

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 2070

ANGIE NICOLosi VICKNAIR AND ROBERT L. VICKNAIR, JR.

VS.

FRANK J. NICOLosi

JUDGMENT RENDERED: SEPTEMBER 19, 2007

ON APPEAL FROM THE
TWENTY-FIRST JUDICIAL DISTRICT COURT
DOCKET NUMBER 2006-000871
PARISH OF TANGIPAHOA, STATE OF LOUISIANA

HONORABLE WAYNE RAY CHUTZ, JUDGE

CASSANDRA BUTLER
INDEPENDENCE, LA

ATTORNEY FOR PLAINTIFF/APPELLEE
ANGIE NICOLosi VICKNAIR AND
ROBERT L. VICKNAIR, JR.

CHARLES B. W. PALMER
AMITE, LA

ATTORNEY FOR DEFENDANT/APPELLANT
FRANK J. NICOLosi

BEFORE: GAIDRY, MCDONALD AND MCCLENDON, JJ.

McClendon J. Concus.

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MCDONALD, J.

This is an appeal of a judgment of the Twenty-first Judicial District Court rendered in favor of plaintiffs, Angie Nicolosi Vicknair and Robert L. Vicknair, Jr., granting a permanent injunction against defendant, Frank J. Nicolosi.

Mrs. Vicknair and Mr. Nicolosi are brother and sister. Their father owned an 18.53-acre tract of land in Tangipahoa Parish from which three 2-acre tracts were sold in 1997 to the parties and a brother, now deceased. Also on the tract of land was an automobile repair shop operated by the senior Mr. Nicolosi, and later the defendant. After the death of the parties' father, the property was amicably partitioned in January 2004. Mrs. Vicknair received a tract of land comprising 1.25 acres and a brick residence located thereon. Mr. Nicolosi received the remainder of the 18.53-acre tract, except for the two acres previously sold to the deceased brother.¹

Mr. Nicolosi continued to operate the automobile repair shop on his property, utilizing a driveway on his sister's property for access with her permission. Numerous automobiles in various states of disrepair were also parked along the driveway on plaintiff's property. On March 13, 2006, the Vicknairs filed suit for a declaratory judgment and injunctive relief, and also requested a temporary restraining order, prohibiting defendant from parking vehicles on the property, or blocking the driveway, or entering Mrs. Vicknair's property to access his shop. The temporary restraining order was issued, and hearing on the issuance of an injunction was set for May 1, 2006.

¹ In May 2004, the deceased brother's two-acre tract was sold to Mr. and Mrs. Vicknair.

After the hearing, the trial court issued a permanent injunction, prohibiting defendant from parking or abandoning vehicles on the property of plaintiff and ordering him to remove all vehicles by May 31, 2006. The court also ruled that no right of way existed in favor of Mr. Nicolosi across the property of Mrs. Vicknair. Mr. Nicolosi appeals the judgment of the trial court alleging six assignments of error, five of which address deficiencies in the issuance of the Temporary Restraining Order.

There shall be no appeal from an order relating to a temporary restraining order. An appeal may be taken from an order or judgment relating to a preliminary or final injunction. La. C.C.P. 3612. In addition to the deficiencies in the issuance of the temporary restraining order, defendant alleges error by the trial court in holding the hearing on May 1, 2006 without: (1) disposing of exceptions raised by the defendant, (2) having the deficiencies in the temporary restraining order corrected, (3) having plaintiff deliver supporting affidavits to the defendant as required by La. C.C.P. art. 3609.

The record indicates that the exceptions that defendant complains the trial court failed to address before the May 1, 2006 hearing were filed into the record on May 2, 2006.² Therefore, the exceptions are not before us. However, we note that the exceptions filed by the defendant alleged deficiencies in the issuance of the temporary restraining order. Defendant is correct in asserting that a temporary restraining order expires by operation of law after ten days unless it is legally extended, and that in this case the TRO expired on March 24, 2006. However, he is not correct in asserting that any

² In oral argument, defendant advised this court that the exceptions were presented to the court at the May 1, 2006 hearing, but the court declined to accept or hear them.

deficiencies in the issuance of the temporary restraining order must be corrected before the trial court can issue a permanent injunction.

Louisiana Code of Civil Procedure article 3609 is not applicable to this matter because the application for injunctive relief was not heard based on verified pleadings or supporting affidavits. Rather, proof was taken as in ordinary cases, with both parties testifying.

We find no error in the trial court's issuance of a permanent injunction in this matter. The judgment appealed is affirmed and this opinion issued in accordance with URCA Rule 2-16.1.B. Costs are assessed to Frank J. Nicolosi.

AFFIRMED.