

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2235-22

S.O.,¹

Plaintiff-Respondent,

v.

S.S.,

Defendant-Appellant.

Submitted April 29, 2024 – Decided June 3, 2024

Before Judges Mawla and Marczyk.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Union County, Docket
No. FV-20-0969-23.

The Law Office of Mustafa Cetin, LLC, attorneys for
appellant (Mustafa Cetin, on the brief).

Cangoz Law LLC, attorneys for respondent (Fatih
Selim Cangoz, on the brief).

PER CURIAM

¹ We refer to the parties using initials to protect their privacy. See R. 1:38-3(d).

Defendant S.S. appeals from the March 1, 2023 trial court order granting plaintiff S.O. a final restraining order ("FRO") under the Prevention of Domestic Violence Act ("PDVA"), N.J.S.A. 2C:25-17 to -35. We affirm.

I.

This case arises out of a dispute between two sisters. On December 15, 2022, plaintiff obtained a temporary restraining order ("TRO") against defendant alleging defendant scratched her vehicle (Kia)² and angrily confronted her at a restaurant. Plaintiff testified that defendant had been scratching her vehicles "for the last six years." She was previously unable to prove that defendant was scratching her vehicles until she installed a Ring doorbell camera around the time she obtained the TRO. She then obtained video footage on December 16, 2022, of defendant scratching her Subaru vehicle—the day after she obtained the original TRO. On the first day of the FRO hearing, the court allowed plaintiff to amend her TRO to include the criminal mischief allegation regarding defendant damaging her Subaru vehicle on December 16.

Plaintiff introduced the camera footage regarding the December 16 incident. She installed the Ring camera and positioned it near her vehicles because "[defendant] would constantly come over there to scratch [their] car[s]."

² Plaintiff testified defendant had previously scratched her Toyota in 2019.

Plaintiff explained the camera begins recording when there is motion. She was notified by the Ring camera within a minute of her car being vandalized.

The camera footage was introduced into evidence without any objection from defendant. Plaintiff identified her sister as the perpetrator because she "had the same outfit" on when she saw her at the police station. Moreover, after plaintiff received the notification from the Ring camera, she went outside and saw defendant and her husband approaching her. Video of this encounter was also introduced into evidence. Plaintiff explained that her sister and her husband were outside of her house "to attack [her]" because she applied for a restraining order.

In an additional video, plaintiff showed the court various scratches on her Subaru. She also presented photos of her other scratched vehicles and indicated defendant damaged them on ten to fifteen prior occasions.³ Plaintiff subsequently rested, and defense counsel advised defendant did not wish to testify or call any witnesses.

The court subsequently rendered an oral decision. It found there was no harassment and instead that the claims of harassment were "nothing more than

³ Plaintiff also testified about when defendant followed and harassed her in public at ShopRite.

sibling squabbling, not the type of conduct that the [PDVA] seeks to prevent." Although plaintiff had no evidence regarding the damage to the Kia or Toyota, the court found plaintiff had proven the predicate act of criminal mischief through the video showing defendant damaging her Subaru. The court found "the video submitted by . . . plaintiff was compelling, especially since she testified that other vehicles had been damaged." It concluded this was evidence of defendant purposely or knowingly damaging plaintiff's property.

Next, the court analyzed the second prong of Silver⁴ and ultimately granted plaintiff an FRO. The court found an FRO was necessary to prevent further abuse because there was a history of domestic violence of defendant destroying plaintiff's property.

II.

A.

Defendant contends the trial court committed plain error by admitting the Ring camera video into evidence. She argues the judge was not able to recognize the issues with the video "due to his unfamiliarity with the technology," and the judge only asked "superficial questions" to authenticate the video. She points to a "dramatic squeaking sound effect" in the video and argues it "clouded the

⁴ Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006).

[t]rial [c]ourt's judgment." Defendant further argues the error was capable of producing an unjust result because, without the video, the court would not have found that she committed criminal mischief.

Defendant argues the "peculiar squeaking" on the video is "very suspicious." She asserts the sound is "very artificial," and she believes it is a "sound effect" rather than the actual audio. She contends, "[a] questionable video recording presented during trial under questionable circumstances should not have resulted in such a dire outcome for someone like . . . defendant" because she "will be stigmatized as a criminal," and this is clearly an unjust result.

Appellate review of an FRO entered by the Family Part is limited. See D.N. v. K.M., 429 N.J. Super. 592, 596 (App. Div. 2013). That is because "we grant substantial deference to the trial court's findings of fact and the legal conclusions based upon those findings." Ibid. "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). Deference is particularly appropriate where the evidence is largely testimonial and hinges upon a court's ability to make assessments of credibility. Id. at 412. However, we review de novo the court's conclusions of law. S.D. v. M.J.R., 415 N.J. Super. 417, 430 (App. Div. 2010).

Here, plaintiff played the Ring video for the court. Defendant did not object to the introduction of this evidence. While initially there were some issues with the audio portion of the video recording, eventually it was corrected. Plaintiff explained the video was footage from the Ring camera she installed on her property to uncover who was damaging her vehicles. She testified the Ring video depicted her sister holding "a shiny object." She stated she knew the individual in the video scratching her car was her sister because she saw her sister and her husband coming toward her when she went outside after receiving the Ring camera alert. Moreover, her sister was wearing "the same outfit" when plaintiff went to the police station "five minutes later."

The plain error standard under Rule 2:10-2 requires the appellate court to "determine whether any error . . . was 'of such a nature as to have been clearly capable of producing an unjust result.'" Toto v. Ensuar, 196 N.J. 134, 144 (2008) (quoting Mogull v. CB Com. Real Est. Grp., Inc., 162 N.J. 449, 464 (2000)); see also T.L. v. Goldberg, 238 N.J. 218, 232 (2019) ("To warrant reversal and entitlement to a new trial, the plain error must have been clearly capable of producing an unjust result."). "If not, the error is deemed harmless and disregarded." Toto, 196 N.J. at 144. "Relief under the plain error rule, R[ule] 2:10-2, at least in civil cases, is discretionary and 'should be sparingly

employed.'" Baker v. Nat'l State Bank, 161 N.J. 220, 226 (1999) (quoting Ford v. Reichert, 23 N.J. 429, 435 (1957)).

We afford substantial deference to trial judges when evaluating their evidentiary determinations. State v. Cole, 229 N.J. 430, 449 (2017). We therefore review a trial court's evidentiary ruling for abuse of discretion. State v. Green, 236 N.J. 71, 81 (2018). Moreover, our Supreme Court has directed that our review of video evidence also is deferential. State v. S.S., 229 N.J. 360, 381 (2017). Accordingly, a trial court finding based on video evidence can only be reversed on appeal if the trial court's interpretation of the video evidence was "so wide of the mark[] that the interests of justice demand intervention." Ibid.; see also State v. Elders, 192 N.J. 224, 245 (2007).

We conclude the trial court did not misapply its discretion in admitting into evidence the Ring video of defendant defacing plaintiff's vehicle. The issue of admissibility turned on whether the video was properly authenticated. In the context of photographic or videographic evidence, a prima facie showing of authenticity requires "proof that the [video] is a substantially correct representation of the matters . . . offered in evidence." State v. Wilson, 135 N.J. 4, 14, 16 (1994) (holding "[i]n practical terms, the authentication of a videotape is a direct offshoot of the authentication of photographic . . . evidence."). The

"testimony [offered] must establish that: (1) the [video] is an accurate reproduction of what it purports to represent; and (2) the reproduction is of the scene at the time of the incident." Id. at 15. "The person testifying need not be the [video]grapher[;] . . . any person with the requisite knowledge of the facts represented in the . . . videotape may authenticate it." Id. at 14. Moreover, the individual "need not even have been present at the time the [video was recorded], so long as the witness can verify that the [video] accurately represents its subject." Ibid.

Here, the Ring video was introduced through the testimony of plaintiff. The video was properly authenticated by plaintiff, who set up the Ring camera and verified the video showed her sister damaging her vehicle outside of her residence. She demonstrated (1) the video was a reproduction of what she claimed it displayed and (2) was of the location and at the time when defendant scratched her vehicle. It was properly authenticated because she verified the video "accurately represents [the] subject." See id. at 14. Moreover, defendant did not dispute that she was the individual depicted on the video.

Furthermore, defendant's argument that the video was altered in some way is unavailing. Defendant's contention that the audio was peculiar,

suspicious, or artificial is simply an unsubstantiated, conclusory allegation.⁵ The court noted, "we have an actual video of . . . defendant damaging . . . plaintiff's property and, . . . plaintiff testified that [she] installed a Ring camera for that very purpose." The trial court did not err—let alone commit a plain error clearly capable of producing an unjust result—in admitting the Ring camera footage.

B.

Defendant next argues, "there is [not] enough evidence to find that . . . [d]efendant committed the offense of criminal mischief." She contends "[t]he video should not have been accorded this much weight, especially considering the circumstances in which it was presented."

The entry of an FRO requires the trial court to make certain findings, pursuant to a two-step analysis. See Silver, 387 N.J. Super. at 125-27. Initially, the court "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 trial court should make this determination "in light of the previous history of violence between the

⁵ Defendant has not provided any expert testimony or other evidence to suggest the Ring camera footage was modified or altered in any manner.

parties." Ibid. (quoting Cesare, 154 N.J. at 402). Secondly, the court must determine "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 (citing N.J.S.A. 2C:25-29(b) (stating, "[i]n proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse")); see also J.D. v. M.D.F., 207 N.J. 458, 476 (2011).

Criminal mischief is a predicate act of domestic violence, as defined by N.J.S.A. 2C:17-3(a). N.J.S.A. 2C:25-19(a)(10). An individual commits criminal mischief if he "[p]urposely or knowingly damages [the] tangible property of another." N.J.S.A. 2C:17-3(a)(1).

As we noted, the court found "the video . . . [to be] compelling, especially since [plaintiff] testified that other vehicles had been damaged." The court further found, "we have an actual video of . . . defendant damaging . . . plaintiff's property and, . . . plaintiff testified that [she] installed a Ring camera for that very purpose." Accordingly, the court concluded plaintiff established defendant had committed the predicate act of criminal mischief.


The court also found plaintiff satisfied the second prong of Silver because there was a history of defendant scratching plaintiff's vehicles. Thus, the court

properly found an FRO was necessary to stop defendant "by removing [her] ability to have contact with . . . plaintiff and present consequences for damaging . . . plaintiff's property."

We affirm substantially for the reasons set forth in the trial court's well-reasoned opinion. There was ample evidence to support the court's decision. To the extent we have not addressed any of defendant's remaining contentions, we conclude they lack sufficient merit to warrant further 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