

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

DAVID BLACK,)
)
 Appellant,)
)
 v.)
)
 CINDY BLACK,)
)
 Appellee.)
 _____)

Case No. 2D19-3738

Opinion filed December 16, 2020.

Appeal from the Circuit Court for Sarasota
County; Donna Padar Berlin, Judge.

Daniel W. Yuter of Tobaygo Law, Sarasota,
for Appellant.

Cindy Black, pro se.

BLACK, Judge.

David Black, the former husband, appeals from the orders extending and amending the injunction for protection against domestic violence entered against him, as well as the order denying his motion to dissolve or modify the injunction. Because Cindy Black, the former wife, failed to present evidence legally sufficient to warrant

denial of the former husband's motion to dissolve and to otherwise justify extension of the injunction, we reverse.

The injunction for protection against domestic violence was uncontested and entered in October 2017, during the pendency of the parties' dissolution proceeding. The injunction was to remain in place for a period of two years. The parties were divorced in July 2018; as part of the marital settlement agreement, the former husband was allocated the marital residence and has continued to reside there. Subsequent to the parties' divorce and prior to the expiration of the injunction, the former husband became aware that the former wife had moved into a home in the same neighborhood and within a mile of the marital residence. In May 2019, the former husband moved to dissolve the injunction, alleging that the injunction no longer served a valid purpose and citing an evident lack of fear on the part of the former wife and the possibility of an inadvertent violation given the proximity of the homes to each other and the shared neighborhood amenities. In August 2019, the former wife filed a motion to extend the injunction.

A hearing on the parties' respective motions was held; both parties testified and documentary evidence was presented. The trial court orally denied the motion to dissolve the injunction and granted the motion to extend; corresponding orders were rendered thereafter.

"[W]hen a party seeks to extend a nonpermanent injunction against domestic violence, he or she must demonstrate that an additional act of domestic violence has occurred or that there is a reasonable fear of imminent domestic violence." Trice v. Trice, 267 So. 3d 496, 501 (Fla. 2d DCA 2019); see also Giallanza v. Giallanza,

787 So. 2d 162, 164 (Fla. 2d DCA 2001) ("When moving for an extension of a preexisting injunction, the petitioner must establish either that additional domestic violence has occurred or that, at the time the petition for extension is filed, he or she has a continuing reasonable fear of being in imminent danger of becoming the victim of domestic violence."). "[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." Trice, 267 So. 3d at 501.¹

Here, the former wife's motion to extend the injunction failed to allege any actual domestic violence or threats of such violence; the allegations detailed by the former wife do not meet the definition of domestic violence. See § 741.28(2), Fla. Stat. (2019). And the evidence presented at the hearing failed to establish that the former wife has an objectively reasonable fear of future domestic violence. See Giallanza, 787 So. 2d at 164. "The possibility of future contact between the parties is not, without more, sufficient to conclude that the circumstances underlying the injunction remain the same." Hobbs v. Hobbs, 290 So. 3d 1092, 1095 (Fla. 1st DCA 2020) (citing Trice, 267 So. 3d at 500). Moreover, the former wife's motion "d[id] not state even a prima facie

¹As noted in Trice, although the domestic violence injunction statute, section 741.30, Florida Statutes (2019), does not state what a party who seeks to dissolve a domestic violence injunction must prove in order to obtain that relief, our court and others have held that the movant must show "that there has been a change in circumstances since the injunction was entered" such "that the scenario underlying the injunction no longer exists so that the continuation of the injunction would serve no valid purpose." 267 So. 3d at 499 (quoting Spaulding v. Shane, 150 So. 3d 852, 853 (Fla. 2d DCA 2014)).

case for extending the injunction for protection against domestic violence." See Giallanza, 787 So. 2d at 165.

There was no legally sufficient basis for the trial court to extend the injunction against domestic violence or to deny the motion to dissolve the injunction. The two-year period of the original injunction has expired. Accordingly, we reverse the orders on appeal and remand with instructions for the trial court to vacate the third amended injunction for protection against domestic violence.

Reversed and remanded.

LaROSE and STARGEL, JJ., Concur.