

RECORD IMPOUNDED

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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2989-20**

K.T.A.,

Plaintiff-Respondent,

v.

J.C.A.,

Defendant-Appellant.

Submitted March 30, 2022 – Decided May 12, 2022

Before Judges Messano and Enright.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Burlington County,
Docket No. FV-03-1533-21.

Helmer, Conley & Kasselmann, PA, attorneys for
appellant (Barry J. Serebnick, of counsel and on the
brief).

Thomas J. Hurley, attorney for respondent.

PER CURIAM

Defendant J.C.A.¹ appeals from the May 17, 2021 final restraining order (FRO) issued against him pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. The Family Part judge found defendant committed the predicate act of harassment, N.J.S.A. 2C:33-4(b), and plaintiff K.T.A., defendant's estranged wife, needed protection under the PDVA from further abuse. See Silver v. Silver, 387 N.J. Super. 112, 127 (App. Div. 2006) (noting second inquiry in action under the PDVA is "whether a restraining order is necessary . . . to protect the victim from an immediate danger or to prevent further abuse" (citing N.J.S.A. 2C:25-29(b))).

The parties were married in January 2017 and had two children, ages four and two at the time of the proceedings before the Family Part. On March 30, 2021, plaintiff obtained a temporary restraining order (TRO) alleging defendant committed harassment by "grabbing [her] by the arms and dropping her into a bathtub of cold water," causing minor bruising and soreness. The complaint alleged "this [wa]s not the first time . . . defendant put his hands on her."

Plaintiff thereafter sought an amended TRO, filing a certification that set forth additional details regarding the parties' March 18, 2021 separation, the

¹ We use initials to protect the identity of the parties pursuant to Rule 1:38-3(d)(10).

events of March 30 supporting her allegations, and general allegations of mistreatment and violence during the marriage. The amended TRO issued by the court now included the additional predicate act of assault and incorporated by reference plaintiff's certification. The TRO was served upon defendant on April 25. One week later, the judge entered an order adjourning the FRO hearing to allow the parties, who were both represented by counsel, to review the amended TRO and discovery, including text messages, emails, and social media content allegedly sent to plaintiff by defendant.

At the May 17, 2021 hearing, Judge Craig A. Ambrose heard the testimony of plaintiff and defendant. Plaintiff said that on March 30, defendant came to the residence to switch vehicles and pick up the couple's two children. While she was upstairs in the guest bedroom napping after working all day, defendant unlocked the door, filled up a bathtub with cold water, picked her up and threw her, fully clothed, into the bathtub before leaving and going downstairs.

As she tried to take off her wet clothing, defendant returned, again unlocked the door, and held her hands at her side as he tried to remove her pants. Plaintiff said defendant was physical toward her in the past "at least once or twice a month [to] try to have sex with [her]," and she was "living in fear every day." Plaintiff expressed concern about the "[twenty] to [fifty] texts in a row [that she

received from defendant] all day long," and emails from him that were "constant[], nonstop, all day long."

When plaintiff's counsel sought to introduce "cut and pasted" text messages, defense counsel objected, arguing the proposed exhibits lacked authentication, under N.J.R.E. 901, and violated the rule of completeness, N.J.R.E. 106. Judge Ambrose sustained the objection.

Plaintiff phoned her mother after the incident, and police responded to plaintiff's residence while defendant was still present. Plaintiff detailed her interaction with the two officers who responded.

Defendant denied unlocking the bedroom door, which he claimed was open, but he did not deny putting plaintiff in the bathtub. Defendant said it was only to "wake her up." Defendant denied assaulting plaintiff, attempting to "rape her," and defendant also asserted there was "no history" of domestic violence between him and plaintiff.

At the conclusion of the hearing, Judge Ambrose issued a thorough oral decision. The judge found plaintiff to be credible, noting plaintiff "testif[ied] in an honest manner. . . . Her mannerisms were that of a person that had been through this type of incident[,] and I do find that she suffered from some type of shock." He noted defendant admitted throwing plaintiff into a tub of water,

but the judge otherwise did not find defendant's testimony "credible," noting defendant "was evasive and . . . wasn't straightforward with his answers." The judge concluded plaintiff proved harassment under N.J.S.A. 2C:33-4(b). Conversely, the judge determined plaintiff failed to prove defendant committed an assault, concluding the evidence as to that predicate act was in "equipoise."

Judge Ambrose then considered "whether or not the second prong of Silver [wa]s satisfied," even though, having excluded the proffered text messages, there was no credible evidence of prior domestic violence. The judge carefully considered the factors set forth in N.J.S.A. 2C:25-29(a)(1) to -29(a)(6). See Silver, 387 N.J. Super. at 127. He concluded there was "a need for protection going forward" and entered the FRO.

On appeal, defendant argues the judge erred in concluding he committed harassment and in determining plaintiff required the protection of an FRO under the second Silver prong. Having reviewed the record before us, we disagree and affirm.

"The scope of appellate review of a trial court's fact-finding function is limited. The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411–12 (1998) (citing Rova Farms Resort, Inc. v. Invs. Ins. Co. of

Am., 65 N.J. 474, 484 (1974)). "We defer to the credibility determinations made by the trial court because the trial judge 'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare, 154 N.J. at 412). Moreover, "[b]ecause of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare, 154 N.J. at 413. However, we do not defer to the judge's legal conclusions "if they are based upon a misunderstanding of . . . applicable legal principles." T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App. Div. 2017) (quoting N.T.B. v. D.D.B., 442 N.J. Super. 205, 215 (App. Div. 2015)).

A person is guilty of harassment "if, with purpose to harass another, he . . . [s]ubjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so." N.J.S.A. 2C:33-4(b). "'A finding of a purpose to harass may be inferred from the evidence presented' and from common sense and experience." H.E.S. v. J.C.S., 175 N.J. 309, 327 (2003) (quoting State v. Hoffman, 149 N.J. 564, 577 (1997)). "The offense must be tainted by a desire to abuse or control the victim because of their domestic relationship." R.G. v. R.G., 449 N.J. Super. 208, 230 (App. Div. 2017).

Here, having found plaintiff's testimony credible, and acknowledging defendant's admission to throwing his estranged wife into the bathtub of water while fully clothed, but rejecting defendant's innocent explanation for his behavior, the judge's conclusion that plaintiff proved harassment under subsection (b) is unassailable.

As for the second prong of Silver, as noted, the judge analyzed the statutory factors, and while noting he did not find a history of domestic violence or that plaintiff faced "immediate danger," Judge Ambrose determined her best interests and those of her two children supported issuance of an FRO. See N.J.S.A. 2C:25-29(2)(a)(1), (2), and (4); see also S.D. v. M.J.R., 415 N.J. Super. 417, 441 (App. Div. 2010) (recognizing imminent birth of the parties' child "would bring the two into contact and almost inevitably be a source of conflict"). The judge earlier credited plaintiff's visible expressions of fear and "shock" in describing the incident, which occurred shortly after the parties separated.

"When the predicate act is an offense that inherently involves the use of physical force and violence, the decision to issue an FRO 'is most often perfunctory and self-evident.'" A.M.C. v. P.B., 447 N.J. Super. 402, 417 (App. Div. 2016) (quoting Silver, 387 N.J. Super. at 127)). Even though the judge concluded plaintiff failed to prove defendant's actions were an assault, which

required a showing that defendant was attempting to cause the plaintiff bodily harm, it is beyond debate that throwing someone into a bathtub of cold water against their will is an act "involv[ing] the use of physical force and violence." The judge's decision to issue an FRO because of the potential for further abuse was legally sound and not an abuse of discretion.

Affirmed.

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



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