FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-3142

JASON ASHLEY STEVENS,

Appellant,

v.

NICOLE A. HUDSON,

Appellee.

On appeal from the Circuit Court for Duval County.
W. Collins Cooper, Judge.

August 31, 2022

PER CURIAM.

Appellant seeks review of a domestic violence injunction sought by his wife arising from various arguments in their home. We reverse because the hearing evidence was legally insufficient to support the injunction.

To obtain an injunction for protection against domestic violence, Appellee had to show that she was either a victim of domestic violence or had reasonable cause to believe that she was in "imminent danger" of becoming a victim of domestic violence. § 741.30(6)(a), Fla. Stat. (2021); *Randolph v. Rich*, 58 So. 3d 290, 292 (Fla. 1st DCA 2011). Section 741.28(2), Florida Statutes defines "domestic violence" as:

> [A]ny assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

In determining whether a petitioner's fear of domestic violence is objectively reasonable, trial courts "consider the current allegations, the behavior of the parties in the relationship, and the history of the relationship." *Hobbs v. Hobbs*, 290 So. 3d 1092, 1094 (Fla. 1st DCA 2020); *see also Gustafson v. Mauck*, 743 So. 2d 614, 616 (Fla. 1st DCA 1999). Although trial courts have broad discretion to grant domestic violence injunctions, the question of whether the evidence is legally sufficient to justify imposing an injunction is a question of law that we review de novo. *Pickett v. Copeland*, 236 So. 3d 1142, 1143–44 (Fla. 1st DCA 2018).

In this case, the trial court did not identify the specific facts causing it to issue the injunction. Rather, it found Appellee's testimony broadly credible as to a collection of occurrences she alleged. At the hearing, Appellee described just one incident close in time to her September 2021 petition. She alleged that during a heated discussion between the parties about marriage and custody, Appellant told her to "take about five steps right now." When Appellee asked why, Appellant turned and glared at her. Appellee testified that she interpreted this back-and-forth as though Appellant might hit her, although "he did not verbally state that he was going to hit me."

Appellee's other allegations described various incidents in their home occurring in February and March 2021, more than six months before she filed the petition. These included arguments where Appellant punched a wall, punched himself, pointed and put his fist in Appellee's face, and told Appellee during a custody discussion "that he would like borrow, steal, or kill over [their daughter] if [Appellee] attempted to remove her." Appellee described another argument when Appellant repeatedly punched the mattress across the queen-sized bed from where Appellee was sitting. Finally, one of Appellant's Facebook posts was admitted into evidence, which said "[y]a know, when you accuse someone of

something and it's true, you say it to their face. If the accusation is false you run and hide. Run rabbit, run." The post was not itself attributed to a particular person or situation, but Appellee believed it to be telling her to run and hide.

Taking account of the context of the parties' behavior, relationship, and history, *Hobbs*, 290 So. 3d at 1094, these various allegations occurred in the context of emotional discussions between the parties about their seemingly crumbling relationship and potential divorce after being married for more than a decade. Appellee feared becoming a victim of violence but also conceded that Appellant had never physically harmed her. Appellant also testified that he had never hit or physically harmed Appellee. He denied the various allegations and considered the petition to be a strategic ploy to facilitate Appellee's divorce intentions.

In the final analysis, for the injunction to stand, the party seeking the injunction had to show evidence of either being a victim of domestic violence, of "at the very least" an objectively reasonable fear of "imminent" violence. *Young v. Young*, 96 So. 3d 478, 479 (Fla. 1st DCA 2012). Here, the most recent allegation, a glare and directive to "take about five steps" did not constitute domestic violence, nor meet the objective test of demonstrating an "imminent danger" of becoming a domestic violence victim. Although an act of domestic violence need not be completed to seek injunctive relief, if fear alone is the "reasonable cause" alleged to support the injunction, then not only must the danger feared be "imminent," but the rationale for the fear must be objectively reasonable as well. *Gustafson*, 743 So. 2d at 615. Appellee herself did not know what Appellant meant by his "five steps" statement, other than to interpret it as a threat to do physical harm. But this was unfounded speculation. The same applies to the obscure Facebook post that threatened Appellee no harm and was not clearly directed at her. Appellee's other allegations describing various earlier marital arguments likewise fall short of demonstrating that an act of domestic violence occurred or was imminent. *See, e.g., Young*, 96 So. 3d at 479 (noting that "mere uncivil behavior that causes distress or annoyance" cannot support a domestic violence injunction); *Randolph,* 58 So. 3d at 292 (recognizing that "the law requires more than general relationship problems and uncivil behavior to support the issuance of an

injunction"); *Oettmeier v. Oettmeier*, 960 So.2d 902, 904 (Fla. 2d DCA 2007) (reversing a domestic violence injunction where the evidence only "painted . . . a typical, albeit unfortunate, picture of a domestic relationship gone awry").

Absent an incident of domestic violence or an objectively reasonable basis for fearing imminent domestic violence, the final judgment must be reversed and the injunction vacated.

REVERSED and REMANDED with instructions to VACATE the injunction.

OSTERHAUS, WINOKUR, and LONG, JJ., concur.

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

Christine C. Leonard, Saint Augustine, for Appellant.

Mariya Zarakhovich, of the Weldon Law Group, PLLC, Jacksonville, for Appellee.