

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1430

NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2002

THOMAS GERALD BASDEN,  
Plaintiff,

v.

Duplin County  
No. 00 CVD 432

CRISTY QUINN BASDEN (BELL),  
Defendant.

Appeal by defendant from order entered 11 June 2001 by Judge Carol A. Jones in Duplin County District Court. Heard in the Court of Appeals 17 September 2002.

*No brief for plaintiff-appellee.*

*Eastern Carolina Legal Services, by E. Maccene Brown, for defendant-appellant.*

EAGLES, Chief Judge.

Cristy Quinn Basden (Bell) ("defendant") appeals from an order renewing a Domestic Violence Protective Order. After careful consideration of the brief and record, we affirm.

From the record and brief, it appears that Thomas Gerald Basden ("plaintiff") and defendant separated in August 1999 and divorced on 16 October 2000. Plaintiff and defendant had two children, Justin Basden born 17 February 1995 and Jayana Basden born 30 October 1998. After their separation, plaintiff and defendant appear to have shared custody of their children without

a written agreement, consent order or court ordered custody agreement.

On 5 June 2000, Judge Paul A. Hardison in Duplin County District Court issued a Domestic Violence Protective Order for plaintiff. The trial court found that on 8 March 2000, defendant "attempted to cause bodily injury to the plaintiff" and "placed the plaintiff[,] a member of the plaintiff's family [and] a member of the plaintiff's household in actual fear of imminent serious bodily injury." The trial court concluded that "defendant has committed acts of domestic violence against the plaintiff," that "[t]here is danger of serious and immediate injury to the plaintiff," and that "[t]his domestic violence protective order is necessary to bring about a cessation of acts of domestic violence." The trial court ordered that "the defendant shall not threaten a member of the plaintiff's family or household," that "the defendant shall stay away from the plaintiff's residence," and that "the defendant shall have no contact with the plaintiff." This order was effective for one year beginning 5 June 2000.

Plaintiff moved to renew the Domestic Violence Protective Order by motion dated 1 June 2001. Plaintiff alleged that "[defendant] comes to my house, calls me and threatens me over and over and kidnapped my daughter 5-21-01 and threatened my life at approximately 7:15 pm." The motion was heard in Duplin County District Court on 11 June 2001 before Judge Carol A. Jones. The trial court renewed the Domestic Violence Protective Order until 11 June 2002. Defendant appeals.

On appeal defendant contends that the trial court erred in granting plaintiff's motion to renew the Domestic Violence Protective Order because the trial court made insufficient findings of fact and conclusions of law to justify the order and because the record contains insufficient evidence to support the trial court's decision. Defendant also contends that the trial court erred in denying defendant's motion to dismiss plaintiff's motion to renew the Domestic Violence Protective Order. After careful consideration, we affirm.

Initially, we address whether defendant's appeal is moot. The Domestic Violence Protective Order expired 11 June 2002. However, an appeal from a domestic violence protective order is not moot even though it is not heard prior to the expiration of the protective order. *Smith v. Smith*, 145 N.C. App. 434, 437, 549 S.E.2d 912, 914 (2001).

Defendant contends that the trial court erred in denying defendant's motion to dismiss because plaintiff's evidence at trial was inconsistent with the allegations contained in plaintiff's motion to renew the Domestic Violence Protective Order. We do not agree.

At the conclusion of plaintiff's evidence, defendant moved to dismiss for "failure to state a claim upon which relief can be granted" and "for a dismissal on the basis of a 12B(6) [sic]." Defendant argues that plaintiff's motion to renew the Domestic Violence Protective Order states that the alleged threats and kidnapping occurred at plaintiff's home. Defendant argues that the

testimony showed that these incidents took place at a Food Lion parking lot. Defendant argues that the evidence at the hearing is inconsistent with the allegations in the motion to renew.

A Rule 12(b)(6) motion is a "challenge to [the] pleading" and asserts that the pleading "fails to state a claim upon which relief can be granted." *In re Hardesty*, 150 N.C. App. 380, 383, 563 S.E.2d 79, 82 (2002). The test "is whether, as a matter of law, and taking the allegations in the [motion to renew] as true, the allegations are sufficient to state a claim upon which relief may be granted under any legal theory." *Id.* Plaintiff's motion to renew the Domestic Violence Protective Order states that: "[defendant] comes to my house, calls me and threatens me over and over and kidnapped my daughter 5-21-01 and threatened my life at approximately 7:15 p.m." These allegations when taken as true are sufficient to state a claim for a renewal of the Domestic Violence Protective Order.

Defendant also argues that these allegations are inconsistent with the evidence presented at the hearing. Plaintiff testified that defendant "continually threatened me, threatened burning my home several times. Threatened killing me." At approximately 7:15 pm at the Food Lion grocery store on 21 May 2001, plaintiff testified that defendant "threatened me -- threatened running me over." Also, plaintiff's mother testified that defendant stated that "[she]'ll burn you up, Thomas." This evidence is consistent with the allegation that defendant "calls [plaintiff] and threatens

[him] over and over" and that defendant "threatened [plaintiff's] life at approximately 7:15 p.m."

Testimony at the hearing was consistent with the allegation that defendant kidnapped plaintiff's daughter on 21 May 2001. Plaintiff's mother testified that while in the Food Lion parking lot on 21 May 2001, defendant "jerked [Jayana] out of my car and put her in [defendant's] car." Plaintiff testified that "[defendant] snatched [Jayana] out of the car anyhow" and that defendant stated she was "going to take her." This testimony is consistent with an allegation of kidnapping.

Defendant next contends that the trial court erred in granting plaintiff's motion to renew the Domestic Violence Protective Order because the record contains insufficient evidence to support the trial court's decision. We do not agree.

Defendant argues that plaintiff presented inconsistent and conflicting testimony at the hearing. Defendant contends that this evidence was insufficient to support plaintiff's motion to renew the Domestic Violence Protective Order. Defendant specifically contends that the trial court did not make any finding that defendant's conduct placed plaintiff or a member of his family in fear of serious imminent bodily harm.

"A court may grant a protective order to bring about the cessation of any act of domestic violence." *Price v. Price*, 133 N.C. App. 440, 442, 514 S.E.2d 553, 554 (1999). "[W]here the trial court finds that a plaintiff is actually subjectively in fear of imminent serious bodily injury, an act of domestic violence has

occurred pursuant to section 50B-1(a)(2).” *Brandon v. Brandon*, 132 N.C. App. 646, 654-55, 513 S.E.2d 589, 595 (1999). “[T]he trial court must find as fact the aggrieved party ‘actually feared’ imminent serious bodily injury.” *Smith*, 145 N.C. App. at 437, 549 S.E.2d at 914. “Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to one additional year.” G.S. § 50B-3(b) (2001).

Along with the evidence of defendant’s threats and actions discussed previously, plaintiff testified that he was “scared that somebody’s going to end up hurt, particularly my kids.” Also, a provision of the Domestic Violence Protective Order entered 5 June 2000 ordered that “the defendant shall not threaten a member of the plaintiff’s family or household,” that “the defendant shall stay away from the plaintiff’s residence,” and that “the defendant shall have no contact with the plaintiff.” Plaintiff and his mother testified about instances of contact between defendant and plaintiff and his mother. This contact violated the Domestic Violence Protective Order. The evidence supported plaintiff’s motion to renew and was sufficient to renew the order.

Defendant contends that the trial court erred in granting plaintiff’s motion to renew the Domestic Violence Protective Order because the trial court made insufficient findings of fact and conclusions of law to justify the order. We do not agree.

Defendant argues that the finding made by the trial court in the order to renew does not support the renewal of the order. The renewal order states only that “[t]he Court finds that the Order \_\_

should be renewed. \_\_\_ should not be renewed." Defendant argues that to support the renewal of the order, the trial court must find that domestic violence has occurred. Defendant specifically contends that the trial court did not make any finding that defendant's conduct placed plaintiff or a member of his family in fear of serious imminent bodily harm.

Here, the trial court stated in open court that:

Based on what I have heard, the testimony regarding this matter, I am going to allow this motion, and it's [sic] renew the restraining order. [Defendant] did testify there was contact there at the Food Lion. There is a restraining order that she's to have no contact with him, not harass, threaten him or any member of his family.

The Order Renewing Domestic Violence Protective Order states that "[t]he previous Domestic Violence Protective Order is attached and incorporated by reference." The renewal order further states that "[t]he Court finds that the Order should be renewed." The initial Domestic Violence Protective Order that was attached and incorporated by reference includes the findings that "defendant attempted to cause bodily injury to the plaintiff" and that defendant "placed the plaintiff[,] a member of the plaintiff's family [and] a member of the plaintiff's household in actual fear of imminent serious bodily injury." Here, because the Order Renewing Domestic Violence Protective Order incorporated by reference the attached original Domestic Violence Protective Order, we hold that the trial court made sufficient findings of fact to support the issuance of a renewal.

This Court has twice addressed the standard Domestic Violence Protective Order, Form AOC-CV-306, and stated concerns regarding adequate findings of fact and conclusions of law with this preprinted form. See *Wilson v. Wilson*, 134 N.C. App. 642, 644, 518 S.E.2d 255, 257 (1999); *Brandon*, 132 N.C. App. at 651, 513 S.E.2d at 593. The Order Renewing Domestic Violence Protective Order, Form AOC-CV-314, contains one preprinted finding which is "[t]he Court finds that the Order \_\_ should be renewed. \_\_ should not be renewed." An order renewing a domestic violence protective order must be based on sufficient findings of fact and conclusions of law. "[W]e appreciate the convenience such forms provide the trial courts, given the large number of domestic violence cases filed" but "we urge trial judges to exercise caution in completing the standard [Order Renewing Domestic Violence Protective Order, Form AOC-CV-314]." *Wilson*, 134 N.C. App. at 644, 518 S.E.2d at 257.

Accordingly, the decision of the trial court is affirmed.

Affirmed.

Judges MARTIN and THOMAS concur.

Report per Rule 30(e).