SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1843-16T1

A.L.S.,

Plaintiff-Respondent,

v.

M.S.,

Defendant-Appellant.

Argued January 30, 2018 – Decided February 21, 2018

Before Judges Fisher, Fasciale and Sumners.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Sussex County, Docket No. FV-19-0106-17.

John E. Clancy argued the cause for appellant (Townsend, Tomaio & Newmark, LLC, attorneys; John E. Clancy, on the brief).

Frederick A. D'Arcangelo argued the cause for respondent (Lindabury, McCormick, Estabrook & Cooper, PC, attorneys; Frederick A. D'Arcangelo, of counsel; Nicole A. Kobis, on the brief).

PER CURIAM

Following a seven-day final hearing addressing both parties' complaints under the Prevention of Domestic Violence Act, N.J.S.A.

2C:25-17 to -35 — and during which the parties were engaged in divorce litigation — the trial judge rendered a thorough oral decision, concluding plaintiff A.L.S. (Anna) was entitled to and in need of a final restraining order against her husband, defendant M.S. (Martin).[1] The judge also dismissed Martin's domestic-violence complaint and, in subsequent proceedings, ordered Martin to pay Anna $28,271.46 in counsel fees.

Martin appeals, arguing:

> I. THE TRIAL COURT ERRED IN FINDING [MARTIN] COMMITTED AN ACT OF HARASSMENT AS HIS PURPOSE WAS NOT TO HARASS [ANNA], AND THE DISPUTE CONSTITUTED MARITAL CONTRETEMPS.
>
> II. [ANNA] USED THE PREVENTION OF DOMESTIC VIOLENCE ACT AS A BARGAINING CHIP IN THE DIVORCE MATTER, AND ADMITTED THAT SHE WAS NOT IN NEED OF A FINAL RESTRAINING ORDER.
>
> III. THE TRIAL COURT ERRED IN AWARDING COUNSEL FEES TO [ANNA].

We find insufficient merit in these arguments to warrant further discussion in a written opinion, R. 2:11-3(e)(1)(E), and affirm substantially for the reasons set forth by Judge Michael C. Gaus in his comprehensive and well-reasoned oral and written decisions. We add only a few brief comments.

The institution of a domestic violence matter while the parties are engaged in matrimonial litigation always raises a

[1] The names used in this opinion are fictional.

cause for concern that the former might have been instituted by a party to gain an edge in the latter. Family judges cognizant of that potential must ensure, before entering a final restraining order, that a party's harassment allegations, when sustained, constitute more than mere domestic contretemps. See, e.g., J.D. v. M.D.F., 207 N.J. 458, 475 (2011); Corrente v. Corrente, 281 N.J. Super. 243, 250 (App. Div. 1995). Judge Gaus considered this possibility but concluded Martin's particularly egregious acts of harassment, coupled with an "extensive prior history of domestic violence," distinguished this case from those, such as Corrente, in which our courts have found restraints unnecessary. We defer to the judge's thoughtful findings on this subject because those findings were solidly grounded on the judge's credibility findings — he found Anna "much more credible" than Martin — as well as other reliable evidence. Cesare v. Cesare, 154 N.J. 394, 411-12 (1998).

We also reject Martin's argument that, because the parties engaged in settlement negotiations prior to the domestic-violence final hearing, a finding on the second inquiry identified in Silver v. Silver, 387 N.J. Super. 112, 127 (App. Div. 2006),[2] could not

[2] We recognized in Silver that, after finding a predicate act, a court's "second inquiry [is] whether a domestic violence restraining order should be issued," a circumstance governed by a

be validly sustained. In responding to this argument, we need not determine whether, for example, a party could validly defend against such a second-prong finding by showing the plaintiff was agreeable to a dismissal of the domestic-violence action in exchange for financial relief in a pending matrimonial action; such facts, if admissible, might belie the plaintiff's claim of fear of the defendant and preclude entry of a final restraining order. The evidence demonstrates, however, that a settlement of the matrimonial action — if ultimately formed — would likely have included Martin's consent to civil restraints in the matrimonial action; in other words, while it might be arguable that Anna was agreeable to dismissing her domestic-violence complaint as part of a global settlement of all disputes, the evidence revealed she anticipated, as part of such an exchange of promises, Martin's consent to civil restraints. In light of this evidence, we conclude the judge properly found the second prong proven and a final restraining order needed to protect Anna from Martin.

Affirmed.

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consideration of whether the plaintiff is in "immediate danger." Ibid.; see also J.D., 207 N.J. at 475-76; N.J.S.A. 2C:25-29(b).