

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CU 1052

CHERYL ANN LOUVIER

VERSUS

ROBIN WASHINGTON

CONSOLIDATED WITH

NUMBER 2006 CU 1053

IN RE THE MINOR CHILD

N. O. W.

Judgment Rendered: OCT - 6 2006

Appealed from the
Family Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 156,634 c/w 156,729

Honorable Jennifer Luse, Judge

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Plaintiff/Appellee
Cheryl Ann Louvier

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Defendant/Appellant
Robin Washington

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

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GUIDRY, J.

The former cohabitant partner of a petitioner for a domestic violence protective order appeals the decision of the trial court to issue the protective order, contending that the evidence submitted at trial was insufficient to warrant the order. Having reviewed the record and law governing this matter, we affirm.

FACTS AND PROCEDURAL HISTORY

Shortly before the onslaught of Hurricane Katrina in 2005, Cheryl Ann Louvier left the home of Robin Washington with the couple's nine-month-old son and moved into a battered women's shelter in Mississippi. On returning home and finding that Ms. Louvier and his son were missing, Mr. Washington filed a missing persons report with the New Orleans Police Department and contacted friends and family members in an effort to learn of Ms. Louvier's whereabouts, to no avail. In the meantime, the Mississippi shelter in which Ms. Louvier and her son were residing transferred them to a shelter in New Orleans so that Ms. Louvier could pursue obtaining legal custody of her son.

On August 29, 2005, Hurricane Katrina struck New Orleans, and Ms. Louvier and her son were evacuated to a shelter in Baton Rouge, Louisiana. Mr. Washington evacuated to Houston, Texas. Following the hurricane, Mr. Washington contacted an organization that assists in finding missing and exploited children and was able to learn that Ms. Louvier and his son were alive and well. Mr. Washington then used a paid internet investigation service to locate Ms. Louvier and his son and thereby discovered that they were living in Baton Rouge and that Ms. Louvier had opened a bank account in his son's name in which Mr. Washington deposited approximately \$1,500.00.

On December 7, 2005, Ms. Louvier filed a "Petition for Protection from Abuse" in the Family Court of East Baton Rouge Parish. In her petition, Ms. Louvier alleged that the most recent acts of abuse, proximate to the time of her

filing her petition, occurred on November 29, 2005, wherein she alleged that Mr. Washington:

bombarded me with e-mail stating that although I have managed to stay hidden from him for 116 days, he will eventually find me (veiled threat) and mysteriously deposited funds into my son's new bank account from Houma, La., as if to say he's found us (harassment). I have not contacted him since I left him. I felt I had to leave secretly for safety purposes. I fled New Orleans and entered a battered women's shelter.

She further alleged that Mr. Washington had committed the following acts of prior abuse:

hit son at 3 mos. & 8 mos. of age
improperly touched son at 5 mos. of age
verbally, mentally, and emotionally abused me during the 10 mos. we lived together. Slept with gun under pillow. Pointed weapon & pretended to shoot in presence of minor child. Put Bengal Roach Powder in food & brought pills in from outside of home & placed in drinking water. Kept me isolated. Told me he'd never hit a white woman; they'd lock him under the jail. There are other ways to handle discipline. Kept guns throughout home, causing me to fear for safety. He also told me that the moment I left ...1435 Gallier St., the battle was on.

Based on the allegations of Ms. Louvier's petition, the trial court issued an *ex parte* temporary restraining order against Mr. Washington pursuant to La. R.S. 46:2131, *et seq.*, effective until December 13, 2005. The trial court also ordered that Mr. Washington show cause on December 13, 2005, why the trial court should not grant the additional relief requested by Ms. Louvier in her petition and why the trial court should not convert the temporary restraining order into a protective order.

On December 13, 2005, only counsel for Ms. Louvier appeared in court, so the matter was reassigned to January 10, 2006, and the trial court issued a new temporary restraining order, effective until January 10, 2006. On December 14, 2005, Mr. Washington filed a "Petition for Custody," wherein he sought sole custody, or in the alternative, joint custody of his minor son, with himself being designated as the domiciliary parent, and child support. Counsel for Mr.

Washington later filed a motion to consolidate the custody proceeding initiated by Mr. Washington with the protective order and custody proceeding initiated by Ms. Louvier, which motion was granted by the trial court.

At the show cause hearing on January 10, 2006, the trial court heard testimony from Ms. Louvier, Mr. Washington, and Mr. Washington's brother. After the close of evidence, the trial court granted the relief requested in Ms. Louvier's petition and issued a protective order against Mr. Washington, effective until July 10, 2007. The trial court also granted Ms. Louvier temporary custody of the parties' minor son. Mr. Washington devolutively appeals, contending that the trial court erred in issuing the protective order as Ms. Louvier failed to prove the allegations of abuse by a preponderance of the evidence.¹

DISCUSSION

The trial court in this matter issued the subject protective order pursuant to La. R.S. 46:2135(B), wherein it is mandated that the petitioner for the order must prove the allegations of abuse by a preponderance of the evidence. At the show cause hearing, the trial court stated the following in rendering its ruling: "[i]t's difficult to be in this case because I believe Ms. Louvier is telling the truth, but I also understand there's the burden of proof and, and I'm vacillating [on] this one, but I'm going to go ahead out of an abundance of caution and grant the protective order."

Based on this statement by the trial court, Mr. Washington contends that the trial court erroneously issued the protective order because it clearly did not find

¹ Mr. Washington also assigned as error the trial court's issuance of the temporary restraining order, which we decline to consider. There is no right of appeal from an order relating to a temporary restraining order. La. C.C.P. art. 3612. Instead, Mr. Washington could have challenged the issuance of the order by filing a motion to dissolve or modify the order in accordance with La. C.C.P. art. 3607 or by way of an application for supervisory writs to this court. See Harper v. Harper, 00-1425, p. 5 (La. App. 5th Cir. 1/30/01), 777 So. 2d 1275, 1278, writ denied, 01-0768 (La. 5/11/01), 792 So. 2d 736. Additionally, we also decline to consider the propriety of the issuance of the temporary restraining order because the effect of that order terminated upon the signing of the protective order by the trial court. See La. C.C.P. art. 3604(C); Cf. La. C.C.P. arts. 3606.

that Ms. Louvier had proven the allegations of abuse by a preponderance of the evidence. We should point out that appeals lie from the judgment itself and not the reasons for judgment. La. C.C.P. art. 2083. An appeal is the exercise of a party's right to have a judgment reviewed by an appellate court. See La. C.C.P. art. 2082. Where the reasons for judgment are flawed, but the judgment is correct, the judgment controls. Reasons for judgment only set forth the basis for the court's holding and are not binding. Veal v. American Maintenance and Repair, Inc., 04-1785, p. 7 (La. App. 1st Cir. 9/23/05), 923 So. 2d 668, 672-673. Thus, in reviewing whether the trial court abused its discretion in issuing the protective order appealed, we will only consider whether the record shows that Ms. Louvier sufficiently proved the allegations of abuse by a preponderance of the evidence. See Rouyea v. Rouyea, 00-2613, p. 5 (La. App. 1st Cir. 3/28/01), 808 So. 2d 558, 561. For the reasons that follow, we find that Ms. Louvier did meet her burden in proving the allegations of abuse.

At the hearing on the rule to show why the protective order should not be issued, Ms. Louvier testified in detail regarding the allegations of abuse specified in her petition. Ms. Louvier stated that she had known Mr. Washington for approximately nine and a half years and that she began living with Mr. Washington in his home when she was approximately seven months pregnant with their son. She described three separate incidents wherein she alleged Mr. Washington abused their son. Ms. Louvier testified that the first incident occurred when their son was three months old. She heard a slap and the baby scream uncontrollably in another room of the house. When she asked Mr. Washington what happened, he did not respond; but later, when he was unable to calm the child, he brought the child to her, and she noticed marks on the top of the child's leg. Mr. Washington was crying and stated that he would never do it again, and she believed him.

The second incident occurred when the child was five months old. Ms. Louvier testified that on that occasion she entered the bathroom to investigate why the baby seemed to cry whenever Mr. Washington bathed him. She found a naked Mr. Washington reclined in the bathtub rubbing his pelvic region against that of the child's. She stated that she grabbed the child and took over the child's bath time from that point on.

The last incident of abuse occurred when the child was eight months old. Ms. Louvier stated that while she was preparing food for the child, who was in his walker in the "front room" with Mr. Washington, she heard the child start fussing and then "slap, slap, slap." She then heard Mr. Washington saying, "No [N.O.W.], No [N.O.W.], No [N.O.W.], you don't always get your way, it's not always about what you want." She said that the child was in hysterics, but Mr. Washington would not let her go to him and comfort him because Mr. Washington said she was "an overly permissive mother and ... [N.O.W.] needed to be disciplined." She stated that she left Mr. Washington two weeks following that incident.

As for the allegations of abuse directed towards her, Ms. Louvier testified that shortly after the bathtub incident with N.O.W., she became very physically ill. For unknown reasons, she said she began to experience severe nosebleeds, vomiting, stomach cramping, massive bruising, and severe pains in her arms and hands. Suspecting that Mr. Washington might be physically attacking her after she had fallen asleep, she testified that she changed the time she took her prescription medication² so that she could stay awake and observe what Mr. Washington was doing after she had gone to bed for the night. She said she pretended to be asleep and then got out of bed to observe Mr. Washington poisoning the food she ate with Bengal Roach powder and spray, although she acknowledged on cross-

² Ms. Louvier testified that she took psychotropic medication for her schizoaffective disorder, a psychoactive condition.

examination that she did not see what was written on the box from which he poured the powder. She said he also poisoned a container of drinking water with pills he obtained from his brother.

Ms. Louvier testified that although Mr. Washington willingly took her to the doctor before, she said he refused to take her "when the bruising and the physical manifestations, the poisoning began." She stated that after she left Mr. Washington, she went to a doctor who observed "the bruising and all" and told her it was caused by the ingestion of blood thinners. She expressed regret at not having the medical records to confirm what she had been told by the doctor, but noted that the nosebleeds, bruising, and other symptoms stopped after she left Mr. Washington.

Ms. Louvier also related an incident in which she stated Mr. Washington pointed a gun at her while she sat in the bedroom with their son. She said that as he was instructing her on how to hold the gun, he aimed the gun in the same direction where she and the baby were sitting. She testified Mr. Washington also slept with a gun under his pillow, which absolutely terrified her, but he justified the habit by stating, "we [live] in a dangerous area and I'm doing what I need to do to take care of my family."

Ms. Louvier said that Mr. Washington became verbally and mentally abusive after she moved in with him, which was demonstrated by his constantly yelling at her, going on trips and not telling her where he was going, and not taking her out in public or to gatherings with his family. Ms. Louvier testified that after she moved out of Mr. Washington's home, she filed a complaint with the New Orleans Police Department regarding the suspected poisoning. She produced in court a piece of paper on which was recorded the incident number of the complaint she had filed. She admitted that she was not contacted by the police regarding the

complaint, but stated that she filed the complaint within days before Hurricane Katrina struck New Orleans.

Ms. Louvier testified that she received approximately 30 e-mails from Mr. Washington after she left and that in one of the e-mails he stated that she "had managed to stay hidden for 116 days, but that he would eventually find me." She also stated that Mr. Washington deposited money in a bank account she had opened in her son's name, and further testified, "I have no idea how he found out that number. This was an account that was opened while in the battered woman's [sic] shelter." During her testimony, Ms. Louvier stated that she was very nervous sitting in the courtroom with Mr. Washington.

Mr. Washington also testified at the hearing for the protective order, and although he denied several of Ms. Louvier's allegations, in several respects his testimony substantiated her allegations. For example, Mr. Washington denied the allegation that he spanked their son when the child was three months old or that he inappropriately touched the child while they were bathing together when the child was five months old; however, he acknowledged spanking N.O.W. three times on the hand when he was eight months old because he was "throwing a fit." He testified that Ms. Louvier ran into the room screaming and he responded by telling her, "wait Cheryl you know I won't hurt him." He also admitted that initially Ms. Louvier had encouraged him to bathe with N.O.W., but he noticed that she stopped doing so "somewhere around in April."

Mr. Washington also acknowledged the incident when he was demonstrating to Ms. Louvier how to use a gun, but he denied pointing the weapon at Ms. Louvier and their son. Instead, he testified that Ms. Louvier was standing beside him in the bedroom when he showed her how to use the gun and that their son was in another room in "the front." He stated that he slept with a gun under his pillow because the neighborhood had changed and the crime rate had gone up since he

purchased his home in 1984, and he related several incidents of criminal activity that had taken place in the neighborhood.

Mr. Washington denied poisoning any of the food in the home, but admitted that one of his brothers had given him some pills for his stomach that he had placed in a napkin and put on top of an armoire in his home. He stated that his brother gave him the pills because he suffered from periodic stomach cramping, but he disclaimed putting the pills in their drinking water and noted that he did not take any of the pills because he did not know what the pills were.

We also note some inconsistency in Mr. Washington's testimony and that of his brother. At one point, Mr. Washington testified that he "had no clue she was going to leave," but then in the same breath he stated that Ms. Louvier "had been threatening to leave for a while." He further testified that when Ms. Louvier left with their son, he first believed they had been abducted because she had left all of her clothes and other personal items behind; however, Mr. Washington's brother testified that Mr. Washington told him that "they've taken almost everything," when Mr. Washington notified him that Ms. Louvier left with their son.

Mr. Washington testified that just prior to Ms. Louvier's disappearance, their relationship had deteriorated to such a degree that they started sleeping separately, one in the bedroom and the other on the sofa; that neither person ate any food the other person had prepared; and that they barely spoke to each other except to discuss their son. As for the e-mails that were sent and the money that he deposited in their son's bank account, Mr. Washington admitted taking such actions in an effort to ascertain the well being of his son.

After reviewing the record before us, we cannot say that the trial court abused its discretion in granting Ms. Louvier's petition for a protective order.

CONCLUSION

Accordingly, we conclude that based on the record before us, Ms. Louvier proved the allegations of her petition by a preponderance of the evidence and thus the trial court did not abuse its discretion in issuing the protective order appealed herein. The costs of this appeal are assessed to the appellant, Robin Washington.

AFFIRMED.