

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3370-22

K.A.K.,¹

Plaintiff-Respondent,

v.

J.M.,

Defendant-Appellant.

Submitted April 29, 2024 – Decided June 3, 2024

Before Judges Marczyk and Chase.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Ocean County, Docket
No. FV-15-1366-21.

Richard A. Amdur, Jr., attorney for appellant.

K.A.K., respondent pro se.

PER CURIAM

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

Defendant J.M. appeals from the trial court's June 1, 2023 order denying his motion to dissolve a Final Restraining Order ("FRO") issued pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35. Plaintiff K.A.K. obtained the FRO following a July 2021 trial. Defendant subsequently moved to vacate the FRO in March 2022. Following our review of the facts and applicable legal principles, we affirm the denial of defendant's motion.

Defendant raises the following point on appeal:

POINT I

THE TRIAL COURT ERRED BY FAILING TO PROPERLY ANALYZE THE CARFAGNO^[2] FACTORS.

More particularly, defendant argues "[t]he tortured history involving . . . plaintiff and defendant has since abated and essentially concluded," which justifies vacating the FRO. Defendant asserts plaintiff only needed an FRO because he was purportedly "continuing financial coercion and domestic violence through[out] the litigation."³ Defendant contends because the litigation between the parties has concluded, the "need [for an FRO and plaintiff's] fear certainly would have abated." He argues "there is no genuine need for the

² Carfagno v. Carfagno, 288 N.J. Super. 424 (Ch. Div. 1995).

³ The parties were involved in a Chancery Division action.

continuation of the [FRO] and that the lack of consent on . . . plaintiff's part is not genuine."

Defendant asserts the trial judge misapplied the Carfagno factor requiring the court to assess if defendant violated the FRO. He claims the contempt proceedings "resulted in no significant repercussions and all of the contempt matters were again associated with ongoing litigation between the parties."

Defendant also challenges the judge's assessment of the Carfagno factor involving substance abuse. He argues that he submitted a certification indicating he is not involved in any "drug or alcohol abuse," and the judge improperly concluded defendant failed to satisfy this Carfagno factor.

Our review of a motion to dissolve an FRO is limited. See G.M. v. C.V., 453 N.J. Super. 1, 11-12 (App. Div. 2018). The denial of a motion without a plenary hearing is reviewed for an abuse of discretion. Id. at 11. We give "substantial deference" to the trial court's factual findings and legal conclusions in a domestic violence matter, C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020), due to the Family Part's "special jurisdiction and expertise in family matters." G.M., 453 N.J. Super. at 11 (quoting N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 343 (2010)). We are bound by the trial court's findings

if they are "supported by adequate, substantial, credible evidence." Ibid. (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)).

On a showing of good cause, an FRO may be dissolved upon application to the court. N.J.S.A. 2C:25-29(d). In determining whether a defendant has demonstrated good cause, the court considers:

(1) whether the victim consented to lift the restraining order; (2) whether the victim fears the defendant; (3) the nature of the relationship between the parties today; (4) the number of times that the defendant has been convicted of contempt for violating the order; (5) whether the defendant has a continuing involvement with drug or alcohol abuse; (6) whether the defendant has been involved in other violent acts with other persons; (7) whether the defendant has engaged in counseling; (8) the age and health of the defendant; (9) whether the victim is acting in good faith when opposing the defendant's request; (10) whether another jurisdiction has entered a restraining order protecting the victim from the defendant; and (11) other factors deemed relevant by the court.

[G.M., 453 N.J. Super. at 13 (quoting Carfagno, 288 N.J. Super. at 435).]

Importantly, the Carfagno factors are weighed qualitatively, not quantitatively. 288 N.J. Super. at 442. Courts "must carefully scrutinize the record and carefully consider the totality of the circumstances" before dissolving an FRO. G.M., 453 N.J. Super. at 14 (quoting Kanaszka v. Kunen, 313 N.J. Super. 600, 605 (App. Div. 1998)).

"Generally, a court may dissolve an injunction where there is 'a change of circumstances [whereby] the continued enforcement of the injunctive process would be inequitable, oppressive, or unjust, or in contravention of the policy of the law.'" Carfagno, 288 N.J. Super. at 433-34 (alteration in original) (quoting Johnson & Johnson v. Weissbard, 11 N.J. 552, 555 (1953)). In other words, a court should consider an application to modify or dissolve an FRO "[o]nly where the movant demonstrates substantial changes in the circumstances that existed at the time of the final hearing" that resulted in the issuance of the FRO. Kanaszka, 313 N.J. Super. at 608.

Before the trial court, defendant argued the FRO was being used "as a sword" and not for its intended purpose. Moreover, defendant contended plaintiff was "the aggressor." Defendant further asserted he had no intention of communicating with plaintiff, and there was no longer a need for the FRO.

Plaintiff argued she was "continually afraid for [her] safety because of [defendant's] previous actions, [and] his ongoing actions." She further noted that defendant has continued his course of "financial coercion and domestic violence through[out] the litigation." Moreover, she had to contact the police several times, and defendant had been incarcerated. She asserted she continued

to be "re-victimized" and that the FRO should remain in place to protect her and her children's safety.

The trial court proceeded to analyze the Carfagno factors. Under the first and second factors—whether the victim consented to lift the restraining order, and whether the victim fears the defendant—the court noted plaintiff "strenuously" objected to the dissolution of the FRO based on defendant's actions. The court noted it had reviewed the prior FRO trial transcript, wherein it found defendant committed harassment. Moreover, the court noted it had found defendant committed prior acts of domestic violence, including choking plaintiff. Accordingly, the court found it was "objectively reasonable" that plaintiff continued to fear defendant "despite defendant's assertion that plaintiff is weaponizing the [FRO] order."

Regarding the third factor—the nature of the relationship between the parties today—the court noted the parties have no children in common but that the pending Chancery Division action concerning a dispute over real estate is indicative of defendant's efforts to control plaintiff. As to the fourth factor—the number of times the defendant has been convicted of contempt for violating the order—defendant pled guilty to contempt of the FRO on at least one occasion.

As to factor five—whether the defendant has a continuing involvement with drug or alcohol abuse—the court noted that notwithstanding defendant's assertion, defendant submitted no proof that he was no longer involved with drugs or alcohol and his "denial of steroid abuse was not credible." Regarding factor seven—whether the defendant has engaged in counseling—the court noted no demonstration was made that he has engaged in counseling.

With respect to the eighth factor—the age and health of the defendant—the court noted defendant is forty-seven years old and in good health. Accordingly, there was no indication of infirmity that would be relevant to the court. The court determined under factor nine—whether the victim was acting in good faith when opposing the defendant's request—it was "objectively reasonable" for plaintiff to oppose vacating the FRO under the totality of the circumstances in this matter. Based on those findings, the court concluded defendant failed to demonstrate a substantial change of circumstances or good cause to warrant dissolving the FRO.


We affirm substantially for the reasons set forth in Judge Vincent J. Grasso's opinion. The judge appropriately addressed the Carfagno factors and made specific findings of fact and conclusions of law to support his decision denying defendant's motion to vacate the FRO. He determined plaintiff still

objectively feared defendant and rejected defendant's argument that the need for the FRO had abated. After reviewing the FRO hearing transcript, the judge highlighted the need for the previously entered FRO and determined there was no basis at this juncture to disturb that order. Moreover, he observed defendant had been held in contempt for violating the prior FRO, which was another significant factor for denying the application under Carfagno.

Judge Grasso's ruling was based on a careful review of the record, and there was ample evidence in the record to support his findings. Defendant's remaining arguments lack sufficient merit to warrant 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