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

JENNY CHIU,

Appellant,

v. Case No. 5D20-2502

MOHAMMED ADAMS,

Appellee.

_____/

Opinion filed September 3, 2021

Appeal from the Circuit Court for Orange County, Jerry L. Brewer, Judge.

Jennifer Ann Synnamon, of Law Office of Joe Castrofort, PLLC, Orlando, for Appellant.

Margaret E. Kozan, of Margaret E. Kozan, P.A., Winter Park, and Matthew P. Ferry, of Lindsey & Ferry, P.A., Winter Park for Appellee.

EDWARDS, J.

Appellant, Jenny Chiu, appeals the trial court's order denying her petition for permanent injunction and dismissing, without prejudice, the previously entered temporary injunction to prevent Appellee, Mohammed Adams, from stalking her. After careful consideration, we are compelled to affirm, primarily because Appellant had only proved one indisputable instance of statutorily-defined stalking at the time her petition was dismissed.

Appellant and Appellee were in an on-again, off-again romantic relationship. They would break up, Appellee would repeatedly communicate with Appellant asking to renew their relationship, and then they would get back together. This pattern repeated itself until February 2020, when Appellant decided and announced to Appellee that it was finally over, forever. Appellee called and sent numerous text and other forms of messages to Appellant seeking to renew their relationship and asking her to explain why she broke up with him. Some of his messages were civil, others were unfriendly. She did not respond.

Appellee told Appellant that he was going to, and he did, travel from out of state to Central Florida in hopes that she would meet with him at a restaurant. When Appellant failed to go to the restaurant or respond to his messages and calls, Appellee went by her home. Appellant was not home and was purposefully staying away so as to avoid Appellee, as she had

previously advised her roommate. It is not clear how long Appellee waited outside in the dark before he began knocking on the door once the roommate turned on the outside lights. He left after leaving some gifts for Appellant. Following these events, Appellant obtained a temporary injunction against Appellee to prevent stalking.

Section 784.0485(1), Florida Statutes (2020), establishes a cause of action for an injunction for protection against stalking. "A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking . . . ." § 784.048(2), Fla. Stat. (2020). Harass is defined as "engag[ing] in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose." § 784.048(1)(a), Fla. Stat. (2020). Course of conduct is defined as "a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose." § 784.048(1)(b), Fla. Stat. (2020).

When seeking the permanent injunction, Appellant relied, in part, on Appellee's conduct, including unpleasant or threatening messages, that pre-dated their final breakup in February 2020; evidence of such conduct may certainly be relevant in appropriate circumstances. However, the evidentiary hearing seemed to focus on the more recent, post-breakup communications

and conduct. The trial court allowed the parties to make post-hearing written submissions that it would consider; thus, it did not orally announce its ruling. Furthermore, the trial court's order dismissing Appellant's petition was accomplished by checking the appropriate box on a form order without any explanation. Therefore, we cannot determine what led the trial court to its decision. "It is well established that a trial court has broad discretion to enter an injunction, and a decision based on that discretion will not be overturned absent a finding that the court abused that discretion." *Khan v. Deutschman*, 282 So. 3d 965, 966 (Fla. 1st DCA 2019) (quoting *Pickett v. Copeland*, 236 So. 3d 1142, 1143–44 (Fla. 1st DCA 2018)).

While Appellant testified that she was so upset by Appellee's post-breakup behavior that she sought counseling, courts are required to use the reasonable person standard, not a subjective test, to determine if the incidents proved by the evidence would likely cause substantial emotional distress. *Slack v. Kling*, 959 So. 2d 425, 426 (Fla. 2d DCA 2007); *see Brungart v. Pullen*, 296 So. 3d 973, 978 (Fla. 2d DCA 2020) ("[G]iven the couple's history of breaking up and then getting back together, a reasonable person in [petitioner's] shoes would likely expect some communication or attempt at communication from [ex-boyfriend] in the days following another such breakup—not all of it particularly kind."). Appellate courts are not

permitted to reweigh the evidence presented to the trial court; thus, whether we or some other trial court might have ruled differently is not the test. *Khan*, 282 So. 3d at 966.

We agree with Appellant that Appellee's unwanted visit to her home in February 2020 was totally inappropriate and indisputably constituted a sufficient predicate act of harassment and stalking. *See Robertson v. Robertson*, 164 So. 3d 87, 88 (Fla. 4th DCA 2015). However, that was a single incident, and two instances of stalking are required to justify issuance of an injunction. *David v. Shack*, 192 So. 3d 625, 627–28 (Fla. 4th DCA 2016). Accordingly, we affirm the dismissal without prejudice of the temporary injunction and denial without prejudice of Appellant's petition for permanent injunction against stalking.

AFFIRMED.

WALLIS, J., concurs
NARDELLA, J., concurs in result only.