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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-449

Filed 5 November 2024

Cabarrus County, No. 23-CVD-2969

COURTNEY BROWN, Plaintiff,

v.

FABIALBERT RODRIGUEZ, Defendant.

Appeal by Plaintiff from 25 October 2023 entered 25 October 2023 by Judge D. Brent Cloninger in Cabarrus County Superior Court. Heard in the Court of Appeals 8 October 2024.

*Collins Family Law Group, by Attorney Amber R. Morris, for the Plaintiff-Appellant.*

*McIlveen Family Law Firm, by Attorney Sean F. McIlveen, for the Defendant-Appellee.*

STADING, Judge.

Courtney Brown (“Plaintiff”) appeals from the trial court’s 22 September 2023 order denying a domestic violence protective order (“DVPO”) against Fabialbert Rodriguez (“Defendant”). After careful review, we affirm the trial court’s order.

**I. Background**

On 7 September 2023, Plaintiff filed a complaint and motion for a DVPO against Defendant. In the complaint and motion, Plaintiff alleged that her seven-year relationship with Defendant “involved many incidents of domestic violence and caused [her] to experience extreme, prolonged emotional and psychological distress.” Among the numerous allegations contained in the complaint, Plaintiff claimed that Defendant terrified her in August 2016 by showing up to her room and taking naked pictures of her without her consent in Virginia. Plaintiff also maintained that Defendant tried to impregnate her to “trap [her] in Virginia” without her consent in November 2018. Plaintiff further alleged that Defendant did not support her during several miscarriages in 2018, 2019, and 2022. Plaintiff additionally detailed a series of aggressive sexual encounters with Defendant between May and August 2023 at a hotel in Shallotte and the barracks at Fort Liberty. And most recently, Plaintiff claimed that Defendant came to her house on 31 August 2023 “even though [she had] told him many times since July 21, 2023 that [she] does not want him [there].”

Based on her allegations, Plaintiff requested that the trial court provide an emergency temporary *ex parte* DVPO and a one-year DVPO. On the same day Plaintiff filed the complaint and motion, the trial court granted Plaintiff a temporary *ex parte* DVPO with an initial expiration date of 13 September 2023. When the hearing day came, Plaintiff requested a continuance “to hire an attorney.” The case was continued with the *ex parte* order remaining in effect until the next hearing date.

## BROWN V. RODRIGUEZ

### *Opinion of the Court*

On 25 October 2023, a hearing was held to determine whether Plaintiff was entitled to a one-year DVPO. After the presentation of evidence and arguments by counsel, the trial court stated, “[h]ere under cross-examination, I feel that there’s some credibility issues as far as [Plaintiff]. And based on that, I am not going to grant your request for a protective order.” The trial court continued that it “cannot determine . . . that there was a threat or imminent threat or even a reasonable threat presented by the defendant. And so . . . I’m going to deny the request for a protective order.” In its written order, the trial court found “Plaintiff was dishonest during her testimony. After expressing her devotion and love . . . , [Plaintiff] then made a decision to proceed on old allegations that appeared to have no imminent threat of harm.” Therefore, the trial court concluded that “Plaintiff’s credibility did not survive cross[-]examination,” and she “failed to prove grounds for issuance of a domestic violence protective order.” Consequently, the trial court denied Plaintiff a one-year DVPO. Plaintiff timely entered her notice of appeal.

### **II. Jurisdiction**

This Court has jurisdiction to consider Plaintiff’s appeal under N.C. Gen. Stat. § 7A-27(b) (2023).

### **III. Analysis**

Plaintiff raises two issues for our consideration. First, Plaintiff maintains that the trial court erred by failing to make sufficient findings of fact to support its denial

of the DVPO. Second, Plaintiff asserts that the trial court acted under a misapprehension of the law when it denied the DVPO.

When considering a DVPO on appeal, “the standard of review . . . 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.” *Hensey v. Hennessy*, 201 N.C. App. 56, 59, 685 S.E.2d 541, 544 (2009) (cleaned up). “Where there is competent evidence to support the trial court’s findings of fact, those findings are binding on appeal.” *Id.* “Competent evidence is evidence that a reasonable mind might accept as adequate to support the finding.” *Eley v. Mid/E. Acceptance Corp. of N.C.*, 171 N.C. App. 368, 369, 614 S.E.2d 555, 558 (2005) (cleaned up). “[W]here there are sufficient findings of fact based on competent evidence to support the trial court’s conclusions of law, the judgment will not be disturbed because of other erroneous findings which do not affect the conclusions.” *Clark v. Dyer*, 236 N.C. App. 9, 24, 762 S.E.2d 838, 846 (2014), cert. denied, 368 N.C. 424, 778 S.E.2d 279 (2015).

Chapter 50B of our General Statutes define “domestic violence” as:

[T]he 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, but does not include acts of self-defense:

- (1) Attempting to cause bodily injury, or intentionally causing bodily injury; or
- (2) Placing 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 G.S.

BROWN V. RODRIGUEZ

*Opinion of the Court*

- 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or  
(3) Committing any act defined in G.S. 14-27.21 through G.S. 14-27.33.

N.C. Gen. Stat. § 50B-1(a) (2023). Any person residing in this State, in a qualifying relationship, may seek a DVPO “by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself . . . .” *Id.* § 50B-2(a). And if the trial court determines that an act of domestic violence has occurred by a preponderance of the evidence, “the court shall grant a protective order restraining the defendant from further acts of domestic violence.” *Id.* § 50B-3(a).

First, we address Plaintiff’s argument that the trial court erred by failing to make sufficient findings of fact to support the denial of the DVPO. Here, the trial court found that “Plaintiff was dishonest during her testimony” and “[a]fter expressing her devotion and love . . . , [Plaintiff] then made a decision to proceed on old allegations that appeared to have no imminent threat of harm.” These findings directly address Plaintiff’s credibility and the weight the trial court gave to her testimony. The trial court, as the sole judge of the credibility of witnesses and the weight to be given their testimony, is entitled to make such determinations:

Where the trial court sits as the finder of fact, and 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

BROWN V. RODRIGUEZ

*Opinion of the Court*

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.

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, 531–32, 773 S.E.2d 890, 892 (2015) (cleaned up). In rendering that deference, a trial court is not required to “set forth the evidence in detail[,] [yet] it does need to make findings of ultimate fact which are supported by the evidence.” *Kennedy v. Morgan*, 221 N.C. App. 219, 224, 726 S.E.2d 193, 196 (2012) (cleaned up). Given the competent evidence on this point, it was for the trial court to assess the credibility of the witnesses, and then to make its determination and findings. *See Brandon v. Brandon*, 132 N.C. App. 646, 651, 513 S.E.2d 589, 593 (1999); *see also Stancill*, 241 N.C. App. at 542, 773 S.E.2d at 899. The trial court did precisely that, and Defendant has provided no basis for us to invade the province of the lower tribunal.

Plaintiff argues that *D.C. v. D.C.*, demands that we reach a different result. 279 N.C. App. 371, 865 S.E.2d 889 (2021). We disagree. In that case, “the trial court did not make any findings of fact other than who was present at the hearing, concluded that each Plaintiff failed to prove grounds for issuance of a DVPO, and dismissed the action.” *Id.* at 373, 865 S.E.2d at 890 (cleaned up). And “[s]uch a failure

to make findings of fact prevents us from conducting meaningful appellate review,” thereby requiring us to “vacate the [o]rders and remand to the trial court for the entry of orders that comply with the North Carolina Rules of Civil Procedure and our caselaw.” *Id.* at 376, 865 S.E.2d at 892. However, this matter is distinguishable in that the trial court made findings of fact upon which we can review its order, especially with respect to its basis for disbelieving Plaintiff’s testimony.

The trial court’s assessment of Plaintiff’s credibility also resolves her second contention. Plaintiff next argues that the trial court acted under a misapprehension of the law by applying an incorrect standard in denying the protective order. Specifically, Plaintiff claims the trial court erred by requiring proof of an imminent threat and using an objective standard rather than a subjective one.

“The test for whether the aggrieved party has been placed ‘in fear of imminent serious bodily injury’ is subjective; thus, the trial court must find as fact the aggrieved party ‘actually feared’ imminent serious bodily injury.” *Smith v. Smith*, 145 N.C. App. 434, 437, 549 S.E.2d 912, 914 (2001) (quoting *Brandon*, 132 N.C. App. at 654, 513 S.E.2d at 595). Yet the trial court found that Plaintiff was dishonest, and concluded her credibility “did not survive cross[-]examination.” The trial court was therefore within its discretion to determine that Plaintiff failed to prove she was in fear of imminent serious bodily injury or continued harassment that rose to the level of substantial emotional distress. *See Stancill*, 241 N.C. App. at 542, 773 S.E.2d at 898 (cleaned up) (“We give great deference to the trial court’s assessment of a

witness's credibility."); *see also Shipman v. Shipman*, 357 N.C. 471, 474, 586 S.E.2d 250, 253 (2003) (cleaned up) ("[The trial court has the] opportunity to see the parties; to hear the witnesses; and to detect tenors, tones, and flavors that are lost in the bare printed record read months later by appellate judges.").

Here, nothing suggests that the trial court misapplied the law or acted under a misapprehension of the legal standard. Instead, the court exercised its discretion in weighing the evidence and assessing the witness's credibility. *See State v. Salinas*, 214 N.C. App. 408, 410, 715 S.E.2d 262, 264 (2011) ("The judge's role is to hear the evidence, determine the credibility of witnesses, and determine the weight to be given to the evidence presented. It is not to accept uncritically the testimony of witnesses . . ."). Accordingly, we reject Plaintiff's arguments as unmeritorious and hold that the trial court did not err.

#### **IV. Conclusion**

The trial court's findings on Plaintiff's lack of credibility are supported by competent evidence and are thus binding on appeal. Our review reveals that the trial court made sufficient findings of fact to support its denial of the DVPO, and there is no evidence that it acted under a misapprehension of the law. We affirm the trial court's denial of the order since there was competent evidence to support its findings of fact, and its conclusions of law were proper in light of such facts. *See Hensey*, 201 N.C. App. at 59, 685 S.E.2d at 544.



BROWN V. RODRIGUEZ

*Opinion of the Court*

AFFIRMED.

Judges ARROWOOD and WOOD concur.

Report per Rule 30(e).