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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

L.C.,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D10-2669
	)	
A.M.C.,	)	
	)	
Appellee.	)	
_____	)	

Opinion filed May 11, 2011.

Appeal from the Circuit Court for Pinellas County; Thomas H. Minkoff, Judge.

Kevin D. Brennan of Meros, Smith, Lazzara & Olney, P.A., St. Petersburg, for Appellant.

No appearance for Appellee.

KELLY, Judge.

L.C. (the Grandfather) appeals from the final judgment of injunction for protection against domestic violence which prohibits him from having any contact with his granddaughter, J.C. Because the Grandfather was denied due process in regard to the hearing on the petition for the injunction, we reverse.

On April 8, 2010, A.M.C. (the Mother) filed a petition for injunction for protection against domestic violence against L.C., the child's paternal grandfather. After reviewing the Mother's petition, the court found that the facts as stated in the petition standing alone did not justify the entry of a temporary injunction. The court set a hearing for April 15, 2010, at 11:00 a.m. The Grandfather was not served with notice of the hearing until April 14, 2010, at 9:45 a.m. The Grandfather attempted to obtain counsel, but was unable to do so in time for the hearing.

The parties appeared as scheduled, but neither party was sworn as a witness. The Mother stated that she sought an injunction because the school crossing guard and the child had told her that the Grandfather had been coming to the child's school to see the child without the Mother's knowledge. She expressed her fear that the Grandfather would kidnap the child because, approximately five years ago, the child's father took the child from a restaurant during visitation while the child's grandparents were present.

In response to questioning by the court, the Grandfather stated that the child had called him several times asking him to come to her school and have lunch with her. The Grandfather attempted to see the child at her request. He stated that the grandparents were never ordered by a court to stay away from their granddaughter. The trial court granted the petition for a permanent injunction finding "competent substantial evidence that there is imminent fear of domestic violence."

On appeal, the Grandfather argues that the trial court denied him his fundamental right to due process by not providing him a full evidentiary hearing. We agree. In due process hearings "[t]he witnesses should be sworn, each party should be

permitted to call witnesses with relevant information, and cross-examination should be permitted." Utley v. Baez-Camacho, 743 So. 2d 613, 614 (Fla. 5th DCA 1999); see Smith v. Smith, 964 So. 2d 217, 219 (Fla. 2d DCA 2007) (holding that the trial court denied the husband his fundamental constitutional right to procedural due process when it entered a permanent injunction without affording the husband the opportunity to call witnesses or to testify in his own behalf).

Section 741.30(1)(a), Florida Statutes (2009), provides that a person with "reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence" may obtain an injunction for protection against domestic violence. There must be competent, substantial evidence to support a finding by the trial court that the petitioner has an objectively reasonable fear of imminent domestic violence. Jones v. Jones, 32 So. 3d 772, 773 (Fla. 2d DCA 2010). Without a full evidentiary hearing, the trial court cannot determine whether the "fear is reasonable." Utley, 743 So. 2d at 614; see Oettmeier v. Oettmeier, 960 So. 2d 902, 903 n.1 (Fla. 2d DCA 2007) (noting that the failure to swear the respondent as a witness or afford the respondent an opportunity to present a defense was contrary to the intent of section 741.30 and Florida Rule of Family Law Procedure 12.610(c)(1)(C), which contemplate a full evidentiary hearing prior to entering an injunction).

In addition, the Grandfather was denied due process by the service of notice only twenty-five hours before the hearing. See, e.g., Traughber v. Traughber, 941 So. 2d 388, 389 (Fla. 2d DCA 2006) (finding that the respondent received insufficient notice of the hearing on the permanent injunction where he was served with notice of the hearing the night before the hearing). Since the Grandfather was served

the day before the hearing, he was not provided sufficient notice to hire an attorney or to prepare a defense to the allegations in the petition.

In conclusion, the circuit court abused its discretion in entering an injunction for protection against domestic violence against the Grandfather without supporting evidence and without providing the Grandfather procedural due process. Accordingly, we reverse and remand for a full evidentiary hearing.

Reversed and remanded.

CRENSHAW and MORRIS, JJ., Concur.