

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3507-22

J.S.,

Plaintiff-Respondent,

v.

B.S.,

Defendant-Appellant.

Submitted May 7, 2024 – Decided June 10, 2024

Before Judges Enright and Whipple.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Union County, Docket
No. FV-20-1766-23.

The Tormey Law Firm, LLC, attorneys for appellant
(Travis J. Tormey, of counsel; Jeffrey Anthony
Skiendziul, on the brief).

Berse Law, LLC, attorneys for respondent (Samuel J.
Berse, on the brief).

PER CURIAM

Defendant B.S.¹ appeals from the July 11, 2023 final restraining order (FRO) entered against her and in favor of her former partner, plaintiff J.S., under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. We affirm, substantially for the reasons expressed in Judge Thomas J. Walsh's thoughtful oral opinion.

I.

The parties were previously married and share two young sons. At the time the FRO was entered, they had separated and filed for divorce.

On May 8, 2023, plaintiff sought and obtained a temporary restraining order (TRO) against defendant, alleging earlier that day, defendant committed the predicate acts of harassment, N.J.S.A. 2C:33-4, and criminal mischief, N.J.S.A. 2C:17-3, by entering the parties' home and "destroy[ing] their property." Plaintiff further alleged "[d]efendant [wa]s not supposed to be at the residence [that day,] as her parenting time d[id] not start until" the next day, per court order.

At the final hearing in July 2023, plaintiff testified that on May 8, 2023, she drove home and "noticed that all of the furniture from the first floor [of the parties' home] was put out on the lawn." Plaintiff stated she "was very confused

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

at how the furniture got out there, because when [she] left [the house] that morning," those items were "not on the lawn." She also submitted as evidence photos of the discarded furnishings and testified those items were used by her family "[e]very day."

Additionally, plaintiff stated she "got upset seeing all the broken furniture, and [she] called the cops" because she "was[not] sure if someone had broken in" and she "was afraid." The police arrived and inspected the parties' home. Then, "because the house was not broken into, the windows were not broken, [and] everything was locked," plaintiff suspected defendant entered the parties' home and discarded their furnishings, considering defendant was "the only other person [plaintiff] kn[e]w who had [a] key" to their home. Therefore, plaintiff asked the police if she could "file [for] a restraining order because [she] was afraid."

During cross-examination, plaintiff conceded that on the same day she found her family's furnishings on the lawn, other residents in town had "put[] stuff on the street" for the town's annual "bulk pick up." She also admitted that prior to May 8, the parties exchanged messages about "removing the bulk items that were in the home." In fact, on April 21, 2023, defendant emailed plaintiff and stated: "[t]ime to throw things away. I will not pay for disposal of any of

the items in that house. So[,] this is you[r] chance to dispose [of] things."

Plaintiff testified she responded to defendant's email on May 7, 2023, stating:

All neighbors have begun to put out their bulk garbage for pickup. I put out a few things. When you are here on Tuesday[, May 9] for your parenting time, if you come, one never knows if you will show up, make sure you throw away the bulk items in the house[,] so you don't end up paying for a dumpster when we sell the house.

Additionally, plaintiff stated the "bulk items" referenced in her May 7 message were items in the parties' basement that their children had outgrown and "no longer use[d]" but could not be "throw[n] out in [the] regular garbage, so they would be considered bulk garbage." Therefore, she was "upset" when she returned home on May 8 to discover the parties' furniture was "all gone" and "out on the lawn." She also noted the bulk items in the basement were not discarded. According to plaintiff, she retrieved "[w]hatever [furnishings she] could salvage[,] whatever [defendant] did[not] break," adding, "[e]verything else was destroyed."

Regarding the parties' history of domestic violence, plaintiff testified she previously sought and obtained a TRO against defendant in February 2022, after defendant was "emotionally" and "physically violent with [her]." In describing this incident, plaintiff stated that on February 23, 2022, after defendant

overheard plaintiff telling their sons plaintiff would be going out, defendant "took [plaintiff's] phone and . . . went out to the back deck." Plaintiff "became scared and . . . locked [defendant] out" of the home, but defendant "came to the front door, . . . used her key to open it, and [because plaintiff] had the baby latch on the door, . . . [defendant] kicked open the door and broke the latch." Plaintiff testified defendant re-entered the home and threw plaintiff's cellphone, so plaintiff withdrew "to the basement just to try to get away from [defendant]." Plaintiff stated defendant followed her to the basement and "started arguing with [her]." Further, plaintiff testified defendant "pushed [her] and [plaintiff] hit the wall and . . . bruised [her] arm." Plaintiff provided a photograph of the bruises she claimed she sustained during this incident, but admitted she did not recall the "exact date" the picture was taken.

After the February 23 incident, plaintiff obtained a TRO against defendant. However, she did not seek an FRO. Instead, the parties "entered into civil restraints," which included a "nesting" arrangement that allowed each party to spend time in the home and exercise parenting time with the children based on a fixed schedule. That schedule was later modified by court order in November 2022.

Given this history, plaintiff asked the judge to grant her an FRO "so . . . [she] c[ould] remain protected from [defendant]'s abuse." Plaintiff stated she was "in fear of [her] life," and "scared . . . [defendant was] going to harm [her]."

When defendant testified, she denied harassing plaintiff or committing criminal mischief on May 8. However, defendant admitted removing furnishings from the marital residence that day and leaving various items at the curb. She stated, "most of the furniture [in the home] . . . was already destroyed" by the parties' children.

Defendant also testified that on May 7, 2023, plaintiff responded to defendant's April 21, 2023 email and "told [her] to take out the bulk items because [the parties] were go[ing to] sell the house, and . . . [plaintiff] did[not] want [defendant] to have to pay for a dumpster when [the parties] sold the house." Because she anticipated that removing the bulk items "was going to take several days," defendant stated she "started with the first floor and then . . . had to go into the basement. And then . . . still had to throw away the furniture on the top floor"

Although defendant admitted she was not scheduled to exercise parenting time at the parties' home on May 8, per the parties' nesting arrangement and court order, she denied she was prohibited from being at the parties' home that

day. She explained, "nowhere in the civil restraints does it say I[am] not allowed to go to my home." Similarly, defendant testified the order entered in November 2022, did not "state that [she was] barred from going to the residence."

Additionally, defendant refuted plaintiff's testimony about the February 23, 2022 incident. Defendant stated during that incident, plaintiff followed defendant into the basement and "pinned [defendant] into the laundry room." Defendant testified she "tried moving [plaintiff] out of the way" and plaintiff "banged into the door." Further, defendant stated, "I never pushed her."

When the trial concluded on July 11, 2023, Judge Walsh granted plaintiff an FRO based on the two-prong test enunciated in Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). The judge first addressed "whether the predicate act[s] of domestic violence ha[d] been proven . . . by a preponderance of the credible evidence" and found plaintiff established that defendant committed the predicate acts of harassment and criminal mischief.

Judge Walsh explained defendant went to the former marital residence on May 8, 2023, when she was not scheduled to be there, considering the parties "nesting agreement." Further, he found defendant "was completely combative and parsed words with [plaintiff's c]ounsel" on cross-examination when she

testified "that just because there were certain days that were hers [under the nesting agreement] did[not] mean she could[not] go there on other days." The judge characterized this testimony as "not credible."

Additionally, Judge Walsh found defendant went to the marital home on May 8, knowing plaintiff and the children would not be there, "and that when [plaintiff] came home[,] the house had been basically emptied out." The judge further concluded "the annual bulk cleanup day [was] coming up" in the parties' town at that point, and the parties "had e[mailed] each other to suggest that it was time to get big bulk items out of the house." However, based on "a number of photographs introduced to the [c]ourt by both sides," the judge found the items defendant placed on the parties' front lawn were "not necessarily garbage," and he was "satisfied there was no agreement to put a lot of th[ose] things out on the street."

Moreover, Judge Walsh credited plaintiff's testimony and the photographs she submitted into evidence to conclude "[t]he living space where the children live[d] ha[d] been basically emptied" by defendant and he was "not satisfied [she] did that for . . . bulk pickup day." Instead, he found defendant "did throw out and destroy marital property and that is an act of criminal mischief. And, obviously, it was done to send a message to . . . attempt to alarm or annoy

[plaintiff]. So[,] . . . both predicate acts [were] . . . proven by a preponderance of the credible evidence."

Next, in determining whether an FRO was "necessary . . . to prevent future acts of domestic violence," the judge considered whether the parties had a history of domestic violence. He found there was "one prior act of domestic violence which the parties resolved through civil [re]straints," referring to the February 23, 2022 incident. Judge Walsh explained that although defendant denied pushing plaintiff during that incident, she did not deny taking plaintiff's phone or kicking the parties' door open. Therefore, the judge was "satisfied there was, at least, this one prior act of domestic violence."

Additionally, Judge Walsh stated, "[t]he parties [we]re going through a difficult divorce" and the current "situation seem[ed] to suggest . . . an increase in the acts between each other." Therefore, the judge found "plaintiff . . . prove[d] . . . she [wa]s entitled to a[n FRO]."

II.

On appeal defendant raises the following arguments: (1) "the trial court improperly concluded . . . [defendant] committed [the] predicate acts of harassment and criminal mischief"; and (2) "the trial court improperly concluded . . . the two-prong test in Silver mandated the issuance of a[n FRO]."

These arguments fail.

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). 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. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)); see also Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016). An appellate court should defer to the 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).

"Appellate courts 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). Deference is especially appropriate in bench trials when the evidence is "largely testimonial and involves questions of credibility." Cesare, 154 N.J. at 412 (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). A trial judge who observes witnesses and listens to their testimony is in the best position "to make first-hand credibility judgments about the witnesses who

appear on the stand." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008). However, "all legal issues are reviewed de novo." Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div. 2017) (citing Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)).

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 will "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, 387 N.J. Super. at 125. The trial court should make this determination "in light of the previous history of violence between the 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),^[2] to protect the victim from an immediate danger or to prevent further abuse." Id. at 127.

Turning to the predicate acts at issue, criminal mischief and harassment, N.J.S.A. 2C:25-19(a)(10) and (13), we first note that a person is guilty of criminal mischief if that person "[p]urposely or knowingly damages [the] tangible property of another." N.J.S.A. 2C:17-3(a)(1); see also N.T.B. v.

² These statutory factors are:

- (1) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment, and physical abuse;
- (2) The existence of immediate danger to person or property;
- (3) The financial circumstances of the plaintiff and defendant;
- (4) The best interests of the victim and any child;
- (5) In determining custody and parenting time, the protection of the victim's safety; and
- (6) The existence of a verifiable order of protection from another jurisdiction.

[N.J.S.A. 2C:25-29(a).]

D.D.B., 442 N.J. Super. 205, 218-19 (App. Div. 2015). Next, pursuant to N.J.S.A. 2C:33-4:

[A] person commits a petty disorderly persons offense if, with purpose to harass another, [that 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) 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.

[N.J.S.A. 2C:33-4(a) to (c) (emphasis added).]

What constitutes harassment is a fact-sensitive inquiry. See Hoffman, 149 N.J. at 580-81. A court may find one party harassed another party, based on the attendant circumstances. C.M.F. v. R.G.F., 418 N.J. Super. 396, 404-05 (App. Div. 2011); see also H.E.S. v. J.C.S., 175 N.J. 309, 326 (2001). A finding of a defendant's purpose to harass may be inferred from the evidence presented, and from common sense and experience. H.E.S., 175 N.J. at 327; Hoffman, 149 N.J. at 577. It may also be inferred from the parties' history. J.D., 207 N.J. at 487.

Guided by these principles, we discern no basis to disturb the FRO. In fact, the judge's factual and credibility findings are well supported on the record, including his findings that: (1) defendant "did throw out and destroy marital property" on a day she was not scheduled to be at the former marital residence; (2) she did so "to send a message to . . . attempt to alarm or annoy [plaintiff]"; and (3) "[t]he parties [we]re going through a difficult divorce" and their "situation" appeared to be escalating, given the "increase in the acts between each other." Therefore, we affirm the FRO, substantially for the reasons set forth in Judge Walsh's cogent and well-reasoned opinion.

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