

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

RASHIDA MARIE STROBER,

Appellant,

v.

THOMAS JEROME HARRIS,

Appellee.

No. 2D21-267

January 5, 2022

Appeal from the Circuit Court for Pinellas County; Doneene D. Loar,
Judge.

Rashida Marie Strober, pro se.

No appearance for Appellee.

PER CURIAM.

Rashida Marie Strober appeals an order dismissing her
petition for injunction for protection against stalking filed against
Thomas Jerome Harris. The trial court ruled that (1) it lacked

personal jurisdiction over Mr. Harris, a Georgia resident, and (2) even if it had jurisdiction, it would deny the petition on the merits. Because both rulings constitute reversible error, we reverse and remand for further proceedings.

BACKGROUND

Ms. Strober and Mr. Harris each derive a portion of their incomes from their respective YouTube channels. Ms. Strober, a Florida resident, focuses on the issue of colorism, which she defines as skin tone discrimination within the Black community. Mr. Harris, a Georgia resident, testified that he is "considered the largest Black YouTuber" in his sector and is "mostly focused on Black people and the Black family." Although Mr. Harris testified that he does not consider himself a "shock jock," he admitted that "people do consider me that."

Ms. Strober appeared on Mr. Harris's channel for an interview, which ended up being contentious. Afterward, Ms. Strober asked Mr. Harris to remove the video of her appearance from his channel. Mr. Harris replied that he would remove the video only if Ms. Strober paid him to do so, which she declined to do.

Thereafter, Ms. Strober and Mr. Harris published competing video content on various platforms in which they criticized one another. For Mr. Harris's part, his videos specifically named and focused on Ms. Strober, including one titled "Dear Rashida Strober."

After Mr. Harris began posting these videos about Ms. Strober, she received a variety of threatening and disturbing emails, text messages, and phone calls. In addition to outright death threats, these messages also included (1) pictures of mutilated and dismembered human bodies, (2) a picture of a young Black woman in a casket, (3) photographs edited to show Ms. Strober hanging from a tree, (4) the home addresses of Ms. Strober and other members of her family, and (5) a picture of a location near Ms. Strober's home with the message "see you soon."

Although most of the threatening messages did not identify the sender, some asserted they were from Mr. Harris, others came from addresses associated with his name, and still others stated they were sent on his behalf. However, none came from the email address through which Mr. Harris had previously communicated with Ms. Strober.

Ms. Strober filed a petition for injunction for protection against stalking. As later supplemented by affidavit and exhibits, the petition alleged that Mr. Harris had engaged in cyberstalking both by directly sending, and by causing to be sent through others, the threatening and disturbing messages to Ms. Strober. She alleged that through videos published to his YouTube channel, Mr. Harris had directly threatened her and had also incited threats against her from his viewers. Among other things, Ms. Strober alleged that Mr. Harris had falsely accused her of child abuse, announced her home address online to his viewers, and published a photograph of her minor daughter. The petition asserted that Ms. Strober had received hundreds of threats and other harassing messages as a result, attaching copies of some of them as exhibits.

The trial court held an evidentiary hearing on the petition, which Mr. Harris, pro se, attended by phone. At first, he objected to Ms. Strober's testimony about his videos on the basis that the best evidence was the videos themselves. Ms. Strober's counsel explained that the full videos were being entered into evidence, but they were "hours and hours and hours long," so counsel had prepared excerpts to play during the hearing. Mr. Harris

maintained his objection to admitting anything other than the full videos and also complained that he had not seen the evidence yet.

Counsel for Ms. Strober stated that Ms. Strober did not oppose a continuance if Mr. Harris requested one. The trial court asked Mr. Harris if he was requesting a continuance to review the evidence. Mr. Harris replied, "[s]ure" and also asked that the case be dismissed with prejudice. The court explained, "No, sir. Either you want a continuance or you want to argue the case here today. It's not both happening." Mr. Harris stated, "well, if that's the case, then we'll do a continuance." Counsel for Ms. Strober confirmed there was no objection to the continuance.

As the court and the parties were rescheduling the hearing as he had requested, Mr. Harris raised the issue of personal jurisdiction. He stated that he was a Georgia resident and his appearance was not an admission that the court had personal jurisdiction over him, reserving the right to challenge the issue. After the court stated it believed that any such motion "would have to be . . . in writing," Mr. Harris stated he could submit a written motion "in the next seven days."

Ms. Strober's counsel again confirmed there was no objection to a short continuance, and the court began reviewing scheduling options. During the scheduling discussion, however, Mr. Harris continued to argue the merits of the case, prompting the court to interrupt him, saying, "Sir. Sir. You've requested a continuance. I am considering that. . . . If you want to argue this here, we'll just . . . go forward with it today."

Mr. Harris replied: "*Technically, just to get this out of the way, I have no real issue of just going forward. I just hope that at the end of it you will dismiss this afterwards with prejudice, so that way I don't have to keep going to court because this is insane.*" The court asked Mr. Harris to confirm that he "want[s] to go forward today," to which he responded, "*Yeah, go—we'll—we'll just go ahead. Because I want this off of my plate. I've done nothing wrong.*" Thereafter, the hearing continued on the merits, without further mention of the jurisdictional issue.

The court did not rule at the hearing, instead promising in light of Mr. Harris's initial evidentiary objections to review all of the video material before making a decision. However, Mr. Harris ultimately withdrew his objections to Ms. Strober's excerpts of his

videos, which were accordingly admitted into evidence and played at the hearing. Among other statements in the excerpts of his videos played at the hearing, Mr. Harris (1) directed viewers to approach Ms. Strober in public, giving them an "edict" to confront her and "let her know nobody likes you"; (2) dared Ms. Strober to sue him over their dispute, saying "Let's go to war, Bitch. I love to be—I want one of you Black hoes to go to court with me. I want to go to court with one of you Black bitches"; and (3) solicited monetary donations from viewers in order to "make this bitch mad," praising those who donated because "Y'all gon' make her kill herself."

The court later issued an order dismissing the petition on two grounds. First, it granted Mr. Harris's "ore tenus motion to dismiss" on the basis that the court lacked personal jurisdiction over him. Second, in the alternative, the court ruled that even if it had jurisdiction, it would still deny the petition on the basis that Ms. Strober failed to prove that Mr. Harris himself sent any of the videos or threatening communications directly to her.

ANALYSIS

Both of the trial court's rulings constitute reversible error. With respect to personal jurisdiction, Mr. Harris waived his

objection by expressly consenting to adjudication on the merits. Moreover, the record amply establishes long-arm jurisdiction under controlling Florida Supreme Court precedent. And finally, with respect to the alternative denial on the merits, the court applied an incorrect legal standard by focusing narrowly on only one part of the statutory definition of "cyberstalk" and ignoring another.

Personal Jurisdiction

"Personal jurisdiction is a personal right, and a respondent may consent to personal jurisdiction." *Miller v. Goodell*, 958 So. 2d 952, 953–54 (Fla. 4th DCA 2007) (citing *Babcock v. Whatmore*, 707 So. 2d 702, 704 (Fla. 1998)). Further, "[i]f a party takes some step in the proceedings which amounts to a submission to the court's jurisdiction, then it is deemed that the party waived his right to challenge the court's jurisdiction regardless of the party's intent not to concede jurisdiction." *Bush v. Schiavo*, 871 So. 2d 1012, 1014 (Fla. 2d DCA 2004) (quoting *Cumberland Software, Inc. v. Great Am. Mortg. Corp.*, 507 So. 2d 794, 795 (Fla. 4th DCA 1987)).

Here, despite an offer by the court of a continuance to allow him to challenge personal jurisdiction, Mr. Harris expressly declined in favor of a decision on the merits. Consistent with that

stated choice, Mr. Harris never filed a written motion challenging jurisdiction or any supporting affidavits. Indeed, he failed to do so even though the trial court had advised him that his personal jurisdiction challenge "would have to be . . . in writing" and even though he had initially responded that he intended to file a written motion within one week. Under these circumstances, Mr. Harris consented to jurisdiction by submitting to the court's authority and waived his earlier objection to personal jurisdiction.

Moreover, jurisdiction was appropriate even absent consent. The court ruled that Ms. Strober had failed to allege that Mr. Harris's actions were specifically targeted to Florida as required by the long-arm statute because (1) Mr. Harris never sent his videos about Ms. Strober directly to her, but instead "posted [them] to his YouTube for his thousands of followers," and (2) Ms. Strober failed to prove that the subsequent threats she received came directly from Mr. Harris, versus from others who had watched his videos.

Although these factual findings are supported by the record, they do not resolve the issue of personal jurisdiction in this case. To the contrary, on this record, the court did have personal jurisdiction over Mr. Harris under controlling Florida Supreme

Court precedent addressing out-of-state defendants committing allegedly tortious conduct online.

Two inquiries govern whether long-arm jurisdiction is appropriate: "First, it must be determined that the complaint alleges sufficient jurisdictional facts to bring the action within the ambit of the statute; and if it does, the next inquiry is whether sufficient 'minimum contacts' are demonstrated to satisfy due process requirements." *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989) (quoting *Unger v. Publisher Entry Serv., Inc.*, 513 So. 2d 674, 675 (Fla. 5th DCA 1987)). We review these inquiries de novo. *Wendt v. Horowitz*, 822 So. 2d 1252, 1256 (Fla. 2002).

With respect to the first inquiry, under Florida's long-arm statute a nonresident defendant submits himself to the jurisdiction of Florida courts for any cause of action arising from "[c]ommitting a tortious act within this state." § 48.193(1)(a)(2), Fla. Stat. (2020). Florida law is well settled that " 'committing a tortious act' within Florida under [the long-arm statute] can occur by making telephonic, electronic, or written communications into this State, provided the tort alleged arises from such communications." *Wendt*, 822 So. 2d at 1253.

Over a decade ago, in *Internet Solutions Corp. v. Marshall*, 39 So. 3d 1201, 1214–15 (Fla. 2010), the Florida Supreme Court explained how this standard applies to defamation claims based on internet postings by a nonresident defendant:

[A]llegedly defamatory material about a Florida resident placed on the Web and accessible in Florida constitutes an "electronic communication into Florida" when the material is accessed (or "published") in Florida. In the context of the World Wide Web, given its pervasiveness, an alleged tortfeasor who posts allegedly defamatory material on a website has intentionally made the material almost instantly available everywhere the material is accessible. By posting allegedly defamatory material on the Web about a Florida resident, the poster has directed the communication about a Florida resident to readers worldwide, including potential readers within Florida. When the posting is then accessed by a third party in Florida, the material has been "published" in Florida and the poster has communicated the material "into" Florida, thereby committing the tortious act of defamation within Florida. This interpretation is consistent with the approach taken regarding other forms of communication.

(Emphasis supplied).

Thus, tortious conduct committed out-of-state is considered to have occurred "within this state" for the purposes of applying the long-arm statute where it involves posting material online about a Florida resident that is in fact accessed in Florida. *Id.*; see also *Baronowsky v. Maiorano*, 326 So. 3d 85, 88 (Fla. 4th DCA 2021)

("[A] nonresident who posts defamatory material about a Florida resident on a website accessible in Florida commits a tortious act within the state, and therefore submits himself to the jurisdiction of the state's courts, once the material is accessed in Florida.").

The allegations set forth in Ms. Strober's petition satisfy this standard. The petition alleges a variety of tortious acts by Mr. Harris, most of which were committed via, or arose from, video material which directly named Ms. Strober and which Mr. Harris posted publicly online. Among other things, the petition alleges that in these videos Mr. Harris (1) falsely accused Ms. Strober of child abuse, (2) published Ms. Strober's home address and a photograph of her minor daughter without permission, (3) directed his viewers to physically attack Ms. Strober, and (4) sent and caused to be sent to Ms. Strober other explicit threats of imminent physical violence and death. Ms. Strober also asserts that the videos were in fact accessed by herself and others in Florida.

Contrary to the trial court's analysis, there is no requirement under the long-arm statute that any of Mr. Harris's videos were "sent directly to" Ms. Strober. Rather, under the test set forth in *Internet Solutions*, it was enough that Ms. Strober alleged that Mr.

Harris posted tortious content online that was "about" her and which was in fact accessed in Florida. 39 So. 3d at 1214–15; see also *Nassar v. Nassar*, No. 3:14–cv–1501–J–34MCR, 2017 WL 26859, at *10 (M.D. Fla. Jan. 3, 2017) (ruling complaint alleging that out-of-state defendant made defamatory internet postings, hired locals to "stalk" plaintiff in Florida, and purchased internet domains relating to plaintiff satisfied long-arm statute based on commission of tortious acts in Florida); *Kamau v. Slate*, NO. 4:11cv522–RH/CAS, 2012 WL 5390001, at *3 (N.D. Fla. Oct. 1, 2012) ("Because Plaintiffs are located in Florida and indicate they accessed and viewed the allegedly defamatory material, this Court will have personal jurisdiction over those Defendants who are alleged to have committed tortious acts by use of a website or by sending electronic communications into Florida.").

Thus, this "action aris[es] from" alleged "tortious act[s] within this state" as required by section 48.193(1)(a)(2) under the analysis set forth in *Internet Solutions*, 39 So. 3d at 1214-15. The trial court erred in concluding otherwise.

The second inquiry, minimum contacts, is likewise satisfied. This inquiry concerns due process, which "requires that the

nonresident have sufficient minimum contacts with the [S]tate of Florida such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *Silver v. Levinson*, 648 So. 2d 240, 243 (Fla. 4th DCA 1994) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

Here, Mr. Harris had sufficient minimum contacts with Florida such that the exercise of jurisdiction over him in this dispute satisfies due process. As the trial court expressly found, Mr. Harris interviewed Ms. Strober, a Florida resident, on his YouTube channel, from which he "earns a large part of his income." The court expressly found that after the interview, Mr. Harris posted multiple videos "demeaning and criticizing" Ms. Strober, which were "clearly made to frustrate" her. Further, at the hearing, Ms. Strober played selected clips of the videos, the accuracy and authenticity of which Mr. Harris did not dispute. Among other things, these clips included videos of Mr. Harris (1) directing viewers to confront Ms. Strober in public, (2) inviting Ms. Strober to sue him, and (3) soliciting monetary donations to further their dispute.

The way the Fourth District explained its minimum contacts analysis in *Silver*, in which a nonresident sent an allegedly defamatory letter to recipients in Florida, applies here as well:

Defendant in this case committed an intentional act directly aimed at Florida and made accusations targeted at a Florida resident. He "purposefully directed" his activities at Florida. . . . The actions of defendant were not random, fortuitous or attenuated. The fact that defendant does not otherwise conduct economic activities within the state does not exempt him from the reach of the long arm statute; defendant could have reasonably anticipated being haled into court in Florida due to the fact that his actions were intentional and purposeful, designed to have an effect in . . . Florida.

648 So. 2d at 243–44.

Accordingly, the trial court erred in ruling it did not have personal jurisdiction over Mr. Harris. Even if he had not consented to a decision on the merits, the record in this case satisfies both inquiries for exercising long-arm jurisdiction.

Statutory Standard for Cyberstalking

The trial court also ruled that "even if the Court had personal jurisdiction over the Respondent, the petition for injunction would be denied." The court specified that the basis for this ruling was its factual findings that neither the videos nor the threats were sent to Ms. Strober directly by Mr. Harris himself. But once again, even

accepting these factual findings, the trial court's analysis reflects a misapprehension of the governing statutory standard.

Generally, "[t]his court reviews orders granting or denying temporary injunctions under the abuse of discretion standard." *Atomic Tattoos, LLC v. Morgan*, 45 So. 3d 63, 64 (Fla. 2d DCA 2010). However, where the ruling turned on an issue of statutory interpretation, our construction of the statute is de novo. *See, e.g., Lukacs v. Luton*, 982 So. 2d 1217, 1218 (Fla. 1st DCA 2008) ("interpret[ing] the statutory definitions of violence, repeat violence, and stalking" de novo in reviewing propriety of injunction); *see also Bellevue v. Frenchy's S. Beach Café, Inc.*, 136 So. 3d 640, 643 (Fla. 2d DCA 2013) ("[B]ecause the court's ruling in this case was based upon an erroneous interpretation of the applicable case law, our review is de novo.").

Under section 784.0485(1), Florida Statutes (2020), injunctions for protection against stalking also include cyberstalking. In turn, section 784.048(1)(d), Florida Statutes (2020),¹ provides:

¹ Notably, a legislative amendment took effect in October 2021 that broadened the definition of cyberstalking. *See* 2021 Fla. Sess.

(d) "Cyberstalk" means:

1. 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.

Thus, the statutory definition of cyberstalk includes not only messages "communicate[d]" by a respondent, but also messages "cause[d] to be communicated" as well.

Under the analysis applied by the trial court, however, the mere failure to establish that Mr. Harris himself sent the videos or threats directly to Ms. Strober ended the inquiry. Specifically, the court ruled that "[a]ll of the alleged threatening and harassing communications by the Petitioner [sic] were videos posted for thousands of others to see, and the communications directly received by the petitioner do not have a direct link to the Respondent *other than his publicly-posted video.*" (Emphasis added). But that begs the question whether the "publicly-posted video[s]"

Law Serv. Ch. 2021-220 (C.S.H.B. 921). But because the 2020 version governed the proceedings below, we confine our analysis to that version and do not comment on which version would apply upon remand or upon any amended petition.

"cause[d the threats] to be communicated"—a crucial part of the statutory definition that the court conspicuously failed to address.

As a result of this narrow interpretation of the statutory standard, the court disregarded Ms. Strober's express allegations and evidence that Mr. Harris had "cause[d the threats] to be communicated" with his videos, even though the court affirmatively found that she began receiving them only after appearing on Mr. Harris's channel. The court also never addressed Mr. Harris's statement—in a video entered into evidence without objection, admitted to be authentic, and played at the hearing—giving his viewers an "edict" to harass Ms. Strober. And, the court declined to determine whether the threatening messages purporting to be from Mr. Harris were "cause[d] to be communicated" by him. Contrary to the trial court's interpretation of the statute, none of these issues were resolved by the discrete finding that Ms. Strober failed to prove that Mr. Harris sent the threats himself.

The trial court's failure to apply the full statutory definition of "cyberstalk" was error. *See, e.g., Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 456 (Fla. 1992) ("It is a cardinal rule of statutory interpretation that courts should avoid

readings that would render part of a statute meaningless."); *City of Miami Beach v. Miami New Times, LLC*, 314 So. 3d 562, 568 (Fla. 3d DCA 2020) (holding that in construing a statute, a court cannot "ignore, or altogether negate, other language within the same subsection").

Accordingly, because the trial court had personal jurisdiction over Mr. Harris and applied an incorrect statutory standard in dismissing the petition, we reverse the order on appeal and remand for consideration under the correct statutory standard.

Reversed and remanded.

CASANUEVA, KHOUZAM, and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.