

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL
CIRCUIT OF THE STATE OF FLORIDA IN AND
FOR PINELLAS COUNTY

21-004904-FD
UCN: 522021DR004904XXFDFD

LUNA, ANNA PAULINA

Petitioner,

VS.

BRADDOCK, WILLIAM

Respondent.

RESPONDENT'S MOTION TO DISMISS

COMES NOW, Respondent William Braddock, by and through undersigned counsel and pursuant to applicable case law, and moves this court to dismiss this petition, and as grounds therefore shows:

BACKGROUND AND OVERVIEW

1. Petitioner Anna Paulina Luna (hereinafter "Luna") has filed a Petition for Injunction against Stalking (hereinafter "Petition") against Respondent William Braddock (hereinafter "Braddock"), wherein Luna alleges that Braddock has committed stalking against Luna, in contravention of Florida statute 784.048, et al. Luna is seeking a permanent injunction enjoining Braddock from having any additional conduct.
2. Luna and Braddock are not domestically related and are not acquaintances or friends. Rather, Luna is a politician; she was the Republican nominee for the United States House of Representatives Florida District 13 seat in the 2020 election cycle, and is vying to be the Republican candidate for the same seat for the next election, which will occur in November of 2022.
3. Braddock, meanwhile, was originally seeking the same 2022 nomination. That campaign has ended, but he remains a politically engaged American citizen.
4. Luna has alleged that Braddock has committed stalking, consisting of a series of harassing events. The first Luna describes is when Braddock contacted Luna while Luna appeared on a radio show. There, Braddock asked Luna a question which she deemed hostile.
5. The second encounter was at a public event which occurred later that day. There, Luna alleges that Braddock confronted her, advised that he had been the caller earlier, and

identified himself as her political opponent.

6. Additionally, Luna has alleged numerous indirect contacts, which she has become aware of due to information provided by third parties. These indirect contacts have consisted of disparaging text messages about Luna which Braddock sent to other people, social media posts Braddock made which insulted Luna, and an apparent phone call to another person, Erin Olszewski (hereinafter “Olszewski”), wherein Braddock discussed harm against Luna.
7. As more fully explained herein, these interactions do not meet the legal standard for issuance of an injunction against stalking. The only direct contact between Luna and Braddock was as part of the political process, and served a legitimate purpose. Messaging to other people, even if it disparaged or even threatened Luna, also fails to constitute stalking, insofar as Luna only became aware of it because of notifications unrelated to Braddock, and none constituted messages of imminent danger.
8. As a political candidate, Luna must accept that the First Amendment to the United States Constitution provides greater protections for those who speak about her than a typical private citizen. Even crass, profane, or offensive statements must be weighed against the right of people to discuss politics and those who seek office.
9. Luna is not potentially without recourse, however. A public figure can still sue civilly for defamation or intentional infliction of emotional distress, and law enforcement is empowered to investigate and possibly arrest a person who is issuing threats of violence. Thus, there is no need to excuse boorish behavior in order to deem this not a matter of stalking sufficient to issue an injunction. Nevertheless, this matter should be dismissed for failure to meet legal muster.

FIRST CONTACT: RADIO SHOW

10. Per Luna, the first time that she encountered Braddock was on May 26, 2021, when she appeared on a local radio show, called The Republic of Pinellas. There, Luna was a guest along with another person seeking the Republican nomination, Matt Tito. At one point, Braddock called in to the show to ask Luna and Tito a question.
11. Luna interpreted the question as hostile, and described it as an attack against her¹.

¹ Luna’s Petition does not attempt to quote the question, and when asked under oath about the question Luna did not provide any verbatim recollection. However, she has provided a description: “...**I believe the nature of the discussion** was he was accusing me of stolen valor, which is a big deal in the United States military. Obviously, it’s a false allegation, but he was attempting to fight with me on the radio station.” *Deposition of Anna Luna, August 31, 2021, Page 17, line 24 – Page 18, Line 3*

12. Regardless of how the questioning made Luna feel, it is not an instance of stalking. For one, Luna's failure to accurately describe the question makes this claim insufficient, as the court is to objectively judge the nature of the communication, and a person's subjective discomfort is not dispositive.

"Without knowing what the alleged communications were, it was not possible for the trial court to determine whether Appellant engaged in stalking or whether the communications would have created substantial emotional distress under a reasonable person standard." *Reid v. Saunders*, 230 So.3d 1288, 1289 (Fla. 1st DCA 2017), citing *McMath v. Biernacki*, 776 So.2d 1039, 1040 (Fla. 1st DCA 2001) (noting that courts use a reasonable person standard rather than a subjective standard in determining whether incidents create substantial emotional distress)

13. Secondly, Luna was presenting herself, through the radio, as a candidate for public office. As such, questioning her at that time had a legitimate purpose – to inquire as to her fitness for office². By definition, this does not constitute harassment³.

14. This is especially true given that Luna has decided to become a public figure by running twice for national office.

"Because Petitioner is a public figure and not a private citizen seeking quiet contentment while going about her day-to-day life, the calculus about what constitutes harassment, credible threats, or even defamation against her is different. Public officials, by the very nature of their positions, are sometimes required to endure the passions and pleas of the public as they do the people's work. On occasion, civility takes a backseat to those passions. While most advocates are respectful, others are uncivil and do little to advance their cause, often undermining their efforts with uncontrolled emotions and actions. Although regrettable, legislators and other public officials sometimes receive intemperate attacks from some of the citizens they represent when advocating for issues others may strenuously oppose...Yet they are nonetheless part of our political process. That has been the nature of elected office and a fact of political life since the founding of the Republic." *Logue v. Book*, 297 So.3d 605, 619 (Fla. 4th DCA 2020)

15. To find otherwise – and deem the call an actionable instance of harassment that supports the

² Luna has made her prior military record a significant part of her campaign rhetoric, so asking questions related to that topic are undoubtedly relevant to her quest for office.

³ "Harass' means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person **and serves no legitimate purpose.**" *Fla. Stat.* §784.048(1)(a)

Petition - requires Luna to demonstrate no reason for the call other than harassment.

“Regardless of how misguided [Appellant]’s tweets may have been, [Appellee] had the burden to prove they served no purpose other than to harass [Appellee]...[Appellant] did not have the burden to prove that his tweets had a legitimate purpose; [Appellee] had to prove that they did not.” *Craft v. Fuller*, 298 So.3d 99, 105 (Fla. 2nd DCA 2020)

16. Lying, as Luna alleged, or asking questions that are unwelcome or hostile⁴, does not overcome this burden.

“An injunction may not be directed to prevent defamatory speech...This includes speech that may be offensive or vituperative.” *David v. Textor*, 189 So.3d 871 (Fla. 4th DCA 2016)

SECOND CONTACT: POLITICAL SPEECH

17. Similar evidentiary defects exist with regard to Luna’s second alleged contact with Braddock. Luna’s petition has indicated that Braddock “sought interaction” with her later the same day as the radio show. This occurred when she was walking to a stage to give a speech. Per Luna, Braddock stopped her to introduce himself⁵.

18. Once again, this was in the context of a political event, open to the public. Politicians who appear at such events, and who give speeches while present, are going to be legitimately interacting with those who attend; to argue otherwise is to take the position that a politician doesn’t want crowds of people listening to their words, and do not intend to meet the people in attendance. For Braddock, who at that point wanted to also seek the nomination for office, it was a chance to hear what his competition was saying on the campaign trail while also networking with potential allies.

19. As such, and regardless of whether Luna wanted Braddock there, or was pleased that he introduced himself, there was a legitimate purpose for Braddock’s actions.

“In determining whether conduct has a legitimate purpose, ‘courts have generally held that contact is legitimate when there is a reason

⁴ “I believe that he threatened my military career in the service, I believe that he threatened my reputation, and I believe that he was making an attempt to emotionally harm me and threaten me in that sense.” *Deposition of Anna Luna, August 31, 2021, Page 24, Line 18 – Line 21*

⁵ “I was walking to the stage to speak. I was asked to speak at the event, and William Braddock kind of pushed his chair out in front of me and said, “Hi, I’m William Braddock. I’m the one that phoned in to your conversation” earlier that day. I immediately knew that he was going to try to seek some kind of bad interaction with me. I felt threatened, and I completely broke at that point in time our interaction by walking away and defusing the situation.” *Deposition of Anna Luna, August 31, 2021, Page 20, Line 3 – Line 12*

for the contact other than to harass the victim’.” *Laquidara v. Houghtaling*, 320 So.3d 243, 245 (Fla. 2nd DCA 2021), citing *Cash v. Gagnon*, 306 So.3d 106, 110 (Fla. 4th DCA 2020)

...

“A finding of ‘no legitimate purpose’ to a given action must not only comport with common sense, it must also be evidenced by a complete lack of usefulness or utility.” *Logue v. Book*, 297 So.3d 605, 614 (Fla. 4th DCA 2020), citing *David v. Textor*, 189 So.3d 871,875 (Fla. 4th DCA 2016) (“[W]hether a communication serves a legitimate purpose is broadly construed and will cover a wide variety of conduct)

20. Additionally, and as recounted by Luna, Braddock merely introduced himself. Regardless of how disturbed Luna may have been by such a greeting, it fails to meet the standard of objective reasonableness required for the court to find harassment. A reasonable person would not experience severe emotional distress just because another person issues a greeting, even if they knew that person was hostile towards them. There is no indication that Mr. Braddock made any overt threats or displayed any use of force. Luna may have genuinely not wanted anything to do with Braddock, but that doesn’t mean that Braddock committed stalking when he introduced himself.

“As long as there is a reason for the communications other than harassment, the communications will have a legitimate purpose even if they are directed at someone who does not welcome them.” *Craft v. Fuller*, 298 So.3d 99, 105 (Fla. 2nd DCA 2020)

INDIRECT CONTACTS

21. In addition to these direct interactions, Luna has alleged that Braddock has engaged in cyberstalking by texting hostile and disparaging comments about Luna to other people⁶, posting comments about Luna on social media⁷, and stating physical threats against Luna while speaking on the phone to another person, Olszewski⁸.

⁶ “...I was also well aware at this point in time of multiple text messages that Braddock had made to at least five people that I know calling me a ‘fucking speed bump in the road’, saying that I was a ‘dumb cunt’, calling me a ‘whore’...I was told by multiple people that I needed to stay away from him, that he was dangerous, and that he was going to try to hurt me, and it was making them feel uncomfortable as well.” *Deposition of Anna Luna, August 31, 2021, Page 20, Line 23 – Page 21, Line 2; Page 21, Line 9 – Line 12*

⁷ Luna has stated that Braddock ‘tagged’ her in Facebook posts, but she means that he used her name when posting a comment.

Q: “So if I wrote a Facebook post, “I think President Biden is doing this,” does that mean that I’ve tagged him if I used his name?”

A: “How I perceive it, yes, you’re referencing him.”

Deposition of Anna Luna, August 31, 2021, Page 45, Line 25 – Line 19

⁸ This recorded phone call was surreptitiously recorded by Olszewski without Braddock’s knowledge, and was

22. None of these instances constitute stalking, either, as they were not directed to Luna, and Luna only knew about these comments because she was advised by third parties.

“[Appellee] testified that [Appellant] sent emails about [Appellee] and [Appellee]’s family, partners, and former employees to 2200 NAPS members...[Appellee] testified that none of the emails were sent directly to him but that he knows about them because they were forwarded by the recipients to him or he received phone calls about them...the emails do not meet the statutory definition of cyberstalking. The emails were not ‘addressed’ to [Appellee], and nothing indicates that [Appellee] was the intended recipient...[Appellant] did not communicate words, images, or language via email or electronic communication directly to [Appellee]...the emails sent to 2200 NAPS members do not constitute words ‘ directed at a specific person’ for purposes of the cyberstalking statute simply because they are about [Appellee].” *Scott v. Blum*, 191 So.3d 502, 503-505 (Fla. 2nd DCA 2016)

23. In fact, the Second District Court has regularly and routinely found that messages sent to third parties, even when about an individual, do not constitute stalking of that individual.

“The emails or messages [Appellant] allegedly sent to third parties, such as [Appellee]’s business associates, did not constitute cyberstalking because they were not addressed to [Appellee] herself...[Appellant]’s online posts also did not meet the definition of cyberstalking because they were not addressed at a specific person.” *Wright v. Norris*, 2021 WL 1555406 (Fla. 2nd DCA, April 21, 2021) [Non-final opinion]

24. This includes social media postings.

“Decisions by our sister courts in the Second and Third Districts on whether ‘a course of conduct [is] directed at a specific person’ have been interpreted to exempt social media messages from qualifying as the type of conduct covered by section 784.048, Florida Statutes.” *Logue v. Book*, 297 So.3d 605, 611 (Fla. 4th DCA 2020)

25. Although a fairly recent innovation, the courts have analogized modern social media commentary to traditional forms of protest; a recourse exists when it crosses certain boundaries, but it is not by alleging that the online poster is stalking the person they are discussing.

“Angry social media posts are now common. Jilted lovers, jilted

therefore obtained in violation of Florida law. It is thus properly excluded from consideration, pursuant to Florida Statute §934.06. Regardless, the fact remains that Luna only became aware of the conversation because Olszewski told her, as opposed to being a direct message from Braddock

tenants, and attention-seeking bloggers spew their anger into fiber-optic cables and cyberspace. But analytically, and legally, these rants are essentially the electronic successors of the pre-blog, solo complainant holding a poster on a public sidewalk in front of an auto dealer that proclaimed, “DON’T BUY HERE! ONLY LEMONS FROM THESE CROOKS!” Existing and prospective customers of the auto dealership considering such a poster made up their minds based on their own experience and research. If and when a hypothetical complainant with the poster walked into the showroom and harangued individual customers or threatened violence, however, the previously-protected opinion crossed the border into the land of trespass, business interference, and amenability to tailored injunctive relief. The same well-developed body of law allows the blogger to complain, with liability for money damages for defamation if the complaints are untruthful and satisfy the elements of that cause of action. Injunctive relief to prohibit such complaints is another matter altogether.” *Krapacs v. Bacchus*, 301 So.3d 976, 980 (Fla. 4th DCA 2020)

26. When the context of politics is added to this analysis, the prohibition against an injunction to prevent hostile rhetoric – even when profane, offensive, and boorish – is even clearer.

“Nothing in the First Amendment requires that constituents be kind, or even polite, in communications with or about their elected representatives and public officials...Injunctions should be reserved for cases of harassment, stalking, and actual threats of imminent harm as the Legislature intended, not to silence annoying political opponents.” *Logue v. Book*, 297 So.3d 605, 619-620 (Fla. 4th DCA 2020)

27. Thus, these communications to third parties⁹, or online postings, do not constitute stalking of Luna under applicable law.

OTHER REMEDIES

28. This is not to say that Luna doesn’t have other recourse. The law does indeed provide for remedies for maliciously lying about somebody or intentionally inflicting emotional distress.

And credible threats to do imminent harm to another are illegal.

29. As such, this court does not need to condone Braddock’s conduct in order to find that

⁹ Q: “The text messages that you are referring to are the one that were sent to your friends and colleagues – “

A: “Correct.”

Q: “Okay. Got you.”

A: “Or people that voted for me...”

Deposition of Anna Luna, August 31, 2021, Page 56, Line 24 – Page 57, Line 4

stalking did not occur. The comments that Braddock made were boorish, crude, and might possibly subject him to criminal prosecution¹⁰.

30. Nevertheless, that does not mean that Braddock stalked Luna, or that an injunction for protection against stalking is justified, especially considering Luna's status as a viable candidate for congress.

“Publicly expressing anger toward an elected official is not a basis for entry of an injunction. In public debate, elected officials must tolerate insulting remarks – even angry, outrageous speech – to provide breathing room for the First Amendment... Respondents methods and posts, as boorish, crude, and crass as they may be, must also be considered ‘against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.’” *Logue v. Book*, 297 So.3d 605, 616-617 (Fla. 4th DCA 2020), citing *NY Times Co. v. Sullivan*, 84 S.Ct. 710 (1964)

31. Indeed, if this injunction is granted, it risks creating a precedent whereby political candidates might seek such relief against those they deem their political opponents simply to silence opposition and ease their path to election. Or, elected officials will use the power of the courts to silence those constituents who are most vocal in their opposition to the person in office. After all, politics is indeed an ugly game, and openly hostile insults are par for the course¹¹, so there would be plenty of invective to reference.
32. Our legal system does not countenance such actions. As noted herein, the First Amendment errs on the side of allowing the crude, the profane, and the vituperative to be expressed openly as the cost of maintaining a free society and a robust democracy.
33. If indeed Braddock went beyond mere invective, and actually threatened the life of Luna, then the criminal justice system can take appropriate action¹². But issuing an injunction on

¹⁰ Police reports reflect that local law enforcement did investigate, but deemed the threats Braddock allegedly made to Luna when talking to Olszewski to be conditional, and therefore did not justify arrest. Upon information and belief, however, Braddock is the subject of a federal criminal investigation concerning threats to a political candidate, although it remains to be seen whether the threats will be deemed credible.

¹¹ Once, when appearing on a Fox news segment, Luna analogized former Presidential candidate Hillary Clinton to ‘herpes’, because she ‘won’t go away’.

¹² As noted, local law enforcement did investigate this case, but have chosen not to arrest Braddock, and for good reason: “...the incident at the credit union did not involve a threat of violence that amounted to an assault because there was no overt act demonstrating that the violence was imminent.” *Singletary v. Greever*, 62 So.3d 700, 702 (Fla. 2nd DCA 2011)

the basis that Luna became aware of such threats is not appropriate, when the threats were not expressed directly to Luna. Similarly, the direct contact which Braddock had with Luna – even though she has clearly expressed that she did not want it – was not so egregious that it would cause a reasonable person to experience severe emotional distress. More plainly, it was for the legitimate purpose of running for public office.

34. For these reasons, these matters do not justify Luna’s request for an injunction, and the Petition should be dismissed.

WHEREFORE, Respondent prays this honorable court will enter an order dismissing this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via E-Filing Portal to the Clerk of the Court and all parties of record, this 9th day of September, 2021.

THE LAW OFFICES OF CARLSON, MEISSNER, HART & HAYSLETT, P.A.

/S/ J. KEVIN HAYSLETT, ESQUIRE

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