BRUNO v. LIGHT, Georgia Court of Appeals, A17A1967, Be Careful about "Love Thy Neighbor!" February 28, 2018, by Margaret Gettle Washburn, cont. ed.

In this lively case, the Court of Appeals, Judge Barnes, Presiding, found that Mr. Bruno and Ms. Light, two neighbors, were both right and both wrong.

Pursuant to OCGA § 16-5-94, Ms. Light filed a petition in Forsyth County Superior Court accusing Bruno of engaging in stalking behavior against her and her family, in January 2016. She alleged that her neighbor, Mr. Bruno, while either on his property or on her and her family's property, had yelled obscenities to her and her family members, made escalating threats to them, blocked their driveway, and shone a light into their house at night. After conducting a hearing thereon, the superior court entered a "Stalking Twelve Month Protective Order."

The Order, in part, provided that Bruno would be "enjoined and restrained from approaching within one mile of [Light] and/or [her] immediate family, and/or residence, place of employment, or school. ... This Order expires on February 10, 2017".

On Friday, February 10, 2017, Light filed a "Motion to Extend Twelve Month Protective Order," and stated that she did not get the "benefit" of the 12 Months ordered restraint because during the intervening twelve-month period, Bruno was held without bond pending a trial in another case (busy neighbor!). She stated that as Bruno had displayed a history of violence, that she feared that Bruno would harm her and/or her family, upon his release from jail. Light requested a hearing and that the Court grant her Motion and Extend the Protective Order.

The Court quickly entered a rule nisi scheduling a hearing for February 22, 2017, and, on the same day, the court entered one of the two orders at issue in this appeal: "Order Extending Twelve Month Protective Order," wherein the superior court stated that "the Twelve Month Protective Order issued February 10, 2016, is extended through February 22, 2017."

On February 22, 2017, the superior court entered the second of the two orders at issue in this appeal: "Stalking Three Year/Permanent Protective Order." The Order provided that a civil hearing was held, "at which [Bruno] appeared and/or was provided with the opportunity to be heard and [Light] requested, pursuant to OCGA §§ 16-5-94 (e) and 19-13-4 (c), that a permanent Protective Order be issued. Having heard the evidence presented, reviewed the petition and the record concerning this cause and for good cause shown, IT IS HEREBY ORDERED AND ADJUDGED: [Bruno] has knowingly and willfully violated OCGA §§ 16-5-90 et seq. and placed [Light] in reasonable fear for [her] safety, because [of] stalking, harassment. ..."

The Order further provided that: "[Bruno] is ... enjoined and restrained from approaching within *one mile* ... of [Light] and/or [Light's] immediate family, and/or residence, place of employment, or school or subsequent residence, place of employment or school. *This restriction includes his own property*.... This Order shall be in effect for three (3) years. ..."

Bruno did not file a notice of appeal from that order, but, more than 30 days from its entry, Bruno filed a motion to set aside the Order Extending Twelve Month Protective Order ("Extension Order") and the Stalking Three Year/Permanent Protective Order" ("3–Year Protective Order"). The superior court denied that motion, and Bruno procured the instant discretionary appeal.

The Court of Appeals found that OCGA § 16-5-94 (a) provides that a person who alleges stalking by another person may seek a restraining order by filing a petition alleging conduct constituting stalking as defined in Code Section 16-5-90. As provided by OCGA § 16-5-90 (a)

(1): "A person commits the offense of stalking when he or she follows, places under surveillance, or contacts another person at or about a place or places without the consent of the other person for the purpose of harassing and intimidating the other person. ... [T]he term "contact" shall mean any communication [.] ... [T]he term "place or places" shall include any public or private property occupied by the victim *other than the residence of the defendant*....

Citing the language italicized above, Bruno argued that the 3–Year Protective Order does not apply because the alleged conduct did "*not* constitute stalking under OCGA § 16-5-90 (a) (1), apparently because he engaged in such conduct while on his own residential property."

The Court of Appeals found that this contention provided no basis to disturb the trial court's denial of Bruno's motion to set aside; therefore, that portion of the court's Order was affirmed in part. However, the Court agreed with Bruno's contention that the superior court's restriction, imposed in the 3–Year Protective Order—banning him from his own residence—was over-broad and reversed that portion of the Order.

The Court found that pursuant to OCGA § 16-5-94, the superior court is vested with discretion in each case to "fashion appropriate relief from conduct designated as stalking."

The Court reviewed the holding in *Johnson v. State*, where the Supreme Court of Georgia reiterated that "[a] statute is unconstitutionally over-broad if it reaches a substantial amount of constitutionally protected conduct." Id. at 591 (1), 449 S.E.2d 94. In construing OCGA § 16-5-90 and 16-5-91 so as to find them constitutional, the *Johnson* Court rejected the argument that the stalking statutes proscribed "many examples of conduct which society considers to be normal everyday living in constitutionally protected areas." *Johnson*, 264 Ga. at 591 (1), 449 S.E.2d 94.

The Court stated that the stalking statutes "were drafted to protect people not places. ... Although the [3–Year Protective] [O]rder may have incidentally kept [Bruno] from face-to-face contact with [Light] while she was at home, ... significantly, [Bruno] would violate the order even if he went to [his residence] when [Light] was not [at hers]." Thus, the Court concluded that the superior court exceeded its authority in banning Bruno from his residence for three years. "To the extent the 3–year Protective Order ousted Bruno from his residence, the superior court should have granted the motion to set aside that order. Accordingly, we reverse in part the denial of Bruno's motion to set aside".

Bruno challenges the Extension Order, asserting other argument as to Light's underlying motion, filed on February 10, 2017, was untimely, because the initial 12–month protective order expired that same day. He contended that he not given notice nor a hearing before the superior court entered the Extension Order, therefore the order violated both OCGA § 19-13-4 (c) and Uniform Superior Court Rule ("USCR") 6.2.

The Court of Appeals found that OCGA § 16-5-94 authorized the superior court to "order such temporary relief ex parte as it deems necessary to protect the petitioner or a minor of the household from stalking." Furthermore, it is undisputed that the superior court conducted a hearing on Light's motion filed on February 10, 2017—at which hearing Bruno appeared and/or was provided with the opportunity to be heard—*before* the superior court entered the 3–Year Protective Order. Thus, the Court found that there was no harm to Bruno and that USCR 6.2 did not provide relief sought by Bruno, either. "For the foregoing reasons, Bruno's challenges to the Extension Order provide no basis to disturb the denial of his motion to set aside. The denial of his motion is thus affirmed in part."

Bruno v. Light, No. A17A1967, 2018 WL 1081333, at *1–5 (Ga. Ct. App. Feb. 28, 2018)