SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2050-15T2

K.B.,

Plaintiff-Respondent,

v.

S.L.,

Defendant-Appellant.

S.L.,

Plaintiff-Appellant,

v.

K.B.,

Defendant-Respondent.

Argued September 19, 2017 – Decided January 2, 2018

Before Judges Reisner and Hoffman.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket Nos. FV-07-2841-15, FV-07-2730-15 and FV-07-3097-15.

Kevin C. Orr argued the cause for appellant.

Lamouria Boyd argued the cause for respondent.

PER CURIAM

The parties in this domestic violence case lived together for six years and had a young son. The relationship was tempestuous. Just before the relationship ended, and then after defendant moved out of their home, plaintiff K.B. filed a series of four domestic violence (DV) complaints against defendant S.L. After plaintiff filed her fourth DV complaint, defendant filed a DV complaint against her, primarily claiming that her prior three DV complaints were meritless and were filed in order to "stop his parenting time."

Defendant now appeals from a June 9, 2015 order concerning transcripts, a July 16, 2015 final restraining order (FRO), two orders dated November 30, 2015 concerning counsel fees, and an amended FRO dated December 1, 2015. His appeal focuses on plaintiff's third and fourth DV complaints and his DV complaint against her, which was tried together with her fourth complaint. He contends that the trial court should have awarded him counsel fees after dismissing plaintiff's third DV complaint. He also objects to the court's order limiting the use the parties could make of the DV trial transcripts. Defendant further asserts that the trial court's decision in favor of plaintiff in the fourth DV trial was against the weight of the evidence, and the trial court

abused discretion in awarding plaintiff counsel fees in the fourth case.

After reviewing the record in light of the applicable legal standards, we affirm all of the orders on appeal. We also conclude that several of defendant's arguments are both without merit and warrant little or no discussion.

We find no abuse of discretion in the trial judge's decision to deny defendant's counsel fee application in the third DV case. As the trial judge cogently explained in his written opinion of November 30, 2015, he found that defendant had anger management issues, engaged in controlling, obnoxious behavior, and sent plaintiff lewd and offensive text messages. However, the judge found that defendant's conduct was not undertaken for the purpose of harassment, and he reasoned that there was no predicate act to support a finding of domestic violence. See N.J.S.A. 2C:25-19(a). Nonetheless, the judge noted that defendant needed to control his angry impulses and learn more appropriate ways of communicating with plaintiff. The judge, who was also presiding over the couple's parallel child custody case, ordered defendant to undergo a psychological evaluation and attend anger management therapy.

Absent a clear abuse of discretion, we will not disturb a trial judge's decision of a counsel fee application. See McGowan v. O'Rourke, 391 N.J. Super. 502, 508 (App. Div. 2007). In light

of the judge's findings, we decline to second-guess his decision that a counsel fee award to defendant was not justified in the third DV case. We affirm the November 30, 2015 order for the reasons stated in the judge's thorough written opinion. No further discussion is warranted. R. 2:11-3(e)(1)(E).

Defendant's arguments concerning limits on the use of the DV trial transcripts are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm the June 9, 2015 order, for the reasons stated in the trial judge's oral decision placed on the record on June 9, 2015.

Next, we address the fourth DV trial. After a fifteen-day trial on plaintiff's fourth DV complaint and defendant's DV complaint against plaintiff, the trial judge set forth detailed credibility determinations and factual findings on the record on July 16, 2015. Significantly, the judge believed plaintiff's testimony in most important respects, found that defendant was not credible, and concluded that defendant committed DV against plaintiff in the fourth incident. The judge also found that defendant committed some of the acts that were the subject of plaintiff's prior DV complaints, including breaking a window in her house in a fit of anger, and telling her that he was going to burn the house down. The judge credited testimony from plaintiff's seventeen-year-old son, who witnessed those incidents but did not

testify at the earlier trials. The judge found that plaintiff did not commit domestic violence against defendant.

Based on our review of the record, including the transcripts of the fourth DV trial, we find that the judge's decision is supported by substantial credible evidence. See Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). In light of the facts as the judge found them to be, his legal conclusions as to the parties' respective DV complaints are unassailable. We affirm for the reasons he stated in his opinion. We add these comments with respect to plaintiff's DV complaint.

Although the trial was lengthy, the essential facts can be stated briefly. Plaintiff described a frightening episode in which defendant suddenly appeared outside her house in his truck, as she was leaving in her truck to pick up a male friend at another location in Newark. Defendant followed her to the meeting place with the friend, and confronted her with obscene accusations about neglecting their young son in order to provide this male friend with sexual favors. According to plaintiff, she drove away from the scene, but defendant persistently followed her in his truck as she tried desperately to get away from him. At one point, defendant appeared to be trying to push her vehicle into a passing bus. Terrified, plaintiff drove to the Irvington Police Department, where defendant pulled up next to her vehicle and

directed more foul language at her, before peeling away as plaintiff got the attention of a nearby police officer.

Plaintiff's passenger, S.B., corroborated her description of defendant chasing plaintiff's vehicle, cursing at her, and trying to photograph her. Police witnesses also provided some corroborating testimony.

In his testimony, defendant admitted that he followed plaintiff on this occasion. He claimed that he first encountered plaintiff's vehicle by coincidence, as he was driving to buy a cigar at about 9:30 p.m., and he decided to follow her. He testified that, because their son had inflamed eyes that afternoon, he thought plaintiff might have the son in her vehicle and might be taking him to the hospital. However, he admitted that he did not see the son in her vehicle. Defendant offered a convoluted explanation as to why he followed plaintiff from Newark into Irvington and, while supposedly intending to return to his home in Newark, somehow instead ended up in front of the Irvington Police Department just as plaintiff arrived there. He admitted that he then stopped his vehicle next to hers, but pulled away when her male companion started blowing her vehicle's horn. Defendant could not explain why he stopped his truck instead of just driving past plaintiff's vehicle and heading home.

For reasons he explained in detail, the judge found defendant's testimony incredible. He found that defendant in fact followed plaintiff and subjected her to harassment, N.J.S.A. 2C:33-4(a) and (c), and assault, N.J.S.A. 2C:12-1(a)(1), both of which are predicate acts for a finding of domestic violence. See N.J.S.A. 2C:25-19(a). The judge found that on April 13, 2015, defendant was waiting for plaintiff when she left her home shortly after 9:30 p.m. He found that defendant followed her and became enraged on seeing her stop her vehicle and pick up a male companion a few streets away. At that point, defendant confronted plaintiff, calling her a "fucking bitch" and expressing in foul and coarse language his suspicion that she was having a sexual relationship with the male companion.

The judge described the events as follows:

> [Defendant] follows her to South 20th Street and confronts her. He's out of the car snapping pictures, cursing, blocking her vehicle and following her again to the intersection of South 20th and 19th Avenue where he gets out of his car again and tries to confront her again, gets back in his car, chasing her down 19th Avenue, Grove Street and Springfield Avenue, getting up on her bumper, pushing her over toward a bus and confronting her again outside of the Irvington Police Department only to peel away with tires screeching and squealing as he departs before being stopped by the police.

The judge found defendant's explanation for his conduct to be incredible. The judge also found that it was necessary to enter an FRO to prevent defendant from committing further acts of DV. See Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). After reading the transcripts, we find ample support for the judge's negative evaluation of defendant's credibility. Based on the facts as the judge found them to be, his legal conclusions - that defendant committed domestic violence and that a final restraining order was warranted — are unassailable.

We find no abuse of the judge's discretion in awarding counsel fees to plaintiff. Nor do we find a basis to second-guess the amount of the award, which totaled about $38,000 for a fifteen-day trial. We affirm substantially for the reasons the judge stated in his written opinion of November 30, 2015. We agree with the judge that the trial took much longer than it should have taken, in part due to defense counsel's insistence on cross-examining witnesses at great length about minor details. At one point during the trial, the judge noted that "[t]his is day seven of a trial that involves a fifteen minute event." As previously noted, we will disturb a trial court's fee award only in the rarest circumstances and where we find a clear abuse of discretion. McGowan, 391 N.J. Super. at 508. This is plainly not one of those unusual circumstances where our intervention is required.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION