SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3910-16T1

M.A.M.,

Plaintiff-Respondent,

v.

M.A.M.,

Defendant-Appellant.

Submitted May 9, 2018 – Decided May 21, 2018

Before Judges Alvarez and Geiger.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FV-20-1432-17.

The BMB Law Firm, PC, attorneys for appellant (Brooke M. Barnett, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant M.A.M. appeals from a May 18, 2017 final restraining order (FRO) entered in favor of plaintiff M.A.M., pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:35-17 to -35 (the Act). We affirm.

We discern these facts from the trial of May 18, 2017. Plaintiff and defendant are divorced. Three children were born of the marriage. On April 18, 2017, plaintiff filed a complaint seeking a temporary restraining order (TRO) against defendant. In her complaint, plaintiff alleged that on April 7, 2017, defendant called plaintiff's place of employment at a local school asking to speak to the principal. Plaintiff further alleged defendant first spoke to the secretary, telling her "plaintiff was crazy, she had mental problems, . . . he doesn't know how she is working with children, [and] that they (the school) will get in trouble for helping her out." Plaintiff also alleged defendant spoke to the principal. Plaintiff called the police, a report was taken, and police advised defendant she could seek a restraining order. Plaintiff alleged harassment, N.J.S.A. 2C:33-4, as the predicate act.

Plaintiff also alleged defendant had committed prior acts of domestic violence, describing a series of incidents involving harassing behavior occurring between December 2013 and March 2017.

Plaintiff appeared with counsel for the trial. Defendant appeared without an attorney. Patrolman Vincent Flagley, Hemat Abdelmouty, plaintiff, and defendant testified. Neither the witnesses nor the parties requested an interpreter.

Plaintiff testified the allegations in her complaint were accurate. Plaintiff recounted defendant's conduct during an incident in 2014 that caused her to lose her prior job. She stated defendant called the school repeatedly on April 7, 2017. The calls caused plaintiff to feel ashamed and concern she might lose her job again. She indicated the principal of the school is no longer speaking to her because of defendant's phone call.

Plaintiff unsuccessfully attempted to admit a Facebook post in evidence. The trial judge stated: "I'm not looking at it, I'm not considering it."

Defendant admitted making the phone call in question to the school and speaking to the secretary and principal. He admitted telling the principal he was plaintiff's ex-husband and that plaintiff was receiving treatment from a social worker at the school and a private psychiatrist. Although he attempted to justify the phone call, defendant offered no testimony or evidence regarding any psychiatric diagnosis of plaintiff, let alone proof that she posed any danger to students.

In his oral decision, the judge noted defendant's goal in placing the phone call was "completely inappropriate." Defendant knew plaintiff had lost her job when he called plaintiff's former employer. The judge found defendant's conduct affected plaintiff's present and future employability.

The judge found plaintiff had proven by a preponderance of the evidence that defendant had harassed her through his statements to the school secretary and principal on March 7, 2017. He further found defendant's conduct was part of a continuing pattern of harassment. He also found that plaintiff risked losing her job again due to defendant's conduct. The judge did not find defendant's explanation of his reasons for the phone call to be credible, concluding that defendant's "intentions weren't good," and determined a final restraining order was necessary to prevent the harassment from happening again. The FRO also continued plaintiff's residential custody of the three children and awarded defendant limited parenting time. This appeal followed.

On appeal, defendant argues the trial court committed plain error by finding defendant harassed plaintiff and that the elements for an FRO were satisfied. He contends he did not intend to harass plaintiff (not raised below), the trial court should have required the presence of Arabic and Spanish interpreters during the proceedings (not raised below), and the trial court improperly considered a Facebook post with multiple evidentiary defects (not raised below).

Because defendant did not raise these arguments before the trial court, they are "reviewed under the 'plain error' standard, which provides reversal is mandated only for errors 'of such a

nature as to have been clearly capable of producing an unjust result.'" R.G. v. R.G., 449 N.J. Super. 208, 220 (App. Div. 2017) (quoting State v. Green, 447 N.J. Super. 317, 325 (App. Div. 2016)); see R. 2:10-2.

When reviewing "a trial court's order entered following trial in a domestic violence matter, we grant substantial deference to the trial court's findings of fact and the legal conclusions based upon those findings." D.N. v. K.M., 429 N.J. Super. 592, 596 (App. Div. 2013) (citing Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). We do not disturb the "factual findings and legal conclusions of the trial judge 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." Cesare, 154 N.J. at 412 (quoting Rova Farms Resort, Inc. v. Inv'rs Ins., Inc., 65 N.J. 474, 484 (1974)). 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)).

The Act defines domestic violence by referring to a list of predicate offenses found within the New Jersey Criminal Code. J.D.

v. M.D.F., 207 N.J. 458, 473 (2011) (citing N.J.S.A. 2C:25-19(a)). "[T]he commission of a predicate act, if the plaintiff meets the definition of a 'victim of domestic violence,' N.J.S.A. 2C:25-19(d), constitutes domestic violence . . . ." Ibid. Harassment is a predicate offense under the Act. N.J.S.A. 2C:25-19(a)(13).

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 (citing N.J.S.A. 2C:25-29(a)). 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., 207 N.J. at 476 (quoting N.J.S.A. 2C:25-29(b)).

Here, the judge concluded defendant committed harassment. A person commits the petty disorderly persons offense of harassment, pursuant to N.J.S.A. 2C:33-4, if, 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.

For a finding of harassment under N.J.S.A. 2C:33-4, the actor must have the purpose to harass. Corrente v. Corrente, 281 N.J. Super. 243, 249 (App. Div. 1995) (citing D.C. v. T.H., 269 N.J. Super. 458, 461-62 (App. Div. 1994); E.K. v. G.K., 241 N.J. Super. 567, 570 (App. Div. 1990)). Finding a party had the purpose to harass must be supported by "some evidence that the actor's conscious object was to alarm or annoy; mere awareness that someone might be alarmed or annoyed is insufficient." J.D., 207 N.J. at 487 (citing State v. Fuchs, 230 N.J. Super. 420, 428 (App. Div. 1989)). "A finding of a purpose to harass may be inferred from the evidence presented." State v. Hoffman, 149 N.J. 564, 577 (1997) (citing State v. McDougald, 120 N.J. 523, 566-67 (1990); State v. Avena, 281 N.J. Super. 327, 340 (App. Div. 1995)). "Common sense and experience may inform that determination." Ibid.

(citing State v. Richards, 155 N.J. Super. 106, 118 (App. Div. 1978)).

The commission of the predicate act of harassment does not automatically warrant the issuance of an FRO. Corrente, 281 N.J. Super. at 248. Defendant's conduct "must be evaluated in light of the previous history of domestic violence between the plaintiff and defendant including previous threats, harassment and physical abuse and in light of whether immediate danger to the person or property is present." Ibid. (citing N.J.S.A. 2C:25-29a(1) and (2)). Defendant's conduct was not an isolated event. The record demonstrated a history of harassment stretching over several years.

The trial court must also determine that an FRO is necessary to provide protection for "the victim from an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 127 (citing N.J.S.A. 2C:25-29(b)). Since harassment is one of the enumerated predicate acts of domestic violence, the need to prevent further harassment will suffice.

Applying these standards, we are satisfied the record supports the trial court's credibility determinations, factual findings, and legal conclusions. There was substantial credible evidence that defendant harassed plaintiff and that the FRO was necessary to protect plaintiff from further acts of abuse. In

particular, there is sufficient evidence from which to infer that defendant's statements to the school secretary and principal were motivated by his intention to harass plaintiff. See C.M.F. v. R.G.F., 418 N.J. Super. 396, 404 (App. Div. 2002). The record also supports the need to protect plaintiff against further abuse based on defendant's continuing pattern of harassing behavior, which posed a risk to plaintiff's employment. The previous history of domestic violence, including the prior incident which resulted in plaintiff losing a previous job, was an appropriate factor warranting the entry of an FRO. See N.J.S.A. 2C:25-29(a)(1). The judge noted plaintiff's fear regarding her employability due to defendant's conduct.

Defendant argues the trial court committed plain error by not requiring the use of Arabic and Spanish interpreters during the trial. We are unpersuaded by this argument. "An interpreter should never be appointed unless necessary to the conduct of a case. That is, interpretation should be resorted to only when a witness' natural mode of expression is not intelligible to the tribunal." State in Interest of R.R., 79 N.J. 97, 116 (1979). Interpreters are appropriate where "the primary witness could speak only a foreign language." Id. at 117. The decision as to whether a defendant cannot adequately understand or communicate in English is "entrusted to the sound discretion of the trial

court." Ibid. A trial court's "decision in this regard will not be disturbed on appeal unless an abuse of discretion is manifest." Ibid.

Here, neither the parties nor the witnesses requested an interpreter. While English is a second language for both plaintiff and defendant, they do not exclusively speak Spanish and Arabic, respectively, and they can adequately understand and communicate in English. Abdelmouty was not a primary witness. Much of her testimony involved the Facebook posting that was not admitted in evidence. Her testimony had little impact on the trial. Accordingly, we find no error, much less plain error clearly capable of producing an unjust result.

Defendant's remaining argument that the trial court improperly considered a Facebook post lacks record support. The Facebook posting was not admitted in evidence or considered by the trial judge.

Affirmed.