

STATE OF MAINE
WALDO, SS.

DISTRICT COURT
BELFAST
Docket No. BELDC PA-11-149

Adam Flanders,)
) Plaintiff,)
))
))
) v.)
))
Brian Camenker,)
) Defendant.)

Order Denying Preliminary Injunction

On November 14, 2011, a year-long protection from harassment (PH) order was issued in this case. On June 19, 2012, Plaintiff Mr. Flanders filed a motion for temporary restraining order and preliminary injunction. The temporary restraining order has been denied for reasons set out in the Court's June 26, 2012, order. The motion for preliminary injunction was set for hearing on July 9, 2012. Plaintiff appeared. Defendant failed to appear.

After hearing and careful consideration, the motion for preliminary injunction is denied, based on the following:

For the purposes of this discussion, the Court will assume, without having received definitive proof, that the postings complained of were in fact written and published by Mr. Camenker.

The "harassment" from which Plaintiff is protected by the PH order is a term of art. In 5 M.R.S. § 4651(2), "harassment" is defined as:

- 2. Harassment. "Harassment" means:
 - A. Three or more acts of intimidation, confrontation, physical force or the threat of physical force directed against any person, family or business that are made with the intention of causing fear, intimidation or damage to property and that do in fact cause fear, intimidation or damage to property;
 - B. Three or more acts that are made with the intent to deter the free exercise or enjoyment of any rights or privileges secured by the Constitution of Maine or the United States Constitution; or

C. A single act or course of conduct constituting a violation of section 4681; Title 17, section 2931; or Title 17-A, sections 201, 202, 203, 204, 207, 208, 209, 210, 210-A, 211, 253, 301, 302, 303, 506-A, 511, 556, 802, 805 or 806.

This definition does not include any act protected by law.

§ 4651(2).

Plaintiff asserts that Mr. Camenker's website postings are a course of conduct constituting "stalking," which is prohibited by 17-A M.R.S. § 210-A, and thus falls within the scope of §4651(2)(C)'s definition of "harassment." The criminal definition of stalking states:

1. A person is guilty of stalking if:

A. The actor intentionally or knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person:

- (1) To suffer serious inconvenience or emotional distress;
- (2) To fear bodily injury or to fear bodily injury to a close relation;
- (3) To fear death or to fear the death of a close relation;
- (4) To fear damage or destruction to or tampering with property; or
- (5) To fear injury to or the death of an animal owned by or in the possession and control of that specific person.

Violation of this paragraph is a Class D crime; or

...

2. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Course of conduct" means 2 or more acts, including but not limited to acts in which the actor, by any action, method, *device or means*, directly or indirectly follows, monitors, tracks, observes, surveils, threatens, *harasses* or *communicates to or about a person* or interferes with a person's property. "Course of conduct" also includes, but is not limited to, threats implied by conduct and gaining unauthorized access to personal, medical, financial or other identifying or confidential information.

17-A M.R.S. § 210-A(1), (2) (emphasis added).

Plaintiff highlights the language emphasized above in the definition of a "course of conduct" set forth in subsection (2)(A) that constitute stalking--i.e., two or more actions using any device or means that harass or communicate about a person, and which cause the effects--emotional distress or serious inconvenience--enumerated in subsection (1)(A)(1) of the harassment law.

Maine may not punish, through criminal sanction, an individual's actions that are protected by the free speech clause of the First Amendment to the United States Constitution.

An individual's right to free speech loses its protection when the speech uttered constitutes libel, a true threat, or fighting words. Plaintiff has failed to demonstrate in his affidavit, in his motion, or in his cover letter dated June 11, 2012, that the writings rise to the level of fighting words (inciting an immediate, violent reaction) or a "true threat" (where the circumstances demonstrate that the speaker intends to communicate serious, express intent to commit crime of violence against a specific individual or group of individuals).

Plaintiff claims that two individuals wrote responses to Mr. Camenker's Internet postings describing methods by which Plaintiff should be killed, but Plaintiff does not contend that Mr. Camenker himself made these statements.

Accordingly, the record makes it clear that Plaintiff has failed to demonstrate that he has a likelihood of success on the merits.

That evaluation measure, the likelihood of success on the merits, prompts a final observation and conclusion. Mr. Flanders has received a protection from harassment order. The PH order follows the provisions of, and the limits of, Maine law governing court orders for protection from harassment. The order, not appealed, has become final. Mr. Flanders has obtained success on the merits and this matter is now closed. The Court is not able to order additional relief, beyond that authorized by the enabling statute.

The clerk shall enter this order denying preliminary injunction upon the docket by reference.

Dated: July 11, 2012

Patricia G. Winstanley
JUDGE, MAINE DISTRICT COURT