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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the 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-4757-15T3

I.S.-P.,

Plaintiff-Respondent,

v.

L.A.P.-C.,

Defendant-Appellant.

Submitted December 4, 2017 – Decided December 22, 2017

Before Judges Messano and Vernoia.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FV-07-0761-15.

The Gorman Law Firm, attorneys for appellant (Scott A. Gorman, of counsel and on the brief).

Respondent has not filed a brief.

PER CURIAM

Following trial, Judge Marcella Matos Wilson issued a final restraining order (FRO) pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, in favor of plaintiff, I.S.-P., against defendant, L.A.P.-C. The judge

concluded: defendant committed an act of domestic violence against his wife, specifically, harassment pursuant to N.J.S.A. 2C:33-4(a); and, a final restraining order was necessary to protect plaintiff. See Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006) (explaining the two-fold inquiry to be made by the trial judge). Defendant appealed.

In an unpublished opinion, we reversed, concluding plaintiff failed to prove defendant made a "communication" with the purpose to harass plaintiff, as required by subsection (a) of N.J.S.A. 2C:33-4. I.S.-P. v. L.A.P.-C., No. A-1144-14 (App. Div. Mar. 24, 2016) (slip op. at 12).[1] Because the complaint only alleged a violation of N.J.S.A. 2C:33-4 without specifying any subsection of the statute, we remanded the matter so Judge Matos Wilson could consider whether the evidence proved defendant had committed harassment under subsection (c), id. at 14, that is, whether defendant "[e]ngage[d] 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(c). We directed the

[1] Although citing an unpublished opinion is generally forbidden, we do so here to provide a full understanding of the issues presented and pursuant to the exception in Rule 1:36-3 that permits citation "to the extent required by res judicata, collateral estoppel, the single controversy doctrine or any other similar principle of law." See Badiali v. N.J. Mfrs. Ins. Grp., 429 N.J. Super. 121, 126 n.4 (App. Div. 2012), aff'd, 220 N.J. 544 (2015).

judge to consider the second Silver factor – whether "there was a need for an FRO to protect plaintiff from 'immediate danger or further acts of domestic violence'" – only if she found defendant committed an act of domestic violence. I.S.-P., supra, slip op. at 14 (quoting Silver, supra, 387 N.J. Super. at 128).

We need not review the trial testimony, which we recited in detail in our prior opinion. Id. at 2-7. Plaintiff failed to appear at the remand hearing. Defense counsel argued that defendant could not have known that his actions on the night in question "would have caused annoyance or alarm" to plaintiff, and, therefore, he lacked the "necessary mens rea element with respect to [p]aragraph c of the harassment statute." Counsel also argued that the parties were "in a very different position" than when the FRO was issued twenty months earlier because defendant had no contact with plaintiff in the interim. Counsel asserted an FRO was no longer necessary under the second Silver factor.

Judge Matos Wilson concluded our remand required her to consider whether there was a predicate act of domestic violence under N.J.S.A. 2C:33-4(c), and whether an FRO was necessary at the time of trial. She told counsel that defendant could subsequently move to vacate the FRO "for whatever reasons . . . necessary," but simply because defendant had not violated the FRO since trial did not mean the FRO was unnecessary.

The judge then meticulously reviewed the trial evidence, repeating her finding that defendant traveled from Long Island to plaintiff's home at 1:30 a.m. on August 31, 2014, ostensibly to deliver a gift to her son, and attempted to break into the home by removing an air conditioner. The judge found defendant wanted to see plaintiff or catch her "with someone else." The judge concluded defendant "was acting with the purpose to alarm or seriously annoy plaintiff." Judge Matos Wilson then described a series of incidents from March through August 2014, which were attempts by defendant to "implant[] himself within plaintiff's life with the purpose to seriously annoy or alarm her." The judge found there was a predicate act of domestic violence under N.J.S.A. 2C:33-4(c).

Turning to whether an FRO was necessary, the judge concluded there was a "history of domestic violence," and "a threat of . . . immediate danger to the person and [the] property of the plaintiff" continued, given defendant's attempt to enter her home through a window during the early morning hours. The judge also concluded the issuance of an FRO was in the best interests of plaintiff's child.[2]

[2] Defense counsel asserted that plaintiff's child might no longer be living with her in the United States. The judge determined that factor could be "eliminate[d]" and concluded the issuance of an FRO was in the best interests of plaintiff.

On appeal, defendant presents the following points for our consideration.

> I.
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> THE LOWER COURT ERRED WHEN IT FOUND THAT [DEFENDANT] VIOLATED N.J.S.A. 2C:33-4(c) BECAUSE DEFENDANT DID NOT INTEND TO CAUSE SERIOUS ANNOYANCE OR ALARM WHEN HE DROVE TO THE HOME OF HIS WIFE TO DELIVER A GIFT FOR HIS WIFE'S SON AND THE EVIDENCE IN THE RECORD IS INSUFFICIENT TO SUPPORT A FINDING THAT [DEFENDANT] ENGAGED IN A COURSE OF ALARMING CONDUCT.
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> II.
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> THE LOWER COURT ERRED WHEN IT FOUND THAT A DOMESTIC VIOLENCE RESTRAINING ORDER SHOULD ISSUE AGAINST [DEFENDANT] WHEN THE PARTIES HAD NO HISTORY OF DOMESTIC VIOLENCE AND WHEN NEITHER PLAINTIFF NOR HER PROPERTY WAS IN IMMEDIATE DANGER.

Having considered these arguments in light of the record and applicable legal standards, we conclude they lack sufficient merit to warrant extensive discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons expressed by Judge Matos Wilson. We add only the following.

In his first point, defendant largely attacks the factual findings of Judge Matos Wilson, arguing defendant's version of the events of August 31, 2014, was more credible. However, "[w]e ordinarily defer to the factual findings of the trial court because it has the opportunity to make first-hand credibility judgments

about the witnesses . . . ; it has a 'feel of the case' that can never be realized by a review of the cold record." N.J. Div. of Youth & Family Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 293 (2007)). This is particularly true here "[b]ecause of the family courts' special jurisdiction and expertise in family matters." Cesare v. Cesare, 154 N.J. 394, 413 (1998).

Defendant argues the specific incidents the judge cited, or his conduct during the early morning hours of August 31, 2014, were not accompanied by the specific purpose to alarm or seriously annoy plaintiff. Judge Matos Wilson, who heard the testimony of both parties, determined otherwise, and we see no reason to disturb the legal conclusions the judge reached in this regard.

Defendant further contends that issuance of the FRO was unnecessary because his conduct on August 31, 2014, was "an isolated incident under circumstances that are not likely to be repeated." This, however, ignores the judge's specific findings regarding the other incidents, which defendant contends were either misunderstandings or not indicative of domestic violence, and the judge's conclusion that there had been a "history of domestic violence" between defendant and his wife.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.
CLERK OF THE APPELLATE DIVISION