

RECORD IMPOUNDED

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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4289-14T4

P.M.,

Plaintiff-Respondent,

v.

A.D.M., JR.,

Defendant-Appellant.

Submitted December 22, 2016 – Decided May 8, 2017

Before Judges Lihotz and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Somerset
County, Docket No. FV-18-0598-15.

A.D.M., Jr., appellant pro se.

Mandelbaum Salsburg, P.C., attorneys for
respondent (Jennifer E. Presti, on the brief).

PER CURIAM

Defendant A.D.M., Jr. appeals from the entry of a Final
Restraining Order (FRO), requested by P.M., defendant's sister,
pursuant to the Prevention of Domestic Violence Act, N.J.S.A.

2C:25-17 to -35 (the Act). Following our review of these arguments in light of the record and applicable law, we affirm.

Plaintiff filed an amended complaint seeking a temporary restraining order, which alleged defendant committed acts of terroristic threats, N.J.S.A. 2C:12-3 and harassment, N.J.S.A. 2C:33-4, in January 2015. Final hearing was delayed because of adjournments requested by each party and to list a companion domestic violence complaint, filed against defendant by his mother, also to be tried before the same judge.

During the four-day trial, the parties testified, as did their mother. Other witnesses included two Bernards Township Police officers, one who served the initial temporary restraining order upon defendant, and another who responded to the house after the order was entered, the parties' sister, a tenant who leases an apartment on the property, and defendant's partner. Photographs of the surveillance cameras, two hours of videotape footage (showing four camera angles) from January 12, 2015, and documents were also introduced into evidence. We recite the facts found in the trial record.

Plaintiff resided in her childhood home with her mother, another brother, and defendant. The home contained an office, which defendant, who is a real estate broker, and his partner used daily for both business and personal activities. Defendant

installed twenty-eight surveillance cameras, recording audio and video, throughout the interior and exterior of the residence. Two monitors located in the home-office used by defendant displaying the video feeds, allowing defendant to "listen and see everything going on in that house, inside and outside." Although plaintiff and her mother were aware defendant installed a few cameras, they were unaware of the extent of the surveillance defendant undertook until this matter was initiated, and they located many cameras, which had been hidden from view.

The parties' sister testified, relating her observations of the current difficulties experienced by her mother and plaintiff, as well as past events showing defendant's volatile personality and inability to control his anger. She also identified twenty-eight cameras discovered in and outside the home.

Plaintiff also testified, explaining she was in a disabling automobile accident and suffered from various emotional conditions, including depression, anxiety, and panic attacks, for which she is prescribed medication. Plaintiff related defendant's conduct, which served as the basis of her request for an FRO. Specifically, she stated defendant told her "I'm going to live to see you die"; "I'll put you right in jail if you hurt one of my cameras"; "you're not going to live to see tomorrow"; and once, while grabbing her from behind around her neck, said "don't touch

the cameras. . . . I want to see you die on the camera." She asserted defendant was "threatening" her with harm if she "t[old] anyone" what he said to her, used "scare tactics," and "treat[ed] her like a piece of property." His actions made her feel "isolated, withdrawn, [instilled] low self-esteem, very sad and anxious all the time."

Further, plaintiff stated defendant followed her if she went outside, berated and called her derogatory names, pushed her once to intercept her receipt of the daily mail, and frequently hit her. While defendant was away from the household in December 2015, he called regularly because plaintiff had covered the visible cameras with paper towels. When he returned, his behavior toward her and their mother became more controlling.

Plaintiff related an instance in January 2013 when defendant barged through her closed bedroom door while she was dressing. She demanded he leave but he stood there staring at her in her underwear. He then demanded her cell phone. When she declined, he grabbed the phone from her, which "ripped off [her] left little . . . thumb . . . nail." He then disconnected her cell phone service for three days, precluding her from contact with friends or family.

Plaintiff also stated she watched defendant kill animals and had physically hurt her in the past, so she feared for her safety,

as well as her emotional well-being. She felt "scared . . . [,] terrorized . . . [and] tormented . . . like no one can help [her]." She stated she felt suicidal and "trapped in her own house."

When plaintiff realized defendant was terrorizing their mother and brother as well, she confided in her sister. Her sister helped plaintiff secure the temporary restraining order.

Defendant testified. He explained he installed cameras for safety, after his mother suffered a stroke, and for security to prevent his boat from theft. His mother gave him the funds to purchase the cameras, although he never revealed the number of units he installed. Defendant denied he monitored plaintiff, attempted to intimidate her, shoved, cursed at, or threatened her. He described how his sister, who aided plaintiff's securing a restraining order, was motivated to eject him from the home for her own financial gain and refuted the testimony offered by plaintiff, his mother, and sister, claiming they all lied. Defendant insisted he is not a threat to anyone.

At the close of testimony, the judge reserved his decision. He delivered oral opinions on the two matters the following morning.

In the companion case filed against defendant by his mother, the judge concluded the evidence was insufficient to support the allegation of terroristic threats. Her complaint was dismissed.

As to plaintiff's complaint, the judge found credible plaintiff's testimony as well as that of her mother and sister; he rejected as not credible defendant's contrary testimony, specifically noting defendant avoided answering questions directly and the facts he asserted did not make sense in light of other evidence.

The judge found defendant uttered threats against plaintiff's life, designed to cause her anxiety and distress. Further, in light of their history, plaintiff reasonably believed defendant's statements to be true, and these threats adversely affected her physically and emotionally. Additionally, the judge found plaintiff proved defendant's use of surveillance cameras, secretly placed in hallways outside her bedroom and bathroom, constituted harassment. He concluded a restraining order was necessary for plaintiff's protection. Defendant appeals.

Our review of a Family Part judge's orders is narrow.

The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence. Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974). Deference is especially appropriate "when the evidence is largely testimonial and involves questions of credibility." In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997). Because a trial court "hears the case, sees and observes the witnesses, [and] hears them testify, it has a better perspective than a reviewing court in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J.

Super. 1, 5 (App. Div. 1961)) (alterations in original). Therefore, an appellate court should not disturb the "factual findings and legal conclusions of the trial judge unless [it is] 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." Rova Farms, supra, 65 N.J. at 484.

[Cesare v. Cesare, 154 N.J. 394, 411-12 (1998).]

The grant of an FRO requires application of 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 proved, by a preponderance of the credible evidence, that one or more of the predicate acts [of domestic violence] set forth in N.J.S.A. 2C:25-19(a) has occurred." Id. at 125; see also Crespo v. Crespo, 201 N.J. 207, 209 (2010). Second, the judge must then analyze whether an FRO is "necessary to protect the victim from an immediate danger or to prevent further abuse." Silver, supra, 387 N.J. Super. at 127; see also N.T.B. v. D.D.B., 442 N.J. Super. 205, 223 (App. Div. 2015).

Defendant challenges the sufficiency of the evidence as supporting the FRO. Relying on "[t]he positive proof" videotape recording his actions over two hours on the morning of January 12, 2015, he maintains he "did not do the things . . . [p]laintiff

stated in her complaint." Defendant also attacks plaintiff and his other sister as "liar[s]."

Following our review, we reject defendant's assertions and determine the trial judge's findings that defendant's conduct constituted prohibited acts of terroristic threats and harassment were amply supported by the evidence on record. The judge also considered the parties' prior history and current contacts to determine an FRO was necessary to assure plaintiff's protection from future domestic abuse. See Silver, supra, 387 N.J. Super. at 125-26. According proper deference to these factual findings, which are largely based on the judge's detailed credibility determinations and feel of the case, we discern no error. See N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008) ("[the trial judge] has the opportunity to make first-hand credibility judgments about the witnesses who appear on the stand; . . . has a 'feel of the case' that can never be realized by a review of the cold record").

Despite the video evidence showing defendant's movements for two hours on the morning of January 12, 2015, the trial judge credited plaintiff's overall testimony. Plaintiff's allegations included several instances of defendant's harassing conduct and numerous statements threatening her life. The judge noted plaintiff's possible incorrect recollection of dates and times,

but found she candidly revealed the effect of her limitations, which was unrefuted. The judge found the very placement of hidden surveillance equipment was designed to check plaintiff's movements and created a climate of fear and anxiety for plaintiff, which constituted harassment.

Further, the judge rejected defendant's testimony as not credible. Defendant's assertion he used cameras to monitor their mother's physical health could not justify the secret placement of units in and around his sister's living space or the number of units installed. The judge further found defendant's general assertions regarding various events was irreconcilable and at odds with the specific, credible testimony of defendant's mother, sister, and plaintiff.

We defer to factual findings that are amply supported with substantial credible evidence in the record. Further, the judge properly applied the law. Accordingly, we have no basis to interfere with the FRO.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION