FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-2314

DAVID CARDON,

Appellant,

v.

BRIAN HALMAGHI,

Appellee.

On appeal from the Circuit Court for Santa Rosa County.
Ross M. Goodman, Judge.

October 19, 2022

NORDBY, J.

This case involves an order permanently extending an injunction entered against David Cardon. The injunction against repeat violence and stalking was entered under section 784.046, Florida Statutes, based on a petition filed by Brian Halmaghi. Cardon challenges the extension of the injunction and argues the trial court erred in (1) not allowing him to present evidence and testimony on his own behalf before holding him in indirect criminal contempt, (2) granting Halmaghi's motion to permanently extend the injunction, and (3) denying Cardon's motion to modify the injunction.

We reverse because Cardon is correct that the trial court erred in permanently extending the injunction. As explained below,

given our reversal on this issue, we decline to reach the remaining issues.

I.

Cardon and Halmaghi, who live catty-cornered across the street from one another, are nearly next-door neighbors. The two have a history of not getting along. In the summer of 2019, their antagonistic relationship reached its boiling point. Cardon physically attacked Halmaghi, resulting in a misdemeanor battery conviction.

Based on this altercation (and another verbal exchange), the trial court granted Halmaghi's petition for a repeat violence injunction against Cardon. The injunction was set to expire in August 2021 and included the usual conditions prohibiting Cardon from having contact with Halmaghi or from going within 500 feet of Halmaghi's property. But the injunction recognized two exceptions to the 500-foot rule: the injunction permitted Cardon ingress and egress to his home and the injunction allowed Cardon to access his mailbox, which is located at the northern edge of Halmaghi's property.

Nearly a year after the injunction issued, Halmaghi's wife filed a letter with the clerk of court accusing Cardon of violating the injunction. She alleged that, one time, while Halmaghi was on the roof working, Cardon walked to a nearby neighbor's house (about thirty feet away) and pointed at Halmaghi. She also alleged that, another time, while visiting the same neighbor, Cardon greeted her with a "smirk." In response to these allegations, the trial court issued an order to show cause requiring Cardon to appear before the court and explain why he should not be held in contempt for violating the injunction.

Before the hearing on the order to show cause, Halmaghi moved to permanently extend the two-year injunction and attached many emails from his wife to the State Attorney's Office. In these emails, Halmaghi's wife accused Cardon of stalking and intimidation. She claimed Cardon watched and photographed Halmaghi's comings and goings. She also alleged that Cardon was twice next door at a neighbor's house. At the same time, she

acknowledged that Cardon was not doing anything threatening, "just trying to prove he is above the law."

At the hearing, Halmaghi reiterated the allegations in his wife's letter to the clerk of court. Halmaghi testified that, on April 7, 2020, Cardon was "next door, smiling, grinning at my wife, nodding his head, being above the law. . . . I came home. He was still next door smiling at me, like, what are you going to do?" And on March 15, 2020, Halmaghi was working on his roof when he heard a voice at the street. When he looked up, he saw Cardon "pointing his finger at me like if it's a gun or something, and I looked at him, and he saw me. He ran next door to the neighbor next door."

Cardon's counsel agreed that Cardon was at a nearby neighbor's property on at least one occasion but explained that Cardon was merely pressure washing the neighbor's driveway. Based on this explanation by counsel, the trial court found that Cardon violated the injunction. The trial court viewed the ingress/egress and mailbox exceptions as limitations, which meant Cardon could not walk across the street to visit a residence located within 500 feet of Halmaghi's property. Cardon's counsel sought to present evidence that Halmaghi was not present while Cardon was pressure washing the neighbor's driveway and other evidence rebutting allegations made by Halmaghi. But the trial court determined that, because Cardon violated the injunction, the evidence was unnecessary. The trial court set the case for a sentencing hearing and reiterated that the injunction precluded Cardon from going within 500 feet of Halmaghi's residence, with two exceptions: the injunction permits Cardon to check his mailbox and authorizes the ingress and egress of his home.

Soon after the hearing, Cardon moved to modify the injunction and requested permission to use his fenced-in backyard and take the trash to the street. Cardon also filed a motion for rehearing seeking to vacate the trial court's ruling on the order to show cause. The trial court denied the motion for rehearing and set a hearing date for the parties to address sentencing and all pending motions.

Many witnesses testified at the sentencing hearing. Halmaghi called his wife. She labeled Cardon as "scary" and terrifying. Halmaghi's wife referenced the emails sent to the State Attorney's Office and several photographs introduced into evidence. Halmaghi's wife admitted that Cardon never said anything to her or Halmaghi, but she alleged Cardon took pictures of Halmaghi with his cell phone. As to the March incident, Halmaghi's wife saw a group of people, including Cardon, gathered in a neighbor's driveway. After about forty-five minutes, she witnessed Cardon point at her husband, who was working on the roof. As to the April incident, Halmaghi's wife testified that law enforcement investigated the issue and declined to arrest Cardon. Specifically, "they came, looked, and said, [h]e's not doing anything wrong, he's helping a neighbor, and left."

Among others, CJ testified on behalf of Cardon. CJ resides directly across the street from Cardon and directly north of Halmaghi. At the hearing, CJ addressed the March and April incidents. On March 15 the neighbors gathered around his driveway to look at a baby deer wandering in the neighborhood. CJ explained that, while outside, he briefly pointed out Halmaghi to his wife. As for the April 7 incident, Cardon pressure washed CJ's driveway in exchange for a favor. During the pressure washing, law enforcement arrived and asked several questions. Law enforcement expressed confusion about whether the injunction permitted Cardon to be at CJ's house, but they permitted Cardon to complete his pressure washing task anyway. CJ never witnessed anything that would lead him to believe that either Cardon or Halmaghi antagonized the other.

Both parties presented argument to the trial court. Cardon's counsel argued that Cardon did not maliciously or intentionally violate the injunction. The injunction was ambiguous, evidenced by law enforcement's confusion. Cardon's counsel asked the trial court to deny Halmaghi's request to extend the injunction because Halmaghi did not prove continuing fear. Counsel also requested the trial court grant Cardon's motion to modify the injunction to enable him to enjoy his backyard, which contains a pool surrounded by a six-foot privacy fence. Conversely, Halmaghi argued that the injunction was not ambiguous. As to Cardon's motion to modify the injunction, Halmaghi argued against

Cardon's request to enjoy his own fenced-in backyard. Halmaghi contended that from his house, he could see Cardon's head over the top of the privacy fence. He added: "[h]e has woods in the back of his property. He likes sneaking up on people. . . . He could build a gun stand and shoot me with a rifle."

Ultimately, the trial court orally denied Cardon's motion to modify the injunction and granted Halmaghi's motion, thereby permanently extending the injunction. The trial court orally sentenced Cardon to forty-five days in jail, suspended, for contempt of court for violating the injunction. In doing so, the trial court pronounced:

> [I]f there's another violation, as they say in the movies, [b]ring your toothbrush to the hearing and leave your wallet at home, because you'll be going to jail if there's another violation. So let's be perfectly clear, ingress, egress, come and go from your house, go across the street to your mailbox, other than that, you're in the four walls of the house.

The trial court never issued a written contempt order or a written order in the matter of Cardon's motion to modify the injunction. The trial court, however, did issue a written order permanently extending the injunction. This timely appeal follows.

II.

A trial court's discretion is broad when granting, denying, dissolving, or modifying injunctions; this means we will not disturb any such ruling absent a clear abuse of that discretion. *Hobbs v. Hobbs*, 290 So. 3d 1092, 1094 (Fla. 1st DCA 2020). Although our review is deferential, we still require that a trial court's grant of an injunction against repeat violence or stalking be supported by competent, substantial evidence. *See Power v. Boyle*, 60 So. 3d 496, 498 (Fla. 1st DCA 2011). And whether that evidence is legally sufficient to support an extension of an injunction is a legal question subject to de novo review. *See Hobbs*, 290 So. 3d at 1094; *see also Pickett v. Copeland*, 236 So. 3d 1142, 1144 (Fla. 1st DCA 2018).

Under section 784.046, Florida Statutes, a victim of repeat violence may petition for a protective injunction. § 784.046(2), Fla. Stat. (2020). For this particular cause of action, the Legislature has defined "repeat violence" to mean "two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member." § 784.046(1)(b), Fla. Stat. In turn, "violence" is defined as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person." § 784.046(1)(a), Fla. Stat. The offense of stalking requires proof "that a person committed repeated acts of following or harassment." *Lukacs v. Luton*, 982 So. 2d 1217, 1219 (Fla. 1st DCA 2008); *see* § 784.048(2), Fla. Stat. (defining the offense of stalking as "willfully, maliciously, and repeatedly follow[ing], harass[ing], or cyberstalk[ing] another person"). And harassment occurs when a person "engage[s] 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.

Once entered, a repeat violence injunction remains in effect until modified or dissolved. *See* § 784.046(7)(c), Fla. Stat. Of course, either party to the injunction proceeding may move to modify or dissolve the injunction "at any time." *See id.*; *see also* Fla. Fam. L. R. P. 12.610(c)(6).

At minimum, a party seeking to extend a nonpermanent injunction involving repeat violence must show that another act of violence has occurred or that there is a continuing reasonable fear that an act of violence is likely to occur in the future. *See Kirton v. McKissick*, 120 So. 3d 193, 194 (Fla. 5th DCA 2013); *Patterson v. Simonik*, 709 So. 2d 189, 190–91 (Fla. 3d DCA 1998); *cf. Power*, 60 So. 3d at 499 (reversing repeat violence injunction against neighbor because there was no evidence she "ever threatened either of the Boyles with violence or that she committed an overt act that would create a reasonable fear in the Boyles' minds that violence was imminent"); *Russell v. Doughty*, 28 So. 3d 169, 170 (Fla. 1st DCA 2010) (reversing repeat violence injunction against neighbor because, beyond a single instance of battery, there was

"no indication that Appellant threatened to do violence, or that he took some action that could have created a well-founded fear that violence was imminent"). With no evidence of another act of violence, the appropriate analysis focuses on whether the petitioner's professed continuing fear of future violence is reasonable under the circumstances. *Kirton*, 120 So. 3d at 194; *Alkhoury v. Alkhoury*, 54 So. 3d 641, 642 (Fla. 1st DCA 2011).[*]

Of course, a petitioner's fear of future violence must be objectively reasonable; it cannot be subjective, nor can it be speculative. *Frost v. Wilson*, 320 So. 3d 820, 824 (Fla. 2d DCA 2021); *Hobbs*, 290 So. 3d at 1095 ("[M]erely speculative fear of future violence is legally insufficient to justify the never-ending existence of an injunction." (internal quotations omitted)). In assessing whether fear is reasonable, a court looks to the totality of the circumstances and contemplates "the current allegations, the parties' behavior within the relationship, and the history of the relationship as a whole." *Giallanza v. Giallanza*, 787 So. 2d 162, 164 (Fla. 2d DCA 2001). Moreover, "the appropriate inquiry looks towards the immediate future rather than some distant possibility of trepidation." *Mitchell v. Mitchell*, 198 So. 3d 1096, 1101 (Fla. 4th DCA 2016).

Here, the Halmaghis stated that they feared Cardon, but Halmaghi failed to show circumstances that evinced an objectively reasonable fear of future violence. Halmaghi's request to extend the injunction pointed to several actions by Cardon that allegedly violated the injunction. Assuming these actions violated the injunction, they still could not support an objectively reasonable fear of violence. The violations did not involve violence, nor did they convey a threat of violence. *See Black v. Black*, 308 So. 3d 269, 271 (Fla. 2d DCA 2020). Indeed, Halmaghi's wife acknowledged this fact in her letter to the State Attorney's Office when she explicitly stated, "[h]e is not doing anything threatening, just

[*] We note our colleague's concurring opinion discussing the standard for extending a repeat violence injunction given the language of 784.046, Florida Statutes. As the parties have neither raised nor briefed that specific issue, we decline to address it here sua sponte.

trying to prove he is above the law." Nor did the violations involve inflammatory, derogatory, or pugnacious communications between the Halmaghis and Cardon. *Cf. Kirton*, 120 So. 3d at 194 (upholding an extension of a repeat violence injunction as "a close call" when, upon completing pretrial diversion, respondent confronted petitioner's wife at a grocery store, calling her names and making obscene gestures, and petitioner received harassing phone calls at his home in the middle of the night). In fact, the violations did not involve any contact or communication between the Halmaghis and Cardon.

Although relevant to the reasonable fear analysis, a non-violent or non-threatening violation of an injunction (by itself) is not enough to establish a continuing fear of future harm on the part of the petitioner. *See Frost*, 320 So. 3d at 822 (reversing extension of dating violence injunction where respondent violated injunction by joining a prohibited social group); *Bacchus v. Bacchus*, 108 So. 3d 712, 715 (Fla. 5th DCA 2013) ("Evidence that Husband had communicated with the Wife through third parties is not enough, standing alone, to show a reasonable fear of continuing violence, particularly when the subject of the communications is reconciliation."). Of course, when such violations fail to create an objectively reasonable fear of violence, a petitioner may still seek relief through contempt or criminal proceedings. *See S.C. v. A.D.*, 67 So. 3d 346, 349 (Fla. 2d DCA 2011) (stating that had A.D. shown that S.C. violated the terms of the domestic violence injunction, "the appropriate course of action would have been to seek relief for the violation of the existing injunction, not to issue another one." (footnote omitted)). Without more, though, a trial court may not permanently extend an injunction.

Because Halmaghi failed to show an objectively reasonable fear of future violence, the trial court lacked a legally sufficient basis to permanently extend the injunction. Thus, we reverse and remand with instructions for the trial court to vacate the order extending the injunction for protection against repeat violence and stalking.

As for the remaining two issues Cardon has raised, we decline to reach them. Given our reversal of the permanent extension

order, the original injunction has expired as of August 2021. Because the injunction is no longer in effect, there is no need to address the modification issue. We also decline to reach the contempt issue, as the injunction's expiration negates any potential that Cardon will be subject to the suspended sentence under the trial court's oral contempt ruling.

REVERSED and REMANDED.

WINOKUR, J., concurs; TANENBAUM, J., concurs in result with opinion.

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

TANENBAUM, J., concurring in result.

Section 784.046(2), Florida Statutes, creates "a cause of action for an injunction for protection in cases of repeat violence." A victim of "repeat violence" has standing to seek this type of injunction, meaning the petitioner must aver under oath that the respondent engaged in "two incidents of violence or stalking" directed toward him. *Id.* (1)(b), (2)(a). One of those incidents must have occurred "within 6 months of the filing of the petition." *Id.* (1)(b). Unlike for a cause of action for a domestic violence injunction or a dating violence injunction, the statute does not give a repeat-violence petitioner the alternative of showing "reasonable cause to believe he or she is in imminent danger of becoming the victim of another act" of violence in the place of establishing actual acts of "violence" against the petitioner, as that term is defined. *Compare id.*, *with id.* (2)(b); *and* § 741.30(1)(a), Fla. Stat. "The trial court must find that two incidents of violence occurred." *Russell v. Doughty*, 28 So. 3d 169, 170 (Fla. 1st DCA 2010).

My quibble with the majority in this case is its suggestion that to obtain an extension of an expiring repeat-violence injunction, a petitioner need only show "there is a continuing reasonable fear

that an act of violence is likely to occur in the future." I do not see where this alternative basis comes from. In the context of the repeat-violence injunction on review in this case, a belief that additional violence is imminent could come into play only to the extent it is a defined component of an act of violence alleged as a basis for the injunction.

For example, in *Russell* (relied on in part by the majority), this court upheld the denial of a repeat-violence injunction petition that alleged assault as the act of violence because the crime of assault has as one of its components the fear of imminent violence. *See Russell*, 28 So. 3d at 170 (noting the absence of any "indication that Appellant threatened to do violence, or that he took some action that could have created a well-founded fear that violence was imminent"); *see also* § 784.011(1), Fla. Stat. (2008) (defining assault as "an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.").

The majority also relies on this court's decision in *Power v. Boyle*, 60 So. 3d 496 (Fla. 1st DCA 2011), which further illuminates my point. There, the court addressed a petition for a repeat-violence injunction that alleged stalking as the basis. A petition for a repeat-violence injunction based on stalking necessarily will involve fact questions of whether the petitioner suffered sufficient distress or was placed in fear of suffering harm at the hands of the respondent. Both stalking and aggravated stalking are included in the definition of "violence" for the purpose of considering whether to issue a repeat-violence injunction. *See* § 784.046(1)(a), Fla. Stat. Stalking can be the repeated harassment of another. *See* § 784.048(2), Fla. Stat. Harassment involves "a course of conduct directed at a specific person which causes *substantial emotional distress* to that person." *Id.* (1)(a) (emphasis supplied). Stalking becomes aggravated if it is accompanied by a "credible threat," which is one that "places the person who is the target of the threat in reasonable fear" of harm. *See id.* (1)(c), (3).

It was in the context of these definitions that the court in *Power* considered whether the "incidents would cause a reasonable person to believe that physical violence was imminent." *Power*, 60

So. 3d at 500. The decision is limited in application to repeat-violence cases in which stalking is the alleged violence. It does not stand for some broader proposition. In fact, the *Power* decision distinguishes another decision from this court regarding a repeat-violence injunction based on stalking, *Lukacs v. Luton*, 982 So. 2d 1217 (Fla. 1st DCA 2008). *See Power*, 60 So. 3d at 500 ("We find *Lukacs* to be distinguishable because the respondent's actions in that case were much more threatening than any of the actions of Ms. Power and Mr. Fulford in this case."). The bottom line here for me is this, based on the statutory text governing repeat-violence injunctions: Before a petitioner can obtain an extension of a repeat-violence injunction, he must prove the occurrence of another incident of violence following rendition of the injunction, and not just conduct on the part of the respondent that places the petitioner in fear that a prior act of violence might occur again. The analysis I apply in this case, then, differs from that of the majority. Still, we all end up in the same place, agreeing that the injunction should be reversed.

I note that the decisions from the Third and the Fifth Districts cited by the majority to support the proposition are of no help because they are lacking in any real textual analysis. *Cf. Kirton v. McKissick*, 120 So. 3d 193 (Fla. 5th DCA 2013); *Patterson v. Simonik*, 709 So. 2d 189 (Fla. 3d DCA 1998). They make no effort to explain why the continuing-reasonable-fear-of-future-violence test used for extending a domestic violence injunction should apply to an extension of a repeat-violence injunction, even though there is a distinct difference in the statutory text regarding each. To add this test to the analysis of whether a repeat-violence injunction should be extended is to read language into section 784.046(2)(a) that is not there—language, in fact, that the Legislature presumably chose to omit.

If I may be frank, this whole situation really borders on the ridiculous. Both the original injunction and the modified injunction now on review smack of being punitive rather than protective—and punitive as judicial intervention upon a trivial spat between two neighbors who cannot figure out how not to be completely awful toward each other. As the trial court admitted in a later hearing, the injunction required Mr. Cardon to stay within "the four walls of [his] house," unless he was leaving or returning

to his neighborhood or going across the street to get his mail. Because Messrs. Cardon and Halmaghi are practically next-door neighbors, the geographic zone of exclusion (with a 500-foot radius originating from Mr. Halmaghi's property) imposed by the trial court overlaps Mr. Cardon's property and a sizable portion of the street on which he lives. Indeed, the injunction precluded Mr. Cardon from visiting his neighbor across the street. The exclusionary swath carved out by the injunction is so large that Mr. Cardon had to seek court permission even to use his backyard and take his trash to the curb at the end of his driveway (both of which Mr. Halmaghi opposed, by the way). In essence, the trial court subjected Mr. Cardon to house arrest—in a civil proceeding—because of a misdemeanor battery and an argument.

The protection afforded by a repeat-violence injunction can include both a court-ordered preclusion against any further acts of violence (under penalty of contempt) and other relief deemed by the trial court as "*necessary* for the protection of the petitioner." § 784.046(7)(a), (b), Fla. Stat. (emphasis supplied). Let us remember that the two incidents of "violence" supporting the original petition were the following: one occasion of misdemeanor battery and one occasion of some verbal altercation. The final judgment of injunction rendered against Mr. Cardon contained no explanation and no findings of fact to justify its draconian restrictions on his enjoyment of his own property as necessary to protect against another altercation between the two neighbors. Yes, the original injunction is not on appeal here. But the trial court had set that injunction to expire in August of last year. Whatever the facts that formed the foundation for the trial court's conclusion that this overly broad injunction was necessary to protect Mr. Halmaghi, those same facts presumably supported the trial court's decision to limit the duration of that protection, for better or worse. Once the final judgment was rendered, there had to be "a change in the facts or circumstances forming a foundation of the final decree" before it could be modified. *Seaboard Rendering Co. v. Conlon*, 12 So. 2d 882, 883 (Fla. 1943).

Like the majority, I support reversal because the record is devoid of any evidence on this front. As I already explained, however, the evidence I am looking for relates to whether there was another act of "violence" (as defined in the statute) committed

after entry of the original injunction. Mr. Halmaghi presented none of this. Instead, he presented overwrought accusations from his wife that intimated stalking, but really were just bizarre complaints about Mr. Cardon looking at him the wrong way, of skirting the border of the 500-foot exclusionary zone, and of Mr. Cardon's being observable at all in the neighborhood (including in his own backyard). If stalking truly had been the basis for Mr. Halmaghi's request to extend the injunction, this does not cut it. He had an obligation to present evidence that established the components of stalking. His evidence came nowhere close to establishing even the minimum—repeated harassment resulting in his own "emotional distress."

Again, entitlement to a repeat-violence injunction is statutorily premised entirely on proven incidents of violence. The terms of such an injunction should be tailored to what is necessary to protect the petitioner based on the circumstances surrounding those prior incidents. Any extension of that injunction likewise should be tailored to any change in necessity as revealed by any post-injunction evidence of additional violence. I, for one, am hard-pressed to see how the terms of the injunction were necessary to protect Mr. Halmaghi in the first place. I certainly can find no evidence in the record to support making permanent an injunction with such a tenuous foundation—which also potentially implicates Mr. Cardon's constitutional rights to due process and to enjoyment of his property. The trial court's involvement in this ongoing petty dispute between neighbors has gone on long enough. I join in the effort to bring it to a close.

Jason Cromey of Cromey Law, P.A., Pensacola, for Appellant.

Brian Halmaghi, pro se, Appellee.