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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

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| ROBBY FROST,<br><br>Appellant,<br><br>v.<br><br>JULIA MICHELLE WILSON,<br><br>Appellee. | ) | Case No. 2D19-4635 |

Opinion filed April 9, 2021.

Appeal from the Circuit Court for Pasco County; Linda H. Babb, Judge.

Keeley R. Karatinos of Mander Law Group, Dade City, for Appellant.

No appearance for Appellee.

LaROSE, Judge.

Robby Frost appeals the order extending, for five years, the final judgment of injunction for protection against dating violence. We have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A). We reverse because Mr. Frost's former girlfriend, Julia Michelle Wilson, presented insufficient evidence demonstrating that she had an objectively reasonable fear of imminent dating violence.

## Background

Ms. Wilson filed her initial petition for injunction on October 3, 2017. Allegedly, she met Mr. Frost through an online social group, Happy Singles of Tampa

Bay. They began dating in January 2017. The relationship ended on October 1, 2017. She told Mr. Frost not to come to her house or talk to her friends. The next day, Mr. Frost repeatedly texted, called, and e-mailed her. He then went to her house, uninvited, while she was alone, banged on the door, and entered the home. Ms. Wilson told him to leave and called 911. Mr. Frost was gone when the police arrived. Ms. Wilson also alleged that Mr. Frost asked her friend and pastor about her and drove by her house. Finally, Ms. Wilson alleged that she feared for her life; she begged the trial court to keep her and her minor child safe.

The trial court held a hearing and entered a final judgment of injunction on November 14, 2017, effective for two years. The trial court ordered Mr. Frost not to contact Ms. Wilson "on any social media or phone applications or websites," and to "leave" Tampa Travel Meetup Group.

On September 9, 2019, Ms. Wilson sought to modify and extend the injunction for an additional two years. Allegedly, Mr. Frost violated the injunction by joining the Tampa Travel Meetup Group and other social groups to which she belonged.[1]

At an October 31, 2019, hearing, Ms. Wilson requested a five-year extension "until the youngest child is 17." Ms. Wilson testified that, through the internet, individuals can join social groups. Those groups organize events for members to attend. Members can see when other members register for an event. Early in 2019, Ms. Wilson registered for a Tampa Travel Meetup Group's fall 2019 snorkeling event. On August 31, 2019, she was checking to see which other members had registered;

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[1]Law enforcement arrested Mr. Frost. But, the State Attorney concluded that the circumstances did not warrant prosecution.

she saw that Mr. Frost and a guest had registered. She also testified that Mr. Frost had joined five other groups to which she belonged.

Ms. Wilson testified that, as a result, she quit her social groups, fearing that Mr. Frost would kill her. Ms. Wilson testified that she also wanted a five-year extension because she fears for her minor child's safety.[2]

On cross-examination, Ms. Wilson admitted that Mr. Frost could join other groups, but not Tampa Travel Meetup Group. Ms. Wilson admitted that since the injunction went into effect, Mr. Frost has not messaged, e-mailed, called, or threatened her. Mr. Frost has not come to her house or contacted her on social media. Ms. Wilson testified that Mr. Frost had joined about twenty other groups that she had not joined. Ms. Wilson also testified that, despite her trepidation, she and her child attended the fall 2019 snorkeling event.

Mr. Frost's adult daughter testified that Mr. Frost was not very proficient with technology and that she repeatedly gives him instructions about technology and websites.

She helped her father set up an online profile to join meetup groups, maintained the profile from afar, and joined groups for him. She testified that she joined Tampa Travel Meetup Group for her father in spring 2019 because she knew her father liked local travel. She did not discuss the fact with her father that she joined the group; she does not "usually discuss with him to clear it with him to see if [she] should join this group or not." She was not aware that he was not allowed to join Tampa Travel Meetup Group. She testified that her father was a member of about fifty groups.

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[2]Ms. Wilson agreed to strike this testimony about the child.

Next, Vanessa Hurst testified that she has been dating Mr. Frost since June 2019. Ms. Hurst testified that she registered for the snorkeling event using Mr. Frost's login information. Ms. Hurst used Mr. Frost's login information because she lived an hour away and his profile had local events. Ms. Hurst saw the snorkeling event and wanted to attend. She told Mr. Frost about the event. He agreed to go. Ms. Hurst signed them up. She did not know the name of the group sponsoring the event. She previously attended a handful of meetup group events. Ultimately, Ms. Hurst and Mr. Frost did not attend the snorkeling event.

The trial court observed that the case was certainly not worthy of a criminal prosecution. However, the trial court noted that Mr. Frost was responsible for his login information, that "his name is not supposed to pop up in front of her," and "it most definitely did show up to her." The trial court extended the injunction. It directed Mr. Frost to talk to his daughter and others who access his login information to ensure that similar experiences do not recur.

Mr. Frost's counsel requested a six month extension. The trial court disagreed: "She has a reason. She doesn't want it. It's a valid reason. The case at the beginning was concerning and I understand her concern. She's afraid." The trial court believed that Ms. Wilson had "a valid reason for wanting [five years]." The trial court subsequently entered the unelaborated written order now before us.[3]

## Discussion

Mr. Frost argues that the trial court lacked competent, substantial evidence to support the extension. He contends that "[Ms. Wilson] did not allege a new

[3]The trial court incorrectly stated in its order that Mr. Frost failed to appear at the hearing.

act of violence," "the trial court conceded that evidence presented did not support a violation of the injunction," "[Ms. Wilson] did not have an objectively reasonable fear of imminent danger," and the trial court's findings that it understood Ms. Wilson's "fear and that it was valid were legally insufficient findings to support extension of the injunction." Mr. Frost further argues that the trial court abused its discretion by extending the injunction for five years to protect Ms. Wilson's minor child, "who was not a named party to be protected by the injunction."

"While 'a trial court has broad discretion in entering an injunction for protection against violence[,] . . . it must be supported by competent, substantial evidence.' " Brungart v. Pullen, 296 So. 3d 973, 976 (Fla. 2d DCA 2020) (alteration in original) (quoting Alderman v. Thomas, 141 So. 3d 668, 672 (Fla. 2d DCA 2014)). "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)).

A party seeking to extend a nonpermanent injunction against dating violence must show a reasonable fear of imminent dating violence. See Alderman, 141 So. 3d at 669 (explaining that under section 784.046(2)(b), Florida Statutes (2012), "the person must 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"); cf. Trice v. Trice, 267 So. 3d 496, 501 (Fla. 2d DCA 2019) (explaining that "a reasonable fear of imminent violence is a legally necessary predicate to the issuance and extension of a domestic violence injunction"). The fear must be objectively reasonable. Alderman, 141 So. 3d at 671. To determine "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.' " Brungart, 296 So. 3d at 976 (quoting Gill v. Gill, 50 So. 3d 772, 774 (Fla. 2d DCA 2010)).

Ms. Wilson saw that Mr. Frost joined Tampa Travel Meetup Group and five other groups and registered for an event that she planned to attend. Ms. Wilson claimed to fear for her life. She advances several supporting theories. We must determine whether her fear was objectively reasonable. It was not.

The incident that triggered the initial injunction was Mr. Frost's appearance at Ms. Wilson's home after their break-up. But Ms. Wilson testified that Mr. Frost has not gone to her house, messaged, called, or threatened her since 2017. See Alderman, 141 So. 3d at 671 ("A review of the transcripts leads us to conclude that while Thomas may have been the victim of one act of dating violence in August 2012, she did not present evidence establishing an objectively reasonable fear that she is in imminent danger of becoming the victim of another act of dating violence. Thomas did not present any evidence that Alderman had threatened her or had done anything else that would support an objective fear of imminent danger." (citation omitted)); Hobbs v. Hobbs, 290 So. 3d 1092, 1094-95 (Fla. 1st DCA 2020) (holding the fear was not objectively reasonable where the original incident that triggered the injunction was the former husband's physical assault of his then-wife when he caught her in bed with another man "[b]ut [the former wife] offered no testimony of any violence or even a single threat of violence from Mr. Hobbs after June 2000"). Seemingly, Mr. Frost has moved on from his relationship with Ms. Wilson.

The only "contact" since the trial court entered the original injunction occurred when Mr. Frost joined and registered for an event organized by a social group. The initial injunction explicitly prohibited him from joining that group. But the "contact"

did not convey any threat of violence. See Hobbs, 290 So. 3d at 1095 ("[M]ost importantly, even if taken at face value, no threat of violence was conveyed by any of the alleged comments. The third-party reports were thus legally insufficient to support a finding that Ms. Hobbs' fear of a threat of violence from Mr. Hobbs was objectively reasonable.").

No evidence indicated that Mr. Frost made any additional comments to or about Ms. Wilson. He did not attend the snorkeling event. Nothing suggested that Mr. Frost did anything regarding Ms. Wilson's child that would give Ms. Wilson reasonable cause to believe her child was in danger. Particularly noteworthy, Ms. Wilson attended the snorkeling event with her child, even knowing that Mr. Frost registered to attend. This belies the existence of any fear. Cf. Magloire v. Obrenovic, 308 So. 3d 258, 262-63 (Fla. 2d DCA 2020) (holding that the trial court abused its discretion in entering an injunction where "despite claiming that she feared for her safety and that of her child, Ms. Obrenovic continued to try to contact Mr. Magloire and his family members after the incidents of violence").

Thus, the alleged violation was insufficient to create an objectively reasonable fear of dating violence that warrants a five-year extension of the injunction. See Hobbs, 290 So. 3d at 1096 (distinguishing Noe v. Noe, 217 So. 3d 196 (Fla. 1st DCA 2017), where "legally sufficient evidence showed that the appellant had a continuing, reasonable fear that she was in imminent danger of domestic violence," because "[t]he evidence showed several violations of the injunction, including acts of violence and threats by the appellee, who was soon to be released from incarceration"). We have not found any cases supporting the extension of such an injunction without the necessary finding of objectively reasonable fear. Cf. Counsil v. Anderson, 259 So. 3d

315, 316 (Fla. 1st DCA 2018) (holding that "there was no factual basis to enter or extend the injunction" for 90 days where "there had been no violence between the parties").

Where the violation of an injunction is insufficient to create an objectively reasonable fear of dating violence, it appears the appropriate avenue would be to seek relief for the violation, not a lengthy extension of the injunction. Cf. S.C. v. A.D., 67 So. 3d 346, 349 (Fla. 2d DCA 2011) (stating that had A.D. shown that S.C. violated the terms of the domestic violence injunction, "the appropriate course of action would have been to seek relief for the violation of the existing injunction, not to issue another one" (footnote omitted)). For example, a trial court may enforce the existing injunction through contempt or criminal proceedings. See §§ 784.046(9)(a), Fla. Stat. (2019) ("The court shall enforce, through a civil or criminal contempt proceeding, a violation of an injunction for protection. The court may enforce the respondent's compliance with the injunction by imposing a monetary assessment."), .047(1) (providing that a violation of a dating violence injunction is a first-degree misdemeanor).

We must address Ms. Wilson's allegation that Mr. Frost stalked her by joining other social groups. Stalking constitutes "violence" under section 784.046(1)(a). "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." Brungart, 296 So. 3d at 978. But, 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).

The trial court never made a finding that Mr. Frost stalked Ms. Wilson. Mr. Frost's daughter explained that she joined Travel Meetup Group on her father's behalf because she thought he would enjoy traveling. Ms. Hurst testified that she registered for the snorkeling event because she wanted to go snorkeling with Mr. Frost. Ms. Wilson recognized that the injunction did not prohibit Mr. Frost from joining the five other groups of which she was a member. Recall that Mr. Frost was a member of over fifty social groups. We cannot say that those memberships did not serve legitimate purposes. See Alderman, 141 So. 3d at 671 (holding petitioner failed to demonstrate Alderman's actions served no legitimate purpose where she did not specify the nature of Alderman's communications, and Alderman testified he texted her for the return of his belongings and "to express his condolences upon the death of her father").

We also are compelled to note that Mr. Frost's social group memberships and the single registration for a snorkeling event were not directed at Ms. Wilson or her child. We cannot say that such conduct constitutes "harassment" under section 784.048(1)(a). See Brungart, 296 So. 3d at 979 ("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."). Indeed, the evidence did not show that Mr. Frost used the groups to contact, threaten, or engage in any conduct directed specifically at Ms. Wilson or her child. And

none of the evidence demonstrated that Mr. Frost communicated or caused to be communicated any "words, images, or language" directed specifically at Ms. Wilson or her child—which is required for his actions to constitute cyberstalking under section 784.048(1)(d).

On the record before us, Ms. Wilson failed to demonstrate that Mr. Frost's online activity created an objectively reasonable fear of imminent dating violence. See, e.g., Alderman, 141 So. 3d at 671 (holding that petitioner failed to demonstrate that she had an objective fear that the communications would continue in the future where she provided vague testimony about Alderman's communications and Alderman testified "that he wants nothing more to do with [her]"); see also Zapiola v. Kordecki, 210 So. 3d 249, 250 (Fla. 2d DCA 2017) ("[N]one of the evidence presented regarding Ms. Zapiola's attempts to contact Ms. Kordecki alleged, much less established, that Ms. Zapiola had engaged in conduct that was threatening or might otherwise reasonably place Ms. Kordecki in fear."); Hobbs, 290 So. 3d at 1094-95 (holding the fear was not objectively reasonable where there was no evidence "of any violence or even a single threat of violence from Mr. Hobbs" after the injunction).

Consequently, competent, substantial evidence did not support the extension of the dating violence injunction.

Reversed and remanded.

CASANUEVA and LABRIT, JJ., Concur.