

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1452-16T3

J.A.B.,

Plaintiff-Respondent,

v.

J.L.M.,

Defendant-Appellant.

Submitted January 24, 2018 – Decided February 27, 2018

Before Judges Alvarez and Geiger.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex
County, Docket No. FV-12-0736-17.

Christina L. Bennett, attorney for appellant.

Respondent has not filed a brief.

PER CURIAM

Defendant J.L.M. appeals the entry of a final restraining order (FRO) on October 28, 2016, under the Prevention of Domestic Violence Act, N.J.S.A. 2C:35-17 to -35. We affirm.

We discern these facts from the trial of October 28, 2016. Plaintiff J.A.B. and defendant began dating while in high school.

After graduating, plaintiff attended Rutgers University, living at the school's Livingston campus, while defendant continued living at home in South Orange and attended a school for court reporters. The parties' relationship began deteriorating when plaintiff thought defendant became controlling with regard to the various social events plaintiff attended on campus. Plaintiff testified the relationship ended on September 6, 2016, due to defendant's controlling behavior, although the parties continued to communicate.

In early October 2016, the parties argued about plaintiff's plan to attend a fraternity party in late October. Defendant wanted to know details about it and how plaintiff planned to get home.

Plaintiff made it clear she wanted to end the relationship, and accompanied defendant to her dormitory room so he could retrieve some personal belongings. While placing the items in defendant's car, the parties argued again.

Plaintiff testified that when she turned to leave, defendant assaulted her by punching her "reasonably hard" in the back with a closed fist, leaving a mark. Plaintiff did not see the closed fist but said she felt a fist on her back and it hurt. Plaintiff told defendant she was going to call the police. He responded he did not care and, according to plaintiff, threatened to post

embarrassing naked pictures of her on the internet. Defendant then drove away. Plaintiff filed for and obtained a temporary restraining order (TRO) against defendant on the grounds of assault based on these events.

Defendant admitted he was mad. While denying he punched plaintiff, he admitted he "pushed her, probably hard," when she walked away from him. Immediately after leaving, defendant began repeatedly calling and texting plaintiff's cell phone. After being unable to reach plaintiff, defendant began calling and texting from his father's phone. Plaintiff testified she received over one hundred phone calls from defendant. Plaintiff further testified defendant went on her Instagram account and changed her name to "slut."

The parties also testified about a prior incident on August 16, 2016. A scuffle broke out during an argument when plaintiff wanted to leave and take her laptop computer. During the struggle her computer screen cracked. She said defendant pushed her on her chest forcing her backwards. Defendant testified plaintiff pushed him first.

Plaintiff further testified she was afraid of defendant, being "more afraid of the harassment that might follow." She also indicated defendant had, from time to time, shown up on campus uninvited, which the trial court found "troubling." When asked

whether there was any reason to believe defendant would want to physically hurt her, plaintiff answered, "possibly." She likewise thought he would "possibly" retaliate because she had filed a restraining order against him.

In an oral decision on October 28, 2016, the trial judge found by a preponderance of the evidence that defendant committed the predicate act of assault against plaintiff during the October 12, 2016 incident. In reaching that decision, the judge stated he found plaintiff's "testimony was straightforward and candid." The judge specifically found plaintiff credible when she testified defendant was controlling and had punched her in the back. The judge concluded, "she sure knew what it felt like and whether it's a hard push, whether it's a punch, it felt like a punch to [plaintiff] and it had to be pretty hard, based on [defendant's] own admission. He said it was probably pretty hard."

With regard to prior history of domestic violence, the judge found plaintiff's version of the August 16, 2016 incident credible and straightforward, reasoning that when plaintiff "had the opportunity to embellish her testimony she did not." The judge found defendant assaulted plaintiff on that date by pushing her in the chest.

The judge then considered whether an FRO would be necessary to protect plaintiff from further domestic violence. Based on the

predicate act of assault, the prior history of assault, and the fact plaintiff was still a student, the judge found an FRO was necessary to protect plaintiff.

On appeal, defendant argues the trial court erred in concluding defendant committed the predicate act of assault in the absence of finding defendant attempted to cause or purposely, knowingly, or recklessly caused bodily injury to plaintiff. Defendant further argues the trial court erred in concluding an FRO was necessary to protect plaintiff from immediate danger or to prevent further acts of domestic violence.

Our standard of review of the trial court's factual findings is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We are generally bound by the trial judge's findings of fact "when supported by adequate, substantial, credible evidence." Id. at 411-12 (citing Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). Findings and conclusions of the trial judge are entitled to enhanced deference in family court matters. Id. at 413. Deference is particularly appropriate when the evidence is testimonial and involves credibility issues because the judge who observes the witnesses and hears the testimony has a perspective the reviewing court does not enjoy. Pascale v. Pascale, 113 N.J. 20, 33 (1988) (citing Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)). It is "[o]nly when the trial court's conclusions are

so 'clearly mistaken' or 'wide of the mark'" that we will intervene and make our own findings "to ensure that there is not a denial of justice." 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. G.L., 191 N.J. 596, 605 (2007)).

The entry of a final restraining order requires the trial court to make certain findings. See Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). The court "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. The court should make this determination "in light of the previous history of violence between the parties." Ibid. (quoting Cesare, 154 N.J. at 402). Next, the court must determine whether a restraining order is required to protect the party seeking restraints from future acts or threats of violence. Id. at 126-27. That means 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)).

Here, the record supports the trial court's credibility determinations and factual findings, including that plaintiff was credible. There was ample evidence to support that finding.

A simple assault is committed when a person "[a]ttempts to cause or purposely, knowingly or recklessly causes bodily injury to another." N.J.S.A. 2C:12-1(a)(1). "'Bodily injury' means physical pain, illness or any impairment of physical condition[.]" N.J.S.A. 2C:11-1(a). The court gave credence to plaintiff's version of events that defendant committed an assault by punching her in the back with a closed fist, causing pain and leaving a mark.

A restraining order will not issue based solely on the commission of a predicate offense listed in the Act. Bittner v. Harleysville Ins. Co., 338 N.J. Super. 447, 454 (App. Div. 2001) (citing N.B. v. T.B., 297 N.J. Super. 35, 40 (App. Div. 1997)). A court must also consider additional factors that include "(1) [t]he previous history of domestic violence between the [parties], including threats, harassment and physical abuse; (2) [t]he existence of immediate danger to person or property; . . . [and] (4) [t]he best interests of the victim." N.J.S.A. 2C:25-29(a)(1), (2), and (4). Indeed, "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, 387 N.J. Super. at 127.

We agree with the court that the record supported the need to protect plaintiff against further abuse based on defendant's assaultive behavior on August 16, 2016, and October 12, 2016, defendant's controlling behavior, defendant's inappropriate conduct after the October 12, 2016 incident, and plaintiff's fear he would physically harm or retaliate against her in the future. The previous history of domestic violence, including physical abuse, was an appropriate factor warranting the entry of an FRO. See N.J.S.A. 2C:25-20(a). The defendant's threat to post embarrassing photographs of plaintiff on the internet and his manipulation of her Instagram account were also appropriate considerations. We are satisfied the record supported the entry of the FRO.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION