

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-1058-21

C.H.,

Plaintiff-Respondent,

v.

R.J.O.,

Defendant-Appellant.

Submitted November 7, 2022 – Decided March 27, 2023

Before Judges Enright and Bishop-Thompson.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Sussex County,
Docket No. FV-19-0395-21.

Law Offices of George T. Daggett, attorney for
appellant (George T. Daggett, on the briefs).

Weiner Law Group LLP, attorney for respondent
(Sean M. Pena, of counsel and on the brief).

PER CURIAM

Defendant R.J.O.¹ appeals from a final restraining order (FRO) entered against him pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. We affirm.

I.

We discern the following facts from the FRO hearing, in which both parties were represented. Plaintiff and defendant met in October 2015 and engaged in an exclusive five-year relationship. During the hearing, plaintiff provided a detailed description of her relationship with defendant. She testified defendant yelled at her on multiple occasions and made her feel uncomfortable and unsafe. Plaintiff explained they had "been fighting for a long time now and . . . he ha[d], on multiple occasions, screamed in [her] face. [H]e scream[ed] in [her] face to the point where [her] ears [rang]."

Plaintiff also testified defendant called her names like "stupid, bitch and the c-word." Additionally, plaintiff stated defendant "grabbed [her] by the shirt sleeve and the wrist a few times." Defendant threatened to "break items he [had] given her such as [an] iPad, phone, [and] computer by smashing them or put[ting] a hammer through them."

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

Plaintiff described a prior incident in 2015 when she attended Sussex County College. While on a "break" from the relationship, plaintiff asked defendant to "just leave [her] alone for a little while." According to plaintiff, defendant disregarded her statement and met plaintiff outside of her classroom. She told him "[she didn't] want to talk." As plaintiff walked through the building towards her car, defendant followed her with a "crazy look in his eyes." Plaintiff testified after she entered her car, she tried to start her car while defendant attempted to open the car doors. Two female students came over to her car and told defendant to leave plaintiff alone; however, defendant did not leave the area.

On May 9, 2021, plaintiff ended the relationship with defendant based on her concerns regarding his mental health and her belief that he needed to get professional support. The next day, they spoke for seven-minutes about their relationship. Plaintiff testified she told defendant "[she] just wanted to take a break" and she "wanted to be left alone for a little while." Plaintiff explained defendant did not accept her intention to pause the relationship and repeated several times "we're not taking a break." Defendant then cursed and yelled at plaintiff when she responded she didn't want to be with him. During the conversation, defendant "threatened" to post sexually suggestive pictures

of plaintiff and show up at her workplace the next day. After the conversation ended, defendant repeatedly called plaintiff's cell phone and she blocked his number.

Upon awakening at 5:00 a.m. the following morning, plaintiff received numerous text messages and seventeen missed calls from defendant, insisting she answer the phone. In his text messages, defendant asked if he needed to "confront" plaintiff and stated "we can do this the easy way," and plaintiff needed to "talk to [him]" or he would "randomly show up," or "wait[] at [her workplace]." When the numerous text messages went unanswered, defendant then stated "[her workplace] it is."

According to the record, defendant went to plaintiff's workplace; however, he left because she had not yet arrived. Plaintiff testified she drove to work at approximately 6:00 a.m. Defendant was driving in the opposite direction when he saw plaintiff's car, made a U-turn, and followed her. Plaintiff recounted defendant also tailgated her. Plaintiff saw defendant from her rearview mirror, and he appeared to be "laughing" and was "holding the wheel right at the top very tight." She stated she was "terrified by the look on his face."

Plaintiff called 9-1-1 and was directed to go to the Sussex State Police Barracks in Augusta. While experiencing an anxiety attack, she passed the turnoff for the State Police Barracks and the call dropped. Plaintiff redialed 9-1-1, was connected to the Sparta Police Department, and told to drive to the Sparta police station.

Before reaching the police station, plaintiff was stopped at a red light. While stopped, defendant exited his car, walked up to plaintiff's car, knocked on the driver's side window, and tried to open her locked door. When the light turned green, defendant returned to his car. Plaintiff continued to the Sparta police station while still on the phone with the dispatcher. Shortly thereafter, plaintiff saw two police officers pull over defendant.

Upon arrival at the Sparta police station, plaintiff reported defendant's actions to an officer. When defendant arrived at the police station and saw plaintiff, he said to her, "Is this what you want?" Plaintiff explained she was "terrified" by the day's events with defendant. She portrayed defendant as having an "aggressive look on his face," which was "scary" to her. As a result, she was "very fearful and frightened" of him. That morning, plaintiff applied for and obtained a temporary restraining order (TRO), alleging harassment and stalking against defendant.

Defendant testified at the final hearing. During his testimony, defendant disputed plaintiff's version of the events. He claimed that plaintiff agreed to continue the conversation in May 2021. Defendant testified he sent the text messages contending taking a break was not the "right thing to do." Defendant claimed it was not his intention to harass plaintiff when he sent the text messages. He stated he only wanted to talk to plaintiff about "saving" the relationship. Defendant also denied threatening to share pictures of plaintiff with anyone.

Additionally, defendant testified that on the morning of the May 11 incident, he went to plaintiff's workplace around 6:30 a.m. Since plaintiff had not arrived at work, he left to get breakfast. Defendant admitted to driving "behind" plaintiff's car but not tailgating. Defendant also denied attempting to open plaintiff's door, but stated he knocked on the window twice. Defendant claimed he wanted her to pull over so they could continue their conversation from the previous night.

After the hearing concluded, the trial judge reserved decision. In a June 7, 2021 oral decision, the judge granted plaintiff's request for an FRO, finding by a preponderance of credible evidence that defendant committed the predicate act of harassment and plaintiff was in need of protection from future

acts under Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006). The judge, however, found plaintiff did not establish the predicate act of stalking.

In considering plaintiff's harassment allegation, the judge found both the 2015 and 2021 incidents similar in that "when . . . plaintiff asked to be left alone and the defendant [did not] wish to leave her alone he pursue[d] . . . her and persist[ed]." The judge further found the 2015 incident gave her "context to consider the defendant's behavior" in relation to the May 11 incident. The judge then explained:

Once again, . . . on May 11, the defendant knew that the plaintiff's last conversation with him, via text, was the plaintiff had asked to be left alone. He doesn't want to let it go. And so, he insists that the conversation continue.

The [c]ourt finds that this is indicative of a level of coercion, control that is characteristic of domestic violence. I'm satisfied that the defendant's conduct was done with the purpose to harass and violative of the harassment statute in both his communications and his conduct.

The judge concluded there was competent evidence in the record to warrant the issuance of an FRO. The judge found a history of domestic violence based on: "the credible testimony of the plaintiff"; "defendant call[ing] the plaintiff degrading or derogatory names"; "inappropriate physical grabbing on one occasion"; and the 2015 Sussex County College incident.

As to whether plaintiff was in need of future protection, the judge found defendant "made good on" his threat the night of May 10 and arrived at plaintiff's workplace "without her consent." The judge also determined "There's no dispute here that the predicate act did not involve physical assault. But . . . defendant's conduct was physical in the sense that he [tried] to impose his will upon the plaintiff; follow[ed] her and then confront[ed] her on a public road." The judge concluded:

In light of the prior history[,] albeit limited, the [c]ourt notes and finds that the defendant's conduct presented an immediate danger to the well-being of the plaintiff on that day and is likely to continue in light of the defendant's unwillingness to leave the plaintiff alone. The conduct on that day was that the defendant simply refused to take no for an answer. His text messages demonstrate an unhealthy need to control and to observe his power over the plaintiff, her desire to end the relationship, not to give her space to consider this matter. And even recognizing that this was a difficult and distressful situation for the defendant, the defendant's conduct went well beyond bounds of what would be acceptable, understandable, and respectful between parties, who were in a long-term dating relationship.

Thereafter, defendant filed a motion for a new trial, which was denied. Plaintiff's counsel's unopposed application for attorney's fees was granted in a September 14, 2021 order, accompanied by a written statement of reasons.

On appeal, defendant contends the trial court erred in applying the PDVA and granting an FRO. Defendant next contends the award of plaintiff's counsel's fees should be reversed because counsel's certification "raised significant doubts as to the hours expe[nd]ed and the amounts charged."

II.

We first address defendant's arguments regarding the entry of the FRO. The scope of appellate review of a Family Part judge's findings following a bench trial is limited. N.T.B. v. D.D.B., 442 N.J. Super. 205, 215 (App. Div. 2015) (citing Cesare v. Cesare, 154 N.J. 394, 411 (1998)). Findings by the trial court "are binding on appeal when supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 411-12 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). Deference is especially appropriate in bench trials when the evidence is "largely testimonial and involves questions of credibility." Ibid. (citations and internal quotation marks omitted). A trial judge who observes witnesses and listens to their testimony is in the best position to "make first-hand credibility judgments about the witnesses who appear on the stand" N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008). However, we do not accord such deference to

legal conclusions and review such conclusions de novo. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016).

An FRO may issue only if the judge finds the parties have a relationship bringing the complained of conduct within the PDVA, see N.J.S.A. 2C:25-19(d); the defendant committed an act constituting domestic violence, N.J.S.A. 2C:25-19(a); and the "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." Silver, 387 N.J. Super. at 125-27.

Relevant to this appeal, the predicate act of harassment is defined in N.J.S.A. 2C:33-4(a) and (c), as when a person "with purpose to harass another":

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;

. . . .

c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

Harassment requires the defendant to act with the purpose of harassing the victim. J.D. v. M.D.F., 207 N.J. 458, 486 (2011). "A finding of a purpose to harass may be inferred from the evidence presented," and a judge may use "[c]ommon sense and experience" to determine a defendant's intent. State v. Hoffman, 149 N.J. 564, 577 (1997) (citations omitted). To that end, judges should consider the totality of the circumstances to determine whether an underlying act of harassment in the context of domestic violence has occurred. Id. at 584-85.

Applying those principles here, we conclude there is no basis to disturb the factual findings or legal conclusions of the trial judge. Both parties testified. The judge had ample opportunity to assess their credibility, determined plaintiff satisfied both prongs of Silver, and granted her request for an FRO. In a comprehensive oral opinion, the judge credited plaintiff's testimony over defendant's. The trial judge described plaintiff's testimony as "believable," "credible," and "reasonable." In sum, the judge found the May 2021 incident "was a frightening lived experience for plaintiff." Conversely, the judge did not find defendant's testimony credible and concluded that defendant "mainly disputed [his] intention."

We are satisfied the record supports the trial judge's determination that defendant committed the predicate act of harassment based on defendant's persistent pursuit of plaintiff after she made numerous requests to be left alone. We also agree with the judge's conclusion that defendant's actions "[were] indicative of a level of coercion, control that is characteristic of domestic violence" when viewed in the backdrop of the 2015 incident. Contrary to defendant's contention on appeal, the judge found the May 2021 incident was "more than an ordinary disagreement or minor dispute." We are persuaded the judge appropriately applied the well-established principles under Silver in evaluating defendant's numerous calls and text messages in the context of the couple's history, and found defendant's conduct constituted domestic violence under the PDVA.

As to the second Silver prong, we are satisfied the judge properly concluded the record reflected the history of domestic violence between the parties, and the May 11 incident was more than enough to establish an FRO was needed to protect plaintiff. We likewise discern no cause to upset the judge's finding that an FRO was necessary to protect plaintiff from further harassment, considering the history of domestic violence—name calling, inappropriate physical touching and following plaintiff to her car—and the

immediate danger to plaintiff on May 11, 2021, which was "likely to continue in light of defendant's unwillingness to leave the plaintiff alone." The finding is based upon the judge's determination that plaintiff's testimony was credible, to which we must defer.

Thus, we discern no basis to disturb the FRO, given the trial judge's factual findings that plaintiff met her burden of proof under Silver are adequately supported by substantial, credible evidence in the record.

III.

We next address the award of counsel fees to plaintiff. Here, defendant has cherry-picked the terms "excessive," "unrelated," and "unreasonable" from the judge's written decision to highlight the judge's finding it was unreasonable for plaintiff's counsel to bill plaintiff 29.8 hours to address the issues involved and that "[a] more reasonable amount of time relative to the issues involved [was] 15.6 hours." Yet, defendant did not oppose plaintiff's application for counsel fees before the trial judge. Therefore, defendant's counsel fees argument is deemed waived. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). Nonetheless, we add the following brief remarks.

Pursuant to N.J.S.A. 2C:25-29(b)(4), a judge may issue "[a]n order requiring the defendant to pay to the victim monetary compensation for losses


suffered as a direct result of the act of domestic violence," which includes "an award of reasonable attorney's fees and costs incurred in successfully defending against a challenge to a final restraining order issued by the trial court." Grandovic v. Labrie, 348 N.J. Super. 193, 197 (App. Div. 2002).

"The reasonableness of attorney's fees is determined by the court considering the factors enumerated in R. 4:42-9(b)." McGowan v. O'Rourke, 391 N.J. Super. 502, 508 (App. Div. 2007). Any "determinations by trial courts [regarding legal fees] will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Ibid. (alteration in original).

Guided by these principles, we are convinced the trial judge appropriately analyzed plaintiff's counsel's initial and supplemental submissions, which included counsel's time entries. The judge also properly exercised her discretion to adjust the amount of fees requested so that the reduced amount was "fair and reasonable and more commensurate with the issues in the case." We are satisfied the judge's award of attorneys' fees was not an abuse of discretion. See N.J.S.A. 2C:25-29(b)(4); 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