

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 CA 2002

ACADIAN CYPRESS & HARDWOODS, INC.

VERSUS

JOY STEWART

*Pme
by [signature]*

Judgment Rendered: SEP 03 2013

On Appeal from the Twenty-First Judicial District Court
In and for the Parish of Tangipahoa
State of Louisiana
No. 2012-0001413

Honorable Elizabeth P. Wolfe, Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

*Whipple, J. concurs in the result.
Higginbotham, J. dissents.*

McCLENDON, J.

The defendant appeals from a trial court judgment granting plaintiff's motion for contempt. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Acadian Cypress & Hardwoods, Inc. (Acadian) is a supplier of domestic and imported hardwood lumber and plywood, hardware, and specialty items, as well as a manufacturer of hardwood moldings. Joy Stewart was employed by Acadian from May 2004 through April 2012 as a sales representative. In September 2009, Acadian presented a Non-competition/Non-solicitation Agreement (Agreement) to Ms. Stewart, which she signed. Ms. Stewart continued employment with Acadian until April 27, 2012, after which she began employment with Deano Hardwoods, LLC (Deano), a competitor of Acadian. Thereafter, Acadian filed a petition for injunctive relief and damages against Ms. Stewart to enforce the Agreement. Following a hearing, the trial court signed a judgment on June 1, 2012, granting the preliminary injunction.¹

The preliminary injunction provides, in relevant part:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that a preliminary injunction issue herein effective until the further Order of this Court, but in no event for a period to exceed two years from April 27, 2012 and enjoining defendant, Joy Stewart, from soliciting current or former, customers or suppliers, of Acadian Cypress & Hardwoods, Inc.; and from carrying on or engaging in a business directly or indirectly, as an employee, independent contractor, owner, principal, or otherwise, that competes with Acadian Cypress & Hardwoods, Inc., specifically including, but not limited to Deano Hardwoods, LLC, where such business provides any of the following products and services: domestic and imported hardwood sales, domestic and imported plywood sales, milling services, cypress propriety products, cabinets and millwork accessories, drying services and distribution of those products. Said restrictions shall only apply within the following parishes and counties:

Louisiana: St. Tammany Parish, Livingston Parish, Tangipahoa Parish, St. Helena Parish, Iberville Parish, East Baton Rouge Parish, West Baton Rouge Parish, Ascension Parish, East Feliciana Parish, West Feliciana Parish, Orleans Parish, Jefferson

¹ Ms. Stewart appealed the judgment granting the preliminary injunction, which was affirmed by this Court. See **Acadian Cypress & Hardwoods, Inc., v. Stewart**, 12-1425 (La.App. 1 Cir. 3/22/13), --- So.3d ---. Ms. Stewart alleged that the Agreement between the parties was null and void and therefore the injunction was invalid. She did not allege lack of conformity between the Agreement and the preliminary injunction that was issued. We note that the preliminary injunction is clearly broader than the terms of the Agreement, as it contained a non-competition provision in addition to the non-solicitation clause.

Parish, Jefferson Davis Parish, St. Charles Parish, St. John the Baptist Parish, St. Bernard Parish, Evangeline Parish, St. Landry Parish, Lafayette Parish, Iberia Parish, Washington Parish, Cameron Parish, Vermillion Parish, and Acadia Parish;

Mississippi: Pearl River County, Hancock County, Harrison County, Hinds County, Forrest County, Pike County, Stone County, and Jackson County;

Alabama: Mobile County and Baldwin County

On July 18, 2012, Acadian filed a motion for contempt, alleging that Ms. Stewart "has willfully and intentionally ignored and disregarded the lawful order of this Court." Acadian asked that Ms. Stewart be held in contempt and sanctioned for her failure to comply with the preliminary injunction. After a hearing, the trial court signed a judgment on August 13, 2012, granting the motion for contempt and "finding [Ms.] Stewart to be in contempt of court in that she has intentionally and willfully violated the preliminary injunction." The trial court ordered Ms. Stewart to pay all court costs regarding the motion. It is from this judgment that Ms. Stewart now appeals.

DISCUSSION

In her appeal, Ms. Stewart maintains that the trial court erred in granting Acadian's motion for contempt. She asserts that she did not violate the trial court's June 1, 2012 judgment granting the preliminary injunction by continuing her employment with Deano and by conducting business outside the confines of the restricted parishes encompassed by the Agreement or by conducting business in her home office located in Tangipahoa Parish, Louisiana.

Authority to punish for contempt of court falls within the inherent power of the court to aid in the exercise of its jurisdiction and to enforce its lawful orders. **Rogers v. Dickens**, 06-0898 (La.App. 1 Cir. 2/9/07), 959 So.2d 940, 945. Contempt of court is defined in LSA-C.C.P. art. 221 as "any act or omission tending to obstruct or interfere with the orderly administration of justice, or to impair the dignity of the court or respect for its authority." There are two types of contempt. A direct contempt is one committed in the immediate view and presence of the court and of which it has personal knowledge. LSA-C.C.P. art.

222. A constructive contempt of court is defined in LSA-C.C.P. art. 224(2) as any contempt other than a direct one, including willful disobedience of any lawful judgment, order, mandate, writ, or process of the court. **Charter School of Pine Grove, Inc. v. St. Helena Parish School Bd.**, 07-2238 (La.App. 1 Cir. 2/19/09), 9 So.3d 209, 224.

Proceedings for contempt must be strictly construed, and the policy of our law does not favor extending their scope. **Estate of Graham v. Levy**, 93-0636 (La.App. 1 Cir. 4/8/94), 636 So.2d 287, 290, writ denied, 94-1202 (La. 7/1/94), 639 So.2d 1167. The trial court is vested with great discretion in determining whether a party should be held in contempt for disobeying a court order, and the court's decision should be reversed only when the appellate court discerns an abuse of that discretion. **Mason v. Hadnot**, 08-2015 (La.App. 1 Cir. 2/13/09), 6 So.3d 256, 258.

The parties initially argue whether this contempt proceeding was civil or criminal in nature. If a contempt proceeding is incidental to a civil action, it is a civil matter if its purpose is to force compliance with a court order or the punishment imposed is remedial or coercive. **Rogers**, 959 So.2d at 947; **Estate of Graham**, 636 So.2d at 290. The burden of proof in a civil contempt case is by a preponderance of the evidence. **Carvajal v. George**, 07-2366 (La.App. 1 Cir. 5/2/08) (unpublished opinion); **McKee v. McKee**, 03-254 (La.App. 3 Cir. 10/1/03), 856 So.2d 135, 137. However, if the purpose of the contempt proceeding is to punish disobedience of a court order or the punishment imposed is punitive and intended to vindicate the authority of the court, it is a criminal matter and the elements of contempt must be proved beyond a reasonable doubt. **Rogers**, 959 So.2d at 947.

In this matter, the trial court's judgment finding Ms. Stewart in contempt of court ordered that she pay the court costs in connection with the motion for contempt, but did not attach any conditions or seek any specific compliance on the part of Ms. Stewart in order to purge herself of the contempt. Because this is an unconditional penalty, one that Ms. Stewart cannot affect or end, it is

criminal in nature. See **Rogers**, 959 So.2d at 947. Accordingly, we find that Ms. Stewart was adjudicated guilty of constructive criminal contempt, and, therefore, the elements of contempt had to have been established beyond a reasonable doubt.

In her appeal, Ms. Stewart argues that she did not violate the terms of the preliminary injunction. At the hearing, she testified that she was currently working for Deano, which is located in Lafayette Parish, one of the restricted parishes. She also stated that her home office was in Tangipahoa Parish, another restricted parish. When asked what she did to make sure she was in compliance with the injunction, Ms. Stewart testified:

We stayed ... within the unrestricted parishes. Basically as far as soliciting and calling on customers I abided by the parishes that are not on the non-compete. ... Now, we did turn me into more of an outside sales person so therefore when I get calls they will be in the parishes that are unrestricted. So yes, I still get calls from my home office, but I am on the road more frequent, therefore, in unrestricted parishes.

Ms. Stewart continued and stated that she transferred calls that would go into the home office to her cell phone. She stated that her understanding was that "I am not supposed to solicit business or customers in those [restricted] parishes. And so that's why when the injunction took place we stayed within the areas that are not restricted."

During cross-examination, Ms. Stewart was asked whether she had been contacted by Acadian customers within the restricted parishes since she had been working for Deano, and she responded affirmatively. Then, she was asked what she told those customers when she was contacted, and Ms. Stewart responded:

Basically, that I could not help them because they were in, because I'm in the middle of a non-compete and they were in the restricted areas.

Ms. Stewart was asked what was her understanding of the terms of the preliminary injunction, and she stated:

Basically, the way I interpret is it says do not solicit, contact customers. I think it may even say vendors in restricted parishes. So basically what we did was, we looked at the parishes that were

not on there and that is who I call on or the customers that I go see.

On redirect examination, the following exchange took place:

Q: When you got calls from these customers that you turned away, did you send them onto another sales person at Deano?

A: I told them they could call the outside salesman for that rep, or they could call the warehouse.

Q: And you gave them the phone number correct?

A: Actually nobody took me up on it. I mean --

Q: So you couldn't do it yourself, but you were willing to let someone else from Deano do what you couldn't do?

A: Redirect them to someone else? Yes.

In its written reasons for judgment, the trial court stated:

[T]he Court considered the plaintiff's motion for contempt and heard the testimony of witnesses, as well as reviewing the memorandum, case law and statutes. The Court granted the motion for contempt and found that the defendant intentionally, knowingly violated the court order in question. The order prohibited her from competing with the plaintiff's business in certain parishes, and she was in clear violation of that. She lives in Tangipahoa Parish and works from her home office in a business that directly competes with the plaintiff. Also, she has materials shipped from Lafayette Parish, where that business likewise competes with the plaintiff. She did attempt to comply with the order by not doing business in the other restricted parishes, but she knew Tangipahoa and Lafayette were restricted and yet she did business activities in those two parishes which competed with the plaintiff. For this contempt, the Court ordered the defendant to pay all of the plaintiff's costs of court.

While we tend to agree with Ms. Stewart that the trial court's interpretation of the injunction may be overly broad,² because such interpretation could effectively prevent her from engaging in her business anywhere in the United States, we nevertheless find no abuse of discretion in the trial court's finding of contempt. Ms. Stewart admitted in her testimony that she referred customers of Acadian to Deano. Clearly, this conduct was willful and intentional and constituted a violation of the non-solicitation provisions of the

² We are specifically troubled by any interpretation that placing sales telephone calls from a home office to a potential customer outside the restricted area would equate to doing business in an area from which the call was placed. In our ever-expanding technological world, such an interpretation would arguably prevent a cell phone call to a customer outside of the restricted area, but made while passing through a restricted area. This does not seem to accomplish the purpose or intent of such agreements.

injunction. Therefore, based on the record before us, we conclude that any rational trier of fact could find the essential elements of criminal contempt beyond a reasonable doubt, and we affirm the trial court's judgment.³

CONCLUSION

For the foregoing reasons, the August 13, 2012 judgment of the trial court is affirmed. All costs of this appeal are assessed to Joy Stewart.

AFFIRMED.

³ Having found a violation of the non-solicitation clause of the preliminary injunction, it is not necessary to address whether Ms. Stewart violated the non-competition provision of the injunction.