

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-2756

PENSACOLA BEACH ELEMENTARY
SCHOOL,

Appellant,

v.

KELLI MOYER,

Appellee.

On appeal from the Circuit Court for Escambia County.
Gary L. Bergosh, Judge.

December 27, 2019

BILBREY, J.

Appellant, Pensacola Beach Elementary School, challenges the trial court's non-final order denying a petition for temporary injunction in which the School sought to enjoin Appellee, Kelli Moyer, from entering the School's grounds. The School also challenges the trial court's requirements in the second numbered paragraph of the order that Moyer's children be enrolled at the

School and Moyer be allowed unrestricted participation and access to School functions and property.¹

Applying the applicable standard of review, and upon our review of the petition, hearing transcript, and exhibits, we find no abuse of the trial court's discretion in its denial of the motion for temporary injunction. *See Colucci v. Kar Kare Automotive Group, Inc.*, 918 So. 2d 431, 437-38 (Fla. 4th DCA 2006) (holding that an order on an injunction relying on live testimony will be affirmed absent abuse of discretion). *See also Meadows v. Med. Optics, Inc.*, 90 So. 3d 924, 925 (Fla. 4th DCA 2012) (holding that in reviewing a temporary injunction the appellate court applies an abuse of discretion standard to factual findings and a de novo standard to legal conclusions).

The School's challenge to the additional relief granted in paragraph number two of the order is well-taken however. At the point in the litigation when the hearing was held, no responsive pleading to the petition had been filed. Accordingly, neither party had requested the relief granted by the court in paragraph number two. "It is well settled that courts are not authorized to grant relief not requested in the pleadings." *Martin v. Lee*, 219 So. 3d 1024, 1025 (Fla. 1st DCA 2017). "To grant unrequested relief is an abuse of discretion and reversible error." *Godwin v. Godwin*, 273 So. 3d 16, 23 (Fla. 4th DCA 2019) (citations omitted). Nothing in the record, including the transcript of the hearing, indicates that issues beyond the School's request for an injunction to prohibit Ms. Moyer's entry onto School grounds were tried by consent. However well-intentioned, the trial court's discretion does not extend to granting affirmative relief not sought by either party.²

Enrollment decisions by the School and the extent to which Moyer would participate in functions and be present on the School's property were not properly before the court at the time of

¹ No other rulings in the order are challenged on appeal, and Moyer did not cross-appeal. We therefore do not address any other matters here.

² A trial court's discretion, as described in *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980), is not boundless.

the hearing and subsequent order. Accordingly, the granting of relief beyond that sought by the School was an abuse of the trial court's discretion requiring reversal of that portion of the order.

The denial of the temporary injunction as sought in the petition is AFFIRMED. However, the relief granted to Moyer in paragraph number two of the order on appeal is REVERSED, and this matter is REMANDED for correction of the order and further proceedings.

RAY, C.J., and LEWIS, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jerry D. Sanders of Vernis & Bowling of Northwest Florida, P.A., Pensacola, for Appellant.

Michael S. Burt, Pensacola, for Appellee.