SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Case No. 6D2025-0337
Lower Tribunal No. 2024-DR-032922

GERALD BUCHHEIT,

Appellant,

v.

CARA SICILIANO,

Appellee.

Appeal from the Circuit Court for Lee County.
Gaston J. Fernandez, Judge.

November 6, 2026

PER CURIAM.

Gerald Buchheit appeals the final injunction for protection against domestic violence entered in favor of his wife, Cara Siciliano. We have jurisdiction. *See* Fla. R. App. P. 9.130(a)(3)(B). Under sister court precedent, Buchheit had a meritorious argument for reversal if he had preserved it. A video shows that the occurrence that caused Siciliano to seek protection, standing alone, does not legally support an injunction. But Siciliano testified that in four incidents ranging from 2016 to 2023, Buchheit had slammed her into a door, cut her, punched her, and choked her. Buchheit only objected to the 2023 door incident, which the trial court improperly

overruled. But he did not object to the other past incidents until his motion for rehearing, which the trial court denied without elaboration.

The domestic violence injunction statute permits a trial court to enter an injunction following a hearing if the petitioner is "*either* the victim of domestic violence as defined by s. 741.28 *or* has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence." § 741.30(6)(a), Fla. Stat. (2024) (emphasis added). Competent, substantial evidence supports both statutory bases here. Buchheit committed domestic violence against Siciliano in 2016, 2020, and 2022. The domestic violence statute does not contain time limitations restricting a trial court from considering an incident that occurred before the petition's filing date. *See id*. And separately, these acts are statutorily enumerated bases for imminent danger of future domestic violence. *See id.* § 741.30(6)(b)1. ("[T]he court shall consider . . . [t]he history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse."). Siciliano testified that she feared Buchheit because he had recently been in a plane crash, which caused him to drink more. Drinking had led to past violence, the parties were divorcing, and in this context, Buchheit's unannounced visit to her home properly led her to seek injunctive relief. We thus affirm the trial court's decision.

Still, in 2010, the Second District crafted a standard untethered to the statute's plain language when it observed that "an isolated incident of domestic violence that

occurred years before a petition for injunction is filed will not usually support the issuance of an injunction in the absence of additional current allegations." *Gill v. Gill*, 50 So. 3d 772, 774 (Fla. 2d DCA 2010) (comparing *Jones v. Jones*, 32 So. 3d 772, 773–74 (Fla. 2d DCA 2010), with *Giallanza v. Giallanza*, 787 So. 2d 162, 163 (Fla. 2d DCA 2001)). In 2019, the First District, citing *Gill*, transformed this judicially created standard into a rule. *See Curl v. Roberts o/b/o E.C.*, 279 So. 3d 765, 767 (Fla. 1st DCA 2019) ("Incidents remote in time by as little as a year are insufficient to support entry of a new injunction, absent allegations of current violence or imminent danger that satisfy the statute.").

Because Buchheit did not make this argument for the first time until his motion for rehearing, he did not preserve this argument for appeal, and we do not consider it. *See Melrose Ventures, LLC v. Uptempo Mktg. Corp.*, 418 So. 3d 217, 221 (Fla. 6th DCA 2025), *certifying conflict with Kawsar v. Alhamdi Gr., LLC*, 369 So. 3d 1227, 1228 (Fla. 5th DCA 2023), and *Elser v. Law Offs. of James M. Russ, P.A.*, 679 So. 2d 309, 312 (Fla. 5th DCA 1996). We recertify conflict with the Fifth District on this issue.

I.

A.

In December 2024, Siciliano filed her verified petition against Buchheit.[1] She said that they were married and in the process of divorce. In support of her request for protection, she claimed that earlier that day, Buchheit walked into their condo while she was sleeping. She stated that he was yelling and videotaping while chasing her around, causing her fear.

The trial court did not enter an ex parte temporary injunction. Rather, it set the matter for hearing, suggesting that it did not find Siciliano's petition established she was in imminent danger of domestic violence. *See* § 741.30(5)(a) (permitting issuance of temporary injunction "[i]f it appears to the court that an immediate and present danger of domestic violence exists").

Siciliano then filed a supplemental affidavit to support her petition. She added that she and her 17-year-old daughter were fully clothed, but Buchheit had been videotaping her 17-year-old daughter in her underwear while "being combative and chasing [Siciliano] around say[ing] he will come back anytime he wants." She claimed Buchheit had made "numerous threats" that she was "going to have [her] ass handed to [her] and that things [were] going to get very bad." She also said that

[1] Florida Supreme Court-approved forms largely drive proceedings involving orders of protection. *See, e.g.*, Fla. Fam. L. R. P. Form 12.980(a) (Petition for Injunction for Protection Against Domestic Violence).

Buchheit had been the subject of a previous protection order in New York. The trial court then entered a temporary injunction and set the matter for a final hearing.

B.

Counsel represented both parties at the final evidentiary hearing, and only the parties testified. Siciliano testified that she and Buchheit were married, but they had been separated since 2022. She lived in Fort Myers, and he lived in Buffalo, New York. Siciliano said that she filed the petition because Buchheit walked into her condo at 7 a.m., unannounced and screaming. She said she and her 17-year-old daughter were naked and Buchheit saw her naked when he kicked her bedroom door open. He videotaped the incident "screaming and yelling," demanding to know where his Ferrari was and chasing her through the living room. He threatened her that "he would be back at any time that he wanted." And in a later text message, Buchheit said Siciliano was "going to have [her] ass handed to [her]," and that things were going to "get really bad" for her.

Siciliano began to testify about past incidents of violence between the parties, and Buchheit objected to her testimony about an incident that happened in January 2023 because her petition did not reference it. The trial court overruled the objection. Siciliano then explained that Buchheit slammed her into a bedroom door, splitting it in half, after she had breast cancer surgery.

Without objection, Siciliano detailed other past incidents of violence against her. In June 2016, Buchheit abused her by shattering a wine glass and slicing the back of her leg open. In March 2020, Buchheit drunkenly choked her, attacked her, and smashed her phone. This left bruises on her arm. And in February 2022, at Mar-a-Lago, he punched her in the back repeatedly.

Siciliano did not call the police or file for a domestic violence injunction after any of these incidents. She explained that she previously had not filed an injunction because Buchheit had multiple residences, moved around a lot, and had filed for divorce. He had no belongings at the Fort Myers condo, and even though they co-owned it, he never lived there. So she did not think that she had any reason to fear his appearance until it happened. She said that after Buchheit had been in a plane crash earlier that year, his behavior had "escalated" towards her. Buchheit was drinking often, and each of the past incidents of violence took place when he was drinking. She said she was in imminent fear for her safety.

Buchheit then testified. He acknowledged that he had filed for divorce two months before this incident in October 2024. But he went to the condo to pick up his mail and drop off gifts for Siciliano that he had gotten in Italy. He claimed that Siciliano never told him that she wanted no contact, although she did block his communications "on and off whenever she gets her temper tantrums." He said that he called out her name and asked about his Ferrari because he did not see it in the

garage. In response, "she started screaming, 'Get out of my house.'" He denied pushing or kicking open the bedroom door and said he never saw her naked or in bed. He also never saw his stepdaughter, never chased anyone around the condo, and never raised his voice. After ten to fifteen seconds of interaction with Siciliano, and after he put down the gifts, he videotaped the incident so he "wouldn't be accused of something bad." He acknowledged that Siciliano would videotape him because of "disturbances in [their] relationship."

The video is 62 seconds long, and it begins with Buchheit addressing a closed door in a calm voice, asking "where's the Ferrari?" Siciliano's daughter responds through the door, also in a normal voice, "and why the fuck are you here?" Buchheit replies, "I bought this house. That's why I'm here." The camera pans from the door to the living room of the condo, where Siciliano stands in her bathrobe on the other side of an enormous couch. He asks her the whereabouts of his Ferrari, and she yells "get out," while dialing on her phone. After standing in place for a few seconds, Buchheit slowly moves across the condo towards Siciliano's bedroom. Siciliano closes the bedroom door as he approaches. It appears Buchheit opens the door slightly (nothing is visible in the opening), and Siciliano slams it shut. He walks to the condo's door, and the video ends.

Buchheit testified that he did not drink alcohol regularly. He confirmed that he had been in a recent plane accident, but he said that it had not changed his

behavior. He also addressed the previous allegations of violence. In June 2016, Siciliano cut her leg when a "wine glass fell," and the incident "had nothing to do with anybody throwing anything." In March 2020, he caused bruises on her arm while trying to keep her from hitting him. Buchheit explained that Siciliano has "a terrible temper" and liked to punch him. The February 2022 Mar-a-Lago incident never happened. And the door cracked when Siciliano slammed it in his face in January 2023.

The parties delivered closing arguments. Siciliano argued for a one-year injunction, claiming that the parties' relationship was "volatile," and that Buchheit admitted he had put marks on her. She said she had met her burden to show "prior domestic violence" and that these other instances had caused her fear of future domestic violence.

Buchheit responded that the trial court should consider Siciliano incredible based on her testimony and the video evidence. He said the trial court should give the "incidents of prior violence" "very little weight" because of the parties' conflicting testimony. Conceding that his argument did not "bear any weight," Buchheit argued that standing alone, the December 2024 incident that led to the proceeding did not provide the basis for an injunction.

Siciliano replied that the statute did not require violence on the date of the petition's filing. She said that she was in imminent fear of becoming a victim of

domestic violence and had, in fact, been a victim several times in this relationship. She referenced Buchheit's "background of drinking and violence," and said it was intimidating for him to appear at a place he had no reason to be.

Citing the past violence between the parties, the trial court granted Siciliano's petition: "The Court finds that the sworn testimony is disputed. The Court finds that the testimony as to violence between the parties is undisputed. The Court will award the injunction, 150 feet. The injunction will extend till [sic] October 1, 2025."[2]

C.

The trial court entered a written order memorializing the injunction, and Buchheit timely moved for rehearing. He argued that Siciliano did not prove that domestic violence occurred during the December 2024 incident that led to the petition's filing. He claimed that the video established that no domestic violence had occurred, and that it showed Siciliano could not have been in reasonable fear of domestic violence. He claimed, for the first time, that the 2016, 2020, 2022, and 2023 incidents had not occurred within one year of the petition's filing and were therefore "too remote in time to legally support entry of a new injunction." Although

[2] Even though the injunction has expired, this case is not moot because of the injunction's collateral consequences. *See Rodman v. Rodman*, 48 So. 3d 1022, 1022 (Fla. 1st DCA 2010) (citing *Godwin v. State*, 593 So. 2d 211 (Fla. 1992)); *Phillips v. Phillips*, 151 So. 3d 58, 59 (Fla. 2d DCA 2014); *Stone v. Stone*, 128 So. 3d 239, 242 (Fla. 4th DCA 2013); *Brooks v. Basdeo*, 336 So. 3d 423, 424 n.1 (Fla. 5th DCA 2022).

the trial court granted, in part, Buchheit's motion for rehearing on grounds irrelevant to this appeal, it denied his newly raised argument about the remoteness of the past incidents without elaboration.

II.

We review de novo the legal sufficiency of evidence supporting a domestic violence injunction's entry. *See Negron v. Bonilla o/b/o A.N.*, 428 So. 3d 181, 183 (Fla. 6th DCA 2026). In resolving this question, we ask whether competent, substantial evidence supports the trial court's decision. *See Klein v. Manville*, 363 So. 3d 1163, 1167 (Fla. 6th DCA 2023). If the supporting evidence is legally sufficient, we review the trial court's imposition of a domestic violence injunction for an abuse of discretion. *See Negron*, 428 So. 3d at 183; *see also* § 741.30(6)(a) ("Upon notice and hearing, . . . the court *may* grant such relief as the court deems proper, including an injunction.") (emphasis added).

III.

The incident precipitating Siciliano's request for a domestic violence injunction, standing alone, did not provide a basis for a final injunction. The trial court did not, however, abuse its discretion by awarding Siciliano relief because, with one exception, the incidents of past violence supported the final injunction's issuance. These incidents also illustrated that Siciliano had a reasonable fear that domestic violence could be imminent because they contextualized Buchheit's

unannounced visit to her home. The trial court erred in admitting evidence of the January 2023 door slamming incident because Siciliano did not reference it in her petition, and Buchheit made that objection at the final hearing. But Buchheit did not preserve his challenge, grounded in sister court precedent, that the three other incidents of past violence were too remote to justify relief.

A.

The Florida Legislature defines "[d]omestic violence" as a list of enumerated acts[3] "resulting in physical injury or death of one family or household member by another family or household member." § 741.28(2), Fla. Stat. (2024). A "family or household member[]" has standing to petition for a domestic violence injunction. *See* § 741.30(1)(e). As spouses, Buchheit and Siciliano are "family or household member[s]." *See* § 741.28(3).

A petitioner's verified petition must allege the existence of domestic violence and "include the specific facts and circumstances upon the basis of which relief is sought." § 741.30(3)(a). Upon review of the verified petition, a trial court may grant an ex parte temporary injunction "[i]f it appears to the court that an immediate and

[3] This list includes assault, battery, stalking, false imprisonment, and aggravated versions of those four basic offenses. *See* § 741.28(2). It also includes the catchall of "any criminal offense" that otherwise meets the statutory definition. *See id*.

present danger of domestic violence exists."[4] § 741.30(5)(a). Thus, immediate and present danger is a prerequisite for a temporary injunction; a past act of domestic violence, standing alone, is not enough. *See id*.

By contrast, to obtain a final domestic violence injunction, the statute requires a petitioner to prove that: 1) he or she was "*either* the victim of domestic violence as defined by s. 741.28 *or* [2)] has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence." § 741.30(6)(a) (emphasis added). If a petitioner makes *either* showing, the trial court "may grant such relief as the court deems proper, including an injunction." *Id*. Thus, to obtain a final injunction under the statute, a past incident of domestic violence, standing alone, is enough. *See id*.

In determining a petitioner's reasonable belief that domestic violence is imminent, the Legislature requires the trial court to "consider and evaluate" a non-exhaustive list of eleven statutory factors that were "alleged in the petition." *See* § 741.30(6)(b)1.–11. Two factors are relevant here. The first directs trial courts to "consider and evaluate . . . [t]he history between the petitioner and the respondent,

[4] Some Florida counties, including Lee County, provide petitioners with non-Florida Supreme Court-approved forms allowing a petitioner to waive a hearing if the trial court did not issue a temporary injunction. This waiver would avoid the potential of a respondent learning that a petitioner was seeking domestic violence relief without the protection a temporary injunction would provide. In this case, Siciliano did not waive her right to a hearing with notice.

including threats, harassment, stalking, and physical abuse." § 741.30(6)(b)1. The second requires trial courts to "consider and evaluate . . . [w]hether the respondent has attempted to harm the petitioner." § 741.30(6)(b)2.

In sum, subsections 741.30(5) and (6) do not require prospective petitioners to wait until prospective respondents commit domestic violence against them before they can obtain injunctive relief. If a petitioner can prove that he or she is in "immediate and present danger" of domestic violence, a trial court may enter a temporary or final injunction. *See* § 741.30(5), (6). But if a petitioner is a past victim of domestic violence, he or she need not show "immediate and present danger" of domestic violence to obtain a final injunction. If a petitioner can prove that he or she is a victim of domestic violence *or* "has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence," a trial court may enter a final injunction. *See* § 741.30(6)(a).

B.

Standing alone, Buchheit's December 2024 unannounced visit to Siciliano's home could not meet either statutory basis for the entry of a final injunction. Siciliano's petition, as amended, alleged that Buchheit chased her around the house while threatening her. The amended petition said that Buchheit was "combative" and he had made "numerous threats," including that she was "going to have [her] ass handed to [her] and that things [were] going to get very bad." While this

provided the basis for the trial court to enter a temporary injunction, the evidence adduced at the final hearing did not support Siciliano's account of what happened that day.

At the final hearing, Siciliano said that Buchheit walked into her condo at 7 a.m., unannounced and screaming. She explained that she and her teenaged daughter were naked, and that Buchheit kicked her bedroom door open. He videotaped the incident "screaming and yelling," demanding to know where his Ferrari was and chasing her through the living room. The threats referenced in her petition occurred not during Buchheit's visit but via text sent afterward.

None of this happened. Instead, the video showed a calm Buchheit recording a robed Siciliano. He did not scream, and although he followed her through the apartment, he did not chase. He was not combative. He did not make any threats. If the December 2024 incident provided the only basis for Siciliano's injunction, we would reverse because no competent, substantial evidence supported its entry.

C.

But four prior incidents of domestic violence also occurred. Three provided independent legal support for the final injunction's entry; one should not have been discussed over Buchheit's timely objection because Siciliano's petition did not reference it. The three unobjected-to prior incidents also contextualized Siciliano's reasonable fear that domestic violence was imminent following Buchheit's

unannounced arrival in her home. The three admissible previous incidents compel affirmance despite Siciliano's exaggeration of the December 2024 incident.[5]

i.

The trial court erred by overruling Buchheit's objection to the January 2023 incident, where Siciliano said that Buchheit slammed her into a bedroom door, splitting it in half, after she had breast cancer surgery. Siciliano did not reference this incident in her petition. *See* § 741.30(3)(a) ("The verified petition must allege the existence of such domestic violence and must include the specific facts and circumstances upon the basis of which relief is sought."). Accordingly, Siciliano's reference to this incident in the final hearing deprived Buchheit of his right to due process because he was not given notice of this allegation in the domestic violence injunction petition or amended petition. *See Blanco v. Santana*, 363 So. 3d 1215, 1215 (Fla. 6th DCA 2023) (citing *J.G.G. v. M.S.*, 312 So. 3d 509, 511 (Fla. 5th DCA

[5] The trial court could have concluded it did not believe Siciliano's testimony about the previous three incidents because of her refuted testimony about the December 2024 incident that precipitated the injunction's filing. But it did not, and we do not second-guess this determination. *See, e.g.*, *Gonzalez v. Baez*, 250 So. 3d 842, 843 (Fla. 3d DCA 2018) ("The trial court was well-suited to evaluate the testimony and, contrary to appellant's argument on appeal, nothing in the record demonstrates an abuse of discretion."); *Jeffries v. Jeffries*, 133 So. 3d 1243, 1244 (Fla. 1st DCA 2014) ("Appellee's testimony describes an incident of domestic violence, as defined in section 741.28, Florida Statutes, and provides the requisite evidentiary support for the trial court's decision to grant the petition. The fact there was conflicting testimony from Appellant that would have supported the denial of the petition is of no significance on appeal.") (citation omitted).

2020); *Sanchez v. Marin*, 138 So. 3d 1165, 1167 (Fla. 3d DCA 2014)). For this reason, we do not consider the January 2023 incident in affirming the trial court's final injunction.

ii.

By contrast, Buchheit did not object to Siciliano's testimony that he had cut her in 2016, choked and bruised her in 2020, and punched her in 2022. The trial court thus properly considered this testimony in awarding a final injunction. *See Blanco*, 363 So. 3d at 1216; *Gonzalez v. Baez*, 250 So. 3d 842, 843 (Fla. 3d DCA 2018); *Faddis v. Luddy*, 221 So. 3d 758, 760 (Fla. 3d DCA 2017). These prior acts supported the trial court's final injunction in two ways. First, each showed that Siciliano was a "victim of domestic violence." *See* § 741.30(6)(a). Each of the past incidents was a battery, a category contained within the statutory definition of "[d]omestic violence." *See* § 741.28(2) (defining "[d]omestic violence" to include battery); *see also* § 784.03(1)(a), Fla. Stat. (2024) (defining battery as occurring "when a person: 1. [a]ctually and intentionally touches or strikes another person against the will of the other; or 2. [i]ntentionally causes bodily harm to another person"). Siciliano testified to each incident. This constituted competent, substantial evidence that Siciliano was a past victim of domestic violence, and the trial court could be affirmed on this basis alone.

Separately, though, the evidence also supported a finding that domestic violence was imminent if the injunction was not entered. Siciliano testified to Buchheit's changes in behavior since his plane crash; he was drinking more and had been violent when drinking in the past, they were divorcing, and he showed up at her home unannounced. No matter what the video showed (as compared to what she said it showed), the parties' history of violence supported the trial court's decision and would provide another basis for affirmance. *See* § 741.30(6)(b)1., 2. This history of violence contextualized why Siciliano was afraid for her safety when Buchheit appeared unannounced in her home during their divorce. *See id*.

iii.

For the first time in his motion for rehearing, Buchheit challenged the trial court's reliance on the 2016, 2020, and 2022 incidents as insufficient to support a final injunction. In support, Buchheit relied on precedent from our sister courts, arguing that these incidents predated the filing of the petition by more than a year, and thus, they were too remote in time to justify the trial court's actions. *See Magloire v. Obrenovic*, 308 So. 3d 258, 261 (Fla. 2d DCA 2020); *Gill*, 50 So. 3d at 774; *Leaphart v. James*, 185 So. 3d 683, 686 (Fla. 2d DCA 2016).

The trial court did not address this issue substantively when it denied Buchheit's motion for rehearing, and it is therefore not preserved for our review. *See Melrose Ventures*, 418 So. 3d at 221. A new argument raised in a motion for

rehearing "cannot be considered contemporaneous" to the trial court's consideration of the underlying issue. *See id*. Thus, in the absence of the trial court engaging on the belatedly raised issue, the argument is unpreserved. *See id*. We recertify conflict with the Fifth District, which has concluded otherwise. *See Kawsar*, 369 So. 3d at 1228; *Elser*, 679 So. 2d at 312.

IV.

We affirm the trial court's final judgment. Competent, substantial evidence supported that Siciliano was a past victim of domestic violence and had reasonable fear to believe domestic violence was imminent if the trial court did not enter an injunction against Buchheit. We do not rely on the 2023 incident in making this determination, nor do we view the December 2024 incident that led to the petition's filing in isolation. Buchheit failed to preserve his argument, first raised on rehearing, that the 2016, 2020, and 2022 incidents were too remote in time to justify an injunction. We thus recertify conflict with the Fifth District on this basis.

AFFIRMED; CONFLICT CERTIFIED.

STARGEL and KAMOUTSAS, JJ., concur.
TRAVER, C.J., concurs and concurs specially, with opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED

TRAVER, C.J., concurring specially.

I concur with the majority opinion. I write separately to explain why we should still affirm the trial court's decision, even if Buchheit had preserved his argument about the 2016, 2020, and 2022 past incidents of violence against Siciliano. The domestic violence statute places no time limitations on when a victim suffered domestic violence to justify imposing a final injunction. By contrast, some of our sister courts have adopted a rule that incidents of domestic violence occurring a year before a petition's filing are insufficient, standing alone, to support an injunction's entry. *E.g.*, *Curl*, 279 So. 3d at 767; *Yaklin v. Yaklin*, 296 So. 3d 531, 532–33 (Fla. 2d DCA 2020); *McGuire v. Boscan*, 337 So. 3d 124, 128 (Fla. 3d DCA 2021).

This rule originated from a standard created by the Second District that addressed "isolated" incidents of domestic violence that occurred "years" before a petition's filing. *See Gill*, 50 So. 3d at 774. The standard and rule conflict with a plain reading of section 741.30.

In 2010, the *Gill* court crafted a standard that "isolated" incidents of domestic violence that occur "years" before a petition's filing "will not usually support the issuance of an injunction in the absence of additional current allegations." *Id*. In *Gill*, an ex-wife testified that her ex-husband had pushed her fourteen months before she filed her domestic violence petition. *Id*. at 773. The parties' divorce was

acrimonious, and the incident that led to the filing of her petition occurred at an exchange of the parties' minor child. *Id*. Notably, the ex-wife lied about this incident in her petition, claiming that the ex-husband tried to run her over with his car. *Id*. Thus, the only incident that would meet the statutory definition of domestic violence was the push. *Id*. at 774 ("The only allegation of any actual violence is that of the pushing incident . . . ."). This was enough under the statute to support the trial court's decision to enter an injunction. *See* §§ 741.28(2) (defining "[d]omestic violence" to include battery); 784.03(1)(a) (defining "battery"); 741.30(6)(a) (allowing trial courts to enter final injunctions when petitioner is "the victim of domestic violence"). Although the competent, substantial evidence supporting the trial court's decision to enter an injunction was thin—especially given the ex-wife's deception—it existed. The trial court could have considered the remoteness of the push and the ex-wife's deception in exercising its discretion not to enter an injunction despite the existence of a battery, but it did not. *Cf. Giallanza*, 787 So. 2d at 163 (reasoning that wife's allegations that her husband had slammed her into door jamb and wrapped his hands around her neck eight and ten years before petition's filing, respectively, were sufficient to warrant initial final injunctive

relief). The *Gill* court revisited this fact-based decision by creating a standard that section 741.30's plain language does not support.[6]

The *Gill* court's creation of this standard, while well-intentioned given the facts of that case, led to other courts applying that standard and reversing trial courts that had entered injunctions when more serious past domestic violence occurred. *See, e.g.*, *Arnold v. Santana*, 122 So. 3d 512, 513 (Fla. 1st DCA 2013) (estranged husband hit wife when they were dating; three or four years later, he kicked down door of bathroom in which wife locked herself during argument, tracked her electronically, and followed her); *Mantell v. Rocke*, 179 So. 3d 511, 512 (Fla. 1st DCA 2015) (respondent committed "felony assault" on petitioner, and then five-and-a-half years later, he twice drove by her home and told her it was a free country); *Leaphart*, 185 So. 3d at 686 (ex-boyfriend "busted [ex-girlfriend's] lip" and twenty months later, she sought injunctive relief because she suspected ex-boyfriend had set her car on fire after seemingly flattening her tires and shooting up her house); *Zapiola v. Kordecki*, 210 So. 3d 249, 249 (Fla. 2d DCA 2017) (respondent punched

[6] *Gill* relied on another Second District case in implementing a standard for isolated past instances of domestic violence. 50 So. 3d at 774 (citing *Jones*, 32 So. 3d at 773–74). *Jones* had a similar fact pattern to *Gill*; an ex-husband pushed an ex-wife three years before she sought an injunction. *See* 32 So. 3d at 773. The ex-wife testified at the final hearing that she was scared the ex-husband would commit domestic violence against her. *See id*. The *Jones* court disregarded the push and concluded no competent, substantial evidence supported the injunction's entry. *See id*. at 774 ("Ms. Jones did not present any evidence that she had been the victim of domestic violence.").

petitioner in face and three to four years later, respondent repeatedly tried to contact petitioner on Facebook and telephone).

The *Curl* court then modified the *Gill* standard into a rule. *See* 279 So. 3d at 767. Relying on *Gill*, it declared that "[i]ncidents remote in time by as little as a year are insufficient to support entry of a new injunction, absent allegations of current violence or imminent danger that satisfy the statute." *Id*. (citing *Leaphart*, 185 So. 3d at 686; *Arnold*, 122 So. 3d at 513; *Gill*, 50 So. 3d at 773; *Giallanza*, 787 So. 2d at 163; *Randolph v. Rich*, 58 So. 3d 290, 292 (Fla. 1st DCA 2011)). *Curl* had nothing to do with a one-year deadline. The petitioner sought an injunction on behalf of her minor child against the respondent—the petitioner's mother and the child's grandmother. *See id*. at 766. But the petitioner's allegations of past domestic violence were unrelated to violent conduct against the minor child. *See id*. Instead, the petitioner focused on the respondent's violent conduct against her, which concluded two to three years before she filed the petition. *See id*. Unlike *Gill*, where the past evidence of domestic violence was scant, but statutorily sufficient, the petitioner in *Curl* offered no evidence that the respondent had committed any past domestic violence against the party on whose behalf the injunction was sought. *See id*.; *Gill*, 50 So. 3d at 774. What remained were allegations that the respondent had tried to interfere with the petitioner's parenting, called social services, and tried to control the petitioner. *See Curl*, 279 So. 3d at 766.

As with *Gill*'s standard, other courts seized on *Curl*'s rule and relied on it in reversing injunctions entered by trial courts. *E.g.*, *Yaklin*, 296 So. 3d at 532–33 (ex-husband "had a history of being physically and emotionally abusive toward" ex-wife during marriage and two years after they divorced, ex-wife saw ex-husband "being arrested by the police while his girlfriend stood nearby with black eyes"); *McGuire*, 337 So. 3d at 128 (ex-boyfriend perpetrated unspecified domestic violence against ex-girlfriend and three years later, she saw him at grocery store and believed he was following her). Other courts cited *Curl* with approval in similar contexts. *See Magloire*, 308 So. 3d at 261; *Fingers v. Fingers*, 353 So. 3d 1283, 1285 (Fla. 5th DCA 2023).

Magloire is relevant here, and not just because Buchheit cited it in support of his rehearing motion. *See* 308 So. 3d at 258. In *Magloire*, the petitioner mother testified that the respondent had sexually assaulted her, pushed and tried to kick her in the stomach when she was pregnant, threatened her with guns, and said he would kill her. *See* 308 So. 3d at 259. Seventeen months later, she filed a domestic violence petition, alleging that the respondent was disputing paternity, and she feared for her and her child's safety. *See id*. Citing *Gill* and *Curl*, the *Magloire* court reversed the trial court's entry of a final injunction. *See id*. at 261 ("The trial court found Ms. Obrenovic to be credible, a finding we will not second-guess. And her testimony established that she was the victim of violence in early 2018, including while she

was pregnant. However, those incidents predated the filing of the petition by well over a year and were thus too remote in time to support the entry of the injunction in the absence of more recent evidence of domestic violence or evidence that Ms. Obrenovic has reasonable cause to believe that she and her child are in imminent danger.") (citation modified). As in *Magloire*, Siciliano petitioned because the parties were involved in family court litigation and testified to serious incidents of domestic violence that predated the petition's filing by over a year.

If Buchheit had preserved his challenge to Siciliano's testimony about the 2016, 2020, and 2022 domestic violence incidents and this Court adopted the discussed precedent, we would be constrained to reverse the trial court's decision. But I respectfully submit that neither the *Gill* standard nor the *Curl* rule are grounded in the domestic violence statute's plain language, which only speaks to past incidents and future fear of domestic violence and does not place time restrictions on the former when permitting trial courts to impose final injunctions. *See* § 741.30(6)(a). I would thus still vote to affirm even if Buchheit had preserved his argument under this precedent.

This is not to say that trial courts *must* enter a permanent injunction if the only instance of domestic violence between the parties is an isolated act of domestic violence that occurred years before the petition's filing. Indeed, the decision to enter

an injunction is discretionary.[7] *See id*. ("[T]he court *may* grant such relief as the court deems proper, including an injunction.") (emphasis added). Trial courts have the discretion to enjoin a party from committing future domestic violence against a respondent who has committed domestic violence on a petitioner in the past. *See id.* A trial court may also enter an injunction if a petitioner's reasonable fear that domestic violence is imminent arises from a history of domestic violence. *See* § 741.30(6)(a), (b)1.–2.

In making this determination, context matters. Consider two situations. In one, a father seeks an injunction against an adult son based on a shove that occurred following a dinner table argument that happened three years ago. The adult son petitions based on another non-violent argument on the same topic that caused the shove, and which happened yesterday. In a second situation, an ex-girlfriend seeks an injunction based on her ex-boyfriend breaking her orbital bone and throwing her down the stairs three years ago. But she had not seen him again until he walked by her home yesterday.

The *Gill* standard and the *Curl* rule do not distinguish between these scenarios because there is no "current" evidence of violence or threats of violence. Both past incidents are "remote" and "isolated." But the statute allows for the entry of an

[7] I do not suggest that this discretion is unlimited, or that a trial court could not possibly abuse its discretion by declining to impose an injunction.

injunction in both contexts. Of course, left to its discretion, one might imagine that a trial court would award an injunction in the second instance but not the first. This discretion is important, though, and it arises from the domestic violence statute's plain language. We should trust trial courts to make these critical and discretionary decisions and respect their superior vantage point if competent, substantial evidence supports them. *See, e.g.*, *Gonzalez*, 250 So. 3d at 843; *Jeffries v. Jeffries*, 133 So. 3d 1243, 1244 (Fla. 1st DCA 2014).

Reuben Doupé, of Coleman, Taylor, Klaus, Doupé, Diaz & Torrez, P.A., Naples, for Appellant.

No Appearance for Appellee.