

Third District Court of Appeal

State of Florida

Opinion filed October 18, 2017.
Not final until disposition of timely filed motion for rehearing.

No. 3D17-76
Lower Tribunal No. 12-15364

Joshua Luther Fuller,
Appellant,

vs.

Shelby Sandler n/k/a Shelby Kempler,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Valerie R. Manno Schurr, Judge.

Marks & West, P.A., and Evan R. Marks and Carolyn W. West, for appellant.

Berger Singerman LLP, and Kathleen S. Phang and David Archer, for appellee.

Before ROTHENBERG, C.J., and SUAREZ and SALTER, JJ.

ROTHENBERG, C.J.

The former husband, Joshua Luther Fuller, appeals from an order denying his motion to vacate and for relief from a temporary stay away order. The denial was without prejudice to allow the trial court to conduct an evidentiary hearing on the former husband's motion. Because the order appealed is a non-final, non-appealable order, we dismiss the appeal for lack of jurisdiction and remand to the trial court to conduct the evidentiary hearing. See Lamothe v. Sellars, 695 So. 2d 1259, 1260 (Fla. 4th DCA 1997) (holding that stay away orders are not injunctions, but rather "protective or case management orders being used by the court to control the proceedings before it," and therefore, stay away orders are not reviewable pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(B), which authorizes review of non-final orders granting injunctions).

Dismissed and remanded.