

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1697-21

A.N.P.,

Plaintiff-Respondent,

v.

A.B.,

Defendant-Appellant.

Argued March 14, 2023 – Decided April 25, 2023

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Essex County, Docket
No. FV-07-0777-22.

Thomas A. Roughneen argued the cause for appellant
(Thomas Roughneen & Associates, LLC, attorneys;
Allan Marain, of counsel and on the briefs).

Hisham Hamed argued the cause for respondent (Law
Offices of Hisham Hamed, LLC, attorneys; Hisham
Hamed, on the brief).

PER CURIAM

Defendant appeals from a Family Part order entering a final restraining order (FRO) pursuant to the Prevention of Domestic Violence Act of 1991 (PDVA), N.J.S.A. 2C:25-17 to -35. Defendant argues the trial court erred in entering an FRO because there was insufficient evidence to establish he acted with any intent to harass plaintiff. We affirm substantially for the reasons expressed by the Honorable Judge David B. Katz in his detailed and well-reasoned opinion.

Plaintiff and defendant were previously in a dating relationship and have three minor children together: two daughters and one son. The parties resided together during different periods from 2015 to 2019. Defendant is a military veteran. He has been diagnosed with bipolar disorder and sustained a traumatic brain injury (TBI).

On September 2, 2021, plaintiff and one of the children tested positive for COVID. The other two children did not test positive but were displaying COVID-like symptoms. One was having trouble breathing, and plaintiff took her to the hospital. Plaintiff's father also went to the hospital to assist plaintiff and the children. At approximately 5:00 a.m., plaintiff informed defendant about their daughter's hospitalization. Defendant became "hysterical," told plaintiff how much he loved her, and that he could not lose her. Utilizing a

parenting communication tool the parties use, defendant instructed plaintiff to remove her father from the hospital or he would have the authorities do it. Plaintiff perceived this as a threat. She then received a phone call from the Nutley Police Department soon thereafter because defendant reported she had abused and kidnapped the children.

On December 23, 2021, following a four-day bench trial, Judge Katz issued an FRO against defendant, ruling defendant harassed plaintiff on September 2, 2021, contrary to N.J.S.A. 2C:33-4 (a) and (c), and an FRO was necessary to prevent immediate danger to plaintiff or prevent further abuse. The judge also made detailed credibility determinations, finding plaintiff's testimony credible and defendant's testimony incredible. Specifically, in rejecting defendant's testimony, Judge Katz found his mental health issues and TBI had no bearing on his credibility, some of his responses to questions made no sense or were untruthful, his demeanor was offensive, he was argumentative, avoided some questions, and was non-responsive at times.

The scope of our review of an FRO is limited. C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020). "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.'" Ibid. (quoting J.D. v. M.D.F., 207 N.J. 458, 482 (2011)). Further, findings of a trial court in domestic violence matters "are binding on appeal when supported by adequate, substantial, credible evidence." T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App. Div. 2017) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). Deference is "especially appropriate" when the evidence presented is mostly testimonial and involves credibility questions. Cesare, 154 N.J. at 412.

To obtain an FRO, the plaintiff bears the burden of establishing both prongs of Silver, 387 N.J. Super. at 125-27. That is, plaintiff must show (1) defendant committed a predicate act pursuant to N.J.S.A. 2C:25-19(a), and (2) the FRO was necessary to prevent immediate danger or further abuse to the victim. See J.D., 207 N.J. at 475-76 (citing Silver, 387 N.J. Super. at 125-27).

Judge Katz found defendant committed the predicate act of harassment on September 2, 2021, pursuant to N.J.S.A. 2C:33-4(a) and (c). On appeal, defendant argues the trial court erred in finding he harassed plaintiff because his actions were spontaneous outbursts induced by anger, not motivated by an intent to harass.

To find harassment, N.J.S.A. 2C:33-4 requires the perpetrator act with intent, which is "with [the] purpose to harass another." Such a finding "may be

inferred from the evidence presented" and "[c]ommon sense and experience may inform that determination." State v. Hoffman, 149 N.J. 564, 577 (1997). It may also be inferred from the parties' history. J.D., 207 N.J. at 487. The court must consider the totality of the circumstances, including the defendant's desire to "have an unhealthy need to control and dominate their partners." Hoffman, 149 N.J. at 585; see Cesare, 154 N.J. at 404.

Judge Katz determined defendant had no other purpose on September 2, 2021, than to harass plaintiff. Judge Katz found defendant wished to control plaintiff because he was "not getting the answers he wanted."

The judge heard testimony that, over the course of the parties' relationship, nine other troubling incidents occurred between the parties before this FRO was entered. Plaintiff had filed and then declined to proceed with three prior TROs because she believed defendant was getting treatment and wished to co-parent with defendant so the children could maintain an active relationship with their father. She filed this fourth TRO and finally proceeded to an FRO hearing because she wanted "to feel safe and move on with [her] life."

Once Judge Katz correctly determined defendant committed the predicate act of harassment, "the judge must determine whether a restraining order is necessary to protect the plaintiff from future danger or threats of violence."

D.M.R. v. M.K.G., 467 N.J. Super. 308, 322 (App. Div. 2021) (citing Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006)). "Although this second determination . . . is most often perfunctory and self-evident, the guiding standard is 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." Silver, 387 N.J. Super. at 127. "Whether the victim fears the defendant" is another factor that may be considered. G.M. v. C.V., 453 N.J. Super. 1, 13 (App. Div. 2018).

First, in January 2018, plaintiff observed defendant was depressed, irritable, and angry frequently, and defendant told plaintiff "he was having thoughts of hurting the children." Thereafter, defendant checked himself into a psychiatric rehabilitation facility. Plaintiff testified she feared defendant. Defendant testified his memory of the event was "very fuzzy," but he did not dispute it occurred.

Next, in April 2018, plaintiff was having an ultrasound of their child and invited defendant to attend the procedure. Defendant was late, and the ultrasound was conducted without him. Once defendant, claiming he was stuck in traffic, arrived, he became angry and began to scream and yell, "flailing all over the place[.]" causing security to forcibly remove him from the doctor's

office. Defendant did not recall using coarse language and avoided answering the question as to whether he made threats by responding "I was already out of the building."

On March 19, 2019, the children were playing at defendant's house when one of their daughters fell off a toy and hurt herself. Blaming their oldest son, defendant screamed at him. When plaintiff intervened, defendant turned his rage onto her, screaming within inches of her face. Plaintiff testified defendant followed her into the bedroom yelling "this is the way you deserve to be treated[] because this is the only way that you understand" Plaintiff testified the children were present during the outburst and "were screaming and terrified."

The next morning, on March 20, 2019, plaintiff's father came to the house. Plaintiff testified defendant attacked her father and strangled him, leaving marks on his neck. Police came to the home and separated defendant and plaintiff's father but did not arrest defendant. Feeling intimidated and afraid, plaintiff applied for a TRO, which she later dismissed.

On October 17, 2019, plaintiff and defendant met in a parking lot to exchange custody of the children, as the parties were no longer living together at this time. Defendant became enraged following "a financial conversation" and began to advance towards plaintiff in a "very aggressive manner," shouting

and frightening her. Police, who happened to be nearby, intervened and arrested defendant. Defendant testified this event was "definitely a blur" and all he could recall was the children happily greeting him. Following the incident, plaintiff applied for another TRO, which she later dismissed.

On February 13, 2020, defendant was scheduled to care for the children. The children were sick and plaintiff informed defendant she was taking them to a pediatrician. Defendant asked if he could accompany them to the doctor's office and plaintiff obliged. Following the appointment, on the drive home, plaintiff testified she noticed defendant was following her, which continued until plaintiff reached her parents' home. Plaintiff filed a police report relating to that incident.

In October 2020, during one of his scheduled parenting times, defendant called plaintiff and told her he did not think he should be supervising the children "because of how he was feeling." Defendant stated he was not treating their daughters properly and was yelling at them. Plaintiff arrived to pick up the children and noted defendant looked "disheveled," was barefoot, and "didn't look like he was in the right state of mind." Given defendant's military background and ownership of firearms, plaintiff testified she was concerned.

She notified the police of this incident. Plaintiff also testified defendant contacted her several times later in the day.

On January 19, 2021, the parties met for another custody exchange in front of a police station. Defendant walked over to plaintiff's vehicle to buckle one of the children into her seat. Defendant then began to yell at the child, prompting plaintiff to ask defendant to leave. Defendant then began yelling at plaintiff, flailed his arms, and removed a different child from the vehicle. Defendant refused to give the child back to plaintiff, and plaintiff called the police. The police came, resolved the situation, and plaintiff applied for another TRO, which she later dismissed.

On March 31, 2021, plaintiff arrived at her home after picking one of the children up from school. When she arrived, the police were at the home doing a wellness check because they received a report plaintiff was abusing defendant and the children. Plaintiff testified the police saw the children, were satisfied no abuse was taking place, and left the premises.

Judge Katz found defendant's outbursts were not, as he argues, the product of spontaneous bouts with anger. Rather, defendant's conduct in the years leading up to and during the events of September 2021 was motivated by a desire to control or otherwise maintain an obsession with plaintiff. Upon being told

that his children were ill, requiring two of them to be hospitalized, defendant showed no concern for the children. Instead, the sole focus of his concern and affection was for plaintiff and his desire to expel plaintiff's father from the hospital so he could be with her. Although defendant's lack of ability to manage his anger certainly contributed to this behavior, viewing the events in their totality, defendant's "conscious object was to alarm or annoy" plaintiff. See also C.M.F. v. R.G.F., 418 N.J. Super. 396, 404 (App. Div. 2011) (stating the fact an outburst was brought about due to the perpetrator's anger does not shield the conduct from constituting harassment or otherwise render anger and intent to harass "mutually exclusive"). Thus, Judge Katz did not err in entering an FRO against defendant.

Defendant makes additional arguments concerning defendant's purported lack of intent, including: (1) "the trial court conflated [defendant's] inordinate anger in five previous events with purpose to harass;" (2) defendant's "prior mental health episodes were antithetical to any purpose to harass;" (3) defendant's intent as to the event where defendant followed plaintiff to her parents' home and when he called the police on her to perform a "wellness check" was ambiguous; (4) "[defendant's] trial demeanor illustrates the distinction between actions highly likely to cause a particular result and purpose

to cause that result" and does not show purpose to harass; and (5) "the trial court's credibility assessments were immaterial." Because these arguments were not raised below, they are not properly before us on appeal. See R. 2:10-2. Nevertheless, defendant's history of consistent outbursts and controlling behavior towards plaintiff well establishes the intent element of N.J.S.A. 2C:33-4, and none of defendant's improperly raised arguments illustrate the trial court committed error.

Finally, to the extent we have not addressed them, any remaining arguments raised by defendant lack sufficient merit to warrant 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