SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3241-20

E.B.,

Plaintiff-Respondent,

v.

A.B.,

Defendant-Appellant.

Submitted November 9, 2022 – Decided February 6, 2023

Before Judges Geiger and Susswein.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Camden County, Docket No. FV-04-1984-20.

Zucker, Steinberg and Wixted, PA, attorneys for appellant (David W. Sufrin, on the brief).

David M. Lipshutz, attorney for respondent.

PER CURIAM

Defendant, A.B., appeals from a series of Family Part orders relating to the final restraining order (FRO) entered in favor of plaintiff, E.B., pursuant to

the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. [1] Defendant argues the trial court abused its discretion in entering the FRO and erred in denying his motion to vacate the FRO and his motion for reconsideration. Defendant also contends that the trial court was biased against him. After carefully reviewing the record in light of the governing legal principles, we affirm.

I.

Because this domestic violence litigation has a complex procedural history, we recount the pertinent events in detail. Plaintiff and defendant were married in October 2014. They have one child together, born in April 2016. In 2016, they moved to Collingswood, where they purchased their marital home.

On February 3, 2020, plaintiff filed a domestic violence complaint alleging that defendant committed five predicate acts of domestic violence against her: assault, criminal restraint, sexual assault, criminal sexual contact, and harassment. Plaintiff was granted a temporary restraining order (TRO) on

[1] We use initials to protect the identity of E.B., a victim of domestic violence, and to preserve the confidentiality of these proceedings. R. 1:38-3(d)(10).

the same date. Furthermore, defendant was arrested and charged by complaint with six indictable crimes, including aggravated sexual assault.[2]

Following a trial on February 24, 2020, the trial court entered an FRO. At the trial, both plaintiff and defendant were represented by counsel. Plaintiff testified at length, and defendant's attorney cross-examined her. Defendant did not testify or call any witnesses.

Plaintiff testified that, over the course of their marriage, she was repeatedly subjected to non-consensual anal sex, which she described as violent. She also described incidents where she felt coerced into oral sex acts, and incidents where defendant grabbed her or held her down during nonconsensual sexual encounters. Plaintiff also described an incident when she was walking with their then-one-year-old-child in a car seat when defendant "grabbed the car seat, and put his hand on [her] neck" and "pushed [her] against the wall."

The trial court found that plaintiff had been sexually abused, stating:

> Okay. I'm going to make a finding at this juncture of the issuance of a final restraining order. I've heard clear, credible evidence that the plaintiff has been sexually abused. I make a finding under Cesare v. Cesare, 154 N.J. 394 (1998). When there [are]

[2] Defendant was subsequently indicted for aggravated sexual assault and pled guilty pursuant to a plea agreement to criminal coercion. In a separate appeal, plaintiff seeks to withdraw his guilty plea.

> egregious acts of domestic violence, the [c]ourt can find and issue a final restraining order.
>
> There is clear, credible evidence of egregious acts of domestic violence. Plaintiff's credibility is intact. Plaintiff is satisfied. And while there may have been [ninety] percent consensual, [ten] percent non-consensual, rape is still rape. You can never, ever force yourself on your spouse under any circumstances. Rape is rape.
>
> And I'm satisfied that there [was] rape occurring here, and plaintiff is entitled to a final restraining order.

Defendant subsequently filed a motion to vacate the FRO. On January 27, 2021, the trial court convened argument on that motion. Due to procedural deficiencies in the motion papers, the court entered an order relisting the motion hearing for March 1, 2021 and directing that the motion, cross-motion, and exhibits were to be resubmitted to the court by both parties in the proper format.

On March 1, 2021, the parties returned to court and the trial judge heard oral argument on defendant's resubmitted motion to vacate the FRO based on newly discovered evidence. Defendant did not ask the trial court to vacate the FRO under a showing of good cause pursuant to the PDVA, which was the basis asserted for the prior motion to vacate. Instead, the resubmitted motion sought to vacate the FRO under Rule 4:50-1(b).

At the March 1, 2021 hearing, defendant submitted short video clips taken from hours of surreptitiously recorded Zoom parenting calls. He argued this evidence demonstrated that plaintiff perjured herself at the FRO hearing and was willing to "sell" the protection under the FRO for money from defendant. After viewing some clips prepared and presented by defendant's counsel, the trial court stated,

> I will again review these videos, [which] as [plaintiff's counsel] points out, are somehow edited from many hours of videos. [They] are extremely poor quality but I get the point. I should have had a brief analyzing the verbatim comments that you want to raise as a basis for the dismissal, something that you would be required to do if you put this case in the Appellate Division, but you've not done for me.

The trial court directed defendant's counsel to submit a brief outlining which videorecorded comments allegedly raised a basis for dismissing the FRO. The court also allowed plaintiff's counsel an opportunity to submit a brief in response. The trial judge advised counsel that he would render a decision based on those submissions. On April 28, 2021, the trial judge entered an order maintaining the FRO and denying the motion to vacate.

Defendant filed a motion for reconsideration as well as for "rehearing or a new trial based on newly discovered evidence." On July 7, 2021, the trial court convened arguments on the reconsideration motion. At that hearing, defendant

raised substantially the same argument he raised at the motion to vacate hearing, contending that the videos constituted newly discovered evidence that necessitated a new FRO hearing. Defendant also argued he should have the chance to testify, claiming he "didn't have the opportunity to be heard" at the FRO trial given the "bogus criminal charges." In response to this claim, the trial judge clarified that defendant had chosen not to testify at the FRO hearing, at which he was represented by counsel. The trial judge commented that defendant "could have just accepted an indefinite restraining order and then when he cleared up his criminal matters come back and ask for a trial[;] . . . he had an attorney, and the attorney did not ask for that relief."

The trial court denied defendant's motion for reconsideration or rehearing, finding there was no basis for relief. The trial court explained:

> I find the defendant's conduct of communicating with the plaintiff to be outrageous, to be outrageous communication that violates the restraining order, clear violation of the restraining order. He could be charged in my opinion[,] and he could be convicted in my opinion. That's what I've seen in this matter. I don't see any Carfagno analysis[3] here that would entitle him to relief under that decision. I find that the defendant is horribly in violation of the restraining order. . . .

[3] Carfagno v. Carfagno, 288 N.J. Super. 424, 435 (Ch. Div. 1995). Carfagno "offers a framework of legal analysis that may be followed when faced with an application to dissolve a final restraining order under N.J.S.A. 2C:25-29(d)." Id. at 434.

> The [c]ourt finds that there is no basis of granting any relief. The defendant pled guilty to coercion of the plaintiff. Now if he didn't give a full factual statement, so be it, but that's where the charges were and that was the plea agreement. He pled guilty. That was the plea agreement. Yeah, he pled guilty, he wanted to get out of jail, but that's what we have here.
>
> I can't assume that the Appellate Division is going to open this case up and reverse it. I have to assume that he pled guilty to coercion of the plaintiff. I see that there is nothing here that requires a reversal of the [c]ourt's original decision[,] and the [c]ourt will sustain the findings it has entered previously. Thank you.

Defendant raises the following contentions for our consideration on appeal:

> POINT I
>
> THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ENTERED A FINAL RESTRAINING ORDER WITHOUT TESTIMONY SUFFICIENT TO DESCRIBE A PREDICATE [ACT] OR A NEED FOR AN FRO.
>
> POINT II
>
> THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT'S MOTION TO VACATE THE FRO AND FOR RECONSIDERATION.
>
> POINT III
>
> THE TRIAL COURT GRATUITOUSLY AND IMPROPERLY CHARACTERIZED

[DEFENDANT]'S CONDUCT AS "OUTRAGEOUS" CONTEMPT OF THE FRO.

II.

We begin our analysis by acknowledging the foundational legal principles governing this appeal. The scope of our review of Family Part orders is narrow. Appellate courts "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.'" C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020) (quoting J.D. v. M.D.F., 207 N.J. 458, 482 (2011)). Moreover, "[d]eference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Cesare, 154 N.J. at 412 (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). Accordingly, we will not disturb the factual findings of the trial judge unless they are so "manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." C.C., 463 N.J. Super. at 428 (quoting S.D. v. M.J.R., 415 N.J. Super. 417, 429 (App. Div. 2010)).

"Only when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' should [we] intervene and make [our] own findings to ensure that there is not a denial of justice." N.J. Div. of Youth & Fam. Servs. v. E.P., 196

N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007)). To the extent the trial court's decision implicates questions of law, we independently evaluate those legal rulings de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

The PDVA is designed to "assure the victims of domestic violence the maximum protection from abuse the law can provide." N.J.S.A. 2C:25-18. However, "[t]he Legislature did not intend that every final restraining order issued pursuant to the [PDVA] be forever etched in judicial stone." A.B. v. L.M., 289 N.J. Super. 125, 128 (App. Div. 1996). Accordingly, a court may vacate an FRO upon good cause shown. N.J.S.A. 2C:25-29(d). Carfagno established eleven factors a court must weigh to determine if a defendant established the requisite good cause. 288 N.J. Super. at 435; accord T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App. Div. 2017).

III.

We first address defendant's contention that the trial court erred by denying his motion to vacate the FRO. Defendant's motion to vacate was not framed as a Carfagno motion.[4] Nor did he seek to vacate the FRO upon a

[4] Despite not pursuing a Carfagno motion below, defendant asserts on appeal that the court should have applied the "factually-applicable Carfagno factors" sua sponte.

showing of good cause under the PDVA. Instead, defendant sought to vacate the FRO pursuant to Rule 4:50-1, citing newly discovered evidence. Defendant now argues that the trial court nonetheless should have determined whether he established the requisite good cause to vacate the FRO even though he never attempted to make such a showing. The trial court clarified the exact basis for relief at the hearing on March 1, 2021 in the following colloquy:

> THE COURT: All right. . . . [I]s this a motion for new trial?
>
> [DEFENDANT'S COUNSEL]: A motion to vacate a mistake that the [c]ourt made almost exactly a year ago. May I continue with my presentation, Judge?
>
> THE COURT: Well, I'm just trying to answer questions. I like questions answered. So are we making a motion to vacate based on Carfagno?
>
> [DEFENDANT'S COUNSEL]: No. Of course not.

Accordingly, we review defendant's motion under Rule 4:50-1(b), which permits a court to relieve a party from a final judgment based upon "newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under Rule 4:49."

"Courts should use Rule 4:50-1 sparingly, in exceptional situations," in order to prevent "a grave injustice." Hous. Auth. of Morristown v. Little, 135

N.J. 274, 289 (1994). Rule 4:50-1 is "designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." Triffin v. Maryland Child Support Enf't Admin., 436 N.J. Super. 621, 629 (App. Div. 2014) (quoting Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)). "The trial court's determination under the rule warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). Abuse of discretion occurs where a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Ibid. (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

To prevail under Rule 4:50-1(b), the moving party must show "that the evidence would probably have changed the result, that it was unobtainable by the exercise of due diligence for use at the trial, and that the evidence was not merely cumulative." DEG, LLC v. Twp. of Fairfield, 198 N.J. 242, 264 (2009) (quoting Quick Chek Food Stores v. Twp. of Springfield, 83 N.J. 438, 445 (1980)). The party seeking relief must satisfy all three requirements. Ibid. Moreover, this category of newly discovered evidence "does not include an

attempt to remedy a belated realization of the inaccuracy of an adversary's proofs." Ibid.

We are satisfied that defendant did not make an explicit showing of the three requirements under Rule 4:50-1(b). Defendant's argument at the hearing on the motion to vacate rested on video clips presented to the court. The trial court viewed those clips and agreed with plaintiff that, when viewed in context, they do not demonstrate that plaintiff committed perjury at the FRO hearing as defendant claims. The trial judge further explained:

> And the way [defendant] spoke to the plaintiff leading her down the line of, well, that didn't really happen, it was almost as a professional attorney could ask leading questions in the time of a trial. That's what occurred. Those comments were vague at best. I see no basis whatsoever of granting any relief in this matter.

We accord substantial deference to the trial judge's factual findings. C.C., 463 N.J. Super. at 428. Moreover, his findings are supported by the evidence in the record, and there is no indication that he abused his discretion. Accordingly, defendant has failed to establish a basis to overturn the denial of his motion to vacate the FRO.

IV.

We turn next to defendant's contention the trial court erred in denying his motion for reconsideration. Once again, the scope of our review is limited. See

Brunt v. Bd. of Trs., Police & Firemen's Ret. Sys., 455 N.J. Super. 357, 362 (App. Div. 2018). "[A] motion for reconsideration 'is not properly brought simply because a litigant is dissatisfied with a judge's decision, nor is it an appropriate vehicle to supplement an inadequate record.'" Guido v. Duane Morris LLP, 202 N.J. 79, 87 (2010) (internal citation omitted). Rather, a motion for reconsideration "is primarily an opportunity to seek to convince the court that either 1) it has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the court either did not consider, or failed to appreciate the significance of probative, competent evidence." Id. at 87–88. "We will not disturb the trial court's reconsideration decision 'unless it represents a clear abuse of discretion.'" Ibid. (quoting Hous. Auth. of Morristown, 135 N.J. at 283).

Here, defendant essentially reargued the merits of his motion to vacate the FRO. At the reconsideration motion hearing, defendant's argument, made by new counsel, morphed into an "appeal to [the court's] sense of equity" to allow defendant to testify at this point, reasoning that the "newly discovered evidence" provided a basis upon which the court could reevaluate the FRO. The trial court rejected that argument, finding that "[t]here is nothing really new here. I have

a lot more documentation. I think I counted 107 pieces of documents, but that's the ruling this [c]ourt makes."

The trial court also rejected defendant's argument that he should be given a rehearing because he had been prohibited from testifying at the FRO trial. The record clearly shows defendant voluntarily chose not to testify at the FRO trial and accepted a plea bargain with respect to the related criminal charges, entering a guilty plea to criminal coercion. The trial judge stressed that defendant chose not to testify at the FRO hearing, at which he was represented by counsel. The record confirms he did not seek to adjourn the civil FRO hearing pending the resolution of the related criminal charges. Moreover, had defendant chosen to testify, his testimony could not have been used in the criminal proceeding arising out of the same incident. See N.J.S.A. 2C:25-29(a).

Defendant has thus failed to show that the trial court's decision was "based upon a palpably incorrect or irrational basis" or that the trial court "either did not consider, or failed to appreciate the significance of probative, competent evidence." Kornbleuth v. Westover, 241 N.J. 289, 301 (2020). Nor has defendant established that the trial court otherwise abused its discretion in denying his motion for reconsideration. See ibid.

V.

We need only briefly address defendant's contention that the trial court was "palpabl[y] biased" against him. Defendant contends that the trial court's bias is reflected in its characterization of defendant's conduct as "outrageous" and that this bias "severely prejudiced the proceedings below." We note that defendant did not file a motion to recuse the trial judge pursuant to Rule 1:12-2. Nor does the record in this matter disclose any basis to conclude that the trial judge should have disqualified himself on the court's own motion. See R. 1:12-1. We stress that "[b]ias cannot be inferred from adverse rulings against a party." Strahan v. Strahan, 402 N.J. Super. 298, 318 (App. Div. 2008).

We add that defendant's assertion that the trial court "complete[ly] refus[ed] to view the exculpatory videographic evidence placed before it" is belied by the record. During the March 1, 2021 hearing on defendant's motion to vacate, the court confirmed that it viewed the video evidence. Later in that hearing, the judge allowed clips of the videos to be played, and transcripts of the video clips played by defendant's counsel are in the trial transcript.

At the July 9, 2021 hearing, the trial court declined to play the videos during the hearing, but it is clear that the court had viewed the videos. The trial court explained, "[c]ounsel with all due respect, I've spent untold number of

hours reviewing the submissions. I counted just over a hundred exhibits, some a couple pages and some many pages and some long videos" and referred to the content of the videos during his analysis recounted above. Furthermore, defendant's counsel acknowledged in the July hearing that the trial judge had watched the video in the March hearing.

To the extent we have not specifically addressed them, any remaining arguments raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.