

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-3172-21**

K.E.Z.,¹

Plaintiff-Respondent,

v.

J.H.,

Defendant-Appellant.

Submitted August 1, 2023 – Decided August 8, 2023

Before Judges Firko and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Cape May County,
Docket No. FV-05-0428-22.

Jacobs & Barbone, PA, attorneys for appellant (Louis
M. Barbone and Michael A. Ortiz Jr., on the brief).

Coalition Against Rape & Abuse Law Project,
attorneys for respondent (Jane Molt, on the brief).

¹ We use initials to protect the parties' privacy and the confidentiality of these proceedings in accordance with R. 1:38-3(d)(10).

PER CURIAM

Defendant J.H. appeals from a final restraining order (FRO) entered against him pursuant to the Prevention of Domestic Violence Act of 1999 (PDVA), N.J.S.A. 2C:25-17 to -35, in favor of plaintiff K.E.Z., his former girlfriend. Defendant claims the Family Part judge 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 judge's findings, we affirm.

I.

The facts were established at the one-day trial in May 2022. Both parties were represented by counsel. No items were introduced into evidence by either party. At the commencement of the hearing, defendant stipulated that he previously had a dating relationship with plaintiff. He also stipulated to the predicate act of stalking, by placing a GPS tracking device on plaintiff's car. The hearing proceeded on the sole issue of whether plaintiff needed the protection of an FRO.

Stalking occurs when someone "purposefully or knowingly engages in a course of conduct directed at a specific person that would cause a reasonable

person to fear for his safety of a third person or suffer other emotional distress."

N.J.S.A. 2C:12-10(b). For the purposes of stalking:

(1) "Course of conduct" means repeatedly maintaining a visual or physical proximity to a person; directly, indirectly, or through third parties, by any action, method, device or means, following, monitoring, observing, surveilling, threatening, or communicating to or about, a person, or interfering with a person's property; repeatedly committing harassment against a person; or repeatedly conveying, or causing to be conveyed, verbal or written threats or threats conveyed by any other means of communication or threats implied by conduct or a combination thereof directed at or toward a person.

(2) "Repeatedly" means on two or more occasions.

(3) "Emotional distress" means significant mental suffering or distress.

(4) "Cause a reasonable person to fear" means to cause fear which a reasonable victim, similarly situated, would have under the circumstances.

[N.J.S.A. 2C:12-10(a).]

Plaintiff testified she dated defendant for about four months. When plaintiff ended the relationship because she became involved in another romantic relationship, she testified defendant became "clingy" and "would overstep boundaries." Following their breakup, defendant sent plaintiff a "few drunken sexting texts." Defendant asked plaintiff if he could drop off a

Christmas present he had bought for her. Plaintiff agreed but told him to leave it in her mailbox and that she did not want to see him or have anything to do with him.

The next month while doing maintenance on her car, plaintiff testified she found a GPS tracking device near the rear camera. After plaintiff sent defendant a text message asking him if he installed the GPS tracking device on her car, he admitted that he did so in November when her car was parked at his house. Plaintiff notified the police about the tracking device, and defendant was arrested for stalking on January 27, 2022.

Defendant is a police officer. Plaintiff testified she learned the prosecutor was negotiating an agreement to reinstate defendant to active-duty status, but he would not be prohibited from contacting her. Feeling "extremely unsafe and scared," in "fear" of her life, and that no one was on her side, plaintiff filed a domestic violence complaint and requested a temporary restraining order.

Plaintiff testified she wanted an FRO even though defendant promised to never contact her again because he lied to her about when and where he actually installed the GPS tracking device on her car—at the hospital parking lot where she works—he knew where she lived, where she worked, and she believed defendant was "completely obsessed" with her. Plaintiff explained there are

many large parking lots where she works, and defendant had to drive around to look for her car since she never told him where she parks her car.

Defendant testified that he is employed by the Ocean City Police Department and the Air National Guard. He asked plaintiff not to go to the police about the incident. Defendant admitted he sent plaintiff a text message taking responsibility for what he did and apologizing to her. He advised her in the text message that he would never try to contact her again. In response to questions from the judge, defendant admitted to installing the GPS tracking device, which he monitored from his cellular phone, in early November at the hospital where plaintiff works. Defendant testified he "had doubts about whether [plaintiff] was being exclusive[,] " and by installing the GPS tracking device, he'd be "able to figure out whether she was or not." No other witnesses testified.

Defendant moved to dismiss the complaint and TRO. The judge denied the motion. Following the parties' testimony and the motion to dismiss, the judge placed his decision on the record. The judge noted that placing a tracking device on a car that can be surveilled on a phone is a violation of the criminal code. The judge found plaintiff testified "very credibly" that the nature of defendant's actions and his failure to remove the GPS tracking device or take

corrective measures caused her to be "afraid." In addition, the judge highlighted that the parties move in "similar social circles," and plaintiff doesn't want to run into defendant. The judge found defendant "credibly" testified he understands his obligation, "which is simply to remove himself from any position in which he may find [plaintiff]," but that did not dissuade the judge from issuing the FRO.

The judge analyzed the second Silver prong and noted an FRO was necessary to protect plaintiff from any future acts of domestic violence given the efforts defendant undertook to place the GPS tracking device, "his willingness to allow it to remain there," and defendant's ability to track plaintiff's every move for over two months. The judge reasoned that in the absence of an FRO, defendant may have another "lapse in judgment" and track plaintiff again. This appeal followed.

II.

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 that a plaintiff bears the burden of demonstrating both prongs of Silver v. Silver, including the necessity to prevent imminent injury or further abuse, in order to obtain an FRO. J.D. v. M.D.F., 207 N.J. 458, 475-76 (2011) (citing Silver, 387 N.J. Super. at 125-27).

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.").

Applying these principles, we conclude there is no basis to disturb the factual findings or legal conclusions of the judge, who heard the testimony of the parties. The judge had the opportunity to assess their credibility based on believability and their demeanor. Defendant points to no evidence in the record that undermines the judge's credibility findings.

The judge's finding that plaintiff needs an FRO is supported by defendant's admission and the judge's finding that defendant placed a GPS tracking device on plaintiff's car allowing him to know where she was at all hours of the day just before and after their breakup. Defendant's apology and promise not to stalk plaintiff again is of no consequence; the fact he tracked her whereabouts to know her location and who she was with satisfied the elements of stalking. Moreover, the GPS tracking device was hidden and would not have been discovered unless plaintiff had her car serviced. We discern no basis to disturb the judge's adequate findings that an FRO was necessary to protect plaintiff, as they are supported by his determination that plaintiff gave very credible testimony.

To the extent we have not specifically addressed any of defendant's arguments, we conclude they lack 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