SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1255-21

M.B.,

Plaintiff-Respondent,

v.

N.O.,

Defendant-Appellant.

Submitted January 25, 2023 – Decided February 9, 2023

Before Judges Accurso and Natali.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FV-13-0089-22.

Law Offices of Hisham Hamed, LLC, attorney for appellant (Hisham Hamed, on the brief).

Law Office of Edward Fradkin, LLC, attorney for respondent (Edward P. Fradkin, of counsel and on the brief).

PER CURIAM

Defendant N.O.[1] appeals from a final restraining order (FRO) entered under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, based on a predicate act of harassment, N.J.S.A. 2C:33-4. We affirm.

I.

We discern the facts from the record developed at the three-day trial. Both parties were represented by counsel and Judge Robin J. Stacy heard testimony from three witnesses: plaintiff, plaintiff's mother, and defendant.

The parties were married in 2018 and separated in November 2020. Plaintiff alleges she left their marital home in Pennsylvania after discovering "underaged pornography" on one of defendant's cellular phones. She testified that when she confronted defendant, "he took the [cellular] phone away . . . got very angry . . . and [she] did not see that [cellular] phone ever again."

Plaintiff resigned from her job, packed a bag of essentials, relocated to her parents' home in New Jersey, and traveled to Turkey for over a month, in part, to "remove [herself] from the environment" as she anticipated defendant would attempt to contact her at her parents' home. Plaintiff also testified that she blocked defendant on her electronic devices and that on their "last phone call in

[1] We use initials to protect the parties' privacy and the confidentiality of these proceedings. R. 1:38-3(d)(9).

November" she told him she "[did not] want to see him . . . talk to him . . . and [did not] want him to come to [her] where [she was] at her parents' house." Plaintiff filed for divorce in Pennsylvania, and unsuccessfully attempted to serve defendant the divorce complaint on three separate occasions.

On July 10, 2021, the court granted plaintiff's request for a temporary restraining order (TRO) based on an incident from the previous night.[2] According to plaintiff, at approximately 7:30 p.m. on July 9, 2021, defendant arrived uninvited at her parents' home while she, her parents, and younger brother were present. Defendant began "banging" on the front door, demanded to speak to plaintiff, retreated to his car, and repeated this conduct several times.

At no point did anyone in the home respond to defendant because plaintiff stated she was "terrified and scared," and "did not want to confront him, [as she knew] from his past behavior how violent he can be." Defendant eventually left the residence at approximately 9:00 p.m., but only after driving by her home multiple times. Plaintiff's testimony was supported by video evidence obtained from a surveillance camera.

[2] Plaintiff amended the TRO on July 15, 2021 and July 19, 2021 to include the prior acts of domestic violence detailed infra at pp. 4-5.

Plaintiff also testified that prior to blocking defendant's number, he excessively called and texted her, at one point attempting to contact her twenty times in a single day. Defendant's text communications generally expressed his desire to reconcile and that he missed her.

In addition, plaintiff detailed two prior acts of domestic violence committed by defendant. Specifically, she explained in May 2020, defendant threw a "freshly made" pot of hot espresso on her, "burn[ing] [the] lower half of [her] body." Plaintiff testified she was "shocked" and "devastated" defendant did not try to assist her after he burned her. After taking a cold shower with her clothes on and obtaining ice to treat the burn, she discovered defendant had hidden her cellular phone and laptop.

Plaintiff stated she locked herself in the bedroom as she "did [not] want [defendant] to come near her," yet he banged on the door until he broke its frame to enter. Despite asking him to leave her alone, defendant refused and proceeded to follow her from the bedroom to the living room throughout the night. The following day, plaintiff, still without her cellular phone or laptop, attempted to leave their apartment, but defendant physically blocked her from doing so. Plaintiff's cellular phone and laptop were not returned to her until two days later.

She also recounted on June 6, 2020, while accompanying defendant during his job as a deliveryman, plaintiff made a comment that angered him. In response, defendant "reached for [a] thermos . . . filled with hot coffee from the back of the car . . . and it spilled across [her] arm." Plaintiff described how she "screamed in pain" and pulled her arm back, but "defendant continued to pour the [entire] thermos of hot coffee on [her] whole arm." Plaintiff attempted to obtain ice to treat her arm from defendant's customer but was unsuccessful.

Plaintiff called her mother immediately to describe the incident causing defendant to become "very angry," as he believed "women [should not] complain." Defendant refused plaintiff's requests to get her ice or drive her to a pharmacy, and instead drove them both in the pouring rain at seventy to eighty miles per hour from Pennsylvania to her parents' home in New Jersey ostensibly to show her parents plaintiff was "exaggerating" the burn on her arm. When they arrived, plaintiff's mother treated her injury with ice and "burn cream."

She also recounted that between November 2020 when she broke off contact with him and prior to July 9, 2021, defendant appeared uninvited at her parents' home "approximately three to four times," causing her to feel "terrified and scared." Plaintiff explained she did not report any of these prior incidents to the police because she was frightened of "what [defendant] might do" as he

had previously "warned [her] against complaining to the police for anything he had done in the past," which plaintiff interpreted as a "threat."

Plaintiff's mother testified regarding the June 6, 2020 incident, and described plaintiff's "whole arm [as] red," causing her to treat it with, "gauze . . . [an] ice pack and cream." She stated defendant seemed unconcerned and "did not believe [plaintiff] was hurt or burned." She also explained that when defendant came to her home on July 9, 2021, he repeatedly "pound[ed] . . . violently" on the door. Following the close of plaintiff's proofs, defendant moved for an involuntary dismissal under Rule 4:37-2(b), which the judge denied.

As noted, defendant also testified. With respect to the July 9, 2021 incident, defendant explained he came to her parents' home because he had previously arranged to meet plaintiff's father at their local mosque to sign the divorce papers and to pick up his vehicle, but plaintiff's father never arrived. As a result, defendant stated he drove to plaintiff's parents' home, called plaintiff's father and knocked on the door. Defendant claimed he first knocked normally and only began knocking with greater force because he thought plaintiff's father could not hear him. Defendant testified that despite observing plaintiff's car in the driveway, he nevertheless believed she was not present in the home.

Defendant categorically denied the May 2020 incident and specifically refuted her claim that he threw hot espresso on her, took her cellular phone and laptop, broke their bedroom doorframe, or physically blocked her from leaving their home. He also disputed defendant's account of the June 6, 2020 incident and maintained he did not intentionally pour hot coffee on plaintiff's arm. Instead, he explained he accidentally "spilled a bit on her hand but . . . not up to a point of [plaintiff] getting burned." He claimed he did not take her to an emergency room or seek treatment because he "wanted to finish his job" and because he did not consider the injury serious. Defendant drove to plaintiff's parents' home simply "to show [them] . . . [the burn] was . . . minor and not a big deal."

After considering the testimony and documentary evidence, including the video surveillance footage of the July 9, 2021 incident, and screenshots of text messages and incoming phone call logs between the parties, Judge Stacy concluded plaintiff satisfied both prongs of Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006), and granted her request for an FRO. In a comprehensive oral opinion, the judge credited plaintiff's and her mother's testimony over defendant's. Judge Stacy described plaintiff's testimony as "even-toned," "detailed," and "accurate" without "contradictions." The judge

also found plaintiff's mother's testimony credible as "she gave straight answers . . . did not embellish and [] was willing to answer any question posed to her."

Conversely, Judge Stacy did not find defendant's testimony credible, characterizing it as "very flat" and "not inherently believable." The judge also noted defendant attempted to "deflect" instead of answering questions directly.

In evaluating the first Silver prong, id. at 125-26, Judge Stacy concluded defendant's actions on July 9, 2021 constituted a predicate act of harassment under N.J.S.A. 2C:33-4(c). She specifically found defendant intended to harass plaintiff based on his "unrelenting" actions of going to the door, "banging," and returning to his car. The judge further noted defendant drove slowly by the house more than once, and overall "his repetitiveness of going back to that door over a course of time is very clear . . . it was his intent to harass [plaintiff]."

The judge then turned to the second prong under Silver, id. at 126-27, the necessity for future restraints. Judge Stacy considered the May 2020 and June 6, 2020 incidents, the relevant statutory factors enumerated in N.J.S.A. 2C:25-29(a), specifically factors one, two, and four, and concluded an FRO was necessary to prevent defendant from committing future acts of domestic

violence. The judge issued a conforming FRO on November 5, 2021 and this appeal followed.[3]

II.

Defendant raises two, related arguments. First, he contends the judge incorrectly denied his motion for involuntary dismissal, as plaintiff's proofs failed to establish he committed the predicate act of harassment. He also contends Judge Stacy erred in granting the FRO, reiterating his actions on July 9, 2021 did not constitute harassment under N.J.S.A. 2C:33-4. We disagree with defendant's arguments and affirm the entry of the FRO against defendant substantially for the sound reasons articulated on the record by Judge Stacy.

Our scope of review of an FRO is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We accord substantial deference to family judges' findings of fact because of their special expertise in family matters. Id. at 413. That deference is particularly strong when the evidence is largely testimonial and rests on a

[3] Judge Stacy issued a separate order on December 23, 2021 granting plaintiff counsel fees. Although defendant's notice of appeal included the December 23, 2021 order, he failed to address any error with respect to that order in his brief before us and we therefore consider any arguments regarding the fee award waived. See Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2023) ("[A]n issue not briefed is deemed waived."); Telebright Corp. v. Dir., N.J. Div. of Taxation, 424 N.J. Super. 384, 393 (App. Div. 2012) (deeming a contention waived when the party failed to include any arguments supporting the contention in its brief).

judge's credibility findings. Gnall v. Gnall, 222 N.J. 414, 428 (2015). We will "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 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)).

Regarding defendant's motion for involuntary dismissal, we reject his claims Judge Stacy erred in denying his application. Rule 4:37-2(b) provides that, at the conclusion of the plaintiff's case,

> the defendant . . . may move for a dismissal of the action or of any claim on the ground that upon the facts and upon the law the plaintiff has shown no right to relief . . . . [S]uch motion shall be denied if the evidence, together with the legitimate inferences therefrom, could sustain a judgment in plaintiff's favor.
>
> [R. 4:37-2(b).]

On a motion for involuntary dismissal pursuant to Rule 4:37-2(b), the trial court's function "is quite a mechanical one. The trial court is not concerned with the worth, nature or extent (beyond a scintilla) of the evidence, but only with its existence, viewed most favorably to the party opposing the motion." Dolson v. Anastasia, 55 N.J. 2, 5-6 (1969). "Under that standard, 'dismissal is appropriate when no rational [factfinder] could conclude from the evidence that an essential

element of the plaintiff's case is present.'" Perez v. Professionally Green, LLC, 215 N.J. 388, 407 (2013) (quoting Pressler & Verniero, cmt. 2.1 on R. 4:37-2(b)). "An appellate court applies the same standard when it reviews a trial court's grant or denial of a Rule 4:37–2(b) motion for involuntary dismissal." ADS Assocs. Grp., Inc. v. Oritani Sav. Bank, 219 N.J. 496, 511 (2014).

We are satisfied Judge Stacy properly exercised this function in denying defendant's motion. As the judge noted, plaintiff and her mother testified to the events of July 9, 2021 when defendant appeared uninvited at plaintiff's parents' residence where he banged on the door after being told by plaintiff not to contact her, only to return to his car and repeat the same conduct "several times" and leaving only after driving by the residence several times. Judge Stacy correctly viewed those actions through the prism of all the evidence, including plaintiff's testimony regarding defendant's prior acts of domestic violence. See Silver, 387 N.J. Super. at 126 ("[T]he court must consider the evidence in light of whether there is a previous history of domestic violence, and whether there exists immediate danger to person or property.").

III.

We also reject defendant's argument the judge incorrectly determined he committed the predicate act of harassment after considering all the evidence,

including his testimony and related text messages and communications with plaintiff and her father. As Judge Stacy correctly explained, when determining whether to grant an FRO under the PDVA, a judge must undertake a two-part analysis. Id. at 125-27. "First, 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. Second, the judge must determine whether a restraining order is necessary to protect the plaintiff from immediate harm or further acts of violence. Id. at 126-27.

Judge Stacy determined defendant committed the predicate act of harassment. Under N.J.S.A. 2C:33-4:

> a person commits a petty disorderly persons offense [of harassment,] if, with purpose to harass another, he:
>
> (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;
>
> (b) Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; 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(a) to (c).]

"Each of [the] three subsections [of N.J.S.A. 2C:33–4] is 'free-standing, because each defines an offense in its own right.'" State v. Hoffman, 149 N.J. 564, 576 (1997) (quoting State v. Mortimer, 135 N.J. 517, 525 (1994)). Under subsection (a), "there need only be proof of a single communication." J.D. v. M.D.F., 207 N.J. 458, 477 (2011). Further, "to annoy" under N.J.S.A. 2C:33–4(a) means "to disturb, irritate, or bother." Hoffman, 149 N.J. at 580. Subsection (c) "requires proof of a course of conduct." J.D., 207 N.J at 478. "That may consist of conduct that is alarming or it may be a series of repeated acts if done with the purpose 'to alarm or seriously annoy' the intended victim." Ibid. "[S]erious annoyance under subsection (c) means to weary, worry, trouble, or offend." Hoffman, 149 N.J. at 581.

A judge may use "[c]ommon sense and experience" when determining a defendant's intent. Id. at 577 (citing State v. Richards, 155 N.J. Super. 106, 118 (App. Div. 1978)). "'A finding of a purpose to harass may be inferred from the evidence presented' and from common sense and experience." H.E.S. v. J.C.S., 175 N.J. 309, 327 (2003) (quoting Hoffman, 149 N.J. at 577). Our Supreme Court has construed "'any other course of alarming conduct' and 'acts with

purpose to alarm or seriously annoy' as repeated communications directed at a person that reasonably put that person in fear for [her] safety or security or that intolerably interfere with that person's reasonable expectation of privacy." State v. Burkert, 231 N.J. 257, 284-85 (2017).

Here, the judge made specific findings crediting plaintiff's and her mother's testimony over defendant's, particularly with respect to defendant's actions on July 9, 2021 and his prior acts of domestic violence. We are satisfied Judge Stacy's determination that defendant's actions that night, which spanned over an hour, including his knowledge of plaintiff's presence at the home and his understanding she did not wish to speak to him, established his "intent to harass," under N.J.S.A. 2C:33-4(c). See H.E.S., 175 N.J. at 327 ("'A finding of a purpose to harass may be inferred from the evidence presented' and from common sense and experience." (quoting Hoffman, 149 N.J. at 577)). We are also satisfied the judge's findings under subsection (c) established a "course of conduct." See Hoffman, 175 N.J. at 581 (stating several episodes are not required to establish a course of conduct, rather this determination must be made on a "case-by-case basis").

Plaintiff was clear in her desire to no longer be in contact with defendant, through her verbal actions, as well as her blocking him on her electronic devices.

Defendant still attempted to see her at her parents' home, despite plaintiff's requests. We also observe the judge's factual findings fully support a determination that defendant's actions that night qualify as harassment under N.J.S.A. 2C:33-4(a), C.M.F. v. R.G.F., 418 N.J. Super. 396, 402 (App. Div. 2011), as he purposely intended to annoy or alarm defendant, and in fact did so. We have considered the record and conclude there was ample credible evidence supporting Judge Stacy's prong two findings.

"Commission of a predicate act is necessary, but alone insufficient, to trigger relief provided by the [PDVA]." R.G. v. R.G., 449 N.J. Super. 208, 228 (App. Div. 2017). Judge Stacy concluded that given the May 2020 and June 6, 2020 incidents, as well as defendant's conduct on July 9, 2021, an FRO was "clearly" necessary to protect plaintiff from future acts of domestic violence and stressed plaintiff credibly testified she was "terrified and scared" of defendant as she "kn[ew] how violent" he could be and found it necessary to "travel to Turkey for a month and half to get away from him."

Given our deferential standard of review, as well as our consideration of the testimony provided at trial, we perceive no basis to second-guess Judge Stacy's factual and credibility findings. Accordingly, her conclusion that plaintiff established the need for an FRO, as a matter of law, is unassailable.

To the extent we have not specifically addressed any of defendant's remaining arguments, it is because we have concluded they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION