

SIXTH DISTRICT COURT OF APPEAL OF FLORIDA

David Marcionette v. Jacqueline Marcionette a/k/a Jacqueline West

Marcionette · No. 6D2024-0289 · Decided August 29, 2025

SUMMARY

The Sixth District Court of Appeal of Florida held that the trial court improperly denied David Marcionette’s motion to dissolve a domestic violence injunction because it appeared to have been filed in the wrong division. The court reversed and remanded for transfer to the appropriate division. It dismissed for lack of jurisdiction Marcionette’s attempted appeal from older injunction-related orders that were not timely appealed.

CASE DETAILS

COURT	Sixth District Court of Appeal of Florida
WRITING FOR THE COURT	Smith, J.; Stargel, J.; Mize, J.
JURISDICTION	Florida Sixth District Court of Appeal
DECIDED	August 29, 2025
DOCKET	6D2024-0289
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal under Florida Rule of Appellate Procedure 9.130 from the denial of a motion to dissolve a domestic-violence injunction; the appellant also attempted to challenge older injunction orders.
STANDARD OF REVIEW	An order on a motion to dissolve an injunction is reviewed for abuse of discretion when based on factual matters and de novo when based on legal matters.
PRECEDENTIAL VALUE	Published opinion
PARTIES	David Marcionette v. Jacqueline Marcionette a/k/a Jacqueline West

TOPICS

- domestic violence
- family law procedure
- writ of certiorari
- appellate jurisdiction
- appellate procedure

PRACTICE AREAS

- Family law
- Appellate procedure
- Domestic violence

QUESTIONS PRESENTED

1. Whether the appeal was timely as to the 2019 temporary and permanent injunction orders and the 2021 order denying a prior motion to dissolve.
2. Whether the trial court erred by denying the 2024 motion to dissolve the injunction because it was filed under the wrong division rather than transferring it to the appropriate division.

HOLDINGS

1. The court lacked jurisdiction to review the 2019 injunction orders and the 2021 order denying the prior motion to dissolve because those orders were rendered more than thirty days before the notice of appeal was filed.
2. When a motion concerning an existing case is filed in the wrong circuit-court division, the proper remedy is to transfer it to the appropriate division rather than deny it for lack of jurisdiction.

KEY QUOTATIONS

“All circuit court judges have the same jurisdiction within their respective circuits.”

“When a case is filed in the wrong division, the proper remedy is to transfer the case to the appropriate division.”

FACTUAL BACKGROUND

In 2019, Marcionette's wife obtained a permanent domestic-violence injunction against him. Marcionette was later arrested for aggravated stalking in violation of the injunction and was convicted in 2023. On January 24, 2024, he filed a second motion to dissolve the injunction, but the motion was filed under a different division and was denied the next day for lack of jurisdiction.

PROCEDURAL HISTORY

A permanent domestic-violence injunction was entered against Marcionette in 2019. His 2021 motion to dissolve was denied, and his 2024 motion to dissolve was denied on the ground that the court lacked jurisdiction over an injunction in another case. Marcionette appealed. The Sixth District dismissed the appeal as to the 2019 and 2021 orders because the notice of appeal was filed more than thirty days after rendition, but reversed the denial of the 2024 motion and remanded for transfer to the appropriate division.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for transfer of Marcionette's 2024 motion to dissolve the domestic-violence injunction to the appropriate circuit-court division. The appeal was dismissed as to the older orders.

CASES CITED

- Bak v. Bak, 332 So. 3d 1122, 1124 (Fla. 4th DCA 2022)
- Burtoff v. Tauber, 85 So. 3d 1182, 1183 (Fla. 4th DCA 2012)
- Malave v. Malave, 178 So. 3d 51, 54 (Fla. 5th DCA 2015)
- In Interest of Peterson, 364 So. 2d 98, 99 (Fla. 4th DCA 1978)
- Chickering v. Bawa, 360 So. 3d 424, 426 (Fla. 4th DCA 2023)
- Golden v. Jones, 194 So. 3d 1060, 1063 (Fla. 4th DCA 2016)
- Carlton v. Zanazzi, 266 So. 3d 243, 247 (Fla. 2d DCA 2019)
- Woods v. State, Woods v. State, 294 So. 3d 423, 424 (Fla. 5th DCA 2020)

OPINION

PER CURIAM.

SIXTH DISTRICT COURT OF APPEAL STATE OF FLORIDA
 _____ Case No. 6D2024-0289 Lower Tribunal No. 2019-DR-
 005751 _____ DAVID MARCIONETTE, Appellant, v.
 JACQUELINE MARCIONETTE a/k/a JACQUELINE WEST, Appellee.
 _____ Appeal pursuant to Fla. R. App. P. 9.130 from the Circuit
 Court for Orange County.

Diana M. Tennis and Barbara J. Leach, Judges. August 29, 2025 SMITH, J. Appellant David Marcionette appeals the trial court’s denial of his 2024 motion to dissolve a domestic violence injunction entered against him.

Because it appears the motion was filed in the wrong division and was erroneously denied rather than transferred, we reverse. Marcionette also attempts to appeal the trial court’s 2019 order granting a temporary injunction and its 2019 order making the same permanent, as well as the trial court’s 2021 order denying a previous motion to dissolve the injunction.

Because those orders were issued more than thirty days prior to Marcionette’s notice of appeal, this appeal is dismissed for lack of jurisdiction as to those orders. See Fla. R. App. P. 9.130(b) (“Jurisdiction of the court... shall be invoked by filing a notice with the clerk of the lower tribunal within 30 days of rendition of the order to be reviewed.”).

In 2019, Marcionette’s wife successfully filed for a permanent domestic violence injunction against Marcionette. Marcionette claims that in 2021, he moved to have the injunction dissolved and was denied. Later that year, he was arrested for aggravated stalking in violation of the injunction. He was convicted in 2023.

On January 24, 2024, Marcionette filed a second motion to have the injunction dissolved, which the trial court denied the next day. The trial court cited lack of jurisdiction as its reason for denial, asserting “this court has no jurisdiction over any domestic violence injunction in another case.”

The case number listed on the order granting the injunction in 2019 was 48-2019-DR-005751-O, division 45; the case number listed on the order denying Marcionette's 2024 motion was 2019-DR- 005751-O, division 38.

This appeal followed. We review the trial court's ruling on a motion to dissolve an injunction for abuse of discretion if the order is based on factual matters, and de novo if based on legal matters. *Bak v. Bak*, 332 So. 3d 1122, 1124 (Fla. 4th DCA 2022) (quoting *Burtoff v. Tauber*, 85 So. 3d 1182, 1183 (Fla. 4th DCA 2012)).

Here, it appears Marcionette filed his motion in the wrong division. "All circuit court judges have the same jurisdiction within their respective circuits." *Malave v. Malave*, 178 So. 3d 51, 54 (Fla. 5th DCA 2015) (quoting *In Int. of Peterson*, 364 So. 2d 98, 99 (Fla. 4th DCA 1978)).

Therefore, a motion improperly filed in the wrong division should be transferred rather than denied. *Chickering v. Bawa*, 360 So. 3d 424, 426 (Fla. 4th DCA 2023) ("When a case is filed in the wrong division, the proper remedy is to transfer the case to the appropriate division." (citing *Golden v. Jones*, 194 So. 3d 1060, 1063 (Fla. 4th DCA 2016))); *Carlton v. Zanzazi*, 266 So.

3d 243, 247 (Fla. 2d DCA 2019) (finding that a petition with the improper case number on it should have been transferred, because "[t]he use of the original case number on a new and separate petition is more in the nature of a scrivener's error than a jurisdictional defect"); *Woods v. State*, 294 So. 3d 423, 424 (Fla. 5th DCA 2020) (remanding a case for resolution on the merits where a pro se motion for postconviction relief referenced the wrong case number and "[t]he postconviction court could have easily noted Woods's scrivener's error and transferred the motion into the correct file.").

The trial court erred in denying Marcionette's motion rather than transferring it. We reverse and remand for transfer to the appropriate division. DISMISSED in part; REVERSED in part; and REMANDED with instructions. STARGEL and MIZE, JJ., concur. David Marcionette, Seminole, pro se. No Appearance for Appellee. NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF TIMELY FILED 3