SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0477-20

L.M.,

Plaintiff-Respondent,

v.

L.J.L.,

Defendant-Appellant.

Submitted February 28, 2022 – Decided April 27, 2022

Before Judges Rose and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FV-12-0367-21.

Proetta, Oliver & Fay, attorneys for appellant (William A. Proetta, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant L.J.L.[1] appeals from a September 8, 2020 final restraining order (FRO) entered against him under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. We affirm.

I.

Defendant and plaintiff, L.M., were in a romantic relationship for approximately four and a half years. Their relationship ended in July 2020, and plaintiff filed for a temporary restraining order in August 2020. She amended her TRO complaint approximately three weeks later.

During the September 8 FRO hearing before Judge John A. Jorgensen II, plaintiff testified that on April 11, 2020, she and defendant were together at his home in Sayreville. The couple had been drinking, and at one point while they were discussing the COVID-19 pandemic, plaintiff "said something that made [defendant] upset." He responded by approaching her from behind and "pulling [her] hair," "telling [her] to . . . shut up." She told him, "you're hurting me," and "then he finally stopped." Plaintiff stated defendant left a bald spot where defendant pulled her hair.

[1] We use initials for the parties to protect the identity of the victim, consistent with Rule 1:38-3(d)(10).

Although defendant left the room right after this incident, plaintiff claimed she "just sat there, quiet, because [she] was afraid he was going to hurt [her]." She stated she "wanted to go home" and "was afraid" but "didn't want to aggravate [defendant] anymore . . . so [she] just kept quiet." She stayed at defendant's home over the next two days and did not report the incident to the police until July 27, 2020.

Plaintiff ended the parties' relationship over the phone on July 20, 2020. She stated defendant became "very angry" when she told him the relationship was over. According to her, defendant promised he would "do better" and "just wanted another chance." Plaintiff testified defendant "continued to call [her] over and over again," but she did not accept his phone calls and "[t]hey all went to [a] blocked folder." A few days after the relationship ended, defendant traveled to plaintiff's home in New York to give her a ring he purchased for her as a birthday gift. Plaintiff testified she did not let defendant into her home, but accepted the ring, fearing defendant "would continue to come back over" if she did not.

During her testimony, plaintiff also described a history of domestic violence between the parties. She stated defendant "strangled [her]" while the parties were on a cruise in October 2018, and "[t]he night before the cruise,

[defendant] took lamps that were in [her] room and he threw them." She also testified he broke her television. Asked by the court why she wanted an FRO, plaintiff stated,

> [b]ecause I'm afraid of him. He's very persistent. It's the way he is. He hurt people in the past. And I'm just in fear of my life. . . . [H]e ripped my hair out of my head. I have a bald spot on my head. He knew exactly what he was doing.

Following his cross-examination of plaintiff, defendant's attorney moved to dismiss the complaint. He argued the "hair pull back in April . . . would be a[n act of] prior history" and "without any predicate act that happened in New Jersey, and [plaintiff] living in New York," plaintiff's case failed on "the jurisdictional issue." Defendant's attorney further contended plaintiff did not satisfy her burden under Silver.[2]

The judge denied the motion, noting he had to "review all the evidence in the light most favorable to [plaintiff]" and having done so, the case should proceed. He further determined "there is no jurisdictional issue," given plaintiff's testimony that "[a]n event occur[ed] in Sayreville . . . and there's assaultive behavior and harassment behavior."

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[2] Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006).

When defendant testified, he denied pulling plaintiff's hair or even physically touching her during the parties' April 11 argument. He stated that instead, the parties engaged in a verbal argument that day. He explained that plaintiff had "too much alcohol" on April 11, and she started screaming "everyone [wa]s going to die" from COVID-19. Defendant testified this comment upset him, particularly because he has three grandchildren, and plaintiff knew he suffers from post-traumatic stress disorder. Defendant further asserted that plaintiff's "hair was falling out" because she suffers from alopecia.

Regarding plaintiff's allegations about prior acts of domestic violence, he denied strangling plaintiff while the parties were on a cruise, but admitted after an argument, he grabbed a cup from her and "threw it off the balcony into the . . . ocean." Further, he admitted the parties argued the day before they left for the cruise and he "broke a lamp" in plaintiff's room. He explained this "wasn't intentional . . . . [I]t just happened." Defendant further conceded he broke plaintiff's television and bought her a new one.

Additionally, defendant testified that he "reached out" to plaintiff after she ended the relationship because he "didn't want her to throw away . . . four and a half years of [their] relationship." He also stated, "I still love her."

Following the parties' testimony, Judge Jorgensen preliminarily observed that the decision regarding whether to grant an FRO "becomes a question of credibility." The judge found "plaintiff's testimony to be credible . . . [because] she was forthright in her testimony[,] . . . and was consistent in her testimony." On the other hand, he found "defendant's testimony, in large part, to be very rambling" and defendant "tried to expound . . . upon answers, which indicates somewhat of a lack of credibility."

Next, in addressing plaintiff's allegations, Judge Jorgensen accepted her version of the incident on April 11, finding she "clearly has a chunk of her hair missing from her scalp, even today," and "the only credible testimony is that the defendant did, in fact, during an argument, . . . grab the plaintiff by her hair, and forced some of her hair out of her head." Thus, the judge found defendant "committed an act of assault on April 11th."[3] But he declined to find defendant

[3] An assault, as defined under N.J.S.2C:12-1, is also a predicate act under the PDVA. See N.J.S.A. 2C:25-19(a)(2). A person commits simple assault if he or she "[a]ttempts to cause or purposely, knowingly or recklessly causes bodily injury to another." N.J.S.A. 2C:12-1(a)(1). "Bodily injury" is "physical pain, illness or any impairment of physical condition." N.J.S.A. 2C:11-1(a). "Not much is required to show bodily injury. For example, the stinging sensation caused by a slap is adequate to support an assault." N.B. v. T.B., 297 N.J. Super. 35, 43 (App. Div. 1997) (citing State v. Downey, 242 N.J. Super. 367, 371 (Law Div. 1988)).

committed the predicate acts of harassment, stalking, or cyber harassment identified in plaintiff's amended complaint.

Judge Jorgensen also considered the prior history of domestic violence between the parties. He determined defendant engaged in "assaultive behavior" during the October 2018 cruise, and credited plaintiff's testimony that defendant "grabbed her by the neck[] and toss[ed] . . . [her] cup overboard." He also concluded the arguments that led to defendant breaking plaintiff's lamp and television "all indicat[ed] to the [c]ourt that there is perhaps an anger problem." Based on these findings, the judge determined it was "necessary for the protection of . . . plaintiff to issue a[n FRO] against [defendant]."

II.

On appeal, defendant raises the following arguments for our consideration:

> POINT I: THE TRIAL COURT ERRED BY DENYING [DEFENDANT'S] MOTION TO DISMISS.
>
> POINT II: THE TRIAL COURT ERRED BY GRANTING A FINAL RESTRAINING ORDER.
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> A. The Trial Court erred by finding the April 11, 2020 Act Constituted a predicate act.

i. This Court has held that history is not a substitute for a valid predicate act.

B. The Trial court erred by finding Plaintiff needed protection.

i. This Court has held immediate danger is necessary before a final restraining order will be issued.

POINT III: THE TRIAL COURT ERRED BY FINDING THAT [DEFENDANT] COMMITTED AN ACT OF ASSAULT.

We are not convinced.

As a threshold matter, we acknowledge the scope of our review of a judge's decision to issue an FRO is limited. "We accord substantial deference to Family Part judges, who routinely hear domestic violence cases and are 'specially trained to detect the difference between domestic violence and more ordinary differences that arise between couples.'" C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020) (quoting J.D. v. M.D.F., 207 N.J. 458, 482 (2011)). Such "[d]eference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Cesare v. Cesare, 154 N.J. 394, 412 (1998) (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). As such, we will not disturb the factual findings of the trial judge unless they are so "manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests

of justice." C.C., 463 N.J. Super. at 428 (quoting S.D. v. M.J.R., 415 N.J. Super. 417, 429 (App. Div. 2010)). We do, however, review the trial judge's legal conclusions de novo. Elrom v. Elrom, 439 N.J. Super. 424, 433-34 (App. Div. 2015) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

The New Jersey Legislature enacted the PDVA "to assure the victims of domestic violence the maximum protection from abuse the law can provide." N.J.S.A. 2C:25-18. In furtherance of that objective, N.J.S.A. 2C:25-28(a) provides that "[a] plaintiff may apply for relief under [the PDVA] in a court having jurisdiction over the place where the alleged act of domestic violence occurred, where the defendant resides, or where the plaintiff resides or is sheltered[.]" (Emphasis added). See also State v. Reyes, 172 N.J. 154, 166 (2002) (concluding our courts retain jurisdiction under the PDVA where "an act of domestic violence occurred in New Jersey").

In determining whether to issue an FRO under the PDVA, the court must perform a two-step analysis. Silver, 387 N.J. Super. at 125-26. "First, the judge 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 trial court should make

this determination "in light of the previous history of violence between the parties." Ibid. (quoting Cesare, 154 N.J. at 402). Second, 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 (emphasis added). Those factors include – but are not limited to − "[t]he previous history of domestic violence between the [parties], including threats, harassment and physical abuse," N.J.S.A. 2C:25-29(a)(1), and "[t]he best interests of the victim[,]" N.J.S.A. 2C:25-29(a)(4). Governed by these principles, we address defendant's contentions.

In reprising his jurisdictional argument, defendant first asserts that because the April 11 incident did not involve a predicate act of assault and "[p]laintiff failed to identify a predicate act that occurred in New Jersey," the judge should have dismissed plaintiff's complaint. This argument lacks merit. R. 2:11-3(e)(1)(E). Indeed, given our deferential standard of review regarding the judge's credibility and factual findings, we perceive no reason to second-guess the judge's determination that defendant assaulted plaintiff at his Sayreville home on April 11. Accordingly, consistent with N.J.S.A. 2C:25-28(a), the judge properly declined to dismiss plaintiff's complaint.

Regarding Point II.A., defendant argues the court should not have considered the April 11 incident a predicate act because it occurred four months before plaintiff requested a TRO. He cites no binding precedent to support this contention. Moreover, it is well established that the PDVA "is remedial in nature" and "should be construed liberally, giving [its] terms the most expansive reading of which they are reasonably susceptible." N.G. v. J.P., 426 N.J. Super. 398, 409 (App. Div. 2012) (citations omitted). In that regard, we have cautioned:

> The passage of time from the end of the dating relationship is only one factor to be considered in determining the availability of the [PDVA's] protection. The extent and nature of any intervening contacts as well as the nature of the precipitating incident must also be considered. No mathematical formula governs the outcome. A qualitative analysis is required, weighing and balancing the nature and duration of the prior relationship, the duration of the hiatus since the end of that relationship, the nature and extent of any intervening contacts, the nature of the precipitating event, and any other appropriate factors. The ultimate issue is whether, in light of these factors, the victim was, at the time of the precipitating event, subjected to potential abusive and controlling behavior related to and arising out of the past domestic relationship. If so, the victim is in need of and entitled to the special protection provided by the [PDVA].
>
> [Tribuzio v. Roder, 356 N.J. Super. 590, 597 (2003).]

Applying these standards and considering plaintiff provided ample evidence of defendant's abusive and controlling behavior throughout the parties' relationship, we agree with Judge Jorgensen's conclusion that plaintiff was entitled to the protections offered under the PDVA, despite her delay in seeking a TRO after she was assaulted. Stated differently, the mere fact plaintiff delayed in seeking a TRO until approximately four months after the April 11 attack did not automatically preclude her from availing herself of the remedies available under the PDVA.

In reaching this conclusion, we recognize ordinary due process protections apply in the domestic violence context. H.E.S. v. J.C.S., 175 N.J. 309, 321-23 (2003). "At a minimum, due process requires that a party in a judicial hearing receive 'notice defining the issues and an adequate opportunity to prepare and respond." Id. at 321 (quoting McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 559 (1993)). Thus, "it is clearly improper to base a finding of domestic violence upon acts or a course of conduct not even mentioned in the complaint." L.D. v. W.D., 327 N.J. Super. 1, 4 (App. Div. 1999) (citing J.F. v. B.K., 308 N.J. Super. 387, 391-92 (App. Div. 1998)) .

But here, defendant and his counsel were on notice plaintiff intended to testify about the April 11 incident at the final hearing, given the incident was

specifically referenced in her initial and amended TRO complaints. Moreover, the record reflects defendant and his attorney were prepared to meet those allegations, not only by cross-examining plaintiff, but in presenting defendant's testimony to refute plaintiff's claims. Because defendant was afforded due process in this matter, and because Judge Jorgensen credited plaintiff's testimony about the April 11 attack and the parties' history of domestic violence, we decline to conclude the judge abused his discretion in finding defendant committed the predicate act of assault.

Defendant next argues under Point II.B. that the judge erred in concluding plaintiff needed the protection of a restraining order because plaintiff was not in immediate danger. Defendant highlights that the parties continued to date for months after the April 11 incident, and he has not contacted plaintiff since he went to her home shortly after the parties' relationship ended. We are not persuaded.

As discussed, when deciding whether to issue an FRO, a judge is to assess whether an FRO is necessary to protect a victim from "an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 127 (emphasis added). To make this assessment, Judge Jorgensen considered the April 11 incident as well as the history of domestic violence between the parties. For example, he

credited plaintiff's account of the October 2018 incident on a cruise ship when defendant "grabbed her by the neck"; the judge characterized such behavior as "assaultive." The judge also found defendant's behavior in breaking a lamp and plaintiff's television suggested he had an "anger problem."

Additionally, defendant's own testimony made clear he did not want the parties' relationship to end, and that he "still love[d]" plaintiff. Further, plaintiff credibly testified defendant was "very angry" over the break-up, continued to contact her after she ended the relationship, was "very persistent," and she was "in fear of [her] life." Accordingly, the judge's finding that an FRO against defendant was "necessary for the protection of the plaintiff" was amply supported by the record.

We need only briefly address defendant's remaining argument that the judge erred in finding defendant committed the predicate act of assault pursuant to N.J.S.A. 2C:25-19(a). It is well established that "[n]ot much is required to show bodily injury" resulting from an assault, and even "the stinging sensation caused by a slap is adequate to support [a finding of] an assault." N.B., 297 N.J. Super. at 43 (citing Downey, 242 N.J. Super. at 371). Here, Judge Jorgensen found defendant engaged in "assaultive behavior" on April 11, and "the only credible testimony is that the defendant did, in fact, during an argument, . . .

grab the plaintiff by her hair, and forced some of her hair out of her head." The judge's factual and credibility findings in this regard are overwhelmingly supported by this record. Thus, his legal conclusion that defendant committed the predicate act of assault is unassailable.

To the extent we have not addressed defendant's other arguments, it is because they are without merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.