No. 1D17-0003

IN THE FIRST DISTRICT COURT OF APPEAL
FOR THE STATE OF FLORIDA

LISA VENN,

Appellant,

v.

KENNETH M. FOWLKES, III,

Appellee.

On Appeal from the Circuit Court of the Fourth Judicial Circuit
in and for Duval County, Florida
L.T. No. 16-2009-DR-2824

ANSWER BRIEF OF KENNETH M. FOWLKES, III

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STATEMENT OF CASE

Nature of the case

This is a stalking case. Appellant, Lisa Venn, and Appellee, Kenneth M. Fowlkes, were in a romantic relationship and had a child together. After their relationship ended, Ms. Venn's animosity toward Mr. Fowlkes dramatically affected his new romantic relationship and career. Mr. Fowlkes sought protection and received a final judgment of stalking and an injunction against Ms. Venn. She appealed.

Course of the proceedings

On November 28, 2016, Mr. Fowlkes petitioned the trial court for an injunction for protection against stalking by Ms. Venn. (R. 1-15.) The next day, he received a temporary injunction for protection and a notice of hearing. (R. 24-30.) On the day of the originally scheduled final hearing (R. 24), the trial court issued an order that extended the temporary injunction and noticed the hearing for a later date (R. 31). After some trouble with service (R. 34), Ms. Venn was served with the temporary injunction, the order extending it, and the new hearing date (R. 35-36). Ms. Venn filed an extensive response. (R. 37-80.)

The trial court held the final hearing (Tr. 1) and issued its final judgment, granting the injunction for protection against stalking (R. 81-86). Two days later, Ms. Venn appealed the final judgment. (R. 87-94.) Simultaneously, she moved the trial court to stay the injunction pending the appeal. (R. 95-97.)

Almost immediately thereafter, Mr. Fowlkes moved for civil contempt and enforcement. (R. 99-106.) Ms. Venn answered the following day (R. 107-122), while also filing her own motion for civil contempt and enforcement (R. 123-125). Again, Ms. Venn moved the trial court to stay the injunction pending the appeal. (R. 127-134.) The trial court denied Ms. Venn's motions to stay. (R. 137.) One week later, she moved for an emergency stay pending appeal (R. 138-145), which this Court denied. (*See* Order, entered February 24, 2017.)

Disposition in the lower tribunal

A. The petition

Mr. Fowlkes petitioned for a stalking injunction against Ms. Venn on November 28, 2016. (R. 1.) Mr. Fowlkes selected several options as provided on the Florida Supreme Court Approved Family Law Form 12.980(t) to explain why he was "a victim of stalking." (R. 6.) He alleged Ms. Venn had: "[c]ommitted stalking; [p]reviously threatened, harassed, stalked, cyberstalked, or physically abused [him]; [t]hreatened to harm [him] or family members or individuals closely associated with [him]; [u]sed, or threatened to use, against [him] any weapons such as guns or knives; [had a] criminal history involving violence or the threat [of] violence, if known;" and "[had a]nother order of protection issued against him or her previously from another jurisdiction, if known." (R. 6.) Mr. Fowlkes attached a document to describe "the specific incidents of stalking," as prompted by the form,

which provides a few inches of space but also an option to provide an attachment. (R. 6.) He also acknowledged that Ms. Venn "owns, has, and/or is known to have guns or other weapons" and described it as a "Glock" (*i.e.*, a type of handgun). (R. 6.)

In the attachment, Mr. Fowlkes described the pertinent details of his life. Mr. Fowlkes and Ms. Venn had a romantic relationship for about 15 years; it ended in 2009. (R. 3.) Together, they have a daughter. (R. 3.) Their daughter was born October 14, 1999. (R. 19.) Both Mr. Fowlkes and Ms. Venn previously had injunctions against one another. (R. 3.) At the time of his petition, Mr. Fowlkes's employer, Bono's Restaurant, had promoted him to assistant manager. (R. 3.) Mr. Fowlkes has enjoyed an over 27-year career at Bono's. (R. 12.)

From 2010 until at least late 2016 (R. 3), Ms. Venn disrupted Mr. Fowlkes's personal and work life. She called him multiple times on July 27, 2016 and "said nothing on the voicemail." (R. 4.) She followed him. (R. 5.) In the early hours of the morning, "she would knock on the door for hours … and [yell] for [Mr. Fowlkes] to come outside." (R. 3.) He did not engage her after their daughter told him Ms. Venn had a gun. (R. 3.) Instead of confronting her in person, he called the police. (R. 3.) Ms. Venn left but later called to tell him "she has numerous pictures of [him] and [his] then girlfriend … now … wife, Mrs. Carmen Spates-Fowlkes." (R. 3.) Others told Mr. Fowlkes that Ms. Venn had photographed him and his

daughter for months. (R. 4.) When Mr. Fowlkes explained Ms. Venn's behavior to his employer, she "drove to [his manager] and tried to get [him] fired." (R. 3.)

Mr. Fowlkes took the step of "block[ing] all incoming … calls and text messages from [Ms. Venn]." (R. 4.) Shortly thereafter, Ms. Venn "file[d] a child support case against [him] … even though [he had] primary custody of [their] daughter." (R. 4.) Mr. Fowlkes hired an attorney and paid hundreds of dollars fighting the case. Although Ms. Venn had initiated the child support action, she neglected to comply with the trial court's orders, and faced motions to compel and for contempt in that proceeding. (*See* R. 4.)

Ms. Venn also contacted Mr. Fowlkes's two brothers to tell them things about Mr. Fowlkes regarding the action; to the second brother, she said "she would never stop bothering [Mr. Fowlkes and] she was going to make [him] pay." (R. 4.) Ms. Venn placed communications directly in Mr. Fowlkes's mailbox (without postage), despite Mr. Fowlkes's instructions that she should direct communication to his attorney. (R. 4.) *See also* 18 U.S.C. § 1725 ("Whoever knowingly and willfully deposits any mailable matter … on which no postage has been paid, in any letter box established, approved, or accepted by the Postal Service … with intent to avoid payment of lawful postage thereon, shall for each such offense be fined under this title."). Again, Mr. Fowlkes turned to the police. (R. 4.)

Mr. Fowlkes contacted the police after a woman, Quillia Reed, told him Ms. Venn was stalking him. (R. 7.) The police officer noted in the report that "[t]he potential victim has not observed any stalking from the subject." (R. 7.) Ms. Reed told the police officer "that approximately four times [between mid-September and mid-October] she and [Ms. Venn] drove by [Mr.] Fowlkes's residence at approximately 3:00 AM [to] 4:00 AM." (R. 7.) She also witnessed Ms. Venn park near and walk towards Mr. Fowlkes's house. (R. 7.) Ms. Venn even took Ms. Reed to Bono's. (R. 7.) Ms. Reed informed Mr. Fowlkes's wife (Mrs. Spates-Fowlkes), that Ms. Venn had stated that "she was recruiting a person known as Laron Daniels 'to take care of her'. She stated that Laron is known to carry a gun." (R. 7.)

Ms. Venn frequented Bono's and sat "in the restaurant for hours, *sometimes* placing an order." (R. 3 (emphasis added).) While Mr. Fowlkes worked, she would speak with Bono's employees or customers at the restaurant's counter and look at him while she was talking to them. (R. 3.) She had "deplorable, filthy conversations about [Mr. Fowlkes] with employees [he] manage[d]." (R. 3.) These conversations caused Mr. Fowlkes to worry that she left the employees with "a negative impression of [him]." (R. 3.) She told one of Mr. Fowlkes's employees that "'[s]he was going to get the crackers on [him].'"[1] (R. 5.)

[1] It is unclear what it means to "get the crackers on" someone, but it can reasonably be interpreted as a violent threat. In slang, a "cracker" is "an insulting

During these confrontations, Mr. Fowlkes could avoid Ms. Venn only by turning around or retreating to his office. (R. 3.) Her presence and actions in some instances interfered with the performance of his job. (R. 3.) Upon leaving the restaurant, she would place prank telephone calls to Bono's with "fake orders." (R. 3, 5.) Mr. Fowlkes was not aware of any reason for these orders other than to affect him. (R. 3.) She would also photograph his wife's license plate. (R. 3.) Mr. Fowlkes listed two specific dates – on July 14, 2016, and again on November 16, 2016 – when Ms. Venn appeared at Bono's. (R. 4-5.)

The staff at Bono's "determined [that Ms. Venn's] behavior within the restaurant … stepped outside of just being a customer." (R. 12.) Melissa Babadi, Bono's store manager, corroborated Mr. Fowlkes's account about Ms. Venn's "frequent and numerous visits to the restaurant." (R. 12.) Ms. Babadi said Ms. Venn spoke to Bono's employees "about her former relationship with" Mr. Fowlkes and their child support litigation. (R. 12.) Bono's refused service to Ms. Venn and "notified [her that] she [was] no longer welcome to [Bono's]." (R. 12.) Ms. Babadi implied that Ms. Venn interfered with Mr. Fowlkes's day-to-day responsibilities. (R. 12.) Ms. Babadi's letter was signed and dated November 22, 2016. (R. 12.)

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and contemptuous term for a poor, white, usually Southern person." MERRIAM-WEBSTER DICTIONARY, *at* https://www.merriam-webster.com/dictionary/cracker (last visited Jan. 30, 2018).

Dynasty Brisbane also provided a letter signed and dated November 25, 2016. (R. 13.) Ms. Brisbane, a Bono's employee, stated that Ms. Venn approached her on November 16, 2016, while she and Mr. Fowlkes worked. (R. 13.) Ms. Venn discussed with Ms. Brisbane the child support case she had with Mr. Fowlkes, in addition to commenting on Mr. Fowlkes's wife. (R. 13.) Ms. Brisbane thought that Ms. Venn seemed "jealous of [Mr. Fowlkes's] wife and holds a hateful grudge against [Mr. Fowlkes]." (R. 13.) Ms. Brisbane "immediately reported the conversation to the Restaurant Store Manager, Melissa [Babadi]." (R. 13.) Ms. Brisbane also volunteered to testify on Mr. Fowlkes's behalf if necessary. (R. 13.)

Because of Ms. Venn's actions, Mr. Fowlkes felt "forced to purchase surveillance cameras and motion detectors for [his] home as an added means of protection." (R. 4.) On October 20, 2016, Mr. Fowlkes's wife ordered the surveillance equipment. (R. 11.) Mr. Fowlkes volunteered that he felt "tired" (R. 5) and "forced" to act and seek protection (R. 4). He "want[ed] [her] to leave him alone *FOREVER!*" (R. 5 (emphasis in original).) In a section titled "PLEASE READ BEFORE COMPLETING PAPERWORK," the form states: "You must truly believe you are in imminent danger of violence from which you will receive physical injury or death and you seriously need protection." (R. 18.) Mr. Fowlkes signed that page, signifying "I have read this notice carefully, and I understand my

responsibility in filing a petition for protection against domestic/repeat violence." (R. 18.)

Mr. Fowlkes signed the petition on November 26, 2016, and swore (or affirmed) the truthfulness and correctness of his petition. (R. 15.)

B. The response

In her written response, Ms. Venn explained that she left things in Mr. Fowlkes's mailbox as an effort to avoid "embarrass[ing] him at his job." (R. 37.) She claimed that "[her] daughter will attest that every time [she] ever went to Bonos [*sic*] it was strictly to get food." (R. 39.) As of September 24, 2009, Ms. Venn's son worked at Bono's. (R. 48-49.) Previously, Ms. Venn claimed that she visited Bono's "just to see [her] son"; admittedly, she sought a change in the location of her son's employment. (R. 49.) Ms. Venn had a registered firearm as of September 24, 2009 (R. 49), and she did not dispute possession at the time of the final hearing in December 2016.

Ms. Venn "respectfully ask[ed] the court to dismiss this order." (R. 39.) She also "mov[ed] the court to ask for proof of all of the information that Mr. Fowlkes … provided." (R. 39.)

C. The final hearing

The final hearing occurred on December 28, 2016. (Tr. 1.) Both parties appeared *pro se*. (Tr. 2.) After the trial court invited any objections, Ms. Venn

objected to the injunction. (Tr. 4.) The trial court asked Mr. Fowlkes if "everything [he] put in [his] petition [was] true and correct." (Tr. 4.) He affirmed that it was. (Tr. 4.)

The trial court turned to Ms. Venn and the actions underlying the petition. The trial court verified whether Ms. Venn went to Bono's "more recently this past year" by asking her. (Tr. 4.) Ms. Venn responded that she "[o]ccasionally … [went] up there with [her] daughter when she was hungry." (Tr. 4.) When the trial court asked whether they could go somewhere else, Ms. Venn said Mr. Fowlkes invited his daughter, who asked her mother to accompany her. (Tr. 4.) Ms. Venn did not mention her son's employment as a reason to frequent the restaurant. (*See id*.)[2]

Asked whether she had been to Mr. Fowlkes's subdivision, Ms. Venn first responded, "Not ever." (Tr. 4.) She then admitted, however, that she had been there "one time" (in May 2016) to "put something in the mailbox" because of her existing child support modification case. (Tr. 5.) The trial court questioned whether Ms. Venn understood that "you can't put things in people's mailboxes." (Tr. 5.) Ms. Venn denied knowing that; instead, she tried to justify her actions, stating:

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[2] It is unclear from the record whether Ms. Venn's son remains employed at Bono's. Even in 2009, she had asked for a change in his employment location. (R. 49.) Her earlier statements, especially when considered together with the testimony at the final hearing, suggest that her son no longer works at Bono's.

"Well, this was – this was before he [Mr. Fowlkes] had an attorney and I was told that it could be hand-delivered so I just stuck it in there." (Tr. 5.)

The trial court gave Ms. Venn an opportunity to respond "to the allegations this past year." (Tr. 5.) Ms. Venn seized that opportunity to share information with the trial court about Mr. Fowlkes's attempts to find the address of her residence (by asking their daughter), the history of their relationship and restraining orders, his solicitation of false testimony against her, her theory that Mr. Fowlkes filed the petition in retaliation for her filing the child support case, her lack of interest in Mr. Fowlkes besides the child support case, his statements of "terrible things" to their daughter, and her attempts to get surveillance tapes from Bono's. (Tr. 5-6.) When Ms. Venn offered copies of text messages documenting her conversations with Mr. Fowlkes and Bono's, the trial court acknowledged it already had copies, which Ms. Venn had previously provided the court. (Tr. 6.) After that brief interruption, Ms. Venn continued speaking, this time offering stories about Ms. Reed (also known as Kewana Jenkins). (Tr. 6.)

The trial court asked Mr. Fowlkes whether Ms. Venn had a restraining order against him; Mr. Fowlkes told the court she did not. (Tr. 7.) Ms. Venn disputed that her petition had been denied. (Tr. 7.) Ms. Venn then asked, "You want to hear my testimony?" (Tr. 7.) The trial court declined to hear more from Ms. Venn and

voiced its intention to enter the injunction. (Tr. 7.) The trial court proceeded to explain the effects of the injunction to the parties. (Tr. 8.)

When Ms. Venn interrupted the court to ask permission to "say one thing," the trial court allowed her to speak. (Tr. 8.) Only when Ms. Venn brought up her "order" that she "filed against him" did the court inform her that she could not address that matter during the present hearing. (Tr. 8.) (That matter, which concerned Ms. Venn's cross-petition, had not been set for hearing.) The trial court declined to give Ms. Venn legal advice when she asked whether she could "refile the order against [Mr. Fowlkes]." (Tr. 8.)

Thereafter, the trial court recalled the case to inform Ms. Venn that another judge had "denied [her] petition for an injunction, but set the hearing on it." (Tr. 9.) The trial court asked Ms. Venn if she had any additional information to add to her petition. (Tr. 9.) Ms. Venn responded, "Yes, ma'am," and began to tell the trial court about Mr. Fowlkes's alleged attempts to "conspire" against her with Ms. Jenkins (also known as Ms. Reed). (Tr. 10.) The trial court interrupted Ms. Venn and asked her instead to describe "what's happened that causes you to be in fear of domestic violence from Mr. Fowlkes." (Tr. 10.) Ms. Venn mentioned text messages in which Mr. Fowlkes had tried to lure her to his job, his efforts to find out where she lived, prior restraining orders, and police reports of his stalking. (Tr. 10-11.) When the trial court clarified that Ms. Venn's daughter was also Mr.

Fowlkes's child, Ms. Venn agreed, but insisted that Mr. Fowlkes was lying. (Tr. 10.) Ms. Venn also pointed out what she perceived to be an inconsistency in the police report and emphasized that she just wanted her child support. (Tr. 10-11.)

The trial court denied Ms. Venn's petition. (Tr. 11.) The trial court clarified for the parties that Mr. Fowlkes's petition had been granted, and the injunction entered against Ms. Venn. (Tr. 12.)

D. The permanent injunction for protection against stalking

On December 28, 2016, the trial court entered the final judgment for protection against stalking against Ms. Venn. (R. 81.) The trial court made the following findings of fact:

> On 12/21/2016 a notice of this hearing was served on Respondent, together with a copy of Petitioner's petition to this Court and the temporary injunction, if issued. Service was within the time required by Florida law, and Respondent was afforded an opportunity to be heard. After hearing the testimony of each party present and of any witnesses, or upon consent of Respondent, the Court finds, based on the specific facts of this case, that Petitioner is a victim of stalking.

(R. 81-82.) This appeal followed. (R. 87-94.)

SUMMARY OF ARGUMENT

For the reasons that follow, Ms. Venn is not entitled to relief on appeal.

First, Ms. Venn failed to preserve any argument that the allegations of the petition did not sufficiently state a cause of action for stalking. Preservation of error draws the attention of the parties and the trial court to an issue, thereby

affording the trial court an opportunity to correct the error and creating a record that the appellate court can then review. Ms. Venn did not ever assert, specifically and with particularity, that the petition failed to state a cause of action. *See* Fla. Fam. L.R.P. 12.140(b)(6). She waived the issue for appeal, and this Court should decline to hear it – even under a fundamental error analysis.

Even if the Court addresses the merits of Ms. Venn's claim, she is not entitled to relief on appeal. The record illustrates the legal sufficiency of the petition's allegations. The allegations tracked the statutory language and included more than enough specific, relevant facts to state a cause of action for stalking.

Next, competent, substantial evidence supports the issuance of the stalking injunction. The petition's allegations were sworn under oath and reaffirmed by Mr. Fowlkes at the evidentiary hearing. There, the trial court had the firsthand opportunity to assess – and reject – Ms. Venn's credibility. Notably, although Ms. Venn initially testified that she had "[n]ot ever" been to Mr. Fowlkes's house, she then admitted that, in fact, she had placed items in Mr. Fowlkes' mailbox without his permission. Similarly, Ms. Venn conceded that she had been to his workplace. Given Ms. Venn's own testimony – in which she admitted to the specific stalking incidents described in Mr. Fowlkes's petition – she should not be heard to argue, on appeal, that the record is devoid of competent, substantial evidence to support the injunction.

Lastly, the trial court did not deprive Ms. Venn of procedural due process. A respondent receives due process if she has a full hearing and opportunities to present her defense to the trial court, to call witnesses, and to cross-examine witnesses. Ms. Venn had a full hearing; she simply failed to take advantage of the opportunities the trial court gave her to present her defense. There is no indication in the record that Ms. Venn desired to question or cross-examine witnesses and was denied the opportunity to do so. An ineffective *pro se* representation does not a due process violation make. Therefore, Ms. Venn's due process argument fails, and this Court should affirm the judgment granting the injunction.

ARGUMENT

I. Ms. Venn did not preserve any argument as to the insufficiency of the petition's allegations to state a cause of action. Even if she did, or if she could claim fundamental error, the petition was legally sufficient to state a cause of action and to support the stalking injunction.

Ms. Venn did not preserve her argument related to the sufficiency of the petition's allegations to prove stalking. Ms. Venn cannot establish fundamental error; indeed, she does not argue fundamental error on appeal. Even if Ms. Venn did preserve the argument, the petition's allegations were legally sufficient to support entry of the stalking injunction.

Standard of Review

Whether an appellant presented an argument to the trial court and properly preserved error for appellate review is reviewed de novo because it "is a question

of law arising from undisputed facts." *Aills* v. *Boemi*, 29 So. 3d 1105, 1108 (Fla. 2010). "Whether an error is fundamental is reviewed [de novo] as a question of law." *Harlan Bakeries, Inc.* v. *Snow*, 884 So. 2d 336, 340 (Fla. 2d DCA 2004).

If Ms. Venn preserved her argument or her alleged errors qualify as fundamental error, an additional standard of review applies. "Whether an [initial pleading] is sufficient to state a cause of action is an issue of law" that is reviewed de novo. *Siegle* v. *Progressive Consumers Ins. Co.*, 819 So. 2d 732, 734 (Fla. 2002) (quoting *W.R. Townsend Contracting, Inc.* v. *Jensen Civil Constr., Inc.*, 728 So. 2d 297, 300 (Fla. 1st DCA 1999)).

Law Governing Preservation of Error

"It is difficult to overemphasize the importance, absent fundamental error, of preserving issues and arguments before asking an appellate court to reverse a trial court's final judgment." *Pensacola Beach Pier, Inc.* v. *King*, 66 So. 3d 321, 326 (Fla. 1st DCA 2011). "The importance of this principle is too often not appreciated, and the appellate courts are constrained … to affirm orders which otherwise might have been reversed." *Id.* (affirming despite otherwise meritorious appellate arguments because they were not properly preserved).

Preservation requirements are "based on practical necessity and basic fairness in the operation of the judicial system." *City of Orlando* v. *Birmingham*, 539 So. 2d 1133, 1134 (Fla. 1989). Proper preservation "puts the trial judge on

notice" of potential error "and thus provides the opportunity to correct the error at an early stage of the proceedings." *Id.* "[I]t also prevents counsel from allowing errors in the proceedings to go unchallenged and later using the error to a client's tactical advantage." *F.B.* v. *State*, 852 So. 2d 226, 229 (Fla. 2003). Timely challenges afford litigants the opportunity to correct error and avoid its prejudicial effect. *See Parlier* v. *Eagle-Picher Indus., Inc.*, 622 So. 2d 479, 481 (Fla. 5th DCA 1993).

In a stalking case, a respondent's assertion of a defense regarding a petition's failure to state a cause of action triggers an opportunity or requirement for a petitioner to amend the petition. *See* Fla. Fam. L.R.P. 12.140(a)(3) (contemplating the trial court's allowance for or even requirement of amendment).

A. Ms. Venn failed to preserve for appellate review her argument as to the insufficiency of the petition's allegations.

Ms. Venn did not sufficiently plead, with specificity and particularity, an affirmative defense of failure to state a cause of action. Therefore, she failed to preserve this argument for appellate review.

At the outset, Ms. Venn conflates arguments regarding insufficient allegations (or failure to state a cause of action) with sufficiency of the evidence. (*See* Venn Br. 18-20.) These two arguments should be addressed separately. "The question of the sufficiency of the evidence which the plaintiff will likely be able to produce in a hearing on the merits is wholly irrelevant and immaterial in reaching a

determination of whether plaintiff's complaint can withstand a motion to dismiss for failure to state a cause of action." *Kest* v. *Nathanson*, 216 So. 2d 233, 235 (Fla. 4th DCA 1968).

The Florida Family Law Rules of Procedure "apply to … injunctions for protection against … stalking." Fla. Fam. L.R.P. 12.010(a)(1).[3] The Rules provide the mechanism by which a respondent may challenge the sufficiency of a petition. A respondent may assert the defense of "failure to state a cause of action" in the responsive pleading, by motion, by motion for judgment on the pleadings, or at trial on the merits. *Id.* 12.140(b)(6), (h)(2). If asserted, a respondent must state the grounds for this defense "specifically and with particularity." *Id.* 12.140(b). Notably, a respondent waives "[a]ny ground not stated." *Id.* 12.140(h)(1). The

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[3] Upon the creation of section 784.0485, *Fla. Stat.*, which went into effect in October 2012, the Supreme Court of Florida amended the Florida Family Law Rules of Procedure, effective October 1, 2012, to apply to the new cause of action for an injunction for protection against stalking. *In re Amendments to Florida Family Law Rules of Procedure*, 95 So. 3d 126, 127 (Fla. 2012). Effective March 16, 2017, the Florida Supreme Court adopted amended rules that more comprehensively covered family law matters. *In re Amendments to Florida Family Law Rules of Procedure*, 214 So. 3d 400, 407 (Fla. 2017). Any differences between the Florida Family Law Rules of Procedure as of late 2016 (when this case was before the trial court) and the current Rules can be seen in the opinion's appendix. *See id.*

Section § 784.0485, *Fla. Stat.*, references the Florida Rules of Civil Procedure: "This paragraph does not affect a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure." § 784.0485(5)(b), *Fla. Stat.* This inconsistency appears to be a typographical error.

purpose of such rules "is to timely present and join the issues on which the parties will rely and to preserve issues for appellate review." *Cf. Coral Ridge Props., Inc.* v. *Playa Del Mar Ass'n, Inc.*, 505 So. 2d 414, 417 (Fla. 1987) (discussing the parallel pleading rules of the Florida Rules of Civil Procedure).

Essentially, Ms. Venn argues, for the first time on appeal, that Mr. Fowlkes failed to state a cause of action in his petition. (Venn Br. 14-20.) Ms. Venn, however, did not properly preserve this argument.

Only two instances in the record deserve analysis. First, in her response, Ms. Venn wrote, "I dont [*sic*] stalk anyone your honor I got a life…. I am respectfully asking the court to dismiss this order." (R. 39.) Even assuming that by "order" she meant "petition," Ms. Venn did not argue that Mr. Fowlkes failed to state a cause of action. Instead, she denied stalking and contested the truthfulness of the accusations (*see* R. 37-49; Tr. 4-8); in other words, the weight of the evidence. She failed to follow up her request with legally effective grounds, stated specifically and with particularity.

Second, in her response, Ms. Venn "mov[ed] the court to ask for proof of all of the information that Mr. Fowlkes has provided." (R. 39.) Even if this could be considered an attempt to assert that Mr. Fowlkes failed to state a cause of action, the request again lacked the necessary grounds, stated with specificity and particularity. *Stueber* v. *Gallagher*, 812 So. 2d 454, 457 (Fla. 5th DCA 2002)

(affirming due to *pro se* litigant's failure to preserve error in trial court because "[i]n Florida, *pro se* litigants are bound by the same rules that apply to counsel"). Thus, Ms. Venn waived any argument regarding the petition's alleged failure to state a cause of action.

Ms. Venn also waived her argument that the petition failed to state a cause of action because the petition somehow conflicted with the attached police report. A petitioner may attach a document "essential to state a cause of action" to a petition. Fla. Fam. L. R. P. 12.130(a). That document is then "considered part of the pleading" for all purposes. *Id.* 12.130(b). Again, if Ms. Venn wished to challenge the petition on this basis, she should have moved to dismiss for failure to state a cause of action. *Striton Props., Inc.* v. *City of Jacksonville Beach*, 533 So. 2d 1174, 1179 (Fla. 1st DCA 1988); *see also* Fla. Fam. L.R.P. 12.110(d) (affirmative defenses); Fla. Fam. L.R.P. 12.140(b), (h) (defense of failure to state a cause of action). However, Ms. Venn did not make such a motion, and she certainly did not make one with the requisite specificity and particularity. Again, she waived the argument. Fla. Fam. L.R.P. 12.140(b), (h).

This Court declines to review whether an initial pleading fails to state a cause of action when "this issue is raised for the first time on appeal [and] the trial court has not been afforded an opportunity to determine the merits of [the] appellants' assertion." *Abrams* v. *Paul*, 453 So. 2d 826, 827 (Fla. 1st DCA 1984).

Here, Ms. Venn argued, for the first time on appeal, that the petition failed to state a cause of action. Because she did not afford the trial court an opportunity to first determine the merits of this issue, the Court should decline to review her argument.

B. Ms. Venn does not and cannot argue her insufficiency argument rises to the level of fundamental error.

Even if, on appeal, Ms. Venn had argued fundamental error (which she does not), her argument would not qualify. When an appellant has failed to raise and preserve an issue in the trial court, an appellate court reviews it only for fundamental error. *Sanford* v. *Rubin*, 237 So. 2d 134, 137 (Fla. 1970). An appellant may raise fundamental error for the first time on appeal. *F.B.*, 852 So. 2d at 229. But fundamental errors are rare, *id.*, and a reviewing court "should exercise its discretion under the doctrine of fundamental error very guardedly." *Sanford*, 237 So. 2d at 137. Fundamental error is the equivalent of a due process violation. *F.B.*, 852 So. 2d at 229. "Thus, we are really dealing with denial of due process." *Ray* v. *State*, 403 So. 2d 956, 960 (Fla. 1981).

Determining whether an error is fundamental "requires a determination as to whether the error is so extreme that it could not have been corrected if the complaining party had [challenged it] and that it so damaged the fairness of the [final hearing] that it would undermine the public's confidence in the judicial system." *Harlan Bakeries*, 884 So. 2d at 339-40 (citing *Hasegawa* v. *Anderson*, 742 So. 2d 504, 506 (Fla. 2d DCA 1999)). Fundamental error is "an

extremely rare exception to the usual rule of waiver of issues not argued below and is probably reserved only for the exceedingly unusual case where a substantial injustice would be otherwise perpetrated." *Hooters of Am., Inc.* v. *Carolina Wings, Inc.*, 655 So. 2d 1231, 1235 (Fla. 1st DCA 1995) (quoting *Moorman* v. *Am. Safety Equip.*, 594 So. 2d 795, 800 (Fla. 4th DCA 1992)).

A petition's alleged failure to state a cause of action is not fundamental error. Historically, this Court has been unable to find "any authority which would support … a contention" that the issue of failure to state a cause of action, raised for the first time on appeal, constitutes fundamental error. *Abrams*, 453 So. 2d at 827. Ms. Venn does not cite, and Mr. Fowlkes is not aware of, any such authority. Given that "there is no due process problem with requiring that [a] defendant plead and prove a defense" in a typical criminal proceeding, *State* v. *Buchman*, 361 So. 2d 692, 695 (Fla. 1978), likewise there should be no due process problem requiring a respondent to plead and prove a defense of failure to state a cause of action for stalking. Therefore, because the alleged failure to state a cause of action is not fundamental error, this Court may decline to consider the argument altogether.

C. Even if the alleged failure to state a cause of action was preserved, or qualified as fundamental error, the petition was legally sufficient to state a cause of action.

In any event, the petition's allegations were legally sufficient to state a cause of action for stalking.

Generally, a petition "must state a cause of action and must contain," *inter alia*, "a short and plain statement of both the relief requested and the ultimate facts showing that the pleader is entitled to that relief." Fla. Fam. L.R.P. 12.110(b)(2). Attachments to petitions are permitted, and any attachments are considered part of the petition. *Id.* 12.130. When evaluating whether a petition stated a cause of action, a reviewing court must assume "'that all allegations in the complaint are true'" and draw "'all reasonable inferences … in favor of the pleader.'" *Higgs* v. *Fla. Dep't of Corr.*, 647 So. 2d 962, 964 (Fla. 1st DCA 1994) (quoting *Abruzzo* v. *Haller*, 603 So. 2d 1338 (Fla. 1st DCA 1992)); *see also Siegle*, 819 So. 2d at 734-35. "Generally speaking, pleadings are to be construed favorably to the pleader. Furthermore, 'liberal construction should be given to *pro se* pleadings.'" *Stokes* v. *Fla. Dep't of Corr.*, 948 So. 2d 75, 77 (Fla. 1st DCA 2007) (internal citation omitted). "In pleading a statutory cause of action or claim, it is true that it is generally sufficient to track the statutory language[,] but adequate facts must also be pled to show how the statute has been activated." *Intercarga Internacional De Carga, S.A.* v. *Harper Grp., Inc.*, 659 So. 2d 1208, 1210 (Fla. 3d DCA 1995).

To seek an injunction for protection against stalking, an individual must file a sworn petition. § 784.0485(1)(a), *Fla. Stat.* "The sworn petition shall allege the existence of such stalking and shall include the specific facts and circumstances for which relief is sought." § 784.0485(3)(a), *Fla. Stat.* The petitioner may include a

variety of allegations, including that the respondent: "[c]ommitted stalking[;] [p]reviously threatened, harassed, stalked, cyberstalked, or physically abused the petitioner[;] [t]hreatened to harm the petitioner or family members or individuals closely associated with the petitioner[;] [u]sed, or threatened to use, against the petitioner any weapons such as guns or knives[;] [and/or had] [a]nother order of protection issued against him or her previously or from another jurisdiction, if known." § 784.0485(3)(d), *Fla. Stat.* The petitioner must affirm the truth of his allegations and acknowledge his awareness of perjury as a penalty for untruthfulness. § 784.0485(3)(e), *Fla. Stat.*

Mr. Fowlkes stated a cause of action for an injunction for protection against stalking. He relied on the Florida Supreme Court Approved Family Law Form (R. 1-2, 6, 14-15), which mirrors much of the language of § 785.0485, *Fla. Stat.* That statute creates "a cause of action for an injunction for protection against stalking." § 784.0485(1), *Fla. Stat.*; *see also* Fla. Fam. L.R.P. 12.610(b)(4)(A) (authorizing the clerk of court to provide simplified forms). Thus, the allegations of his petition were sufficient.

Mr. Fowlkes also offered a short and plain statement of the relief requested. He clearly and repeatedly requested an injunction against Ms. Venn in his petition. (*E.g.*, R. 5, 14.)

Additionally, Mr. Fowlkes offered a short and plain statement of the ultimate facts showing that he was entitled to an injunction pursuant to the stalking statute. In addition to completing the requisite form, he wrote his own account of many of the facts, which he attached. (R. 3-5.) For instance, he stated that Ms. Venn followed and harassed him. (R. 5.) He described those episodes and patterns of behavior in detail. (R. 3-5.) Mr. Fowlkes met the standard.

Although not argued below, Ms. Venn suggests that a petitioner must expressly allege or plead the magic words "substantial emotional distress" to claim harassment as a component of stalking. (Venn Br. 18.) No authority supports this standard; indeed, it is contrary to over a century of American legal history. *Cf. Wood* v. *Lucy, Lady Duff-Gordon*, 118 N.E. 214, 214 (N.Y. 1917) (Cardozo, J.) ("The law has outgrown its primitive stage of formalism when the precise word was the sovereign talisman, and every slip was fatal.").

Substantial emotional distress is a component of harassment, which is itself a potential element of stalking. *See* § 784.048(2), *Fla. Stat.* (stalking potentially includes following, harassing, or cyberstalking). As long as some facts point to substantial emotional distress, courts can reasonably infer substantial emotional distress from the circumstances described in the petition. *Bouters* v. *State*, 659 So. 2d 235, 238 (Fla. 1995). In fact, one form accompanying the petition (in a section titled "PLEASE READ BEFORE COMPLETING PAPERWORK")

specifically states: "You must truly believe you are in imminent danger of violence from which you will receive physical injury or death and you seriously need protection." (R. 18.) Mr. Fowlkes signed that page, signifying "I have read this notice carefully." (R. 18.) At a minimum, this affirmation supports the cause of action and defeats any argument that Mr. Fowlkes did not allege substantial emotional distress.

Therefore, even if this Court considers an alleged failure to state a cause of action to be fundamental error, Mr. Fowlkes's petition was legally sufficient.

II. The evidence at the final hearing was legally sufficient to support the stalking injunction.

Next, Ms. Venn argues that Mr. Fowlkes provided no "evidence, much less competent, substantial evidence of stalking." She claims that he failed to show two incidents of stalking, substantial emotional distress, or the lack of a legitimate purpose. (Venn Br. 14-15.) The evidence, however, was legally sufficient. Competent, substantial evidence – as filed by Mr. Fowlkes and as elicited at the final hearing – supported the injunction for protection against stalking.

Standard of Review

"[W]hether the evidence is legally sufficient to justify imposing an injunction is a question of law … review[ed] de novo." *Pickett* v. *Copeland*, 2018 WL 444243, at *1 (Fla. 1st DCA Jan. 17, 2018) (citing *Wills* v. *Jones*, 213 So. 3d 982, 984 (Fla. 1st DCA 2016)). However, "[t]he weight and the sufficiency of

evidence are ... two distinct [issues].” *Tibbs* v. *State*, 397 So. 2d 1120, 1123 (Fla. 1981). Weight is a factual determination; sufficiency is a legal one. *Id.* “The resolution of factual conflicts by a trial judge in a nonjury case will not be set aside on review unless totally unsupported by competent substantial evidence.” *Clegg* v. *Chipola Aviation, Inc.*, 458 So. 2d 1186, 1187 (Fla. 1st DCA 1984) (quoting *Concreform Systems, Inc.* v. *R.M. Hicks Constr. Co.*, 433 So. 2d 50, 50 (Fla. 3d DCA 1983)). Once the reviewing court resolves “all conflicts in the evidence and all reasonable inferences therefrom ... in favor of” the trial court’s decision, the question becomes whether “substantial, competent evidence” supports the trial court’s ruling. *Tibbs*, 397 So. 2d at 1123.

If the evidence is sufficient, trial courts enjoy “broad discretion” when issuing permanent injunctions. To warrant reversal, a trial court’s decision to grant an injunction must constitute a “clear abuse of that discretion.” *Pickett*, 2018 WL 444243, at *1 (citing *Noe* v. *Noe*, 217 So. 3d 196, 199 (Fla. 1st DCA 2017)).

Merits

A. Both the petition and the final hearing testimony should be considered in deciding whether competent, substantial evidence supports the injunction.

Reviewing courts consider both the sworn petition and the final hearing testimony when determining whether “competent substantial evidence … support[s] [the trial court’s] finding” of stalking. *Thoma* v. *O’Neal*, 180 So. 3d

1157, 1159 (Fla. 4th DCA 2015) (considering both a flyer's contents, which appeared attached to the petition, and testimony about the flyer, which occurred during the final hearing when analyzing the sufficiency of evidence in a stalking case under § 784.0485, *Fla. Stat.*); *Touhey* v. *Seda*, 133 So. 3d 1203, 1204 (Fla. 2d DCA 2014) (considering information from the petition and the hearing when analyzing the sufficiency of evidence in a stalking case under § 784.0485, *Fla. Stat.*); *Schutt* v. *Alfred*, 130 So. 3d 772, 774 (Fla. 3d DCA 2014) (holding that competent substantial evidence did not support an injunction protecting against dating violence under § 784.046, *Fla. Stat.*, after considering both the petition and the evidence at the final hearing). Analogously, federal courts preclude summary judgment when a plaintiff files a complaint with "sworn statements of definite [and specific] facts"; the sworn allegations establish a genuine dispute of material fact. *Perry* v. *Thompson*, 786 F.2d 1093, 1095 (11th Cir. 1986).

Thus, both the petition and the parties' testimony at the final hearing should be considered competent, substantial evidence.

B. The petition details courses of conduct that caused substantial emotional distress to Mr. Fowlkes and served no legitimate purpose.

Florida law offers a "cause of action for an injunction for protection against stalking." § 784.0485(1), *Fla. Stat.* Ms. Venn contends that "the statute contemplates a petitioner 'must allege and prove *two separate instances of*

stalking' and these instances must each be proven by competent, substantial evidence." (Venn Br. 15 (emphasis added) (citing *Burns* v. *Bockorick*, 220 So. 3d 438, 440 (Fla. 4th DCA 2017)).) Yet as recently established by the First District in *Pickett*, this interpretation of the statute is incorrect.[4] *See* 2018 WL 444243, at *2. Instead, "the injunction provisions of section 784.0485 only require the petitioner to prove a single incident of stalking." *Id.*

Stalking is defined to include when "[a] person … willfully, maliciously, and repeatedly follows, harasses, *or* cyberstalks another person." § 784.048(2), *Fla. Stat.* (emphasis added). "A single 'stalking' offense requires *repeated* acts of … following, and/or harassment, and/or cyberstalking," two at minimum. *Pickett*, 2018 WL 444243, at *2 (emphasis in original). The statute provides no further definition of "following." *See* § 784.048, *Fla. Stat.*

Harassment is "engage[ment] in a *course of conduct* directed at a *specific person* which causes *substantial emotional distress* to that person and serves *no legitimate purpose*." § 784.048(1)(a), *Fla. Stat.* (emphases added). A course of conduct is "a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose." § 784.048(1)(b), *Fla. Stat.*

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[4] Ms. Venn served her amended initial brief on November 22, 2017, before this Court issued its opinion in *Pickett*.

Substantial emotional distress can be inferred "where the circumstances [are] such as to ordinarily induce fear in the mind of a reasonable man"; "actual fear need not be strictly and precisely shown." *Bouters*, 659 So. 2d at 238 (quoting *Pallas* v. *State*, 636 So. 2d 1358, 1361 (Fla. 3d DCA 1994), *approved*, 654 So. 2d 127 (Fla. 1995)). This standard does not enable "an unduly sensitive victim [suffering] distress from entirely innocent contact" to an injunction. 659 So. 2d at 238. A contact's legitimacy of purpose "is evaluated on a case-by-case basis and the term 'legitimate' seems to be lacking a precise definition." *O'Neill* v. *Goodwin*, 195 So. 3d 411, 413 (Fla. 4th DCA 2016). "However, courts have generally held that contact is legitimate when there is a reason for the contact other than to harass the victim." *Id.*

Here, competent, substantial evidence supports the trial court's grant of a permanent injunction against Ms. Venn. The sworn petition contains most of the evidence supportive of Mr. Fowlkes's action. It describes Ms. Venn's following Mr. Fowlkes (R. 5) and two courses of conduct that constitute harassment: one related to Mr. Fowlkes' employment at Bono's and the other related to Mr. Fowlkes's personal life. Ample evidence supports the trial court's finding of stalking. *See Pickett*, 2018 WL 444243, at *2.

First, Ms. Venn frequented Bono's (R. 3, 4-5), sometimes with other people (R. 7). She tried to get Mr. Fowlkes fired from his employment. (R. 3.) While he

worked, she gossiped to his subordinates and customers about him. (R. 3.) His only escape was to retreat to his office. (R. 3.) She photographed his wife's license plate while the car was parked at Bono's (R. 3), and even told one of Mr. Fowlkes' employees that "'[s]he was going to get the crackers on [him].'" (R. 5.) Ms. Venn's actions and presence interfered with his ability to do his job. (R. 3.)

Others corroborated this account of Ms. Venn's conduct. The staff at Bono's thought she went too far and acted unlike a normal customer; the restaurant eventually refused service and told her she was not welcome. (R. 12.) The store manager, Ms. Babadi, discussed Ms. Venn's "frequent and numerous visits to the restaurant." (R. 12.) Ms. Venn's disruptive behavior interfered with Mr. Fowlkes's day-to-day responsibilities as assistant manager. (*See* R. 12.)

Another staff member, Ms. Brisbane, described a particular interaction with Ms. Venn at Bono's on November 16, 2016, when Ms. Venn gossiped about Mr. Fowlkes's personal business. (R. 13.) Ms. Brisbane reported the incident to her supervisor and volunteered to testify for Mr. Fowlkes. (R. 13.) Ms. Brisbane inferred that Ms. Venn harbored jealousy and a hateful grudge against Mr. Fowlkes. (R. 13.)

Second, Ms. Venn engaged in harassing conduct related to Mr. Fowlkes's personal life. Ms. Venn had a registered firearm as of September 24, 2009 (R. 49); she did not dispute possession in 2016. Ms. Venn called Mr. Fowlkes multiple

times, without leaving any message. (*See* R. 4-5.) In the early morning hours, she knocked on his door and yelled for him (R. 3), and drove strangers by his house (R. 7). He preferred to call the police rather than confront her. (R. 3.) Ms. Venn also told Mr. Fowlkes that she had numerous pictures of him and his current wife (R. 3.) Others told him that Ms. Venn had repeatedly photographed him leaving his home with his daughter. (R. 4.)

After Mr. Fowlkes blocked her calls and messages, Ms. Venn sued for custody of their daughter. (R. 4.) Ms. Venn placed communications in Mr. Fowlkes' mailbox (without postage), despite Mr. Fowlkes's instructions that she should direct communications to his attorney. (R. 4.) Again, he turned to the police. (R. 4.)

Ms. Venn also contacted Mr. Fowlkes's brothers to gossip about Mr. Fowlkes. She threatened to never stop bothering one brother and to make him pay. (R. 4.) And, Mr. Fowlkes's wife received a warning that Ms. Venn planned to recruit a man with a gun to kill her. (R. 7.) Together or individually, these courses of conduct show stalking.

Competent, substantial evidence supports Mr. Fowlkes's substantial emotional distress in the face of Ms. Venn's courses of conduct. Consideration of Ms. Venn's repeated acts would instill fear for his continued employment and physical safety in any reasonable person. Mr. Fowlkes has long been employed at

Bono's and is an assistant manager there. (R. 3, 12.) Ms. Venn's conduct created concerns that he would be fired. He was forced to try and minimize Ms. Venn's direct and indirect efforts to accomplish his firing, and to address the embarrassment resulting from the disruption and personal drama that Ms. Venn brought to his workplace. Under these circumstances, any reasonable person would experience substantial emotional distress and fear for his continued employment.

As for his personal life, Ms. Venn's conduct required Mr. Fowlkes to call the police (R. 7) and buy surveillance cameras and motion detectors (R. 4.) Perceived threats to physical safety from a gun owner – who not only repeatedly photographs the victim, members of the victim's family, and license plates without permission, but also approaches the house at odd hours and makes threats – would frighten any reasonable person.

Competent, substantial evidence supports a finding of no legitimate purpose for Ms. Venn's conduct. Ms. Venn herself established that she had no legitimate purpose for her trips to the restaurant where Mr. Fowlkes worked. The only possible legitimate purpose that she gave to the trial court was that she had accompanied her daughter to eat there "when she was hungry." (Tr. 4.)[5] This does not explain Ms. Venn's lingering at the restaurant. As the record reveals, she only

[5] Again, it does not appear that Ms. Venn's son still works at Bono's. Even if he did, she admitted in her response that he was the reason for only "several" of her visits. (R. 49.)

"sometimes" places an order, even after sitting in the restaurant for hours. She has also made prank telephone calls to the restaurant for "fake orders." (R. 3, 5.) Food was incidental to her usual, primary mission: gossiping about Mr. Fowlkes to his co-workers and customers or communicating violent threats to him. (R. 3.)

Ms. Venn also testified that Mr. Fowlkes had invited his daughter to his work. Although Ms. Venn used this invitation as the reason for her visits to Bono's (Tr. 4), her daughter, by then, was at least seventeen. (R. 19.) The record lacks any indication that the daughter depended on her mother for transportation. The trial court could have rationally rejected the legitimacy of this asserted reason for Ms. Venn's visits to Bono's – particularly given the consistent disruptive behavior that she exhibited there.

Likewise, Ms. Venn's visits to Mr. Fowlkes' subdivision and house at odd hours, her repeated telephone calls to him without recording a message, and her taking photographs without consent all lack any apparent legitimate reason. Ms. Venn did not provide any reasons for her actions. (R. 4.)

Therefore, competent, substantial evidence supports the stalking injunction. Respectfully, this Court should affirm the injunction.

C. Even if the testimony at the final hearing is considered alone, competent, substantial evidence supports the injunction.

Taken together, the parties' testimony at the final hearing provides competent, substantial evidence to support the stalking injunction. The trial court

clearly believed Mr. Fowlkes to be a credible witness. However, Ms. Venn's attempts to explain her conduct served only to diminish her credibility.

"[W]hen a [respondent] chooses to testify, he runs the risk that if disbelieved the [factfinder] might conclude the opposite of his testimony is true." *United States* v. *Hunt*, 526 F.3d 739, 745 (11th Cir. 2008) (concerning a criminal defendant's testimony before a jury as factfinder) (quoting *United States* v. *Brown*, 53 F.3d 312, 314 (11th Cir.1995). Ms. Venn testified at the final hearing and therefore ran the risk that the trial court, as the factfinder, would disbelieve all or part of her testimony. Indeed, in her testimony, Ms. Venn admitted that not only had she frequented Mr. Fowlkes's workplace, she had placed items in his home mailbox – without his consent. Thus, the trial court heard competent, substantial evidence that Ms. Venn had stalked Mr. Fowlkes.

Apparently, Ms. Venn is troubled that Mr. Fowlkes said little at the final hearing. She implies that his brief responses to the trial court's questions added nothing to his case. (Venn Br. 15.) Further, Ms. Venn suggests that the trial court decided the case solely based on Mr. Fowlkes's statement that his petition was true and correct. (Venn Br. 13.)

However brief, the interaction between the trial court and Mr. Fowlkes certainly added to the trial court's determination. First, it can be inferred that by initially asking Mr. Fowlkes whether his petition was true and correct, the trial

court intended to save time at the final hearing by incorporating the petition's assertions (and numerous exhibits) into the evidence. *See Touhey v. Seda*, 133 So. 3d 1203, 1204 (Fla. 2d DCA 2014) (considering information both from the petition and the hearing when analyzing the sufficiency of the evidence to support a stalking injunction); *cf. Jenkins* v. *Eckerd Corp.*, 913 So. 2d 43, 51 (Fla. 1st DCA 2015) (discussing how another document becomes part of a written contract through incorporation by reference). Throughout the hearing, the trial court and Ms. Venn discussed the case as only those informed about Mr. Fowlkes's precise factual assertions could. Ms. Venn never objected to the trial court's clear awareness of, and reliance on, the petition's facts.

The trial court's question to Mr. Fowlkes also allowed for an assessment of his credibility, in comparison to that of Ms. Venn. The trial court assessed the credibility of both parties. When the trial court asked Mr. Fowlkes whether everything in his petition was "true and correct," and he affirmed that it was (Tr. 4), the trial court had an opportunity to assess Mr. Fowlkes's credibility face-to-face. By responding, "All right," and turning to question Ms. Venn (Tr. 4), the trial court apparently found Mr. Fowlkes to be credible.

In contrast, the testimony of Ms. Venn illustrated a lack of credibility. Ms. Venn initially denied that she had "ever" been to Mr. Fowlkes' subdivision. (Tr. 4.) However, she admitted that "one time" (in May 2016), she had been to his house to

put something in the mailbox." (Tr. 5, 13.) This reversal of testimony not only supported the allegations of Mr. Fowlkes's petition, it damaged Ms. Venn's credibility.

Moreover, when the trial court confronted Ms. Venn as to the illegality of her conduct, she was unable to provide a sufficient justification. Ms. Venn denied knowing that it was illegal to place items in mailboxes without postage (and without permission). Instead, she testified that "this was before [Mr. Fowlkes] had an attorney and [she] was told that it could be hand-delivered." (Tr. 5.)

Ms. Venn's testimony conflicted with the facts of the petition. Mr. Fowlkes alleged that Ms. Venn placed information in his mailbox, notwithstanding his specific instructions that she should communicate with his attorney. (R. 4.) As evidenced by its ruling, the trial court resolved this conflict in Mr. Fowlkes's favor.

The trial court granted the injunction, thereby finding Mr. Fowlkes more credible than Ms. Venn. Given the evidence and the parties' testimony, the trial court necessarily determined that the allegations of Mr. Fowlkes's petition were true and correct, and warranted issuance of the stalking injunction.

In an effort to persuade this Court of the trial court's error, Ms. Venn relies on *Newsom* v. *Newsom*, 221 So. 3d 1265 (Fla. 1st DCA 2017), and *Mantell* v. *Rocke*, 179 So. 3d 511 (Fla. 1st DCA 2015). (Venn Br. 15-16.) The facts now

before this Court are easily distinguishable from the facts of either decision cited by Ms. Venn.

First, the petition in *Newsom* seemingly contained nothing more than bare allegations that the husband made a threat against the wife and "had disparaged her to their daughter." *Newsom*, 221 So. 3d at 1266. In contrast, Mr. Fowlkes's petition contained a detailed account of Ms. Venn's actions – not just conclusory allegations. He also attached supporting documents. (R. 1-18).

Second, the trial court in *Newsom* received no evidence at the hearing other than confirming that the parties were divorced. The trial court "simply asked the [petitioner/wife] if she still wanted the injunction." *Newsom*, 221 So. 3d at 1266. The *Newsom* court found this was insufficient. *Id*.

Here, rather than rehashing each assertion of fact, the trial court accomplished the same result by confirming with Mr. Fowlkes that the allegations of his petition were true and correct. This enabled the trial court to move then to Ms. Venn's points of contention. Unlike the facts of *Newsom*, where the trial court's query added nothing substantive, the trial court's questioning of Mr. Fowlkes allowed the entire petition to be incorporated into the evidence. Indeed, the trial court's questioning of Ms. Venn, and her responses, illustrated that both were well-acquainted with the petition's factual allegations.

Mantell is also distinguishable. In *Mantell*, no evidence supported the petitioner's case. 179 So. 3d at 512. But here, Ms. Venn's gave detailed testimony that – as it turns out – *supported* Mr. Fowlkes's allegations. At a minimum, Ms. Venn admitted to frequenting Mr. Fowlkes's workplace (Tr. 4) and to illegally leaving papers in his home mailbox (Tr. 5). Ms. Venn's own admissions provided competent, substantial evidence of stalking.

Finally, both *Newsom* and *Mantell* analyzed the statute governing injunctions against domestic violence, not the stalking statute. *See Newsom*, 221 So. 3d at 1266; *Mantell*, 179 So. 3d at 512. Ms. Venn places more reliance on these cases than they deserve. *Newsom* and *Mantell* are inapposite.

Once again, competent substantial evidence supports the injunction against Ms. Venn. She cannot show otherwise.

III. The trial court afforded Ms. Venn due process when it invited her objection to the injunction, gave her many opportunities to present a defense, and prompted her for information relevant to her defense during a full hearing.

The trial court afforded Ms. Venn procedural due process by giving her a full hearing, inviting her to offer an objection to the injunction and a defense, and prompting her for information relevant to her defense.

Standard of review

Due process is "a pure question of law" reviewed de novo. *Cromartie* v. *State*, 70 So. 3d 559, 563 (Fla. 2011).

Merits

The standard for deciding whether a trial court afforded a stalking-injunction respondent due process arises from the statute. Section 784.0485(5)(c), *Fla. Stat.*, requires a trial court to conduct a "full hearing" before it issues an injunction. *Ceelen* v. *Grant*, 210 So. 3d 128, 129 (Fla. 2d DCA 2016). Only if, after "notice and hearing," it "appears to the court that the petitioner is the victim of stalking" may a trial court grant an injunction. § 784.0485(6)(a), *Fla. Stat.* Ms. Venn does not argue any notice issues; rather, she disputes only the quality of the hearing.

"To satisfy procedural due process during a full hearing[,] 'the parties must have an opportunity to prove or disprove the allegations made in the [initial pleading]. All witnesses should be sworn, each party should be permitted to call witnesses with relevant information, and cross-examination should be permitted." *Ceelen*, 210 So. 3d at 129 (internal quotation omitted).

To violate due process, a trial court must effectively silence or totally deprive a respondent of his or her opportunity to present a defense to the petition. *Id.* In *Ceelen*, the trial court "simply refused to allow [the respondent] to present evidence in his defense." *Id.* Further, when the respondent tried to insist on defending himself, "the court threatened [him] with jail time," which the reviewing court found "especially troubling." *Id.* The reviewing court reversed and remanded,

finding that the trial court completely deprived the respondent of the opportunity to present his case. *Id.*

Similar to *Ceelen*, the trial court in *David* v. *Shack* unacceptably silenced the respondent. After asking a single question as to whether the petitioner had asked him to leave her alone, the court granted the petitioner's injunction "[w]ithout providing [the respondent] further opportunity to present his case." 192 So. 3d 625, 627 (Fla. 4th DCA 2016).

Nothing like *Ceelen* or *David* occurred here. The trial court in no way silenced Ms. Venn. Rather, she had plenty of opportunities to present her defense at her final hearing. At the outset of the hearing, the trial court directly invited Ms. Venn to voice any objection she had to the injunction. (Tr. 4.) Ms. Venn did object. After briefly questioning Mr. Fowlkes (Tr. 4), the trial court spent most of the hearing eliciting information from Ms. Venn. (*See* Tr. 4-9.)

The trial court gave Ms. Venn an opportunity to respond "to the allegations [of] this past year." (Tr. 5.) Ms. Venn seized that opportunity to share information with the trial court about Mr. Fowlkes's attempts to discover her address, the history of their relationship, his purported solicitation of false testimony, her theory that Mr. Fowlkes filed the petition in retaliation for her filing the child support case, her lack of interest in Mr. Fowlkes, his statements of "terrible things" to their daughter, and her attempts to obtain Bono's surveillance tapes. (Tr. 5-6.)

When Ms. Venn offered copies of text messages documenting her conversations with Mr. Fowlkes and Bono's, the trial court acknowledged it already had the copies Ms. Venn had previously provided. (Tr. 6.) After that brief interruption, Ms. Venn continued speaking, this time offering stories about Ms. Jenkins (also known as Quilla Reed). (Tr. 6-7.)

When the trial court asked Mr. Fowlkes whether Ms. Venn had a restraining order against him, Mr. Fowlkes told the trial court she did not. (Tr. 7.) Ms. Venn disputed that her petition had been denied. (Tr. 7.)

After the trial court interjected again, Ms. Venn asked the trial court, "You want to hear my testimony?" (Tr. 7.) The trial court declined to hear more from Ms. Venn and voiced its intention to enter the injunction. (Tr. 7.) The trial court proceeded to explain the effects of the injunction to the parties. (Tr. 8.)

Ms. Venn then interrupted the trial court to ask permission to "say one thing." The trial court allowed her to speak. (Tr. 8.) Only when Ms. Venn brought up the "order" that she had filed against Mr. Fowlkes did the trial court inform her she could not address that matter during the present hearing. The trial court declined to give Ms. Venn legal advice when she asked a question. (Tr. 8.)

The trial court later re-called the case to inform Ms. Venn that another judge had "denied [her] petition for an injunction, but set the hearing on it." (Tr. 9.) The trial court asked Ms. Venn if she had any additional information to add to her

petition. (Tr. 9.) Ms. Venn again began to explain to the trial court her belief that Mr. Fowlkes had conspired with Ms. Jenkins. (Tr. 10.) The trial court interrupted Ms. Venn, however, and asked her to explain specifically what may have happened that caused her to be in fear of domestic violence from Mr. Fowlkes. (Tr. 10.) Ms. Venn mentioned text messages from Mr. Fowlkes asking their daughter for Ms. Venn's address, along with the filing of restraining orders and police reports. (Tr. 10.) Ms. Venn conceded that her daughter was also Mr. Fowlkes' daughter. She insisted, however, that Mr. Fowlkes was lying. (Tr. 10.) Ms. Venn then pointed out what she perceived to be an inconsistency in his police report (Tr. 10-11), and insisted that she "just want[s] [her] child support." (Tr. 11.)

In the end, the trial court denied Ms. Venn's petition. (Tr. 11.) The trial court informed the parties that the injunction against Ms. Venn had been entered. (Tr. 12.)

This final hearing easily met the due process standard. The trial court attempted to elicit pertinent information from Ms. Venn and gave her numerous opportunities to speak, often for long periods without interruption. The record does not reflect that Ms. Venn attempted to call witnesses or cross-examine Mr. Fowlkes. The fact that neither of these strategies occurred does not weigh in favor of a due process violation.

Instead, Ms. Venn's due process argument depends on an inaccurate description of the record. As she contends:

> While the trial court asked Ms. Venn a few pointed questions, and she was able to present a case on her petition, in attempting to defend herself in the final hearing for the Permanent Injunction at issue, Ms. Venn stated to the Court, "do you want to hear my testimony" and the trial court prohibited her from being heard and stated, "That's all. I am going to enter the injunction. It will be valid until further order."

(Venn Br. 21 (citing Tr. 7).) Based on the hearing's entirety, however, this description of the trial court's interactions with Ms. Venn omits substantial chunks of the transcript, both at the beginning and at the end. In no way did the hearing establish a due process violation. At some point, every trial must end. Ms. Venn has had her day in court.

Ms. Venn's due process argument must fail. The trial court gave her a full hearing, provided her with an opportunity to put on a defense, and prompted her for information relevant to her defense. The ineffectiveness of her self-representation does not constitute a denial of due process.

CONCLUSION

For all the foregoing reasons, the Court should affirm the final judgment granting Mr. Fowlkes an injunction against Ms. Venn for protection against stalking.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 9, 2018, I electronically served the following via eDCA and email to: William S. Graessle, William S. Graessle, P.A., 219 Newnan Street, 4th Floor Jacksonville, Florida 32202 (wsgservice@fcol.com); Jonathan W. Graessle (wsgservice@fcol.com), William S. Graessle, P.A., 219 Newnan Street, 4th Floor Jacksonville, Florida 32202.

/s/ Rebecca Bowen Creed
Attorney

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ Rebecca Bowen Creed
Attorney