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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1192

Filed: 5 November 2019

Alamance County, No. 18CVD500094

NALLELI RAMIREZ, Plaintiff,

v.

FREDDIE EDWARD PARKER, JR., Defendant.

Appeal by Defendant from judgment entered 16 July 2018 by Judge Kathryn W. Overby in Alamance County District Court. Heard in the Court of Appeals 18 September 2019.

Hatch, Little & Bunn, L.L.P., by David M. Yopp, for Plaintiff-Appellee.

Collins Family Law Group, by Rebecca K. Watts, for Defendant-Appellant.

INMAN, Judge.

Freddie Edward Parker, Jr. ("Defendant") appeals from the trial court's domestic violence protective order ("DVPO") concluding that he committed acts of domestic violence. Defendant argues that the trial court erred because no competent evidence supported the charge that he attempted to cause bodily injury. After thorough review of the record and applicable law, we vacate the trial court's order.

I. FACTUAL AND PROCEDURAL BACKGROUND

The evidence in the record tends to show the following:

Nalleli Ramirez ("Plaintiff") and Defendant began a romantic relationship in late 2011 or early 2012, eventually living together. Plaintiff and Defendant had one child together, their five-year-old son E.P.[1] Plaintiff has two older children from previous relationships, son A.F. and daughter A.R. Plaintiff and the children lived with Defendant until sometime in 2017 or 2018, when Plaintiff and Defendant separated. Defendant shares custody of E.P. with Plaintiff, placing E.P. within his unsupervised care on weekends.

On 26 March 2018, Plaintiff filed a complaint and motion in Alamance County District Court seeking an *ex parte* DVPO against Defendant. Plaintiff alleged that Defendant had been molesting A.R. since 2017. Plaintiff's complaint alleged that Defendant's actions "caused [A.R.] to feel unsafe," that Plaintiff was in fear A.R. "will suffer a lot of emotional pain," and that Defendant "still [had] an attraction" to A.R.[2] Using a preprinted form, AOC-CV-304, the trial court issued an *ex parte* DVPO that same day, finding that Defendant intentionally caused bodily injury to A.R. Defendant was enjoined from contacting Plaintiff and her family and friends and ordered to surrender all of his firearms and ammunition.

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[1] Pseudonyms are used to preserve the identities of all the juveniles mentioned.

[2] The complaint also stated that Defendant placed Plaintiff in fear for her and the children's safety. These allegations were not addressed during the trial or included in any of the trial court's findings.

After several continuances, a hearing on a permanent DVPO proceeded on 16 July 2018. The trial court received evidence that, sometime in March or April 2018, A.R. spoke to school officials, prompting a police investigation against Defendant regarding alleged sexual assaults. Detective Daniel Robert Madison ("Detective Madison") of the Burlington Police Department initiated the investigation. Following the investigation, Defendant was charged with two counts of indecent liberties against A.R. The Alamance County Department of Social Services ("DSS") also conducted its own investigation. No evidence was presented describing the alleged molestation or the content of A.R.'s reported concerns about Defendant. At the time of the DVPO hearing, Defendant's criminal prosecution was still pending. No evidence was introduced at the hearing concerning the findings or the outcome of the police investigation or the DSS investigation. Plaintiff testified she did not personally witness any assaults, but that A.R. had been "gloomy" and did not sleep well since she reported concerns involving Defendant.

On 16 July 2018, using the preprinted AOC-CV-306 form, the trial court issued a DVPO against Defendant for one year. The trial court found that on 1 March 2018, Defendant attempted to cause bodily injury against A.R. In support of its ultimate finding, the trial court found: (1) Defendant was charged with two counts of indecent liberties against the minor child A.R.; (2) Defendant was living with Plaintiff and A.R. at the time of the alleged indecent liberties; (3) Plaintiff "did not see anything

inappropriate occur" between Defendant and A.R.; and (4) DSS conducted an investigation. Defendant was ordered to have no contact with Plaintiff, stay away from the children's schools and day care, and surrender his firearms. The trial court kept the same custody visitation arrangement with E.P. in place, but ordered that the paternal grandmother pick up and drop off E.P. with Plaintiff.

Defendant appeals.[3]

II. ANALYSIS

Defendant argues that the trial court erred in concluding that he committed domestic violence. He asserts that the trial court received no competent evidence that he attempted to cause bodily injury to A.R. We agree.

> 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.

Kennedy v. Morgan, 221 N.C. App. 219, 220-21, 726 S.E.2d 193, 195 (2012) (citation omitted).

Domestic violence supports the issuance of a protective order if the trial court finds that a person "[a]ttempt[ed] to cause bodily injury, or intentionally caus[ed]

[3] Although Defendant's DVPO has expired, his appeal remains justiciable. *See Smith ex rel. Smith v. Smith*, 145 N.C. App. 434, 436-37, 549 S.E.2d 912, 914 (2001) (stating that numerous legal and non-legal collateral consequences can occur from having a DVPO on one's record).

bodily injury" to an "aggrieved party or upon a minor child residing with or in the custody of the aggrieved party." N.C. Gen. Stat. § 50B-1(a) (2017). The trial court "shall grant a protective order restraining the defendant from further acts of domestic violence" if it "finds" that domestic violence has occurred. N.C. Gen. Stat. § 50B-3(a) (2017).[4]

The record, including the transcript of the hearing, reflects scant evidence supporting the trial court's minimal findings. Although Detective Madison testified that DSS performed its own investigation, he provided no testimony regarding the information revealed or the result of the investigation. *See Burress v. Burress*, 195 N.C. App. 447, 450, 672 S.E.2d 732, 734 (2009) ("While the results of a DSS investigation may be relevant to the issue of domestic violence, the fact that there is an investigation is not.").

While Detective Madison testified that two indecent liberties charges were pending against Defendant stemming from A.R.'s allegations to school authorities, he also testified that Defendant had not been indicted.[5] Neither party submitted any

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[4] This determination by the trial court is in fact a conclusion of law rather than a finding of fact as provided in Section 50B-3(a). *Kennedy*, 221 N.C. App. at 223 n.2, 726 S.E.2d at 196 n.2.

[5] Defendant relies on this Court's opinion in *Little v. Little*, 226 N.C. App. 499, 739 S.E.2d 876 (2013), to support his assertion that being charged with a crime does not amount to domestic violence. *Little*, however, involved the trial court taking judicial notice of a criminal case that it perceived as finding the defendant guilty of assault. Because the trial court did not specify why it found the criminal file relevant, this Court reasoned that "the only possible basis" was the doctrine of collateral estoppel. *Id.* at 505, 739 S.E.2d at 880. We held the trial court erred because the underlying criminal case did not result in a final judgment, but "was a prayer for judgment continued . . . that only imposed as conditions payment of costs and obedience to [a] preexisting temporary restraining order." *Id.* at

documentary proof of Defendant's criminal proceedings or the evidence supporting the charges up to the date of the hearing. No statements by A.R. were presented, either via testimony or affidavit. No witness testified about what A.R. told law enforcement or DSS investigators. No witness testified about what A.R. told school authorities that prompted the two investigations other than that she raised a "concern."

Plaintiff's allegation is not competent evidence because she testified that she did not personally witness any of Defendant's alleged assaults against A.R. *Cf. Wilson v. Wilson*, 191 N.C. App. 789, 792, 666 S.E.2d 653, 655 (2008) (holding that a verified complaint "may be treated as an affidavit" if, *inter alia*, it is made on personal knowledge).

III. CONCLUSION

No competent evidence was presented tending to show that Defendant attempted to cause bodily injury to A.R. We are mindful the evidence tends to show that A.R.'s allegations form the basis of both the DVPO and Defendant's pending criminal charges. However, Detective Madison's statement that charges merely exist would not—absent any evidence of Defendant's actions—sustain a DVPO. The evidence that the parties were living together and that A.R. had been in a "gloom" is also insufficient to support a finding that Defendant attempted to harm A.R. Because

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505, 739 S.E.2d at 880-81. Nothing in *Little* suggests that criminal charges cannot help form the basis of a DVPO.

the trial court's conclusion that domestic violence occurred was not supported by sufficient findings of fact, we hold that the trial court erred in issuing the DVPO.

VACATED.

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).