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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2991-22

IN THE MATTER OF THE
APPEAL OF THE DENIAL OF
ALFRED L. ESPOSITO JR.'S
APPLICATION FOR A FIREARMS
PURCHASER IDENTIFICATION
CARD AND A PERMIT TO
PURCHASE A HANDGUN.

Submitted June 4, 2024 – Decided June 26, 2024

Before Judges Paganelli and Whipple.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Docket No. GPA-0051-22.

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

Mark Musella, Bergen County Prosecutor, attorney for
respondent State of New Jersey (Edward F. Ray,
Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Alfred L. Esposito, Jr., appeals from a May 31, 2023 order denying his application for a firearms purchaser identification card (FPIC) and permit to purchase a handgun. We affirm.

We recite the facts and procedural history from the record. The judge held a plenary hearing on May 30, 2023. Esposito testified on his own behalf and the State summoned Sergeant Theodore Wetklow on its behalf. In denying Esposito's application, the judge found Esposito's testimony was "argumentative during . . . cross-examination" and that he "displayed a lack of self[-]control and a lack of a controlled demeanor." Moreover, the judge determined Esposito attempted to "divert attention" from his threatening voicemails admitted into evidence. On the other hand, the judge found Sergeant Wetklow's "testimony was most credible, direct and consistent throughout." The judge also concluded the Sergeant conducted "a very thorough background investigation."

Our review of the record reveals that on August 30, 2022, Esposito applied for an FPIC. On September 16, 2022, he appeared—uninvited—at his girlfriend's work event. He testified he went to the event because he suspected his girlfriend was cheating on him. Esposito testified he saw the girlfriend and her manager "all over" each other and he was "really upset."

After the event, Esposito admitted to leaving a voicemail on the manager's phone. In fact, the record reflected two voicemails were left on September 17, 2022, at 1:57 and 1:59 a.m.

In the first voicemail, Esposito stated:

Hey, [stating the manager's first and last name]. This is Alfred Esposito. I hear you're talkin' to [the girlfriend] about, oh, if she has contact with me. Well, guess what? I'm calling you directly. You have a problem with me, give me a call. Okay? Other than that, stay the f**k outta my way. Okay?

I know where you live. You live in Illinois. I know your family. Let's not make this a problem. Okay? So this is not a threat, but stay the f**k outta my f**kin' way. Okay? Stay outta -- if you have a problem with [the girlfriend], you have a problem with her f**kin' job -- [girlfriend's employer's name] f**kin' shit. Okay? That's all I'm going to say. We'll leave it at that. That's it. Okay? Have a great weekend. Safe travels and have a good night.

In the second voicemail, Esposito stated;

Hey [manager's first name]. It's Alfred again. I just want to give you a public record -- a public record announcement. You live at [stated the manager's full address]. So like I said, I'm not here to cause problems. I'm just letting you know so you got situational awareness, I know where you're at.

So like I said, stay outta my business between me and [the girlfriend]. Shut your f**kin' mouth and mind your own business. And that's it. Other than that, nothin' else -- to discuss. So go about selling your beer. You're

a f**kin' alcoholic and that's what you are and that's fine.

From a legal perspective, there's nothing. There's no threats. And that's what -- that's what we have right now. So, uh, other than that, leave me alone. Don't contact [the girlfriend] 'cause obviously, we (indiscernible) -- and that's it. Have a good night. Take care.

Esposito explained "situational awareness" meant "to be alert" and he included the reference to the manager's "exact address" to let the manager know "he was really serious." Esposito acknowledged "there's no excuse for th[e] call" but testified he "didn't mean it as a threat."

Esposito's girlfriend obtained a temporary restraining order (TRO) wherein she alleged he committed harassment and stalking. Esposito was served with a cease-and-desist letter advising him to stay away from the girlfriend's fellow employees and her manager.

Sergeant Wetklow testified that he worked for the Edgewater police department for eight years and conducted background investigations associated with FPIC applications for four years. He was assigned to conduct the background investigations for Esposito's FPIC application.

Sergeant Wetklow explained investigations included fingerprinting and searching an applicant's criminal, motor vehicle, juvenile, and domestic violence

histories. For Esposito's application, the Sergeant's review included: (1) the allegations in the girlfriend's TRO; (2) the girlfriend's statement to the police; and (3) the manager's statement. Sergeant Wetklow also testified that he responded to another domestic dispute between Esposito and the girlfriend. At the time, the girlfriend declined to apply for a TRO but the Sergeant testified that he "drove her to another part of town where she then was able to get transport to a friend's home." Sergeant Wetklow testified that he recommended Esposito's application be denied.

On October 12, 2022, the TRO was voluntarily dismissed and Esposito was notified that his application was denied. He appealed the denial to the Law Division.¹ The judge found that during the pendency of Esposito's application, Esposito became the subject of a TRO. The judge recognized the TRO had been dismissed before the hearing.²

¹ The Law Division is required to conduct a de novo review. See N.J.S.A. 2C:58-3(d); In re Dubov, 410 N.J. Super. 190, 200 (App. Div. 2009).

² Because the TRO was dismissed, the judge declined to consider N.J.S.A. 2C:58-3(c)(6) that provided "[a] handgun purchase permit or [FPIC] shall not be issued: To any person who is subject to . . . a . . . [TRO] issued pursuant to the 'Prevention of Domestic Violence Act of 1991' . . . prohibiting the person from possessing any firearm."

The judge, based on Esposito's testimony, determined that Esposito "followed . . . his former girlfriend to a work event in Manhattan and harassed her on that day." In addition, the judge found Esposito's "testimony essentially corroborate[d] the very disturbing, harassing and . . . threatening behavior . . . toward his former girlfriend and in particular, his former girlfriend's" manager. Moreover, the judge found Esposito's testimony was corroborated by the voicemails.

With respect to the voicemails, the judge noted he listened to both voicemails and concluded they were made for the purpose of threatening the manager. The judge detailed that in the voicemails Esposito stated: "stay the f**k out of my way"; he knew where the manager and the manager's family lived; he knew the manager's exact address; and warned the manager to be "situational[ly] aware[]." Moreover, the judge found the girlfriend's work event and the threatening voicemails coincided with the date of Esposito's application.

The judge determined Esposito "engaged in acts or made statements suggesting that [he wa]s likely to engage in conduct other than justified self-defense that would pose a danger to self or others." In addition, the judge found "that the issuance of an [FPIC] and a permit to purchase a handgun to . . . Esposito would not be in the interest of the public health, safety or welfare

because [Esposito wa]s found to be lacking the essential character and temperament necessary to be entrusted with a firearm."

Here, Esposito raises the following arguments for our consideration:

POINT I: THE TRIAL COURT ERRED BY FINDING THAT THE APPELLANT IS SUBJECT TO DISQUALIFICATION TO FIREARMS OWNERSHIP PURSUANT TO N.J.S.A. 2C:58-3(C)(5) DUE TO PAST CONDUCT WITHOUT MAKING SPECIFIC FINDINGS AS TO HOW THE PAST CONDUCT OF THE APPELLANT PRESENTLY REFLECTS ON THE APPELLANT'S PRESENT CONDITION AS IT RELATES TO THE ISSUE OF FITNESS FOR FIREARMS OWNERSHIP (NOT ARGUED BELOW).

POINT II: THE CONSTITUTIONALITY OF N.J.S.A. 2C:58-3(C)(5) IS CURRENTLY BEING CHALLENGED IN THE NEW JERSEY SUPREME COURT AND SHOULD NOT CONSIDER THE ISSUE SINCE N.J.S.A. 2C:58-3(C)(5) IS PENDING APPEAL BEFORE THE NEW JERSEY SUPREME COURT (NOT ARGUED BELOW).

POINT III: THE PROVISIONS OF THE NEW JERSEY FIREARMS LICENSING STATUTE RELIED UPON BY THE TRIAL COURT TO JUSTIFY GRANTING THE STATE'S MOTION TO DENY THE APPELLANT'S FIREARMS PURCHASER IDENTIFICATION CARD AND PERMIT TO PURCHASE A HANDGUN ARE VAGUE, OVERBROAD, AND VIOLATE U.S. SUPREME COURT CASE LAW (NOT ARGUED BELOW).

At the outset we reject Esposito's argument that N.J.S.A. 2C:58-3(c)(5) is unconstitutionally vague, overbroad, and violative of United States Supreme Court case law. We have already considered this argument, see In re M.U.'s Application for a Handgun Purchase Permit, 475 N.J. Super. 148 (App. Div. 2023); and discern no reason to deviate from that decision here.

In addition, we deny Esposito's request that we stay this matter pending the New Jersey Supreme Court's decision to grant certification in M.U. He failed to proffer any of the requisite elements to justify a stay.

A party seeking a stay must demonstrate that (1) relief is needed to prevent irreparable harm; (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) balancing the "relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were." McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484, 486 (2003) (LaVecchia, J., dissenting) (citing Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982)). The moving party has the burden to prove each of the Crowe factors by clear and convincing evidence. Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2021) (citation omitted).

[Garden State Equality v. Dow, 216 N.J. 314, 321 (2013).]

Moreover, Esposito has not asserted "an issue of significant public importance" that would require "considerations of the public interest." McNeil, 176 N.J. at 484. Therefore, Esposito's request for a stay is denied.

As to the merits, Esposito argues the judge improperly relied upon the voicemails and a dismissed TRO in finding he should be disqualified from firearms ownership pursuant to N.J.S.A. 2C:58-3(c)(5). Esposito contends the judge "made no findings to justify how the . . . previous . . . TRO[,] which was subsequently dismissed, relate[d] to his present condition regarding the issue of firearms ownership." In addition, Esposito argues the judge failed to "make any findings that considered the . . . change in relationship status . . . particularly since the [girlfriend] in the dismissed TRO [wa]s no longer in a dating relationship with [him] and otherwise . . . had no contact with" him. We find these arguments unavailing.

We begin with a review of the principles governing our analysis. "Ordinarily, an appellate court should accept a trial court's findings of fact that are supported by substantial credible evidence." In re Return of Weapons to J.W.D., 149 N.J. 108, 116-17 (1997) (citing Bonco Petrol Inc. v. Epstein, 115 N.J. 599, 607 (1989)). "Deference to a trial court's fact-findings is especially appropriate when the evidence is largely testimonial and involves questions of

credibility." Id. at 117 (citing Epstein, 115 N.J. 607). However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citing State v. Brown, 118 N.J. 595, 604 (1990)); Dolson v. Anastasia, 55 N.J. 2, 7 (1969); Pearl Assurance Co. v. Watts, 69 N.J. Super. 198, 205 (App. Div. 1961).

N.J.S.A. 2C:58-3 provides:

c. . . . Except as hereinafter provided, a person shall not be denied a permit to purchase a handgun or a [FPIC], unless the person is known in the community in which the person lives as someone who has engaged in acts or made statements suggesting the person is likely to engage in conduct, other than justified self-defense, that would pose a danger to self or others, or is subject to any of the disabilities set forth in this section or other sections of this chapter. A handgun purchase permit or [FPIC] shall not be issued:

. . . .

(5) To any person where the issuance would not be in the interest of the public health, safety or welfare because the person is found to be lacking the essential character of temperament necessary to be entrusted with a firearm[]

[N.J.S.A. 2C:58-3(c) (emphasis added).]

Subsection (c)(5) is "[t]he broadest of the restrictions." In re Carlstrom, 240 N.J. 563, 570 (2020). It is "intended to relate to cases of individual unfitness, where, though not dealt with in the specific statutory enumerations, the issuance of the permit or identification card would nonetheless be contrary to the public interest." In re Osworth, 365 N.J. Super. 72, 79 (App. Div. 2003) (quoting Burton v. Sills, 53 N.J. 86, 91 (1968)).

Here, Esposito's focus on the dismissed TRO misses the mark. The judge considered the dismissal of the TRO in his analysis. Nonetheless, the judge correctly concluded that the dismissal, in and of itself, did not end the inquiry. "[E]ven if a domestic violence complaint is dismissed and the conditions abate, forfeiture may be ordered if the defendant is subject to any of the disabilities in N.J.S.A. 2C:58-3(c)[]" In re F.M., 225 N.J. 487, 510-11 (2016).

Moreover, Esposito's focus on the TRO and his former relationship with the girlfriend failed to account for the threatening voicemails left for the girlfriend's manager. While the judge found Esposito's conduct toward the girlfriend was harassing and concerning, the judge's determination also rested on Esposito's threats to the manager. The judge considered the threats were contemporaneous to Esposito's applications.

The judge conducted a de novo review and made detailed findings of fact. The judge's factual findings were supported by substantial credible evidence in the record. Moreover, the judge applied the facts to the relevant sections of the statute and determined Esposito was disqualified under N.J.S.A. 2C:58-3(c) and N.J.S.A. 2C:58-3(c)(5). The judge's decision was unassailable.

To the extent we have not addressed any of Esposito's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(2).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION