

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0367-20

D.E.H.H.,

Plaintiff-Respondent,

v.

W.K.M.,

Defendant-Appellant.

Submitted November 30, 2021 – Decided April 21, 2022

Before Judges DeAlmeida and Smith.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Essex County, Docket
No. FV-07-0224-21.

W.K.M., appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Defendant W.K.M.¹ appeals from a September 30, 2020 final restraining order (FRO) entered against him 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.

Relying on what it found to be the credible testimony of plaintiff D.E.H.H., the trial court issued an oral opinion setting forth the following findings of fact and conclusions of law.

The parties entered into a romantic relationship in July 2019. In February 2020, defendant was informed that the acquaintance with whom he was living was being evicted from her home. Having no place to live, defendant asked plaintiff if he could move into her apartment. She agreed, although the arrangement was intended to be temporary. Defendant was a guest in plaintiff's home, not a tenant.

In the following months, defendant began to engage in harassing behavior toward plaintiff. On one occasion, defendant, who considers himself to be an "American National" who is "an internationally protected person" not subject to New Jersey law without his consent, demanded plaintiff sign a document

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

declaring herself to be a trust. Apparently, defendant believes that such a document would accord to plaintiff the legal status he has declared for himself.

Plaintiff repeatedly refused defendant's demands. In response, he "[got] up in her face, use[d] foul language, and scare[d] her." Defendant badgered plaintiff over the document while aware she was recovering from a stroke and had high blood pressure. The court concluded defendant's behavior was done with the intent to alarm and annoy plaintiff.

The parties' interaction with respect to the trust document occurred during an ongoing course of action by defendant concerning the environmental conditions of the apartment. Defendant was aware plaintiff's medical condition required her to have air conditioning. Despite this knowledge, defendant would turn off the air conditioning and open the windows to let in hot air. On one occasion, plaintiff sat in her car for two hours with the air conditioning on to allow the apartment to cool down after defendant had turned off the air conditioning and opened the windows. When she returned to the apartment, she discovered that defendant had again turned off the air conditioning and opened the windows while she was in the car.

The trial court found that defendant's acts went beyond a couple's dispute with respect to the temperature of their apartment. The court concluded that

defendant intentionally made the apartment hot with knowledge of plaintiff's medical condition in order to alarm and annoy her.

On another occasion, defendant was on the telephone with a friend who accused him of being narcissistic. Upset at that remark, defendant began arguing with his friend and repeatedly attempted to engage plaintiff in the dispute. Although she refused to take part in the argument, defendant continued to insist that she defend him by repeatedly attempting to force her to watch a video that he believed proved his behavior did not fit the definition of narcissism. He was loud and verbally abusive toward plaintiff during that incident.

Defendant's behavior reached a point of forcing plaintiff to put a lock on her bedroom door to protect herself against defendant. The court found that plaintiff was justifiably fearful of defendant at that time, as his behavior was escalating.

Because of defendant's behavior, in February 2020, plaintiff demanded he move out of the apartment. Although defendant had no right to remain in the home, he refused to leave. Ultimately, it was necessary for police to remove defendant from the premises. Defendant was arrested during the removal.

The trial court concluded that defendant's behavior constituted the predicate act of harassment pursuant to N.J.S.A. 2C:33-4 (a) and (c). See

N.J.S.A. 2C:25-19(a)(13). In addition, the trial court concluded plaintiff needed protection from future acts of domestic violence by defendant. The court found plaintiff's fear of defendant was justified given the persistence with which he engaged in harassing behavior toward her and the need to have police intervention to remove him from her home.

On September 30, 2020, the court entered an FRO against defendant.

This appeal follows. Defendant argues, among other things, that: (1) the trial court's findings of fact and conclusions of law are not supported by the record; (2) the judge should have recused himself because he and plaintiff's mother likely know some of the same people; (3) the trial court "legislated from the bench" by asking questions of the witnesses and erred by not reading an affidavit submitted by defendant; (4) his due process rights were violated because the hearing had been adjourned from a prior date; (5) his removal from plaintiff's apartment violated the Governor's executive orders prohibiting the eviction of tenants during the COVID-19 state of emergency; and (6) an FRO cannot be entered without proof of physical abuse.

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 should 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 (quoting Rova Farms Resort, Inc. v. Invs. 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 defendant committed harassment, one of the predicate acts set forth in the Act. N.J.S.A. 2C:25-19(a)(13). Under the statute in place at the times relevant to this appeal, a person commits harassment if, "with purpose to harass another," he or she:

- (a) Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
- (b) Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; 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:33-4.²]

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.

² Effective December 21, 2021, the statute was amended to change the phrase "a communication or communications" in subsection (a) to "one or more communications." L. 2021, c. 327, § 1.

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 defendant acted with the purpose of annoying or alarming plaintiff by using coarse language and repeatedly engaging in alarming conduct. Defendant confronted plaintiff using coarse language regarding her refusal to sign a document he believed would accord her protected legal status. He repeatedly attempted to prod plaintiff to join an argument he was having with a friend by verbally haranguing her to defend him and demanding she watch a video. In addition, defendant purposely turned off the air conditioning and opened the windows to annoy plaintiff and cause her alarm with knowledge that her medical condition required she be in an air-conditioned environment while recovering from a stroke. A guest in plaintiff's home, defendant refused to leave when he had no right to remain there, forcing her to have the police remove him from the premises. Defendant's course of behavior was so alarming that plaintiff put a lock on her bedroom door to protect herself from him in her own home.

In addition, our review of the record reveals sufficient support for the trial court's conclusion that an FRO is necessary to protect plaintiff from future acts of domestic violence. The record contains evidence of defendant's ongoing

harassing behavior toward plaintiff. It is clear that he has difficulty controlling his behavior when plaintiff does not accede to his demands. In addition, defendant has an unfounded entitlement to remain on property when he has no right to do so. He displayed that entitlement when he refused to leave plaintiff's home after he was told he was no longer welcome there. The record supports plaintiff's fear that defendant might return to her apartment to further harass her.

We have carefully considered defendant's remaining arguments and conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). There is no evidence in the record defendant was denied due process or that the judge should have recused himself from this matter. Nor is there any merit to defendant's argument that he was entitled to remain in plaintiff's home under the Governor's COVID-19 executive orders, which, for a period of time, prohibited entry of court orders removing someone from a home in "eviction or foreclosure proceedings" See e.g. Exec. Order No. 106 (Mar. 19, 2020). The Governor did not prohibit a person from telling a guest he was no longer welcome to stay in her home. There is no legal bar to concluding defendant's repeated refusal to leave plaintiff's home constituted harassment.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION