

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-1805-21

D.M.L.,

Plaintiff-Respondent,

v.

K.A.C.,

Defendant-Appellant.

Submitted December 20, 2022 – Decided March 2, 2023

Before Judges Geiger and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Hudson County,
Docket No. FV-09-0276-22.

Mario M. Blanch, attorney for appellant.

Respondent has not filed a brief.

PER CURIAM

Defendant appeals from a final restraining order (FRO) entered against her pursuant to the Prevention of Domestic Violence Act of 1991 (PDVA),

N.J.S.A. 2C:25-17 to -35, claiming the trial court erred in finding an FRO was necessary to prevent immediate danger to the victim or further abuse pursuant to the second prong of the test adopted in Silver v. Silver, 387 N.J. Super. 112, 127 (App. Div. 2006). Because we find no reason to disturb the trial court's findings, we affirm.

Plaintiff is defendant's aunt. In February 2021, plaintiff and defendant began living together. Plaintiff's adult daughter, Ellie,¹ also lived at the residence. Plaintiff suffers from health issues, requiring a caregiver to assist her in her daily activities.

In July 2021, Sandy, plaintiff's niece, dropped off her two dogs at the home. Defendant became enraged because she did not want the dogs there. Defendant then struck a broomstick on a table several times while yelling at plaintiff and Ellie. Plaintiff's caregiver was present in the room. The incident continued outside the apartment where defendant again confronted plaintiff, Ellie, and plaintiff's caregiver and pushed plaintiff in the face. Plaintiff, Ellie, and Sandy's testimony was consistent and corroborated these events, and

¹ We use initials and pseudonyms to protect the privacy of individuals and the records of this proceeding. See R. 1:38-3(d)(9).

Plaintiff stated she feared defendant. Defendant denied these allegations during her testimony at trial.

The trial court ruled defendant committed the predicate act of harassment, N.J.S.A. 2C:33-4(b), and an FRO was necessary to prevent further abuse. It made credibility determinations, finding plaintiff, Ellie, and Sandy credible and finding defendant not credible.

Our review of an FRO is limited. C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020). "Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare v. Cesare, 154 N.J. 394, 413 (1998). Findings of the 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, 154 N.J. at 411-12). Further, when the evidence presented in the matter is largely testimonial and involves credibility questions, "[d]eference is especially appropriate." Cesare, 154 N.J. at 412. Our review of a judge's legal decisions, however, is de novo. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016); C.C., 463 N.J. Super. at 428-29.

It is well established to obtain an FRO, a plaintiff bears the burden of demonstrating both prongs of Silver v. Silver, including that an FRO is

necessary to prevent imminent injury or further abuse. J.D. v. M.D.F., 207 N.J. 458, 475-76 (2011) (citing Silver, 387 N.J. Super. at 125-27). Despite her sworn testimony to the contrary, on appeal, defendant admits she pushed plaintiff in the face and concedes she committed a predicate act of harassment. However, defendant contends the trial court erred in finding the FRO was necessary because there is no prior history of domestic violence between the parties and the incidents described during the testimony amount to mere domestic contretemps. See Corrente v. Corrente, 281 N.J. Super. 243, 250 (App. Div. 1995) ("The domestic violence law was intended to address matters of consequence, not ordinary domestic contretemps . . .").

Whether an FRO is necessary involves an evaluation of various factors contained in N.J.S.A. 2C:25-29(a), including: "(1) [t]he previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;" and "(2) [t]he existence of immediate danger to person or property[.]" The court is not limited to these factors and must determine, pursuant to the totality of the circumstances, whether the FRO is necessary "to protect the victim from an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 127; C.C., 463 N.J. Super. at 436; N.J.S.A. 2C:25-29(a). The inquiry is necessarily fact specific. Silver, 387 N.J. Super. at

127; C.C., 463 N.J. Super. at 434-35; see also N.J.S.A. 2C:25-29(b) ("In proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse.").

The trial court heard testimony it found credible regarding the inception of the animosity. In July 2021, a Division of Child Protection & Permanency (Division) worker came to the home to speak with defendant regarding her son, who also lived in the household, and defendant became upset someone had called the Division.² Arguments ensued amongst defendant, plaintiff, and Ellie because defendant believed either plaintiff or Ellie had called the Division. The court heard testimony that defendant threatened plaintiff with pushing her into a wall. The court also heard testimony that defendant placed a candle and some unidentified powder in the hallway near plaintiff's bedroom. Defendant denied this allegation as well. On appeal, she asserts the trial court erred in considering this evidence because it could not discern defendant's motive.

The trial court found the candle and powder incident and the July arguments and threats occurred as recounted by plaintiff's witnesses and discredited defendant's testimony. Although it did not ascertain defendant's

² The record does not reveal the basis for which the Division worker was looking for defendant.

motive for placing the candle outside plaintiff's bedroom door, it found the incident did occur and determined defendant posed a risk to plaintiff. Given plaintiff's physical limitations, at the very least, the candle created a potential that plaintiff would trip, or a fire would occur, creating an unacceptable risk to plaintiff. Defendant's uncontrolled anger and threats also posed a risk to plaintiff, who has health issues. We are satisfied sufficient evidence in the record exists to support the trial court's findings an FRO is necessary to prevent further abuse and affirm.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION