Stalking Injunctions

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While not always a part of divorce or child custody cases, stalking injunctions are an issue that can fall under the realm of family law, even though they do not always occur between family members or partners in a relationship.

Florida Statutes Section 784.048 defines stalking as "when a person willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person." The statute further clarifies the definition by specifically stating that "harass" means to engage in a course of conduct directed at a specific person, which causes substantial emotional distress to that person and serves no legitimate purpose. This burden makes it more difficult to obtain a stalking injunction than one may think.

The standard regarding whether a petitioner suffered substantial emotional distress as a result of the conduct is determined by an objective, reasonable person standard, not a subjective standard, *Klenk v. Ransom*, 44 Fla. L. Weekly D 1270 (Fla. 1st DCA 2019). The *Klenk* case involves a petitioner who alleged the respondent was sexually harassing her at work. The respondent appealed the entry of a stalking injunction. The Florida First District Court of Appeals ruled that the evidence was insufficient to show conduct that would produce substantial emotional distress in an objectively reasonable person, and they reversed and remanded for the trial court to vacate the injunction. Specifically, evidence that the petitioner was "weirded out" or uncomfortable is not enough to establish substantial emotional distress. In creating this ruling, the *Klenk* court cites another case, *Paulson v. Rankart*, 251 So.3d 986 (Fla. 1st DCA 2018) where the 1st DCA rejected the argument that even the respondent's acts of watching the petitioner sunbathe from a public street were enough to support an injunction, because of that same legal standard of substantial emotional distress.

The case *Stone v. McMillian*, 44 Fla. L. Weekly D 1171 (Fla. 1st DCA 2019), further clarifies the "objective" standard that the issuance of a stalking injunction must meet. In the *Stone* case, the parties were neighbors. The respondent took daily walks around the street where both he and petitioner each lived. One day, petitioner allegedly intentionally drove her car at respondent, and he got angry. He put a letter in her mailbox that warned her not to "pull another stunt like that." She then filed a petition for injunction based upon his walking near her house. The trial court declined to grant that first injunction, and then she filed another one based on similar allegations and a video camera log showing how many times he walked by her house daily. The respondent had six neighbors testify that he was active in the community and part of the neighborhood watch community. He also argued that the first injunction based on similar allegations was not granted. The trial court ruled that the sheer number of times respondent walked around the street signaled that he had not "let go of his animosity" towards petitioner. The trial court granted the injunction and respondent appealed.

The First District Court of Appeals reversed the injunction, and ruled that an injunction against stalking must be supported by evidence of conduct that would produce substantial emotional distress in a reasonable person. It is not a subjective standard. Further, one neighbor's interpretations of another's innocuous actions as aggressive does not by itself support the entry of an injunction. The evidence in *Stone* was insufficient to show that the respondent maliciously engaged in a course of conduct directed at petitioner that would cause a reasonable person substantial emotional distress.

The statute sets forth clearer guidance on what a court must find in order to support the entry of an injunction. For more information on obtaining a stalking injunction or another form of injunction, such as domestic violence injunctions, contact an attorney.

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