SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0663-16T3

P.L.G.,

Plaintiff-Respondent,

v.

C.K.,

Defendant-Appellant.

Submitted May 8, 2018 – Decided May 30, 2018

Before Judges Carroll and Mawla.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Sussex County, Docket No. FV-19-0037-17.

Hollander, Strelzik, Pasculli, Pasculli, Hinkes, Wojcik, Gacquin, Vandenberg & Hontz, LLC, attorneys for appellant (Catherine Anne Gacquin, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant C.K. appeals from a final restraining order (FRO) entered against him by the Family Part under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. The trial

judge found defendant committed assault and harassment against plaintiff P.L.G., his wife, and that an FRO was necessary. We affirm.

The record reveals that on July 2, 2016, plaintiff obtained a temporary restraining order (TRO) against defendant based on her complaint that defendant assaulted her while they were on vacation in Florida. Ten days later, defendant obtained a TRO against plaintiff based on allegations of assault and harassment arising out of the same incident and subsequent harassment by plaintiff after the parties returned to New Jersey. Both parties' complaints alleged a prior history of domestic violence (DV). Prior to trial, each party amended their respective complaints to add additional information regarding the July 2, 2016 incident and the prior DV history.

The trial court conducted a hearing on August 3, 2016, and September 1, 2016, at which both parties were represented by counsel. We summarize the most pertinent testimony adduced at the FRO hearing.

With respect to the prior DV history, plaintiff testified to a December 2014 incident when defendant arrived home from work intoxicated. An argument ensued, during which defendant pushed

her into a door with such force that the doorknob put a hole through a closet door located behind the door.[1]

A second incident occurred in November 2015, after defendant spent $8000 to purchase a snowmobile rather than reimburse plaintiff monies she previously advanced him to pay his attorney's fees from his prior divorce and renovate his premarital home prior to listing it for sale. Plaintiff threw a flower vase at the snowmobile and told defendant to remove the snowmobile from her garage or she would take a sledgehammer to it. Plaintiff testified defendant "then threatened to put a bullet in my head." Plaintiff threw defendant out of the house and obtained a TRO against him, which she subsequently voluntarily dismissed.

Regarding the June 30, 2016 incident that formed the basis of the parties' present complaints, plaintiff testified that, while on vacation in Florida, defendant began consuming alcohol at 10:00 a.m. and continued to imbibe throughout the day. Later, during dinner, plaintiff decided she "was done dealing with [defendant's] drunken behavior[.]" Plaintiff described defendant's treatment of her throughout the vacation as "[b]elligerent and [d]egrading," and stated he consumed alcohol daily to the point of intoxication. Consequently, plaintiff sat

[1] A photograph of the hole in the closet door was admitted in evidence at the hearing.

on the living room couch and "started videotaping [defendant in his drunken state] for proof, because he's in denial that there's a problem . . . that he drinks too much. He's in denial that he calls me names. So I started videotaping him with my phone."

The twelve-minute video recording was played for the court. Plaintiff testified that at the conclusion of the video, "[defendant] came right at me on the couch and I had the phone up so the phone went blank. I rolled to my right and he fell on the couch, face first to my left. With that, I got up and . . . went into the kitchen to start cleaning up."

Plaintiff stated she was cleaning the kitchen while holding her cell phone, when she "turned around and [defendant] was coming at me. He had two fists; he was huffing and puffing and just [coming] right for me . . . he barricaded me in the corner and he grabbed my right wrist and he squeezed it so hard I screamed." Plaintiff testified defendant "was pressing up against me and I was bent backwards over the counter. I took my left hand and I scratched his face to get him off me."

At that point, plaintiff's son, R.G., pulled defendant off plaintiff by grabbing defendant's neck in a chokehold-style, and R.G. and defendant "scuffled." Plaintiff testified that when they separated, "[R.G.] and I were backed up . . . in the living room.

[Defendant] was blocking the only doorway. I asked him to leave, I asked him to move and he wouldn't."

Plaintiff again recorded defendant. In the video, which was played for the court, plaintiff is shown repeatedly asking defendant to leave. Defendant accused plaintiff of having "planned" the incident, denied backing her into a corner of the kitchen, and told R.G. he was "going to regret" his actions.

Plaintiff stopped recording and called 9-1-1. An audio recording of the 9-1-1 call was played for the court. Plaintiff testified that while she was on the phone with the 9-1-1 operator, defendant grabbed her arm above her elbow and squeezed "really hard." Plaintiff introduced photographs into evidence depicting the marks and bruises left on her arm and wrist as a result of being grabbed by defendant.

R.G. testified at the hearing, consistent with plaintiff's description of the June 30, 2016 incident. According to R.G., defendant's conduct while on vacation mirrored his conduct at home in New Jersey, where he consumed alcohol "[u]sually every day" and verbally abused plaintiff and R.G.

Defendant testified that the hole in the closet door that plaintiff described in the December 2014 incident was caused by plaintiff falling into the door on her own rather than defendant pushing her. He further testified that he and plaintiff separated

after the November 2015 snowmobile incident, and reconciled the following month at plaintiff's suggestion. He denied ever threatening to put a bullet in her head.

Defendant described the parties' June 2016 Florida vacation as enjoyable "[f]or the most part." However, "it kind of went downhill a little bit when, two days into the vacation, [plaintiff] . . . approached me and said, 'I think when we get home, we need to separate and go our own ways.'"

Defendant testified the only time during the Florida trip that he drank to the point of intoxication was on June 30. That evening, after dinner, plaintiff "started calling me a drunk and a loser, and she started filming me with her phone." Defendant felt "very confident" that "she was trying to stage an argument, and get it on tape, and have a leg [up] in the divorce."

Defendant stated he tried to grab the phone away from plaintiff, without success. Plaintiff stopped recording and went into the kitchen to clean up. According to defendant, he went into the kitchen to assist her, and plaintiff

> started filming me again. And I asked her not to. And when I went to grab the phone again, she . . . started screaming profusely. . . . And before I knew it, [R.G.] had me around the neck in a . . . [chokehold], and he had a pretty good grip on me. And right at that point, [plaintiff] hit me and scratched her nails right down my face.

When defendant freed himself from R.G.'s grip, plaintiff called 9-1-1. Defendant denied grabbing plaintiff's arm while she was on the phone with the 9-1-1 operator, but rather he attempted to grab the phone from her because he "wanted to talk to the dispatcher." The police arrived a short time later, and defendant was taken to jail, where he remained overnight.

While still in Florida on July 1, 2016, defendant was served with a "no contact" order. That day, defendant called plaintiff's best friend, J.M., for advice on how to get his property back from plaintiff when he returned to New Jersey. Defendant stated he did not ask or intend for J.M. to contact plaintiff following his phone call, but rather he was merely seeking advice.

Once back in New Jersey, defendant, accompanied by police, retrieved his truck, which was packed with his clothes, from plaintiff's house. He claimed plaintiff called his employer and his ex-wife and told them his drinking was out of control and detailed the events that transpired in Florida.

Regarding plaintiff's allegations that he violated the TRO and no contact order, defendant testified he did not call and leave plaintiff a voicemail from jail on July 1, 2016. He admitted he once drove past plaintiff's house, but explained he was going to a client's house and did not realize in advance that the most direct route there would take him past plaintiff's home.

On rebuttal, plaintiff testified defendant left her a voice mail from jail on July 1, 2016, thus disputing his claim that he did not call her from jail. Plaintiff played the voice mail from her phone for the court.

With respect to the events of June 30, 2016, the trial judge credited plaintiff's testimony and found defendant was not credible. Specifically, the judge found that plaintiff's testimony, as corroborated by her videos and the audio of the 9-1-1 call, made "chronological sense as to what actually occurred." Conversely, the videos did not corroborate the sequence of events testified to by defendant. Having viewed the videos, the judge noted defendant "was slurring. He was stumbling. He . . . was clearly just totally out of it."

The judge found defendant "tried to grab the phone, not once, but on at least two occasions during this time that they're in this Florida condo." The judge determined that "for [defendant] to say that he tried to get the phone and there was no contact except maybe touching her fingers a little, just defies belief." Rather, plaintiff's account was corroborated by the fact "she had significant bruising on her wrists." The judge also noted defendant violated the no contact order by driving past plaintiff's house and contacting J.M. Ultimately, the judge concluded the evidence established defendant committed the predicate acts of

assault and harassment, and that an FRO was necessary because of the risk of future violence.[2] This appeal followed.

Defendant argues the trial judge erred in finding that his conduct constituted assault and harassment, and that the judge failed to make sufficient findings that defendant engaged in such conduct. Defendant further contends the judge erred in finding an FRO was necessary to protect plaintiff from further abuse. We disagree.

The scope of an appellate court's review of the factual findings made by a trial judge is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12 (citing Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)). "Deference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Id. at 412 (citation and internal quotation marks omitted). We afford particular deference "to factfindings of the family court because it has the superior ability to gauge the credibility of the witnesses who testify before it and because it possesses special

[2] The judge also found plaintiff committed an act of harassment when she called defendant's employer, but denied defendant's request for an FRO on the basis that he did not require it to prevent further harassment. Defendant does not appeal this ruling.

expertise in matters related to the family." N.J. Div. of Youth & Family Servs. v. F.M., 211 N.J. 420, 448 (2012) (citing Cesare, 154 N.J. at 413). This "'feel of the case' . . . can never be realized by a review of the cold record." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008) (citing N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 293 (2007)).

The Supreme Court has recognized the difficulty facing a "trial court to discern on which side of the line running between domestic violence and ordinary 'contretemps' a particular act properly falls." J.D. v. M.D.F., 207 N.J. 458, 482 (2011). Yet, Family Part judges "have been specially trained to detect the difference between domestic violence and more ordinary differences that arise between couples, and [because of that expertise,] their findings are entitled to deference." Ibid. (citing Cesare, 154 N.J. at 412-13). Consequently, a family court's factual findings "should not be disturbed unless 'they are so wholly insupportable as to result in a denial of justice . . . ." In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993) (quoting Rova Farms, 65 N.J. at 483-84).

When determining whether to grant a final restraining order pursuant to the PDVA, the judge must make two determinations. Silver v. Silver, 387 N.J. Super. 112, 125 (App. Div. 2006). "First, the judge must determine whether the plaintiff has proven,

by a preponderance of the credible evidence, that one or more of the predicate acts set forth in N.J.S.A. 2C:25-19a has occurred." Ibid. Second, there must also be a finding that "relief is necessary to prevent further abuse." J.D., 207 N.J. at 476 (quoting N.J.S.A. 2C:25-29b). In this regard, it is well-established that commission of one of the predicate acts of domestic violence set forth in N.J.S.A. 2C:25-19 does not, on its own, "automatically . . . warrant the issuance of a domestic violence [restraining] order." Corrente v. Corrente, 281 N.J. Super. 243, 248 (App. Div. 1995); Peranio v. Peranio, 280 N.J. Super. 47, 54 (App. Div. 1995).

The determination of whether such an order should be issued must be made "in light of the previous history of domestic violence between the plaintiff and defendant including previous threats, harassment[,] and physical abuse[,] and in light of whether immediate danger to the person or property is present." Corrente, 281 N.J. Super. at 248 (citing N.J.S.A. 2C:25-29a(1) and (2)); Peranio, 280 N.J. Super. at 54. Although this determination "is most often perfunctory and self-evident, the guiding standard is whether a restraining order is necessary, upon an evaluation of the factors set forth in N.J.S.A. 2C:25-29a(1) to -29a(6), to protect the victim from an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 127 (citation omitted). Our

review of a trial court's legal conclusions is always plenary. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Here, the evidence supported the judge's findings. Plaintiff's testimony that defendant grabbed and aggressively squeezed her wrist and arm, causing pain, was corroborated by the photographic evidence of the bruising she sustained in those areas. That evidence was sufficient for a finding of simple assault. N.J.S.A. 2C:12-1(a)(1); see N.J.S.A. 2C:11-1(a).

In addition to physically grabbing and squeezing plaintiff, the judge found defendant tried to take plaintiff's phone away from her on multiple occasions. The judge's finding of harassment was supported by the evidence that defendant had the purpose to harass, and that his communications were likely to cause plaintiff annoyance and alarm, N.J.S.A. 2C:33-4(a); that he subjected plaintiff to striking and other offensive touching, N.J.S.A. 2C:33-4(b); and that his course of conduct was intended to alarm and seriously annoy plaintiff, N.J.S.A. 2C:33-4(c). See J.D., 207 N.J. at 477-78. "A finding of purpose to harass may be inferred from [this] evidence . . . ." State v. Hoffman, 149 N.J. 564, 577 (1997) (citing State v. McDougald, 120 N.J. 523, 566-67 (1990)).

As the judge recognized, the issue in this case was credibility. The judge credited plaintiff's testimony, which was

corroborated by her son, the photographs, and the video and audio recordings. The judge discredited defendant's denials, which were belied by his obvious intoxication and the photographs of plaintiff's injuries. We find no basis for disturbing the judge's credibility and factual findings.

Here, the trial judge heard the testimony, listened to and observed the witnesses, and then concisely articulated his findings. In addition to finding defendant committed predicate acts of domestic violence, the judge noted defendant's conduct after the no contact order was issued, and found an FRO was necessary "to prevent further acts of domestic violence, because he just doesn't stop." Accordingly, we similarly find no basis to disturb the judge's conclusion in accordance with the second prong of Silver that plaintiff needed the protection of an FRO.

Affirmed.