IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-242

Filed: 4 October 2016

Union County, No. 15 CVD 1688

MOLLY L. BATES, Plaintiff-Appellant,

v.

EDUARDO GOMEZJURADO, Defendant-Appellee.

Appeal by Plaintiff from order entered 10 December 2015 by Judge L.T. Hammond, Jr. in Union County District Court. Heard in the Court of Appeals 8 September 2016.

Collins Family Law Group, by Rebecca K. Watts & Dana B. Lehnhardt, for Plaintiff-Appellant.

Eduardo Gomezjurado, pro se, for Defendant-Appellee.

HUNTER, JR., Robert N., Judge.

Molly L. Bates ("Bates") appeals from an order entered 10 December 2015 denying her motion for a Domestic Violence Protection Order ("DVPO"). Bates argues that the trial court was required by Rule 52 of the North Carolina Rules of Civil Procedure to make findings of fact before denying her motion. We disagree.

I. Facts and Procedural History

Bates and Eduardo Gomezjurado ("Gomezjurado") are former spouses who are parents to two minor children. Bates has sole legal and physical custody of the children, and Gomezjurado is allowed to communicate with the children twice a week via FaceTime.

Bates claims that in April and May of 2015, Gomezjurado began making unwanted contact with Bates's mother and their children. These incidents included an unscheduled encounter with Bates's mother and the two children in a public place, and packages left for the children at both Bates's and her mothers' residences. On 24 July 2015, Bates observed Gomezjurado driving out of the parking lot at her place of employment. On 28 July 2015, while Bates was on vacation with her children in Florida, Gomezjurado's scheduled conversation with his children was cut short. Bates subsequently received the following text message from Gomezjurado:

> Both you and [Bates's boyfriend] were drinking at the party by the Lake of Armenia and drive [sic] back to your hotel off Anderson with the girls. I have it all recorded and a private eye following you right now and through the whole vacation. Your [sic] in the causeway right now pull over or I am taking all this video to judge [sic] Gwynn along with last nights [sic] conversation that you agreed to let me talk to the girls. I'm filing an emergency motion to remove your rights because you're drinking with them. Sorry, not the causeway; Howard Franklin [Bridge]. I'm done being nice.

On 30 July 2015, Bates searched her car and discovered a GPS tracking device under the rear bumper.

On her return to North Carolina, Bates filed a complaint and motion for a DVPO on 6 July 2015, alleging that on the basis of the unwanted contact during the spring of 2015, the text message and discovery of the GPS, she was "in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress . . . ." Based on these allegations, the trial court issued an ex parte DVPO on 6 July 2015. On 14 July 2015, Gomezjurado was served with the ex parte order and notice of a hearing for the complaint and motion scheduled for 16 July 2015.

After Gomezjurado was granted continuances on three separate occasions, the hearing was held on 10 December 2015. Bates took the stand first, testifying to her claims that Gomezjurado had improperly contacted her family during the spring. She also testified that she had observed Gomezjurado leaving her place of business only days before she received the threatening text message from him and found the GPS tracking device on her car. Bates spoke about the emotional impact of these events, telling the court that she and her children were "scared to death" after finding the tracking device, and now "look [for Gomezjurado] under bed[s] and in closets" upon returning home.

Gomezjurado then took the stand and explained that he had contacted members of Bates's family and their two children for the purpose of giving the children toys and clothes, and that he ceased making contact upon request by Bates's

attorney. However, on cross-examination, Gomezjurado admitted to placing the tracking device on Bates's car, admitted to sending Bates the text message, and also testified that his family had indeed arranged for someone to follow Bates while she was in Florida.[1] Gomezjurado subsequently called Rory McNicholas, a friend and former client, to testify that McNicholas had delivered toys and clothes to the children on Gomezjurado's behalf.

After hearing the forgoing evidence and argument from both sides, the trial court denied Bates' motion from the bench, stating:

> THE COURT: The Court's ruling in this case is the plaintiff has failed to prove grounds for issuance of a permanent domestic violence order and I've signed an order to that effect. Thank you.

The trial court subsequently signed off on standard form AOC-CV-306, entitled "Domestic Violence Order of Protection." The form provides a section in which the trial court may check off boxes and fill in pre-printed entries to make written findings of fact and conclusions of law. While most of the boxes and pre-printed entries on the form are geared toward facts and conclusions supporting issuance of a DVPO, there is a space for the judge to write in "other" findings. Without checking off any boxes under "Additional Findings" or writing in any findings of fact, the trial court merely

[1] On this point, Gomezjurado gave a conflicting account, testifying on cross-examination that his family had hired a private eye, but that he did not recall the investigator's name or the dates that he was employed. On re-direct examination, Gomezjurado testified that it was a member of his family who had followed Bates in Florida.

checked off a box in the section marked "Conclusions" stating that "the plaintiff has failed to prove grounds for issuance of a domestic violence protective order."

Bates filed and served her notice of appeal on 5 January 2016. Gomezjurado was served with a proposed record on appeal on 26 January 2016, and with the final record on appeal on 11 March 2016.

II. Jurisdiction

As an appeal from a final judgment of a district court in a civil action, jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7A-27(b).

III. 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. Where there is competent evidence to support the trial court's findings of fact, those findings are binding on appeal." *Hensey v. Hennessy*, 201 N.C. App. 56, 59, 685 S.E.2d 541, 544 (2009) (citation omitted).

IV. Analysis

Plaintiff contends that the trial court erred in denying her motion for a DVPO without making findings of fact, as required by Rule 52 of the North Carolina Rules of Civil Procedure. We disagree.

Under Rule 52(a)(2), "findings of fact and conclusions of law are necessary on decisions of any motion or order ex mero motu only when requested by a party." N.C. Gen. Stat. § 1A-1, Rule 52(a)(2) (2015). In the absence of a request by a party, "it will be presumed that the judge, upon proper evidence, found facts sufficient to support the judgment." *Baker v. Lanier Marine Liquidators*, 187 N.C. App. 711, 718, 654 S.E.2d 41, 46 (2007) (Steelman, J. concurring) (quoting *J.M. Thompson Co. v. Doral Mfg. Co.*, 72 N.C. App. 419, 424, 324 S.E.2d 909, 912 (1985) (internal quotation marks and citations omitted)). In such cases, our inquiry is limited to whether the presumed findings of fact were supported by competent evidence. *Id.* at 718, 654 S.E.2d at 46. If competent evidence is found in the record, the findings will be "conclusive on appeal despite evidence to the contrary." *Id.* at 718,654 S.E.2d at 46.

In the instant case, there is no sign in either the record or the transcript of the hearing that either party requested findings of fact. However, there is competent evidence to support the trial court's presumed findings of fact.

In order to issue a DVPO where there has been no physical contact between the parties, the trial court must find that there has been an act of domestic violence that has "[placed] 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." N.C. Gen. Stat. § 50B-1(a)(2) (2015).

Here, the only evidence Bates offered was her testimony that she and her children were "scared" of Gomezjurado, and that she had taken some precautions as to where she parked her car at work. She offered no testimony that would suggest that she or anyone in her household was in "fear of imminent serious bodily injury or continued harassment," nor did she present any evidence that Gomezjurado's actions had inflicted "substantial emotional distress."

As a result, we may presume that the trial court properly based its decision on competent evidence, and its judgment is

AFFIRMED.

Judges McCULLOUGH and DIETZ concur.

Report per Rule 30(e).