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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-484

No. COA21-80

Filed 7 September 2021

Onslow County, No. 20 CVD 1371

LOUISE ANN WELLER, Plaintiff,

v.

GERALD JACKSON, Defendant.

Appeal by defendant from order entered 17 August 2020 by Judge Michael C. Surles in Onslow County District Court. Heard in the Court of Appeals 10 August 2021.

No brief filed for plaintiff-appellee.

Duke Law School First Amendment Clinic, by Sarah H. Ludington and Nicole J. Ligon, for defendant-appellant.

ARROWOOD, Judge.

¶ 1

Gerald Jackson (“defendant”) appeals from a civil no-contact order restricting him from “posting anything further about” Louise Ann Weller (“plaintiff”). Defendant contends the order must be reversed because there was insufficient evidence to support the order and because the trial court misapplied N.C. Gen. Stat. § 50C-1(6) (2019). Defendant further contends the order restricts his protected speech under the

First Amendment and that the order is a prior restraint in violation of the First Amendment. For the following reasons, we reverse the trial court's order.

I. Background

¶ 2 On 19 May 2020, defendant wrote and published an article on his online news blog “The North Carolina Beat.” The article discussed plaintiff and alleged that she had created several Facebook groups concerning missing persons in North Carolina and other states. The article further alleged that plaintiff used the groups to contact the families of the missing persons to offer help and support but would instead use the groups to terrorize the families and “spread false information” about them, including by insinuating the family members were responsible for the disappearances.

¶ 3 On 20 May 2020, plaintiff filed a complaint in Onslow County District Court seeking a civil no-contact order against defendant under N.C. Gen. Stat. § 50C. The trial court denied plaintiff's request due to a lack of evidence and scheduled a hearing for 26 May 2020 to determine whether a permanent no-contact order was warranted.

¶ 4 Both parties represented themselves *pro se* at the 26 May hearing. Plaintiff explained that she had filed the action related to social media posts made by defendant on his “North Carolina Beat” Facebook page. In her opening statement, plaintiff expressed fear for herself and her family due to “harassment, slander, and verbal assaults that occurred to us from [defendant], as well as racial – racist sexual

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harassment slurs and verbal sexual harassment assaults.” Plaintiff added that defendant was “threatening and insinuating that himself or others commenting on his lives¹ should inflict violence and deadly bodily harm to us.” Defendant responded by explaining that plaintiff initially contacted him “as it relates to exposing someone, and that backfired on her[.]” Defendant further stated that he had not directly or indirectly contacted plaintiff or made any type of harassing comments to her, and that he had no control over other individuals that may have contacted plaintiff.

¶ 5 During the presentation of evidence, plaintiff moved to introduce several printouts of news articles related to defendant. Defendant objected to the printouts, arguing they were irrelevant to the matter at hand. Plaintiff responded by arguing that the articles were “very crucial” as they provided background of defendant’s previous history, which “is part of the reason that’s got us so scared.” The trial court overruled defendant’s objection, cautioning plaintiff that the documents as related to prior conduct or history “certainly can be relevant, but to the extent that you’re just using this as a means to bash [defendant] because he’s a convicted felon, or because of any other misconduct that articles have been written about – on him, then certainly I would sustain that objection.”

¶ 6 After presenting the documents, plaintiff offered a series of video clips to be

¹ “Lives” refers to defendant’s live-streamed videos.

played on two different phones, each of which lasted “maybe 10 or 20 seconds[,]” which were recorded from defendant’s web page. Plaintiff clarified that there were approximately 20 separate clips, none more than 30 seconds long. The trial court began to play the recordings, to which defendant objected “because they don’t play an entirety of what was actually stated.” Defendant argued that plaintiff sought to portray all of the videos as pertaining to her, but “they aren’t.” Defendant requested the trial court either play the video in its entirety, a total of 47 minutes, or “kind of question on each individual clip.” The trial court responded that it did not have 47 minutes to listen to the recording in its entirety, and that although it “would be best” for the trial court to watch the entire video, it would take too long. Accordingly, the trial court allowed the recordings to be played while allowing defendant the opportunity to respond to each one, to which defendant agreed. In one clip, defendant is heard telling his audience that it was not “worth it” to inflict violence against plaintiff, but instead encouraged families targeted by plaintiff to file a civil lawsuit against her. The trial court later clarified that it would not accept the clips as presented because the trial court did not “think that shows the entire context in which it was said.”

The trial court questioned defendant regarding the 19 May article. Defendant described several screenshots, which were provided with the article, of conversations between plaintiff and a family in Arkansas that had a missing daughter. Defendant

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stated that the screenshots showed plaintiff threatening to expose a family member's addiction history. Defendant clarified that the family had contacted him after seeing a video of an interview defendant had conducted with plaintiff on 6 May 2020, after plaintiff contacted defendant "to try to expose a lady in a most recent case that involved two women in Wilmington, North Carolina." Defendant also informed the trial court that he had removed the video of the interview with plaintiff, blocked plaintiff from his social media pages, and had no further communication with plaintiff after 17 May 2020.

¶ 8 The trial court acknowledged that defendant had made no "direct threat" to plaintiff but expressed concern that the North Carolina Beat posts may "in essence, be planting bad thoughts in people's heads." The trial court described the North Carolina Beat videos as walking "a fine line between freedom of speech and reporting the news" and "inciting people because it has entertainment value." The trial court added that although defendant was not responsible for what his audience posted or how they responded to his videos, he was "partially responsible" for their harmful behavior "if [he] incit[ed] that type of a response out of [his] listeners by presenting information that goes beyond journalism."

¶ 9 The trial court concluded the hearing due to time constraints and continued the case to 17 August 2020. The trial court entered an order requiring that neither plaintiff nor defendant "have contact with one another" until 17 August, and that

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both parties refrain from discussing the case publicly and from making any comments about each other “on social media, the internet, any blog, or any other form of communication, electronic or print or verbal” until the case was resolved. The order did not include any instructions or requirements for defendant to remove any blog, article, or video that had already been posted.

¶ 10 At the 17 August 2020 hearing, only plaintiff was present. Plaintiff testified that defendant did not comply with the 26 May order because he had not removed all references to her from his blog. Plaintiff also alleged that defendant had posted another live video discussing her which was deleted before she could record it, and that defendant was “liking” comments on his blog that were made about plaintiff.

¶ 11 The trial court issued a civil no-contact order against defendant, barring him from “posting anything further about” plaintiff for six months. The trial court found that defendant had “harassed Plaintiff through his social media blog & website and has caused and incited individuals through his livestream broadcasts to make threatening statements towards Plaintiff.” The trial court also found that defendant had continued to harass plaintiff through social media since the prior hearing, and that “Plaintiff has suffered substantial emotional distress and fears for her safety.”

¶ 12 Defendant received a copy of the order via regular mail and accepted service of the no-contact order on 16 September 2020. Defendant filed written notice of appeal on 24 September 2020 and served the notice of appeal on plaintiff’s last known

address on the same day. Notice of defendant’s appeal and the proposed record on appeal were made by publication in the newspaper of record for Onslow County on 11 December, 18 December, and 25 December 2020.

II. Discussion

¶ 13 Defendant contends the no-contact order must be reversed due to insufficient evidence and because the trial court misapplied N.C. Gen. Stat. § 50C-1(6). Defendant further contends the no-contact order restricts his protected speech under the First Amendment and that the order is a prior restraint in violation of the First Amendment.

A. Sufficiency of Evidence

¶ 14 “Findings of fact made by the trial judge are conclusive on appeal if supported by competent evidence, even if there is evidence to the contrary.” *Sisk v. Transylvania Cmty. Hosp., Inc.*, 364 N.C. 172, 179, 695 S.E.2d 429, 434 (2010) (citation and internal quotation marks omitted). “The trial court’s findings of fact must include ‘specific ultimate facts . . . sufficient for the appellate court to determine that the judgment is adequately supported by competent evidence.’” *Stikeleather Realty & Invs. Co. v. Broadway*, 241 N.C. App. 152, 160, 772 S.E.2d 107, 113 (2015) (citation omitted). This Court must then determine whether “conclusions of law were proper in light of such facts.” *Tyll v. Willets*, 229 N.C. App. 155, 158, 748 S.E.2d 329, 331 (2013) (citation omitted).

¶ 15 Section 50C authorizes a civil no-contact order “[u]pon a finding that the victim has suffered an act of unlawful conduct committed by the respondent.” N.C. Gen. Stat. § 50C-7. The definition of “unlawful conduct” includes “stalking,” which is defined in N.C. Gen. Stat. § 14-277.3A(b)(2) as “[o]n more than one occasion, following or otherwise harassing, . . . another person without legal purpose with the intent to” either “[p]lace the person in reasonable fear either for the person’s safety or the safety of the person’s immediate family or close personal associates[,]” or “[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.” See N.C. Gen. Stat. § 50C-1(6)-(7) (2019). “Harassment” is defined as “[k]nowing conduct including written or printed communication or transmission, . . . 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) (2019). Additionally, this Court has noted a distinction within the context of [N.C. Gen. Stat.] § 14-277.3A(b)(2) between social media posts written “*about*” an individual but not sent “*directly to*” the individual. See *State v. Shackelford*, 264 N.C. App. 542, 556, 825 S.E.2d 689, 698 (2019) (emphasis in original) (holding the application of harassment statute to social media posts constituted a violation of defendant’s First Amendment rights).

¶ 16 The evidence presented at the 26 May 2020 hearing consisted of a series of

printed blog articles, a series of brief video clips, and testimony from the parties. The trial court ultimately chose not to consider the video clips due to the lack of context to the entire video. The only evidence presented at the 17 August 2020 hearing consisted of plaintiff's testimony that defendant had not complied with the 26 May order.

¶ 17 In order to support a finding and conclusion that defendant was “stalking” and “harassing” plaintiff, plaintiff had the burden of presenting competent evidence that defendant, on more than one occasion, harassed plaintiff without legal purpose and with the intent to place plaintiff in fear for her or her family's safety, or cause substantial emotional distress. This could include evidence that defendant had directed written or printed communication at plaintiff that tormented, terrorized, or terrified plaintiff and served no legitimate purpose.

¶ 18 Here, the record reflects that defendant posted a news blog article and a video that discussed plaintiff, but there is no evidence that defendant directed any written or printed communication at plaintiff. The social media posts and articles were “about” plaintiff, but were not “directed at” her, similarly to the social media posts made in *Shackleford*. There was no evidence presented that defendant directed any other written or printed communication “at” plaintiff prior to the no-contact order being entered. Because there was no evidence to support a finding that defendant stalked or harassed plaintiff within the definitions of N.C. Gen. Stat. § 50C, the trial

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court's findings of fact do not support the trial court's conclusion that defendant engaged in unlawful conduct. Accordingly, we reverse the no-contact order against defendant.

B. First Amendment

¶ 19 Defendant additionally argues the no-contact order violates his protected speech under the First Amendment and constitutes a prior restraint. Because we reverse the no-contact order due to insufficient evidence, it is unnecessary to address defendant's additional arguments.

III. Conclusion

¶ 20 For the forgoing reasons, we reverse the no-contact order against defendant.

REVERSED.

Judges MURPHY and GRIFFIN concur.

Report per Rule 30(e).