

CAUSE NO. DC-19-14291

BRANDON DAVIS,

Plaintiff,

v.

DANIELLE M. ELLIS

Defendant.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

____ JUDICIAL DISTRICT

TEMPORARY RESTRAINING ORDER

CAME TO BE HEARD *Petitioner's* Verified Original Petition, Application for Temporary Restraining Order, and Temporary and Permanent Injunction (the "Application"), filed by Plaintiff Brandon Davis (the "Petitioner") against Defendant Danielle M. Ellis (the "Respondent").

The Court, having considered the verified pleadings, the evidence presented, the argument presented at the hearing on the temporary restraining order, and the applicable law, concludes that the Application should be granted on the terms set forth below.

The Court finds the Application is supported by evidence that:

1. Petitioner is a non-public, private citizen who is dual-trained neurosurgeon and endovascular surgeon at Memorial Neuroscience Institute in Hollywood, Florida. Petitioner is a non-public, non-media, private citizen who is an aspiring model and fashion designer. Petitioner was introduced to on or about August 15, 2018 in Broward County, Florida at a birthday party birthday for a mutual friend. Shortly after this meeting, the parties began a casual, non-exclusive dating relationship for about six weeks—from about August 23, 2018 to October 7, 2018.

2. During this same period, Petitioner and Respondent began to work together on projects in the fashion industry because in addition to being a surgeon, Petitioner owns a modeling and media company called Vybelle Fashion Agency, located in Miami, Florida. The casual, non-exclusive dating relationship between the parties ended in early October 2018 after Respondent determined that Petitioner excessively charged Respondent's personal credit card after he had permitted her to use the card to purchase a gift to celebrate their successful collaboration on a fashion event in Florida. Thereafter, Petitioner distanced himself from Respondent and he ended the dating relationship.

3. In the months following the break up, Respondent began to exhibit escalating conduct, including: (a) arriving unannounced at Petitioner's residence in

West Palm, Florida, to be stopped by the building security; (b) sending threatening text messages to Petitioner; and (c) making untrue allegations about Petitioner's conduct towards her.

4. On August 20, 2019, Respondent publicly posted personal information about Petitioner on her public Instagram and Facebook accounts, including Petitioner's cell phone number, home address, work address, employee photograph, birthdate, and hash tags to identify Petitioner's fashion modeling agency. In her postings, Respondent stated that Petitioner was "hacking" her computer and "stalking" her, and she claimed that she had filed a police report against Petitioner. There is no evidence that Petitioner was hacking or stalking Respondent, and there is no evidence of Respondent filing a police report in Palm Beach County, Florida—the county where Petitioner resides. Yet, Respondent posted statements that Petitioner asserts are untrue, and Respondent encouraged her social media contacts and followers to support her. Indeed, several followers posted threatening and offensive comments about Petitioner to express support for Respondent.

5. On August 21, 2019, Petitioner's boss at Memorial Neuroscience Institute, who is the Chairman of Neuroscience, informed Petitioner that Respondent had left a voicemail on the hospital call center in which she stated that she wanted to speak with the Chairman about a "personal" matter not relating to Petitioner's professional license or employment.

6. Petitioner became fearful about his safety and concerned about his professional reputation in the community. Petitioner retained counsel and on August 23, 2019, Petitioner (through his attorney) sent a cease-and-desist letter to Respondent, a copy of which is attached as Exhibit A to the Affidavit of Elizabeth Brandon submitted in support of the Application. Respondent confirmed receipt of the cease-and-desist letter, and although the letter demanded that Respondent take down the offending posts she made about Petitioner and remove his private information from her public postings, Respondent failed to do so.

7. Since Respondent received the cease-and-desist letter, she or others working on her behalf, have attempted to contact Petitioner on his personal cell phone and through his agency's Instagram account since. Ex. 2, Brandon Aff. Ex. B. For example, on September 2, 2019, the Instagram account for Davis's agency Vybelles received a message from an unknown person that stated: "I know it's you Brandon. I know you manage this account & it's not Yovanna. You obviously won't stop & neither will I. You are stalking me why?". The handle name associated with the Instagram message was "dme4monetportfolio," which is unknown to Petitioner and is not a handle for one of the previously-accepted followers of Vybelles. Petitioner did not respond to dme4monetportfolio, but he remains fearful that the message was sent by Respondent or someone on her behalf.

8. Similarly, on September 6, 2019, Petitioner received a text message from a person who identified himself as "Joseph Laurent" who claimed he was

“referred to [Petitioner] by Danielle Ellis.” Petitioner does not know a “Joseph Laurent” or “Mr. Laurent’s” supposed connection to Respondent; however, Petitioner is concerned that individual obtained his cell phone number and attempted to contact him to possibly harm or harass him. The individual who identified himself as “Mr. Laurent” previously sent the exact same message to the Instagram account for Vybelle weeks earlier on August 26, 2019—three days after Respondent had received the cease-and-desist letter.

9. To date, Respondent has not complied with the cease-and-desist letter and Petitioner remains fearful that Respondent will continue to take steps to harass, humiliate and embarrass him publicly, socially, and professionally. Because Respondent has not taken down Petitioner’s name, photo, address, phone number, work address, hospital address, fashion business name and related hashtags, Petitioner is in fear of his personal safety.

Claim for Permanent Relief and Probable Right to Relief Have Been Shown.

10. Petitioner has filed this instant action for defamation and asserted claims for Libel, Slander, Ratification, Request for Retraction, and Intentional Infliction of Emotional Distress against Respondent. Petitioner has shown a probable right to recovery by providing evidence that Respondent knowingly published false information about Petitioner, a private citizen, and publicly posted Petitioner’s personal information on social media without his permission. Respondent has failed to take steps to remove the false statements from the public forum, remove the personal information about Petitioner from her social media accounts, or to issue a retraction about her previously-posted false statements. Given the facts stated above, Petitioner has shown that he has a probable right to the relief claimed herein.

Probable Injury, Including Imminent Harm and Irreparable Injury, and No Adequate Remedy at Law Have Been Shown

11. Respondent’s actions show an imminent intent to damage Petitioner’s professional reputation, standing in the community, goodwill, and harm his business interests. Unless Respondent is restrained and enjoined as requested herein, Petitioner will suffer incalculable loss and irreparable harm (including harm to his reputation, goodwill, business relationships, standing in the community, and personal safety) for which Petitioner has no adequate remedy at law.

Petitioner is Entitled to a Temporary Restraining Order

12. By virtue of the foregoing, Petitioner has demonstrated a likelihood of success on the merits of his claim, and a balancing of the equities favors the issuance of a Temporary Restraining Order against Respondent.

13. The facts set forth in the Application were verified by Petitioner.

In light of the evidence and allegations adduced by Petitioner, the Court finds that unless

injunctive relief sought by Petitioner is granted, Petitioner will suffer immediate and irreparable injury, loss, or damage before notice can be served and a hearing has on Petitioner's request for temporary injunction, including harm to Petitioner's goodwill and reputation in the community, and possible physical harm to Petitioner himself.

IT IS THEREFORE ORDERED that Respondent is hereby temporarily restrained from:

- a. Continuing to publicly post any defamatory statements about Petitioner;
- b. Encouraging, enlisting, or recruiting others to make defamatory statements about Petitioner;
- c. Refusing to remove the defamatory statements against Petitioner from any and all of her social media public posts;
- d. Refusing to remove the personally-identifiable information about Petitioner—which includes Petitioner's name, work address, home address, phone number, photograph, company affiliation, hospital affiliation, and various social media hashtags associated with Petitioner—from any and all of her social media public posts;
- e. Refusing to contact third-party republishers of the statements to have them remove the statements from their posts or publications;
- f. Communicating or attempting to communicate with Petitioner, directly or through a third party, in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, in vulgar, profane, obscene., or indecent language or in a coarse or offensive manner;
- g. Threatening Petitioner, directly or through a third party, in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, to take unlawful action against Petitioner;
- h. Causing bodily injury to Petitioner, directly or through a third party, or threatening to cause bodily injury to Petitioner, directly or through a third party; and
- i. Going to or near or within five-hundred (500) feet of Petitioner or remaining within five-hundred (500) feet of Petitioner after Respondent becomes aware of the presence of Petitioner.

IT IS FURTHER ORDERED that Petitioner's application for temporary injunction be heard before the Judge of the above-named Court, on September ___, 2019, at _____ o'clock _____.m. in the courtroom of the _____ Judicial District Court, Dallas County, Texas.

The clerk of the above-entitled Court shall forthwith, on the filing by Petitioner of the Bond hereinafter required, and upon approving the same according to the law, issue a temporary restraining order in conformance with the law and the terms of this Order.

The Order shall not be effective unless and until a cash or surety bond in conformity with the law is executed and filed with the Clerk, in the amount of \$ _____. Without limitation, the District Clerk can accept a cash bond in the form of a cashier's check, firm check(s) from the law firm of Reed Smith LLP, or personal; checks from Petitioner's counsel of record, any of which will satisfy the conditions of the Bond.

Signed this ____ day of _____, 2019, at _____ o'clock ____m.

JUDGE PRESIDING