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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-6

Filed: 31 December 2020

Cabarrus County, No. 19 CVD 1813

CYNTHIA ALICEA, Plaintiff,

v.

STEPHEN MICHAEL VAUGHN, Defendant.

Appeal by defendant from order entered 28 August 2019 by Judge Juanita Boger-Allen in Cabarrus County District Court. Heard in the Court of Appeals 6 October 2020.

Hartsell & Williams, PA, by Austin “Dutch” Entwistle III, for defendant-appellant.

No brief was filed on behalf of plaintiff.

BRYANT, Judge.

Where the record evidence supports the finding that plaintiff suffered substantial emotional distress due to defendant’s continued harassment, we affirm the trial court’s 28 August 2019 civil no-contact order. Where defendant failed to appeal the trial court’s 3 May 2019 ex parte temporary no-contact order for stalking or nonconsensual sexual conduct and on appeal failed to contend that entry of the 3

May 2019 order affected the merits of the 28 August 2019 order, we dismiss defendant's argument.¹

On 31 May 2019, in Cabarrus County District Court, plaintiff Cynthia Alicea filed a complaint for a no-contact order for stalking or nonconsensual sexual conduct, pursuant to General Statutes, section 50C-2, against her next-door neighbor defendant Stephen Michael Vaughn. Plaintiff's allegations describe various actions by defendant intended to intimidate plaintiff, including his constant observation of plaintiff, causing damage to her lawn, and calls to law enforcement by defendant reporting that plaintiff was communicating threats. Plaintiff alleged defendant had purchased a pit bull "and started to harass me with the dog." In the mornings, when plaintiff opened her garage door to leave, taking her son to school, defendant would bring his dog out to the property line between the two residences and stand about five feet from plaintiff's vehicle. When plaintiff returned, ten minutes later, defendant would again exit his residence and stand with his dog in his yard. Plaintiff alleged that on the evening of 2 May 2019, plaintiff observed defendant spraying something on her lawn, and the next morning, she determined vinegar had been sprayed on her lawn causing damage to her yard. Plaintiff told defendant to stay off of her lawn; ten minutes later, law enforcement officers arrived, responding to a report from

¹ Neither the allegations in the complaint, the evidence presented before the trial court, nor the court's findings of fact indicate nonconsensual sexual conduct. Thus, our analysis focuses solely on the statutory definition of stalking.

defendant that plaintiff had verbally assaulted him and was communicating threats. Neither party indicated what, if any, action was taken.

On 29 May 2019, plaintiff was at a community pool when “[defendant] drove by and slowed down, turned down his window and waved at me like a clown On Thursday, May 30th, . . . [defendant] was backing his car into his driveway, he proceeded to wave at me” On one occasion, while plaintiff was standing in her yard, some ten feet away from defendant, defendant told her to get out of *his* yard. As tensions escalated, both plaintiff and defendant called law enforcement. Plaintiff’s allegations include her prior charge against defendant for stalking and harassment the previous year, which was dismissed. Plaintiff alleged “he has an arsenal of weapons and we fear for the safety of our family and our neighborhood. [Defendant] also burns things in his yard and causes explosions. This is part of his tactics to intimidate us.” “[As plaintiff is] a terminal Cancer patient[,] . . . this situation of continued torment and harrasment [sic] has inflicted substantial emotional and physical distress.” Plaintiff requested a temporary no-contact order to prevent defendant from stalking, harassing, or contacting her and her family, and to refrain from entering plaintiff’s property as well as the community pool.

On 31 May 2019, the Honorable Steven A. Grossman, District Court Judge presiding, entered an ex parte temporary no-contact order for stalking. The court found that plaintiff had suffered unlawful conduct from defendant in the form of

harassment on 29 May and 30 May 2019 and during “numerous prior incidents.” The court also noted, “[he] will not leave her alone.”

On 28 August 2019, a hearing was held before the Honorable Juanita Boger-Allen, District Court Judge presiding. That same day, the court entered a no-contact order finding “[t]here has been harassment on more than one occasion causing [plaintiff] substantial emotional distress, placing [plaintiff] in fear of continued harassment.” The court ordered that defendant

1. . . . shall not visit, assault, molest, or otherwise interfere with [plaintiff].
2. . . . cease stalking [plaintiff].
3. . . . cease harassment of [plaintiff].
4. . . . not abuse or injury [plaintiff].
5. . . . not contact [plaintiff] by telephone, written communication, or electronic means.
6. . . . not enter or remain present at [plaintiff’s] residence, school, [and] place of employment

Defendant appeals.

On appeal, defendant raises four issues: whether the trial court erred by (I & II) making findings of fact and conclusions of law unsupported by the evidence; (III) entering a no-contact order; and (IV) granting an ex parte temporary civil no-contact order.

Mootness

We note that the trial court’s civil no-contact order was entered on 28 August 2019 and was effective until “one (1) year from the date of th[e] Order.” This matter

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was calendared to be heard before this Court on 6 October 2020. Thus, the order had expired prior to the time the merits of this appeal were to be reviewed by this Court.

Usually, when the terms of a challenged trial court judgment have been carried out, a pending appeal of that judgment is moot because an appellate court decision “cannot have any practical effect on the existing controversy.” *Roberts v. Madison Cty. Realtors Ass’n, Inc.*, 344 N.C. 394, 398–99, 474 S.E.2d 783, 787 (1996). In certain cases, however, the continued existence of the judgment itself may result in collateral legal consequences for the appellant. *See, e.g., In re Hatley*, 291 N.C. 693, 694–95, 231 S.E.2d 633, 634–35 (1977) (involuntary commitment order); *Smith ex rel. Smith v. Smith*, 145 N.C. App. 434, 436–37, 549 S.E.2d 912, 913–14 (2001) [(holding that “appeals from expired domestic violence protective orders are not moot because of the stigma that is likely to attach to a person judicially determined to have committed [domestic] abuse. . . . [I]n addition to the continued legal significance of an appeal of an expired domestic violence protective order, we hold the issues raised by an appeal from such an order are not moot.” (first alteration in original) (citations and quotations omitted))]. Possible adverse consequences flowing from a judgment preserve an appellant’s substantial stake in the outcome of the case and the validity of the challenged judgment continues to be a “live” controversy. As a result, an appeal from a judgment which creates possible collateral legal consequences for the appellant is not moot. *Hatley*, 291 N.C. at 694, 231 S.E.2d at 634.

In re A.K., 360 N.C. 449, 452–53, 628 S.E.2d 753, 755 (2006); *see also Williams v. Vonderau*, 362 N.C. 76, 77, 653 S.E.2d 144, 145 (2007) (per curiam) (reversing decision that appeal of civil no-contact order was moot once order expired).

Standard of Review

[W]hen the trial court sits without a jury, 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. While findings of fact by the trial court in a non-jury case are conclusive on appeal if there is evidence to support those findings, conclusions of law are reviewable *de novo*.

Tyll v. Willets, 229 N.C. App. 155, 158, 748 S.E.2d 329, 331 (2013) (alteration in original) (citation omitted).

I

Defendant argues the trial court improperly entered the 28 August 2019 civil no-contact order against him where the court failed to make findings of fact as to defendant's intent. More specifically, defendant contends the statutory authority governing a civil no-contact order entered pursuant to Chapter 50C requires a finding that a defendant's harassment was with the specific intent to place a person in fear for her safety or cause substantial emotional distress and in fact, causes substantial emotional distress. Defendant argues that in the absence of such an explicit finding of fact, the trial court's 28 August 2019 civil no-contact order must be vacated. We disagree.

We note that while the trial court failed to specifically set forth a finding as to defendant's intent, defendant fails to cite any authority to support the proposition that this failure is reversible error in the context of a civil no-contact order entered pursuant to Chapter 50C.

“In all actions tried upon the facts without a 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. Gen. Stat. § 1A-1, Rule 52(a)(1) (2019). “There are two kinds of facts: Ultimate facts, and evidentiary facts. Ultimate facts are the final facts required to establish the plaintiff’s cause of action or the defendant’s defense; and evidentiary facts are those subsidiary facts required to prove the ultimate facts.” *Woodard v. Mordecai*, 234 N.C. 463, 470–71, 67 S.E.2d 639, 644 (1951) (citations omitted).

Rule 52(a) does not, of course, require the trial court to recite in its order all evidentiary facts presented at hearing. The facts required to be found specially are those material and ultimate facts from which it can be determined whether the findings are supported by the evidence and whether they support the conclusions of law reached.

Quick v. Quick, 305 N.C. 446, 451, 290 S.E.2d 653, 657 (1982), *superseded in part by statute on other grounds as stated in State v. Brice*, 370 N.C. 244, 251, 806 S.E.2d 32, 37 (2017).

In the context of reviewing a civil no-contact order, this Court has previously looked to the evidence presented before the trial court as well as evidentiary findings of fact to determine if such established the statutorily required elements supporting the trial court’s ultimate finding. *See St. John v. Brantley*, 217 N.C. App. 558, 563, 720 S.E.2d 754, 758–59 (2011) (“The plain language of Chapter 50C does not require *any* particular purpose behind a defendant’s stalking or harassment, beyond an

intent to frighten a plaintiff or cause her severe emotional distress. Nor does Chapter 50C require that the trial court use the term ‘harassment’ or ‘stalking’ in its findings of fact to support a civil no-contact order. Rather, the court need only find ‘that the victim has suffered unlawful conduct committed by the [defendant.]’ N.C. Gen. Stat. § 50C–5(a).”); *id.* at 564–65, 720 S.E.2d at 759 (affirming a trial court’s entry of a civil no-contact order over the defendant’s challenge for lack of statutorily-required findings where the plaintiff’s testimony as well as the trial court’s findings of fact “comport[ed] with the statute’s requirements and support[ed] entry of the no-contact orders”). Further, it is well established that “intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred.” *State v. Brown*, 177 N.C. App. 177, 188, 628 S.E.2d 787, 794 (2006) (quoting *State v. Bell*, 285 N.C. 746, 750, 208 S.E.2d 506, 508 (1974)).

Moreover, where, as here, the trial court concluded that “defendant committed acts of unlawful conduct against . . . plaintiff” based on the finding of fact that “[t]here has been [harassment] on more than one occasion causing [p]laintiff substantial emotional distress, placing [p]laintiff in fear of continued [harassment],” the trial court’s finding of fact is sufficient to enable this Court to determine the statutory authority on which the trial court predicated the issuance of the 28 August 2019 civil no-contact order and to determine if the evidence before the trial court supports the exercise of such authority.

Accordingly, we overrule defendant’s argument that absent an explicit finding as to defendant’s intent, the trial court’s 28 August 2019 civil no-contact order must be vacated.

II & III

Defendant argues the trial court’s finding and conclusion that plaintiff suffered unlawful conduct by defendant is not supported by competent evidence. Moreover, defendant contends the evidence presented before the trial court during the 28 August 2019 hearing did not rise to the level of stalking or harassment required for a civil no-contact order. We disagree.

Pursuant to General Statutes, section 50C-5, “[u]pon a finding that the victim has suffered unlawful conduct committed by the respondent, the court may issue temporary or permanent civil no-contact orders as authorized in this Chapter.” N.C. Gen. Stat. § 50C-5(a) (2019). Pursuant to section 50C-1, “unlawful conduct” is defined as “[t]he commission of one or more of the following acts by a person 16 years of age or older upon a person, but does not include acts of self-defense or defense of others:

- a. Nonconsensual sexual conduct, including single incidences of nonconsensual sexual conduct.
- b. Stalking.

Id. § 50C-1(7). Neither the allegations in the complaint, the evidence presented before the trial court, nor the court’s findings of fact indicate any nonconsensual sexual conduct by defendant. We focus on stalking.

Under Chapter 14 of our General Statutes, which addresses our criminal laws, our legislature has enacted a law to address the serious problem of stalking. N.C. Gen. Stat. §14-277.3A (2019) (codified under Subchapter IX, Article 35 “Offenses Against the Public Peace”).

Stalking involves severe intrusions on the victim’s personal privacy and autonomy. It is a crime that causes a long-lasting impact on the victim’s quality of life and creates risks to the security and safety of the victim and others, even in the absence of express threats of physical harm. Stalking conduct often becomes increasingly violent over time.

Id. §14-277.3A(a). The legislature expressed an intent “to encourage effective intervention . . . before stalking escalates into behavior that has serious or lethal consequences.” *Id.*

Under Chapter 50C, our legislature has authorized courts to enter civil no-contact orders in response to stalking. Pursuant to section 50C-1, “stalking” is defined as

[o]n more than one occasion, following or otherwise harassing, as defined in G.S. 14-277.3A(b)(2), another person without legal purpose with the intent to do any of the following:

- a. Place the person in reasonable fear either for the person’s safety or the safety of the person’s immediate family or close personal associates.
- b. Cause that person to suffer substantial emotional distress by placing that person in fear of death, bodily

injury, or continued harassment and that in fact causes that person substantial emotional distress.

Id. § 50C-1(6). Plaintiff does not allege defendant followed or endangered her safety or the safety of plaintiff's immediate family or close personal associates. Thus, plaintiff's claim is solely based upon defendant's harassment with intent to cause substantial emotional distress and plaintiff suffering such. *See, e.g., Tyll*, 229 N.C. App. at 160–61, 748 S.E.2d at 332.

To define “harasses or harassment,” section 50C-1 references the definition set out in section 14-277.3A(b)(2): “[k]nowing conduct . . . directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.” N.C. Gen. Stat. § 14-277.3A(b)(2). Section 50C-1 does not define “substantial emotional distress”; therefore, we look to the plain ordinary meaning of those terms. *See Ramsey v. Harman*, 191 N.C. App. 146, 150, 661 S.E.2d 924, 927 (2008) (discussing statutory construction). Merriam-Webster’s online dictionary defines “emotional distress” as “a highly unpleasant emotional reaction (as anguish, humiliation, or fury) which results from another’s conduct and for which damages may be sought.” *Emotional distress*, Merriam-Webster.com, [https://www.merriam-webster.com/legal/emotional distress](https://www.merriam-webster.com/legal/emotional%20distress) (last visited Dec. 15, 2020). “Substantial” is defined, in pertinent part, as “considerable in quantity: significantly great.” *Substantial*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/substantial> (last visited Dec. 15, 2020). *Cf.* N.C. Gen. Stat. §

14-277.3A(b)(4) (2019) (defining “*substantial* emotional distress” in the context of the criminal offense of *stalking* as “[s]ignificant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling” (emphasis added)); *Stancill v. Stancill*, 241 N.C. App. 529, 542–43, 773 S.E.2d 890, 898–99 (2015) (upholding the trial court’s finding of substantial emotional distress in the context of Chapter 50B (“Domestic Violence”) where the plaintiff believed the defendant was “coming to kill” her after he had admittedly tried to kill her during a previous romantic breakup and following a second breakup communicated to the plaintiff that her actions “caused a rage . . . [he] couldn’t imagine. [It is going to] be ugly” and “[t]he wrath will be . . . immense. I will spend every dollar I have to get revenge”).

This Court has previously affirmed a trial court’s 50C civil no-contact order where the defendants clearly sought to torment and terrorize the plaintiffs. *See St. John*, 217 N.C. App. 558, 720 S.E.2d 754; *Hardin v. Coulston*, No. COA16-694, 2016 WL 7368727 (N.C. Ct. App. Dec. 20, 2016) (unpublished). *Cf. Ramsey*, 191 N.C. App. 146, 661 S.E.2d 924 (vacating a trial court’s Chapter 50C civil no-contact order after reasoning the defendant’s sharp personal criticisms of the plaintiff published on the defendant’s internet website were not intended and did not cause the plaintiff substantial emotional distress as required by section 50C-1(6)). In *Hardin*, this Court affirmed the 50C civil no-contact order where “[the d]efendant drove his vehicle

towards [the p]laintiff at a high rate of speed; exited the vehicle and charged towards [the p]laintiff with a fist balled up, yelling obscenities, and ordered one of his employees to roll over the [p]laintiff with a dump truck” and on another occasion blocked the plaintiff’s only avenue for ingress and egress to the road on which the plaintiff lived, detaining the plaintiff for five minutes. *Hardin*, 2016 WL 7368727, at *2.

In *St. John*, the defendants (two sisters) began to harass the plaintiff after she reported an assault by one of the defendants. While the assault trial was pending, the plaintiff suffered negative social media messaging, threats of vandalism to her property, and being verbally accosted by the defendant’s yelling at her from the outside of the plaintiff’s residence. *St. John*, 217 N.C. App. at 559–60, 720 S.E.2d at 756–57. “Plaintiff testified she did ‘not feel safe’ and stated, ‘I think if I go outside, except to get in my car, [one of the defendants] will try to harm me.’” *Id.* 560–61, 720 S.E.2d at 757. The Court reasoned that the defendants’ “knowing conduct” was directed at the plaintiff with the intent to terrorize her and held no legitimate purpose. “Thus, [the d]efendants’ actions to intimidate [the p]laintiff were ‘harassment’ under section 14–277.3A(b)(2), which in turn constituted ‘stalking’ and thus ‘unlawful conduct’ under Chapter 50C.” *Id.* at 563, 720 S.E.2d at 758.

In its 28 August 2019 order, the trial court found that “[t]here has been harassment on more than one occasion causing [p]laintiff substantial emotional

distress, placing [p]laintiff in fear of continued harassment.” Thus, the court concluded, “defendant committed acts of unlawful conduct against . . . plaintiff.”

At trial, on direct examination, plaintiff presented evidence that defendant was her adjacent neighbor and that each resided on a lot roughly an acre in size. When asked how defendant had harassed her, she testified that he stood outside to observe in close proximity her goings and comings every day. He had gotten a dog and put the dog’s marker to use the bathroom some twenty feet from her property and her car. And “so every morning as I would take my son to school he would come out and stand there with the dog and basically try to intimidate me. . . . [A]nd I would come back and there he was again.” Plaintiff testified that defendant spread weed killer along the edge of her lawn and “killed our lawn,” and shouted at her so loudly she felt the need to call law enforcement. Plaintiff further testified that the previous summer, defendant began yelling obscenities at her from the sidewalk, told her to go inside her residence because she “did not need to be outside.”

Q. . . . Are you afraid of [defendant]?

A. Yes. I don’t put anything past him.

Q. Why is that?

A. There was a large explosion about six months ago. It was late at night, about 11 o’clock at night. . . . We thought it had been a gas line.

. . . .

Q. . . . So what do you know, from what you have seen about this incident that took place in this back yard?

A. He has a barrel out [there] that he burns things in, making explosions. . . .

. . . .

He has PTSD. He is irrational. He does not care or have any empathy towards me or my family. He feels that he can get away with any type of behavior that he has. He continues to harass and stalk me with his cameras. He actually admitted to that in his affidavit. He tried to teach me a lesson, and those were his words in the affidavit to this [c]ourt. And I am very afraid of what he could do to me and my family.

Plaintiff, who has terminal cancer, testified that she takes anxiety medication and that she speaks with someone for emotional distress.

The evidence presented during the 28 August 2019 hearing supports the finding that plaintiff has suffered substantial emotional distress placing her in fear of continued harassment. Also, the evidence supports the statutory requirement that defendant has acted with the intent to cause plaintiff to suffer substantial emotional distress by placing her in fear of continued harassment. *See* N.C. Gen. Stat. § 50C-1(6)b.; *St. John*, 217 N.C. App. 558, 720 S.E.2d 754; *Hardin*, 2016 WL 7368727. Therefore, the finding of fact supports the trial court's conclusion that defendant committed acts of unlawful conduct against plaintiff within the meaning of N.C. Gen. Stat. §§ 50C-1(7) and 50C-5(a). Accordingly, the trial court's 28 August 2019 civil no-contact order against defendant is affirmed.

IV

Defendant also argues the trial court erroneously entered an ex parte civil no-contact order against him.

We note that the ex parte temporary civil no-contact order for stalking entered by Judge Grossman against defendant on 3 May 2019 was an interlocutory order preceding the final order entered 28 August 2019. Defendant timely entered notice of appeal following the entry of the 28 August 2019 no-contact order for stalking, appealing only the “No-Contact Order for Stalking or Nonconsensual Sexual Conduct entered on August 28, 2019 in the District Court of Cabarrus County by the Honorable Juanita Boger-Allen.” Moreover, defendant fails to argue that the entry of the 3 May 2019 ex parte temporary civil no-contact order affected the merits of the 28 August 2019 civil no-contact order for stalking. *See Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 382 (1950) (“A nonappealable interlocutory order of [a trial court], which involves the merits and necessarily affects the judgment, is reviewable . . . on appropriate exception upon an appeal from the final judgment in the cause.” (citations omitted)); *cf. Hensey v. Hennessy*, 201 N.C. App. 56, 59, 685 S.E.2d 541, 544 (2009) (reviewing an ex parte DVPO where the notice of appeal was filed after entry of the DVPO and notice of appeal was given as to *both* the ex parte DVPO and the DVPO). Therefore, the appeal of this ex parte temporary civil no-contact order is not properly before this Court. Accordingly, we dismiss this issue.

ALICEA V. VAUGHN

Opinion of the Court

AFFIRMED IN PART; DISMISSED IN PART.

Judges TYSON and COLLINS concur.

Report per Rule 30(e).