SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5061-15T1

M.Y.,[1]

Plaintiff-Respondent,

v.

G.C.,

Defendant-Appellant.

Submitted September 20, 2017 – Decided October 30, 2017

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FV-02-1627-16.

Matthew Jeon, attorney for appellant.

E. Sandra Choi, attorney for respondent.

PER CURIAM

Defendant G. C. appeals from the Family Part's June 7, 2016 final restraining order ("FRO") that the court entered against him

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

pursuant to the Prevention of Domestic Violence Act ("PDVA"), N.J.S.A 2C:25-17 to -35, and in favor of his former wife, plaintiff M. Y. The trial judge found defendant committed the predicate act of harassment, N.J.S.A. 2C:33-4, by engaging in a pattern of conduct against plaintiff with the intention of annoying and alarming her, and that an FRO was needed to protect plaintiff. On appeal, defendant argues the trial court failed to properly apply the analysis required under Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006). We disagree and affirm.

The facts developed at the final hearing in this matter are summarized as follows. Plaintiff and defendant were married in October 2011 and divorced almost five years later. Soon after plaintiff filed for divorce in March 2016, she also filed a complaint seeking a restraining order against defendant. That complaint alleged defendant harassed plaintiff by repeatedly calling her and texting her "threatening and harassing" messages beginning on March 3, 2016 and continuing for approximately four days.

At the ensuing final hearing, it was undisputed by the parties that there was no previous history of domestic violence or harassment by defendant before these incidents. Defendant also conceded that he sent all of the subject text messages and that he repeatedly tried to communicate with plaintiff. According to

defendant, the communications were only made in an attempt to discuss with plaintiff her reasons for seeking the divorce and so that he could get closure.

Plaintiff testified that over the course of four days after she filed for divorce, defendant sent her hundreds of text messages throughout the day and night. Initially, defendant's texts focused on the divorce and defendant wanting to arrange a meeting to discuss the divorce. When plaintiff expressed reluctance to meet, defendant began texting plaintiff nude photos of herself that defendant had stored on his phone, as well as photos of his bloody stools. He threatened to disclose the photos to plaintiff's family and her fellow church members, and made threatening statements about causing harm to plaintiff's family. In addition to the photos, defendant sent plaintiff texts about her immigration status and the possibility of defendant having her green card revoked.

Plaintiff stated she was "scared" of the text messages, that they made her sick, and kept her from sleeping. According to plaintiff, after she stopped responding to defendant's text messages, defendant continued to post items on Facebook, and plaintiff's family chat room.

Defendant sent plaintiff similar text messages even after he was served with a temporary restraining order ("TRO") that

prohibited him from having contact with plaintiff. Plaintiff reported this contact to the police, and testified that she was shocked and scared by defendant's continued communication after the TRO had been issued.

In his oral decision granting plaintiff a FRO, Judge Walter Skrod made specific credibility determinations, finding plaintiff truthful and defendant incredible. Turning to the alleged predicate act, the judge analyzed whether defendant's actions constituted harassment under N.J.S.A. 2C:33–4(a) and concluded that they did. He found that by sending hundreds of text messages and the nude photos of plaintiff over a short period of time, defendant caused plaintiff annoyance and alarm, and that the communications were made with the intent to harass.

Judge Skrod also addressed whether plaintiff required the protection of an FRO. He found plaintiff's continued fear of defendant to be reasonable in light of "the continuous messaging, especially after the TRO occurred." Ultimately, he decided that an FRO was necessary to protect plaintiff's "overall health and well being" from "being subjected to the barrage of continuous discussion by defendant." Judge Skrod entered the FRO, and this appeal followed.

Defendant contends on appeal that the evidence at the final hearing was insufficient to sustain the judge's finding that an

act of harassment occurred. He argues that he did not send the text messages with the requisite purpose of harassing plaintiff. Rather, he was trying to obtain information concerning her reasons for the divorce. He further explains that the great volume of text messages he sent was due to the lack of response by plaintiff. He also argues that even if he committed an act of harassment, that an FRO was not required to protect plaintiff, especially because there was no history of domestic violence between the parties. We disagree.

Our scope of review is limited when considering a FRO issued by the Family Part following a bench trial. We consider a trial court's findings to be 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) (citing N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008)). This deference is particularly appropriate where the evidence at trial is largely testimonial and hinges upon a court's ability to make assessments of credibility. Gnall v. Gnall, 222 N.J. 414, 428 (2015). We also defer to 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) (citing Cesare v. Cesare, 154 N.J. 394, 412-13 (1998)). We will "not disturb the 'factual findings and legal conclusions of the trial judge unless [we are]

convinced 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, supra, 154 N.J. at 412). Despite our deferential standard, a judge's purely legal decisions, are subject to our de novo review. Crespo v. Crespo, 395 N.J. Super. 190, 194 (App. Div. 2007) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

We conclude from our review that Judge Skrod properly performed the two-fold test required by Silver when a court decides whether to issue a FRO. Silver, supra, 387 N.J. Super. at 125. He "[f]irst . . . determine[d] whether the plaintiff ha[d] 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) ha[d] occurred," and then whether "a restraining order that provides protection for" plaintiff was needed. Id. at 125-26. He found plaintiff established that she was a victim of defendant's repeated harassing conduct as alleged in her complaint and that she proved the requisite elements of harassment. See N.J.S.A. 2C:33-4; see also State v. Hoffman, 149 N.J. 564, 576 (1997). In reaching his conclusions, the judge properly inferred from defendant's conduct that defendant intended to harass plaintiff after he learned she had filed for divorce. See C.M.F. v. R.G.F., 418 N.J. Super. 396,

402 (App. Div. 2011) (addressing the need for proof of intent to harass) (citing Hoffman, 149 N.J. at 576 (stating that a "finding of a purpose to harass may be inferred from the evidence presented," and "[c]ommon sense and experience may inform that determination." Id. at 577)). The "judge's inferences were rationally based on evidence in the record." State v. Avena, 281 N.J. Super. 327, 340 (App. Div. 1995).

We affirm substantially for the reasons expressed by Judge Skrod in his thoughtful decision. Defendant's arguments that the weight of the evidence did not support the judge's findings or that a FRO was not needed "are without sufficient merit to warrant [further] discussion in a written opinion." R. 2:11-3(e)(1)(E). Suffice it to say, the judge was "not obligated to find a past history of abuse before determining that an act of domestic violence ha[d] been committed." Cesare, supra, 154 N.J. at 402. "A single act can constitute domestic violence for the purpose of the issuance of a[] FRO," even without a history of domestic violence. McGowan v. O'Rourke, 391 N.J. Super. 502, 506 (App. Div. 2007) (holding that the defendant sending graphic pornographic pictures of plaintiff to her sister and then implying that he would also send them to others were egregious acts of harassment that justified entry of a final restraining order, even in the absence of any history of prior domestic violence).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION