

# RECORD IMPOUNDED

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### SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-0652-19

S.B.,

Plaintiff-Respondent,

v.

D.L.,

Defendant-Appellant.

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Argued January 24, 2023 – Decided February 17, 2023

Before Judges Rose and Gummer.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Cape May County,  
Docket No. FV-05-0034-20.

Wayne R. Maynard argued the cause for appellant.

S.B., respondent, argued the cause pro se.

PER CURIAM

Defendant appeals from a 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.<sup>1</sup> Defendant argues the trial judge erred in finding plaintiff had proven the predicate act of harassment and that the FRO was needed to ensure her future protection. Because the judge's findings are supported by adequate, substantial evidence, including testimony he found credible, we affirm.

## I.

We glean these facts from the trial, during which each party testified. At the time plaintiff filed the domestic-violence complaint, the parties owned two properties together: a three-unit property in Wildwood, New Jersey and a shared house in Bensalem, Pennsylvania. The parties had been in a dating relationship for about twenty-three years. Plaintiff testified their dating relationship ended in 2015; defendant contended it ended in 2017.

Plaintiff filed a domestic-violence complaint against defendant on July 10, 2019, alleging a predicate act of harassment based on events that took place on July 5 and 6, 2019, and two text messages defendant purportedly sent her on July 6, 2019. In response to a question on the complaint about any prior history of domestic violence, plaintiff detailed events that took place in 2018, alleged defendant had been "physically abusive toward [her] throughout their [twenty-

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<sup>1</sup> We use initials to protect the confidentiality of the victim in these proceedings. R. 1:38-3(d)(10).

three] year relationship off and on, punching [her]," and accused defendant of throwing a glass at her in 2008, "causing her to need [fifty] stitches in her face." The court issued a temporary restraining order (TRO) on July 10, 2019.

At trial, plaintiff testified that on July 5, 2019, she was staying in the cottage located behind the house on the parties' Wildwood property. She noticed the lights were on in the house and realized defendant was staying there for the first time that summer. That evening, as plaintiff walked back to the cottage after retrieving her purse from her car, defendant stood on the front porch and stared at her. At about 8:30 a.m. the next morning, defendant and his friend were on the porch and stared at plaintiff as she was leaving the cottage. According to plaintiff, defendant and his friend "sat there and just wanted to kind of intimidate [her] . . . until [she] got in [her] car." When she returned later that morning, defendant asked plaintiff about a bathroom leak in one of their houses and told her he had been there recently to check the leak. In response to plaintiff reminding him he was supposed to give her twenty-four hours' notice before entering the house, defendant said: "I can do whatever I want to do." At about 10:30 a.m., while sitting on the porch, defendant and his friend stared at plaintiff and her male friend as they were leaving in separate cars.

Plaintiff testified that at 11:23 a.m., defendant sent a text, stating: "I have zero respect for you after seeing what I seen [sic] today. How could you lay [sic] in the same bed with another guy in our houses. I'm so glad I witnessed that today. It totally confirms what type of person you truly are." At 8:08 p.m., defendant sent plaintiff another text, stating: "Your [sic] a pig. I better not go through that again or it will pan out out [sic] for him or you. Will not."

Plaintiff also testified about her allegations of past abuse, including a 2008 incident during which defendant threw a glass at her face. Plaintiff stated she "was in fear of walking out of . . . [her] house." She testified she was "in fear for what he said and for" what she knew he had "done in the past."

At trial, defendant admitted he had sent the text messages to plaintiff. He testified he had not meant anything harmful by sending the messages but had been "totally thrown back when [he saw] her and another guy sleeping in what [he] own[s], [his] house, [their] house." He explained, "[i]t was just an impulsive thing" and that he "didn't act." He noted, "if [he had] wanted to get physical, [he] could have," but "[he] didn't." Defendant conceded he had had a conversation with plaintiff about the bathroom leak and that he had not provided twenty-four hours' notice of his presence to plaintiff. He denied staring at plaintiff on either day. Regarding the glass-throwing incident, defendant

admitted that while the parties were having a "huge argument," he had thrown a glass, the glass had hit plaintiff, and they had gone to the emergency room because she was bleeding. He claimed he "accidentally did that to her," having "blindly thr[own] the glass behind [him] . . . ." Defendant asserted plaintiff had no reason to fear him and that "she knows in the bottom of her heart at the end of the day [he] would never ever harm her, hurt her, nor [does] [he] want to." He accused plaintiff of "just trying to make [his] life miserable."

In a decision issued at the conclusion of the trial, the judge granted plaintiff's FRO application. Rejecting defense counsel's arguments regarding plaintiff's credibility, the judge found that "[b]oth of the parties presented as credible." He held the text messages qualified as harassment pursuant to N.J.S.A. 2C:33-4(a):

There was no good reason to send those texts other than to indicate to . . . plaintiff that he was upset. His choice of language is intended to annoy or alarm. He sends not one but two over the course of nine hours. Maybe the first one was simply an impulse, but the second one he had time to cool down. And the second one he not only sends but he corrects, calls her a pig and indicates it's not going to pan out for both him and her. In this court's view, that's a deliberate attempt to annoy or alarm, especially give[n] the passage of time.

And we're not dealing with a circumstance where the parties have recently broken up. The parties have, you know, gone their separate ways four years ago.

And I understand that they have ongoing litigation conflict, but . . . defendant was upset that he saw her with another man on the property that they owned together. And the text[s], again, served no legitimate purpose in my view and were simply designed to annoy or alarm. So that qualifies as harassment, an act of domestic violence.

The judge considered the second prong of Silver v. Silver, 387 N.J. Super. 112, 127 (App. Div. 2006): whether plaintiff needed a restraining order to prevent further abuse. He found plaintiff's testimony about the glass-throwing incident to be more credible than defendant's testimony. The judge determined that defendant "left to his own devices, if he comes upon the plaintiff with a gentleman in a property that she's entitled to be at, his response is to send those texts." The judge held that given that context, "[plaintiff] does require a restraining order" to "safeguard" her "right to be left alone" pursuant to the PDVA. The judge acknowledged that if the text messages were "[i]n the context of a breakup, they might qualify as domestic contretemps" but because "the parties [were] four years separated[,] [t]here's no reason that [plaintiff] couldn't be at that property and should she choose, have company." The judge subsequently entered the FRO.

In this appeal, defendant argues the judge erred in entering the FRO because (1) the record did not support a finding that defendant "had the requisite

intent and purpose to harass [plaintiff] by sending two texts" and (2) the FRO "was not necessary to prevent further abuse." Unpersuaded by those arguments, 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). "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); 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 review de novo a trial judge's legal conclusions. C.C., 463 N.J. Super. at 429.

"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.'" Id. at 428 (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, 154 N.J. at 412). We defer to a trial judge's credibility determinations "because the trial judge 'hears the case, sees and observes the witnesses, and hears them testify,' affording [the trial judge] 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" Gnall, 222 N.J. at 428 (quoting Cesare, 154 N.J. at 412).

The PDVA protects adults and emancipated minors who have been subjected to domestic violence by "any other person who is a present household member or was at any time a household member." N.J.S.A. 2C:25-19(d); see R.G. v. R.G., 449 N.J. Super. 208, 219 (App. Div. 2017) (recognizing the definition of "[v]ictim of domestic violence" had the "intent to broaden the application" of the PDVA). The PDVA also protects "any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship." N.J.S.A. 2C:25-19(d).

The entry of an FRO under the PDVA requires the trial judge to make certain findings pursuant to a two-step analysis delineated in Silver, 387 N.J. Super. at 125-27. Initially, 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 (citing N.J.S.A. 2C:25-29(a)). Second, the judge must determine whether a restraining order is necessary to protect the plaintiff from immediate harm or further acts of abuse. Id. at 127; see also C.C., 463 N.J. Super. at 429. A previous history of domestic violence between the parties is one of the factors a court considers in determining whether a restraining order is necessary to protect the plaintiff. N.J.S.A. 2C:25-29(a)(1); see also D.M.R. v. M.K.G., 467 N.J. Super. 308, 324-25 (App. Div. 2021) (whether a judge should issue a restraining order depends, in part, on the parties' history of domestic violence).

Harassment is one of the statutory predicate acts. See N.J.S.A. 2C:25-19(a)(13). 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 . . . ." N.J.S.A. 2C:33-4(a). For a finding of harassment, the plaintiff must prove the defendant had acted with the purpose of harassing the plaintiff. D.M.R., 467 N.J. Super. at 323 (citing J.D., 207 N.J. at 486). A judge may use "common sense and experience" to determine a defendant's intent and to infer a purpose to harass

from the record evidence. Ibid. (quoting H.E.S. v. J.C.S., 175 N.J. 309, 327 (2003)).

Applying those standards, we are satisfied the issuance of the FRO is supported by substantial credible evidence in the record. The judge found plaintiff had established the predicate act of harassment based on the two text messages defendant sent after seeing her leave the cottage with a man. Defendant faults the judge for failing to consider that his testimony supports a conclusion that he was "stung" and "hurt" after seeing plaintiff with another man. To the contrary, the judge expressly considered defendant's reaction to and feelings about seeing plaintiff leave the cottage with another man. That defendant chose to send the text messages, including one overtly threatening text issued approximately ten hours after defendant had seen plaintiff with her friend and years after the parties' dating relationship had ended, demonstrated his intent to harass and supported the judge's finding of the predicate act of harassment.

The judge's finding under the second Silver prong also was supported by substantial credible evidence in the record. The parties have a history of domestic violence, including physical abuse. The parties agreed that while they were engaged in a "huge" argument, defendant threw a glass that hit plaintiff,

causing her injury. The judge found more credible plaintiff's testimony that defendant had thrown the glass at her than defendant's testimony that he had thrown it blindly behind him. We defer to that credibility determination. Years after their dating relationship had ended, defendant reacted to seeing plaintiff leave with a male friend by sending her harassing text messages. That history and context supports the judge's finding that the FRO was necessary to protect plaintiff 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