# RECORD IMPOUNDED



SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3988-21

F.K.,

Plaintiff-Respondent,

v.

E.L.,

Defendant-Appellant.

———————————————

Submitted October 11, 2023 – Decided October 27, 2023

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Camden County, Docket No. FV-04-3755-22.

Afonso Archie, PC, attorneys for appellant (Kerlin Hyppolite, on the brief).

Rutgers Law Associates, attorneys for respondent (Patrick Severe and Ziqin Zhou, on the brief).

PER CURIAM

Defendant E.L.[1] appeals from a July 26, 2022 final restraining order (FRO) entered in favor of plaintiff F.K. under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. We affirm.

I.

The parties never married but share a son together. On the evening of June 4, plaintiff filed for and obtained a temporary restraining order (TRO) against defendant, alleging he harassed her earlier that day while she was hosting a celebration for the parties' son at her home.

The parties appeared for the final hearing on July 26, 2022. During the hearing, plaintiff testified about the June 4 incident. She explained the parties' son was scheduled to attend his eighth-grade dance that evening, so she invited family, friends, and defendant to her home to take photos with the child. According to plaintiff, defendant was intoxicated when he arrived with his fiancée and their two children. She stated she "could tell from the second he walked up that this was not good."

Plaintiff testified she asked defendant to take a photo with his two children and their son, and in response, he cursed at her and told her "directly to [her]

[1] We use initials to protect the confidentiality of the victim. R. 1:38-3(d)(10).

face," not to talk to his children. Plaintiff stated that after defendant accused her of being a "fucking drug addict" and stealing "all [her] husband's fucking money," she asked him to leave.

Shortly thereafter, plaintiff saw defendant's fiancée walk up her driveway and asked her "not to come up." Plaintiff stated defendant's fiancée cursed at her, threatened to call the Division of Child Protection and Permanency against her, and defendant also cursed at plaintiff, saying, "[f]uck you. I'll fucking deck you. Fucking talk like that." Additionally, plaintiff testified defendant "walk[ed] up to [her] father-in-law and [her] husband and sa[id], '[plaintiff's] a fucking drug addict and she's going to steal all your fucking money.'" Her "father-in-law asked [defendant] to keep moving and stop using th[at] language."

Plaintiff also testified that "[a]t this point, [defendant's] brother [wa]s physically holding [defendant] back as [defendant was] screaming." According to plaintiff, defendant's "brother and [his] friend eventually were able to get [defendant] in his car" but "[h]e was trying to go around them to get to [plaintiff and her family]." Plaintiff stated defendant's brother "was holding him just one-on-one, but it was too much to be held one-on-one so they needed to bring another person in." She testified that while defendant was being restrained, he

screamed at her, "[y]ou're going to be sorry once I get to you . . . . You know what I can do." Plaintiff stated she believed defendant "intended to hurt [her]," and told the judge:

> I am afraid of him. . . . [T]his has been just a longstanding[, fourteen] to [seventeen] years of just kicking in the doors and screaming and [defendant saying,] . . . "I'm going to get what I want," and . . . it's the constant, "[i]f I get to you, you're going to fucking be dead."
>
> . . . .
>
> . . . I can't do this anymore. I'm constantly scared and . . . I don't ever know what is going to happen and I think that this is the time I . . . need [a restraining order]. I'm scared of him.

Plaintiff also testified about the parties' history of domestic violence. For example, she stated when the parties were dating in 2008, defendant pushed her against a refrigerator. Further, she described her attempt to leave defendant in or around 2009 and stated he prevented her from leaving him. Additionally, plaintiff testified that after the parties' relationship ended, defendant removed a television from plaintiff's apartment and the police directed defendant to return it. Plaintiff also testified that in 2010, defendant tried to kick down her apartment door and after she let him inside, he pushed her against a wall, choked her, and demanded sex.

Moreover, plaintiff testified that in 2011, defendant came to her home intoxicated and demanded parenting time with the parties' son. She stated he "rip[ped their] son out of [her] arms" and when he "drove off," he "ran over . . . [her] foot." Plaintiff also stated that in 2012, and twice in 2013, defendant tried to break into her apartment. During the first 2013 incident, he was intoxicated and holding "a jug of vodka," and when he was unable to get inside her home, he told her, "[j]ust wait 'til you see what I'm going to fucking do to you." According to plaintiff, the next incident occurred around Christmas in 2013, when defendant tried to "kick in [her] door" and screamed at her, "[f]uck you. I'm getting in this fucking house. Nothing's stopping me." After a neighbor and "[l]aw enforcement" intervened, and defendant left the area, plaintiff discovered "[a]ll of [her] decorations [were] shattered all over the steps." Lastly, plaintiff testified that in 2021, while at a family gathering, defendant approached her and said, "[y]ou know, I don't know why the fuck you're here. . . . Fuck you, . . . . [g]et the fuck out of here." Plaintiff left the gathering after this confrontation.

Plaintiff called her husband and father-in-law to testify at the FRO hearing. Both witnesses corroborated her description of the June 4 incident.

When defendant testified, he denied plaintiff's allegations about the June 4 incident, including her claims that he was intoxicated or tried to hurt her. He stated, "I would never put my hands on her." Defendant also testified plaintiff initiated the "shouting match" between the parties by yelling at his fiancée. However, on cross-examination, he admitted he was "held back by . . . friends that day" and while he "was getting pushed back" and "yelling," his brother and friend told him, "[g]o home."

The judge asked defendant why plaintiff would "fabricat[e] these allegations against" him. Defendant replied, "I have no idea . . . . It is just totally untrue." Defendant's fiancée subsequently corroborated defendant's testimony about the June 4 incident, except she denied anyone "led [defendant] off [plaintiff's] property," testifying he "left on his own free will."

When the testimony concluded, the judge credited plaintiff's testimony over that of defendant's and granted her an FRO, finding defendant committed the predicate act of harassment, N.J.S.A. 2C:33-4 on June 4. He explained:

> Plaintiff testifie[d] clearly that there was a predicate act of harassment and potentially trespass. . . . [W]hen someone who owns the property tells you to leave, your obligation is to leave the property, not to lose your temper and start raising your voice . . . . [D]efendant indicate[d] that he was upset and did raise his voice and was escorted off the property by his brother and his . . . friend.

. . . .

When . . . . your invitation to leave occurs, you need to leave.

So that may be the focus here of whether there's a predicate act. It can be considered harassment, [as defined by statute, if a defendant] "makes communication in a manner likely to cause annoyance or alarm, engages in any other course of alarming conduct or repeatedly commit[s] acts with the purpose to alarm or seriously annoy."

Now, . . . [plaintiff] testifie[d] that . . . defendant was in her face and . . . threatened her.

. . . .

The court is satisfied that [for defendant] to be escorted off the property as described here[,] is a clear indication that there was a problem. . . . [D]efendant [was] not escorted off the property by anyone else there[,] other than a friend and a . . . family member. So why would that . . . occur?

. . . .

I've listened to the testimony. . . . And it's not an easy determination the court has to make, but the determination is only the [fifty-one-] percent standard.

Considering that [standard] of proof, the court is satisfied that plaintiff . . . carried her burden by the preponderance of the evidence. I am satisfied that her testimony is more believable than the defense's testimony.

Next, the judge noted that when he asked defendant why plaintiff would fabricate allegations against him,

> his answer [wa]s he [did not] know. . . . [T]hat's . . . the defense's position, "we have no idea." . . . [P]laintiff's position is[,] . . . "I've been harassed, I've been threatened, I've been assaulted, he broke into my house, he took my property." . . .
>
> So[,] if you look at those two scenarios, the plaintiff's scenario seems to be stronger . . . and the court's satisfied that the predicate act has been proven by the preponderance or greater weight of the evidence for . . . harassment.
>
> The communications, the court finds, did, in fact, occur in which there [we]re very negative comments made to . . . plaintiff. . . . [P]laintiff then want[ed] [him] to leave. And at that juncture, there is no question . . . defendant need[ed] to turn around and leave the property. Not be[] helped off the property with friends . . . . That[ was] his obligation.

The judge also credited plaintiff's testimony that "there [wa]s a history . . . of domestic violence" and "there [were] some real problems . . . that date[d] back for [twelve] years." Therefore, he stated "prong two of Silver[2] is established" and "[u]nder those circumstances, the [FRO] will be entered."

II.

---

[2] Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006).

On appeal, defendant solely argues "the trial court's findings were inadequate that a[n FRO] was necessary." We are not persuaded.

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) (citing 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)). Further, 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). However, we review legal issues de novo. Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div. 2017).

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) (alteration in original) (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.

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), (4).

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

> a person commits a petty disorderly persons offense [of harassment,] if, with purpose to harass another, [the 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 often 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) (citing State v. Siegler, 12 N.J. 520, 524 (1953)). Therefore, "[a] history of domestic violence may serve to give content to otherwise ambiguous behavior and support entry of

a restraining order." J.D., 207 N.J. at 483; 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"(citation omitted)).

Guided by these standards, we discern no basis to disturb the July 26 FRO. Here, the judge found defendant committed the predicate act of harassment by refusing plaintiff's request to leave her property, noting defendant had to be "escorted off the property by . . . a friend and a . . . family member" after making "very negative comments . . . to . . . plaintiff." The judge also concluded an FRO was warranted because "there [wa]s a history here of domestic violence" that "date[d] back for [twelve] years and . . . with this history of domestic violence, prong two of Silver is established." The judge's credibility and factual findings are amply supported by competent, credible evidence in the record. Thus, we agree with his finding that plaintiff was entitled to an FRO.

To the extent we have not addressed any remaining arguments advanced by defendant, we are persuaded they lack sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(2).

Affirmed.