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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-205

Filed 15 October 2024

Orange County, No. 22 CVD 500271

JASON WESTLING, Plaintiff,

v.

JERRY GRAVITT, Defendant.

Appeal by Defendant from order entered 24 August 2023 by Judge Joal H. Broun in Orange County District Court. Heard in the Court of Appeals 11 September 2024.

No brief filed for plaintiff-appellee.

Law Office of Matthew Charles Suczynski, PLLC, by Matthew C. Suczynski, for defendant-appellant.

WOOD, Judge.

Jerry Gravitt (“Defendant”) appeals from a domestic violence order of protection (the “Order”), arguing that the trial court had insufficient grounds in making its determination. For the reasons set forth below, we vacate the trial court’s 24 August 2023 Order and remand to the trial court for further findings of fact and conclusions or dismissal.

I. Factual and Procedural Background

On 7 October 2022, Jason Westling (“Plaintiff”), a seventeen-year-old minor, initiated this action through the assistance of his mother, Kimberly Westling (“Mother”), acting as his guardian *ad litem*. Plaintiff filed a complaint seeking a domestic violence protective order against Defendant, his stepfather. He alleged Defendant had placed him in fear of continued harassment that rose to such a level as to inflict substantial emotional distress upon him and his Mother. In his complaint Plaintiff detailed the events that gave rise to this action, as set forth below.

Defendant and Mother married approximately three years prior to the filing of this complaint. Plaintiff resided with them in their home. Shortly after the marriage, Plaintiff expressed to Defendant and Mother that he had been experiencing suicidal ideations and that he would do it with a knife. Defendant responded, “what the hell is stopping you,” “do it,” and told Plaintiff there were knives in the kitchen. This led Plaintiff into a “downward spiral” and psychiatric commitment. Thereafter, Plaintiff was homeschooled and his mental health improved. At some point, Mother learned that Defendant had been diagnosed with borderline personality disorder and that he was supposed to take medication for the diagnosis.

Approximately six weeks prior to the filing of the complaint, Defendant was terminated from his job. As a result, Defendant spent more time at home and his attitude toward Plaintiff became “severe, malicious, and hurtful.” Defendant’s persistent harassment increased in severity and frequency, causing Plaintiff anxiety,

depression, and suicidal ideation. Defendant continuously pestered, belittled, and criticized Plaintiff, telling Plaintiff he “does nothing” all day. These comments were designed to aggravate and worsen Plaintiff’s psychological condition. Defendant similarly harassed Mother while in the presence of Plaintiff. Additionally, Defendant often “intrude[d] upon [Plaintiff’s] room” where he would point out deficiencies in his living environment and became increasingly demanding regarding Plaintiff’s household responsibilities. Further, Defendant would violently slam doors with such force that items fell from the wall.

Plaintiff further explained Defendant began walking into the bathroom while Plaintiff was nude and about to take a shower. Plaintiff confronted Defendant about it and felt that Defendant was “intentionally doing [it] to see him naked.” As a result of Defendant’s targeted behavior, Plaintiff’s struggle with suicidal ideation worsened, and Mother slept on the floor in his locked bedroom for his safety. Two of those nights, specifically on 4 and 5 October 2022, Defendant picked the lock of Plaintiff’s bedroom door, intruding while they slept. Defendant stood in the doorway, looming over them and staring. Mother also removed all firearms from their home because of Plaintiff’s mental condition. In response, Defendant became “irate” and demanded that his two shotguns be brought back into the residence.

Following these events, Plaintiff refused to be left alone with Defendant and increased the frequency of his therapy. Mental health providers advised Mother the situation was “critically dangerous” to Plaintiff’s mental health and that Defendant

needed to be removed from the home. Plaintiff and Mother's efforts to stop Defendant's persistent harassment were unavailing and led to the filing of this current action.

On 7 October 2022, the court granted an *ex parte* domestic violence protective order. The judge found, based on Plaintiff's complaint, that Defendant had committed acts of domestic violence against Plaintiff and ordered him to have no contact with Plaintiff and to surrender all firearms, ammunition, and gun permits. The hearing on the matter was continued numerous times upon motions filed by both parties. On 24 August 2023, a hearing was held on the domestic violence complaint. Both parties and Mother testified to the events alleged in Plaintiff's complaint.

Plaintiff testified to additional incidents that occurred during that time, including: Defendant consistently found something wrong, such as "pocket change" left out, when Plaintiff cleaned his room; Defendant woke Plaintiff by loudly dropping spray paint cans on his bedroom floor because he had left them outside one time; and Defendant verbally belittled him, like a "drill instructor," when asking Plaintiff to complete household tasks.

At the completion of the hearing, the trial court found that Defendant had placed Plaintiff "in fear of continued harassment that [rose] to such a level as to inflict substantial emotional distress." The trial court specifically found:

The Defendant harassed the Plaintiff, knowing that the Plaintiff had mental health problems and that he recently had another episode of suicide ideation. Prior October 4,

2022, Defendant had been escalating by waking up the Plaintiff loudly by dropping paint cans in his room; Defendant also came into the bathroom on at least three occasions the week before October 4. Prior to that time the Defendant did not come into the locked bathroom when the Plaintiff was in the room. This made the Plaintiff feel exposed and vulnerable. Defendant harassed the Plaintiff by yelling at him when there [was pocket] change on the floor.

Based on these respective findings, the court concluded that Defendant had committed acts of domestic violence against Plaintiff and entered a domestic violence protective order for a term of one-year, with an expiration date of 25 August 2024. The trial court ordered Defendant, among other things, to have no contact with Plaintiff and to surrender all firearms, ammunition, and gun permits. On 21 September 2023, Defendant filed notice of appeal.

II. Analysis

On appeal Defendant argues that the evidence does not support the trial court's finding that Defendant's actions placed Plaintiff "in fear of continued harassment that rose to such a significant level as to inflict substantial emotional distress." Defendant further contends the trial court's findings do not support the conclusion of law that Defendant committed acts of domestic violence against Plaintiff and thus erred in granting the domestic violence protective order.

This Court reviews a domestic violence protective order to 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." *Hensey v. Hennessy*, 201 N.C.

App. 56, 59, 685 S.E.2d 541, 544 (2009) (citation omitted). If the findings of fact are supported by competent evidence, “those findings are binding on appeal.” *Id.* “Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding.” *City of Asheville v. Aly*, 233 N.C. App. 620, 625, 757 S.E.2d 494, 499 (2014) (citation omitted). “The trial court’s findings turn in large part on the credibility of the witnesses, and must be given great deference by this Court.” *Stancill v. Stancill*, 241 N.C. App. 529, 532, 773 S.E.2d 890, 892 (2015) (citation omitted). Similarly, “where different reasonable inferences can be drawn from the evidence, the determination of which reasonable inferences shall be drawn is for the trial court.” *Id.* at 531, 773 S.E.2d at 892 (citation omitted).

This Court is tasked to determine whether the trial court’s findings support its conclusions of law, and such conclusions are reviewable *de novo*. *Bunting v. Bunting*, 266 N.C. App. 243, 249, 832 S.E.2d 183, 188 (2019). However, the trial court “must make a conclusion of law that an act of domestic violence has occurred” and that conclusion of law “must be based upon the findings of fact.” *Kennedy v. Morgan*, 221 N.C. App. 219, 223, 726 S.E.2d 193, 196 (2012) (cleaned up). Stated differently, “[w]hile the trial court need not set forth the evidence in detail it does need to make findings of ultimate fact which are supported by the evidence; the findings must identify the basis for the ‘act of domestic violence.’ ” *Id.* at 224, 726 S.E.2d at 196 (citations omitted).

Domestic violence is defined as “the commission of one or more of the following

acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship.” N.C. Gen. Stat. Ann. § 50B-1(a). One of the “acts” defined in the statute is, “[p]lacing the aggrieved party or a member of the aggrieved party’s family or household in fear of imminent serious bodily injury or continued harassment . . . that rises to such a level as to inflict substantial emotional distress.” *Id.* § 50B-1(a)(2). There must be evidence of, and the trial court must find, that the defendant “has or has had a personal relationship” with the plaintiff; the defendant committed one or more acts upon the plaintiff; the act or acts of the defendant placed the plaintiff in fear of imminent serious bodily injury or continued harassment; and the fear “rises to such a level as to inflict substantial emotional distress.” *Kennedy*, 221 N.C. App. at 222, 726 S.E.2d at 195 (cleaned up).

“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)(2023). “The plain language of the statute requires the trial court to apply only a subjective test to determine whether the aggrieved party was in actual fear; no inquiry is made as to whether such fear was objectively reasonable under the circumstances.” *Walker-Snyder v. Snyder*, 281 N.C. App. 715, 719, 870 S.E.2d 139, 143 (2022) (citation omitted). The Court in *Kennedy* outlined factors that a trial court must assess when determining whether a defendant’s behavior constitutes harassment: (1) [the acts] were knowing; (2) directed

at a specific person; (3) tormented, terrified, or terrorized the person; and (4) served no legitimate purpose. *Kennedy*, 221 N.C. App. at 222, 726 S.E.2d at 195-96.

In addition to “harassment,” there must be evidence that a defendant’s acts inflicted substantial emotional distress. “Substantial emotional distress” is defined as “[s]ignificant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.” *Stancill*, 241 N.C. App. at 541, 773 S.E.2d at 898 (citation omitted). This Court in *Bunting* found sufficient evidence of emotional distress was presented when the plaintiff testified “[that] [d]efendant's repeated contact caused her to feel terror, to change her housing arrangements, and to alter her daily routine.” *Bunting*, 266 N.C. App. at 253, 832 S.E.2d at 190. In contrast, in *Tyll v. Willets*, this Court held that while defendant’s actions could be considered “harassment,” plaintiff had failed to show that she suffered from *substantial* emotional distress when all she alleged was that the actions were “annoying.” *Tyll v. Willets*, 229 N.C. App. 155, 162, 748 S.E.2d 329, 333 (2013) (citations omitted). “[T]he fact that plaintiff may have been ‘afraid’ or ‘apprehensive’ because of defendant's actions does not necessarily support a determination of [substantial emotional distress].” *Kennedy*, 221 N.C. App. at 224–25, 726 S.E.2d at 197 (citation omitted).

Sub judice, Defendant’s argument centers on the responsibilities and disciplinary measures required of his role as stepfather to Plaintiff. He contends the trial court failed to distinguish between normal parenting actions and behavior that

risers to the level of inflicting substantial emotional distress. Defendant argues that they resided together as a family for more than nine years and he became a father figure to Plaintiff.

Moreover, as a father figure, it is normal for Defendant to ask Plaintiff to clean up after himself and to get frustrated when he failed to do so, just as any parent would. Defendant contends that Mother and Defendant would discuss parenting styles and goals and would often disagree as to how to parent Plaintiff. Nevertheless, Plaintiff was a teenager living in their home and needed to be parented by Mother and Defendant. Defendant contends the acts identified by the trial court in its findings are parenting actions, which do not rise to harassment. Thus, Defendant argues that the grounds for the Order are unsupported by the evidence, as there was insufficient evidence for the trial court to conclude that continued harassment occurred or that substantial emotional distress was inflicted.

Here, in support of its conclusion that grounds existed to grant the Order, the trial court found as fact: that Defendant had harassed Plaintiff, knowing that Plaintiff had mental health problems and that he had a recent episode of suicidal ideation; Defendant woke Plaintiff up by dropping paint cans in his room; Defendant went into the locked bathroom occupied by Plaintiff on at least three occasions; Plaintiff felt “exposed and vulnerable” when Defendant would come into the bathroom; and Defendant harassed Plaintiff by yelling at him when there was pocket change on the floor. Based on these findings, the trial court concluded that

Defendant's actions placed Plaintiff "in fear of continued harassment that rose to such a significant level as to inflict substantial emotional distress."

We cannot conclude the trial court's findings in the Order were sufficient to support its conclusions of law. Our Supreme Court has held:

Effective appellate review of an order entered by a trial court sitting without a jury is largely dependent upon the specificity by which the order's rationale is articulated. Evidence must support findings; findings must support conclusions; conclusions must support the judgment. Each step of the progression must be taken by the trial judge, in logical sequence; each link in the chain of reasoning must appear in the order itself. Where there is a gap, it cannot be determined on appeal whether the trial court correctly exercised its function to find the facts and apply the law thereto.

Coble v. Coble, 300 N.C. 708, 714, 268 S.E.2d 185, 190 (1980).

Here, the trial court's lack of findings hinders our ability to determine the trial court's rationale for entering the Order. The only findings made by the trial court are a blanket assertion that Defendant intentionally harassed Plaintiff and incidents involving paint cans, Plaintiff's bathroom, and pocket change. Notably, the findings "must identify the basis for the 'act of domestic violence.'" *Kennedy*, 221 N.C. App. at 224, 726 S.E.2d at 196 (citations omitted). While the trial court did identify specific acts committed by Defendant and targeted at Plaintiff, these findings, standing alone, were insufficient to support its conclusion of continued harassment that rose to a level to inflict substantial emotional distress.

We acknowledge "there is evidence in the record from which findings could be

made which would in turn support the conclusion” that Defendant had placed Plaintiff in fear of continued harassment that inflicted substantial emotional distress, provided the trial court determines the evidence to be credible. *Coble*, 300 N.C. at 713, 268 S.E.2d at 189–90. We further recognize that “the trial court was present to see and hear the inflections, tone, and temperament of the witnesses, and that we are forced to review a cold record.” *Brandon v. Brandon*, 132 N.C. App. 646, 652, 513 S.E.2d 589, 594 (1999).

However, based on the Order, the findings “lack the required specificity necessary ‘to enable an appellate court to review the decision and test the correctness of the judgment.’ ” *In re E.B.*, 256 N.C. App. 27, 33, 805 S.E.2d 390, 393 (2017) (citations omitted). While the trial court’s findings “need not set forth the evidence in detail,” the trial court must make ultimate findings which support its conclusion of domestic violence. *Kennedy*, 221 N.C. App. at 223, 726 S.E.2d at 196. Because the trial court’s findings do not support the conclusion that Defendant committed acts of domestic violence against Plaintiff, we vacate the Order entered against Defendant and remand to the trial court for additional proceedings.

III. Conclusion

The trial court’s findings of fact are insufficient to support its conclusion of law that Defendant had committed domestic violence by harassing Plaintiff to a degree that rises to such a level as to inflict substantial emotional distress. Thus, we vacate the trial court’s Order and remand to the trial court for further findings of fact and

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conclusions or dismissal.

VACATED AND REMANDED.

Judges DILLON and TYSON concur.

Report per Rule 30(e).