

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4969-15T2

R.M.,

Plaintiff-Appellant/
Cross-Respondent,

v.

L.A.G.,

Defendant-Respondent/
Cross-Appellant.

Argued October 16, 2017 – Decided November 3, 2017

Before Judges Accurso and Vernoia.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Morris County,
Docket No. FV-14-0841-16.

Dale E. Console argued the cause for
appellant/cross-respondent.

Lizanne J. Ceconi argued the cause for
respondent/cross-appellant (Ceconi &
Cheifetz, LLC, attorneys; Barry L. Baime and
Patricia Tuckman, on the brief).

PER CURIAM

After twenty-four years of marriage, R.M. and L.A.G. filed
cross-complaints requesting final domestic violence restraining

orders (FRO) under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35. At the conclusion of a four-day trial, the court denied L.A.G.'s FRO request, finding she failed to prove R.M. committed a predicate act of domestic violence. The court denied R.M.'s FRO request concluding that although he proved L.A.G. committed the predicate acts of harassment and criminal mischief, he failed to demonstrate an FRO was necessary to protect him from immediate danger or prevent further acts of domestic violence. R.M. appeals the court's order denying his request for an FRO.¹ We affirm.

R.M. and L.A.G. are lawyers and share four children. They experienced marital difficulties during the three-year period prior to the April 11, 2016 filing of their cross-complaints. A month before the complaints were filed, R.M. moved out of the marital home. R.M. and L.A.G. continued to communicate thereafter regarding their children and other marital and financial issues.

They exchanged text messages about tax documents that R.M. needed to review. On April 11, 2016, L.A.G. went to R.M.'s office with the documents. She also intended to discuss with R.M. marriage counseling therapy she had arranged for them. R.M. encountered L.A.G. in the parking lot of his office, and she gave

¹ L.A.G. filed a cross-appeal of the court's order denying her FRO request. The cross-appeal was subsequently withdrawn.

him the documents and requested to speak with him. R.M. said he was leaving to get water. Believing R.M. would return quickly, L.A.G. went into his office.

R.M.'s failure to return immediately resulted in a series of text messages between the parties. R.M. advised L.A.G. he would meet her at their home. L.A.G. texted that she wanted to meet in R.M.'s office, and she was at his desk looking at his emails.

When R.M. returned to his office, L.A.G. sat at his computer taking pictures of the screen. He asked L.A.G. to leave. She stood, yelled and threw a paperweight into a bin. She ripped R.M.'s mail, removed the webcam from his computer and threw a binder. She also threw two picture frames to the floor and broke them. L.A.G. threatened to throw a glass cube but then put it down.

R.M. called 911, and L.A.G. was heard saying she was being kidnapped and held against her will. R.M. stood by the door, blocking her egress. R.M. testified he prevented L.A.G. from leaving because she threatened to make a scene in front of his co-workers and he felt she was out of control. L.A.G. testified that in her attempt to leave, she accidentally scratched R.M.'s cheek. Upon the arrival of the police, the incident ended. R.M. and L.A.G. immediately filed their cross-complaints.

The judge denied L.A.G.'s FRO request, finding she failed to prove R.M. committed the predicate acts of harassment, N.J.S.A. 2C:33-4, and false imprisonment, N.J.S.A. 2C:13-3. The judge determined that R.M. proved L.A.G. committed the predicate acts of harassment, N.J.S.A. 2C:33-4, and criminal mischief, N.J.S.A. 2C:17-3(a)(1), but found insufficient evidence to sustain R.M.'s claim L.A.G. committed a simple assault, N.J.S.A. 2C:12-1. The judge then considered whether an FRO was necessary to prevent future acts of domestic violence.

The judge found L.A.G. went to R.M.'s office to try to get him to go to the marriage therapy she hoped would repair their marriage. The judge found R.M. could have immediately left his office, but instead "stood at the door and waited" until the police arrived. The court determined that if R.M. had been afraid of L.A.G., he would not have remained in the office. The court further determined that during their twenty-four year marriage, there was "minimal, if any, difficulty" between the parties and there was no evidence of any "cycle of power and control."

In its opinion, the court referenced the parties' financial circumstances and their four children, and noted that an FRO would not be in the children's best interests. The court observed that if an FRO was entered in the future, it could adversely affect L.A.G.'s status as a practicing lawyer. The court concluded there

was insufficient evidence showing L.A.G. posed an immediate threat of future domestic violence and an FRO was unnecessary to protect R.M. from future acts of domestic violence. The court entered an order dismissing R.M.'s complaint. This appeal followed.

In adjudicating a domestic violence case, the trial judge has a "two-fold" task. Silver v. Silver, 387 N.J. Super. 112, 125 (App. Div. 2006). The judge must first determine whether the plaintiff has proven that the defendant committed one of the predicate acts referenced in N.J.S.A. 2C:25-19(a). Id. at 125-26. The judge must construe any such acts in light of the parties' history to better "understand the totality of the circumstances of the relationship and to fully evaluate the reasonableness of the victim's continued fear of the perpetrator." Kanaszka v. Kunen, 313 N.J. Super. 600, 607 (App. Div. 1998); see N.J.S.A. 2C:25-29(a)(1).

If a predicate offense is proven, the judge must then assess "whether a restraining order is necessary, upon an evaluation of the facts set forth in N.J.S.A. 2C:25-29(a)(1) to -29(a)(6), to protect the victim from an immediate danger or to prevent further abuse." J.D. v. M.D.F., 207 N.J. 458, 475-76 (2011) (quoting Silver, supra, 387 N.J. Super. at 126-27). Whether a restraining order should be issued depends on the seriousness of the predicate offense, on "the previous history of domestic violence between the

plaintiff and defendant including previous threats, harassment[,]
and physical abuse," and on "whether immediate danger to the person
or property is present." Corrente v. Corrente, 281 N.J. Super.
243, 248 (App. Div. 1995) (citing N.J.S.A. 2C:25-29(a)); see also
Cesare v. Cesare, 154 N.J. 394, 402 (1998) (noting the need to
consider any prior history of domestic violence).

On appeal, R.M. argues the court erred by finding an FRO was
unnecessary. He claims the court failed to consider the nature
of the predicate acts and the parties' prior domestic violence
history. He also asserts there was no evidence supporting the
court's reliance on the parties' financial circumstances and, even
if there was, it was improper for the court to consider such
evidence and the impact of an FRO on the children in determining
whether an FRO was necessary. We are not persuaded.

The court did not ignore the evidence concerning alleged
prior acts of domestic violence. The court considered R.M.'s
testimony, which showed L.A.G.'s use of foul language and
statements concerning R.M.'s interactions with their children, and
found the evidence showed no history of domestic violence during
the parties' twenty-four year marriage. We defer to the judge's
findings of fact because they are "supported by adequate,
substantial, credible evidence," Cesare, supra, 154 N.J. at 411-

12, and "[b]ecause of the family courts' special jurisdiction and expertise in family matters," id. at 413.

We are also unconvinced that the court failed to consider L.A.G.'s commission of the predicate acts. The commission of a predicate act of domestic violence alone does not "automatically mandate[] the issuance of" an FRO. A.M.C. v. P.B., 447 N.J. Super. 402, 417 (App. Div. 2016). "[C]ourts may consider two key factors when determining whether to issue permanent restraints: (1) a lack of evidence demonstrating a history of domestic violence or abuse; and (2) the commission of a predicate act that does not involve physical violence against the victim." Id. at 414.

Here, the court did not find a history of domestic violence. In addition, it determined R.M. failed to prove L.A.G. committed a predicate act of physical violence against him, and dismissed his claim that L.A.G. committed the predicate act of assault. Cf. A.M.C., supra, 447 N.J. Super. at 418-19 (finding evidence the defendant had a history of physical violence and threats of violence, and committed physical acts of aggression to prevent plaintiff from leaving the marital home, was sufficient as a matter of law to establish an FRO was necessary).

R.M. last argues the court could not properly consider the parties' financial circumstances and the best interests of their children in its determination if an FRO was necessary because

those factors "are relevant only to the fashioning of a domestic violence remedy" under N.J.S.A. 2C:25-29. Cesare, supra, 154 N.J. at 401. Although we agree the court should not have relied on those facts to determine whether an FRO was necessary, the error was not clearly capable of producing an unjust result. R. 2:10-2. Independent of those findings, the record supports the court's determination that R.M. failed to establish that an FRO was necessary.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION