

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2021 CA 1327

CHRISTOPHER TODD TERRELL

VERSUS

CHRISTIFER DEROUEN

DATE OF JUDGMENT: JUL 05 2022

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA
NUMBER 707510, SECTION 23

HONORABLE WILLIAM A. MORVANT, JUDGE

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BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

Disposition: REVERSED AND REMANDED.

Guidry, J., concurs in the result.

CHUTZ, J.

Plaintiff-appellant, Christopher Todd Terrell, appeals the trial court's judgment, granting a special motion to strike pursuant to La. C.C.P. art. 971, Louisiana's anti-SLAPP statute,¹ and dismissing his petition for protective orders arising from claims of stalking and cyberstalking by defendant-appellee, Christifer James Derouen. For the following reasons, we reverse and remand.

FACTUAL AND PROCEDURAL BACKGROUND

On May 10, 2021, Terrell instituted this lawsuit by filling in a preprinted form, entitled "PETITION FOR PROTECTION FROM STALKING OR SEXUAL ASSAULT." Terrell placed an "x" in the portions of the form requesting that an ex parte temporary restraining order be issued prohibiting certain conduct by defendant. Terrell additionally included an eight-page addendum setting forth facts to support his allegations. He also attached to his pleading copies of electronic communications contained in various exhibits.² The day of filing, the trial court signed an order, directing Derouen to show cause why the relief that Terrell requested should not be granted in the form of protective orders.³

Derouen filed an answer on June 22, 2021, generally denying the allegations contained in Terrell's pleading. Describing the electronic communications of

¹ Anti-SLAPP is an acronym for anti-Strategic Lawsuit Against Public Participation. Article 971 belongs to the class of statutes known as "anti-SLAPP statutes" and applies in a very specific situation: when a litigant has brought a cause of action, typically alleging defamation, in an effort to chill the First Amendment speech of its target. *Stabiler v. Louisiana Bus., Inc.*, 2016-1182 (La. App. 1st Cir. 9/26/17), 232 So.3d 555, 557 n.1, writ denied, 2017-1824 (La. 12/15/17), 231 So.3d 639.

² The preprinted form included various "FINDING" options in Section D, allowing the trial court to select among enumerated choices a finding of "Stalking," which was not completed. The preprinted form stated, "ONLY ORDERS CHECKED AND INITIALED BY A JUDGE SHALL APPLY," and none of the orders Terrell requested were initialed. Thus, the trial court did not grant the temporary restraining order as requested by Terrell in the preprinted form.

³ The May 10, 2021 show-cause order set the hearing for May 20, 2021. Terrell's counsel sought and was granted a continuance until May 28, 2021, because one of his attorneys had a hearing in another district court and the other attorney was unable to leave his house due to Covid-19. On Derouen's motion, another continuance was granted setting the matter for July 13, 2021, without objection from Terrell.

which Terrell complained as having been made in furtherance of his constitutional right of free speech in connection with a public issue, Derouen asked the court to apply the special motion to strike set forth in Article 971 to dismiss Terrell's petition and award attorney fees to him.

At the conclusion of the hearing, the trial court granted the special motion and awarded to Derouen attorney fees in the amount of \$2,500. On July 23, 2021, the trial court signed a judgment in conformity with its oral determination, dismissing Terrell's case with prejudice. Terrell suspensively appealed.

DISCUSSION

Terrell sought protective orders under the Protection from Stalking Act. See La. R.S. 46:2171-2174. The statement of the purpose of the act is set forth in La. R.S. 46:2171, providing:

The legislature hereby finds and declares that there is a present and growing need to develop innovative strategies and services which will reduce and treat the trauma of stranger and acquaintance stalking. The nature of stalking allegations [is] sometimes not easily substantiated to meet the prosecution's burden of proving the case beyond a reasonable doubt, and victims of stalking are left without protection. Orders of protection are a proven deterrent that can protect victims of stalking from further victimization; however, many victims are forced to pursue civil orders of protection through ordinary process, often unrepresented, rather than through a shortened, summary proceeding. Additionally, victims of stalking are not always aware of the vast resources available to assist them in recovering from the trauma associated with being a victim of stalking. It is the intent of the legislature to provide a civil remedy for victims of stalking that will afford the victim immediate and easily accessible protection.

According to La. R.S. 46:2172, "stalking" means "any act that would constitute the crime of stalking under [La.] R.S. 14:40.2 or cyberstalking under [La.] R.S.

4:40.3.”⁴

In his pleading, Terrell alleged that he is the President and founder of the Louisiana non-profit organization, United Cajun Navy (UCN), which coordinates search-and-rescue efforts in response to natural disasters and other tragedies. He

⁴ La. R.S. 14:40.2 sets forth the following relevant provisions:

A. Stalking is the intentional and repeated following or harassing of another person that would cause a reasonable person ... to suffer emotional distress as a result of verbal, written, or behaviorally implied threats of ... bodily injury ... to himself. ...

C. For the purposes of this Section, the following words shall have the following meanings:

(1) “Harassing” means the repeated pattern of verbal communications or nonverbal behavior without invitation which includes but is not limited to making telephone calls, transmitting electronic mail, sending messages via a third party, or sending letters or pictures.

(2) “Pattern of conduct” means a series of acts over a period of time, however short, evidencing an intent to inflict a continuity of emotional distress upon the person. Constitutionally protected activity is not included within the meaning of pattern of conduct.

And La. R.S. 14:40.3 states in pertinent part:

A. For the purposes of this Section, the following words shall have the following meanings:

(1) “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by wire, radio, computer, electromagnetic, photoelectric, or photo-optical system. ...

B. Cyberstalking is action of any person to accomplish any of the following:

(1) Use in ... electronic communication of any words or language threatening to inflict bodily harm to any person ... or for the purpose of extorting money or other things of value from any person.

(2) ... [E]lectronically communicate to another repeatedly, whether or not conversation ensues, for the purpose of threatening, terrifying, or harassing any person.

(3) ... [E]lectronically communicate to another and to knowingly make any false statement concerning ... indecent conduct, or criminal conduct of the person electronically mailed ... with the intent to threaten, terrify, or harass. ...

E. This Section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others.

See La. R.S. 46:2173, addressing services, benefits, and assistance available to victims of stalking. See also La. R.S. 46:2135, addressing the court’s authority to issue a temporary restraining order.

and UCN responded to the capsizing of the Seacor Power in the Gulf of Mexico on April 13, 2021, by activating the corps of volunteers and charitably raising money to fund and supply support for search-and-rescue efforts of crewmen.

On April 30, 2021, as UCN searched for seven missing Seacor Power crewmen, Terrell averred that he was ambushed by several individuals making false claims that UCN was not using donations for supplies and material and demanding that Terrell turn over UCN's bank statements. Terrell alleged that on May 1, 2021, in a Facebook live video, Derouen threatened to inflict bodily harm on Terrell and motivated third parties to threaten, harass, and intimidate him.⁵ Also on May 1, 2021, Derouen texted a UCN volunteer stating, "But [Terrell]...if you watching this...you better run if you see me mother fucker."

According to Terrell, Derouen subsequently made several Facebook posts that Terrell felt were threatening. On May 3, 2021, Derouen stated, "I never back down.... anyone who knows me, knows that. Be careful what you wish for. I fear no man." The next day, Derouen posted:

Some of you think I'm stooping or aren't proud of some of my actions lately.... I'm sorry....But this is who I am. I will never let anyone mess with these families, my family, or my friends. For anyone who's ever "sucker punched" anyone I've ever loved, I have always tucked my chin, stared them in the eye, and "punched them in the mouth." I never claimed to be a Saint. And if by some chance my actions send me to hell when my days are done....just know that I'll likely be carrying a smile...because I get to whip their "behinds" again.

On May 7, 2021, Derouen stated on his Facebook page, "I was built for this. I will bring these men home....and I will take down every...single...person that had ill intentions for these families, so help me God." Although he did not include a copy of the electronic posting, ostensibly because it was later unpublished, Terrell attested that, on May 10, 2021 (the same day he filed the lawsuit), Derouen posted

⁵ Terrell attached electronic communications from the third parties in which he was called "a piece of shit" and advised to "run and hide" and "burn in hell."

on Facebook, “Come get me pussy...screenshot this too. I am everything you are afraid of...you can hide behind a judge and an attorney...I don’t answer to anyone.”

In his request for relief, as set forth in the preprinted form, Terrell placed an “x” in those portions that sought orders of protection directed at Derouen limiting him from access to Terrell. With these allegations and the attached exhibits to his petition setting forth the contents of a text message, Facebook posts, and Facebook live video by Derouen, Terrell contended that he was entitled to the protective orders he sought.

In response, Derouen averred that his social media posts expressed his “political views, opinions, and lawful information to the public” about the Seacor Power search-and-rescue effort and individuals who were involved. As such, Derouen characterized Terrell’s lawsuit as an attempt to “chill through the abuse of the judicial process” Derouen’s “participation in matters of public significance,” and invoked the provisions of Louisiana’s anti-SLAPP statute.

La. C.C.P. art. 971 provides, in pertinent part,

A. (1) A cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established a probability of success on the claim.

(2) In making its determination, the court shall consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability of success on the claim, that determination shall be admissible in evidence at any later stage of the proceeding.

B. In any action subject to Paragraph A of this Article, a prevailing party on a special motion to strike shall be awarded reasonable attorney fees and costs. ...

F. As used in this Article, the following terms shall have the meanings ascribed to them below, unless the context clearly indicates otherwise:

(1) “Act in furtherance of a person’s right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue” includes but is not limited to: ...

(c) Any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest.

The granting of a special motion to strike presents a question of law. Appellate review regarding questions of law is simply a review of whether the trial court was legally correct or legally incorrect. On legal issues, the appellate court gives no special weight to the findings of the trial court but exercises its constitutional duty to review questions of law and renders judgment on the record. *Thinkstream, Inc. v. Rubin*, 2006-1595 (La. App. 1st Cir. 9/26/07), 971 So.2d 1092, 1100, writ denied, 2007-2113 (La. 1/7/08), 973 So.2d 730.

Louisiana Code of Civil Procedure Article 971 was enacted by 1999 La. Acts, No. 734, §1. Section 2 of the Act provides:

The legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances. The legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, it is the intention of the legislature that the Article enacted pursuant to this Act shall be construed broadly.

Hence, Article 971 was enacted by the legislature as a procedural device to be used in the early stages of litigation to screen out meritless claims brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for redress of grievances. *Thinkstream, Inc.*, 971 So.2d at 1100.

Pursuant to Article 971, a cause of action against a person arising from any act in furtherance of the person’s right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue shall be subject

to a special motion to strike, unless the court determines that the plaintiff has established a probability of success on the claim. La. C.C.P. art. 971(A)(1). Under the shifting burdens of proof established by the article, the mover must first establish that the cause of action against him arises from an act by him in the exercise of his right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue. If the mover satisfies this initial burden of proof, the burden then shifts to the plaintiff to demonstrate a probability of success on the claim. *Thinkstream, Inc.*, 971 So.2d at 1100.

The First Amendment to the United States Constitution and Louisiana Constitution Article I, § 7 prohibit the enactment of laws abridging the freedom of speech.⁶ The First Amendment was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people, see *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957), and it attempts to secure the widest possible dissemination of information from diverse and antagonistic sources. *New York Times Co. v. Sullivan*, 376 U.S. 254, 266, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). Speech may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. *Terminiello v. City of Chicago*, 337 U.S. 1, 4, 69 S.Ct. 894, 93 L.Ed. 1131 (1949).

The right of free speech, however, is not unlimited. See *Near v. Minnesota*, 283 U.S. 697, 708, 51 S.Ct. 625, 75 L.Ed. 1357 (1931). The First Amendment permits restrictions upon the content of speech in a few limited areas which are of such slight social value as a step to truth that any benefit that may be derived from

⁶ U.S. Const., Amend. 1, states in relevant part, "Congress shall make no law ... abridging the freedom of speech, or of the press." And La. Const. Art. I, § 7 states, "No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom."

them is clearly outweighed by the social interest in order and morality. *Virginia v. Black*, 538 U.S. 343, 358-359, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003).

The First Amendment permits a State to ban a “true threat.” True threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. *Virginia v. Black*, 538 U.S. at 359, 123 S.Ct. 1536. The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protects individuals from the fear of violence and the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur. Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death. *Virginia v. Black*, 538 U.S. at 359-60, 123 S.Ct. 1536.

Based on Terrell’s allegations, a trier of fact could find that Derouen committed acts constituting the crime of stalking under La. R.S. 14:40.2 or cyberstalking under La. R.S. 14:40.3. Derouen commenced his communications with Terrell by a text he sent to a UCN volunteer, “[Terrell]...if you watching this...you better run if you see me mother fucker.” Although the text was not directly sent to Terrell, it is not fatal to his claim that Derouen sent the comments to a third party who associated with UCN rather than directly to Terrell because the cyberstalking statute does not require the electronic communication be transferred or transmitted directly to the victim. See *Head v. Robichaux*, 2018-0366 (La. App. 1st Cir. 11/2/18), 265 So.3d 813, 819. Derouen followed the text with a Facebook post advising Terrell that “[you] clearly haven’t paid attention well enough to know what kind of man I am.” After that, in a series of Facebook posts, Derouen offers statements that he “punch[e]s” those he believes “sucker punched” anyone he ever loved, and that he “will take down every ...single...person” that Derouen

determines has “ill intentions” toward the families affected by the Seacor Power tragedy.

A trier of fact could find that these electronic communications by Derouen constitute statements by which Derouen meant to communicate a serious expression of an intent to commit the act of assault and/or battery on Terrell, which are unlawful acts. See La. R.S. 14:33, 34.1, 35, 36 and 38. If a trier of fact were to find Derouen’s comments constitute true threats, Terrell is entitled to protection from the fear of violence, the disruption that fear engenders, and the possibility that the threatened violence will occur. Such a conclusion would entitle Terrell to the protective orders he seeks, establishing that Derouen’s words were intended to intimidate Terrell and fall outside the ambit of constitutionally-protected speech. Therefore, the trial court erred in concluding that Derouen sustained his initial burden of establishing that the protective orders Terrell seeks under the Protection from Stalking Act arise from Derouen’s exercise of his right of free speech in connection with a public issue. Accordingly, the trial court erred in granting the special motion to strike.

DECREE

For these reasons, we reverse the judgment and remand the matter to the trial court to determine whether Terrell is entitled to any relief under the Protection from Stalking Act. Appeal costs are assessed against defendant-appellee, Christifer Derouen.

REVERSED AND REMANDED.