SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1884-22

M.P.,[1]

Plaintiff-Respondent,

v.

N.P.,

Defendant-Appellant.

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Submitted May 14, 2024 – Decided May 30, 2024

Before Judges Smith and Perez Friscia.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FV-12-1525-23.

N.P., appellant pro se.

M.P., respondent pro se.

PER CURIAM

[1] We use initials to protect the confidentiality of the victim in these proceedings. R. 1:38-3(d)(10).

Defendant N.P. appeals from the January 23, 2023 final restraining order (FRO) entered against him under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. Defendant argues the Family Part judge erroneously found he committed the predicate act of harassment and that the FRO was necessary to ensure plaintiff M.P.'s future protection. We affirm.

I.

The parties are married and have two minor children, K.P. and S.P. They lived separately, shared custody of their children, and defendant had supervised parenting time. Plaintiff resided with the children in the marital residence. On January 1, 2023, plaintiff filed a domestic violence complaint and obtained a temporary restraining order (TRO). At the time, the parties were in the process of divorcing.

In the complaint, plaintiff alleged a day earlier defendant committed harassment by calling and threatening her because he was not permitted into the marital residence for unscheduled parenting time. She also indicated a prior history of domestic violence. On January 18, plaintiff amended the TRO, including a detailed history of alleged prior domestic violence, which was served on defendant.

At the FRO trial, plaintiff testified defendant called her house phone and their son's cell phone multiple times on December 31, 2022. She texted defendant not to come to the house, as he was not scheduled for parenting time. After plaintiff answered their son's cell phone, defendant stated "if [she] did not open the door[,] he would slash [her] tires" and she should "watch [her] back at all times" because she was "going to be in a lot of trouble." Plaintiff testified that defendant demanded to see their children and told her "[w]hy don't you obey the rules and respect the person who is paying for all your sh[*]t."

Plaintiff further testified to alleged prior acts of domestic violence and receiving two prior TROs against defendant. A prior TRO was granted on June 26, 2021, because defendant had threatened to harm her family, but the action was dismissed. The parties thereafter entered into an agreement with mutual civil restraints prohibiting threatening and harassing contact. On September 1, 2022, another TRO was issued after defendant telephoned her and had an expletive-laden tirade.[2] After an FRO hearing, a different Family Part judge dismissed the complaint, finding no predicate act of domestic violence.

[2] We need not recite in detail plaintiff's testimony regarding defendant's expletives because the parties are familiar with the testimony from the FRO hearing.

Plaintiff described other prior incidents by date, relaying that defendant: threatened to "hire a hit[]man"; "put [her] in a chest-lock" when she tried to call the police; screamed at her, claiming "the FBI [was] against him"; threatened to "annihilat[e]" her family after she filed for divorce; and "threatened to kill [her.]" She testified to feeling "threatened for [her] safety," "[not] feel[ing] safe in [her] own house," and not wanting "anymore future incidents" for her and "the children."

Defendant admitted he arrived at the home unannounced on December 31, 2022, because he had not seen his children for over three months, due to his mother's refusal to supervise parenting time after obtaining two TROs against him. Defendant also admitted he threatened to slash plaintiff's tires and told her to watch her back, seeking to cause her annoyance and alarm. Further, regarding prior acts of domestic violence, defendant admitted he "said things, absolutely," but averred he "ha[d] not done any physical harm."

After considering the testimony and evidence, the judge found plaintiff proved by a preponderance of the evidence the predicate act of harassment. The judge also found an FRO was necessary to protect plaintiff from immediate or future acts of domestic violence.

On appeal, defendant argues the judge: erred by granting the FRO; and violated the "Double Jeopardy . . . Clause" by permitting plaintiff to testify about allegations in her prior domestic violence complaint.

II.

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). In reviewing "a trial court's order entered following trial in a domestic violence matter, we grant substantial deference to the trial court's findings of fact and the legal conclusions based upon those findings." J.D. v. A.M.W., 475 N.J. Super. 306, 312-13 (App. Div. 2023) (quoting N.T.B. v. D.D.B., 442 N.J. Super. 205, 215 (App. Div. 2015)). 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)). "We defer to the credibility determinations made by the trial court because the trial judge 'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare, 154 N.J. at 412).

We do not disturb a trial judge'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." S.D. v. M.J.R., 415 N.J. Super. 417, 429 (App. Div. 2010) (quoting Cesare, 154 N.J. at 412). We recognize "Family Part judges . . . routinely hear domestic violence cases and are 'specially trained to detect the difference between domestic violence and more ordinary differences that arise.'" C.C., 463 N.J. Super. at 428 (quoting J.D. v. M.D.F., 207 N.J. 458, 482 (2011)). However, we review de novo a trial judge's legal conclusions. S.B.B. v. L.B.B., 476 N.J. Super. 575, 595-96 (App. Div. 2023).

The New Jersey Legislature enacted the PDVA "to assure the victims of domestic violence the maximum protection from abuse the law can provide." N.J.S.A. 2C:25-18. The PDVA protects victims of domestic violence, which include, among others, "any person . . . who has been subjected to domestic violence by a person with whom the victim has a child in common." N.J.S.A. 2C:25-19(d).

The entry of an FRO under the PDVA requires the trial judge to make specific findings pursuant to a two-step analysis delineated in Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). Initially, "the judge 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 judge is also required to consider "any past history of abuse by a defendant as part of a plaintiff's individual circumstances and, in turn, factor that history into its reasonable person determination." Cesare, 154 N.J. at 403. Secondly, if a predicate act is proven, the judge must determine whether a restraining order is necessary to protect the plaintiff from immediate harm or further acts of abuse. Silver, 387 N.J. Super. at 127. A previous history of domestic violence between the parties is one of seven non-exhaustive factors a court is to consider in evaluating whether a restraining order is necessary to protect the plaintiff. N.J.S.A. 2C:25-29(a)(1); see also D.M.R. v. M.K.G., 467 N.J. Super. 308, 324-25 (App. Div. 2021) (finding whether a judge should issue a restraining order depends, in part, on the parties' history of domestic violence).

Harassment, N.J.S.A. 2C:33-4, is a predicate act of domestic violence enumerated under the PDVA. See N.J.S.A. 2C:25-19(a)(13). Under N.J.S.A. 2C:33-4(a) to (c), a person commits an act of harassment

> if, with purpose to harass another, he:
>
> [(a)] Makes, 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)] Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
>
> [(c)] Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

"'A finding of a purpose to harass may be inferred from the evidence presented' and from common sense and experience." D.M.R., 467 N.J. Super. at 323 (quoting H.E.S. v. J.C.S., 175 N.J. 309, 327 (2003)). "Although a purpose to harass can be inferred from a history between the parties, that 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." J.D., 207 N.J. at 487 (citation omitted). A judge "must consider the totality of the circumstances to determine whether the harassment statute has been violated." H.E.S., 175 N.J. at 326 (quoting Cesare, 154 N.J. at 404).

III.

Guided by these principles, we discern no basis to disturb the judge's entry of an FRO against defendant. The judge's finding that defendant committed the predicate act of harassment, N.J.S.A. 2C:33-4(c), by "engag[ing] in a course . . . of [alarming] conduct," which caused plaintiff "annoyance [and]

alarm," is amply supported by the record. It is uncontroverted defendant admitted to threatening to slash plaintiff's tires and warning she should watch her back. The judge also found a "significant prior history" of domestic violence, including the June 2021 incident, but noted plaintiff voluntarily dismissed the TRO, and the parties entered into civil restraints. See N.J.S.A. 2C:25-29(a)(1). Further, the judge observed defendant's history of acrimony directed at plaintiff, noting the September 2022 incident, which did not rise to the level of domestic violence despite defendant's "clearly inappropriate" language toward plaintiff. In elaborating on defendant's established history of domestic violence against plaintiff, the judge found credible plaintiff's testimony that he previously placed her in a chest lock and committed various other specifically identified incidents. The judge's determination that plaintiff established defendant committed the predicate act of harassment, and prior incidents of domestic violence, by a preponderance of the evidence is well-supported by the credible evidence in the record.

Under the second Silver prong, the judge found credible plaintiff's statement "she [wa]s fearful" and determined an FRO was warranted to protect her from an immediate danger and to prevent further abuse. Silver, 387 N.J. Super. at 127. The judge stated, "there is a need for the issuance of [an FRO]

to . . . afford the appropriate protections to . . . plaintiff." He further elaborated that plaintiff was "very[,] very credible" based on her "demeanor" and "open, honest, and earnest" testimony. The judge found defendant's statements that "many of [his] actions resulted from the . . . divorce" and "how could [plaintiff] be afraid because [he] pa[id] the mortgage" evidenced "coercive control." A review of the record demonstrates the judge's finding that an FRO was necessary to prevent future acts of domestic violence is well-supported by substantial credible evidence. We defer to the judge's findings "when the evidence is largely testimonial and involves questions of credibility." MacKinnon v. MacKinnon, 191 N.J. 240, 254 (2007) (quoting Cesare, 154 N.J. at 412). Thus, we discern no reason to disturb the judge's well-reasoned findings and issuance of the FRO.

Finally, we reject defendant's argument that the judge's consideration of prior acts of domestic violence, which were the subject of an earlier domestic violence complaint, violated his rights under the Double Jeopardy Clause of the Fifth Amendment. We note defendant maintained at the FRO hearing that "everything that was in the [TRO] amendment ha[d] nothing to do with this [F]RO" hearing. Our Supreme Court elucidated, "[a]t a minimum, due process requires that a party in a judicial hearing receive 'notice defining the issues and

an adequate opportunity to prepare and respond.'" J.D., 207 N.J. at 478 (alteration in original) (quoting H.E.S., 175 N.J. at 321). At the hearing, defendant acknowledged he received the amended TRO, including plaintiff's affidavit listing "several prior history acts." We are satisfied that defendant had sufficient "notice . . . and an adequate opportunity to prepare and respond" to the alleged predicate act of harassment. Ibid. (quoting H.E.S, 175 N.J. at 321).

As we have previously addressed in the context of a domestic violence proceeding, "[t]he Double Jeopardy Clause of the Fifth Amendment to the United States Constitution protects against a second prosecution for the same offense after a conviction or an acquittal, and prohibits multiple punishments for the same offense." T.M.S. v. W.C.P., 450 N.J. Super. 499, 508-09 (App. Div. 2017) (citing State v. Widmaier, 157 N.J. 475, 489-90 (1999)). "A complaint brought under the PDVA is a civil action separate and distinct from a criminal action." Id. at 509 (quoting State v. Brown, 394 N.J. Super. 492, 504 (App. Div. 2007)). "Therefore, a double jeopardy defense does not apply to the PDVA." Ibid. The judge, pursuant to N.J.S.A. 2C:25-29(a)(1), was charged with considering plaintiff's timely-noticed allegations of prior acts of domestic violence. Thus, defendant's contention that the judge erroneously considered prior acts of domestic violence is meritless.

To the extent not addressed, defendant's remaining contentions lack sufficient merit to warrant discussion in our written opinion. R. 2:11-3(e)(1)(E).

Affirmed.