

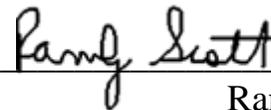
**IN THE DISTRICT COURT OF APPEAL,
SECOND DISTRICT, STATE OF FLORIDA
CASE NO. 2D15-3412**

Randy A Scott)
Appellant)
) L.T. CASE NO. 15-031538DR N
v.)
)
Frederic A Blum)
Appellee)

INITIAL BRIEF OF APPELLANT

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

September 27, 2015



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PRELIMINARY STATEMENT

Appellant, Randy Scott, referred to herein as “Scott.” Appellee, Frederic A Blum, referred to herein as “Blum.” The National Association of Professional Process Servers referred to herein as “NAPPS” and the Florida Association of Professional Process Servers referred to herein as “FAPPS”.

References to the record on appeal (the “Record”) are designated by record volume and page number as “([Item number], [vol. no.] at [pg. no.]” .

STATEMENT OF THE CASE AND FACTS

Nature of the Appeal and Standard of Review

This is an appeal from a final judgment of injunction for protection against stalking under Fla. Stat. § 784.0485. Which is the order on appeal (item 12, volume 1 at pg. no.80-85). Scott appeals the entry of the injunction under the statute and, alternatively, the scope of the injunction under the First Amendment to the United States Constitution. This Court's review of the entry of the injunction is to determine whether there was competent, substantial evidence to support each incident of stalking underlying the injunction. See *Touhey v. Seda*, 133 So. 3d 1203, 1204 (Fla. 2d DCA 2014). The Court reviews de novo, however, the legal questions regarding the constitutionality of the injunction's scope under the First Amendment. See *Operation Rescue v. Women's Health Ctr., Inc.*, 626 So. 2d 664, 670 (Fla. 1993), *aff'd in part, rev'd in part*, *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753 (1994).

STANDARD OF REVIEW

This Court reviews the granting of an injunction under a mixed standard of review. The trial court's factual findings will not be reversed unless the court abused its discretion; however, to the extent the order is based on legal conclusions, the trial

court's decision is subject to de novo review. *Meadows v. Medical Optics, Inc.*, 90 So. 3d 924, 925 (Fla. 4th DCA 2012); see also *Burtoff v. Tauber*, 85 So. 3d 1182 (Fla. 4th DCA 2012) (same). "In cases raising First Amendment issues [the US Supreme Court has] repeatedly held that an appellate court has an obligation to make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression." *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984) (quoting *New York Times v. Sullivan*, 376 U.S. 254, 284-86 (1964)).

Factual Background

Petitioner counsel filed a purported prose petition on July 16, 2015. (item 1, volume 1 at pg. no.1). Petitioner's counsel did not use the Florida Supreme Court Approved Form (item 39, volume 2 at pg. no. [pg-t82]). Petitioner's counsel had assistance by the Lee County Florida Domestic Violence Unit¹ (item 5, volume 1 at

¹ The Lee County Domestic Violence unit is funded by the Violence Against Women Act signed into law by President Clinton in 1994 and reauthorized by the signing of the reauthorization bill in 2013 by President Obama. The United States Attorney General in the report to congress in 2014 described the VAWA purposes are to assist **petitioners** to obtain "successful injunctions". The congressional authority, under this law, giving victims a right to sue in federal court, was overturned in *United States v. Morrison*, 529 U.S. 598. That section was overturned on Federalism grounds relating to federal government imposition on local criminal laws. The majority, quoting from *NLRB v. Jones & Laughlin Steel Corp.* (1937), said that the scope of the interstate commerce power

pg. no.23). A temporary injunction was obtained without the necessary rule 1.610 statements why an order is necessary without notice. (item 8, volume 1 at pg. no.30). This declaration is required when a petitioner files by counsel. Although petitioner counsel prepared the petition and filed the petition counsel filed an appearance *after* temporary petition was granted on July 17, 2015. (item 7, volume 1 at pg. no.29).

“ must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. ”

In October of 1994, shortly after the creation of VAWA funding mechanics the Honorable Chief Judge of the 20th judicial circuit created the administrative order approved by the Florida Supreme Court to create this Lee County Domestic Violence Unit and accept these federal funds. The state legislator’s enacted provisions of law such as reporting requirements to a national database of all persons under a protective order so individuals who are stopped by police or under some other investigative matter across the United States will be warned of the order on the individual. That undoubtedly will cause more police scrutiny on appellant as a domestic violence offender. In order to receive the federal funding the grantees (Florida legislators, courts and executives through the FLDOJ and its sub grantees i.e 20th Judicial Circuit) must accept the condition of the federal oversight of states criminal codes through federal funding and remove all guns and ammunition from those under a protective order. Respondent did not and does not have the funding assistance of the federal government for a defense that has stripped him of first and second amendment protections against government intrusions.

Scott is a process server since 2009. (Item 9, volume 1 at pg. no.39) In 2010 Scott moved to FLORIDA and was met with regulatory license scheme that sought to control the free trade market of process serving. The device that the individuals used is a federally recognized tax exempt public purpose nonprofit call NAPPS. Scott successfully spoke out about collusive efforts of leaders in the process serving industry (Item 39, volume 2 at pg. no.364). This included speech about many elected board members of this public purpose tax exempt NAPPS including Blum the petitioner. Public purpose process serving industry was the subject of Scott's speech. NAPPS as well as its confederates speak in that same public space.

Course of the Proceedings and Disposition Below

Blum's counsel Jennifer Gutmore filed Blums Petition for Injunction for Protection against Stalking on July 16, 2015 under the guise of a prose filing, resulting in the issuance of a temporary injunction against Scott. A Florida rule of civil procedure 1.610 directs petitioners seeking an injunction with counsel to include a statement to the court why notice is not needed. By filing the petition prose an ex-parte temporary injunction is more likely to issue, as happened in this instant case. In order for the lower tribunal clerk of courts to accept the petition it is required that the petitioner completes a "Notice of Limitation of Services" form. The form is filled out when the prose petitioner gets assistance from the domestic violence group of the 20th Judicial Circuit. Without that form the Lee County Domestic

Violence Unit will not accept the filing of the petition as a prose petition. Instead of immediately filing the attorney appearance the opposing counsel filled out the notice of limitation of services in the petitioners name avoiding the 1.610 rule of why notice is not needed. (item 5, volume 1 at pg. no.23)

Following a thrice-interrupted proceeding totaling about 90 minutes in an abbreviated evidentiary hearing on July 27, 2015, the court below entered a Final Judgment of Injunction for Protection Against Stalking against Scott (the “Injunction”). This is the order on appeal (item 12, volume 1 at pg. no.80-85). The trial court made no obvious identified rulings leading up to the granting of the petition.

SUMMARY OF ARGUMENT

This appeal tests the constitutionality of an eerily quiet yet sweeping injunction.

That application makes it illegal for Appellant Randy Scott to say virtually anything online about the process serving industry, NAPPS, or contact anyone or communicate with anyone that involves a Blum alliance including government agencies and legislators and regulators because Blum may get “upset”.

The court:

7. he's got a good point there. Before someone can
 8. believe they're stalked, I got to **know that he knew**
 9. about all of this and that he -- **it upsets him.**
- (Item 39, volume 2 at pg. no.304 [transcript-pg 27:7-9:])

This colloquy between the court and the petitioners counsel appears to be the standard of the court in issuing the injunction.

The element of Florida cyber stalking law require(s):

“Cyberstalk” means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

Speaking about a person or a group of persons not “directed at a specific person”.

THE WITNESS: How were they directed at me?

THE COURT: Yeah.

THE WITNESS: He speaks about me in very negative terms. He has --

THE COURT: But to other people.

THE WITNESS: To other people, correct. He is telling people --

THE COURT: Not to you. He's not sending these emails directly to you.

THE WITNESS: No, he is not.

(Item 39, volume 2 at pg. no.305 [transcript-pg 28:25-29:])

Blum has been following respondent for some time. His organization NAPPS has spent large sums of money hiring private investigators to surveil and surround respondent to gain political advantage against Scott's industry speech. (Item 9, volume 1 at pg. no.18, Exhibit 1).

This injunction is an unconstitutional misuse of Florida's cyberstalking statute, which was directed at problems far different from what occurred here – Scott's online commentary about a prominent process server nonprofit political lobbying organization. The alleged conduct does not satisfy the statutory definition of "cyberstalking" under § 784.048, Fla. Stat. (2014). This focuses on the statutory and constitutional infirmities in the lower court's injunction. The injunction is a classic prior restraint which this very court and other appellate courts in Florida and around the country routinely have held violates the fundamental right to free speech protected by both the First Amendment and the Florida Constitution's Declaration of Rights. Moreover, the scope of conduct the injunction covers is overbroad and vague because it prohibits constitutionally protected speech through subjective prior restraint what speech Scott is allowed to make, even if such statements are about Blum. Consequently, the injunction in this case improperly

restricts Scott's free speech rights and must be reversed lest it open the door to further encroachments on the free speech rights of other Florida citizens.

The Injunction should be reversed because Blum did not establish that stalking occurred by competent, substantial evidence that the speech in any of the proffered exhibits was directed at a [Blum] specific person AND was void of a legitimate purpose AND under a reasonable person standard substantial emotional distress resulted. Not one of these specific elements was reported on in any one of petitioner's voluminous submissions.

The trial court recognized the lack of credibility of the records. With objection by Scott of all the exhibits as hearsay and unauthenticated exhibits the court entered the exhibits. There is no clear statement or ruling on any one specific communication meeting all the elements of cyberstalking.

The Injunction should be reversed also because it was not narrowly tailored to restrict no more speech than necessary to serve the State's interest in preventing the actual stalking of Blum. Scott's peaceful publications were not threats, true or otherwise, they were not directed at a specific person namely Blum. Scott has done such forms of public speech for many years without incident, yet now it is completely proscribed by the Injunction. The remedy of the supposed stalking incidents found by the trial court reads; do not contact, stay away from the house

of Blum, no email, no messages to Blum etc. The remedy does not fit the allegations. Since none of this enjoined activity occurred the vagueness of the courts order reaches heights beyond the courts authority to enjoin all speech. The overbroad and vagueness of the order that includes “DO NOT CYBERSTALK BLUM” order is so vague that even the judge seems not prepared to address Scotts request for clarification. Honorable Judge R Corbin stated, “I don’t give legal advice”.

4. MR. SCOTT: What can I and can't I do?

5. THE COURT: I don't give legal advice. I just

6. grant or deny petitions. I granted it.

(Item 39, volume 2 at pg. no.366 [transcript-pg 89:4-6:])

This application in this court shines a light on the statutes over breadth, vagueness, and unconstitutionality. If a trier of fact is confused as to what this refined statute directs certainly the law is suspect. The statute in chief was created/refined post *Bouter v State* 659 So.2d 235 (1995) The Florida Supreme Court direction in *Bouter* is too far removed by the current refinement of this subsection within the *Bouter* confines. The *Bouter* concurrence clearly point out the refinements in the stalking law requires a revisit.² With the rights of private actors pursuing

² KOGAN, Justice, specially concurring.

Bouter's brief may be fairly characterized as resting in part on an assertion of rights under the Florida Constitution, primarily because of his extensive reliance on the statelaw holding of *Perkins v. State*, [576 So.2d 1310](#) (Fla. 1991). Accordingly, I would analyze

injunctions and the loss of two constitutional encumbrances on the government against Scott. Those fences removed from the government encroachment against Scott include the first amendment and the second amendment.

Georgia Supreme Court has taken the first step among the states to address this specific question involving cyberstalking and speech too many as opposed to speech to one, about a person as compared to directed at a specific person. In *Chan v. Ellis*, 2015 WL 1393410 (Ga. Supreme Ct. Mar. 27, 2015).

this case entirely under the Florida Constitution in keeping with the doctrine of primacy announced in *Traylor v. State*, [596 So.2d 957](#) (Fla. 1992). I also write separately to stress that the only statute at issue in this case is subsection 784.048(3), Florida Statutes (Supp. 1992), dealing with *aggravated* stalking. The validity of subsections 784.048(2) and (4), Florida Statutes (Supp. 1992), involve distinct questions of law not at issue in this case.²

On the merits, I am in general agreement with the majority and with Judge Cope's analysis in *Pallas v. State*, [636 So.2d 1358](#) (Fla. 3d DCA 1994). Aggravated stalking is in the nature of an aggravated form of assault, and it is arguable that the latter is even a necessarily lesser included offense of the former.³ That being the case, overbreadth is not a tenable argument for invalidity, and vagueness is arguable only if the refinements added by subsection 784.048(3) are themselves vague. Because I cannot conclude that they are, I concur with the majority. I also reiterate my comments in the companion case, *Gilbert v. State*, [659 So.2d 233](#) (Fla. 1995) (Kogan, J., specially concurring)

ARGUMENT

I.THE TRIAL COURT IDENTIFIED SUBSTANTIAL EVIDENTIARY HURDLES and GUIDED PETITIONER.

The trial court discussed some documents by petitioner prior to entering it into evidence.

THE COURT: No, no. Here's the point. This evidence is doctored. This evidence is modified. This evidence is not complete.

MS. GUTMORE: Okay.

THE COURT: G is not an email address.

MS. GUTMORE: That's correct.

THE COURT: There you go; you got it.

MS. GUTMORE: All right.

THE COURT: So let me back up the truck. How do I know that all of this stuff isn't doctored? You doctor one line, you can doctor a thousand.

(Item 39, volume 2 at pg. no.296-297 [transcript-pg 19:25-20:10:])

All of Blum's evidence was objected to.

MR. SCOTT: Your Honor, I'd just like to, if I could, have an objection on that to how he obtained the information on that. If he -- if it wasn't

(Item 39, volume 2 at pg. no.348 [transcript-pg 71:2-4])

MR. SCOTT:

I can't accept that these letters which are clearly manipulated, things are missing and if we did a full evidentiary hearing I could show you some other points that indicate, wow, there's stuff missing. Why?

(Item 39, volume 2 at pg. no.318 [transcript-pg 41:10-14])

MR. SCOTT:

I stand on -- I stand on what I do write, and I'm not sure that her exhibits reflect what I write because there seems to be a lot of inconsistencies plus these exhibits are gotten from a third-party, which I think might be problematic with hearsay.

(Item 39, volume 2 at pg. no.232 [transcript-pg 55:14-19])

The exhibits are all edited and unverified third party supplied material and most certainly never directed at a specific person and a legitimate purpose of petitioning government and regulators in regards to regulating process servers.

Accordingly, the Florida statutes allow the court to take notice of such fundamental errors affecting substantial rights:

90.104 Rulings on evidence.—

(3) Nothing in this section shall preclude a court from taking notice of fundamental errors affecting substantial rights, even though such errors were not brought to the attention of the trial judge.

The court recognized the appellants exhibits attached to his motion to dissolve but only entered two exhibits as evidence from appellant. The motion to dissolve, if read, shows the appellants intent in the motion to dissolve was to enter into the record the exhibits as evidence.

MS. GUTMORE: May I see them as well, Your Honor?

THE COURT: Yeah, yeah. I think it's the same ones attached to his motion.

(Item 39, volume 2, page 362[t-page 85])

The evidence in the motion to dismiss would show that Blum is using the court to intervene in matters of public speech where both sides speak in the public square to win public opinion in matters of the public issue of the process serving industry and nonprofit management.

The court discussed the following petitioner exhibits without question:

Exhibit 4 (Item 39, volume 2, page 288 line 16[t-page 11])

Exhibit 5,6,& 7 (Item 39, volume 2, page 292 line 3-22[t-page 15])

Exhibit 12 (Item 39, volume 2, page 296 line 4-7[t-page 19])

Exhibit 30 & 31 (Item 39, volume 2, page 297 line 17-20[t-page 20])

Without the court challenge exhibit 32, 33, 34,35,36,44, & 49 were discussed all from the petitioner's filing. The court directed respondent in a different flavor when respondent attempted to discuss his evidence attached as exhibits:

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.

(Item 39, volume 2, page 322 line 2-8[t-page 45])

The courts involvement in directing the petitioner and the respondent regarding evidence skewed greatly to petitioners favor. The courts intervention in the case with questions and commentary accepting identically placed documents on the record and into evidence from the petitioner pleadings, yet not doing the same for respondent was fundamentally prejudicial to the defense by the respondent.

The court directed the petitioner as to what he needs to issue the injunction:

6. THE COURT: Yeah, you're right. Ma'am, look,

7. he's got a good point there. Before someone can
 8. believe they're stalked, I got to **know that he knew**
 9. about all of this and that he -- **it upsets him.**
- (Item 39, volume 2 at pg. no.304 [transcript-pg 27:6-9:])

For these reasons, the injunction should be reversed as fundamental error.

II. PROPERLY INTERPRETED, THE CYBERSTALKING STATUTE CANNOT BE USED TO PREVENT SCOTT'S SPEECH ABOUT NAPPS or BLUM.

In a genuine case of stalking, an aggressor follows, surveils, or repeatedly sends threatening and harassing communications to a victim. A no-contact order is a proper remedy for such invasions of privacy. However, the order in this case goes beyond a no-contact order; its vagueness under threat of criminal contempt chills speech about a Blum, not just speech to him. See Aaron Caplan, Free Speech and Civil Harassment Orders, 64 *Hastings L.J.* 781, 849 (2013) (distinguishing between speech about a person and contact with a person); see also Eugene Volokh, One-to-One Speech vs. One-to-Many Speech, Criminal Harassment Laws, and “Cyberstalking,” 107 *Northwestern U. L.Rev.* 731, 745-46 (2013) (same). For example, the order enjoins Scott from “Cyberstalking” Blum without a legitimate purpose. The only “publications” proffered by Blum were third party emails and web sites containing links to truthful online news articles that discussed Blum. Upon a full evidentiary hearing, it would shown, that the 48 exhibits are expanded from links. For instance, one email may have linked to numerous websites where other material from other people and government agencies is found. Blum clicked

on those links, printed out the results, and included it the petition. Albeit deleted sections of the results. What Scott published is not reflected credibly in the doctored exhibits of Blum. Whether he doctored them or those third parties who sent it to him doctored them is unknown.

The trial court evidently concluded that online speech about NAPPS, FAPPS Blum and those in the process serving trade constituted speech “directed at” Blum that could be enjoined, supposedly because posting such truthful articles lacked “a legitimate purpose.” In fact, Florida’s stalking laws are designed to protect a person’s privacy and safety, not to silence constitutionally protected speech to the public at large. In 1992, Florida created the offense of “stalking” to address victims’ “prolonged suffering from conduct commonly described as stalking, which consists of a knowing and willful course of conduct by any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear of death or great bodily injury.” Ch. 92-208, § 1, Laws of Fla. The 4th District Court found in *Curry v. State*, 811 So. 2d 736, 741 (Fla. 4th DCA 2002), Florida’s stalking statute “was intended to fill gaps in the law by criminalizing conduct that fell short of assault or battery. The stalking statute was also designed to protect women from being harassed by ex-husbands or former boyfriends, by ensuring that victims did not have to be injured or threatened with death before stopping a

stalker's harassment." See generally, Caplan, Civil Harassment Orders, at 793-94 (discussing history of anti-stalking legislation); James T. Tucker, Note, Stalking the Problems With Stalking Laws: The Effectiveness of Florida Statutes Section 784.048, 45 Fla. L.Rev. 609, 628-29 (1993). In Curry, this Court overturned a stalking conviction where the defendant's allegedly harassing conduct consisted of speech about the victim (in that case, complaints against the victim with government agencies) not accompanied by contact directed at the victim. In 2003, the Legislature amended the stalking law to include "cyberstalking," which the statute defined as engaging "in a course of conduct to communicate, or cause to be communicated, words, images, or language, by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose." § 748.048(1)(d), Fla. Stat. This addition to the statute retained the existing concept of a "course of conduct" from subsection (1)(b), which includes a proviso indicating that "constitutionally protected activity" is not included within that term. The statute identifies "picketing" and "organized protests" as examples of constitutionally protected activities, but as Curry explained, "the list is not exclusive". Other constitutionally protected activities are also excluded from the definition of 'course of conduct.'" Curry, 811 So. 2d at 742. By using the phrase "directed at" as part of its definition of cyberstalking, and by incorporating into it

the existing statutory proviso exempting constitutionally protected speech, the legislature sought to ensure that its new statute would not infringe upon people's right to engage in speech to the public at large, even when the speech involves statements about other people (as would occur in picketing and protests). To be sure, genuine stalking is conduct that can be made illegal, and a resulting no-contact order would not violate the constitutional right of free speech. *Bouters v. State*, 659 So. 2d 235, 237 (1995) (upholding a stalking conviction where there was proof of stalking through direct contact with victim). This does not justify stretching the cyberstalking addition to Florida's statute to enjoin truthful reporting like Scott's directing readers to articles truthfully describing legal actions involving the process serving trade, NAPPS and its leaders such as Blum. See *Watts v. United States*, 394 U.S. 705, 708 (1969) (per curiam) (To ensure that public discussion remains "uninhibited, robust, and wide-open," the First Amendment protects speech that is "vituperative, abusive, and inexact.") (quoting *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964)); Lyrissa Lidsky, *How Not to Criminalize Cyberbullying*, 77 *Missouri L. Rev.* 693, 703-04 (2012) (explaining that attempts to "modernize" stalking statutes to combat cyberbullying "inevitably target 'non-physical' harassment, consisting entirely of expression or expressive conduct that are hard to define with the precision required to avoid constitutional

vagueness or overbreadth challenges”). Therefore, the lower court’s issuance of the injunction based on Florida’s cyberstalking law was improper.

III. THE LOWER COURT’S INJUNCTION IS A PRIOR RESTRAINT AND AN INSUPPORTABLE RESTRICTION ON SCOTT’S FREE SPEECH RIGHTS.

The right to express oneself through words and conduct is one of the most cherished rights we enjoy in this country. A court order banning specified speech that, in a judge’s view, lacks a “legitimate purpose” is presumptively unconstitutional and goes far beyond prohibiting only unprotected speech.

Gagliardo v. Branam Children, 32 So. 3d 673, 674 (Fla. 3d DCA 2010). See also *Alexander v. United States*, 509 U.S. 544, 550 (1993) (“Temporary restraining orders and permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints.”); *Vrasic v. Leibel*, 106 So. 3d 485, 486 (Fla. 4th DCA 2013) (“[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.”)(quoting *Neb. Press Ass'n v. Stuart*,). In particular, “prior restraint problems arise for any civil harassment order that forbids speech with specified content, as in ‘Do not say X to petitioner’ or ‘Do not say Y about petitioner.’” *Caplan*, *Civil Harassment Orders*, at 824. Florida’s courts have respected the prohibition on prior restraints, refusing to enter speech-restrictive orders in cases factually similar to this one. In *Vrasic v. Leibel*, 106 So. 3d 485 (Fla. 4th DCA

2013), this Court reversed in part a cyberstalking injunction against the petitioner's former girlfriend for engaging in conduct that included hacking into the petitioner's email and sending offensive letters and naked photos of him over the internet. 106 So. 3d at 486. The petitioner argued his girlfriend's behavior constituted cyberstalking and the injunction not only banned any contact between them, but it also prohibited her from using his name or likeness for any commercial purpose related to a book she was promoting. *Id.* In striking down all aspects of the injunction except for the "no contact" provision, this Court noted that "[a] free society prefers to punish the few who abuse rights of speech after they break the law than to throttle them and all others beforehand." *Id.* at 487 (quoting *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559 (1975)). *Concerned Citizens for Judicial Fairness, Inc. v. Yacucci*, 2014 WL4327916 (Fla. 4th DCA 2014), is a more recent case in which this Court struck down an injunction against the organization distributing any information about the plaintiff, who was a judicial candidate, through a website, direct mailer, television or radio commercial, or any other format. In ruling the injunction was a prior restraint, this Court reasoned that, "[t]he concept that a statement on a public issue may be suppressed because it is believed by a court to be untrue is entirely inconsistent with constitutional guarantees and raises the spectre of censorship in almost pernicious form." *Yacucci*, 2014 WL 4327916 *4 (quoting *Wilson v. Superior Court*, 13 Cal.3d 652

(1975). Because of its significance and harmful consequences, a prior restraint on the freedom of expression is presumptively unconstitutional. *NY Times Co. v. United States*, 403 U.S. 713, 714 (1971) (“Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.”) (internal citations omitted); *Gagliardo*, 32 So. 3d at 674. For that reason, “only in ‘exceptional cases’ will courts consider censorship of publication acceptable.” *Id.* (quoting *Post-Newsweek Stations Orlando, Inc. v. Guetzloe*, 968 So. 2d 608, 610 (Fla. 5th DCA 2007)). Courts have routinely invalidated prior restraints, at most surmising that one might be proper if there is “no less restrictive means available” to target the speech proven to lack constitutional protection. *Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1200 (Fla. 2d DCA 2014) (reversing grant of temporary injunction which barred media company from publishing excerpts of a sex tape which was allegedly recorded without the plaintiff’s consent). See also *Romero v. Erik G. Abrahamson, P.A.*, 113 So. 3d 870, 872 (Fla. 2d DCA 2012) (reversing trial court’s case management order that enjoined appellant from making any statements about the case except to court personnel); *Gagliardo*, 32 So. 3d (reversing order prohibiting writer from distributing any information about children who were subject of custody dispute). In true cases of cyberstalking, a content-neutral no contact order—as opposed to abandon all speech containing specified contact—would be a

less restrictive alternative. Moreover, in cases involving a business or business practices, which are matters of public concern, courts are particularly reluctant to issue injunctions. See *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971) (striking down as unconstitutional state court’s order enjoining distribution of leaflets critical of the respondent’s business); *Animal Rights Found. of Fla., Inc. v. Siegel*, 867 So. 2d451, 457 (Fla. 5th DCA 2004) (reversing injunction which resulted in a prior restraint of constitutionally protected freedom of expression and noting that “[u]nder strict scrutiny, ... a court must review the [regulation] to ensure that it furthers a compelling state interest through the least intrusive means”) (internal quotation marks omitted)). Because the injunction in this case forbids Scott from engaging in electronic communications concerning Blum, the court’s order constitutes a prior restraint and is unconstitutional.

IV. THE LOWER COURT’S INJUNCTION AGAINST SCOTT WAS OVERBROAD BECAUSE IT PROHIBITED HIM FROM ENGAGING IN CONSTITUTIONALLY PROTECTED EXPRESSIVE CONDUCT.

A statute or a court order is overbroad if it reaches a “real and substantial” amount of constitutionally protected speech as compared to its “plainly legitimate sweep.” *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973). Florida’s cyberstalking statute, by purporting to make unlawful online speech “causing substantial emotional distress” and “serving no legitimate purpose,” poses significant overbreadth problems. See *Snyder v. Phelps*, 131 S. Ct. 1207, 1220(2001) (noting that speech

can “inflict great pain,” but courts “cannot react to that pain by punishing the speaker” when the speech involves a matter of public concern); Lidsky, *How Not to Criminalize Cyberbullying*, at 715 (“Many people feel ‘alarmed’ or ‘harassed’ when confronted with ideas they find objectionable, but the First Amendment prohibits states from imposing liability on speech merely because it creates discomfort or annoyance or even ‘alarm’ in its target audience.”). The order in this case undoubtedly reached a real and substantial amount of speech because the injunction did not limit itself to barring any future fighting words, true threats, incitements to violence, defamation, or any other constitutionally proscribable forms of speech. Thus, the necessary implication of the court’s order is that merely forwarding linked publications, offering opinions and parody and satire about NAPPS including Blum is forbidden, including true statements and comments totally unrelated to the underlying cases. The injunction is also overly broad in another way: it exceeds statutory authorization and general rules of equity. In 2012, the legislature enacted § 748.0485, Fla. Stat., which authorized private individuals for the first time to seek civil injunctions against stalking, including cyberstalking. Subsection (6)(a) explains that the intended injunctions would be those that “restrain[] the respondent from committing any act of stalking.” The order in this case is vague and unyielding. The court offered no guidance. The court said “I don’t give legal advice” when Scott asked “what can I and cant I do”.

The court granting Blums petition restrains and chills speech from Scott. Blum is now, with his NAPPS associates able to walk the halls of government petitioning it unchallenged.

4. MR. SCOTT: What can I and can't I do?
5. THE COURT: I don't give legal advice. I just
6. grant or deny petitions. I granted it.
(Item 39, volume 2 at pg. no.366 [transcript-pg 89:4-6:])

The order enjoins other things that never occurred. Specifically, direct contact email or messages at Blum. In addition, the general rules of equity demand that any injunction be tailored to proven violations of law and not reach unnecessarily further. *Chevaldina v. R.K./FL Management, Inc.*, 133So. 3d 1086, 1091 (Fla. 3d DCA 2014) (“An injunction should never be broader than is necessary to secure to the injured party relief warranted by the circumstances involved in the particular case.”). Otherwise, an overly broad injunction chills constitutionally protected expression. *Id.* at 1091. See also *IDS Long Distance, Inc. v. Heiffer*, 819 So. 2d 949, (Fla. 4th DCA 2002) (striking down injunction as overbroad on its face, concluding that overbreadth argument did not require an evidentiary hearing); *Health Clubs, Inc. v. State ex rel. Eagan*, 377 So.2d 28, 29-30 (“Where illegal conduct which has been decreed to constitute a public nuisance is separable from legal conduct within a business enterprise, only the illegal conduct may be enjoined.”) (internal citations omitted). Because the temporary injunction forbids

Scott from engaging in constitutionally protected speech, the court's order was an unconstitutional exercise of its authority.

V.THE INJUNCTION SHOULD BE REVERSED AS A MATTER OF LAW THAT THE ELECTRONIC COMMUNICATIONS WERE NOT DIRECTED AT PETITIONER.

“Cyberstalk” means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, **directed at a specific person**, causing substantial emotional distress to that person and serving no legitimate purpose.

Petitioner admits at the hearing the alleged electronic communication was not directed at him. Florida cyberstalking element requires a factual finding of “directed at”. Here the petitioner states they were not directed at him.

THE WITNESS: How were they directed at me?

THE COURT: Yeah.

THE WITNESS: He speaks about me in very negative terms. He has --

THE COURT: But to other people.

THE WITNESS: To other people, correct. He is telling people --

THE COURT: Not to you. He's not sending these emails directly to you.

THE WITNESS: No, he is not.

(Item 39, volume 2 at pg. no.305 [transcript-pg 28:25-29:])

The legal standard of a successful cyberstalking charge requires “directed at a specific person”. Petitioner admits at the hearing they were not directed at him and the injunction should be reversed.

VI. THE INJUNCTION SHOULD BE REVERSED BECAUSE THE LOWER COURT DID NOT APPLY THE LEGAL LEGISLATIVE DIRECTION OF THE CYBERSTALKING LAW.

The court applied the wrong standard in meeting the cyberstalking elements. The court directed the petitioners counsel to support the petition for indefinite injunction by telling counsel the following:

6. THE COURT: Yeah, you're right. Ma'am, look,
7. he's got a good point there. Before someone can
8. believe they're stalked, I got to **know that he knew**
9. about all of this and that he -- **it upsets him.**

(Item 39, volume 2 at pg. no.304 [transcript-pg 27:6-9:])

The court guided the petitioners counsel to find for the court that the petitioner knew about it and that it upsets him. The petitioners counsel complied with the courts direction. The subsequent injunction does not apply the legal standard of “directed at a specific person” and caused “substantial emotional distress” nor void of legitimate purpose. At best based on the absence of the courts factual findings it appears in the record that the injunction was granted on the standard set forth by

the court in the colloquy with petitioners counsel. The injunction did not meet the legal standards of cyberstalking “directed at a specific person” and should be reversed.

VII. THE INJUNCTION SHOULD BE REVERSED BECAUSE THERE IS NO COMPETENT, SUBSTANTIAL EVIDENCE OF REPEATED STALKING INCIDENTS.

Issuance of a civil injunction for protection against stalking is governed by Fla. Stat. § 784.0485. See *Wyandt v. Voccio*, 39 Fla. L. Weekly D2181 (Fla. 2d DCA Oct. 15, 2014); *Touhey v. Seda*, 133 So. 3d 1203, 1203 (Fla. 2d DCA 2014). For an injunction to issue, a petitioner must prove by competent, substantial evidence that the respondent has committed the offense of stalking as defined in Fla. Stat. § 784.048. *Id.*

"A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking" Fla. Stat. § 784.048(2). A finding of stalking, therefore, requires proof of repeated incidents of harassment or malicious following. See *Goudy v. Duquette*, 112 So. 3d 716, 718 (Fla. 2d DCA 2013) (emphasis added); *Dudley v. Smith*, 786 So. 2d 630, 631 (Fla. 5th DCA 2001). “Each incident must be proven by competent, substantial evidence to support an injunction against stalking.” *Touhey*, 133 So. 3d at 1204.

Determining whether incidents of stalking supporting an injunction have occurred requires consideration of certain controlling definitions and standards. “‘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.” Fla. Stat. § 784.048(1)(a) (emphasis added). “‘Course of conduct’ means a pattern of conduct composed of a series of acts over a period of time” Fla. Stat. § 784.048(1)(b). But, “[course of conduct] does not include constitutionally protected activity such as picketing or other organized protests.” *Id.* (emphasis added). Whether conduct “causes substantial emotional distress” is determined by an objective reasonable person standard, not a subjective standard. See *Touhey*, 133 So. 3d at 1204; *Goudy*, 112 So. 3d at 717.

Thus, a finding of stalking cannot be based on an incident of constitutionally protected activity, or an incident of conduct that serves a legitimate purpose. See *Curry v. State*, 811 So. 2d 736, 738 (Fla. 4th DCA 2002). Furthermore, stalking cannot be based on conduct which does not cause substantial emotional distress, as determined by an objective reasonable person standard. See *Touhey*, 133 So. 3d at 1204; *Goudy*, 112 So. 3d at 717. The court below misapplied the controlling standards in finding that Scott committed stalking, and should be reversed.

A. There is no competent, substantial evidence of a malicious following incident sufficient to form the basis of a stalking injunction.

The court below did not describe their findings or reasoning's of issuing the injunction(s). Neither the temporary injunction issued July 16, 2015 nor the final injunction issued July 27, 2015 included any factual findings or reasons. Upon the granting Honorable Judge R Thomas Corbin was asked by Scott "what can I and cant I do" and the judge responded, "I don't give legal advice".

The undisputed testimony below established that Scott travels the same internet that Blum accessed. That Blum lives over 1000 miles away and there has been no contact, no emails, no messages, no telephone calls and no direct or indirect contact except one meeting way back in 2012. The petitioner does not allege that one meeting as a stalking incident. Thus, on any given date and time Blum can visit and seek out Scott's speech regarding process serving trade and he follows it religiously for political oppositional research to prevent Scott's lobbying policy makers regarding process serving.

In Goudy, the Second District reversed an injunction where the trial court based its finding of stalking on several "following" incidents. 112 So. 3d at 716-18. Goudy involved a dance team coach who sought an injunction against the father of one of her dancers based on "a telephone call, one face-to-face encounter, and three 'following' encounters." Id. at 717 (emphasis added). The Goudy court considered each incident to determine whether it could be counted towards the repeated acts or

course of conduct required to meet the statutory definition of stalking, or its underlying definition of harassment, under Fla. Stat. § 784.048. Id.

First, the court concluded that the single telephone call, in which the father told the coach he was no longer willing to accept the coach's decisions regarding his daughter, could not count as an incident of harassment towards a finding of stalking because "a reasonable person would not have suffered substantial emotional distress as a result of the conversation, however one-sided or hostile it might have been." Id. Alternatively, the court concluded the call could not count as harassment because the purpose of the call was to address the participation of the father's daughter in dance team activities, which was a legitimate purpose. Id.

Second, the Goudy court concluded that an act of following by the father resulting in a face-to-face encounter between the father and coach could have counted as one incident of malicious following, towards the two required for a finding of stalking.

Id. Third, however, the court concluded that none of the subsequent three "following" incidents could be counted: The father first drove his daughter to her dance team's competition, then to the team hotel for his daughter to visit teammates, and then to a restaurant for dinner. Id. at 717-18. The father did not speak to the coach at any location, but the coach testified that he did "'stare [her] down' and 'make his presence known.'" Id. at 718 None of these "following" incidents counted towards stalking, the court concluded, because the father had a

legitimate purpose in driving his daughter to her dance team’s activities. And, the court continued, none of the “following” acts—even the ‘staring down’ and ‘making his presence known’—were sufficient to cause a reasonable person emotional distress. *Id.* at 718.

After discounting the telephone call and the three incidents of “following,” only one incident of malicious following remained, which the court held insufficient to support a finding of stalking. *Id.* “Without repeated harassment or malicious following there was no proof of stalking.” *Id.* (emphasis added).

The court below based its Injunction against Scott was insufficient to count towards a finding of stalking for two separate reasons. First, as was the case in *Goudy*, the Record is clear here that Scott had a legitimate purpose for communicating on the same internet at the same time as Blum. Scott engages in lawful, peaceful, and constitutionally protected speech on the internet and Blum does not have to visit nor is any of the speech directed at a specific person. (*Id.*)

Second, Scott’s speech is being forwarded to Blum by third parties such as Andy Estin, Mike Compton, Gina Sharbowski, and James Lowery is far less significant or potentially intimidating than the “following” incidents held objectively insufficient in *Goudy*—all of which were never directed to Blum by Scott.

Honorable Supreme Court Justice Scalia commented on page 20 of the transcripts of *Elonis v. United States*, 575 U.S. ____ (2015)

JUSTICE SCALIA: “I’m not no, no. I’m not prosecuting him. I’m prosecuting his friend who calls the former wife and says your your former husband has threatened to kill you.”

Unlike in *Goudy*, Scott has no alleged incident of “following” and did not result in a face-to-face encounter, did not involve “staring,” and was not malicious or hostile in any way. A “following” which is not “malicious” cannot be counted towards stalking. See, e.g., *Touhey*, 133 So. 3d at 1204 (reversing injunction for protection against stalking based in part on “single incident of ‘following,’ which was not malicious”). Thus, Scott publishing to many people on the internet discussing the legitimate purpose of process serving regulations and licensing , without more, was not sufficient to cause a reasonable person emotional distress.

Because Scott’s public websites about process serving industry to many people and not directed at a specific person it is objectively insufficient to cause severe emotional distress, and served an eminently legitimate purpose, it cannot count as any stalking incidents required to support the Injunction. Therefore, the Injunction should be reversed.

VIII. THE INJUNCTION SHOULD BE REVERSED BECAUSE IT IS NOT NARROWLY TAILORED AND UNCONSTITUTIONALLY RESTRICTS FAR MORE SPEECH THAN IS NECESSARY.

A. An injunction restricting free speech in a public forum requires stringent narrow tailoring and must burden no more speech than is necessary to serve a significant government interest.

Under the United States Supreme Court’s decision in *Madsen v. Women's Health* Ctr., injunctions that restrict speech on the public sidewalks surrounding an abortion clinic are subject to a stringent application of the First Amendment. 512 U.S. at 764-65. According to the Court:

“Injunctions carry greater risks of censorship and discriminatory application than do general ordinances. We believe that these differences require a somewhat more stringent application of general First Amendment principles in this context. Accordingly, when evaluating a content-neutral injunction, we think that our standard time, place, and manner analysis is not sufficiently rigorous. We must ask instead whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest.”

In other words, an injunction must be “couched in the narrowest terms that will accomplish the pin-pointed objective” of the injunction. *Id.* at 767. The Injunction entered against Scott by the court below falls far short of satisfying this stringent narrow tailoring requirement and must be reversed.

B. The Injunction burdens far more speech than is necessary to serve any legitimate purpose of the Injunction.

The Injunction, among other restrictions, is vague overly broad and the lack of specifics requires Scott under a prior restraint mandate a threat of criminal charges to remain far and wide from the violations of the order and chills the free exercise of speech.

“It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute "abut[s] upon sensitive areas of basic First Amendment freedoms," it "operates to inhibit the exercise of those freedoms." Uncertain meanings inevitably lead citizens to "steer far wider of the unlawful ones' . . . than if the boundaries of the forbidden areas were clearly marked." *Grayned v. City of Rockford*, 408 U.S. 104, 108-09, 92 S.Ct. 2294, 2298-99, 33 L.Ed.2d 222 (1972)

Thus, the injunction entirely cuts off Scott's petitioning government during this very timely opening legislative season. Blum and his confederates now have had free reign to propose their unchallenged legislative and regulatory petitions. The injunction burdens far more speech than is necessary to serve any legitimate purpose of the Injunction, and is therefore unconstitutional.

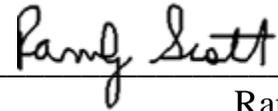
CONCLUSION

For all of the foregoing reasons, this Court should reverse the Injunction and remand the case with instructions to dismiss Blum's Petition.

CERTIFICATE OF COMPLIANCE

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

September 27, 2015

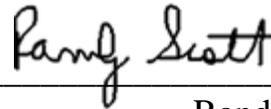


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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy hereof was filed electronically through the Court's eDCA system on this 27th of September 2015. In addition to any electronic service provided to parties or counsel of record by the eDCA system.

September 27, 2015



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