

FILED

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Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs March 1, 2023

**JESSICA GARVIN v. MARIAH SHELTON**

**Appeal from the Chancery Court for Knox County**  
**No. 204966-2 Clarence E. Pridemore, Jr., Chancellor**

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**No. E2022-01258-COA-R3-CV**

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The plaintiff filed a complaint for a restraining order against the defendant, the wife of the plaintiff's ex-husband. The plaintiff sought a restraining order because the defendant requested to "add" or "friend" plaintiff's co-workers and manager on certain social media applications. The trial court entered an *ex parte* temporary restraining order and, after conducting a hearing, extended the temporary restraining order for one year. Following our review of the record, we conclude that the plaintiff presented insufficient evidence to establish that she would suffer immediate and irreparable harm absent a restraining order against the defendant or any other facts that would otherwise constitute a cause of action. We therefore reverse and vacate the one-year restraining order.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court  
Reversed; Case Remanded**

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which CARMA DENNIS MCGEE and JEFFREY USMAN, JJ., joined.

Evan M. Wright, Livingston, Tennessee, for the appellant, Mariah Shelton.

Larry C. Vaughan, Knoxville, Tennessee, for the appellee, Jessica Garvin.

**MEMORANDUM OPINION<sup>1</sup>**

**Background**

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<sup>1</sup> Rule 10 of the Rules of the Court of Appeals provides: "This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated 'MEMORANDUM OPINION,' shall not be published, and shall not be cited or relied on for any reason in any unrelated case."

On June 24, 2022, Jessica Garvin (“Plaintiff”) filed a complaint in the Knox County Chancery Court (“the Trial Court”), seeking a restraining order against Mariah Shelton (“Defendant”). In her complaint, Plaintiff averred that Defendant was married to Plaintiff’s ex-husband, Chad Shelton, and that Plaintiff and Mr. Shelton shared minor children together from their marriage. According to Plaintiff, Defendant began to exhibit “erratic and stalking behavior” in January 2019. Plaintiff alleged that on January 7, 2019, Defendant had “jumped out from hiding and taunted” her when Plaintiff arrived at the home of Freeda Shelton, Mr. Shelton’s mother, to pick up the minor children. Plaintiff insisted that she did “not step towards” Defendant but that Defendant called the sheriff’s office and had a criminal warrant for aggravated assault taken out against Plaintiff.

Plaintiff alleged that she possessed recordings of conversations between Defendant and herself in which Defendant offered to dismiss the aggravated assault charge against her if she agreed to release Mr. Shelton from an obligation to pay child support. Plaintiff further claimed that she possessed a recording of Freeda Shelton stating that Defendant had fabricated the aggravated assault allegation against Plaintiff.

Plaintiff also alleged that Defendant had contacted Plaintiff’s co-workers and employers when Plaintiff was employed at Advanced Rehabilitation Center in Crossville, Tennessee, from June 2020 through June 2021. As an example, Plaintiff claimed that she had received text messages from a co-worker, Kaylee Jean Valentine, who expressed “concern over Defendant’s contacting her, seeking her out on Facebook and requesting to add her as a confidant on Snapchat” and Instagram. Plaintiff averred that Defendant did not know any of Plaintiff’s co-workers or employers but “caused difficulty at Plaintiff’s place of employment because of the interference and harassment by the Defendant.” Plaintiff attached to her complaint images of text messages she had received from Ms. Valentine, reflecting that Ms. Valentine informed Plaintiff that Defendant had “added” her on Instagram and Snapchat.

Plaintiff also stated that Defendant’s “harassing and stalking continued” when Plaintiff worked at “The Vein Company” from July 2021 through March 2022. According to Plaintiff, Defendant contacted her manager and co-workers there. Specifically, Plaintiff claimed that Defendant sent a request to follow Plaintiff’s manager, Nicole Moroz, on Instagram. Plaintiff further claimed that Ms. Moroz called Plaintiff into her office to discuss “the intrusions being made by the Defendant to the place of employment as well as the employees thereto.” Plaintiff contended that Defendant’s actions placed her employment at The Vein Company in “great jeopardy.” Plaintiff also attached images of a text message conversation between herself, a co-worker, and Ms. Moroz, discussing Defendant’s social media activity.

Lastly, Plaintiff alleged that on June 18, 2022, Kirk Getz, Plaintiff’s “former boyfriend,” informed her that Defendant had contacted his fiancée, Monica Gehring, to ask

her “what kind of dirt” she may have on Plaintiff that Defendant could use in court.<sup>2</sup> A few days later, Plaintiff filed a supplemental pleading with an attachment showing a text message sent from Mr. Getz in which he requested that Plaintiff help prevent Mr. Shelton or Defendant from contacting him, his family, and his friends. Plaintiff described Defendant’s behavior as “strange, erratic, and borderline psychotic.” Plaintiff requested that the Trial Court grant her request for a temporary restraining order, claiming that she feared she may suffer immediate and irreparable injury. Plaintiff requested a temporary restraining order that would prevent Defendant from contacting Plaintiff’s employers, co-workers, and friends and from “coming about the Plaintiff at any place whatsoever that she may be found.” The Trial Court granted Plaintiff’s request and entered an *ex parte* temporary restraining order on June 27, 2022.

On July 6, 2022, Defendant filed a motion to continue a hearing on Plaintiff’s complaint set for July 11, 2022. Two days later, Defendant filed a motion to dismiss Plaintiff’s complaint and a memorandum of law in support thereof, pursuant to Tennessee Rule of Civil Procedure 12.02(6) and 65.03. In her motion to dismiss, Defendant argued that neither Plaintiff’s complaint nor the temporary restraining order complied with the requirements of Tennessee Rule of Civil Procedure 65.03(1) in that Plaintiff had failed to present a claim of immediate and irreparable harm or a certification in writing explaining the efforts made to give Defendant notice and the reasons why notice should not be required. In addition, Defendant contended that the temporary restraining order constituted a prior restraint on Defendant’s constitutional rights to free speech and association under the United States and Tennessee Constitutions. Defendant requested that the Trial Court dissolve the temporary restraining order, dismiss Plaintiff’s complaint with prejudice, and award Defendant mandatory attorney’s fees and costs pursuant to Tenn. Code Ann. § 20-12-119(c).

In her memorandum of law in support of her motion to dismiss, Defendant noted that Plaintiff had merely complained that Defendant had requested to “associate or friend or follow these individuals on social media” and that Plaintiff had not cited a “single loss of employment or business opportunity linked to any of this contact.” With respect to Defendant’s contact with Mr. Getz, Defendant argued that Plaintiff had complained only of a “possible alienated friendship from [Defendant] sending a message or speaking to another person in a relationship with [Mr. Getz].” Defendant argued that none of Plaintiff’s claims were actionable under the law and that the United States and Tennessee Constitutions protected the right of Defendant to freely associate with and speak to other individuals. Given that Plaintiff had failed to make any claim of defamation or any harm or injury to her by Defendant’s actions, Defendant claimed that there was no significant government interest involved that would outweigh her right to communicate with others.

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<sup>2</sup> From our review of the record, we gather that Plaintiff and Mr. Shelton were engaged in a child support dispute. Plaintiff’s reference to “court” may concern this dispute.

The Trial Court conducted a hearing on July 11, 2022, and heard testimony from Plaintiff and Ms. Moroz. The Trial Court entered a final order on August 29, 2022, denying Defendant's motion to dismiss and concluding that an order restraining her future communications with persons Plaintiff may know or eventually come to know through social relationships or employment was not a prior restraint on speech. The Trial Court ordered the following:

Defendant is prohibited and restrained from contacting Plaintiff's employers, fellow employees or friends; and shall not invade Plaintiff's life. Defendant shall not go on a website and Google Plaintiff's name to ascertain where she works; and Defendant shall not contact, friend, or follow present or future co-workers or friends of the Plaintiff, except to conduct a business transaction.

IT IS FURTHER ORDERED that the Temporary Restraining Order previously granted herein shall continue for one year.

Defendant timely appealed.

### **Discussion**

Although not stated exactly as such, Defendant raises the following issues for our review on appeal: (1) whether Plaintiff's complaint stated a claim upon which relief could be granted, (2) whether the Trial Court's decision to proceed with a final hearing on the merits without notice to Defendant violated constitutional and procedural protection against "trial by ambush," and (3) whether the Trial Court's extension of the temporary restraining order by one year was supported by the Tennessee Rules of Civil Procedure, the evidence, or the law. Upon our review of the record, we agree with Defendant that the Trial Court erred by extending the temporary restraining order by one year.

Our review is *de novo* upon the record, accompanied by a presumption of correctness of the findings of fact of the trial court, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001). A trial court's conclusions of law are subject to a *de novo* review with no presumption of correctness. *S. Constructors, Inc. v. Loudon Cnty. Bd. of Educ.*, 58 S.W.3d 706, 710 (Tenn. 2001). After reviewing the record, we conclude that neither the evidence presented by Plaintiff nor the facts as found by the Trial Court in its final order establish that Plaintiff would suffer immediate and irreparable harm by Defendant's conduct or any other legally sufficient basis for granting the restraining order. The evidence presented by Plaintiff failed to establish an underlying cause of action.

Plaintiff's evidence presented to the Trial Court established that (1) in 2019, more than three years prior to the filing of the complaint, Defendant reported to police that

Plaintiff had committed aggravated assault against her; (2) the aggravated assault charge was dropped at least in part because Plaintiff had obtained a recording of Defendant offering to dismiss the aggravated assault charge if Plaintiff agreed to release Mr. Shelton from any child support obligation; (3) Defendant requested to “add”, “friend”, or “follow” certain co-workers and a manager of Plaintiff on certain social media applications approximately ten months prior to the filing of the complaint; (4) Ms. Moroz testified that Plaintiff had not suffered any consequences for Defendant’s social media requests and that Defendant’s request to follow Ms. Moroz on Instagram did not affect her interactions with Plaintiff; and (5) Defendant contacted the fiancée of Plaintiff’s ex-boyfriend. Although Plaintiff testified that she had been “verbally warned” by Ms. Moroz, Ms. Moroz contradicted Plaintiff’s statement. In addition, when asked whether Ms. Moroz had been angry with Plaintiff because of Defendant’s request to add her on Instagram, Plaintiff stated: “Why would [Ms. Moroz] be mad at me? I don’t control what [Defendant] does.”

These facts failed to establish a cause of action or the threat of immediate and irreparable injury to Plaintiff, a requirement for establishing a restraining order. *See* Tenn. R. Civ. P. 65.03(1) (“The court may issue a temporary restraining order . . . only if: (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition[.]”); Tenn. R. Civ. P. 65.04(2) (“A temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence that the movant’s rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action . . . .”); *Smith v. Smith*, No. 01A01-9511-CH-00536, 1996 WL 526921, at \*3 (Tenn. Ct. App. Sept. 18, 1996) (“[A]uthorities have noted that the extension of a temporary restraining order converts the order into a temporary or preliminary injunction.”).

As Defendant notes on appeal, Plaintiff never established or even alleged that Defendant defamed Plaintiff to her co-workers or employers in any way, or that she even established communication with these individuals. The evidence established only that Defendant had sent friend requests to these individuals on certain social media applications. The only exhibit introduced by Plaintiff was a text message conversation between Plaintiff, Ms. Moroz, and another co-worker. Despite Plaintiff’s allegation in her complaint that Defendant’s request to follow Ms. Moroz’s Instagram account placed her employment in “great jeopardy,” Ms. Moroz confirmed at the hearing that Defendant’s follow request did not in any way negatively affect her interactions with Plaintiff. Ms. Moroz further confirmed that she neither disciplined nor suspended Plaintiff because of Defendant’s social media request. Ms. Moroz simply deleted Defendant’s follow request. Inasmuch as Plaintiff failed to demonstrate that she would suffer immediate and irreparable harm absent a restraining order or establish any other facts that would constitute a cause of action, we reverse and vacate the Trial Court’s order.

### **Conclusion**

The Trial Court's final order extending the temporary restraining order for one year is reversed and this cause is remanded to the Knox County Chancery Court for the collection of costs below. Costs on appeal are taxed to the appellee, Jessica Garvin, and her surety, if any.

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D. MICHAEL SWINEY, CHIEF JUDGE