

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-679

Filed 1 October 2024

Wake County, No. 23 CVD 600247

KIMBERLY MOORHEAD, Plaintiff,

v.

TIM MOORHEAD, Defendant.

Appeal by defendant from order entered 6 March 2023 by Judge Christine Walczyk in District Court, Wake County. Heard in the Court of Appeals 6 February 2024.

Gailor Hunt Davis Taylor & Gibbs, PLLC, by Jonathan S. Melton, for defendant-appellant.

Sandlin Family Law Group, by Deborah Sandlin, for plaintiff-appellee.

STROUD, Judge.

In this appeal from a domestic violence protective order, Defendant Tim Moorhead contends that the trial court erred in making certain findings about his acts and their impact on Plaintiff Kimberly Moorhead, concluding based on those findings that Defendant committed an act of domestic violence against Plaintiff and requiring Defendant to surrender his firearms, ammunition, and gun permits to the sheriff. We reject each of Defendant's arguments and affirm the domestic violence protective order.

I. Factual Background and Procedural History

MOORHEAD V. MOORHEAD

Opinion of the Court

On 7 February 2023, Plaintiff sought an *ex parte* domestic violence protective order (“DVPO”). In her complaint, Plaintiff alleged that after the parties’ separation,¹ Defendant used cameras connected to a security system – installed in the marital home during the marriage – to observe Plaintiff, the parties’ children, and others inside the former marital home; watched Plaintiff and her family through the home’s windows; sent many harassing emails and texts to Plaintiff, her family members, and others; threatened to commit suicide three times in late 2020 and early 2021; and possessed four firearms. Based on those allegations and others, Plaintiff asked the court to prohibit Defendant’s abusive and harassing behavior, bar him from contact with Plaintiff and the children, and require him to surrender his firearms, ammunition, and gun permits. An *ex parte* DVPO was entered on 7 February 2023.

The matter came on for hearing on 6 March 2023, where the evidence tended to show Plaintiff and Defendant had three daughters during their marriage, two of whom were minors and living with Plaintiff in the former marital home at the time of the hearing. At various times after their separation, Defendant communicated with Plaintiff – by phone call, text, email, in person, and through contacts with friends, family members, and others in Plaintiff’s orbit – in a way that caused Plaintiff fear and distress.

¹ The parties divorced on 3 March 2023.

MOORHEAD V. MOORHEAD

Opinion of the Court

Defendant acknowledged that, after the parties' separation, he accessed a security camera inside Plaintiff's home to observe the people and activities; hired a private investigator to follow and report Plaintiff and people with whom she had interactions; and used information from a tracking device he placed on Plaintiff's car. Plaintiff testified about many situations in which Defendant seemed to use information gained from those sources – about Plaintiff's location, actions, and plans – to send her communications that Plaintiff found to be frightening and upsetting. For example, Defendant texted Plaintiff about her medical coverage while she was at a gynecology appointment; alerted Plaintiff he was aware of travel plans she had not shared with him; described watching Plaintiff and their children inside their home; indicated awareness of communications Plaintiff had with her legal counsel and others; and showed up in person while Plaintiff was on a dinner date at a restaurant. Defendant did not deny obtaining this information about Plaintiff and her activities or his communications to Plaintiff, instead focusing his testimony on his contention that his actions were for legitimate purposes and his communications were justified. Plaintiff also testified about three times Defendant threatened to commit suicide near the end of the parties' marriage.

Following the 6 March 2023 hearing, the trial court entered the DVPO that same day, with the order set to expire 5 March 2024.² Defendant timely appealed.

II. Analysis

On appeal, Defendant argues the trial court erred in four ways: (1) in finding that Defendant placed Plaintiff in fear of continued harassment rising to the level of infliction of emotional distress; (2) in finding that Defendant made threats to commit suicide; (3) in concluding Defendant committed an act of domestic violence against Plaintiff; and (4) in requiring Defendant to surrender his firearms, ammunition, and gun permits. After careful review, we find no merit in these claims.

A. Standard of Review

When the trial court sits without a jury on a DVPO, 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. Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding.

Chociej v. Richburg, 287 N.C. App. 615, 617, 883 S.E.2d 649, 650-51 (2023) (citations, quotation marks, and brackets omitted).

² The DVPO was set to expire on 5 March 2024. However, "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." *In re A.K.*, 360 N.C. 449, 458, 628 S.E.2d 753, 759 (2006) (citations, quotation marks, ellipses, and brackets omitted).

MOORHEAD V. MOORHEAD

Opinion of the Court

Findings of fact supported by competent evidence are conclusive on appeal even if there is evidence to the contrary. *Bridges v. Bridges*, 85 N.C. App. 524, 526, 355 S.E.2d 230, 231 (1987). This is because

where different reasonable inferences can be drawn from the evidence, the determination of which reasonable inferences shall be drawn is for the trial court. This Court can only read the record and, of course, the written word must stand on its own. But the trial judge is present for the full sensual effect of the spoken word, with the nuances of meaning revealed in pitch, mimicry and gestures, appearances and postures, shrillness and stridency, calmness and composure, all of which add to or detract from the force of spoken words.

Brandon v. Brandon, 132 N.C. App. 646, 651, 513 S.E.2d 589, 593 (1999) (citations, quotations marks, and brackets omitted).

B. Findings Regarding Specific Incidents of Harassment by Defendant

Defendant first argues that the trial court erred in making several findings of fact regarding various incidents of his harassment of Plaintiff. Specifically, Defendant contends that his admitted actions of “moving a tracker from the parties’ daughter’s car to Plaintiff’s car and accessing Plaintiff’s CPI account (including viewing inside cameras). . . . [along with] hir[ing] a Private Investigator to follow Plaintiff 24/7 for several months” cannot constitute harassment because he had a legitimate purpose for them. Defendant’s framing of this argument reflects his misperception of the actions that constituted harassment under the pertinent

MOORHEAD V. MOORHEAD

Opinion of the Court

statutes. Competent evidence to support the trial court's determination was before the trial court. Accordingly, we reject Defendant's position.

Plaintiff sought and was granted a DVPO under the second statutory definition of domestic violence: “[p]lacing the aggrieved party or a member of the aggrieved party’s family or household in fear of . . . continued harassment, as defined in [North Carolina General Statute Section] 14-277.3A, that rises to such a level as to inflict substantial emotional distress.” N.C. Gen. Stat. § 50B-1(a)(2) (2023). Section 14-277.3A delineates the criminal offense of “stalking” and includes the following definition pertinent to this appeal:

(2) Harasses or harassment. — Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions 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) (2023) (emphasis added). Under these statutes, the trial court must make findings of fact regarding the defendant's conduct, the effect of the conduct on the plaintiff, and whether the defendant's conduct “serves no legitimate purpose.” *Martin v. Martin*, 266 N.C. App. 296, 307, 832 S.E.2d 191, 200 (2019). We review the findings of fact to determine if they are supported by competent evidence, and “we defer to the trial court's assessment of [the] defendant's credibility”

MOORHEAD V. MOORHEAD

Opinion of the Court

and whether the defendant's actions "served no legitimate purpose." *Stancill v. Stancill*, 241 N.C. App. 529, 542, 773 S.E.2d 890, 899 (2015) (citations omitted).

Defendant maintains that "[t]he conduct and the purpose of the conduct [alleged to constitute harassment] are key factors to consider." We agree, but Defendant misperceives the conduct which constituted harassment here. As the trial court found, it was not simply – or even primarily – Defendant's placement of a tracking device on Plaintiff's car, his hiring of a private investigator to monitor Plaintiff, or his access of security cameras inside Plaintiff's home that formed the gravamen of his harassment of Plaintiff. As the trial court found, "Defendant *used the information he uncovered* to harass Plaintiff" by email, in-person confrontation, text, and phone calls. (Emphasis added.) Yet, Defendant focuses his arguments on several actions he undertook to gather this information.

For example, Defendant acknowledges that he moved a tracking device from the car used by one of the parties' children to Plaintiff's car and focuses his argument on the legality of this admitted action. Thus, Defendant argues that his action would not constitute the offense of cyberstalking as stated in our statutes because he testified that he told Plaintiff he had placed it on the vehicle, and lack of consent is an element of cyberstalking via a tracking device. *See* N.C. Gen. Stat. § 14-196.3(b)(5) (2023). Yet, the pertinent issue at the DVPO hearing was not whether Defendant committed the criminal offense of cyberstalking in his installation of the tracking device – although he may have done so – but instead whether his communications

MOORHEAD V. MOORHEAD

Opinion of the Court

with Plaintiff based on information obtained from the tracking device were terrorizing or tormenting to Plaintiff and “serve[d] no legitimate purpose.”³

At the DVPO hearing, Plaintiff testified that she discovered a tracking device on her vehicle in October 2022, eleven months after the parties separated. Plaintiff explained that she had been aware that the device had been placed on the car used by one of the parties’ children “[s]ometime before [that child] turned 18,” but that after finding that it had been moved to her own car, Plaintiff felt “[s]cared. . . . [because s]omebody was knowing everywhere I’ve been.” Plaintiff further testified about multiple occasions when she received harassing texts from or was confronted in person by Defendant, which indicated to Plaintiff that Defendant was aware of her specific location, including during a gynecology appointment and while on a birthday dinner date at a restaurant.

In his testimony, Defendant stated that he had placed the tracker on Plaintiff’s car because he was worried about the car’s battery and that the tracker also “monitors the engine condition, it monitors [the] battery.” Certainly, the trial court could have found Defendant’s testimony to be credible and it could have found that Defendant’s purpose was to monitor the car’s condition and that this is a legitimate purpose, at

³ Although not relevant to our resolution of this matter, we note that, although Defendant repeatedly alleges Plaintiff’s “knowledge and consent” regarding placement of the tracking device in the context of cyberstalking pursuant to North Carolina General Statute Section 14-196.3(b)(5), only lack of *consent* appears as an element of that offense. N.C. Gen. Stat. § 14-196.3(b)(5). Accordingly, it would appear that the placement of a tracking device with a victim’s knowledge but without the victim’s *consent* would nonetheless be a criminal offense.

MOORHEAD V. MOORHEAD

Opinion of the Court

least for placement of the device. *See Brandon*, 132 N.C. App. at 651, 513 S.E.2d at 593. But the trial court did not find the Defendant's explanation regarding his purpose to be credible. In addition, the trial court's findings focus on Defendant's use of the information he obtained from the tracker, not simply the fact that the tracker was on the car. Although Defendant's counsel cross-examined Plaintiff briefly about the restaurant incident, Defendant did not deny Plaintiff's allegation he had used the tracking device to learn Plaintiff's location so he could send her communications or confront her. In any event, the trial court has the duty to make credibility determinations regarding the witnesses and their testimony, *see id.*, and Plaintiff's testimony was "[c]ompetent evidence . . . adequate to support [a] finding" that Defendant used information about Plaintiff's location obtained from the tracking device to terrorize and/or torment Plaintiff both by phone and an in-person confrontation and not for a legitimate purpose, *Chociej*, 287 N.C. App. at 617, 883 S.E.2d at 650-51.

Turning to Defendant's employment of a private investigator to surveil Plaintiff, he presents a similarly misplaced argument: that the surveillance was properly conducted and for a legitimate purpose, specifically because Plaintiff was dating, and had introduced the parties' children to, a man with a criminal record. Defendant is correct that using a private investigator to obtain information about someone who could present a threat to his children *could* be a legitimate purpose for conducting surveillance, but there was competent evidence to support the trial court's

MOORHEAD V. MOORHEAD

Opinion of the Court

finding that Defendant did not have a legitimate purpose for his conduct. The problem here arose from how Defendant used the information he obtained from the surveillance. At the hearing, the trial court acknowledged that the act of hiring a private investigator to conduct surveillance by itself is not domestic violence. Defendant also argues that the surveillance was done in an appropriate manner, but the actions of the investigator were not the issue here. The trial court found Defendant *used the information he obtained from the investigator* to let Plaintiff “know he knew where she was traveling” or that he had seen Plaintiff’s boyfriend “playing volleyball with [the parties’] children” inside Plaintiff’s home. Plaintiff’s testimony that those communications made her feel “unsafe,” “panicked,” and harassed was competent evidence for the trial court to consider. The determination that Defendant’s acts – communicating that he knew where Plaintiff was and what was occurring in the privacy of her home – served no legitimate purpose was reserved for the finder of fact, and there was competent evidence to support it. *See Stancill*, 241 N.C. App. at 542, 773 S.E.2d at 899.

Likewise, Defendant’s argument that “Plaintiff was aware Defendant had access to the . . . security cameras and did not restrict his access” does not address the dispositive question: whether Defendant used information gained from that access to communicate to Plaintiff in a harassing way and without a legitimate purpose. *See* N.C. Gen. Stat. § 14-277.3A(b). Once again, our review of the transcript reveals competent evidence supports the trial court’s findings, as Plaintiff testified

MOORHEAD V. MOORHEAD

Opinion of the Court

she felt “[v]ictimimized” and “[s]cared” by Defendant’s communications alerting her he could see what occurred inside her home. The trial court was entitled to rely on that evidence in making its findings about Defendant’s harassment of Plaintiff. *See Stancill*, 241 N.C. App. at 542, 773 S.E.2d at 899.

In sum, we agree with Plaintiff that “[t]he ultimate question is whether [Defendant’s] actions in using the information he obtained whether legally or illegally rises to the level of harassment which caused substantial emotional distress.” Given the competent evidence on this point, it was for the trial court to assess the credibility of the witnesses, *see Brandon*, 132 N.C. App. at 651, 513 S.E.2d at 593, and then to make its determination and findings, *see Stancill*, 241 N.C. App. at 542, 773 S.E.2d at 899. The trial court here did exactly that, and Defendant has provided no basis for this Court to invade the province of that tribunal. Defendant’s arguments on these matters are overruled.

C. Finding that Defendant Threatened Suicide

Defendant next argues that the trial court erred in finding he “made previous threats to commit suicide at the end of 2020 and beginning of 2021 when the [parties’] marriage was ending.” Defendant suggests that “when determining whether a [d]efendant made threats to commit suicide, the context and timing of the alleged threats must be considered[.]” citing *Stancill*. We find *Stancill* inapposite as the DVPO under review in that case contained no finding that the defendant had threatened suicide and therefore any discussion about the context and timing of

MOORHEAD V. MOORHEAD

Opinion of the Court

threats in making such a finding was dicta. *Id.* at 540, 773 S.E.2d at 897 (“In fact, as discussed in more detail below, the DVPO does not include a finding that [the] defendant had threatened suicide.”).

Moreover, the record on appeal in this matter contains competent evidence from both parties supporting the trial court’s finding. Defendant acknowledges that Plaintiff alleged Defendant’s three threats of suicide in her complaint and also testified about those instances at the DVPO hearing. Further, in his answer, Defendant “admit[ted] that he and Plaintiff were consuming a great deal of wine during the time frame alleged, so that he may have made statements similar to the ones alleged and does not remember them.” Because the trial court’s finding of fact that Defendant threatened to commit suicide on the occasions noted is supported by competent evidence, it is conclusive on appeal. *See Bridges*, 85 N.C. App. at 526, 355 S.E.2d at 231. Defendant’s argument is overruled.

D. Conclusion that Defendant Committed an act of Domestic Violence

Defendant bases this argument on his contention that the trial court’s findings regarding his use of information obtained from the tracking device he placed on Plaintiff’s car, the private investigator he hired, and his accessing of security cameras inside Plaintiff’s home to harass Plaintiff did not support its conclusion that Defendant committed acts of domestic violence against Plaintiff. As explained above, Plaintiff testified about the fear and anxiety she experienced because of Defendant’s communications, and the trial court did not find Defendant’s testimony he had

MOORHEAD V. MOORHEAD

Opinion of the Court

“legitimate” reasons for those communications to be credible. *See id.*; *see also Brandon*, 132 N.C. App. at 651, 513 S.E.2d at 593. Having rejected Defendant’s misplaced contentions about the trial court’s findings regarding those acts above, we likewise reject his challenge to the trial court’s reliance on those findings for its conclusion that Defendant committed at least one act of domestic violence by means of harassment.

Once a trial court “finds that an act of domestic violence has occurred, the court *shall* grant a protective order restraining the defendant from further acts of domestic violence.” N.C. Gen. Stat. § 50B-3(a) (2023) (emphasis added). Because even a single act of domestic violence found by the court requires issuance of a DVPO, *see Keenan v. Keenan*, 285 N.C. App. 133, 134, 877 S.E.2d 97, 99 (2022), we need not address Defendant’s assertions that “the [additional] findings that Defendant threatened to report Plaintiff’s email monitors, charge their daughter with extortion, and called Plaintiff’s boyfriend a ‘cokehead’ relate to third parties, not Plaintiff herself, and cannot support a conclusion of domestic violence.” The trial court’s findings regarding Defendant’s harassment of Plaintiff, as defined in North Carolina General Statute Section 14-277.3A(b)(2), were supported as explained above, and they were sufficient to sustain entry of the DVPO under North Carolina General Statute Section 50B-1(a)(2).

E. Order for the Surrender of Firearms

MOORHEAD V. MOORHEAD

Opinion of the Court

Defendant’s argument on this point rests entirely on his claim that “the trial court erred in finding that [he] made threats to commit suicide.” As discussed above, the trial court’s finding that Defendant threatened suicide three times was supported by Plaintiff’s testimony at the hearing and Defendant’s answer. Our statutes require that where a DVPO is issued and threat to commit suicide by a defendant is found by the court, “the court *shall* order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms[.]” N.C. Gen. Stat. § 50B-3.1(a) (2023) (emphasis added). Here, the trial court complied with this statutory directive, and Defendant’s argument of error lacks merits.

III. Conclusion

The DVPO entered 6 March 2023 is affirmed.

AFFIRMED.

Judges GRIFFIN and THOMPSON concur.