

IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO.: DVCE 18-008661

BRENDA FORMAN,

Petitioner,

vs.

WILLIAM GELIN,

Respondent.

PETITIONER'S MOTION TO CANCEL JANUARY 31, 2019 HEARING

Pursuant to Florida Rule of Civil Procedure 1.420(a)(1) and other applicable law, Petitioner Brenda Forman (“Clerk Forman”) hereby respectfully requests this Honorable Court to cancel the hearing scheduled at 9:00 a.m., Thursday, January 31, 2019 (the “Final Hearing Date”) on Clerk Forman’s now-dismissed Petition For Injunction For Protection Against Stalking (the “Petition”), and in support thereof, states as follows:

A. PROCEDURAL/FACTUAL HISTORY

1. On December 5, 2018, after three separate encounters with Respondent William Gelin (“Gelin”) at the Broward County Courthouse (the “Courthouse”) where Clerk Forman was performing her duties as Clerk of the Court, Clerk Forman filed the Petition pursuant to Florida Statutes section 784.0485, seeking, among other things, an injunction to prevent Gelin from stalking and/or harassing her, as such is defined in accordance with section 784.048.

2. That same day, Judge Mily Rodriguez Powell denied temporary injunctive relief in favor of Clerk Forman based upon the Petition itself, and scheduled a hearing before Judge Michael Kaplan for December 17th.

3. On December 13, 2018, Clerk Forman filed a Supplemental Affidavit in support of the Petition, based upon an encounter with Gelin in the Courthouse parking garage the day before.

4. On December 14, 2018, Judge Kaplan entered an order recusing himself from this action, and Chief Judge Tuter requested that the case be transferred to another county in light of Clerk Forman's position. Consequently, the December 17th hearing date was cancelled.

5. On December 18, 2018, the Florida Supreme Court transferred this action to the Eleventh Judicial Circuit and specifically assigned Judge William Altfield to hear the Petition.

6. The following day, December 19, 2018, undersigned counsel appeared in this action on behalf of Clerk Forman.

7. On or about December 24, 2018, upon clearance with all counsel and Clerk Forman, Judge Altfield set the Final Hearing Date.

8. On the afternoon of January 15, 2019, while represented by counsel, Clerk Forman made a deliberate and voluntary choice to bring this action to an end. Consequently Clerk Forman caused to be filed and served a Notice of Voluntary Dismissal Without Prejudice pursuant to Florida Rule of Civil Procedure 1.420(a)(1) (the "Dismissal"), which was her absolute right in accordance with Rule 1.420.

9. As a consequence, later that day, undersigned counsel's office advised Judge Altfield's Judicial Assistant of the Dismissal filing and provided a copy of same via email.

10. On January 16, 2019, Judge Altfield's Judicial Assistant sent an email to undersigned counsel and others, advising, among other things, that "Judge Altfield is asking for the hearing set on Thursday, January 31st, @ 9 AM, remain scheduled. He would like to colloquy the petitioner."

11. Although Clerk Forman and undersigned counsel can understand and appreciate that Judge Alfield may have some questions in light of the nature of the proceeding, respectfully, the Court no longer has any jurisdiction to address the substance of the now-dismissed action and only, if at all, may address “ancillary matters,” of which there are none as no motions or other filings remain pending and/or unaddressed, other than this filing.

B. LEGAL ANALYSIS

12. With very limited exceptions (not applicable here), Florida Rule of Civil Procedure 1.420 allows a plaintiff to voluntarily dismiss an action without prejudice at any time so long as no hearing on a motion for summary judgment is pending. Fla. R. Civ. P. 1.420(a)(1).

13. This right of a plaintiff to dismiss is absolute, barring extremely limited circumstances wholly inapplicable to this action. *See Tobkin v. State*, 777 So. 2d 1160, 1163-64 (Fla. 4th DCA 2001); *see also Giuffre v. Edwards*, 226 So. 3d 1034, 1037 (Fla. 4th DCA 2017).

14. A voluntary dismissal of an action is effective upon service, *see Pino v. Bank of N.Y.*, 121 So. 3d 23, 31 (Fla. 2013), and once the dismissal is served, the court is deprived of jurisdiction over the subject matter of the case. *Katke v. Bersche*, 161 So. 3d 574, 576 (Fla. 5th DCA 2014). *See also Pino*, 121 So. 3d at 31 (recognizing that a voluntary dismissal under Rule 1.420(a)(1) “is jurisdictional[,]” meaning it “serves to terminate the litigation, to instantaneously divest the court of its jurisdiction to enter or entertain further orders that would otherwise dispose of the merits of the case, and to preclude revival of the original action.”); *Giuffre*, 226 So. 3d at 1037 (confirming that the filing of a voluntary dismissal effectuates a “deprivation of ‘jurisdiction’”); and *Tobkin*, 777 So. 2d at 1164 (“In a civil case where a voluntary dismissal is entered, the trial court *no longer has jurisdiction to act in the case.*”) (emphasis added).

15. A trial court may no longer “act” on the subject of an action upon dismissal; it does retain limited jurisdiction, however, solely to hear “ancillary matters involved in the case such as outstanding and unresolved motions for attorney’s fees and costs, *and similar issues.*” *Id.* at 1163 (emphasis added); *see also Giuffre*, 226 So. 3d at 1036 (finding that the trial court erred by refusing to consider defendant’s previously-filed motions for sanctions after plaintiff filed a notice of voluntary dismissal).

16. Even though a petition for injunction as a result of stalking, which originates from the State’s criminal code sections, may not seem like the typical “civil action,” it is beyond dispute that this action is, in fact, a civil action; and, thus, upon service of the Dismissal, this Court was divested of jurisdiction to hear anything other than “ancillary matters.” *See Lopez v. Hall*, 223 So. 3d 451, (Fla. 2018) (holding that Florida’s petition for injunction for protection against repeat and dating violence, created pursuant to Florida Statutes section 784.046 (the sister criminal statute to the petition for injunction involved here pursuant to Florida Statutes section 784.0485), is a “civil proceeding”); *accord Tobkin*, 777 So. 2d at 1164 (declaring that a petition for injunction against domestic violence pursuant to Florida Statutes section 741.30 can be voluntarily dismissed by a petitioner just like “any other civil action” based upon the legislature creating such a private cause of action).

17. Here, Florida Statutes section 784.0485 creates a private cause of action in favor of individuals who are victims of stalking; and, consequently, a petition for injunction for protection against stalking can be voluntarily dismissed in accordance with Rule 1.420(a)(1) ... just as Clerk Forman has done here.

18. Although it may not be the Court’s intention to “enter or entertain further orders” at the Final Hearing Date, because a colloquy of Clerk Forman will undoubtedly touch upon the

subject matter of the Petition (which, for all intents and purposes no longer exists before the Court based upon the Dismissal), proceeding with same on the Final Hearing Date will effectively constitute an improper “revival of the [] action”, and not an ancillary matter within the proper remaining, limited jurisdiction of the Court, as set forth in *Tobkin*. 777 So. 2d at 1164.

19. Consequently, the Final Hearing Date should be cancelled accordingly.

WHEREFORE, Clerk Forman respectfully requests that this Honorable Court cancel the hearing currently scheduled for 9 a.m., Thursday, January 31, 2019.¹

Dated this 22nd day of January, 2019.

Respectfully submitted.

/s/Thomas H. Loffredo

THOMAS H. LOFFREDO

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of January, 2019, I electronically filed the foregoing with the Clerk of the Courts by using the Florida Courts E-Filing Portal system which will send a notice of electronic service to the parties on the below Service List.

/s/Thomas H. Loffredo

THOMAS H. LOFFREDO

Florida Bar No.: 870323

¹ To the extent that this Court is not inclined to cancel the pending hearing, the undersigned respectfully requests that the Court advise the parties of such prior to the Final Hearing Date so that Clerk Forman can proceed to file a writ of prohibition with the appellate court. *Katke*, 161 So. 3d at 575 (recognizing that a writ of prohibition is the proper mechanism for relief when a court loses “‘case’ jurisdiction[.]”

Service List

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