SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0051-16T3

H.G.,

Plaintiff-Respondent,

v.

E.G.,

Defendant-Appellant.

Argued November 29, 2017 – Decided December 15, 2017

Before Judges Fuentes and Manahan.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Warren County, Docket No. FV-21-0115-17.

David Scott Mack argued the cause for appellant (Donahue, Hagan, Klein & Weisberg, LLC, attorneys; Francis W. Donahue, of counsel; Francis W. Donahue and David Scott Mack, on the briefs).

Silvana D. Raso argued the cause for respondent (Schepisi & McLaughlin, PA, attorneys; Silvana D. Raso and Michael T. Caulfield, on the brief).

PER CURIAM

Defendant E.G. appeals from the entry of a final restraining order (FRO) pursuant to the Prevention of Domestic Violence Act. N.J.S.A. 2C:25-17 to -35. The FRO was issued based upon a finding that E.G. committed the predicate act of harassment. N.J.S.A. 2C:33-4(a). We affirm.

We discern the following from the hearing record relevant to our decision. H.G. and E.G. have been married for over twenty-two years and are the parents of four children. During the course of the marriage, the parties were temporarily estranged. In addition to that period of estrangement, the marriage was marked by discord, including instances of verbal and physical abuse between them.

On July 3, 2016, E.G. and H.G. were in the marital residence. E.G. told H.G. that she was "lazy and did nothing," and also said that she was "full of demons." In response, H.G. attempted to leave the room where this took place to go to the bathroom. E.G. followed her until she went into the bathroom and locked the door.

On July 6, 2016, H.G. observed E.G. chasing their fourteen-year-old son around the house. While this was occurring, E.G. was stating that H.G. was a horrible mother and that she trained the children to be disrespectful to him. The son was crying and trying to get away from E.G., who ultimately yanked the child down the stairs by his leg. H.G. also observed that the child was weeping

and that he had dialed 911 but did not complete the call. When H.G. asked the child if he felt safe, he responded, "no." H.G. took her keys to the van and intended to remove three of her children from the house. When E.G. engaged in conduct that prevented her from leaving, H.G. returned to the house to retrieve the keys to E.G.'s truck, which was blocking the van. E.G. refused to move his truck until H.G. told him where she was going, she took the children into her bedroom, locked the door, and called the police. H.G. told police that she wanted to get a restraining order, to which the police responded that they did not think that she would get it that night.[1]

The next day, H.G. applied for and was granted a temporary restraining order (TRO). The TRO form complaint contained a section which posed the question whether there was any prior history of domestic violence reported or unreported. H.G. noted "yes" and provided the following explanation:

> Throughout the relationship the def[endant] has forced pla[intiff] to use an alias to go outside, has not allowed the pla[intiff] to receive mail at the home, has not allowed the pla[intiff] to make decision[s] in regards to the home. Has controlled all the finances. When the pla[intiff] has to make a credit card

[1] Pursuant to N.J.S.A. 2C:25-23, a law enforcement officer shall disseminate and explain to a victim of domestic violence their right to access court, twenty-four hours a day, seven days a week, in order to obtain a TRO that may protect the victim from more abuse by the attacker.

> bill payment[,] she has to tell the def[endant] what the exact amount of the bill is and then he will deposit that exact amount into their joint bank account so that pla[intiff] can then pay that bill. Pla[intiff] has to ask def[endant] for money and explain[ed] what that money is for before money is given to her by the def[endant]. The def[endant] examines the pla[intiff]'s cell phone bill. The def[endant] tells pla[intiff,] "You do nothing all day." He also tells her sticking his finger in her face and glaring at her[,] "You can go get a job and get your own insurance." The def[endant] tells the pla[intiff,] "This is going to end really badly for you[,]" and that "you have something coming to you." Def[endant] has also told pla[intiff,] "You are going to cause this family to fall apart." When pla[intiff] is trying to get away from the def[endant] after an argument the def[endant] follows her around the house knocking on doors and on outside windows. The def[endant] has put the pla[intiff] on a [two] meal per day diet without meat or dairy. [In] 2009: def[endant] kept pla[intiff] awake at night for days on end.

A hearing was conducted before Judge Ann R. Bartlett on July 14 and July 21, 2016. During the hearing H.G. testified at length regarding the prior history of alleged domestic violence between the parties. The testimony included acts that were set forth in the complaint, as well as other acts not contained in the complaint. No objection was raised as to the scope of H.G.'s testimony or the questions posed to her by E.G.'s counsel.[2] At

[2] E.G. is an attorney although he does not practice in the area of litigation.

the conclusion of H.G.'s direct examination, she was cross-examined in detail, not only regarding the alleged incidents, but as to her self-acknowledged prior mental health history.

E.G. testified on his own behalf. He denied the allegations relating to his conduct both on July 3 and July 6, 2016 as well as his conduct on prior occasions. E.G. characterized H.G.'s version of the events as "hyperbole," and denied engaging in threatening conduct or in restraining H.G. from leaving.

When E.G.'s testimony concluded, his counsel requested that the hearing be adjourned so that he could call as a witness the State Trooper who responded to the marital home on July 6, 2016. Counsel argued that the State Trooper's testimony would add context. When H.G.'s attorney objected, the judge sustained the objection. The judge noted that the witness was not present for either incident and that the State Trooper's testimony would be hearsay or an unqualified opinion as to what constitutes domestic violence.

At the conclusion of the hearing, the judge entered a FRO. In reaching the decision, the judge first noted that the alleged predicate acts were "weak[,]" and could "very easily be interpreted as domestic contretemps." However, the judge also noted that the history of conduct by E.G. was "significant[,]" and was "not a pretty history. In fact, it's an alarming history." The judge

made particularized findings with regard to both incidents. With regard to the July 3, 2016 incident the judge stated:

> And I find that, in saying anything to her in this case, calling her ordinary names that would not otherwise constitute domestic violence at all or harassment, in this case, in this manner, in this posture, constituted a communication in a manner likely to cause the alarm that was intended.
>
> This, as I've said, has to be seen in the context of years of control, accusations, requiring plaintiff to be accountable for money she spends, who she speaks to on the phone, where she goes in the car, and — [] what she eats, this is just absurd control and in violation of her basic human rights.

With regard to the July 6, 2016 incident the judge stated:

> On the 6[] of July, he stood in the doorway of the car that she was trying to get away in and blocked her from — blocked the door from closing by standing there, thereby, again, preventing her from getting away from him.
>
> In the context of their history, I do find that this was a course of alarming conduct and it was committed with the purpose to alarm, and clearly would have just the effect that defendant expected, which is, once again, he could intimidate plaintiff into submitting and giving up her independence[.]
>
> Her independent ideas, her independent travel, her independent thoughts, her independent communications, her — her independent relations with family members and friends. This is such classic domestic violence. This . . . is very alarming to the [c]ourt.

. . . .

> Now, under Silver v. Silver,[3] as counsel for defense so appropriately argued, the [c]ourt has to do two things:
>
> Distinguish this from domestic contretemps and I believe I've done that because of the history; I take these acts very seriously, although neither one of them by itself, without the history, would likely rise above domestic — domestic contretemps.

The judge found H.G. to be a credible witness whose emotion "smacked of the genuine." The judge noted E.G.'s demeanor as wanting to take over the entire proceeding and explain to the court what he wanted the court to understand.

In the opinion, the judge recited the numerous instances and examples of E.G.'s controlling behavior over the course of the marriage. The history of E.G.'s conduct toward H.G., according to the judge, was an "alarming history."

In addressing the need for a FRO, the judge held:

> [T]his is so subtle, has been going on for so long, defendant is so used to having his way and controlling everything in the household, that nothing short of a domestic final restraining order [] under the Prevention of Domestic Violence Act would achieve what the Act was meant to achieve, and that is:
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> To give the victim some peace of mind, to be able to go about her life without being under constant threat, and to prevent the

[3] Silver v. Silver, 387 N.J. Super. 112 (2006).

defendant from imposing that threat on her in all of the subtle ways he has over many years.

On appeal, E.G. raises the following points:

POINT I

THE COURT BELOW COMMITTED PLAIN ERROR THAT WAS CLEARLY CAPABLE OF PRODUCING AN UNJUST RESULT (NOT RAISED BELOW.)

POINT II

THE COURT BELOW COMMITTED PLAIN ERROR BY RELYING ON THE ALLEGED PAST HISTORY OF DOMESTIC VIOLENCE TO INTERPRET THE ALLEGED PREDICATE ACTS AS HARASSMENT (NOT RAISED BELOW.)

POINT III

IT WAS PLAIN ERROR FOR THE TRIAL COURT TO CONSIDER ALLEGATIONS OF PREDICATE ACTS AND PAST DOMESTIC VIOLENCE WHEN THOSE ALLEGATIONS DID NOT APPEAR IN THE PLAINTIFF'S COMPLAINT (NOT RAISED BELOW.)

POINT IV

IT WAS PLAIN ERROR FOR THE COURT BELOW TO CONCLUDE THAT A FINAL RESTRIAINING ORDER WAS NECESSARY TO PROTECT THE PLAINTIFF FROM AN IMMEDIATE DANGER OR PREVENT FURTHER ABUSE (NOT RAISED BELOW.)

POINT V

THE COURT BELOW ABUSED ITS DISCRETION IN PERMITTING PLAINTIFF TO ANSWER LEADING QUESTIONS (NOT RAISED BELOW.)

POINT VI

THE COURT BELOW ABUSED ITS DISCRETION BY DENYING DEFENDANT'S REQUEST FOR AN ADJOURNMENT TO ALLOW AN ADDITIONAL WITNESS TO TESTIFY.

We are unpersuaded by the arguments which are raised for the first time on appeal, and are therefore reviewed under the plain error standard. R. 2:10-2. Having considered the hearing record and the application of controlling law, we affirm substantially for the reasons set forth in the comprehensive oral opinion of Judge Bartlett. We add only the following comments.

"In our review of a trial court's order entered following trial in a domestic violence matter, we grant substantial deference to the trial court's findings of fact and the legal conclusions based upon those findings." D.N. v. K.M., 429 N.J. Super. 592, 596 (App. Div. 2013) (citing Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). We should not disturb "the factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Cesare, 154 N.J. at 412 (citation and quotation marks omitted).

> [T]he task of a judge considering a domestic violence complaint . . . [is] two-fold. 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:25-19(a) has occurred. In performing that function, "the Act does require that 'acts claimed by a plaintiff to be domestic violence . . . be evaluated in light of the previous history of violence between the parties.'" Stated differently, when determining whether a restraining order should be issued based on an act of assault or, for that matter, 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.
>
> [Silver, 387 N.J. Super. at 125-26 (citations omitted).]

N.J.S.A. 2C:25-29 provides a list of six items that courts "shall" consider when presiding over such a hearing. This list includes: "the previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse." N.J.S.A. 2C:25-29(a)(1). As such, it was not only appropriate for the judge to consider the prior history of abuse and harassment by E.G., it was required that it be considered.

E.G. argued that there was no history of physical harm and thus no need to protect H.G. by the issuance of a FRO. We disagree.

The need for a FRO is not limited to protection from physical harm. This factor is satisfied when there is a need "to prevent further abuse." Silver, 387 N.J. Super. at 127. Since harassment is one of the enumerated predicate acts of domestic violence, the

need to prevent further harassment will suffice. Although the court should assess the factors set forth in N.J.S.A. 2C:25-29(a)(1) to -29(a)(6) to determine if the protection of a FRO is necessary, ibid, the statute does not limit the court's consideration to those factors. See N.J.S.A. 2C:25-29(a) (listing the factors a "court shall consider but not be limited to"). As the judge found, there was a history of significant harassing and controlling conduct by E.G. As such, we discern no reason to disturb the judge's conclusion that the issuance of the FRO was supported in the hearing record and was necessary to protect H.G. from further acts of domestic violence.

Finally, we conclude that the remaining arguments raised by E.G., not specifically addressed herein, are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.