

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0075-23

IN THE MATTER OF M.A.Z.¹

Argued May 21, 2024 – Decided June 3, 2024

Before Judges Sumners and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Petition No. 1506-XTR-2023-000012.

Gregory P. Shugar argued the case for appellant (Shugar Law Offices, attorneys; Gregory P. Shugar, of counsel; Jeffrey Zajac, on the brief).

Cheryl L. Hammel, Assistant Prosecutor, argued the cause for respondent (Bradley D. Billhimer, Ocean County Prosecutor, attorney; Samuel Marzarella, Chief Appellate Attorney, of counsel; Cheryl L. Hammel, on the brief).

PER CURIAM

¹ We use initials because "[a]ll records related to proceedings for [Final Extreme Protective Orders] are confidential and may not be disclosed to anyone other than the respondent . . . , except if good cause is found by the court to release such records." Admin. Off. of the Cts., Admin. Directive #19-19, Guidelines for Extreme Risk Protective Orders 9 (Aug 12, 2019) (AOC Directive).

M.A.Z. appeals from an August 31, 2023 Law Division order granting the State's petition for a Final Extreme Risk Protection Order (FERPO) entered under the Extreme Risk Protective Order Act of 2018 (ERPO), N.J.S.A. 2C:58-20 to -32. We affirm.

I.

On June 7, 2023, Brick Township Police Department received a welfare check request for M.A.Z. from his employer. Officers Fogarty and Miller² were dispatched to M.A.Z.'s home because his employer reported substance abuse health concerns. Upon meeting M.A.Z., the officers observed his responses were slow. He explained he was depressed because his mother had passed away. M.A.Z. relayed he did not wish to harm himself or others and agreed to speak with a mental health professional. After the officers finished speaking with M.A.Z., Psychiatric Emergency Screening Services (PESS) was dispatched. When the officers later returned with the PESS screener, M.A.Z. was not home.

The following day, Officers Joseph McGrath and Thergsen responded to the scene of a head-on collision on Mantoloking Road. M.A.Z. had driven across the center line into an oncoming vehicle. The officers observed his

² We use the officers' first names, if known, and last names only when their first names or initials were not included in the record.

speech was slow and slurred, and he had difficulty walking and standing. M.A.Z. denied drinking alcohol but admitted taking five or six "gummies." No alcohol was found in his system. When asked regarding any medical condition, M.A.Z. reported taking no prescription medication but advised he had gout. After unsuccessfully completing the field sobriety tests, M.A.Z. stated, "[j]ust take me," and was arrested for driving under the influence. Recognizing M.A.Z.'s address from his driver's license, the officers learned M.A.Z. had not completed his PESS screening. When officers placed M.A.Z. in a patrol car, he stated, "Just shoot me. I don't want to be here anymore," and at headquarters told officers "to shoot him."

Due to the officers' concerns regarding M.A.Z.'s suicidal statements, he was transported to the hospital for evaluation. After his screening and discharge, a caseworker completed a "Notification to Law Enforcement/New Jersey Duty to Warn Law" form stating M.A.Z. had threatened self-harm to police and possessed firearms. Based on the belief M.A.Z. posed a danger to himself or others, McGrath applied for a Temporary Extreme Risk Protective Order (TERPO), which was entered prohibiting M.A.Z.'s possession of firearms and ammunition. M.A.Z. was served with the TERPO and surrendered a: Smith &

Wesson .38 revolver, Remington .308 rifle, Glenfield .22 rifle, and .44 Magnum rifle, among other weapons and ammunition.

In August 2023, after a one-day hearing in which McGrath and M.A.Z. testified, the trial court issued a FERPO and an accompanying oral decision. The court found McGrath's testimony credible that he heard M.A.Z. make multiple suicidal statements and had concerns for M.A.Z.'s and others' safety. The court further found M.A.Z.'s testimony was contradictory, and he lacked accurate recollection. Specifically, while M.A.Z. had no recollection of his statements to the officers during the welfare check, he recalled officers had "stormed his house." He believed his conduct and the accident were caused by hypoglycemia, which results in him appearing "drunk." Further, he attributed his inability to conduct the field tests to gout, though he submitted no medical documentation. M.A.Z. also denied stating he had consumed THC³ gummies.

Considering the factors enumerated in N.J.S.A. 2C:58-23(f) and the AOC Directive, Admin. Directive #19-19, at 4-5, the court found factors one (history of threats or acts of violence against self or others), five (prior arrests, pending charges, or convictions for a violent indictable crime or disorderly persons

³ "THC . . . is the main ingredient that produces the psychoactive effect" in marijuana. Marijuana, DEA, <https://www.dea.gov/factsheets/marijuana> (last visited May 23, 2024).

offense, stalking offense, or domestic violence offense), seven (history of drug or alcohol abuse), and ten (an existing or previous extreme risk protective order). The court entered a FERPO finding the State sustained its burden by a preponderance of the evidence.

On appeal, M.A.Z. argues in a single point:

POINT I:

THE ENTRY OF A [FERPO] BY THE LAW DIVISION REPRESENTS PLAIN AND REVERSIBLE ERROR.

A. The State Failed to Satisfy Its Burden of Proof Under N.J.S.A. 2C:58-23(f).

B. The Reasoning of the Law Division Does Not Support the Entry of a FERPO Under N.J.S.A. 2C:58-23(f).

II.

Our review of a trial court's findings of fact and credibility is deferential. See C.R. v. M.T., 248 N.J. 428, 440 (2021). Trial court findings are "binding on appeal when supported by adequate, substantial, credible evidence." G.M. v. C.V., 453 N.J. Super. 1, 11 (App. Div. 2018) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). "When evidence is testimonial and involves credibility questions, deference is 'especially appropriate' because the trial judge

is the one who has observed the witnesses first-hand." In re D.L.B., 468 N.J. Super. 397, 416 (App. Div. 2021) (quoting Cesare, 154 N.J. at 412).

In 2018, the New Jersey Legislature enacted ERPO, also known as the "red flag law[,] to permit family members and others to seek emergent orders to remove firearms from a person who poses a danger to self or others because of a mental health crisis or instability." Id. at 400-01. ERPO created "a two-stage process for issuing temporary and final orders to remove a person's firearms and ammunition, firearms purchaser identification card, handgun purchase permit, and handgun carry permit." Id. at 401 (citing N.J.S.A. 2C:58-23 (authorizing TERPOs); N.J.S.A. 2C:58-24 (authorizing FERPOs)).

The court initially decides whether to issue a TERPO based on an ex parte documentary record. Id. at 401-02 (citing N.J.S.A. 2C:58-23). Thereafter, the court conducts a plenary hearing to determine whether to issue a FERPO to remove firearms indefinitely. Id. at 402 (citing N.J.S.A. 2C:58-24).

Pursuant to N.J.S.A. 2C:58-31, the Supreme Court promulgated the AOC Directive to effectuate the purposes of the ERPO Act. Admin. Directive #19-19, at 1. The AOC Directive summarizes ERPO and "promulgates [g]uidelines . . . that prescribe the process for obtaining orders" under the statute. D.L.B., 468 N.J. Super. at 402. "Because the AOC Directive implements the [Supreme]

Court's constitutional power to promulgate rules governing practice and procedure and the administration of the courts," it has "the force of law." Ibid. "As such, a trial court is required to comply with the requirements of the [AOC Directive]." Ibid.

Additionally, under N.J.S.A. 2C:58-32, the Office of the Attorney General adopted Law Enforcement Directive No. 2019-2 (the AG Directive) to implement the law. See Off. of the Att'y Gen., Law Enf't Directive No. 2019-2, Attorney General Directive Pursuant to the Extreme Risk Protective Order Act of 2018 (Aug. 15, 2019). "Attorney General directives relating to the administration of law enforcement have the 'force of law.'" D.L.B., 468 N.J. Super. at 402 (quoting In re Att'y Gen. L. Enf't Directive Nos. 2020-5 and 2020-6, 246 N.J. 462, 487-88 (2021)).

A petitioner may seek an ERPO order "by 'alleging that the respondent poses a significant danger of bodily injury to self or others by having custody or control of, owning, possessing, purchasing or receiving a firearm.'" Ibid. (quoting N.J.S.A. 2C:58-23(a)). A law enforcement officer "'shall file a petition for a TERPO' if [a] non-family or non-household member provides information that gives the officer 'probable cause to believe that the respondent poses an immediate and present danger of causing bodily injury to self or others' by

possessing a firearm." Id. at 403 (quoting L. Enf't Directive No. 2019-2, at 6). Alternatively, "[i]f an officer only has 'good cause,' then that officer may . . . file for a TERPO." Ibid. (quoting Law Enf't Directive No. 2019-2, at 6). "The petition shall include an affidavit presenting the factual grounds for the relief and shall provide available information about the respondent's firearms and ammunition." Ibid. (citing N.J.S.A. 2C:58-23(b)); see Admin. Directive #19-19, attach. 1, at 3-4.

In determining whether grounds exist to issue a TERPO or FERPO, the court must consider whether respondent:

- (1) has any history of threats or acts of violence by the respondent directed toward self or others;
- (2) has any history of use, attempted use, or threatened use of physical force by the respondent against another person;
- (3) is the subject of a temporary or final restraining order or has violated a temporary or final restraining order issued pursuant to the "Prevention of Domestic Violence Act of 1991[]";
- (4) is the subject of a temporary or final protective order or has violated a temporary or final protective order issued pursuant to the "Victim's Assistance and Survivor Protection Act";
- (5) has any prior arrests, pending charges, or convictions for a violent indictable crime or disorderly persons offense, stalking offense pursuant to section 1

of [N.J.S.A.] 2C:12-10, or domestic violence offense enumerated in section 3 of [N.J.S.A.] 2C:25-19;

(6) has any prior arrests, pending charges, or convictions for any offense involving cruelty to animals or any history of acts involving cruelty to animals;

(7) has any history of drug or alcohol abuse and recovery from this abuse; or

(8) has recently acquired a firearm, ammunition, or other deadly weapon.

[N.J.S.A. 2C:58-23(f) (citations omitted).]

The Legislature elucidated the eight factors are not exhaustive and other relevant evidence may be considered. See N.J.S.A. 2C:58-23(f) & N.J.S.A. 2C:58-24(c). Pursuant to AOC Directive § 3(d) and 5(d), the trial court is also to consider three additional factors:

(9) has recklessly used, displayed, or brandished a firearm;

(10) has an existing or previous extreme risk protective order issued against him or her; and

(11) has previously violated an extreme risk protective order issued against him or her.

[Admin. Directive #19-19, attach. 1, at 7, 10.]

If a court finds at least one of the eleven "behavioral" factors, it then "may consider," four mental health factors regarding whether the respondent:

(12) has any prior involuntary commitment in a hospital or treatment facility for persons with psychiatric disabilities;

(13) has received or is receiving mental health treatment;

(14) has complied or has failed to comply with any mental health treatment; and

(15) has received a diagnosis of a mental health disorder.

[Id. attach. 1, at 5, 7, 10.]

A finding that a factor is established "may not be enough to support the issuance of a TERPO. The [court] 'shall issue' the TERPO only 'if the court finds good cause to believe that the respondent poses an immediate and present danger of causing bodily injury to the respondent or others by' possessing a firearm." D.L.B., 468 N.J. Super. at 405 (quoting N.J.S.A. 2C:58-23(e); see also Admin. Directive #19-19, attach. 1, at 8). The court is thereafter authorized to issue a search warrant for firearms and ammunition in "the possession, custody, or control of the respondent" or which the respondent could access, upon a showing of probable cause. Ibid. (quoting Law Enf't Directive No. 2019-2, at 18).

"The rules governing admissibility of evidence at trial shall not apply to the presentation and consideration of information at the [FERPO] hearing." Id.

at 406 (quoting Admin. Directive #19-19, attach. 1, at 10). While hearsay evidence is permitted, "there must be a residuum of . . . competent evidence in the record to support" the issuance of a FERPO. Ibid. (quoting Weston v. State, 60 N.J. 36, 51 (1972)). A FERPO shall be issued if the court "finds 'by a preponderance of the evidence . . . that the respondent poses a significant danger of bodily injury to the respondent's self or others' by possessing a firearm." Id. at 406-07 (quoting N.J.S.A. 2C:58-24(b)). "The FERPO bars the respondent from possessing, and requires the respondent to surrender, any firearms, ammunition, firearm purchaser identification card, handgun purchase permit, and handgun carry permit." Id. at 407 (citing Admin. Directive #19-19, attach. 1, at 12); see also N.J.S.A. 2C:58-24(d). "A respondent may ask the court at any time to terminate the order" but "[u]ntil the court issues a further order, the FERPO remains in effect." Ibid. (citing Admin. Directive #19-19, attach. 1, at 12).

III.

M.A.Z. contends the court erroneously granted the FERPO, finding the State sustained its burden of proof pursuant to N.J.S.A. 2C:58-23(f). Specifically, M.A.Z. argues the court's determination that factor one was established, because he has a history of threats of self-harm, is unsupported by

the record. He argues his statements at the scene after "a traumatic accident," which the court found McGrath credibly established, are factually insufficient to support a history of threats or acts. M.A.Z. posits reversal is warranted because the statements, "[j]ust shoot me" and "I don't want to be here anymore," made directly to the officers, should only be construed as "non-literal outbursts." We disagree.

As the court observed, M.A.Z. made multiple suicidal statements—not a single isolated comment. Further, M.A.Z.'s actions and statements "escalated" over three days. The court began its factor one findings noting that officers were dispatched to M.A.Z.'s home for a welfare check, and he admitted to being depressed, agreeing to speak with a PESS evaluator. Regarding M.A.Z.'s testimony denying his recollection of the statements, the court concluded, "I don't believe [M.A.Z.] fully recalls those facts." The court also found relevant that M.A.Z.'s suicidal statements to the officers occurred after he caused a serious automobile accident.

Further, the court found no credible "evidence . . . or medical documentation" supported M.A.Z.'s testimony that his statements and actions were caused by his hypoglycemia rather than mental health concerns. The court discerned McGrath "truthfully" testified that M.A.Z. made suicidal statements

while in the patrol car and made a similar statement at headquarters. Recognizing the hearing concerned M.A.Z.'s firearms, the court found the statement regarding "some sort of self-harm in shooting himself" supported a finding of risk. We conclude the court correctly considered the relevant credible evidence surrounding the totality of events including the context of the suicidal statements. Thus, we discern no reason to disturb the court's sufficiently supported findings under factor one.

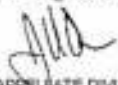
M.A.Z. next argues the court's reasoning in support of the FERPO, and specifically the finding that M.A.Z. "posed a significant danger to himself," was "untenable and without support in the record." M.A.Z. contends the court's reasoning that his behavior was concerning because it "escalated" "over three . . . days" wrongly included a finding that he made a suicidal comment at the hospital. Specifically, M.A.Z. avers the court's reliance on alleged suicidal statements to hospital personnel was misplaced as the "Duty to Warn" form only stated that he "expressed to police the thought to hurt himself" and "denied presently but had made this threat with guns at home." While unclear whether the "Duty to Warn" memorialized M.A.Z.'s denial of a desire to hurt himself at the time of discharge or a denial of suicidal statements to the police, the court otherwise made sufficient findings based on the credible evidence in the record

to support the issuance of the FERPO. The court did not abuse its discretion in finding by a preponderance of the evidence that McGrath's credible testimony and other evidence supported that M.A.Z. posed "a significant danger [of] bodily injury to self or others by . . . possessing . . . firearm[s]." See N.J.S.A. 2C:58-23(a). Thus, the court's decision to issue the FERPO, finding under N.J.S.A. 2C:58-23(e) that there was "good cause to believe that [M.A.Z.] . . . poses an immediate and present danger of causing bodily injury" to himself or others, was sufficiently supported by credible evidence in the record.

To the extent we have not specifically addressed any of M.A.Z.'s remaining 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