

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-0229-23

L.R.A.R.,¹

Plaintiff-Respondent,

v.

C.D.,

Defendant-Appellant.

Submitted May 29, 2024 – Decided June 14, 2024

Before Judges Gooden Brown and Natali.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Union County, Docket
No. FV-20-0032-24.

The Tormey Law Firm, LLC, attorneys for appellant
(Travis J. Tormey, of counsel; Jeffrey Anthony
Skiendziul, on the brief).

Respondent has not filed a brief.

¹ We use initials because of the nature of the case. See R. 1:38-3(d)(10).

PER CURIAM

In this one-sided appeal, defendant appeals from an August 3, 2023, final restraining order (FRO) entered against him in favor of plaintiff based on the predicate act of harassment, pursuant to the Prevention of Domestic Violence Act of 1991 (PDVA), N.J.S.A. 2C:25-17 to -35. We affirm.

The parties were in a dating relationship that ended in August 2022. On July 6, 2023, plaintiff filed a domestic violence complaint under the PDVA alleging harassment and obtained a temporary restraining order (TRO) based on incidents that allegedly occurred on July 2 and 3, 2023.²

At the ensuing FRO hearing conducted on August 3, 2023, plaintiff testified that defendant sent her harassing text messages on WhatsApp, TikTok, and other social media platforms. Specifically, on July 2, 2023, through WhatsApp, defendant wrote "I'm sorry that you had to go back to that fraudulent midget and that you have all these bills to pay. If I would have known that you had returned or gotten back together with him, I would not have contacted you." The following day, on July 3, 2023, through TikTok, defendant wrote "Don't become my enemy." In addition, according to plaintiff, defendant created a page

² The TRO was not provided in the record.

on TikTok with her photos and the label "Ecuawhore," and sent it to her friends and son in Ecuador.

In recounting a prior history of domestic abuse, plaintiff testified that defendant had called her "a whore" in the past "[o]n many occasions." He also sent her numerous text messages and made phone calls to her from different numbers despite her telling him not to contact her. When plaintiff "block[ed the] number," defendant would "use a new number to try and contact [her]." Plaintiff also testified that in the Summer of 2022, defendant told her that if he found out she was with someone else, she should be "ready to be in a wheelchair." Plaintiff was "very scared" by the threat.

Additionally, in September 2022, defendant "came to [her] home and threw liquid shit through [her] window." Plaintiff said the substance was "brown" and smelled like "[p]oop, shit." She testified that she identified defendant as the culprit by checking her home security cameras. Although the perpetrator was wearing a "hat" and a "mask," plaintiff recognized defendant "based on the clothes he was wearing" and "the way that he walk[ed]." Plaintiff testified she felt "terrorized" by the incident and reported it to the police.

Finally, on an unspecified day in October 2022, defendant was calling and texting plaintiff "the entire day." When plaintiff eventually "picked up one of

the calls, [defendant] said to [her], tell the Mexican dishwasher with the New York plates that accidents on the road can occur at any moment." Plaintiff interpreted the comment as a threat to her and her new boyfriend.

As a result of defendant's harassing and threatening behavior, plaintiff testified that she was "scared of him." Although she had "made [it] clear to him on many occasions" that she "[did] not want to speak to him," he constantly called, sent her messages, or came to her house, and she "[did not] know what he[was] willing to do." Plaintiff explained that defendant had previously "told [her] that he had weapons . . . to go hunting" and he had shown her a gun "on a video call." She wanted a final restraining order because she wanted no contact with him, and she was afraid that he would "kill [her], especially since he has weapons" and is "an unstable person." Plaintiff recalled defendant telling her while they were still together "that he was not scared of killing somebody."

During his testimony, defendant largely denied the allegations. He testified that he was married, and that plaintiff was his mistress for two years. He believed that plaintiff's motive in filing the complaint was to get back at him for not divorcing his wife and marrying her as he had supposedly promised. He admitted calling plaintiff a whore when she sent him a text message on September 2, 2022, telling him that she "[did not] want to see [him] no more"

and that "she was seeing someone else." However, he denied that plaintiff told him to stop contacting her despite being shown messages that contradicted his denial.

In an oral decision, the judge determined the entry of an FRO was justified. The judge was satisfied that the evidence met both prongs of Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006), which delineates the two-part test for granting an FRO under the PDVA. In support, the judge credited plaintiff's testimony, noting that "she supported her testimony with several exhibits." In contrast, the judge "had some problem with . . . defendant's testimony at times." For example, notwithstanding his denial, the judge pointed out that defendant was the source of the TikTok post calling plaintiff an "Ecua-whore."

Considering the parties' prior history, the judge was convinced that the offensive TikTok post, along with the other communications on July 2 and 3, 2023, proved that defendant "engaged in behavior that could easily be characterized as communication intending to harass [plaintiff]." The judge further found that the communication was "likely to cause [plaintiff] annoyance and/or alarm," contrary to N.J.S.A. 2C:33-4, to satisfy the first prong of the Silver test. As to the second prong, the judge determined that although the case

did not involve "physical abuse" where the need for an FRO was "self[-]evident," based on the totality of the evidence, there was a "need to enter a restraining order to protect . . . plaintiff" from defendant "and to prevent any further abuse." As a result, the judge entered a conforming FRO.

In this ensuing appeal, defendant challenges the judge's findings.

Our limited scope of review of a trial court's findings of fact in domestic violence cases is well established. "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.'" 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)). "[D]eference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" MacKinnon v. MacKinnon, 191 N.J. 240, 254 (2007) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)).

Consequently, "findings by a trial court are binding on appeal when supported by adequate, substantial, credible evidence." Gnall v. Gnall, 222 N.J. 414, 428 (2015). To be sure, we will not disturb a trial court's factual findings unless "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. of Am., 65 N.J. 474, 484 (1974)). We do not, however, accord such deference to the court's legal conclusions, which we review de novo. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016).

As previously stated, the entry of an FRO under the PDVA requires the trial court to make certain findings pursuant to a two-step analysis delineated in Silver, 387 N.J. Super. at 125-27. Initially, 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 (citing N.J.S.A. 2C:25-29(a)). Harassment is one of the predicate acts included in N.J.S.A. 2C:25-19(a). 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).

If the court finds the defendant committed a predicate act of domestic violence, the court must then determine whether it "should enter a restraining order that provides protection for the victim." Silver, 387 N.J. Super. at 126. In those cases where "the risk of harm is so great," J.D., 207 N.J. at 488, the second inquiry "is most often perfunctory and self-evident," Silver, 387 N.J. Super. at 127. However, in all cases, "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 . . . (6), to protect the victim from an immediate danger or to prevent further abuse." Ibid. The statutory factors include but are not limited to: "[t]he previous history of domestic violence between the [parties], including threats, harassment and physical abuse;" "[t]he existence of immediate danger to person or property;" and "[t]he best interests of the victim and any child." N.J.S.A. 2C:25-29(a)(1), (2), (4).

Applying these principles, we are satisfied there is sufficient credible evidence to support the judge's determination that defendant committed the predicate act of harassment to establish the first Silver prong. Admittedly, "[o]ur courts have struggled with the proofs needed to support a domestic violence restraining order based on claims of harassment," and "[n]ot all offensive or bothersome behavior . . . constitutes harassment." J.D., 207 N.J. at

482-83. Because "direct proof of intent" is often absent, "purpose may and often must be inferred from what is said and done and the surrounding circumstances." State v. Castagna, 387 N.J. Super. 598, 606 (App. Div. 2006). Therefore, "[a] history of domestic violence may serve to give content to otherwise ambiguous behavior and support entry of a restraining order." J.D., 207 N.J. at 483.


Here, the totality of the circumstances demonstrated that defendant's communications, which included offensively coarse language, threats of harm, unwanted contacts, and a course of alarming conduct, were engaged in with the purpose to harass plaintiff. See State v. Hoffman, 149 N.J. 564, 577, 585 (1997) (explaining that in determining whether a defendant's conduct constitutes harassment, a judge may use "[c]ommon sense and experience," and "[t]he incidents under scrutiny must be examined in light of the totality of the circumstances"); C.M.F. v. R.G.F., 418 N.J. Super. 396, 404 (App. Div. 2011) (noting "the very nature of the verbal attack, the manner of its delivery and the attendant circumstances" may "strongly suggest a purpose to harass"); Pazienza v. Camarata, 381 N.J. Super. 173, 183-84 (App. Div. 2005) (explaining text messages sent from defendant to plaintiff "when viewed in the context of defendant's prior conduct towards plaintiff, was likely to cause plaintiff annoyance," and the "purpose to harass on defendant's part [was] easily

inferred"). Additionally, the evidence clearly established that an FRO was required to protect plaintiff and prevent further acts of domestic violence, satisfying the second Silver prong.

On appeal, relying on the fact that "he denied many of the allegations made against him," defendant challenges the judge's credibility findings. However, the judge's factual findings, particularly those based on credibility assessments, are entitled to substantial deference on appeal where, as here, they are supported by substantial credible evidence in the record. Cesare, 154 N.J. at 412.

Affirmed.

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



CLERK OF THE APPELATE DIVISION