

RECORD IMPOUNDED

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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-1964-20

C.D.,¹

Plaintiff-Respondent,

v.

T.J.D., JR.,

Defendant-Appellant.

Submitted April 24, 2023 — Decided April 27, 2023

Before Judges Whipple and Mawla.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Essex County, Docket
No. FV-07-3306-20.

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

Respondent has not filed a brief.

PER CURIAM

¹ We use initials pursuant to Rule 1:38-3(d)(9) and (10).

Defendant T.J.D., Jr. appeals from a final restraining order (FRO) entered in favor of plaintiff C.D. pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. We affirm.

On June 5, 2020, plaintiff filed a complaint alleging harassment and terroristic threats. She claimed that during a telephone conversation regarding the parties' child, defendant threatened to shoot and kill plaintiff, prompting her to call the police. Plaintiff also alleged defendant sent explicit photos of her to her boyfriend and sent her a screenshot of the transmittals and conversation with the boyfriend to her.

The trial judge conducted a two-day trial, and considered testimony from the parties, as well as plaintiff's sister and defendant's mother. The sister and the mother testified regarding the telephone call. However, because the trial judge did not find plaintiff proved defendant threatened her and dismissed the terroristic threats claim, we do not address this issue. Similarly, the judge dismissed certain other allegations of harassing Facebook communications, so we do not consider testimony which relates to those arguments.

The harassment claim was based on the transmittal of the nude photos. Plaintiff testified she was once defendant's supervisor and he had anger problems. She explained defendant began to harass her because the parties were

disputing parenting time. Although she tried to resolve the parenting time issues with defendant, he "decided that it had to go his way or the highway[,] even after the parties "came to an agreement." His behavior escalated after the parties received the results of a paternity test. Plaintiff expressed fear of being in defendant's presence during parenting time interactions. Defendant admitted he sent the nude photos of plaintiff to her and her boyfriend, and that it was "wrong" and "immature" of him to do, "[r]egardless of what the situation was"

The judge found plaintiff credible. He concluded the transmittal of the photos to the boyfriend constituted harassment, pursuant to N.J.S.A. 2C:33-4(a), because defendant knew the boyfriend would show the photos to plaintiff. The judge found there was "no legitimate purpose" for sending the photos other than "to harass, . . . cause annoyance[and] . . . irritation to . . . plaintiff." The judge cited McGowan v. O'Rourke,² where we affirmed the entry of an FRO in similar circumstances. He found defendant's animosity and attempts to antagonize plaintiff and the boyfriend, as well the fact the parties would be "tied together through a child," necessitated an FRO.

On appeal, defendant argues the transmittal of the photos was not a sufficiently egregious act to warrant entry of an FRO. He asserts the trial judge's

² 391 N.J. Super. 502 (App. Div. 2007).

findings plaintiff needed an FRO were unsupported because the predicate act did not establish a "threat of immediate or future harm[.]"

Our "review of a trial court's fact-finding function is limited." Cesare v. Cesare, 154 N.J. 394, 411 (1998). This is because "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). "Deference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Id. at 412 (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). We "should not disturb the 'factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Ibid. (quoting Rova Farms, 65 N.J. at 484). We review a trial court's conclusions of law de novo. T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App. Div. 2017) (citing S.D. v. M.J.R., 415 N.J. Super. 417, 430 (App. Div. 2010)).

We reject defendant's assertion the transmittal of the photos was not sufficiently egregious to find he committed an act of domestic violence pursuant to N.J.S.A. 2C:33-4(a). As the judge noted, the facts of this case are like

McGowan. There, despite the absence of a history of domestic violence, we concluded the defendant's transmittal of twelve sexually explicit photos of the plaintiff to her sister, and the threat to send the photos to others, was egregious and warranted an FRO. 391 N.J. Super. at 504, 506.

Here, the fact defendant did not threaten to send the photos to others beyond plaintiff and her boyfriend does not convince us McGowan is inapposite. Defendant sent multiple transmissions in the form of sending two photos separately to and then engaging in a conversation with the boyfriend. He then took the time to send plaintiff a screenshot of the conversation with the boyfriend. Sharing the illicit photos with a third party, and then letting plaintiff know about that transgression, demonstrates animosity.

The trial judge did not err when he found an FRO was necessary. He cited N.J.S.A. 2C:25-29(a), which requires a court to consider six factors in deciding whether an FRO is needed, including: "(4) The best interests of the victim and any child; [and] (5) In determining custody and parenting time the protection of the victim's safety"

Defendant's testimony demonstrated a lack of self-control. He conceded there was no valid purpose for his conduct. Under the circumstances, plaintiff's best interests, the child's best interests, and plaintiff's safety vis-à-vis

defendant's ability to exercise parenting time, required the interposition of an FRO.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION