SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1083-21

D.I.L.,

Plaintiff-Respondent,

v.

T.L.B.,

Defendant-Appellant.

Submitted October 18, 2022 – Decided December 8, 2022

Before Judges Sumners and Susswein.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Cumberland County, Docket Nos. FV-06-0358-22 and FV-06-0463-22.

T.L.B., appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Defendant appeals from the final restraining order (FRO) entered against her on October 27, 2021 pursuant to the Prevention of Domestic Violence Act

(PDVA), N.J.S.A. 2C:25-17 to -35. She also appeals from the dismissal of her cross-complaint seeking an FRO against plaintiff. The parties' domestic violence cross-complaints were tried together. Neither party was represented by counsel. Judge Benjamin C. Telsey convened the trial and rendered an oral decision, concluding that defendant committed the predicate act of harassment by engaging in a pattern of alarming conduct. After carefully reviewing the record in light of the applicable legal principles, we affirm.

The parties had a dating relationship. Although plaintiff was engaged to be married to another woman, he continued to maintain sexual relationships with defendant and others. Defendant posted sexually graphic text messages and images, sharing them with plaintiff, plaintiff's then-fiancé, and some of the fiancé's family and friends. Judge Telsey found,

> It's very clear to me, and I do make the following finding that you were very upset with [plaintiff] because he was playing you along with multiple women at the same time, and [you] took out your frustrations by contacting these women.

The judge further explained,

> You put these [sexually graphic texts and images] out there, and you put these out here in some way to show that you – he's yours, you're controlling him, and if they don't like it, to[o] darn bad.

Judge Telsey made explicit credibility findings, noting,

> So, your denial that you posted any of these things, I don't believe you. I believe these are your posts, and because [I] find that you're lying to me about creating these fake posts, I find that your entire testimony is not credible. I don't believe anything that you're saying.

The judge also found that defendant acted with a purpose to harass "by contacting all of these people and posting and making such communications that clearly were intended to cause [plaintiff] alarm which is what harassment is." The judge further explained,

> I do find that you've acted in a pattern of harassment, and that by making these posts and communicating with third parties about your relationship with him, and the very graphic posts about your relationship with him, that the purpose of doing that was to cause him harm and perhaps to create some problems for him in these other relationships that he was having by indicating that, you know, he's fooling around with you when he's with them, and so maybe it was your way to cause him harm.

Having established that defendant committed the predicate act of harassment, Judge Telsey next found that plaintiff had established the need for an FRO, stating, "I do further find that he needs [the] protection of the [PDVA] going forward [and] that would be the only way that he could be protected from this. I'm concerned that you've gone so far as to create fake social media posts with fake names." Judge Telsey thereupon entered the FRO against defendant.

Defendant's brief does not include point headings as required by Rule 2:6-2(a)(6), nor does it contain citations to the hearing transcript. See R. 2:6-2(a)(5). Despite these deficiencies, we discern that defendant is raising the following contentions for our consideration:

> (1) Defendant was "falsely accused of domestic violence and harassment that she did not commit," and Judge Telsey rendered "an unfair/unjust[] ruling" that was "arbitrar[il]y based on his personal discretion rather than a fair application of the law with several of his comments towards [her] during the hearing."
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> (2) Defendant was not "allowed to confront all her alleged accusers against their accusations" and plaintiff "was allowed to read content from his phone that he did not forward to the court in person or email . . . [which] Defendant could not physically read nor see."
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> (3) "Defendant was not given the equal opportunity to state her case" and was precluded from "submit[ing] any documentation to support her innocen[ce]" and that although she "informed [the judge] that she had witnesses, her witnesses were never called during the hearing nor was she given the opportunity to attempt to contact them during the court procedure."

The scope of our review is narrow. Appellate courts "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)). Moreover, "[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)). Accordingly, 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)).

The PDVA authorizes a court to issue a restraining order "after a finding . . . is made that an act of domestic violence was committed by that person." N.J.S.A. 2C:25-29(a). An FRO may be issued if two criteria are met. Silver v. Silver, 387 N.J. Super. 112, 125 (App. Div. 2006). The plaintiff seeking the FRO must prove that (1) "one or more of the predicate acts set forth in N.J.S.A. 2C:25-19(a) has occurred," and (2) that the order is necessary to protect plaintiff "from an immediate danger or to prevent further abuse." Id. at 125, 127.

The plaintiff must prove a predicate act of domestic violence by a preponderance of the evidence. S.D., 415 N.J. Super. at 431 (citing N.J.S.A. 2C:25-29(a)). Under the preponderance standard, "a litigant must establish that a desired inference is more probable than not. If the evidence is in equipoise,

the burden has not been met." N.J. Div. of Youth & Fam. Servs. v. N.S., 412 N.J. Super. 593, 615 (App. Div. 2010) (quoting Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006)). "The evidence must demonstrate that the offered hypothesis is a rational inference, that it permits the trier[] of fact to arrive at a conclusion grounded in a preponderance of probabilities according to common experience." Ibid. (alteration in original) (quoting In re Est. of Reininger, 388 N.J. Super. 289, 298 (Ch. Div. 2006)).

In Silver, we explained that "the commission of any one of the predicate acts enumerated in [the PDVA] does not automatically warrant issuance of a domestic violence restraining order." 387 N.J. Super. at 124. In R.G. v. R.G., we reaffirmed that principle, explaining, "the trial court must find a predicate offense and also find a basis, upon the history of the parties' relationship, to conclude the safety of the victim is threatened and a restraining order is necessary to prevent further danger to person or property." 449 N.J. Super. 208, 224 (App. Div. 2017); see also Corrente v. Corrente, 281 N.J. Super. 243, 248 (App. Div. 1995) ("[T]he drafters of the law did not intend that the commission of any one of these acts automatically would warrant the issuance of a domestic violence order.").

The second prong of the Silver test "reflects the reality that domestic violence is ordinarily more than an isolated aberrant act and incorporates the legislative intent to provide a vehicle to protect victims whose safety is threatened. This is the backdrop on which defendant's acts must be evaluated." R.G., 449 N.J. Super. at 229 (quoting Corrente, 281 N.J. Super. at 248).

The predicate act of harassment is committed "if, with purpose to harass another," the defendant:

> 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
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> c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.
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> [N.J.S.A. 2C:33-4(a) to (c).]

This case focuses on subsection (c).

In Corrente, we held that "[i]ntegral to a finding of harassment . . . is the establishment of the purpose to harass." 281 N.J. Super. at 249 (first citing D.C. v. T.H., 269 N.J. Super. 458, 461–62 (App. Div. 1994); and then citing E.K. v. G.K., 241 N.J. Super. 567, 570 (App. Div. 1990)). "A person acts purposely

with respect to the nature of his [or her] conduct or a result thereof if it is his [or her] conscious object to engage in conduct of that nature or to cause such a result." State v. Hoffman, 149 N.J. 564, 577 (1997) (quoting N.J.S.A. 2C:2-2(b)(1)). Thus, to find harassment, there must be proof that a defendant's conscious object was to "harass," that is, "annoy," "torment," "wear out," and "exhaust." State v. Castagna, 387 N.J. Super. 598, 606, 607 (App. Div. 2006) (quoting Webster's II New College Dictionary 504 (1st ed. 1995)).

Our Supreme Court has made clear that a trial judge may use common sense and experience to infer from the evidence presented a defendant's intent to harass. H.E.S. v. J.C.S., 175 N.J. 309, 327 (2003). In Hoffman, our Supreme Court held that, in the absence of any legitimate purpose for the defendant's conduct, the trial court could reasonably infer defendant acted with the purpose to harass when sending plaintiff torn-up copies of a support order. 149 N.J. at 577. In McGowan v. O'Rourke, 391 N.J. Super. 502 (App. Div. 2007), we affirmed a trial court's finding that defendant's act of sending graphic pornographic photographs of plaintiff to third parties was meant to annoy or alarm, thus constituting domestic violence harassment. Id. at 505.

Defendant contends she was not able to confront her alleged accusers and was not allowed to submit any evidence. The trial record contradicts those

assertions. Defendant had an opportunity to cross-examine plaintiff and the two witnesses he presented. She testified in her own defense. At the conclusion of the trial, the judge asked, "so anything else you wish to tell me, ma'am?" Defendant replied, "[n]o." Defendant now contends that she had witnesses that were never called and that she was not "given the opportunity to attempt to contact them during the court procedure."

The record shows defendant's lone request to delay proceedings so she could prepare was granted and she did not ask to call any witnesses. There is no indication any witnesses were standing by, waiting to be brought into the trial. Furthermore, she has yet to identify any witness who she wished to call, and nothing in her brief suggests what any such witness might have said or why such testimony would have been relevant.

Defendant also contends that plaintiff was allowed to introduce evidence from his phone that she did not have and could not see. The record shows, however, that the court arranged to have those screenshots emailed to defendant during the trial.

In his oral opinion, the trial judge specifically found defendant's testimony was not credible. We have no basis upon which to second guess that assessment. See Cesare, 154 N.J. at 412. We find no abuse of discretion in the trial court's

determination that defendant harassed plaintiff because she was a scornful ex-lover or in the judge's conclusion that an FRO was needed to prevent future harassment.

Nor did the judge abuse his discretion in dismissing defendant's cross-complaint. The judge acknowledged that plaintiff maintained multiple sexual relationships. However, there was no credible evidence that plaintiff purposely harassed defendant within the meaning of N.J.S.A. 2C:33-4.

To the extent we have not addressed them, any remaining contentions raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.