

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2910-21

L.H.,¹

Plaintiff-Respondent,

v.

D.T.H.,

Defendant-Appellant.

Argued May 8, 2023 – Decided May 19, 2023

Before Judges Whipple, Mawla and Walcott-Henderson.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FV-02-0680-20.

Kirah M. Addes argued the cause for appellant (The Law Office of Kirah M. Addes, LLC, attorneys; Kirah M. Addes, on the briefs).

John E. Clancy argued the cause for respondent (Townsend, Tomaio & Newmark, LLC, attorneys; John E. Clancy, on the brief).

¹ We utilize the parties' initials pursuant to Rule 1:38-3(d)(9) and (10).

PER CURIAM

Defendant D.T.H.² appeals from an April 22, 2022 final restraining order (FRO) entered against him, in favor of L.H., pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. He also appeals from a May 24, 2022 order granting plaintiff counsel fees. We affirm.

In October 2019, plaintiff filed a complaint under the PDVA alleging, among other grounds, harassment. The parties are siblings who previously resided together. The complaint alleged that on September 30, 2019, plaintiff "received a call from a [mutual friend] stating [defendant] was having a psychotic break and was homicidal towards [plaintiff]." It also alleged three days later, defendant "made statements to [the] parties' mother stating he now has everything he needs to come for [plaintiff]." Three weeks prior, defendant sent her emails, stating: "I'm fucking coming for you demon"; "Fucking die, asshole"; and "[Y]ou need to die." According to the complaint, defendant drove by plaintiff's house several times, and her mother called to tell her. He also hacked into her email.

² The matter is captioned with defendant's name as D.T.H. However, at trial defense counsel informed the court defendant had a legal name change to D.D.C. We use D.T.H. because that is how the matter is docketed. We intend no disrespect.

The complaint alleged a history of domestic violence beginning in approximately 2013. This included defendant: regularly driving past plaintiff's home for four years; mailing packages to her home, including a custom t-shirt, calling her a "cunt" and a "whore"; contacting and threatening plaintiff through different emails and phone numbers and repeating the pattern after plaintiff blocked him; driving to a home where plaintiff was working as a nanny; threatening to go to plaintiff's job with a gun to shoot everyone; sending plaintiff texts stating he hoped she dies; texting his friends asking "the penalty for murdering your sister if you can prove she deserves it"; throwing a fork at plaintiff during a family dinner; assaulting plaintiff by screaming at her and "forcefully putting his hands on [her] head/face"; constantly cursing at plaintiff and referring to her by vulgar names and racial slurs; and making harassing statements on her wedding website page.

After entry of the temporary restraining order (TRO), plaintiff alleged she received several emails from defendant that he was going to exact revenge and referred to plaintiff using a racial slur. On two occasions when plaintiff was speaking with her mother, defendant was heard in the background screaming, cursing, and threatening plaintiff. An amended TRO was entered.

A two-day FRO hearing ensued, at which plaintiff's counsel called defendant, the friend, the parties' mother, and plaintiff to testify. Defendant did not testify on his own behalf and called no witnesses. Plaintiff adduced several items of evidence documenting defendant's communications, including emails, texts, and mail.

Defendant was plaintiff's first witness. He claimed he lived in Canada and occasionally stayed at his mother's home in New Jersey. He testified he knew the mutual friend since high school and admitted having a text conversation with her in September and October 2019, during which he used the word "homicidal" in relation to plaintiff, but claimed he was "not . . . actually homicidal." When asked if he threatened plaintiff's life during the conversation with the mutual friend, defendant responded he did not "believe so."

Defendant admitted he texted plaintiff after his father made him aware of the TRO. He confirmed posting a long message to plaintiff on her wedding webpage, including the following statement: "I will even happily explain what I have been doing online to you because it's part of this larger story" He explained "it was [his] feeling . . . that [plaintiff] was harassing [him] online and was providing . . . information about [his] activities online to [their] father at the

time. . . . [He] believed that she was posting fake profiles, interacting with [defendant] through anonymous profiles, and the like."

Defendant admitted accessing plaintiff's email account and plaintiff also adduced an email from him containing a similar admission. Although he denied he broke into her email, he admitted he "had her password without her knowledge." He confirmed mailing plaintiff a t-shirt despite testifying he did not know where she lived. The t-shirt stated: "I made up HUGE lies about my brother and spread them to everyone to try to get him committed to a psych hospital. He lost his marriage, home, dog, [two] cars and [three] years of his life. And all I got was this LOUSY t-shirt." Defendant conceded plaintiff did not reach out to him or do anything to prompt him to send the t-shirt.

Plaintiff's counsel confronted defendant with a litany of emails he sent plaintiff or included plaintiff on, disparaging, threatening, and directing vulgarity at her over a period of years before the domestic violence proceedings. Despite all these communications, defendant admitted plaintiff never responded or initiated any communications with him. And despite his claims the communications were because of plaintiff's actions, defendant never detailed what plaintiff did, or contacted police.

Plaintiff testified she and defendant lived together in their mother's home until the Spring of 2016, when plaintiff moved out. On June 26, 2014, plaintiff sent defendant a text message stating: "Please don't talk to me. Don't message me or associate with me." This was her last communication to defendant, electronically or otherwise.

Plaintiff testified she filed the domestic violence complaint because the telephone call she received from the mutual friend alarmed her and put her in fear. Following the call, plaintiff reported the matter to police. Defendant continued to communicate with plaintiff, notwithstanding the TRO, "pressuring [her] to drop the TRO." She "felt that this was him saying to [her], '[n]ot even the court system can protect [her] from him.'" Defendant sent plaintiff more emails of a similar nature containing vulgar words.

Plaintiff testified about text messages defendant sent to her on October 30, 2021, at 4:00 a.m., and October 31, 2021, at 6:45 a.m. One of the messages provided plaintiff with a German email so they could communicate "outside of U.S. jurisdiction" and a new phone number plaintiff did not recognize. Plaintiff explained defendant's insistence on communicating "outside of jurisdiction" scared her. She testified defendant "changed his number [several times] over the years[,] and every time she blocked his number "a new one pops up."

Plaintiff corroborated her claims by testifying to several other texts she received from unknown numbers, some during early morning hours, containing harassing statements. One message contained plaintiff's IP address³ and claimed to share information about plaintiff with the whole family. Plaintiff asserted defendant "using [her] family as a threat really upset and scared" her.

Plaintiff confirmed she decided not to attend Thanksgiving dinner at her mother's home in 2019 because when she called to discuss plans for the dinner, she could hear defendant "screaming and cursing and calling [plaintiff] a bitch and a liar." On another occasion in 2021, when plaintiff was speaking with her mother, she could hear defendant in the background calling her "a bitch[,] . . . cunt[,] and a liar[,] " which prompted plaintiff to end the call. Defendant also drove by plaintiff's home on "at least four instances" prompting her to call police.

Plaintiff testified defendant hacked her Apple ID because she began receiving messages in the middle of the night that her "ID had been logged in[to]

³ An IP or internet protocol "address is a string of numbers assigned to an internet-connect device . . . like an address on a house. . . . IP addresses . . . reveal your geolocation [and] . . . might reveal the city, ZIP code, or area code from where you are connecting to the internet at that moment[.]" What is an IP Address? A definition + how to find it (July 25, 2022), <https://us.norton.com/blog/privacy/what-is-an-ip-address#>.

from his friend's iPad." She adduced an email from defendant in which he admitted using the friend's computer to break into her email. Plaintiff explained she would never provide defendant her email password, never responded to any of his messages, and never told him her physical address.

Plaintiff testified she called the police after she received the t-shirt in the mail. Defendant also called plaintiff's job. As a result of defendant's behavior, including the messages posted to her wedding webpage, plaintiff hired private security for her wedding.

The court interrupted plaintiff's testimony to hear from the mutual friend. The friend testified she called plaintiff with concerns because defendant had called her "very upset, saying that he was going to hurt himself[,] had threatened his father, and "was definitely negative about" plaintiff. However, the friend could not recall defendant saying he was homicidal, despite counsel showing her the text conversation between her and defendant. The friend's recollection was limited; she described it as "a blur" due to the passage of time.

When plaintiff resumed the witness stand, she continued to testify regarding the emails she received from defendant in 2016 containing vulgar words and threats stating defendant would not rest until he made the family "homeless, jobless, or in jail." Plaintiff stated: "These emails this day actually

scared me so much, I had to leave my nanny job that day because I was afraid I was putting the kids in danger if they were around me." Plaintiff testified to even more emails sent at early morning hours, which included admissions defendant had accessed her email account.

Plaintiff recounted the assault as well. She stated defendant approached her from behind and "put his hands on [her] head very forcibly, like when you palm a basketball." Plaintiff testified she "could not get up from the seat. [Defendant] started to move his hands. [She] was very scared." Defendant "did not let go of [her] until [her] now-husband stood up . . . because it was clear that I was very scared and uncomfortable in that moment"

In 2013, defendant threw his food on the ground during a family dinner, and plaintiff remarked it was rude of defendant to do so and told him to clean it up. "He then took a dinner fork that he had in his hand, threw the dinner fork, and it landed in the wall right next to" her. Plaintiff claimed the fork stuck in the wall and her father had to repair the wall.

Plaintiff recounted how defendant's conduct adversely impacted her health:

I suffer from anxiety insomnia. . . . [E]very night, I wake up and I cannot go back to sleep without checking to make sure that there is nothing waiting for me in my inbox of my email or on my phone. I also have to get

up and check to make sure that all the doors are locked, even if I've seen my husband do it before we go to bed.

I also was diagnosed with lupus and the stress and anxiety of this can sometimes trigger my flare ups. . . . I also have tachycardia and the stress of this triggers it.

Plaintiff explained why she needed an FRO:

I'm scared. I have not spoken to my brother. I have avoided him . . . since 2014 and it doesn't stop. He constantly says that he's coming for me. There's constantly threats of jail time and . . . the loss of my family. I'm scared. He's driven by my house. [My husband and I] no longer discuss the possibility of having children because I'm terrified that he might come after my child as a way to hurt me.

It's . . . gotten to the point where I feel also a prisoner in my own home. I'm afraid that I might run into him, you know, out and about at the grocery store. I'm afraid of him driving by my house. . . . [M]y husband has taken so many steps to help me feel safe and time and time again, [defendant] has stated that going to the court and doing this and doing that is not going to keep me safe. And I'm scared.

I . . . would like just to be left alone. I would like to be able to live my life without having to look over my shoulder every day.

Following the cross-examination of plaintiff, plaintiff's counsel called the parties' mother as the last witness. She explained defendant lives in Canada, but he goes "[b]ack and forth" between there and her house. She testified about the call from the parties' mutual friend and explained it made plaintiff afraid. Her

testimony regarding the dinner incident involving the fork added little further detail, except she noted the wall did not need repair.

The trial judge made oral findings. He cited N.J.S.A. 2C:25-19(d) and R.G. v. R.G., 449 N.J. Super. 208 (App. Div. 2017) and found the parties' relationship was covered by the PDVA because they "were previously household members."

The judge determined the mutual friend's testimony was credible, but did not have weight because she had "very little recollection as to the events." The judge made no credibility findings regarding the mother's testimony except to recount she testified with "some sadness" regarding the parties' disputes.

The judge found defendant's testimony was evasive and lacked candor. Defendant "showed a reluctance to answer. . . . He danced around a lot of the questions," which caused the judge to question his credibility because "he burst[] into tears for a moment[] and then gathered himself quickly It looked like a set-up. It looked like he forced himself to act that way." The judge did not find defendant's testimony reasonable and rejected his assertion he did not intend to harass plaintiff.

Plaintiff's "testimony struck [the judge as] more true and credible." He "found her testimony to be reasonable . . . she answered questions Her

testimony was believable." The judge found no "inconsistent or contradictory statements by any witnesses. Accordingly, [the judge found] . . . plaintiff to be credible"

The judge found defendant committed a predicate act of harassment under N.J.S.A. 2C:33-4(a), because he communicated with her anonymously and at extremely inconvenient hours. The predicate act was colored by the history of domestic violence, which included physical abuse and a "long list of contact by . . . defendant based on anger." The judge found defendant's statements disturbing and "have gone well past" mere hyperbole. He concluded defendant intended to harass plaintiff because he could not find "any other reason" for defendant's conduct "other than to annoy or bother the other individual."

The judge next considered whether plaintiff required the protection of an FRO. He noted the PDVA is construed liberally and affords "maximum protection from abuse that the law can provide. At the heart of the [PDVA] is the notion that victims of domestic violence have the right to be left alone. State v. Hoffman, 149 N.J. 564 (1997)." Pursuant to Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006), the judge considered the factors under N.J.S.A. 2C:25-29 and concluded as follows:

I have weighed the testimony, the evidence, and credibility of the witnesses, which I have set forth on the record. And I find by a preponderance of the evidence that the plaintiff's life, health, and well-being have been and are endangered by the defendant's acts. The entry of a restraining order is necessary for the plaintiff's protection.

On appeal, defendant challenges the court's findings that: plaintiff was credible; he committed the predicate act of harassment; an FRO was necessary to protect plaintiff; plaintiff qualified as a victim of domestic violence; and the parties' relationship qualified to give the court jurisdiction to enter the FRO. Although defendant's notice of appeal included the May 2022 order granting plaintiff counsel fees, defendant did not brief the issue, and it is therefore waived. State v. Shangzhen Huang, 461 N.J. Super. 119, 125 (App. Div. 2018), aff'd o.b., 240 N.J. 56 (2019).

In domestic violence matters, the trial court's findings of fact are binding on appeal when "supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). "Deference is especially appropriate '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)). "Because a trial court 'hears the case, sees and observes the witnesses, [and] hears them testify,' it has a better perspective than a reviewing court in

evaluating the veracity of witnesses." Ibid. (alteration in original) (quoting Pascale v. Pascale, 113 N.J. 20, 33 (1988)). Thus, "an appellate court should not disturb the 'factual findings and legal conclusions of the judge unless [it is] convinced . . . they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Ibid. (first alteration in original) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). However, our review of conclusions of law is de novo. S.D. v. M.J.R., 415 N.J. Super. 417, 430 (App. Div. 2010) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Pursuant to these principles, we affirm substantially for the reasons expressed by the trial judge. We add the following comments.

N.J.S.A. 2C:33-4 states a person acts "with purpose to harass another, [if they]: a. Make[], or cause[] 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" "For purposes of [N.J.S.A. 2C:33-4(a)], there need only be proof of a single such communication, as long as defendant's purpose in making it . . . was to harass

and as long as it was made in a manner likely to cause annoyance or alarm to the intended recipient." J.D. v. M.D.F., 207 N.J. 458, 477 (2011).

In order to determine whether a communication constitutes harassment, a court does "not measure the effect of the speech upon the victim; [it] look[s] to the purpose of the actor in making the communication[,]" even if the communication was "understandably upsetting to [the recipient]." E.M.B. v. R.F.B., 419 N.J. Super. 177, 182 (App. Div. 2011). A finding of 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. A purpose to harass may be inferred from the evidence. State v. McDougald, 120 N.J. 523, 566-57 (1990). A judge's common sense and experience may also color the analysis. Hoffman, 149 N.J. at 577.

We reject defendant's argument he did not commit harassment. Defendant directed a constant stream of vitriol at plaintiff, which had no valid purpose other than to annoy and alarm her. Defendant's actions were neither an expression of anger as a part of back-and-forth dialogue or argument, nor a response to a provocation. The undisputed evidence is plaintiff told defendant to leave her alone and stop contacting her years ago, never contacted defendant

since that time, and never responded to his ongoing communications. Despite defendant's claims, the record amply supports the trial judge's application of common sense and experience to infer defendant's intent was to harass. Ibid.

We likewise reject defendant's arguments plaintiff was not a victim of domestic violence and did not require the protection of an FRO. N.J.S.A. 2C:25-29(a) contains six factors a court must consider in deciding whether an FRO should enter. N.J.S.A. 2C:25-29(a)(1) requires consideration of "[t]he previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;" and under N.J.S.A. 2C:25-29(a)(2) a court considers "[t]he existence of immediate danger to person or property"

Although the trial judge did not enumerate the factors he considered, it is obvious from his findings, and our review of the record, these factors applied to plaintiff's circumstances. The domestic violence history included assault and harassment, and defendant's conduct showed unabated anger and a lack of self-control, which clearly warranted the protection of an FRO.

Finally, the trial judge's findings on credibility were unassailable and the court clearly had jurisdiction. Defendant's challenge to these findings and any

other arguments we have not addressed lack 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