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NO. COA11-1010
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

JEANIE BAKER
Petitioner/Plaintiff

v.

Guilford County
No. 11 CVD 5329

DAVID BAKER
Respondent/Defendant

Appeal by defendant from order entered 14 April 2011 by Judge Jan H. Samet in Guilford County District Court. Heard in the Court of Appeals 10 January 2012.

The Law Office of John W. Kirkman, Jr., by John W. Kirkman, Jr., and Adam W. Arthur, for plaintiff.

Moshera Mills, for defendant.

THIGPEN, Judge.

David Baker ("Defendant") appeals from a domestic violence protective order. Because we conclude the trial court did not err in entering the domestic violence protective order, we affirm.

On 6 April 2011, Jeanie Baker ("Plaintiff") filed a Complaint and Motion for Domestic Violence Protective Order

("Complaint") against Defendant, her husband. In her Complaint, Plaintiff alleged that Defendant came into her home extremely intoxicated and uninvited on 2 April 2011; that Defendant threatened Plaintiff's son-in-law and his friend earlier in the evening; that Plaintiff asked Defendant to leave but he refused; and that Defendant grabbed Plaintiff when she said she would call 911. The trial court filed an Ex Parte Domestic Violence Order of Protection on 6 April 2011.

After a hearing, on 14 April 2011 the trial court entered a Domestic Violence Order of Protection ("DVOP") to remain in effect until 14 April 2012. In the DVOP, the trial court found as fact that on 3 April 2012,¹ Defendant "attempted to cause bodily injury to the plaintiff" and placed Plaintiff "in fear of imminent serious bodily injury[.]" The trial court also found:

On the morning of April 3, 2011 at approximately 1:45 a.m. Defendant having been told not to come to [Plaintiff's] residence, came to the residence in a highly intoxicated state. When told to leave [Defendant] refused and went and sat down in

¹Defendant correctly notes the trial court erroneously stated the year of the domestic violence incident as 2012 rather than 2011. However, we believe the trial court merely committed a harmless typographical error. The trial court subsequently noted the correct date of the incident as 2011 on the DVOP, and it is clear from our review of the record that the incident occurred in 2011, rather than in 2012. Thus, Defendant suffered no prejudice as a result of this minor typographical error.

[Plaintiff's] living room. [Defendant] ha[d] previously while at a nightclub returned his wedding ring to [Plaintiff] [,] called her a whore and said it was all over. He struggled with [Plaintiff] over delivery of the keys to [Plaintiff's] car. . . . [Unreadable] and assault[ed] her when she attempt[ed] to call 911 to have [Defendant] removed.

The trial court concluded Defendant "has committed acts of domestic violence against the plaintiff[.]" and ordered him, *inter alia*, not to commit any further acts or threats of abuse and to have no contact with Plaintiff. Defendant appeals from the DVOP.

Defendant essentially contends the trial court erred in entering the DVOP because the findings of fact are not supported by sufficient evidence, and the findings of fact do not support the conclusion of law that an act of domestic violence occurred. We disagree.

"Where the trial court sits as the finder of fact, and where different reasonable inferences can be drawn from the 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) (quotation and quotation marks omitted). "Accordingly, where the trial court's findings of fact are supported by competent evidence, they are

binding on appeal." *Id.* at 652, 513 S.E.2d at 593 (citation omitted). Furthermore, "[t]he trial court's findings of fact must support its conclusions of law." *Id.* at 653, 513 S.E.2d at 594 (citation omitted).

North Carolina General Statutes § 50B-1(a) (2011) defines domestic violence as follows:

Domestic violence means the commission of one or more of the following acts upon an aggrieved party . . . by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing 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[.]

The term "personal relationship" includes a relationship between current or former spouses. N.C. Gen. Stat. § 50B-1(b).

Defendant contends the trial court's finding that Defendant assaulted Plaintiff as she was attempting to call 911 is not supported by any evidence, and therefore, the finding does not support the conclusion of law that an act of domestic violence occurred. However, Plaintiff testified at the hearing before the trial court that when she told Defendant she would call 911

if he didn't leave, he "went towards me and grabbed me[.]" Moreover, Deputy Mark Osborne, who responded to the incident, testified that Plaintiff told him Defendant grabbed her and that he saw a small mark "about an inch long under [Plaintiff's] ear." Additionally, Plaintiff's daughter testified her mother "had a scratch on her face and on the side of her neck."

Based on our review of the evidence, we conclude there was competent evidence to support the trial court's findings that Defendant "assault[ed] [Plaintiff] when she attempt[ed] to call 911" and "attempted to cause bodily injury to the plaintiff[.]" Furthermore, we conclude these findings are sufficient to support the trial court's conclusion of law that Defendant committed an act of domestic violence against Plaintiff pursuant to the statutory definition in N.C. Gen. Stat. § 50B-1(a). Accordingly, we affirm the trial court's DVOP.

AFFIRMED.

Judges HUNTER and McCULLOUGH concur.

Report per Rule 30(e).