

**IN THE DISTRICT COURT OF APPEAL,
SECOND DISTRICT, STATE OF FLORIDA
CASE NO. 2D15-3412**

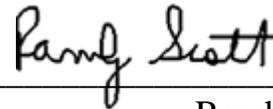
Randy A Scott)
Appellant)
)
v.)
)
Frederic A Blum)
Appellee)

L.T. CASE NO. 15-031538DR N

EMERGENCY MOTION TO STAY or WRIT OF PROHIBITION

On Appeal from a Final Judgment of the Twentieth Judicial Circuit Court of
Florida, in and for Lee County

November 8, 2015



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BASIS FOR INVOKING THE JURISDICTION OF THE COURT

COMES NOW the Petitioner, Randy Scott, Prose and pursuant to Florida Rules of Appellate Procedure 9.100(e) and 9.030(b)(3), and Article V, Section 4 of the Florida Constitution, and hereby respectfully petitions the Court for issuance of a Writ of Prohibition prohibiting continuing jurisdiction in the underlying case in the Circuit Court of the Twentieth Judicial Circuit, in and for Lee County, Florida, Case Number 15-031538DR N.

The lower court does not have continuing jurisdiction for this filing titled “PETITION BY AFFIDAVIT FOR ORDER TO SHOW CAUSE FOR A VIOLATION OF FINAL JUDGMENT OF INJUNCTION FOR PROTECTION AGAINST STALKING”. (Appendix D 1) Substantial justice will not be the outcome with the respondent facing one year in jail. In fact this purported affidavit on its face shows the continuing fraud upon the court that has severely prejudiced Mr. Scott. As it was in the beginning, the record shows, *counsel* for Mr. Blum filed a prose petition (Appendix D 2), was granted a temporary injunction (Appendix D 3), and *then* filed an appearance the next day. (Appendix D 4)

In sum for the issuance of the Writ of Prohibition Mr. Scott asserts the lower court does not have jurisdiction to hear this petition for violation as the affidavit is fatally defective at best, if not fraudulent at worse. The notary and signing dates do not match! (Appendix D 1)

Fla. R. App. P. 9.030(c)(3) A writ of prohibition is required as there is no other “appropriate and adequate legal remedy.” *S. Records & Tape Serv. v. Goldman* , 502 So. 2d 413, 414 (Fla. 1986) (citing *English v. McCrary* , 348 So. 2d 293 (Fla. 1977)). An appeal has been filed on these substantive grounds. The petitioner now seeks the lower courts modifications or clarity through a violation proceeding, that if allowed to proceed, outside its jurisdiction that harms the efforts of this court. To approve punishment first and redemption later upon Mr. Scott’s liberty does not equate to substantial justice. “A writ of prohibition, however, is an extraordinary writ that is used sparingly *to forestall the future actions of public officials.*” *Sparkman v. McClure* , 498 So. 2d 892, 895 (Fla. 1986) (citing *State ex rel. Turner v. Earle* , 295 So. 2d 609 (Fla. 1974); *State ex rel. Schwarz v. Heffernan* , 194 So. 313 (Fla. 1940);. Prohibition is generally available only to prevent courts from acting when there is no jurisdiction to act (rather than to prevent an erroneous exercise of jurisdiction), see *Goldman* , 502 So. 2d at 414 (citing *English* , 348 So. 2d 293). The filing that has reopened the lower tribunal case does not meet the goal of substantial justice nor the affidavit requirement. The lower court does not have jurisdiction in this matter. The affidavit is fatally defective.

FACTS ON WHICH THE PETITIONER RELIES

1. On July 17, 2015 an unidentified circuit court Judge issued an ex parte temporary injunction involving domestic violence against Mr. Scott.

(Appendix D 3)
2. On July 17, 2015 Mr. Scott was served with the injunction and immediately complied with the order by turning over his guns to the process serving sheriff. (Appendix D 3)
3. On July 27, 2015 an abbreviated evidentiary hearing was held on the petition only.
4. On July 27, 2015 Mr. Scott asked what the order directed and the judge responded “I am done, D-O-N-E, done. (t-89)
5. On July 27, 2015 the Honorable Judge R.Thomas Corbin issued the superseding permanent injunction with the specific terms and conditions in written form. (Appendix D 5)
6. On or about July 28, 2015 Mr. Scott removed his youtube channel including the videos the court took notice of. Those two videos are now a part of the record but held within the chambers of the Lee County Clerk’s office.
7. On August 24, 2015 appellant filed in this court a motion to relinquish to the trial court with one of the stated goals as follows :

“Cognizant that the lower court may not grant the dissolution or dismissal the lower court has been asked to make detailed factual reasoning’s that will assist the appellant, the appellee and most

importantly this appeals court should the appeal continue and the case not be dissolved or dismissed. (Appendix D 6)

8. On September 9, 2015 Mr. Blum filed his objection with this court to appellant move to relinquish the case back to the trial court. (Appendix D 7)
9. On September 9, 2015 in the Twentieth Circuit Court Domestic Violence court the Honorable Judge Carlin reset the motion calendar with Mr. Scott present and Mr. Blum absent to September 28, 2015.(Appendix D 8)
10. On September 18, 2015 this court denied relinquishing the case back to the trial court.
11. Apparently, based on the docket and subsequent notices, Twentieth Circuit Court Domestic Violence court continued to hear the motions relating to the denial to relinquish on July 28, 2015 with Mr. Blum present and Mr Scott absent and issued its ruling of deny, deny, and deny for Mr Scott and the granting of the striking of interrogatories for Mr Blum. The rulings have no clarifying statements. (Appendix D 9,10,11,12)
12. On October 22, 2015 Mr. Blum electronically submitted a document titled “PETITION BY AFFIDAVIT FOR ORDER TO SHOW CAUSE FOR A VIOLATION OF FINAL JUDGMENT OF INJUNCTION FOR PROTECTION AGAINST STALKING”. The Lee County clerk of courts office immediately reopened the case based on this filing. (APPENDIX D 1)

13. On October 23, 2015 Mr. Scott contacted Beth Nichols of the Lee County Domestic Violence Unit created by administrative order to assist petitioner to obtain injunctions. Ms Nichols informed Mr. Scott he will be notified of arraignment. Mr Scott asked arraignment? Ms Nichols stated yes it is an arraignment.

NATURE OF THE RELIEF SOUGHT

1. Request the Second Court of Appeals to Issue a Writ of Prohibition to the circuit court from jurisdiction on the “PETITION BY AFFIDAVIT FOR ORDER TO SHOW CAUSE FOR A VIOLATION OF FINAL JUDGMENT OF INJUNCTION FOR PROTECTION AGAINST STALKING”. (Appendix D1) The required affidavit is fatally defective (or fraudulent) and by statute an affidavit is required.
2. Request this court to issue a stay of the lower courts order.

WRIT OF PROHIBITION

The jurisdiction should remain in the Second District Court of Appeals. The petition for violation in the lower court sets no clarity or boundary between the substantive issues to be determined here. Mr. Blum now seeks to adopt his petition over the written order. The petition of violation is by a facially false affidavit and the jurisdiction fails. The lower court clerk reopened the case and the states

attorney and the domestic violence office is now statutorily acting on the filing. This is to determine if Mr Scott should be charged and arrested and how that arrest and charge should occur.

The content of the petition itself indicates an attack against the fundamental question before this court.

Does the legal sufficiency of any allegation(as opposed to evidentiary weight of the many) of the [challenged] allegations meet the requirements (individual elements in individual allegations[course of conduct, directed at, without legitimate purpose, causing substantial emotional distress]) of the [cyber]stalking law?((Goudy v.. Duquette, 112 So.3d 716, 717 (Fla. 2d DCA 2013) (quoting Slack v. Kling, 959 So.2d 425, 426 (Fla. 2d DCA 2007)). Each incident of stalking must be proven by competent, substantial evidence to support an injunction against stalking. See generally id. at 717))

The fatally defective affidavit within the petition or violation is more of a motion to modify. Mr. Blum requests the lower court to rewrite its superseding written order and incorporate the underlining petition verbatim. That argument was available if the petitioner did not oppose Mr. Scott's motion to relinquish. Both

parties were to have benefited in the motion to relinquish. (Appendix 7) The petitioner should not benefit from lack of clarity in the order when it opposed Mr. Scott's motion to relinquish.

AFFIDAVIT REQUIRED AND FATALLY DEFICIENT

The law of notary in all states require a signer to be in the presence of a notary. The petition for violation shows the notary agent from Pennsylvania signed it a day before or on October 19, 2015 Mr. Blum signed it October 20, 2015 the day after! (Appendix D 1) The lower court has no jurisdiction, it is not an affidavit and it is fatally defective to gain jurisdiction. To allow the lower court to continue to entertain such procedural missteps severally handicaps Mr. Scott's ability to defend and chills his speech further, three months and counting.

The "PETITION BY AFFIDAVIT FOR ORDER TO SHOW CAUSE FOR A VIOLATION OF FINAL JUDGMENT OF INJUNCTION FOR PROTECTION AGAINST STALKING" does not cite the governing authority so the readers are forced to guess. Accordingly it appears that the authority is as follows:

784.0487 Violation of an injunction for protection against stalking or cyberstalking

(1) If the injunction for protection against stalking or cyberstalking has been violated and the respondent has not been arrested, the petitioner may contact the clerk of the circuit court of the county in which the violation is alleged to have occurred. The clerk shall assist the petitioner in **preparing an affidavit** in support of reporting the violation or directing the petitioner to the office operated by the court that has been designated by the chief judge of that circuit as the central intake point for violations of injunctions for protection where the petitioner can receive assistance in the **preparation of the affidavit** in support of the violation.

(2) The affidavit shall be immediately forwarded by the office assisting the petitioner to the state attorney of that circuit and to such judge as the chief judge determines to be the recipient of **affidavits** of violations of an injunction. If the affidavit alleges that a crime has been committed, the office assisting the petitioner shall also forward a copy of the petitioner's **affidavit** to the appropriate law enforcement agency for investigation. No later than 20 days after receiving the initial report, the local law enforcement agency shall complete its investigation and forward a report to the state attorney. The policy adopted by the state attorney in each circuit under s. 741.2901(2) shall include a policy regarding intake of alleged violations of injunctions for protection against stalking or cyberstalking under this section. The intake shall be supervised by a state attorney who has been designated and assigned to handle stalking or cyberstalking cases. The state attorney shall determine within 30 working days whether his or her office will file criminal charges or prepare a motion for an order to show cause as to why the respondent should not be held in criminal contempt, or prepare both as alternative findings, or file notice that the case remains under investigation or is pending subject to some other action.

(3) If the court has knowledge that the petitioner or another person is in immediate danger if the court does not act before the decision of the state attorney to proceed, the court shall immediately issue an order of appointment of the state attorney to file a motion for an order to show cause as to why the respondent should not be held in contempt. If the court does not issue an order of appointment of the state attorney, it shall immediately notify the state attorney that the court is proceeding to enforce the violation through criminal contempt.

(4) A person who willfully violates an injunction for protection against stalking or cyberstalking issued pursuant to s. 784.0485, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, by:

- (a) Going to, or being within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family members or individuals closely associated with the petitioner;
- (b) Committing an act of stalking against the petitioner;
- (c) Committing any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- (d) Telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- (e) Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- (f) Defacing or destroying the petitioner's personal property, including the petitioner's motor vehicle; or
- (g) Refusing to surrender firearms or ammunition if ordered to do so by the court, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

An affidavit is the required first step and in this present case the affidavit is fatally defective where the notary statement is one day *before* the signature it cannot be, on its face, an affidavit. The filing of this document as a purported affidavit, the potential impact on Mr Scott's liberty, in action not yet occurred requires this writ of prohibition to suspend. There is no other remedy under law to prevent the

improper jurisdiction from usurping the authority of this court on substantive question of law, yes even questions of first impression already passed to this court.

Mr. Scott did not willfully violate the injunction. Mr Scott removed the youtube channel the court appeared to take issue with. Mr Scott asked the judge what the order means what can and can't be done. (t-85). Mr Scott turned in his guns and ammunition.(R1:106) The posting of the docket on a web page cannot be considered stalking when the Lee County Clerk of Court posts the same docket information for public view. The written order of the judge "Final Judgment of Injunction For Protection Against Stalking (After Notice)" states the obligation of the enjoined. (R1:80-85) On page 5 section 6 is blank there are no additional provisions listed. The court did not order removal of posts or provide any guidance when asked. The order is in a state of limbo until this court issues it mandate and the lower court should not enforce any provision of the order that are interpretative and not clearly defined. That is why Mr. Scott asks this court to:

STAY OF THE LOWER COURTS ORDER

The likelihood of success requires this stay to be issued. A continuation of the lower courts order is a prior restraint on speech that has for near three months irreparably harmed the respondent/appellant. The legal sufficiency of the

allegations did not meet the cyberstalking elements. The lower tribunal appears to weigh all the evidence combined never getting to the individual qualifying incidences that this court required in *Touhey v. Seda*, 133 So. 3d 1203, 1204 (Fla. 2d DCA 2014),(Initial Brief 1,26,27, 30) following *Goudy v.. Duquette*, 112 So.3d 716, 717 (Fla. 2d DCA 2013) (Initial Brief:passim)– quoting (quoting *Slack v. Kling*, 959 So.2d 425, 426 (Fla. 2d DCA 2007))

The respondent has his first amendment rights to petition government chilled and the petitioner and his National Association of Professional Process Servers are actively marching their legislative influence even within the confines of the 20th judicial circuit. In June the petitioner's organization contributed \$500.00 to the clerk of Court of Lee County's reelection campaign. On November 17, 2015 the petitioners organization has scheduled it first ever renewal class in Fort Myers Beach Florida that is accepted by the 20th Judicial Circuit of Florida for its licensing approval of process servers. Mr. Scott would like to challenge these activities but the threat of imprisonment for using comparative discussion among the participant's position and Mr. Scott's position is chilled.

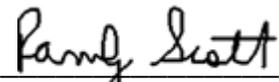
The record before you clearly shows that there is no legally sufficient allegation aligned with the individual elements of individual speech items meeting the stalking statute. What is guessed, without real guidance from the court, is that a

standard of evidentiary weight in total was used and that does not meet the burden of the elements of cyberstalking per incident.

Each incident of stalking must be proven by competent, substantial evidence to support an injunction against stalking. Goudy v.. Duquette, 112 So.3d 716, 717 (Fla. 2d DCA 2013) (Initial Brief:passim) (quoting Slack v. Kling, 959 So.2d 425, 426 (Fla. 2d DCA 2007)).

Cyberstalking requires a surgical application toward individual statements meeting the legal sufficiency. None of the instances met the legal sufficiency, without the courts findings of fact, the court appeared to weigh all the evidence and request this motion to stay is granted based on the apparent likelihood of success based in part on this fundamental error.

November 8, 2015



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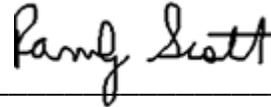
CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Fla. R. App. P. 9.210(a)(2). November 8, 2015

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy hereof was filed electronically through the Court's eDCA system on this 8th of November 2015. In addition to any electronic service provided to parties or counselors of record by the eDCA system.

November 8, 2015



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