SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1300-20

P.O.,

Plaintiff-Respondent,

v.

C.N.,

Defendant-Appellant.

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Submitted April 7, 2022 – Decided May 20, 2022

Before Judges Haas and Alvarez.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FV-02-0768-21.

C.N., appellant pro se (Joseph J. Haskins, Jr., on the brief).

Sheena Burke Williams, attorney for respondent.

PER CURIAM

Defendant C.N. appeals a December 7, 2020 final restraining order (FRO) issued under the Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-

17 to -35. He also appeals the trial judge's award of $14,009.75 in counsel fees to plaintiff, P.O. We affirm.

The trial was conducted virtually over four days from November 18, 2020 to December 4, 2020. At times, the transcriber could not discern the words spoken by the witnesses, which included the parties, their adult daughter, and their teenage son. Additionally, intermittent connectivity issues occasionally halted the proceedings and briefly delayed start times. Both parties were represented. The court rendered its FRO decision on December 7, 2020, and its decision as to counsel fees on January 14, 2021, after receiving plaintiff's counsel's affidavit of services and defendant's brief in opposition.

Plaintiff's complaint and amended complaint recited the following:

> THE VICTIM AND DEFENDANT HAVE BEEN HAVING ON-GOING MARITAL ISSUES FOR THE PAST SEVERAL YEARS. RECENTLY, THE VICTIM LEARNED THAT THE DEFENDANT HAD MARRIED AND MOVED TO AFRICA. THE DEFENDANT HAD STOPPED COMMUNICATING WITH THE VICTIM AND THEIR CHILDREN. RECENTLY, THE DEFENDANT CAME BACK TO THE RESIDENCE AND REFUSED TO LEAVE. THERE HAVE BEEN SEVERAL REPORTED AND NON-REPORTED INCIDENTS OF DOMESTIC VIOLENCE.
>
> ***AMENDED 11/04/2020***
> PLA REPORTS A HISTORY OF ABUSE SINCE 1992. THEY HAD BUSINESSES TOGETHER AND

> BOUGHT PROPERTIES WITH THE MONEY AND THE DEF HAS TAKEN EVERYTHING. IF THE PLA ASKED HIM FOR MONEY, SHE WAS TOLD THAT THE MONEY SHE MADE WAS TO FEED THE CHILDREN. THE DEF WAS DISRESPECTFUL TOWARD THE PLA AND WOULD FIGHT WITH HER, YELL AT HER AND BEAT HER ALL THE TIME. IN ONE INCIDENT THE PLA REPORTS THAT THE DEF CUT HER THIGH WITH A KNIFE. THE DEF THREW A STAPLER AT THE PLA, STRIKING HER IN THE SIDE OF THE FACE CAUSING THE PLA TO COLLAPSE AND SUSTAIN A BUMP, WHEN THEIR DAUGHTER WAS 2 YEARS OLD[,] THE DEF THREW HER AT THE PLA CAUSING INJURY. THE DEF HAS LOCKED THE PLA IN THE CAR USING THE CHILD SAFETY LOCKS AND THEN BEAT HER, PUNCHING HER IN THE JAW. ***SEE ADDENDUM***

The addendum refers to additional allegations that appear on page five of the TRO, which read as follows:

> ***AMENDMENT 11/04/2020 (CONT.)***
> DUE TO THIS ASSAULT, THE PLA ONLY HAS FIVE TEETH REMAINING IN[ ]FRONT IN HER UPPER JAW. THE DEF TELLS THE PLA TO LEAVE THE HOUSE SO HE CAN BRING HIS WIFE THERE. BUT THEY HAVE NOT DIVORCED YET. THE DEF PULLED THE PLA OUT OF THE SHOWER NAKED BECAUSE HE WANTED TO SHOWER AND THE HOUSE IS HIS. THE DEF HAS BITTEN THE PL[']S FINGER AND TOLD HER IF SHE CONTINUED WITH A CASE, HE WOULD NOT APPLY FOR HER VISA AND WORK PERMIT. THE PLA REPORTS ALSO GETTING THREATS FROM THE DE[']S FAMILY MEMBERS. AFTER BITING HER FINGER AND THE CASE WAS OVER, THE DEF NEVER

CHANGED AND THE PLA REMAINED AFRAID OF HIM. SHE MOVED OUT OF THE BEDROOM AND SLEPT ON THE COUCH AND THE DEF WOULD STILL COME AND ATTACK HER.

PLA REPORTS THAT AFTER MOVING OUT OF THE BEDROOM BETWEEN JUNE AND AUGUST 2017, SHE FOUND THE DEF[']S NOTEBOOK AND WHAT SHE READ PUT HER IN GREAT FEAR. THE WRITINGS INCLUDED COMING BACK TO BED HOW [sic] PUNISHMENT FOR WRONG DOING [sic] WRECK CAR, DISEASE ETC[.]

ONE DAY WHEN THE PLA HAD SERVED THE DEF HIS FOOD, HE STARTED FIGHTING WITH HER OVER HIS WIFE IN KENYA. THE DEFENDANT TOOK THE PLATE AND HIT HER IN THE HEAD AND BROKE THE PLATE.

PLA REPORTS THAT SHE HAD ASKED THE DEF TO SUPPORT HER AND TO PAY FOR THEIR DAUGHTE[R'S] COLLEGE FEES. THE DEF STARTED YELLING AT THE PLA AND SAID THAT SHE AND THEIR CHILDREN ARE JUST IN HIS HOUSE TO STEAL FROM HIM. THE DEF THEN PUSHED THE PLA CAUSING HER TO FALL DOWN. ANOTHER DAY HE PUSHED THE PLA DOWN THE STAIRS AND SHE ALMOST BROKE HER LEG.

THE DEF HAS REFUSED TO REPAIR THE WATER HEATER IN THE HOUSE FOR THE PAST 14 MONTHS. THE DEF SAID THAT AS LONG AS SHE IS IN THE HOUSE, HE WILL NEVER REPAIR ANYTHING.

THE DEF BUYS HIS ON [sic] FOOD, COOKS IT AND THEN LOCKS HIMSELF IN THE BEDROOM TO EAT.

WHEN THE DEF HAS ARGUMENTS WITH THE PLA, HE WOULD FOLLOW HER INTO THE BEDROOM. WHEN THE PLA SAID THAT SHE WAS GOING TO CALL THE POLICE, THE DEF WOULD WALK AWAY AND SAY YOU WILL SEE. WHEN THE DEF IS IN THE HOUSE AT NIGHT, THE PLA PUSHES A DRESSER UP AGAINST THE DOOR SO THAT THE DEF CANNOT ATTACK HER WHILE SHE IS SLEEPING.

WHENEVER THE DEF SEES THE PLA HE WILL BANG THE DOOR VERY LOUDLY AND INSTILLS FEAR IN HER. NOW WHEN SHE HEARS A BANGING NOISE HER WHOLE BODY SHAKES.

THE PLA DECIDED TO FIND A PLACE OF HER OWN TO ESCAPE THE DE[F']S ABUSE. SHE FOUND A PLACE AND PLANNED ON MOVING OUT BUT THEN THE DEF WAS NOT AROUND AND THERE WAS NO ONE TO STAY WITH THEIR SON. THE PLA STAYED IN THE HOME WAITING FOR THE DEF TO RETURN SO THERE WAS SOMEONE HOME FOR THEIR SON AND SHE COULD MOVE OUT. ON 2ND OF OCTOBER ONE OF THE UN STAFF AND A FAMILY FRIEND TOLD THE PLA THAT THE DEF GOT A JOB IN ETHIOPIA AFRICA. THE PLA DECIDED TO RETURN HER BELONGINGS BACK TO THE HOUSE TO STAY WITH THEIR SON. AROUND 10/16/2020. THEIR SON ADVISED THE PLA THAT THE DEF WAS BACK HOME. THE PLA ALMOST FELL DOWN AND STARTED SWEATING. WHEN THE PLA RETURNED TO THE HOME, THEIR SON TOLD HER THAT THE DEF HAD PACKED AGAIN AND

> LEFT. THE PLA SENT HIM A MESSAGE TELLING HIM THAT THEY CANNOT LIVE TOGETHER ANYMORE. ON 10/19/2020, THE DEF RETURNED IN THE NIGHT AND AN ARGUMENT STARTED OVER HIM HAVING A WIFE AND CHILD IN ANOTHER COUNTRY. THE DEF TOLD THE PLA THAT HER SALARY CA[N']T PAY FOR THIS HOUSE, AND THAT SHE HAS NOTHING. THIS IS WHEN PLA WENT TO THE POLICE.

We repeat the allegations in full to provide context for defendant's claimed points of error.

Plaintiff testified about defendant's frequent violent assaults and conduct spanning their thirty-five-year marriage. These included, but were not limited to, defendant biting off the end of plaintiff's finger in 2016. Plaintiff further testified that in order for the criminal assault charges to be dismissed, she signed an affidavit in defendant's attorney's office denying that defendant had bitten her. The story became that the injury was caused by a mishap with the blade of a fan. Plaintiff actually displayed the fan to the judge to demonstrate that defendant's explanation was physically impossible.

Plaintiff had only four teeth left in her upper jaw, the loss of teeth being attributable to defendant's frequent blows. On an earlier occasion, defendant physically pulled plaintiff out of the shower while she was using it so he could shower without having to wait. Plaintiff also described defendant's habit of

banging on doors to announce his presence in the home, which she said terrified her.

The parties own properties together in Africa; however, only defendant collects the rents. He does not contribute to the support of plaintiff or their children other than the carrying costs on the marital home. Defendant refused to pay to repair the water heater so long as plaintiff continued to live in the house.

The parties' daughter testified that for some unspecified time she had managed the overseas properties, but that she stopped doing so because of her anger over her father's treatment of her mother. When confronted with this testimony, defendant claimed plaintiff had inexplicably refused to accept any income from the rental properties.

Defendant flatly denied plaintiff's version of events. For example, he said plaintiff's missing teeth were extracted during pregnancy because they caused her pain. He denied biting off the end of plaintiff's finger. He also denied entering the house through the doorway identified by plaintiff when the triggering incident occurred.

Plaintiff returned home, which she had vacated for a short time, because she heard defendant had accepted a job in Africa. When she arrived, her son told her defendant had taken his belongings.

On October 19, 2020, however, as plaintiff sat in the living room, she heard banging on the doors. She testified the banging was consistent with defendant's past practice "when he wants to put fear in me." When defendant entered, she attempted to tell him they could not live together anymore because of his conduct. Plaintiff said defendant told her the house was not hers because she could not afford the mortgage payments, and that she had returned only because she was "waiting to steal from [him] through divorce." At that point, plaintiff went to the local police and obtained a temporary restraining order (TRO).

Unsurprisingly, the judge found plaintiff's testimony credible and defendant's incredible. Various inconsistencies led her to that conclusion. For instance, defendant reversed his testimony regarding his exclusive receipt of rental income after his adult daughter testified. The judge also noted the parties' daughter confirmed defendant's physical violence against plaintiff, and the son's testimony that he went downstairs when the triggering incident occurred to make sure no physical violence took place. The judge further focused on the

impossibility of defendant's tale ascribing plaintiff's finger injury to a mishap with a protective fan grid.

In the context of the parties' history, defendant's act of ignoring plaintiff's emails shortly before her return to the marital home after his seeming departure, followed by his surprise return, terrorized plaintiff. Defendant knew unexpectedly returning and banging his way into the home would likely cause alarm.

The judge observed: "[t]his is one of the most horrific histories of domestic violence this [c]ourt has [heard] . . . this [c]ourt genuinely fears [plaintiff] will be physically hurt if this restraining order is not granted." Addressing defendant's argument that plaintiff did not fear him because after he returned home, she followed him saying that the parties could not reside together, the judge pointed out that "[t]here is no one way that a true victim of domestic violence responds to violence." Furthermore, plaintiff's "actions spoke louder than any words," as she then immediately gathered her belongings and went to the police station.

After announcing that she would enter an FRO in plaintiff's favor, the judge invited argument from counsel on the appropriate fine. Since defendant

had to carry "all the costs for the marital residence," the judge imposed a $250 fine rather than the maximum $500.

Plaintiff's attorney requested fees. Defendant objected because the complaint did not mention them. The judge responded, "many times I entertain the[se applications] at the end of the court case" and instructed plaintiff's counsel to submit a supporting certification. Defendant's attorney submitted a brief in opposition. Ultimately, the judge awarded plaintiff $14,009.75.

Now on appeal, defendant raises the following alleged points of error:

> POINT I
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> THE TRIAL COURT ERRED IN FINDING THAT DEFENDANT COMMITTED A PREDICATE ACT OF DOMESTIC VIOLENCE HARASSMENT AGAINST PLAINTIFF ON OCTOBER 19, 2020.
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> POINT II
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> THE TRIAL COURT ERRED IN ALLOWING PLAINTIFF TO TESTIFY TO AN ALLEGED PREDICATE ACT OF DOMESTIC VIOLENCE (THAT DEFENDANT ALLEGEDLY OPENED THE DOORS TO THE HOUSE WITH A "BANG"), WHICH WAS NOT ALLEGED BY PLAINTIFF IN PLAINTIFF'S COMPLAINT OR IN PLAINTIFF'S AMENDED COMPLAINT.
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> POINT III
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> THE TRIAL COURT ERRED IN REVERSING ITS OWN RULING PURSUANT TO SILVER VS.

SILVER, 387 N.J. SUPER. 112, (APP. DIV. 2006), THAT PLAINTIFF MUST PRESENT EVIDENCE OF A PREDICATE ACT OF DOMESTIC VIOLENCE BEFORE THE COURT CAN HEAR OR CONSIDER EVIDENCE OF AN ALLEGE[D] PRIOR HISTORY OF DOMESTIC VIOLENCE, AND IN OTHERWISE APPLYING SILVER.

POINT IV

THE TRIAL COURT ERRED IN ITS ANALYSIS OF THE PARTIES' TESTIMONY AND THE PARTIES' CREDIBILITY, AND IN ITS EVIDENTIARY RULINGS.

POINT V

THE TRIAL COURT ERRED IN ALLOWING PLAINTIFF TO MAKE A POST-TRIAL, POST-DECISION, APPLICATION FOR COUNSEL FEES WHERE PLAINTIFF HAD FAILED TO REQUEST THIS RELIEF IN HER COMPLAINT AND IN HER AMENDED COMPLAINT.

I.

Because Family Part judges possess special expertise in family matters and have the opportunity to observe witnesses, their factual findings are reviewed deferentially. Cesare v. Cesare, 154 N.J. 394, 411–13 (1998); see also C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020) (stating that Family Part judges are "specially trained to detect the difference between domestic violence and more ordinary differences that arise between couples.") cert.

denied, 244 N.J. 339 (2020). Such findings are upheld if supported by sufficient, credible evidence. Cesare, 154 N.J. at 413. An appellate court should "exercise its original fact[-]finding jurisdiction sparingly and in none but a clear case where there is no doubt about the matter." Id. at 412. Thus, the mere existence of some inconsistent evidence is not a basis for reversing the factual findings of the trial court. Id. at 413 (stating that the Appellate Division should have sustained the trial court's factual findings "despite the existence of some evidence that might have supported different factual findings."). Legal conclusions are reviewed de novo. C.C., 463 N.J. Super. at 429.

We address defendant's first three points simultaneously. First, it is a misstatement of law that a domestic violence complainant must present a predicate act of domestic violence before the trial judge can hear evidence of the parties' prior history. To the contrary, the Supreme Court said in J.D. v. M.D.F., 207 N.J. 458, 483-84 (2011):

> A history of domestic violence may serve to give content to otherwise ambiguous behavior and support entry of a restraining order. . . . The decision about whether a particular series of events rises to the level of harassment or not is fact-sensitive. The smallest additional fact or the slightest alteration in context, particularly if based on a history between the parties, may move what otherwise would appear to be non-harassing conduct into the category of actions that qualify for issuance of a restraining order.

[Id. at 483-84.]

Thus, the parties' prior history is the context in which a predicate act is examined. The trial court properly and necessarily admitted the prior domestic violence history to assess whether or not defendant's conduct on the night in question—which at first glance might only appear deliberately annoying—constituted harassment.

To find harassment, a defendant must have communicated in a manner "likely to cause . . . alarm" and must have had the purpose to harass. See N.J.S.A. 2C:33-4(a). In this case, plaintiff's testimony established that over time, defendant had used door-banging as a means of intimidation. His inappropriately noisy arrival presaged additional acts of abuse. Admission of this testimony established his purpose to harass and to alarm plaintiff.

Additionally, it is inaccurate that plaintiff had not alleged door-banging as a means of harassment. She did so when she said in her addendum to the complaint seeking a TRO, that "whenever the defendant sees the plaintiff he will bang the door very loudly and instill fear in her. Now when she hears a banging noise her whole body shakes." That language gave defendant ample warning she would include that conduct as an act of harassment. Furthermore, defendant

testified over two weeks after plaintiff. Thus, his due process rights were not violated. He had sufficient time to develop a defense.

As discussed by the Court in J.D., trial judges may grant postponements in order to ensure that a defendant has an adequate opportunity to prepare to defend a surprise allegation that arises while a plaintiff is testifying. See 207 N.J. at 480. Here, that step was not necessary because defendant had days to prepare his response, and the FRO was not granted based upon conduct omitted from a complaint. Id. at 478. Defendant could have anticipated the testimony, and once developed, prepare a defense.

II.

Defendant's challenge to the judge's credibility rulings does not warrant much discussion in a written opinion. See R. 2:11-3(e)(1)(E). Not only do we defer to factual findings made by Family Part judges because of their unique expertise and the opportunity to observe witnesses, but in this case, even the cold transcript reflects inherent problems with defendant's testimony that made him an incredible witness. See Cesare, 154 N.J. at 411-13. The judge's findings were more than supported by sufficient and credible evidence. Id. at 413.

III.

Finally, the award of attorney's fees is explicitly authorized by the Act. N.J.S.A. 2C:25-29(b)(4). The Act is to be liberally construed to achieve its remedial and salutary purpose. Grandovic v. Labrie, 348 N.J. Super. 193, 196 (App. Div. 2002). Determinations by trial judges regarding legal fees are disturbed only when a clear abuse of discretion occurs. See McGowan v. O'Rourke, 391 N.J. Super. 502, 508 (App. Div. 2007).

Given the circumstances in which domestic violence complaints are filed, and the reality that victims are often unrepresented at that stage, it is logical and reasonable that a complaint need not request counsel fees in order for an award to be made. In McGowan, for example, the court affirmed an award first requested after the court's decision to grant the FRO. See 391 N.J. Super. at 505-08. Defendant offers no caselaw that would make a demand in the initiating complaint a procedural requirement.

In any event, defendant here had ample time to oppose the application. He did not request additional time and submitted an opposing brief. Given the dramatically disparate financial circumstances between the parties, the decision was not an abuse of discretion.

Affirmed.