

RECORD IMPOUNDED

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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1514-21**

B.M.,

Plaintiff-Respondent,

v.

J.M.A.,

Defendant-Appellant.

Submitted November 28, 2022 – Decided January 4, 2023

Before Judges Currier and Puglisi.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Passaic County,
Docket No. FV-16-0138-22.

Maitlin Maitlin Goodgold Brass & Bennet, attorneys
for appellant (Scott A. Gorman, of counsel and on the
brief).

B.M., respondent pro se.

PER CURIAM

Defendant J.M.A.¹ appeals from the December 21, 2021 order denying his motions for reconsideration and to vacate default of the August 17, 2021 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.

On July 13, 2021, B.M. filed a domestic violence complaint and was granted a temporary restraining order (TRO) against J.M.A. That same day, J.M.A. was served with the TRO, which ordered the parties to appear for the FRO hearing on July 21, 2021. Both parties appeared virtually on July 21, at which time the trial court granted J.M.A.'s request for an adjournment to retain counsel and set a new date of August 17, 2021 for the FRO hearing. The court entered a continuance order reflecting the new date and both parties were served with the order.

On August 6, 2021, B.M. amended the complaint and TRO to include additional allegations of domestic violence. The next day, J.M.A. was served with the amended TRO, which still reflected the August 17 hearing date.

B.M. appeared virtually for the FRO hearing on August 17, but J.M.A. failed to appear. The court noted J.M.A. had appeared at the prior hearing and

¹ We use initials to protect plaintiff's privacy. See R. 1:38–3(d)(9) to (10).

had notice of the new hearing date, and therefore conducted the hearing in his absence.

B.M. testified she had been dating J.M.A. for six weeks when she ended the relationship. She testified about events that occurred on July 10 and 17, 2021. J.M.A. called her cell phone more than fifty times in a day, often in rapid succession when she did not answer or hung up on him. He used "spoofed" or fake telephone numbers, including "spoofing" numbers of her acquaintances so that it would appear someone else she knew was calling her. He alternated calling, texting and trying to video chat her for hours. He called her mother and her home landline telephone, although she had not given him either number, and threatened to call her workplace in order to speak with her. He used profanity, made veiled threats and appeared at her home and workplace against her explicit wishes. He refused to leave until she came out of her home to talk to him. He was also arrested on August 10, 2021 and charged with contempt of the TRO, having contacted her by phone and parking across the street from her house.

The court admitted into evidence B.M.'s screenshots of text messages, logs of the calls and a police report. The court found B.M.'s testimony to be credible and determined she had proven by a preponderance of the evidence the predicate acts of harassment, N.J.S.A. 2C:33-4(c), and stalking, N.J.S.A. 2C:12-

10, under the PDVA. The court further found J.M.A.'s violations of the TRO each constituted a separate act of domestic violence. The court determined B.M. needed the protection of an FRO in order to ensure her safety, pursuant to Silver v. Silver, 387 N.J. Super 112 (App. Div. 2006), and granted the FRO.

Two weeks later, J.M.A.'s counsel entered his appearance. On September 7, 2021, counsel filed motions for reconsideration and to vacate the FRO, supported by identical certifications. J.M.A. certified he had been arrested on or about August 8, 2021 for contempt of the TRO, had two pending cases in the Family Part and "another pending matter" in Superior Court, all of which arose out of B.M.'s allegations. He claimed he was unaware he had to appear on August 17 and had he known, he would have appeared and "opposed [p]laintiff's application for a final restraining order by challenging [p]laintiff's contention that she has been the victim of acts of domestic violence . . . and that she requires the protection of a domestic violence restraining order to prevent her from being the victim of domestic violence in the future."

At oral argument on the motion, the judge noted that unlike default in a civil matter, where default is entered automatically, a defendant's failure to appear at an FRO hearing does not necessarily result in the issuance of an FRO. Rather, the court must conduct a hearing in the defendant's absence, to determine

whether the plaintiff is a protected party, whether an act of domestic violence occurred and whether the plaintiff needs the protection of an FRO.

After considering arguments from both parties, the court denied the motion for reconsideration because J.M.A. did not allege the court's decision was based on a palpably incorrect or irrational basis or that the court failed to consider evidence, which is the basis for a motion under Rule 4:49-2. The court also denied the motion to vacate default because J.M.A. had actual notice of the hearing and failed to demonstrate exceptional circumstances or excusable neglect for failing to appear. In rejecting J.M.A.'s claim of confusion, the court noted J.M.A. was arrested and released from detention six days prior to the FRO hearing and his certification was devoid of any specific facts that would create confusion about the FRO hearing date. The court also noted J.M.A. requested an adjournment of the first scheduled hearing to obtain counsel but did not do so until he had been criminally charged, two weeks after the hearing had already occurred. Thus, the court found J.M.A. took the TRO "rather cavalierly" and "didn't think it was very important at all, based on his conduct, until he got arrested on a criminal charge for violating it."

The court also found J.M.A. did not demonstrate a meritorious defense, as required by Rule 4:50, because his certification contained only a conclusory

statement denying the allegations in the TRO. Thus, the court denied the motion to vacate default. This appeal follows.

"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) (citing Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)). "Appellate courts accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters." Harte v. Hand, 433 N.J. Super. 457, 461 (App. Div. 2013) (quoting Cesare, 154 N.J. at 412). However, "all legal issues are reviewed de novo." Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div. 2017) (citing Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)).

An appellate court reviews a motion for reconsideration under an abuse of discretion standard. In re Belleville Educ. Ass'n, 455 N.J. Super. 387, 405 (App. Div. 2018). A reversal is only warranted when the trial court's "decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012) (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)).

Likewise, a trial court's decision under Rule 4:50-1 should be given "substantial deference," and will not be reversed unless shown to be "a clear abuse of discretion." US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (citing DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 261 (2009)). Further, relief under subsection (f) of the rule is available "only when 'truly exceptional circumstances are present.'" Guillaume, 209 N.J. at 484 (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994)). "The rule is limited to 'situations in which, were it not applied, a grave injustice would occur.'" Ibid. (quoting Little, 135 N.J. at 289).

On appeal, J.M.A argues the court erred in denying his motion to vacate default under Rule 4:50-1(a) and (f) and in the alternative, the court should have reconsidered the entry of the FRO. He contends his "understandable confusion regarding his upcoming court dates" justifies relief from the default judgment under Rule 4:50-1(f), he demonstrated excusable neglect under subsection (a), and the motion for reconsideration should have been granted because the trial court was unaware defendant's failure to appear was due to his confusion.

B.M. urges this court to affirm the court's decisions because J.M.A. was on notice that his appearance was required on August 17 and he failed to demonstrate excusable neglect.

A motion to vacate default judgment implicates two often competing goals: the desire to resolve disputes on the merits and the need to efficiently resolve cases and provide finality and stability to judgments. "The rule is designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977). In balancing these two goals, our system is sympathetic to the party seeking relief, because of the high value we place on deciding cases on the merits.

However, as the trial court noted, this case is not a typical civil matter involving a defaulted defendant. As J.M.A. points out, there are severe consequences that result from the issuance of an FRO, including registration on a central registry, N.J.S.A. 2C:25-34, which is not subject to expungement. This must be balanced against the interests of plaintiff as a victim of domestic violence, who obtained the protection of an FRO after an adjudication on the merits. The court granted the FRO based on plaintiff's credible testimony and corroborating physical evidence. Vacating default would require the victim, who has proven her case once, to recount the traumatic events again.

In support of his motion under Rule 4:50-1(f), J.M.A. cites Mancini v. EDS, 132 N.J. 330 (1993). The defendant in Mancini was a corporate entity which had reduced its number of employees, resulting in a period of "administrative confusion." Id. at 335. The company was served with notice, but due to confusion of mailroom employees, the notices were misplaced and not forwarded to the individuals responsible for filing a response. Ibid. The Court found the defendant company was entitled to vacate default because the circumstances of the default were "sufficiently exceptional" and the reason for its neglect in answering was neither willful nor calculated. Id. at 336. We agree with the trial court's determination that Mancini is distinguishable here. Unlike the defendant's employees in Mancini, who had no notice of the upcoming court date, J.M.A. was provided actual notice of the hearing date on two separate occasions and there is nothing "exceptional" about the articulated reasons for his non-appearance.

The trial court denied J.M.A.'s motion to vacate default under section (f) because it rejected his contention he was confused about the court dates. We find no abuse of discretion in the judge's finding that J.M.A.'s arrest and overnight detention, which occurred six days prior to the FRO hearing, did not constitute exceptional circumstances that would warrant vacating default.

Mancini, 132 N.J. at 336 (quoting Baumann v. Marinaro, 95 N.J. 380, 395 (1984)).

J.M.A. also argues the trial court should have granted his motion to vacate default under Rule 4:50-1(a) because his confusion constitutes excusable neglect. He cites to Bergen-Eastern Corp. v. Koss, 178 N.J. Super. 42 (App. Div. 1981) and Goldhaber v. Kohlenberg, 395 N.J. Super. 380 (App. Div. 2007), two cases in which we determined the defendants were entitled to vacate default. In Koss, the defendant was a seventy-four-year-old woman with "a history of continuing, serious psychiatric problems with several hospitalizations for mental illness" who failed to respond to a notice because she did not understand the import of a notice of tax sale. 178 N.J. Super. at 45. Goldhaber involved a complicated jurisdictional issue, where the defendant relied on his attorney's advice that New Jersey did not have jurisdiction over him. 395 N.J. Super. at 392. In contrast to the facts of Goldhaber, the trial court here found "[w]e don't have any complicated legal issues that [J.M.A.] could have been confused about or didn't understand." As the judge concluded:

I don't find any such fact pattern in this case. There were no facts alleged which could create, specifically, confusion about this final hearing which [J.M.A.] had notice of for almost a month prior to the return date; the original complaint having -- TRO complaint having been filed way back in July. And him doing absolutely

nothing, other than coming in, getting an adjournment so that he could hire counsel for August 31st, after being arrested on a criminal complaint for violation of the temporary restraining order. I don't find excusable neglect by [J.M.A.].

In addition, although not expressly included in Rule 4:50-1(a), it is well-settled a defendant claiming excusable neglect must also demonstrate he or she has a meritorious defense. Marder v. Realty Constr. Co., 84 N.J. Super. 313, 318 (App. Div. 1964). Here, J.M.A.'s certification contains a single conclusory statement that he contests the allegations of the domestic violence complaint, which the trial court found insufficient to establish a meritorious defense. We agree.

Lastly, an aggrieved party may seek reconsideration pursuant to Rule 4:49-2 where (1) the court based its decision on "a palpably incorrect or irrational basis," (2) the court either failed to consider or "appreciate the significance of probative, competent evidence[,] or (3) the moving party is presenting "new or additional information . . . which it could not have provided on the first application." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

During oral argument on the motion, defendant's counsel conceded reconsideration was not supported because it was not premised on a claim that the court based its decision on a palpably incorrect or irrational basis or failed to consider evidence. On appeal, defendant now contends the court failed to consider the significance of probative, competent evidence, specifically, the fact he was confused about the hearing date. He further alleges the court did not consider his challenges to B.M.'s proofs and her claim that she needed an FRO. These arguments were not raised before the trial court and we decline to address them for the first time on appeal. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973). Furthermore, the record reflects the court's findings of predicate acts of domestic violence and plaintiff's need for an FRO were supported by credible evidence.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION