NO. COA14-772

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2014

SARAH A. FOREHAND,
Plaintiff,

v.

Wake County
No. 12 CVD 14117

JASON A. FOREHAND,
Defendant.

Appeal by defendant from order entered 3 February 2014 by Judge Anna Worley in Wake County District Court. Heard in the Court of Appeals 17 November 2014.

No brief filed on behalf of plaintiff-appellee.

The Law Corner, by Betsy Gold, for defendant-appellant.

HUNTER, Robert C., Judge.

Defendant Jason Forehand appeals the order renewing plaintiff Sarah Forehand's domestic violence protective order. On appeal, defendant challenges several findings of fact and ultimate conclusion of law that there was "good cause" to renew the domestic violence protective order ("DVPO").

After careful review, we affirm the order.

Background

On 8 October 2012, plaintiff filed a complaint and motion for a DVPO against defendant, her husband. The parties have three minor children born of the marriage. In the complaint and motion, plaintiff alleged that defendant attempted to cause or intentionally caused her and her children bodily injury and placed them in fear of imminent serious bodily injury. Specifically, plaintiff stated that, on 5 October 2012, defendant stole the family dog from the family residence with the children watching. Plaintiff additionally claimed that defendant put her and their newborn child in danger when she tried to open the car door to get the dog out. During defendant's hospitalization for a suicide attempt on 26 September 2012 and while plaintiff was ten months pregnant, defendant allegedly told her: "Bitch, I want to smash your teeth in and slam you to the floor you dirty cunt." Based on this threat, plaintiff claimed that she went into early labor. In the complaint, plaintiff also asserted that her children were at substantial risk of physical or emotional injury based on defendant's issues with substance abuse. Specifically, plaintiff stated that defendant was addicted to heroin and prescription drugs and has overdosed several times. Finally, plaintiff claimed that defendant had made threats to commit

suicide and had been institutionalized for attempted suicide on two occasions. Based on these allegations, the trial court granted plaintiff an *ex parte* DVPO that same day.

On 15 October 2012, a hearing was held to determine whether plaintiff was entitled to a one-year DVPO. At the hearing, the parties consented to a continuance based on defendant's claim that he was entering a 90-day inpatient treatment facility for heroin abuse. The trial court continued the existing *ex parte* DVPO until 25 January 2013. At the next hearing, on 19 February 2013, the trial court granted plaintiff a one-year DVPO (the "2013 DVPO"); however, a copy of it is not included in the record on appeal.

On 14 January 2014, plaintiff filed a motion to renew the DVPO. She claimed that defendant had sent her "harassing emails, using vulgar words, to describe [her]" and was using drugs again. Furthermore, citing his "hateful attitude," plaintiff alleged that she is "fearful of physical harm."

The matter came on for hearing on 4 February 2014. At the hearing, plaintiff testified that defendant was supposed to submit to monthly drug screenings as required by the temporary custody order entered in their Chapter 50 domestic action. She claimed that defendant has failed to provide her with copies of

the screenings; however, she did admit into evidence a copy of one screening from 5 November 2013 where defendant tested positive for cocaine. Plaintiff also admitted into evidence two emails from defendant. The first was dated 20 December 2013 and was in reference to the visitation schedule for the children's Christmas holiday. In it, plaintiff stated that she did not want the children to have an overnight visit with defendant; instead, she wanted them to have a supervised Christmas Eve visit with defendant at his parents' house. After telling plaintiff he had to work Christmas Eve, defendant called plaintiff a "stupid cunt[.]" In another email from January 2014 to his attorney, which he copied to plaintiff, defendant called plaintiff a "conniving bitch" and said that no one "wants her form of 'Christian love.'" As a result of these emails, plaintiff contended that

> I have no track record of anything except for his attitude toward me still being hateful and negative. That's the only thing that I have seen consistent in the past year and a half. That's the only thing is his hatred and his anger and resentment and his vulgarity towards me, his lack of respect for me. So again, yes, I am fearful of him. I am fearful of being put in the same room with him without a DVPO in place. He's unpredictable. He's scary. He hates me. He is angry towards me. And all of this that they just tried to present is escalating the situation.

At the hearing, defendant also testified and claimed that the labs conducting the drug tests do not email the results; however, he stated that he has signed a release which would allow plaintiff to obtain the results from the lab directly. He did not deny sending the emails and calling plaintiff vulgar names, but he claimed that he did not express hatred or threaten her in any way. He also claimed that he is not a violent person and does not pose a danger to anybody.

The trial court, after noting that "[t]he burden is relatively low at a [DVPO] renewal hearing[,]" found that defendant continued to send vulgar and angry emails to plaintiff, plaintiff "continues to be in fear" of defendant, and "there has been a poor exchange of the drug tests." Furthermore, the trial court made "additional findings" based on defendant's past behavior. Specifically, the trial court found that defendant had: attempted to cause and intentionally caused bodily injury to plaintiff, placed plaintiff in fear of serious bodily injury, threatened plaintiff during his hospitalization, made threats to seriously injure plaintiff, made threats to commit suicide, been hospitalized for several suicide attempts, and "has had issues with drug use." Based on these findings,

the trial court renewed the DVPO until 1 June 2015. Defendant appeals.

Standard of Review

"When 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." *Hensey v. Hennessy*, 201 N.C. App. 56, 59, 685 S.E.2d 541, 544 (2009).

Arguments

Initially, defendant argues that there was insufficient evidence to support the trial court's findings of fact that plaintiff continues to be in fear of defendant and that there had been a "poor exchange" of the monthly drug test results. We disagree.

"Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." *City of Asheville v. Aly*, __ N.C. App. __, __, 757 S.E.2d 494, 499 (2014). Here, there was competent evidence to support the trial court's finding that plaintiff was in subjective fear of defendant. She specifically claimed that she was "fearful of

being put in the same room with [defendant] without a DVPO in place." She also stated that:

> The restraining order has protected me in the way I need. . . . But if it were to be lifted–again, I am fearful of him, and I know that if it were to be lifted, he would be at my doorstep tonight. And I fear for the safe-my safety, my physical safety, as well as, you know, potential, you know, harm to the children, what might be done in their presence and that-that type of thing.

Although defendant disputed that he was a danger to plaintiff, plaintiff's testimony was adequate to support a finding that she was in subjective fear of defendant.

Furthermore, as to the finding that there was a "poor exchange" of the drug test results, there was also competent evidence to support this finding. Plaintiff claimed that she had not seen any of his drug test results except for one illegible result and the positive one from November 2013. Moreover, defendant did not deny that he had failed to provide the results, claiming that "[t]here's nothing that [he] [could] give [plaintiff] that has the drug screen results on them." However, defendant failed to provide any proof of his negative tests even though he knew that the issue of his drug tests would be raised at the hearing and despite the fact that he claimed to have provided those results to his own attorney in their child

custody proceedings. Consequently, the finding that there was a "poor exchange" of the drug test results is supported by competent evidence.

Next, defendant argues that the trial court erred in concluding that "good cause" existed to renew the DVPO. We also disagree.

Section 50B-3(b) provides, in pertinent part, that:

> The court may renew a protective order for a fixed period of time not to exceed two years, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order[.] . . . The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed.

N.C. Gen. Stat. § 50B-3(b) (2013). As noted, the statute does not require a criminal act or even an act of domestic violence to renew a DVPO. *Id.*; N.C. Gen. Stat. § 50B-1(a) (2013). Instead, the trial court must find "good cause" to renew the DVPO. N.C. Gen. Stat. § 50B-3(b).

Here, the trial court found that "good cause" existed to renew the DVPO based on: (1) defendant's emails with "vulgar and angry language"; (2) the fact that "plaintiff continues to be in fear of the [defendant] due to his angry attitude—particularly

surrounding custody issues"; (3) the "poor exchange" of the drug test results required in their Chapter 50 action which has "heighten[ed] plaintiff's anxiety and fear"; (4) defendant's past attempts to cause bodily injury to plaintiff in September 2012; (5) defendant's past conduct that placed plaintiff in fear of imminent serious bodily injury; (6) the threats defendant made while he was hospitalized at WakeMed hospital in September 2012; (7) defendant's past threats to commit suicide and commitments based on his attempts to commit suicide; and (8) defendant's past issues with drug use. Although the order renewing the DVPO rests, in large part, on defendant's acts from 2012 that served as the basis for the original 2013 DVPO, there is nothing in section 50B-3 nor in our caselaw prohibiting the trial court from basing its decision whether to renew a DVPO on acts that happened in the past which served as the basis for issuance of the original DVPO. In fact, this Court, in an unpublished case, held that prior acts may provide support for and be "incorporated by reference" into orders renewing DVPOs. *Basden v. Basden*, COA01-1430, 2002 WL 31687267, at *4 (Dec. 3, 2002) (unpublished). Even though unpublished opinions from this Court do not constitute controlling legal authority, N.C.R. App. P. 30(e)(3) (2013), we find its reasoning persuasive and apply

it to the facts of the present case. Thus, in totality, based on defendant's past conduct in addition to plaintiff's continued fear of defendant, defendant's use of angry language in emails, and the "poor exchange" of the drug tests results, we are unable to say that the trial court's conclusion that "good cause" existed to renew the DVPO constituted error.

Conclusion

The trial court's reliance on those past acts in addition to other findings were sufficient for plaintiff to meet her burden. Therefore, we affirm the order renewing the DVPO.

AFFIRMED.

Chief Judge McGEE and Judge BELL concur.