

IN THE FLORIDA DISTRICT COURT OF APPEAL
SECOND DISTRICT

CASE NO. 2D15-3412

RANDY A. SCOTT

Appellant

vs.

FREDERIC A. BLUM

Appellee

On Appeal from the Circuit Court
of the Twentieth Judicial Circuit
In and For Lee County, Florida

* * * * *

ANSWER BRIEF OF APPELLEE

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PRELIMINARY STATEMENT

In this brief, the Appellant, Randy A. Scott, is referred to by name as “Scott.” Appellee, Frederic A. Blum, is referred to as “Blum.”

The Record on Appeal is cited as “R” followed by the volume number, a colon and pertinent page number(s). References to the Transcript of the proceedings below are cited by “T:” followed by the pertinent page number(s).

STATEMENT OF THE CASE AND FACTS

Frederic Blum sought a Petition for Injunction Against Stalking¹ against Randy Scott. (R1:1-12) The Circuit Court granted the Injunction on a temporary basis, and set the matter for an evidentiary hearing on July 27, 2015. (R1:16-20)

Prior to that hearing, Scott filed pleadings captioned “Motion to Dissolve Temporary Injunction and for the Record” and “Additional Pages in Support of Motion to Dissolve Temporary Injunction Issue 7-16-15 and for the Record.” (R1:30-31; R1:32-76) The Circuit Court denied both Motions. (R1:87) The Court then held an evidentiary hearing on July 27, 2015, where Blum introduced forty-nine (49) exhibits in support of the Petition. Blum also testified. Scott did not.

The evidence adduced in the hearing demonstrated that Blum, who lives near Philadelphia and owns a process serving business, served as President and as a Board

¹ More specifically, Cyberstalking.

Member of the National Association of Professional Process Servers (“NAPPS”) for many years. (T:28)

The evidence further showed Scott formerly belonged to that organization but had since been removed and has no present affiliation with NAPPS. (T.28)

Blum testified and introduced exhibits that showed that for over three (3) years Scott has repeatedly sent emails to associates of Mr. Blum and to the members of NAPPS that characterize Mr. Blum as corrupt, a deviant, a thief, accusing him of having committed tax fraud and financial misappropriation, running a criminal syndicate, and referring to him as “Ayatollah.” (R3:521-524; R4:603-611; R4:612-622; R4:625-630; R4:633-634; R4:667-670)

Though not sent directly to Blum, these correspondences were clearly directed at Mr. Blum. Additionally, Blum introduced two separate “YouTube” videos that Scott acknowledges that he personally recently made and posted. (T:40-41, 48; R4:643-644; R4:645-646)

One of the recent videos constitutes a disturbing attack on Blum and his family. While looping a video of Blum explaining how to discover public documents, the video superimposes pictures of various associates of Blum with unflattering portrayals, eventually falsely suggesting under a photo of Blum’s son, Jeffrey, “Fred Blum new partner his son!” (R4:643-644) Blum’s son was briefly employed by Blum about a decade ago. (T:35)

The next image in the video is a photo Mr. Blum's son and link to his registration as a Sexual Offender in Florida. Blum's son was born physically handicapped and has endured fourteen surgeries and difficult developmental issues. (T:34)

As disturbingly, the link on the video disseminates the son's address in Pompano Beach, Florida, a condominium where the Blum family – including Blum's grandchildren – often congregate. Again, Scott acknowledges creating and posting this video. (T:41, 48; R:4:645-646)

Scott also created a second "YouTube" video about Blum and posted it online. (T:70) To fully appreciate the intent and tenor of that video, it is essential to know Blum is Jewish, and he serves as the President of the Jewish Genealogical Society of Greater Philadelphia. (T:37) Blum has spoken to law enforcement agencies and volunteers with the United States Holocaust Memorial Museum in Washington, D.C. where he primarily helps families locate Holocaust survivors. (T:37)

The video itself depicts a rabbi, with an Orthodox Jewish appearance, speaking about Jewish customs, such as Kosher foods, the Hebrew language, and prayer. This video is prefaced with the caption of: "How To Be A Member of NAPPS" and superimposes an image of Blum. The video pejoratively depicts Blum and appears to attack his religious affiliation while connecting his religious beliefs to NAPPS.

The sum total of the video is thinly-veiled anti-Semitism. (R4:695-697; R4:698-699; R4:700-701)

Blum explained that these videos have caused him to become fearful for his own and for his family's safety, especially in light of the escalating behavior of Scott. (T:34-36)

The Court, having the opportunity to hear from the parties, observe their demeanor and credibility, and having reviewed the exhibits, concluded competent, substantial evidence was presented to support the Petition for Injunction. (R1:80-85)

Scott timely filed a Notice of Appeal to this Honorable Court. (R1:94; 109)

SUMMARY OF ARGUMENT

Florida Statute 784.0485 creates a cause of action to Petition for an Injunction for Protection Against Stalking. Under Florida law, stalking does not require contact, direct or indirect, but provides in pertinent part: "Any person who willfully, maliciously and repeatedly follows or harasses another person commits the offense of stalking...."

"Harass" is defined in Florida Statute 784.048(1)(a) as: "'Harass' means to engage in a course of conduct directed at a specific person that causes substantial

emotional distress in such a person and serves no legitimate purpose.” (Emphasis added.)

Scott engaged in repeated efforts to harass Blum through emails and video postings and dissemination clearly directed at Blum, whom he seems to possess animosity towards based upon his affiliation with NAPPS, a national process server organization for which Blum has served as President and Board Member.

Since Scott clearly directed this harassment towards Blum, his argument that the lack of direct contact merits reversal is contrary to the plain language of the Statute.

Scott’s actions also do not implicate issues of free speech. Stalking and/or cyberstalking do not constitute constitutionally-protected behavior, and those respective Statutes are neither overbroad nor vague. *Bouters v. State*, 659 So.2d 235 (Fla.1995); *Goosen v. Walker*, 714 So.2d 1149 (Fla.4th DCA 1998)(stalking does not constitute constitutionally-protected activity); *Gilbert v. State*, 659 So.2d 233 (Fla.1995)(stalking statute constitutional). Such conduct does not establish legitimate purpose.

As a reasonable person in Blum’s position would, he suffered substantial emotional distress from Scott’s conduct. Contacting 2,200 colleagues and friends, Scott “outed” Blum’s son’s Sexual Offender status and revealed the son’s home address, where Blum and his family frequently gather. Scott also created, posted on

YouTube and sent to 2,200 people a thinly-veiled anti-Semitic video, which video purposely demeaned Blum, his significant work, and his heritage. Combined with dozens of emails calling Blum a thief, a deviant, a tax cheat, an embezzler, the head of a criminal syndicate, and suggesting his company was corrupt – all while Scott’s postings escalated – Blum quite reasonably experienced substantial and objective distress as a result.

Finally, Scott proffers several arguments on appeal not addressed at the trial court level. Effectively, Scott argued at the hearing, or through his pre-hearing motions, that his conduct constituted free speech or that the Order should not be granted because he did not directly contact Blum or his actions served a legitimate purpose.

Insofar as Scott now argues in issue I that the trial court “guided Petitioner” [Blum] or issue III regarding “repeated” incidents, Scott waived these issues by not addressing them with argument or contemporaneous objection, and he cannot address them now for the first time on appeal. *Cuevas v. Kelly*, 873 So.2d 369 (Fla.2d DCA 2004)(failure to address issue at trial court level precludes doing so for the first time on appeal); *Keech v. Yousef*, 815 So.2d 718 (Fla. 5th DCA 2002)(failure to preserve an issue for appellate review constitutes waiver).

ARGUMENT

ISSUE ONE [RESTATED]

THE TRIAL COURT COMMITTED NO ERROR ENGAGING THE PARTIES ABOUT EVIDENTIARY ISSUES, DID NOT AID PETITIONER BLUM, AND SCOTT'S FAILURE TO CONTEMPORANEOUSLY OBJECT CONSTITUTES WAIVER

As to Scott's argument about impropriety by the trial court, the court merely identified issues related to admissibility of evidence as the hearing was conducted. (T:44-45) None of the court's actions support that the Court assisted Blum or his counsel.

Scott contends the trial court treated him differently when he attempted to read a document into the record. In truth, the trial court patiently explained to Scott that he would have to enter a document into evidence before he could refer to it. The court then asked Scott if he would like to admit it, Scott replied he would, and the document was actually admitted. In fact, Appellant Scott has omitted a significant portion of that interaction with the trial court in his argument, which in totality exhibits the court actually aiding Mr. Scott:

THE COURT: Wait a minute. Wait, wait. You're reading from an exhibit I got?

MR. SCOTT: No, not yet, but I'd like to submit it.

THE COURT: Yeah, you can, but what is it?

MR. SCOTT: It's a copy – it's no different –

THE COURT: Is it an email? What is it?

MR. SCOTT: It's Facebook post.

THE COURT: All right. Do you have copies for them?

MR. SCOTT: I do believe I have an extra copy; yes, I do.

THE COURT: Okay. You can't read something not in evidence. Do you want to put it in evidence?

MR. SCOTT: Yes, sir. Let me find the other copy which I hope I do have.

(T:44-45)

Further, Scott waived this issue by failing to make a contemporaneous objection. As this District has previously held, the failure to raise an issue before the trial court precludes doing so for the first time on appeal. *See Cuevas v. Kelly*, 873 So.2d 367, 373 (Fla.2d DCA 2004), citing *Keech v. Yousef*, 815 So.2d 718 (Fla.5th DCA 2002)(failure to object at trial court level precludes consideration of issue on appeal).

ISSUES TWO, THREE, FOUR AND EIGHT [RESTATED]

**CYBERSTALKING DOES NOT CONSTITUTE
CONSTITUTIONALLY PROTECTED SPEECH OR
ACTIVITY**

Scott contends the Injunction entered violates his free speech rights, constitutes prior restraint, and is infirm as overbroad. Scott's repeated harassment of Blum by calling him pejorative names and directing videos at him that harassed Blum and created significant emotional distress does not constitute constitutionally protected speech or actions.

The Florida Supreme Court has previously rejected the constitutional infirmity arguments regarding Florida Statute 784.048 in *Bouters v. State*, 659 So.2d 235 (Fla.1995). Similarly to Scott's arguments, Bouters challenged the stalking Statute on First Amendment grounds, and based upon the vagueness and overbreadth doctrines.

The *Bouters* Court found the conduct proscribed by the Statute "is unprotected by the First Amendment." *Id.* at 237. In doing so, the Court incorporated precedent applicable to Scott's argument:

While the First Amendment confers on each citizen a powerful right to express oneself, it gives the [citizen] no boon to jeopardize the health, safety, and rights of others.

Bouters at 237, citing *Operation Rescue v. Women's Health Center, Inc.*, 626 So.2d 664, 675 (Fla.1993).

The Supreme Court similarly rejected a vagueness challenge to the Statute. *Bouters* at 237-238. *See also Gilbert v. State*, 659 So.2d 233 (Fla.1993)(rejecting overbreadth and vagueness challenges to stalking statute).

Blum would also point out that the First Amendment does not protect an individual from speech that annoys, abuses or harasses another. *See State v. Elder*, 382 So.2d 687 (Fla.1980); *Gilbreath v. State*, 650 So.2d 10 (Fla.1995).

Respectfully, Scott's First Amendment claims are without merit.

ISSUE FIVE [RESTATED]

THOUGH NOT INVOLVING DIRECT CONTACT, SCOTT'S EMAIL AND VIDEO BARRAGES WERE DIRECTED AT BLUM, CONSISTENT WITH THE PLAIN LANGUAGE OF THE STATUTE

Florida Statute 784.0485 creates a cause of action to Petition for Injunction for Protection Against Stalking. Under Florida law, stalking does not require contact, direct or indirect, but provides in pertinent part: “Any person who willfully, maliciously and repeatedly follows or harasses another person commits the offense of stalking....”

“Harass” is defined in Florida Statute 784.048(1)(a) as: “‘Harass’ means to engage in a course of conduct directed at a specific person that causes substantial emotional distress in such a person and serves no legitimate purpose.” (Emphasis added)

Scott engaged in repeated efforts to harass Blum through emails and video postings that were clearly directed at Blum, whom he seems to possess animosity towards based upon his removal from NAPPS.

Since Scott clearly directed this harassment towards Blum, his argument that the lack of direct contact merits reversal is contrary to the plain language of the Statute. *Seitz v. State*, 867 So.2d 421 (Fla.3d DCA 2004), is directly on point. Seitz was criminally charged with stalking and contended that no violation of that statute

occurred “because he did not have any direct or indirect contact with the victim ...” *Seitz* at 422. In *Seitz*, the victim was not directly contacted. Instead, the defendant, strikingly similar to this case, published and disseminated records of the victim to various third parties. *Seitz* at 422.

The District Court rejected *Seitz*’ argument based upon the plain language of the Statute, which defines harassment as a course of conduct directed at a specific person. *Seitz* at 423 (emphasis added). The *Seitz* court held that the meaning of the statute did not require actual contact: “The statute does not require contact, direct or indirect, as part of the offense, of stalking, thus we reject *Seitz*’ first argument.” *Id.*

Finally, just as a matter of clarification, Scott argues in his Initial Brief that Blum acknowledged in the hearing that the communication was not directed at him. Respectfully, the Record clearly indicates Blum testifying the emails and videos were not sent directly to him, not that they were not directed at him. (T:28-29)

ISSUE SIX [RESTATED]

SCOTT'S CONDUCT WOULD CAUSE SUBSTANTIAL EMOTIONAL DISTRESS IN A REASONABLE PERSON

Scott directed email and video correspondence to 2,200 members of Blum's professional association identifying Blum as corrupt, as the Ayatollah, his partners as criminals, and his son as a sexual offender, including the son's personal information, sex offender registration page, and home address, where Blum and his family frequently congregate. The video created legitimate fear in Blum's mind about his family's safety. (T:35)

Another video made and sent to 2,200 of his friends and colleagues portrays Blum pejoratively and is clearly anti-Semitic. The video itself depicts a rabbi, with an Orthodox appearance, speaking about Jewish customs, such as Kosher foods, the Hebrew language, and prayer. Blum is Jewish and has worked extensively in various causes relating to the Holocaust. (T:38-39) The video is prefaced with the caption of: "How To Be A Member of NAPPS," apparently suggesting Blum's Jewish heritage is some sort of prerequisite to admission to that organization. The video superimposes an image of Blum, connecting him to these customs and this heritage in a pejorative way. The sum total of the video is thinly-veiled anti-Semitism. (T:38-39; R4:695-697; R4:698-699; R4:700-701)

Additionally, Scott sent dozens of emails to Blum's colleagues for a period of three hours, labeling him a deviant, "Ayatollah," a thief, as corrupt, accusing him of financial misappropriation of NAPPS with no proof or foundation, and accusing him of running a criminal syndicate. (R3:521-524; R4:608-611; R4:612-622; R4:625-630; R4:633-634; R4:667-680)

Further, Blum testified that some communication had occurred over the last couple of years, but had "become extremely vicious lately" and was escalating in nature, especially with the recent creation and dissemination of the videos. (T:34-36)

"Outing" his son's sex offender status to his 2,200 colleagues, publicly posting that video on YouTube with links to the address where Blum, his children and grandchildren frequently reside, diminishing and demeaning his heritage and religion and identifying him many times over as a criminal – with no shred of proof to support it – objectively demonstrates the reasonableness of Blum's emotional distress.

T.B. v. State, 990 So.2d 651 (Fla.4th DCA 2008) is instructive. In *T.B.*, T.B. was convicted of stalking after calling the victim "faggot, queer" on one occasion in a way intending to hurt the victim's feelings, and again calling him a faggot and queer later. *T.B.* at 652-53. Others in a shopping mall heard these comments.

The District Court rejected T.B.'s argument that there was insufficient evidence to demonstrate substantial distress to the victim. The District Court acknowledged

a reasonable person standard and held, as a matter of law, this type of conduct – occurring in front of others – would reasonably cause emotional distress.

T.B. underscores a substantial part of Blum’s reasonable distress: when the conduct involves such personal attacks, significant name-calling, and exposes the victim to scorn not only because it is directed at the victim, but is communicated to colleagues – like the 2,200 friends and colleagues that received the communications – reasonable emotional distress naturally follows.

Here, Scott deliberately and maliciously harassed Blum and did so by directing this harassment through thousands of colleagues with whom he shares a long-standing professional relationship. His distress is objectively reasonable.

ISSUE SEVEN [RESTATED]

SCOTT ENGAGED IN ONGOING HARASSMENT OF BLUM THAT DEMONSTRATES COMPETENT, SUBSTANTIAL EVIDENCE OF REPEATED STALKING, THOUGH SCOTT FAILED TO ADDRESS THIS ISSUE IN THE TRIAL COURT

Scott suggests the Injunction should be reversed because no substantial, competent evidence supports an injunction. Blum would first suggest Scott waived this argument by failing to address the issue at the initial hearing.

At the hearing and through prehearing motions, Scott suggested his actions constituted free speech or, alternatively, an injunction should not be issued because no direct contact occurred with Blum or, finally, because the conduct did not cause substantial emotional distress. Scott did not challenge that the conduct constituted harassment.

As suggested, *supra*, a party waives an argument if they do not address the issue at the trial court level. *Cuevas v. Kelly*, 873 So.2d 369 (Fla.2d DCA 2004); *Keech v. Yousef*, 815 So.2d 718 (Fla. 5th DCA 2002). As perhaps best articulated by the District Court in *Vorbeck v. Betancourt*, 107 So.3d 1142, 1147-48 (Fla.3d DCA 2012):

The rule of preservation, which is a keystone in our appellate process, dictates that “[i]n the absence of fundamental error, an appellate court will not consider an issue that has been raised for the first time on appeal.” *Keech v. Yousef*, 815 So.2d 718, 719 (Fla. 5th DCA 2002); *see also Sunset Harbour Condo. Ass'n v. Robbins*, 914

So.2d 925, 928 (Fla.2005) (“As a general rule, it is not appropriate for a party to raise an issue for the first time on appeal.”). As Florida courts have long recognized, “[i]n order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation....”

Scott did not raise this issue in the trial court, and Blum respectfully suggests it is thus waived.

Assuming, *arguendo*, Scott did not waive this issue, Scott effectively argues: (1) no “following” occurred, so stalking is not proven; (2) the conduct was not directed at Blum; (3) there were not repeated acts to justify an injunction.

A. “Following” Issue

Scott contends the Injunction must be reversed because *Goudy v. Duquette*, 112 So.3d 716, 718 (Fla.2d DCA 2013), mandates “following” must be proven to obtain a stalking injunction. Blum respectfully suggests *Goudy* merely involved a case where incidents of following happened to be the basis for which the petitioner sought an injunction. “Following” an individual is not a required condition precedent to obtain injunctive relief under § 784.0485.

B. “Directed At” Issue

This issue is addressed in Issue Five.

C. “Repeated Acts” Issue

Stalking has been interpreted to mean “repeated acts of following or harassment.” Fla. Stat. 784.048(2). Harassment is defined as a series of acts over time directed at a specific person that causes substantial distress and serves no legitimate purpose.

Thus, a “series of acts” is necessary to establish the harassment component for an injunction against Stalking. As Scott correctly points out, one act of harassment is insufficient to support an injunction. Additionally, to constitute “harassment,” the conduct must be willful, malicious and repeated.

In the instant case, Scott has sent dozens of emails identifying Fred Blum as a criminal, a deviant, the Ayatollah, the head of a criminal syndicate, and other equally false, yet pejorative, names. These correspondences were intentionally and willfully sent to harass Blum – repeatedly and maliciously.

Scott took the time to produce sophisticated videos and publish them to YouTube. More importantly, to underscore this was not mere freedom of expression, Scott sent these videos to 2,200 of Blum’s professional brethren. Akin to *T.B.*, this harassment was malicious because it was not only directed at Blum, but intended to humiliate him specifically to thousands of friends and colleagues.

The content of the videos underscore illegitimacy and malice: disclosing Blum’s son’s sexual offender status and home address, subtly accusing Blum of

criminal activity, and maliciously diminishing his accomplishments in the Jewish community through an anti-Semitic presentation.

These acts equate to many acts of harassment. Blum respectfully suggests competent, substantial evidence supported the Circuit Court's Order.

CONCLUSION

Scott engaged in repeated acts of harassment directed at Blum that served no legitimate purpose and objectively reasonably caused Blum substantial distress. The trial court's finding is supported by substantial, competent evidence. Appellee Blum prays this Court AFFIRMS the Circuit Court's Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was filed with the Clerk of the 2nd District Court of Appeal via the Florida Courts E-Filing Portal, with a copy furnished to the Appellant, Randy Allen Scott via email to randy@randyscott.us on this 13th day of October, 2015.

/s/ Jeremy J. Kroll
JEREMY J. KROLL

CERTIFICATE OF COMPLIANCE

I Hereby Certify that the above Answer Brief is in compliance with the font requirements of Rule 9.100(1) in that it is produced in Times New Roman 14-point font.

/s/ Jeremy J. Kroll
JEREMY J. KROLL