

RECORD IMPOUNDED

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-1856-21

B.A.R.S.,

Plaintiff-Appellant,

v.

S.R.L.,

Defendant-Respondent.

Submitted October 25, 2022 – Decided February 14, 2023

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Camden County,
Docket No. FV-04-1298-22.

Hark & Hark, attorneys for appellant (Michael J. Collis,
on the briefs).

S.R.L., respondent pro se.

PER CURIAM

Plaintiff appeals from an order denying her request for a final restraining order (FRO) and dismissing the previously-issued temporary restraining order

(TRO) pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to - 35.¹ She contends the court failed to make adequate findings of fact or appropriate credibility determinations. We disagree and affirm.

I.

We glean these facts from the trial, during which each party testified. The parties have known each other for over twenty-two years and, at times, have been in a dating relationship. At the time of the events at issue, they were living together in defendant's house.

Plaintiff filed a domestic-violence complaint against defendant on October 21, 2021, alleging predicate acts of assault and harassment based on events that had taken place that day and on October 18, 2021. In the complaint, plaintiff alleged she had been residing in defendant's home for two weeks due to a plumbing issue in her home. Plaintiff certified the accuracy of the information she provided in her complaint. At trial, she testified she had been living in defendant's house for two years and that the reference in the complaint to two weeks was an error, typed into the complaint by someone else. Defendant

¹ We use initials to protect the confidentiality of the participants in these proceedings. R. 1:38-3(d)(10).

testified plaintiff and her two dogs had lived with him from June to October 2021.

On the morning of October 18, 2021, an incident between the two parties resulted in a broken cabinet and a call to police. The parties disagree about what caused the broken cabinet and what else happened that day. In the complaint, plaintiff alleged that while she was feeding a dog, defendant "lunged" at her, "grabbed her arm, and pushed her back causing [her] to fall back into the cabinet door to break [sic]." She claimed defendant then "began yelling and screaming stating 'I want you out of here.'" At trial, plaintiff testified she was in defendant's kitchen caring for her dogs when defendant entered the kitchen and began to move items that had been placed on the counter. According to plaintiff, he moved a jar of pasta, she moved it back, and he rushed over and moved it back to where he had placed it. While she was holding a cabinet door, she reached for the jar again. He then pulled or pushed her away from the counter and, in doing so, broke the cabinet door she was holding. Defendant "freaked out"; plaintiff "got scared" and called the police, who took no action against either party. Three days later, she went to the police station and filed the complaint. Plaintiff testified that she was afraid of defendant and feared for her safety,

noting she had moved out of defendant's house on December 15, 2021, and had moved back to her residence where she lived alone.

Plaintiff also testified defendant previously had locked her out of the house, made her sleep on the living-room floor, and had called her vulgar names. According to plaintiff, "this has been going on for years" and she could not take it anymore. The judge asked plaintiff if there had been other "incidents" between the parties. Plaintiff answered: "[t]he verbal abuse, the emotional abuse. And then it became physical," referencing specifically the October 18 incident. In response to the judge's question, plaintiff said nothing about other allegations of prior domestic violence she had made in the complaint, including that defendant had "bullie[d her] into having sex" and would unlock the bathroom door and come into the bathroom when she was using it.

Plaintiff also initially said nothing about the October 21 incident, which, along with the October 18 incident, had formed the basis of her complaint. In the complaint, plaintiff alleged that at 4:30 a.m. on October 21, 2021, defendant had come "downstairs and took several pictures of the dog to prove animal cruelty due to the size of the crate the dog was being held in" and "then contacted a private animal control company and told them her dog was abandoned and had the dog removed from the home." At trial, in response to the judge's request to

describe what had caused her to file for the TRO, plaintiff testified only about the October 18 incident; she said nothing about the October 21 incident. Defense counsel asked her about it during cross-examination. Plaintiff testified that on October 21, 2021, defendant had accused her of mistreating her dog and had told her that if she continued to mistreat the dog, he would call "the authorities" and have the dog removed. According to plaintiff, the dog was removed while she was at the police department filing the complaint. That testimony differed from her allegation in the complaint, in which plaintiff alleged that defendant already had had the dog removed that day. During cross-examination, defense counsel also asked plaintiff about inconsistent or inaccurate statements she had made in a prior court proceeding regarding her income and the number of adjournments she had requested.

After the close of plaintiff's case, defendant moved for a directed verdict. The judge granted the motion as to the October 21 incident, finding plaintiff had not proven the events of that day "rose to the level on a prima facie basis of any of the predicate acts."

Defendant's testimony differed significantly from plaintiff's testimony. According to defendant, he purchased his home, which had been abandoned, on February 13, 2020, and because of its condition did not move into it until April

2021. Thus, the parties could not have lived together in that home in the two years leading up to the October 18 incident. Defendant testified that in June 2021, plaintiff had asked him if she could stay with him for a few weeks because she was having a plumbing problem at her house. He agreed she could stay with him while her property was being repaired. She moved in with two dogs, including a husky she kept in a small crate. In early to mid-October 2021, defendant told plaintiff he would call to have the dog removed if she did not take better care of it. In response, plaintiff threatened to have defendant removed from the house by filing for a restraining order against him.

Regarding the October 18 incident, defendant agreed the parties were arguing about a jar but denied breaking the cabinet by pushing or pulling plaintiff while she had her hand on the cabinet door. He denied touching plaintiff. According to defendant, plaintiff broke the cabinet door when she slammed it in the wrong direction. He called the police because she was "breaking things." Both plaintiff and defendant testified that the police had left without taking measures against either party.

On October 19, 2021, defendant filed an eviction action against plaintiff. He had previously asked her to move out of his house, and she told him, "You can't make me leave." When he told her on October 19, 2021, he had filed the

eviction action, she responded that she would "get" him. On October 21, 2021, he contacted a local animal control office. Someone came to the house at 11:00 a.m. to remove the husky. Plaintiff obtained the TRO against him later that day. In the TRO, the judge granted plaintiff exclusive possession of the house and required defendant to relinquish his keys to the house. He was not permitted to return to the house until December 15, 2021.

In a decision issued on the record at the conclusion of the trial, the judge noted "inconsistencies in both parties' testimony" but found "a larger inconsistency in [plaintiff's] testimony when you read the [TRO]." The judge found "[t]he way the plaintiff described how the cabinet door broke [in her testimony] is not consistent at all with what [the complaint] says." Because "we have two totally different versions from the plaintiff with regard to how [the broken cabinet door] actually came about," the judge found "plaintiff's testimony to be not credible . . . on that issue." He held "that really is the crux of the case, the heart of the case." "[G]iven the significant inconsistencies in the plaintiff's testimony with regard to how the incident actually happened," the judge found plaintiff's testimony to be not credible and held she had not established a predicate act of domestic abuse. Accordingly, he issued an order dismissing the complaint and vacating the TRO. This appeal followed.

II.

Our scope of review of the grant or denial of an FRO is limited. See Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Ibid.; see also Gnall v. Gnall, 222 N.J. 414, 428 (2015). We defer to a trial judge's factual findings unless 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. of Am., 65 N.J. 474, 484 (1974)); see also C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020). We review de novo a trial judge's legal conclusions. C.C., 463 N.J. Super. at 429.

"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.'" Id. at 428 (quoting J.D. v. M.D.F., 207 N.J. 458, 482 (2011)). "[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). We defer to a trial judge's credibility determinations "because the trial judge 'hears the case, sees and

observes the witnesses, and hears them testify,' affording [the trial judge] 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" Gnall, 222 N.J. at 428 (quoting Cesare, 154 N.J. at 412).

"It is well settled that to obtain an FRO under the [PDVA], a plaintiff must not only demonstrate defendant has committed a predicate act of domestic violence as defined in N.J.S.A. 2C:25-19(a)(1) to (19), but also that a restraining order is necessary for his or her protection." C.C., 463 N.J. Super. at 429; see also Silver v. Silver, 387 N.J. Super. 112, 126-27 (App. Div. 2006). If the court determines the plaintiff did not prove a predicate act, "the court must dismiss the complaint." A.M.C. v. P.B., 447 N.J. Super. 402, 413 (App. Div. 2016); see also M.C. v. G.T., 452 N.J. Super. 509, 510-11 (App. Div. 2018) (reversing trial court's decision to enter a restraining order despite the plaintiff failing to prove a predicate act of domestic violence and finding that a trial court cannot enter a final restraining order "absent preponderating evidence that the defendant committed an act of domestic violence").

N.J.S.A. 2C:25-19 defines domestic violence under the PDVA as the infliction of one or more of the enumerated predicate acts upon a protected person. Assault, N.J.S.A. 2C:12-1, and harassment, N.J.S.A. 2C:33-4, are among the predicate acts listed in N.J.S.A. 2C:25-19. A person commits

harassment "if, with purpose to harass another," he or she: (a) "[m]akes, 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) "[s]ubjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so"; or (c) "[e]ngages 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). A person commits assault "if the person: (1) [a]ttempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or (2) [n]egligently causes bodily injury to another with a deadly weapon; or (3) [a]ttempts by physical menace to put another in fear of imminent serious bodily injury." N.J.S.A. 2C:12-1(a)(1) to (3).

Applying these standards to our review of the arguments raised by plaintiff, we discern no basis for disturbing the judge's decision to deny entry of an FRO. The trial judge made detailed credibility findings, found plaintiff's testimony regarding "the heart of the case" not credible, and, given that her case was based on her testimony, held she had not established a predicate act of domestic violence. His credibility finding was based on the inconsistencies between her testimony and the certified statements she had made in her

complaint. Plaintiff faults that credibility finding, asserting her two versions of the events of October 18 were "very close in character" and attributing any inconsistencies to the person who had recorded her statements on the complaint. The differences in her two versions were sufficient to support the credibility findings of the trial judge, who was also free to reject her testimony blaming someone else for those inconsistencies. With no credible testimony or other evidence to support her allegations of assault and harassment, the judge had no alternative but to find plaintiff had not proven a predicate act of domestic violence and, appropriately, dismissed her complaint and vacated the TRO.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION