Filing # 33754324 E-Filed 10/27/2015 06:48:14 PM

IN THE DISTRICT COURT OF APPEAL,
SECOND DISTRICT, STATE OF FLORIDA
CASE NO. 2D15-3412

Randy A Scott	)	
Appellant	)	
	)	L.T. CASE NO. 15-031538DR N
v.	)	
	)	
Frederic A Blum	)	
Appellee	)	

APPELLANT'S REPLY BRIEF

On Appeal from a Final Judgment of the Twentieth Judicial Circuit Court of Florida, in and for Lee County

October 27, 2015

Randy A Scott
343 Hazelwood Ave S
Lehigh Acres , Florida 33936
randy@randyscott.us
239.300.7007

TABLE OF CONTENTS

TABLE OF CITATIONS

Florida Supreme Court

Florida Appeals

ARGUMENT

It should be noted that what you have before you appears facially to be involving Blum V Scott the full record shows otherwise.

> "THE WITNESS: Many emails are forwarded to me. ***People*** are very upset by what Mr. Scott is doing, and they're sending me have you seen, you know, the latest outrageous thing that he has said." (t=37:2-5)

What you have before you is "people" represented by Mr. Blum. Mr. Blum's counsel who is intimately familiar with the cause of Mr. Blum states the following:

> he just doesn't understand why these two men who have never met before, never been in business before and have only met once **how their communications about each other** has gone to the level of speaking out about his son and then disseminating that in such a negative way to his business associates.(t=79:22-80:1-2)

Mr. Blum speaks "about" Mr. Scott and Mr. Scott speaks about the process serving industry.

PROCEDURE

Although an evidentiary hearing was held, a full evidentiary hearing did not occur. (AB:2) The motion to dismiss was not afforded a full evidentiary hearing as required by 12.610(1)(b). Motion to dismiss was acknowledged (t=3). The motion

to dismiss was set aside not by motion of the participants but by request of the court:

> MS. GUTMORE: -- but the respondent has filed a motion to dismiss that was also set for hearing by court order, and because the petition would be moot if the motion to dismiss is granted, I don't know if you want to start with that.
> THE COURT: Well, okay, but I still would like a little background. (t=5)

Mr Scott tried to get the motion to dismiss heard (t=8) (t=49) (t=65, 81).

The last time we heard of the motion to dissolve was when the court stated the following:

> THE COURT: Yeah, yeah. I think it's the same ones attached to his motion.(t=85)

Mr. Scott objected to the petitioners exhibits as “hearsay” or third party supplied (t=55:17-19)

The Florida Supreme Court in Williams v. State , 414 So.2d 509 (Fla. 1992) has recognized that there are no magical words that a defendant must divine in order to make an argument in the trial court that is deemed sufficiently preserved for review. All that is necessary is that the objection or argument made in the trial court be specific enough to apprise the trial judge of the putative error and to preserve the issue for intelligent review on appeal. Id at 511 (quoting Castor v. State , 365 So.2d 701, 703 (Fla.1978)). In Roscioli Yachting Cen ter, Inc. v.

Lexington Insurance Company , 601 So. 2d 1246 (Fla. 4th DCA 1992), the court was asked to decide whether a literal reading of an argument made by counsel at trial resulted in the waiver of an argument on appeal. In ruling that it is not necessary for a party to use a magic word to preserve an issue and that the appellate court must look at the context of what occurred in the lower court the court stated the following: It is often tempting to read a verbatim account of an argument literally and conclude in retrospect that magic words have not been incanted, so that something has been waived or otherwise lost. We are charged, however, to do substantial justice. This means that we should be reluctant to construe words apart from their context. See also Johnson v. State C So.2d C , 2006 WL 2505189 (Fla. 1st DCA 2006)(magic words not necessary to preserve motion to vacate plea) ; A.P.R. v. State , 894 So.2d 282 (Fla. 5th DCA 2005)(there are no magical words that a defendant must devine in order to make an argument in the trial court that is deemed sufficiently preserved for appellate review.); Baskin v. State , 898 so.2d 266 (Fla. 2d DCA 2005)(if trial judge is fairly apprised of reason for objection no magic words must be uttered to preserve the objecti on); Avila v. State , 781 So.2d 413 (Fla. 4th DCA 2001)(no magic words are

necessary to make a proper objection.) Repeatedly Mr Blum talks about Mr. Scott attacking his family. That is not the case. As the exhibit where he draws that from is clearly a cut and paste without commentary directly from his NAPPS macdonald

award. (t-75:2-3) Are we getting into content vs. conduct? If the petitioner is looking at my content and ascribing to it conduct then we are indeed moving into the strict scrutiny required of the First Amendment constitutional issues of speech.

Mr. Blum speaks about me.(t=79:24) Mr. Blum is focused on respondent not respondent on Mr. Blum. In the past few years Mr. Blum has been focused on other people in the process serving industry too. Bruce Lazarus (R1:53), Phil Geron (R1:52), and Don Feldman(R1:54).He publishes his comments on the National Association of Professional Process Servers web site and the Georgia Association of Professional Process Server websites and in a national trade magazine delivered to thousands of process servers called The Docket. (R:47-48 & Appendix C:1) Mr Blum speaking about respondent is more substantial than what he has said about others. (R1:45-46).

Mr. Blum has abused the Florida cyberstalking statute. Mr. Blum represents B & R Process out of Philadelphia Pennsylvania and represents National Association of Professional Process Servers out of Portland Oregon and other “people”. This is done in attempt to restrain lawful speech and gain an unfair advantage in United States public participation regarding the public purpose of the process serving industry and the public purpose of non profit organization(s).

The only statement the court made regarding credibility was against the petitioner.

> THE COURT:No, no. Here's the point. This evidence is doctored. This evidence is modified. This evidence is not complete. (t:19:25-20:2)
> THE COURT: So why isn't this just your ordinary libel lawsuit?
> THE WITNESS: Why is this not an ordinary libel lawsuit?
> THE COURT: I'm asking a legal question; I recognize, but -- ma'am, this smells just like a libel lawsuit.
> THE WITNESS: Well, Your Honor --
> THE COURT: Whoa, whoa. There's a difference between cyberstalking and libel.
> MS. GUTMORE: That's correct, Your Honor.
> THE COURT: This looks and smells and walks and talks like libel.
>
> (t=29:14-30:1)

In the colloquy above between the court and Mr. Blum (the witness) it appears Mr. Blum was getting ready to speak substantial information and the court stopped that with “whoa”.

Mr. Blum’s Answer Brief leaves no question that the court’s Order is overly broad and unconstitutional. Mr. Blum’s position – that it is unlawful “cyberstalking” for Mr. Scott to say anything about Mr. Blum or any of “his” associates on the Internet – is textbook prior restraint . This Court must reverse the circuit court ’s July27, 2015 Order (“Injunction”). In addition, the Order should be reversed because of significant procedurally deficiencies as the record shows. Petitioner through opposing counsel gained a strategic advantage by fraudulent filing the petition

prose, obtaining the temporary injunction and setting into the issuance the permanent injunction with its governing terms and conditions in standard Supreme Court issued form.(R1:80-85)

Mr. Blum developed a personal and conclusory opinion of the content of the speech not the conduct of Mr Scott. The conduct requires “directed at a specific person”. Admitted by Mr Blum this conduct never occurred.

> THE COURT: Not to you. He's not sending these emails directly to you.
> THE WITNESS: No, he is not.(t=29:7-9)

Nothing in the answer brief cures that fatal defect; nor can the Order’s procedural and constitutional infirmities withstand strict scrutiny . The Injunction should be vacated for these reasons, as well.

Mr. Blum’s position that the process serving industry trade participants are “his” exclusive associates and expects the exclusion of the respondent from any public purpose interactions. (t=pg 21:11, 31:11,33:4, 80:2,)

The lower court nor the petitioner showed any one allegation meeting all the requirements of the stalking statute. Nor was any order given that described what the findings supporting the order are.

There are no evidentiary candidates for cyberstalking communications as none were directed at Mr Blum or his family, none were without legitimate purpose and none were of the sort a reasonable person who involved in public debate with the party would suffer substantial emotional duress. The cyberstalking statute defines a "course of conduct" as "a pattern of conduct composed of a series of acts over time." § 784.048(1)(b), Fla. Stat. A "pattern of conduct composed of a series of acts" cannot as a matter of logic or English mean just two communication acts. The Florida cyberstalking statute also specifically exempts any constitutionally protected activity from the definition of "course of conduct." § 784.048(1)(b), Fla. Stat.; Curry v. State of Florida, 811 So.2d 736, 742 (2008) (noting that cyberstalking statute exempts any constitutionally protected activity from the definition of "course of conduct" – not just picketing or organized protests). It also requires that the communications serve "no legitimate purpose." § 784.048(1)(d), Fla. Stat. All of the speech of Mr Scott was directed to the highest public purpose of influencing legislative and regulatory bodies and those who vote in a non profit member organization are also contacted (which by law receives a IRS tax break to represent the entire trade not just its members) for their board of directors to influence public policy regarding the trade of process serving.

Mr. Scott's Internet Postings Were Not Directed at Mr. Blum

Mr. Blum assumes, wrongly, that any publication where a subject is mentioned is also "directed at" a person as that term is used in the cyberstalking statute. This is not so. The cyberstalking statute is more specific: it requires communication "through the use of electronic mail or electronic communication, directed at a specific person." The electronic communication must be directed at a person, not merely have an effect on a person. Mr. Blum's allegations describe speech that mentions or is otherwise "about" Mr. Blum (by his description). There were no communications actually "directed at" Mr. Blum and they all served a legitimate purpose. Mr. Blum then advances the novel argument that Mr. Scott's mere mentioning (speech) constitutes action (conduct) "directed at" Mr. Blum. None of the cases Mr. Blum cites in support of that notion supports such a remarkable extension of the law. Mr. Blum has made no showing that Mr. Scott's postings were restricted to Pennsylvania or specially intended to be seen by Pennsylvania residents where Mr Blum resides. In fact Mr Blum's writes the following in his ongoing internet publications against Mr Scott going back to July 2013…

> If you chose to read Scott's unending emails, if you were able to understand them, ask yourself "what does this person have to gain?" He claims to want transparency, yet he blocks some people from access to his emails and his Facebook site if they disagree with him. …(R1:47-48 Appendix C)

Mr Blum cannot use T.B. to support his substantial emotional distress because T.B. circumstances are wholly inconsistent with Mr. Blum's behavior. Mr. Blum lurks

against Mr. Scott. He writes articles against Mr Scott. Mr. Blum is the most active visitor of Mr Scott's websites. (t=83:18-20) Mr. Blum has personally and professionally engaged in significant political wrangling against groups and individuals to maintain control of the process serving industry. In this wrangling Mr. Blum published openly and notoriously against individual people to keep his political positions secure in NAPPS. Bruce Lazarus(R1-53), Phil Geron (R1-52), and Don Feldman(R1-54))

In the lower court Mr Scott gave notice to the court that this is not about Blum v Scott nor was Scott focused on a specific person:

> MR. SCOTT: Your Honor, there is a concerted effort and -- a concerted effort to bring about my silence, and I contend that Mr. Blum is here today representing a group, which specifically defeats "directed at a specific person."
> . (t=87:6-18)

The court responded,:

> THE COURT: Uh-huh.

The sworn affidavit in the petition mentions NAPPS in every itemized allegation. It also includes other names he is representing such as Alan Crowe and Gary Crowe. Credibility or even likability should not supplant the application of the facts to the law.

Further this court in Leach v. Kersey, 162So. 3d 1104(Fla. 2d DCA 2015) has taken guidance from Wyandt v. Voccio, 148 So. 3d 543, 544 (Fla. 2d DCA 2014). Wyandt states:

> "Section 784.0485, which governs the procedure for the issuance of stalking injunctions, became effective on October 1, 2012. *See Touhey v. Seda,* 133 So.3d 1203, 1203 n. 1 (Fla. 2d DCA 2014) (citing ch. 2012-153, §§ 3, 6, at 2035, 2039, Laws of Fla. (2012)). We analyze the statute with guidance from section 784.046, which defines repeat violence as "two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member." *See* § 784.046(1)(b); *Seda,* 133 So.3d at 1203 & n. 2. **The petitioner must prove each stalking incident by competent, substantial evidence to support an injunction against stalking.** *Seda,* 133 So.3d at 1204."

In reviewing the violence definition that the repeat violence addresses it reads this :

> (a)"Violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

The construction of the statute sentence shows that contact is the overwhelming requirement of each and every word. Assault, aggravated assault, aggravated battery, sexual assault, sexual battery, kidnapping, or false imprisonment or any criminal offense resulting in physical injury or death. To conclude that the legislators pooled all these contact words together in the repeat violence statute, then made an exception to stalking that contact is not needed is not consistent. For these reasons the injunction should be vacated:

BOUTERS V STATE

Mr. Blum cites *Bouters v. State* for the general proposition that stalking is not protected by the First Amendment; therefore, he continues, the injunction is not a prior restraint. A.B. at 9. But *Bouters* did not address prior restraint at all. Moreover, *Bouters* was decided in 1995, before § 784.048 was amended to include language about cyberstalking (2003), and before the civil cause of action for injunctions against (cyber)stalking was enacted (2012). *Bouters* said nothing about the constitutionality of the *cyberstalking* statute. Further, *Bouters* is readily distinguished on its facts. That case presented a combination of threatening or violent nonverbal conduct, in addition to threatening speech, directed at the victim. "The record shows that Bouters harassed the victim, his ex-girlfriend, by repeatedly calling her on the telephone and threatening to harm her. He battered her and threatened to kill her. He then violated a domestic violence injunction by entering her home uninvited and left only when the sheriff's office was called.". Here, the (cyber)stalking statute is being applied to argue that speech to the general public about the plaintiff is unlawful and should be enjoined. *Bouters*'s holding that the old statute was not vague or overbroad on its face does not resolve an as-applied case like that here. Lastly, and perhaps most significantly, the remedy in Bouters was a no contact order, which then raised no serious constitutional problem. It does now as the refinement and application of the cyberstalking law

now requires the loss of the second amendment to the one an order is issued against. In fact, the scope of the order was not an issue in *Bouters*. Here, in contrast, the order is couched as no-contact order; yet the lack of direction by the court it now appears to be a no-speech-about-plaintiff order. Prior restraint was not an issue in *Bouters* and it cannot be used to save Mr. Blum's claims here.

CONCLUSION

For all of the foregoing reasons, this Court should reverse the Injunction and remand the case with instructions to dismiss Blum's Petition.

Randy A Scott
343 Hazelwood Ave S
Lehigh Acres , Florida 33936
randy@randyscott.us
239.300.7007

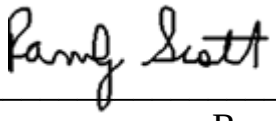
CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Fla. R. App. P. 9.210(a)(2). October 27, 2015

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy hereof was filed electronically through the Court's eDCA system on this 27th of September 2015. In addition to any electronic service provided to parties or counsel of record by the eDCA system.

October 27, 2015



Randy A Scott
343 Hazelwood Ave S
Lehigh Acres , Florida 33936
randy@randyscott.us
239.300.7007