An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-268

No. COA21-458

Filed 19 April 2022

Brunswick County, No. 20CVD 500482

DANA HITCHCOCK, Plaintiff,

v.

KIKI RUPERT, Defendant.

Appeal by Defendant from order entered 11 March 2021 by Judge Quintin M. McGee in Brunswick County District Court. Heard in the Court of Appeals 26 January 2022.

Howard A. Jacobson for Defendant-Appellant.

Plaintiff-Appellee, pro-se.

CARPENTER, Judge.

¶ 1 Appeal by Kiki Rupert ("Defendant") from the entry of a domestic violence protective order filed against her in Brunswick County District Court on 11 March 2021. Defendant contends her actions did not warrant the entry of a domestic violence protective order against her, but instead served a "legitimate purpose" pursuant to N.C. Gen. Stat. § 14-277.3A(b)(2) (2021). Competent evidence exists to

support the trial court's findings of fact, and in turn, conclusions of law. We affirm the actions of the trial court.

I. Factual and Procedural Background

¶ 2 This case arises out of a domestic violence protective order filed against Defendant. Dana Hitchcock ("Plaintiff") and Defendant were in a relationship from June 2018 through the beginning of October 2020. The couple entered into a landscaping business together in November 2018 and moved in with each other in June 2019. The relationship eventually deteriorated. Throughout September and early October 2020, Plaintiff sought to remove Defendant from the landscaping business through a variety of methods, including removing Defendant's signature from the signature card for the business bank account, moving the business office, and canceling the service to Defendant's phone.

¶ 3 Defendant became violent during heated arguments with Plaintiff, during which Defendant would make threats and "put her hands on [Plaintiff] over and over again." Plaintiff's sister testified that between July and October 2020, Defendant threatened to burn down Plaintiff's home a minimum of "four to six times." Plaintiff testified he believed these threats to be genuine. Plaintiff found a pistol in the bathroom of their home on 8 October 2020, and believed Defendant planned to use the weapon against him. Plaintiff moved out of the home on 12 October 2020.

¶ 4 On 29 December 2020, Defendant filed a domestic violence complaint against Defendant. Judge Calvin Chandler entered an *ex parte* domestic violence protective order against Defendant the same day. On 11 March 2021, Judge Quintin McGee presided over a domestic violence protective order hearing and granted the order against Defendant. The trial court made the following finding of fact: "Defendant placed [Plaintiff] in fear of continued harassment that rises to the level of substantial emotional distress by [. . .] on multiple occasions, threaten[ing] to harm the Plaintiff and burn down his home." The court then made the following conclusion of law: "The Defendant has committed acts of domestic violence against the [P]laintiff." Defendant appealed from the domestic violence protective order against her.

II. Jurisdiction

¶ 5 Jurisdiction lies in this Court as a matter of right over a final judgment of a district court, pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2021).

III. Issue

¶ 6 The issue on appeal is whether the district court erred in granting a domestic violence protective order in favor of Plaintiff against Defendant.

IV. Standard of Review

¶ 7 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.

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) (citation omitted). "Competent evidence is evidence 'that a reasonable mind might accept as adequate to support the finding.'" *Ward v. Ward*, 252 N.C. App. 253, 256, 797 S.E.2d 525, 528 (2017) (citation omitted).

¶ 8 "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).

V. Analysis

¶ 9 Defendant contends competent evidence does not support the findings of fact made by the trial court, and the findings were inadequate to support the trial court's conclusions of law. Specifically, Defendant argues Plaintiff was not harassed because there was no evidence tending to show he was tormented, terrorized, or terrified, and even if he was, Defendant was acting to serve a "legitimate purpose." We disagree.

¶ 10 Domestic violence under N.C. Gen. Stat. § 50B occurs when:

> a person with whom the aggrieved party has or has had a personal relationship . . . [places] 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 [N.C. Gen. Stat. §] 14-277.3A, that rises to such a level as to inflict substantial emotional distress[.]

N.C. Gen. Stat. § 50B-1(a)(2) (2021).

¶ 11 Harassment is defined as "[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). N.C. Gen. Stat. § 50B-1(a)(2) requires this Court to apply "a subjective test, rather than an object reasonableness test, to determine whether an act of domestic violence has occurred." *Jarrett v. Jarrett*, 249 N.C. App. 269, 280, 790 S.E.2d 883, 890 (2016) (citation omitted).

¶ 12 Here, Plaintiff testified he believed the pistol he found was going to be used to harm him, and the repeated threats to burn down his house were genuine. Along with this evidence, Plaintiff testified Defendant struck him multiple times during heated arguments. "[A] reasonable mind" might find this evidence "adequate to support the finding" Defendant suffered substantial emotional distress. *See Ward*, 252 N.C. App. at 256, 797 S.E.2d at 528.

¶ 13 As to the "legitimate purpose" argument, evidence existed to suggest some of the threats made by Defendant occurred prior to Defendant's removal from the business. *See* N.C. Gen. Stat. § 14-277.3A(b)(2). Disregarding this evidence, threatening to harm someone or burn their home because of a business dispute would not fall under a "legitimate purpose." *See Stancill v. Stancill*, 241 N.C. App. 529, 542–43, 773 S.E.2d 890, 899 (2015) (holding harassing text messages served no "legitimate purpose" when the defendant testified he only meant to be aggressive in negotiating the parties' property settlement). Defendant further contends the letters

sent by Defendant's counsel served a "legitimate purpose," but this argument is misplaced. The domestic violence protective order was filed against Defendant, not her counsel. Counsel's actions were not considered in the order.

¶ 14 Defendant argues the court's conclusions of law are not proper because the court made no factual findings Plaintiff was tormented, terrorized, or terrified, or that he experienced substantial emotional distress. For this argument, Defendant relies heavily on outdated case law based on a previous version of N.C. Gen. Stat. § 50B-1(a)(2). *See Brandon v. Brandon*, 132 N.C. App. 646, 653, 513 S.E.2d 589, 594 (1999) (citing to N.C. Gen. Stat. § 50B-1(a)(2) (1997)). The current version of this statute has been amended to include "continued harassment, as defined in [N.C. Gen. Stat.] § 14-277.3A, that rises to such a level as to inflict substantial emotional distress[.]" N.C. Gen. Stat. § 50B-1(a)(2).

¶ 15 The trial court made the following findings of fact: "Defendant placed [Plaintiff] in fear of continued harassment that rises to the level of substantial emotional distress by . . . threaten[ing] to harm the Plaintiff and burn down his home" on "multiple occasions." The court then made the following conclusion of law: "The Defendant has committed acts of domestic violence against the [P]laintiff." This finding of fact was supported by Plaintiff's testimony, in which he claimed he was afraid of Defendant and believed she was planning to use her pistol to harm him, even though this allegation is wholly unsupported. Plaintiff's testimony qualifies as

competent evidence, as "a reasonable mind might accept [the evidence] as adequate to support" the finding of fact that Plaintiff had suffered substantial emotional distress. *See Ward,* 252 N.C. App. at 256, 797 S.E.2d at 528.

¶ 16 Because the current statute defining domestic violence includes the harassment provision, and the trial court found Plaintiff was "in fear of continued harassment that rises to the level of substantial emotional distress," the trial court's findings of fact support its conclusion of law that Defendant committed acts of domestic violence. *See Burress* at 449–50, 672 S.E.2d at 734.

¶ 17 Defendant contends Plaintiff's testimony is not credible and is inconsistent. Defendant contends Plaintiff's testimony regarding his fear of Defendant's alleged plan to harm him arising "from the presence of a weapon [Defendant] could not have known was loaded (and was not loaded) should give rise to serious doubts regarding his veracity." Second, Defendant contends "[Plaintiff's] truthfulness also must be questioned in light of the blatantly false statement at trial that [Defendant] was under investigation for stealing funds from [Plaintiff], and that charges had been filed against her." Issues of credibility, however, are "for the trial court to decide." *State v. Darrow*, 83 N.C. App. 647, 649, 351 S.E.2d 138, 140 (1986) (citation omitted). Though Plaintiff's testimony and the asserted lack of credibility could have led the trial court to a different finding, the evidence presented at trial was such that a "reasonable mind might find adequate" to support the court's finding and is therefore

competent. *See Ward,* 252 N.C. App. at 256, 797 S.E.2d at 528. Because the trial court's findings are supported by competent evidence, we will not disturb the decision to accept Plaintiff's questionable testimony as adequately credible.

VI. Conclusion

¶ 18 Competent evidence supports the trial court's findings of fact. Plaintiff discovered a pistol, which he testified without supporting basis he believed Defendant would use against him; Plaintiff's sister testified Defendant threatened to burn down Plaintiff's home a minimum of "four to six times;" and Plaintiff testified Defendant was often violent during arguments. These facts support the trial court's conclusion of law that Defendant committed acts of domestic violence against Plaintiff, as well as the trial court's entry of a domestic violence protective order against her. The trial court's entry of the domestic violence protective order is affirmed.

AFFIRMED.

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).