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Divided Appeals Panel Affirms Domestic Violence Order

By Ertel Berry

The Appeals Court has split over whether a Dare County woman was entitled to a domestic violence protective order after a 2005 confrontation with her estranged husband.

In a 2-1 decision, *Wornstaff v. Wornstaff* (North Carolina Lawyers Weekly No. 06-07-1042, 15 pages), the panel upheld the one-year protective order against the husband. That was imposed under G.S. Sect. 50B-3(a) to “bring about the cessation of acts of domestic violence.”

The issue in *Wornstaff* was whether the husband had committed an act of domestic violence according to the statute.

The three judges on the panel agreed these points were key to analyzing a 50B case: G.S. Sect. 50B-1(a)(2) defines “domestic violence” to include putting a party in fear of “imminent bodily injury or continued harassment” that inflicts “substantial emotional distress.”

“Harassment” is defined as “knowing conduct directed at a specific person that torments, terrorizes, or terrifies that person and serves no legitimate purpose.”

Under a 1999 decision, the test for determining whether a person was placed in a state of actual fear is a subjective one. No inquiry is made into whether the fear was objectively reasonable.

While agreeing on the relevant law, the judges disagreed on how it applied to the facts.

The parties, who had been married 17 years, separated two months before the incident that triggered a domestic violence protective order by District Judge Amber Davis.

The incident began when Mr. Wornstaff said he discovered that the phone and power lines to his home were cut. He asked a police officer to go with him to the couple’s jointly-owned business to make sure nothing was awry there. Ms. Wornstaff arrived an hour later.

The ensuing argument placed Ms. Wornstaff in fear of continued harassment by Mr. Wornstaff and inflicted substantial emotional distress, according to Judge Davis' order.

The Appeals Court majority said the order, which concluded Mr. Wornstaff had committed an act of domestic violence, was supported by these findings:

During the argument, Mr. Wornstaff yelled at Ms. Wornstaff: "Would you like to hurt me? Would you like to kill and hit me? Would that make you feel better?"

Mr. Wornstaff banged a stapler on a counter.

He threw a water bottle in Ms. Wornstaff's direction.

He refused to leave their jointly-owned business despite the late hour.

Ms. Wornstaff testified that she was afraid of Mr. Wornstaff and thought that he was "out of control."

Writing for the majority, Judge James A. Wynn Jr. stressed that at the 50B hearing, Judge Davis was able to "see and hear the inflections, tone and temperament of the witnesses."

"In this case, while different reasonable inferences could be drawn from the evidence presented, we must defer to the trial judge's determination of which reasonable inferences should have been drawn," Judge Wynn said.

Judge Robin Hudson concurred in the opinion.

Dissent

Judge John Tyson dissented, saying the evidence and the trial court's findings were insufficient to support the order.

According to Judge Tyson, the undisputed evidence showed that:

The defendant's conduct wasn't continuous because it occurred only once on a single evening.

The argument occurred at the couple's business where the defendant had the right to be and remain after the plaintiff appeared.

A police officer was present during the entire argument.

The defendant wasn't threatening the plaintiff when he asked, "Would you like to hurt me?" according to Judge Tyson.

The defendant banged the stapler on a desk because it was jammed.

A trash can was in the same direction that the defendant threw the half-empty water bottle.

The plaintiff had tried to block the defendant from exiting the business, Judge Tyson said.

The plaintiff failed to present any evidence that she actually feared continued harassment by the defendant or that she suffered substantial emotional distress, according to Judge Tyson – and the trial court’s order, which only addressed the defendant’s conduct on one occasion, lacked findings on those issues, he said.

Attorney Comment

The plaintiff’s attorney, family law specialist Stephanie Irvine of Williamston, said there weren’t many appellate decisions on 50B protective orders because lawyers usually aren’t involved.

“Most of them are done pro se,” said Irvine.

According to Irvine, the *Wornstaff* opinion was newsworthy because it’s apparently the first appellate decision to apply the statute after it was amended to add “fear of continued harassment” to the definition of “domestic violence.”

“The other side argued there was not enough evidence at the hearing to show a fear of continued harassment and substantial emotional distress,” said Irvine. “However, judges typically don’t expect these cases to take up a tremendous amount of time. You could spend days talking about a person’s emotional distress.”

It was also typical for judges to enter domestic violence protective orders based on one specific incident, according to Irvine.

“We tried to introduce other stuff about prior occurrences but the other side objected,” she said.

Irvine applauded the Appeals Court’s deference to the trial judge’s ability to personally observe the witnesses.

“That’s particularly important in domestic violence cases,” she said. “The hearing occurs within days of an alleged incident. You can tell if someone is shivering or scared or acting pompous – all things that go to credibility when you’re talking about whether a party is afraid.”

The defendant’s attorney, James Wills III of Harbinger, said his client hadn’t decided whether to appeal the ruling based on Judge Tyson’s dissent.

However, Wills said he believed the majority set the bar too low for getting a 50B order.

When the statute required that an aggrieved party had to fear imminent bodily injury – as opposed to fearing continued harassment – 50B orders that were appealed “got reversed all the time,” according to Wills.

“Now if you get into an argument and simply start yelling, it’s going to be domestic violence,” said Wills. “They said this rose to the level of causing substantial emotional distress. My client wasn’t yelling that he was going to cut her head off – he was yelling ‘Would you like to hurt me? Would that make you feel better?’

“On top of that, my client is now branded with this,” Wills said. That could have legal consequences if he tried to purchase a gun or was charged with a crime, he said.

In a footnote, Judge Wynn addressed similar concerns in explaining why the defendant’s appeal in *Wornstaff* was not moot, even though the 50B order against him expired last month.

Judge Wynn said the merits of the appeal should be addressed due to the “stigma” of a finding of domestic abuse and the “continued legal significance of an appeal of an expired domestic violence protective order.”

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