IN THE SUPREME COURT OF THE EASTERN BAND OF CHEROKEE INDIANS

No. 25-01

The Cherokee Court, DV 24-1027

ALYSSA LOUISE ROSEMAN, Plaintiff,

v.

ZACHARY QUINN ROSEMAN, Defendant.

Appeal by Defendant from order entered 25 March 2025 by Judge Barbara Parker in the Cherokee Court. Heard in the Supreme Court 21 July 2025.

EBCI Legal Assistance Office – Tsoine, by Kelly Hebrank, for Plaintiff-Appellee.

Nielsen Law, PLLC, by Joshua D. Nielsen, for Defendant-Appellant.

LETTS, Chief Justice.

Zachary Quinn Roseman (Defendant) appeals from the renewal of a Domestic Violence Protective Order (DVPO). On appeal, Defendant argues that: (1) the trial court improperly admitted hearsay testimony at the 25 March 2025 DVPO renewal hearing; (2) that the trial court abused its discretion in granting Plaintiff's motion to renew the DVPO; and (3) that Cherokee Code Section 50B-10 is unconstitutionally vague. After careful review, we remand for expeditious entry of an order containing findings of fact and conclusions of law as to whether renewal of the 10 December 2024 Consent DVPO was appropriate based upon the record before the trial court at the 25 March 2025 DVPO renewal hearing. The existing DVPO remains in effect until a new order has been entered or upon further review by this Court.

I. Factual Background and Procedural History

On 5 April 2024, Plaintiff filed a complaint and motion for an *ex parte* DVPO against Defendant, her former husband. In her complaint, Plaintiff alleged that while exchanging custody of the couple's minor children for a weekend, Plaintiff was tending to one of the minor children in Defendant's car when "[D]efendant proceeded to put the vehicle in drive and dr[agged] [Plaintiff] 30 feet across the parking lot" causing Plaintiff to suffer "visible road rash which include[d] scratches, and bruising, and [Plaintiff's] pants [being] ripped/torn." The trial court entered an *ex parte* DVPO that same day, 5 April 2024, granting Plaintiff temporary custody of the minor children, ordering Defendant to remain away from Plaintiff's home, and ordering Defendant not to communicate with Plaintiff and the minor children until a final protective order was entered, or the *ex parte* DVPO was vacated.

Over the next eight months, hearings on the DVPO were scheduled and rescheduled until 10 December 2024. On 10 December 2024, a DVPO order (Consent DVPO) was entered, wherein the parties consented to waiver of findings of fact regarding the allegations that gave rise to the *ex parte* DVPO complaint[1] and agreed to extend the DVPO until 10 April 2025. Under the terms of the Consent DVPO, Defendant would not "assault, threaten, abuse, follow, harass . . . or interfere with [Plaintiff]."

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[1] The 10 December 2024 order itself has physical mark-throughs on page one where there is a designated space for the trial court to enter findings of fact and conclusions of law.

On 6 March 2025, Plaintiff filed a motion to renew the Consent DVPO for an additional two years. The matter came on for hearing 25 March 2025, and by order entered that same day, the trial court concluded that "[P]laintiff has shown that she is in reasonable fear o[f] physical or emotional harm from [Defendant]" and granted the motion to renew the existing DVPO for two years. From this order, Defendant entered timely written notice of appeal.

II. Discussion

On appeal, Defendant alleges: (1) that the trial court improperly allowed hearsay testimony at the 25 March 2025 hearing; (2) that the trial court abused its discretion and improperly applied C.C. § 50B-10 in granting Plaintiff's motion to renew the DVPO; and (3) that C.C. § 50B-10 is unconstitutionally vague. We will address these issues, as necessary, in the analysis to follow.

I. Hearsay

First, Defendant argues that the trial court improperly allowed hearsay testimony and relied upon such testimony in renewing the Consent DVPO. We do not agree.

A. Standard of Review

We review "a trial court's ruling on the admission of evidence over a party's hearsay objection *de novo*." *State v. Woodley*, 286 N.C. App. 450, 468, 880 S.E.2d 740, 752 (2022). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *Id.* (citation omitted).

B. Admissibility of Challenged Testimony

Pursuant to the Cherokee Code, in this Court, we generally follow the North Carolina Rules of Evidence unless otherwise provided for by Cherokee law. C.C. § 7-23(a). The North Carolina Rules of Evidence provide that "[h]earsay is a statement, other than one made by the declarant while testifying at trial or hearing, offered into evidence to prove the truth of the matter asserted." N.C. Gen. Stat. § 8C-1, Rule 801 (2023). "Hearsay is inadmissible except as provided by the statutes or by the rules of evidence." *Woodley*, 286 N.C. App. at 469, 880 S.E.2d at 752–53.

However, the official commentary to Rule 801 observes that, "[i]f the significance of an offered statement lies solely in the fact that it was made, no issue is raised as to the truth of anything asserted, and the statement is not hearsay . . . ." N.C. Gen. Stat. § 8C-1, Rule 801 (Official Commentary). Indeed, North Carolina courts have held that, "if the significance of an offered statement lies solely in the fact that it was made, no issue is raised as to the truth of anything asserted, and the statement is not hearsay." *State v. Mitchell*, 135 N.C. App. 617, 619, 522 S.E.2d 94, 95 (1999) (citing N.C.R Evid. 801, Official Commentary). Therefore, where an out-of-court statement is offered *solely* to prove the fact that the statement was made, the statement is not hearsay, but a *hearsay exemption*; in other words, the statement is *non-hearsay*.

Reviewing the transcript, the challenged testimony restated the couples' daughter's message from Defendant, "Daddy says stop, that he's not a mean person[,]"

and was offered in response to Plaintiff's Counsel's question about Plaintiff's concern that Defendant attempted to contact Plaintiff outside of the terms of the Consent DVPO. The testimony was not offered to prove the truth of the matter asserted, that Defendant was "not a mean person", but rather to prove "the fact that [the statement] was made," that Defendant used an intermediary—the couples' daughter—to relay messages to Plaintiff while the Consent DVPO was in place.

Here, because "the significance of [the] offered statement lies solely in the fact that it was made, no issue is raised as to the truth of anything asserted, and the statement is not hearsay." *Mitchell*, 135 N.C. App. at 619, 522 S.E.2d at 95; *see also State v. Leyva*, 181 N.C. App. 491, 500, 640 S.E.2d 394, 399 (2007) (observing that the challenged testimony was not offered for the truth of the matter asserted but was "admissible to explain the presence of the detectives" at the location in question "rather than to prove that [the] defendant sought to sell cocaine" and was therefore permissible non-hearsay). Thus, we conclude that the trial court did not err in overruling Defendant's hearsay objection at the 25 March 2025 DVPO renewal hearing.

II. Renewal of 10 December 2024 Consent DVPO

Next, Defendant argues that the trial court erred in failing to enter any findings of fact or conclusions of law in the 25 March 2025 DVPO that renewed the 10 December 2024 Consent DVPO. We agree.

A. Standard of Review

Our Court has not yet had the opportunity to set forth the standard for appellate review of an order renewing a DVPO. Cherokee Code Section 7-2(d) provides that:

> [i]n deciding cases and controversies over which it has jurisdiction, the Judicial Branch shall be bound by the laws, customs, traditions, and precedents of the Eastern Band of Cherokee Indians. If there is no applicable Cherokee Law, the Judicial Branch shall look next to Federal law, then to North Carolina law, and finally to the law of other jurisdictions for guidance.

C.C. § 7-2(d).

Indeed, the mandate found in Cherokee Code § 7-2(d) "requires the Cherokee courts to analyze and apply pertinent EBCI laws, customs, traditions, and precedents as controlling law and in deciding matters over which the courts have jurisdiction" and "only permits the courts to consider legal authority from other jurisdictions when there is no applicable EBCI legal authority." *Campos v. Eastern Band of Cherokee Indians*, 18 Am. Tribal Law 137, 158–59 (2024). The statute "provides a specific sequence that Cherokee courts are to follow in looking to other jurisdictions for guidance on the issues before them" and where there are no customs or traditions nor federal law "that expressly and directly appl[y] to the EBCI[,] . . . the Cherokee Code directs the Cherokee courts to look first to North Carolina law, and then to other jurisdictions." *Id.* at 159.

We observe that there are no EBCI customs or traditions that govern the standard of review from a renewal of a domestic violence protective order, nor does

federal law provide guidance on this issue; therefore, we turn to North Carolina for further guidance. In North Carolina, "[t]he standard of review of a trial court's order renewing a DVPO is strictly limited to determining whether the trial judge's underlying findings of fact are supported by competent evidence, and whether those factual findings in turn support the judge's ultimate conclusions of law." *Roy v. Martin*, 297 N.C. App. 704, 713–14, 911 S.E.2d 501, 507 (2025) (internal quotation marks, brackets, and citation omitted).

Therefore, after careful review and finding no pronouncement in the EBCI Code on this issue, we determine that the appropriate standard of review to apply to appellate review of the renewal of a DVPO in the EBCI is found in the aforementioned *Roy* decision.

B. Cherokee Code Section 50B-10

Turning to the issue before the Court, renewal of the Consent DVPO, Cherokee Code § 50B-10 governs the duration of a DVPO. It provides that:

> [t]he Court may extend or modify the terms of an existing order or, if an order is no longer in effect, grant a new order upon a showing that:
>
> (1) Respondent has violated a prior or existing order of protection or has engaged in other acts of domestic violence; or
>
> (2) The petitioner (or person on whose behalf petition is filed) is reasonably in fear of physical or emotional harm from the Respondent[.]

> A petitioner does not need to show that physical or emotional harm is imminent to obtain an extension or a subsequent order.

C.C. § 50B-10.

After careful review, we observe that the 25 March 2025 DVPO does not contain *any* findings of fact or conclusions of law to support the trial court's renewal of the 10 December 2024 Consent DVPO.[2] We recognize that the absence of findings of fact, pursuant to the consent of the parties, in the 10 December 2024 Consent DVPO was permissible; however, both parties did not agree to the *renewal* of the Consent DVPO beyond 10 April 2025. Therefore—absent consent of *all parties*—for the trial court to renew the 10 December 2024 Consent DVPO beyond 10 April 2025, the DVPO renewal order must *contain* findings of fact and conclusions of law. Absent findings of fact or conclusions of law in the DVPO renewal order, we are unable to determine "whether the trial judge's underlying findings of fact are supported by competent evidence, and whether those factual findings in turn support the judge's ultimate conclusions of law." *Roy*, 297 N.C. App. at 713–14, 911 S.E.2d at 507 (internal quotation marks, brackets, and citation omitted).

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[2] While we observe that the 25 March 2025 renewal order from which Defendant filed this appeal does not contain findings of fact or conclusions of law, we also recognize that the Tribalex electronic form utilized by the trial court lacks a field for entry of findings of fact or conclusions of law through no fault of the trial court. The trial court judge had no method to override the computer system, and this software limitation imposed a barrier upon the presiding judge preventing her from entering findings of fact and conclusions of law. This erroneous form will be corrected by the Chief Justice as required in his administrative duties and obligations in overseeing the Cherokee Court to provide a dedicated area for future trial courts to enter findings of fact and conclusions of law.

Therefore, we remand the matter for the trial court to consider whether Defendant has "violated a prior or existing order of protection or has engaged in other acts of domestic violence" or whether Petitioner "is reasonably in fear of physical or emotional harm from [Defendant]" pursuant to C.C. § 50B-10. On remand, the trial court is bound by the evidentiary record before it on 25 March 2025, no new evidence is permitted at the remand hearing. However, on remand, the parties *are* entitled to make arguments regarding whether renewal of the Consent DVPO is appropriate pursuant to C.C. § 50B-10, based upon the record before the trial court *at the time of the renewal hearing* on 25 March 2025.[3]

C. Evidentiary Standard of Review

Finally, we observe that Section 50B of the Cherokee Code does not set forth an evidentiary standard for the trial court's determination of whether to renew a DVPO. *See generally* C.C. § 50B. However, Cherokee Code Section 50E-4, which governs the issuance of a permanent protective order, utilizes a preponderance of the evidence standard. C.C. § 50E-4. Given the analogous policy motivations between these separate and distinction provisions of the Code—and absent a directive from Tribal Council to the contrary—we adopt the preponderance of the evidence standard as the applicable evidentiary standard to be applied to Cherokee Code § 50-B, because there is reasonable evidence to suggest that this standard is what Tribal Council

[3] This decision and remand by this Court, does not affect any pending criminal charges or vacate any prior criminal convictions of Defendant, if any exist.

would consider appropriate in these cases. Therefore, on remand, the court shall apply a preponderance of the evidence standard in determining whether the findings of fact support the conclusions of law.

Moreover, in consideration of the public policy issues surrounding DVPOs, on remand, we instruct the trial court that this matter be heard as promptly and expeditiously as the trial court's calendar allows during the next domestic violence civil term on 7 October 2025, or the earliest court date thereafter where all parties and their counsel are available. Finally, in light of our disposition, we elect not to address the alleged violations of the Indian Civil Rights Act issues raised by Defendant—inopportunely asserted as a constitutional argument under the United States Constitution.

III. Conclusion

After careful review, we conclude that the absence of findings of fact and conclusions of law in the 25 March 2025 DVPO renewal order frustrates appellate review of whether the trial court properly considered C.C. § 50B-10 when it renewed the Consent DVPO. Therefore, we remand for entry of a new order that includes findings of fact and conclusions of law supporting the court's determination of whether renewal of the Consent DVPO pursuant to C.C. 50B-10 is appropriate. On remand, this order shall be entered *nunc pro tunc*[4] to the date of the original renewal

[4] "A *nunc pro tunc* order is an entered order with retroactive effect." *Dabbondanza v. Hansley*, 249 N.C. App. 18, 22, 791 S.E.2d 116, 120 (2016).

order, 25 March 2025, due to the lack of findings of fact in the renewal order that were caused by the Tribalex program. It is so ordered.

REMANDED.

Justices BARRETT and HUNTER concur.