NO. COA07-543

NORTH CAROLINA COURT OF APPEALS

Filed: 6 May 2008

ELIZABETH M. BECKER,
Plaintiff-Appellant,

v. Guilford County
No. 06 CvD 5678

ADAM C. BECKER
Defendant-Appellee.

Appeal by Plaintiff from order entered 22 September 2006 by Judge Susan R. Burch in District Court, Guilford County. Heard in the Court of Appeals 10 December 2007.

Hill Evans Jordan & Beatty, PLLC, by William W. Jordan and Robert E. Gray III, for Plaintiff-Appellant.

Woodruff Law Firm, P.A., by Carolyn J. Woodruff, for Defendant-Appellee.

McGEE, Judge.

The evidence presented at trial tended to show that Elizabeth M. Becker (Plaintiff) and Adam C. Becker (Defendant) were formerly married and have two young children together, B.B. and R.B. Plaintiff and Defendant divorced on 10 July 2006. Two months before their divorce, Plaintiff and Defendant were involved in an altercation in which Plaintiff received injuries to one of her hands.

Plaintiff testified that on the afternoon of 17 April 2006, she and B.B. arrived at R.B.'s school to pick up R.B. from a ballet

class. When Plaintiff and B.B. arrived, Defendant was also at the school, although he was not scheduled to be with the children that afternoon. When ballet class ended, Plaintiff and Defendant walked to Plaintiff's car and secured both children in car seats. Plaintiff noticed that Defendant's car was parked next to her car. Plaintiff glanced inside the window of Defendant's car and saw a stack of prescription pill bottles with her name on the label of the outermost bottle. Plaintiff opened the front passenger side door of Defendant's car, picked up the bottles, and asked Defendant why he had the bottles. Defendant began screaming, "[g]ive me back my evidence, my evidence, my evidence." Then, according to Plaintiff:

> The next thing I knew, [Defendant] came around the corner of his car, I believe, and grabbed my sweatshirt and dragged me and eventually threw me on the hood of my car while my two little girls were in the back. [Defendant] grabbed my hand and my wrist and put his weight on me on top of the vehicle . . . . I remember my hand being scrapped [sic] on the grill of the car, and I was crying and screaming for help.

Plaintiff sought medical treatment for her hand, which was bleeding, scratched, and swollen after the altercation.

Defendant also testified at trial. According to Defendant, he arrived at R.B's ballet class around 3:15 p.m. Plaintiff and B.B. arrived near the end of the class. Defendant spoke with B.B., but he did not speak to Plaintiff. After the class ended, Defendant and Plaintiff walked with B.B. and R.B. to the parking lot and secured them in Plaintiff's car. Defendant then walked around the back of Plaintiff's car toward the driver's side of his car. As he

was walking, Defendant unlocked his car doors with his remote key chain. When he opened the front driver's side door, Defendant observed Plaintiff opening the front passenger door of his car, and "rustling around with the stuff that was right on my passenger seat of my car." Defendant explained that he had planned to meet his attorney that evening to prepare for an upcoming custody hearing, and materials related to the hearing were sitting on the passenger seat. Included among these materials were a number of prescription pill bottles that Defendant planned to use at the custody hearing to demonstrate that Plaintiff abused prescription drugs.

Defendant testified that after Plaintiff opened his passenger door, she took the prescription pill bottles from the front seat. Defendant asked Plaintiff what she was doing, and Plaintiff backed away from the car and "giggled." Defendant said to Plaintiff, "[y]ou can't take things out of my car," and "[y]ou've got to give me back those. That's my evidence[.]" Defendant began walking towards Plaintiff, and Plaintiff began walking backwards and refused to give Defendant the pill bottles. Defendant testified that "I had at that point grabbed solely, and only, the area where the bottles were in her possession," meaning Plaintiff's hand. As Plaintiff backed up, she tripped on a cement barrier, lost her balance, and landed "just above the grill of the hood of her [car]." As she fell, Plaintiff lost her grip on the pill bottles, and she may have dropped one or more of the bottles. Defendant then recovered the bottles, got into his car, and drove out of the parking lot.

Plaintiff filed a complaint and motion for a domestic violence protective order on 20 April 2006. Plaintiff's complaint was heard in Guilford County District Court on 20-22 September 2006. The trial court issued a "Second Amended Corrected Domestic Violence Order of Protection" on 1 December 2006. In that order, the trial court found that "[t]he parties engaged in a mutual struggle over the pill bottles," and therefore concluded that "[P]laintiff has failed to prove grounds for issuance of a domestic violence protective order." The trial court then dismissed Plaintiff's action. Plaintiff appeals.

I.

Plaintiff first argues the trial court erred by finding that she and Defendant engaged in a mutual struggle over the pill bottles. "Our standard of review of a nonjury trial is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." *Pineda-Lopez v. N.C. Growers Ass'n*, 151 N.C. App. 587, 589, 566 S.E.2d 162, 164 (2002). "If the [trial] court's factual findings are supported by competent evidence, they are conclusive on appeal, even though there is evidence to the contrary." *Id.*

Under N.C. Gen. Stat. § 50B-1 (2007):

> (a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party . . . by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:
>
> (1) Attempting to cause bodily injury, or

intentionally causing bodily injury[.]

Plaintiff contends that the trial court's finding that she and Defendant engaged in a "mutual struggle," rather than finding that Defendant intentionally caused Plaintiff's bodily injury, is not supported by competent evidence. According to Plaintiff, the evidence presented at trial, including Defendant's own testimony, demonstrates that Defendant was the physical aggressor in the altercation that led to Plaintiff's injury. Specifically, Plaintiff argues that although she walked away from Defendant's car after removing the pill bottles, Defendant chose to pursue her. Defendant grabbed at Plaintiff while Plaintiff was attempting to retreat from Defendant. Defendant then threw Plaintiff onto the hood of Plaintiff's car. Plaintiff also contends that Defendant cannot claim he acted in self-defense or that he had lawful possession of Plaintiff's pill bottles at the time of the altercation and, therefore, Defendant has no defense for his actions.

We disagree with Plaintiff's contentions. While Plaintiff did testify that Defendant "grabbed" her clothes and threw her against the hood of her car, there is other evidence in the record to suggest that the struggle was mutual, and that Defendant did not attempt or intend to harm Plaintiff during the altercation. Plaintiff's testimony regarding the incident demonstrates that Defendant's main concern was retrieving the pill bottles that Plaintiff had taken from his car. Defendant testified that he only approached Plaintiff to retrieve the pill bottles, and when

Plaintiff refused to return the bottles to Defendant, he "grabbed solely, and only, the area where the bottles were in her possession." Defendant also claimed that both parties tripped while struggling for control of the pill bottles, and that Plaintiff lost her balance as a result, which caused her to fall onto the hood of her car and injure her finger. Regarding Plaintiff's injury, Defendant testified that "[i]n no way that evening did I have any intent of injuring, harming period. And that was it."

After considering the evidence, the trial court reflected on the parties' testimony:

> [I]t is apparent through this hearing - you all have been here the whole time with me - you have both highly underestimated the power of telling the whole truth. You have both said things, and then, unfortunately for you, documentation has demonstrated that what you have said is not true. And I say it to you like that, that it doesn't discount all of what you've told me, and it doesn't discount the tension and the difficulty that surrounds this incident, but I want you to understand that it's present[.]

The trial court then informed the parties that

> the best of what I can determine after listening to all of the evidence, is that the parties engaged in a struggle over some items; that had been in the possession of [Defendant] that [P]laintiff took from his vehicle; and [D]efendant attempted to regain possession of them and the parties struggled over that. I cannot conclude that that mutual struggle was an attempt by [Defendant] to cause bodily injury or an intentional causing of bodily injury[.]

The trial court made its finding that the parties engaged in a "mutual struggle" based on testimony that it considered less than

truthful. It is clear that the trial court's finding, "which turn[s] in large part on the credibility of the witnesses, must be given great deference by this Court." *State v. Sessoms*, 119 N.C. App. 1, 6, 458 S.E.2d 200, 203 (1995), *aff'd per curiam*, 342 N.C. 892, 467 S.E.2d 243, *cert. denied*, 519 U.S. 873, 136 L. Ed. 2d 129 (1996). We find that although the record contains evidence to the contrary, there is competent evidence to support the trial court's finding that the parties engaged in a mutual struggle over the pill bottles. Plaintiff's assignment of error is overruled.

II.

Plaintiff next argues the trial court erred by failing to find that Defendant intentionally caused bodily injury to Plaintiff. The "Second Amended Corrected Domestic Violence Order of Protection" issued by the trial court contains check-boxes that allowed the trial court to indicate a finding that Defendant either (a) attempted to cause, or (b) intentionally caused, bodily injury to Plaintiff. The trial court left both of these boxes blank, and instead made its written finding that "[t]he parties engaged in a mutual struggle over the pill bottles." Plaintiff contends that the evidence mandated a finding that Defendant intentionally caused bodily injury to Plaintiff, given Defendant's admission that he initiated a struggle with Plaintiff during which Plaintiff was injured. Therefore, according to Plaintiff, the trial court erred by failing to make such a finding in its order.

We disagree with Plaintiff's contentions. Our appellate review is limited to whether the trial court's findings of fact are

supported by competent evidence. When the trial court's findings are properly supported, we do not review the trial court's "non-findings" to determine whether they should have been made. As discussed in Part I, we find that the trial court's actual findings were supported by competent evidence. Therefore, the trial court did not err by failing to make a contrary finding.

Plaintiff also argues that the form used by the trial court improperly grouped several possible findings together disjunctively. In *Brandon v. Brandon*, 132 N.C. App. 646, 513 S.E.2d 589 (1999), the trial court employed a domestic violence protective order form that allowed it to mark one box to indicate that "[t]he defendant has attempted to cause *or* has intentionally caused bodily injury to the plaintiff[.]" *Id.* at 651, 513 S.E.2d at 593. We specifically disapproved of the form in *Brandon* because "[i]f, on review, we determine that no competent evidence exists to support one of the possibilities, we would be forced to remand because we would have no way of knowing whether the possibility unsupported by competent evidence was the only possibility which the trial court actually found." *Id.* Plaintiff argues that the form used by the trial court in the present case is equally faulty, because it is impossible to determine from the form "whether the [trial] court found that [Plaintiff] suffered no bodily injury or whether the [trial] court found that Defendant did not intentionally cause the injury."

As discussed above, where the trial court makes findings and those findings are supported by competent evidence, it is

unnecessary for us to determine which specific findings the trial court *did not* make. We find that Plaintiff's concerns regarding the trial court's "Domestic Violence Order of Protection" form are unfounded, and Plaintiff's assignment of error is overruled.

III.

Finally, Plaintiff argues the trial court erred by concluding that Plaintiff failed to prove grounds for issuance of a domestic violence protective order. Plaintiff argues that because the evidence demonstrates that Defendant intentionally caused bodily harm to Plaintiff, the trial court erred by concluding that Plaintiff "failed to prove grounds for issuance of a domestic violence protective order."

We disagree with Plaintiff's contentions. Under N.C. Gen. Stat. § 50B-3(a) (2007), a trial court must grant a protective order if it finds that an act of domestic violence, as defined in N.C.G.S. § 50B-1(a), has occurred. The trial court found that no act of domestic violence occurred, and this finding was supported by competent evidence in the record. Therefore, the trial court correctly concluded that Plaintiff failed to prove that a protective order should have issued under N.C.G.S. § 50B-3(a). Plaintiff's assignment of error is overruled.

Affirmed.

Chief Judge MARTIN and Judge STEPHENS concur.

Report per Rule 30(e).