SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0656-16T1

C.G.,

Plaintiff-Respondent,

v.

B.C.M.,

Defendant-Appellant.

Submitted October 31, 2017 – Decided December 12, 2017

Before Judges Reisner and Gilson.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FV-20-1736-16.

B.C.M., appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Defendant appeals from a June 20, 2016 final restraining order (FRO), entered under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. We vacate the FRO against defendant and remand for further proceedings because the trial

judge failed to provide sufficient findings of fact and conclusions of law to support an FRO. See R. 1:7-4(a).

I.

Plaintiff and defendant were in a dating relationship for approximately eight years. Plaintiff described the relationship as an "on-and-off relationship", which ended around Easter 2016. After the relationship ended, plaintiff sought to cut off all communication with defendant and, thus, she blocked his cell phone number and changed her home phone number. Thereafter, plaintiff twice sought a restraining order against defendant when he attempted to contact her.

A communication from defendant on April 29, 2016, triggered the first application. On that date, defendant sent plaintiff's boss an email describing the parties' relationship and seeking to make contact with plaintiff. Based on that email, plaintiff sought a restraining order against defendant contending that the email was an act of harassment.

The Family Part conducted a trial on that first application on May 17, 2016. The parties were the only witnesses and they both represented themselves. Plaintiff testified that defendant attempted to contact her by leaving her a voicemail and by sending her boss an email. Defendant acknowledged that he had attempted

to contact plaintiff, but testified that he was only seeking to follow up on their relationship.

The trial judge found that plaintiff had not proven a predicate act of harassment and that defendant had not contacted plaintiff with the purpose to annoy or alarm her. Accordingly, the court denied the first application for an FRO.

The court went on, however, to find that plaintiff did not want any further contact with defendant. Thus, invoking its "equitable powers" and citing our decision in P.J.G. v. P.S.S., 297 N.J. Super. 468 (App. Div. 1997), the court ordered defendant not to have any further contact with plaintiff. The court embodied that directive in the dismissal order entered on May 17, 2016.

On June 2, 2016, plaintiff filed a second application for a restraining order. The same Family judge conducted the second trial on June 20, 2016. Again, the parties were the only witnesses and they both represented themselves.

Plaintiff testified that on June 1, 2016, she found a letter in her mailbox that she believed was left by defendant. The letter was admitted into evidence and read into the record. The sender of the letter stated that he still loved plaintiff and wanted to get back together. The letter made no threats against plaintiff and contained no obscene or offensive words. Defendant denied sending the letter and testified that plaintiff was trying to set

him up because, in the summer of 2015, he caused a break up between plaintiff and a man who she was dating at that time.

After listening to the parties' testimony, the trial court found plaintiff to be more credible than defendant. The court then found that defendant left the letter in plaintiff's mailbox in violation of the court's May 17, 2016 order. The court also stated that the letter was harassment. Therefore, the court entered an FRO reasoning that plaintiff wanted to be left alone and the FRO was necessary to prohibit future contact by defendant.

II.

On this appeal, defendant makes two arguments. First, he contends that there was no basis for a restraining order. Second, he disputes the trial court's factual findings and argues that there was no history of harassment or domestic violence between the parties. Plaintiff did not file any opposition to this appeal.

Our scope of review is limited when considering an FRO issued by the Family Part following a bench trial. A trial court's findings are binding on appeal "when supported by adequate, substantial, and credible evidence." N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014). This deference is particularly appropriate where the evidence at trial is largely testimonial and hinges upon a court's ability to assess credibility. Gnall v. Gnall, 222 N.J. 414, 428 (2015). We also

keep in mind the expertise of trial court judges who routinely hear domestic violence cases in the Family Part. J.D. v. M.D.F., 207 N.J. 458, 482 (2011). Consequently, we will 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." S.D. v. M.J.R., 415 N.J. Super. 417, 429 (App. Div. 2010) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)).

Domestic violence occurs when an adult or emancipated minor commits one or more acts upon a person covered by the PDVA. N.J.S.A. 2C:25-19(a). When determining whether to grant an FRO, a trial judge must engage in a two-step analysis. Silver v. Silver, 387 N.J. Super. 112, 125-26 (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:25-19[(a)] has occurred." Id. at 125; see also N.J.S.A. 2C:25-29(a) (providing that an FRO may only be granted "after a finding or an admission is made that an act of domestic violence was committed"). Second, the court must determine that a restraining order is necessary to provide protection for the victim. Silver, supra, 387 N.J. Super. at 126-27; see also J.D., supra, 207 N.J. at 476 (explaining that an FRO

should not be issued without a finding that "relief [is] necessary to prevent further abuse" (quoting N.J.S.A. 2C:25-29(b))). As part of that second step, the judge must assess "whether a restraining order is necessary, upon an evaluation of the fact[or]s 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 abuse." J.D., supra, 207 N.J. at 475-76 (quoting Silver, supra, 387 N.J. Super. at 127).

Moreover, a judge is required to make specific findings of fact and state his or her conclusions of law. R. 1:7-4(a); see also Shulas v. Estabrook, 385 N.J. Super. 91, 96 (App. Div. 2006) (requiring an adequate explanation of the basis for a court's action). "Failure to make explicit findings and clear statements of reasoning [impedes meaningful appellate review and] 'constitutes a disservice to the litigants, the attorneys, and the appellate court.'" Gnall, supra, 222 N.J. at 428 (quoting Curtis v. Finneran, 83 N.J. 563, 569-70 (1980)). Thus, although our standard of review is generally limited, where inadequate factual findings are made or where issues are not addressed, we are constrained to vacate the FRO and remand for further proceedings. Elrom v. Elrom, 439 N.J. Super. 424, 443 (App. Div. 2015); see also Franklin v. Sloskey, 385 N.J. Super. 534, 544 (App. Div. 2006) (vacating an FRO where the facts in the record did not

support a determination of harassment, and there was no history of domestic violence between the parties).

Here, the trial judge failed to place adequate findings of fact and conclusions of law on the record. First, the trial judge did not adequately identify the specific conduct that constituted the predicate act of harassment. See Silver, 387 N.J. Super. at 125; see also N.J.S.A. 2C:33-4. The trial judge stated that the letter was sent in violation of the May 17, 2016 order and that the letter was harassing. The trial judge, however, did not explain or make findings as to how the letter was harassing. The trial judge also did not find that defendant had acted with the purpose to harass plaintiff.

Second, the trial judge did not make specific findings as to why an FRO was necessary. See Silver, supra, 387 N.J. Super. at 126-27. In that regard, the trial judge merely stated that the FRO was necessary to prevent defendant from having further contact with plaintiff. The trial judge did not explain how contact from defendant would constitute an immediate danger or how an FRO would prevent further abuse. See J.D., supra, 207 N.J. at 476. Moreover, the trial court did not evaluate any of the factors set forth in N.J.S.A. 2C:25-29(a)(1) to (6). See id. at 475-76. The trial judge also did not review the history between the parties and determine whether there was any history of domestic violence.

Accordingly, we remand this matter for further proceedings. We vacate the current FRO because there are inadequate findings to support it. We do not, however, vacate the May 17, 2016 order prohibiting defendant from having contact with plaintiff. It is within the trial court's inherent authority under the PDVA to enter an order restraining contact or communication between parties in a domestic violence case. P.J.G. v. P.S.S., supra, 297 N.J. Super. at 472. Such remedies should be "narrowly framed" and "have a[n adequate] basis in the record." Ibid. Thus, there must be sufficient factual findings in the record to show that "there is a basis for apprehending incidents of future violence and the history between the parties suggests a need to take special steps to keep the parties apart[.]" Ibid. The May 17, 2016 order was not appealed and is not before us on this appeal. Thus, the prohibition in the May 17, 2016 order remains in place pending further proceedings and a further order of the trial court.

Reversed and remanded. We do not retain jurisdiction.