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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

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| TERENCE K. WOLFE,<br><br>Petitioner,<br><br>v.<br><br>LISA L. NEWTON,<br><br>Respondent. | ) | Case No. 2D20-1994 |

Opinion filed December 11, 2020.

Petition for Writ of Certiorari to the Circuit Court for Hillsborough County; Frances M. Perrone, Acting Circuit Judge.

Terence K. Wolfe, pro se.

No appearance for Respondent.

LUCAS, Judge.

Terence K. Wolfe has filed a petition for certiorari in this court challenging the circuit court's ruling that he must attend a post-final order hearing and give testimony before he can retrieve his shotgun, semiautomatic pistol, and ammunition from the custody of the Hillsborough County Sheriff's Office. We treat his petition as a petition for a writ of prohibition and grant it.

I.

Lisa Newton and Mr. Wolfe lived on the same street in Tampa. Apparently, Mr. Wolfe became concerned with the manner in which Ms. Newton was keeping her dog and using an adjoining lot. Ms. Newton, in turn, became concerned with the manner in which Mr. Wolfe was monitoring her and her property. On March 17, 2020, Ms. Newton filed a petition for injunction for protection against stalking in the Hillsborough County Circuit Court, alleging that Mr. Wolfe had driven and walked around her house on a few occasions over the past year and recorded her on his mobile phone.

After reviewing Ms. Newton's petition, a circuit judge entered an ex parte temporary injunction for protection against stalking against Mr. Wolfe. In addition to ordering Mr. Wolfe to have no contact with or come within 500 feet of Ms. Newton, her home, or her place of employment, the ex parte injunction required Mr. Wolfe to surrender all of his firearms and ammunition to the Hillsborough County Sheriff's Office. Mr. Wolfe complied with the terms of the ex parte injunction and attended the return hearing that was set for March 25, 2020.

At the conclusion of that hearing, the circuit court entered two orders, both of which contained the same substantive finding. One order denied Ms. Newton's petition; the second order dismissed it. Both orders stated "[t]he [c]ourt does not find evidence of stalking as defined by Florida Statute[] section 784.048 and interpreted by the appellate courts."[1]

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[1]Ms. Newton never challenged either order, nor has she made an appearance in this proceeding. Without deciding the propriety of entering contemporaneous orders that both dismiss and deny a petition under section 784.048, we will refer to the orders collectively in this opinion.

Later that same day, March 25, Mr. Wolfe filed an "Amended [Verified] Motion for Return of Firearms." In his verified motion, he pointed out that the court had both denied and dismissed the petition that had given rise to the ex parte temporary injunction against him. He requested the circuit court enter an order so that the Sheriff's Office would return his firearms and ammunition to him.[2] He did not request a hearing within his motion, nor (as we will explain) should he have needed to. By its own terms, the ex parte temporary injunction was only in effect "until the hearing" that had just concluded in his favor.

Nevertheless, Mr. Wolfe attempted to schedule a hearing with the presiding judge's judicial assistant to facilitate the entry of the order he was told he needed to obtain. Mr. Wolfe informs us that he was unable to obtain a date at that time, but six days later, on March 31, the court sua sponte set a hearing on his motion for June 4, 2020.

The day before the hearing, Mr. Wolfe received an email from the presiding judge's judicial assistant informing him that, due to current public health restrictions, he would need to appear by video conference for his hearing through the "Zoom" website application.[3] Mr. Wolfe replied that he did not have the capability to

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[2]In his motion, Mr. Wolfe relayed that the Sheriff's Office had informed him that it would not return his firearms without a separate court order directing them to do so. On April 2, 2020, the Sheriff's Office sent correspondence to the presiding judge indicating it had "no objection" to returning Mr. Wolfe's firearms. Our opinion should not be read as an endorsement of the sheriff requiring such an order before returning firearms taken in the course of a stalking injunction or the sheriff's ability to assert objections to the return of such firearms absent an independent State interest in holding them.

[3]At the time of these events, Florida courts were under an administrative order that directed chief judges to "take all necessary steps to facilitate conducting

appear by Zoom, but that he could appear by telephone. The court's judicial assistant responded with an email stating that the presiding judge

> has to swear you in and take testimony from you under oath[] about the return of the firearm. It is an evidentiary hearing by law. If you can't utilize the Zoom Video app. then the Motion will be continued for another date. You were mailed the notice of hearing and the Zoom instructions so you have the information.

Her email concluded by emphasizing that this process was per the judge's order. Mr. Wolfe promptly sent an email in response, which stated, in pertinent part:

> I am unaware of any opposition to the motion which, in my opinion, should not even require a hearing, and which should have been granted as soon as it was filed, two months ago. The relief it seeks is entirely ministerial, and not discretionary. . . .
>
> I am unaware of any need for the taking of evidence at a hearing on an uncontested motion, therefore, there is no need, and you have identified none, for the swearing in of anyone. . . .
>
> . . . .
>
> I do not consent to the continuation of anything, as there is no legitimate grounds on which to do so. I, who prevailed in the indicated matter, have waited more than long enough for the return of my property.
>
> Kindly produce the telephone number to call in for tomorrow's hearing. Or the [c]ourt may, if it pleases, have me draft a proposed order compelling the Sheriff immediately to release my property to me, an order to which the Sheriff already has communicated to the [c]ourt he has no objection.

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proceedings with the use of technology" due to a global pandemic illness popularly known as Covid-19. See In re: Comprehensive COVID-19 Emergency measures for the Florida State Courts, Fla. Admin. Order No. AOSC20-23, amend. 2 (2020) (on file with clerk, Fla. Sup. Ct.). Zoom became a widespread video-conferencing platform that many businesses, agencies, and courts utilized to facilitate meetings, discussions, and hearings.

When Mr. Wolfe did not make a video appearance as the court directed, the court entered an order continuing his hearing. That order read:

> Respondent's Motion for Return of Firearms is continued. Both parties appeared via Zoom audio pursuant to COVID-19 advisories. The court required video or live appearance to administer an oath and inquire of Respondent before granting a motion for return of firearms. The matter is reset for June 30, 2020 at 1:00 p.m. for a live hearing for Respondent to appear. Petitioner was advised she may appear if she chooses. However, the inquiry would pertain to the pending motion. The motion is not a vehicle for appeal or re-litigating the underlying matter.

Mr. Wolfe then filed the petition now before us.

II.

Mr. Wolfe has cast a wide net for the appropriate writ to obtain redress, and we can't fault him for doing so. His petition asks for certiorari relief, but in the alternative, he requests a writ of mandamus, prohibition, or quo warranto. His argument is fairly straightforward: the only ostensible basis for seizing his firearms was the ex parte injunction entered on Ms. Newton's petition;[4] when the court later dismissed and

[4]We pause here to observe that there does not appear to be any express statutory authorization for the ex parte seizure of Mr. Wolfe's firearms in this context, and the ex parte order contained no finding and cited no legal authority that would support that provision of the order (it was simply a checked box on a form). Section 784.0485, Florida Statutes (2020), the statute that governs stalking injunctions, does not expressly empower a court to require respondents to surrender their firearms and ammunition on an ex parte basis. Section 790.233, Florida Statutes (2020), would prohibit firearm and ammunition possession if a *final* stalking injunction had been ordered and in effect, but obviously that is not the case here. Mr. Wolfe's firearms were not seized under either sections 790.401 (governing risk protective orders) or 790.08 (governing arrests). It may be that the court's ex parte command to Mr. Wolfe to surrender his firearms and ammunition was relief the court "deem[ed] proper" pursuant to section 784.0485(5)(b)'s ex parte provisions, but if so, it is impossible to tell from the order why the court deemed it.

denied her petition, that injunction was dissolved; since there was no lawful basis for the sheriff to continue holding his firearms, and since his case was over, he should not have to attend an evidentiary hearing to have his property returned to him. His argument touches aspects within each of the extraordinary writs, but since we can resolve this case fully on the basis of prohibition (and thereby avoid extending our extraordinary writ jurisdiction unnecessarily), that is the writ through which we will examine his argument, an argument that we find to be well taken.

Article V, section 4 of the Florida Constitution gives this court the power to issue a writ of prohibition. The First District summarized when a writ of prohibition may be appropriate if a lower tribunal attempts to exercise judicial power it does not have:

> "Prohibition is an extraordinary writ by which a superior court may prevent an inferior court or tribunal, over which it has appellate and supervisory jurisdiction, from acting outside its jurisdiction." Mandico v. Taos Constr., Inc., 605 So. 2d 850, 853 (Fla. 1992). Subject matter jurisdiction is the "[p]ower of a particular court to hear the type of case that is then before it" or "jurisdiction over the nature of the cause of action and relief sought." Fla. Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988) (quoting *Black's Law Dictionary* 767 (5th ed. 1979)). It "means no more than the power lawfully existing to hear and determine a cause." Malone v. Meres, 91 Fla. 709, 109 So. 677, 684 (1926). Although a writ of prohibition is meant to be employed "with great caution and utilized only in emergencies," English v. McCrary, 348 So. 2d 293, 296 (Fla. 1977), it "may be granted when a trial court acts outside of its jurisdiction." Scott v. Francati, 214 So. 3d 742, 749 (Fla. 1st DCA 2017).

Scott v. Hinkle, 259 So. 3d 982, 984 (Fla. 1st DCA 2018).

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That issue is not before us today. We point it out only so that our opinion will not be read as a tacit endorsement of this manner of ex parte seizure in a stalking injunction proceeding.

Prohibition may be appropriate where, as here, a trial court that had subject matter jurisdiction attempts to exercise an unreserved power to adjudicate further substantive matters when a case has definitively concluded. See, e.g., Baden v. Baden, 260 So. 3d 1108, 1114-15 (Fla. 2d DCA 2018) (granting prohibition where trial court, after declaring a voluntary dismissal "a nullity," attempted to retain jurisdiction over a dispute in the management of a trust); Aurora Bank v. Cimbler, 166 So. 3d 921, 927 n.4 (Fla. 3d DCA 2015) ("However, continuing to exercise jurisdiction over the [postjudgment] case for the purpose of compelling a nonparty mediator's discovery requests was an improper and unlawful exercise of the trial court's jurisdiction for which relief by prohibition is proper."); Tobkin v. State, 777 So. 2d 1160, 1164-65 (Fla. 4th DCA 2001) (granting prohibition to prevent trial court from ordering a husband and wife to attend a domestic violence center after they had voluntarily dismissed their underlying domestic violence and dissolution of marriage petitions). This is so because "[t]he rule is firmly established in this State that the trial Court loses jurisdiction of a cause after a judgment or final decree has been entered and the time for filing petition for rehearing or motion for new trial has expired or same has been denied." Travelers Cas. & Sur. Co. of Am. v. Culbreath Isles Prop. Owners Ass'n, 103 So. 3d 896, 899 (Fla. 2d DCA 2012) (quoting Liberty Ins. Corp. v. Milne, 98 So. 3d 613, 615 (Fla. 4th DCA 2012)). The trial court may hold some degree of "case" jurisdiction after a final decree has become final, see Baden, 260 So. 3d at 1111, but only "to conclude ancillary matters involved in the case such as outstanding and unresolved motions for attorney's fees and costs, and similar issues," Tobkin, 777 So. 2d at 1163; cf. Santiago v. U.S. Bank Nat'l Ass'n, 257 So. 3d 1145, 1148 (Fla. 5th DCA 2018) (holding that trial court

could convene a hearing in a dismissed foreclosure lawsuit when the bank requested the return of a promissory note in the court file).[5]

There is no question that the circuit court had lost subject matter jurisdiction over this matter months before the June evidentiary hearing was scheduled to commence. The final orders were entered on March 25 and Ms. Newton never filed an appeal or sought rehearing. See Fla. R. Civ. P. 1.530(b). There was no express reservation of jurisdiction over any matter within either of the orders. Thus, the court had no lawful authority to decide any further substantive matters in this case. See Renovaship, Inc. v. Quatremain, 208 So. 3d 280, 283–84 (Fla. 3d DCA 2016) ("As a general rule, 'a trial court loses jurisdiction upon the rendition of a final judgment and expiration of the time allotted for altering, modifying or vacating the judgment.' The trial court retains jurisdiction to the extent such is specifically reserved in the final judgment or as otherwise provided by statute or rule." (footnote omitted) (quoting Ross v. Wells Fargo Bank, 114 So. 3d 256, 257 (Fla. 3d DCA 2013))); see also Porter v. Chronister, 295 So. 3d 310, 312 (Fla. 2d DCA 2020) ("Once the trial court loses jurisdiction over a case, it may act again in the case only if a motion properly invoking its jurisdiction is timely filed."), reh'g denied (May 14, 2020); Travelers Cas. & Sur. Co. of Am., 103 So. 3d at 899. The only question is whether the hearing the court attempted to convene

[5]In the family law context, the court may also exert "continuing jurisdiction" over certain postjudgment disputes that may arise. See Kozel v. Kozel, 302 So. 3d 939, 945 (Fla. 2d DCA 2019) ("When a trial court renders a final judgment in an action, its jurisdiction over that action is terminated, except that it retains continuing jurisdiction to enforce its judgment."). And in civil actions, Florida Rule of Civil Procedure 1.540 sets forth certain limited grounds for later challenging a judgment before the court that had issued it on the basis of mistake, newly discovered evidence, fraud, and the like. None of these issues are pertinent here.

could, in some way, be said to have been ancillary to the stalking injunction proceeding that had concluded and become final.

If it appeared to us that the scheduled hearing was going to be confined to simply ensuring the prompt return of Mr. Wolfe's property to Mr. Wolfe, perhaps we could deem it as ancillary.[6] But we would be obtuse if we failed to recognize why the court ordered the kind of hearing that it did. This was a hearing where Mr. Wolfe's video or live appearance was mandatory so that the court could compel him to provide testimony under oath and then watch and listen to his responses. Clearly, the court had something it wished to inquire about, and it wanted Mr. Wolfe's sworn answers to its questions. Ms. Newton—whose petition had been dismissed, denied, and become final—was also notified of the hearing so that, presumably, she could appear and participate in some fashion. And the Sheriff's Office took the liberty of notifying the court of its position on Mr. Wolfe's motion in advance of the hearing (which would seem an odd thing to do since the sheriff had no right or further interest in Mr. Wolfe's property). All of which leads us to the inescapable deduction that the court was ordering this evidentiary hearing not to facilitate the return of Mr. Wolfe's seized firearms, but to decide whether there was some independent reason Mr. Wolfe's firearms *ought not* to be returned to him.

That was not a decision the circuit court could make. The case between Ms. Newton and Mr. Wolfe was over and the court's order was final. The court had no lawful authority to compel Mr. Wolfe to testify as a prerequisite to what should have

[6]Though there would seem to be little point in having to have a hearing for the presiding judge to sign an appropriate order directed to the Sheriff's Office.

been the purely ministerial act of returning his property to him. Therefore, we must grant his petition for prohibition.[7]

III.

We will conclude by addressing a final point, one that may not be explicit but is no less apparent. We suspect the reason the court ordered this evidentiary hearing had nothing to do with Mr. Wolfe or Ms. Newton personally, but was simply a court policy born from a concern that returning firearms to prevailing respondents in proceedings such as these could pose some kind of potential danger. Stalking injunction hearings can be emotionally charged and volatile. Some litigants involved in these proceedings may become confrontational, even violent, after they leave the courthouse. We recognize that. And we certainly would not fault a trial judge's desire to ensure public safety. But judicial concern, understandable as it may be, does not confer judicial power.

This circuit court's power came to an end after it entered a final order for which no rehearing or appeal was sought. There were no ancillary matters and no independent legal authority for the court to convene an evidentiary hearing to require

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[7]Mr. Wolfe's argument includes a constitutional dimension as well; he points out that the procedure the court adopted improperly infringed upon his Second and Fifth Amendment rights. Cf. District of Columbia v. Heller, 554 U.S. 570, 595 (2008) ("There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms."); Fuentes v. Shevin, 407 U.S. 67, 80-81 (1972) ("The purpose of [due process] is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property, a danger that is especially great when the State seizes goods simply upon the application of and for the benefit of a private party."). We need not address his constitutional concerns given our holding that the court was without authority to convene this hearing.

Mr. Wolfe to give testimony before he could have his property returned. Accordingly, we grant the petition and prohibit the circuit court from convening an evidentiary hearing as a condition to returning the property that had been seized pursuant to the prior ex parte order. Trusting that the court below will promptly enter an order granting Mr. Wolfe's pending motion, we will withhold issuing the writ at this time.

Petition granted.

VILLANTI and MORRIS, JJ., Concur.