WILLIAM R. FORRESTER, JR. AND REGAN A. FORRESTER	*	**NO. 2018-CA-0648**
	*	
VERSUS		**COURT OF APPEAL**
	*	
JOSHUA L. BRUNO		**FOURTH CIRCUIT**
	*	
		STATE OF LOUISIANA

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CONSOLIDATED WITH:	**CONSOLIDATED WITH:**
KATHRYN R. MCCOOL AND DEAN G. SMITH, 1458 NASHVILLE AVENUE, NEW ORLEANS, LOUISIANA 70115	**NO. 2018-CA-0649**
VERSUS	
JOSHUA L. BRUNO, 1448 NASHVILLE AVENUE, NEW ORLEANS, LOUISIANA 70115	

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2016-02574, DIVISION "F"
Honorable Christopher J. Bruno, Judge
* * * * * *
Judge Paula A. Brown
* * * * * *

(Court composed of Judge Rosemary Ledet, Judge Sandra Cabrina Jenkins, Judge Paula A. Brown)

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AFFIRMED
MAY 1, 2019

This matter arises out of a boundary dispute. Plaintiffs/appellees, William R. Forrester, Jr., Regan A. Forrester (collectively, the "Forresters"), Kathryn McCool and Dr. Dean Smith (collectively, the "McCools"),[1] filed petitions to fix boundary against their neighbor, Joshua L. Bruno, defendant/appellant herein. During the pendency of their petitions to fix boundary, each filed motions for preliminary injunctions. In this appeal, Mr. Bruno argues the district court erred in granting the Forresters' motion for preliminary injunction, granting in part the McCools' motion for preliminary injunction, and denying Mr. Bruno's exceptions of no cause of action and unauthorized use of a summary proceeding. Finding no error of law or abuse of the district court's discretion, we affirm the judgments.

FACTUAL AND PROCEDURAL HISTORY

The Forresters purchased their home, 1442 Nashville Avenue, on March 28, 1984. The McCools bought their home, 1458 Nashville Avenue, on December 31, 2014. Mr. Bruno moved into 1448 Nashville Avenue, next door to the Forresters, on August 9, 2015. The Forresters and Mr. Bruno share a garage located in the

[1] Ms. McCool and Dr. Smith are married. Only Ms. McCool testified at the hearing for injunctive relief. Accordingly, for purposes of this opinion, we shall collectively reference Ms. McCool and Dr. Smith as the "McCools."

rear of their properties and bounded by Garfield Street. The McCools' property is bounded to the south by Mr. Bruno's residence.[2]

On March 14, 2016, the Forresters filed a "Petition to Fix Boundary." They alleged that "[d]uring the period from August through December 2015, [Mr. Bruno] ha[d] erected, expanded and maintained encroachments on petitioners' property beyond the boundaries set forth in his deed and survey, in the form of fencing, pool/pump equipment and A/C equipment." The Foresters requested an order compelling Mr. Bruno to abide by his survey and to remove the encroachments.

The McCools filed a "Petition to Fix Boundary; Petition to Enjoin Criminal Trespass; Destruction of Immovable Property; Request for Treble Damages; Request for Injunction" (collectively, "petition to fix boundary") on September 19, 2017.[3] They alleged, in part, that Mr. Bruno, his workers and/or guests continually trespassed on their property; parked in the McCools' driveway, blocking the McCools' egress and ingress to their driveway; erected scaffolding on their property; removed plants; and destroyed several of the McCools' holly trees. Additionally, the McCools alleged Mr. Bruno heaved a six-foot rebar onto their property, spat on one of the McCools' landscapers, and threatened to bankrupt them with litigation. As part of the prayer for relief, the "request for injunction" demanded a mandatory injunction to restrain and permanently enjoin Mr. Bruno from committing further acts of trespass and assault.

[2] There are no shared boundaries between the Forresters' property and the McCools' property.

[3] Ms. McCool, an out-of-state attorney, filed the petition, *pro se*, on behalf of the McCools.

The Forresters moved to consolidate their petition to fix boundary with the McCools' petition to fix boundary on January 29, 2018. The district court granted the motion on April 2, 2018.[4]

On May 7, 2018, the Forresters filed a supplemental and amending petition. They alleged that after the filing of their petition to fix boundary, Mr. Bruno had made verbal threats, intentionally damaged, altered or removed the Forresters' property, and had continually encroached and trespassed on the Forresters' property, including their backyard, side yard, and the Forresters' portion of the shared garage which faces Garfield Street. They demanded preliminary and permanent injunctions. On May 15, 2018, the Forresters followed-up their supplemental petition with a motion for preliminary injunction to enjoin Mr. Bruno's actions pending the trial on the merits on the petition to fix boundary.

On the same day, May 15, 2018, the McCools filed a motion for preliminary injunction to enjoin Mr. Bruno, his agents, and guests from parking, trespassing, and throwing items on their property and to prohibit Mr. Bruno from cursing, harassing, making obscene gestures, or threatening the McCools. Along with the motion, the McCools filed a rule to show cause as to why a temporary injunction should not issue against Mr. Bruno.

Mr. Bruno filed exceptions of no cause of action and unauthorized use of summary proceedings in opposition to the respective motions for preliminary injunction. He asserted the motions did not allege facts to support a preliminary

[4] Before the petitions to fix boundary were consolidated, Mr. Bruno filed an answer and affirmative defenses to the Forresters' petition on December 20, 2017; and on December 26, 2017, he filed an answer, affirmative defenses, and reconventional demand to the McCools' petition.

injunction and that the motions represented an improper use of summary proceedings to establish property rights.

The hearing on the preliminary injunctions and Mr. Bruno's exceptions was held on May 22, 2018. The district court, at the outset of the hearing, considered and orally denied Mr. Bruno's exceptions and, thereafter, proceeded with the hearing on the merits of the respective preliminary injunctions. The district court first heard testimony in support of the Forresters' preliminary injunction.

The Forresters

Tommy Francis, an expert in the installation and maintenance of video security equipment retained by the Forresters, testified that he installed surveillance cameras in the garage in areas under the Forresters' control on or about December 2017. Mr. Francis identified videos which depicted Mr. Bruno removing and damaging the surveillance cameras, trespassing, and engaging in behavior Mr. Francis described as malicious. Mr. Francis testified Mr. Bruno directly threatened him with lawsuits.

William Forrester testified that his problems with Mr. Bruno began shortly after Mr. Bruno moved in next door when Mr. Bruno's work crews used the Forresters' yard as a "staging" area to build a swimming pool, without providing any notice or obtaining permission. Mr. Bruno's workers also dug a trench across his backyard in order to build a concrete sidewalk leading to the back door of the garage. The workers pulled up the Forresters' pavers and sprinkler system, took down a fence on the property line, constructed a fence that was partially on the Forresters' property, and used the Forresters' water supply. Mr. Forrester voiced his objections to Mr. Bruno, posted a "no trespassing" sign, and sent numerous e-mails to Mr. Bruno in October and November 2015 detailing his complaints. Mr.

Forrester also asked Mr. Bruno for his survey to establish the property lines, but Mr. Bruno did not respond. After these actions yielded no results, Mr. Forrester obtained a copy of Mr. Bruno's survey from the Conveyance Office, retained his own surveyor, and filed the Forresters' petition to fix boundary.[5]

Mr. Forrester testified that Mr. Bruno had ripped out the Forresters' surveillance camera equipment and police officers had to retrieve the equipment from Mr. Bruno's house. Mr. Forrester complained that Mr. Bruno routinely dumped his garbage in the Forresters' yard, blocked Mrs. Forrester's access to the garage, and had his workers service Mr. Bruno's pool pump equipment, which is on the Forresters' property. Mr. Forrester testified that in February 2018, Mr. Bruno threatened to "bury" him after Mr. Forrester had asked Mr. Bruno's workers—who were standing in Mr. Forrester's azaleas—to get off his property. Approximately three weeks before the hearing, while Mr. Forrester was walking his dog, Mr. Bruno confronted him, screaming about the litigation. In response, Mr. Forrester instructed his attorney to tell Mr. Bruno's counsel that any communication between the two should go through their respective legal representatives. He believed Mr. Bruno intentionally tried to provoke him, and he felt intimidated.

On cross-examination, Mr. Forrester admitted that problems associated with the construction of the swimming pool mostly ceased in 2015; however, he reiterated that Mr. Bruno's workers still entered his property to service Mr.

[5] During his testimony, Mr. Forrester identified the petition to fix boundary and the exhibits attached to the petition. Exhibits introduced into evidence during the Forresters' case-in-chief included diagrams of the location of the installed video surveillance equipment, videos taken by Mr. Francis, the Forresters' and Mr. Bruno's acts of sale and survey, e-mails between the Forresters and Mr. Bruno and between their attorneys, Mr. Bruno's answers to interrogatories, and photographs depicting the shared garage space, the disputed fence, trash in the Forresters' backyard, and Mr. Bruno's car blocking entry to the garage.

Bruno's pool pump equipment. As to whether the only access to the garage was through the Forresters' backyard, Mr. Forrester testified that Mr. Bruno could gain entry to the garage by using a sidewalk going from Mr. Bruno's property through a gate to Garfield Street. While Mr. Forrester believed Mr. Bruno had constructed a fence which encroached on the Forresters' property and that Mr. Bruno's pool pump equipment was on their property, he made clear the relief sought by the preliminary injunction did not include demands for Mr. Bruno to remove the fence or the pool pump equipment. He testified those matters would be resolved at the hearing on the petition to fix boundary.

Regan Forrester testified that Mr. Bruno's workers sometimes prevented her from using her side of the garage by leaving equipment in the garage. On an occasion when she complained to Mr. Bruno, she said he put his finger in her face and said, "I have people who can take [care] of you - - who can handle you. . ." She said she felt threatened. The situation worsened after Mr. Bruno was served with their lawsuit in December 2017. Mrs. Forrester returned home to discover the rear garage door had been torn off its hinges and tossed into her backyard. That incident caused the Forresters to install the surveillance cameras. Mrs. Forrester testified Mr. Bruno frequently parks too close to her car and that she often has to remove objects placed behind her car before she backs out. Mrs. Forrester described an incident around Mother's Day when she returned home after midnight and was forced to park in the street because Mr. Bruno's vehicle was parked in the middle of the garage.

Mr. Bruno, the sole witness in opposition to the motions for preliminary injunction,[6] acknowledged that he and the Forresters share garage space. He contended, however, that he utilizes the rear door to access the garage at least twice a week because the garage does not open properly. He said he enters the garage through a paved walkway in the Forresters' backyard as it is a safer route for his young children than entering from Garfield Street. He testified that he became aware the Forresters had a problem with his usage of the rear entry to the garage only after they filed the preliminary injunction.

Mr. Bruno admitted he removed and repacked the pavers in the Forresters' backyard. He maintained he "stabilized" the pavers for walking and pushing a baby stroller. Mr. Bruno testified that he removed and replaced the "mutually shared" fence because of termites. He said he attempted to resolve his differences with Mr. Forrester before the preliminary injunction was filed; however, he claimed Mr. Forrester refused to talk to him.

On cross-examination by the Forresters' counsel, Mr. Bruno did not dispute that he had to walk on part of the Forresters' property to get to the garage; but rather, he maintained he had a legal servitude over a "large swath" of the Forresters' backyard, which entitles him to enter their yard to access the rear garage door. He admitted he had told police he owned the entire garage at the time he ripped out the Forresters' surveillance equipment. He explained he removed the Forresters' surveillance equipment, in part, because he thought the equipment was placed by another party with whom he was engaged in a domestic dispute. He denied threatening Mrs. Forrester and yelling at Mr. Forrester while Mr. Forrester

[6] Mr. Bruno admitted into evidence pictures depicting the landscaped area before and after his dispute arose with the McCools and various pictures of the garage space he shared with the Forresters.

walked his dog. As to the threat to "bury" Mr. Forrester, he testified that he told Mr. Forrester that they would bury each other with litigation.

The McCools

Kathryn McCool testified that in 2015, she consented for Mr. Bruno to landscape a "small bit" of the front corner of her property. She said, however, that Mr. Bruno removed her plants without her permission and landscaped a fifty-four feet area to which she had not consented. As a result, his workers were constantly on her property to maintain his landscaping. Her relationship with Mr. Bruno deteriorated in June 2017 when he complained that leaves from her holly trees had damaged his swimming pool. He demanded that she trim the trees. Ms. McCool permitted him to trim the trees and cut down a tree trunk that hung over onto Mr. Bruno's property. When she returned from a vacation in July 2017, she discovered Mr. Bruno had totally removed the trees. Thereafter, the McCools sent notices to Mr. Bruno to remove the shrubs and trees he had planted on their property and to return their property to its preexisting state. She asserted his plantings amounted to an encroachment based on his "Cash Sale" document and the certified survey of his property registered with the Clerk's Office.

Ms. McCool identified still photographs from videos which showed Mr. Bruno had tossed a six foot piece of rebar, hurled chicken bones, and thrown other garbage onto the McCools' property.[7] She testified that Mr. Bruno, his guests and his employees frequently parked in her driveway or within three feet of her driveway. She also said Mr. Bruno had threatened to bankrupt the McCools with litigation. Ms. McCool requested the district court enjoin Mr. Bruno, his

[7] Ms. McCool also introduced into evidence photographs showing the property boundaries and trees, "notice" letters sent to Mr. Bruno, and a "thumb drive" video.

employees, or guests from trespassing and littering on the McCools' property and from using or blocking their driveway.

On cross-examination, Ms. McCool admitted if Mr. Bruno had not cut down her holly trees, she would have had no landscaping issues with him. She re-urged that she wanted Mr. Bruno to not trespass on her property in accordance with the boundary lines as established in the surveys. When Mr. Bruno's counsel disputed the surveys presented by Ms. McCool, the district court opined that it could not resolve the property line dispute in the preliminary injunction proceeding. Mr. Bruno's counsel acknowledged that, for purposes of the McCools' preliminary injunction, Mr. Bruno was not asserting that he had a right to walk on her driveway; instead, he was contesting whether the edge of the landscaped property belonged to the McCools or Mr. Bruno.

Mr. Bruno testified that Ms. McCool permitted him to landscape and maintain the landscaped area during the period from September 2015 to July 2017. In support of his ownership claim to the edge of the landscaped property, Mr. Bruno noted the bricks on the landscaped area between his house and the McCools' driveway match the bricks on both sides of his house.

At the conclusion of the hearing, the district court orally granted the Forresters' request for preliminary injunction and granted in part and denied in part the McCools' request for preliminary injunction. The district court also overruled Mr. Bruno's exceptions of no cause of action and unauthorized use of summary proceeding filed against both the Forresters and the McCools.

The district court granted Mr. Bruno's motions for appeal from both judgments on June 11, 2018.[8]

DISCUSSION

Mr. Bruno's assigned errors are two-fold: first, the district court erred in denying his exceptions of no cause of action and unauthorized use of summary proceedings; and second, the district court erred in granting the preliminary injunction in favor of the Forresters and partially granting the McCools' preliminary injunction. Before we address the merits, we will first consider the McCools' motion for partial dismissal of Mr. Bruno's appeal.

The McCools argue this Court lacks jurisdiction over the judgments denying the exceptions because the judgments are interlocutory, rather than final, judgments. We agree the denials of the exceptions constitute non-appealable, interlocutory judgments. *See* La. C.C.P. arts. 1841 and 2083.[9] However, noting that the interlocutory rulings are before us on appeal from a final judgment, this court in *Schwarzenberger v. Louisiana State Univ. Health Scis. Ctr.-New Orleans*, 2018-0480, pp. 6-7 (La. App. 4 Cir. 10/3/18), ___ So.3d ___, ___, 2018 WL 4778871,*3, *writ denied*, 18-1966 (La. 1/28/19), 263 So.3d 428, recently observed:

> [O]nce the trial court renders a final, appealable judgment adjudicating all the remaining claims, a prior interlocutory judgment is only subject to review through an appeal of the final judgment. *See Joseph v. Wasserman*, [20]16-0528, p. 5 (La. App. 4 Cir. 12/7/16), 206 So.3d 970, 973 (citing *People of the Living God v. Chantilly Corp*., 251 La. 943, 947, 207 So.2d 752, 753 (1968)); *Louisiana High School Athletics Ass'n, Inc. v. State*, [20]12-1471, p. 26 (La. 1/29/13),

[8] The record reflects that the McCools' judgment was entered into the district court record on June 11, 2018; and the Forresters' judgment was entered on June 14, 2018.

[9] La. C.C.P. art. 1841 provides, in pertinent part, that "[a] judgment that does not determine the merits but only preliminary matters in the course of the action is an interlocutory judgment." La. C.C.P. art. 2083(C) provides that "[a]n interlocutory judgment is appealable only when expressly provided by law."

> 107 So.3d 583, 603. "When an unrestricted appeal is taken from a final judgment, the appellant is entitled to seek review of all adverse interlocutory rulings prejudicial to him, in addition to the review of the final judgment." *Favrot v. Favrot*, [20]10-0986, p. 2, n. 1 (La. App. 4 Cir. 2/9/11), 68 So.3d 1099, 1102 (quoting Roger A. Stetter, LOUISIANA CIVIL APPELLATE PROCEDURE, § 3:32 (2010-2011 ed.).

See also Maqubool v. Sewerage & Water Bd. of New Orleans, 2018-0572, p. 3 (La. App. 4 Cir. 11/14/18), 259 So.3d 630, 632 wherein this Court held that "[a]lthough the partial grant of the preliminary injunction is the only appealable portion of the judgment in this matter, the appellant is entitled to have this Court review the interlocutory portions of the judgment."). Consequently, the motion to dismiss the appeal is denied.

We now return to consider the merits of the assigned errors.

Denial of Exceptions

Exceptions of No Cause of Action

Mr. Bruno argues the Forresters' and the McCools' respective pleadings do not state a cause of action in that the pleadings fail to allege facts to prove irreparable harm, a necessary predicate to obtain a preliminary injunction. *See* La. C.C.P. art. 3601.[10] We disagree.

The peremptory exception of no cause of action questions whether the law extends a remedy against the defendant based on the facts alleged in the pleadings. *See Mid-South Plumbing, LLC v. Development Consortium-Shelly Arms, LLC*, 2012-1731, p. 4 (La. App. 4 Cir. 10/23/13), 126 So.3d 732, 736 (citation omitted). Hence, no evidence may be admitted in support of the exception; and in deciding

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[10] La. C.C.P. art. 3601(A) states, in pertinent part, that "[a]n injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant. . ."

La. C.C.P. art. 3601(C) states, in part, that '[d]uring the pendency of an action for injunction the court may issue a temporary restraining order, a preliminary injunction, or both. . ."

the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. *Id*. at 2012-1731, pp. 4-5, 126 So.3d at 736. The exception shall not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle plaintiff to relief." *Id*., 2012-1731, p. 5, 126 So.3d at 736. Therefore, "[e]very reasonable interpretation must be accorded the language of the petition in favor of maintaining its sufficiency and affording the plaintiff the opportunity of presenting evidence at trial." *Moses v. Moses*, 2015-0140, p. 4 (La. App. 4 Cir. 8/5/15), 174 So.3d 227, 230 (citation omitted).

In reviewing a district court's ruling on an exception of no cause of action, appellate courts conduct a *de novo* review as the exception raises a question of law; and the district court's decision is based only on the sufficiency of the petition. *See Herman v. Tracage Development, L.L.C.*, 2016-0082, 2016-0083, p. 4 (La. App. 4 Cir. 9/21/16), 201 So.3d 935, 939 (citations omitted). The burden of proof to show a petition does not state a cause of action rests on the mover. *State, Div. of Admin., Office of Facility Planning & Control v. Infinity Sur. Agency, L.L.C.*, 2010-2264, p. 9 (La. 5/10/11), 63 So.3d 940, 946 (citation omitted).

In the case *sub judice*, review of the relevant facts pled in the Forresters' supplemental petition and motion for preliminary injunction alleges Mr. Bruno's actions, such as engaging in "a continuing pattern of threatening and destructive behavior, which includes intentionally damaging, altering and removal of plaintiffs' property, as well as verbal threats and other forms of harassment," caused them irreparable injury.

Likewise, the McCools' petition to fix boundary and motion for preliminary injunction[11] specify irreparable injury resulting from Mr. Bruno's trespassing on their property, destroying their trees and vegetation, throwing garbage onto their property, blocking their driveway, and threatening the McCools.

When we accord every reasonable interpretation to the Forresters' and the McCools' pleadings, we find the pleadings allege sufficient operative facts, which if taken as true, articulate a cause of action for a preliminary injunction. Mr. Bruno has failed to meet his burden of proof. Accordingly, based upon our *de novo* review, the district court did not err in denying the no cause of action exceptions.

Exceptions of Unauthorized Use of Summary Process

Mr. Bruno argues that the Forresters and the McCools used motions for preliminary injunctions to resolve boundary disputes; and the district court's treatment of the preliminary injunctions was procedurally and substantively improper.

A preliminary injunction is essentially an interlocutory procedural device designed to preserve the status quo as it exists between the parties, pending trial on the merits. *See Bank One, Nat. Ass'n v. Velten*, 2004-2001, p. 5 (La. App. 4 Cir.

[11] Mr. Bruno complains the McCools did not properly request injunctive relief in accordance with La. C.C.P. art. 3601(C), which requires "an application for injunctive relief shall be by petition." The transcript of the hearing shows the district court interpreted the McCools' "Request for Injunction"—demanded within the petition to fix boundary—as a separate claim from the boundary dispute. In the interests of judicial economy, the district court severed the boundary and injunctive relief claims. Upon noting the McCools had later filed their request for a preliminary injunction in the form of a motion, the district court permitted the McCools to seek a preliminary injunction based on the facts pled in their motion. We find this action well within the district court's discretion as "Louisiana is a fact pleading state that values substance over form and does not require the use of magic titles or terminology as a threshold requirement for validly pleading an action." *Reynolds v. Brown*, 2011-525, p. 6 (La. App. 5 Cir. 12/28/11), 84 So.3d 655, 658-59 (citations omitted). Pleadings are liberally construed so as to give the pleader every opportunity to offer his evidence and to achieve substantial justice. *See Jackson v. Housing Authority of New Orleans*, 478 So.2d 911, 913 (La. App. 4th Cir. 1985). Recovery may be granted to a party under any legal theory justified by the facts pled. *Bains v. The Young Men's Christian Ass'n of Greater New Orleans, Louisiana*, 2006-1423, p. 4 (La. App. 4 Cir. 10/03/07), 969 So.2d 646, 649.

8/17/05), 917 So.2d 454, 458 (citations omitted). In comparison, the principal demand is determined on its merits only after a full trial under ordinary process. *Velten*, 2004-2001, p. 5, 917 So.2d at 458. Well-settled jurisprudence provides that it is proper to hear a motion for preliminary injunction by way of summary proceeding if the preliminary injunction is ancillary to a petition for permanent injunction or other ordinary proceedings." *Brown v. Brown*, 473 So.2d 851, 854, n. 7 (La. App. 1st Cir. 1984) (citing La. C.C.P. arts. 2592 and 3601). Finding that the preliminary injunction was procedurally proper before the district court, whether the district court properly denied the exceptions of unauthorized use of summary process rests on whether the relief granted by the preliminary injunctions maintained the status quo or resolved the merits of the principal demands raised in the petitions to fix boundary.

In the case *sub judice*, the preliminary injunction granted in favor of the Forresters enjoined Mr. Bruno, his agents and assigns in the following respects:

- Encroaching or trespassing on the Forresters' property at 1442 Nashville Avenue, which property is highlighted in yellow on the survey by Sam Z. Scandaliasto dated January 18, 1994. . .;

- Damaging, removing or obstructing any equipment and/or movable property of the Forresters; and

- Harassing, threatening and provoking William Forrester, as well as any of their family or guests.

Our examination of the record shows the preliminary injunctive relief—prohibiting Mr. Bruno from trespassing, damaging equipment and harassing the Forresters—does not dispose of the matters raised in the petition to fix boundary; namely, the preliminary injunction does not affirmatively fix the boundaries between the Forresters and Mr. Bruno nor does it require Mr. Bruno to remove the alleged encroachments. We specifically note Mr. Forrester's testimony at the

hearing wherein he relayed he was not seeking removal of the fence or the pool pump equipment as part of the relief requested by the preliminary injunction. Nonetheless, Mr. Bruno contends the injunction against entering the Forresters' property preemptively decided his alleged servitude/right of passage claim to access the rear of the garage through the Forresters' yard and, thus, interferes with the status quo as he has routinely used this entry. These arguments are unpersuasive.

The record is devoid of any evidence that Mr. Bruno has established a legal right to access the Forresters' property. Moreover, there is no evidence that Mr. Bruno is landlocked. Mr. Bruno's testimony made clear that he has access to the shared garage via Garfield Street, which he utilizes at least three times per week. Consequently, the status quo is, and has been, that the yard area to the rear of the garage belongs to the Forresters. Whether Mr. Bruno has a legal right to access this part of the Forresters' property is a matter properly referred to the trial on the merits of the petition to fix boundary.

As to the McCools, the district court granted in part and denied in part the McCools' request for preliminary injunction as follows:

- Kathryn McCool and Dean Smith's Motion for Preliminary Injunction is denied for the flowerbed/garden area.

- Kathryn McCool and Dean Smith's Motion for Preliminary Injunction is granted insofar as Joshua Bruno is hereby ordered to cease all communications or contact with Kathryn McCool and Dean Smith. Any necessary communications must go through the parties' attorneys.

- Joshua Bruno is also prohibited from entering Ms. McCool's driveway, but may walk through the flowerbed/garden area as needed.

- Joshua Bruno is prohibited from allowing his workers to enter Ms. McCool's property or store their materials on her property.

Thus, the preliminary injunction not only bars Mr. Bruno from communication with or harassment of the McCools, it also prohibits him and his workers from entering the McCools' driveway or storing materials on their property. In analyzing this relief, we note that at the hearing, Mr. Bruno conceded he was not claiming a right to walk on the McCools' driveway and maintained the only property line dispute was whether the edge of the landscaping was on Mr. Bruno's property or on the McCools' property. Concerning the property line dispute, the district court specifically denied the McCools' request for an injunction for the landscaped area, opining, "I cannot grant it as to that [sic] the bed or garden. I do not have sufficient evidence in the injunction to prove that is indeed on your property. Right now the status quo is that property - - that landscaping property will remain the way it is." Accordingly, we find the partial injunctive relief granted to the McCools involved non-property boundary issues properly decided in a summary proceeding.

Having found that the preliminary injunctions issued maintained the status quo and did not dispose of the principal demands raised in the Forresters' and McCools' respective petitions to fix boundary, Mr. Bruno's exceptions of unauthorized use of summary process are without merit.

We now review whether the district court erred in granting the preliminary injunctions.

Preliminary Injunctions

This Court explained the standard of review and the plaintiff's burden of proof to obtain a preliminary injunction in *Yokum v. Pat O'Brien's Bar, Inc.*, 2012-0217, pp. 6-7 (La. App. 4 Cir. 8/15/12), 99 So.3d 74, 80, as follows:

> "A trial court has broad discretion in the granting or denial of a preliminary injunction, and will not be disturbed on review absent clear abuse of that discretion." *Cajun Elec. Power Co-op., Inc. v. Triton Coal Co.*, [19]91–1816, 590 So.2d 813, 816 (La. App. 4th Cir.1991); *Smith v. West Virginia Oil & Gas Co.*, 373 So.2d 488, 493 (La.1979). That broad standard is, of course, based upon a conclusion that the trial court committed no error of law and was not manifestly erroneous or clearly wrong in making a factual finding that was necessary to the proper exercise of its discretion. *See South East Auto Dealers Rental Ass'n, Inc. v. EZ Rent To Own, Inc.*, [20]07–0599, pp. 4–5 (La. App. 4 Cir. 2/27/08), 980 So.2d 89, 93.
>
> In order for a plaintiff to meet his burden of proof at a hearing on a preliminary injunction, he must make a *prima facie* showing that he will prevail at the trial on the permanent injunction. *See* La. C.C.P. art. 3601; *Mary Moe, L.L.C. v. Louisiana Bd. of Ethics*, [20]03–2220, p. 9 (La. 4/14/04), 875 So.2d 22, 29. The standard of proof to obtain a preliminary injunction on a *prima facie* showing is, however, "less than that required for a permanent injunction." *Historic Restoration, Inc. v. RSUI Indem. Co.*, [20]06–1178, p. 11 (La. App. 4 Cir. 3/21/07), 955 So.2d 200, 208.

An injunction is an extraordinary remedy and should only issue in circumstances where the party seeking it is threat

ened with irreparable harm without adequate remedy at law. *Harvey v. State*, 2014-0035, 2014-0156, 2014-0977, 2014-0978, 2014-0979, p. 21 (La. App. 4 Cir. 12/16/15), 183 So.3d 684, 700.

Mr. Bruno argues that neither the Forresters nor the McCools was entitled to a preliminary injunction as each failed to prove irreparable harm and that other remedies were unavailable to them. Mr. Bruno posits that the Forresters and the McCools could have sought relief for their complaints through their respective petitions to fix boundary or through tort actions. He contends that a preliminary injunction is not proper relief in a boundary dispute action. Established statutory and jurisprudential authority, however, rebuts this argument.

Statutorily, La. C.C.P. art. 3601(C) establishes that a preliminary injunction, by its nature, may be ancillary to an action for a permanent injunction. Moreover,

in *Nomey v. State Dept. of Highways*, 325 So.2d 732 (La. App. 2d Cir. 1976), the appellate court determined the evidence was sufficient to support the issuance of preliminary injunction in a matter where the plaintiff alleged the Department of Highways had encroached on his property. In sustaining the denial of Mr. Bruno's exceptions of no cause of action and unauthorized use of summary proceedings, we have already determined that the Forresters and the McCools properly sought preliminary injunctions ancillary to their claims for a permanent injunction. Hence, the only issue before us is whether the district court abused its discretion in determining the Forresters and the McCools proved irreparable harm to warrant the issuance of the preliminary injunctions.

The Forresters' proof of irreparable harm consisted of evidence that Mr. Bruno damaged their security cameras, tore off the garage door, threw a garbage can and other debris on their property, threatened to "handle" Mrs. Forrester and made other statements to harass and intimidate them. In granting their preliminary injunction, the district court noted "there is clear evidence of vandalism that you perpetrated on certain property owned by the Forresters. This is extremely troubling to me."

In their demand for a preliminary injunction, the McCools put forth evidence that Mr. Bruno parked in their driveway, threw a rebar and tossed garbage and other trash onto their property, and yelled at and verbally threatened the McCools. After Ms. McCool's testimony, Mr. Bruno's counsel asked for a dismissal of the McCools' request for a preliminary injunction. In refusing to grant Mr. Bruno's request to dismiss, the district court reasoned, "there are some troubling things that occurred and I saw in the video that Mr. Bruno engaged in unnecessary acts of I think bullying. Quite frankly, I find that it does rise at this point."

Our review of the record reveals the district court thoroughly considered witness testimony and the evidence submitted. As noted earlier in this opinion, the district court found Mr. Bruno's acts of vandalism and bullying to be "troubling" and, consequently, rising to the level of irreparable harm. [12] We find no abuse of the district court's discretion in granting the Forresters' request for preliminary injunction and granting, in part, the McCools' request for a preliminary injunction.

This assignment of error lacks merit.

The McCools' Request for Attorney's Fees and Costs

The McCools seek attorney's fees and costs for a frivolous appeal, pursuant to La. C.C.P. art. 2164. La. C.C.P. art. 2164 provides the following:

> The appellate court shall render any judgment which is just, legal and proper upon the record on appeal. The court may award damages for frivolous appeal; and may tax the costs of the lower or appellate court, or any part thereof, against any party to the suit, as in its judgment may be considered equitable.

We decline to consider the McCools' request due to their failure to file either an answer to the appeal or a cross appeal requesting such damages. *See An Erny Girl, L.L.C. v. BCNO 4 L.L.C.*, 2016-1011, pp. 17-18 (La. App. 4 Cir. 3/30/17), 216 So.3d 833, 844, *writ denied*, 2017-0815 (La. 6/29/17), 222 So.3d 48.

[12] Notwithstanding our sustaining of the district court's finding of irreparable harm, we note that a finding of irreparable harm is not required to obtain injunctive relief in matters, such as this, to enjoin trespassers and other disturbers. *See* La. C.C.P. art. 3663(2) which provides, in part, that injunctive relief is available to "[a] person who is disturbed in the possession which he and his ancestors in title have had for more than a year of immovable property or of a real right therein of which he claims ownership, the possession, or the enjoyment." *See also Gaumnitz v. Williamson*, 36,177, p. 9 (La. App. 2 Cir. 8/14/02), 824 So.2d 531, 536, where the Second Circuit found that a preliminary injunction brought pursuant to La. C.C.P. art. 3663 does not require a showing of irreparable injury.

CONCLUSION

Based on the reasons provided herein, we affirm the judgments of the district court.

AFFIRMED