

RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2838-21

A.K.G.,

Plaintiff-Respondent,

v.

M.J.S.,

Defendant-Appellant.

Submitted June 7, 2023 – Decided June 19, 2023

Before Judges Haas and Gooden Brown.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Mercer County,
Docket No. FV-11-0906-22.

Kendall S. Murphy, attorney for appellant.

Respondent has not filed a brief.

PER CURIAM

Plaintiff commenced this action, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, based on an allegation that defendant

harassed her after she broke up with him by sending her vulgar text messages, making forty-four FaceTime calls to her in a single hour, and later showing up unannounced at her father's home and pounding on the door in an attempt to see her. At the conclusion of a final hearing at which only the parties testified, the judge rendered detailed findings of fact and entered a final restraining order (FRO) in plaintiff's favor.

On appeal, defendant argues the judge "improperly found the predicate act of harassment" and "erred in finding a continuing need [for] protection." We find insufficient merit in these arguments to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following brief comments.

Our review of a trial judge's fact-finding function is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). A judge's findings of fact are "binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12.

Deference is particularly warranted where, as here, "the evidence is largely testimonial and involves questions of credibility." Ibid. (quoting In re Return of Weapons of J.W.D., 149 N.J. 108, 117 (1997)). Such findings become binding on appeal because it is the trial judge who "sees and observes the witnesses," thereby possessing "a better perspective than a reviewing court in

evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)). Therefore, we will not disturb a judge's factual findings unless convinced "they are so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice." Rova Farms Resort v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)).

After considering the parties' testimony, the judge found plaintiff to be a credible witness; he did not find defendant to be credible. Among other things, the judge found that the parties were in a dating relationship that lasted approximately one year. They ended the relationship in July 2021. Over the next month, they periodically texted each other as defendant sought the return of two items of clothing, a sweatshirt and a "beanie." Plaintiff returned the sweatshirt, but could not locate the beanie.

Suddenly, on November 5, 2021, defendant sent plaintiff "multiple text messages and calls . . . with very vulgar language. He[] called [her] the C word. He told [plaintiff] that [she] was fucking pathetic, that [she] never cared and that when [she] saw missing articles about him in the paper that it was going to be [her] fault."

On November 25, 2021, defendant called plaintiff forty-four times on FaceTime between 12:38 a.m. and 1:48 a.m. Plaintiff did not answer these calls. Because she was afraid of defendant, plaintiff made arrangements to be escorted in and out of buildings at her college and job.

Finally, defendant went to plaintiff's father's home on December 20, 2021. Defendant "proceeded to forcibly pound on the door and ring the doorbell and yell saying that I know you're home. Open the door." Plaintiff did not answer and called her father "because [she] was scared and . . . didn't know what to do." Plaintiff's father advised her to call the police. Plaintiff then made arrangements to seek a temporary restraining order.

In light of plaintiff's credible testimony concerning defendant's conduct, the judge's conclusion that defendant harassed plaintiff was plainly supported by the record. We discern no principled reason for second-guessing this determination.

After careful examination of the record, we are also satisfied that this same evidence more than amply supported the judge's finding that plaintiff was in need of an FRO to protect her from further domestic violence. Silver v. Silver, 387 N.J. Super. 112, 126-27 (App. Div. 2006).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION