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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-263

Filed: 6 November 2018

Durham County, No. 16 CVD 3981

JIAN SHEN, Plaintiff,

v.

CHARLES HUGH MCGOWAN, III, Defendant.

Appeal by Defendant from order entered 13 September 2017 by Judge Fred S. Battaglia in District Court, Durham County. Heard in the Court of Appeals 17 September 2018.

Legal Aid of North Carolina, Inc., by Celia Pistolis, Gina Reyman, Rebecca Dixon Eden, and Yolanda Taylor, for Plaintiff-Appellee.

W. Gregory Duke for Defendant-Appellant.

McGEE, Chief Judge.

Charles Hugh McGowan, III ("Defendant") appeals from order renewing a Domestic Violence Protective Order for Jian Shen ("Plaintiff"), arguing that a renewal must be filed prior to one year after the court enters an *ex parte* Domestic Violence Protective Order. Because N.C. Gen. Stat. § 50B-3 (2017) requires only that a

plaintiff file for renewal of a Domestic Violence Protective Order before the expiration of the plaintiff's current Domestic Violence Protective order, we disagree.

I. Factual Background

Plaintiff and Defendant were formerly married. Plaintiff sought and received an *ex parte* Domestic Violence Protective Order ("*ex parte* order") on 19 August 2016, which was subsequently served on Defendant on 20 August 2016. At a hearing on 6 September 2016, Plaintiff was granted a Domestic Violence Protective Order ("DVPO") that would remain in effect for one year. The trial court found that constant communications from Defendant, and Plaintiff's claim that she was fearful for her and her daughter's safety, warranted the entry of the DVPO. The DVPO was amended on 6 March 2017 to remove a provision that prohibited Defendant from purchasing, receiving, or possessing a firearm. Plaintiff filed for an extension of the DVPO on 31 August 2017, and the DVPO was extended for two years, until 6 September 2019. Defendant appeals the renewal of the DVPO.

II. Standard of Review

This Court held in *Hensey v. Hennessy* that:

> 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. Where there is competent evidence to support the trial court's findings of fact, those findings are binding on appeal.

Hensey, 201 N.C. App. 56, 59, 685 S.E.2d 541, 544 (2009) (citation and quotation marks omitted). We review a trial court's conclusions of law *de novo*. *See In re S.N., X.Z.*, 194 N.C. App. 142, 146, 669 S.E.2d 55,59 (2008).

III. Analysis

Defendant argues the trial court erred in granting the two-year extension of the DVPO, as the protective orders collectively had been in effect beyond the one-year period prescribed in N.C. Gen. Stat § 50B-3 (2017). Defendant further argues the trial court erred in renewing the DVPO because Plaintiff filed a motion for renewal more than one year after receiving the *ex parte* order. Because the one-year renewal deadline in N.C.G.S. § 50B-3 begins to run with the issuance of a DVPO — not an *ex parte* order — we disagree.

Defendant's claim that the two-year extension was granted in error relies on the text of N.C.G.S. § 50B-3(b), which states: "Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year." While true, the statute continues by stating:

> The court may renew a protective order for a fixed period of time not to exceed two years, including an order that previously has been renewed, upon a motion by the aggrieved party *filed before the expiration of the current order*. . . . The court may renew a protective order for good cause.

Id. (emphasis added). While the statute refers to a protective order generally, and does not distinguish between an *ex parte* order and a DVPO, this Court has previously interpreted Chapter 50B, in context, to mean

> that N.C. Gen. Stat. § 50B-2 addresses the procedure and time limitations for ex parte or temporary orders, while the substantive protective provisions of any type of protective order are addressed by N.C. Gen. Stat. § 50B-3, and the time limitations of the one-year DVPO are addressed by N.C. Gen. Stat. § 50B-3(b).

Rudder v. Rudder, 234 N.C. App. 173, 183, 759 S.E.2d 321, 328 (2014). Therefore, the portion of the statute cited by Defendant applies only to the DVPO, not the *ex parte* order that was initially entered by the trial court. Defendant's argument that the statute's deadline includes the time the *ex parte* order was in effect is without merit.

Plaintiff filed her motion to renew on 31 August 2017, before the DVPO's expiration date of 6 September 2017. The statute requires only that the motion to renew be made "before the expiration of the current order[.]" N.C.G.S. § 50B-3(b). With no definition of "current order" provided in the statute, we apply the plain meaning of the term. *Sharpe v. Worland*, 137 N.C. App. 82, 85, 527 S.E.2d 75, 77 (2000) ("[S]tatutory interpretation begins with the plain meaning of the words of the statute."). "Current" is defined as "now going on; now in progress." *Webster's New World College Dictionary* (5th ed. 2014). At the time Plaintiff's motion to renew was filed, the one-year DVPO was in effect, as the *ex parte* order had terminated at the 6

September 2016 hearing. The *ex parte* order and the DVPO, while based on the same underlying facts, were granted at two different hearings, on separate dates, and provided different protections. The plain meaning of the term "current order" indicates the current order in this case is the DVPO that was still in effect at the time Plaintiff filed her motion to renew the DVPO, not the *ex parte* order. By filing her motion to renew before the expiration of the DVPO, Plaintiff met the statutory requirements. The trial court did not err in renewing Plaintiff's DVPO for two years, as allowed under N.C.G.S. § 50B-3(b).

Defendant further cites *Rudder*, in which this Court vacated the issuance of a DVPO that was entered after an *ex parte* order that had been continuously renewed for eighteen months, had expired. *Rudder*, 234 N.C. App. at 186, 759 S.E.2d at 330. However, the present case is distinguishable, as the trial court in *Rudder* had not entered a DVPO prior to the expiration of the *ex parte* order. *Id.* at 184, 759 S.E.2d at 329. In *Rudder*, the trial court had continued to extend the *ex parte* order, even though an *ex parte* order is designed to be a temporary measure to protect a victim until a DVPO can be entered after a hearing. *Id.* at 182, 759 S.E.2d at 328. After eighteen months of renewing the *ex parte* order, it expired; then the trial court entered a DVPO. *Id.* at 184, 759 S.E.2d at 329. This Court found that the expiration of the *ex parte* order deprived the trial court of the authority to enter a DVPO. *Id.* In the present case, the trial court properly entered a DVPO prior to the expiration of

the *ex parte* order. *Rudder* does not state that a renewal must be filed within one year of the issuance of an *ex parte* order. Defendant's argument that this Court's decision in *Rudder* means a trial court "cannot make protective orders under Chapter 50B effective for a period in excess of one year" is incorrect.

IV. Conclusion

Defendant's argument that the law requires a plaintiff to file for renewal of a DVPO prior to one year after the trial court enters an *ex parte* order is incorrect. The plain language of N.C.G.S. § 50B-3 only requires that a plaintiff renew an order prior to the expiration of the current order in effect. Since Plaintiff's current order had not expired prior to Plaintiff filing her motion to renew, Plaintiff met the statute's requirements.

AFFIRMED.

Judges CALABRIA and DIETZ concur.

Report per Rule 30(e).