SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2054-15T1

M.D.,[1]

Plaintiff-Respondent,

v.

P.D.,

Defendant-Appellant.

Submitted January 11, 2017 – Decided October 13, 2017

Before Judges Fuentes and Carroll.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Ocean County, Docket No. FV-15-0741-16.

Michael R. Bateman, attorney for appellant.

James R. Ozol, attorney for respondent.

The opinion of the court was delivered by

FUENTES, P.J.A.D.

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[1] Pursuant to Rule 1:38-3(d)(9), we use initials to protect the parties' confidentiality.

Defendant P.D. appeals from the Final Restraining Order (FRO) issued by the Chancery Division, Family Part on November 6, 2015, pursuant to the Prevention of Domestic Violence Act, (PDVA), N.J.S.A. 2C:25-17 to -35. After hearing the testimony of both parties, the trial judge found defendant committed the domestic violent act of harassment, as defined under N.J.S.A. 2C:33-4, by engaging in a pattern of conduct against plaintiff with the intention of annoying and alarming her. The judge accepted plaintiff's account of events as credible and rejected defendant's testimony as not credible. Citing Silver v. Silver, 387 N.J. Super. 112, 128 (2006), the judge found an FRO was necessary because defendant's harassing behavior was "likely to occur again if there's not a Restraining Order."

In this appeal, defendant argues the judge erred because the evidence presented at trial does not support a finding that defendant intended to harass plaintiff within the meaning of N.J.S.A. 2C:33-4a. Defendant also argues the issuance of final restraints was not necessary to protect plaintiff against further acts of domestic violence by defendant. Plaintiff argues the trial judge properly found defendant harassed her in violation of the PDVA. After reviewing the record developed before the trial judge and mindful of our standard of review, we affirm.

I

The parties married in 1996 and had one child, a girl who was nearly eleven years old at the time this matter was tried before the Family Part. Plaintiff is a Brazilian national; she arrived in the United States approximately in 2004. She is employed by Ocean County in the Information Technology Department. Defendant is employed by the New Jersey Department of Corrections at East Jersey State Prison. The parties separated when plaintiff moved out of the marital residence. Defendant filed for divorce sometime thereafter.

Plaintiff filed two Domestic Violence complaints against defendant. The first complaint was filed on March 4, 2015, and was predicated on an incident that occurred on February 28, 2015. Plaintiff alleged defendant was "calling her and texting her nonstop" and "showing up at her apartment and place of work repeatedly." Plaintiff claimed that defendant "placed a GPS device" on her car without her knowledge or consent. In addition to these specific predicate acts, plaintiff also described a history of harassment, intimidation, and disparaging language. Plaintiff claimed defendant accused her of having an affair and "threatened to have inmates at Rahway State Prison[2] take care" of

[2] East Jersey State Prison is in the City of Rahway and is also known as "Rahway State Prison."

the man with whom defendant believed plaintiff was romantically involved.

Although plaintiff obtained an ex parte temporary restraining order (TRO) against defendant based on these allegations, the matrimonial judge dismissed the domestic violence complaint by mutual consent. Represented by their respective attorneys, the parties entered into a Consent Order in the matrimonial action that addressed all of the pendente lite issues associated with a dissolution action, including alimony, child support, custody, and parenting time of the minor child. This Consent Order dated March 24, 2015, also included the following provision imposing civil restraints against defendant:

> There shall be civil restraints against Plaintiff, [P.D.],[3] which shall include the following: The only communication between Plaintiff and Defendant shall be via text message and emails except in case of emergency.

Thus, in the parties' view, the civil restraints were intended to replace the statutory protections afforded to plaintiff under the PDVA.

The spirit of compromise reflected in the March 25, 2015 Consent Order proved to be short lived. On October 28, 2015,

[3] The reference to P.B. as "Plaintiff" is due to his procedural status in the matrimonial action. P.B. is a "defendant" in the domestic violence complaint.

plaintiff filed a second domestic violence complaint against defendant predicated on an event that occurred two days earlier. According to plaintiff, on October 26, 2015, defendant called her on her cellphone while she was at work and "accused her of having an affair with her boss" and threatened that he was "going to do something about this." Plaintiff believed that defendant's call was triggered by the receipt of the Custody Neutral Assessment (CNA) report ordered by the judge presiding over the matrimonial case. The author of the CNA report recommended that the court designate plaintiff as the Parent of Primary Residence.

Plaintiff also claimed that on October 18, 2015, a date scheduled for parenting time with his daughter, defendant arrived an hour early and entered plaintiff's home "uninvited." Defendant attempted to converse with plaintiff's mother, despite the fact that she does not speak English and defendant does not speak Portuguese. Plaintiff alleged she was alarmed and offended by defendant's uninvited presence in her home. After he left her residence, defendant called plaintiff on her cellphone and allegedly told her: "I'm the man, nobody else; I wear the pants. I'm the child's father, nobody else."

Finally, plaintiff alleged that on September 25, 2015, defendant called to cancel his parenting time date with the child. However, when he learned from the child that plaintiff was going

to Water Street Bar, defendant decided to go to this bar with his ten-year-old daughter. Plaintiff also claimed that defendant has called her a prostitute and made disparaging remarks about her ethnic background and national origin as a Brazilian.

The Family Part conducted the FRO hearing over two non-sequential days starting on November 9, 2015 and ending on November 16, 2015. Both parties were represented by counsel. Plaintiff testified consistent with the allegations reflected in the two domestic violence complaints. When plaintiff's counsel asked her to describe the events that led her to file the first domestic violence complaint, defense counsel objected, arguing that this complaint had been dismissed by the matrimonial judge. This prompted the following colloquy between defense counsel and the judge:

> THE COURT: [If] . . . there [is] a case that says that if somebody voluntarily dismisses a T.R.O. and enters into a civil restraints, and thereafter the civil restraints are allegedly violated and there's a further alleged incident of domestic violence thereafter, then in litigating that later incident of domestic violence, the plaintiff is precluded from raising the original T.R.O. . . . allegations, I'm unaware of such a case.
>
> That . . . I don't think would be the right ruling because it's never been adjudicated by the [c]ourt and the parties may have consented, and . . . in this instance, the plaintiff, to say I'll dismiss that in consideration for civil restraints, but then

the civil restraints are violated and now, I'm foreclosed as the plaintiff from raising the prior allegations that I gave up because he said he would stay away and he didn't?

. . . .

A Consent Order is different than a Judge finding certain facts and making other conclusions. It's just finding by the [c]ourt, by the Judge, that this was voluntarily entered into. That's the only fact that you find when you, as a Judge, bless a Consent Order. . . . [Y]ou don't find anything about the underlying merits. You find that the parties freely and voluntarily agree to this Consent Order.

DEFENSE COUNSEL: . . . Your Honor, this was an unusual circumstance because with the Consent Order, . . . that became part and parcel of the domestic violence, when, really, it shouldn't.

The only question before the [c]ourt on March 24th, 2015, was there an act of Domestic Violence and has the plaintiff proven that act? The [c]ourt found that that didn't take place. The case was dismissed, Your Honor.

THE COURT: It was a voluntary dismissal by the plaintiff. The [c]ourt went through what I go through and what I went through this morning with others and none of them are questions such as do you admit, plaintiff, this didn't happen? Do you admit that there was no domestic violence? All I'm asking somebody when they dismiss it is you understand you can be contacted? Are you afraid at this time? None of those things adjudicate the underlying allegations. They're not discussed in a dismissal and the Judge isn't finding as a fact that they didn't occur or making any findings that they did or

> didn't, just that the party's freely and voluntarily dismissing them.
>
> So I'm going to allow [the domestic violence complaint] into evidence[.]

Based on the testimony of the parties, the judge found defendant engaged in the conduct plaintiff described in the two domestic violence complaints with the intent to harass her. The judge found that defendant went to the Water Street Grill with his ten-year-old daughter with the specific purpose to annoy and alarm plaintiff. The judge expressly found: "No other reason that I can think of for him to do that or that has been suggested." The judge also found that defendant threatened plaintiff that he would inform the Ocean County Freeholders that she was having an affair with a coworker with the intent of harassing her within the meaning of N.J.S.A. 2C:33-4(a).

With respect to the two-prong approach this court established in Silver, supra, 387 N.J. Super. at 128, the judge held that these acts by defendant were sufficient "to show a pattern." These were not isolated incidents. The judge also found defendant has a history of domestic violence as demonstrated by the two domestic violence complaints filed by plaintiff. As to the second prong of Silver, which requires the Family Part to find that a restraining order is necessary to prevent further abuse, the judge

found these incidents of harassment by defendant were "likely to occur again if there's not a Restraining Order."

Against this factual backdrop, defendant seeks that this court reverse the Family Part and vacate the FRO based on a lack of evidence of harassment and a failure by plaintiff to prove, by a preponderance of the evidence, that permanent restraints are necessary to prevent future harm. We reject these arguments.

Factual findings of the trial court should not be disturbed unless they "are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Cesare v. Cesare, 154 N.J. 394, 412 (1998) (quoting Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)). We are bound to defer to the trial court's factual findings especially "'when the evidence is largely testimonial and involves questions of credibility[,]'" Ibid. (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). It is well-settled that due to the Family Part's unique jurisdiction, judges who decide these cases acquire a special expertise in these matters. Id. at 413. Thus, reversal is warranted only "if the court ignores applicable standards[.]" Gotlib v. Gotlib, 399 N.J. Super. 295, 309 (App. Div. 2008).

Here, the judge carefully reviewed the testimonial evidence presented by the parties and made specific findings based on that

evidence that are well-supported by the record. We discern no legal basis to disturb them. We particularly endorse the judge's ruling which declined to consider plaintiff's decision in the matrimonial action to dismiss her first domestic violence complaint and enter into a Consent Order that provided for civil restraints, as the functional equivalent of a formal adjudication finding that defendant did not commit an act of domestic violence.

The record amply supports that defendant engaged in a pattern of conduct with the express purpose to annoy and alarm plaintiff. These acts of harassment "can cause great emotional harm and psychological trauma." A.M.C. v. P.B., 447 N.J. Super. 402, 417 (App. Div. 2016).

Affirmed.