

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-2263-20

K.M.J.,

Plaintiff-Respondent,

v.

J.M.,

Defendant-Appellant.

Submitted March 16, 2022 – Decided June 2, 2022

Before Judges Gilson and Gooden Brown.

On appeal from the Superior Court, Chancery Division,
Family Part, Ocean County, Docket No. FV-15-0979-
20.

Carluccio, Leone, Dimon, Doyle & Sacks, LLC,
attorneys for appellant (Edward J. Dimon and Brett A.
Berman, on the briefs).

Villani and DeLuca, PC, attorneys for respondent
(Benjamin M. Hoffman, on the brief).

PER CURIAM

Defendant appeals from a final restraining order (FRO) entered under the Prevention of Domestic Violence Act (the Act), N.J.S.A. 2C:25-17 to -35, based on predicate acts of harassment, N.J.S.A. 2C:33-4, and contempt, N.J.S.A. 2C:29-9(b)(1). We affirm because the trial court's factual findings are supported by substantial credible evidence, and it correctly applied the law.¹

I.

We discern the facts from the record developed at a one-day trial on January 19, 2021. Plaintiff represented herself at trial and defendant was represented by counsel. The court heard testimony from five witnesses: plaintiff, plaintiff's mother, defendant, defendant's mother, and defendant's grandfather.

The parties had been in a dating relationship for approximately two years. The incident that gave rise to the request for a restraining order occurred on December 18, 2019, when plaintiff was nineteen years old, and defendant was eighteen years old.

Plaintiff testified that she had gone over to defendant's home and while there took a final examination for a course she was taking. While at defendant's

¹ We use initials to protect the confidentiality of the participants in these proceedings. R. 1:38-3(d)(10).

home, she learned that her mother and her mother's boyfriend were on their way over to pick her up to bring her home because there was an ice storm. When plaintiff informed defendant that she was leaving, defendant physically prevented her from leaving and he blocked and locked the door to his bedroom. Plaintiff was able to get out of defendant's bedroom and she went outside where her mother and her mother's boyfriend were waiting in a car.

According to plaintiff, defendant also came outside, reached through the car window, and grabbed her mother and then threatened to hurt and kill both her mother and her mother's boyfriend. Defendant also grabbed plaintiff and tried to pull her out of the vehicle. Plaintiff was able to free herself and she, her mother, and her mother's boyfriend drove away to her mother's home.

When they arrived at the mother's home, defendant was waiting there and confronted plaintiff and her mother. Defendant yelled at plaintiff and again threatened to harm the mother's boyfriend. Plaintiff's mother then called the police and defendant left before the police arrived.

The next day, plaintiff applied for and obtained a temporary restraining order (TRO) against defendant. Plaintiff went on to testify that on December 28, 2019, while the TRO was in effect, defendant came to her place of employment when she was there and tried to speak to her. When she avoided

defendant, he gave her manager letters and two rings to give to her. Plaintiff's mother's testimony largely corroborated and was consistent with plaintiff's testimony.

During his testimony, defendant admitted that plaintiff was over his house on December 18, 2019, but he denied physically preventing her from leaving. He also denied grabbing her or her mother and testified that he did not make any threats against plaintiff's mother or her boyfriend. He did admit that he had been served with a TRO and that after he had received it, he went to plaintiff's place of work on December 28, 2019.

Defendant's mother's testimony differed from defendant's testimony. She essentially denied any wrongdoing by her son and testified that plaintiff had become upset and had struck her son at which point she directed plaintiff to get out of her home. She also testified that she accompanied her son to plaintiff's mother's home to ensure that they got home safely. She testified that at plaintiff's mother's home, plaintiff continued to shout and strike defendant and that plaintiff's mother and her boyfriend were also screaming at defendant.

Defendant's grandfather testified that on the night of the incident, he went to bed at approximately 9:30 p.m. and he did not see or hear anything that occurred between plaintiff and defendant.

The trial court found plaintiff's testimony to be credible. The court also found plaintiff's mother's testimony to be credible and that it corroborated plaintiff's testimony. In contrast, the court found defendant and his mother's testimony to be incredible. In particular, the court noted that defendant's mother told a different version of events that was not even consistent with defendant's testimony. The court also found that the grandfather's testimony was irrelevant because he did not witness any of the events.

Relying on plaintiff's testimony, the court found that defendant had harassed plaintiff and had violated the TRO. The court then found that plaintiff needed a restraining order because the judge credited plaintiff's testimony that she was fearful that defendant would harass her in the future if she did not have a restraining order. Accordingly, the court entered an FRO against defendant.

II.

In appealing from the FRO, defendant makes two related arguments. He contends that we should "re-examine" the factual findings made by the trial court and asserts that there was insufficient evidence to support the finding that plaintiff needed the protection of an FRO.

Our scope of review of an FRO is limited. See C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020). We accord substantial deference to family

judges' findings of fact because of their special jurisdiction and "expertise in family matters." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 343 (2010) (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998)). That deference is particularly strong when the evidence is largely testimonial and rests on a judge's credibility findings. Gnall v. Gnall, 222 N.J. 414, 428 (2015). We will "not disturb the factual findings and legal conclusions of the trial [court] 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." Balducci v. Cige, 456 N.J. Super. 219, 233 (App. Div. 2018) (alteration in original) (quoting In re Forfeiture of Pers. Weapons & Firearms Identification Card Belonging to F.M., 225 N.J. 487, 506 (2016)). "[W]e owe no deference to a trial court's interpretation of the law, and review issues of law de novo." Cumberland Farms, Inc. v. N.J. Dep't of Env't Prot., 447 N.J. Super. 423, 438 (App. Div. 2016).

The Act was passed to further New Jersey's "strong policy against domestic violence." N.T.B. v. D.D.B., 442 N.J. Super. 205, 216 (App. Div. 2015) (quoting Cesare, 154 N.J. at 400). Domestic violence occurs when an adult or emancipated minor commits one or more of the predicate acts identified in the Act. N.J.S.A. 2C:25-19(a). When determining whether to grant an FRO,

a trial judge must engage in a two-step analysis. Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). "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; see also N.J.S.A. 2C:25-29(a) (providing that an FRO may only be granted "after a finding or an admission is made that an act of domestic violence was committed"). Second, the court must determine that a restraining order is necessary to provide protection for the victim. Silver, 387 N.J. Super. at 126-27; see also J.D. v. M.D.F., 207 N.J. 458, 475-76 (2011) (explaining that an FRO should not be issued without a finding that relief is "necessary to prevent further abuse" (quoting N.J.S.A. 2C:25-29(b))).

The trial court found that defendant had committed two predicate acts: harassment and contempt. See N.J.S.A. 2C:25-19(a)(13) and (17). 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;
- 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(a) to (c).]

A person is guilty of contempt if he or she "purposely or knowingly violates an order entered under the provisions of the [Act]." N.J.S.A. 2C:29-9(b)(2). A person acts "purposely" if he or she consciously engages in conduct or causes a certain result. N.J.S.A. 2C:2-2(b)(1). A person acts "knowingly" if he or she is aware of his or her conduct, the circumstances surrounding his or her conduct, or is aware of a high probability that those circumstances exist. N.J.S.A. 2C:2-2(b)(2).

Having reviewed the record, we conclude that there was sufficient credible evidence supporting the trial court's determination that defendant committed the predicate acts of harassment and contempt. The court credited plaintiff's testimony that defendant physically restrained her from leaving his home, and that when she did escape, he followed her to her mother's car where he grabbed her and tried to pull her out of the car. Based on the testimony of both plaintiff and her mother, the court also found that defendant followed plaintiff back to her mother's house where he continued to yell at plaintiff and to make threats to her mother and her mother's boyfriend. Those factual findings

support the legal conclusion that defendant engaged in harassment under both subsections (b) and (c) of N.J.S.A. 2C:33-4.

There was also substantial credible evidence that defendant engaged in the predicate act of contempt of the TRO. The evidence at trial established that defendant had been served with the TRO on December 19, 2019. The TRO prohibited him from having any contact or communications with plaintiff. He admitted that on December 28, 2019, he went to plaintiff's place of employment and tried to speak with plaintiff. When plaintiff would not speak with defendant, he then gave letters and two rings to her manager and asked that they be delivered to plaintiff. At trial, plaintiff testified that the letters effectively blamed her for the incident, and defendant expressed the desire to get back together. The trial court found that defendant's conduct was a violation of the TRO and that finding supports the determination that defendant committed the act of contempt.

There was also sufficient evidence that plaintiff needed an FRO to protect her from further abuse. Although plaintiff acknowledged that there had been no prior history of domestic violence by defendant, she testified, and the trial court found the testimony to be credible, that she was afraid that defendant would continue to contact her and harass her if she did not have a restraining order. In

finding that plaintiff needed the FRO, the court credited plaintiff's testimony that defendant had a history of trying to dominate and control plaintiff. That finding, particularly when coupled with defendant's contempt of the TRO, was sufficient credible evidence to support the finding that plaintiff needed an FRO to protect her from further abuse.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION