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

VICTORIA ELIZABETH BRADLEY,

Appellant,

v. Case No. 5D21-649

CHRISTOPHER SLYMAN,

Appellee.

_____/

Opinion filed July 23, 2021

Nonfinal Appeal from the Circuit Court
for St. Johns County,
Joan Anthony, Judge.

Tania R. Schmidt-Alpers, St. Augustine, for Appellant.

Matthew A. Shirk, Jacksonville, for Appellee.

EVANDER, J.

Victoria Elizabeth Bradley appeals an order dissolving an injunction for protection against stalking entered on her behalf against Christopher

Slyman. We reverse. Slyman did not sufficiently allege, nor prove, grounds necessary to support dissolution of the injunction.

The final judgment for injunction for protection against stalking was initially entered, with Slyman's consent, on August 18, 2019.[1] On January 22, 2021, Slyman filed an unverified motion to dissolve the injunction alleging, inter alia, that he had been arrested for cyber stalking on May 31, 2019, that he had worn a GPS monitoring device from May 31, 2019 to August 6, 2020 without any violations, and that he had pled no contest to misdemeanor stalking for which he had been adjudicated guilty and ordered to pay court costs. The motion further alleged that he resided "several miles from [Bradley's] place of residence and employment." Attached to Slyman's motion was a copy of a deposition given by Bradley in Slyman's criminal case. The motion alleged that, in her deposition, Bradley acknowledged that she "had only met [Slyman] 26 days prior to this incident." Finally, the motion alleged that there had been no contact between Slyman and Bradley subsequent to May 2019 and that Slyman had "moved on with his life."

A hearing was held on the motion to dissolve injunction on February 24, 2021. At the outset of the hearing, Slyman's counsel announced that

[1] The final judgment was later amended to reflect Bradley's new residence address. (Both addresses were within the same city).

movant would rely on the motion and on Bradley's deposition. The trial court then stated that it would take judicial notice of the motion and deposition and inquired as to whether Bradley had any objection. Bradley's counsel responded in the affirmative and further argued as to the insufficiency of Slyman's motion. After hearing Bradley's counsel's argument regarding the legal sufficiency of the motion, the trial court requested to hear Bradley's testimony. Bradley testified that she was still in fear of Slyman but did acknowledge the lack of contact between the parties subsequent to the incident that gave rise to the injunction. No other witness testified at the hearing.

After hearing closing argument, the trial court granted Slyman's motion, opining that "continuation of the injunction would serve no valid purpose." The trial court erred in several respects.

A party seeking to dissolve an injunction for protection entered against him has the burden to establish changed circumstances sufficient to "demonstrate that the scenario underlying the injunction no longer exists so that continuation of the injunction would serve no valid purpose." *Alkhoury v. Alkhoury*, 54 So. 3d 641, 642 (Fla. 1st DCA 2011); *see also Hamane v. Elofir*, 226 So. 3d 330 (Fla. 5th DCA 2017). Here, the only facts alleged that did not exist at the time of the entry of the final judgment of injunction for

protection against stalking was that Slyman had worn a GPS monitor for fourteen months without violation, had been convicted of misdemeanor stalking, had no contact with Bradley for a little over one and one-half years,[2] and had "moved on with this life." These barebones allegations were legally insufficient to support the dissolution of the injunction. Although it is possible that these factual allegations may have been developed and supplemented with evidence sufficient to meet his burden to establish changed circumstances, Slyman chose not to do so.[3]

More importantly, we conclude that the evidence presented at the hearing was woefully insufficient to support the granting of Slyman's motion. Bradley did not stipulate to the "facts" set forth in the unverified motion to dissolve injunction or made during opposing counsel's closing argument. In the absence of a stipulation, unsworn representations of counsel about factual matters do not have any evidentiary weight. *Chase Home Loans, LLC v. Sosa*, 104 So. 3d 1240, 1241 (Fla. 3d DCA 2012); s*ee also Radosevich v. Bank of N.Y. Mellon*, 245 So. 3d 877, 881 (Fla. 3d DCA 2018)

[2] It is noteworthy that, according to the motion's allegations, the great majority of the time in which Slyman avoided having contact with Bradley was time in which his criminal charges were pending.

[3] Bradley's deposition primarily focused on the events that led to the granting of the injunction.

("Mere representations and argument of counsel do not constitute evidence.").

Furthermore, although a deposition may be judicially noticed, it does not mean that all of the contents of a deposition are admissible. *See Allstate Ins. Co. v. Greyhound Rent-A-Car, Inc.*, 586 So. 2d 482, 482 (Fla. 4th DCA 1991). Here, the deposition given by Bradley in the criminal case was never moved into evidence. In essence, the only actual evidence presented to the trial court was Bradley's testimony. That testimony clearly did not support the granting of Slyman's motion. On remand, the trial court is directed to vacate the order on appeal and to enter an order denying Slyman's motion to dissolve injunction.

REVERSED and REMANDED.

LAMBERT, C.J. and NARDELLA, J., concur.