SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2876-21

L.M.J.,

Plaintiff-Respondent,

v.

D.V.O.,

Defendant-Appellant.

Submitted March 15, 2023 – Decided June 20, 2023

Before Judges Mayer and Bishop-Thompson.

On appeal from the Super Court of New Jersey, Chancery Division, Family Part, Passaic County, Docket No. FV-16-1644-22.

Jardim, Meisner & Susser, PC, attorney for appellant (Jessica R. Sprague, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant D.V.O.[1] appeals from the April 12, 2022 Chancery Division, Family Part order granting plaintiff L.M.J. a final restraining order (FRO) under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. Because the judge's findings were supported by substantial credible evidence in the record, we affirm.

We recite the relevant facts from the trial testimony and evidence. Plaintiff and defendant were in an "on and off" relationship for ten years. They have one son together, and plaintiff has an older son from a previous relationship. They did not live together. Plaintiff and her children were the only tenants approved to live in the Section 8 apartment.[2] Although there were times during the ten-year relationship where defendant would "stay over for a period of time," the record does not reflect plaintiff added defendant to her Section 8 lease.

According to plaintiff, the relationship had been tumultuous for some time. She testified defendant often drank while driving on the way home from

[1] We identify the parties by initials to protect their identities in domestic violence matters pursuant to Rule 1:38-3(d)(9)-(10).

[2] The Section 8 Housing Voucher Program, funded by the U.S. Department of Housing and Urban Development, assists in making safe and quality housing in the private rental market affordable to low- and very-low-income households by reducing housing costs through direct rent subsidy payments to landlords.

working in New York City. On October 5, 2021, when he arrived at her apartment, defendant "stunk like alcohol" and was "argumentative." Plaintiff stated she knew he had been drinking because defendant's "demeanor" and "whole face change[d]" when he became intoxicated.

Later, around midnight, plaintiff heard the dog crying and asked defendant to let the dog outside. Defendant replied, "I'm not letting her out. You go fucking do it." Plaintiff repeatedly stated the baby was sleeping on her and she did not want to wake him up. Because defendant refused to let the dog out, plaintiff did it. Plaintiff's video of the October incident admitted into evidence demonstrated they started arguing and defendant continued to berate and taunt plaintiff using vulgar language. Defendant went upstairs and "broke [plaintiff's] ceiling fan . . . flipped [her] bed, and . . . broke [her] TV." Defendant screamed "[s]leep on that."

On November 5, 2021, defendant began arguing with plaintiff's seventeen-year-old son. Defendant told plaintiff's son that he was going to "smack" him and then "raised his hand." Plaintiff "jumped up" to intervene and said, "[Y]ou're not going to touch him." Defendant told her to sit down and walked towards the living room while screaming vulgarities at plaintiff and her oldest

son. Plaintiff again told defendant that he was "done." Sometime later, defendant left the apartment.

Plaintiff testified on February 20, 2022, they "got into a lot of fight[s]" over "the baby's social security number" and "who was going to file taxes for the child credit."

According to plaintiff, on February 24, while in the home, defendant said he was going to put a chair through her window if she locked the doors. Defendant also stated that he was going to "break" into her lockbox where she kept their son's social security card. Plaintiff said defendant broke into her lockbox for their son's social security number for tax purposes.

Plaintiff testified whenever they argued and she asked defendant to leave, he refused. Defendant threatened to "call [Section 8] housing" and "make [her] homeless" because he had been living with her for years, when plaintiff said she was calling the police. A report made by defendant that he had been living with plaintiff without approval would have been considered a violation of her lease and a basis for eviction. On several occasions, defendant said, "You're going to be living down at [Shelter] Our Sisters," a shelter for homeless, battered women and their dependent children.

Additionally, plaintiff testified she locked the doors to her apartment "all the time." After plaintiff reviewed video security camera footage, she saw that on the morning of February 27, defendant entered her apartment through the kitchen window. As she was playing with her son in the living room, she heard footsteps and saw defendant "just standing [in the living room]." She described defendant as "mad" about a conversation her mother had with his aunt concerning his drinking. After a brief conversation with defendant, she left the living room and went into the kitchen. As defendant was playing with their son, he repeatedly played a song, the gist of which plaintiff said was "[f]uck you bitch."

Defendant came into the kitchen, and she went outside. He kept opening the door and told plaintiff that he was going to take the car and she should "get [her] boots on for walking." He also called her a "pig." Defendant left the apartment. Later that day, defendant "spit on [the] cameras outside."

Plaintiff stated after she had locked the door defendant entered the apartment through the window at approximately 9:15 p.m. She saw defendant leaving the apartment through the front door.

On March 6, 2022, defendant arrived at plaintiff's house unannounced. Plaintiff left the door open since she was taking out the garbage. Defendant spit

on the outdoor camera, walked in, took her car keys out of her purse, and drove off with her car. The videos admitted into evidence supported plaintiff's testimony.

Plaintiff testified after the March 6 event; she obtained a temporary restraining order (TRO) against defendant alleging harassment.

When asked if she feared for her safety and required an FRO, plaintiff stated: "Yes, absolutely."

In his testimony, defendant disputed plaintiff's version of the October 6 events. He denied drinking while driving because he has a commercial driver's license. Defendant stated he had been working forty-eight hours straight and when he arrived at the apartment, he "might" have had a "couple of drinks." He came into the apartment and went upstairs and "passed out." Defendant stated he was "dead asleep" when plaintiff "kicked open" the bedroom door and yelled "[g]et the fuck downstairs. Clean your fucking dog's piss up." He responded: "Fuck you, or something of that sort." Defendant admitted to breaking the fan, television, and the bed because he was "pissed off" with plaintiff.

As to the November 6 incident, defendant explained plaintiff's oldest son had "a lot of 'attitude' and was 'disrespectful'" with plaintiff, defendant, teachers,

and the "help at school." Defendant denied drinking or raising his hand to plaintiff's son. He further denied ever striking plaintiff or plaintiff's oldest child.

Regarding the February 20 interaction involving their son's social security card, defendant stated he was permitted to claim his son as a dependent on his tax returns since he was the working parent. He denied knowing about plaintiff's lockbox. Defendant also denied that plaintiff locked him out of the apartment or that they had any conversations about being locked out. Defendant claimed the landlord never gave them a key to the door. As a result, plaintiff did not lock the front door when she left the apartment.

Defendant next addressed the February 24 incident. He denied telling plaintiff that he would put a chair through the window if she locked him out. He also denied telling plaintiff that he would make her homeless.

At the conclusion of a bench trial on April 12, 2022, the judge placed his decision on the record. The judge found plaintiff to be a "forth[]coming witness," "straight[]forward" and with the appropriate demeanor. He credited plaintiff's testimony to be "highly consistent with the written allegations that she made on the day she filed the complaint." He also found plaintiff's testimony credible that she feared for her safety and believed she needed an FRO to keep her safe.

The judge determined defendant's testimony was not credible and he was untruthful regarding the parties' living arrangements. The judge stated defendant would come and go from the apartment "whenever he want[ed]" and his "minimization of [those] incidents [were] completely belied by the audio on the video." He further determined defendant had a drinking problem, noting:

> [I]t [was] also abundantly clear that under the influence of that alcohol he breaks into rages. He screams, he yells, he's threatening, he's a very large man. He is obviously fiercely intimidating when he gets in the face of a woman and screams the way he did in those audios that we just heard accompanied the videos.

The judge concluded "the combination of speech and actions" by defendant met the standards set forth in State v. Burkert.[3] He reasoned,

> the speech, the screaming, and the yelling combined with the examples of strength, picking up a bed, flipping it so the top of the bed is eight feet in the air, breaking other household furniture. Combined with the screaming and the yelling, speech threatening to make . . . [p]laintiff homeless because . . . [d]efendant will just stop assisting in whatever manner he may be with her expenses.

Based on those factual findings, the judge found plaintiff proved the predicate act of harassment, citing N.J.S.A. 2C:33-4(a). He also held plaintiff established the need for an FRO, finding "all of this speech . . . would put a

[3] 231 N.J. 257 (2017).

reasonable person in fear for [her] safety when combined with his acts of physical strength and his displays of anger and emotion while drunk." The judge then issued the FRO. This appeal followed.

On appeal, defendant argues the trial court committed procedural errors which warrants a remand for a new trial. Specifically, the trial court erred in failing to address defendant at the beginning of the trial; precluding defendant from conducting a cross-examination of plaintiff; and permitting plaintiff to testify to facts not set forth in the complaint. Additionally, defendant argues the trial court's finding of harassment was not support by record; the credibility determinations were made in error, and the alleged events amounted to domestic contretemps.

Following the entry of an FRO after a bench trial, our review of a trial court's fact-finding function is limited. C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020). "[F]indings 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). We will reverse only when convinced that the trial judge's factual findings "'are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Ibid. (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co.,

65 N.J. 474, 484 (1974)). We review de novo a trial judge's legal conclusions. C.C., 463 N.J. Super. at 428-29.

Furthermore, "[b]ecause of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." Cesare, 154 N.J. at 413; Gnall v. Gnall, 222 N.J. 414, 428 (2015). This is particularly true where the evidence is testimonial and implicates credibility determinations. Cesare, 154 N.J. at 412 (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). A trial judge who observes witnesses and listens to their testimony is in the best position to "make first-hand credibility judgments about the witnesses who appear on the stand." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008).

We turn first to defendant's argument that the trial judge committed prejudicial procedural errors. We reject these arguments.

There is no merit to defendant's argument that the court "swayed" him from cross-examining plaintiff. We recognize one of the "essential procedural safeguards" for a defendant is the right to cross-examine witnesses. Peterson v. Peterson, 374 N.J. Super. 116, 124 (App. Div. 2005). A trial is a search for the truth, and "[c]ross-examination is the most effective device known to our trial

procedure for seeking the truth." Id. at 124-25 (alteration in original) (quoting Tancredi v. Tancredi, 101 N.J. Super. 259, 262 (App. Div. 1968)).

The trial judge properly informed defendant of his right to cross-examine plaintiff and allowed him to do so. While the judge noted the difficulty a self-represented litigant may have in conducting cross-examination, he explained defendant's options and general facts regarding cross-examination. When asked if he wanted to start questioning plaintiff, defendant replied, "No, I'll just testify." Our review of the record, does not show an abuse of discretion by the trial judge. We therefore discern no procedural error.

We turn next to defendant's argument that the trial judge erred in finding the predicate act of harassment and granting plaintiff an FRO. We likewise reject these arguments.

In deciding whether to grant an FRO, a trial court is required to make findings under a two-prong analysis. Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). First, the court "must determine whether the plaintiff has proven, by a preponderance of the credible evidence," that a defendant committed one of the predicate acts referenced in N.J.S.A. 2C:25-19(a), which includes harassment, N.J.S.A. 2C:33-4. Silver, 387 N.J. Super. at 125. The judge must construe any such acts considering the parties' history to better

"understand the totality of the circumstances of the relationship and to fully evaluate the reasonableness of the victim's continued fear of the perpetrator." Kanaszka v. Kunen, 313 N.J. Super. 600, 607 (App. Div. 1998); see also N.J.S.A. 2C:25-29(a)(1) (instructing courts to consider the parties' previous history of domestic violence).

Second, the judge must then assess "whether a restraining order is necessary, upon an evaluation of the fact[or]s 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." J.D. v. M.D.F., 207 N.J. 458, 475-76 (2011) (quoting Silver, 387 N.J. Super. at 126-27). Whether a restraining order should be issued depends on "the previous history of domestic violence between the plaintiff and defendant including previous threats, harassment[,] and physical abuse" and "whether immediate danger to the person or property is present." Corrente v. Corrente, 281 N.J. Super. 243, 248 (App. Div. l995) (citing N.J.S.A. 2C:25-29(a)); see also Cesare, 154 N.J. at 402.

Harassment is one of the enumerated statutory predicate acts of domestic violence. See N.J.S.A. 2C:25-19(a)(13). The statute provides that a person commits harassment if, with purpose to harass another, he:

> (a) Makes, 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) Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
>
> (c) Engages 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.]

Proof of a purpose to harass is an essential element of N.J.S.A 2C:33-4. See L.D. v. W.D., 327 N.J. Super. 1, 5 (App. Div. 1999) (quoting State v. Hoffman, 149 N.J. 564, 576 (1997)). A finding that a party had the purpose to harass "must be supported by some evidence that the actor's conscious object was to alarm or annoy; mere awareness that someone might be alarmed or annoyed is insufficient." J.D., 207 N.J. at 487 (citing State v. Fuchs, 230 N.J. Super. 420, 428 (App. Div. 1989)). "[A] purpose to harass can be inferred from a history between the parties" and "from common sense and experience." Ibid. (citing Hoffman, 149 N.J. at 577); H.E.S. v. J.C.S., 175 N.J. 309, 327 (2003).

Applying these standards, we are satisfied the trial judge appropriately concluded defendant committed the predicate act of harassment and the issuance of an FRO is supported by substantial credible evidence in the record under both

prongs of Silver. Defendant argues the trial judge should have viewed the parties' arguments and "nasty" statements made to each other as domestic contretemps. In rejecting defendant's contention, the judge noted his demeanor when drinking, the destruction of household items, the coarse language directed toward plaintiff and her oldest son, and the threats of homelessness. The judge found plaintiff's testimony credible, and discredited defendant's testimony as not credible. We defer to the judge's credibility determination. Thus, we conclude there was sufficient credible evidence in the record to support the judge's determination that defendant committed an act of harassment.

Regarding the second prong of Silver, defendant argues the judge impermissibly relied on prior conduct not mentioned in plaintiff's domestic violence complaint. Defendant also argues the judge incorrectly considered the prior acts since "only the event of March 6, 2022[,] represented the predicate act" and therefore, an FRO should not have been entered. We reject defendant's contentions.

Defendant contends a judge may not find a violation based on past conduct not contained in a complaint, citing J.F. v. B.K., 308 N.J. Super. 387, 391-92 (App. Div. 1998). As noted above, the trial judge found plaintiff credible and noted her testimony was "highly consistent with the written allegations that she

made on the day she filed the complaint." Moreover, the complaint specifically referenced the November 2021 incident.

Additionally, the record reflects numerous incidents of domestic violence between October 2021 and March 2022, which included threats of physical abuse and property damage. Moreover, the record demonstrates a pattern of drinking, foul language, continuous threats, violent remarks, and property damage. Together, these acts constitute harassment under the PDVA, as determined by the judge. As noted by our Supreme Court, "there is no such thing as an act of domestic violence that is not serious." Brennan v. Orban, 145 N.J. 282, 298 (1996).

When asked if she needed an FRO because she feared for her safety and needed protection, plaintiff responded, "Yes, absolutely." Defendant ignored plaintiff's pleas that the relationship was over, and he could not come to the apartment without contacting her. Therefore, the record supports the judge's finding that an FRO was necessary to protect plaintiff from immediate harm or further abuse. We therefore discern no basis to disturb the trial judge's order granting the FRO.

To the extent we have not considered any of defendant's remaining arguments, we are satisfied they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION