IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

M.L., a minor child,

Appellant,

v.

CASE NOS. 1D04-1186/1D04-1611

J.H.P. and B.N.P., a minor child,

Appellees.

_____/

Opinion filed March 29, 2005.

An appeal from an order of the Circuit Court for Duval County.
Peter J. Fryefield, Judge.

William Mallory Kent, of The Law Office of William Mallory Kent, Jacksonville, for appellant.

No appearance for appellees.

PER CURIAM.

There being no competent substantial evidence that B.N.P. suffered repeat acts of violence, we are required to reverse. See McMath v. Biernacki, 776 So. 2d 1039 (Fla. 1st DCA 2001); Anderson v. McGuffey, 746 So. 2d 1257 (Fla. 1st DCA 2000). The trial court's final judgment imposing an injunction against repeat violence (Case

No. 1D04-1186) is reversed. The appeal from the order denying the motion to dissolve the injunction (Case No. 1D04-1611) is hereby dismissed as moot.

WOLF, C.J. and KAHN, J., CONCUR; POLSTON, J., DISSENTS WITH OPINION.

Polston, J., dissenting

Appellant M.L. seeks to reverse the trial court's order granting an injunction for protection against repeat violence and the trial court's order denying M.L.'s motion to vacate and dissolve the temporary and final judgment of injunction for protection against repeat violence. The majority erroneously rules that there is no competent substantial evidence that B.N.P. suffered repeat acts of violence. See Connor v. State, 803 So. 2d 598, 607 (Fla. 2001) (stating that the deference given to a trial court's findings at the appellate level is based upon the trial court's superior position to evaluate and weigh the evidence). Therefore, I respectfully dissent.

Repeat violence requires two incidents of violence or stalking. See § 784.046(1)(b), Fla. Stat. (2003). "Violence" is defined to mean "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnaping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person." § 784.046(1)(a), Fla. Stat.

Because the record indicates that M.L. physically touched B.N.P. at school in an offensive manner, threatened B. N. P. at school, and threatened B.N.P. through the internet, there is competent substantial evidence for the trial court to have found

sufficient incidents of violence by battery and assault. Accordingly, the trial court's rulings should be affirmed. See generally §§ 784.011(1), 784.03(1)(a)1., Fla. Stat. (2003); K.E.H. v. State, 802 So. 2d 395 (Fla. 4th DCA 2001); Osrecovery, Inc. V. One Groupe Int'l, Inc., 2003 WL 23313, at *2 (S.D.N.Y. Jan. 3, 2003).