

Unpublished Disposition

2011 WL 3276726

Only the Westlaw citation is currently available.

NOTE: THIS OPINION WILL NOT APPEAR IN A PRINTED VOLUME. THE
DISPOSITION WILL APPEAR IN A REPORTER TABLE.

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controlling legal authority. Citation is disfavored, but may be permitted in
accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of
Appellate Procedure.

Court of Appeals of North Carolina.

Correna C. HOWE, Plaintiff,

v.

BRADLEY Earl HOWE, Defendant.

No. COA10-1230.

Aug. 2, 2011.

Opinion

***1** Appeal by defendant from order entered 2 June 2010 by Judge J. Gary Dellinger
in Caldwell County District Court. Heard in the Court of Appeals 6 June 2011.

Attorneys and Law Firms

No brief filed by plaintiff.

Bradley Earl Howe, pro se, for defendant-appellant.

[MARTIN](#), Chief Judge.

Defendant, Bradley Earl Howe, and plaintiff, Correna C. Howe, separated on 11 May
2009. They have a daughter together, D.H.,¹ who was two years old at the time
plaintiff filed a Complaint and Motion for Domestic Violence Protective Order in this
action. The record indicates that a custody order provides defendant scheduled
visitation with D.H. and other visitation to which the parties agree.

Between Saturday, 8 May 2010 and Sunday, 9 May 2010, plaintiff and defendant
exchanged several e-mail messages regarding visitation with D.H. that week, but
were unable to agree on a schedule. On Tuesday morning, at 6:45 a.m., defendant
went to plaintiff's residence to get D.H. Plaintiff informed defendant that D.H. was
going to daycare. Defendant stood on the porch and began knocking again. Plaintiff
yelled through the door that D.H. was going to daycare. Defendant then went to the
parking area and began taking photographs of plaintiff's car. Plaintiff told defendant
to get off her property. Defendant moved his van across the street, but stood in the
road near plaintiff's driveway and began recording plaintiff and D.H. with his video

camera. Plaintiff had called the police before going out to her car, but when she realized she was running late, she called the police again and said she was leaving the residence. When plaintiff arrived at the daycare center, defendant was there. Plaintiff testified that, because she did not want to “cause a scene,” she allowed him to take D.H.

That afternoon, plaintiff filed a Complaint and Motion for Domestic Violence Protective Order against defendant in Caldwell County District Court. The matter was scheduled to be heard on 19 May 2010 for emergency relief under [N.C.G.S. § 50B-2](#). Defendant requested and was granted a continuance. Defendant then filed an “Answer and Counter Complaint” on 1 June 2010. Following a hearing on 2 June 2010, the trial court found that defendant had placed plaintiff in fear of imminent serious bodily injury and in fear of continued harassment that rises to such a level as to inflict substantial emotional distress and entered a domestic violence protective order.²

On appeal, defendant first argues that the trial court's finding that defendant placed plaintiff in fear of imminent serious bodily injury is unsupported by the evidence. We disagree.

[N.C.G.S. § 50B-1](#) defines domestic violence as

(a) ... 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, but does not include acts of self-defense:

*2 (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. 14-277.3A](#), that rises to such a level as to inflict substantial emotional distress; or

(3) Committing any act defined in [G.S. 14-27.2](#) through [G.S. 14-27.7](#).

[N.C. Gen.Stat. § 50B-1\(a\)](#) (2009) (emphasis added). “The plain language of [section 50B-1\(a\)\(2\)](#) imposes only a subjective test, rather than an objective reasonableness test, to determine whether an act of domestic violence has occurred.” *Brandon v. Brandon*, [132 N.C.App. 646, 654, 513 S.E.2d 589, 595 \(1999\)](#). Thus, “[t]he plain language used by our legislature does not require a trial court to attempt to determine whether the plaintiff's actual subjective fear is objectively reasonable under the circumstances.” *Id. at 655, 513 S.E.2d at 595*. “Accordingly, where the trial court finds that a plaintiff is actually subjectively in fear of imminent serious bodily injury, an act of domestic violence has occurred pursuant to [section 50B-1\(a\)\(2\)](#).” *Id. at 654-55, 513 S.E.2d at 595*.

The trial court made the following findings on the Domestic Violence Order of Protection form:

On May 11, 10, the defendant placed [the plaintiff] in fear of imminent serious bodily injury [and] placed [the plaintiff] in fear of continued harassment that rises to such a level as to inflict substantial emotional distress.

Below these findings, the trial court wrote “defendant would not leave when plaintiff told him to leave her property. Paragraph # 4 of Complaint is hereby incorporated by reference.”

“[W]hen the 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 fact and whether its conclusions of law were proper in light of such facts.” [Burress v. Burress](#), [195 N.C.App. 447, 449, 672 S.E.2d 732, 734 \(2009\)](#)(alteration in original) (internal quotation marks omitted). “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].” [Brandon](#), [132 N.C.App. at 651, 513 S.E.2d at 593](#) (alterations in original) (internal quotation marks and citations omitted).

[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. The trial court’s findings turn in large part on the credibility of the witnesses, [and] must be given great deference by this Court. *3 [Id. at 651–52, 513 S.E.2d at 593](#) (alterations in original) (citations omitted).

Defendant contends there is no evidence to support the trial court’s finding that he placed plaintiff in fear of imminent serious bodily injury. After thoroughly reviewing the transcript from the hearing on this matter, we disagree.

During the hearing, when defendant referenced plaintiff’s statement in her Complaint and Motion for Domestic Violence Protective Order that she was in fear of imminent bodily injury, plaintiff responded, “Yes I am, yes I am.” When defendant asked her why, she replied, “[Y]ou keep filing all these actions against me”; you are “not getting your way”; and, “I know it[']s just a matter of time before you do something because you’re not getting your way.” We recognize that the trial court was present to see and hear plaintiff’s testimony and that we are forced to review a cold record. See [id. at 652, 513 S.E.2d at 594](#). Because the trial court’s findings “turn in large part on the credibility of the witnesses” and “must be given great deference by this Court,” we hold that plaintiff’s testimony supports the trial court’s finding on this point. See [id. at 652, 513 S.E.2d at 593](#); see also [Mitchell v. Mitchell](#), [199 N.C.App. 392, 407, 681 S.E.2d 520, 530 \(2009\)](#) (noting that, in reviewing the trial court’s modification of a

child custody order where the trial court's findings are binding if supported by substantial evidence, “the trial court could have relied only upon plaintiff’s testimony if it deemed his testimony of sufficient credibility and weight”).

Because plaintiff's testimony supports the trial court's finding that plaintiff feared imminent serious bodily injury and this finding in turn supports the trial court's conclusion that “defendant has committed acts of domestic violence against plaintiff” and the trial court's entry of a domestic violence protective order, it is unnecessary to reach defendant's argument that the trial court's finding that defendant placed plaintiff in fear of continued harassment that rises to such a level as to inflict substantial emotional distress is unsupported by the evidence. Because we affirm the trial court's entry of a domestic violence protective order, we also do not address defendant's assertion that, “[b]y erroneously concluding that the Defendant committed acts of domestic violence upon the Plaintiff, the courts [sic] order denying the Defendants [sic] counterclaim is err [sic].”

Next, defendant contends the trial court erred by entering a domestic violence protective order because it had intended to enter a no contact order. Defendant points out that the trial court referred to this action as a “no contact proceeding” several times during the hearing. However, the trial court's entry of a domestic violence protective order containing findings and the conclusion that defendant “committed acts of domestic violence against the plaintiff” pursuant to [N.C.G.S. § 50B-1](#) makes it clear that the trial court intended to enter a domestic violence protective order. Defendant's argument is overruled.

*4 Defendant also contends the trial court “committed reversible error by denying [his] request for [a] recess to procure video playback equipment.” A motion for a recess is addressed to the sound discretion of the trial court and its ruling thereon is not subject to review on appeal except in a case of manifest abuse. See [State v. Hailstock](#), 15 N.C.App. 556, 559, 190 S.E.2d 376, 378, cert. denied, 281 N.C. 760, 191 S.E.2d 363 (1972). During the hearing, the trial court allowed defendant the opportunity to play the video he had recorded on 11 May 2010, but informed him it would not “set up the courtroom for either parties [sic] evidence” and stated, “[I]f you want to present evidence it's up to you to present evidence.” The trial court denied defendant's request for a recess so that he could get equipment to play the video. Because defendant had ample time before the hearing to obtain the necessary equipment to play the video he wished to offer as evidence and apparently failed to do so, we find no merit to defendant's assertion that the trial court abused its discretion by denying his request for a recess.

Finally, defendant argues, and we agree, that the trial court erred by ordering that he surrender his firearms without entering findings in accordance with [N.C.G.S. § 50B-3.1\(a\)](#). We therefore reverse this portion of the trial court's order.

Initially, we again note that the trial court's order is inoperative because it expired on 2 June 2011. However, [N.C.G.S. § 50B–3.1\(f\)](#) provides that a defendant who has surrendered firearms must file a motion requesting the return of the surrendered firearms at the expiration of the domestic violence protective order. [N.C. Gen.Stat. § 50B–3.1\(f\)](#) (2009). After the filing of the motion, the trial court must schedule a hearing and determine whether the defendant “is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm.” *Id.* Because it is unclear in this case whether defendant has recovered his firearms, we cannot dismiss this issue as moot. See [Gainey v. Gainey, 194 N.C.App. 186, 187 n. 1, 669 S.E.2d 22, 23 n. 1 \(2008\)](#) (“[B]ecause the sheriff continues to hold the firearms, defendant's death does not moot the issue raised in this appeal.”).

[N.C.G.S. § 50B–3.1\(a\)](#) provides that,

[u]pon issuance of an emergency or ex parte order pursuant to this Chapter, 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 that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

***5** (3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

[N.C. Gen.Stat. § 50B–3.1\(a\)](#) (2009).

In its order, the trial court checked the box indicating defendant “is in possession of, owns or has access to firearms, ammunition, and gun permits described below” and below that, wrote “(2) two rifles, (1) one shotgun, and (3) three handguns.” However, the trial court failed to check any of the boxes on the AOC form related to the factors in [N.C.G.S. § 50B–3.1\(a\)](#). Because [N.C.G.S. § 50B–3.1\(a\)](#) provides that “the court shall order the defendant to surrender to the sheriff all firearms ... *if the court finds any of the following factors*,” [N.C. Gen.Stat. § 50B–3.1\(a\)](#) (emphasis added), and the trial court failed to find any of those factors, it erred by ordering that defendant surrender his firearms. Although “this matter could be remanded for the entry of a new order containing findings and conclusions,” see [Price v. Price, 133 N.C.App. 440, 442, 514 S.E.2d 553, 554 \(1999\)](#), the record contains no evidence that defendant made any of the threats described in [N.C.G.S. § 50B–3.1\(a\)](#) factors one, two, and three or that defendant inflicted serious injuries on plaintiff or a minor child

as described in factor four. In fact, plaintiff testified that defendant had never threatened her in the past. Because the evidence in this case fails to support a finding that defendant engaged in any of the acts described in the factors of [N.C.G.S. § 50B-3.1\(a\)](#), remand in this case would be futile. See *id.* Therefore, the portion of the trial court's order requiring that defendant surrender his firearms is reversed.

Affirmed in part, reversed in part.

Judges [STEPHENS](#) and THIGPEN concur.

Report per Rule 30(e).

Footnotes

[1](#)

We refer to the parties' minor child as "D.H." throughout this opinion.

[2](#)

Although the order from which defendant appeals was "effective until June 2, 2011" and therefore expired just before defendant's appeal was heard in this Court, an expired domestic violence protective order should not be dismissed as moot. See *Smith ex rel. Smith v. Smith*, [145 N.C.App. 434, 436-37, 549 S.E.2d 912, 914 \(2001\)](#).

Unpublished Disposition

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Court of Appeals of North Carolina.

Kelly MACE, Plaintiff,

v.

Bennett LaPRADE, Defendant.

No. COA10-1268.

June 7, 2011.

Opinion

*1 Appeal by Defendant from order entered 2 June 2010 by Judge Charles T.L. Anderson in Orange County District Court. Heard in the Court of Appeals 13 April 2011.

Attorneys and Law Firms

No brief for Plaintiff.

Doster, Post, Silverman & Foushee, P.A., by [Jonathan Silverman](#), for Defendant.

[STEPHENS](#), Judge.

Factual and Procedural History

On 26 May 2010, Plaintiff Kelly Michelle Mace filed a complaint and motion for domestic violence protective order (“DVPO”) against Defendant Bennett LaPrade. The complaint alleged that the parties are divorced and have a minor son, and recounted various incidents of domestic violence by Defendant against Plaintiff and their son beginning in 1996 and continuing to the present. On the same day, the trial court denied the motion without prejudice, concluding that Plaintiff had failed to prove grounds for *ex parte* relief “in that no hearing or testimony was received.” The district court set the matter for hearing on 2 June 2010. Following that hearing, the trial court entered a DVPO on 2 June 2010. The trial court found that in April and May 2010, Defendant had placed Plaintiff “in fear of continued harassment that rises to such a level as to inflict substantial emotional distress ... [by] passing by [P]laintiff’s home in a manner to make [P]laintiff apprehensive about her security and safety and causing her substantial emotional distress.” The trial court concluded that Defendant had committed domestic violence against Plaintiff, and ordered Defendant to stay away from Plaintiff’s workplace, home, and neighborhood, except during custody exchanges of the parties’ son. The trial court also prohibited Defendant from possessing or purchasing a firearm and suspended his concealed handgun permit. The terms of the order were to last until 2 June 2011. Defendant appeals, contending that there was insufficient evidence to support the trial court’s finding that he had (I) placed Plaintiff “in fear of continued harassment that rises to such a level as to inflict substantial emotional distress ... [by] passing by [P]laintiff’s home in a manner to make [P]laintiff apprehensive about her security and safety and causing her substantial emotional distress;” and its conclusion that (II) he had committed domestic violence against Plaintiff. Defendant also contends that (III) the evidence and the trial court’s findings and conclusions were insufficient to support entry of the DVPO. For the reasons which follow, we affirm.

Standard of Review

[W]hen the trial court sits without a jury [regarding 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. Where there is competent evidence to support the trial court’s findings of fact, those findings are binding on appeal.

[Burress v. Burress, 195 N.C.App. 447, 449–50, 672 S.E.2d 732, 734 \(2009\)](#) (internal citations and quotation marks omitted). Further,

*2 [w]here 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 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.

[Brandon v. Brandon](#), 132 N.C.App. 646, 651–52, 513 S.E.2d 589, 593 (1999) (internal quotation marks, citations and brackets omitted).

Discussion

Defendant first argues that the evidence was insufficient to support the trial court's finding that he had placed Plaintiff "in fear of continued harassment that rises to such a level as to inflict substantial emotional distress ... [by] passing by [P]laintiff's home in a manner to make [P]laintiff apprehensive about her security and safety and causing her substantial emotional distress." We disagree.

The trial court's finding tracks the language of [N.C. Gen.Stat. § 50B–1\(a\)\(2\)](#) (2009), which states that domestic violence includes, *inter alia*, "[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, as defined in [G.S. 14–277.3A](#), that rises to such a level as to inflict substantial emotional distress[.]" 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](#) (2009). "The plain language of the statute requires the trial court to apply only a subjective test to determine if the aggrieved party was in actual fear; no inquiry is made as to whether such fear was objectively reasonable under the circumstances." [Wornstaff v. Wornstaff](#), 179 N.C.App. 516, 518–19, 634 S.E.2d 567, 569 (2006) (citing [Brandon](#)), *affirmed*, 361 N.C. 230, 641 S.E.2d 301, (2007).

At the hearing, Plaintiff was not represented by counsel and her direct testimony was somewhat rambling and disjointed. In addition, the recording of the hearing appears to start in the middle of Plaintiff's direct testimony. Plaintiff testified as follows:

[Plaintiff]: Okay. I go specifically because of the abuse, the cycle of abuse that is—the years of abuse, the many, many tangible reasons that I have to be physically afraid, afraid to conduct business on my property, afraid to have people in my life, afraid to go outside without thinking he's there, to look out my window. He's always there.

That's why I go to a therapist, because moving on is extremely difficult.

*3 THE COURT: Now, Ms. Mace, what you need to understand is it's your obligation to put meat on the bones of the skeleton. So, I really—I'm—I cannot be your lawyer. I do not want to restrict you in any way.

But, thus far, you have indicated that an incident occurred at approximately 11:00 p.m. on May the 30th, after the filing of this action on May the 25th. You've indicated on May the 25th, at 1:15 to 1:30, you were walking a friend to her car when he drove by the house and that your friend heard you say, "There's my ex-husband."

And that you've testified that you go to therapy because of your concerns about Mr. LaPrade and your concerns about how he behaves towards you.

Plaintiff's testimony indicates that there were incidents on 25 and 30 May 2010 when Defendant drove past Plaintiff's home and that Plaintiff is afraid because Defendant is "always there" outside her home. It further indicates that Plaintiff's

fear stems from “years of abuse[.]” Plaintiff then went on to explain her fear of Defendant in greater detail:

He’s stressed me in every possible way and yet cannot stop watching me. And in the last three months, my son has told me that there’s a picture on [Defendant’s] refrigerator of the one person I dated at a year and a half of separation, and that gentleman’s name is []. And [Defendant] has a picture of his car in my driveway on his refrigerator.

[Defendant] said to my son, “That’s the man your mother had sex with.” At a year and a half of separation, [Defendant’s] still hanging onto that.

I am afraid of him. He is extremely intimidating, extremely physically violent, can be extremely mean. Ms. Redline saw it that day.

I am—I cannot practice massage in my home. I cannot rest in my home. I can’t bring male clients to my house. And they say I won’t work. This has gone on for so very long. It needs to stop. I’m asking for a small thing.

For [Defendant] to say it would inconvenience him not to go by my house is an absolute lie. There are four roads, boom, boom, boom. He could take any of those cut-throughs easily. He can go straight down and not take the cut-through. I never go past his house, ever.

Plaintiff testified that Defendant’s actions in driving past her home had “stressed” her so that she could not “rest in [her] home” or bring male clients to her house.¹ Plaintiff’s testimony illustrates a history of violent acts between the parties and accusations of past substance abuse and physical violence by Defendant. This evidence amply supports the trial court’s finding that Defendant’s current actions had made Plaintiff “apprehensive about her security and safety and caused her substantial emotional distress.” Plaintiff’s emotional stress reached a level where she sought professional counseling for this distress. We weigh this result heavily in determining whether there is a factual predicate for proof of “substantial emotional distress.” Defendant’s argument is overruled.

*4 We also note that Defendant cites *Brandon* several times in his brief, and refers to the trial court’s failure to make a finding that Plaintiff “ ‘actually feared’ imminent serious bodily injury.” The version of [N.C. Gen Stat. § 50B–1\(a\)\(2\)](#) which was considered in *Brandon* defined domestic violence solely as “[p]lacing the aggrieved party or a member of the aggrieved party’s family or household in fear of imminent serious bodily injury[.]” The statute has since been amended to add as a definition of domestic violence the disjunctive language “or continued harassment, as defined in [G.S. 14–277.3A](#), that rises to such a level as to inflict substantial emotional distress,” which the trial court relied on here. Thus, *Brandon* is inapposite on this point. Defendant’s related arguments are misplaced, and, accordingly, are overruled.

Defendant next argues that the trial court’s findings are insufficient to support its conclusion that Defendant committed an act of domestic violence against Plaintiff. We disagree.

As discussed above, the trial court’s finding that Plaintiff was placed “in fear of continued harassment that rises to such a level as to inflict substantial emotional distress” by Defendant driving past her home was supported by competent evidence. In turn, [section 50B–1 \(a\)\(2\)](#) defines “[p]lacing the aggrieved party ... in

fear of ... continued harassment ... that rises to such a level as to inflict substantial emotional distress” as an act of domestic violence. Thus, the trial court's finding fully supports its conclusion. This argument is overruled. In his final argument, Defendant contends the trial court erred in entering the DVPO against him. In making this argument, Defendant relies on his contentions that the trial court's finding was not supported by competent evidence, and that it, in turn, did not support the trial court's conclusion. Having rejected each of those arguments, we likewise overrule Defendant's argument here. The order of the trial court is
AFFIRMED.

Judges [STEELMAN](#) and [HUNTER, JR.](#), ROBERT N., concur.

Report per Rule 30(e).

Footnotes

[1](#)

Plaintiff works out of her home, apparently as a massage therapist.

Unpublished Disposition

699 S.E.2d 140 (Table)

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Court of Appeals of North Carolina.

Anne SANDER, Plaintiff,

v.

Lawrence David SANDER, Defendant.

No. COA09-912.

Sept. 7, 2010.

West KeySummary[Collapse West KeySummary](#)

[Change View](#)

1[Protection of Endangered Persons](#)

Defendant's narrative summary of the evidence, presented to the appellate court in lieu of a hearing transcript on an appeal from a grant of a domestic violence order, did not contain a fair reflection of the evidence as to provide the true sense of the testimonies, and, thus, the appellate court would not consider on appeal his assignment of error concerning whether he committed an act of domestic violence. Defendant framed the evidence in his favor and did not present the narrative in a question and answer format. Defendant also did not include that parties' choice of words in describing the events that took place. [Rules App.Proc., Rule 9.](#)



[315P](#)Protection of Endangered Persons

[315PII](#)Security or Order for Peace or Protection

[315PII\(G\)](#)Appeal and Review

[315Pk125](#)Record

Opinion

*1 Appeal by defendant from order entered 3 April 2009 by Judge Peter Knight in Henderson County District Court. Heard in the Court of Appeals 10 March 2010.

Attorneys and Law Firms

No brief filed on behalf of plaintiff-appellee.

Lawrence David Sander, pro se, defendant-appellant.

PER CURIAM.

Lawrence David Sander (“defendant”) appeals from a Domestic Violence Order of Protection (“domestic violence order” or “DVPO”) filed 3 April 2009, the terms of which remained in effect until 2 April 2010. Defendant proceeds *pro se* and plaintiff has declined to file an appellee brief. After careful review, we dismiss defendant's appeal.

Background

In attempting to set out the facts in this case, we note that the record on appeal does not provide a complete factual or procedural background. Additionally, the transcript of the hearing held in this matter is not contained in the record. The record tends to establish that Anne Sander (“plaintiff”) and defendant are married, but separated, and have four minor children. Plaintiff maintained primary physical custody of the children after the parties separated. A temporary custody order was entered 11 July 2008, which set out the visitation rights of defendant. The order stated that as of 30 August 2008, “the Defendant shall have the children every other weekend from Saturday at 11:00 a.m. until Sunday at 6:30 p.m.” In an email dated 17 March 2009, defendant set out a conversation he allegedly had with plaintiff in which the two agreed that defendant would pick up the children from plaintiff's office on the evening of Friday 27 March 2009 and that the children would remain with defendant until Sunday 29 March 2009. The record does not reveal the relationship of the recipients of this email to the parties involved in this case.

On 30 March 2009, plaintiff filed a Complaint and Motion for Domestic Violence Protective Order in which she alleged:

Lawrence Sander came to my house after being told not to.... [He] tr[ie]d to break the window with his fist, then he tried to break the door down. He was yelling that he wanted his children. I told him I had called the police and he continued to try and break the windows and ring the door bell. He continue[d] to rage until the police arrived a little after 10:10.... I was afraid he would hurt all of us. He was out of control and yelling at the top of his lungs. I feared for my safety and the children and stayed with [a] friend for the rest of the weekend. I am still afraid to go home.

Defendant claims in his brief that on 27 March 2009, plaintiff called him and stated that instead of picking up the children at her office, he could pick them up at her house in Hendersonville, North Carolina. Defendant further claims that when he arrived at plaintiff's home, he could see plaintiff and her boyfriend through the window, but plaintiff refused to open the door or allow the children to exit the house. Defendant then “repeatedly rang the doorbell, knocked on the door, and tapped on the window.” Defendant asserts that he “was doing nothing violent, destructive, disruptive, or threatening.”

*2 On 3 April 2009, the trial court held a hearing in this matter and subsequently issued a DVPO. The trial court found as fact that defendant “placed [plaintiff] in fear of imminent serious bodily injury” and concluded as a matter of law that defendant “has committed acts of domestic violence against the plaintiff.” The trial court ordered that, *inter alia*: (1) defendant have no contact with plaintiff; (2) defendant “shall not commit any further acts of abuse or make any threats of abuse”; (3) defendant shall stay away from “any place where the plaintiff shall be, and any place where the minor children shall be [including the children's school and daycare] except pursuant to any order entered now or hereafter in the separate action of the parties, which relates to custody”; (4) defendant could call plaintiff's residence for the purpose of speaking with his children; and (5) defendant's concealed handgun permit be suspended. This order was to remain in effect until 2 April 2010. Defendant timely appealed to this Court.¹ Plaintiff has not filed a brief with this Court.

Standard of Review

“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].’ “ [Brandon v. Brandon](#), 132 N.C.App. 646, 651, 513 S.E.2d 589, 593 (1999) (quoting [Electric Motor & Repair Co. v. Morris & Assocs.](#), 2 N.C.App. 72, 75, 162 S.E.2d 611, 613 (1968)). “Accordingly, where the trial court's findings of fact are supported by competent evidence, they are binding on appeal.” *Id.* at 652, 513 S.E.2d 589, 513 S.E.2d at 593. “The trial court's findings of fact must support its conclusions of law.” *Id.* at 653, 513 S.E.2d at 594.

Discussion

Defendant primarily argues that the trial court erred in concluding as a matter of law that defendant committed an act of domestic violence against plaintiff. We disagree.

A trial court may grant a protective order for the purpose of “restraining the defendant from further acts of domestic violence.” [N.C. Gen.Stat. § 50B-3 \(a\)](#) (2009). [N.C. Gen.Stat. § 50B-1 \(2009\)](#) lists multiple acts that qualify as acts of domestic violence, including “[p]lacing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury....” [N.C. Gen.Stat. § 50B-1\(a\)\(2\)](#). “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](#), 145 N.C.App. at 437, 549 S.E.2d at 914 (quoting [Brandon](#), 132 N.C.App. at 654, 513 S.E.2d at 595).

Here, the trial court found as fact that defendant placed plaintiff in fear of imminent serious bodily injury. The trial court expounded upon that finding by stating:

[Defendant] appeare[d] at the plaintiff's residence between 9:30 pm and 10:00 pm, and being upset because he could not pick up his children from the plaintiff who is their mother, became angered to the point where he pounded on the door and windows of the plaintiff's residence, and repeatedly rang the door bell, all

with sufficient force and excitement that it caused the plaintiff to be in fear for her safety.

***3** Defendant assigns error to this finding of fact and argues that he repeatedly “knocked” on the door, “tapped” on the window, and rang the doorbell. He claims that these actions do not constitute an act of domestic violence under the statute. The version of events described by defendant are quite different from those alleged in plaintiff’s complaint. However, we have no means by which to address the issues raised in this case since defendant failed to file the verbatim transcript of the hearing in this matter and the narrative of the evidence supplied by defendant in the record on appeal is wholly unreliable and does not address the central issue to be determined by the trial court, namely, plaintiff’s subjective fear. “[A] determination as to whether the trial court’s findings are supported by the evidence requires a review of the evidence presented at the hearing.” [Miller v. Miller, 92 N.C.App. 351, 353, 374 S.E.2d 467, 468 \(1988\)](#). [N.C. R.App. P. 9](#) requires that “the record on appeal contain so much of the evidence, either in narrative form or in the verbatim transcript of the proceedings, as is necessary for an understanding of all errors assigned.” [Matter of Botsford, 75 N.C.App. 72, 74-75, 330 S.E.2d 23, 25 \(1985\)](#). In lieu of a transcript, defendant filed a “Recitation of the Evidence” pursuant to N.C. R.App. 9(c)(1), which requires that testimony from the trial proceedings

be set out in narrative form except where such form might not fairly reflect the true sense of the evidence received, in which case it may be set out in question and answer form. Counsel are expected to seek that form or combination of forms best calculated under the circumstances to present the true sense of the required testimonial evidence concisely and at a minimum of expense to the litigants.

Id. (emphasis added).

Defendant’s narrative of the evidence presented is clearly intended to frame the evidence in defendant’s favor. Defendant states in two pages a summary of the witness’ testimony. Defendant has not presented the narrative in “question and answer” format, which would have provided the necessary context, and, more importantly, the parties’ choice of words. Defendant claims that plaintiff, plaintiff’s boyfriend, and defendant all testified that defendant repeatedly “rang the doorbell, knocked on the door, and tapped on the window[.]” (Emphasis added). However, without the transcript this Court has no means of testing the veracity of defendant’s presentation of the evidence. Plaintiff’s complaint states that defendant was “yelling,” and that he attempted to break down the door and shatter the window, which would logically require more than mere knocking or tapping. In reviewing defendant’s recitation of the testimony, we conclude that defendant has failed to present the evidence in a manner “best calculated under the circumstances to present the true sense of the required testimonial evidence.” *Id.* Most importantly, defendant’s recitation of the evidence does not in any way address the primary issue in this case, namely, plaintiff’s subjective fear.

***4** A narrative is meant to serve as a substitute for the verbatim transcript and should reflect the evidence presented by both parties in such a manner as to aid this Court in determining the issues presented. The narrative presented by

appellant simply does not meet the requirements of [Rule 9](#). Consequently, we will not address this assignment of error. [Hicks v. Alford, 156 N.C.App. 384, 389-90, 576 S.E.2d 410, 414 \(2003\)](#) (“It is the duty of the appellant to ensure that the record is complete.... ‘An appellate court is not required to, and should not, assume error by the trial judge when none appears on the record before the appellate court.’ “ (internal citations omitted)); [West v. G.D. Reddick, Inc., 48 N.C.App. 135, 137, 268 S.E.2d 235, 236 \(1980\)](#) (“The Court of Appeals can judicially know only what appears of record.... Matters discussed in a brief but not found in the record will not be considered by this Court. It is incumbent upon the appellant to see that the record is properly made up and transmitted to the appellate court.” (internal citation omitted)), *rev’d on other grounds*, [302 N.C. 201, 274 S.E.2d 221 \(1981\)](#).

Defendant's remaining arguments are: (1) the trial court was required to find a “course of conduct” by defendant, not one incident of domestic violence; (2) the trial court was required to find that defendant acted with specific intent; (3) the trial court deprived defendant of his constitutional right to bear arms by requiring that he surrender his firearms; (4) the trial court “overreached[ed]” its authority by ordering him to stay away from his children where there were no findings that defendant committed an act of domestic violence against the children; (5) the trial court improperly used an “ultra-strict” application of the subjective standard in determining whether plaintiff actually was in fear; and (6) the trial court did not have authority to make a finding regarding the parties' child custody dispute.

Defendant includes several case and statute citations throughout the remainder of his brief; however, none of these citations are applicable to his arguments. Accordingly, we decline to review defendant's remaining assignments of error pursuant to [N.C. R.App. P. 28\(b\)\(6\)](#) (“Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.... The body of the argument and the statement of applicable standard(s) of review shall contain citations of the authorities upon which the appellant relies.”).

In sum, we are obliged to dismiss defendant's appeal due to the multiple appellate rules violations that have hampered our review. See [Bledsoe v. County of Wilkes, 135 N.C.App. 124, 125, 519 S.E.2d 316, 317 \(1999\)](#) (stating that the Rules of Appellate Procedure are mandatory and “apply to everyone-whether acting *pro se* or being represented by all of the five largest law firms in the state”).

Dismissed.

Panel consisting of Judges [HUNTER](#), Robert C., [CALABRIA](#), and [HUNTER](#), ROBERT N., JR.

*5 Report per Rule 30(e).

Parallel Citations

2010 WL 3466572 (N.C.App.)

Footnotes

1

As a preliminary matter, we note that although the DVPO issued in this case expired on 2 April 2010, defendant's appeal is not moot. See [Smith v. Smith, 145 N.C.App. 434, 436-37, 549 S.E.2d 912, 914 \(2001\)](#).