

RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3158-20**

J.S.S.,¹

Plaintiff-Appellant,

v.

S.M.P.,

Defendant-Respondent.

Submitted April 28, 2022 – Decided June 6, 2022

Before Judges Mawla and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Camden County,
Docket No. FV-04-2740-21.

Adam W. Toraya, attorney for appellant.

Respondent has not filed a brief.

PER CURIAM

¹ We use initials to protect the privacy of the parties. R. 1:38-3(d)(9)-(10).

Plaintiff commenced this action, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, based on an allegation that defendant harassed him by calling him numerous times and threatening his life. The allegedly harassing calls started after someone using plaintiff's email account sent defendant and her husband a video of a three-way sexual encounter that occurred between plaintiff, defendant, and another woman. Plaintiff claimed the calls were so excessive that he had to get a new phone number. A day after defendant and her husband received the video, defendant contacted plaintiff's aunt on Instagram stating she was going to beat up plaintiff.

On May 20, 2021, at the conclusion of the trial at which plaintiff, plaintiff's aunt, and defendant testified, Judge Michael E. Joyce rendered an oral opinion and judgment dismissing plaintiff's complaint and declining to issue a Final Restraining Order (FRO). He found plaintiff did not "convince the court" that defendant committed the predicate act of harassment by a preponderance of the evidence. The judge did not find that harassment occurred "or that one little communication between [defendant] and [plaintiff's aunt]" was "enough to rise to the level of harassing conduct." The judge likened defendant's statement to plaintiff's aunt to the case Peranio v. Peranio, 280 N.J. Super. 47, 55-57 (App. Div. 1995), where the court found the statement "I'll bury you" was not sufficient

to constitute harassment. He noted that there was not "any follow up documentation evidence that there was . . . repeated acts of threatening conduct." Although plaintiff submitted evidence of defendant's message to his aunt and a photo of his aunt's social media account, plaintiff failed to provide any documentary evidence, voice recordings, or texts to indicate that defendant was repeatedly calling plaintiff. The judge concluded that an FRO was not warranted because there had been no prior acts of domestic violence.

On appeal, plaintiff presents the following argument for our consideration:

POINT I

THE COURT ERRED IN FAILING TO GRANT A[N]
[FRO] AFTER IMPROPERLY CONSIDERING THE
ACT OF HARASSMENT.

We reject plaintiff's argument and affirm, substantially for the reasons set forth in the judge's thorough and thoughtful opinion. We add the following comments.

Our review of a trial judge's fact-finding function is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). A judge's findings of fact are "binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12.

Deference is particularly warranted where, as here, "the evidence is largely testimonial and involves questions of credibility." Id. at 412 (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). Such findings become binding on appeal because it is the trial judge who "sees and observes the witnesses," thereby possessing "a better perspective than a reviewing court in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)). Therefore, we will not disturb a judge's factual findings unless convinced "they are so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice." Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)).

After considering the testimony and documents submitted at trial, the judge found defendant's testimony "convincing." The judge determined that defendant "was very direct on direct examination," and that there was "no hesitancy in her responses." He believed defendant when she stated she did not have plaintiff's number and contacted plaintiff's aunt in the heat of the moment after the fall out with her husband. On the other hand, the judge found plaintiff's testimony "confusing" and determined that his testimony did not "convince the

court that [defendant] engaged in harassing conduct." He noted plaintiff was "reluctant to acknowledge he['d] been charged with certain crimes" associated with the unauthorized taping and dissemination of the sexual encounter. Additionally, the judge found plaintiff's aunt's testimony did not "assist the court whatsoever."

In a case that hinged on credibility, we discern no reason to disturb the judge's findings. After a careful examination of the record, we are satisfied that the evidence amply supported the judge's determination that plaintiff failed to establish by a preponderance of the evidence the predicate act of harassment and that an FRO was not necessary, especially given the lack of prior domestic violence history and the lack of evidence showing ongoing harassment.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION