RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0153-23

S.C.,[1]

Plaintiff-Respondent,

v.

L.G.,

Defendant-Appellant.

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Submitted May 29, 2024 – Decided June 7, 2024

Before Judges Sumners and Perez Friscia.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Gloucester County, Docket No. FV-08-0108-24.

David T. Garnes, LLC, attorney for appellant (David Thornton Garnes, on the brief).

Respondent has not filed a brief.

PER CURIAM

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

Defendant L.G. appeals from the August 3, 2023 Final Restraining Order (FRO) entered against him under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. Defendant argues the trial judge erroneously found plaintiff S.C. had proven the predicate acts of terroristic threats and harassment, and the FRO was necessary to ensure her future protection. Following a review of the record, the parties' arguments, and the applicable legal principles, we affirm.

I.

The parties had a long-term dating relationship and share a minor son, E.G. After living with defendant in Mexico intermittently for about a year, plaintiff returned with E.G. to New Jersey to live with her parents. Defendant remained in Mexico.

On July 18, 2023, plaintiff obtained a temporary restraining order (TRO) after filing a domestic violence complaint alleging defendant committed the predicate acts of terroristic threats and harassment. Plaintiff alleged during the afternoon of July 15, defendant over FaceTime from Mexico threatened if he was prevented from seeing his son he would kill her, her mother, C.C., and E.G. Defendant allegedly repeated the threat in another conversation later that day. Plaintiff also alleged a prior history of domestic violence.

At the FRO trial, plaintiff, C.C., and defendant testified. Plaintiff testified that on July 15, defendant became upset on a FaceTime call with E.G. and "was making some disparaging comments about [her] to [their] son." She testified to "hear[ing] the complete conversation" and that defendant knew she was listening. Defendant threatened to kill everyone in the house if he was prevented from speaking with E.G., and plaintiff subsequently disconnected the call to avoid upsetting E.G. When defendant called back, he repeated the same threat. C.C. and plaintiff heard the threat because they were "on th[e] . . . call . . . to get an understanding of . . . why he was so angry." Plaintiff further testified that a couple days earlier, defendant had threatened in a text message to disseminate "revenge porn[ography]" of her, and she retained the screenshot.

Plaintiff relayed on July 19, defendant returned to the United States from Mexico and went to C.C.'s home. After C.C. called the police, defendant was served with the TRO. Plaintiff testified defendant had previously threatened to harm her if he was "[un]able to contact or communicate with [their] son." On cross-examination, plaintiff acknowledged she may have told defendant she felt safe with him, but that was "before [he] threatened [her] life and [her] household."

C.C. testified to hearing defendant, during the July 15 FaceTime, threaten that "if he ha[d] to come to [C.C.'s] home and kill everyone in [her] home, that [wa]s what he would do." C.C. relayed that a couple days earlier she disagreed with defendant over FaceTime regarding "marriages[] and women being submissive." At the end of that conversation, defendant texted plaintiff "if she [was not] quiet, or if she sa[id] anything, he [would] put out revenge porn[ography of her]." C.C. maintained defendant also told her plaintiff "[wa]s a whore" and called plaintiff "all kind[s of] names." Plaintiff ultimately blocked defendant's number to prevent further contact.

C.C. confirmed that a couple days after plaintiff obtained the TRO, defendant arrived at their home, which "rattled" her and her husband. She asserted defendant's threats to kill everyone in the house "scared" her, "made [her] anxiety go through the roof," and that E.G. was "collateral damage in th[e] whole situation."

Defendant acknowledged engaging in "a conversation about relationships" with C.C. in plaintiff's and E.G.'s presence. He testified they became "passionate about what [they spoke] about." After the conversation, he texted C.C. and plaintiff, stating "that [was not] a good look for us. It was in front of [E.G.]" Defendant acknowledged discussing E.G.'s day and their typical

daily "routine" during the July 15 FaceTime. After E.G. advised he "just played all day" and was "distracted," defendant instructed E.G. to go outside to the patio. Plaintiff had joined E.G. and heard defendant "getting on [E.G.] about . . . not following the routine." Defendant conceded "arguing" with plaintiff. Wanting to speak with E.G. privately, defendant told him to go out the front door, which caused plaintiff to "rip[] the tablet out of [E.G.'s] hand" and end the call. E.G. then called defendant from plaintiff's vehicle in her presence.

Defendant relayed when he went to C.C.'s house, he contacted the police to locate E.G. because he had not spoken with plaintiff for a couple days. Unaware of the TRO, defendant waited and knocked on the door after C.C. and her husband arrived. He represented his "intention was not to be dangerous" and he told C.C.'s husband he was waiting for E.G.'s return while "stay[ing] off to the side."

Defendant testified he would likely not return to live in the United States "in the . . . foreseeable future" because he "ha[d] a life [in Mexico.]" He attested to "not [being] violent" and having "never been in trouble." Defendant reiterated being "very upset" on July 15, and having no intention to "kill everybody." He denied threatening to kill plaintiff and everyone in her household.

After hearing the testimony and reviewing the evidence, the judge found plaintiff had proven by a preponderance of the evidence the predicate acts of terroristic threats and harassment. The judge further found an FRO was necessary to protect plaintiff from immediate and future acts of domestic violence.

On appeal, defendant argues the FRO should be vacated because the judge erroneously found: he committed the predicate acts of terroristic threats and harassment based on insufficient evidence and mere domestic contretemps; and there was an immediate danger to plaintiff on a limited factual basis and prior history of domestic violence.

II.

Our review of an FRO issued after a bench trial is limited. C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020). In reviewing a Family Part judge's "order entered following trial in a domestic violence matter, we grant substantial deference to the trial [judge]'s findings of fact and the legal conclusions based upon those findings." See J.D. v. A.M.W., 475 N.J. Super. 306, 312-13 (App. Div. 2023) (quoting N.T.B. v. D.D.B., 442 N.J. Super. 205, 215 (App. Div. 2015)). A trial judge's findings are "binding on appeal when supported by adequate, substantial, credible evidence." G.M. v. C.V., 453 N.J. Super. 1, 11

(App. Div. 2018) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). "We defer to the credibility determinations made by the trial court because the trial judge 'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare, 154 N.J. at 412).

We do not disturb a trial judge's factual findings unless they are "so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice." S.D. v. M.J.R., 415 N.J. Super. 417, 429 (App. Div. 2010) (quoting Cesare, 154 N.J. at 412). "We accord substantial deference to Family Part judges, who routinely hear domestic violence cases and are 'specially trained to detect the difference between domestic violence and more ordinary differences that arise between couples.'" C.C., 463 N.J. Super. at 428 (quoting J.D. v. M.D.F., 207 N.J. 458, 482 (2011)). "[D]eference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" MacKinnon v. MacKinnon, 191 N.J. 240, 254 (2007) (quoting Cesare, 154 N.J. at 412). However, we review de novo a trial judge's legal conclusions. C.C., 463 N.J. Super. at 429.

The New Jersey Legislature enacted the PDVA "to assure the victims of domestic violence the maximum protection from abuse the law can provide." N.J.S.A. 2C:25-18. The PDVA protects victims of domestic violence, which include, among others, "any person . . . who has been subjected to domestic violence by a person with whom the victim has a child in common." N.J.S.A. 2C:25-19(d).

The entry of an FRO under the PDVA requires the trial judge to make certain findings pursuant to a two-step analysis delineated in Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). Initially, "the judge must 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." Id. at 125. The judge is also required to consider "any past history of abuse by a defendant as part of a plaintiff's individual circumstances and, in turn, factor that history into its reasonable person determination." Cesare, 154 N.J. at 403. "'A single act can constitute domestic violence for the purpose of the issuance of an FRO,' even without a history of domestic violence." C.C., 463 N.J. Super. at 434-35 (quoting McGowan v. O'Rourke, 391 N.J. Super. 502, 506 (App. Div. 2007)). Secondly, if a predicate act is proven, the judge must determine whether a restraining order is necessary to protect the

plaintiff from immediate harm or further acts of abuse. Silver, 387 N.J. Super. at 127. A previous history of domestic violence between the parties is one of seven non-exhaustive factors a court is to consider in evaluating whether a restraining order is necessary to protect the plaintiff. N.J.S.A. 2C:25-29(a)(1); see also D.M.R. v. M.K.G., 467 N.J. Super. 308, 324-25 (App. Div. 2021) (finding whether a judge should issue a restraining order depends, in part, on the parties' history of domestic violence).

A terroristic threat, N.J.S.A. 2C:12-3, is a predicate act of domestic violence enumerated under the PDVA, N.J.S.A. 2C:25-19(a)(3). A person commits a terroristic threat "if he threatens to commit any crime of violence with the purpose to terrorize another . . . , or in reckless disregard of the risk of causing such terror or inconvenience." N.J.S.A. 2C:12-3(a). The statute further provides a terroristic threat is committed if a person "threatens to kill another with the purpose to put [that person] in imminent fear of death under circumstances reasonably causing the victim to believe the immediacy of the threat and likelihood that it will be carried out." N.J.S.A. 2C:12-3(b).

Proof of a terroristic threat must be evaluated by an objective standard of review. State v. Smith, 262 N.J. Super. 487, 515 (App. Div. 1993); see also State v. Nolan, 205 N.J. Super. 1, 4 (App. Div. 1985) ("[T]he statute merely

requires that the threat be made under circumstances under which it carries the serious promise of death. Stated somewhat differently, the words or conduct must be of such a nature as would reasonably convey the menace or fear of death to the ordinary hearer."). "The pertinent requirements [in evaluating an alleged terroristic threat] are whether: (1) the defendant in fact threatened the plaintiff; (2) the defendant intended to so threaten the plaintiff; (3) a reasonable person would have believed the threat." Cesare, 154 N.J. at 402.

Harassment, N.J.S.A. 2C:33-4, is also a predicate act of domestic violence enumerated under the PDVA, N.J.S.A. 2C:25-19(a)(13). Under N.J.S.A. 2C:33-4(a) to (c), a person commits an act of 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.

To commit harassment, a defendant must "act with the purpose of harassing the victim." D.M.R., 467 N.J. Super. at 323. "'A finding of a purpose to harass may be inferred from the evidence presented' and from common sense and experience." Ibid. (quoting H.E.S. v. J.C.S., 175 N.J. 309, 327 (2003)). "Although a purpose to harass can be inferred from a history between the parties, that finding 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. 487 (citation omitted). A judge must consider "the totality of the circumstances to determine whether the harassment statute has been violated." H.E.S., 175 N.J. at 326 (quoting Cesare, 154 N.J. at 404).

III.

Guided by these principles, we discern no basis to disturb the judge's entry of an FRO against defendant. We first address defendant's argument that the judge erroneously found predicate acts of domestic violence sufficient to satisfy the first prong of Silver. See 387 N.J. Super. at 125. The judge found defendant committed a terroristic threat under N.J.S.A. 2C:12-3(a) because he "threaten[ed] to kill everyone in the house, and threatened that if he had to go to [C.C.]'s house and kill everyone there, [that was] what he would do." The judge

also found by a preponderance of the evidence defendant had the "purpose to terrorize another" threatening "a crime of violence." Defendant's threats were determined by the judge to have been intended to terrorize plaintiff and caused her fear.

In assessing the conflicting testimony, the judge found plaintiff and C.C. more credible. The judge noted he had the ability "to observe [their] body language[] [and] facial expressions" and found their statements "lined up very well." Defendant's testimony was determined to lack credibility because it was "trappings around the edge of the issue" and he did not specifically address the threats until the end of his testimony. The judge's credibility findings are accorded deference as he had the opportunity throughout the trial testimony to observe the witnesses' demeanors. See Gnall, 222 N.J. at 428.

We reject defendant's assertion that the judge mistakenly found he committed terroristic threats rather than mere contretemps. The judge soundly determined, after assessing the credible testimony, that defendant made "direct threat[s]" of violence that he would "kill everyone in the house." The record sufficiently supports the judge's finding defendant committed the predicate act of a terroristic threat.

We observe the judge additionally found defendant committed the predicate act of harassment stating, "[I am] not going to address harassment other than to note that the harassment statute, the proofs that are necessary under N.J.S.A. 2C:33-4 . . . we[re] met based on my findings of terroristic threats. So[,] he did also harass . . . plaintiff." This statement of reasoning is insufficient to support a finding of harassment. While the judge found defendant "threaten[ed] to kill everyone," this statement alone falls short of the required findings of the elements of harassment. In rendering a decision, a trial judge is required to make specific findings of fact and state his or her conclusions of law. R. 1:7-4(a); see also Elrom v. Elrom, 439 N.J. Super. 424, 443 (App. Div. 2015) (requiring an adequate explanation for the basis of a court's action). "Failure to make explicit findings and clear statements of reasoning 'constitutes a disservice to the litigants, the attorneys, and the appellate court.'" Gnall, 222 N.J. at 428 (quoting Curtis v. Finneran, 83 N.J. 563, 569-70 (1980)). Although the judge made insufficient findings regarding the predicate act of harassment, as we have concluded, the judge's findings regarding the predicate act of terroristic threats satisfied the first Silver prong. Indeed, an FRO can be justified based on "[a] single act." C.C., 463 N.J. Super. at 434-35 (quoting McGowan, 391 N.J. Super. at 506).

Turning to the second prong of Silver, the judge found plaintiff "need[ed] the protection, and objectively so." The judge noted defendant's presence in New Jersey four days after he made the terroristic threats and found "that living in another country [wa]s not sufficient to overcome . . . that [plaintiff] need[ed] the protection of a[n] [FRO]." Notably, defendant admitted to returning to New Jersey with some regularity. The judge also found plaintiff's testimony credible that defendant had threatened "to circulate . . . private pornographic materials [of her] to the general public." Finding plaintiff proved she needed protection, the judge further noted the parties have a child in common which may necessitate defendant's continued, future "communicat[ion] with his co-parent[, plaintiff.]" A review of the record demonstrates the judge's findings that an FRO was necessary to prevent further acts of domestic violence to plaintiff were supported by credible evidence.

For these reasons, we discern no reason to disturb the judge's issuance of an FRO against defendant. To the extent not addressed, defendant's remaining arguments lack sufficient merit to warrant discussion in our written opinion. R. 2:11-3(e)(1)(E).

Affirmed.