NO. 14-433

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

TERESA J. NORRELL,
Plaintiff,

v.

Currituck County
No. 13-CVD-367

WILLIAM MILES KEELY,
Defendant.

Appeal by defendant from order entered 19 November 2013 by Judge C. Christopher Bean in District Court, Currituck County. Heard in the Court of Appeals 9 October 2014.

No brief filed on behalf of plaintiff-appellee.

Pritchett & Burch, PLLC, by Lloyd C. Smith, Jr. and Lloyd C. Smith, III, for defendant-appellant.

Defendant appeals no-contact order. For the following reasons, we affirm.

I. Background

On 9 September 2013, plaintiff filed a complaint for a no-contact order pursuant to North Carolina General Statute Chapter 50C; her complaint for the North Carolina General Statute Chapter 50C no-contact order was on a form provided by the administrative office of the courts. The form complaint, AOC-CV-520, Rev. 2/06, had pre-printed language with boxes to check if the sentences following the box are applicable; under certain

boxes spaces are provided for writing in additional details.

Plaintiff checked box 4 which states,

> The defendant has followed on more than one occasion or otherwise tormented, terrorized, or terrified the plaintiff named above with the intent to place the plaintiff in reasonable fear for the plaintiff's safety or the safety of the plaintiff's immediate family or close personal associates or with the intent to cause, and which did cause, the plaintiff to suffer substantial emotional distress by placing the plaintiff in fear of death, bodily injury, or continued torment or terror in that: *(give specific dates and describe in detail what happened and how it placed the plaintiff in fear of safety or how it caused substantial emotional distress)*[.]

Plaintiff underlined the words "tormented," "terrorized," and "terrified." Plaintiff then wrote under box 4:

> The defendant's stalking, harassing, and threatening/intimidating conduct has continued over a 5 year period of time; More specifically has escalated to the following more recent incidents:
> 7/16/13 at approximately 7:00 AM – Came to the entrance of my drivewa[y] starring [(sic)] in an intimidating manner and stating, "Don't think that[t] fence is going to stop me."
> 7/25/13 at approximately 11:00 AM – I was walking my dog down Rocky Top Ro[ad] he was driving toward me, stopped appx 40 ft from me, revve[d] his engine & sped directly toward me as if he was going to run me over; then slowed beside me & was laughing uncontrollably.
> 7/29/13 – Subpoenaed for a case I had Nothing to do with just to cause me to lose

time for work.

On the following page plaintiff continued:

> 8/17/13 at approximately 10:30-11:00AM, the defendant falsely called & reported to the Currituck County 911/Sherriff's Dept, that I was screaming at him from our residence. This is a total false accusation, as my husband and I were in Virginia. This incident was investigated by Deputy Starcher of the Currituck Cty Sherriff's Dept and was closed due to it being unfounded.
> 9/7/13 at approximately 9:30-10:00AM. My husband and I were walking down Rocky Top Rd. The defendant was in a car with RoseAnn Wright-Fulp. They were exiting the neighborhood on Rock Top Rd, but stopped when they saw us walking on Matildas Trace toward Rocky Top. They waited for us to get next to their vehicle, Bill Keely rolled down his window and was holding his cell phone up as if to be videoing us. We walked past the car and they finally left the neighborhood. By the time we got to the end of the street and was coming back, they had turned around & came back & backed into the entrance of the[i]r driveway waiting for us. As we passed them, the defendant and RoseAnn were both holding their cell phones out the window and making derogatory comments & laughing. They continued following us, in the vehicle, until we turned off Rocky Top Rd back onto Matilda's Trace.
> 9/9/13 - Subpoenaed for case - No involvement to cause loss of work.
> Note: Every day when I'm in my yard or in view of his house he comes out or hides behind bushes and screams derogatory and disparaging comments to me.

On 3 October 2012, defendant answered plaintiff's complaint by denying most of the substantive allegations, moved for

dismissal based upon North Carolina General Statute § 1A-1, Rule 12(b)(6) and the constitutional protections of the First Amendment, and requested sanctions.

On 19 November 2013, the trial court entered a no-contact order because

> [o]ver a period of five (5) years, Defendant has on a continuous basis yelled at Plaintiff with degrading names such as "whore", "faggot", "loser", and on July 25, 2013 while Plaintiff was walking her dog, Defendant revved the engine of his car and sped toward Plaintiff, causing Plaintiff to jump into a ditch; and on August 18, 2013, Defendant made a false report to the Currituck County Sherriff's Department regarding Plaintiff's alleged conduct. Such conduct by Defendant was for the purpose of harassing Plaintiff and has in fact caused her considerable emotional distress.

On 16 December 2013, the trial court entered an order stating that "[a]t the close of the Defendant's evidence, the Defendant made a motion for a directed verdict on the grounds that the statute that as applied in this case violates his rights of free speech" and thereafter denied the motion in its order. Defendant appeals the no-contact order and the order denying his motion for a directed verdict.

II. Standard of Review

"[W]hen the trial court sits without a jury, 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. While findings of fact by the trial court in a non-jury case are conclusive on appeal if there is evidence to support those findings, conclusions of law are reviewable *de novo*." *Romulus v. Romulus*, 215 N.C. App. 495, 498, 715 S.E.2d 308, 311 (2011) (citations and quotation marks omitted). Furthermore, "[t]he trial court's unchallenged findings of fact are presumed to be supported by competent evidence and are binding on appeal." *Peltzer v. Peltzer*, ___ N.C. App. ___, ___, 732 S.E.2d 357, 360, *disc. review denied*, 366 N.C. 417, 735 S.E.2d 186 (2012). Here, except as specifically noted, defendant does not challenge the findings of fact made by the trial court, so they are binding on this Court; *see id.*, defendant's arguments instead are that the findings of fact do not support its conclusions of law, and these arguments we review *de novo*. *Romulus*, 215 N.C. App. at 498, 715 S.E.2d at 311.

III. Constitutionality of the No-Contact Order

Defendant first contends that the no-contact order is unconstitutional as applied to him because his "language [did] not rise to the level of 'fighting words' and therefore is protected by the First Amendment[.]"

> [A]ppellate courts must "avoid constitutional questions, even if properly presented, where a case may be resolved on other grounds." *Anderson v. Assimos*, 356 N.C. 415, 416, 572 S.E.2d 101, 102 (2002); *see also Union Carbide Corp. v. Davis*, 253 N.C. 324, 327, 116 S.E.2d 792, 794 (1960) ("Courts must pass on constitutional questions when, but only when, they are squarely presented and necessary to the disposition of a matter then pending and at issue."); *State v. Blackwell*, 246 N.C. 642, 644, 99 S.E.2d 867, 869 (1957) ("[A] constitutional question will not be passed on even when properly presented if there is also present some other ground upon which the case may be decided."); *State v. Muse*, 219 N.C. 226, 227, 13 S.E.2d 229, 229 (1941) (an appellate court will not decide a constitutional question "unless it is properly presented, and will not decide such a question even then when the appeal may be properly determined on a question of less moment.").

James v. Bartlett, 359 N.C. 260, 266, 607 S.E.2d 638, 642 (2005).

It is true that some of plaintiff's allegations were based upon verbal statements which defendant made to her, but defendant here fails to mention in his argument that the trial court also found that defendant revved his engine and charged his car toward plaintiff in such a manner that she jumped into a ditch and fraudulently contacted the sheriff's department regarding plaintiff. Accordingly, even if some of defendant's statements to plaintiff would be protected under the First

Amendment, there were other unchallenged findings of fact regarding defendant's conduct to support the issuance of the no-contact order. *See* N.C. Gen. Stat. § 50C-7 (2011) ("Upon a finding that the victim has suffered unlawful conduct committed by the respondent, a permanent civil no-contact order may issue[.]")[1] As such, the trial court properly denied defendant's motions to dismiss and for a directed verdict on these grounds, and we need not consider defendant's constitutional argument. *See generally id.* This argument is overruled.

IV. Harassment

Defendant contends that "the trial court erred in determining that defendant's actions constitute harassment as defined in North Carolina General Statute § 14-277.3(A)(2)." (Original in all caps.) North Carolina General Statute § 50C-7 states that "[u]pon a finding that the victim has suffered unlawful conduct committed by the respondent, a permanent civil no-contact order may issue[.]" N.C. Gen. Stat. § 50C-7. "Unlawful conduct" is defined as "[t]he commission of one or

[1] North Carolina General Statute § 50-7 (2013) now reads, "Upon a finding that the victim has suffered *an act of* unlawful conduct committed by the respondent, a permanent civil no-contact order may issue[.]" N.C. Gen. Stat. § 50-7 (2013) (emphasis added). However, the italicized change was "applicable to actions commenced on or after October 1, 2013." *Id.*, Editor's Note. As plaintiff's complaint was filed in September of 2013, the change is not applicable. *See id.*

more of the following acts[:] . . . [s]talking." N.C. Gen. Stat. § 50C-1(7) (2013). "Stalking" is defined as

> [o]n more than one occasion, following or otherwise harassing, as defined in G.S. 14-277.3A(b)(2), another person without legal purpose with the intent to . . .
> . . . .
> b. [c]ause that person to suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment and that in fact causes that person substantial emotional distress."

N.C. Gen. Stat. § 50C-1(6) (2013). "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(b)(2) (2013). Thus, the ultimate determination here is whether defendant engaged in "[k]nowing conduct . . . directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose." *Id.*

Here, the trial court found that defendant's conduct that constituted harassment included,

> [o]ver a period of 5 (5) years, Defendant has on a continuous basis yelled at Plaintiff with degrading names such as "whore", "faggot", "loser", and on July 25, 2013 while Plaintiff was walking with her dog, Defendant revved the engine of his car and sped toward Plaintiff, causing Plaintiff to jump into a ditch; and on August 18,

> 2013, Defendant made a false report to the Currituck County Sherriff's Department regarding Plaintiff's alleged conduct.

Even if we were to assume *arguendo* that defendant's speech was protected by the First Amendment as he contends in his first argument, the trial court still found that defendant acted as though he were going to hit plaintiff with his car and engaged law enforcement on a fabricated claim.

Defendant contends that charging his car at plaintiff and making false reports to law enforcement is not a form of "communication" directed toward plaintiff, and therefore not harassment. However, we need not engage in a lengthy analysis determining what conduct may constitute an exercise of communication as North Carolina General Statute § 14-277.3A(b)(2) only requires "[k]nowing conduct . . . directed at a specific person[.]" *Id.* While North Carolina General Statute § 14-277.3A(b)(2) enumerates various kinds of "communications" that may constitute knowing conduct, by its very terms the statute clearly covers both communications and conduct. *See id.* ("Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or

transmissions, and electronic mail messages or other computerized or electronic transmissions directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.") Conduct, including communications, which is "directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose" is covered by North Carolina General Statute § 14-277.3A(b)(2). *Id.* The trial court properly concluded that defendant's conduct of charging at plaintiff with a vehicle and making false claims about her to a sheriff's department are forms of harassment in that they were "[k]nowing conduct . . . directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose." *Id.* This argument is overruled.

V. Intent to Harass

Defendant also contends that "[t]he trial court erred in determining defendant intended to harass plaintiff." (Original in all caps.) Defendant provides this Court with a lengthy legal analysis regarding the trial court's need to find an intent to harass but does little to address the facts of this case. Here, the trial court found that defendant's "purpose" was to harass plaintiff based in part on his decision to act as

though he was going to run plaintiff over with his car and frivolously contacting the sheriff's department for a fraudulent claim. A finding regarding defendant's "purpose" is the equivalent of a finding regarding his "intent" in this instance. This argument is overruled.

VI. Substantial Emotional Distress

Defendant next argues that "the trial court erred in determining defendant in fact caused plaintiff . . . considerable substantial emotional distress." (Original in all caps.) Defendant challenges the trial court's finding of ultimate fact that his conduct "in fact caused her considerable emotional distress." As best we can tell, defendant's argument seems to present three sub-issues: (1) plaintiff did not make sufficient allegations of emotional distress in her complaint; (2) plaintiff did not present sufficient evidence of substantial emotional distress; and (3) the trial court was required to make more detailed findings of evidentiary facts regarding plaintiff's substantial emotional distress.

> Neither North Carolina General Statutes Chapter 50B or 50C define substantial emotional distress; however, North Carolina General Statute § 14-277.3A, entitled stalking defines substantial emotional distress as significant mental suffering or distress that may, but does not necessarily, require medical or other professional

> treatment or counseling.

Tyll v. Willets, ___ N.C. App. ___, ___, 748 S.E.2d 329, 332 (2013) (citation, quotation marks, and brackets omitted).

Regarding defendant's first contention, that plaintiff did not make sufficient allegations of emotional distress, it is imperative to note, as we have in the background section of this case, that a complaint for a civil no-contact order is normally filed on a form provided by the administrative office of the courts; it differs greatly from a civil claim in which a plaintiff is starting with a blank page and makes any allegations she deems pertinent. In addition, most no-contact complaints are filed by *pro se* plaintiffs, just as plaintiff in this case. On the form complaint here, AOC-CV-520, Rev. 2/06, plaintiff was provided with boxes to check as applicable; under certain boxes some space is provided for writing in additional details. Plaintiff checked box 4 which states,

> The defendant has followed on more than one occasion or otherwise tormented, terrorized, or terrified the plaintiff named above with the intent to place the plaintiff in reasonable fear for the plaintiff's safety or the safety of the plaintiff's immediate family or close personal associates or with the intent to cause, and which did cause, the plaintiff to suffer substantial emotional distress by placing the plaintiff in fear of death, bodily injury, or continued torment or terror in that: *(give*

> *specific dates and describe in detail what happened and how it placed the plaintiff in fear of safety or how it caused substantial emotional distress)*[.]

(Emphasis in original.) Here, plaintiff underlined the words "tormented," "terrorized," and "terrified[.]" While underlining the words in the form may not be the best way to convey plaintiff's emotional distress, her emphasis on these words is relevant, particularly when read in conjunction with her factual allegations. As directed by the italicized language on the form, plaintiff gave "specific dates" and described "what happened" and "how it caused substantial emotional distress." The underlining of these words was part of plaintiff's attempt to "describe in detail" her "substantial emotional distress," and this must be read in conjunction with her detailed allegations written in the blanks on the form. We do not believe that plaintiff is required to make detailed allegations of her emotional state upon each act of defendant's alleged conduct, especially where common sense is all that is needed to understand why the conduct alleged would be distressing to any reasonable person. For example, if a person has been daily yelling derogatory language at an individual and then acts as though he will run over her with a vehicle, "tormented, terrorized, [and] terrified" are reasonable ways to describe the

"substantial emotional distress" such conduct would cause; as such, plaintiff has adequately alleged "significant mental suffering [and] distress[;]" *i.e.*, "substantial emotional distress." *Id.*

The second sub-issue raised by defendant's argument is whether plaintiff actually presented sufficient evidence of substantial emotional distress. At the hearing for the no-contact order, plaintiff testified that defendant had put her "in fear of [her] life" and plaintiff's husband testified that the "toll" on his wife was so severe she was "having problems sleeping, eating, [and] concentrating." While both plaintiff's and plaintiff's husband's testimony could have been more descriptive of emotional distress, the trial court had the "opportunity to see the parties; to hear the witnesses; and to detect tenors, tones, and flavors that are lost in the bare printed record read months later by appellate judges[,]" *Shipman v. Shipman*, 357 N.C. 471, 474, 586 S.E.2d 250, 253 (2003) (citation and quotation marks omitted). Accordingly, there was evidence presented of "significant mental suffering [and] distress" and thereby "substantial emotional distress." *Id.*

The third sub-issue is whether the trial court's ultimate

determination that plaintiff was caused substantial emotional distress was supported by the findings of fact. We first note that the trial court found that defendant over the course of five years yelled derogatory language at plaintiff, acted as though he was going to hit her with a vehicle, and falsely made a report to the sheriff's department regarding her; as these findings are unchallenged they are binding on appeal. *See Peltzer*, ___ N.C. App. at ___, 732 S.E.2d at 360.

Furthermore, although North Carolina General Statute § 50C-1(6) refers to "substantial emotional distress[,]" the trial court found that defendant had caused plaintiff "considerable emotional distress[,]" but this is a distinction without a difference. N.C. Gen. Stat. § 50C-1(6). In this context, "[s]ubstantial is defined as *considerable* in value, degree, amount or extent[,]" and thus, in this case, "considerable emotional distress" is the equivalent of "substantial emotional distress." *Ramsey v. Harman*, 191 N.C. App. 146, 150, 661 S.E.2d 924, 927 (2008) (emphasis added) (citation, quotation marks, and brackets omitted).

In *Ramsey*, this Court addressed "substantial emotional distress[,]" *id.* and there found that "the record [was] wholly devoid of any evidence" the plaintiffs suffered substantial

emotional distress due to the defendant's comments made on a website. *Id.* at 151, 661 S.E.2d at 927. Specifically, in *Ramsey*, the

> [p]laintiffs, [a mother and daughter,] alleged defendant had posted information on her website stating that [the plaintiff daughter] . . . harasses other children and accused [the plaintiff daughter] of being the reason kids hate to go to school. Plaintiffs also alleged that on numerous occasions defendant had referred to [the plaintiff daughter] on her website as endangered, offspring, bully and possum, which caused [the plaintiff daughter] to suffer emotional distress.

Id. at 146, 661 S.E.2d at 924-25 (quotation marks omitted). This Court ultimately determined that the no-contact order should not have been granted because

> [w]hile [the plaintiff mother's] self-serving testimony indicated that she felt threatened by the messages, the trial court expressly stated the messages posted on defendant's website did not contain language threatening to inflict bodily harm or physical injury. Plaintiffs' only other assertion was that [the plaintiff daughter] became embarrassed when she had allegedly observed teachers viewing defendant's website in her school's library.

Id. at 151, 661 S.E.2d at 927 (quotation marks omitted). In *Tyll v. Willets*, a brother requested a no-contact order be enforced against his sister because she threatened "to make statements about plaintiff to various others, including

plaintiff's employer and the Department of Social Services." ___ N.C. App. ___, 748 S.E.2d 329 (2013). This Court again found there was no substantial emotional distress based upon these facts. *Id.* Both *Tyll* and *Ramsey* are distinguishable from this case, both as to the facts and as to the evidence presented regarding the impact of the defendant's conduct on the plaintiffs. *Id.*; *Ramsey*, 191 N.C. App. 146, 661 S.E.2d 924.

In *Ramsey*, the trial court "expressly stated" that no physical threats had been made and the defendant's conduct had resulted only in "embarrass[ment;]" here, however, plaintiff was physically threatened by defendant when he acted as though he was going to run over her with a car. *Ramsey*, 191 N.C. App. at 151, 661 S.E.2d at 927; *contrast Tyll*, ___ N.C. App. ___, 748 S.E.2d 329 (threatening behavior was only regarding communication to third parties). Furthermore, here, defendant's conduct was not on the internet, but in person where defendant harassed plaintiff over the course of five years to the point that plaintiff's daily functions such as eating, sleeping, and concentrating were impaired. *Contrast Ramsey,* 191 N.C. App. at 146, 661 S.E.2d at 924; *Tyll,* ___ N.C. App. ___, 748 S.E.2d 329. Based upon the trial court's findings, over the course of five years, defendant has made frequent contact with plaintiff in

person, screaming derogatory language at her. Defendant has gone so far as to involve law enforcement by making false reports to the Currituck County Sherriff's Department, and most disturbingly, physically threatened defendant by charging a moving vehicle at her; such behavior "tormented, terrorized, [and] "terrified" plaintiff to the point that her daily life was affected by defendant's conduct. Under these circumstances, the trial court properly found that defendant has caused plaintiff substantial emotional distress, *i.e.*, "significant mental suffering or distress[.]" *Tyll*, ___ N.C. App. at ___, 748 S.E.2d at 332. This argument is overruled.

VII. Considerable Emotional Distress

Lastly, defendant contends that because the trial court found "considerable emotional distress" rather than "substantial emotional distress" the no-contact order could not properly be entered. As we have already noted, our case law defines "substantial" in the context of emotional distress as "considerable[.]" *Ramsey*, 191 N.C. App. at 150, 661 S.E.2d at 927. The law in this type of case is not treated as a "magic words" game, and a finding of "considerable emotional distress" is no different from a finding of "substantial emotional distress." This argument is overruled. *See id.*

VIII. Conclusion

For the foregoing reasons, affirm.

AFFIRMED.

Judges GEER and BELL concur.