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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

WILLIAM R. BRUNGART, Appellant, v. JUDY LYNN PULLEN, Appellee.	)	Case No. 2D19-2511

Opinion filed June 3, 2020.

Appeal from the Circuit Court for Manatee County; Diana Moreland, Judge.

Tracy B. Pratt of Tracy Pratt, P.A., Palmetto, for Appellant.

Judy Lynn Pullen, pro se.

ROTHSTEIN-YOUAKIM, Judge.

William R. Brungart appeals a final judgment of injunction for protection against dating violence entered against him and in favor of Judy Lynn Pullen, his former girlfriend. We reverse because the evidence failed to establish that Pullen had reasonable cause to believe that she was in imminent danger of becoming the victim of another act of dating violence.

On May 16, 2019, Pullen filed a petition for an injunction against Brungart for protection against dating violence. At the hearing on the petition, Pullen testified that she and Brungart had been involved in an on-again, off-again relationship for about a year and a half. She described an argument they had had on May 2—two weeks before she filed her petition—during which Brungart had demanded the passcode to unlock her cellphone. When she refused, Brungart had grabbed her wrist and pinned her down until she gave him the passcode.

On May 10, Pullen and Brungart ended their relationship for the last time, and Pullen told Brungart not to contact her again. Nevertheless, over the next few days, Brungart continued to send text messages to Pullen, calling her names and criticizing her. He also went to her apartment complex a few times and, after learning that she had moved out, represented himself to the property manager as a furniture delivery person in an attempt to find out more information. During this period, he also contacted Pullen's son to inquire about her whereabouts and sent various text messages to Pullen's ex-husband, with whom she had moved back in. Some of the texts to Pullen's ex-husband included videos of Brungart and Pullen engaging in sexually explicit conduct.

The evidence established that Brungart had sent such videos to Pullen's ex-husband following a previous breakup in December 2018. Around that same time, Brungart had left his business card on the windshield of Pullen's car, which was parked in the driveway of her ex-husband's house; Pullen had moved out of her apartment and back in with her ex-husband after that breakup, too. Near the car, Brungart had left two chairs that she had given back to him during the breakup. Pullen testified that this

incident had made her feel like he was stalking her because the house is in a gated community. Pullen testified that she was afraid of Brungart, but she admitted that he has never threatened to harm her physically. Rather, at some point, he had threatened to show the sexually explicit videos to others in her family.

At the conclusion of the hearing, the trial court determined that "violence had occurred" and found that Pullen had suffered harassment and embarrassment. The court entered a final judgment of injunction for protection against dating violence, which we review for abuse of discretion. See Alderman v. Thomas, 141 So. 3d 668, 672 (Fla. 2d DCA 2014). While "a trial court has broad discretion in entering an injunction for protection against violence[,] . . . it must be supported by competent, substantial evidence." Id. (citing Arnold v. Santana, 122 So. 3d 512, 513 (Fla. 1st DCA 2013)). "Whether the evidence is legally sufficient to support issuance of the injunction is a legal question subject to de novo review." Schultz v. Moore, 282 So. 3d 152, 154 (Fla. 5th DCA 2019) (citing Sumners v. Thompson, 271 So. 3d 1232, 1233 (Fla. 1st DCA 2019)).

Section 784.046(2)(b), Florida Statutes (2018), permits any person to seek an injunction for protection against dating violence when he or she has "reasonable cause to believe he or she is in imminent danger of becoming the victim of an act [or another act] of dating violence." The statute defines "violence" 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). In determining whether reasonable cause exists, "the trial court must consider the current allegations, the parties' behavior within the relationship, and the history of the

relationship as a whole." Gill v. Gill, 50 So. 3d 772, 774 (Fla. 2d DCA 2010) (quoting Giallanza v. Giallanza, 787 So. 2d 162, 164 (Fla. 2d DCA 2001)).

In this case, the trial court's conclusion that Pullen had been the victim of one act of violence was supported by Pullen's testimony that Brungart had grabbed her wrist and pinned her down during an argument they had had while they were still dating. But to obtain an injunction for protection against dating violence, "[i]t is not sufficient to have been the victim of one incident of dating violence in the past." Alderman, 141 So. 3d at 669. Rather, section 784.046 specifically requires that the petitioner have "reasonable cause to believe he or she is in *imminent danger* of becoming the victim of an act of dating violence" *in the future.* See § 784.046(2)(b) (emphasis added). This differentiates a dating violence injunction from other violence injunctions. See, e.g., §§ 784.046(2)(a), (c), .0485; see also Schultz, 282 So. 3d at 153 ("Unlike injunctions for protection against repeat violence and sexual violence under section 784.046(2)(a), (c) and injunctions for protection against stalking under section 784.0485, dating violence injunctions must be predicated on the reasonable prospect of a future violent act."). Notably missing from the trial court's analysis, however, were any findings to support its conclusion that Pullen had reasonable cause to believe that she was in imminent danger of becoming the victim of an (or in this case, another) act of dating violence.[1]

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[1]The trial court did not address that requirement at the hearing, and the "Findings" included in its amended written judgment provide only,

> After hearing the testimony of each party present and of any witnesses, or upon consent of Respondent, the Court finds, based on the specific facts of this case, that Petitioner is a victim of domestic violence or has reasonable cause to believe that he/she is in imminent danger of becoming a victim of domestic violence by Respondent.

And because we agree with Brungart that the record would not support such a conclusion, we must reverse.

First, there was no evidence to support a conclusion that Pullen had reasonable cause to believe that she was in imminent danger of physical violence. Apart from the incident giving rise to their most recent breakup, Pullen testified that Brungart had never physically harmed her and had never threatened to physically harm her. While the text messages Brungart sent to Pullen were unquestionably uncivil, none of the messages threatened physical violence. Cf. Alderman, 141 So. 3d at 669-71, 672 (holding that although the petitioner established evidence of one incident of violence by her ex-boyfriend, she did not establish that she was in imminent danger of becoming the victim of *another* act of violence where the evidence established only that she received many text messages from him, that he drove by her house and her son's bus stop, and that she believed he had Facebook stalked her). Indeed, Pullen testified that she was afraid not that Brungart would physically harm her but that he would continue to share their sexually explicit videos with others.

Furthermore, there was no evidence to support a conclusion that Pullen had reasonable cause to believe that she was in imminent danger of being "stalked" for purposes of section 784.046. See § 784.046(1)(a) (including "stalking" in the definition of "violence"). Stalking occurs when a person "willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person." § 784.048(2). " 'Harass' means to engage 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). Cyberstalking occurs when a person "engage[s] in a course of conduct to communicate,

or . . . cause[s] to be communicated, words, images, or language by or through the use of . . . electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose." § 784.048(1)(d).

At the hearing, the trial court concluded that the injunction was warranted because Pullen had been "stalked, she was battered physically, and that she has been humiliated through methods using electronic harassment . . . with the full-on intent" to embarrass and harass her. In determining that Brungart had stalked Pullen, the trial court found that Brungart had gone to her apartment complex and, after learning that she had moved out, had represented himself as a furniture delivery person in an attempt to elicit information from the property manager about her; had sent text messages to Pullen, her adult son, and her ex-husband; and had sent sexually explicit videos to her ex-husband.

Of course, a determination that an act of violence has already occurred is certainly relevant to and would support a determination that violence will occur in the future. The conduct on which the court relied to determine that Brungart had stalked Pullen, however, was insufficient to establish stalking within the meaning of section 784.048(2).

Although harassment constitutes stalking, Brungart's text messaging to Pullen and visits to her apartment complex in the days immediately following their most recent breakup fall short of meeting the statutory definition of "harassment" in section 784.048(1)(a). "In determining whether substantial emotional distress occurred, the courts look to the standard of a reasonable person in the petitioner's shoes." Leach v. Kersey, 162 So. 3d 1104, 1106 (Fla. 2d DCA 2015) (citing Jones v. Jackson, 67 So. 3d

1203, 1204 (Fla. 2d DCA 2011)). Especially given the couple's history of breaking up and then getting back together, a reasonable person in Pullen's shoes would likely expect some communication or attempt at communication from Brungart in the days following another such breakup—not all of it particularly kind. Cf. id. (reversing a final judgment of injunction against stalking and explaining that certain phone calls, Facebook messages, and "friend" requests would not cause substantial emotional distress because "[a] reasonable woman who had an eighteen-month affair with another woman's husband might well expect to hear the scorn of an angry wife"). And we again emphasize that Brungart sent the messages and made the visits over the course of only a few days immediately following the breakup. Cf. Khan v. Deutschman, 282 So. 3d 965, 968 (Fla. 1st DCA 2019) (upholding the trial court's determination that a reasonable person in the petitioner's shoes would suffer substantial emotional distress after receiving messages from her ex-boyfriend *for three months* after the petitioner unequivocally told him to stop contacting her and had her attorney send a cease and desist letter to him). Nothing in the hearing suggested that Brungart would continue to send such messages or contact Pullen in the future; in fact, Brungart testified that he had no intention or desire to speak to or see Pullen ever again. Accordingly, the text messages did not constitute "harassment" within the meaning of section 784.048(1)(a). And for the same reasons, they did not constitute cyberstalking. See § 784.048(1)(d) (defining cyberstalking); Scott v. Blum, 191 So. 3d 502, 504 (Fla. 2d DCA 2016) ("[C]yberstalking is harassment via electronic communications." (citing Murphy v. Reynolds, 55 So. 3d 716, 717 (Fla. 1st DCA 2011))).

The incident involving the two chairs also falls short of constituting harassment. Brungart's act of returning two chairs to Pullen, along with his business card, arguably served a "legitimate purpose," but even if it did not, none of the evidence presented at the hearing established that this isolated incident—which occurred six months before the hearing and following the parties' first breakup—caused substantial emotional distress to Pullen.

Moreover, even to the extent that it may reasonably have caused Pullen substantial emotional distress, Brungart's sending of videos and communications to third parties such as Pullen's ex-husband and her son also does not qualify as harassment of Pullen for purposes of section 784.048(1)(a) because nothing in the record establishes that those videos and communications were *directed at* Pullen. See § 784.048(1)(a) (" 'Harass' means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person. . . ." (emphasis added)); see also Horowitz v. Horowitz, 160 So. 3d 530, 531-32 (Fla. 2d DCA 2015) (explaining that the respondent's Facebook post about the petitioner did not constitute stalking because it was not directed at the petitioner); Santiago v. Leon, 45 Fla. L. Weekly D48 (Fla. 3d DCA Jan. 2, 2020) (explaining that to the extent that the respondent's conduct regarding the petitioner was directed at the petitioner's father rather than at the petitioner, it was insufficient to constitute harassment of the petitioner); Logue v. Book, 44 Fla. L. Weekly D2083 (Fla. 4th DCA Aug. 14, 2019) (distinguishing between conduct being "aimed" at a specific person as a factual matter and being "directed at" a specific person for purposes of determining whether it qualifies as harassment). And for the same reason, it does not constitute cyberstalking. See §

784.048(1)(d)(1) (providing that cyberstalking occurs when a person "engage[s] in a course of conduct to communicate . . . words, images, or language by or through the use of . . . electronic communication, directed at a specific person" (emphasis added)); see also Scott, 191 So. 3d at 504 (explaining that emails sent to more than 2000 recipients about Blum did not fall within the meaning of cyberstalking in section 784.048(1)(d)(1) because they were not "directed at" him given that "[t]he emails were not 'addressed' to Mr. Blum, and nothing indicate[d] that Mr. Blum was an intended recipient"). In short, none of the evidence established that stalking had occurred, much less that it would occur in the future.

In conclusion, the evidence presented at the hearing did not show that Brungart had done anything to give Pullen reasonable cause to believe that she was in imminent danger of becoming the victim of another act of dating violence. Consequently, we conclude that competent substantial evidence did not support the dating violence injunction and that the trial court abused its discretion by issuing it. Accordingly, we reverse the final judgment of injunction for protection against dating violence.[2]

Reversed and remanded.

MORRIS and SALARIO, JJ., Concur.

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[2]Because we reverse on this ground, we do not reach Brungart's remaining arguments.