SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3398-22

S.G., II,

Plaintiff-Respondent,

v.

K.G.,

Defendant-Appellant.

Submitted May 14, 2024 – Decided May 28, 2024

Before Judges Enright and Paganelli.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Glouceser County, Docket No. FV-08-1760-23.

William J. Veitch, III, attorney for appellant.

Gregory Charles Dibsie, attorney for respondent.

PER CURIAM

Defendant K.G.[1] appeals from the July 3, 2023 final restraining order (FRO) entered in favor of plaintiff S.G., II under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. We affirm.

I.

We glean the facts from the trial record. At the time of the final hearing, the parties were married but living in separate homes and pursuing a divorce. They shared parenting time with their three young children based on a custody and parenting time order.

On June 9, 2023, plaintiff filed for and obtained a temporary restraining order (TRO) against defendant, alleging she harassed him earlier that day following their youngest child's nursery school graduation.

On July 3, 2023, the parties appeared with counsel for the final hearing. Plaintiff testified that after the parties attended their daughter's June 9 graduation, defendant spent approximately twenty to twenty-five minutes taking pictures of the child with defendant's family members. Plaintiff then asked defendant if she was finished because he and his family had plans to celebrate the child's graduation elsewhere. According to plaintiff, defendant responded,

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

"[g]et the fuck out of here, you bald fat fuck, you're not going to tell me when you're going to get my child back." This interaction occurred in front of the parties' child.

Plaintiff stated he "got mad" when defendant cursed at him, and told her she was encroaching on his "parenting time." He also told her she had "five more minutes" with their daughter. Several minutes later, defendant carried the child back inside the church and left her with plaintiff and his family members. According to plaintiff, as defendant dropped the child off, she told plaintiff's girlfriend that she did not "want [the parties'] children sleeping on the floor" when they stayed overnight at the girlfriend's house, and defendant would "be calling . . . [the Division of Child Protection and Permanency (DCPP)] if they continued to sleep on the floor."

Plaintiff testified that after defendant let go of their daughter, the child jumped into his girlfriend's arms, and his girlfriend hugged and congratulated the child. Plaintiff stated defendant then "whipped around," came "from behind [his] mother" to try to get back to the parties' child, and in doing so, "shouldered [his] mom in the back," with defendant's "arms . . . flailing." Additionally, plaintiff stated defendant called plaintiff's mother a "fat fucking bitch."

Plaintiff testified he sought a TRO that day because he was fearful of defendant. He explained, "[t]he child was there in front of [defendant, and defendant wa]s exhibiting aggressive behaviors. She assaulted my mother. . . . [A]nd that[is] why I filed [for] the restraining order. I felt for the safety of myself and my family, [and] my child was in that zone of danger." Moreover, plaintiff testified he "fe[lt] like [defendant's] harassing behaviors ha[d] escalated." He stated defendant had "driven by" his girlfriend's house, "sought out" his girlfriend's ex-husband, and "stalked [his girlfriend] on the Internet."

Plaintiff's brother-in-law, sister, and mother provided similar testimony about the post-graduation incident. These witnesses also stated that when defendant pushed plaintiff's mother, the mother was "pushed . . . into [plaintiff's sister,]" who was holding her "five-month old . . . on [her] hip." At that point, plaintiff's sister asked her husband to "call the cops."

Additionally, plaintiff's girlfriend testified at the final hearing. She stated she was continually harassed by defendant, even though the two women had only met once before the graduation ceremony. Plaintiff's girlfriend testified she received text messages from defendant on multiple occasions, learned defendant "was contacting mutual friends, trying to obtain information about"

her, "sought out where [she] went to the gym," and "made a comment . . . [on] a workout video that [plaintiff's girlfriend] was posted in." Moreover, on the night of June 9, 2023, "two police officers came to [her] door," saying "there was a well[ness] visit called in." The wellness check was for the parties' children, who were not at the home at that time.

The police officer who responded to the June 9 incident testified for the defense. He confirmed when he arrived at the graduation site, neither party displayed any visible signs of injury. Thereafter, he "ma[de] sure . . . the scene . . . was safe for all the parties there," and answered plaintiff's questions about filing for a restraining order. The officer also explained to plaintiff's mother that "if she wanted to file a criminal compl[ai]nt" against defendant, "she could do so with the [c]ourt." Later that day, plaintiff filed for and obtained a TRO against defendant. His mother subsequently filed a criminal complaint against defendant, alleging defendant assaulted her.[2]

During defendant's direct testimony, she neither admitted nor denied cursing at plaintiff during the June 9 incident. However, she denied pushing

[2] In October 2023, a municipal court judge found defendant guilty of simple assault, N.J.S.A. 2C:12-1(a)(1), based on the June 9 incident. Defendant appealed from this conviction, and in April 2024, following a Law Division judge's de novo review of the matter, defendant was found not guilty of the offense.

plaintiff's mother that day. When defendant was cross-examined, plaintiff's counsel asked her if she called plaintiff "a bald fat fuck" after their child's graduation ceremony. Defendant answered, "I do curse, yes. I curse at [plaintiff], and I curse in front of our children." The judge directly questioned defendant regarding whether she "ever . . . call[ed plaintiff's mother] a [']fat fucking bitch.[']" Defendant answered, "I don't recall saying it in that way." The judge also asked if defendant ever said to plaintiff's mother, "why don't [you] call your mom, oh, that's right, you can't because she's dead." Defendant replied, "I don't recall saying that either."

After the hearing concluded, the judge orally granted plaintiff's request for an FRO. The judge found it was "pretty clear what occurred" on June 9, 2023, and that "every witness that[was] produced by . . . [p]laintiff . . . said almost the exact same, identical story." Moreover, the judge found defendant's testimony was "not credible" and "she spent a great deal of . . . time being argumentative w[hen] being cross-examined." He also determined defendant was "non-responsive in most respects with regard to her testimony."

Additionally, the judge concluded that after the graduation ceremony ended on June 9, 2023, defendant took pictures with the child for twenty to twenty-five minutes, prompting plaintiff to ask defendant "what was taking them

so long." The judge stated "[t]here[was] no doubt . . . that [defendant then] called [plaintiff] a [']fat bald fuck.[']"

Noting the definition of harassment included a person "mak[ing] or caus[ing] to be made a communication or communications . . . in offensively co[a]rse language," the judge concluded defendant used "co[a]rse language" by calling plaintiff a "[']fat bald fuck.[']" The judge explained that defendant's use of "co[a]rse language" "d[id not] have to be all the time" to qualify as harassment, and that defendant "clearly . . . admitted under oath that she use[d] offensive and co[a]rse language, and she sw[ore] in front of her kids."

Next, the judge found defendant's purpose in using such language was "to harass" plaintiff, because "there[was] no other purpose in [using] that language. . . . except to harass somebody." Further, the judge stated he had "no doubt" defendant "called her mother-in-law a [']fat fucking pig[']" and "[t]his was all done in the presence of the children and . . . the other relatives."

Additionally, the judge found that when defendant heard plaintiff's girlfriend tell the parties' child that she "look[ed] beautiful" and "did a great job today," "this triggered a reaction from [defendant]." He stated, "instead of having a decent reaction to [plaintiff's girlfriend's comment], it triggered [defendant]. And [defendant] . . . turned around and . . . ran back into the group.

And then it was[not] fisticuffs, but it was darn near close to it. There was . . . pushing and shoving." The judge also found:

> [i]t was [plaintiff]'s time with the family at that point with the child[,] . . . [but defendant] was reaching around, flailing her arms. Probably not on purpose, but causing injury to the paternal grandmother on her leg by kicking her, probably trying to reach around . . . and grab [her daughter] out of [plaintiff's girlfriend's] hands.
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> . . . [E]ventually[, plaintiff's mother] was pushed during the melee . . . into [her] daughter . . . who was holding the five-month[-]old [baby,] . . . and it turned into a melee. People were screaming to call the police, and the police were summoned.

After finding defendant harassed plaintiff by speaking to him in coarse language, the judge also found defendant "struck" plaintiff's mother. In addressing what constituted harassing behavior, the judge noted "[a] single act can be sufficient," and "[t]here need not be a course of alarming conduct" to find harassment occurred. Importantly, the judge also concluded that even "if you take out the assault from the equation, ... [t]he [c]ourt is faced with . . . the [']War of the Roses.[']" The judge explained this reference by stating defendant engaged in "an escalating level of harassment, leading to violence in front of a child." To demonstrate this escalation, the judge read aloud a series of messages

defendant previously left for plaintiff on the Our Family Wizard[3] app, finding her messages "start[ed] to devolve" into "snarky comments."

Further, the judge determined defendant had "an obsession" with plaintiff's girlfriend, as evinced by the fact "[s]he reach[ed] . . . out to [the girlfriend's] ex-husband to find out information on her," searched the internet "to find [plaintiff's girlfriend's] telephone number[,] and sen[t] her a text message." The judge also found defendant went "on Instagram" to find the gym the girlfriend attended, adding, "[t]here[wa]s no reason for that." He concluded such behavior constituted "acts of harassment."

Next, the judge found defendant "[t]hreaten[ed] to call [DCPP]" against plaintiff's girlfriend and "[t]here[was] no other reason behind this except to get back at [plaintiff]. And this . . . can[not] be tolerated." The judge stated "these events" were not "directed at [plaintiff,]" but "[t]hey d[id not] have to be" because such "third-party communications [were] all it t[ook] [for plaintiff] to be harassed," considering the communications were "reasonably likely to get back to [plaintiff]." The judge added, "there[is] no doubt that [defendant was] trying to get at [plaintiff] and through him with . . . the new paramour."

[3] Our Family Wizard is an online tool designed to facilitate communication between separated and divorced parents.

Having found defendant committed the predicate act of harassment, the judge considered whether plaintiff was entitled to an FRO. The judge credited plaintiff's testimony that he was afraid defendant's "escalating" behavior would "lead to more violence, and he d[id not] know where it[was] going to end." The judge added, "I have to agree with [plaintiff]." Moreover, the judge found defendant could not "control her temper and . . . c[ould not] control her anger." Accordingly, he granted plaintiff the FRO, finding plaintiff "established" "by a preponderance of the evidence" an "ongoing need for a restraining order."

II.

On appeal, defendant argues the trial court: (1) "did not make findings of facts and conclusions of law consistent with the testimony and harassment statute"; (2) "erred in finding the [PDVA] was violated"; and (3) "did not correctly find that [plaintiff] needed a[n FRO] to protect against future acts of domestic violence." These arguments fail.

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. Inv'rs. 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 v. Silver, 387 N.J. Super. 112, 125 (App. Div. 2006). 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 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)(2), (4). However, the need for an FRO can be justified based on "one sufficiently egregious action." Cesare, 154 N.J. at 402.

A person is guilty of harassment under N.J.S.A. 2C:33-4:

> if, with purpose to harass another, [the person]:
>
> > (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) [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) (emphasis added).]

Because "direct proof of intent" to harass 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)). "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").

Guided by these standards, we discern no basis to disturb the July 3, 2023 FRO. Instead, we are persuaded the judge's finding that defendant purposely

harassed plaintiff by using "offensively coarse language" when calling plaintiff a "fat bald fuck" in front of the parties' child, is amply supported by competent, credible evidence in the record. Accordingly, we need not address whether any other acts committed by defendant against plaintiff or his family members during the June 9 incident also constituted harassment.

Similarly, we have no reason to second-guess the judge's finding that plaintiff was entitled to an FRO, given the judge's well-supported finding that defendant could not "control her temper and . . . c[ould not] control her anger" against plaintiff, as evidenced by her behavior against plaintiff and his girlfriend before the June 9, 2023 incident occurred.

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.