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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-242-2

Filed: 19 June 2018

Union County, No. 15 CVD 1688

MOLLY L. BATES, Petitioner,

v.

EDUARDO GOMEZJURADO, Respondent.

Appeal by Petitioner 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. Petition for rehearing granted 16 November 2016. The following opinion supersedes and replaces the opinion filed 4 October 2016.

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

Eduardo Gomezjurado, pro se, for Respondent-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 Protective Order ("DVPO"). Bates argues the trial court failed to make findings of fact before denying her motion, in violation

of Rule 52 of the North Carolina Rules of Civil Procedure. We agree, and vacate the order and remand for additional findings.

I. Factual and Procedural History

Bates and Eduardo Gomezjurado ("Gomezjurado")[1] are former spouses and the parents of two minor children. Bates has sole legal and physical custody of the children, and Gomezjurado is allowed to communicate with them twice a week, via FaceTime and telephone calls.

Bates claims from April 2015 to July 2015, Gomezjurado began making unwanted contact with the children and Bates's mother. These incidents included, *inter alia*, 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 mother's residences. On 24 June 2015, Bates observed Gomezjurado driving out of the parking lot at her place of employment. On 28 June 2015, while Bates was on vacation with her children in Florida, Gomezjurado's scheduled conversation with the children was cut short. Bates subsequently received the following text message from Gomezjurado:

> But if you and [Bates's boyfriend] were drinking at the party by the Lake of Armenia and drive [sic] back to your hotel off of Anderson with the girls. I have it all recorded and a private eye following you right now and through your whole vacation. You're on the causeway right now. Pull over, I'm taking the video to Judge Gwyn along with last night's conversation that you agreed to let me talk to the girls. I'm filing an emergency motion to remove your rights

[1] In the record, Respondent's last name is spelled differently, as "Gomezjurado," "Gomez Jurado," or "Gomezjuardo." In his brief, he spells his last name "Gomezjurado," and we follow suit.

> because you're drinking with them. Sorry, not the causeway; Howard Franklin [Bridge]. I'm done being nice.

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

On 6 July 2015, after returning to North Carolina, Bates filed a complaint and motion for a DVPO. She alleged she needed a DVPO because of the following: (1) unwanted contact during the spring and summer of 2015; (2) the text message sent on 28 June 2015; (3) discovery of the GPS; and (4) her "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, the Mecklenburg County Sheriff's Office served Gomezjurado with the *ex parte* order and notice of the hearing for the complaint and motion, scheduled for 16 July 2015.

After granting continuances on three separate occasions, the trial court held a hearing on 10 December 2015. Bates took the stand first, testifying to her claims that Gomezjurado improperly contacted her family during the spring. She also testified she 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 she "was scared to death" after finding the tracking device, her children were also scared, and now she "look[s for Gomezjurado] under [her] bed and in closets" upon returning

home. Additionally, the behavior "substantially emotionally" affected her, because "[i]t's scary to think someone is following you and watching your every move and telling exactly what you're doing and when you're doing it."

Gomezjurado took the stand and explained he contacted members of Bates's family and their two children for the purpose of giving the children toys and clothes, and he ceased making contact upon request by Bates's attorney. On cross-examination, Gomezjurado admitted he placed the tracking device on Bates's car, sent Bates the text message, and his family arranged for someone to follow Bates while she was in Florida.[2] Gomezjurado subsequently called Rory McNicholas, a friend and former client, to testify McNicholas delivered toys and clothes to the children on Gomezjurado's behalf.

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

> 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, titled "Domestic Violence Order of Protection." (All capitalized in original). The form

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

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 trial court to write in "Other" or "ADDITIONAL" findings. Without checking off any boxes under "ADDITIONAL FINDINGS" or writing in any findings of fact, the trial court checked off a box in the section marked "CONCLUSIONS" stating "The plaintiff has failed to prove grounds for issuance of a domestic violence protective order." Bates filed timely notice of appeal on 5 January 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) (2017).

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

omitted). We review conclusions of law *de novo*. *Wright v. Auto Sales, Inc.*, 72 N.C. App. 499, 325 S.E.2d 493 (1985).

IV. Analysis

Plaintiff contends 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 agree.

"[T]he Rules of Civil Procedure apply to actions under Chapter 50B [(the governing chapter for DVPOs)], except the extent that a differing procedure is prescribed by statute." *Hensey*, 201 N.C. App. at 62, 685 S.E.2d at 546 (citation and quotation marks omitted). Under Rule 52 of the Rules of Civil Procedure, "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment." N.C. R. Civ. P. 52(a)(1) (2017). However, "[f]indings of fact and conclusions of law are necessary on decisions of any motion or order ex mero motu *only* when requested by a party and as provided by Rule 41(b)." N.C. R. Civ. P. 52(a)(b) (emphasis added).

Here, the only finding in the order is "THE COURT HEREBY FINDS THAT: This matter was heard by the undersigned district court judge, the court has jurisdiction over the parties and subject matter, and the Respondent/Defendant has been provided with reasonable notice and opportunity to be heard." Then, "[b]ased

on these facts," the court concluded, "The plaintiff has failed to prove grounds for issuance of a domestic violence protective order."

Both Bates and Gomezjurado testified at the hearing, and the conflicts in evidence must be resolved by the fact-finder. The order contains no findings beyond the one finding addressing jurisdiction and notice given to Gomezjurado. While the trial court stated it based its conclusion of the above stated facts, the trial court failed to enter any findings of fact supporting the conclusion. Accordingly, we are unable to conclude the conclusion of law was supported by sufficient findings of fact and vacate the order and remand for additional findings.

Bates also asks this Court to reverse the trial court's denial of her motion for a DVPO. She contends Gomezjurado's "admitted conduct meets [the] definition of domestic violence and so the trial court should have entered a domestic violence protective order against him." (All capitalized in original). However, because we vacate the order for additional findings, we need not address this argument on appeal, as the additional findings we require may alter the trial court's decision. We make no conclusions regarding whether Gomezjurado's actions amounted to domestic violence, as this conclusion must first be made by the trial court, and supported by sufficient findings of fact.

V. Conclusion

For the reasons stated above, we vacate the trial court's order and remand for additional findings. The trial court may, in its discretion, take additional evidence.

VACATED AND REMANDED.

Chief Judge McGEE and Judge DIETZ concur.

Report per Rule 30(e).