

Dissolving domestic violence permanent injunction

Number: INFORMAL

Date: October 24, 1996

The Honorable Keith Brace
Judge, First Judicial Circuit
Okaloosa County Courthouse
101 James Lee Boulevard East, Suite 204
Crestview, Florida 32536-3515

RE: JUDGES--INJUNCTIONS--DOMESTIC VIOLENCE--requirement of hearing to dissolve permanent injunction. s. 741.30, Fla. Stat.

Dear Judge Brace:

This is in response to your recent request for assistance in determining the appropriate standard to be used when you are considering petitions for dismissal of permanent injunctions issued in domestic violence cases. You state that you generally grant the request without a hearing when the petitioner for a temporary injunction requests a dismissal. However, you express concerns that a respondent may improperly influence a petitioner to have a permanent injunction removed, thus requiring a more circumspect review in those cases.

Section 741.30, Florida Statutes, creates a cause of action for an injunction for protection against domestic violence and prescribes the form to be used in petitioning the court for such an injunction.[1] If it appears to the court that an immediate present danger of domestic violence exists, the court "may grant a temporary injunction *ex parte*, pending a full hearing, and may grant such relief as the court deems proper . . . "[2] The hearing on the request for an *ex parte* temporary injunction is generally limited in the evidence that may be received and the resulting order is effective for a fixed period not to exceed fifteen days.[3] A full hearing must be set for a date no later than when the temporary injunction ceases to be effective, unless continued by the court.[4]

After notice and a full evidentiary hearing, it is within the court's discretion to enter a final order of injunction.[5] Section 741.30(7)(a)3., Florida Statutes, states that "[a]ll orders issued, changed, continued, extended, or vacated subsequent to the original service of documents enumerated under subparagraph 1., shall be certified by the clerk of the court and delivered to the parties at the time of the entry of the order." Moreover, within twenty-four hours after service to the parties, a copy of the injunction must be served to the sheriff with jurisdiction over the residence of the petitioner.[6] The sheriff must then make the information relating to the injunction available to other law enforcement agencies.[7]

In the event an injunction for protection is vacated, terminated, or otherwise rendered no longer effective, the clerk must within twenty-four hours notify the sheriff who received the original notification of injunction. The sheriff must then notify the law enforcement agencies that were previously alerted to the injunction.[8]

While section 741.30(9), Florida Statutes, recognizes that the petitioner or the respondent may move the court to modify or dissolve an injunction at any time, there is no legislative direction as to standards of proof to be applied when considering such a request relative to a permanent injunction against domestic violence. Clearly, the modification or dissolution of an injunction is a matter resting in the discretion of the court. It has been recognized, however, that the "court which renders a decree for a permanent or perpetual injunction may open or modify the same where the circumstances, and the circumstances of the parties, are shown to have so changed as to make it just and equitable to do so . . . "[9]

Section 741.30(5)(b), Florida Statutes, provides that nothing in the statute affects a petitioner's right to be heard in person on any petition consistent with the Florida Rules of Civil Procedure. Moreover, Rule 12.610(c)(6), Family Law Rules of Civil Procedure, states that "[m]otions to modify or vacate an injunction shall be governed by the Florida Rules of Civil Procedure." Rule 1.610(d), Florida Rules of Civil Procedure, provides that when a party who moves to dissolve or modify an injunction, "the motion shall be heard within 5 days after the movant applies for a hearing on the motion." The rule contemplates that the court will hold a hearing on a motion to dissolve or modify an injunction. Thus, it would appear that a party making a motion to dissolve a permanent injunction against domestic violence must request a hearing on the motion.

In instances where there has been evidence of domestic violence or repeat violence supporting an order of a permanent injunction against such violence, a request by the protected party to dissolve the injunction could appear highly suspect. It would be prudent, therefore, to hold an evidentiary hearing to consider whether the parties' circumstances have changed such that dissolution or modification of the injunction is warranted.

I trust these informal comments will be of some assistance to you. Should you have further questions, please do not hesitate to contact this office.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See s. 741.30(3), Fla. Stat. (1995).

[2] Section 741.30(5)(a), Fla. Stat. (1995).

[3] See s. 741.30(5)(b) and (c), Fla. Stat. (1995).

[4] See s. 741.30(5)(c), Fla. Stat. (1995).

[5] See s. 741.30(6)(a), Fla. Stat. (1995).

[6] Section 741.30(7)(c)1. and 2., Fla. Stat., as amended by s. 3, Ch. 96-392, Laws. of Fla.

[7] See s. 741.30(7)(c)3. and 4., Fla. Stat., as amended by s. 3, Ch. 96-392, Laws. of Fla.

[8] Section 741.30(7)(c)5., Fla. Stat., as amended by s. 3, Ch. 96-392, Laws of Fla.

[9] See *Jackson Grain Co. v. Lee*, 7 So. 2d 143, 146 (Fla. 1942), (unless provided by its terms, injunction remains in force as long as the court feels protection it affords is necessary to complainant's rights or until conditions demand a modification).