

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1163-21

M.A.P.,

Plaintiff-Respondent,

v.

U.G.,

Defendant-Appellant.

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Argued January 19, 2023 – Decided May 8, 2023

Before Judges Enright and Bishop-Thompson.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Middlesex County,  
Docket No. FV-12-0729-22.

Luke C. Kurzawa argued the cause for appellant (Reisig  
Criminal Defense & DWI Law, LLC, attorneys; Luke  
C. Kurzawa, on the brief).

Respondent has not filed a brief.

PER CURIAM

In this one-sided appeal, defendant U.G. appeals from the November 4, 2021 final restraining order (FRO) entered under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, in favor of plaintiff M.A.P., based on the predicate act of harassment, N.J.S.A. 2C:33-4(a).<sup>1</sup> Defendant argues the trial judge erred in finding plaintiff had proven the predicate act of harassment. Because the judge's findings were supported by substantial credible evidence, we affirm.

## I.

On September 25, 2021, plaintiff obtained a temporary restraining order (TRO) against defendant alleging harassment. In the TRO, she asserted:

On 9/25/2021 at 4:30 p.m. [d]efendant has been harassing the [p]laintiff by calling and sending text messages that are insulting and intimidating making her feel unsafe. The [p]laintiff stated that the [d]efendant constantly calls her over the phone screaming at her. The plaintiff stated that the [d]efendant has been watching her via surveillance cameras in the residence and it is making her feel very scared to be in the same home as him.

The following facts are derived from the trial record. Plaintiff and defendant had a turbulent, "on and off" dating relationship for about twenty

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<sup>1</sup> We use initials to protect the parties' privacy. R. 1:38–3(d)(9) to (10).

years. They have two children from the relationship: a son, J.G., was born in 2007, and a daughter, I.G., was born in 2016. According to plaintiff, defendant had a "long-standing drinking problem," which became "something that they just kind of learned to deal with on a daily basis." During the last five years, defendant's drinking had become an "every night thing."

Plaintiff provided a history of prior incidents with defendant. She testified that many of the arguments over the course of the parties' twenty-year relationship were "alcohol-fueled." She stated that fifteen years ago, while they were living in Brooklyn, they argued after defendant came home from a night out. Defendant threw a dinner plate at plaintiff which caused her to bleed from a cut to her temple and required fifty stitches.

Plaintiff also testified defendant threw a dinner plate in her presence on at least two different occasions in front of the children. The first incident occurred approximately three years ago after he returned home from a night out drinking. When plaintiff asked defendant, "Why do you have to drink so much," he threw the dinner plate in the sink and it "shattered everywhere." Plaintiff picked up her then-two-year-old daughter and "ran to [their]bedroom."

The second incident occurred near the end of August 2021. Plaintiff stated defendant was angry because he claimed she had an "attitude." Defendant told

her to "get the fuck out of his face" as the family ate dinner. When she started cleaning off her plate with her back turned, defendant threw a plate of food that "crashed" on the floor. The children were "scared" after witnessing the incident. Plaintiff picked up her daughter and retreated to her bedroom.

After this incident, plaintiff obtained a TRO in August 2021 (August TRO) against defendant alleging he harassed her when he was intoxicated and "screamed" and "demanded" that she hand him a loaded gun. According to plaintiff, when she refused to hand over the gun, defendant told her that he would "break all the walls in the house" if she did not give him the gun. In addition, defendant said, "[I]f I really wanted to kill you, you know, I wouldn't need a gun to do it. I could do it with my bare hands."

The August TRO was dismissed when the parties entered a consent order with civil restraints.<sup>2</sup> Importantly, in paragraph (1) of the consent order, "[d]efendant agree[d] not to make harassing communications to the plaintiff." In paragraph (3), defendant also agreed to "enroll in an inpatient substance abuse program for alcohol within four weeks of entry of [the dismissal order]."

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<sup>2</sup> Defendant did not include the consent order in his appendix. However, its pertinent provisions were included in the record.

Less than a week after the consent order was entered, defendant returned to the home intoxicated and "upset" with plaintiff because she had "embarrassed him in front of the neighbors" when the police escorted him from their home. He woke plaintiff up and "confronted" her. He "curs[ed] [her] out" and "called her a snitch" and a "snake." Defendant also screamed in plaintiff's face and stated it was her fault he was "ripped out of his home," she was "a piece of shit, [and] . . . a fucking asshole." Defendant told plaintiff the August TRO was "[her] fault."

Additionally, plaintiff alleged defendant watched her using a surveillance camera in their home, she testified the parties had a camera in their home. She stated when defendant returned home after the entry of the consent order, he "yanked" the camera off the wall. But defendant reinstalled the camera after one week and demanded the new password. She said she felt "scared" to be in the home with defendant because he "watched" and "controlled" everything in their home.

Sometime in September 2021, plaintiff told defendant she was "uncomfortable" with him living in the house because of his anger and drinking. Defendant told her to put the house up for sale since he "couldn't be in the

house." Although defendant contacted a realtor, plaintiff listed the house for sale.

On September 25, as plaintiff was making dinner, defendant while "extremely intoxicated" called her and "scream[ed] at the top of his lungs" because he was "infuriated" the house was listed for sale. Defendant, apparently unable to recall that he contacted the realtor, said he "never told [her] to put the house up for sale." He also said, "Who the fuck gave [you] the right to do that. If you don't want to stay in the house, [you] can get the fuck out." She then told defendant the parties were living in a "very toxic environment," and she was "nervous" every day when he came home intoxicated. He repeated, "If you don't like it, get the fuck out then." Plaintiff responded, "I can't get the fuck out, everything is under my name."

Based on this conversation, plaintiff testified she was scared that defendant was going to come home and "confront" her, so she left with the children and went to the police station. She "fear[ed] . . . that he would do something that he would regret for the rest of his life." During the three hours plaintiff was at the police station, defendant constantly made numerous calls to find her. After defendant was served and plaintiff returned home, she saw the

entry door was "ripped off the hinges" and there was a "dent on the wall." She photographed the damage.

The same night, accompanied by a police officer, defendant came to the home to retrieve his personal items. Upon seeing plaintiff and the children with an officer, defendant said to her, "[Y]ou're a piece of shit. You're a piece of shit for not letting me see my kids."

Plaintiff testified to and offered into evidence text messages defendant sent her after entry of the consent order and through the end of September.<sup>3</sup> She perceived the text messages as threats based on defendant's prior abusive behavior, such as screaming, cursing, and acting in a "completely unreasonable" manner when intoxicated. She stated that whenever defendant said he wanted "to come in and talk to [her]," he was already intoxicated and the conversations were "never civil." For example, defendant called her names like "clown," and said that he would "let[] [her] have it."

Lastly, plaintiff testified she feared defendant after he had been drinking at night. She stated she did not "trust" defendant's actions and felt he was

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<sup>3</sup> We discern the content of the messages from the transcript record since defendant did not include the text messages in his appendix.

"capable of doing something that he [might] regret." She also testified she felt defendant had a "Jekyll and Hyde" personality.

When defendant testified, he denied raising his voice at plaintiff. However, he acknowledged he called her names like "snake" and cursed at her. Defendant also admitted to making the statement that "if [he] ever wanted to hurt [her], [he] wouldn't need a gun," adding, "Why would I be even looking for a gun?"

Defendant also stated that on the night of September 25, he tried to contact plaintiff through numerous calls and text messages to her cellphone. He called the police station looking for her because "maybe" she had been in an accident.

After the parties' testimony, the judge placed his oral decision on the record. The judge found plaintiff more credible than defendant "when it [came] down to the drinking and maybe [defendant's] alter ego that [came] into place."

The judge also determined plaintiff satisfied the two-prong test set forth in Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006). As to the first prong, the judge concluded plaintiff had proven the predicate act of harassment, N.J.S.A. 2C:33-4(a). He found the first prong had been "triggered" based on the parties' previous history of domestic violence including "threats, harassment, and physical abuse." The judge noted defendant consumed alcohol and used



"foul language, cursing, [in] close proximity to [plaintiff]." The judge determined defendant's communications with plaintiff violated the restraints imposed under the consent order. The judge stated, "I can't think of a more harassing thing than to go right back and touch the very wound that was the foundation of [the August TRO]."

Regarding the second Silver prong, the judge highlighted defendant's "threat of violence with the gun" and the threat he could hurt plaintiff with his bare hands. He further "believed" defendant made the "threatening statement" that he would not need a gun to kill plaintiff. The judge concluded defendant's statement about not needing a gun to hurt plaintiff was "particularly harassing because of the prior [history]." Lastly, the judge found it was not "in the best interest of the children . . . to be around "such threatening behavior as it "put[] the children in jeopardy." Based on these findings, the judge entered an FRO in plaintiff's favor.

## II.

On appeal, defendant argues the trial judge's finding of harassment under the PDVA and entry of the FRO was a "palpable mistake of law." We disagree.

We are guided by well-defined principles. The scope of our review in an appeal from an FRO 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 (internal quotation marks omitted) (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.

"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.'" C.C., 463 N.J. Super. 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). We defer to a trial judge's credibility determinations "because the trial judge 'hears the case, sees and observes the witnesses, and hears them testify,' affording [the trial judge] 'a better perspective than a reviewing court in evaluating the veracity

of a witness.'" Gnall, 222 N.J. at 428 (quoting Cesare, 154 N.J. at 412). We note, however, that a trial judge's decision on a purely legal issue is subject to de novo review on appeal. See Crespo v. Crespo, 395 N.J. Super. 190, 194 (App. Div. 2007) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Here, defendant argues the trial judge erred in finding defendant harassed plaintiff. He contends that since the trial judge found defendant "[said] things that he didn't necessarily intend," the judge mistakenly found defendant intended to harass plaintiff. Defendant argues the trial judge "attempted to rectify this logical inconsistency by referencing prior acts" defendant committed, even though "allegations of harassment in the within matter must be considered in the context of the current events." Lastly, he contends his text messages to plaintiff prior to the entry of the September 25 TRO were not harassing and demonstrated nothing more than marital discord. Again, we disagree.

As noted above, the entry of an FRO under the PDVA requires the trial judge to make certain findings pursuant to a two-step analysis under Silver, 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 126-27; 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).

Harassment is one of the statutory predicate acts under the PDVA. N.J.S.A. 2C:25-19(a)(13). Under N.J.S.A. 2C:33-4(a), a person commits harassment "if, with purpose to harass another," he or she "[m]akes, or causes to be made, one or more communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm."

To find an individual committed the predicate act of harassment under subsection (a), the court must find: "(1) defendant made or caused to be made a communication; (2) defendant's purpose in making or causing the communication to be made was to harass another person; and (3) the communication was in one of the specified manners or any other manner

similarly likely to cause annoyance or alarm to its intended recipient." State v. Hoffman, 149 N.J. 564, 576 (1997).

A finding of harassment requires proof that a defendant acted "with purpose to harass." N.J.S.A. 2C:33-4; see Silver, 387 N.J. Super. at 124. Because direct proof of intent is often absent, "purpose may and often must be inferred from what is said and done and the surrounding circumstances," and "[p]rior conduct and statements may be relevant to and support an inference of purpose." State v. Castagna, 387 N.J. Super. 598, 606 (App. Div. 2006). In addition, a judge may use "common sense and experience" to determine a defendant's intent and to infer a purpose to harass from the record evidence. D.M.R., 467 N.J. Super. at 323 (internal quotation marks omitted) (quoting H.E.S. v. J.C.S., 175 N.J. 309, 327 (2003)). "[T]he decision about whether a particular series of events rises to the level of harassment or not is fact-sensitive." J.D., 207 N.J. at 484.

When determining whether a person has engaged in harassment under N.J.S.A. 2C:33-4(a), the trial court may "examine the totality of the circumstances, especially and including the context of domestic violence, in determining whether subsection (a) has been violated." Hoffman, 149 N.J. at 584. The court must also consider whether the defendant's communication rose

to the required level of annoyance or alarm, considering the defendant's "past conduct toward the victim" and the parties' relationship history. Id. at 585.

Applying those standards, we are convinced there is sufficient credible evidence in the record to support the trial judge's determination that defendant committed the predicate act of harassment. Here, the judge credited plaintiff's description of defendant's demeanor when intoxicated. He also credited plaintiff's testimony that defendant made communications to plaintiff "in offensively coarse language" sometimes "screaming" in her face and in a "manner likely to cause annoyance or alarm . . . ." See N.J.S.A. 2C:33-4(a). The judge also found defendant's behavior toward plaintiff violated the consent order, given that he called plaintiff "snake," "clown," "piece of shit," and "fucking asshole" and screamed at her after the consent order was executed.

Further, the judge determined defendant repeatedly told plaintiff "to get the fuck out" of their home and did not deny telling plaintiff, "If I really wanted to kill you, you know, I wouldn't need a gun to do it. I could do it with my bare hands." Thus, there was sufficient competent evidence for the trial judge to conclude defendant intended to harass plaintiff, his behavior jeopardized the best interest of the children, and there was an "immediate danger to [plaintiff] and [her property]." As the judge correctly concluded, defendant's

communications were harassing and "touch[ed] the very wound" that gave rise to the issuance of the August TRO, which was not only relevant, but also supported an "inference of purpose" to harass. See Castagna, 387 N.J. Super. at 606; see also D.M.R., 467 N.J. Super. at 323 (citing H.E.S., 175 N.J. at 327). Therefore, we perceive no basis to disturb the judge's determination that an FRO was necessary to protect the plaintiff from immediate harm or further acts of abuse.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION