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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2360-22

IN THE MATTER OF
S.L.

Submitted May 28, 2024 – Decided June 6, 2024

Before Judges Mawla and Chase.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Petition No. 0246 XTR 2022 000001.

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

Mark Musella, Bergen County Prosecutor, attorney for respondent State of New Jersey (Ian C. Kennedy, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Appellant S.L.¹ appeals from a February 27, 2023 order entering a Final Extreme Risk Protective Order (FERPO) against him pursuant to the Extreme Risk Protective Order Act of 2018 (the Act), N.J.S.A. 2C:58-20 to -32. We affirm.

On May 29, 2022, appellant's father entered the Paramus Police Department and reported appellant, who was then eighteen, had made suicidal remarks. He said appellant was suspended from school for possessing and using a marijuana vape on school grounds in February 2022. The suspension caused appellant to "fall into a depression."

Appellant's father told police that he and his wife brought appellant to a mental health facility in Connecticut in March 2022, but he did not cooperate. Appellant was subsequently involuntarily committed to a mental health facility in North Carolina. However, he left the facility after a month, traveled to Tennessee, and stayed in a hotel for a few months. His relationship with his father was "contentious." During an argument, appellant reportedly told his father, "why don't you just shoot me in the head with a nine-millimeter."

¹ Records relating to Temporary Extreme Risk Protective Order (TERPO) and FERPO proceedings are confidential and shall not be disclosed to persons other than the respondent, except for good cause shown. Admin. Off. of the Cts., Admin. Directive #19-19, Guidelines for Extreme Risk Protective Orders 8(a) (Aug. 12, 2019) [hereinafter AOC Directive].

Weeks later, appellant contacted his mother and requested to return to New Jersey. Appellant flew back to New Jersey on May 28, 2022, and booked a hotel room in Paramus. Appellant's father informed police his son was at the hotel.

The father provided police with a psychiatric evaluation from February 21, 2022. The police report stated appellant was indefinitely expelled from school for researching "weapons of mass destruction" during school hours. It explained appellant "has a history of violent behavior, computer . . . hacking, the search of radical ideologies and other peculiar interests." The psychiatric evaluation diagnosed appellant with autism, attention-deficit/hyperactivity disorder (ADHD), and generalized anxiety disorder.

Paramus police went to the hotel where appellant was staying. He declined to answer any questions regarding his mental state. Police informed appellant he needed to speak with a 262-HELP screener.² The screener

² 262-HELP is "Bergen County's Designated Psychiatric Emergency Screening Program. The purpose of 262-HELP is to provide emergency mental health services to residents of Bergen County." Bergen ResourceNet, 262-HELP Psychiatric Emergency Screening Program – PESP (Care Plus N.J.), <https://www.bergenresourcenet.org/search/262-help-psychiatric-emergency-screening-program-pest-care-plus-nj/>.

determined appellant needed to be involuntarily committed for further evaluation. He was transported to the hospital.

Appellant's father told the screener his son claimed to have purchased a gun in Tennessee. He further explained appellant disassembled the weapon and was mailing parts of it to New Jersey.

Based on the information gathered by the police, Paramus Police Sergeant Todd Colaianni sought a TERPO, which the municipal court granted. After police served the TERPO on appellant, he informed them he purchased a firearm in Tennessee but had abandoned it there, noting Tennessee was "not a red flag state." During his stay at the hospital, appellant told the attending physician "if I want to kill myself I could, I have guns at home." The physician reported appellant was "irritable," and that his insight and judgment were "minimal" and "poor."

Simultaneous to the FERPO proceeding, appellant's parents sought guardianship of him. However, after an investigation by a court-appointed guardian ad litem, it was determined appellant was competent and not in need of a guardian.

The FERPO hearing began in December 2022. Sergeant Colaianni testified about the day of the initial incident, when appellant's father reported to

the police station. The sergeant was not present when appellant's father made the report, and the "direct information taken from his father was not given" to him, but instead, he requested the TERPO based on a police report prepared by a fellow officer who spoke to appellant's father.

The judge and the parties realized the State did not have recent medical documents for appellant that were created during the guardianship proceeding, namely a November 2022 psychiatric evaluation requested by the guardian ad litem.³ The judge adjourned trial to provide the State time to obtain and examine the documents.

The FERPO proceeding resumed two months later. Appellant testified he never researched the use of weapons online. He stated he did not currently own a weapon but did own a long rifle in Tennessee the year prior and the last time he saw the gun was before he left Tennessee. Appellant testified he never brought the weapon to New Jersey and had "no clue" where it was. He denied threatening to harm himself.

³ The November 2022 psychiatric evaluation obtained by the guardian ad litem concluded appellant did not have a primary psychiatric diagnosis, including personality disorder, ADHD, or autism spectrum disorder. Rather, he had "mild signs of an [a]djustment [d]isorder" that was common to teenagers and was suffering from "a 'phase of life problem' in that his age, student status, and inexperience all negatively influence his ability to become fully independent of his parents."

Appellant claimed his parents admitted him to the mental health facility in Connecticut against his will because he was a minor. He was there for three weeks, but the facility needed appellant's consent to continue treating him and he was discharged because he refused to consent. His parents then admitted him to the North Carolina facility because it did not require his consent. He was treated with medication but shortly after his discharge he claimed he "was cleared to go without . . . medication." Appellant then engaged in intensive outpatient therapy (IOP) for approximately eight months.

The judge considered appellant's psychiatric evaluations, which detailed some of his more troubling behavior. For example, a 2017 psychological evaluation noted appellant stated September 11 was his "favorite holiday." Additionally, after appellant's English class read a story about saving children from a burning house, appellant remarked, "it would be better if the kids weren't saved." Appellant downloaded a program to bypass his school's internet security so he could access blocked websites, and he searched for "malicious computer programs, World War II, Nazi[]s, [and] machine guns."

When appellant was thirteen years old, he wrote a poem that read: "The people are dead, the dirt is [red], hit with a sled, shot in the head, all I know is the dirt is red and the people are dead." The poem prompted a psychological

evaluation. In middle school, appellant reportedly "attempted to stab another student with a pencil" and was assigned a one-to-one aide. On his school computer, appellant downloaded a document called "Sniper's notebook," a cartoon about a terrorist, and foreign war propaganda.

Appellant was "observed by a staff member" at his high school "who believed [he] may have been under the influence of drugs [or] alcohol." This prompted a substance use assessment, in which he tested negative for drugs and alcohol. Appellant admitted he used marijuana but not at that time.

When appellant was admitted to the hospital after speaking with the screener, he told a physician he was suspended from high school for "smoking cannabis in the school bathroom." The screening forms showed reports of "suicidal ideation, suicidal threats with knives, and stated that he . . . bought a gun to kill [him]self." (Internal quotation marks omitted). The physician diagnosed appellant with major depressive disorder, impulse control disorder, and autism.

When the guardian ad litem interviewed appellant for the guardianship proceeding, appellant admitted he "threatened to shoot [him]self if [his parents] did not return [his] computer." He also admitted to purchasing the gun in Tennessee.

The trial judge found Sergeant Colaianni credible and "only portions of [appellant]'s testimony credible," because even though he "spoke clearly and answered all of counsel's questions, . . . he was evasive at times." She found appellant had a history of threats or acts of violence against himself or others based on the statement he made to his father about shooting him and the psychiatric records, which showed a history of violent behavior. In particular, she noted the attempt to stab another student, that he used a translator at school to say "kill the president," and searched for weapons on his computer.

The judge concluded this evidence established factor one under N.J.S.A. 2C:58-23(f). Relying on the same factual findings for factor one, she found factor two was established because appellant had a history of use, attempted use, or threatened use of physical force against another person.

The judge found factor seven, a history of drug or alcohol abuse and recovery from the abuse, was supported by the fact appellant was suspended from high school for using marijuana. Factor eight was met because appellant recently acquired a firearm, ammunition, or other deadly weapon "based on his own admissions to police, his parents, and the [c]ourt."

Furthermore, the State proved the following factors: twelve, appellant has prior involuntary commitment in a hospital or treatment facility; thirteen,

appellant has received or is receiving mental health treatment; fourteen, appellant has both complied and failed to comply with different mental health treatments; and fifteen, appellant has received a diagnosis of a mental health disorder.

The judge granted the FERPO. She later issued an amplification of findings, which reiterated her initial findings in greater detail. Notably, she acknowledged the November 2022 psychiatric evaluation differed from the other mental health evaluations in the record, but she observed the purposes of a guardianship proceeding and a FERPO matter "are fundamentally different." Still, given the fact the guardian ad litem recommended appellant "seek therapy and the reported statement[s appellant made] to his father, the [c]ourt remained concerned as to whether [appellant] should own or possess a firearm."

I.

Appellant argues the judge should not have granted the FERPO because the following N.J.S.A. 2C:58-23(f) factors weighed heavily against it: three, whether the respondent is subject to a domestic violence temporary restraining order (TRO) or final restraining order; four, whether he is subject to a Victim's Assistance and Survivor Protection Act order; five, whether he has any prior arrests, pending charges, or convictions; and six, whether he has a criminal

record related to cruelty toward animals. Appellant claims he has never used physical force against others or threatened to do so.

Additionally, the judge erred basing her finding under factor one on hearsay, because appellant's father did not testify, and his statement was not corroborated. Appellant denied making any statements or threats of self-harm or harm to others. Further, Sergeant Colaianni sought the TERPO based on information relayed by appellant's father to an officer who did not testify. Therefore, Sergeant Colaianni "had no firsthand knowledge of the contents of the report."

Appellant argues the judge also improperly found factor two of N.J.S.A. 2C:58-23(f). He reiterates there has been no documented use or threats of use of physical force by him; he was never charged criminally for use of physical force, has never been subject to a TRO, and has never made statements to anyone that he would use physical force in any context.

Appellant points out AOC Directive Guideline 3(d) requires the court to consider additional factors, namely: nine, whether appellant recklessly used, displayed, or brandished a firearm; ten, whether appellant had a previous TERPO; and eleven, whether appellant violated an existing TERPO. Appellant asserts these factors weigh heavily in favor of dismissing the FERPO because

he has never engaged in such conduct. Sergeant Colaianni conceded there was no evidence appellant possessed a firearm during the TERPO application process.

Appellant argues, although his involuntary commitment in New Jersey after speaking to the screener supports factor twelve, it was not dispositive of whether he posed a danger to himself or others if he possessed a firearm. He contends the same reasoning applies to factors thirteen through fifteen—though appellant received mental health treatment and received a diagnosis of a mental health disorder, the State did not present a logical nexus between those facts and the conclusion that appellant presents a significant risk of bodily injury to himself or others. He argues a mere diagnosis is not sufficient justification for a FERPO.

For the first time on appeal, appellant argues the judge violated his Second Amendment right by failing to explain how the FERPO and the Act are consistent with the nation's historical traditions of firearm regulation. The judge failed to articulate a specific justification for the constitutionality of the Act under Bruen.⁴

⁴ N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022).

"The scope of appellate review of a trial court's fact-finding function is limited. 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). We do "not disturb the 'factual findings and legal conclusions of the trial judge unless [we are] convinced . . . they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Id. at 412 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)).

We previously outlined the law that frames our discussion of appellant's arguments at length in In re D.L.B., 468 N.J. Super. 397, 400-07 (App. Div. 2021). We explained the Act is modeled on the process for obtaining a domestic violence restraining order. Id. at 402. The Act contains eight statutory factors under N.J.S.A. 2C:58-23(f), and seven additional factors were promulgated in the AOC Directive, which courts must consider before entering a FERPO. Id. at 402-04. We also described the applicable evidentiary standards, including that the Act provides "[t]he court shall issue the FERPO . . . if it finds 'by a preponderance of the evidence at the hearing 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)).

Pursuant to these principles, we affirm substantially for the reasons expressed in the trial judge's opinions. We add the following comments.

The judge's finding that N.J.S.A. 2C:58-23(f) factors one, two, seven, and eight were established was amply supported by the record. In finding factors one and two, that appellant has a history of threats of violence against self or others and of use, attempted use, or threatened use of physical force against another person, the judge cited appellant's statement to his father about shooting him in the head, that he attempted to stab another student with a pencil, and his prior internet searches on violent subjects.

Additionally, we reject appellant's claims the judge could not rely on the evidence relayed to Sergeant Colaianni. Guideline 5(c) instructs the Rules of Evidence do not apply in the presentation and consideration of evidence in a FERPO case. D.L.B., 468 N.J. Super. at 406.

The court's finding of factors seven and eight was also supported by adequate, substantial, and credible evidence. Factor seven, appellant's history of drug or alcohol abuse and recovery from the abuse, was supported by the fact appellant was admittedly suspended from school for "smoking cannabis in the school bathroom." Factor eight, that appellant has recently acquired a firearm,

ammunition, or other deadly weapon, was proven by the fact appellant stated he purchased a gun while living in Tennessee.

Because the judge found four behavioral factors were present, she could then consider Guideline factors twelve through fifteen pertaining to appellant's mental health. D.L.B., 468 N.J. Super. at 404 (quoting AOC Directive Guideline 3(d)). These findings were also supported by adequate, substantial, and credible evidence.

Factor twelve, whether appellant "has any prior involuntary commitment in a hospital or treatment facility for persons with psychiatric disabilities" was clearly demonstrated from the record. Admin. Directive #19-19 at 5. Appellant acknowledged he was involuntarily admitted in New Jersey. Factor thirteen, whether appellant "has received or is receiving mental health treatment" was clearly established, as evidenced by the multiple psychiatric reports in the record and his admission to multiple mental health facilities. Ibid.

Factor fourteen was supported by the record and the same facts as factor thirteen, namely, appellant voluntarily left the Connecticut and North Carolina treatment centers, but complied with treatment when he was involuntarily admitted to the New Jersey facility. And factor fifteen, that appellant has received a mental health diagnosis, was amply supported by the multiple


psychiatric reports detailing his symptoms and psychiatric diagnoses. The judge correctly noted the conclusions in these reports were not outweighed by the psychiatric evaluation obtained by the guardian ad litem.

For these reasons, the judge neither abused her discretion nor misapplied the law when she granted the FERPO. And the other factors appellant claims the judge should have found would not have changed the outcome and lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Finally, we decline to consider appellant's constitutional challenge to the Act. This issue was not properly raised before the trial judge, and we will not consider it for the first time on appeal. Selective Ins. Co. of Am. v. Rothman, 208 N.J. 580, 586 (2012); Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION