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Injunction -- Repeat violence -- Petitioner who, individually and on behalf of his minor child, sought injunction against former wife's boyfriend -- Injunction reversed where evidence did not support finding that respondent committed acts of repeat violence as defined in section 784.046 -- Respondent's actions of spanking minor child were reasonable and did not constitute violence under statute -- Incident during custody exchange in which petitioner and respondent engaged in a verbal altercation did not meet statutory definition of violence where there was no allegation of physical violence and petitioner failed to show that respondent's action of clenching his fists amounted to assault -- Although petitioner testified that he was afraid of respondent, there was no evidence that respondent committed an overt act that justified a well-founded fear in petitioner that violence was imminent

J.A.F., Appellant, v. A.J.R., JR., individually and on behalf of J.L.R., a minor child, Appellee. 2nd District. Case No. 2D18-4764. February 14, 2020. Appeal from the Circuit Court for Pinellas County; Dorothy Vaccaro, Judge. Counsel: Andrew R. Mallory of Byne Mallory, PLLC, St. Petersburg, for Appellant. Jane H. Grossman, and Carl T. Boake of Carl T. Boake, P.A., St. Petersburg, for Appellee.

(PER CURIAM.) J.A.F. appeals a final judgment of injunction for protection against repeat violence entered in favor of A.J.R., individually, and on behalf of his then five-year-old son, J.L.R. Because we agree with J.A.F. that the evidence did not support a finding that he committed acts of repeat violence as defined in section 784.046, Florida Statutes (2018), we reverse.

A.J.R. and his former wife are the parents of the minor child at the center of this controversy; J.A.F. is the former wife's boyfriend. A.J.R. filed a petition for injunction alleging that J.A.F. had committed acts of repeat violence against A.J.R. and the child. After a hearing, the trial court entered the injunction in favor of the child based on testimony that J.A.F. spanked the child on two occasions and that the child was afraid of J.A.F. The injunction was entered in favor of A.J.R. based on his testimony regarding confrontations that occurred during two custody exchanges.

Section 784.046(2)(a) provides that a victim of repeat violence may petition the court for an injunction for protection. Repeat violence is defined as two incidents of violence. § 784.046(1)(b). Violence includes any assault, battery, or criminal offense resulting in physical injury or death. § 784.046(1)(a). The two incidents of violence must be supported by competent substantial evidence. *Singletary v. Greever*, 62 So. 3d 700, 702 (Fla. 2d DCA 2011).

We conclude the evidence was insufficient to support a finding that J.A.F. committed two acts of violence against the child. At the hearing on A.J.R.'s petition, the only evidence presented in this regard was the testimony of the former wife and J.A.F. that J.A.F. “tapped” the child on the bottom on two occasions after the child ran into a busy parking lot. The former wife was present, approved of J.A.F.'s actions, and the child suffered no physical injury. Under these circumstances, we agree with J.A.F. that his actions were reasonable and do not constitute violence under the statute.

Likewise, A.J.R. failed to establish two acts of violence to justify an injunction against repeat violence on his behalf. *See* § 784.046(1)(b). One of the two incidents cited by A.J.R. in his petition involved a verbal confrontation between A.J.R. and J.A.F. during a custody exchange and J.A.F. clenching his fists. Because there was no allegation of physical violence, A.J.R. was required to show that J.A.F.'s actions amounted to an assault. An assault is defined as “an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.” § 784.011(1). Although A.J.R. testified that he was afraid of J.A.F., there was no evidence that J.A.F. committed an overt act that justified a well-founded fear in A.J.R. that violence was imminent. Therefore, this incident does not qualify as an act of violence under the statute. *See Titsch v. Buzin*, 59 So. 3d 265, 266-67 (Fla. 2d DCA 2011) (explaining that threats without an overt act that places the victim in fear do not constitute the type of violence required for an injunction). A.J.R.'s failure to establish that this incident met the statutory definition of violence renders it unnecessary to address the second incident alleged in A.J.R.'s

petition. *See* § 784.046(b); *Russell v. Hogan*, 738 So. 2d 1003, 1003-04 (Fla. 2d DCA 1999) (reversing an injunction for protection against repeat violence where the statutory elements were not met).

Accordingly, we reverse the trial court's final judgment imposing an injunction against repeat violence.

Reversed. (KELLY, VILLANTI, and LUCAS, JJ., Concur.)

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