

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3849-21

D.M.Z.,

Plaintiff-Respondent,

v.

C.J.H., JR.,

Defendant-Appellant.

Submitted September 18, 2023 – Decided September 29, 2023

Before Judges Gooden Brown and Puglisi.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Camden County,
Docket No. FV-04-3829-22.

The Law Office of Rajeh A. Saadeh, LLC, attorneys for
appellant (Rachel L. Baxter, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant C.J.H., Jr. appeals from a June 29, 2022, Family Part order,
granting plaintiff D.M.Z.'s application for a final restraining order (FRO)

pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. Because we agree with defendant that the trial court did not adequately explain its reasons for finding defendant committed the predicate acts of terroristic threats and harassment, we reverse and remand to the trial court for a new hearing before a different judge.

We glean the following facts from the record. The parties were previously in a dating relationship and are co-parents of two teenage children, a son and a daughter. On June 10, 2022, plaintiff filed a complaint against defendant alleging he had committed acts of domestic violence against her, specifically terroristic threats and harassment, and seeking injunctive relief under the PDVA. In the complaint, plaintiff asserted that defendant had "responded to her daughter's softball game" and "threatened [her] when [she] refused to talk to [him]." She reported defendant "stated 'he was gonna fuck me up' and he will 'fuck me up out here.'" She further reported defendant "called her names, made disparaging remarks about her body, and threatened to physically harm her in front of their daughter." She noted "previous reports for harassment/no arrest" and "previous dismissed TRO/FRO" as prior history of domestic violence.

Based on plaintiff's complaint, she was granted a temporary restraining order (TRO) on June 11, 2022. Defendant was served with the complaint that

same day. On June 29, 2022, a Family Part judge conducted a final hearing, during which both parties appeared pro se and testified. At the outset of the hearing, plaintiff advised the court she had a video of the incident on her cell phone, which she said staff had told her she could play in court. The judge said plaintiff had been given "bad information" because he could not consider a video on her cell phone, and instead later in the hearing plaintiff emailed the video to the court.

Plaintiff testified defendant called her from their daughter's softball game, which was down the street from her residence. He wanted to discuss taking their son to Canada for the summer, to which she said, "absolutely not." After defendant kept "pushing the issue," she told him, "Your life is in disarray and you should worry about that," and hung up on him. Defendant called her again and she did not answer. She arrived at the softball game shortly thereafter. Defendant tried to talk to her again about taking their son to Canada and she told him twice, "I don't want to talk to you." She testified:

So, as I'm walking away with my daughter, he started, like, an argument basically, calling me names and saying, I don't give a fuck, I'm taking him to Canada. I'm going to get a court order, it can be enforced. And just basically harassing me. So, then now, I'm—you know, we're arguing with each other in public at a softball field. Our daughter is crying. He started saying, I will fuck you up out here. Bitch, I will fuck

you up. I don't know who the fuck you think you are. Threatening bodily harm to me. And in the video, you can see me saying, come on, we're getting pizza, like trying to continue to walk away, and he is continuing his tirade.

Plaintiff estimated the encounter lasted five minutes, and then defendant drove away. She filed for and was granted the TRO at the local police station that evening.

In response to the court's question whether she had "problems with the defendant in the past," plaintiff answered, "Problems such as this. Conflict of parenting issues." She further testified defendant threatened her with bodily harm in the past and harmed her twice before: eleven years prior, defendant pulled her out of bed by her hair and dragged her to the living room; and on another occasion, he "pushed [her] down a flight of steps" but she caught herself before she fell.

Plaintiff explained her reasons for seeking the FRO:

I'm just afraid of what he does because he's very erratic, and he—that is why I'm afraid. Like, I would have never—when I said I didn't want to talk to him, I would have thought he would just leave me alone. But I never know what he's going to do. Is he going to show up at my house, is he not going to show up? Is he going—I don't know. And I'd rather just live my life in peace.

At the conclusion of plaintiff's testimony, the court asked defendant if he had any cross-examination questions, to which he responded, "Some of this information is new to me, so—" but then waived cross-examination and instead elected to testify in his defense.

Defendant stated he called plaintiff from the softball field:

So I said, you know, I'd like him to work an internship, plus I want to send him to Canada for two weeks. And she tells me, someone who lives in their grandma's basement shouldn't be trying to call the shots. So, I'm like—like, why the F are you talking to me like that? I don't—you know, where I live doesn't matter. I graduated from Rutgers with an economic degree, the same university as Milton Friedman. I'm very accomplished in my career. And I'm an entrepreneur. I'm building a business currently. So, she hangs up on me.

Defendant testified he tried to speak with plaintiff at the softball field but plaintiff rebuffed him. He said his comments were precipitated by plaintiff's cursing at him, calling him a "bitch" in front of their daughter and other spectators at the game, and saying he was not a good father and was not in his kids' lives. Defendant testified:

I said, I will fuck you up out here. You don't want to see me in court. I'll squash you with my wallet. You'll hear from my lawyer. The court order says I have a right to my—I have joint custody with my children. . . . At no point did I approach her.

Twice more during the hearing, defendant reiterated he did not mean he was going to physically harm plaintiff, but rather he would get his attorney and "smash her" with his wallet in court.

Disputing the necessity of the FRO, defendant argued plaintiff was not afraid of him because she continued to text him the evening after the incident. Defendant also denied committing any prior acts of domestic violence, instead testifying plaintiff had hit him and broke the skin, which resulted in his obtaining an FRO against her. Regarding the other prior incident, defendant testified plaintiff had broken into his house and he called the police on her.

The court clerk then confirmed on the record defendant had a prior FRO against plaintiff which he voluntarily dismissed; and plaintiff had one prior TRO against him which she voluntarily dismissed and one application for a TRO that was denied.

Despite the parties' conflicting testimony, the court stated, "we don't really need the video at this juncture because apparently the threats were made." The court then issued its decision, finding plaintiff uniquely credible because she responded appropriately to the court's questions and did not embellish her testimony; and finding defendant not credible because he had "problems" responding to the court's questions and went "on and on and on about

information that is basically irrelevant." The judge then stated, "Further, I make a finding that on this particular occasion, there was a substantial threat of violence made that would be by the preponderance or greater weight of the evidence considered terroristic threats. Under those circumstances, I'm going to issue a final restraining order."

On August 16, 2022, the court issued a supplemental oral decision on the record with additional findings of fact and conclusions of law to more specifically address the two prongs of Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006): whether defendant committed an act of violence and whether an FRO should issue. The court reiterated it had found defendant made "a specific terroristic statement . . . that he was going to f-u-c-k [plaintiff] up and he would f-u-c-k up out here," and those statements were "terroristic threats, substantial harassment, that gave the plaintiff concern and being harmed by the acts of the defendant."

The court then noted it was "mindful that there is some lacking proofs here" regarding prong two of Silver. Relying on Cesare v. Cesare, 154 N.J. 394 (1998) and McGowan v. O'Rourke, 391 N.J. Super. 502 (App. Div. 2007), the court found the predicate acts to be sufficiently egregious to warrant the issuance

of an FRO, and therefore found prong two of Silver had been met. This appeal followed.

Ordinarily, "[i]n our review of a trial court's order entered following trial in a domestic violence matter, we grant substantial deference to the trial court's findings of fact and the legal conclusions based upon those findings." D.N. v. K.M., 429 N.J. Super. 592, 596 (App. Div. 2013). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 411-12. However, reversal is warranted when a trial court's findings are "so wide of the mark that a mistake must have been made." N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (quoting C.B. Snyder Realty Inc. v. BMW of N. Am., Inc., 233 N.J. Super. 65, 69 (App. Div. 1989)). Likewise, "if the court ignores applicable standards, we are compelled to reverse and remand for further proceedings." Gotlib v. Gotlib, 399 N.J. Super. 295, 309 (App. Div. 2008). Moreover, our review of a trial court's legal conclusions is always de novo. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Under the first prong of Silver, the judge must determine whether plaintiff proved, by a preponderance of the credible evidence, defendant committed one or more of the predicate acts set forth in N.J.S.A. 2C:25-19(a).

Plaintiff here alleged defendant committed acts of terroristic threats and harassment. A person is guilty of terroristic threats "if he threatens to commit any crime of violence with the purpose to terrorize another" or "if he threatens to kill another with the purpose to put him in imminent fear of death under circumstances reasonably causing the victim to believe the immediacy of the threat and the likelihood that it will be carried out." N.J.S.A. 2C:12-3(a)-(b). Although not specifically noted in the record, we infer the court found defendant had committed terroristic threats under the first section, since there was no threat to kill plaintiff.

"In the domestic violence context, an act of terroristic threats requires that (1) the abuser threatened the victim; (2) the abuser intended to threaten the victim; and (3) 'a reasonable person would have believed the threat.'" State v. Dispoto, 189 N.J. 108, 121-22 (2007) (quoting Cesare, 154 N.J. at 402).

In ruling plaintiff had established the predicate act of terroristic threats, the judge stated, "I make a finding that on this particular occasion, there was a substantial threat of violence made that would be by the preponderance or

greater weight of the evidence considered terroristic threats." In addition to misstating the elements of the statute as a "substantial threat of violence," the court does not address the second or third prongs: whether the threat was made with the purpose to terrorize another and whether a reasonable person would have believed the threat. The court's reasons in the supplemental decision further compound the problem by finding defendant's statements "gave the plaintiff concern," when the analysis must be objective, not subjective. Because the court's decision did not establish plaintiff proved the requisite elements of terroristic threats, the finding cannot stand.

A person is guilty of harassment if, with purpose to harass another, he:

- a. Makes, or causes to be made, a communication or 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.]

Again, although not clear from the record, we infer the judge found defendant violated section (a) of the statute because the conduct involved a

statement to plaintiff made in offensively coarse language. As with the offense of terroristic threats, an element of harassment is that a defendant had the intent to harass. See State v. Hoffman, 149 N.J. 564, 576 (1997) (internal citations omitted). A plaintiff's complaint of feeling harassed is insufficient to establish the offense of harassment. This is particularly critical where allegations of harassment arise from a familial dispute, where a judge must "distinguish between ordinary disputes and disagreements between family members and those acts that cross the line into domestic violence." R.G. v. R.G., 449 N.J. Super. 208, 225 (App. Div. 2017) (citing J.D. v. M.D.F., 207 N.J. 458, 475-76 (2011)). Because the court's decision did not establish plaintiff proved the requisite elements of harassment, the finding cannot stand.

Given our decision to reverse and remand for a new hearing, we need not address defendant's remaining arguments that the court: misapplied the second prong of Silver, should have afforded defendant an adjournment, and prejudged the case.

The FRO is reversed, the TRO is reinstated and the matter remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION