RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0150-21

D.I.,

Plaintiff-Respondent,

v.

S.B.,

Defendant-Appellant.

———————————————

Submitted October 20, 2022 – Decided December 15, 2022

Before Judges Haas and DeAlmeida.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Ocean County, Docket No. FV-15-1810-21.

Hark & Hark, attorneys for appellant (Michael J. Collis, on the briefs).

D.I., respondent pro se.

PER CURIAM

Defendant S.B.[1] appeals from an August 16, 2021 final restraining order (FRO) entered by the Family Part pursuant to the Prevention of Domestic Violence Act (the Act), N.J.S.A. 2C:25-17 to -35. We affirm.

I.

The trial court made the following findings of fact after a hearing at which both parties testified. The parties were in a nine-year dating relationship and lived together for part of that time. In January 2021, plaintiff D.I. told S.B. that she was no longer interested in a relationship with him and directed him to move out of her apartment. D.I. later moved, but did not provide her new address, on a side street, to S.B.

After S.B. made several attempts to contact D.I. and drove past her new home on a number of occasions, D.I. sent S.B. a registered letter stating that she wanted no further contact with him. A return receipt card establishes S.B.'s receipt of the letter. Despite the unequivocal nature of the letter, S.B. went to D.I.'s new home with the purported purpose of discussing why the couple broke up. D.I. sent S.B. a second letter stating that she did not want to have any contact with him.

[1] We use initials to preserve the confidentiality of court records concerning domestic violence. R. 1:38-3(d)(9).

S.B. persisted in attempting to contact D.I. by telephone, by going to her home, and by leaving notes on her car. He subsequently went to the home of D.I.'s daughter, where he left a note on D.I.'s car, which was parked in the driveway. Neither D.I. nor her daughter had provided S.B. with the daughter's address. D.I. and her daughter arrived at the home to find S.B. present. S.B. claimed that he went to the daughter's home to inform D.I. that he received confidential information from a Drug Enforcement agent that D.I.'s daughter lived in a high-crime area, that her home was being watched as part of an investigation, and that D.I.'s car registration listed her former address. The court, however, found "there was absolutely no reason for him to show up at that house. I do find it concerning. I find it alarming." The court also found that S.B. "doesn't seem able to grasp [the] concept" that D.I. does not want any contact with him.

S.B.'s attempts to contact D.I. stopped only after entry of a temporary restraining order (TRO) once D.I. filed a domestic violence complaint.

The court concluded that S.B. engaged in harassment pursuant to N.J.S.A. 2C:33-4(a), by making, or causing to be made, one or more communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm, and N.J.S.A.

2C:33-4(c), by engaging in a course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy another person.[2]

The court also found that D.I. was in need of an FRO to protect her from immediate danger or to prevent further abuse. The court concluded that given S.B.'s continuing attempts to contact D.I. after being told she did not want contact with him, "in the absence of this [r]estraining [o]rder which appears to be the only thing that stopped him from contacting her, that he would continue to do it. He would continue to show up at her home, leave notes on her car. He would continue to question her as to whether or not they can be together and ask her to contact him."

Based on these findings, the court, on August 16, 2021, entered an FRO.

This appeal followed. S.B. argues: (1) the trial court's finding that he engaged in harassment is not supported by the record; (2) the record does not support the trial court's conclusion that an FRO is necessary to protect D.I. from immediate danger or to prevent further abuse; (3) the court failed to make

[2] Although the transcript indicates the judge found S.B. to have violated N.J.S.A. 2C:33-4(d), that section of the statute was removed by enactment of L. 2001, c. 443. Given the nature of the evidence admitted at trial, we assume the court intended to refer to N.J.S.A. 2C:33-4(c).

credibility determinations; and (4) during the trial the judge acted as an advocate for D.I., who was self-represented.

II.

"In our review of a trial court's order entered following trial in a domestic violence matter, we grant substantial deference to the trial court's findings of fact and legal conclusions based upon those findings." D.N. v. K.M., 429 N.J. Super. 592, 596 (App. Div. 2013) (citing Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). We do 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.'" Cesare, 154 N.J. at 412 (alteration in original) (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). Deference is particularly appropriate when the evidence is testimonial and involves credibility issues because the judge who observes the witnesses and hears the testimony has a perspective the reviewing court does not enjoy. Pascale v. Pascale, 113 N.J. 20, 33 (1988) (citing Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)).

The entry of an FRO requires the trial court to make certain findings. See Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). The court "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. The court should make this determination "'in light of the previous history of violence between the parties.'" Ibid. (quoting Cesare, 154 N.J. at 402). Next, the court must determine "whether a restraining order is necessary, upon an evaluation of the factors 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." Id. at 127 (citing N.J.S.A. 2C:25-29(b)); see also J.D. v. M.D.F., 207 N.J. 458, 476 (2011). This determination requires evaluation of:

> (1) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;
>
> (2) The existence of immediate danger to person or property;
>
> (3) The financial circumstances of the plaintiff and defendant;
>
> (4) The best interest of the victim and any child;
>
> (5) In determining custody and parenting time the protection of the victim's safety; and
>
> (6) The existence of a verifiable order of protection from another jurisdiction.
>
> [N.J.S.A. 2C:25-29(a); see also Cesare, 154 N.J. at 401.]

Here, the trial court determined that S.B. committed harassment, one of the predicate acts set forth in the Act. N.J.S.A. 2C:25-19(a)(13). A person commits harassment if, "with purpose to harass another," he or she:

> (a) Makes, or causes to be made, one or more communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
>
> . . . or
>
> (c) Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.
>
> [N.J.S.A. 2C:33-4.]

For a finding of harassment under N.J.S.A. 2C:33-4, the actor must have the purpose to harass. Corrente v. Corrente, 281 N.J. Super. 243, 249 (App. Div. 1995) (citing D.C. v. T.H., 269 N.J. Super. 458, 461-62 (App. Div. 1994); E.K. v. G.K., 241 N.J. Super. 567, 570 (App. Div. 1990)). Finding a party had the purpose to harass must be supported by "some evidence that the actor's conscious object was to alarm or annoy; mere awareness that someone might be alarmed or annoyed is insufficient." J.D., 207 N.J. at 487 (citing State v. Fuchs, 230 N.J. Super. 420, 428 (App. Div. 1989)). A purpose to harass may be inferred from the evidence. State v. McDougald, 120 N.J. 523, 566-67 (1990). Common sense and experience may also inform a determination or finding of purpose.

State v. Hoffman, 149 N.J. 564, 577 (1997) (citing State v. Richards, 155 N.J. Super. 106, 118 (App. Div. 1978)).

The record contains ample support for the trial court's finding that S.B. acted with the purpose of alarming or seriously annoying D.I. There is unequivocal evidence that D.I. informed S.B. in writing that she did not want to have contact with him. Yet, S.B. continued to attempt to contact D.I., including appearing at the home of her daughter, whose address had never been provided to S.B. by D.I. or her daughter, and leaving a note on D.I.'s car. Despite S.B.'s preposterous testimony that he was provided confidential information about a drug investigation that he wanted to pass on to D.I. and her daughter, the court found S.B. had absolutely no reason to be at the home of D.I.'s daughter or to leave D.I. a note. S.B. also repeatedly drove by D.I.'s new home, which was on a side street, the address of which D.I. never provided to S.B. He appeared at D.I.'s residence and approached her in her garden after receiving her letter informing him she wanted no further contact with him.

In addition, we find sufficient support in the record for the trial court's conclusion that entry of an FRO was necessary to protect D.I. from immediate danger or further abuse. S.B. engaged in long-term behavior that quite convincingly established that he did not accept D.I.'s demand to be left alone,

stopping his alarming behavior only after the court entered a TRO. It was entirely reasonable for the court to conclude that an FRO was necessary to keep S.B. from returning to his harassing behavior.

We have carefully reviewed the trial transcript and find no support for S.B.'s claim that the trial court judge engaged in advocacy for D.I. The court conducted the trial in a measured fashion, eliciting testimony from D.I., who was self-represented, in a fair manner, and permitted S.B.'s counsel wide latitude to cross-examine D.I. and present S.B.'s defense. To the extent that the court did not expressly state that it found D.I. more credible than S.B., that conclusion is readily apparent from the findings of fact, which reject the excuses S.B. offered for ignoring D.I.'s request to have no contact with him.

Affirmed.