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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-4130-15T4

IN THE MATTER OF THE SEIZURE
OF WEAPONS BELONGING TO
MARC R. PICINICH.

Submitted January 31, 2017 – Decided February 22, 2017

Before Judges Fasciale and Gilson.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FO-02-277-16.

Gurbir S. Grewal, Bergen County Prosecutor,
attorney for appellant State of New Jersey
(Meredith A. Rodriguez, Assistant Prosecutor,
of counsel and on the brief).

Respondent Marc R. Picinich has not filed a
brief.

PER CURIAM

In this forfeiture case, the State of New Jersey appeals from
a March 17, 2016 order requiring the return of Mr. Picinich's
weapons and Firearms Purchaser Identification Card (FPIC), and a
May 6, 2016 order denying reconsideration. We affirm substantially
for the reasons expressed by Judge Lisa A. Firko in her thorough
oral opinions.

The police seized Mr. Picinich's weapons and FPIC after the issuance of a temporary restraining order (TRO). The State filed a petition seeking forfeiture of the weapons and FPIC. The court conducted a two-day hearing and took testimony from Mr. Picinich, his wife, and several police officers.

The judge found the wife, who voluntarily dismissed the TRO the day she obtained it, was largely not credible. The judge also concluded the testimony from the officers was limited because they had no personal knowledge of the events leading to the issuance of the TRO. The judge believed Mr. Picinich's testimony and denied the petition. She also denied the State's motion for reconsideration and the State's request for a stay pending appeal. The judge rendered two extensive oral opinions supporting the orders under review.

On appeal, the State argues that returning the weapons and FPIC to Mr. Picinich poses a threat to the public health, safety, and welfare, N.J.S.A. 2C:58-3(c)(5). The State contends that the judge also erred by "preventing the State from offering credible hearsay testimony from the police officers." The State maintains that the judge's findings are not supported by substantial credible evidence.

The court must grant the State's forfeiture petition if it establishes, by a preponderance of the evidence, that the return

of the weapons seized "would not be in the interest of the public health, safety or welfare[.]" N.J.S.A. 2C:58-3(c)(5). To make this determination, the judge made numerous findings of fact after taking testimony from various witnesses. In matters involving firearm permits and the forfeiture of weapons, we may only "set aside a trial court's forfeiture ruling when it was not supported by sufficient competent evidence." State v. Cordoma, 372 N.J. Super. 524, 535 (App. Div. 2004); see also State v. Wahl, 365 N.J. Super. 356, 369 (2004) (deferring to the judge's fact-finding in a weapons forfeiture matter because of the court's "special jurisdiction and expertise in family matters" (quoting Cesare v. Cesare, 154 N.J. 394, 413 (1998))).

We have no reason to disturb the judge's finding that Mr. Picinich did not pose a threat to the safety, health, and welfare of the public. As to whether the wife feared Mr. Picinich, she testified equivocally. She stated, "When I called the police in 2010, at that moment that I called, I – I guess I was." As to Mr. Picinich, the judge found "he was credible He had good eye contact with the [c]ourt. He said I would never hurt [the wife] consistently through this trial. And I found him to be credible in that regard." Although the wife sustained a small cut on her finger when Mr. Picinich broke a computer keyboard in her vicinity, the judge stated:

I find [Mr. Picinich] to be credible when he said he didn't mean to throw that keyboard at [the wife] because if he did she would have had black eyes, [a] broken nose, broken bones, and bruise[s] all over her body. And that's, fortunately, not what the case was. So, I found him credible. When he snatched the keyboard some of the plastic flew out. The keys flew out. And it gave her a little scratch on her finger. It was, you know, nothing more than that. No medical attention was required. And the police had to do what they had to do. So, I think, something that was domestic (indiscernible) really got blown out of proportion and involved in the system.

Moreover, the wife testified she feels comfortable with Mr. Picinich owning weapons and added that she did not feel her safety was threatened. As a result, we conclude that there is sufficient credible evidence in the record to support the judge's findings.


The State's remaining argument, that the judge prevented the State from offering hearsay evidence from the police officers, is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add these brief remarks.

The State did not raise this issue during the two-day hearing. Instead, the State argued to the judge on reconsideration that she erred by preventing the officers from testifying as to what the wife had told them when she called the police. The State characterized this purported hearsay from the wife as being of "credible character."

The wife testified extensively about the alleged domestic violence. She was therefore available, subject to probing cross-examination, to testify during the hearing about the alleged acts of domestic violence.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION