FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-3129

RANDOLPH MACK,

Appellant,

v.

MELISSA MACK,

Appellee.

On appeal from the Circuit Court for Levy County.
David P. Kreider, Judge.

November 4, 2020

PER CURIAM.

The appellant challenges the trial court's granting of an injunction for protection against domestic violence against him on behalf of the appellee and their children. The appellant raises seven issues on appeal. We only find merit in the appellant's argument that the trial court erred when it granted an injunction for protection on behalf of the parties' minor children. Finding no merit in the appellant's other issues, we affirm those issues without further comment.

The husband argues that the trial court erred when it granted an injunction for protection against domestic violence on behalf of the children because there was no evidence to support it. This Court has recently stated that the question of whether the

evidence is sufficient to justify imposing an injunction for protection is reviewed *de novo*. *Whitlock v. Veltkamp*, 45 Fla. L. Weekly D1115 (Fla. 1st DCA May 6, 2020). The appellant is correct that the record on appeal does not contain evidence to support a legal conclusion that the children had been or were in immediate danger of becoming victims of domestic violence. Because there was no evidence to justify imposing an injunction for protection on behalf of the children, we reverse and remand the case to the trial court for it to strike that portion of the order.

AFFIRMED in part, REVERSED in part, and REMANDED with instructions.

ROBERTS and KELSEY, JJ., concur; ROWE, J., concurs with opinion.

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

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ROWE, J., concurring.

No evidence in the record of this case shows that the appellee had a reasonably objective fear that the parties' children were victims of domestic violence or that they were in imminent danger of becoming victims of such violence. *See* § 741.30(1)(a), Fla. Stat. (2017). And so, I concur in reversing the portion of the final judgment granting the domestic violence injunction in favor of the children. I also agree with affirming the final judgment in all other respects.

During the five months before it entered the injunction, the trial court presided over several matters involving the parties and their children. One matter involved the dissolution of the parties' marriage. The trial court entered a final judgment dissolving the marriage in January 2018.

Other matters included a November 2017 emergency shelter petition, a December 2017 petition for dependency, and a

subsequent petition for termination of parental rights—all stemming from allegations against both parties for the abuse and neglect of their two children. In those cases, the trial court considered allegations of the appellee's substance abuse problems and neglect of the children. The trial court also considered allegations that the appellant "had been physically violent toward [the appellee] in front of the children" and that the appellant suffered from "significant mental health issues that would place the children at imminent risk of harm in his care."

And so, when the trial court held an evidentiary hearing on the injunction, it questioned the appellant's mental health: "[w]e've had other hearings where I've talked to him about his mental health." But the appellee presented no evidence in the injunction case that the appellant's mental health caused him to act violently toward the children or threaten them with violence. She did not allege in her petition that the children had been victims of any act of domestic violence committed by the appellant or that they were in imminent danger of becoming victims of domestic violence. *See G.C. v. R.S.*, 71 So. 3d 164, 166 (Fla. 1st DCA 2011) (holding that a spouse had standing to seek a domestic violence injunction against a former spouse on behalf of the parties' children). And she offered no evidence that would support any such allegation. *See Randolph v. Rich*, 58 So. 3d 290, 292 (Fla. 1st DCA 2011) (holding that a party seeking a domestic violence injunction "must present sufficient evidence to establish the objective reasonableness of his or her fear that the danger of violence is 'imminent'"). For this reason, despite its knowledge of the parties drawn from other cases and its concern over the appellant's mental health, the evidence presented here was not legally sufficient to justify imposition of the injunction in favor of the children. *See Hobbs v. Hobbs*, 290 So. 3d 1092, 1096 (Fla. 1st DCA 2020).

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Randolph Mack, pro se, Appellant.

Melissa Mack, pro se, Appellee.