IN THE COURT OF APPEALS OF IOWA

No. 5-418 / 94-448

JANELL THRANE,

Plaintiff-Appellee,

vs.

CHARLES STORM,

Defendant-Appellant.

FILED
OCT 31 1995
CLERK SUPREME COURT

Appeal from the Iowa District Court for Wayne County, David Christensen, Judge.

Charles Storm appeals the district court's order issuing a permanent writ of injunction enjoining him from contacting Janell Thrane, coming within 200 feet of her in the city of Humeston, or within 1000 feet of her outside the city limits. **AFFIRMED.**

William L. Shelton of the Shelton Law Firm, Chariton, for appellant.

Roberta A. Chambers, Corydon, for appellee.

Considered by Hayden, P.J., Huitink, J., and Perkins, S.J.*

* Senior judge from the 5th Judicial District serving on this court by order of the Iowa Supreme Court.

PERKINS, S.J.

Janell Thrane is a forty-five year old woman who lives in Humeston, Iowa. She works as an aide at a local school. One of Janell's three children committed suicide in December 1991. In May 1992, her husband told her he was involved with another woman. Janell filed for divorce in October 1992. She also had financial problems during this period of time.

Janell suffered emotional distress due to these accumulated difficulties. She was involuntarily committed to the mental health unit of the Ottumwa hospital for one week. Janell entered into a friendship with Charles Storm during this period of stress. Charles, who was fifty-two years old, was a married man and a member of Janell's church.

By December 29, 1992, Janell decided Charles was interested in more than friendship. She told him not to come to her house anymore. Charles continued to telephone Janell at home and at work. He also wrote letters to her and her daughter, Lindsay, who was in the military in Germany.

On about March 17, 1993, Charles sent a letter to Janell telling her his wife would be out of town for the weekend and asking her to go to Des Moines with him. Janell declined the offer and told Charles not to telephone or send her letters. On March 19, 1993, Charles delivered a red dress, black lace panties, black pantyhose, perfume and a letter to Janell.

Charles continued to telephone and write to Janell. In these communications he asked her what had happened to their friendship and sought to meet with her. On June 8, 1993, Janell wrote to Charles and asked him to leave her alone. Charles then began contacting Janell's friends, asking their help in setting up a meeting between himself and Janell. Janell also received some unsigned letters which recommended that she get back together with Charles.

On August 25, 1993, Janell filed an application for a temporary injunction to restrain Charles from contacting her. The district court issued a temporary injunction on August 31, 1993. The injunction prohibited Charles from coming within 1000 feet of Janell or from contacting her in any manner.

Janell testified she always did her errands at the same time of day, which was when she was finished with work. She testified that even after the temporary injunction was issued, Charles always would be in the business area of Humeston at this time of day. Also, every time she went to the library in town, Charles parked across the street. Janell testified she felt threatened by Charles' behavior.

In October 1993, Charles and his wife met with Janell's supervisor. After this meeting, school administrators met with Janell and accused her of being in possession of a gun. Charles told Hope Mendenhall that Janell was in danger of losing her job. He also told Hope, "Janell better see that this never comes to court because I will tell things that she does not want known." Linda Watkins, a friend of Janell's, testified she received an unsigned letter which stated that if the matter came to trial, a rumor

would be spread that Janet's husband was having an affair with Janell. Lavonne Casey, the town librarian, testified a friend of Charles' threatened her with the loss of her job if she testified for Janell.

Janell filed an application for rule to show cause why Charles should not be found in contempt for violating the terms of the temporary injunction. She also sought a permanent injunction.

The district court heard these matters in a consolidated hearing. The court determined there was insufficient evidence to show Charles had willfully violated the temporary injunction, and concluded he was not in contempt of court. The court issued a permanent injunction which provided: (1) Charles should not contact Janell in any manner; (2) he should not come within 200 feet of Janell within the city limits of Humeston; and (3) he should not come within 1000 feet of her outside the city limits of Humeston. The court determined there was no footage limitation at the parties' church or at school functions, although Charles should still not contact Janell. Charles appealed.

I. A request for an injunction invokes the court's equitable jurisdiction. *Matlock v. Weets*, 531 N.W.2d 118, 121 (Iowa 1995). Because an appeal of an injunction is in equity, our review is de novo. Iowa R. App. P. 4. We give weight to the district court's findings of fact, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Charles contends the district court abused its discretion by issuing a permanent injunction which did not conform to the requirements of the case. He states that Humeston is a small town and the 200 foot restriction will keep him out of the business district if Janell is there. He also states that the 1000 foot restriction will keep him from the roadways of Wayne County because of the possibility that he may accidentally come upon Janell on the same roadway. He points out that he farms in several different areas around Humeston.

A court of equity will not grant injunctive relief unless it appears there is an invasion or threatened invasion of a right, and that substantial injury will result to the party whose rights are so invaded, or such injury is reasonably to be apprehended. *Hughes A. Bagley, Inc. v. Bagley*, 463 N.W.2d 423, 425 (Iowa App. 1990). A court of equity should carefully weigh the relative hardship which would be incurred by the parties upon the award of injunctive relief. *Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637, 639 (Iowa 1991). An injunction should be limited to the requirements of the case. *205 Corp. v. Brandow*, 517 N.W.2d 548, 552 (Iowa 1994).

We find no abuse of discretion in the scope of the injunction issued by the district court. The court weighed the relative hardships of the parties. Janell testified she felt threatened by Charles' conduct because he seemed to be following her around. Also, Charles and his wife threatened Janell's job security. Additionally, threats were made against persons who were going to testify for Janell. We conclude the injunction was necessary to protect Janell from Charles' unwelcome attentions.

Charles makes his own hours, and is free to conduct business in Humeston at any time he does not expect Janell to be there. Janell testified she has only a short period of time to conduct errands between the time she gets off work and the time the businesses close. Thus, there is only a short period of time Charles could expect Janell to be in the business district of Humeston and when he would have to be alert to the 200 foot restriction.

Furthermore, we note Charles would violate the injunction only by willfully coming within 1000 feet of Janell outside the city limits of Humeston. We believe the injunction does not restrict Charles from driving the roadways of Wayne County for the purposes of conducting his farm business. We conclude the injunction here was limited to the requirements of the case.

III. Charles claims Janell failed to establish grounds for the injunction to be issued. He states that he is not a threat to Janell and there is no adequate grounds for issuing the injunction. He believes Janell is only seeking the court to help her with some sentimental issues.

In seeking an injunction, a petitioner has the burden to show not only a violation of her rights, but also that she will suffer substantial damages unless one is granted. *Matlock*, 531 N.W.2d at 123. The test for issuing an injunction is whether the facts of the case show a necessity for intervention of equity in order to protect rights cognizable in equity. *Id.* An actual assault or verbal physical threat is not necessary before behavior reasonably seen to be dangerous may be enjoined. *Id.*

We believe there is sufficient evidence in the record to show Charles' actions could reasonably be seen to be dangerous. The evidence showed Charles followed Janell and had caused her problems at work. Janell testified she felt threatened and was afraid of Charles. There was also evidence Charles, or someone on his behalf, had threatened those who attempted to keep him from Janell by testifying on her behalf at the hearing for a permanent injunction. We conclude Janell presented sufficient grounds for issuance of the injunction.

IV. Charles contends the injunctive order is void because of its ambiguity. He states he found the footage restriction to be ambiguous and that he had to seek the advice of others as to what the order meant.

An injunction should be drawn in a clear, understandable manner. *Id.* The acts or things enjoined should be definitely specified, and they should be set forth with certainty and clearness so that persons bound by the decree may readily know what they must refrain from doing without speculation or conjecture. *205 Corp.*, 517 N.W.2d at 552.

An objective reading of the permanent injunction issued by the court establishes its meaning and it is not ambiguous. We believe the language of the injunction clearly conveys to Charles what he must refrain from doing. We conclude the injunction is not void.

V. Janell seeks attorney fees for this appeal. Charles claims Iowa law does not support the award of attorney fees in this action.

Generally, there is no right to attorney fees in the absence of any contractual or statutory authority for an award of attorney fees. *Presto-X Co. v. Ewing*, 442 N.W.2d 85, 91 (Iowa 1989). Courts have recognized a rare exception to this general rule, however, when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Hockenberg Equipment Co. v. Hockenberg's Equipment & Supply Co.*, 510 N.W.2d 153, 158 (Iowa 1993). A plaintiff seeking common law attorney fees must prove that the culpability of the defendant's conduct exceeds the willful and wanton disregard for the rights of another; such conduct must rise to the level of oppression or connivance to harass or injure another. *Id.* at 159-160. The determination of an attorney fee award lies within the equitable power of the court. *Id.* at 159.

We think Charles' conduct in the present case shows an intent to harass or injure Janell. His behavior has been oppressive in that he has intended for Janell to feel his presence at all times. We conclude Charles should pay $500 of Janell's appellate attorney fees.

AFFIRMED.