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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-2252-15T2

V.J.,

Plaintiff-Respondent,

v.

A.D.,

Defendant-Appellant.

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Argued February 28, 2017 – Decided March 29, 2017

Before Judges Yannotti and Gilson.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FV-02-1119-16.

Joseph Alexander Takach argued the cause for appellant (Koulikourdis and Associates, attorneys; Peter J. Koulikourdis and Rosemary N. Gushiken, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant appeals from a December 22, 2015 final restraining order (FRO) entered in accordance with the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. We affirm because

the trial court's findings of predicate acts and the need for an FRO are supported by substantial, credible evidence in the record.

I.

At a one-day trial conducted on December 22, 2015, the trial court heard testimony from plaintiff and defendant. Plaintiff was self-represented and a lawyer represented defendant. Based on the testimony, the trial court found that the parties had been in a dating relationship for over a year. Plaintiff broke off the relationship sometime in the fall of 2015. Thereafter, plaintiff started dating another man.

On December 14, 2015, plaintiff and her new boyfriend were outside her home when defendant drove by. Defendant stopped his car and approached plaintiff and her boyfriend. Plaintiff and the boyfriend then went into her residence, which was a two-family house. While the boyfriend went upstairs to plaintiff's home, plaintiff locked the entrance to the front door. Defendant broke the front door, grabbed plaintiff, and pushed her up against a wall. According to plaintiff, defendant also took her cell phone, which he later smashed.

Defendant testified that he stopped to confront plaintiff's new boyfriend because plaintiff had told him that the new boyfriend was physically abusing her. Defendant acknowledged that he pushed open the door after plaintiff had locked it, but he denied grabbing

her or pushing her against the wall. Defendant also denied taking plaintiff's cell phone, explaining that plaintiff threw the phone at him and that is what caused the phone to break.

After hearing the testimony of both parties, the trial court found plaintiff "generally credible" and found "some of [defendant's] testimony . . . incredible[.]" The court then went on to find that defendant had committed three predicate acts of assault, criminal trespass, and harassment.<sup>1</sup>

With respect to assault, the judge found that the breaking down of the door was an act of physical menace capable of placing plaintiff in fear of imminent serious injury. In finding criminal trespass, the judge credited plaintiff's testimony that the outside door to the residence had been locked and defendant, therefore, knew he was not permitted to enter the property. He, nevertheless, broke the door and entered plaintiff's residence. In finding harassment, the judge relied on N.J.S.A. 2C:33-4(b), and found that when defendant grabbed plaintiff and pushed her up against the wall those actions constituted offensive touching.

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<sup>1</sup> In making its findings, the trial court also found that defendant had engaged in criminal mischief. In identifying the predicate acts on which it was relying, however, the trial court stated that it was finding predicate acts of assault, criminal trespass, and harassment.

The trial court went on to find that there was a need to issue an FRO to protect plaintiff. In making that finding, the court found no history of domestic violence between the parties, but did find that defendant had an anger problem and that plaintiff had a legitimate fear that without an FRO, she would be subject to future abuse.

## II.

On appeal, defendant raises seven arguments, contending that (1) there were no predicate acts; (2) his actions did not rise to the level of harassment because he did not have the purpose to alarm or annoy plaintiff; (3) there was no assault because there was no prior history of violence between the parties; (4) the trial court failed to clearly state its factual findings and correlate those findings with legal conclusions; (5) an isolated act of trespass did not justify the issuance of an FRO; (6) there was no showing of the need for an FRO; and (7) plaintiff's provocations were relevant and the trial court should have considered those provocations.

Our scope of review is limited when considering an FRO issued following a bench trial. J.D. v. M.A.D., 429 N.J. Super. 34, 42 (App. Div. 2012). A trial court's findings are binding on appeal "when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (citing Rova Farms

Resort, Inc. v. Inv. Ins. Co., 65 N.J. 474, 484 (1974)). This deference is particularly appropriate where the evidence at trial is largely testimonial and hinges upon a court's ability to assess credibility. Ibid.

We also keep in mind the expertise of family judges who routinely hear domestic violence cases. Id. at 413. Consequently, we will not disturb the "factual findings and legal conclusions of the trial judge unless [we are] convinced that 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, supra, 154 N.J. at 412), certif. denied, 220 N.J. 98 (2014). Nevertheless, when we address a question of law, a "trial judge's findings are not entitled to that same degree of deference if they are based upon a misunderstanding of the applicable legal principles." N.J. Div. of Youth & Family Servs. v. Z.P.R., 351 N.J. Super. 427, 434 (App. Div. 2002) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

The PDVA was enacted to further New Jersey's "strong policy against domestic violence." Cesare, supra, 154 N.J. at 400. Domestic violence occurs when an adult or emancipated minor commits one or more of the acts covered by the PDVA. N.J.S.A. 2C:25-

19(a). When determining whether to grant an FRO, a trial judge must engage in a two-step analysis. Silver v. Silver, 387 N.J. Super. 112, 125-26 (App. Div. 2006). "First, 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; see also N.J.S.A. 2C:25-29(a) (providing that an FRO may only be granted "after a finding or an admission is made that an act of domestic violence was committed"). Second, the court must determine that a restraining order is necessary to provide protection for the victim. Silver, supra, 387 N.J. Super. at 126-27; see also J.D. v. M.D.F., 207 N.J. 458, 475-76 (2011) (explaining that an FRO should not be issued without a finding that "relief is necessary to prevent further abuse" (quoting N.J.S.A. 2C:25-29(b))).

Applying these standards to the arguments raised by defendant, we discern no basis for disturbing the trial court's decision to grant an FRO to plaintiff. There was substantial credible evidence in the record to support the trial court's finding that defendant committed an assault, harassment, and criminal trespass.

A. Assault

A person is guilty of assault if he:

(1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or

(2) Negligently causes bodily injury to another with a deadly weapon; or

(3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

[N.J.S.A. 2C:12-1(a)(1) to (3).]

Here, the trial court focused on subsection (3) of N.J.S.A. 2C:12-1(a). Thus, the trial judge found that when defendant broke through the locked front door and confronted plaintiff in a confined location, he was physically menacing plaintiff and put her in fear of imminent serious bodily injury. In making that finding, the trial court noted that defendant weighed approximately 215 pounds while plaintiff was a "petite" 125-pound woman. Those findings are supported by substantial, credible evidence in the record.

Defendant argues that the trial court erred in finding assault because there was no history of violence between the parties. That argument is really an attempt to conflate the two prongs of the Silver test. While plaintiff acknowledged that there was no history of violence between the parties, she also testified that on this occasion, defendant broke down the door while she was standing just inside, grabbed her, and pushed her up against the wall.

B. Harassment

The harassment statute provides that a person commits harassment

if, with purpose to harass another, he:

a. Makes, or causes to be made, a communication or 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.

[N.J.S.A. 2C:33-4(a) to (c).]

Here, the trial court focused on subsection (b) of N.J.S.A. 2C:33-4, and found that defendant harassed plaintiff by purposely breaking down the front door, grabbing her, and pushing her up against the wall. Those findings are supported by substantial, credible evidence in the record.

Defendant argues that his actions did not constitute harassment because it was not his purpose to alarm or seriously annoy plaintiff, nor was there a series of repeated acts. In making that argument, defendant incorrectly focuses primarily on subsections (a) and (c) of the harassment statute. See N.J.S.A.



2C:33-4(a) and (c). As previously noted, the trial court here focused on subsection (b) of N.J.S.A. 2C:33-4. There was substantial credible evidence that defendant acted with the purpose to harass plaintiff when he broke through the door, grabbed her, and pushed her up against the wall.

### C. Criminal Trespass

The criminal trespass statute states in relevant part: "A person commits an offense if, knowing that he is not licensed or privileged to do so, he enters . . . [a] structure [.]" N.J.S.A. 2C:18-3(a).

Here, the trial court reasoned that because the door was locked, defendant was on notice that he was not licensed or privileged to enter plaintiff's residence. Defendant, however, argues that the trial court initially indicated that there was not sufficient evidence to show criminal trespass. A close reading of the trial court's decision, however, establishes that the court first questioned whether criminal trespass had been shown, but then went on to find that there was a criminal trespass.

Our review of the record satisfies us that there was sufficient credible evidence to support a finding of criminal trespass as a predicate act for domestic violence. Moreover, we note that even without the finding of criminal trespass, the trial

court found two other predicate acts warranting the finding that defendant had engaged in domestic violence against plaintiff.

D. The Need for an FRO

Defendant argues that there was insufficient evidence to support a finding that plaintiff needed the protection of an FRO. The trial court, however, found that defendant's actions demonstrated that he had a temper that could get out of control and, thus, it was likely that he would engage in further acts of domestic violence. Moreover, the court found that plaintiff was in need of a protective order and that she had a legitimate fear that defendant would subject her to future domestic violence. Again, those findings are supported by substantial, credible evidence in the record.

E. Defendant's Other Arguments

Defendant's other arguments are without sufficient merit to warrant further discussion in a written opinion. See R. 2:11-3(e)(1)(E). In that regard, we note that the record in this matter does not support defendant's arguments about plaintiff's alleged provocations. In short, defendant contends that he was acting to confront plaintiff's new boyfriend because she had recently been intimate with him and had disclosed that her new boyfriend was physically abusing her. At trial, plaintiff denied telling defendant that her new boyfriend had abused her. The trial court

found that plaintiff's testimony was more credible than defendant's testimony and, thus, the trial court did not find any facts showing that plaintiff engaged in provocations.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION