

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3516-21

N.I.,

Plaintiff-Respondent,

v.

L.M.,

Defendant-Appellant.

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Submitted August 15, 2023 – Decided August 25, 2023

Before Judges Enright and Marczyk.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Bergen County,  
Docket No. FV-02-2264-22.

The Tormey Law Firm, LLC, attorneys for appellant  
(Travis J. Tormey, of counsel; Jeffrey A. Skiendziul, on  
the brief).

Louis J. Lamatina, attorney for respondent.

PER CURIAM

Defendant L.M.<sup>1</sup> appeals from a June 9, 2022 final restraining order (FRO)<sup>2</sup> entered against him under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to - 35. We affirm.

## I.

Defendant and plaintiff N.I. never married but share a son, L.M. (Luke) together. Luke is seven years old and autistic. Plaintiff has sole physical and legal custody of the child, subject to defendant's supervised parenting time.

In May 2022, plaintiff filed for and obtained a temporary restraining order (TRO) against defendant. Her TRO complaint, which was subsequently amended, alleged defendant harassed her.

During the final hearing on June 9, 2022, plaintiff testified that on May 10, 2022, after defendant had a supervised visit with Luke, he called to tell her she was "a whore" and he was going to "tell their son [she's] a whore" and that she "need[ed] to take [defendant] off child support right now." Additionally, plaintiff testified that on May 16, 2022, defendant called her to "verbally berat[e] her" and reiterate he no longer wanted to pay child support for Luke.

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<sup>1</sup> We use initials and pseudonyms to protect the confidentiality of the proceedings. R. 1:38-3(d)(9) and (10).

<sup>2</sup> The FRO was amended on June 10, 2022, to address an issue unrelated to this appeal.

According to plaintiff, defendant told her she "was a grub living off his money" and "[a] twat afraid of [her] own shadow." Plaintiff stated this type of behavior had "been going on for a year." She also provided phone records to prove how frequently defendant called her. Further, plaintiff testified defendant's abusive behavior "weigh[ed] on" her and "affect[ed her] wellbeing."

Plaintiff stated that days before the May 10 incident, after she sent defendant a report confirming their son was autistic, he emailed her to apologize for how he behaved toward her. The email, which was admitted into evidence, stated, in part,

I owe you an apology . . . . I've let my own anger[,] frustration[,] emotion and thoughts take[] over way too many times and . . . said things that I am sure are hurtful to you . . . . I know that I have been downright horrible, but I am committed to changing for . . . my little boy.

Plaintiff testified the email "mean[t] nothing" and was "not a real apology," because defendant harassed her again on May 10 and May 16, 2022. She stated, "Who calls someone a whore after writing an email like that?"

Plaintiff also testified about a history of domestic violence between the parties. She stated that in 2020, defendant "shoved [her] in front of [Luke]" and "told [Luke she] was a cunt because [she] would [not] let them throw rocks at police cars behind the . . . police station."

During his testimony, defendant admitted his "language" toward plaintiff was "often . . . offensive." He explained he was "just a very, very direct person" and his manner of communicating stemmed "from just being a . . . perfectionist." He also stated, "I can't say that I'll change . . . because that's what made me so successful." Defendant denied shoving plaintiff in 2020 and stated his interactions with her were "never . . . violent," "never . . . physical."

Following the parties' testimony, Judge Michael Antoniewicz concluded "plaintiff . . . prove[d] by a preponderance of the evidence that . . . defendant did commit acts of harassment" and an FRO was needed to protect her from further abuse. The judge found: "[P]laintiff's testimony [was] far more reasonable" than defendant's testimony; "she had candor" when she testified; and she "answered all questions without . . . evasion."

Judge Antoniewicz concluded defendant's testimony was "problematic," noting "[t]here was some evasion" when he testified. The judge also stated he did not find defendant credible because "when . . . questioned about . . . [his] offensive use [of] language," and whether he "ever call[ed plaintiff] a whore, . . . [or] a cunt[,]" defendant answered, "'I don't recall' [and] 'I don't remember.'" Additionally, the judge found defendant's "circuitous and rambling testimony" was "less credible" than plaintiff's testimony.

Regarding whether plaintiff proved defendant harassed her, the judge stated, "What I have here is a defendant [who] constantly contact[ed] plaintiff" and admitted "his language [was] sometimes offensive. And he says that it's because he's a perfectionist." Further, the judge found "defendant . . . made numerous phone calls, [sent] numerous emails[] and . . . text messages, often with offensive and abusive language," and that under "the totality of the circumstances, . . . such actions by . . . defendant [did] amount to harassment."

In determining whether plaintiff established the need for an FRO, the judge referenced the two-prong test under Silver v. Silver, 387 N.J. Super. 112, 126-27 (App. Div. 2006), and concluded:

[I]t looks like the parties . . . have a disagreement regarding parenting time . . . [a]nd the child support that is being paid. Rather than taking a constructive [approach] . . . , there are micro aggressions and other aggressions that are being committed by ... defendant against ... plaintiff.

. . . .

Having weighed the testimony and the evidence and credibility of witnesses I find, by a preponderance of the evidence, that . . . plaintiff's life, health, and wellbeing, as she testified to, have been and are endangered by the acts of . . . defendant. He needs to find a more constructive way to express himself to the mother of his child. . . . Thus, the entry of a restraining order is necessary for her protection.

## II.

On appeal, defendant argues "[t]he trial court improperly concluded that [defendant] committed the predicate act of harassment" and "improperly found that the two-prong test in [] Silver mandated the issuance of" an FRO. These arguments lack merit. R. 2:11-3(e)(1)(E). We add the following comments.

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)). 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"; "[t]he existence of immediate danger to person or property"; and "the best interests of the victim and any child." N.J.S.A. 2C:25-29(a)(1), (2) and (3).

Under N.J.S.A. 2C:33-4:

[A] person commits a petty disorderly persons offense [of harassment,] if, with purpose to harass another, [that person]: (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).]

Because "direct proof of intent" is generally 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); see also Hoffman, 149 N.J. at 577, 585 (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").

Guided by these standards and persuaded that the judge's credibility and factual findings are amply supported by the record, we discern no basis to disturb the June 9, 2022 FRO.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION