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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2020-2021

2190333

B.G.K.

v.

A.A.B.

Appeal from Cleburne Circuit Court
(DR-19-900050)

DONALDSON, Judge.

2190333

B.G.K. ("the husband") appeals from a final protection-from-abuse ("PFA") order entered by the Cleburne Circuit Court ("the trial court"). We affirm.

Procedural History

On July 1, 2019, A.A.B. ("the wife") commenced an action pursuant to the Protection from Abuse Act ("the Act"), Ala. Code 1975, § 30–5–1 et seq., seeking a PFA order against the husband. The wife's petition alleged, among other things, that the husband was her spouse; that the husband and the wife were separated and were parties to a divorce action pending in Georgia; that the wife was a resident of Cleburne County, Alabama; that the husband was a resident of Carroll County, Georgia; and that the husband had threatened to kill the wife if he ever caught her with another man.¹ On July 2, 2019, the trial court entered a temporary ex parte PFA order enjoining the husband from having any contact with the wife other than communicating with her regarding the parties' three children. On

¹The wife's petition also alleged that the husband had engaged in a number of other acts that did not constitute abuse as that term is defined by the Act. Because those allegations are not pertinent to the issues involved in this appeal, we do not discuss them in this opinion.

2190333

July 14, 2019, the husband was served with process in Carroll County, Georgia.

On September 4, 2019, the wife filed a request for a hearing to clarify the temporary ex parte PFA order. On October 5, 2019, the husband appeared in the action through counsel. On October 25, 2019, the husband filed a motion to dissolve the temporary ex parte PFA order based on allegations (1) that the wife's petition had not alleged that the husband had committed any act that would constitute "abuse" as that term is defined by the Act and (2) that the wife had violated the temporary ex parte PFA order by, among other things, voluntarily having sex with the husband on multiple occasions and by repeatedly contacting the husband to ask for money. On December 9, 2019, the trial court held a bench trial at which it received evidence ore tenus. When the wife rested her case-in-chief, the husband, pursuant to Rule 52(c), Ala. R. Civ. P., made an oral motion for a judgment on partial findings. As the grounds of that motion, the husband asserted that the wife had failed to prove that she was entitled to a PFA order by a preponderance of the evidence and that the trial court did not have subject-matter jurisdiction over the

2190333

wife's action because, the husband said, any alleged abuse had occurred in Georgia. The trial court denied that motion. On December 12, 2019, the trial court entered a final PFA order. Thereafter, the husband timely appealed to this court.

Material Evidence

The wife testified that she and the husband were married; that she and the husband had three children; and that she, the husband, and their three children had lived together in Bowdon, Georgia, until she and the children had moved to Cleburne County, Alabama, in late May 2019. She further testified that, both before and after she moved to Alabama, the husband had threatened to kill her if he caught her with another man and had communicated those threats to her orally when they were in each other's presence and by text message when they were not in each other's presence:

"Q. [By the wife's counsel:] What was communicated to you?

"A. [The wife:] In -- text message-wise, he always said that he would try to hurt me if he ever caught me with anybody.

"Q. Caught you with anybody. Did -- what -- when you say 'hurt you,' what did he -- how did he threaten to hurt you?

2190333

"A. He always said he would kill me. That's all he ever said to me.

"Q. Okay. Did he threaten -- did he say how he was going to kill you?

"A. No .

"Q. How many times would he have said that?

"A. Multiple times when we was married, but then after I finally left, you know, he said that when I saw him

"....

"Q. In order to get the PFA -- the reason you wanted to get your PFA in July is because he had threatened to kill you?

"A. Uh-huh.

"Q. And he had said that you to verbally?

"A. Uh-huh.

"Q. And also in text messages?

"A. Uh-huh."

The husband testified that he had never threatened to kill the wife and denied that he had ever harmed the wife. He further testified that the wife had asked him to move her washing machine and clothes dryer to her residence in Alabama and that he had done so. He also testified that,

2190333

subsequent to the entry of the temporary ex parte PFA order, the wife had voluntarily had sex with him on a number of occasions. The wife testified that she had had sex with the husband because, she said, she needed money to pay her and the children's expenses and the husband had refused to provide her with financial support unless she had sex with him.

The Trial Court's Subject-Matter
Jurisdiction

As a threshold matter, the husband asserts that the trial court did not have subject-matter jurisdiction over the wife's action because, he says, any alleged abuse occurred in Georgia rather than in Alabama. "Matters of subject-matter jurisdiction are subject to de novo review." Baldwin v. Baker, 86 So. 3d 1006, 1007 (Ala. Civ. App. 2012) (quoting DuBose v. Weaver, 68 So. 3d 814, 821 (Ala. 2011)).

The wife testified that she had sought a PFA order as a result of the husband's threatening to kill her after she moved to Alabama. Although the husband testified that he had never threatened to kill the wife in either Georgia or Alabama, the trial court, as the sole judge of the facts and of the credibility of the witnesses, implicitly resolved that dispute in

2190333

the evidence in favor of the wife by entering the final PFA order. Based on the wife's testimony that the husband had orally threatened to kill her when they were in each other's presence after she moved to Alabama, the trial court reasonably could have found that the husband had made threats to kill the wife when both the husband and the wife were in Alabama. Therefore, the trial court had subject-matter jurisdiction over the wife's action.

Sufficiency of the Evidence

The husband also argues that the entry of the final PFA order was erroneous because, he says, the wife failed to prove by a preponderance of the evidence that he had committed an act of "abuse" as that term is defined by the Act. Because the trial court based the final PFA order on evidence it received ore tenus, our review of the husband's sufficiency-of-the-evidence argument is governed by the following principles:

"The ore tenus rule provides that a trial court's findings of fact based on oral testimony "have the effect of a jury's verdict," and that "[a] judgment, grounded on such findings, is accorded, on appeal, a presumption of correctness which will not be disturbed unless plainly erroneous or manifestly unjust." Noland Co. v. Southern Dev.

Co., 445 So. 2d 266, 268 (Ala. 1984). "The ore tenus rule is grounded upon the principle that when the trial court hears oral testimony it has an opportunity to evaluate the demeanor and credibility of witnesses." Hall v. Mazzone, 486 So. 2d 408, 410 (Ala. 1986).'

"Ex parte Anonymous, 803 So. 2d 542, 546 (Ala. 2001). 'The trial court's judgment in cases where the evidence is heard ore tenus will be affirmed, if, under any reasonable aspect of the testimony, there is credible evidence to support the judgment.' River Conservancy Co., L.L.C. v. Gulf States Paper Corp., 837 So. 2d 801, 806 (Ala. 2002). Accord Clark v. Albertville Nursing Home, Inc., 545 So. 2d 9, 13 (Ala. 1989). 'In ore tenus proceedings, the trial court is the sole judge of the facts and of the credibility of the witnesses, and it should accept only that testimony which it considers worthy of belief.' Clemons v. Clemons, 627 So. 2d 431, 434 (Ala. Civ. App. 1993).

" 'Appellate courts do not sit in judgment of disputed evidence that was presented ore tenus before the trial court" ' Ex parte Roberts, 796 So. 2d 349, 351 (Ala. 2001) (quoting Ex parte Bryowsky, 676 So. 2d 1322, 1324 (Ala. 1996)). 'When the evidence in a case is in conflict, the trier of fact has to resolve the conflicts in the testimony, and it is not within the province of the appellate court to reweigh the testimony and substitute its own judgment for that of the trier of fact.' Delbridge v. Civil Serv. Bd. of Tuscaloosa, 481 So. 2d 911, 913 (Ala. Civ. App. 1985). '[A]n appellate court may not substitute its judgment for that of the trial court. To do so would be to reweigh the evidence, which Alabama law does not allow.' Ex parte Foley, 864 So. 2d 1094, 1099 (Ala. 2003) (citations omitted)."

Ex parte R.E.C., 899 So. 2d 272, 279 (Ala. 2004).

2190333

Section 30-5-2(1), Ala. Code 1975, defines "abuse" as including, among other things, "[h]arassment as defined under Section 13A-11-8[, Ala. Code 1975]." See §30-5-2(1)(g). In pertinent part, § 13A-11-8(2), Ala. Code 1975, provides: "For purposes of this section, harassment shall include a threat, verbal or nonverbal, made with the intent to carry out the threat, that would cause a reasonable person who is the target of the threat to fear for his or her safety." As noted above, the wife testified that the husband had threatened to kill her if he ever caught her with another man. Although the husband denied ever threatening to kill the wife, the trial court, by entering the final PFA order, implicitly resolved that dispute in the evidence in favor of the wife. This court cannot substitute its judgment for that of the trial court with regard to the resolution of that dispute. See Ex parte R.E.C. Accordingly, we conclude that the trial court had evidence before it from which it reasonably could have found, by a preponderance of the evidence, that the husband had threatened to kill the wife if he ever caught her with another man, which constituted an act of "abuse" as defined by § 30-5-2(1). Consequently, we cannot reverse the

2190333

final PFA order based on the husband's argument that that order is not supported by sufficient evidence.

Conclusion

For the reasons discussed above, we affirm the final PFA order entered by the trial court.

AFFIRMED.

Thompson, P.J., and Hanson, J., concur.

Moore and Edwards, JJ., concur in the result, without writings.