NO. COA10-1268

NORTH CAROLINA COURT OF APPEALS

Filed: 7 June 2011

KELLY MACE,
Plaintiff,

v. Orange County
No. 10 CVD 885

BENNETT LAPRADE,
Defendant.

Appeal by Defendant from order entered 2 June 2010 by Judge Charles T.L. Anderson in Orange County District Court. Heard in the Court of Appeals 13 April 2011.

No brief for Plaintiff.

Doster, Post, Silverman & Foushee, P.A., by Jonathan Silverman, for Defendant.

STEPHENS, Judge.

Factual and Procedural History

On 26 May 2010, Plaintiff Kelly Michelle Mace filed a complaint and motion for domestic violence protective order ("DVPO") against Defendant Bennett LaPrade. The complaint alleged that the parties are divorced and have a minor son, and

recounted various incidents of domestic violence by Defendant against Plaintiff and their son beginning in 1996 and continuing to the present. On the same day, the trial court denied the motion without prejudice, concluding that Plaintiff had failed to prove grounds for *ex parte* relief "in that no hearing or testimony was received." The district court set the matter for hearing on 2 June 2010. Following that hearing, the trial court entered a DVPO on 2 June 2010. The trial court found that in April and May 2010, Defendant had placed Plaintiff "in fear of continued harassment that rises to such a level as to inflict substantial emotional distress . . . [by] passing by [P]laintiff's home in a manner to make [P]laintiff apprehensive about her security and safety and causing her substantial emotional distress." The trial court concluded that Defendant had committed domestic violence against Plaintiff, and ordered Defendant to stay away from Plaintiff's workplace, home, and neighborhood, except during custody exchanges of the parties' son. The trial court also prohibited Defendant from possessing or purchasing a firearm and suspended his concealed handgun permit. The terms of the order were to last until 2 June 2011. Defendant appeals, contending that there was insufficient evidence to support the trial court's finding that he had (I)

placed Plaintiff "in fear of continued harassment that rises to such a level as to inflict substantial emotional distress . . . [by] passing by [P]laintiff's home in a manner to make [P]laintiff apprehensive about her security and safety and causing her substantial emotional distress;" and its conclusion that (II) he had committed domestic violence against Plaintiff. Defendant also contends that (III) the evidence and the trial court's findings and conclusions were insufficient to support entry of the DVPO. For the reasons which follow, we affirm.

Standard of Review

> [W]hen the trial court sits without a jury [regarding a DVPO], the standard of review on appeal 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. Where there is competent evidence to support the trial court's findings of fact, those findings are binding on appeal.

Burress v. Burress, 195 N.C. App. 447, 449-50, 672 S.E.2d 732, 734 (2009) (internal citations and quotation marks omitted). Further,

> [w]here the trial court sits as the finder of fact, and where different reasonable inferences can be drawn from the evidence, the determination of which reasonable inferences shall be drawn is for the trial court. This Court can only read the record and, of course, the written word must stand on its own. But the trial judge is present

> for the full sensual effect of the spoken word, with the nuances of meaning revealed in pitch, mimicry and gestures, appearances and postures, shrillness and stridency, calmness and composure, all of which add to or detract from the force of spoken words. The trial court's findings turn in large part on the credibility of the witnesses, and must be given great deference by this Court.

Brandon v. Brandon, 132 N.C. App. 646, 651-52, 513 S.E.2d 589, 593 (1999) (internal quotation marks, citations and brackets omitted).

Discussion

Defendant first argues that the evidence was insufficient to support the trial court's finding that he had placed Plaintiff "in fear of continued harassment that rises to such a level as to inflict substantial emotional distress. . . [by] passing by [P]laintiff's home in a manner to make [P]laintiff apprehensive about her security and safety and causing her substantial emotional distress." We disagree.

The trial court's finding tracks the language of N.C. Gen. Stat. § 50B-1(a)(2) (2009), which states that domestic violence includes, *inter alia*, "[p]lacing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict

substantial emotional distress[.]" Harassment is defined as "[k]nowing conduct . . . directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose." N.C. Gen. Stat. § 14-277.3A (2009). "The plain language of the statute requires the trial court to apply only a subjective test to determine if the aggrieved party was in actual fear; no inquiry is made as to whether such fear was objectively reasonable under the circumstances." *Wornstaff v. Wornstaff*, 179 N.C. App. 516, 518-19, 634 S.E.2d 567, 569 (2006) (citing *Brandon*), *affirmed*, 361 N.C. 230, 641 S.E.2d 301, (2007).

At the hearing, Plaintiff was not represented by counsel and her direct testimony was somewhat rambling and disjointed. In addition, the recording of the hearing appears to start in the middle of Plaintiff's direct testimony. Plaintiff testified as follows:

> [Plaintiff]: Okay. I go specifically because of the abuse, the cycle of abuse that is -- the years of abuse, the many, many tangible reasons that I have to be physically afraid, afraid to conduct business on my property, afraid to have people in my life, afraid to go outside without thinking he's there, to look out my window. He's always there.
>
> That's why I go to a therapist, because moving on is extremely difficult.

> THE COURT: Now, Ms. Mace, what you need to understand is it's your obligation to put meat on the bones of the skeleton. So, I really -- I'm -- I cannot be your lawyer. I do not want to restrict you in any way.
>
> But, thus far, you have indicated that an incident occurred at approximately 11:00 p.m. on May the 30th, after the filing of this action on May the 25th. You've indicated on May the 25th, at 1:15 to 1:30, you were walking a friend to her car when he drove by the house and that your friend heard you say, "There's my ex-husband."
>
> And that you've testified that you go to therapy because of your concerns about Mr. LaPrade and your concerns about how he behaves towards you.

Plaintiff's testimony indicates that there were incidents on 25 and 30 May 2010 when Defendant drove past Plaintiff's home and that Plaintiff is afraid because Defendant is "always there" outside her home. It further indicates that Plaintiff's fear stems from "years of abuse[.]" Plaintiff then went on to explain her fear of Defendant in greater detail:

> He's stressed me in every possible way and yet cannot stop watching me. And in the last three months, my son has told me that there's a picture on [Defendant's] refrigerator of the one person I dated at a year and a half of separation, and that gentleman's name is []. And [Defendant] has a picture of his car in my driveway on his refrigerator.
>
> [Defendant] said to my son, "That's the man your mother had sex with." At a year and a half of separation, [Defendant's] still hanging onto that.

> I am afraid of him. He is extremely intimidating, extremely physically violent, can be extremely mean. Ms. Redline saw it that day.
>
> I am -- I cannot practice massage in my home. I cannot rest in my home. I can't bring male clients to my house. And they say I won't work. This has gone on for so very long. It needs to stop. I'm asking for a small thing.
>
> For [Defendant] to say it would inconvenience him not to go by my house is an absolute lie. There are four roads, boom, boom, boom, boom. He could take any of those cut-throughs easily. He can go straight down and not take the cut-through. I never go past his house, ever.

Plaintiff testified that Defendant's actions in driving past her home had "stressed" her so that she could not "rest in [her] home" or bring male clients to her house.[1] Plaintiff's testimony illustrates a history of violent acts between the parties and accusations of past substance abuse and physical violence by Defendant. This evidence amply supports the trial court's finding that Defendant's current actions had made Plaintiff "apprehensive about her security and safety and caused her substantial emotional distress." Plaintiff's emotional stress reached a level where she sought professional counseling for this distress. We weigh this result heavily in determining

[1] Plaintiff works out of her home, apparently as a massage therapist.

whether there is a factual predicate for proof of "substantial emotional distress." Defendant's argument is overruled.

We also note that Defendant cites *Brandon* several times in his brief, and refers to the trial court's failure to make a finding that Plaintiff "'actually feared' imminent serious bodily injury." The version of N.C. Gen Stat. § 50B-1(a)(2) which was considered in *Brandon* defined domestic violence solely as "[p]lacing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury[.]" The statute has since been amended to add as a definition of domestic violence the disjunctive language "or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress," which the trial court relied on here. Thus, *Brandon* is inapposite on this point. Defendant's related arguments are misplaced, and, accordingly, are overruled.

Defendant next argues that the trial court's findings are insufficient to support its conclusion that Defendant committed an act of domestic violence against Plaintiff. We disagree.

As discussed above, the trial court's finding that Plaintiff was placed "in fear of continued harassment that rises to such a level as to inflict substantial emotional distress" by

Defendant driving past her home was supported by competent evidence. In turn, section 50B-1(a)(2) defines "[p]lacing the aggrieved party . . . in fear of . . . continued harassment . . . that rises to such a level as to inflict substantial emotional distress" as an act of domestic violence. Thus, the trial court's finding fully supports its conclusion. This argument is overruled.

In his final argument, Defendant contends the trial court erred in entering the DVPO against him. In making this argument, Defendant relies on his contentions that the trial court's finding was not supported by competent evidence, and that it, in turn, did not support the trial court's conclusion. Having rejected each of those arguments, we likewise overrule Defendant's argument here. The order of the trial court is

AFFIRMED.

Judges STEELMAN and HUNTER, JR., ROBERT N., concur.

Report per Rule 30(e).