

IN THE UTAH COURT OF APPEALS

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Denise Martinez,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellee,)	
)	Case No. 20070665-CA
v.)	
)	F I L E D
Julie Marie Gascoigne,)	(May 15, 2008)
)	
Respondent and Appellant.)	2008 UT App 177

Third District, Salt Lake Department, 060920782
The Honorable Glenn K. Iwasaki

Attorneys: Stephen K. Christiansen, Salt Lake City, for
Appellant
Richard A. Van Wagoner and Sam Harkness, Salt Lake
City, for Appellee

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

This case is before the court on a Stipulated Joint Motion to Vacate District Court Judgment in Part. Based upon the motion and the Appellant's brief, which attaches the relevant portions of the record, we reverse in part and remand the case for proceedings consistent with this decision.

Appellee Denise Martinez obtained a civil stalking injunction against Appellant Julie Marie Gascoigne. The district court's bench ruling found a pattern of acts constituting civil stalking directed toward Martinez and her daughter. However, the signed civil stalking injunction protects not only Martinez and her daughter but included Paul Edward Gascoigne, who is described as Martinez's fiancé. The only relief sought in this appeal is removal of Mr. Gascoigne as a protected person under the civil stalking injunction. The parties to this appeal request that this court vacate the district court's judgment to remove Mr. Gascoigne as a protected person.

A civil stalking injunction may be issued to protect the subject of a course of conduct constituting stalking and members of that person's immediate family. Immediate family is defined

by statute as "a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months." Utah Code Ann. § 76-5-106.5(1)(b) (2003); see also Utah Code Ann. § 77-3a-101(1)(2003)(incorporating provisions of section 76-5-106.5 into civil stalking injunction statutes). The district court made no findings that would bring Mr. Gascoigne within the definition of immediate family. Further, the district court did not make findings of fact establishing a course of stalking conduct "directed at or toward" Mr. Gascoigne.

Based upon the foregoing, we grant the stipulated motion and vacate the civil stalking injunction only insofar as it names Mr. Gascoigne as a person protected by the civil stalking injunction. All other provisions of the civil stalking injunction shall remain in effect according to the injunction's terms. Accordingly, we remand to the district court for further proceedings in accordance with this decision and dismiss the appeal, with each party to bear his or her own costs and attorney fees.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge