SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0488-22

M.L.H.,

Plaintiff-Respondent,

v.

W.K.P.,

Defendant-Appellant.

Argued September 18, 2023 – Decided November 1, 2023

Before Judges Gilson and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Hunterdon County, Docket No. FV-10-0309-22.

Steven D. Farsiou argued the cause for appellant (Trinity & Farsiou, LLC, attorneys).

Suzanne Groisser argued the cause for respondent (Rachel Coalition, attorneys; respondent filed a pro se brief).

PER CURIAM

Defendant W.K.P[1] appeals from the August 18, 2022 order denying his motion to dissolve the June 23, 2022 amended final restraining order (FRO), and in the alternative to reconsider, entered against him pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to - 35. Defendant argues the trial judge erred in finding he committed harassment and in not granting his motion for reconsideration and dissolve the FRO. We conclude the judge's findings are supported by sufficient credible evidence and therefore we affirm.

I.

On Mach 23, 2022, plaintiff filed a domestic violence complaint and was granted a temporary restraining order (TRO).

The self-represented parties appeared for a remote bench trial held on March 31, 2022. Plaintiff testified the parties have been divorced for approximately seventeen years. She was granted residential custody of the then minor children in 2016. Following the change in custody, defendant started his "Divorce 101" YouTube channel. According to plaintiff, defendant posted six

[1] We use initials to refer to the parties to protect plaintiff's privacy and because the names of victims of domestic violence are confidential under Rule 1:38-3(d)(9) to (10).

videos discussing the end of the marriage and the divorce, using the plaintiff's and children's names which caused viewers to contact plaintiff and their children. Thereafter, for a while defendant stopped posting videos.

Six years later, on March 8, 2022, during an acrimonious telephone conversation with plaintiff concerning their youngest son's college graduation in Florida, defendant called plaintiff a "manipulating, conniving, little cunt" and ended the call stating, "I have a surprise for you."

Between March 9 and March 21, 2022, plaintiff viewed six videos defendant posted on his "Divorce 101" channel. Plaintiff summarized the contents of the videos as defendant discussing their former marriage, divorce, and their adult children. Defendant also discussed the content of the emails between plaintiff and the man she had an affair with eighteen years ago and read sexual content from those emails. Plaintiff testified the emails contained "stuff that [did not] need to be out [there] for 147,000 [subscribers to his channel] to know." Defendant also posted comments on his "One Lonely Farmer" YouTube channel, directing viewers to his "Divorce 101" channel. Plaintiff viewed the comments posted by viewers on defendant's YouTube channels. One comment said: "Well[,] what happens if she commits suicide?"

When asked by the court whether the posted videos affected plaintiff's life, health, and well-being, she replied "yes." Additionally, plaintiff testified although defendant has since placed the videos in "private," he told her he was going to re-release them and continue to read the emails on his channel.

In his testimony, defendant did not deny that he posted the videos on his channel. Defendant claimed the videos "chronicl[ed] [his] life, from the point of marriage . . . until today." He explained that he read plaintiff's personal emails "for accuracy." Defendant further claimed he posted the videos "so plaintiff would never call or contact him again" and the "emails [would] never come to light again."

Following the parties' testimony, the court placed its oral decision on the record. The court found defendant committed the predicate act of harassment. The court determined there were no disputed facts. The court did not find the telephone conversation was an act of harassment. As to the videos, the court explained defendant "proceeded to post [those] videos, which clearly, based upon the content that was described by the plaintiff, were harassing." The court found defendant's actions "indefensible," and he had "absolutely no reason" to post the videos over the course of five days. The court concluded defendant

"engaged in a course of alarming conduct and repeatedly committed acts with the purpose to seriously annoy [] plaintiff."

Citing Silver v. Silver, 387 Super. 112 (App. Div. 2006), the court determined a restraining order was necessary to prevent further abuse from defendant. The court stated:

> There's absolutely no justification for the defendant's acts. And it's going to stop. And it's going to stop now. As a result of that, number one, I'm prohibiting the defendant from future acts of domestic violence. And he's prohibited, specifically prohibited, from making or causing anyone else to make harassing communications to [plaintiff]. He's prohibited from [p]osting these videos, specifically, among other things.

An FRO was issued that day.

Approximately six weeks later, defense counsel entered an appearance. On May 16, 2022, counsel filed a motion to dismiss the FRO based on Rule 1:1-2. The family court held oral argument on the motion. At the motion hearing, defense counsel argued there had not been any direct communication between the parties, no statements of violence or telling people to harass plaintiff took place, and plaintiff certified she did not fear him.

Plaintiff was self-represented and pointed out defendant ended the March 8 telephone call with the veiled statement, "I have a surprise for you." In plaintiff's certification opposing the motion, she stated that she did not fear

defendant but feared the information that he placed on the internet that would cause his subscribers "to show up" at her work or home. At oral argument, plaintiff detailed her fears, stating:

> And, yes, he only says my first name. But if you Google, even using his last name, [M.P.], my name and my home address comes up. Now, in the world that we live in today, I don't know what these people are capable of doing or will do. I have two younger children here that are under the age of eighteen. I don't know if somebody's going to come burn my house . . . All these people have access to my job, my home, just by Googling [M.P.]. They don't have to Google [M.H.].

Prior to rending its oral decision, the court inquired whether defendant moved to dissolve the FRO under Carfagno[2]. The court noted defendant's motion did not address the Carfagno factors. In response, defense counsel conceded that he did not initially file a Carfagno application; however, the court could nonetheless consider the factors. The court concluded that a Carfagno application was not made, and even if an application had been filed, defendant did not satisfy the factors. The court then denied defendant's motion, noting defendant had not filed a notice of appeal within forty-five-days and finding

[2] Carfagno v. Carfagno, 288 N.J. Super. 424 (Ch. Div. 1995).

Rule 1:1-2 did not apply. The court restated the factual and legal bases for entering the initial FRO and entered an amended FRO.

On July 19, 2022, defendant moved to dissolve the FRO under Carfagno[3], or alternatively, for reconsideration of the court's June 23, 2022 order denying defendant's motion to dismiss the FRO. In support of his motion, defendant filed a certification addressing the Carfagno factors, reasserting plaintiff did not fear him. Defendant also claimed that the entry of the FRO negatively impacted his farming business because he was unable to obtain a depredation permit to control the deer population from eating his crops.

At oral argument, defendant raised substantially the same arguments presented at the motion to dismiss. In its August 18, 2022 oral decision, the court denied defendant's motion for reconsideration and dissolution under Carfagno, finding there was no basis for relief. The court explained that it "dealt" with defendant's arguments presented in the initial motion to dismiss and no new arguments were presented on reconsideration or in the Carfagno application.

[3] In the appendix annexed to defendant's merit brief, he does not include any pleadings beyond his certification filed in support of the Carfagno application.

II.

On appeal, defendant presents two arguments for our consideration. First, the court erred in applying the two-prong Silver test and denying defendant's subsequent motion for reconsideration. Second, the court erred in denying defendant's Carfagno application.

We are guided by the foundational legal principles that govern this appeal. Our review of an FRO issued after a bench trial is limited. C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998); see also Gnall v. Gnall, 222 N.J. 414, 428 (2015). We defer to a trial judge's factual findings unless 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. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)); see also C.C., 463 N.J. Super. at 428. However, we review a trial judge's legal conclusions de novo. C.C., 463 N.J. Super. at 429.

We "accord substantial deference to Family Part judges, who routinely hear domestic violence cases and are 'specially trained to detect the difference

between domestic violence and more ordinary differences that arise between couples.'" Id. at 428 (quoting J.D. v. M.D.F., 207 N.J. 458, 482 (2011)). "[D]eference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" MacKinnon v. MacKinnon, 191 N.J. 240, 254 (2007) (quoting Cesare, 154 N.J. at 412).

"Only when the trial court's conclusions are so 'clearly mistaken' or 'wide of the mark' should [we] intervene and make [our] own findings to ensure that there is not a denial of justice." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008) (quoting N.J. Div. of Youth & Fam. Servs. v. G.L., 191 N.J. 596, 605 (2007)). To the extent the trial court's decision implicates questions of law, we independently evaluate those legal rulings de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

The PDVA defines domestic violence as the commission of any one or more of the eighteen crimes and offenses enumerated in N.J.S.A. 2C:25-19(a). Harassment under N.J.S.A. 2C:33-4 is among the predicate offenses that, if proven, may entitle a plaintiff to the entry of a FRO. N.J.S.A. 2C:25-19(a)(13). The harassment statute provides that a person commits harassment if, with purpose to harass another, he:

> a. Make[], or cause[] 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. Subject[] another to striking, kicking, shoving, or other offensive touching, or threaten[] to do so; or
>
> c. Engage[] 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) to (c).]

Harassment requires the defendant to act with the purpose of harassing the victim. J.D. v. M.D.F., 207 N.J. 458, 486 (2011). A court may glean intentional harassment from attendant circumstances, C.M.F. v. R.G.F, 418 N.J. Super 396, 404-05 (App. Div. 2011), and may consider the totality of such circumstances in determining whether the harassment statute has been violated. Cesare, 154 N.J. at 404. A judge may use "[c]ommon sense and experience" when determining a defendant's intent. State v. Hoffman, 149 N.J. 564, 577 (1997) (citing State v. Richards, 155 N.J. Super 106, 118 (App. Div. 1978)).

A plaintiff seeking a FRO under the PDVA must establish by a preponderance of the evidence that the defendant committed an act of domestic violence. Franklin v. Sloskey, 385 N.J. Super. 534, 542 (App. Div. 2006). Under the PDVA, the court is required to make certain findings pursuant to a two-step analysis delineated in Silver before entering an FRO. 387 N.J. Super.

at 125-27. 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." Id. at 125 (citing N.J.S.A. 2C:25-29(a)). Second, the judge must determine whether a restraining order is necessary to protect the plaintiff from immediate harm or further acts of abuse. Id. at 126; see also C.C., 463 N.J. Super. at 429. A previous history of domestic violence between the parties is one of the factors a court considers in determining whether a restraining order is necessary to protect the plaintiff. N.J.S.A. 2C:25-29(a)(1); see also D.M.R. v. M.K.G., 467 N.J. Super. 308, 324-25 (App. Div. 2021) (explaining that whether a judge should issue a restraining order depends, in part, on the parties' history of domestic violence).

Initially, we note that defendant cannot appeal from the first FRO. He did not file a timely appeal from that order. Nevertheless, if we were to consider the first FRO, we discern no basis to disturb that FRO. There was substantial credible evidence in the record to support the trial court's finding that defendant committed an act of harassment.

Defendant argues there is no evidence in the record of any action taken by him that would (1) establish the predicate act of harassment or (2) establish that plaintiff was in imminent or future danger. The arguments are not supported by

the record. The court found defendant had "absolutely no reason" for posting the videos. The court further credited plaintiff's testimony that defendant would re-release the videos following the bench trial. Although the family court did not articulate which section of the harassment statute defendant was guilty of violating, the court found defendant posted the videos and "based upon the content that was described by the plaintiff," defendant's actions were harassing.

Defendant relies on E.M.B. v. R.F.B., 419 N.J. Super. 177 (App. Div. 2011), which we find factually distinguishable. In E.M.B., we reversed the entry of an FRO because the record did not support the family court's finding that defendant acted with the purpose to annoy or harass her based on the "sparse record [was] devoid of the context" for defendant's derogatory comment to plaintiff and there was no evidence of any prior harassing behavior by defendant.

Contrary to defendant's assertions, defendant deliberately posted successive videos immediately following an acrimonious conversation and foreshadowed by the statement "I have a surprise for you" was more than an "ordinary domestic contretemps." See Corrente v. Corrente, 281 N.J. Super. 243, 250 (App. Div. 1995).

Defendant argues that the court failed to address the second prong. In finding that plaintiff required an FRO to protect her from further acts of

domestic violence, the trial court cited Silver. Plaintiff testified that the posted videos affected her life, wellbeing, and health. She feared for her safety. She recounted the 2016 video posts and described the 2022 video posts disclosing intimate contents of eighteen-year-old personal emails and defendant's intention to re-release the videos. Consequently, the court ruled the postings had to "stop" and defendant was prohibited from "posting these videos, specifically, among other things." We are satisfied there was sufficient evidence in the record for the entry of an FRO to support the court's finding under both Silver prongs.

III.

We turn next to defendant's contention the trial court erred in denying his Carfagno application and motion for reconsideration.

The PDVA is designed to "assure the victims of domestic violence the maximum protection from abuse the law can provide." N.J.S.A. 2C:25-18. However, "the Legislature did not intend that every final restraining order issued pursuant to the [PDVA] be forever etched in judicial stone." A.B. v. L.M., 289 N.J. Super. 125, 128 (App. Div. 1996). Accordingly, a court may vacate an FRO upon good cause shown. N.J.S.A. 2C:25-29(d); Carfagno, 288 N.J. Super. at 435; accord T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App. Div. 2017).

The scope of our review is limited. See Brunt v. Bd. of Trs., Police & Firemen's Ret. Sys., 455 N.J. Super. 357, 362 (App. Div. 2018). "[A] motion for reconsideration 'is not properly brought simply because a litigant is dissatisfied with a judge's decision, nor is it an appropriate vehicle to supplement an inadequate record.'" Guido v. Duane Morris LLP, 202 N.J. 79, 87 (2010) (internal citation omitted). Rather, a motion for reconsideration "is primarily an opportunity to seek to convince the court that either 1) it has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the court either did not consider, or failed to appreciate the significance of probative, competent evidence." Id. at 87-88. "We will not disturb the trial court's reconsideration decision 'unless it represents a clear abuse of discretion.'" Kornbleuth v. Westover, 241 N.J. 289, 301 (2020) (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). Rule 1:1-2 is to be applied sparingly, and resort to that Rule should be avoided when adherence to the rules offers a solution to the problem at hand. Bender v. Adelson, 187 N.J. 411, 427 (2006).

The record on appeal consists of only defendant's certification filed in support of his Carfagno application, precluding review of defendant's contention the court incorrectly denied his request to dissolve or reconsider the entry of the

FRO. For completeness, however, we add these brief comments regarding the substantive issues presented.

At the reconsideration motion hearing, defendant reargued that plaintiff was not in fear of defendant, he did not present any danger to her, and he resided in another state, which he argued provided a basis to reevaluate the FRO. The family court rejected that argument, finding that the arguments had been "dealt" with because defendant's contentions were not new.

Defendant thus failed to show that the trial court's decision was "based upon a palpably incorrect or irrational basis" or that the trial court "either did not consider, or failed to appreciate the significance of probative, competent evidence." Kornbleuth, 241 N.J. at 301. Nor has defendant established that the trial court otherwise abused its discretion in denying his motion for reconsideration. See ibid.

In light of the record and applicable law, we conclude defendant has not produced proofs showing the court's reasoning was flawed or its application of the law was erroneous. Moreover, defendant's unsupported, generalized assertions that he experiences inconvenience or believes the restraint is unnecessary will not sustain a motion to dissolve the FRO. Instead, defendant simply reasserted the same claims rejected by the family court, with

inconsequential changes in the facts, desiring a different outcome. We agree with the court that Rule 1:1-2 did not apply because the rule governing defendant's reconsideration motion was properly applied. We therefore find no basis to interfere with the order denying dissolution or reconsideration.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION