

Third District Court of Appeal

State of Florida

Opinion filed May 27, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-2128
Lower Tribunal No. 18-27353

Fahad A.A.M.A. Alobaid,
Appellant,

vs.

Saba Khan,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Oscar Rodriguez-Fonts, Judge.

Josie Perez Velis; Karen J. Haas, for appellant.

Philip D. Parrish; Lawrence S. Katz, for appellee.

Before LOGUE, HENDON and LOBREE, JJ.

LOBREE, J.

Fahad A.A.M.A. Alobaid (“Alobaid”) appeals from the issuance of a permanent injunction for protection against domestic violence with children (the

“final injunction”) in favor of his wife, Saba Khan (“Khan”). He contends that the court lacked personal jurisdiction over him and that the final injunction was not supported by competent substantial evidence. He also challenges jurisdiction for the entry of a temporary time-sharing plan with respect to their minor son (the “child”). For the following reasons, we affirm.

Factual and Procedural Background

Khan, a U.S. citizen and Florida resident, and Alobaid, a citizen and resident of Kuwait, met while studying at the University of Miami. They wed in 2011, and maintained their marriage long-distance for the most part. Their child was born in Florida in January 2018, and later also obtained Kuwaiti citizenship. In November 2018, Khan petitioned for a domestic violence injunction against Alobaid pursuant to section 741.30, Florida Statutes (2018), alleging that Alobaid had been physically and verbally abusive with her since the beginning of the marriage, and that the abuse had increased in frequency after the child’s birth.

Khan’s petition alleged four specific instances of domestic violence: 1) While she visited Alobaid in Kuwait in 2014, they argued, and he slapped her in the face, pushed her into a wall and onto the bed, and grabbed and shoved her upper body; 2) While Alobaid visited her at her mother’s house in Florida in February 2018, they

argued about Khan's relocation to Kuwait, and Alobaid pushed her in the chest;¹ 3) In June 2018, in Kuwait, she caught Alobaid looking through her phone, which resulted in another argument, during which Alobaid kicked her several times in her legs, causing bruises; and 4) In July 2018, while still in Kuwait, Khan and Alobaid argued about their child's sleep training, and Alobaid shoved her. Based on these allegations, the lower court issued a temporary domestic violence injunction against Alobaid. The court further entered a temporary order granting Khan 100 percent of time sharing with the child, as Khan feared that Alobaid would imminently abuse, remove, or hide the child from her based on his prior threat to take him to Kuwait.

Alobaid was personally served with the petition upon his next visit to Florida in November 2018. He filed an unsworn motion to dismiss the petition based upon lack of personal jurisdiction, asserting that he was a resident and citizen of Kuwait, and his contacts with Florida did not satisfy its long-arm statute. He did not file an affidavit in support of his position. The court denied the motion, finding that Alobaid had sufficient minimum contacts with Florida, as he attended school here, maintained a relationship here, and his child was conceived and born here.

The matter proceeded to an evidentiary hearing. At the outset of the hearing, Khan confirmed under oath the veracity of her allegations in the petition. She then

¹ Khan further alleged that Alobaid said that if she did not relocate to Kuwait with him, he would relocate the child there without her, so in fear, she agreed to go to Kuwait with the child in April 2018.

testified consistently with her allegations. Khan's account was partially corroborated by her mother, who testified regarding the February 2018 incident at her Florida home. Khan asserted that she travelled with the child to Kuwait in April 2018 because she was afraid that Alobaid would take the child there without her. She testified that they initially intended to stay in Kuwait for a month, but Alobaid did not give her permission to take the child from the country for about six months, and only agreed to let her and the child return to the United States because Khan needed medical treatment to have a second child.

Alobaid testified and denied these allegations. However, he conceded that at times during the marriage he was "rough" toward Khan, which the court interpreted to mean "physically rough," but Alobaid later denied. At the conclusion of the hearing, the court entered the final injunction against Alobaid for three years. The court also approved a temporary time-sharing plan with respect to the child, where Khan was awarded 100 percent of the time-sharing, and Alobaid was permitted supervised visitation through Family Court Services.² This appeal ensued.

² Contemporaneously with the domestic violence petition, Khan petitioned for child support and a parenting plan unconnected with dissolution of marriage in family court. She later also petitioned for dissolution of marriage. During the pendency of these cases, Alobaid initiated child custody proceedings in Kuwait, where he was awarded custody of the child. In the pending dissolution case, the court has not made a determination of initial child custody jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), or whether the Kuwait custody order is entitled to be recognized and enforced in Florida.

Analysis

Personal Jurisdiction

Alobaid first challenges the issuance of the final injunction on the basis that the lower court lacked personal jurisdiction over him. We review the issue de novo, see Small v. Chicola, 929 So. 2d 1122, 1124 (Fla. 3d DCA 2006), and reject this contention. Alobaid was personally served with process while voluntarily present in Florida, which was sufficient to confer personal jurisdiction over him. See Durkee v. Durkee, 906 So. 2d 1176, 1177 (Fla. 4th DCA 2005); Keveloh v. Carter, 699 So. 2d 285, 288 (Fla. 5th DCA 1997) (“As a general rule, Florida courts have personal jurisdiction over nonresidents when that nonresident is properly served with service of process while voluntarily present in the state.”). To the extent that Alobaid now argues that he was lured into coming to Florida to be personally served here, he failed to make this argument to the court below, and thus waived it. See Pota v. Holtz, 852 So. 2d 379, 381 (Fla. 3d DCA 2003).

The lower court could also exercise specific personal jurisdiction over Alobaid pursuant to Florida’s long-arm statute. The jurisdictional allegations in the petition concerning the domestic violence incident in Florida were sufficient to bring the action within the ambit of section 48.193(1)(a)(2), Florida Statutes (2018), which provides that a nonresident subjects himself or herself to the personal jurisdiction of a Florida court by “[c]ommitting a tortious act *within* this state.” (emphasis added).

Alobaid failed to file a legally sufficient affidavit to challenge these allegations. See Venetian Salami Co. v. Parthenais, 554 So. 2d 499, 502 (Fla. 1989); Navas v. Brand, 130 So. 3d 766, 770 (Fla. 3d DCA 2014). Moreover, Alobaid had sufficient minimum contacts with Florida such that the maintenance of the domestic violence action did not offend “traditional notions of fair play and substantial justice.” See Machtinger v. Inertial Airline Servs., Inc., 937 So. 2d 730, 736 (Fla. 3d DCA 2006) (holding that person who commits tortious act in this state reasonably can expect to be haled into Florida court to answer for that tort).³

The Final Injunction

We review the court’s issuance of the final injunction for abuse of discretion and to determine whether it is supported by competent, substantial evidence. Lopez v. Regalado, 257 So. 3d 550, 554 (Fla. 3d DCA 2018). In doing so, “we look at legal sufficiency as opposed to evidentiary weight.” Id. A court may issue a domestic violence injunction when the petitioner shows that he or she is “*either* a victim of domestic violence as defined in section 741.28 *or* has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence.” § 741.30(1)(a), Fla. Stat. (2018) (emphasis added). Domestic

³ In light of our disposition, we do not address whether the court could also exercise personal jurisdiction over Alobaid pursuant to the general jurisdiction provision of Florida’s long-arm statute, section 48.193(2), Florida Statutes, or Khan’s alternative arguments concerning personal jurisdiction.

violence means “assault, aggravated assault, battery, aggravated battery, . . . or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.” § 741.28(2). “General harassment, general relationship problems, and uncivil behavior are not enough.” Leal v. Rodriguez, 220 So. 3d 543, 545 (Fla. 3d DCA 2017). In determining whether a petitioner has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence, “the trial court must consider ‘the current allegations, the parties’ behavior within the relationship, and the history of the relationship as a whole.’” Id. (quoting Gill v. Gill, 50 So. 3d 772, 774 (Fla. 2d DCA 2010)).

We conclude that Khan established competent, substantial evidence that she was either a victim of domestic violence or had reasonable cause to believe she was in imminent danger of becoming the victim of domestic violence, as required by section 741.30(1). Contrary to Alobaid’s contention, she showed more than general relationship problems. Khan confirmed under oath the allegations in her petition describing four incidents, three of which were recent, where Alobaid either slapped, pushed, shoved, or kicked her.⁴ She also verified that Alobaid threatened to relocate their child to Kuwait without her if she had not agreed to go there herself. Khan’s testimony was partially corroborated by her mother. Further, Alobaid admitted to

⁴ Physical injury is not an element of simple battery. See § 784.03, Fla. Stat. (2018).

being “rough” toward Khan during their marriage, which the lower court could reasonably interpret to mean “physically rough.”

This court has found similar evidence sufficient to support the entry of an injunction against domestic violence. See Lopez, 257 So. 3d at 556-57 (finding respondent’s history of violence, abusive conduct, and manic behavior competent, substantial evidence to support injunction against domestic violence); Zarudny v. Zarudny, 241 So. 3d 258, 263 (Fla. 3d DCA 2018) (affirming permanent injunction where record contained evidence of respondent’s angry and abusive conduct, prior violence, and controlling behavior, including threats to send wife back to Russia and to take their daughter away); Leal, 220 So. 3d at 545 (finding evidence of recent history of violence, severe abusive conduct, controlling behavior, and attempts to take petitioner’s immigration documents sufficient to support injunction).

Temporary Time-Sharing Plan

Finally, Alobaid argues that the court erred in approving a temporary time-sharing plan with respect to the child because Kuwait, not Florida, is the child’s home state under the UCCJEA.⁵ We review de novo a question of whether a court

⁵ “Home state” is defined as “the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding. . . . A period of temporary absence of any of the mentioned persons is part of the period.” § 61.503(7), Fla. Stat. The UCCJEA does not define a “temporary absence.” Sarpel v. Eflanli, 65 So. 3d 1080, 1083 (Fla. 4th DCA 2011).

has jurisdiction pursuant to the UCCJEA, which governs subject matter jurisdiction over interstate child custody matters. McAbee v. McAbee, 259 So. 3d 134, 139 (Fla. 4th DCA 2018). “Pursuant to the initial child custody jurisdiction provision of the UCCJEA, . . . the child’s ‘home state’ is unequivocally granted priority to exercise jurisdiction to determine initial custody matters, *except in temporary emergency situations.*” N.B. v. Dep’t of Children & Families, 274 So. 3d 1163, 1167 (Fla. 3d DCA 2019) (emphasis added). The UCCJEA provides that “a [Florida] court . . . has temporary emergency jurisdiction if the child is present in [Florida] and . . . it is necessary in an emergency to protect the child because the child, . . . or *parent of the child, is subjected to or threatened with mistreatment or abuse.*” § 61.517(1), Fla. Stat. (emphasis added). Here, the parties do not dispute that the child was physically in Florida when Khan filed the underlying petition alleging domestic violence. Thus, regardless of whether Florida or Kuwait is deemed the child’s home state in the ongoing family proceedings, the domestic violence court properly invoked jurisdiction to enter a temporary time-sharing plan pursuant to section 61.517(1). See McAbee, 259 So. 3d at 139.⁶

⁶ We decline to resolve the issue of initial child custody jurisdiction herein, as this is being litigated in family court. See Spano v. BB ex rel. Bruce, 947 So. 2d 635, 636 (Fla. 3d DCA 2007) (“Where custody, visitation and support considerations are implicated in the context of alleged domestic violence, the better practice is for the trial court to enter a temporary order . . . while directing the parties to litigate custody

Conclusion

As the lower court had personal jurisdiction over Alobaid, jurisdiction to address child custody on at least an emergency or temporary basis, and competent substantial evidence to support its issuance of the final injunction, we affirm.

and visitation matters in family court.”) (citing Cleary v. Cleary, 711 So. 2d 1302 (Fla. 2d DCA 1998)).