

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-1231

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

ELSIE M. LEE,
Plaintiff

v.

Wake County
No. 00 CVD 2269

RICHARD O'BRIEN and
wife, HAZEL O'BRIEN,
Defendants

Appeal by plaintiff from judgment entered 27 February 2001 and order entered 12 July 2001 by Judge Alice C. Stubbs in Wake County District Court. Heard in the Court of Appeals 22 May 2002.

Elsie M. Lee, pro se, plaintiff-appellant.

Davis Flanagan Bibbs & Smith, PLLC, by Rodney Eugene Davis, Jr. and David C. Smith, for defendants-appellees.

WALKER, Judge.

Plaintiff and defendants are neighbors whose activities towards each other have escalated over time. Plaintiff filed the present action *pro se* alleging that defendants had "persecuted, harassed, intimidated and threatened the Plaintiff and by involving others in these acts, have caused the home, property and vehicle owned by Plaintiff to be vandalized with resulting damage to these." Plaintiff's claims included nuisance, trespass against property, trespass to person, and the necessity for injunctive

relief. Attached to the complaint was a listing of twenty-two "harassing activities engaged in by [defendants] and their agents et. al." These alleged harassing activities included defendants standing on their own property watching plaintiff while she worked outside and attempting to look into plaintiff's house, defendants standing in the cul-de-sac with other neighbors conversing and making disparaging remarks about plaintiff, defendants and their agents flashing lights into plaintiff's house at night, defendants placing a sign on their house facing plaintiff's house which stated "WHAT A BITCH OUR NEIGHBOR IS," defendants physically trespassing on plaintiff's property, and defendants and their agents throwing things at plaintiff, her home, and her property.

The trial court granted a temporary restraining order which restrained defendants from going onto plaintiff's property and from assaulting, threatening, or harassing plaintiff. This temporary restraining order was continued when defendants requested a continuance of the hearing on the restraining order.

Defendants counterclaimed alleging violation of covenants, trespass, nuisance, malicious prosecution, intentional infliction of emotional distress, and asking for injunctive relief, Rule 11 sanctions, and damages. Defendants claimed that plaintiff filed multiple civil and criminal actions against defendants and neighbors of defendants, whom plaintiff termed as defendants' "agents" in her complaint. Although defendants admitted to some of the actions alleged in the complaint, they contend that any actions

they took were in response to harassing actions taken and caused by plaintiff.

On 28 March 2000, after a hearing, the trial court denied plaintiff's motion for a preliminary injunction finding that "Plaintiff has failed to forecast sufficient evidence in support of her claims and that the Plaintiff is not likely to succeed upon the merits of her action." The trial court further found that it was likely that defendants would succeed on the merits of their counterclaim and that they would suffer irreparable harm if the preliminary injunction and restraining order were not granted. Plaintiff was restrained from violating covenants, from photographing and videotaping defendants and their guests and neighbors, from trespassing on defendants' property, from undressing and standing naked in front of her un-curtained or un-shuttered windows at night, "[f]rom calling the police to report unfounded or harassing complaints against Defendants and their guests" or any of the neighbors who appeared in court on behalf of defendants, and from filing civil or criminal actions or magistrate summons against anyone in Wake County without prior written approval of a Wake County District Court judge.

On 30 June 2000, the trial court found plaintiff in contempt for violations of the temporary restraining order and preliminary injunction by photographing and videotaping defendants and their guests, by installing "a gutter splash block directing her water runoff toward Defendants' property," and by trespassing upon defendants' property and damaging defendants' holly bushes and

grass. The trial court found that "the failure of the Defendant to comply with the March 24, 2000 order of this Court described is willful, deliberate, without just cause and is in deliberate disregard of a court order." The trial court sentenced plaintiff to thirty days in the Wake County Jail but ordered that she could purge herself of the contempt by turning over her video camera to the police within ten days and by refraining from having any contact with defendants. Plaintiff did not turn over her video camera and continued to violate the temporary restraining order and preliminary injunction. An order for her arrest was issued on 13 September 2000 and plaintiff was ordered to be held in the Wake County Jail "until she has been sent for a Mental Health evaluation to determine if she is competent to stand trial for criminal contempt."

Both parties proceeded to trial *pro se*. At the conclusion of the trial, the trial court granted a permanent injunction against plaintiff noting that she still continued to violate the restraining order and injunction. It directed a verdict in favor of defendants on the claim of "trespass to person" finding there was no evidence presented on the claim and that "the court is not aware that this is a valid claim under North Carolina Law." The trial court further directed a verdict in favor of plaintiff on defendants' claim of violation of covenants. It instructed the jury pursuant to the pattern jury instructions on the remaining claims.

The jury found that defendants trespassed on plaintiff's property and that defendants substantially and unreasonably interfered with the plaintiff's use and enjoyment of her property. Nominal damages of \$1 were granted on each claim. As to defendants' claims, the jury found plaintiff trespassed on defendants' property, that plaintiff substantially and unreasonably interfered with defendants' use and enjoyment of their property, and that plaintiff maliciously filed and proceeded with a civil proceeding against defendants with actual malice. The jury awarded nominal damages of \$1 on each claim. After finding "Plaintiff's malicious civil proceeding [was] accompanied by actual malice," it awarded punitive damages in the amount of \$22,500. However, the jury found that plaintiff did not intentionally or recklessly cause severe emotional distress to either defendant.

Plaintiff filed a motion to amend judgment or for a new trial pursuant to Rules 59 and 60 of the North Carolina Rules of Civil Procedure. The trial court denied plaintiff's motion.

Although the appellant's brief violated the Rules of Appellate Procedure, we elect to hear the appeal. On appeal, plaintiff contends that the trial court erred in failing to dismiss the claim for malicious civil prosecution. "To recover for malicious prosecution the [complaining party] must show that [the other party] initiated the earlier proceeding, that he did so maliciously and without probable cause, and that the earlier proceeding terminated in [the complaining party's] favor." *Stanback v. Stanback*, 297 N.C. 181, 202, 254 S.E.2d 611, 625 (1979). Either

criminal or civil proceedings may be the basis for a malicious prosecution claim. *Id.* If the proceedings are civil in nature, then the complaining party must present evidence of special damages. *Id.* at 203, 254 S.E.2d at 625.

Plaintiff first claims there was no evidence of prior proceedings terminating in favor of defendant. Defendants alleged in their counterclaim that, prior to the present action being filed, plaintiff had caused criminal proceedings to be issued against them and had caused multiple civil proceedings to be issued against defendants and others whom plaintiff referred to as "agents" of defendants. On appeal, plaintiff admits that at trial defendants "claimed that [plaintiff] had filed many lawsuits with [the] purpose of getting money." She further admits defendants testified at trial that they "had been dragged into court numerous times at a loss of wages and time." The record indicates that plaintiff did not prevail on any of these claims.

In the present action, plaintiff brought suit on multiple charges of harassment including "trespass to person" which the trial court dismissed "due to the fact that no evidence was presented on this claim and the court is not aware that this is a valid claim under North Carolina Law." Plaintiff also brought suit for a permanent injunction against defendants. The trial court issued a temporary restraining order against defendants; however, after a hearing, it denied the motion for a preliminary injunction, dismissed the temporary restraining order, and ultimately denied the claim for a permanent injunction. These were proceedings filed

previous to defendants' claim for malicious prosecution and ultimately terminated in favor of defendants. Thus, we find there is sufficient evidence of prior proceedings terminating in favor of defendants as required for malicious prosecution.

Plaintiff further contends that defendants did not present evidence of special damages. Special damages are only relevant when dealing with claims of malicious civil prosecution. *Koury v. John Meyer of Norwich*, 44 N.C. App. 392, 397, 261 S.E.2d 217, 221, *disc. rev. denied*, 299 N.C. 736, 267 S.E.2d 662 (1980). "The gist of such special damage is a substantial interference either with the plaintiff's person or his property." *Stanback*, 297 N.C. at 203, 254 S.E.2d at 625. The substantial interference could include causing an injunction or temporary restraining order to be issued against the complaining party. *Id.* Here, evidence of both prior civil and criminal proceedings initiated by plaintiff was presented. In the civil proceedings, defendants testified that they lost wages and time plus the cost of the proceedings. There was also a temporary restraining order issued against them which was later dissolved. This restraining order restrained defendants from going on plaintiff's property and from "harassing assaulting or threatening the plaintiff" based on the harassing activities alleged in the complaint. The "harassing" activities listed in the complaint included defendants standing on their own property looking and talking to plaintiff, defendants gathering to talk with guests and neighbors on their own property or in the common areas and streets of the development, and defendants standing on their

own deck with guests and friends looking at plaintiff's property and residence. Thus, we find there is sufficient evidence of a substantial interference with defendants and with the use of their property. As plaintiff does not assign error to the other elements of malicious civil prosecution, we find the trial court did not err in submitting this issue to the jury.

Plaintiff further contends that the trial court erred in granting a permanent injunction which denied her access to the police and to the courts. The preliminary injunction, which the trial court converted to a permanent injunction, found the following in part:

2. That it appears from the evidence presented that the Plaintiff has filed multiple actions against the homeowners association in Spring Pines Subdivision and that she has caused several criminal magistrate summons to be issued against her neighbors and that such actions were either dismissed or finally determined against the Plaintiff. That it appears that the motive behind such filings was for the purpose of harassment and annoyance and that these complaints were made with malicious intent. That it further appears that unless enjoined, the Plaintiff will continue to engage in such actions and that the ends of justice will not be served by the unfettered filing of such actions by the Plaintiff;

. . .

4. . . . that she repeatedly falsely reports the Defendants, their guests, and her neighbors to the police for various alleged crimes and that these reports are made solely to harass the Defendants;

In the trial court's order, plaintiff was restrained from the following in part:

5) From calling the police to report unfounded or harassing complaints against Defendants and their guests and any neighbors who appeared in court on behalf of the Defendants, including Pamela Joslin and Nancy Smith or any of their guests or members of their families[;]

6) From filing any civil actions, criminal complaints or magistrate summons against anyone in Wake County, without the prior written approval of a District Court Judge of Wake County[.]

After the trial, the trial court found and ordered the following in part:

8. On June 30, 2000, Judge Calabria entered an order finding that the plaintiff was in contempt for having violated the preliminary injunction.

. . .

10. On September 13, 2000, Judge Calabria issued an order for the plaintiff's arrest for her failure to comply with the order of June 30, 2000.

. . .

12. The restraining order and preliminary injunction entered by Judge Gessner remains in effect.

13. The defendants and their witnesses at trial testified that the plaintiff continues to violate the restraining order and preliminary injunction[.]

14. Based on the evidence at trial and the history of the plaintiff's violations, it appears that nothing less than permanent incarceration or a permanent separation from the defendants will be sufficient to prevent the plaintiff from continuing to violate the restraining order and preliminary injunction.

15. The plaintiff shall be permanently enjoined from engaging in the acts prohibited by the restraining order and preliminary

injunction and from having any further contact with the defendants.

Thus, plaintiff is not denied access to the police by this order. Instead, after finding that plaintiff made false reports solely for the purpose of harassment, the trial court restrained her from calling the police with "unfounded or harassing complaints." Plaintiff retains the ability to call the police with legitimate complaints which are not for harassing purposes. Also, the trial court's order was limited to defendants, their guests, and those neighbors who testified at trial.

Similarly, the trial court's order does not deny plaintiff access to the courts. Instead, it required plaintiff, prior to filing a complaint in Wake County, to have the written approval of the Wake County District Court. This requirement came after finding multiple abuses of the legal processes. The trial court found that plaintiff had initiated multiple civil and criminal actions solely for the purpose of harassment and that "Plaintiff will continue to engage in such actions and that the ends of justice will not be served by the unfettered filing of such actions by the Plaintiff." It further found that, by continually violating orders and injunctions already in place, plaintiff has failed and will continue to fail to respect the authority of the courts. Based on the facts and circumstances present in this case, we find the trial court's permanent injunction and restraining order does not deny plaintiff access to the police or to the courts.

In conclusion, we find the trial court did not err in denying plaintiff's motion to dismiss the malicious civil prosecution claim

nor in the issuance of its permanent injunction and restraining order against plaintiff. Because plaintiff's remaining assignments of error are based on the proposition that there was no evidence of malicious civil prosecution, we overrule the remaining assignments of error.

Affirmed.

Judges McCULLOUGH and BRYANT concur.

Report per Rule 30(e).