

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-3092-20

M.R.,

Plaintiff-Respondent,

v.

K.T.B., JR.,

Defendant-Appellant.

Submitted October 20, 2022 – Decided December 23, 2022

Before Judges DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Atlantic County,
Docket No. FV-01-1020-21.

Melissa Rosenblum, LLC, attorney for appellant
(Melissa Rosenblum, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant K.T.B., Jr.¹ appeals from a May 20, 2021 final restraining order (FRO) entered by the Family Part pursuant to the Prevention of Domestic Violence Act (the Act), N.J.S.A. 2C:25-17 to -35. We affirm.

I.

After a trial at which both parties were represented by counsel and testified, the trial court found that M.R. credibly testified to the following facts. The parties were in a dating relationship for approximately five years. K.T.B., Jr. lived with M.R. at her home until December 2020, when M.R. ended the relationship and directed him to leave the house.

M.R. was motivated to end the relationship by a change in K.T.B., Jr.'s behavior that made her fear for her safety. K.T.B., Jr. called M.R. from West Virginia and said he intended to buy a home there and establish a new relationship. In addition, he stated he was going to purchase a gun at a store near the hotel at which he was staying. He later reminded M.R. he had a gun permit, was an experienced hunter, and knew how to kill animals with one shot. On another occasion, K.T.B., Jr. called a veteran's suicide hotline and falsely reported he was in M.R.'s home with a weapon intending to commit suicide or

¹ We use initials to preserve the confidentiality of court records concerning domestic violence. R. 1:38-3(d)(9).

hurt someone else. This caused a S.W.A.T. team to descend on M.R.'s house and point a gun at her head while removing her from the premises. M.R.'s teenage son and elderly mother were home during the S.W.A.T. team raid. K.T.B., Jr. subsequently made similar false calls to the police a number of times, causing officers to respond to M.R.'s home.

In addition, K.T.B., Jr. repeatedly contacted M.R. by telephone and text message, often late at night, frequently mentioned weapons, threatened to confront the father of her teenage son in order to have contact with the son, and purchased items online and directed they be delivered to M.R.'s home. Shortly before the hearing, K.T.B., Jr. left an envelope in M.R.'s mailbox containing his credit cards, health care identification, ripped up photographs of him and his former girlfriend, and other materials, violating a temporary restraining order.

At the conclusion of M.R.'s testimony, the trial court issued an oral opinion. K.T.B., Jr.'s counsel did not ask to present witnesses and did not object to the court issuing its opinion without hearing evidence offered by K.T.B., Jr.²

² We note that at the start of the hearing, K.T.B., Jr. testified with respect to a domestic violence complaint he filed against M.R. During his testimony, he said he wished to withdraw the complaint. After stating it would enter an order dismissing K.T.B., Jr.'s complaint, the trial court took testimony from M.R. with respect to the domestic violence cross-complaint she filed against K.T.B., Jr.

The trial court found that K.T.B., Jr. committed the predicate act of harassment, N.J.S.A. 2C:33-4, by making one or more communications at extremely inconvenient hours and in a manner likely to cause annoyance or alarm. The court also concluded that M.R. credibly testified that she feared K.T.B., Jr. and was in need of protection from an immediate danger or further acts of domestic violence, warranting entry of an FRO. A May 20, 2021 FRO memorializes the trial court's decision.

This appeal follows. K.T.B., Jr. argues: (1) his due process rights were violated when the trial court did not give him the opportunity to present witnesses after M.R.'s testimony; and (2) the record does not support the trial court's conclusion that K.T.B., Jr. committed harassment or that M.R. is in need of protection from immediate danger or further acts of domestic violence.

II.

"In our review of a trial court's order entered following trial in a domestic violence matter, we grant substantial deference to the trial court's findings of fact and legal conclusions based upon those findings." D.N. v. K.M., 429 N.J. Super. 592, 596 (App. Div. 2013) (citing Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). We do not disturb the "factual findings and legal conclusions of the trial judge 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.'" Cesare, 154 N.J. at 412 (alteration in original) (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). Deference is particularly appropriate when the evidence is testimonial and involves credibility issues because the judge who observes the witnesses and hears the testimony has a perspective the reviewing court does not enjoy. Pascale v. Pascale, 113 N.J. 20, 33 (1988) (citing Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)).

The entry of an FRO requires the trial court to make certain findings. See Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). 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. The court should make this determination "'in light of the previous history of violence between the parties.'" Ibid. (quoting Cesare, 154 N.J. at 402). Next, 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 (citing N.J.S.A. 2C:25-29(b)); see also J.D. v. M.D.F., 207 N.J. 458, 476 (2011). This determination requires evaluation of:

- (1) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;
- (2) The existence of immediate danger to person or property;
- (3) The financial circumstances of the plaintiff and defendant;
- (4) The best interests of the victim and any child;
- (5) In determining custody and parenting time the protection of the victim's safety; and
- (6) The existence of a verifiable order of protection from another jurisdiction.

[N.J.S.A. 2C:25-29(a); see also Cesare, 154 N.J. at 401.]

Here, the trial court determined that K.T.B., Jr. committed harassment, one of the predicate acts set forth in the Act. N.J.S.A. 2C:25-19(a)(13). 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;

. . . 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.]

For a finding of harassment under N.J.S.A. 2C:33-4, the actor must have the purpose to harass. Corrente v. Corrente, 281 N.J. Super. 243, 249 (App. Div. 1995) (citing D.C. v. T.H., 269 N.J. Super. 458, 461-62 (App. Div. 1994); E.K. v. G.K., 241 N.J. Super. 567, 570 (App. Div. 1990)). Finding a party had the purpose to harass must be supported by "some evidence that the actor's conscious object was to alarm or annoy; mere awareness that someone might be alarmed or annoyed is insufficient." J.D., 207 N.J. at 487 (citing State v. Fuchs, 230 N.J. Super. 420, 428 (App. Div. 1989)). A purpose to harass may be inferred from the evidence. State v. McDougald, 120 N.J. 523, 566-67 (1990). Common sense and experience may also inform a determination or finding of purpose. State v. Hoffman, 149 N.J. 564, 577 (1997) (citing State v. Richards, 155 N.J. Super. 106, 118 (App. Div. 1978)).

The record contains ample support for the trial court's finding that K.T.B., Jr. harassed M.R. within the meaning of N.J.S.A. 2C:33-4. The court adopted M.R.'s testimony with respect to a number of acts by K.T.B., Jr. which could only have been intended to cause her annoyance and alarm. Causing an armed S.W.A.T. team to descend on M.R.'s home surely was intended by K.T.B., Jr. to cause her alarm. There is no other explanation for this disturbing and dangerous

behavior. K.T.B., Jr.'s repeated communications, often referencing weapons, also constituted harassment, given the disturbing nature of such statements from someone with whom the recipient had a recent breakup. We are not convinced by K.T.B., Jr.'s argument that M.R. did not prove these acts because she did not specify the dates on which they occurred or produce documentary evidence of the communications.

Nor are we persuaded by K.T.B., Jr.'s argument that the record does not support entry of an FRO. K.T.B., Jr.'s course of conduct evinces a need for protecting M.R. from his harassing, and potentially dangerous, behavior on an ongoing basis.

Lastly, we do not agree with K.T.B., Jr.'s claim that the court denied him the opportunity to present witnesses. K.T.B., Jr. was represented by counsel. After limited cross-examination of M.R., his counsel did not request to have K.T.B., Jr. return to the stand. While it is true the trial court did not expressly ask K.T.B., Jr.'s counsel if he wished to call any witnesses after M.R. testified, nothing in the record suggests the court precluded counsel from requesting to call witnesses or objecting to the court's issuance of an oral opinion prior to K.T.B., Jr. presenting further evidence. It is more likely, in our view, that counsel elected not to call K.T.B., Jr. back to the stand, given the somewhat

meandering and sometimes non-responsive answers he gave to counsel's questions during direct examination on his withdrawn complaint.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION