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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-333

Filed 5 December 2023

Onslow County, No. 22 CVD 600605

JESSICA ABRANTES, Plaintiff,

v.

ROBERT ABRANTES, Defendant.

Appeal by defendant from order entered 14 November 2022 by Judge James L. Moore, Jr. in District Court, Onslow County. Heard in the Court of Appeals 20 November 2023.

No brief filed for plaintiff-appellee.

Woodruff Family Law Group, by Jessica S. Bullock, for defendant-appellant.

PER CURIAM.

Robert Abrantes (“defendant”) appeals from the trial court’s domestic violence protection order. Defendant contends the trial court lacked subject matter jurisdiction to enter the order and that his due process rights were violated because he did not receive service of the summons or notice of the hearing. Alternatively, defendant argues the trial court’s findings of fact were insufficient to support the

conclusion that defendant had committed an act of domestic violence. For the following reasons, we vacate the trial court's order.

I. Background

On 21 October 2022, Jessica Abrantes (“plaintiff”) filed a complaint and motion for domestic violence protective order against defendant. The parties were married and at the time the action was filed; they also share one minor child who was five years old when the action commenced.

In the complaint, plaintiff alleged that defendant had taken steps to register their child for school in Virginia, which plaintiff believed was improper because the child resided with plaintiff in North Carolina. Plaintiff further alleged that defendant called her on 25 September 2022 and made statements “that were extremely bizarre and concerning in nature[,]” as well as other “inflammatory allegations that [plaintiff] was involved with a human trafficker,” and “bizarre questions such as if [plaintiff] [had] ever been to Mexico,” and allegedly stating that he was being targeted at work. Plaintiff alleged that defendant, who was engaged in active military service at the time, was involuntarily committed to Fort Belvoir Community Hospital by military command on or about 30 September 2022.

As part of her request for relief, plaintiff requested that the parties be able to communicate through defendant's chain of command about the minor child and that “the minor child will not be able to leave the State of North Carolina with defendant for any reason until further notice due to defendant's medical circumstances.”

Plaintiff further requested that defendant “has supervised visitation with the minor child, with a third party that specializes in supervised visitation,” and “that the defendant can contact [the] minor child by phone, via FaceTime, that is within child’s school schedule.”

After filing the complaint, an Ex Parte Order was entered the same day granting plaintiff temporary relief, but the trial court did not grant plaintiff’s request for temporary custody. A civil summons was also issued the same day, but the endorsement and return of service sections were left blank and no service on defendant was recorded. A notice of hearing was issued for 31 October 2022. The notice of hearing did not include any notations regarding whether defendant was or was not served. On 31 October 2022, the trial court continued the matter to 14 November 2022 due to lack of service on defendant.

On 14 November 2022, the trial court conducted a hearing on plaintiff’s complaint. Defendant was not present at the hearing. When the case was called, the trial court inquired of the Clerk if there were “any messages” to which the Clerk replied “no,” but no other inquiry on the record was made regarding service on defendant. After hearing brief testimony from plaintiff, the trial court entered a one-year Domestic Violence Protective Order.

Defendant filed notice of appeal on 7 December 2022.

II. Discussion

Defendant contends the trial court lacked jurisdiction and violated defendant’s

due process rights because defendant did not receive notice of the complaint and hearing or service of the Summons and required attachments. We agree.

“[A] court’s jurisdiction over a person is generally achieved through the issuance and service of a summons.” *In re K.J.L.*, 363 N.C. 343, 346 (2009) (citation omitted). A defense of lack of jurisdiction over the person or insufficiency of service of process “is waived (i) if omitted from a motion [consolidating defenses], or (ii) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.” N.C.G.S. § 1A-1, Rule 12(h) (1) (2022).

Any action for a domestic violence protective order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been issued, and other papers through the appropriate law enforcement agency where the defendant is to be served.

N.C.G.S. § 50B-2(a). “Even without a summons, a court may properly obtain personal jurisdiction over a party who consents or makes a general appearance, for example, by filing an answer or appearing at a hearing without objecting to personal jurisdiction.” *In re K.J.L.*, 363 N.C. at 346 (citation omitted).

In this case, the record reflects that a civil summons was issued on 21 October 2022. The “Return of Service” section of the summons, however, was left blank. Similarly, the Notice of Hearing issued on the same day also had a blank

“Return of Service” section. The trial court’s 31 October 2022 order included a finding that defendant had “not been served with notice of this hearing[,]” and granted a continuance to continue to attempt service. Nothing in the record indicates that defendant was served between the order and the subsequent hearing on 14 November 2022. When the matter was called for trial, the trial court inquired if there were any messages regarding the case, to which the clerk responded “no.” The trial court did not conduct any further inquiry into the record to determine whether defendant had been served with the summons, complaint, or notice of the hearing. Finally, defendant was not present at any of the hearings.

Because defendant was never served and did not otherwise waive or consent to jurisdiction by making a general appearance or filing an answer or other pleading, the trial court lacked jurisdiction to enter the Domestic Violence Protective Order. Accordingly, the trial court’s order must be vacated.

III. Conclusion

For the foregoing reasons, we vacate the trial court’s order.

VACATED.

Panel consisting of: Judges ARROWOOD, HAMPSON, and GRIFFIN.

Report per Rule 30(e).