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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1026-20

IN THE MATTER OF J.M.

Submitted December 12, 2022 – Decided January 26, 2023

Before Judges Whipple, Mawla, and Marczyk.

On appeal from the Superior Court of New Jersey,
Law Division, Ocean County, Petition No. 1511-XTR-
2020-000002.

J.M., appellant pro se.

Bradley D. Billhimer, Ocean County Prosecutor,
attorney for respondent (Samuel Marzarella, Chief
Appellate Attorney, of counsel; Cheryl L. Hammel,
Assistant Prosecutor, on the brief).

PER CURIAM

Pro se appellant, J.M., appeals from a Temporary Extreme Risk Protective Order (TERPO), Final Extreme Risk Protective Order (FERPO), and the denial of his motion for reconsideration and stay. We affirm.

I.

The Extreme Risk Protective Order Act of 2018 (the ERPO Act), N.J.S.A. 2C:58-20 to -32, also known as the "red flag law," "permits the emergent removal of weapons from any person who poses a danger to self or others." Matter of D.L.B., 468 N.J. Super. 397, 402 (App. Div. 2021). Pursuant to its authority under N.J.S.A. 2C:58-31, the Supreme Court promulgated Administrative Directive #19-19 to effectuate the purposes of the ERPO Act. See Admin. Off. of the Cts., Administrative Directive #19-19, Guidelines for Extreme Risk Protective Orders (Aug. 12, 2019). In addition, pursuant to its authority under N.J.S.A. 2C:58-32, the Office of the Attorney General adopted Attorney General Law Enforcement Directive No. 2019-2 to implement the law. See Attorney General, Law Enforcement Directive No. 2019-2 (Aug. 15, 2019) (the Directive).

New Jersey's law creates a two-stage process for issuing temporary and final orders to remove a person's firearms and ammunition, firearms purchaser identification card, handgun purchase permit, and handgun carry permit. N.J.S.A. 2C:58-23 (authorizing TERPO); N.J.S.A. 2C:58-24 (authorizing FERPO). The court first decides, based on an ex parte documentary record, if it will issue a temporary order to remove firearms. See N.J.S.A. 2C:58-23. Then, after a plenary hearing, the court decides if it will issue a final order to remove firearms indefinitely. See N.J.S.A. 2C:58-24. The [ERPO] Act is loosely modeled on the process for obtaining temporary and

final domestic violence restraining orders. See [the Guidelines].

[The Guidelines and the Directive] discuss the [ERPO] Act and its background at length. See [the Directive]. [The Guidelines] . . . prescribe the process for obtaining orders under the [ERPO] Act Because the [Guidelines] implement[] the Court's constitutional power to promulgate rules governing practice and procedure and administration of the courts, the . . . Guidelines have "the force of law." See State v. Morales, 390 N.J. Super. 470, 472 (App. Div. 2007) (discussing court directives generally). As such, a trial court is required to comply with the requirements of [the Directive and the Guidelines]. The . . . Directive prescribes in detail prosecutors' and law enforcement's role in carrying out and enforcing the [ERPO] Act

[D.L.B., 468 N.J. Super. at 401-02.]

A TERPO petition

shall include an affidavit setting forth the facts tending to establish the grounds of the petition, or the reason for believing that they exist, and, to the extent available, the number, types, physical description, and locations of any firearms and ammunition currently believed by the petitioner to be controlled or possessed by the respondent.

[N.J.S.A. 2C:58-23(b).]

In determining whether to issue a TERPO or FERPO, a court must consider eight factors as to whether the respondent:

(1) has any history of threats or acts of violence by the respondent directed toward self or others;

(2) has any history of use, attempted use, or threatened use of physical force by the respondent against another person;

(3) is the subject of a temporary or final restraining order or has violated a temporary or final restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991," . . . ;

(4) is the subject of a temporary or final protective order or has violated a temporary or final protective order issued pursuant to the "Sexual Assault Survivor Protection Act of 2015," . . . ;

(5) has any prior arrests, pending charges, or convictions for a violent indictable crime or disorderly persons offense, stalking offense pursuant to section 1 of [L. 1992, c. 209] [(N.J.S.A. 2C:12-10)], or domestic violence offense enumerated in section 3 of [L. 1991, c. 261] [(N.J.S.A. 2C:25-19)];

(6) has any prior arrests, pending charges, or convictions for any offense involving cruelty to animals or any history of acts involving cruelty to animals;

(7) has any history of drug or alcohol abuse and recovery from this abuse; or

(8) has recently acquired a firearm, ammunition, or other deadly weapon.

[N.J.S.A. 2C:58-23(f).]

Guideline 3(d) requires the court to consider three additional factors as to whether the respondent:

(9) has recklessly used, displayed, or brandished a firearm;

(10) has an existing or previous extreme risk protective order issued against him or her; and

(11) has previously violated an extreme risk protective order issued against him or her.

[Guideline 3(d).]

If a court finds at least one of the eleven "behavioral" factors, it may then consider four mental health factors as to whether the respondent:

(12) has any prior involuntary commitment in a hospital or treatment facility for persons with psychiatric disabilities;

(13) has received or is receiving mental health treatment;

(14) has complied or has failed to comply with any mental health treatment; and

(15) has received a diagnosis of a mental health disorder.

[Guideline 3(d).]

Furthermore,

A finding of one or more of the factors may not be enough to support the issuance of a TERPO. The

judge "shall issue" the TERPO only "if the court finds good cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the respondent or others by" possessing a firearm. N.J.S.A. 2C:58-23(e); see also Guideline 4(a). The court may grant a TERPO ex parte; the court may rely only on the petitioner's affidavit, or the court may examine under oath the petitioner and any witness the petitioner presents. N.J.S.A. 2C:58-23(d); Guideline 3(c).

[D.L.B., 468 N.J. Super. at 405.]

When determining whether to grant a FERPO, the court must consider the N.J.S.A. 2C:58-23(f) factors "as well as any other relevant evidence." N.J.S.A. 2C:58-24. Guideline 5(d) requires the court to "consider all relevant evidence, including the factors referenced in Guideline 3(d)(1) to (11)."

II.

Through this lens, we observe the following facts from the record. J.M. is a former New York City Police Department (NYPD) Sergeant who is retired on an Accident Disability Retirement pension. In March 2005, he filed a complaint against the NYPD for gender discrimination by his then-supervisor. J.M. alleged he experienced anxiety and distress in his job, and as a result, he was admitted to a hospital with an anxiety attack and chest pains. He is currently under treatment for anxiety and has been prescribed numerous medications for his conditions. He regularly receives treatment by a

psychiatrist and a psychologist for severe emotional distress caused by perceived harassment and retaliation.

In 2018, after J.M.'s father passed away, he filed suit in the Middlesex County, Chancery Division, Probate Part, against his sister Debra Canova, the executrix of their deceased father's estate. J.M. also filed a complaint in the United States District Court for the District of New Jersey against Somerset Vicinage Superior Court Judge Margaret Goodzeit, the Somerset County Surrogate Frank Bruno, Canova, and Canova's lawyer Louis P. Lepore. The District Court consolidated the matter with another complaint, adding Middlesex Vicinage Superior Court Judge Alberto Rivas and New Jersey Supreme Court Chief Justice Stuart Rabner.

After Canova moved to dismiss the probate complaint with prejudice for failure to answer interrogatories, Judge Rivas ordered J.M. to provide answers to interrogatories, advising that his failure to abide by the conditions of the order would result in the dismissal of the case with prejudice. Judge Rivas also stated the court would not entertain any application for a stay of the order.

J.M. responded in the District Court matter by filing a notice of claim against the State of New Jersey and others. J.M. alleged Judge Rivas threatened him and retaliated against him, asserting he "personally attempted,

and . . . made a reasonable, and good faith effort, to personally serve [two] copies of the summons and complaint upon . . . [J]udge Alberto Rivas, and . . . [Chief Justice] Stuart J. Rabner, pursuant to [Rule 4:4-3] and pursuant to Fed. R. Civ. P. 4(e)(1)." J.M.'s affidavit extensively described his various efforts to serve Judge Rivas and Chief Justice Rabner by meeting with them in person. Supreme Court staff noted he hand delivered the summons and complaint addressed to the Chief Justice.

Alarmed by J.M.'s actions, Lepore alerted the NYPD by letter of J.M.'s "increasing obsessive and bizarre behaviors." Lepore reported J.M.'s behaviors occurred in connection with the will proceedings and J.M.'s lawsuits against Judge Rivas and Judge Goodzeit. Lepore wrote:

Upon receiving [J.M.'s letter to Judge Rivas], I believe I am now obligated to err on the side of caution and inform your office that my client, Debra Canova, has reason to believe [J.M.] has in his possession a firearm taken from the home of their father Attached as Exhibit [two], "Affidavit of Debra Canova." In addition, [J.M.] is a retired police officer of the [NYPD] who has firearms training and therefore may have additional firearms for which he may or may not be currently licensed.

[J.M.] has exhibited a severe and concerning obsession with myself, which can be seen in his very numerous and overly lengthy motions where he repeatedly attempts to make outlandish claims. [J.M.]'s obsession has been noted by the current

assigned [j]udge to the case, the Honorable Alberto Rivas.

[J.M.] has also shown concerning and obsessive behaviors against the judges assigned to his litigations. [J.M.] has filed a federal lawsuit against the first judge assigned to the above referenced case, Judge Margaret Goodzeit, and recently filed a federal lawsuit against the second judge assigned to the above referenced case, Judge Alberto Rivas, where he makes wild and unsubstantiated accusations of conspiracy and crimes committed by the judges.

[J.M.]'s latest letter is not only inappropriate, it is in my opinion something which should not be taken lightly.

Lepore also sent copies of this letter to the Jackson Township Police Department, the Office of the Attorney General for the State of New Jersey, the New Jersey State Police Firearms Investigation Unit, Deputy Surrogate Eileen Weber, Judge Rivas, Judge Goodzeit, the Chief Justice, and J.M. Lepore attached J.M.'s December 26, 2019 letter to Judge Rivas and Canova's affidavit, which stated, in pertinent part:

4. It is my belief that [J.M.] took a firearm from the home of the [d]ecedent after the death of the [d]ecedent.
5. It is my belief that the firearm taken by [J.M.] is a rifle.
6. That [J.M.] is a retired New York City police officer.

7. It is my belief that [J.M.] may have additional firearms.

The Lepore letter set a number of things in motion in different agencies. J.M. was advised his request to meet with the Chief Justice and Judge Rivas was denied, and that the Counsel's Office of the Administrative Office of the Courts was authorized to accept service on behalf of the Chief Justice and Judge Rivas. Judge Rivas's law clerk told J.M. he should not come to the Middlesex County Court on Monday, January 6, 2020, because Judge Rivas would not entertain his then pending motions.

J.M. pursued additional relief in the District Court against Judge Rivas for allegedly criminally harassing him and engaging in unlawful retaliation and aggravated harassment against him. J.M. wrote to the Attorney General about his allegations regarding Judge Rivas and wrote to the Middlesex County Sheriff's Office Internal Affairs Division alleging a Middlesex County Police Detective inappropriately used police resources on behalf of Judge Rivas to harass and annoy J.M., inappropriately investigated him, and falsely reported he made threats regarding Judge Rivas. Deputy Attorney General Andrew C. Munger advised J.M.: "Please direct all correspondence to me and cease any contact with my clients."

Several investigations commenced. The Judicial Security Unit contacted Middlesex County Sheriff's Office Captain Eric M. Deprossimo about Lepore's letter. Deprossimo investigated and confirmed that J.M had retired from NYPD on disability, suffered from anxiety and depression, had three firearms registered under his name, and did not have a permit to carry.

The Middlesex County Prosecutor's Office contacted the Jackson Township Police Department to request J.M. voluntarily surrender his weapons, and Deprossimo asked the local police department to conduct periodical checks on Judge Rivas's home. Subsequently, the Jackson Township Police Department reported that J.M. refused to surrender his weapons.

Deprossimo submitted a report to the to the New Jersey State Police and the New Jersey Judiciary Security Management Response Team (JSMART) stating:

[J.M.] is involved in litigation with his sister and her attorney. [J.M.] has made federal complaints against two judges. [Lepore] submitted a letter to this agency indicating he is fearful that the [J.M.] will attempt to harm Judge Rivas or Lepore himself. [J.M.] has not made any overt threats but has access to firearms and has been allegedly exhibiting erratic behavior. Jackson Police Department did a welfare check[,] which did not require a transport for an evaluation. [J.M.] has been engaging in harassing litigation with

constant filings and faxing hundreds of pages of briefs to the [j]udge almost daily. With [J.M.] filing a federal lawsuit against Judge Rivas the venue will inevitably change again and [J.M.] will be engaging with a judge in another county. This alert is for awareness level security.

Detective Scott Krukowski of the Somerset County Sheriff's Office reported to JSMART:

Judge Goodzeit's chambers received a letter from [Lepore]. In the letter, [Lepore] states [J.M.] has filed federal lawsuits against Judge Goodzeit (Somerset County) and Judge Rivas (Middlesex County) pertaining to litigation. According to [c]ounsel in the case, the behavior of [J.M.] has become increasingly "bizarre[.]" In addition, [J.M.] is a retired NYPD Officer who has [three] handguns registered in his name At this time, [J.M.] had not made any direct threats although contact was made to Judge Goodzeit's local police department to provide routine property checks at her residence.

These actions and investigations ultimately culminated in the State Police filing a charge against J.M. for falsifying information on a Firearms Purchaser Identification Card (FPIC) application, N.J.S.A. 2C:39-10(c). Specifically, the State Police alleged that on or about December 10, 2010, J.M:

Falsified question [twenty-six] of the application for [an FPIC] and/or handgun purchase permit by answering "no" to the question ["Have you ever been attended, treated or observed by any doctor or psychiatrist or at any hospital or mental institution on an inpatient or outpatient basis for any mental or

psychiatric condition[?"] in violation of [N.J.S.A.]
2C:39-10C (a third degree crime).

The TERPO

The State Police then filed a TERPO petition, and the court held an ex parte hearing. The State Police alleged that J.M. is a former NYPD sergeant who retired in 2013 with a disability pension who was receiving mental health treatment and failed to disclose that in connection with a New Jersey FPIC application. It also noted that J.M. had filed lawsuits against judges in Somerset and Middlesex Counties, as well as Chief Justice Rabner, and that he had personally travelled to the Justice Complex in Trenton demanding to see the Chief Justice.

The State presented New Jersey State Trooper Detective Muddeser Malik's testimony to establish that J.M. had previously filed a lawsuit against the NYPD in 2005, wherein he represented he sought psychiatric and psychological help from a doctor due to the stress at work. J.M. settled with the NYPD in 2013.

Years later, after J.M.'s father left most of his property in his will to Canova, J.M. sued her in Somerset County. After the judge ruled against him, J.M. sued that judge. J.M. subsequently sued Canova in Middlesex County. After the second judge ruled against him, J.M. also sued that judge. The

judges later expressed their concerns to the State Police about J.M.'s litigation tactics. They did not express concerns about their safety.

J.M. also sought to sue and attempted to hand deliver his complaint on Chief Justice Rabner. Security personnel stopped him at the front security entrance of the Justice Complex. He stated his objective was to see the Chief Justice. J.M. did not make any threatening statements. Security personnel turned him away, and J.M. departed from the Justice Complex. According to Detective Malik, the Chief Justice "felt threatened" and was "extremely concerned" about J.M. "making some sort of attempt to approach him at his chambers or at the [Justice] Complex."

The chief judicial officer for security reports contacted the State Police Central Security Unit and advised it about J.M.'s presence at the Justice Complex. The Central Security Unit investigates threats received by the judiciary, the Attorney General, and the Governor's office. The State Police performed a preliminary investigation, which revealed J.M. falsified information on his FPIC application in December 2010, because he indicated he had not received psychiatric treatment on his application.

The State Police obtained information about J.M.'s lawsuit against the NYPD, which "clearly stated that he was seeing a psychologist and a

psychiatrist for emotional distress that he was receiving from the NYPD." However, officers did not uncover any other information regarding J.M.'s history of threats or acts of violence directed toward himself or others. They did not find any temporary or final restraining orders under the Prevention of Domestic Violence Act, any temporary or final protective orders under the Sex Assault Survivor Protection Act, any prior arrests, pending charges or convictions for "any violent crime, disorderly persons offense, indictable offense, stalking offense or a domestic violence offense." They found no prior arrests, pending charges or convictions for animal cruelty, or any history of acts of cruelty to animals. They found no issue of drug or alcohol abuse or recovery, or indication J.M. recklessly used, displayed, or brandished a firearm. There was no information about any prior or existing TERPO or FERPO.

The State Police did not have information from the NYPD about "any prior involuntary commitment in a hospital or treatment facility for persons with psychiatric disabilities," whether J.M. complied or failed to comply with mental health treatment, or whether he received a diagnosis of a mental health disorder. Detective Malik assumed "that a disability pension by a police officer indicates that he was . . . permanently and totally disabled from

performing the functions of a police officer evidently due to psychiatric reasons."¹

Detective Malik also testified about the Lepore letter asserting J.M. appeared to be "unstable based off of his behavior" and removed firearms from his father's estate. Based on the timing of Lepore's letter, Malik presumed J.M. removed those firearms "in the last couple months."

The State Police believed J.M. possessed at least three firearms, and thus also sought a warrant to search and seize those weapons at J.M.'s home in Jackson based on the falsification of the firearm permit application. Based on Detective Malik's training, experience, and investigation, he believed J.M. "pose[d] an immediate or present danger of bodily injury to himself or others by possessing, purchasing, owning or receiving firearms" and that the falsification of his FPIC application supported probable cause.

The court found Malik's testimony credible and admitted J.M.'s statement from his complaint against the NYPD—that he was receiving psychiatric treatment—as an admission of a party-opponent. The court

¹ The record herein demonstrates J.M. is on Accidental Disability Retirement because of a line of duty accident involving his hand. There is no evidence in the record J.M. is on psychiatric disability.

considered this persuasive proof that J.M. had received mental health treatment since at least 2005.

Turning to the TERPO factor analysis, the court concluded as to factor one—regarding a history of threats or acts of violence directed towards self or others—respondent "acted in a way to alarm Superior Court judges in Somerset and Middlesex Counties as a result of litigation over his father's estate," and "acted in a way to alarm Chief Justice Stuart Rabner" by appear[ing] at the Justice Complex allegedly for the purposes of hand-delivering a complaint to the Chief Justice. The court noted that J.M.'s conduct was unusual, because service is typically done by a sheriff's office or a process server, not an individual party. The court also found J.M.'s conduct "demonstrates some type of irrational thinking that a litigant could personally confront the Chief Justice for the purposes of service of process."

The court then proceeded to find factors two, seven, and nine were "unknown," and factors three, four, six, nine, ten, or eleven were unsupported by the evidence.

As to factor five, the court found that J.M.'s alleged falsification of an FPIC application by concealing mental health history "would have been extremely relevant to a determination as to whether [J.M.] was entitled to the

issuance of an" FPIC. As to factor eight, the court noted J.M. recently acquired firearms from his father's estate, and Lepore expressed a concern about him being a danger.

Having found at least one of the eleven factors, the court turned to the four mental health factors. The court found, as to the first factor, it was unknown whether J.M. was previously committed for psychiatric disability. As to the second factor, J.M. certified in a civil complaint filed in 2005 that he was receiving psychiatric treatment for emotional distress based on his work with the NYPD, and the State established J.M. received a disability pension from the NYPD in 2013 based on a psychiatric disability. As to the third factor, it was unknown whether J.M. was complying with mental health treatment. Finally, as to the fourth factor, J.M. was previously diagnosed with post-traumatic stress disorder (PTSD) and anxiety, and therefore received a psychiatric disability pension from the NYPD. Thus, the court found the State "established good cause to believe that [J.M.] pose[d] an immediate and present danger of bodily injury to himself or others by possessing, purchasing, owning or receiving firearms," and entered a TERPO.

The court also noted the State requested a TERPO search warrant, which is guided by the Directive and court rules, which require a finding of probable

cause. The court found Detective Malik specifically described the items to be seized and there was probable cause the weapons were in J.M.'s possession at his home in Jackson. The court noted that because information indicated J.M. removed weapons from his father's home, the search warrant would include authorization for any additional firearms at the home. Although the court was not able to describe the weapons with any greater particularity, it nevertheless found probable cause under the Fourth Amendment of the United States Constitution and Article I, Paragraph 7 of the New Jersey Constitution. The court therefore granted the TERPO petition and signed the accompanying search warrant. Malik indicated on the search warrant return of service form that he personally served J.M. on February 5, 2020, at 3:43 p.m.

Thereafter, J.M. sought relief from the TERPO against Judge Rivas and the Chief Justice from the District Court. J.M. later filed an initial notice of claim for damages against the State of New Jersey against Judge Rivas and Malik for making "a false threat report."

The FERPO

On July 2, 2020, the trial court conducted a hearing to determine whether a FERPO should be entered against respondent. J.M. appeared with counsel. Detective Malik again testified about the Chief Justice's and Judge

Rivas's concerns about J.M. Malik also testified as to Lepore's letter, Canova's affidavit, Judge Rivas's Judiciary Incident Report, and the other reports.

The detective also testified Judge Ryan granted the TERPO, which Malik and other members of the State Police served on J.M. on February 7, 2020, executing out a search warrant at respondent's residence at 7:30 a.m. Police recovered J.M.'s FPIC, three firearms registered to him, two firearms not registered to him, and ammunition.

The charge for falsifying information on an FPIC application was dismissed due to the statute of limitations. When he filed the TERPO based on his investigation, Detective Malik was looking at the history of threatening or violent behavior of the respondent and respondent's prior mental health treatment.

Malik testified he did not currently have anything in his possession or in his office indicating respondent was discharged for a psychiatric reason or got a psychiatric pension, and he did not speak with Canova or Lepore. J.M. was not charged with the improper or unlawful operation of a firearm, had no criminal record from 2010 to 2020, did not threaten to use a weapon against anyone or any of the judges, had no domestic violence history, and was not involved in any sexual assaults. Detective Malik acknowledged there was

nothing in the letter from Judge Rivas to indicate that respondent threatened the judge. J.M. did not call a witness.

The trial court entered an order and written decision granting a FERPO against J.M. The court first found factor one, N.J.S.A. 2C:58-23(f)(1), was satisfied because J.M. attempted to personally serve judges unannounced. It noted the Chief Justice was alarmed after learning J.M. removed a firearm from his late father's home. The court noted the recent general increase in threats and violence towards judges and court staff, which requires the judiciary and officials to take precaution in addressing threats and unusual behavior. The court also found Lepore's letter, which alleged that J.M. showed "obsessive, bizarre behaviors," to be persuasive. The court also found the existence of factor eight, N.J.S.A. 2C:58-23(f)(8), because J.M. recently took firearms from his father's home, and those firearms were not registered in his name.

The court next found factors thirteen and fifteen. The court noted in the NYPD lawsuit, J.M. admitted he saw a psychiatrist and psychologist. During the trial of that matter, J.M.'s doctors testified he suffered from panic disorder, PTSD, and major depressive disorder. J.M. lied on his FPIC application when

he checked "no" when asked whether he had been diagnosed with a mental illness.

Thus, having found factors one, eight, thirteen, and fifteen, the court "[found] by a preponderance of the evidence that [J.M.] pose[d] a significant danger of bodily injury to [him]self and others by owning, possessing, purchasing, or receiving a firearm." Therefore, the court granted the FERPO.

J.M. moved for reconsideration and stay of order. On November 18, 2020, the court entered an order and written decision denying J.M.'s motion for reconsideration and stay. This appeal followed.

III.

J.M. argues on appeal that he was never served with the TERPO. He also argues the warrant was invalid, and thus the warrantless search and seizure of his weapons was impermissible, unsupported by probable cause, and without exigent circumstances permitting the police to enter his home. Because J.M. did not raise these arguments with the trial court, we decline to consider them here on appellate review. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).

More substantially, J.M. argues the court erred in finding factor one, N.J.S.A. 2C:58-23(f)(1), because he did not "[make] any threats to himself or anyone else."

This is an issue of statutory interpretation, and our review is de novo. McGovern v. Rutgers, 211 N.J. 94, 108 (2012). We owe no deference to the trial court's statutory interpretation. Ibid. "The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492 (2005) (citing Frugis v. Bracigliano, 177 N.J. 250, 280 (2003)). Therefore, "[t]he plain language of the statute is [the appellate courts'] starting point." Patel v. N.J. Motor Vehicle Comm'n, 200 N.J. 413, 418 (2009).

Factor one of the statute assesses whether a person "has any history of threats or acts of violence." No caselaw, Directive, Guidelines, or legislative history illuminates precisely what constitutes a "history of threats" under N.J.S.A. 2C:58-23(f)(1).

Neither judge expressly found J.M. had a "history of threats or acts of violence." The FERPO judge instead characterized respondent's acts as "unusual" and "alarming behavior." The judge found J.M. attempted to personally serve multiple judges; arrived at courthouses unannounced; alarmed

the Chief Justice, particularly when the Chief Justice learned respondent recently removed a firearm from his father's estate; and sent "voluminous documents to the court." We are satisfied under this record that ample evidence supports the court's finding that J.M.'s behavior was unusual and alarming, but it is unclear whether this behavior constitutes "threats" within the meaning of the statute.

However, this case turns on consideration of "any other relevant evidence" under N.J.S.A. 2C:58-24(c) and compels such consideration pursuant to Guideline (5)(d). In this regard, ample evidence supports the courts' finding his behavior was alarming and relevant. The court did not abuse its discretion in considering the judges' alarm under the circumstances. As the court noted, threats against judges have increased, which warrants heightened caution. Therefore, the court properly exercised its discretion in considering these facts as "relevant evidence." N.J.S.A. 2C:58-24(c); Guideline (5)(d).

J.M. next argues the court erred in finding factor eight, as the record does not show he recently removed a firearm from his father's home. Factor eight assesses whether the respondent "has recently acquired a firearm, ammunition, or other deadly weapon." N.J.S.A. 2C:58-23(f)(8). The ERPO

Act defines "recent" as "within six months prior to the date the petition was filed." N.J.S.A. 2C:58-21. "When deciding whether to issue the [FERPO], the court shall consider the factors enumerated in subsection f. of [N.J.S.A. 2C:58-23], as well as any other relevant evidence." N.J.S.A. 2C:58-24.

In finding factor eight, the court gave weight to Malik's testimony that J.M. recently acquired firearms from his father's home. The court also noted J.M. possessed firearms not registered in his name. J.M. is correct the record does not support the court's finding he recently acquired firearms within six months of the State Police's filing of the TERPO petition. At the TERPO hearing, Detective Malik testified he presumed respondent recently took firearms out of J.M.'s father's home. Throughout Malik's testimony, neither party elicited facts to confirm or refute the timeframe respondent allegedly acquired the firearms. Therefore, as the record does not support a finding of factor eight, the court erred in finding this factor. This does not change the outcome.

Despite the error, the court did not err in considering the unlawful possession of firearms not registered in J.M.'s name. N.J.S.A. 2C:58-24(c) permitted the court to consider the eight factors and "any other relevant

evidence." Further, Guideline (5)(d) required the court to consider other relevant evidence.

J.M.'s remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION