RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3495-21

S.A.P.,[1]

Plaintiff-Appellant,

v.

J.L.,

Defendant-Respondent.

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Submitted April 18, 2023 – Decided May 15, 2023

Before Judges Geiger and Chase.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FV-12-2154-22.

Andrew Seewald, attorney for appellant.

Sanvenero & Cittadino, attorneys for respondent (Richard Sanvenero, Jr., of counsel and on the brief; Terence C. Natale, on the brief).

PER CURIAM

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

Defendant, J.L. appeals from a final restraining order (FRO) entered against him under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to-35 (the Act), and in favor of his wife, plaintiff S.A.P. Because the evidence at trial supports the court's finding that J.L. committed a predicate act of domestic violence, see N.J.S.A. 2C:25-10(a), and that a FRO was necessary to prevent further abuse, see N.J.S.A. 2C:25-29(b), we affirm.

In her complaint seeking a temporary restraining order (TRO) under the Act, S.A.P. alleged J.L. committed three different predicate acts: stalking, N.J.S.A. 2C:12-10, and contempt of a domestic violence order, N.J.S.A. 2C:29-9, for incidents on November 3, 2021, and November 8, 2021; and harassment, N.J.S.A. 2C:33-4, for an incident on March 30, 2022. In her complaint, S.A.P. also alleged thirty-two previous acts of domestic violence committed against her by J.L., including sexual assault and physical violence.

Trial proceeded on May 13, 2022, with both parties being represented by counsel. At the time, S.A.P. and J.L. were married, having had three children together ages ten, seven, and six. S.A.P. testified that she had obtained a prior TRO against J.L. in October of 2021, which was dismissed when the parties agreed upon civil restraints in their pending divorce action. S.A.P. and J.L. had operated a used car dealership together for many years.

S.A.P. testified that after she received her first TRO in October 2021, J.L. violated it the following week. On November 3, 2021, S.A.P., a friend, and the friend's son were moving office furniture from the car lot to her home three miles away. S.A.P. stated that it was after 7:00 p.m., and J.L. was sitting on the corner of Buckelew Avenue and Schoolhouse Road watching her drive by. J.L. then texted her friend calling him a scumbag and a few days later texted S.A.P. that he was watching her and had photographs of her using the company tow truck to move furniture. S.A.P. produced GPS data[2] showing the car J.L. was driving at the time S.A.P. stated she was driving by.

S.A.P. went on to testify that on November 8, 2021, she was driving on Route 33 when she heard beeping and looked over to see J.L. in his car beeping and waving. S.A.P. confirmed it was J.L.'s car through the GPS logs. S.A.P. was terrified because J.L. had found out where she was on two occasions and that he always shows up where she is.

S.A.P. testified that she and J.L. communicate almost exclusively through text messaging. S.A.P. testified that on March 30, 2022, J.L. sent her a litany of text messages calling her a "trash bag," "scumbag," "low life," "Staten Island trash," and "just constantly different names." After texting her and stating, "real

[2] The car dealership placed GPS in its cars for repossession purposes.

smart, dip shit," J.L. continued with "you are total trash . . . . [I] should have left your trash after I found you. Let me see my kids, low life."

S.A.P. further testified J.L. is "constantly on the attack for me for every little thing . . . every day and it's all of these things and it's just not fair." S.A.P. elaborated on other threatening text messages sent to her by J.L., including that "he just tells me he's going to lock me up, he's going to put me in an orange jumpsuit, it looks better on me than it would on him; that he is going to the State for tax evasion[,] . . . he is going to put me behind bars, you know if I don't give him what he wants."

S.A.P. then testified as to the J.L.'s incessant name calling, stating:

> he has called me a cunt, an asshole, a whore, low life, scum, trash. He's called me every imaginable name you can possibly think of. On any specific day, it could have been for any reason, and I can show you his text messages to show it. It's been a lot and it's overwhelming and it's all the time. It's not a one-time incident where he calls me these names and, you know, he says it in front of the kids and stuff, so I don't know exactly the time without seeing like the reasoning behind it until I see the messages.

S.A.P. testified further that J.L.'s actions are concerning because:

> It's threatening. It's scary. I'm actually really scared that I have people watching everything I do. He's telling me there's people watching me, my neighbors are watching me, this one is watching. Everybody is watching me. Everybody reports to him like he's

> constantly watching everything I do, and the kids do, and it scares me a lot. I'm terrified of it.

Regarding prior acts of domestic violence, S.A.P. testified the abuse against her started in 2012, and grew progressively worse as time went on. S.A.P. testified that J.L. would tell her that if she didn't have sex with him, he wouldn't do things for the business. Or, in the alternative, that if S.A.P. did engage in intercourse, she would have the "best life." She testified that J.L. would make these comments in front of their children. She continued, disclosing that J.L. would tell the children, "We can't go out to dinner tonight because mommy won't be with me" and then he would "put his hands up my shirt or down my pants in front of them."

S.A.P. stated that one day they had an argument about money and that after she fell asleep with the baby in her arms and her son next to her, J.L. woke her up by punching her in the lower back. S.A.P. testified that J.L. had also pulled her out of the kids' bunkbed and woke her up by smacking her in the face with socks and threatening her. According to S.A.P., J.L. also woke her up by placing his fingers inside of her or shining a flashlight in her eyes when she slept. She also testified that J.L. told her "He wanted to take video of [her] so he wouldn't regret what he was going to do." Per S.A.P., J.L. would constantly scream at her, corner her into kitchen cabinets and throw water bottles at her.

He also threatened to bash her head through a glass window. S.A.P. admitted on cross-examination that on one occasion, she had texted J.L. that he was a scumbag for not paying child support.

J.L.'s motion to dismiss the complaint at the end of S.A.P.'s case was denied by the trial court. J.L. then testified he was driving during the highway incident on November 3, 2021, and that he just happened to drive past their business's tow truck with his friend driving it. He was surprised and upset that his friend did not tell him he was helping his wife, so he texted him "scumbag." J.L. denied ever threatening, punching, or sexually assaulting S.A.P. at any time. J.L. also testified that he just wants the divorce to be over. He testified that he never beeped or waved at S.A.P. and the car he was driving had tinted windows that prevented S.A.P. from seeing if he was waving. He went on to testify that the text messages with S.A.P. were only about the business.

The trial court rendered an oral decision. After finding the Act applied because of the parties' relationship, the trial court found S.A.P. had not proven by a preponderance of the evidence that J.L. committed stalking or contempt of the first TRO in November 2021. However, the court found that the text messages from March 30, 2022, constituted harassment and S.A.P. needed a FRO to protect her from J.L. As such, a FRO was issued against J.L.

J.L. raises two issues on appeal for our consideration:

> I. Whether the trial court considered the totality of the circumstances and evidence in its decision.
>
> II. Whether the trial court disregarded the well-settled precedent that vulgar language between divorcing spouses does not constitute grounds for issuance of a FRO.

I.

The scope of our review of an FRO issued after a bench trial is limited. C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020). "We 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.'" Ibid. (quoting J.D. v. M.D.F., 207 N.J. 458, 482 (2011)). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998); see also Gnall v. Gnall, 222 N.J. 414, 428 (2015). However, we do not defer to a trial court's factual findings if they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Cesare, 154 N.J. at 412; see also C.C., 463 N.J. Super. at 428. We review a trial court's legal conclusions de novo. C.C., 463 N.J. Super. at 429.

J.L.'s first contention, that the trial court did not consider the totality of the circumstances and evidence in its decision is a veiled attempt to overturn the court's findings that S.A.P. was credible, and that J.L. was not credible. J.L.'s challenge to the judge's credibility rulings does not warrant much discussion in a written opinion. See R. 2:11-3(e)(1)(E). Not only do we defer to factual findings made by the court, but in this case, the transcript reflects J.L.'s incredible testimony. See Cesare, 154 N.J. at 411-13. The court's findings were amply supported by credible evidence. Id. at 413.

The court made express findings supporting its determination that S.A.P. was credible. The court stated:

> One party is saying something happened the other party is saying it did not happen and therefore, it becomes a question of credibility. Oftentimes it's up to the Court to decide what makes sense.
>
> Is it [S.A.P.'s] version as to what occurred over the type of things that were going on make more sense or is it [J.L.] who makes more sense, his version does not make sense,
>
> In looking at the credibility of the witnesses, there is a number of factors that we need to think about, one of those is the accuracy of the witnesses recollection, the witnesses ability to know what they are talking about, obviously they both know what they are talking about because they are involved with it; the reasonableness of the testimony, is it more reasonable as [S.A.P.] has testified or is it more reasonable as to [J.L.] has

> testified; their demeanor on the stand, candor, or whether or not they are being evasive or rambling; and really the inherent believability of the testimony.

The court held that on the issue of credibility, S.A.P. was overcome and distraught on the witness stand and was "crying real tears two times as opposed to fake tears that we sometimes see." Conversely, the trial court found J.L. had an angry tone of voice and was belligerent during his testimony. There is nothing in the record to support J.L.'s contention that the court failed to consider the totality of the circumstance or that it overemphasized his "emotional inarticulateness."

J.L.'s second argument, that the court disregarded the well-settled precedent that vulgar language between divorcing spouses does not constitute harassment and therefore grounds to issue a FRO, is also without merit. The court made express findings supporting its determination that the predicate act of harassment alleged was proven by a preponderance of the evidence based on J.L.'s conduct and the prior history between the parties, and that a FRO was necessary to protect S.A.P.

Entry of a FRO requires the trial court make findings in accordance with the two-prong standard established in Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). First, the court "must determine whether the plaintiff has

proven, by a preponderance of the credible evidence, that one or more of the predicate acts set forth in N.J.S.A. 2C:25-19(a) has occurred." Id. at 125. The trial court should make this determination "in light of the previous history of violence between the parties." Ibid. (quoting Cesare, 154 N.J. at 402). Second, the court must determine "whether a 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." Id. at 127; 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.").

S.A.P. alleged J.L. committed the predicate act of harassment. See N.J.S.A. 2C:25-19(a)(13). A person commits harassment "if, with purpose to harass another," he or she: (a) "[m]akes, or causes to be made, one or more communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;" (b) "[s]ubjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so;" or (c) "[e]ngages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person." N.J.S.A. 2C:33-4(a) to (c). The course of conduct

under (c) is either alarming or it may be a series of repeated acts if done with the purpose "to alarm or serious annoy". Ibid. In interpreting subsection (c), our Supreme Court has explained this phrase means "to weary, worry, trouble or offend." State v. Hoffman, 149 N.J. 564, 577, 581 (1997). This threshold contrasts with subsection (a) which only requires annoyance; meaning to disturb, irritate, or bother. Id. at 580.

"'A finding of a purpose to harass may be inferred from the evidence presented' and from common sense and experience." H.E.S. v. J.C.S., 175 N.J. 309, 327 (2003) (quoting Hoffman, 149 N.J. at 577). To determine whether a defendant acted with the purpose to harass, a court may look at the "history between the parties." J.D., 207 N.J. at 487 (citing Hoffman, 149 N.J. at 577). The "finding must be supported by some evidence that the actor's conscious object was to alarm or annoy; mere awareness that someone might be alarmed or annoyed is insufficient." Ibid. (citing State v. Fuchs, 230 N.J. Super. 420, 428 (App. Div. 1989)).

As our Supreme Court has made clear, the "decision about whether a particular series of events rises to the level of harassment is fact sensitive." J.D. 207 N.J. at 484. The Court continued: "[t]he smallest additional fact or the slightest alteration in context, particularly if based on a history between the

parties, may move what otherwise would appear to be non-harassing conduct into the category of actions that qualify for issuance of a restraining order." Ibid.

Analyzing the allegations in this case begins with the trial court's finding that J.L. violated N.J.S.A. 2C:33-4(a). For purposes of subsection (a), there need only be proof of a single such communication, if defendant's purpose in making it, or causing it to be made by another, was to harass and as long as it was made in a manner likely to cause annoyance or alarm to the intended recipient. There were multiple texts by J.L., which the trial court found the only purpose of the language used was to annoy and alarm S.A.P. The court relied on the "complete history" between the parties, fully appreciating their relationship as business partners terminating their marriage. The court further credited S.A.P.'s testimony that J.L. punched, grabbed, constantly verbally abused S.A.P., put his hands down her shirt and pants in front of the children, and demanded sex in exchange for doing business for her.

J.L. relies on Chernesky v. Federacy, 346 N.J. Super 34 (2001), for the proposition that his texts did not rise to the level of harassment. This reliance is misplaced as this matter is readily distinguishable. In Chernesky, the defendant was dropping off the parties' shared child and yelled to the plaintiff about the child's behavior. Id. at 37. In addition, no trial took place in

Chernesky, and there was only a brief inquiry made by the judge, with neither party testifying. Here, both parties were represented, placed under oath, testified and cross-examined, and the trial court made findings of fact and law. The trial court also found that based on J.L.'s progressively worse behavior over time, a FRO was "absolutely necessary" for S.A.P.'s protection.

This case does not present ordinary domestic contretemps between a couple who is divorcing both from marriage and a business. Rather, it involves a case of escalating abuse where the S.A.P. requires the protection of an FRO.

Affirmed.