

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

BRIAN B. STOVER,)	
)	
Appellant,)	
)	
v.)	Case No. 2D18-4820
)	
ASHLEY M. STOVER,)	
)	
Appellee.)	
_____)	

Opinion filed January 3, 2020.

Appeal from the Circuit Court for Pinellas
County; Jack Helinger, Judge.

Roberta E. Blush and K. Dean Kantaras of
K. Dean Kantaras, P.A., Palm Harbor, for
Appellant.

No appearance for Appellee.

LaROSE, Judge.

Brian B. Stover (Father) appeals the trial court's final judgment of injunction for protection against domestic violence with minor children.¹ Specifically, he contests (1) the trial court's determination that the evidence warranted an injunction, and (2) the trial court's award of exclusive timesharing to Ashley M. Stover (Mother). We affirm the first issue without comment. As to the second issue, our record indicates

¹We have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A); see also Merkle v. Guardianship of Jacoby, 912 So. 2d 593, 594 (Fla. 2d DCA 2005) ("[T]he issue of mootness does not raise a question about our jurisdiction to decide the case.").

that the injunction has expired and the timesharing award is no longer in effect. Thus, we cannot grant Father any effectual relief, and the second issue is moot.² See generally Merkle v. Guardianship of Jacoby, 912 So. 2d 595, 600 (Fla. 2d DCA 2005) ("An issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect." (quoting Godwin v. State, 593 So. 2d 211, 212 (Fla. 1992))).

Facts

Mother filed a form petition for injunction for protection against domestic violence. The form provided several timesharing options:

- a. "[p]etitioner requests that the Court provide a temporary parenting plan, including a temporary timesharing schedule with regard to, the minor child or children of the parties";
- b. "[p]etitioner requests that the Court order supervised exchange of the minor child(ren) or exchange through a responsible person designated by the Court";
- c. "[p]etitioner requests that the Court limit time-sharing by Respondent with the minor child(ren)";

²The injunction's expiration did not render the first issue moot. See generally Young v. Smith, 901 So. 2d 372, 373 (Fla. 2d DCA 2005) ("[A] determination that a person had either victimized a domestic partner with an act of violence or placed that domestic partner in reasonable fear of imminent danger, is a serious finding of fact that can have many unintended collateral consequences."); see, e.g., Jacquot v. Jacquot, 183 So. 3d 1158, 1159 (Fla. 5th DCA 2015) ("Although the final judgment of injunction for protection in the present case had expired by the time Appellant filed his motion for relief from final judgment, the trial court incorrectly denied the motion as moot. Injunctions for protections against domestic violence fall under the third exception to the usual rule of mootness because of the collateral legal consequences that may flow from the injunction.").

- d. "[p]etitioner requests that the Court prohibit time-sharing by Respondent with the minor child(ren) because Petitioner genuinely fears that Respondent imminently will abuse, remove, or hide the minor child(ren) from Petitioner"; and
- e. "[p]etitioner requests that the Court allow only supervised time-sharing by Respondent with the minor child(ren)."

Mother marked options (a) and (b). The form then permitted Mother to summarize the relief sought. The summarized options were, in pertinent part:

- h. "granting Petitioner on a temporary basis 100% of the time sharing with the parties' minor child(ren)"; and
- i. "establishing a temporary parenting plan including a temporary time-sharing schedule for the parties' minor child(ren)."

Mother marked option (i).

The trial court held an evidentiary hearing on the petition. At the end of the hearing, the trial court initially awarded Father supervised timesharing. When his counsel reminded the trial court that Mother had requested no such relief, the trial court stated it would "deal with timesharing at some other time." The trial court further explained that "right now, the temporary order will remain in full force and effect. I will be preparing the final judgment. There will be no timesharing under the temporary order until I've had a chance to have a full evidentiary hearing." Father's counsel agreed to this procedure. The trial court subsequently rendered the final judgment awarding Mother exclusive timesharing, without holding a further hearing. The terms of the injunction expired on November 28, 2019.

Analysis

Father argues that the trial court violated his due process rights by awarding Mother exclusive timesharing of the parties' minor children because the relief was not requested in the pleadings and Father "had no notice that a limitation or prohibition of his timesharing would be adjudicated." We agree.

"[C]ourts are not authorized to award relief not requested in the pleadings. To grant unrequested relief is an abuse of discretion and reversible error." Abbott v. Abbott, 98 So. 3d 616, 617-18 (Fla. 2d DCA 2012) (citations omitted); see, e.g., Davis v. Lopez-Davis, 162 So. 3d 19, 21 (Fla. 4th DCA 2014) (concluding that "the court erroneously awarded the wife relief that she did not request" "by denying the husband any visitation" because the wife "requested that the husband be allowed supervised visitation" and "did not request that the husband be denied any timesharing with the child"). "Additionally, a court should not grant such relief absent proper notice to the parties." Worthington v. Worthington, 123 So. 3d 1189, 1191 (Fla. 2d DCA 2013) (citing Sinton v. Sinton, 749 So. 2d 532, 533 (Fla. 2d DCA 1999)). Granting unrequested relief absent proper notice is a violation of due process. See Buschor v. Buschor, 252 So. 3d 833, 834-35 (Fla. 5th DCA 2018) (concluding that the trial court violated Former Wife's due process rights when it awarded unrequested relief without proper notice).

Mother requested a temporary timesharing schedule with supervised exchanges of the minor children. Mother's petition did not give Father notice that the trial court might limit or prohibit his timesharing. When the trial court recognized that Mother did not request such relief, it deferred ruling on the timesharing issue until it conducted an evidentiary hearing on the matter, a hearing that never occurred. By awarding Mother unrequested relief without proper notice, the trial court violated Father's due process rights. See id. ("The record confirms that Former Wife did not

have notice that the trial court might . . . award any more than equal timesharing to Former Husband, which is the amount he requested in his petitions for modification. This lack of notice and the trial court's ruling constituted relief outside of that requested in Former Husband's pleadings in violation of Former Wife's due process rights.").

Although the trial court erred by awarding Mother exclusive timesharing, we are compelled to dismiss this issue as moot because the injunction—including the erroneous timesharing award—has expired. See Julian v. Bryan, 710 So. 2d 1037, 1039 (Fla. 2d DCA 1998) ("Although the trial court erred by awarding temporary residential custody, we must conclude that the Mother's appeal of the trial court order is moot because the temporary custody period with the Father has been completed. . . . Because the trial court's order for temporary custody was error, that order should not be utilized as a basis for a new order for a permanent change of custody."); see also Cancellari v. Rance, 779 So. 2d 373, 374 (Fla. 2d DCA 2000) ("There are substantial problems with the circuit court's order, but the period of 'make up visitation' has ended. Therefore, we dismiss as moot the issues addressing the propriety of the contempt determination, the contempt sanction and the order to show cause.").

Affirmed in part; dismissed in part.

VILLANTI and SLEET, JJ., Concur.