SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5213-14T3

J.M.M.,

Plaintiff-Respondent,

v.

S.A.S.,

Defendant-Appellant.

Submitted February 7, 2017 – Decided February 24, 2017

Before Judges Fasciale and Gilson.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Ocean County, Docket No. FV-15-1663-15.

Speck Law Offices, L.L.C., attorneys for appellant (Michael R. Speck, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant appeals from a June 11, 2015 final restraining order (FRO), entered pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, in favor of plaintiff. We affirm.

Plaintiff and defendant were friends and lived together in defendant's home. When defendant departed for a business trip, plaintiff claimed that defendant asked her to leave her home. During that time, plaintiff had posted on Facebook "I had no clue it was so nice out today. I need new friends and places to go that's kid friendly." Plaintiff's friends and defendant then began arguing by recording comments to the Facebook post. Plaintiff claimed that defendant called her and threatened to "slit [her] throat" if she did not remove the Facebook post, and that defendant called her again and told her "she was going to slit [her] throat in [her] sleep if [she] didn't remove [her] stuff from [defendant's] house in three hours."

Plaintiff did not continue living at the house, but her belongings remained there. Plaintiff stated that defendant gave her fifteen minutes to remove her belongings from the house, but due to plaintiff's pregnancy, she was unable to lift her belongings out of the house.

In June 2015, the judge held the FRO hearing and heard testimony from plaintiff, defendant, and defendant's friend (the friend). In issuing the FRO against defendant, he found that defendant made a terroristic threat, N.J.S.A. 2C:12-3, when defendant told plaintiff that she would slit her throat, and he also found the predicate act of harassment, N.J.S.A. 2C:33-4,

occurred because defendant threatened to strike plaintiff with the purpose to harass her. The judge concluded that the FRO was needed to protect plaintiff because she was afraid.

On appeal, defendant argues (1) the trial court did not determine that there was a need to issue an FRO; and (2) the facts supplied by plaintiff did not provide a reasonable basis that defendant committed predicate acts of terroristic threats and harassment.

In a domestic violence case, we accord substantial deference to a Family Part judge's findings, which "are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 412 (1998). Deference is particularly warranted when much of the evidence is testimonial and implicates credibility determinations. Ibid. We do not disturb the judge's factual findings and legal conclusions, 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." Ibid. (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)).

When determining whether to grant an FRO pursuant to the Act, the judge must make two determinations. Silver v. Silver, 387 N.J. Super. 112, 125-26 (App. Div. 2006); see also Cesare, supra,

154 N.J. at 400-05. "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." Silver, supra, 387 N.J. Super. at 125.

Second, the judge must determine whether a restraining order is required to protect the plaintiff from future acts or threats of violence. Id. at 126-27. Under that determination, there must be a finding that "relief is necessary to prevent further abuse." J.D. v. M.D.F., 207 N.J. 458, 476 (2011) (quoting N.J.S.A. 2C:25-29(b)). It is well established that commission of one of the predicate acts of domestic violence set forth in N.J.S.A. 2C:25-19(a) does not, on its own, "automatically . . . warrant the issuance of a domestic violence [restraining] order." Corrente v. Corrente, 281 N.J. Super. 243, 248 (App. Div. 1995). Although that determination "is most often perfunctory and self-evident, the guiding standard is whether a restraining order is necessary, upon an evaluation of the factors 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." Silver, supra, 387 N.J. Super. at 127.

There exists substantial credible evidence to support the judge's finding that there was a need to issue an FRO. The judge

found that plaintiff needed protection because defendant threatened to slit plaintiff's throat twice and plaintiff was afraid for her safety. The court explained that defendant was very possessive toward plaintiff and her daughter because defendant called plaintiff's daughter "my little girl." The judge found that although there was a four-day delay in seeking a temporary restraining order, plaintiff's reasoning for the delay was credible.

A person is guilty of harassment where, "with purpose to harass another," he or she:

> 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)-(c).]

Harassment requires that the defendant act with the purpose of harassing the victim. J.D., supra, 207 N.J. at 486. A judge may use "[c]ommon sense and experience" when determining a defendant's intent. State v. Hoffman, 149 N.J. 564, 577 (1997).

N.J.S.A. 2C:12-3, terroristic threats, states:

> a. A person is guilty of a crime of the third degree if he threatens to commit any crime of violence with the purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience . . . .
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> b. A person is guilty of a crime of the third degree if he threatens to kill another with the purpose to put him in imminent fear of death under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it will be carried out.

There is adequate substantial evidence in the record to support the judge's finding that defendant harassed plaintiff and was guilty of terroristic threats.

The judge found plaintiff credible and believed that as a result of the Facebook post, defendant threatened to slit plaintiff's throat twice. The judge determined that the friend was not credible when he stated that defendant never threatened plaintiff because someone at his party would have told him if defendant threatened plaintiff. The judge explained that defendant was possessive toward plaintiff and her daughter by referring to plaintiff's daughter as "my little girl" and was angry over the Facebook post. The judge found that defendant

threatened to slit plaintiff's throat with the purpose to harass plaintiff and remove her from her home.

Moreover, there was evidence that defendant became angry toward plaintiff when plaintiff returned to defendant's home to get medicine for her daughter. Plaintiff testified that defendant was screaming at the friend and threw plaintiff's Pack 'n Play out the door. The judge found that defendant called the friend a traitor when he gave plaintiff her daughter's medicine. The judge also referred to a text message defendant sent to plaintiff stating that plaintiff could pick up her things alone and "[t]here never was and still is no danger to you here." The judge determined the statement evidenced that defendant made a threat sometime prior.