

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

SKYLER P. WYNTER,

Appellant,

v.

Case No. 5D20-2235

JAELYN GUTIERREZ,

Appellee.

_____ /

Opinion filed March 5, 2021

Appeal from the Circuit Court
for Brevard County,
Judith E. Atkin, Judge.

Lindsey M. Sharp, of Sharp & Dye
Attorneys, Indialantic, for Appellant.

No Appearance for Appellee.

EVANDER, C.J.,

Skyler P. Wynter (“Father”) appeals an injunction against domestic violence issued in favor of Jaelyn Gutierrez (“Mother”). We reverse.

In her petition for injunction for protection, Mother made allegations regarding incidents that occurred on August 2, 2020. At the final hearing, Mother testified, over objection, to an alleged act of domestic violence that occurred in April 2020. The trial

court made no findings as to the alleged events of August 2, 2020,¹ but did grant an injunction for protection based on the April incident.

“It is axiomatic that a party defending against a claim is entitled to due process, including the right to proper and adequate notice of the allegations which form the basis for the relief sought.” *Sanchez v. Marin*, 138 So. 3d 1165, 1167 (Fla. 3d DCA 2014); see also *J.G.G. v. M.S.*, 45 Fla. L. Weekly D1601 (Fla. 5th DCA July 2, 2020) (holding that respondent was deprived of his right to procedural due process when, over objection, trial court permitted introduction of evidence regarding unpled allegations of domestic violence for first time during hearing). Here, the trial court granted relief solely on the basis of objected-to testimony that was not the subject of the petition for injunction for protection. We therefore reverse and remand with directions to vacate the permanent injunction and for a new final hearing, either upon the existing petition or upon any amended petition that may properly be filed.

REVERSED and REMANDED with directions.

WALLIS and LAMBERT, JJ., concur.

¹ The record reflects that the trial judge had not completed taking evidence regarding the August 2, 2020 incidents at the time it decided to grant an injunction based on the April 2020 incident. Therefore, it is premature to address Father’s argument that the evidence was insufficient to grant an injunction for protection based on these alleged incidents. We also decline to address Father’s argument that it was improper for the trial court to appoint a guardian ad litem for a child in an injunction for protection case. The record reflects that the trial court’s order was directed to be entered in the parties’ ongoing paternity case.