SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1059-15T2

J.R.,

Plaintiff-Respondent,

v.

B.A.,

Defendant-Appellant.

Submitted August 8, 2017 – Decided December 11, 2017

Before Judges O'Connor and Whipple.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Camden County, Docket No. FV-04-1476-12.

B.A., appellant pro se.

Obermayer Rebmann Maxwell & Hippel, LLP, attorneys for respondent (Shari B. Veisblatt and Thomas A. Roberto, on the brief).

PER CURIAM

Defendant B.A. appeals from a November 5, 2015 Family Part order denying his motion to schedule a final hearing to adjudicate the domestic violence complaint plaintiff J.R. filed

against him in 2011. We vacate this order and remand for further proceedings.

I

We recount only those portions of the record pertinent to the issues on appeal. Plaintiff and defendant had a four-month dating relationship, which ended in March 2011. Later that year, each party filed a domestic violence complaint pursuant to the Prevention of Domestic Violence Act (the Act), N.J.S.A. 2C:25-17 to -35, and each obtained a temporary restraining order (TRO) against the other.

After nine days of trial, on August 2, 2011, the parties agreed plaintiff's TRO against defendant would continue indefinitely, and defendant would dismiss the complaint and TRO he obtained against plaintiff. It is not disputed plaintiff's TRO against defendant, which is expressly identified as an "indefinite TRO" in the order itself, is also a consent order. For the balance of the opinion, we refer to such order as the consent order, indefinite TRO, or order.

At the time of the entry of this order, both parties were represented by counsel. Before signing the order, the court questioned both parties and determined they had entered into the order voluntarily. However, the court failed to elicit any

acknowledgment from defendant he committed an act of domestic violence.

In October 2011, defendant filed a motion to set aside the order on the ground he agreed to its entry under duress and the terms were vague, ambiguous, or unenforceable. On December 6, 2012, the court rejected defendant's contentions and denied his motion. On February 26, 2013, subsequent motions for reconsideration of or to vacate the December 6, 2012 order were denied. Defendant appealed the December 6, 2012 order, but his appeal was ultimately dismissed and his motion to reinstate the appeal was unsuccessful.

In 2015, defendant filed a and order to show cause why a final hearing should not be scheduled on the indefinite TRO. Later converted to a motion, defendant asserted a number of contentions, one of which was the court erred by failing to complete the final hearing on plaintiff's domestic violence complaint and by allowing the entry of an indefinite TRO.

On November 5, 2015, the court denied the motion. In its decision, the court claimed defendant had made the same argument when he previously sought to set aside the order and that such argument already had been rejected. The court also emphasized it was the parties' decision to suspend the final hearing on their respective complaints and enter into the order which,

among other things, permitted plaintiff's TRO against defendant to continue indefinitely. The court further observed defendant was in favor of this resolution at the time the parties crafted their agreement, because such resolution avoided the possibility of a final restraining order being entered against him.

Finally, the court stated an "indefinite TRO" is regarded as one that has not been served upon a defendant named in a domestic violence complaint. Although it did not specifically refer to this authority, we assume the court was making reference to subsection 4.9.9 of the New Jersey Domestic Violence Procedures Manual (Manual), which is promulgated by the Supreme Court in conjunction with the Office of the Attorney General, Department of Law and Public Safety. This subsection states that when it is unlikely the defendant will be served within a reasonable period of time, the court can issue an indefinite TRO that continues the relief requested by the plaintiff and that a final hearing will be scheduled when the defendant is served.[1]

According to the court, the police will not arrest a defendant if he or she violates an indefinite TRO, because the

[1] The manual may be found online at https://www.judiciary.state.nj.us/courts/assets/family/dvprcman.pdf.

police will assume the defendant has not been served with the TRO. The court commented defendant was aware this was one of the benefits of having an indefinite TRO, because he could:

> avoid the possibility of plaintiff calling the police and having [defendant] arrested any time [he] allegedly violated the temporary restraining order. In other words, police officers will not arrest a defendant on an indefinite temporary restraining order because they assume that the defendant has not been noticed.

II

On appeal, defendant asserts various contentions for our consideration. None, but for one, has sufficient merit to warrant discussion in a written opinion, see Rule 2:11-3(e)(1)(E). The sole contention worthy of discussion is defendant's claim the court erred when it denied his request to complete the final hearing on plaintiff's complaint and permitted the entry of the indefinite TRO. We note defendant had not in fact asserted this argument when he sought to set aside this order in 2012.

There is no provision in the Act that provides for the issuance of an "indefinite TRO." The Manual, which is "intended to provide procedural and operational guidance for . . . judges and Judicial staff and law enforcement personnel[,]" N.J. Domestic Violence Procedures Manual § i (amended 2008), does

permit the entry of an "indefinite TRO," but only under the circumstances set forth in subsection 4.9.9, addressed above. See N.J. Domestic Violence Procedures Manual, § 4.9.9 (amended 2008). However, this subsection does not apply here, as defendant was served with plaintiff's complaint.

According to the Act, once served with a domestic violence complaint[2], no order restraining the defendant may be entered absent a court's finding or the defendant's admission he or she committed an act of domestic violence. N.J.S.A. 2C:25-29(a). "A domestic violence final restraining order may not be entered by consent or without a factual foundation." J.S. v. D.S., 448 N.J. Super. 17, 23 (App. Div. 2016) (citing Franklin v. Sloskey, 385 N.J. Super. 534, 540-41 (App. Div. 2006)).

The Manual similarly provides that "[t]he court only has jurisdiction to enter restraints against a defendant after a finding by the court or an admission by the defendant that the defendant has committed an act(s) of domestic violence[.] . . . The defendant must provide a factual basis for the admission

[2] The form of domestic violence complaint used by the court includes a form of temporary restraining order. "A Domestic Violence Civil Complaint means the multi-page application and temporary restraining order issued by the Superior or Municipal Court." See Domestic Violence Procedures Manual (October 9, 2008), I-1, 1.6; III-9, 3.11. Thus, if a defendant has been served with a domestic violence complaint, he or she has also been served with a temporary restraining order.

that an act of domestic violence has occurred." N.J. Domestic Violence Procedures Manual § 4.13.2 (amended 2008).

We are mindful the prohibition against the entry of a restraining order after a complaint and TRO have been served upon a defendant pertains to the entry of a final restraining order and that the order under review here was labeled by the parties as an "indefinite TRO." However, an order is not temporary merely because it is labeled as such. There is no question the "indefinite TRO" entered in this matter was intended to be and is a final order. It disposed of and terminated the matter.

We also acknowledge New Jersey's strong public policy favoring the settlement of litigation. Gere v. Louis, 209 N.J. 486, 500 (2012). "The settlement of litigation ranks high in our public policy." Brundage v. Estate of Carambio, 195 N.J. 575, 601 (2008) (quoting Jannarone v. W.T. Co., 65 N.J. Super. 472, 476 (App. Div.), certif. denied, 35 N.J. 61 (1961)). "This policy rests on the recognition that parties to a dispute are in the best position to determine how to resolve a contested matter in a way which is least disadvantageous to everyone." Gere, supra, 209 N.J. at 500 (2012) (citations omitted).

In addition, "[a]dvancing that public policy [of fostering the settlement of disputed claims] is imperative in the family

courts where matrimonial proceedings have increasingly overwhelmed the docket. . . . This practice preserves the right of competent, informed citizens to resolve their own disputes in whatever way may suit them." Ibid. (quoting Puder v. Buechel, 183 N.J. 428, 438 (2005). We also appreciate that, here, the court was endeavoring to facilitate a disposition both parties favored and which terminated this highly contentious matter.

Nevertheless, the Act limits the manner in which domestic violence matters may be resolved. Under these particular circumstances, the court was not at liberty to enter what was in effect a final order, absent a finding or an admission defendant committed an act of domestic violence. Here, neither condition was fulfilled.

Notwithstanding, under these particular facts, another question must be resolved before the subject order can be found void. Although not framed as such, in effect the relief defendant sought before the Family Part was that afforded by Rule 4:50-1(d). Thus, even though he did not specifically cite this rule, we are compelled to consider if it is availing to him. See Midland Funding LLC v. Albern, 433 N.J. Super. 494, 498, n.3 (App. Div. 2013) (citing Baumann v. Marinaro, 95 N.J. 380, 390 (1984)(noting regardless of the legal authority upon

which a party expressly posits a motion, the court is required to apply the law actually implicated by such motion)).

Rule 4:50-1(d) does provide that the court may relieve a party from a final judgment or order if it is void. However, "[t]he mere fact [an order] is void within the intendment of subsection (d) has been held not to automatically entitle the defendant to relief pursuant to the rule." See Pressler & Verniero, Current N.J. Court Rules, cmt. 5.4.1 on R. 4:50-1 (2018) (citing Garza v. Paone, 44 N.J. Super. 553 (App. Div. 1957)). Rule 4:50-2 requires motions seeking relief under Rule 4:50-1(d) be made within a reasonable time. Whether a party has moved timely rests in the court's sound discretion, as guided by equity. Garza, supra, 44 N.J. Super. at 558.

Accordingly, we remand this matter to the Family Part court to consider, after permitting the parties the opportunity to brief the issue, whether defendant timely moved under Rule 4:50-1(d) for relief from the subject order.

The November 5, 2015 order is vacated and this matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.