

Stalking Is a Contextual Crime: Recent Fla. Case Tackles Issue

Elisa Reiter and Daniel Pollack | September 27, 2024



According to the [Domestic Violence Services Network](#), (2024): “Unwanted communication and being followed or watched are the most frequently experienced stalking tactics. 75% of victims receive unwanted phone calls and 57% receive unwanted emails, texts, and/or social media or other messages. 57% also experience their stalker showing up and/or approaching them in places where the victim does not want them or expect them, and 52% are followed and/or watched.”

A recent case in the Court of Appeal of Florida, First District, *Hoover v. Peak ex rel. C.P.*, 2024 Fla. App., examined the context of the state's stalking statute. [Florida Statutes Title XLVI. Crimes § 784.048. Stalking; definitions; penalties](#) provides the following definition of stalking:

4) A person who, after an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to s. [784.046](#), or an injunction for protection against domestic violence pursuant to s. [741.30](#), or after any other court-imposed prohibition of conduct toward the subject person or that person's property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

On July 4, 2023, Mr. Hoover positioned a Roman candle towards a group of neighborhood children. Ms. Peak's daughter was in that group; she was facing away from Mr. Hoover when the Roman candle combusted, causing C.P. to incur a slight thigh injury. C.P.'s mother, Ms. Peak, reported the event to the Department of Children and Families ("the Department"). As a result of that report, Mr. Hoover was arrested for child abuse. Mr. Hoover also faced arrest regarding a domestic violence allegation initiated by his then estranged wife, Mandelin Hoover.

Mandelin Hoover was granted a domestic violence injunction against Mr. Hoover; that injunction included a no-contact provision. Following the entry

of that order, in August, 2023, Matthew Hoover and another former wife attended orientation for their daughter at Crestview High School. Coincidentally, C.P. was also a student at Crestview, attending the same orientation. Therefore, Ms. Peak, her husband, C.P. (the child made the subject of the child abuse allegation), and Mandelin Hoover were all present at the same introduction to the high school event. Of note is the fact that Mandelin Hoover and Ms. Peak were known to be “best friend(s).” While at the Crestview event, Ms. Peak and Mr. Hoover encountered each other four times. Ms. Peak believed that Mr. Hoover knew that his criminal case due to the fireworks matter included a no-contact order regarding Mr. Hoover and C.P. However, the orders did NOT include such a provision.

Ms. Peak found a school police deputy, advised him that Mr. Hoover was present, and requested that Mr. Hoover be removed from the event. Concurrently, Mr. Hoover was about to walk along the same hallway as Ms. Peak and her family were in, but on observing the Peak family, Mr. Hoover turned and walked away.

Based on the four “ships passing” events at the Crestview event, Ms. Peak filed a petition to enjoin Hoover from stalking her family.

The trial court heard from Ms. Peak, her husband, and from Ms. Peak’s best friend, Mandelin Hoover, as well as from Mr. Hoover’s former wife. The high school freshman, C.P., did not testify. The trial court, as gatekeeper, refused to allow Mr. Hoover’s daughter’s testimony. When the hearing ended, the trial court found that Ms. Peak sustained her burden of proof by “showing that a reasonable person would have been placed in

substantial emotional distress” by Hoover’s actions and granted a permanent injunction – or no-contact order between Mr. Hoover and the Peak family. Mr. Hoover appealed that order.

Pursuant to [Section 784.0485\(1\), Florida Statutes](#), a civil action for injunctive relief against stalking exists “when it appears to the court that the petitioner is the victim of stalking,” allowing the trial court the discretion to grant such relief as the court deems warranted. The [burden](#) is on the petitioner to present “competent, substantial evidence on the record to support a finding that a ‘reasonable person’ suffered from emotional distress due to stalking.” Florida appellate courts have a [history of reversing](#) injunctions prohibiting stalking due to a petitioner failing to present substantial evidence that the person who was enjoined by a trial court caused the petitioner “substantial emotional distress.”

As is often the case for an orientation or “meet the teacher” night, Mr. Hoover, like all the other parents in attendance, was obliged to “walk” his daughter’s schedule. Of the four encounters at Crestview between Hoover and Peak, the appellate court notes that:

- Mr. Hoover saw the Peak group, but simply continued down the same hallway as the Peaks.
- When Mr. Hoover and his group observed the Peaks enter the same room that the Hoovers were in, the Hoovers took their leave rather than have any issues with Mandelin Hoover, who held a no-contact injunction against Matthew Hoover.

- Mr. Hoover needed to perambulate a hallway the Peaks occupied in order to reach his daughter's math class.
- The last encounter was near the school's media center, where Mr. Hoover saw Ms. Peak talking to the school police officer. Mr. Hoover turned and walked away.

Peak argues that all four encounters constituted Hoover harassing her 9th grade daughter, C.P. and her family. The statute speaks to harassment, including a "course of conduct directed at a specific person which causes substantial emotional distress to that person and achieves no legitimate purpose." While we cannot put ourselves in the Peaks' position to determine what feelings they experienced on the evening of the high school orientation, it is clear that Hoover, his former wife, and their child were at the school for a legitimate purpose, and further, that he took precautions to attempt to limit contact with Madeline Hoover. It is equally clear that Peak argues that C.P. allegedly asked to resume counseling to deal with recurrent nightmares; however, Peak failed to present evidence that C.P. attended therapy.

The appellate court also addressed the allegation that Hoover "followed" C.P. during the Crestview welcome to freshmen. There was no presentation of substantial evidence that Matthew Hoover repeatedly followed C.P. in a manner consistent with entry of an injunction – an injunction of constitutional proportion that would have placed restrictions on Mr. Hoover's freedom of association and other fundamental rights. The Florida appellate court found nothing in Mr. Hoover's actions at Crestview to be malicious or criminal. Therefore, the appellate court reversed and

remanded the trial court's rulings, instructing the trial court to dissolve the injunctive relief granted against Mr. Hoover.

Takeaways

- Federal and state constitutions grant citizens fundamental rights, including the freedom of speech and the freedom of association.
- Stalking statutes should not be taken lightly – those made the subject of an application for entry of an injunction are entitled to their day in court, and to expect that the applicant must sustain their burden of proof.
- One act of failing to think out the consequences of one's actions while celebrating our nation's independence may have many consequences, including making future encounters between parents of children who were injured as a result of an individual's negligence more than a bit awkward.
- Stalking statutes provide important relief, but the imposition of relief pursuant to such statutes may include imposition of criminal sanctions such as being incarcerated for up to one year for violations, and being deprived of the right to possess a firearm.
- If you seek relief under a stalking statute, you must meet your burden of proof to present substantial evidence of intent to willfully, maliciously and repeatedly following, harassing, or cyberstalking another person.

- Stalking is a contextual crime. The imposition of relief must be balanced against the alleged stalker's constitutionally protected privileges.

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