

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

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

JESSICA PECK,

Appellant,

v.

Case No. 5D20-2099

TERRI ROSADO,

Appellee.

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Opinion filed June 25, 2021

Appeal from the Circuit Court  
for Flagler County,  
Christopher A. France , Judge.

C. Popham Decunto and Kevin A.  
Schoeppel, of Durant, Schoeppel &  
Decunto, P.A., Jacksonville, for Appellant.

William B. White, Flagler Beach,  
for Appellee.

NARDELLA, J.

This is an appeal of an Amended Final Judgment of Injunction for Protection Against Stalking (“Amended Permanent Injunction”), Order of Contempt, and Stipulated Order for Attorney’s Fees (collectively “Order of Contempt”). Because the trial court entered the Amended Permanent

Injunction as a sanction for contempt and without due process, we reverse. Likewise, because the trial court did not clearly prohibit the conduct complained of in the Order of Contempt, we reverse the Order of Contempt and resulting award of attorney's fees.

### FACTUAL BACKGROUND AND TRIAL COURT PROCEEDINGS

Appellant/Respondent, Jessica Peck ("Peck") and Appellee/Petitioner Terri Rosado ("Rosado"), were close friends and neighbors; their homes faced the same street and sat 294 feet apart. When their friendship ended in November 2019, Peck began writing letters to Rosado, seven in total, expressing her sadness and confusion over the end of their friendship. A few months later, when the COVID-19 pandemic hit, Peck left COVID-19 supplies at Rosado's door. Rosado expressed her gratitude for the masks, toilet paper and homemade hand sanitizer, but insisted the gestures stop.

In addition to these unwelcomed notes and packages, the neighbors ran into one another on morning walks. Rosado believed the encounters occurred by choice, not chance, and changed her routine to avoid Peck. She changed the time of her walks and when that failed, she changed the location. She began driving to different neighborhoods just to walk her dog each morning. In addition to following her on foot, Rosado believed Peck followed her by car. She recounted winding her way through their

neighborhood just to see if Peck drove in the same direction; according to Rosado, she did. Finally, Rosado reported that Peck verbally accosted her in a Target parking lot.

Based upon these events, Rosado filed a Petition for Injunction Against Stalking (“Petition”) claiming that Peck sent her letters, left items on her doorstep, and followed her in a manner that made her uncomfortable. There was no allegation in the Petition that Peck threatened or was violent towards Rosado. After reviewing the Petition, the trial court issued the Temporary Injunction for Protection Against Stalking (“Temporary Injunction”) prohibiting Peck from going within 500 feet of Rosado’s residence.

Because Peck lived 294 feet from Rosado’s residence, she immediately filed an Urgent Emergency Motion for Modification of Injunction for Protection Against Stalking. She noted the proximity of her residence to Rosado’s, explained that she cared for a disabled son, and claimed that the two had no other place to go. The following day, the trial court entered an Amended Temporary Injunction for Protection Against Stalking (“Amended Temporary Injunction”), containing two contradictory provisions:

Unless otherwise provided herein, Respondent shall not go to, in, or within 500 feet of:

- . . . .
- b. Petitioner’s current residence (list address) 10 Port Echo Lane, Palm Coast, FL or any residence to which Petitioner may move;

. . . .

g. Other provisions regarding contact: Respondent may reside at residence at 15 Port Echo Lane, Palm Coast, FL but shall have no contact with Petitioner.

Peck filed a second emergency motion seeking modification of the contradictory provisions in the Amended Temporary Injunction. Instead of stating the restriction in terms of feet, Peck suggested the trial court modify the Amended Temporary Injunction to state that Peck “not be allowed on [Rosado’s] property.” The trial court rejected the suggestion but granted the motion in part, stating Peck could:

be in her residence located at 15 Port Echo Lane, Palm Coast, FL 32164 which is within 500 feet of Petitioner’s residence located at 10 Port Echo Lane, Palm Coast, FL 32164. All other conditions of the temporary injunction remain in effect.

About a week later, Peck and Rosado, through counsel, appeared before the trial court and stipulated to the extension of the Temporary Injunction as amended and further modified in response to Peck’s second emergency motion (“Amended Modified Temporary Injunction”). Regarding the provisions that allowed Peck to remain “in her residence” but ordered her not go within 500 feet of Rosado’s residence, Peck’s counsel stated: “Yes -- yes, sir. And I’ve advised my client to just go the other direction, so there shouldn’t be any -- any crossing. But, yeah, that’s -- kind of makes it a little -

- little odd. But, yeah, no problems.” Thereafter, the trial court entered a Stipulated Order Extending Temporary Injunction for Protection, which set a hearing for the consideration of the entry of a Final Judgment of Protection Against Stalking for October 29, 2020.

Two weeks later, Rosado and Peck were back in front of the trial court after Rosado filed a Petition By Affidavit For Order To Show Cause For Violation Of Injunction For Protection Against Stalking (“Motion for Order to Show Cause”) alleging Peck drove in front of her home nine times. The trial court issued an Order Setting Order To Show Cause Hearing (“Order to Show Cause”) and commanded Peck to appear on September 3, 2020, “to show cause why [she] should not be held in indirect civil contempt for failing to comply with the Temporary Injunction for Protection Against Stalking filed July 16, 2020.”

At the hearing, Rosado entered photographs showing Peck’s vehicle driving in front of Rosado’s residence. Peck admitted as much but explained that on occasion she had driven down their shared street—in front of Rosado’s residence—when road construction blocked an alternative route. More importantly, Peck testified that, although it had been suggested by her counsel that she not drive in front of Rosado’s residence, she did not understand that to be a requirement of the injunction.

At the conclusion of the hearing on the Order to Show Cause, counsel for Rosado requested “that the injunction be made permanent.” Peck’s counsel objected and reminded the trial court that the contempt issue was the only matter noticed for hearing. Nevertheless, the trial court made the following oral pronouncements:

In taking the evidence under advisement, we have an admission to willfully driving in front of the [Rosado’s] home by [Peck]. The terms of the injunction are clear. There was an exception that she may stay in the home, and it was worded very specifically not to waive any other terms of the injunction. The testimony from [Peck] today shows that she understood that she’s not -- still not to go within 500 feet of [Rosado]. And, frankly, I find her – her explanations, to include legal advice that I would -- I do not think was ever given, to be disingenuous. I do find her to be in violation of the order, find her to be in contempt of Court. I will enter a permanent injunction today by separate order, subject to rehearing should the [Peck] like to call it up for rehearing. And as to the remaining sanctions prayed for by [Rosado], I’ll take those under advisement, and I’ll have a written order out hopefully this afternoon.

That same day, the trial court entered both the Order of Contempt, based on Peck violating the Amended Modified Temporary Injunction, and entered the Permanent Injunction against Peck. During the pendency of this appeal, the trial court also entered an Amended Permanent Injunction<sup>1</sup>

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<sup>1</sup>This Court temporarily relinquished jurisdiction, *nunc pro tunc*, to permit entry of the trial court’s Amended Permanent Injunction and to allow supplementation of the record so that the Amended Permanent Injunction could be considered on appeal.

clarifying that Peck was permitted to “remain at her residence.” It is the permanent injunction as amended for clarification purposes which we will review.

### STANDARDS OF REVIEW

We review whether the trial court erred in entering a permanent injunction without procedural due process de novo. See *Pena v. Rodriguez*, 273 So. 3d 237, 240 (Fla. 3d DCA 2019). Additionally, this Court reviews the trial court’s decision to exercise its civil contempt power for an abuse of discretion. See *Carter v. Hart*, 240 So. 3d 863, 865 (Fla. 5th DCA 2018).

### ANALYSIS AND DISCUSSION

#### I. Amended Permanent Injunction

The Amended Permanent Injunction must be reversed for two reasons: (1) Peck was deprived of procedural due process; and (2) the Amended Permanent Injunction was errantly entered as a sanction. Because these errors are dispositive, we do not address in this opinion whether there was competent, substantial evidence presented that Peck ever “followed” or “harassed” Rosado in a willful or malicious manner that caused substantial, emotional distress as required by section 784.048(2), Florida Statutes (2020).

a. Peck was deprived of due process.

Peck argues that the trial court deprived her of due process when it issued a permanent injunction, even though the issue was not noticed for hearing. Peck emphasizes that the only issue noticed was the trial court's show cause order for alleged violations of the temporary injunction.

Peck is correct: entry of the Amended Permanent Injunction on September 3, 2020, and its later amendment, was a clear violation of due process since that issue had not been noticed for consideration on that date. In *Florida State Society of Homeopathic Physicians v. Florida Department of Professional Regulation*, 487 So. 2d 374, 376 (Fla. 5th DCA 1986), this Court found the trial court erred in entering a permanent injunction where the hearing was clearly set only for the request for temporary injunction and thus was not specially set for the purpose of disposing of the case on the merits. This Court held that "entering a permanent injunction against [Appellant] without a hearing on the request for permanent injunction, [is a clear] violation of due process." *Id.*

Similarly, here, the September 3, 2020 hearing clearly was set only for the Order to Show Cause and not to dispose of this case on the merits. Before entry of a permanent injunction, Peck was entitled to fair notice and a real opportunity to be heard. See *J.G.G. v. M.S.*, 312 So. 3d 509, 511 (Fla.



5th DCA 2020). Peck got neither, and while this Court has explained that “there are no hard and fast rules about” what constitutes reasonable notice, the parties must have actual notice and time to prepare. *Borden v. Guardianship of Borden-Moore*, 818 So. 2d 604, 606 (Fla. 5th DCA 2002) (citations omitted).

Additionally, in further violation of Peck’s due process rights, and over objections from Peck’s counsel, the trial court allowed Rosado to testify that she believed Peck had driven by her home on occasions other than which had been sworn to her in the Motion for Order to Show Cause. The trial court stated in response to Peck’s objection that it would “either exclude it from [the] final determination or give it the weight it deserves.” However, the new allegations should have been given no weight because they were not pled in the Motion for Order to Show Cause. See *J.G.G.*, 312 So. 3d at 511 (holding that the husband was deprived of his right to due process when the trial court admitted two unpled allegations of domestic violence for the first time during the hearing on the wife’s petition for injunction); *DeLeon v. Collazo*, 178 So. 3d 906, 906–08 (Fla. 3d DCA 2015) (same). Peck did not have proper notice of these “fresh allegations, nor a full and fair opportunity to prepare to rebut them.” *J.G.G.*, 312 So. 3d at 511 (citation omitted). When issuing its oral ruling, the trial court never stated whether it was excluding those allegations

from consideration. Accordingly, this Court “cannot conclude that the erroneous admission of the evidence did not contribute to the trial court’s final determination.” *Id.* at 512. Because Peck was denied procedural due process before the trial court entered a permanent injunction without a hearing on the issue and based upon fresh allegations, we reverse the Amended Permanent Injunction.

- b. The trial court improperly entered the permanent injunction as a sanction.

Peck argues the trial court erroneously entered the permanent injunction as an improper sanction for contempt. On this record, we agree. *See Skyway Trap & Skeet Club, Inc. v. Sw. Fla. Water Mgmt. Dist.*, 854 So. 2d 676, 680–81 (Fla. 2d DCA 2003) (holding that the permanent injunction was an improper contempt sanction for an alleged violation of a temporary injunction and was tantamount to a default judgment). In this case, the trial court essentially barred Peck from accessing her home because it believed she violated the Temporary Injunction. However, “[o]ne may not be barred forever from protecting one’s life, liberty or property simply for being disobedient or contumacious.” *Id.* at 680. (citation omitted). Accordingly, we find the trial court improperly entered the permanent injunction as a contempt sanction.

## II. Contempt Order

We next review Peck's argument seeking reversal of the contempt order. Peck argues the Amended Modified Temporary Injunction was not sufficiently precise to put her on notice of exactly what she could or could not do because it both prohibited her from being within 500 feet of Rosado's residence and permitted her to reside at her residence, which was 294 feet away from Rosado's.

Upon review, we find the Amended Modified Temporary Injunction gives insufficient directives to Peck regarding how she can both reside in her residence and comply with the court's order to stay 500 feet away from Rosado's residence. Had the trial court tailored the proscribed distance to fit the facts in this case or alternatively restricted Peck from being *on* Rosado's property, instead of requiring that she remain 500 feet away, then an ambiguity would not have resulted. But because the trial court did not reconcile the conflicting provisions, the moment Peck stepped outside of her residence, irrespective of which direction she drove from her residence, she was in violation of the temporary injunction's terms. Therefore, the Amended Modified Temporary Injunction was, at best, ambiguous. Peck cannot be held in contempt for coming within 500 feet of Rosado's residence under these circumstances. *See Robinson v. Robinson*, 284 So. 3d 593, 595 (Fla.

5th DCA 2019) (“[A] person cannot be held in contempt for violating a court’s order if the order is not sufficiently explicit or precise to put a party on notice of exactly what it must or must not do.”). Consequently, we reverse the trial court’s Order of Contempt and resulting award of attorney’s fees.

### CONCLUSION

In sum, the trial court entered the Amended Permanent Injunction as an inappropriate sanction for contempt and without due process. Additionally, the trial court erred in entering the Order of Contempt and resulting award of attorney’s fees because the Amended Modified Temporary Injunction was too ambiguous to be enforced through an Order of Contempt. Therefore, we reverse the Amended Permanent Injunction and the Order of Contempt and remand for proceedings consistent with this opinion.

REVERSED and REMANDED.

EVANDER, C.J., and COHEN, J., concur.