

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-1701-21

K.M.R.,

Plaintiff-Respondent,

v.

B.R.,¹

Defendant-Appellant.

Submitted February 7, 2023 – Decided March 2, 2023

Before Judges Rose and Gummer.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Camden County,
Docket No. FV-04-2195-13.

Mario J. Persiano, attorney for appellant.

Linwood H. Donelson, III, attorney for respondent.

PER CURIAM

¹ We use their initials in accordance with Rule 1:38-3(d)(10).

On January 14, 2020, the trial court issued a final restraining order (FRO) in favor plaintiff K.M.R. under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35 (PDVA). In a prior appeal, defendant B.R. contended plaintiff failed to establish the predicate act of harassment, N.J.S.A. 2C:33-4; N.J.S.A. 2C:25-19(a)(13), as charged in plaintiff's domestic violence complaint. In the alternative, defendant claimed a remand was warranted because the court failed both to conduct the two-step analysis articulated in Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006), and comply with Rule 1:7-4.

In our opinion addressing that first appeal, we agreed with defendant's alternate argument and remanded, directing the trial court to make "amplified findings of fact and conclusions of law as to both Silver prongs based on the existing record." K.M.R. v. B.R., No. A-2603-19 (App. Div. Oct. 18, 2021) (slip op. at 12) (citing Silver, 387 N.J. Super. at 125-27). Accordingly, we vacated the FRO and reinstated the indefinite restraining order (ITRO).² Ibid.

² As we noted in our prior opinion, although

[t]here is no provision in the PDVA that provides for the issuance of an ITRO[,] . . . the Domestic Violence Procedures Manual provides that when it is unlikely the defendant will be served within a reasonable period of time, the court can issue an ITRO that continues the

On remand, the same judge rendered a lengthy written decision on January 10, 2022, which: addressed the procedural background of the matter; explained the Silver standard and an "alternate 'egregious act' standard"; reviewed the process for filing a domestic violence action in general and in this matter; explained the manner of assessing credibility in a domestic violence action; surveyed the history of the "battered person syndrome" and its impact on a court's credibility findings; and assessed the credibility of the parties in this matter. Pertinent to our remand instructions, the court addressed the first Silver prong, and found defendant committed the acts of harassment charged in plaintiff's domestic violence complaint. The court sua sponte found defendant committed other predicate acts based on prior acts of abuse, which were not specifically charged in the complaint. Turning to the Silver second prong, the court determined plaintiff demonstrated the need for final restraints, in part, by finding plaintiff suffered from battered person syndrome. Accordingly, the court reentered the January 14, 2020 FRO.³ This appeal followed.

relief requested by the plaintiff and a final hearing will be scheduled when the defendant is served.

[K.M.R., slip op. at 3 n.3 (citation omitted).]

³ The court did not issue an accompanying order.

Defendant now challenges the trial court's amplified credibility findings, contending the court improperly expanded the record without affording an opportunity to challenge the supplemental information, thereby infringing on his right to due process. Without expressly challenging the court's findings on each predicate act, defendant urges us to vacate the FRO and, if a new trial is granted, remand the matter to another judge. Because the record supports the trial court's findings on the predicate act of harassment as alleged in plaintiff's ITRO and its determination that final restraints were necessary to protect plaintiff from further abuse, we affirm.

I.

A.

We incorporate by reference, the facts and procedural history set forth at length in our prior opinion. Id. at 3-8. In summary, "the parties cohabitated for about one year of their thirty-month relationship, which ended in May 2012." Id. at 4. One child was born of their union in September 2011; residential custody of the child was awarded to defendant's mother in April 2012. Ibid.

On February 9, 2013, plaintiff filed a domestic violence complaint against defendant. Id. at 3. Defendant failed to appear at the March 6, 2013 return date and an ITRO was issued against him. Ibid.

For reasons that are not germane to this appeal, the FRO hearing was conducted nearly seven years later on January 14, 2020, during which both parties were represented by counsel. Id. at 4. Plaintiff testified about the incidents that underscored the harassment allegations charged in her domestic violence complaint. In our prior decision, we summarized plaintiff's testimony as follows:

[A]fter she ended the parties' relationship in May 2012, defendant would continuously "pop up at certain places," following plaintiff "basically everywhere [she] went." On multiple occasions, defendant appeared at plaintiff's place of work, the park, and her parents' home. Plaintiff assumed defendant learned about her whereabouts through social media because she posted her family outings on Facebook. Plaintiff changed her telephone number at least five times to prevent defendant from contacting her. She also moved several times because she felt unsafe whenever defendant discovered her residence.

[Id. at 4-5.]

We also summarized plaintiff's testimony about past incidents of domestic violence. Plaintiff alleged defendant had

"closed [her] head in the oven door"; "stomped on [her]" to "basically make [her] have a miscarriage"; forced her at gunpoint to cook for him; struck her with a gun in the back of her head; "put [her] through a[n] oven door"; "stabbed [her] with a knife on [her] arm"; and "punched [her] in [her] ribs."

[Id. at 5.]

Plaintiff claimed she previously had filed three TROs against defendant, stemming from such incidents, but did not provide supporting documentation. Id. at 6. She further acknowledged "defendant had not contacted her after the March 6, 2013 ITRO was entered, and the parties ha[d] been in the same location with their son on two occasions without issue." Id. at 6-7.

Defendant testified and denied the present and prior incidents. Id. at 7. Noting "so much time had elapsed after the issuance of the ITRO," without any further incidents between the parties, defense counsel argued plaintiff failed to "demonstrate she was fearful of defendant." Ibid.

B.

On remand, the trial court searched the Family Part records and determined four prior TROs had been issued between the parties – two filed by plaintiff against defendant, and two filed by defendant against plaintiff – all of which were dismissed by the applicant. The court also listened to the Court Smart recording of the March 6, 2013 hearing conducted by another judge and found:

The recording has a reference to a court note statement from . . . defendant that he was involved in an auto accident on March 2, 2013, which prevent[ed] him from attending the March 6, 2013 trial. Defendant

stated he would send a letter from his doctor confirming his injuries and why he could not appear for the FRO hearing. As an accommodation, . . . the trial judge at the time, issued an ITRO for . . . plaintiff, and . . . defendant was advised that once he recovered, he could contact the court for a new trial date. No letter was received from any doctor, but the restraining order was [ac]knowledge[d] because the defendant reached out to the court to advise that he could not appear. The[re is] no record of . . . defendant ever contacting the court again until the proceeding on January 14, 2020, when the FRO was entered.

The trial court noted that after the ITRO was issued, the parties' problems ceased. Plaintiff credited the existence of the ITRO, but defendant claimed "he had no knowledge of the restraining order and said he had moved on with his life." Having listened to the March 6, 2013 hearing, the court rejected defendant's version, discrediting his entire trial testimony under the presumptive inference embodied in the "false in one, false in all" maxim. See State v. Ernst, 32 N.J. 567, 583 (1960) (permitting the factfinder to disregard some or all of a party's testimony who knowingly testifies falsely about a material fact, with the intent to deceive). Nevertheless, the trial court went on to assess defendant's credibility based on his testimony at the 2020 trial and found it lacking.

Prior to its discourse of the battered person syndrome, the court generally noted the "syndrome makes it more complicated to determine which party is telling the truth" in domestic violence actions. The court then conducted a

fulsome review of the existing record and made detailed credibility findings.

For example:

Comparing the testimony of . . . plaintiff and defendant, plaintiff's testimony appeared more reasonable, consistent, and therefore believable to the court. In addition, under the preponderance of evidence standard, plaintiff's testimony is accepted by the court as more credible and convincing, and accordingly, meets the burden of proof.

The court elaborated:

At times, . . . defendant's testimony was confrontational[] [r]egardless of which side conducted the examination. Defendant would ignore the question and make an unrelated statement in response to the question. On several occasions, . . . defendant would laugh, use profanity, and push his version of events. Defendant's testimony could, at times, be characterized as holding back information.

On the other hand, plaintiff's testimony was not confrontational, no matter who asked her the questions. She answered questions directly and her answers were understandable. Plaintiff's answers were clear, sounded credible, and gave spontaneous answer[s] that added to her credibility. While plaintiff was sometimes slow in supplying information, there was nothing in her testimony that indicated she was hiding anything. Plaintiff's testimony was candid, and she gave willingly statements. Under the application of this criteria, the plaintiff is a more credible witness.

. . . .

[The c]ourt easily finds plaintiff's testimony clear, honest, warm, and friendly as compared to defendant's testimony. The [c]ourt finds plaintiff's testimony to create a positive feeling while from . . . defendant, there is no similar feeling. . . . [D]efendant was argumentative, hostile[,] and evasive while plaintiff's testimony lack[ed] these characteristics. The conclusion the [c]ourt draws is that plaintiff's demeanor is positive, making her testimony more truthful.

Addressing the first Silver prong, the court referenced plaintiff's testimony and found defendant committed the acts of harassment charged in the February 9, 2013 domestic violence complaint, by: "repeatedly mak[ing] communications and engag[ing] in conduct that alarmed and seriously annoyed . . . plaintiff," under N.J.S.A. 2C:33-4(a); and engaging in a "course of alarming conduct" under N.J.S.A. 2C:33-4(c). The court also found three other predicate acts based on plaintiff's testimony about the parties' domestic violence history: assault: N.J.S.A. 2C:12-1; criminal mischief, N.J.S.A. 2C:17-3; and terroristic threats; N.J.S.A. 2C:12-3. These offenses were not charged as predicate acts in plaintiff's domestic violence complaint.

Turning to the second Silver prong, the court found "the potential [for] future acts of similar abuse by . . . defendant was clear" given, among other factors, "the history of domestic violence between the parties." The court also found "the[] multiple acts of domestic violence suggest[ed] . . . plaintiff most

likely suffer[ed] from 'battered person syndrome,' and there [wa]s a need 'to protect the victim from further abuse,' as required by Silver's second prong."

II.

Our scope of review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). Because of its special expertise in family matters, we owe substantial deference to the Family Part's findings of fact. Id. at 413. "[D]eference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" MacKinnon v. MacKinnon, 191 N.J. 240, 254 (2007) (quoting Cesare, 154 N.J. at 412). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 411-12. However, we owe no special deference to the trial court's legal conclusions, which we review de novo. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016).

As a preliminary matter, we reject defendant's challenges to the scope of the remand hearing. Although we directed the trial court to amplify its factual findings and legal conclusions as to both Silver prongs "based on the existing record," K.M.R., slip op. at 12, we did not prohibit the court from reviewing the recording of the March 6, 2013 hearing or determining the disposition of the prior restraining orders issued between the parties. Indeed, in many cases, the

same judge conducts all related Family Part proceedings. Because the prior hearing and restraining orders involved the parties in the present matter, we discern no impropriety.

Nor are we persuaded that the court improperly utilized the information gleaned from those prior events in making its credibility assessments here. Although the court invoked the "false in one, false in all" maxim following its review of the March 6, 2013 hearing, the court nonetheless went on to make extensive credibility findings based, in large part, on the testimony of both parties adduced at the January 14, 2020 hearing. Those findings warrant our deference. MacKinnon, 191 N.J. at 254.

Defendant also claims the court's supplementation of the record violated his right to due process by not affording him an opportunity to address the facts underlying the prior restraining orders and testify about the March 6, 2013 hearing. We are unpersuaded.

"Ordinary due process protections apply in the domestic violence context, notwithstanding the shortened time frames for conducting a final hearing." J.D. v. M.D.F., 207 N.J. 458, 478 (2011). Accordingly, "[a]t a minimum, due process requires that a party in a judicial hearing receive 'notice defining the issues and an adequate opportunity to prepare and respond.'" H.E.S. v. J.C.S., 175 N.J.

309, 321 (2003) (quoting McKeown–Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 559 (1993)). Represented by counsel at the January 14, 2020 FRO hearing, defendant had appropriate notice, affording him the opportunity to prepare for the hearing and address plaintiff's allegations.

Moreover, the trial court's supplemental review complied with the statutory command to consider "[t]he previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse." N.J.S.A. 2C:25-29(a)(1); see also Cesare, 154 N.J. at 402 (holding the PDVA requires the trial court to consider the parties' prior domestic violence history, if any). Here, plaintiff's complaint alleged a prior history of domestic violence and prior domestic violence court proceedings. During the FRO trial, both parties testified about the prior domestic violence complaints. Accordingly, defendant has not demonstrated that the court's confirmatory review of the parties' prior restraining orders or the March 6, 2013 hearing violated his right to due process. We are therefore satisfied defendant received the process he was due.

Having considered the trial court's amplified factual and legal findings in view of both Silver prongs and the evidence adduced at trial, we discern no basis to disturb its decision reentering the January 14, 2020 FRO. We are satisfied

the court correctly determined plaintiff proved the predicate act of harassment as charged in the domestic violence complaint and an FRO was necessary to prevent further abuse. In that context, the court correctly considered the parties' previous history of domestic violence under N.J.S.A. 2C:25-29(a)(1).

Because only one predicate act is required to find domestic violence, see Silver, 387 N.J. Super. at 125, we need not address whether defendant's conduct also constituted the other predicate acts found by the court on remand. Indeed, defendant does not argue that the court improperly found predicate acts that were not alleged in the complaint. For the sake of completeness, however, we recognize due process forbids the trial court from "'convert[ing] a hearing on a complaint alleging one act of domestic violence into a hearing on other acts of domestic violence which are not even alleged in the complaint.'" H.E.S., 175 N.J. at 322 (quoting J.F. v. B.K., 308 N.J. Super. 387, 391-92 (App.Div.1998)).

However,

[t]hat does not mean that trial courts must limit plaintiffs to the precise prior history revealed in a complaint, because the testimony might reveal that there are additional prior events that are significant to the court's evaluation, particularly if the events are ambiguous. Rather, the court must recognize that if it allows that history to be expanded, it has permitted an amendment to the complaint and must proceed accordingly.

[J.D., 207 N.J. at 479 (emphasis added).]

Because plaintiff did not move to amend her complaint, the court erroneously determined defendant committed additional predicate acts. That error was not fatal here, where the record supports the predicate act of harassment as charged in plaintiff's domestic violence complaint.

To the extent not specifically addressed, defendant's remaining contentions 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