# RECORD IMPOUNDED



SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2228-21

E.J.,

Plaintiff-Respondent,

v.

M.W.,

Defendant-Appellant.

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Submitted May 17, 2023 – Decided June 6, 2023

Before Judges Vernoia and Firko.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, FV-09-1259-14.

M.W., appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Defendant M.W.[1] appeals from a January 10, 2022 Family Part order denying his motion to dissolve a November 21, 2013 final restraining order (FRO) and an April 1, 2014 amended FRO entered pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, in favor of his grandmother, plaintiff E.J., based on a finding of the predicate act of harassment.[2] Based on our review of the record, and the arguments presented in M.W.'s brief on appeal, we conclude the evidence supports the court's determination defendant failed to demonstrate a substantial change of circumstances warranting relief from the FROs under the factors established in Carfagno v. Carfagno, 288 N.J. Super. 424 (Ch. Div. 1995). We therefore affirm the court's order denying defendant's motion.

[1] We use initials to refer to the parties to protect plaintiff's privacy and because the names of victims of domestic violence are excluded from public access under Rule 1:38-3(d)(10).

[2] We recognize the amended 2014 FRO became the operative order following its entry. We focus on the 2013 FRO because defendant's arguments supporting his motion in the trial court, and his arguments on appeal, solely concern what he claims was the erroneous entry of the 2013 FRO. He makes no arguments expressly concerning the 2014 FRO. In our discussion we sometimes refer to the "FROs" to make clear that although defendant's arguments are directed exclusively to the 2013 FRO, our analysis and conclusions apply to the 2013 FRO as well as the 2014 amended FRO.

I.

We glean the following facts from the evidence presented in support of defendant's motion. Plaintiff is defendant's eighty-three-year-old grandmother. Defendant is thirty-one years old and has "a history of head injuries beginning at age [eight] months and into adulthood, and cognitive, behavioral and mental health difficulties since childhood." According to a 2021 neuropsychological evaluation report he submitted to the motion court, defendant suffers from "recurrent major depressive disorder," "borderline personality disorder," "chronic pain[,] and sleep difficulties" which may emanate from his "pediatric brain injuries."

A. The 2013 FRO

On November 7, 2021, plaintiff filed a complaint against defendant seeking an FRO under the PDVA based on a claim defendant committed the predicate act of harassment. See N.J.S.A. 2C:25-19(a)(13) (defining harassment in violation of N.J.S.A 2C:33-4 as a predicate act of domestic violence under

the PDVA). On November 21, 2013, the court conducted a plenary hearing on the complaint and rendered a decision on plaintiff's claim.[3]

The court found defendant committed the predicate act of harassment based on "the testimony of the parties"; a letter written by defendant which "criticize[d]" plaintiff; and a finding "there were many, many phone contacts and phone calls and text messages" from defendant to plaintiff.[4] The court found "there were . . . many phone contacts" from defendant to plaintiff after "look[ing] at [defendant's] laptop" and "phone during his testimony" and hearing plaintiff's testimony. The court found "the letter [constituted] an act of harassment" because its "purpose" was "to annoy" plaintiff. The court also found "the great number of the phone contacts" and the content of defendant's text messages to plaintiff evidenced defendant's "purpose to harass" plaintiff.

Next, the court found plaintiff "witnessed [defendant] become very angry and . . . punch[] walls . . . ." The court concluded, based on that incident and defendant's numerous untoward contacts with plaintiff, "there is a need for the

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[3] The record on appeal does not include a transcript of the evidentiary portion of the November 21, 2013 hearing. The record on appeal includes only the court's oral decision given that day on plaintiff's FRO request.

[4] Defendant did not include the letter in the record on appeal in this matter.

[FRO] to be entered in order to prevent additional acts of domestic violence." The court entered the FRO the same day.

It appears defendant subsequently filed a motion for reconsideration of the FRO because the record on appeal includes an amended FRO, entered on April 1, 2014, referring in part to the court's denial of defendant's motion for reconsideration.[5] The amended FRO further states it was entered to delete the name of an individual listed in the original FRO as a person with whom defendant could not have any contact.

The original and amended FROs prohibited defendant from: committing "future acts of domestic violence"; visiting plaintiff's residence; "having any . . . communication with" plaintiff or her family; "making or causing anyone else to make harassing communications to" plaintiff or others; "stalking" plaintiff, "following" her, or "threatening to" harm, stalk, or follow her; and "possessing any and all fire-arms or other weapons."

[5] The appellate record does not contain either the pleadings submitted in connection with defendant's 2014 motion for reconsideration or the court's "memorandum of decision" referred to in the April 1, 2014 amended FRO.

Defendant did not appeal from the 2013 FRO. He also did not appeal from the amended 2014 FRO, which denied his reconsideration motion and continued the restraints against him.

B. The Trial Court's 2022 Decision

In June 2021, almost eight years after entry of the 2013 FRO and seven years after entry of the amended FRO, defendant filed a motion for an order vacating the FROs under Rule 4:50-1(f) and dissolving the FROs pursuant to N.J.S.A. 2C:25-29(d). The statute allows the court to dissolve or modify an FRO "[u]pon good cause shown."[6] N.J.S.A. 2C:25-29(d).

At the outset of the hearing on defendant's motion, defendant advised the court that he withdrew his request for relief under Rule 4:50-1(f) and he intended to proceed only on his request to dissolve the FROs under the statute.

[6] The statute allows dissolution or modification of an FRO upon good cause shown "but only if the judge who dissolves or modifies the order is the same judge who entered the order, or has available a complete record of the hearing or hearings on which the order was based." N.J.S.A. 2C:25-29(d). Here, the judge who issued the 2013 FRO retired prior to defendant's filing of the 2021 motion to dissolve the FRO. Accordingly, a different judge heard the motion to dissolve the FRO, and it appears the judge was provided with the transcript of the hearing on which the 2013 order was based because the court did not make any findings to the contrary. As noted, however, on appeal defendant has not provided either a transcript of the evidentiary portion of the 2013 hearing or the letter sent by defendant to plaintiff the court cited in its 2013 decision as support for its determination defendant committed the predicate act of harassment. See ibid.

Nonetheless, the court found defendant's Rule 4:50-1(f) motion was time-barred because it sought to modify an order entered in 2013, well more than one year before the 2021 filing of the motion to vacate the FRO.[7]

The court explained defendant's request for dissolution of the FRO under N.J.S.A. 2C:25-29(d) required either consideration of the factors set forth in Carfagno or "the victim's request" to dissolve the FRO. The court engaged in a colloquy with plaintiff, who appeared over the telephone and explained she was restricted to a nursing home due to her advanced years and health issues.

The court asked plaintiff a series of questions concerning whether she feared defendant and whether she consented to a dissolution of the FRO. Plaintiff provided a series of confusing and contradictory answers to those queries, variously stating: "I'm going to have to say, no, I don't fear him . . . [i]f that'll make you happy"; she did not want the FRO lifted; the FRO caused problems; she wanted "this case" to "end"; she was afraid defendant was "going to kill" her because he could not resist the impulse to do so; she had been upset by recent "calls" to her home; she was not "physically . . . able to" travel to the court; and she did not want to "upset" defendant, who "had several

[7] Again, the court did not directly address the 2014 amended FRO because defendant's arguments focused solely on what he claimed was the erroneous entry of the 2013 FRO.

hospitalizations for" "mental problem[s]." The court asked plaintiff if she "ha[d] no objection with the restraining order being lifted if [defendant] meets all the other [Carfagno] factors . . . ? Is that correct . . . ?" Plaintiff answered: "Yes, it is."

The court then noted that following its own review of the record, it concluded the FRO was "issued accurately" based on "credible evidence" presented in 2013.[8] As the court attempted to make further findings, defendant repeatedly interrupted to complain he had not been allowed to speak. Amid these interruptions, the court began explaining why it was focused on the Carfagno factors. Defendant stated: "I know what the factors are. You don't need to be my lawyer." The court replied: "Believe you me, I'm not being your lawyer. . . . I'm just explaining . . . the law [to you]."

The court permitted defendant to "explain . . . why the FRO should now be terminated . . . ." Defendant testified he attempted to appeal the FRO in 2013, but "had no money" because he was "briefly incarcerated . . . ." He then explained he sought to dissolve the FRO "for the well-being of [his criminal]

[8] The court noted it reviewed two transcripts from the 2013 FRO proceeding. On appeal defendant provides only one transcript from the 2013 proceeding and it is of the prior judge's decision granting plaintiff's request for the FRO.

record." He testified his criminal record contains only one conviction for "theft from a department store " but all other cases against him had been dismissed.

Defendant also discussed his "histories and records of brain injuries[,]" "neurological depression[,]" and "memory loss[,]" for which he has received treatment. Defendant argued he has "never been bipolar" and asserted the FRO states he is bipolar. Defendant explained the FRO "says . . . I'm bipolar and I don't know what . . . my name in the newspapers might be looked at in the . . . future by my . . . children" if that was not corrected.[9]

Defendant gave conflicting testimony regarding whether he had violated the FRO. Defendant first testified he had visited plaintiff once since the FRO was in place to "drop[] a letter off at her house." He later testified he had never contacted plaintiff while the FRO was in place.

Plaintiff testified defendant was "lying" and he visited her apartment in 2019 or 2020. When the court asked defendant to confirm or deny that visit,

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[9] Despite defendant's oft-repeated assertions to the contrary, neither the 2013 FRO nor the amended 2014 FRO described him as "bipolar." Defendant's appendix includes a November 7, 2013 complaint and amended temporary restraining order noting that "[plaintiff] states [defendant] is bipolar." The copy of the temporary restraining order included in the appendix is unsigned and bears a "superseded" watermark stamped across the document. The record does not include any orders stating defendant is bipolar.

defendant first refused to answer and then denied the visit. Later in the hearing, however, defendant testified he had visited plaintiff while the FRO was in place because his aunt asked him to bring plaintiff food.

Defendant testified he has no relationship with plaintiff and respected her "right" "to live a completely secluded life." Defendant told the court he had no intention to contact plaintiff following dissolution of the FRO because he was singularly motivated by his "record." The court confirmed with defendant he had never "been convicted of contempt" for violating the FRO.

Shortly before rendering its decision, the court again asked plaintiff if she wanted to dissolve the FRO.[10] Plaintiff answered: "Personally, no, but I know I have to." The court responded: "You're telling me no, but then you're crying and saying you're scared." Plaintiff then testified: defendant "receives a lot of money from the government"; defendant has had psychological issues since he was three years old; she "can't take the stress anymore"; defendant has visited her home "two, maybe three times" since the FRO was entered; she has "severe emphysema" and cannot leave her home; and she wants defendant to "stay away

[10] Neither the court nor the parties expressly addressed the operative 2014 amended FRO, but that is of no moment because the colloquy concerned defendant's request for the dissolution of the restrictions and limitations that were identically imposed as to defendant by the 2013 FRO and the amended 2014 FRO.

from" her. Plaintiff also testified she did not want the FRO dissolved because it has "been many, many years of torment and [she] cannot take much more." Plaintiff testified she believes defendant continues to pose a risk to her.

In its decision, the court made findings under each of the Carfagno factors. See 288 N.J. Super. at 435-42 (enumerating the eleven factors that should be considered in determining whether to dissolve an FRO). Under factor one — "whether the victim consents to lifting the restraining order" — the court found plaintiff's contradictory testimony, on balance, ultimately indicated she "wants [defendant] to stay away from her" and thus "does not . . . want the restraining order lifted." Under factor two — "whether the victim still fears the defendant" — the court found plaintiff was "audibly upset" and still fears defendant "will continue to contact her if" the FRO is lifted.

The court found under the third factor — "the relationship between the parties" — that there is no relationship between plaintiff and defendant. Under the fourth factor — "the number of times defendant has been convicted of contempt for violating the restraining order" — the court determined defendant violated the order once but was not charged with contempt based on the violation.

Under factor five — "whether defendant has a continued involvement in drugs or alcohol abuse" — the court found no evidence "to substantiate" such a finding. Under factor six — "[w]hether the defendant has been involved in any other acts of violence with other persons" — the court found credible defendant's testimony "he has not been involved in any other acts of violence," and found no other evidence "show[s] he has."

The court further found under the seventh factor — "[w]hether the defendant has engaged in counseling" — that defendant's "eight[-]page neuropsychological evaluation" showed he received treatment for "recurring major depressive disorder and borderline personality disorder." Under factor eight — the age and health of the defendant — the court found defendant is "physically healthy."

The court also made a determination under the ninth factor — "whether the victim is acting in good faith when opposing defendant's request" — that plaintiff "truly believes" she will be in danger if the restraining order is lifted. The court addressed factor ten — "whether another jurisdiction has another restraining order protecting the victim from the defendant" — explaining there was no record of such an order.

The trial court did not explicitly address factor eleven — other factors — finding no other factors it deemed relevant. The trial court did, however, commend defendant for seeking therapy and noted plaintiff "is an [eighty-three]-year-old elderly female . . . in a nursing home."

The court found that based on the totality of the factors the FRO should "remain in full force and effect." Before the hearing concluded, defendant requested the court amend the FRO so that it no longer identified him as "[b]ipolar." The court denied defendant's request as out of time, explaining "[t]hat would have had to have been done . . . within a year [of] when it was issued."

The court entered an order denying defendant's request for relief under Rule 4:50-1 and N.J.S.A. 2C:25-29(d). This appeal followed.

II.

The findings of a Family Part judge are "binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 412 (1998). The Family Part has "special jurisdiction and expertise" in these matters. Id. at 413. Therefore, a reviewing court should not disturb the trial court's fact-findings unless it is "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." Id. at 412 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)).

The Legislature enacted the PDVA to provide victims of domestic violence "the maximum protection from abuse the law can provide." N.J.S.A. 2C:25-18. However, "the Legislature did not intend that every final restraining order issued pursuant to the Act be forever etched in judicial stone." A.B. v. L.M., 289 N.J. Super. 125, 128 (App. Div. 1996). The PDVA allows for the dissolution or modification of an FRO "[u]pon good cause shown." N.J.S.A. 2C:25-29(d).

"Generally, a court may dissolve an injunction where there is 'a change of circumstances [whereby] the continued enforcement of the injunctive process would be inequitable, oppressive, or unjust, or in contravention of the policy of the law.'" Carfagno, 288 N.J. Super. at 433-34 (alteration in original) (quoting Johnson & Johnson v. Weissbard, 11 N.J. 552, 555 (1953)). A court should consider an application to modify or dissolve a domestic violence FRO "[o]nly where the movant demonstrates substantial changes in the circumstances that existed at the time of the final hearing" that resulted in the issuance of the FRO. Kanaszka v. Kunen, 313 N.J. Super. 600, 608 (App. Div. 1998).

To determine whether the movant has made such a showing, the court must consider the non-exhaustive list of factors set forth in Carfagno.[11] 288 N.J. Super. at 434-35; see also Sweeney v. Honachefsky, 313 N.J. Super. 443, 447-48 (App. Div. 1998) (applying the Carfagno factors in the assessment of a trial court's order denying a motion to dissolve a domestic violence FRO). A court must weigh the factors "qualitatively, and not quantitatively." Id. at 442.

The trial court must also explore and consider the history of the relationship and prior acts of domestic violence "to fully evaluate the

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[11] The factors include:

> (1) whether the victim consented to lift the restraining order; (2) whether the victim fears the defendant; (3) the nature of the relationship between the parties today; (4) the number of times that the defendant has been convicted of contempt for violating the order; (5) whether the defendant has a continuing involvement with drug or alcohol abuse; (6) whether the defendant has been involved in other violent acts with other persons; (7) whether the defendant has engaged in counseling; (8) the age and health of the defendant; (9) whether the victim is acting in good faith when opposing the defendant's request; (10) whether another jurisdiction has entered a restraining order protecting the victim from the defendant; and (11) other factors deemed relevant by the court.
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> [Carfagno, 288 N.J. Super. at 435.]

reasonableness of the victim's continued fear of the perpetrator" and "the necessity for continued protection." Kanaszka, 313 N.J. Super. at 607-08 (citations omitted). However, "[t]he linchpin in any motion addressed to dismissal of a final restraining order should be whether there have been substantial changed circumstances since its entry that constitute good cause for consideration of dismissal." Id. at 609.

In the assessment and weighing of the factors, a trial court must remain mindful of the Act's foundational principle that domestic violence victims should remain assured they are protected under the law. See N.J.S.A. 2C:25-18 (stating in part the intent of the PDVA is "to assure the victims of domestic violence the maximum protection from abuse the law can provide"). The Legislature expressly declared the foundational principle applies to protect "the health and welfare of some of [the State's] most vulnerable citizens, the elderly and disabled, [who] are at risk because of incidents of reported and unreported domestic violence." Ibid.

"With protection of the victim the primary objective, the [trial] court must carefully scrutinize the record and carefully consider the totality of the circumstances before removing the protective shield." Kanaszka, 313 N.J. Super. at 605. "The party asking to modify or dissolve the FRO has the 'burden

to make a prima facie showing [that] good cause exists for dissolution of the restraining order prior to the judge fully considering the application for dismissal.'" G.M. v. C.V., 453 N.J. Super. 1, 12-13 (App. Div. 2018) (alteration in original) (quoting Kanaszka, 313 N.J. Super. at 608). The movant must show "'substantial changes in the circumstances' from what existed at the final hearing for the court to 'entertain the application for dismissal' in order that the victim is not 'forced to repeatedly relitigate issues with the perpetrator, as that itself can constitute a form of abusive and controlling behavior.'" Ibid. (quoting Kanaszka, 313 N.J. Super. at 608).

Measured against these standards, we discern no basis to conclude the court abused its discretion in denying defendant's motion to dissolve the restraining order. The court considered and made findings as to each of the Carfagno factors and determined they weighed against the requested dissolution of the FROs. The court also considered plaintiff's testimony she continues to be fearful of defendant based on his prior actions, his lengthy mental health history, and her advanced years and frailty due to health-related issues. The court further noted that although defendant has not been charged with violating the FROs, plaintiff testified defendant visited her in the nursing home where she resided,

and defendant refused to respond to the court's questions about whether he had done so after first testifying he had never violated the FROs.

The court's findings as to the factors are supported by substantial credible evidence and those findings provide a proper basis for the court's determination defendant did not sustain his burden of demonstrating changed circumstances sufficient to warrant dissolution of the FROs. See Kanaszka, 313 N.J. Super. at 609. Defendant does not argue otherwise. We also defer to the court's special expertise in such matters, Cesare, 154 N.J. at 412-13, and affirm the court's determination defendant failed to sustain his burden of establishing an entitlement to the relief sought.

We also note defendant failed to demonstrate the sole changed circumstance that he argued supported his request. He claimed before the motion court the changed circumstance warranting dissolution of the FRO was that the court in 2013 determined the FRO was necessary in part because he suffered from bipolar disorder. In support of the claim, defendant presented a 2021 neuropsychological evaluation that did not include a bipolar disorder diagnosis. Defendant therefore asserted the circumstances under which the 2013 FRO had been issued had changed and he was entitled to a dissolution of the FROs on that basis.

Defendant's argument fails because it is founded on the inaccurate premise the court issued the FRO in 2013 based on a finding he had bipolar disorder. The record undermines the claim. As reflected in the transcript of the court's 2013 decision granting the FRO, the court did not make any finding defendant had bipolar disorder. Moreover, the 2013 FRO did not include such a finding. Similarly, the 2014 amended FRO does not include a finding defendant is bipolar. In sum, defendant's claim the 2013 FRO was issued based on an erroneous finding he suffered from bipolar disorder is unsupported by any competent evidence, and therefore defendant's reliance on the 2021 neuropsychological evaluation as demonstrating a change in circumstances warranting dissolution for the FRO is unavailing.

In his pro se brief on appeal, defendant argues there was no basis for the issuance of the 2013 FRO in the first instance. For example, he claims the letter he sent to plaintiff in 2013 that in part supported her claim he committed the predicate offense of harassment was not "illegal" because plaintiff sent a similar letter to her daughter a month earlier. He claims the record before the court in 2013 did not show he bullied, alarmed, intimidated, or had any intent to harm plaintiff. He also makes vague references to a criminal charge of theft plaintiff had filed against him for which he claims to have been found not guilty, and

claims "non-related arrests raised by [plaintiff] were not a pattern of behavior and [he was] adjudicated not guilty over [ninety-five] percent of [the] cases." He also declares he is not a violent person with bipolar disorder, but instead has been diagnosed with trauma injuries and major depression.

We are not convinced any of these claims require reversal of the court's order denying defendant's motion to dissolve the FRO. None of the claims is supported by citations to evidence, and a party's arguments asserted in a brief on appeal do not constitute evidence supporting relief from a court's order.[12] See, e.g., Rudbart v. Bd. of Review, 339 N.J. Super. 118, 122-23 (App. Div. 2001) ("Counsel's insertion in his appellate brief of facts outside the record below is inappropriate. Generally, when reviewing trial errors, we confine ourselves to the record."). Defendant's self-serving arguments that are untethered to competent evidence did not, and do not, support dissolution of the FROs.

Additionally, defendant's failure to include in the record on appeal the transcript of the evidentiary portion of the 2013 FRO hearing renders it

[12] We recognize defendant supported his claim he does not suffer from bipolar disorder with the neuropsychological evaluation report but, as we have explained, defendant's claim he does not suffer from bipolar disorder does not establish changed circumstances warranting dissolution of the FRO because the issuance of the 2013 FRO was not based on a finding he had bipolar disorder.

impossible to assess his claim the evidence at the 2013 hearing did not establish he presented an ongoing threat to plaintiff's safety. We cannot properly consider an argument on appellate review where the appellant fails to include the record of the trial court proceedings essential to that review. See In re Zakhari, 330 N.J. Super. 493, 495 (App. Div. 2000) ("Despite the indulgence with which we are ordinarily inclined to treat procedural deficiencies in the interests of justice, the deficiencies here cannot be overlooked since they make it impossible for us properly to review this matter."). For that reason, we reject any claim defendant is entitled to dissolution of the FROs based on the evidence presented at the 2013 hearing.

Defendant also argues the court erred by denying his motion to dissolve the FROs because he is not a violent person, he has no desire to harm plaintiff, and there are no "past incidents of actual harm" to plaintiff. Defendant therefore contends there was no basis for the motion court to conclude there is a current need to protect plaintiff from future acts of domestic violence. We reject the argument because it is founded on nothing more than defendant's self-serving declarations and it ignores that the court's analysis under the Carfagno standard supports its determination defendant did not sustain his burden of establishing an entitlement to a dissolution of the FROs.

As noted, defendant also does not offer any argument that the court erred in its findings or conclusions under the Carfagno standard. Indeed, defendant's brief on appeal does not address the Carfagno standard in any manner even though it governed the disposition of his motion.

Defendant's claim the court violated his constitutional right to a fair hearing by permitting a breakdown of courtroom decorum finds no support in the record. The record shows the court maintained appropriate decorum during the motion hearing, primarily by not allowing defendant to interrupt and speak over the court as it attempted to properly address the issues presented in an organized and thoughtful manner. Defendant was not denied proper courtroom decorum by the court. The court maintained proper decorum by refusing to allow defendant to disrupt it.

We also reject defendant's argument the court erred by denying his motion for relief from the FROs under Rule 4:50-1(f). The argument ignores that defendant expressly withdrew his request the court consider his motion under Rule 4:50-1. When the court noted at the outset of the proceeding that defendant moved under Rule 4:50-1(f) and N.J.S.A. 2C:25-29(d) for a dissolution of the FRO, defendant stated, "I just want to withdraw that rule that I'm relying on. I'm just going straight with the . . . statute." Defendant therefore waived any

claimed entitlement to relief under Rule 4:50-1(f) because he withdrew his arguments based on the Rule before the motion court. See N.J. Div. of Youth and Fam. Servs. v. M.C. III, 201 N.J. 328, 340 (2010) (quoting State v. Jenkins, 178 N.J. 347, 358 (2004)) (stating "a defendant cannot beseech and request the trial court to take a certain course of action . . . [and] then condemn the very procedure he sought").

Although defendant withdrew his request for relief under Rule 4:50-1(f), the court nonetheless briefly addressed the claim, finding it was time-barred because the motion was not made within one year of the 2013 FRO defendant sought to vacate. The court's conclusion was in error because the one-year time bar for the filing of motions to vacate final orders pursuant to Rule 4:50-1 applies only to motions filed under subsections (a), (b), and (c) of the Rule. R. 4:50-2. Defendant filed his motion pursuant to subsection (f) of Rule 4:50-1 and, as such, he was required to file his motion within "a reasonable time . . . after the judgment, order, or proceeding was entered or taken." Ibid.

Although the court erred in its conclusion defendant's Rule 4:50-1(f) motion is barred under Rule 4:50-2's one-year time bar, the court's determination defendant's motion is time-barred was correct. Defendant sought relief from the 2013 FRO based on claims the evidence did not support it and the FRO

wrongfully stated he suffered from bipolar disorder. Those purported facts were known to defendant in 2013, but he did not appeal from the FRO, nor did he file his motion to vacate the FRO until almost eight years later in 2021.[13]

Defendant's motion papers did not offer any reason for his long delay in filing the Rule 4:50-1(f) motion and, based on the circumstances presented, we find he did not file the motion within a reasonable time under Rule 4:50-2. See Romero v. Gold Star Distrib., LLC, 468 N.J. Super. 274, 296-97 (App. Div. 2021) (finding a Rule 4:50-1(f) motion was not filed within a reasonable time where the defendant waited 359 days after becoming aware of the grounds for the motion to file it); see also Jackson Constr. Co. v. Ocean Twp., 182 N.J. Super. 148, 152 (Tax Ct. 1981) (finding a nine-month delay unreasonable under Rule 4:50-2). Thus, for reasons different than those relied on by the motion court, we affirm its determination defendant's Rule 4:50-1(f) motion was untimely. See Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001) (explaining an appellate court may affirm an order for reasons different than

[13] As noted, the 2014 amended FRO stated defendant filed a motion for reconsideration of the 2013 FRO. Defendant did not include in the record on appeal any pleadings or transcripts of proceedings pertaining to the reconsideration motion. In any event, the amended FRO establishes that by 2014 defendant believed the 2013 FRO was entered in error such that it should be reconsidered and reversed. Yet, defendant waited another seven years to file his Rule 4:50-1(f) motion for relief from the 2013 FRO.

those relied on by the trial court because "appeals are taken from orders and judgments and not from opinions").

To the extent we have not expressly addressed any other arguments that may be discerned from defendant's merits brief on appeal, we find they are without 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