RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2574-20

L.R.,

Plaintiff-Respondent,

v.

N.G.R.,

Defendant-Appellant.

Submitted May 11, 2022 – Decided June 3, 2022

Before Judges Gooden Brown and Gummer.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, FV-07-2258-20.

Adam W. Toraya, attorney for appellant.

Ricci & Fava, LLC, attorneys for respondent (Kevin Sisco, on the brief).

PER CURIAM

Defendant N.G.R. appeals from an amended final restraining order (FRO), which was entered pursuant to the Prevention of Domestic Violence Act

(PDVA), N.J.S.A. 2C:25-17 to -35.[1] Defendant argues the trial judge erred in finding plaintiff L.R. had proven the predicate acts of harassment and criminal mischief and that the FRO was necessary to ensure plaintiff's future protection. He also faults the judge for awarding plaintiff counsel fees. Because the judge's findings were supported by adequate, substantial evidence, including testimony he found credible, we affirm.

I.

We glean these facts from the FRO hearing and the pleadings and orders contained in the record. The parties were married in 2013 and had two children who were four and six years old when the FRO was issued. Plaintiff filed for divorce in January 2019. The parties disagree on whether and when defendant moved out of the marital home. Plaintiff contends defendant voluntarily moved out in September 2019 and that defendant's subsequent efforts to enter and maintain a presence in the house constituted acts of harassment and criminal mischief. Defendant denies he moved out of the house and contends plaintiff's assertion that he had moved out represents her effort to gain a tactical advantage in their divorce proceedings.

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

On January 21, 2020, plaintiff filed a complaint for a temporary restraining order (TRO) against defendant, claiming harassment, criminal mischief, and burglary as predicate acts. She alleged, among other things, she had witnessed defendant from her doorbell camera break into her home, rip a camera off the house, and tap on a basement window, which she believed was his means of entering the house. According to plaintiff, the police arrested defendant that day. She alleged the day before he had parked his vehicle in her driveway in a way that blocked her car and prevented her from leaving. According to plaintiff, earlier that month, her alarm system reported movement in her kitchen. When police arrived, defendant was not present, but plaintiff's motion sensors had been removed and her Alexa devices and dry cleaning were missing. Plaintiff described an incident the prior month in which defendant yelled, cursed, and raised his middle finger at her. Plaintiff subsequently amended her complaint to allege defendant had engaged in "cyber harassment" by sending a nude photo of her to the court and her counsel and to describe a prior incident in which defendant showed up at the house with police at 3:00 a.m.

The parties, both represented by counsel, testified during a four-day hearing. Plaintiff testified about her mother's purchase of the house; defendant's

agreement to move out of the house; texts demonstrating he had moved out; photographs of damage to the house defendant had caused; videos of defendant attempting to enter the house, being in the house, and removing a camera from a wall in the house; and domestic-violence incidents, including one incident in which he pulled and twisted her arm and the incidents she had alleged in the amended complaint. Plaintiff also called as a witness a friend, who confirmed defendant had moved out of the house and testified about the domestic-violence incidents she had witnessed.

Defendant denied he had moved out of the house. He admitted entering the house through a basement window after plaintiff had changed the locks and admitted he had taken down security motion sensors. He admitted that on another day he had gone to the house with a locksmith with the intention of changing the locks, had entered the house through a basement window, and had removed security motion sensors. He conceded he had parked in the driveway behind her car but faulted plaintiff for not giving him room to park next to her.

The judge granted plaintiff's FRO application, placed his decision on the record, and issued the FRO. The judge found defendant had moved out of the marital home and thereafter had

> engaged in a course of conduct over a repeated period of time in which he was exerting control over the

> [plaintiff], not only the matrimonial property, but the plaintiff . . . by virtue of the [manner] in which he acted. The repeated presence at the matrimonial residence when he was not living there.

The judge found plaintiff's testimony credible and supported by the videos admitted into evidence and admissions defendant had made. The judge rejected defendant's assertion plaintiff was "attempting to take advantage of the domestic violence statute in order to gain the upper-hand insofar as possession of the marital residence" and his testimony about having a "residential interest" in the property. The judge found "the manner" in which defendant "took it upon himself to exercise . . . control" over the house "would have been shocking to" plaintiff and "obviously upsetting" to her, and "clearly placed . . . plaintiff in a position of alarm and concern." The judge had a "concern with regard to [defendant's] ability to respect [plaintiff's] privacy and the sanctity of her residence."

The judge held plaintiff clearly had established the predicate act of harassment, finding "[n]ot only that . . . defendant engaged in a course of alarming conduct, but that in doing so he was sending a clear message to [plaintiff] that he intended to continue to observe his dominance and his exercise of power and control over . . . plaintiff." The judge found defendant's "intended purpose" to be "clear": "to harass . . . plaintiff and place her in a position where

she would be insecure in her very home." The judge also held plaintiff had established the predicate act of criminal mischief, specifically referencing "[t]he act of the removal of the lock." The judge found plaintiff had not established the predicate act of burglary.

The judge subsequently heard argument regarding plaintiff's application for an award of counsel fees. Plaintiff sought an award of $44,555 based on the number of hours expended by her attorney multiplied by her attorney's normal hourly rate. The judge awarded plaintiff $22,000 in counsel fees. In issuing that award, the judge found defendant's "positions maintained during the trial . . . to be incredible." He considered the parties' incomes, imputing income to plaintiff based on her position as a teacher's aide, and considered their respective abilities to pay. He held the services rendered by plaintiff's counsel were necessary and reasonable, specifically referencing plaintiff's counsel's hourly rate. Nevertheless, the judge awarded half the amount of fees requested and issued an amended FRO to include the fee award.

In this appeal, defendant argues plaintiff did not present sufficient evidence to establish the predicate acts of harassment and criminal mischief or that a restraining order was necessary to protect her. Defendant also contends

the judge abused his discretion by awarding counsel fees without first reviewing plaintiff's retainer agreement with her counsel. Unpersuaded, we affirm.

II.

The scope of our review is limited in an appeal involving an FRO issued after a bench trial. C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020). "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.'" Ibid. (quoting J.D. v. M.D.F., 207 N.J. 458, 482 (2011)). "[D]eference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" MacKinnon v. MacKinnon, 191 N.J. 240, 254 (2007) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 411-12; see also Gnall v. Gnall, 222 N.J. 414, 428 (2015). We defer to a trial judge's factual findings unless 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. of Am., 65 N.J. 474, 484 (1974)); see also C.C., 463 N.J. Super.

at 428. We defer to a trial judge's credibility determinations. Gnall, 222 N.J. at 428. We consider a trial court's fee award under an abuse-of-discretion standard. McGowan v. O'Rourke, 391 N.J. Super. 502, 508 (App. Div. 2007). We review de novo a trial judge's legal conclusions. C.C., 463 N.J. Super. at 429.

The entry of an FRO under the PDVA requires the trial court to make certain findings pursuant to a two-step analysis delineated in Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). Initially, 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 (citing N.J.S.A. 2C:25-29(a)). Harassment and criminal mischief are among the predicate acts included in N.J.S.A. 2C:25-19(a). See N.J.S.A. 2C:25-19(a)(10), (13). Second, the judge must determine whether a restraining order is necessary to protect the plaintiff from immediate harm or further acts of violence. Silver, 387 N.J. Super. at 127; see also C.C. 463 N.J. Super. at 429.

A person commits harassment "if, with purpose to harass another," he or she: (a) "[m]akes, 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)

"[e]ngages 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), (c).

A person commits criminal mischief if he "[p]urposely or knowingly damages tangible property of another . . . " or "[p]urposely, knowingly or recklessly tampers with tangible property of another so as to endanger person or property . . . ." N.J.S.A. 2C:17-3(a). The term "'[p]roperty of another' includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property . . . ." N.J.S.A. 2C:20-1(h). Plaintiff's mother had purchased the parties' marital home using, in part, funds provided from the parties' joint account. Defendant paid the mortgage until he moved out. The house was in plaintiff's name at the time of the domestic-violence incidents. Even if defendant had an ownership interest in the house, it would not excuse him from purposely damaging it. Married parties who jointly own a home each hold "a separate and distinct interest" in the residence. N.T.B. v. D.D.B., 442 N.J. Super. 205, 219 (App. Div. 2015). Therefore, if one party "purposely or knowingly damages" that property, he or she has committed the predicate act of criminal mischief. Id. at 219-20.

Applying these standards, we are satisfied the judge's issuance of an FRO is supported by substantial credible evidence in the record. Plaintiff's testimony, her friend's testimony, videos, photographs, and even at times defendant's testimony supported the judge's finding of the predicate acts of harassment and criminal mischief and a need to protect plaintiff from future domestic violence.

"A finding of a purpose to harass may be inferred from the evidence presented. . . . Common sense and experience may inform that determination." State v. Hoffman, 149 N.J. 564, 577 (1997); see also J.D., 207 N.J. at 477. Defendant continues on appeal to make assertions the judge found "incredible." He asserts his purpose was not to harass plaintiff but to "continue to enjoy his right to have access to the marital home." The judge's credibility findings — adopting plaintiff's narrative of the events over that of defendant's and concluding defendant had moved out of the marital home — were extensive and detailed and are entitled to our deference on appeal. We are unpersuaded by defendant's contention that he was simply trying to "utilize the house for its intended purpose" when he repeatedly re-entered without notice or invitation the house he had voluntarily vacated, crawled through a basement window, showed up at 3:00 a.m. with police, removed security motion sensors and the doorbell camera, attempted to remove the locks on the house, and blocked plaintiff's

vehicle. We see no reason to disturb the judge's findings that defendant acted with a purpose to harass and had committed the predicate acts of harassment and criminal mischief.

Defendant argues the judge erred in finding he had harassed plaintiff even though he had "never committed any acts of violence against [p]laintiff." The absence of violence does not excuse an abuser. "The law is clear that acts of actual violence are not required to support a finding of domestic violence." H.E.S. v. J.C.S., 175 N.J. 309, 329 (2003); see also A.M.C. v. P.B., 447 N.J. Super. 402, 413 (App. Div. 2016) ("A finding of domestic violence does not require actual violence.").

Defendant contends plaintiff did not establish a restraining order was necessary to protect her from future acts of violence and faults the judge for not making findings regarding the second prong of Silver, which requires the judge to determine whether a restraining order is necessary to protect the plaintiff from immediate harm or further abuse. 387 N.J. Super. at 127. We disagree. Based on the evidence plaintiff presented, the judge found "the manner" in which defendant "took it upon himself to exercise . . . control" over the house "clearly placed . . . plaintiff in a position of alarm and concern." The judge had a "concern with regard to [defendant's] ability to respect [plaintiff's] privacy and

the sanctity of her residence." The judge found "defendant had engaged in a course of alarming conduct . . . [and] in doing so he was sending a clear message to [plaintiff] that he intended to continue to observe his dominance and his exercise of power and control over . . . plaintiff" and clearly intended to "place [plaintiff] in a position where she would be insecure in her very home." Those findings, which were supported by substantial, credible evidence in the record, are sufficient to establish the second prong of Silver, 387 N.J. Super. at 126-27, especially considering defendant's belief he has a right to enter at any time the house he voluntarily vacated.

Defendant argues the judge erred by not reviewing plaintiff's retainer agreement with her counsel before awarding plaintiff counsel fees. We decline to consider that issue because nothing in the record provided to us on appeal indicated defendant raised it in the trial court. See Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (noting appellate courts generally decline to consider issues not presented to the trial court). Even if we were to consider the argument, we see no abuse of discretion in awarding plaintiff $22,000 in counsel fees given the factual findings of the judge and procedural history of this case. See Rendine v. Pantzer, 141 N.J. 292, 317 (1995) (finding "determinations by trial courts [regarding legal fees] will be disturbed only on the rarest occasions, and then

only because of a clear abuse of discretion"); see also McGowan, 391 N.J. Super. at 508.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION