COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-17-00235-CV

MARTA CARREJO MARTINEZ — APPELLANT

V.

JANET D. MANGRUM — APPELLEE

FROM THE 96TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 096-263989-13

MEMORANDUM OPINION[1]

I. INTRODUCTION

Following a forty-five-minute bench trial, at which only the plaintiff—Appellee Janet D. Mangrum—testified, the trial court signed a permanent injunction and final judgment enjoining Appellant Marta Carrejo Martinez from coming within fifty feet of Mangrum or Mangrum's residence and from making

[1]*See* Tex. R. App. P. 47.4.

threats or engaging in any other conduct which could reasonably be construed to constitute intimidation or threat of bodily injury to Mangrum. At Martinez's request, the trial court made findings of fact and conclusions of law. Martinez perfected this appeal and, in three issues, challenges the factual sufficiency of the evidence to support two of the findings of fact and asserts that the permanent injunction is fatally vague. We will affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of repeated, antagonistic behavior directed at Mangrum by Martinez. After Mangrum filed suit against Martinez, on March 22, 2013, the trial court entered a temporary injunction that enjoined and restrained Martinez and her family members, agents, servants, employees, and all persons acting with or on behalf of her from, among other things, coming within 300 feet of Mangrum's residence, which included driving in front of Mangrum's residence and engaging in threatening or intimidating behavior toward Mangrum.

Although this case had at various times other parties and other relief requested, eventually the only issue that remained was Mangrum's request for a permanent injunction against Martinez. The request for a permanent injunction proceeded to a forty-five-minute bench trial on February 13, 2017.

At trial, only one exhibit, which consisted of five photographs, was admitted into evidence. Mangrum—the sole witness—provided the following uncontroverted testimony:

- In 2013, Martinez came onto her property and screamed and cursed at her and uprooted flowers that Mangrum had recently planted.

- In 2013 and 2015, Martinez came onto her property to spit in front of Mangrum and her mother and began calling them names and screaming and cursing at them.

- Martinez "firebombed" Mangrum's house twice, once causing $10,000 in damage.

- Martinez came onto her property and spat what "looks like blood" onto her driveway.

- Martinez came onto her property at night, screamed and cursed at Mangrum, and shined flashlights into her bedroom, bathroom, and living room windows.

- After calling the police to complain, Mangrum was instructed by the police that her only remedy to prevent Martinez from coming onto her property, setting fires, and threatening Mangrum was to obtain an injunction through a civil action.

- Since obtaining a temporary injunction, Martinez has not shined flashlights into Mangrum's windows, but Martinez has still sworn at her, spit in front of Mangrum on her driveway, and "firebombed" her home.

The judge took the matter under advisement and two weeks later sent the parties a letter indicating that after considering the pleadings and evidence, he would enter judgment in favor of Mangrum.

On April 5, 2017 the trial court signed a "Permanent Injunction and Final Judgment" that permanently enjoined and restrained

> Marta Carrejo Martinez and her family members, agents, servants, employees and all persons acting in concert with her from:
>
> > a. coming within fifty (50) feet of [Mangrum] or [Mangrum's] residence . . . and further be enjoined and restrained from engaging in any aggressive behavior toward the Plaintiff Janet

> Mangrum including making threats or engaging in any other conduct which could reasonably be construed to constitute intimidation or threat of bodily injury to Plaintiff Janet Mangrum.

The trial court also entered three findings of fact and a single conclusion of law.

Martinez filed a notice of appeal. She complains of three issues: (1) the evidence is factually insufficient to support finding of fact #1; (2) the evidence is factually insufficient to support finding of fact #2; and (3) the permanent injunction is too vague and is not supported by the requisite showing of imminent harm.

III. STANDARD OF REVIEW

A. Findings of Fact: Factual Sufficiency

A trial court's findings of fact have the same force and dignity as a jury's answers to jury questions and are reviewable for legal and factual sufficiency of the evidence to support them by the same standards. *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994); *Anderson v. City of Seven Points*, 806 S.W.2d 791, 794 (Tex. 1991); *see also MBM Fin. Corp. v. Woodlands Operating Co.*, 292 S.W.3d 660, 663 n.3 (Tex. 2009). When the appellate record contains a reporter's record, findings of fact on disputed issues are not conclusive and may be challenged for the sufficiency of the evidence. *Sixth RMA Partners, L.P. v. Sibley*, 111 S.W.3d 46, 52 (Tex. 2003); *Allison v. Conglomerate Gas II, L.P.*, No. 02-13-00205-CV, 2015 WL 5106448, at *6 (Tex. App.—Fort Worth Aug. 31, 2015, no pet.) (mem. op.). We defer to unchallenged findings of fact that are

supported by some evidence. *Tenaska Energy, Inc. v. Ponderosa Pine Energy, LLC*, 437 S.W.3d 518, 523 (Tex. 2014).

When reviewing an assertion that the evidence is factually insufficient to support a finding of fact, we set aside the finding only if, after considering and weighing all of the evidence in the record pertinent to that finding, we determine that the credible evidence supporting the finding is so weak, or so contrary to the overwhelming weight of all the evidence, that the answer should be set aside and a new trial ordered. *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986) (op. on reh'g); *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986); *Garza v. Alviar*, 395 S.W.2d 821, 823 (Tex. 1965).

B. Permanent Injunction

Whether to grant a permanent injunction is ordinarily within the sound discretion of the trial court, and our review of the trial court's action is limited to the question of whether the action constituted a clear abuse of discretion. *Priest v. Tex. Animal Health Comm'n*, 780 S.W.2d 874, 875 (Tex. App.—Dallas 1989, no writ). Because an injunction is an equitable remedy, a trial court weighs the respective conveniences and hardships of the parties and balances the equities. *Hitt v. Mabry*, 687 S.W.2d 791, 795 (Tex. App.—San Antonio 1985, no writ) (citing *Lower Nueces River Water Supply Dist. v. Live Oak Cty.*, 312 S.W.2d 696, 701 (Tex. Civ. App.—San Antonio 1958, writ ref'd n.r.e.)).

An injunction must be as definite, clear, and precise as possible and, when practicable, it should inform the defendant of the acts she is restrained from

doing without calling on her for inferences or conclusions about which persons might well differ and without leaving anything for further trial. *Webb v. Glenbrook Owners Ass'n, Inc.,* 298 S.W.3d 374, 384 (Tex. App.—Dallas 2009, no pet.); *see also* Tex. R. Civ. P. 683. An injunction should be broad enough to prevent a repetition of the "evil" sought to be corrected, but not so broad as to enjoin a defendant from lawful activities. *Webb,* 298 S.W.3d at 384. A trial court abuses its discretion by granting an injunction when it misapplies the law to established facts or when the evidence does not reasonably support the determination or the existence of a probable right of recovery or probable injury. *Heat Shrink Innovations, LLC v. Med. Extrusion Techs.-Tex., Inc.*, No. 02-12-00512-CV, 2014 WL 5307191, at *8 (Tex. App.—Fort Worth Oct. 16, 2014, pet. denied) (mem. op.).

IV. ANALYSIS

A. Evidence is Factually Sufficient to Support Finding of Fact Number 1

Finding of fact number 1 states, "Over the last several years, [Martinez] has engaged in conduct which threatened [Mangrum] with imminent bodily injury." Martinez challenges this finding and claims that anything she did that could be construed as threatening bodily injury was more than "several" years earlier and any recent actions did not threaten bodily injury.

Mangrum's uncontroverted trial testimony provided that in 2013 and 2014, Martinez repeatedly cursed at Mangrum, spat at Mangrum while on her driveway, and "firebombed" Mangrum's home. Indeed, Martinez concedes that "any of the

conduct that could be considered to threaten imminent bodily injury was [in] . . . 2013 and 2014 . . . ." Black's Law Dictionary defines "several" as "more than one or two but not a lot[.]" *Several*, BLACK'S LAW DICTIONARY (10th ed. 2014). Three or four years falls squarely within the meaning of "several years." Therefore, considering and weighing all of the evidence in the record pertinent to finding of fact number 1, the credible evidence supporting the finding that Martinez threatened Mangrum with bodily injury "over the last several years" is not so weak, nor is contrary evidence—there is none—so overwhelming that finding of fact number 1 should be set aside and a new trial ordered. *See, e.g., Pool*, 715 S.W.2d at 635. Because the evidence is factually sufficient to support finding of fact number one, we overrule Martinez's first issue.

B. Evidence is Factually Sufficient to Support Finding of Fact Number 2

Finding of fact number 2 provides, "[Martinez] engaged in such conduct knowingly and intentionally." Martinez points out that her house and Mangrum's house are on the same block. Martinez argues that "[t]o the extent that this finding [number 2] extends to Martinez's recent conduct—that is Martinez driving by and near Mangrum and her house—Martinez contends that the evidence supporting this finding is factually insufficient." Thus, Martinez's argument in her second issue is predicated on the success of the arguments in her first issue contending that the evidence is factually insufficient to support the finding that she threatened Mangrum bodily harm within the last "several" years. That is, Martinez argues that considering her driving conduct alone (because as alleged

in Martinez's first issue the other conduct was allegedly not within the past "several" years) the driving conduct cannot be "intentional" as found in finding of fact number two since Martinez resides near Mangrum.

But as explained above, the evidence supports finding of fact number 1 that Martinez had engaged in conduct which threatened imminent bodily injury to Mangrum "over the last several years." Therefore, Martinez's attempt to limit the scope of evidence supporting her threatening actions that the trial court found to be intentional in finding of fact number 2 fails. Because the evidence is factually sufficient to support finding of fact number 2, we overrule Martinez's second issue.

C. Martinez Failed to Preserve Her Complaint Concerning the Alleged Vagueness of the Permanent Injunction

In her third issue, Martinez challenges the permanent injunction as impermissibly vague because she claims not to know if it enjoins aggressive behavior that is verbal as well as physical, if the threats it enjoins are limited to threats of bodily injury and intimidation, and if its use of the phrase "reasonably construed to constitute intimidation" is premised on an objective or subjective standard. Thus, the substance of Martinez's complaint is not about the specificity or vagueness of the injunctive language; rather, it is about the breadth of the language. *See Livingston v. Livingston*, 537 S.W.3d 578, 598 (Tex. App.—Houston [1st Dist.] 2017, no pet.).

We have not located, and Martinez has not pointed us to, any place in the record before us where Martinez raised her overbreadth (or vagueness) objection to the permanent injunction in the trial court. The failure to raise an overbreadth complaint in the trial court constitutes a waiver of that issue on appeal. *See id.* (holding that the failure to raise "complaints about the over breadth of the permanent injunction in the trial court[,]" and failure to file "a post-judgment motion to complain that the language of the permanent injunction was overly broad" demonstrates appellant "has waived these complaints on appeal"); *Ford v. Ruth*, No. 03-14-00460-CV, 2016 WL 1305209, at *2 (Tex. App.—Austin Mar. 31, 2016, pet. denied) (mem. op.) ("There is nothing in the record indicating that appellants . . . contended that the permanent injunction was overly broad in district court. Instead, they make these complaints for the first time on appeal and have, therefore, failed to preserve these issues for review."). Because Martinez failed to file a postjudgment motion or otherwise raise this issue in the trial court, she failed to preserve it for our review.

D. Imminent Harm

Also in her third issue, Martinez complains that the trial court erred in entering a permanent injunction because Mangrum failed to establish that harm is imminent and because Mangrum's evidence of Martinez's current behavior only relates to fear and apprehension and not to actual injury. We cannot agree.

A prerequisite for injunctive relief is actual injury, the threat of imminent harm, or another's demonstrable intent to do that for which injunctive relief is

sought. *Vaughn v. Drennon*, 202 S.W.3d 308, 313 (Tex. App.—Tyler 2006, no pet.). Regarding a showing of imminent harm, the plaintiff is required to prove that the defendant "*has attempted* or intends to harm the plaintiff in the future." *In re City of Dallas*, 977 S.W.2d 798, 804 (Tex. App.—Fort Worth 1998, no pet.) (emphasis added).

As explained above, the uncontroverted evidence at trial demonstrated that Martinez twice "firebombed" Mangrum's home—once after the court's temporary injunction. The first time Martinez firebombed Mangrum's home it caused $10,000 in damage. This represents an attempt to harm Mangrum. Mangrum also provided uncontroverted testimony that as recently as a few weeks before trial, Martinez had driven to Mangrum's home to harass Mangrum and her guest and that Martinez and/or one of her associates had followed Mangrum and her husband in their car. This represents a recent attempt to intimidate and harass Mangrum. We hold that, taking this evidence together and applying the law on permanent injunctions to the evidence, it was not an abuse of discretion for the trial court to conclude that Martinez has attempted to harm Mangrum and, unless permanently enjoined, Martinez will likely do so again, thereby placing Mangrum in imminent harm. *See Operation Rescue-Nat'l v. Planned Parenthood of Houston & Se. Tex., Inc.*, 975 S.W.2d 546, 554 (Tex. 1998) (recognizing the question of whether imminent harm exists to warrant injunctive relief is a question for the court); *City of Dallas*, 977 S.W.2d at 804 (permitting injunctive relief if evidence shows defendant either has attempted to

or intends to harm plaintiff in the future). Therefore, we overrule Martinez's third issue.

V. CONCLUSION

Having overruled Martinez's three issues, we affirm the permanent injunction and final judgment entered by the trial court.

/s/ Sue Walker
SUE WALKER
JUSTICE

PANEL: WALKER, MEIER, and BIRDWELL, JJ.

DELIVERED: April 26, 2018