SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2037-21

E.T.,

Plaintiff-Respondent,

v.

S.H.,

Defendant-Appellant.

Submitted February 8, 2023 – Decided February 24, 2023

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Camden County, Docket No. FV-04-2072-22.

Fridie Law Group, LLC, attorneys for appellant (James R. Fridie, III, on the brief).

Donelson, D'Alessandro & Peterson, LLC, attorneys for respondent (Linwood H. Donelson, III, on the brief).

PER CURIAM

Defendant S.H.[1] appeals from a January 24, 2022 final restraining order (FRO) entered against him under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. We affirm.

I.

On December 31, 2021, plaintiff E.T. obtained a temporary restraining order (TRO) against defendant, and subsequently amended the TRO to allege defendant harassed and stalked her. During plaintiff's testimony at the January 24, 2022 trial, she stated the parties had a volatile dating relationship for approximately four years, and she broke up with defendant many times. Plaintiff also testified she ended the relationship for the last time in December 2020 and told defendant she wanted no further communication with him. Further, she warned that if he contacted her, she would seek a restraining order. Still, according to plaintiff, defendant repeatedly called her "from blocked numbers" and emailed her throughout 2021.

Plaintiff also testified that at approximately 7:00 a.m. on December 21, 2021, defendant traveled from his home in Maryland and drove past her home in New Jersey. Plaintiff stated she lived alone at the time, and her apartment

[1] We use initials to protect the confidentiality of the victim. R. 1:38-3(d)(10).

was located "in a cul-de-sac of [a] dead-end development." The incident was captured on her Ring alarm, and she reported it to the police the next day.

On December 31, 2021, defendant spotted plaintiff's vehicle while she waited in line at a local drive-through pharmacy. He pulled his car alongside hers and asked to speak to her. Plaintiff told him, "no," and defendant drove away. Plaintiff testified there was a car in front of her when this occurred, and it was impractical for her to "back up to escape him."

Plaintiff also stated these two incidents caused her alarm, left her "in fear," and annoyed her because defendant "plac[ed] himself in close proximity" to her. Further, she testified, "after [defendant] contacts me, I don't leave my house after dark for weeks." She explained this was because, "he's unpredictable, and he could be anywhere."

When asked on direct examination if there was a history of domestic violence in the parties' relationship, plaintiff answered affirmatively. She testified that when she broke up with defendant in 2016, he choked her. Additionally, she stated he pushed her into a door that same year, bruised her by grabbing her in 2017, and punched her in the face in 2019. During the trial, plaintiff provided multiple photographs of the injuries she sustained from defendant's physical abuse. Asked on direct examination what would happen if

she did not receive an FRO, plaintiff answered, "I don't think he's ever going to stop. He has no boundaries. . . . He won't leave me alone."

Defendant testified he was not "aware" plaintiff wanted no further contact with him after their 2020 break-up. Yet, he conceded that on the morning of December 21, 2021, after traveling for approximately two hours and forty minutes from Maryland to drive past plaintiff's home, he "thought to call plaintiff and kind of get closure, but went with [his] better judgment and . . . decided against it." He also admitted he spoke to plaintiff ten days later when he drove up next to her as she waited in her car at a drive-through pharmacy. When the judge asked defendant if plaintiff ever tried to contact defendant after they broke up in December 2020, he acknowledged she had not.

At the conclusion of the parties' testimony, the judge credited plaintiff's testimony but found defendant "sometimes avoid[ed] answering questions," and could "be considered evasive." Next, in deciding whether to grant plaintiff an FRO, the judge cited "the two-prong requirements of Silver,"[2] and rhetorically asked,

> [d]oes the defendant violate the harassment statute by the preponderance of the greater weight of the evidence, or is this just somewhat annoying conduct of

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

> driving by, or pulling up [next to plaintiff]? Is . . . this something . . . that is minor or insignifican[t]?

The judge added, "[w]e need to look at the history here. The history . . . that is established under prong two of Silver is egregious. There [are] photographs here of brutality . . . over a substantial period of the relationship of the parties." Further, the judge found, "these photographs [plaintiff provided] are real" and "the history of domestic violence is real." He also found plaintiff was "truly, sincerely afraid of . . . defendant," because defendant "won't leave her alone."

In that regard, the judge determined defendant repeatedly tried to contact plaintiff via email and text messages after the parties' relationship ended, but she "refuse[d] to respond" and in fact, "had nothing to do with . . . defendant." Therefore, the judge concluded defendant "clearly kn[ew]" plaintiff did not "want to have any contact" with him, based on his "history of abusive conduct," yet defendant continued contacting plaintiff and "continue[d] to come by." The judge stated, "I find that that is annoying conduct, a violation of [N.J.S.A.] 2C:33-4(a) and 4(c), harassment." Accordingly, he concluded plaintiff was entitled to an FRO.[3]

[3] The judge granted the FRO without addressing plaintiff's allegations regarding the predicate act of stalking.

II.

On appeal, defendant argues the judge's findings were "manifestly unsupported by the competent, . . . and reasonably credible evidence as to offend the interests of justice." Defendant specifically contends there was insufficient proof he committed an act of harassment, and the judge misapplied the analysis required under Silver by considering the parties' history of domestic violence before finding plaintiff proved the predicate act of harassment. We are not convinced.

Findings by a trial court are generally binding on appeal, provided they are "supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)); see also Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016). We defer to a trial court's findings unless those findings appear "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, 65 N.J. at 484).

An appellate court owes a trial court's findings deference especially "when the evidence is largely testimonial and involves questions of credibility." Ibid. (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). Further,

we "accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters." Harte v. Hand, 433 N.J. Super. 457, 461 (App. Div. 2013) (quoting Cesare, 154 N.J. at 412). But "all legal issues are reviewed de novo." Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div. 2017) (citing Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)).

The purpose of the PDVA is to "assure the victims of domestic violence the maximum protection from abuse the law can provide." G.M. v. C.V., 453 N.J. Super. 1, 12 (App. Div. 2018) (quoting State v. Brown, 394 N.J. Super. 492, 504 (App. Div. 2007)); see also N.J.S.A. 2C:25-18. Consequently, "[o]ur law is particularly solicitous of victims of domestic violence," J.D. v. M.D.F., 207 N.J. 458, 473 (2011) (quoting State v. Hoffman, 149 N.J. 564, 584 (1997)), and courts "liberally construe[] [the PDVA] to achieve its salutary purposes," Cesare, 154 N.J. at 400 (citations omitted).

When considering whether the entry of an FRO is appropriate, a trial court must first "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." Silver, 387 N.J. Super. at 125.

If a trial court finds a defendant has committed a predicate act of domestic violence, it next must determine if a restraining order is needed for the victim's

protection. Id. at 126. While this second inquiry "is most often perfunctory and self-evident, the guiding standard is whether a restraining order is necessary, upon an evaluation of the factors set forth in N.J.S.A. 2C:25-29[(a)](1) to -29[(a)](6), to protect the victim from an immediate danger or to prevent further abuse." Id. at 127. Those factors include but are not limited to: "[t]he previous history of domestic violence between the [parties], including threats, harassment and physical abuse;" and "[t]he existence of immediate danger to person or property." N.J.S.A. 2C:25-29(a)(1) and (2).

Here, the judge found defendant committed the predicate act of harassment. Under N.J.S.A. 2C:33-4:

> a person commits a petty disorderly persons offense [of harassment,] if, with purpose to harass another, he: (a) "[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"; (b) "[s]ubjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so"; or (c) "[e]ngages 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).]

Under subsection (a) of the statute, "there need only be proof of a single communication." J.D., 207 N.J. at 477. Further, "to annoy" under N.J.S.A.

2C:33-4(a) means "to disturb, irritate, or bother." Hoffman, 149 N.J. at 580 (citation omitted). Subsection (c) "requires proof of a course of conduct." J.D., 207 N.J at 478. "That may consist of conduct that is alarming or it may be a series of repeated acts if done with the purpose 'to alarm or seriously annoy' the intended victim." Ibid. "[S]erious annoyance under subsection (c) means to weary, worry, trouble, or offend." Hoffman, 149 N.J. at 581.

"Not all offensive or bothersome behavior . . . constitutes harassment." J.D., 207 N.J. at 482-83. 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." State v. Castagna, 387 N.J. Super. 598, 606 (App. Div. 2006) (citation omitted). Therefore, "[a] history of domestic violence may serve to give content to otherwise ambiguous behavior and support entry of a restraining order." J.D., 207 N.J. at 483; see also Hoffman, 149 N.J. at 577 (explaining that in determining whether a defendant's conduct constitutes harassment, a judge may use "[c]ommon sense and experience," and "[t]he incidents under scrutiny must be examined in light of the totality of the circumstances"); Pazienza v. Camarata, 381 N.J. Super. 173, 184 (App. Div. 2005) (citations omitted) (explaining a text message sent from defendant to plaintiff "when viewed in the context of defendant's prior conduct towards

plaintiff, was likely to cause plaintiff annoyance," and the "purpose to harass on defendant's part [was] easily inferred").

Based on these principles, we agree with the judge that the totality of the circumstances demonstrated defendant engaged in conduct in December 2021 with the purpose to harass plaintiff. Indeed, defendant admitted to trying to repeatedly communicate with plaintiff after she broke up with him in December 2020, and conceded she never responded to him throughout the following year. He also acknowledged he drove almost three hours from his home in Maryland in December 2021, with the "thought to call" plaintiff as he drove by her home, "but went with [his] better judgment" and left the area. Then, ten days later, he pulled up next to her while she was in line at a pharmacy and spoke to her.

Given these facts, we perceive no basis to disturb the judge's finding that defendant knew plaintiff wanted no contact with him. We also find no reason to second-guess the judge's findings that defendant's conduct in December 2021, when viewed in the context of defendant's "brutality" toward plaintiff "over a substantial period of the [parties'] relationship" was "egregious" and that plaintiff was "truly, sincerely afraid . . . defendant won't leave her alone." Accordingly, the judge did not abuse his discretion in concluding plaintiff was entitled to an FRO.

All other points raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(2).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION