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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-174

No. COA20-481

Filed 20 April 2021

Iredell County, No. 20 CVD 468

ROBERT R. TODD, Plaintiff,

v.

DONNA WELLING TODD, Defendant.

Appeal by defendant from order entered 24 February 2020 by Judge Deborah Brown in Iredell County District Court. Heard in the Court of Appeals 24 March 2021.

No appellate entry by plaintiff.

Clodfelter Law, PLLC, by Christina E. Clodfelter, for defendant.

ARROWOOD, Judge.

¶ 1 Donna Welling Todd ("defendant") appeals from a domestic violence protection order entered 24 February 2020. Defendant contends that the trial court's findings of fact are not supported by competent evidence and that the conclusion of law is not supported by the findings of fact. For the following reasons, we affirm the trial court.

I. Background

¶ 2 Robert R. Todd ("plaintiff") filed a complaint and motion for domestic violence protective order on 19 February 2020. Plaintiff also requested an ex parte domestic violence order of protection which the trial court denied on 19 February 2020. The complaint and motion for domestic violence protective order were heard on 24 February 2020 in Iredell County domestic violence court, the Honorable Deborah Brown presiding. The evidence and testimony presented at the hearing tended to show as follows.

¶ 3 At the time of the hearing, the parties were in the midst of a "highly contested divorce case[.]" Defendant was granted temporary possession of the marital residence in an earlier ex parte domestic violence order of protection entered 30 December 2019. The complaint and motion for domestic violence order of protection were later dismissed on 27 January 2020 and both parties resumed living in the marital residence. At the 24 February hearing, plaintiff testified that he changed the locks on the residence "later in [the] week" after 21 January because he "had a lot of things missing[.]" On 2 February 2020, plaintiff discovered that the gas-powered heat "had been turned off[,]" and on 10 February 2020 found that the electrical power had been disconnected from the house. Plaintiff had services restored on each of the following days. When plaintiff returned home from work on 17 February 2020, he discovered that defendant had removed the front door from the

residence. Plaintiff testified that as he was attempting to address the missing door, defendant "[flew] up in the car screaming with the headlights up—in the backyard, like she's going to run over me."

¶ 4 At the close of the plaintiff's case, defendant made a motion to dismiss "on the grounds that what [plaintiff] has testified to really relates to a dispute over the possession of the marital residence[,]" and is instead a matter for the civil court. The trial court denied defendant's motion.

¶ 5 Defendant testified that after she separated from plaintiff in November 2019, she continued to come and go from the marital residence because all of her belongings were there and she "had told him that [she] wanted him to leave." Defendant also described several prior incidents in which plaintiff allegedly damaged the marital residence. Defendant testified that when the previously requested order was dismissed on 27 January 2020, plaintiff returned to the residence and "wanted in." Plaintiff called the sheriff's department, who told defendant that she had to give plaintiff a key because it was a marital residence. Defendant stated that while both parties continued to use the residence during this period, she would make sure to leave the residence if she saw plaintiff coming to the house. Defendant also testified that the electrical power was cut off for nonpayment, which she attributed to plaintiff's failure to pay. When asked if there was a door on the front of the residence, defendant acknowledged removing the front door, also noting that there was a storm

door, "[s]o it's not like there is no door." Defendant described her reason for removing the door as "to keep him from changing the deadbolts again."

¶ 6 At the conclusion of the hearing, the trial court entered a domestic violence order of protection in favor of plaintiff, effective until 27 April 2020 or until the civil matter was heard. The trial court made additional findings of fact that on 17 February 2020, defendant placed plaintiff "in fear of continued harassment that rises to such a level as to inflict substantial emotional distress[,]" noting that "[d]efendant has turned off utilities [and] gone so far as removing the front door to prevent the Plaintiff from changing locks. Law enforcement has been called at least 5 [times]." Defendant gave notice of appeal on 27 February 2020.

II. Discussion

¶ 7 Defendant contends that the trial court's findings of fact are not supported by competent evidence, and that the trial court's conclusion of law is unsupported by the findings of fact. Defendant specifically argues that the findings of fact and conclusion of law are improper because the record lacks competent evidence that defendant placed plaintiff in fear of continued harassment that rises to such a level so as to inflict substantial emotional distress. We disagree.

A. Findings of Fact

¶ 8 When reviewing a domestic violence protective order, this Court must determine "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." *Martin v. Martin*, 266 N.C. App. 296, 302, 832 S.E.2d 191, 197 (2019) (quoting *Burress v. Burress*, 195 N.C. App. 447, 449, 672 S.E.2d 732, 734 (2009)). "Where there is competent evidence to support the trial court's findings of fact, those findings are binding on appeal." *Burress v. Burress*, 195 N.C. App. 447, 449-50, 672 S.E.2d 732, 734 (2009) (citing *Harris v. Harris,* 51 N.C. App. 103, 105, 275 S.E.2d 273, 275 (1981)). "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding." *Forehand v. Forehand*, 238 N.C. App. 270, 273, 767 S.E.2d 125, 128 (2014) (citation omitted). "In a non-jury trial, where there are sufficient findings of fact based on competent evidence to support the trial court's conclusions of law, the judgment will not be disturbed because of other erroneous findings which do not affect the conclusions." *Clark v. Dyer*, 236 N.C. App. 9, 24, 762 S.E.2d 838, 846 (2014), *cert. denied*, 368 N.C. 424, 778 S.E.2d 279 (2015).

¶ 9 Our General Statutes define "domestic violence" as

> the commission of one or more of the following acts upon an aggrieved party . . . with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:
>
> . . . .
>
> (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[.]

N.C. Gen. Stat. § 50B-1(a) (2019). Harassment is defined as "knowing 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) (2019).

¶ 10 In this case, there was substantial competent evidence to support the trial court's findings of fact. Plaintiff presented evidence that following the dismissal of a domestic violence protective order, defendant had turned off several utilities at the marital home, eventually removing the front door of the residence and confronting plaintiff in the backyard. Defendant denied any involvement in shutting off the electricity but did acknowledge that she had removed the front door. We hold that there was sufficient competent evidence to support the trial court's findings of fact with respect to continued harassment.

¶ 11 Defendant argues that she removed the door "for the legitimate purpose of continuing to occupy her residence where she lived, preventing Plaintiff from locking her out of the [marital] residence, and preventing further damage to the property by Plaintiff." We disagree with defendant's contention, as the act of removing the front door from a marital residence does not serve a legitimate purpose in these circumstances, instead constituting evidence of harassment directed at tormenting, terrorizing, or terrifying plaintiff.

B. Conclusion of Law

¶ 12 Defendant next contends that the trial court's conclusion of law is not supported by adequate findings of fact on the grounds that the previously discussed findings of fact are not supported by competent evidence. We disagree.

¶ 13 When entering a domestic violence order of protection, a trial court is required to make a conclusion of law that an act of domestic violence has occurred. N.C. Gen. Stat. § 50B-3(a) (2019). Conclusions of law must be based upon findings of fact. *Hensey v. Hensey*, 201 N.C. App. 56, 59, 685 S.E.2d 541, 544 (2009). Although the trial court is not required to "set forth the evidence in detail[,]" it is required to make specific findings on the ultimate facts determinative of the questions raised in the action and essential to support the conclusions of law. *Kennedy v. Morgan*, 221 N.C. App. 219, 224, 726 S.E.2d 193, 196 (2012) (citations omitted).

¶ 14 Here, the conclusion of law that defendant committed an act of domestic violence against plaintiff is supported by the findings of fact. Although the findings of fact do not go into as much detail as the hearing testimony, the trial court did specifically reference defendant's actions in turning off utilities and removing the front door to the residence, which are the ultimate facts determinative to the question of harassment and emotional distress. Furthermore, as previously discussed, the findings of fact are supported by competent evidence. Accordingly, we hold that the trial court's conclusion of law is supported by adequate findings of fact.

III. Conclusion

¶ 15 For the forgoing reasons, we hold that there was competent evidence to support the trial court's findings of fact, which in turn are adequate to support the conclusion of law. We affirm the trial court's judgment and order.

AFFIRMED.

Judges HAMPSON and CARPENTER concur.

Report per Rule 30(e).