FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-1269

JAMES E. HOBBS,

Appellant,

v.

LESLIE J. HOWELLS HOBBS,

Appellee.

On appeal from the Circuit Court for Escambia County.
John L. Miller, Judge.

February 27, 2020

ROWE, J.

James E. Hobbs appeals an order denying his motion to dissolve an almost twenty-year-old injunction against domestic violence. Because Mr. Hobbs showed that the circumstances underlying the original injunction no longer exist and that continuing the injunction would no longer serve a valid purpose, we reverse and remand with directions to dissolve the injunction.

Facts

In June 2000, the parties lived in Pensacola, were going through their second divorce, and had separated. One night, Mr. Hobbs asked his stepdaughter to allow him to enter the former marital home. When he walked into the master bedroom, Mr.

Hobbs found Ms. Hobbs in bed with another man. Mr. Hobbs pushed Ms. Hobbs. She pushed him back and punched him in the face. Mr. Hobbs left the home. He returned a few hours later with a law enforcement officer to retrieve a gun he kept at the home. Ms. Hobbs petitioned for an injunction for protection against domestic violence. She described the incident at her home and alleged that Mr. Hobbs had stalked her. The petition for injunction was granted. Soon after, Ms. Hobbs moved away from the area.

Eighteen years later, Mr. Hobbs applied for a concealed weapons license. He learned that the injunction remained in place when his application was denied. Mr. Hobbs moved to dissolve the injunction.

At the hearing on Mr. Hobbs' motion, Ms. Hobbs testified that Mr. Hobbs never contacted her after the injunction was entered and had never violated the injunction. But she maintained that the only reason Mr. Hobbs had not violated the injunction was because she moved away from Pensacola after the divorce. In 2018, Ms. Hobbs moved back to the area. She testified that she felt safe returning to Pensacola because the injunction remained in place. But after she returned, Ms. Hobbs claimed that third parties approached her to report that Mr. Hobbs was still "crazy about her" and talked about her.

Mr. Hobbs testified that he knew nothing about Ms. Hobbs' relocation or whereabouts in the years following the 2000 incident. Mr. Hobbs did not realize that the injunction remained in effect after the marriage was legally dissolved. He testified that he never tried to contact Ms. Hobbs after the injunction issued. After the divorce, Mr. Hobbs retired from his job as a firefighter and obtained a pilot's license. He flew for Air Force fire patrols, volunteered for the civil air patrol, and was pursuing a commercial pilot's license. He testified that he did not wish to contact Ms. Hobbs or appear at her home or work locations.

Even so, the trial court denied Mr. Hobbs' request to dissolve the injunction. But the court added that it would be willing to revisit the request in the future. This timely appeal follows.

Standard of Review

Trial courts have "broad discretion in granting, denying, dissolving, or modifying injunctions, and unless a clear abuse of discretion is demonstrated, appellate courts will not disturb the trial court's decision." *Noe v. Noe*, 217 So. 3d 196, 199 (Fla. 1st DCA 2017) (quoting *Simonik v. Patterson*, 752 So. 2d 692, 692 (Fla. 3d DCA 2000)). But whether the evidence is legally sufficient to justify dissolving an injunction is a question of law reviewed de novo. *Pickett v. Copeland*, 236 So. 3d 1142, 1144 (Fla. 1st DCA 2018) (citing *Wills v. Jones*, 213 So. 3d 982, 984 (Fla. 1st DCA 2016)).

Analysis

A court may grant an injunction for protection against domestic violence when the party seeking the injunction is a victim of domestic violence or has a reasonable belief that he or she is in imminent danger of becoming a victim of domestic violence. § 741.30(6)(a), Fla. Stat. (2018). When determining whether the petitioner's fear is objectively reasonable, the trial court considers the current allegations, the behavior of the parties in the relationship, and the history of the relationship. *Mitchell v. Mitchell*, 198 So. 3d 1096, 1100 (Fla. 4th DCA 2016). But after an injunction has been entered, either party to the injunction may move to modify or dissolve the injunction at any time. § 741.30(6)(c), Fla. Stat. (2018); *Trice v. Trice*, 267 So. 3d 496, 499 (Fla. 2d DCA 2019) ("[B]ecause permanent injunctions are open-ended and everlasting, they must be subject to dissolution when the circumstances that justified such an injunction are no longer operative.").

Although the domestic violence statute is silent on the burden of proof required of a party moving to dissolve an injunction, this Court has explained that the movant must "show changed circumstances." *Alkhoury v. Alkhoury*, 54 So. 3d 641, 642 (Fla. 1st DCA 2011). To show that the circumstances have changed, the movant must "demonstrate that the scenario underlying the injunction no longer exists so that continuation of the injunction would serve no valid purpose." *Id*.

And in determining whether an injunction continues to serve a valid purpose, the trial court considers whether the victim "reasonably maintain[s] a continuing fear of becoming a victim of domestic violence." *Id*. (finding no evidence to show that the former wife's continuing fear was unreasonable); *Noe*, 217 So. 3d at 199 (holding that the trial court did not abuse its discretion in denying a motion to dissolve where appellant testified about her continuing fear and appellee's multiple violations of the injunction); *Trice*, 267 So. 3d at 501 ("Because a reasonable fear of imminent violence is a legally necessary predicate to the issuance and extension of a domestic violence injunction, it follows that a reasonable fear of imminent violence is also necessary to justify denying a motion to dissolve a domestic violence injunction that is otherwise supported by the requisite change in circumstances."). Here, the trial court erred in denying the motion to dissolve the injunction because the evidence was legally insufficient to show that Ms. Hobbs' continuing fear of domestic violence is objectively reasonable.

Mr. Hobbs alleged a significant change in circumstances since the injunction was entered. Nineteen years earlier, the parties were going through a contentious divorce and Ms. Hobbs had young children living in the former marital home. Fast-forward to 2019. The parties' marriage had long since been dissolved; Ms. Hobbs' children had reached the age of majority. Mr. Hobbs was 63 years old and testified that he had not contacted Ms. Hobbs in almost two decades.

Still, Ms. Hobbs testified that she remained fearful that Mr. Hobbs would harm her. She testified at length about the original incident that triggered the injunction in June 2000, the months leading up to the incident, and the fear she experienced afterwards. But she offered no testimony of any violence or even a single threat of violence from Mr. Hobbs after June 2000.

Instead, Ms. Hobbs' testimony about Mr. Hobbs' post-2000 conduct consisted of speculation and rumors. After nineteen years with no contact with Mr. Hobbs, Ms. Hobbs assumed nonetheless that he may yet harm her. Ms. Hobbs presumed that the only reason Mr. Hobbs had not violated the injunction was that she moved away from Pensacola and he did not know where she was located. She reasoned that after her return to Pensacola, a location

close to Mr. Hobbs' home in Cantonment, Mr. Hobbs posed a threat to her—even though Mr. Hobbs had not contacted her once in the six months since her return to town.

The trial court found that this testimony by Ms. Hobbs showed an objectively reasonable fear that Mr. Hobbs continued to present a threat to Ms. Hobbs. But no competent evidence supports the trial court's finding. *See Trice*, 267 So. 3d at 500. The possibility of future contact between the parties is not, without more, sufficient to conclude that the circumstances underlying the injunction remain the same. *Id*. Ms. Hobbs' "merely speculative fear of future violence" is legally insufficient "to justify the never-ending existence of an injunction." *See id.* at 500-01.

Besides speculating that Mr. Hobbs would harm her, Ms. Hobbs also testified about rumors she heard that caused her to believe that Mr. Hobbs remained a threat. She claimed that people reported to her that Mr. Hobbs told them he still had feelings for her and revealed intimate details about their sex life during the marriage. But Ms. Hobbs' testimony about Mr. Hobbs' alleged comments to third parties does not, standing alone, show that she had a reasonable fear that she was in danger of domestic violence. *See Bacchus v. Bacchus*, 108 So. 3d 712, 715 (Fla. 5th DCA 2013) (observing that evidence of communication through third parties is not enough, standing alone, to show a reasonable fear of continuing violence). Indeed, the trial court found there was no evidence to suggest that Mr. Hobbs directed or instructed any third parties to contact Ms. Hobbs. And most importantly, even if taken at face value, no threat of violence was conveyed by any of the alleged comments. The third-party reports were thus legally insufficient to support a finding that Ms. Hobbs' fear of a threat of violence from Mr. Hobbs was objectively reasonable.[1]

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[1] The dissent asserts that our consideration of the third-party statements is improper because, even though Mr. Hobbs objected to the admission of the statements in the trial court, he did not raise the admission of the statements as an issue on appeal. We disagree. Mr. Hobbs argued in his initial brief that there was "no competent substantial evidence to support Ms. Hobbs' general assertion of fear of imminent domestic violence." Our review of the third-party statements offered by Ms. Hobbs is not to consider

Even though Ms. Hobbs' testimony consisted of speculation and hearsay, the trial court found Ms. Hobbs' fear of violence from Mr. Hobbs was objectively reasonable. The court found that Ms. Hobbs had been absent from the Pensacola area for almost eighteen years and had returned only six months before the hearing. The trial court observed Ms. Hobbs's demeanor and body language and found that she was still "very, very angry at what [Mr. Hobbs] did in the year '99/2000." The trial court found that she "looked scared." The record supports these findings. But these findings only show that Ms. Hobbs had a subjective fear of Mr. Hobbs. And subjective fear is not enough to maintain a permanent injunction. *McMath v. Biernacki,* 776 So. 2d 1039, 1040 (Fla. 1st DCA 2001) ("For determining whether an incident creates substantial emotional distress, courts must use a reasonable person standard, not a subjective standard."). Instead, Ms. Hobbs' fear of harm from Mr. Hobbs had to be objectively reasonable, based on all the circumstances. *See Alkhoury*, 54 So. 3d at 642. The evidence did not show that Ms. Hobbs' fear was objectively reasonable. The trial court erred in finding otherwise.

And this case is distinguishable from *Noe v. Noe*, 217 So. 3d 196 (Fla. 1st DCA 2017). There, legally sufficient evidence showed that the appellant had a continuing, reasonable fear that she was in imminent danger of domestic violence. The evidence showed several violations of the injunction, including acts of violence and threats by the appellee, who was soon to be released from incarceration. *Id.* Based on the appellee's history of violating the injunction, the trial court found that the appellant had a reasonable and continuing fear of becoming a victim of domestic violence. *Id.* On that record, this Court affirmed the trial court's order denying the motion to dissolve the injunction. *Id.* at 199.

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whether the court abused its discretion in admitting them. Rather, we consider the statements only to determine their legal sufficiency to support the trial court's finding that Mr. Hobbs presented an imminent threat of harm to Ms. Hobbs.

Unlike *Noe*, Mr. Hobbs never violated the injunction and has no criminal history.[2] Ms. Hobbs admitted that Mr. Hobbs had not contacted her in almost twenty years—not in person, not by phone, email, or text. Nor did he try to contact Ms. Hobbs after he learned that she had returned to the Pensacola area or in the six months leading up to the hearing. Mr. Hobbs' conduct in the twenty years following the entry of the injunction renders Ms. Hobbs' subjective fear that she was in imminent danger objectively unreasonable. And though a trial court has broad discretion to grant an injunction, the evidence must be legally sufficient to justify imposition of the injunction. *Stone v. McMillian*, 270 So. 3d 510, 512 (Fla. 1st DCA 2019); *Pickett*, 236 So. 3d at 1143-44; *Willis v. Jones*, 213 So. 3d 982, 984 (Fla. 1st DCA 2016). Here, the evidence was legally insufficient to show that Ms. Hobbs had reasonable cause to believe she was in imminent danger of becoming a victim of domestic violence. For this reason, and because Mr. Hobbs showed the requisite change in circumstances so that the injunction no longer serves a valid purpose, we reverse the order denying the motion to dissolve the injunction.

M.K. THOMAS, J., concurs; BILBREY, J., dissents with opinion.

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[2] The dissent contends that Mr. Hobbs "possessed a firearm in violation of the injunction." It is true that Mr. Hobbs testified that he "took a course" and "shot." But there was no further testimony on the matter. Though it may be logical to conclude that Mr. Hobbs "shot" a firearm, the trial court did not make any oral or written factual findings about Mr. Hobbs' testimony to support the legal conclusion that Mr. Hobbs used or possessed a firearm in violation of the domestic violence injunction. And sitting as an appellate court, we may not make those factual findings in the first instance. *See Douglass v. Buford*, 9 So. 3d 636, 637 (Fla. 1st DCA 2009).

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

BILBREY, J., dissenting.

Because I believe reasonable people could differ as to the propriety of the trial court's decision, I would find no clear abuse of discretion and affirm the trial court's order. Since the majority reverses, I respectfully dissent.

As the majority recognizes, trial courts have "broad discretion in granting, denying, dissolving, or modifying injunctions, and, unless a clear abuse of discretion is demonstrated, appellate courts will not disturb the trial court's decision." *Noe v. Noe*, 217 So. 3d 196, 199 (Fla. 1st DCA 2017) (quoting *Simonik v. Patterson*, 752 So. 2d 692, 692 (Fla. 3d DCA 2000)). "This is particularly true where the order relies on live testimony or other evidence that the trial court is singularly well-suited to evaluate." *Noe*, 217 So. 3d at 199 (citations omitted). As reiterated in *Noe*, the "reasonableness" test for the court's exercise of discretion provides that "discretion is abused only where no reasonable [person] would take the view adopted by the trial court," and "[i]f reasonable [people] could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion." *Id.* (alteration in original) (citations omitted).

At the hearing on the motion to dissolve the injunction, the trial court heard live testimony from the parties, much of which recounted the grounds which led to the entry of the injunction.[1] Appellee testified that in June 2000, she filed a petition for

[1] Here, as part of the appendix filed by Appellant, we have the Appellee's sworn petition for injunction, as well as the temporary and permanent injunction entered by the court. But we do not have a transcript of the June 21, 2000, hearing on the petition which led to the permanent injunction.

injunction for protection against domestic violence against Appellant after Appellant entered her home and then her bedroom, confronting Appellee and her roommate.[2] A physical altercation ensued. Conflicting testimony was given at the hearing on the motion to dissolve the injunction as to whether Appellant was in possession of a firearm at the time. Appellee also testified that Appellant was "stalking" her around the time of the entry of the injunction and exhibited bizarre behavior such as leaving written notes on the windows of her car, house, and place of employment.

The trial court entered the permanent injunction on June 21, 2000, and it provided that it would be in effect "until further Order of the Court." In the injunction, Appellant was prohibited from going to several locations such as Appellee's home, employment, and school. Appellant was also prohibited from possessing "any firearm or ammunition."

Contesting Appellant's motion to dissolve the injunction, Appellee testified that the reason Appellant had not violated the injunction over the years was because she moved away shortly after the marriage was dissolved and moved frequently thereafter. However, she recently relocated back to town, residing in the same home where the domestic violence occurred. Appellee testified that she felt safe returning to town because of the protection of the injunction. According to Appellee, she was advised by mutual friends that Appellant was still "crazy about her" and talked about her frequently.

Appellant testified that he was unaware of Appellee's relocations over the years and that he had no idea the injunction remained in effect after the dissolution of marriage was finalized. He only discovered the pendency of the injunction when he and some friends applied for Florida concealed weapons licenses. Appellant testified that he and friends "went down and we took a course and we shot," meaning he possessed a firearm in violation of the injunction and sections 741.31(4)(b)1. and 790.233, Florida

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[2] In the petition, Appellee swore that Appellant had moved out of the home six months before the incident, would not honor her request to leave the home, and pushed her.

Statutes.[3] Appellant further testified that he mistakenly reported in his application for the concealed weapons license that he was not subject to any domestic violence injunctions. The licensing agency denied his application for the license, which alerted him that the injunction remained in effect.

At the hearing, the judge questioned Appellee and commented on her demeanor in the following exchange:

> THE COURT: Ma'am, let me ask you this: You're very, very angry at what he did in the year 99/2000. It hasn't -- you remember it vividly. It was -- and from what you described, I think anybody would be. It was beyond outrageous. It has been a long time. It has been a long time. You look scared to me today. You're shaking, number one; number two, it's 3:15. You've been here since, what, 8 o'clock?
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> APPELLEE: Yes, sir.

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[3] I respectfully disagree with the majority that the trial court had to make specific findings of fact that Appellant possessed a firearm in violation of the injunction for us to consider the violation as supporting the trial court's decision. *See Cohen v. Mohawk, Inc.*, 137 So. 2d 222, 225 (Fla. 1962) ("[T]he judgment of the trial court reached the district court clothed with a presumption in favor of its validity. Accordingly, if upon the pleadings and evidence before the trial court, there was *any* theory or principle of law which would support the trial court's judgment. . . the district court was obligated to affirm that judgment.") (citations omitted). The issue is not which specific findings were made by the trial court but whether competent, substantial evidence in the record supports the trial court's judgment. *See Arnold v. Santana*, 122 So. 3d 512 (Fla. 1st DCA 2012); *Achurra v. Achurra*, 80 So. 3d 1080 (Fla. 1st DCA 2012). No factual findings were necessary since the undisputed evidence was Appellant possessed a firearm.

> THE COURT: You're serious about this or you wouldn't still be here. You would have left at lunch today like a couple of others did.

After more questioning, the judge continued:

> THE COURT: Okay. I'm asking this as tactfully as I know how because I'm trying to get to the bottom of this. What happened is very disturbing to you. There's no question about it. I can tell from your demeanor, from your speech, from everything. Are you angry or are you scared?
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> APPELLEE: I am fearful knowing that -- what he did -- if it were done nowadays, he would have been armed home invasion. This is serious. I don't take it lightly. He should have been in his right mind to have never brought a gun out around my children. And I am back in town now. He hasn't had the opportunity to come near me because I've been gone and I've stayed gone. I'm back now. He knows where I live. Yes, I have been fearful because I'm in my own home by myself now, and I -- and now this comes up out of the blue.

Counsel for Appellant argued the injunction should be dissolved because "the scenario underlying the injunction no longer exists so that the continuation of the injunction would serve no valid purpose." He characterized the incident in 2000 between the parties as a "dispute over the home," but the court noted that the home was a pre-marital asset of Appellee.

The judge then announced the ruling:

> THE COURT: Okay. I've considered the case law, the evidence, and the argument. I'm going to deny the motion to dissolve the injunction. I will find that the [Appellee] still has an imminent fear of domestic violence, that the fact that [Appellee] moved away for a long period of time and is just now back buttresses her claim. I will find based on her demeanor, her testimony, her body language that she's still in fear.

> I will reevaluate it at a time -- she is back in the area now. If it's -- I can't put a bright-line test on it and say this is when it's going to be, but assuming that she remains in the area and there are no problems, I'll certainly reevaluate it if [Appellant] brings it back before the Court.

The judge stated further:

> What happened is a very traumatic and very serious thing, and given the totality of the circumstances surrounding what happened and the totality of the circumstances about her return and her subjective state of mind and her fear, I just think that the injunction's warranted to stay in place.

Certainly, as the majority discusses, some circumstances have changed since the injunction was entered. The parties' marriage has been dissolved, Appellee's children are adults living in their own homes, and many years have passed since the altercation which led to the issuance of the injunction. And shortly after the injunction was entered, Appellee relocated her residence outside the State of Florida. But in this case, unlike the permanent relocation of both parties in *Trice v. Trice*, 267 So. 3d 496 (Fla. 2d DCA 2019), Appellee recently returned, after years of living elsewhere, to the same home where she resided when the injunction was entered. She is back near Appellant in the same small-town area. And she testified that third-parties have told her that Appellant is still "crazy about her and [has] crazy stuff in his head" causing her to remain in fear of Appellant.[4] Furthermore,

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[4] Appellee further testified that "[i]t's ironic that in these years, even recent years, he still has his cronies harassing me and continuing to make derogatory statements and sabotage my character," which formed the basis of the trial court's finding that third parties had made contact with her. These hearsay statements were admitted by Appellee over objection but are not challenged on appeal. Therefore, we should not address whether hearsay was improperly considered by the trial court. *See Doe v. Baptist Primary Care, Inc.*, 177 So. 3d 669 (Fla. 1st DCA 2015)

Appellant admitted to shooting a firearm while taking a course to get a concealed weapons license, which clearly violated the injunction. *See* § 790.06(2)(h), Fla. Stat. (requiring an applicant attempting to obtain a license to carry a concealed weapon by attending various courses to discharge a weapon "including live fire using a firearm and ammunition").

While reasonable people could differ on whether the injunction still serves a valid purpose, the trial court observed the parties, determined their credibility and the weight to be given their respective testimony, and exercised its discretion by denying the motion to dissolve. In denying the motion, the trial court expressed a willingness to consider a new motion from Appellant in the near future, as evidenced by the court's statement on the record that "assuming she remains in the area and there are no problems, I'll certainly reevaluate if he brings it back before the Court."

Undoubtedly, the Appellee remained in subjective fear of Appellant. However, as the majority discusses, the objective reasonableness of the fear is what is at issue. Based on the testimony at the hearing, I would hold that the trial court did not abuse its discretion in determining that Appellee maintains an objectively reasonable fear of becoming a victim of another incident of domestic violence. A reasonable person in Appellee's position, having recently returned to the area, residing in the home where the domestic violence occurred, and being recently informed by third parties that Appellant remains "crazy about her" may objectively remain in fear of violence from a former spouse.[5] The fact that Appellant recently possessed and discharged a firearm while attempting to obtain a concealed weapons license, thereby

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(holding that points not raised by an appellant are waived or abandoned).

[5] Appellee, acting pro se, filed a verified response to Appellant's motion to dissolve the injunction and stated that she "returned to the Pensacola area because a valid injunction is in [p]lace." At the hearing she testified that she "felt confident coming back here to be with my family who is here because this [injunction] was in place."

violating the injunction, is an additional factor in considering the subjective reasonableness of the fear. *See Noe*, 217 So. 3d at 199. By comparison in *Trice*, the fact that there had been no violations of the injunction was a consideration in the Second District's decision to overrule the trial court and dissolve the injunction. 267 So. 3d at 500.

Here, the trial court relied on the live testimony at the hearing and duly evaluated the parties "as they appeared in the proceedings." *Noe*, 217 So. 3d at 199. The trial court applied the correct standard of proof, and we should decline to substitute our judgment for that of the trial court based on the testimony, witnesses' demeanor, and live-testimony factors not observable in the cold record. Like the other issues to be determined, the trial court's conclusion that Appellee's current fear was objectively reasonable was without prejudice to a future filing by Appellant. I would therefore affirm the order of the trial court and respectfully dissent from the decision to reverse.

Ross A. Keene of Ross Keene Law, P.A., Pensacola, for Appellant.

No appearance for Appellee.