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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-907

Filed 02 May 2023

Henderson County, No. 22CVD1120

JOSE LUIS RAMIREZ FIGUEROA, Plaintiff,

v.

LAURA ST. CLAIR, Defendant.

Appeal by defendant from order entered 22 July 2022 by Judge Mack Brittain in Henderson County District Court. Heard in the Court of Appeals 11 April 2023.

*Jose Luis Ramirez Figueroa, pro se, for plaintiff-appellee; no brief filed.*

*Middlebrooks Law PLLC, by James G. Middlebrooks, for defendant-appellant.*

FLOOD, Judge.

Laura St. Clair (“Defendant”) appeals from the trial court’s issuance of a no-contact order for stalking or nonconsensual sexual conduct. As we explain in further detail below, we reverse the trial court’s order for failure to find the requisite specific intent on part of Defendant.

**I. Facts and Procedural Background**

On 13 July 2022, Jose Luis Ramirez Figueroa (“Plaintiff”)—a stucco

subcontractor—filed a complaint for a No-Contact Order for Stalking or Nonconsensual Sexual Conduct against Defendant. Plaintiff cited in his complaint that Defendant, a neighbor, had harassed him and his family by repeatedly calling, emailing, and sending threatening messages since 2020. The matter was heard on 28 July 2022 in Henderson County District Court, where Plaintiff was represented by counsel, and Defendant appeared *pro se*. At the hearing, Plaintiff’s employer testified to having received phone calls from Defendant regarding Plaintiff, where Defendant told the employer that Plaintiff was participating in illegal chicken fights and dog fights. Although Defendant did not mention Plaintiff by name on these calls, the employer was able to ascertain that Defendant was referring to Plaintiff due to a comment Defendant made about “stucco,” as Plaintiff is the “only person [the employer has] used for stucco[.]”

After the close of evidence, the trial court orally articulated its finding that Defendant committed “harassing” acts against Plaintiff. The court specifically provided that Defendant “contacted [Plaintiff’s] employers to disparage [Plaintiff], causing difficulty between [Plaintiff] and his employers[.]” and “there was a previous action between [Defendant] and [Plaintiff] that was dismissed with the agreement that [Defendant] and [Plaintiff] would not interfere with one another.” The trial court further provided its “findings are limited to what [it] just stated; not necessarily what was in the Complaint.”

On 28 July 2022, the trial court entered a no-contact order for stalking or

nonconsensual sexual conduct (the “Order”) against Defendant. In the Order’s “Findings” section, without marking the box that indicates Defendant acted with intent, the trial court provided:

[Defendant] cause[d] [Plaintiff] to suffer substantial emotional distress by placing [Plaintiff] in fear of continued harassment, and this in fact caused [Plaintiff] substantial emotional distress, [by] contacting Plaintiff’s employers to disparage Plaintiff causing difficulty between Plaintiff and employers. [A] [p]revious action between [the] parties was dismissed with [the] agreement that parties would not interfere with one another.

Defendant obtained counsel, and on 25 August 2022, filed Notice of Appeal.

**{R. p. 10}**

## **II. Jurisdiction**

Defendant’s appeal is properly before this Court under N.C. Gen. Stat. § 7A-27(b)(2). N.C. Gen. Stat. § 7A-27(b)(2) (2021) (“[A]ppeal lies of right directly to the Court of Appeals . . . [f]rom any final judgment of a district court in a civil action.”).

## **III. Analysis**

Defendant argues the Order was not supported by appropriate findings of fact and competent evidence in the Record. Defendant specifically contends there is insufficient evidence in the Record to satisfy the requirements of N.C. Gen. Stat. Ann. § 50C-1(6); that Defendant’s communications were not “directed to” Plaintiff; and that the Order does not contain a specific finding of requisite intent.

### **A. Specific Intent**

When a 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 facts 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).

Pursuant to N.C. Gen. Stat. Ann. § 50C-1(6), a civil no-contact order for stalking may be issued against a party when said party,

[o]n more than one occasion, follow[s] or otherwise harass[es], as defined in [N.C. Gen. Stat.] § 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.

N.C. Gen. Stat. Ann. § 50C-1(6) (2021). Under the statute, “[h]arasses or 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) (2021). Even if a trial court finds by competent evidence that a defendant's behavior amounted to harassment, however, this Court has recently held that “a finding of harassment alone . . . cannot be the sole basis to sustain entry

of a civil no-contact order under N.C. Gen. Stat. § 50C-1(6).” *DiPrima v. Vann*, 277 N.C. App. 438, 2021-NCCOA-210, ¶ 17 (citation and quotation marks omitted). Rather,

the trial court [must] further find [the] defendant’s harassment was accompanied by the specific intent to either: (1) place the person in fear for their safety, or the safety of their family or close personal associates or (2) cause the person substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment and in fact cause that person substantial emotional distress.

*Id.*, 2021-NCCOA-210, ¶ 17; *see* N.C. Gen. Stat. Ann. § 50C-1(6) (2021). Additionally, “such a finding [of specific intent] must be specifically made, not inferred.” *DiPrima*, 2021-NCCOA-210, ¶ 18 (“[A] specific finding of intent is necessary under [N.C. Gen. Stat. Ann. § 50C-1(6)].”).

Here, the trial court failed to make any finding that Defendant specifically intended to cause any of the harms listed under N.C. Gen. Stat. Ann. § 50C-1(6). At the hearing, the trial court found that Defendant harassed Plaintiff and stated the “basis of the order” was that Defendant “contacted [Plaintiff’s] employers to disparage [Plaintiff], causing difficulty between [him] and his employers[,]” and that “there was a previous action between [the parties] that was dismissed with the agreement that [the parties] would not interfere with one another.” The Order provided the same findings as articulated at the hearing, and box 3a—which provides Defendant acted “with the intent to” cause Plaintiff to suffer emotional distress—was left unmarked.

Our analysis need not go further because, regardless of whether there was sufficient evidence to support the trial court’s finding of harassment, issuance of a proper civil no-contact order for stalking requires the trial court to find Defendant had specific intent to act in accordance with subsections a. and b. of N.C. Gen. Stat. Ann. § 50C-1(6), and “such a finding must be specifically made, not inferred.” *See DiPrima*, 2021-NCCOA-210, ¶¶ 17–18. The trial court, thus, erred by failing to make specific findings of fact as to Defendant’s intent.

#### **IV. Conclusion**

For the foregoing reasons, we reverse the trial court’s civil no-contact order.

REVERSED.

Chief Judge STROUD and Judge COLLINS concur.

Report per Rule 30(e).