SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1094-21

M.C.,

Plaintiff-Respondent,

C.D.,

Defendant-Appellant.

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Submitted November 7, 2022 – Decided January 31, 2023

Before Judges Whipple and Marczyk.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Burlington County, Docket No. FV-03-0455-22.

Kalavruzos, Mumola, Hartman, Lento & Duff, LLC, attorneys for appellant (W. Les Hartman, of counsel and on the brief; Jeffrey Zajac, on the brief).

M.C., respondent pro se.

PER CURIAM

Defendant C.D.[1] appeals from an August 30, 2021, final restraining order (FRO) entered against him pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35 (PDVA). Following our review of the record and applicable legal principles, we affirm.

I.

The trial court made the following findings of fact and conclusions of law[2] after trial at which plaintiff, two former neighbors, and her current husband testified.[3] The parties were married for thirteen years and had two daughters, Melissa and Emily. Melissa lived with plaintiff, and Emily lived with defendant. On August 30, 2021, plaintiff drove to defendant's home to pick up Emily to take her to therapy. In doing so, she drove on a portion of defendant's lawn. Shortly thereafter, defendant called plaintiff screaming, "I hate you, I want you to die . . . you ruined my lawn." Plaintiff was unaware of having driven on defendant's lawn, but apologized to calm him down and offered to fix the lawn. Plaintiff was "shaken" by the call and drove to her home instead of running

[1] We utilize initials and pseudonyms to protect the confidentiality of the parties, their children and other witnesses. R. 1:38-3(d)(3).

[2] In addition to rendering oral findings, the trial court issued a written amplification pursuant to Rule 2:5-1(d).

[3] The court noted defendant did not testify at trial.

errands. Approximately twenty minutes later, she encountered defendant walking on Stoneham Road[4] coming from the direction of her home. As plaintiff drove by defendant she began to slow down because she was contemplating speaking with him. However, after making eye contact, she noted he looked "dirty and disheveled," and he started screaming and pointing at her, with veins "popping out of his neck."

Plaintiff returned to her home and found shrubbery pulled out of the ground and damaged along with a flowerpot turned upside down and "smashed." The damage occurred on the side of her home where there were no surveillance cameras. Plaintiff's husband and defendant then exchanged text messages regarding the damaged plants. Defendant initially responded to plaintiff's husband's texts by saying he did not "know what [plaintiff's husband was] talking about." Plaintiff's husband then texted defendant, "[a]ll you had to do was tell me [about your lawn], I would have handled it," to which defendant responded, "[a]nd if [plaintiff] has to plant new bushes, o[h] well." Additionally, defendant wrote, "I'm sorry to [yo]u, but not to her . . . ." Plaintiff called the police, but did not want to press charges to escalate the situation.

[4] Stoneham Road is a main road that connects the side-streets where plaintiff and defendant live. The parties live approximately a quarter-mile from each other.

However, she realized something had to be done as things were getting out of hand.

Addressing the first prong of Silver v. Silver,[5] the court concluded plaintiff proved by a preponderance of the evidence defendant committed the predicate act of criminal mischief pursuant to N.J.S.A. 2C:17-3 by purposely or knowingly damaging the tangible property of another—namely plaintiff's shrubs and flowerpot. The court further determined plaintiff established defendant committed an act of harassment under N.J.S.A. 2C:33-4(c) by his actions in destroying plaintiff's property. The court characterized defendant's conduct as "retaliation," which by its nature had no purpose other than to alarm or seriously annoy defendant.

The court next addressed defendant's history of domestic violence. Plaintiff testified concerning a September 2015 incident where defendant grabbed mediation papers from their matrimonial action from her, ripped them up, and grabbed plaintiff and screamed in her face, which prompted plaintiff to call the police. Further, in October 2014, defendant woke plaintiff up and accused her of cheating. Plaintiff got out of bed, but defendant grabbed her and threw her back onto the bed. She ran out of the house in her underwear and

[5] 387 N.J. Super. 112 (App. Div. 2006).

called the police. She was eventually assisted by her neighbors, Josh and Stacy Smith, who both testified at trial. Stacy testified defendant called her after plaintiff had run to their garage where her husband Josh was helping plaintiff. Defendant told Stacy "not to let [M.C.] tell anyone he put his hands on her." The court noted that while the incident occurred seven years prior to the trial the Smith's testified as if it happened "yesterday" and were still "troubled" by the episode.[6] The court found the Smiths' and plaintiff's testimony credible concerning the history of defendant's domestic violence. The court further noted defendant's conduct on August 30, 2021, was not simply domestic contretemps.

The court then addressed the second prong of Silver and evaluated the factors set forth in N.J.S.A. 2C:25-29(a)(1) to -29(a)(6).[7] 387 N.J. Super. at 126.

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[6] Plaintiff also testified as to another incident in September 2016 where plaintiff screamed at her and acted aggressively. She also called the police on that occasion because of the prior incidents.

[7] In addressing the second prong of Silver, a court must address the following factors:

> (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;

The court recounted the history of domestic violence, defendant's temper, lack of impulse control, and his unrelenting anger—even after he destroyed plaintiff's property when he was on his way home and encountered plaintiff in her car. After weighing the factors, the "calculated violence exhibited" by defendant, and the proximity of the parties' homes, the court concluded an FRO was necessary to protect plaintiff from future acts of domestic violence.

This appeal followed.

II.

Our scope of review is limited when considering an FRO issued by the Family Part. See D.N. v. K.M., 429 N.J. Super. 592, 596 (App. Div. 2013). That is because "[w]e grant substantial deference to the trial court's findings of fact and the legal conclusions based upon those findings." Ibid. "The general rule is that findings by the trial court are binding on appeal when supported by

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> (4) The best interest 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.
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> [N.J.S.A. 2C:25-29(a); see also Cesare v. Cesare, 154 N.J. 394, 401 (1998).]

adequate, substantial, credible evidence." Cesare, 154 N.J. at 411-12. Deference is particularly appropriate where the evidence is largely testimonial and hinges upon a court's ability to make assessments of credibility. Id. at 412. We review de novo the court's conclusions of law. S.D. v. M.J.R., 415 N.J. Super. 417, 430 (App. Div. 2010).

The entry of an FRO requires the trial court to make certain findings, pursuant to a two-step analysis. See Silver, 387 N.J. Super. at 125-27. Initially, 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 trial court should make this determination "in light of the previous history of violence between the parties." Ibid. (quoting Cesare, 154 N.J. at 402). Secondly, 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) ("[i]n proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse")); see also J.D. v. M.D.F., 207 N.J. 458, 476 (2011).

III.

Defendant raises the following points on appeal:

> POINT I
>
> THE LAW DIVISION COMMITTED REVERSIBLE ERROR BY MISAPPLYING THE TWO PRONGS OF THE SILVER ANALYSIS AND GRANTING THE PLAINTIFF'S APPLICATION FOR A FINAL RESTRAINING ORDER.
>
> > A. Under the First Prong of Silver, the Plaintiff Was Not Entitled to A Final Restraining Order.
> >
> > B. Under the Second Prong of Silver, the Plaintiff Was Not Entitled to A Final Restraining Order.
> >
> > C. The Trial Court's Reasoning Is Not Supported By the Adequate, Substantial Credible Evidence, and Requires Reversal.
>
> POINT II
>
> THE CHANCERY DIVISION ERRED IN BARRING TESTIMONY AS TO THE PLAINTIFF'S INTOXICATION AND INABILITY TO PICK UP [EMILY] FOR HER THERAPY SESSIONS.

A.

As to the first prong of Silver, defendant asserts he has no criminal history, and plaintiff never sought a temporary restraining order prior to the alleged incident in this case. Moreover, the damage to the plants and flowerpot did not

involve any violent act directed at plaintiff, and he did not make any threats toward plaintiff. Defendant further asserts no one witnessed him damaging plaintiff's property, and there is no video surveillance. Even if defendant did cause damage to the property, he asserts it did not constitute an act of domestic violence, but instead were "ordinary domestic contretemps." Corrente v. Corrente, 281 N.J. Super. 243, 250 (App. Div. 1995). Defendant further contends the damage to plaintiff's property was too trivial to warrant condemnation.

As to prong two of Silver, defendant contends the alleged "disruption of shrubbery" does not present a threat of immediate or future harm to warrant an FRO. Defendant further asserts the alleged prior acts of domestic violence were remote in time, and the alleged acts from 2014 and 2015 pale in comparison to the domestic violence acts contemplated by the PDVA.

We are unpersuaded by defendant's arguments. Because this case turned almost exclusively on the testimony of the witnesses, we defer to the Family Part judge's credibility findings, as she had the opportunity to listen to the witnesses and observe their demeanor. See Gnall v. Gnall, 222 N.J. 414, 428 (2015). The trial court rendered a thorough and comprehensive decision addressing the witnesses' credibility, as well as other evidence. The judge

evaluated both prongs of Silver against the backdrop of the history of domestic violence. The record contains ample support for the trial court's finding defendant committed the requisite predicate act of domestic violence, which constituted both criminal mischief and harassment under prong one of Silver. Moreover, the record contained adequate, substantial, credible evidence to support the court's conclusion, under the totality of the circumstances, that an FRO was required to prevent future acts of domestic violence.

B.

Defendant next argues the trial court improperly barred evidence regarding plaintiff purportedly not being able to pick Emily up from her therapy sessions because a clinician had previously observed plaintiff in an intoxicated state. Defendant argued this incident was relevant because it resulted in plaintiff seeking a restraining order to "get a leg up in any future threatened matrimonial proceedings." Defendant's argument is unavailing.

When considering a trial court's evidentiary rulings, our standard of review is well-settled. "When a trial court admits or excludes evidence, its determination is 'entitled to deference absent a showing of an abuse of discretion, i.e., [that] there has been a clear error of judgment.'" Griffin v. E. Orange, 225 N.J. 400, 413 (2016) (quoting State v. Brown, 170 N.J. 138, 147

(2001)) (alteration in original). "Thus, we will reverse an evidentiary ruling only if it 'was so wide [of] the mark that a manifest denial of justice resulted.'" Ibid. (quoting Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480, 492 (1999)).

Under New Jersey's Rules of Evidence, all relevant evidence is presumptively admissible. N.J.R.E. 402. Evidence is relevant if it has "a tendency in reason to prove or disprove any fact of consequence to the determination of the action." N.J.R.E. 401. To determine whether evidence is relevant, courts look at "the logical connection between the proffered evidence and a fact in issue." Verdicchio v. Ricca, 179 N.J. 1, 33 (2004) (quoting State v. Hutchins, 241 N.J. Super. 353, 358 (App. Div. 1990)). Courts determine "whether the evidence proffered 'renders the desired inference more probable than it would be without the evidence.'" Ibid. (quoting State v. Davis, 96 N.J. 611, 619 (1984)).

The trial court noted plaintiff's ability to pick up her daughter from therapy was not relevant regarding the predicate act of domestic violence at issue in this case. Moreover, the court noted it was also not germane as to whether plaintiff has an objective and subjective fear from the incident, or as to whether there is a need for an FRO to prevent future acts of domestic violence. We affirm for the reasons stated by the court and conclude the trial court did not

abuse its discretion in sustaining the objection concerning the relevance of this testimony.

To the extent we have not addressed the parties' remaining arguments, we are satisfied they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.