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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-330

Filed 2 January 2024

Cabarrus County, No. 22 CVD 1605

LAURA RACHEL SHAY, Plaintiff,

v.

JOSEPH MICHAEL SHAY, Defendant.

Appeal by Defendant from order entered 30 September 2022 by Judge Steven A. Grossman in Cabarrus County District Court. Heard in the Court of Appeals 29 November 2023.

Laura R. Shay, pro se, for Plaintiff-Appellee.

Epperson Law Group, PLLC, by Lauren E. R. Watkins and James L. Epperson, for Defendant-Appellant.

GRIFFIN, Judge.

Defendant Joseph Michael Shay appeals from a domestic violence order of protection issued by the trial court. Defendant contends the order was not based on competent evidence and failed to create a basis for any acts of domestic violence against Plaintiff Laura Shay or their minor children. We hold the trial court did not err.

I. Factual and Procedural Background

Plaintiff and Defendant were married in October 2006. Four children were born of the marriage. On 25 May 2022, Plaintiff filed a complaint and motion for domestic violence protective order (“DVPO”). The same day, the trial court entered an ex parte DVPO. On 1 June 2022, Plaintiff filed an amended complaint and motion for DVPO. On 14 July 2022, Defendant filed an answer, motion to dismiss, and motion for sanctions.

On 28 September 2022, the matter came on for hearing in Cabarrus County District Court. At the conclusion of the hearing, the trial court denied Defendant’s motion to dismiss. On 30 September 2022, the trial court entered a DVPO which included a temporary child custody addendum (“Addendum”).

On 10 October 2022, Defendant timely filed notice of appeal.¹

II. Analysis

Defendant specifically argues the trial court’s findings of fact are not supported by competent evidence; the trial court’s findings do not support its conclusions of law; and the Addendum was entered in error. We disagree.

On appeal from a DVPO, we must determine “whether there was competent

¹ On 1 May 2023, Plaintiff filed a motion for inclusion in the NC Appellate Pro Bono Program. In our discretion, we deny Plaintiff’s motion.

On 22 September 2023, Plaintiff filed a motion to supplement the record on appeal. Plaintiff’s motion is hereby denied.

evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." *Gibson v. Lopez*, 273 N.C. App. 514, 517, 849 S.E.2d 302, 304 (2020) (internal marks and citation omitted). "Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding[s]." *Forehand v. Forehand*, 238 N.C. App. 270, 273, 767 S.E.2d 125, 128 (2014) (internal marks and citation omitted). We recognize "[t]he trial court is in the best position to weigh the evidence, determine the credibility of witnesses[,] and the weight to be given their testimony." *Goodson v. Goodson*, 145 N.C. App. 356, 362, 551 S.E.2d 200, 205 (2001) (internal marks and citation omitted). Thus, "[w]here there is any competent evidence to support the trial court's findings, such findings are conclusive and binding upon this Court, even though there is evidence contra to sustain other findings." *Id.* While findings of fact supported by competent evidence are binding on appeal, the trial court's conclusion of law are reviewable de novo. *State v. Fields*, 268 N.C. App. 561, 567, 836 S.E.2d 886, 890 (2019).

Defendant argues the following findings in the DVPO are not supported by competent evidence:

Defendant intentionally caused bodily injury to Plaintiff.

Defendant placed Plaintiff and a member of Plaintiff's family in fear of imminent serious bodily injury.

Defendant placed Plaintiff and a member of Plaintiff's household in fear of continued harassment that rises to such a level as to inflict substantial emotional distress.

Nonetheless, at the DVPO hearing, Plaintiff testified to a pattern of abuse and continued harassment by Defendant including, among other things:

- In January 2022, while Plaintiff and Defendant were in an altercation, he grabbed her arm and twisted it. Further, Plaintiff noted when she called her daughter to come downstairs and call 911, Defendant lunged at the child.
- On 22 January 2022, Plaintiff was sleeping with her daughter when Defendant came into the room, and in the presence of their daughter, poured vodka on Plaintiff, called her a slut, and tried to shove condoms in her mouth.
- While on vacation in April 2022, Defendant masturbated on Plaintiff's face while she was sleeping and, while intoxicated, forced Plaintiff to have sex despite her asking him to stop. Defendant was also verbally abusive in the presence of the children.
- On 14 May 2022, Defendant was intoxicated and again had forcible sex with Plaintiff against her will, such that Defendant left a bruise on Plaintiff's leg.
- On 17 May 2022, when Plaintiff tried to leave the house, Defendant grabbed her in the presence of their child and attempted to restrain her. Plaintiff sustained an injury to her head and had to go to the hospital to get stitches.

Moreover, Plaintiff testified, due to the trauma of the emotional, physical, and sexual abuse by Defendant, she had suffered panic attacks, difficulty sleeping, and anxiety. Plaintiff also recounted several instances in which her children were upset and in fear of Defendant's behavior. This testimony serves as competent evidence which

supports the trial court's findings. In turn, these findings support the trial court's conclusions which state:

Defendant has committed acts of domestic violence against Plaintiff.

There is danger of serious and immediate injury to Plaintiff and the minor children.

Because there was competent evidence to support the trial court's findings and because the findings support the conclusions, the trial court did not err in granting the DVPO.

Defendant also contends the trial court erred in entering the Addendum to the DVPO as there was not competent evidence to support the findings, and, as a result, the findings did not support the conclusion that it would be in the best interests of the minor children to grant Plaintiff temporary primary custody.

In the Addendum, the trial court made several findings including:

The children are presently in the physical custody of Plaintiff.

The children were exposed to a substantial risk of physical or emotional injury or sexual abuse as there was a pattern of abuse in the presence of the children.

The children were present during acts of domestic violence.

Plaintiff's testimony outlined above constitutes competent evidence which supports these findings. Further, these findings support the trial court's conclusion which states:

It is in the best interest of the minor children that

temporary custody be given to Plaintiff and that Defendant be granted visitation.

Because the trial court's Addendum contains findings which are supported by competent evidence and because the findings support its conclusion, the trial court did not err.

III. Conclusion

For the aforementioned reasons, the trial court did not err in granting the DVPO or its Addendum.

AFFIRMED.

Judges ARROWOOD and HAMPSON concur.

Report per Rule 30(e).