

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-3538-21

T.T.,

Plaintiff-Respondent,

v.

A.L.,

Defendant-Appellant.

Argued May 23, 2023 – Decided July 10, 2023

Before Judges Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Camden County,
Docket No. FV-04-3716-22.

A.L., appellant, argued the cause pro se (Ciro A. Spina,
III, on the brief).

T.T., respondent, argued the cause pro se.

PER CURIAM

Defendant appeals from an order granting a Final Restraining Order
(FRO) to plaintiff after the trial court found he committed the predicate acts of

harassment and terroristic threats, contending the trial court's ruling is not supported by facts in the record. We conclude the trial court failed to make sufficient findings of fact or law, and are constrained to vacate the FRO, reinstate the temporary restraining order (TRO), and remand for a new FRO hearing. Because the trial judge made credibility determinations, the FRO shall be conducted by a different judge.

We glean the following facts from the record. The parties share a two-year-old son, but defendant lived in California full time for at least one year before the FRO was entered. Plaintiff filed a TRO claiming she felt "basically harassed" by defendant during their interactions, which were exclusively telephonic. During the FRO hearing, where both parties were self-represented, plaintiff testified she and defendant disagreed over his failure to pay child support. Both parties admitted plaintiff applied for a TRO one day after defendant called police regarding bruising he observed on their son's face during a virtual visit, prompting an investigation by the Division of Child Protection & Permanency (DCPP).

Our review of an FRO is generally 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)); see also S.K. v. J.H., 426 N.J. Super. 230, 238 (App. Div. 2012).

In matters involving domestic violence, the Supreme Court has held the findings of a "trial court 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 v. Cesare, 154 N.J. 394, 411-12 (1998)).

We do not disturb the judge's factual findings and legal conclusions unless we are "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." Cesare, 154 N.J. at 412 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). Our review of the trial court'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.

When determining whether to grant an FRO pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, a trial court must make two determinations. 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 PDVA defines "domestic violence" as the occurrence of one or more predicate acts constituting specified crimes or offenses. N.J.S.A. 2C:25-19(a).

After finding a predicate act pursuant to N.J.S.A. 2C:25-19(a), "the judge must determine whether a restraining order is necessary to protect the plaintiff from future danger or threats of violence." D.M.R. v. M.K.G., 467 N.J. Super. 308, 322 (App. Div. 2021). "Although this second determination . . . is most often perfunctory and self-evident, the guiding standard is 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." Silver, 387 N.J. Super. at 127.

N.J.S.A. 2C:25-29 provides "[t]he court shall consider but not be limited to the" consideration of six factors, including "the previous history of domestic violence between the [parties]." "[W]hether the victim fears the defendant" is an additional factor the trial court may consider. G.M. v. C.V., 453 N.J. Super. 1, 13 (App. Div. 2018).

In this matter, the trial court failed to make sufficient findings of fact and law. With respect to the predicate act of harassment, plaintiff testified she "felt like [she] was being harassed" because defendant was seeking a paternity test

before paying child support and he called police and DCPD regarding their son's visible bruising. She stated, "he is harassing me because he does not want to pay child support" and "[s]o he [sic] stopping payments. He's doing a lot of things on purpose, I guess, to spite me. I don't have no other option, so – that's why the child support is here, I tried to explain that to him." Later, plaintiff stated, "he is harassing me because he does not want to pay child support, that's the real story." Without distinguishing between relationship contretemps and domestic violence, and without addressing whether defendant was justified in his parental concerns, the trial court merely found "Harassments occur[ed]," without making findings of fact regarding dates and times. The trial court also failed to make findings of law as to whether a pattern of harassment had been established, whether one event was sufficient to establish harassment, and whether it was defendant's purpose to harass. See Corrente v. Corrente, 281 N.J. Super. 243, 250 (App. Div. 1995) ("The domestic violence law was intended to address matters of consequence, not ordinary domestic contretemps . . .").

With respect to terroristic threats, this predicate act was not alleged in the TRO, and plaintiff did not make an oral motion to amend the TRO at the final hearing. The record reflects the only testimony given by either party was by plaintiff when she stated, "I used to accept his calls . . . but . . . he started

disrespecting everyone in my household, he threatened everyone in my household, he said he would kill everyone in my house." Plaintiff never testified defendant threatened to kill her. The court did not elicit any further testimony from plaintiff regarding when these alleged threats were made, whom they were made about, in what context, or even who were the other members in plaintiff's household. Defendant was never asked about these alleged threats.

In ruling, the court stated, "there is what is referred to as a serious threat, a threat to kill, a threat in which the question is whether that, in and of itself, is the basis for a restraining order." Without referring to the statute, the trial court granted the FRO, failing to state the facts supporting findings of the predicate acts of harassment or terroristic threats, and without commenting upon documentary evidence introduced by defendant. When prompted by the defendant's question "But, sir, on what grounds, may I ask?" The trial court amplified its ruling, stating "I've made that decision based on the relative law of Silver versus Silver. There's two prongs here, predicate acts of harassment, egregious acts of domestic violence. Threats to kill, I find occurred from the credible evidence."

The trial court also did not make findings pursuant to the second prong of Silver. It is firmly established the commission of one of the acts of domestic

violence set forth in N.J.S.A. 2C:25-19(a) does not "automatically . . . warrant the issuance of a domestic violence [restraining] order." Corrente, 281 N.J. Super. 248. 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; accord 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.

The trial court rendered an oral amplification of its opinion after the appeal had been filed, which referred to the caselaw of Silver and Corrente but again failed to make findings of fact to support any finding an FRO was necessary to prevent future acts of domestic violence, mentioning only an unspecific threat to kill someone had been made by defendant to plaintiff telephonically at some unspecified point in time.

Although the court did make credibility findings, stating it found plaintiff more credible than defendant, it again failed to articulate the facts it relied upon in reaching those conclusions. Although credibility findings are critical to a trial court's issuance of an FRO, alone they are not sufficient to support a finding of a predicate act of domestic violence or a finding an FRO is necessary to prevent further acts of domestic violence. Rule 1:7-4(a) requires a court to "find the facts and state its conclusions of law"

The trial court's failure to make factual and legal findings does not afford us any meaningful opportunity to review its conclusions, requiring our reversal and remand.

Reversed and remanded for a new FRO hearing before a different judge.
We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION