

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

WALLACE MANAGEMENT CO.)	
dba THERAPY PARTNERS, et al.)	CASE NO: CV-09-691412
)	
Plaintiffs)	JUDGE JOHN P. O'DONNELL
)	
vs)	
)	
LISE D. RUBIN)	<u>PERMANENT INJUNCTION</u>
aka ELISHEVA RUBIN)	<u>AGAINST LISE D. RUBIN</u>
)	<u>aka ELISHEVA RUBIN</u>
Defendant)	

John P. O'Donnell, J.:

For the reasons set forth in the court's separate Journal Entry of this same date, attached as Exhibit A to this entry and incorporated by reference, the defendant Lise D. Rubin, aka Elisheva Rubin, last known address 3684 Bendemeer Road, Cleveland Heights, OH 44118, is permanently restrained as follows:

1. The defendant is prohibited from communicating, by any means, with James W. Rogerson or any member of his family;
2. The defendant is prohibited from communicating, by any means, with Richard M. Boyson, Jr., or any member of his family;
3. The defendant is restrained from communicating, by any means, with any owner, employee, or agent of Wallace Management Company, dba Therapy Partners, without the express consent to the communication by the owner, employee, or agent;
4. The defendant is prohibited from entering onto the residence premises of James W. Rogerson and Richard M. Boyson, Jr.;

5. The defendant is prohibited from entering the premises at 16600 Sprague Road, Suite 365, Middleburg Heights, OH 44130; and
6. The defendant is prohibited from communicating, by any means, with Renee Coughlin and the home care services office of the Cleveland Clinic Foundation on any subject that relates in any way to the plaintiffs.

This restraining order remains in effect until a future order of this court to the contrary.

The plaintiffs are ordered to provide a *praecipe* to the Clerk of Courts, with sufficient copies of this order, for service on the defendant in a manner provided under Civil Rules 4 and 65(E).

IT IS SO ORDERED:

Date: _____

Judge John P. O'Donnell

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WALLACE MANAGEMENT CO.)	
dba THERAPY PARTNERS, et al.)	CASE NO: CV-09-691412
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Plaintiffs)	JUDGE JOHN P. O'DONNELL
)	
vs)	
)	
LISE D. RUBIN)	<u>JOURNAL ENTRY</u>
aka ELISHEVA RUBIN)	
)	
Defendant)	

John P. O'Donnell, J.:

Plaintiffs Wallace Management Company (doing business as Therapy Partners), James W. Rogerson, and Richard M. Boyson, Jr., filed this lawsuit on April 29, 2009, seeking to enjoin the defendant, Lise D. Rubin, from “contacting in person or by telephone, written communication, electronic communication including facsimile, and e-mail, Rogerson and Boyson along with any and all of Therapy Partners’ employees, customers and clients” and to enjoin Rubin from “coming within 500 feet of Therapy Partners’ principal place of business.”¹

An evidentiary hearing on the request for a permanent injunction took place on August 18, 2009, and this entry follows.

The defendant is an occupational therapist. The plaintiff Therapy Partners is in the business of providing rehabilitation therapy services. The individual plaintiffs are officers of the corporate entity Wallace Management Company.

¹ See complaint at unnumbered page 12.

The defendant was hired by Therapy Partners in October, 2008, to be a part-time occupational therapist. Her assignments from Therapy Partners primarily involved the administration of therapy at home to patients of the Cleveland Clinic Foundation.

On January 14, 2009, the defendant resigned her employment by notifying Therapy Partners by letter that “it is not feasible for me to accept further Therapy Partners’ assignments.”² Therapy Partners then asked the defendant to return company property, submit outstanding documentation pertaining to patient care, and refrain from communicating with clients and customers of Therapy Partners.³ The defendant was also informed that her final paycheck could not be processed until Therapy Partners received all patient care documentation.⁴

The defendant demanded severance pay from Therapy Partners.⁵ Plaintiff Rogerson testified that the company declined to offer severance to the defendant because she was not entitled to it under the circumstances. She started sending him e-mails and leaving telephone messages threatening to “report” Therapy Partners to the Ohio Occupational Therapy Board or other government agencies with the authority to regulate the plaintiffs’ business. The defendant also communicated with Cleveland Clinic Home Care, the party with which Therapy Partners contracted to do occupational therapy.⁶

The e-mails and telephone calls to Rogerson continued and the defendant even sent a letter to Rogerson’s house containing the same sort of vague demands, complaints, and threats.

The defendant also communicated to plaintiff Richard Boyson, the chief financial officer of Therapy Partners. Her communications to him included phone calls, e-mails, and at least one letter to his house asking for a monetary payment.

² See Exhibit A to the complaint, defendant’s 1/14/09 letter to Therapy Partners.

³ See Exhibit B to the complaint, 1/20/09 letter of Therapy Partners to the defendant.

⁴ *Id.*

⁵ See Exhibit C to the complaint, defendant’s 1/22/09 e-mail to plaintiff James Rogerson.

⁶ See Exhibit E to the complaint.

Boyson testified that the defendant has made various complaints about Therapy Partners to the Ohio Occupational Therapy Board, the Ohio Accountancy Board, and the Department of Commerce. These complaints have alleged various wrongdoings and each agency has found the complaints to be unfounded. The defendant has also made a complaint about plaintiffs' counsel to the Ohio Supreme Court, with a similar outcome.

The plaintiffs have offered a proposed judgment entry including the following language:

IT IS . . . ORDERED . . . that . . . Defendant Rubin is restrained and enjoined from annoying harassing, threatening or contacting . . . Plaintiffs . . . and/or their employees, staff members and families.

IT IS FURTHER ORDERED . . . that . . . Defendant Rubin be enjoined and restrained from approaching, entering or attempting to enter Wallace Management Corporation dba Therapy Partners place of employment located at 16600 W. Sprague Road . . .

IT IS FURTHER ORDERED . . . that . . . Defendant Rubin be enjoined and restrained from contacting any of Wallace Management Corporation dba Therapy Partners' clients and customers except for the purposes of applying for or seeking employment or seeking personal medical treatment or care.

An injunction is an extraordinary remedy in equity where there is no adequate remedy available at law.⁷ It is not available as a right but may be granted by a court if it is necessary to prevent a future wrong that the law cannot.⁸ A party seeking a permanent injunction must demonstrate by clear and convincing evidence an entitlement to the requested relief and that an injunction is necessary to prevent irreparable harm.⁹

⁷ *Garono v. State* (1988), 37 Ohio St. 3d 171, 173.

⁸ *Id.*

⁹ *Acacia on the Green Condominium Assoc., Inc. v. Gottlieb*, 2009-Ohio-4878, Cuyahoga App. No. 92145, ¶18.

The evidence supports a finding that the plaintiffs are entitled to most of the relief they seek. American society has a tradition of cherishing and protecting freedom of association.¹⁰ Freedom of association includes the right not to associate, *i.e.* to be left alone. The plaintiffs have made it clear that they do not wish to have any association whatsoever with the defendant. The irreparable harm that would occur if the defendant continues to communicate with any of the plaintiffs – the individuals or the corporate entity – includes the abridgement of their right to be left alone by the defendant. The court is inclined to do what it can to keep the defendant away from the plaintiffs.

The request that the defendant be restrained from communicating with any clients or customers of Therapy Partners except for limited purposes is more problematic. First, there is no evidence of record sufficient to identify all of the plaintiffs’ “clients and customers.” Rule 65(D) of the Ohio Rules of Civil Procedure requires that every injunction “shall be specific in terms” and must “describe in reasonable detail . . . the act or acts sought to be restrained.” A restraining order prohibiting the defendant from “contacting” the plaintiffs’ “clients and customers” except to apply for a job or seek medical care is insufficient to provide the defendant with adequate notice of what conduct, and toward whom, will result in violation of the order.

Second, such an order may constitute a prior restraint of speech. Assuming that the plaintiffs’ “clients and customers” were specifically identifiable, the defendant may have legitimate reasons other than to complain about the plaintiffs for communicating with those people.

¹⁰ “Freedom of association” applies to the choice to enter into and maintain both political and intimate human relationships. See, *e.g.*, *State v. Rushton*, 2003-Ohio-692, 151 Ohio App. 3d 654, 659, ¶ 30. While this case does not implicate political association or expression or “intimate” human relationships, those principles do apply by analogy to the kind of association plaintiffs seek to avoid by their complaint in this case. Moreover, the law protects the right to be left alone that the plaintiffs seek to vindicate by allowing an invasion of privacy cause of action for intrusion upon seclusion. The plaintiffs inability to prove – or unwillingness to seek – the kind of damages recoverable in an action for intrusion upon seclusion should not preclude the equitable relief sought here.

Third, the plaintiffs may have an adequate remedy at law for communications to “clients and customers.” Depending on the nature of the defendant’s contacts with the clients and customers, she may expose herself to a cause of action for defamation, invasion of privacy, infliction of emotional distress, tortious interference with business relations, or other possible causes of action for which an adequate remedy may exist at law.

For those reasons, the court declines to issue the broad injunction sought by the plaintiffs. However, the evidence does support a prohibition against communications of any kind relating to the plaintiffs with Renee Coughlin and the home care services office of the Cleveland Clinic Foundation. There are no issues outstanding between the defendant and Cleveland Clinic’s home care services office that relate in any way to the plaintiffs.¹¹ There can, therefore, be no legitimate reason for the defendant to contact Cleveland Clinic’s home care services about any subject involving the plaintiffs.

For all of the reasons set forth above, a separate entry of injunction is being placed on the court’s docket contemporaneously with the journalization of this entry.

IT IS SO ORDERED:

Date: _____

Judge John P. O’Donnell

¹¹ See Exhibit E to the complaint, e-mail from Renee Coughlin to the defendant.