

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3651-20

T.A.,

Plaintiff-Respondent,

v.

W.B.,

Defendant-Appellant.

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Submitted May 2, 2022 – Decided May 25, 2022

Before Judges Sabatino and Bishop-Thompson.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Mercer County,  
Docket No. FV-11-0066-22.

W.B., appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Defendant W.B.<sup>1</sup> appeals from an August 4, 2021 final restraining order (FRO) entered against him after a hearing pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. The Family Part judge found defendant committed the predicate act of harassment, N.J.S.A. 2C:33-4(b), and plaintiff T.A., defendant's estranged wife, needed protection under the PDVA from further abuse. See Silver v. Silver, 387 N.J. Super. 112, 127 (App. Div. 2006) (noting second inquiry in action under the PDVA is "whether a restraining order is necessary . . . to protect the victim from an immediate danger or to prevent further abuse" (citing N.J.S.A. 2C:25-29(b))). We affirm.

The parties dated for approximately three months and married in October 2020. The parties, along with plaintiff's seven-year-old child from a former marriage, resided together from March 2021 until July 12, 2021, when defendant moved out of the apartment. On July 14, 2021, plaintiff obtained a temporary restraining order (TRO) alleging terroristic threats, burglary, criminal trespass, stalking, and harassment committed by defendant between July 12, 2021 and July 14, 2021. The same day, the TRO was served on defendant.

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<sup>1</sup> We use initials and pseudonyms to protect the identities of the parties and to preserve the confidentiality of the proceedings. R. 1:38-3(d)(9)-(10).

Defendant thereafter obtained a cross-complaint and TRO against plaintiff alleging harassment and terroristic threats, which was served on July 20, 2021.<sup>2</sup> The judge adjourned the FRO hearing to hear both complaints together.

We summarize the facts from the FRO hearing held on August 4, 2021. The judge heard the testimony of plaintiff and defendant. Plaintiff's testimony was consistent with her domestic violence complaint. About 3:30 a.m. on July 14, 2021, plaintiff awoke after hearing noise downstairs. She explained that she went downstairs and found defendant slamming cabinets, packing bags, washing clothes, and disassembling furniture, purportedly purchased by her. Defendant eventually left the apartment.

Later in the morning, plaintiff received a voicemail on her phone.<sup>3</sup> She recognized defendant's voice and believed that he was talking about her. She also believed that he was unaware that he left the message when he was sitting in his truck across the street from their apartment. Plaintiff testified defendant was talking with an unidentified person and stated, "if I had a pistol – I swear I

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<sup>2</sup> On August 4, 2021, defendant obtained a FRO against the plaintiff, which she did not appeal.

<sup>3</sup> Plaintiff testified that she accidentally deleted the voicemail sometime after the police listened to it. As a consequence, we do not have the benefit of this evidence.

think I need my pistol." He also stated, "I'm going to have to shoot this, [B-\*-\*-\*-\*]."

Defendant then followed with "no, no, seriously I think I'm going to have to shoot this." Plaintiff called the police after listening to the message. After reporting the incident, she was driven by police officers to the station to obtain a TRO.

Plaintiff also recounted other earlier incidents of domestic violence. On Mother's Day 2021, plaintiff and her daughter were awakened at 1:00 a.m. by defendant "banging on the door." Sometime after defendant entered the apartment, he raised his fist at plaintiff. She raised her fist in response; however, no physical contact occurred.

Plaintiff testified that later on Mother's Day defendant was "outside with a knife running around [her] car and trying to poke the tires" on the car defendant had given to her. She did not know what caused defendant to act in this manner. She explained defendant often used the car as "leverage" when he was "mad" or "something was not going his way."

Defendant testified that plaintiff's complaint was "fabricated." Defendant denied that he committed any of the acts alleged by plaintiff. Defendant likewise disputed plaintiff's ownership of the car. He testified plaintiff was allowed to use his car because she did not have transportation.

At the conclusion of the hearing, the judge issued an oral opinion accompanied by an order. The judge first concluded that the court had jurisdiction under N.J.S.A. 2C:25-19(d) based upon the parties' marital relationship. The judge credited and accepted plaintiff's testimony regarding the Mother's Day incidents and the July 14, 2021 incidents.

The judge determined plaintiff failed to prove defendant committed burglary, criminal trespass, and terroristic threats.

Conversely, the judge concluded plaintiff proved harassment under N.J.S.A. 2C:33-4(b). The judge explained that the "message was left on [plaintiff's] phone and that it was left with an intent to alarm, annoy, or intimidate consistent with earlier threats in text messages."

The judge then considered "whether or not the second prong of Silver [wa]s satisfied," having accepted plaintiff's testimony regarding the prior history of domestic violence. The judge carefully reviewed the factors set forth in N.J.S.A. 2C:25-29(a)(1) to -29(a)(6). See Silver, 387 N.J. Super. at 127. The judge concluded there was "a need for protection going forward" and entered the FRO. This appeal followed.

On appeal, defendant argues: (1) the court's decision lacked sufficient credible evidence in the record; (2) plaintiff failed to satisfy her burden of proof

by a preponderance of the evidence; (3) defense counsel failed to put forth a vigorous defense; and (4) this matter should be heard by a different judge on remand. We reject these arguments.

"The scope of appellate review of a trial court's fact-finding function is limited. The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (citing Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). "We defer to the credibility determinations made by the trial court because the trial judge 'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare, 154 N.J. at 412). In this regard, we note that the court reciprocally found defendant's claims against plaintiff were also credible.

Moreover, "[b]ecause of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare, 154 N.J. at 413. However, we do not defer to the judge's legal conclusions "if they are based upon a misunderstanding of . . . applicable legal principles." T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App.

Div. 2017) (quoting N.T.B. v. D.D.B., 442 N.J. Super. 205, 215 (App. Div. 2015)).

Before a FRO may be issued, the court must engage in a two-prong analysis and make specific factual findings and legal conclusions. Silver, 387 N.J. Super. at 125-27. First, the court must determine, "in light of the previous history of violence between the parties...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:25-29(a) has occurred." Ibid.

A person is guilty of harassment "if, with purpose to harass another, he '[m]akes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm.'" N.J.S.A. 2C:33-4(a). "'A finding of a purpose to harass may be inferred from the evidence presented' and from common sense and experience." H.E.S. v. J.C.S., 175 N.J. 309, 327 (2003) (quoting State v. Hoffman, 149 N.J. 564, 577 (1997)). "Although a purpose to harass can be inferred from a history between the parties." J.D. v. M.D.F., 207 N.J. 458, 487 (2011) (citing Hoffman, 149 N.J. at 577). Such a finding must be supported by "some evidence that the actor's conscious object was to alarm or annoy; mere awareness that someone might be

alarmed or annoyed is insufficient." Id. (citing State v. Fuchs, 230 N.J. Super. 420, 428. (App. Div. 1989)). In addition, the communication must be delivered to the victim for harassment to occur. R.G. v. R.G., 449 N.J. Super. 208, 226 (App. Div. 2017) (citing J.D., 207 N.J. at 487).

We are satisfied the court's conclusion that defendant harassed plaintiff, as defined under N.J.S.A. 2C:33-4(a), was based upon substantial, credible evidence in the record. The court found plaintiff credible. The court found defendant harassed plaintiff when he left the message because the statement was left with purpose "in some [way to] intimidate her" and with the "intent to alarm, annoy." The court further explained the voicemail was "threatening in nature." He also noted the prior history of verbal abuse and the Mother's Day incidents. When viewed in totality, defendant's course of conduct evidenced a "purpose to harass." J.D. 207 N.J. at 487. The record supports the court's finding that plaintiff proved by a preponderance of the evidence that defendant committed the predicate act of harassment pursuant to the PDVA, N.J.S.A. 2C:25-29(a).

A finding that a defendant committed a predicate act does not "automatically mandate[ ]" the entry of a FRO. Silver, 387 N.J. Super. at 126-27. Under the second Silver prong, "the guiding standard is whether a restraining order is necessary, upon an evaluation of the factors set forth in



N.J.S.A. 2C:25-29(a)(1) to -29(a)(6)", "to protect the victim from an immediate danger or to prevent further acts of domestic violence." Silver, 387 N.J. Super. at 127. "[W]hen determining whether a restraining order should be issued based on . . . any of the predicate acts, the court must consider the evidence in light of whether there is a previous history of domestic violence, and whether there exists immediate danger to person or property." Id.

In addition, our review of the record reveals sufficient support for the court's conclusion that a FRO is necessary to protect plaintiff from future acts of domestic violence. The record contains substantial evidence of defendant's ongoing "erratic," harassing, and threatening behavior toward plaintiff, which made her feel unsafe. The judge also considered plaintiff's testimony that she was concerned for her child's well-being. It is also clear from the record that defendant has difficulty controlling his behavior. In addition, defendant had no legal right to enter the apartment, whenever he desired, after he moved out. The record supports plaintiff's fear that defendant might return to her apartment to further harass her.

"At its core, the 1991 [Prevention of Domestic Violence] Act effectuates the notion that the victim of domestic violence is entitled to be left alone."

Hoffman, 149 N.J. at 584. Without a FRO, defendant would not allow plaintiff to be left alone. Thus, we see no reason to disturb the trial court's ruling.

To the extent we have not addressed defendant's remaining arguments, we are satisfied they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION