IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-937

Filed 2 April 2024

Madison County, No. 23 CVD 186

JESSE DUSTIN HUNTER, Plaintiff,

v.

JESSE LAWRENCE HUNTER, Defendant.

Appeal by Defendant from order entered 10 July 2023 by Judge Hal G. Harrison in Madison County District Court. Heard in the Court of Appeals 5 March 2024.

No brief filed for Plaintiff-Appellee.

John R. Sutton, Jr., for Defendant-Appellant.

GRIFFIN, Judge.

Defendant Jesse Lawrence Hunter appeals from a domestic violence protective order entered against him and in favor of his son, Plaintiff Jesse Dustin Hunter. Defendant argues the order should be vacated because competent evidence did not support (1) the trial court's finding that Defendant committed an act of domestic violence, (2) the trial court's finding that Plaintiff was in fear of imminent bodily

injury, and (3) therefore, the findings of fact did not support the conclusions of law. We disagree.

I. Factual and Procedural History

Defendant and Plaintiff are father and son, respectively. On 19 June 2023, Defendant struck Plaintiff in the neck during an argument about Plaintiff's daughter attending bible school. Plaintiff's fiancé and daughter were present and sitting in a car when Plaintiff inserted himself between Defendant and the car. This strike caused Plaintiff to fall to the ground and suffer a concussion. On 22 June 2023, Plaintiff filed a complaint for a domestic violence protective order. That same day, a designated magistrate entered an *ex parte* domestic violence protective order.

On 10 July 2023, a hearing was held on Plaintiff's motion for a protective order. Defendant claimed he acted in self-defense. Two witnesses, both Defendant's sisters, testified that they observed Plaintiff aggressively waiving his hands in front of Defendant's face from approximately 200 yards away. At the close of evidence, the trial court entered a one-year domestic violence protective order in favor of Plaintiff.

Defendant timely appealed.

II. Standard of Review

On review, this Court determines "'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. When there is competent evidence to support the trial court's findings of fact, those findings are binding on appeal.'" *Stancill v. Stancill*,

241 N.C. App. 529, 531, 773 S.E.2d 890, 892 (2015) (quoting *Hensey v. Hennessy*, 201 N.C. App. 56, 59, 685 S.E.2d 541, 544 (2009)). "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." *Forehand v. Forehand*, 238 N.C. App. 270, 273, 767 S.E.2d 125, 128 (2014) (citation and internal quotation marks omitted). Where different, but reasonable inferences may be drawn from the same evidence, "the determination of which reasonable inferences shall be drawn is for the trial court." *Brandon v. Brandon*, 132 N.C. App. 646, 651, 513 S.E.2d 589, 593 (1999) (citation and internal marks omitted); *Walker-Snyder v. Snyder*, 281 N.C. App. 715, 720, 870 S.E.2d 139, 143 (2022).

"The trial court's findings turn in large part on the credibility of the witnesses, [and] must be given great deference by this Court." *Brandon*, 132 N.C. App. at 652, 513 S.E.2d at 593 (citation and internal quotation marks omitted). The trial court is best suited to make these determinations because "the trial judge is present for the full sensual effect of the spoken word, with the nuances of meaning revealed in pitch, mimicry and gestures, appearances and postures, shrillness and stridency, calmness and composure, all of which add to or detract from the force of spoken words." *Stancil*, 241 N.C. App. at 531, 773 S.E.2d at 892 (quoting *Brandon*, 132 N.C. App. at 651–52, 513 S.E.2d at 593)).

III. Analysis

Defendant contends there was not competent evidence to support the trial court's findings of fact that Defendant was the aggressor. Moreover, Defendant

contends there was not competent evidence to support the trial court's finding of fact that Defendant placed Plaintiff in fear of imminent serious bodily injury. Defendant also argues the trial court's conclusions of law are not supported by the findings of fact. We disagree.

A. Self-Defense

North Carolina defines domestic violence as, among other actions, attempting to cause bodily injury, or intentionally causing bodily injury. N.C. Gen. Stat. § 50B-1(a)(1) (2023). Our legislature exempts "acts of self-defense" from this definition. *Id.* Thus, if an individual attempts to cause or intentionally causes bodily injury to another while acting in self-defense, then they have not committed the requisite act of domestic violence under section 50B-1(a)(1) needed for entry of a domestic violence protective order. *See* N.C. Gen. Stat. § 50B-1(a)(1).

While "[a] person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force," a person is not justified in using force if they are the aggressor. N.C. Gen. Stat. § 14-51.3 (2023); *see State v. Parks*, 264 N.C. App. 112, 115, 824 S.E.2d 881, 884 (2019) (explaining "our law does not permit a defendant to receive the benefit of self-defense if he was the aggressor or initially provokes the use of force against himself or herself" (citation and internal quotation marks omitted)).

Here, the trial court concluded that Defendant committed an act of domestic

violence against Plaintiff. The trial court found that "Defendant struck Plaintiff in neck, shoving him to ground causing a concussion to Plaintiff." Because it was uncontested that Defendant struck Plaintiff, the only issue left to resolve was whether Defendant did so in self-defense. The trial court heard testimony from Plaintiff, Defendant, and Defendant's two sisters; however, the court gave the sisters' testimony no weight as they admittedly observed the incident from approximately 150 to 200 yards away. *See Phelps v. Phelps*, 337 N.C. 344, 357, 446 S.E.2d 17, 25 (1994) (explaining "the trial judge, sitting without a jury, has discretion as finder of fact with respect to the weight and credibility that attaches to the evidence" (citation and internal quotations marks omitted)).

Thus, the trial court was left with the conflicting testimony of Plaintiff and Defendant. Both testified they responded to the threat of physical force. Defendant testified Plaintiff was "[p]hysically in [his] face fixing to hit [him], and that's when [Defendant] knocked him backwards." Plaintiff, on the other hand, testified "[a]s things escalated it became apparent that [Defendant] was going to reach in [Plaintiff's fiancé's] car and hit her and [Plaintiff] stepped between them." Ultimately, the trial court, being present to hear and weigh the full effects of the parties' testimony, drew the inference that Defendant was the aggressor and was not entitled to strike Plaintiff in self-defense. It was uncontested that Defendant caused Plaintiff bodily injury and thus, without a finding of self-defense, committed an act of domestic violence.

Accordingly, the trial court's finding that Defendant committed an act of domestic violence was supported by competent evidence.

B. Fear of Imminent Serious Bodily Injury

Next, Defendant contends there was not competent evidence to support the trial court's finding of fact that Defendant placed Plaintiff in fear of imminent serious bodily injury. We disagree.

The trial court received testimony from Plaintiff that he turned his head to speak to his fiancé when Defendant struck him in the throat. Plaintiff then proceeded to demonstrate the strike to the court. Moreover, Plaintiff answered "Yes, I do" when asked by the court whether he "believe[d] there[] [was] a danger of serious and immediate injury to [him] from [] Defendant." This testimony is competent evidence to support finding Defendant placed Plaintiff in fear of imminent serious bodily injury. *See Jarrett v. Jarrett*, 249 N.C. App. 269, 279–80, 790 S.E.2d 883, 890 (2016) (holding the plaintiff's testimony that the defendant cut her off on the highway as competent evidence to support a finding of fact of the same).

Accordingly, there was competent evidence to support the finding of fact that Defendant placed Plaintiff in fear of serious bodily injury.

C. Conclusions of Law

Finally, Defendant contends that the trial court's conclusions of law are unsupported by its findings of fact.

For the entry of a domestic violence protective order, "the trial court must make a conclusion of law that an act of domestic violence has occurred. The conclusion of law must be based upon the findings of fact." *Kennedy v. Morgan*, 221 N.C. App. 219, 223–24, 726 S.E.2d 193, 196 (2012) (citations and internal quotation marks omitted). A trial court's "conclusions of law are reviewable *de novo* on appeal." *Bunting v. Bunting*, 266 N.C. App. 243, 249, 832 S.E.2d 183, 188 (2019) (citation and internal quotation marks omitted).

Here, the trial court's findings of fact were supported by competent evidence. The first finding of fact, that on 19 June 2023, Defendant intentionally caused Plaintiff bodily injury, supports the court's first conclusion of law that Defendant committed acts of domestic violence against Plaintiff when he struck him in the neck. Moreover, Plaintiff's testimony that he believed there was a danger of serious and immediate injury to him from Defendant is competent evidence to support the trial court's finding of fact that Defendant placed Plaintiff in fear of imminent serious bodily injury. This finding of fact supports the conclusion of law that there is a danger of serious and immediate injury to Plaintiff.

Accordingly, the trial court's findings of fact support its conclusions of law.

IV. Conclusion

For the foregoing reasons, we hold that the trial court's findings of fact were supported by competent evidence and the findings of fact in turn support the conclusions of law.

AFFIRMED.

Judges HAMPSON and STADING concur.

Report per Rule 30(e).