RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2947-21

S.A.,[1]

Plaintiff-Appellant,

v.

J.G.H.,

Defendant-Respondent.

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Submitted February 6, 2023 – Decided February 24, 2023

Before Judges Gooden Brown and Mitterhoff.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FV-12-1844-22.

Lowenstein Sandler LLP, attorney for appellant (Michael A. Kaplan and McKenzie A. Wilson, on the brief).

Respondent has not filed a brief.

PER CURIAM

[1] We use initials to protect the privacy of the parties and the confidentiality of these proceedings. Rule 1:38-3(d)(10).

Plaintiff S.A. appeals from an April 14, 2022 order dismissing her February 25, 2022 domestic violence complaint, vacating her April 8, 2022 Temporary Restraining Order (TRO), and denying her motion for a Final Restraining Order (FRO) against her ex-fiancée J.G.H. pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. We affirm.

We discern the following facts from the record. The parties dated for approximately seven years and were engaged. On or around February 22, 2022, plaintiff informed defendant that she did not want to move forward with the relationship or the marriage. The parties had planned to obtain their marriage license on February 25, 2022. Her decision to end the engagement and the relationship was based on a history of arguments between the parties, including arguments on September 7, 2021, January 1, 2022, February 19, 2022, and February 22, 2022.

On February 25, 2022, plaintiff applied for a TRO against defendant. The judge granted the TRO and granted an amended TRO on April 8, 2022. Plaintiff's amended TRO alleged two of the PDVA's predicate acts of domestic violence: harassment and terroristic threats.

On April 24, 2022, the parties appeared for an FRO hearing during which the parties characterized their history of arguments differently. During the hearing, plaintiff emphasized defendant's angry outbursts, his destruction of her property, and two alleged verbal threats to her physical well-being. Defendant admitted to being angry and upset and to destroying plaintiff's property. However, defendant testified to plaintiff's joint responsibility for the arguments, denied plaintiff's allegations that he physically threatened her, and provided a motive for plaintiff obtaining a TRO.

According to plaintiff's testimony, on September 7, 2021, defendant allegedly screamed, slapped the steering wheel of their car, and said, "I should smack your face, I just feel like smacking your face." Plaintiff emphasized her shock and fear. Defendant testified that he did not threaten plaintiff in any way and clarified that their argument began with plaintiff's abusive verbal treatment of defendant.

During her testimony, plaintiff alleged that on January 1, 2022, defendant "began getting really angry and enraged and name calling, [sic] and he began hitting, smashing holes in the walls, the cabinets, the bedroom door . . . everywhere." In his testimony, defendant admitted to being upset, but stated that he only punched a hole in the apartment wall. Defendant also testified that

both parties were responsible for the January 1 argument, that they apologized to each other afterwards, and that he paid for the damage.[2]

Plaintiff testified further that on February 19, 2022, defendant screamed at her, did not allow her to leave the argument, then grabbed plaintiff's phone from her hand "and smashed it on . . . the floor." Defendant testified that plaintiff instigated the argument, did not let him leave, and that he did not break her phone. Defendant testified that plaintiff became argumentative after he confronted her about her use of abusive language toward her eight-year-old special-needs son. Defendant further testified that plaintiff expressed fear that he would contact a child services agency—something he had never threatened to do.

According to plaintiff's testimony, on February 22, 2022, defendant allegedly forced plaintiff to close his car trunk at a laundromat. Defendant testified that he asked her to close the trunk during an argument and that nothing forceful or physical occurred. Defendant objected to plaintiff characterizing his actions and anger as random outbursts. Defendant testified that plaintiff incited the argument by insinuating "an infatuation with [his] co-workers."

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[2] $1,500.00 of the $1,900.00 security deposit retained for apartment damages, was defendant's money.

At or around the time the parties ended their relationship, plaintiff decided not to renew her lease and moved in with her mother. Before the move-out date, plaintiff replaced the locks on their apartment and left defendant homeless. Defendant slept in his car for about a week. On February 24, 2022,[3] defendant went to plaintiff's mother's house. Plaintiff testified that defendant called her on the drive over and said, "when I get there I'm going to f*** you up." In his testimony, defendant denied threatening plaintiff and noted that he was calling to determine whether he was still supposed to take her son to a doctor's appointment.

Upon arrival, defendant called plaintiff to ask her to come outside. When she did not, defendant knocked and rang the doorbell a number of times. During this period, plaintiff woke up and, feeling unsafe, asked her mother to text defendant to go away. Plaintiff's mother texted defendant asking him to leave and indicating that she would call the police if he did not comply. Defendant responded, texting, "I don't care . . . [I]f you call them they're going to have to shoot another black man tonight. I won't ring your bell, but again, I'm not leaving. I want to talk to her." Defendant, however, complied with plaintiff's

[3] Plaintiff incorrectly testified that defendant arrived on February 25, 2022.

mother's request to stop knocking and ringing the doorbell. Defendant drove away from the property at some time after midnight.

Plaintiff's mother called the police at some point before defendant left the property. At the recommendation of the police, plaintiff went to the police station and filed for a TRO that night. Defendant was not at plaintiff's mother's house when the police arrived. Defendant returned to the house at around 7:00 a.m. on February 25, 2022 and called plaintiff. Plaintiff informed him over the phone and through text message that she had filed for a TRO against him and that he could not contact her. Defendant testified that he was not served with the TRO on February 25th, and testified to doubting that a TRO had been filed against him. Defendant's testimony also clarified that he was intent on fixing his relationship and that he returned to plaintiff's mother's house to take plaintiff's son to the doctor's office, as he had promised earlier.[4]

Defendant continued to attempt to contact plaintiff through text-messages, telephone calls, and email messages until February 28, 2022. Approximately

[4] Defendant testified to caring for plaintiff's child over the parties' seven-year relationship. The child was eight at the time of their separation.

400 text messages, thirteen voice messages,[5] and thirteen emails were sent to plaintiff in that period. The content of the messages were not threatening and only reiterated defendant's desire to talk to plaintiff. Defendant had not been served with the TRO during his attempted communications. After defendant became aware that a TRO had been entered against him, defendant cut off all communication with plaintiff.[6]

When asked by the judge whether any of defendant's communications were "threats to [her]," plaintiff said, "[n]o." When asked by the judge why she was asking for an FRO, plaintiff said, "[s]o that I can just feel safe. My son could feel safe, and my mother, as well, could feel safe."

At the close of testimony, the judge provided a detailed oral opinion with credibility determinations and an analysis pursuant to the requirements of Silver v. Silver.[7] In addressing the first prong of Silver, the judge found that plaintiff failed to meet her burden of proof regarding the alleged predicate acts of terroristic threats and harassment. Regarding terroristic threats, the judge stated:

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[5] The messages were unintelligible and did not contribute to the court's understanding of plaintiff's claim.

[6] The record does not indicate a date of service. However, the record indicates that defendant was eventually served at his place of work.

[7] 387 N.J. Super. 112, 125-126 (App. Div. 2006).

> The [c]ourt does not find that plaintiff has met her burden of proof with regard to terroristic threats. . . I think the only thing that was [a] terroristic threat was the telephone conference call that the parties had on the way to . . . her mother's house where she says that he said that he was going to f[***] her up, and he denies that. And the [c]ourt finds that his testimony is far more credible than hers in that regard.

The judge also found that plaintiff failed to establish harassment. The judge stated:

> Plaintiff feeling harassed is not enough for an FRO. Evidence must reflect the defendant had the purpose to harass, annoy, and bother.
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> . . . .
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> Now, it's a close call here because of the number of communications, but the defendant testified credibly that he [was] upset as a result of the end of the seven-year relationship. . . .
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> The question is, was that a sufficient evidence of intent with the purpose to -- remember, I have to find that he had the purpose of harassing. . . . He had a relationship with the child. . . as well. He wasn't doing it to harass her. He was doing it to get her to -- to respond to him.
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> . . . .
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> And, you know, the [c]ourt -- it – that's why I said it's a close call, but the plaintiff has the burden of proof, and I don't find that she has met her burden of proof with regard to the allegations of harassment, although, I will tell you I -- I do agree that it's a very close call because of the sheer volume of the calls and the

> communications. But the [c]ourt does not find, and she was saying -- her testimony that when asked on a number of occasions like how did she feel when she got them that she was afraid or she was concerned. The [c]ourt did not find that to be particularly credible.

The judge then quickly addressed the second prong of Silver v. Silver. The judge stated:

> So, in order to grant the FRO, I have to find the predicate act of domestic violence, but also, even if I were to find that it was harassment based on the sheer volume of it, I have to find that there's an immediate danger and a necessity to protect the victim from domestic violence, and the Court did not find her testimony in that regard.

Ultimately the judge dismissed the TRO and denied plaintiff's request for an FRO.

Plaintiff presents the following arguments on appeal:

> POINT I
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> THIS COURT SHOULD REVIEW THE RECORD DE NOVO BECAUSE THE COURT BELOW APPLIED THE INCORRECT LAW (NOT RAISED BELOW).
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> POINT II
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> THE COURT BELOW ERRED IN FINDING THE EVIDENCE INSUFFICIENT TO ESTABLISH THE PREDICATE ACTS OF HARASSMENT AND TERRORISTIC THREATS.

A. Plaintiff Established the Predicate Act of Harassment by a Preponderance of the Credible Evidence.

B. Plaintiff Established the Predicate Act of Terroristic Threats by a Preponderance of the Credible Evidence.

POINT III

THE TRIAL COURT FURTHER ERRED IN FAILING TO CONSIDER ALL GROUNDS FOR ISSUING FINAL RESTRAINTS PURSUANT TO THE FACTORS SET FORTH IN N.J.S.A. 2C:25-29 (NOT RAISED BELOW).

Our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We typically accord deference to the Family Part judges due to their "special jurisdiction and expertise in family matters." Id. at 413. The judge's findings are binding so long as they are "supported by adequate, substantial, credible evidence." Id. at 412 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). Deference is particularly warranted where, as here, "the evidence is largely testimonial and involves questions of credibility." Ibid. (quoting In re Return of Weapons of J.W.D., 149 N.J. 108, 117 (1997)). Such findings become binding on appeal because it is the trial judge who "sees and observes the witnesses," thereby possessing "a better perspective than a reviewing court in evaluating the veracity of

witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)). Therefore, we will not disturb a judge's factual findings unless convinced "they are so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice. . . ." Rova Farms, 65 N.J. at 484 (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)).

We review de novo "the trial judge's legal conclusions, and the application of those conclusions to the facts. . . ." Elrom v. Elrom, 439 N.J. Super. 424, 433 (App. Div. 2015) (quoting Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)).

The protection of the PDVA and the issuance of an FRO may be appropriate where (1) the judge finds the plaintiff is a victim of domestic violence, as defined by the PDVA; (2) the plaintiff proves by a preponderance of the credible evidence that defendant committed an act of domestic violence as defined by N.J.S.A. 2C:25-19(a); and (3) the "restraining order is necessary, upon an evaluation of the factors set forth in N.J.S.A. 2C:25-29(a)(1) to -29(a)(6), to protect the victim from an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 125-27 (emphasizing that the judge must perform a two-prong analysis to determine whether the predicate act

occurred by a preponderance of the evidence and whether the victim must be protected from immediate danger or future harm).

After a careful examination of the record, we are satisfied that the evidence amply supports the judge's factual findings and that her legal conclusions are sound. The judge found that whether the predicate act of harassment was established was a close call. However, the judge found that even assuming the predicate act of harassment occurred, that an FRO was not warranted. The evidence largely rested on the credibility of the parties, and we see no reason to question the judge's finding that defendant was more credible.

Affirmed.