

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

TODD B. SCOBEEY, CYNTHIA KING,)	
AND JACKSON SCOBEEY, by his next)	
friend TODD B. SCOBEEY, and)	
STRONG WATERPROOFING, LLC,)	
)	
Plaintiffs,)	
)	
VS.)	NO. 17-691-BC
)	
JOE STRONG,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

After conducting an evidentiary hearing in which Plaintiff Cynthia King testified and after considering the sworn declarations filed by the Defendant, it is ORDERED that pursuant to Tenn. Code Ann. §§ 29-9-101, *et. al.* Plaintiff King is found guilty of civil contempt. It is further ORDERED that the claims of civil contempt against Plaintiff Todd B. Scobey are dismissed with prejudice.

It is ORDERED that upon finding Plaintiff King guilty of civil contempt, she is charged and warned by the Court that she must comply with the order issued August 23, 2017 “to maintain the peace and stability of the operations of the LLC,” and in particular the provision of the Order which enjoins the Plaintiffs “from participating in or

interfering with the operations of the LLC; and from contacting or communicating with any employees of the LLC.”

It is additionally ORDERED that Plaintiff King shall pay, by June 29, 2018, One Thousand and 00/100 Dollars (\$1000) for some of the attorneys’ fees incurred by Defendant Strong in obtaining this order of civil contempt.

It is ORDERD that by June 8, 2018, Defendant’s Counsel shall file an affidavit and itemized statement of fees incurred as per Local Rule 5.05 as evidence that at least \$1000 in fees have been incurred in successfully obtaining an order of civil contempt against Plaintiff King.

From the filings made by Defendant Strong’s Counsel and the time spent in court, it is clear that more than \$1,000 was incurred by Defendant Strong in attorneys’ fees to file this matter. Only a portion of the fees incurred are awarded because, as found below, Amy Strong, after being provoked, engaged in aggressive behavior. Accrediting Amy Strong’s statement that her aggression was motivated by fear for her children and to defend herself and back Ms. King off, Mrs. Strong’s yelling is excused. Another reason only a \$1000 portion of the attorneys’ fees incurred is awarded is because Plaintiff Todd B. Scobey is not held in contempt. Plaintiff Todd B. Scobey, is not held in civil contempt because he was not the instigator, and appears to have engaged in conduct of contact with a Strong Waterproofing LLC, as forbidden by the August 23, 2018 Order, only after all three persons involved at Bison Park on Hillsboro Road (Ms. King, Mrs. Strong and Mr. Scobey) were yelling.

The findings of fact and conclusions of law on which this ruling is based are as follows.

Tennessee Civil Procedure Rule 65.06 authorizes this Court to compel compliance with and punish disobedience to a breach of a court order.

Upon a showing by affidavit or other evidence of the breach or threatened breach of a restraining order or injunction, compliance with such order or injunction may be compelled or its disobedience punished as a contempt by a judge of the court in which the action is pending, or if this judge is disqualified, disabled or absent from the county, by a judge of a court having comparable jurisdiction.

TENN. R. CIV. P. 65.06 (West 2018).

Civil contempt is addressed in Tennessee Code Annotated section 29-9-105 which provides that, “If the contempt consists in the performance of a forbidden act, the person may be imprisoned until the act is rectified by placing matters and person in status quo, or by the payment of damages.” Attorney’s fees incurred by the moving party are a species of damages recoverable under section 29-9-105. *Parimore v. Parimore*, No. W201601188COAR3CV, 2017 WL 657771, at *5 (Tenn. Ct. App. Feb. 17, 2017) (“[T]he trial court is authorized in civil contempt proceedings to award attorney's fees upon a finding of contempt. *See Reed*, 39 S.W.3d at 119 (construing the ‘payment of damages’ provision under Tennessee Code Annotated section 29–9–105 to mean that attorney's fees are allowed in civil contempt proceedings).”).

“Civil contempt claims based upon an alleged disobedience of a court order have four essential elements. First, the order alleged to have been violated must be

‘lawful.’ Second, the order alleged to have been violated must be clear, specific, and unambiguous. Third, the person alleged to have violated the order must have actually disobeyed or otherwise resisted the order. Fourth, the person's violation of the order must be ‘willful.’” *Konvalinka v. Chattanooga-Hamilton Cty. Hosp. Auth.*, 249 S.W.3d 346, 354–55 (Tenn. 2008) (footnotes omitted).

In this case there is no dispute that the August 23, 2017 injunction Order is valid in terms of jurisdiction of subject matter and person.

As to the clarity, specificity and lack of ambiguity of the wording of the August 23, 2017 Order, the Court dismisses the Plaintiffs’ argument that: (1) the Order is not clear and (2) that it is not clear that the Order applies to the events in issue. The text, itself, of the Order quoted above is clear and understood by a person of ordinary intelligence. That the Order does not say that it explicitly applies outside the formal office of Strong Waterproofing, the Court concludes, is not a defense. The Order provides that its purpose is to “maintain the peace and stability of the operations of the LLC.” That the events in issue occurred offsite of the Strong Waterproofing Office is disingenuous because the conduct of Plaintiff King, as found below, violated the purpose of the Order, just quoted, and the conduct prohibited in the Order “from participating in or interfering with the operations of the LLC; and from contacting or communicating with any employees of the LLC.”

As stated in *Family Trust Services, LLC, et. al. v. REO Holdings, LLC, et. al.*,

‘In deciding whether there has been an actual breach of an injunction it is important to observe the objects for which the relief was granted, as well as the circumstances attending it. And it is to be observed that the violation of the spirit of an injunction, even though its strict letter may not have been disregarded, is a breach of the mandate of the court.’ (Emphasis ours).

No. M201602524COAR3CV, 2018 WL 2203216, at *6 (Tenn. Ct. App. May 14, 2018) (quoting *Davidson Cty. v. Randall*, 201 Tenn. 444, 447, 300 S.W.2d 618, 620, 621 (1957)).

The Court further finds that Plaintiff King committed the following acts which constitute actual disobedience of the August 23, 2017 Order.

- She requested, persuaded, and instigated Plaintiff Todd B. Scobey to drive onto private condominium property where Jeff Hunter lives and works regularly out of his home. It is well-known to the Plaintiffs that Mr. Hunter does work for and is intimately involved with the work of the LLC. Moreover, that Ms. King knows of Mr. Hunter’s work for the LLC is proven by her testimony that her purpose in instigating Todd B. Scobey to perform this drive-by was so she could try to catch Mr. Hunter in acts that would show he was not doing the amount of work for the LLC he claims he does. As someone presently very actively working for the LLC, Jeff Hunter fits within the class of persons denominated by the term in the August 23, 2018 Order, “employee”, and this is a reasonable construction of the Order that a lay person like Plaintiff King would understand, even though Jeff Hunter is an independent contractor. It was, then, reasonably foreseeable, the Court finds, that engaging in this drive-by could encounter Jeff Hunter and thereby breach the

peace and stability of the operations of the LLC, and constitute contact and communications with employees of the LLC, all as forbidden by the Order.

- A contact and communication with an LLC employee, forbidden in the Order is, in fact, what proximately occurred because the drive-by resulted in the Plaintiffs encountering the Defendants' wife, Amy Hunter, an LLC employee, taking LLC work to Mr. Hunter's condominium. At Bison Park on Hillsboro Road, Plaintiff King clearly violated the August 23, 2018 Order by contacting and communicating with an employee of the LLC: Amy Strong
- The Court accredits the sworn statements of Amy Hunter that she had the feeling she was being followed by a Chevrolet Equinox when inside the condominium property on her way to deliver work to Mr. Hunter. The Court accredits Amy Hunter's statement that she turned one direction and the Chevrolet Equinox turned the other. When Mrs. Strong parked in front of Mr. Hunter's condo, she noticed the Chevrolet Equinox had circled around the building and that the people inside (whom she could not identify at the time) were watching her. Mrs. Strong felt that she was being watched and followed, and was scared. Therefore, she sat in her vehicle in front of Mr. Hunter's condominium for approximately one minute. Concerned for her safety, she made the decision not to exit her vehicle and deliver the Company documents for the meeting between Mr. Strong and Mr. Hunter. Instead, she drove home. As Mrs. Strong pulled out of Mr. Hunter's complex and onto Hillsboro Pike, she noticed the Chevrolet Equinox was now in front of her.

She then observed the Chevrolet Equinox turn onto her street (Hemingway Drive) and pull onto her street, she became scared once again. At the time, her three children – ages 15, 10 and 7 – were home alone. Mrs. Strong became concerned the Chevrolet Equinox would pull into her driveway after her, blocking her in with her children potentially playing outside. To avoid this, she pulled onto a parking space at Bison Meadows Park in an effort to determine who had been following her. At this point, Plaintiff Cynthia King quickly and in an aggressive manner exited the passenger's side of the Chevrolet Equinox. Ms. King rapidly came up to the driver's side window of Mrs. Strong's car, pointing her finger and yelling about the Company and this lawsuit. After Ms. King engaged in this conduct and Todd B. Scobey join the yelling, and only after that did Mrs. Strong yell back.

- The Court finds the conduct of Plaintiff King was willful. Her testimony establishes that she instigated the drive-by to the Hunter condominium, that she was willful and deliberate in trespassing on private property with a bad intent to spy on Mr. Hunter and watch him. These actions were calculated to disrupt the peace and stability of the LLC and to result in contact with someone working for the LLC. That Ms. King's intended contact with Mr. Hunter resulted in transferred contact with Mrs. Strong comes within the terms of the August 23, 2018 Order, certainly with respect to Ms. King yelling and aggressively confronting Mrs. Strong.

As ruled above, Amy Strong is not held in civil contempt and is excused at this time because the Court accredits her testimony that her actions and conduct were motivated by fear for her children, and her yelling was prompted to back off and defend against the aggression of Ms. King. Todd B. Scobey is not found in civil contempt because he was not the instigator. Nevertheless, all parties and persons involved in this incident are ORDERED by this Court not to engage in conduct violative of the August 23, 2018 Order, and are notified in advance that the Court has the authority under Tennessee law to address any future violations with jail time as well as attorneys' fees.

s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

cc by U.S. Mail, email, or efileing as applicable to:

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