SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4058-16T4

E.D.B.,

Plaintiff-Respondent,

v.

D.S.,

Defendant-Appellant.

Submitted May 8, 2018 – Decided May 15, 2018

Before Judges Fisher and Moynihan.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket Nos. FV-02-1470-17 and FV-02-1514-17.

Kornitzer Family Law, LLC, attorneys for appellant (Valerie Jules McCarthy and Robert B. Kornitzer, on the brief).

Sunshine, Atkins, Minassian, Tafuri, D'Amato & Beane, PA, attorneys for respondent (Jay R. Atkins and Janell N. Weinstein, on the brief).

PER CURIAM

The parties were married in 2007. In July 2015, plaintiff E.D.B. (Ellen) told defendant D.S. (Daniel)[1] she wanted a divorce. Despite their estrangement and a pending divorce action, the parties and their children continued to inhabit the same home, and both parties entered into relationships with others, provoking further difficulties and contretemps.

Confirming suspicions her husband was spying on her when he was not at home, Ellen commenced this action in March 2017 pursuant to the Prevention of Domestic Violence Act (the Act), N.J.S.A. 2C:25-17 to -35; Daniel filed a domestic-violence complaint in response. At the conclusion of a four-day trial concerning both complaints, Judge Terry Paul Bottinelli found Daniel had stalked Ellen and he entered a final restraining order (FRO) in Ellen's favor. The judge also rejected Daniel's contention that Ellen harassed him, dismissed Daniel's complaint, and awarded Ellen $2000 in compensatory damages and $14,750 in counsel fees.

Daniel appeals the FRO and the monetary relief, arguing[2]:

> I. THE TRIAL COURT ERRED IN FINDING [ELLEN] PROVED BY A PREPONDERANCE OF THE CREDIBLE EVIDENCE THAT [DANIEL] COMMITTED THE PREDICATE ACT OF STALKING.
>
> A. The Trial Court Erred as a Matter of Law in Finding That [Ellen] Can

[1] The names we use are fictitious.

[2] We have renumbered some of these points.

Have an Objectively Reasonable Expectation of Privacy in a Home Office or [Daniel's] Personal Bedroom.

B. The Trial Court Erred as a Matter of Law by Disregarding the Requirement that the Offending "Course of Conduct" be Such That it "Would Cause a Reasonable Person to Fear for His Safety" Under N.J.S.A. 2C:12-10.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW IN CONCLUDING, WITHOUT ANALYSIS, THAT A[N] [FRO] WAS NECESSARY TO "PREVENT FURTHER ABUSE" UNDER SILVER.[3]

III. THE TRIAL COURT ERRED AS A MATTER OF LAW IN AWARDING [ELLEN] ATTORNEY'S FEES FOR DEFENDING AGAINST [DANIEL'S] APPLICATION FOR A RESTRAINING ORDER.

IV. THE TRIAL COURT ERRED IN AWARDING [ELLEN] COMPENSATORY DAMAGES.

We find insufficient merit in these arguments to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

To briefly amplify on our disposition of a few of Daniel's arguments, we start by observing there was sufficient evidence to support all Judge Bottinelli's findings, which are deserving of appellate deference. Cesare v. Cesare, 154 N.J. 394, 413 (1998). And we are satisfied the judge properly interpreted and applied the stalking statute, N.J.S.A. 2C:12-10, in finding an act of

[3] Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006).

domestic violence to support Ellen's domestic-violence claim, N.J.S.A. 2C:25-19(a)(14) (including "stalking" within the definition of "domestic violence"). The evidence adduced by Ellen demonstrated that Daniel surreptitiously placed — as Daniel conceded during his testimony — an iPad in a shared home office and an iPhone under his bed to monitor or record Ellen's activities in the home[4] while he was away on a trip to Kansas City. The judge found a lack of credibility in Daniel's testimony that the devices were placed to ensure Daniel's "privacy and protect his stuff" because there were numerous other ways in which his papers or files could have been protected from prying eyes. Indeed, the devices were not pointed in a direction that would have captured any meddling among his papers or things; instead, the lens pointed outward, toward the doorway and into a hallway. Consequently, the judge concluded that Daniel's true intent was to record Ellen's conversations and movements "to get the upper hand or to gain evidence against" her for use in the matrimonial action. There was ample credible evidence from which the judge could draw such a conclusion.

[4] Daniel's contention that Ellen failed to demonstrate a reasonable expectation of privacy in these areas of the marital home is wholly without merit.

Substantially for the reasons set forth by Judge Bottinelli in his thorough and well-reasoned oral opinion, we agree that Daniel's conduct violated the stalking statute: Daniel's actions constituted a course of conduct within the meaning of N.J.S.A. 2C:12-10(a)(1); were directed at Ellen; and would "cause a reasonable person to fear for [her] safety . . . or suffer other emotional distress," N.J.S.A. 2C:12-10(b).

We also reject Daniel's contention that the judge failed to make adequate Silver findings. To the contrary, the judge alluded to Daniel's prior surveillance of Ellen — on an earlier occasion Daniel placed a tracking device in Ellen's car, as Daniel acknowledged — as evidence of a need to prevent any further abusive conduct. This was sufficient.

We lastly reject Daniel's contentions about the award of counsel fees. His argument mistakenly presupposes that Ellen was only statutorily entitled to fees incurred in the prosecution of her domestic-violence complaint and not in the defense of Daniel's unsuccessful cross-complaint. In support of this view, Daniel chiefly relies on M.W. v. R.L., 286 N.J. Super. 408, 411 (App. Div. 1995), where we recognized that "the Legislature only made provision [in the Act] for counsel fees for victims, and not for prevailing parties." This interpretation was based on the Act's declaration that "[i]n proceedings in which complaints for

restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse . . . [and] may issue an order granting . . . the victim monetary compensation for losses suffered as a direct result of the act of domestic violence . . . includ[ing] . . . reasonable attorney's fees [and] court costs." N.J.S.A. 2C:25-29(b)(4) (emphasis added). M.W. interpreted this statute in a way intended to avoid "chilling" domestic-violence claimants from bringing suit out of fear that a claim's failure would generate a fee award for the alleged abuser. We adhere to that view, but we find it irrelevant to what occurred here. In this case, Ellen was called upon to fend off her abuser's meritless domestic-violence cross-complaint while simultaneously prosecuting her own successful suit. We see nothing about the language or intent of N.J.S.A. 2C:25-29(b)(4) to preclude an award of fees as to all the proceedings that took place here.

Those arguments of Daniel that we have not specifically addressed are without sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E). See also R. 2:11-3(e)(1)(A).

Affirmed.