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JALA COO Kimberly Martyn Cited as Authority by Appellate Court in Stalking Injunction Decision

JACKSONVILLE, FLORIDA, February 27, 2018 – Jacksonville Area Legal Aid, Inc. (JALA) Chief Operating Officer Kimberly Martyn was recently cited by the Florida First District Court of Appeal as authoritative support for its opinion on the proof needed for the relatively new injunction for protection against stalking, in *Pickett v. Copeland*, WL 444243 (Fla. 1st DCA 2018). Although appellate courts typically rely on prior court decisions for support, the First District Court of Appeal relied on practice manual material authored by Ms. Martyn [*Representing Battered Spouses*, Florida Dissolution of Marriage, §21.78 (Fla. Bar CLE 12th ed. 2015)] to reject a line of cases that had been developing in other Florida districts that would have resulted in unnecessarily onerous proof requirements.

The issue was whether a stalking injunction requires proof of more than one act of stalking. Prior to the creation of the stalking injunction, a victim who had been in a domestic relationship with the perpetrator could seek relief through a domestic violence injunction by proving only reasonable fear of an imminent act of violence or stalking. A victim without this relationship had to prove at least two acts of violence or stalking occurred to seek relief through a repeat violence injunction. But, because a single act of stalking by definition includes a course of harassing conduct, a jurisdictional split had arisen among the appellate courts as to whether a repeat violence injunction should require more than one act of stalking. Ms. Martyn opined in her chapter that the subsequent creation of the stalking injunction resolved any conflict by specifically requiring only one act of stalking. Yet, several appellate courts continued to pronounce that more than one act of stalking would be required for not only a repeat violence injunction, but the new stalking injunction as well.

Pickett v. Copeland, WL 444243 (Fla. 1st DCA 2018):

Stalking is defined simply as ‘willfully, maliciously, and repeatedly’ following, harassing, or cyberstalking another person -- not *repeatedly stalking* another person. §784.048(2), Fla. Stat. Equally important, section 784.0485 makes no reference to the provisions of the repeat violence statute; does not mandate ‘guidance’ from the repeat violence provisions; and, independent of the requirements of section 784.046, creates a ‘cause of action for an injunction for protection against stalking.’ § 784.0485(1), Fla. Stat.; see M. Kimberly Martyn, *Representing Battered Spouses, Florida Dissolution of Marriage*, §21.78 (Fla. Bar CLE 12th ed. 2015) “Effective October 1, 2012, a fifth type of protective injunction exists for protection against stalking. F.S. 784.0485(1). The availability of this injunction enables victims of stalking, including cyberstalking, who do not qualify for domestic violence injunctions, to seek relief without the necessity of proving the two separate stalking offenses that are required in repeat violence injunction proceedings.” (Emphasis added).

About Jacksonville Area Legal Aid:

The mission of Jacksonville Area Legal Aid, Inc. is to obtain and provide high quality legal assistance to low income and other special need groups and to stimulate and empower groups of poor people to accomplish energetic and affirmative advocacy, all to alleviate the circumstances, incidents and causes of poverty. Donate at www.JaxLegalAid.org.

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