

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3306-22

K.R.B.,

Plaintiff-Respondent,

v.

C.F.B.,

Defendant-Appellant.

Submitted October 23, 2024 – Decided January 2, 2025

Before Judges Mayer and DeAlmeida.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Burlington County,
Docket No. FV-03-0926-23.

Hark & Hark, attorneys for appellant (Michael J.
Collis, on the brief).

Ted M. Rosenberg, attorney for respondent.

PER CURIAM

Defendant C.F.B.¹ appeals from a June 28, 2023 final restraining order (FRO) entered against him by the Family Part pursuant to the Prevention of Domestic Violence Act (the Act), N.J.S.A. 2C:25-17 to -35. We affirm.

I.

The following facts are derived from the record. Defendant and plaintiff K.R.B. were married in 2006 and have two children together.

In March 2022, the parties divorced. A dual final judgment of divorce incorporated the terms of a property settlement agreement (PSA) that granted the parties joint custody of their children.

On September 29, 2022, the Family Part entered a consent order imposing civil restraints in conjunction with the parties agreeing to dismiss domestic violence temporary restraining orders (TROs) each had obtained against the other. The consent order, filed in the parties' divorce action, prohibits them from having contact with each other, except through a court-approved application, and requires them to maintain a distance of at least fifty feet from one another. Both may be present at school functions.

¹ We identify the parties by initials to protect the identity of the victim of domestic violence. R. 1:38-3(d)(9).

On November 21, 2022, plaintiff filed a domestic violence complaint seeking entry of an FRO against defendant. She alleged that on November 20, 2022, after the parties' younger daughter's soccer game, she and her younger daughter were walking to her car, in which the older daughter was seated, when they were approached by defendant in violation of the consent order. According to the complaint, after the younger daughter declined defendant's offer to drive her to his house, he followed her and plaintiff to their car, repeatedly screaming, "you are denying me parenting time." When the parties arrived at plaintiff's car, defendant began yelling to the younger daughter, "you are coming with me now. I want my parenting time." Defendant recorded a portion of the encounter. Plaintiff alleged that these acts put her in fear for the safety of herself and her children and constituted the predicate act of harassment, N.J.S.A. 2C:33-4.

Plaintiff alleged numerous prior acts of domestic violence. She alleged that: (1) on February 13, 2021, defendant put his hands around her neck and pushed her against a wall; (2) in May 2021, defendant harassed her at their child's soccer game; (3) on June 17, 2021, defendant harassed her by standing in front of her car videotaping her and refusing to let her leave; (4) in July 2021, defendant called her and said she "just ended her own life" and that he

would no longer support their children beyond the amounts withheld by court order, and sent her numerous emails, some of which threatened to send a video recording of the parties' older daughter having an emotional breakdown to plaintiff's employer; and (5) on September 19, 2022, defendant appeared at his older daughter's soccer game to drop off the other child and began yelling at plaintiff and the children while videotaping the encounter until police arrived.

On November 21, 2022, a Family Part judge issued a TRO against defendant. The TRO was subsequently amended to include additional alleged incidents of past domestic violence. The record does not contain a copy of the amended TRO.

On June 28, 2023, following a five-day trial at which ten witnesses testified, the trial court issued a comprehensive, thirty-four-page written decision granting plaintiff's application for an FRO. The court found plaintiff to be a credible witness who provided straightforward answers during her testimony, without evasion or embellishment. The court found plaintiff's testimony to be "intelligent, consistent with the evidence presented" and without contradictions.

Conversely, the court found defendant to lack credibility. The court found that "[h]is answers, particularly on cross[-]examination, were extremely

evasive and defiant" and noted "[t]here were many instances where [plaintiff's] counsel had to repeat questions multiple times as [defendant] evaded the question, gave an answer to a question that was not asked, asked and answered his own question, and/or took control of his own testimony." The court found that defendant, in response to simple questions, "would exaggerate and ramble on about things not relating to the questions asked[,] and his "answers were simply not logical, not reasonable, and were contradictory."

The court found several instances during which defendant provided testimony inconsistent with the evidence presented at the trial, including his claim to have walked away from an argument with plaintiff and their older daughter when a video clearly depicted defendant following plaintiff and their older daughter while arguing with them. The court also found defendant was forced to withdraw his testimony that a video showed plaintiff punching him in the face three times, in light of his admission that he is not seen in the recording and that the recording does not depict plaintiff striking him.

The court also found defendant falsely testified that he did not threaten plaintiff's job. The court found numerous exhibits contained threats by defendant to send videos of plaintiff to her employer to negatively affect her

job, including defendant stating, "you won't have a job when I'm done, it's on 100 percent" and "your job is done."

Citing defendant's angry demeanor, his frequent reference to notes during cross-examination, and squirming and fidgeting during his testimony, the court found: "He was simply not credible, and it was very apparent to this [c]ourt that [defendant] was not telling the truth."

With respect to the predicate act, the court found that on November 20, 2022, plaintiff took her younger daughter to participate in a soccer game. The older daughter remained in plaintiff's car. Defendant and his girlfriend also attended the game. The court found that defendant parked directly across from, and within fifty feet of, plaintiff's car, in violation of the consent order. Despite it not being his day to have parenting time with the younger daughter, defendant asked plaintiff if the child could go home with him. Plaintiff asked the child if she wanted to go home with her father. The child said she did not want to go with defendant because she was tired.

The court found defendant began yelling at plaintiff, repeatedly saying that she was denying him parenting time. Contrary to defendant's allegations, the court found plaintiff was not yelling at him that he was not taking the child. The court found plaintiff did not respond to defendant and continued to

walk to her car. The court found that during the walk, defendant took out his phone and appeared as if he was recording plaintiff, which further annoyed and alarmed plaintiff, and made her fearful of defendant. The court found defendant's yelling attracted the attention of several people, including his girlfriend. Two of the witnesses to the incident testified at trial.

The court also found that video evidence established defendant falsely accused plaintiff of threatening his girlfriend, who is heard on the video saying "no" six times to defendant's accusation that plaintiff had threatened her. The court found defendant falsely claimed plaintiff was screaming in his girlfriend's face. Although the court found plaintiff came closer than fifty feet to defendant, it concluded she did so in response to defendant's behavior toward her and did not violate the consent order.

With respect to alleged prior acts of domestic violence, the court found plaintiff's version of these events was accurate and defendant's version lacked credibility. The court found that: (1) on February 13, 2022,² defendant came to plaintiff's home and instigated a confrontation with their older daughter, by

² Plaintiff's complaint alleged that this incident occurred on February 13, 2021. It appears that the last digit of the year was a typographical error. The same error was made with respect to several other dates alleged in the complaint. The evidence adduced at trial supports the trial court's findings that the prior acts of domestic violence took place in 2022.

among other things, making fun of an outfit she had selected to attend a concert and telling her she belonged in a "psych ward." After refusing repeated demands from plaintiff to leave the home, defendant grabbed plaintiff by the neck and held her up against a closet, leaving her feet dangling; (2) on April 18, 2022, the parties exchanged hostile emails concerning their divorce; (3) on May 8, 2022, defendant repeatedly called plaintiff and sent her unwanted text messages while she was driving the children to a soccer game, causing their older daughter to have a panic attack. Defendant appeared at the game and yelled to plaintiff, "you better get in this truck," which she found threatening; (4) on May 9, 2022, defendant repeatedly called plaintiff while she was at work and called a secretary at her workplace. The communications were so frequent that plaintiff was unable to perform her job duties and needed coverage from a coworker. Evidence established thirteen calls from defendant to plaintiff prior to 8:15 a.m. that day; (5) on June 17, 2022, during a dispute between defendant and the older daughter, plaintiff arrived in her vehicle. Defendant jumped in front of plaintiff's car and began talking about their older daughter; (6) on July 21, 2022, after plaintiff obtained a court order garnishing defendant's wages to satisfy his child support obligations, defendant told plaintiff "[y]ou just ended your own life. You don't know what you just did by

doing that." The statement caused plaintiff to feel scared, upset, and threatened; and (7) on September 19, 2022, defendant followed and recorded plaintiff at the older daughter's soccer game, threatening to send a video to her employer to jeopardize her employment, attempted to intimidate the older daughter, and refused plaintiff's requests to leave her and the children alone, stopping only when police arrived.

The trial court found that on November 20, 2022, defendant committed the predicate act of harassment, under N.J.S.A. 2C:33-4(a). The court found defendant violated the consent order, and, with the purpose to harass plaintiff, yelled at her and recorded her, causing plaintiff to be annoyed and alarmed. The court inferred defendant's intent to harass from common sense, experience, and the totality of the circumstances, including the prior acts of domestic violence.

With respect to plaintiff's need for an FRO, the court considered the factors set forth in N.J.S.A. 2C:25-29(a). The court found that

[t]he most important factor . . . in this circumstance that requires the entry of an FRO against [defendant] is the credible history of domestic violence against [plaintiff] by [defendant]. Moreover, it is clear to this [c]ourt that [defendant's] pattern of abusive and controlling behavior towards [plaintiff] has escalated since the demise of their marriage.

The court found defendant's past acts of domestic violence where those of "someone with the intent to control and harass" plaintiff and that he "physically abused her, repeatedly threatened her, repeatedly harassed her, all while refusing to deescalate situations." In light of those findings, the court concluded plaintiff needed an FRO to protect her from future abuse by defendant. A June 28, 2023 FRO memorialized the trial court's decision.³

This appeal followed. Defendant raises the following arguments.

POINT I

THE TRIAL COURT ERRONEOUSLY
CONCLUDED [DEFENDANT] COMMITTED THE
PREDICATE ACT OF HARASSMENT.

POINT II

THE TRIAL COURT ERRONEOUSLY
CONCLUDED THE RESTRAINING ORDER WAS
NECESSARY FOR [PLAINTIFF'S] PROTECTION.

II.

The entry of an FRO requires the trial court to make certain findings. Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). The court "must determine whether the plaintiff has proven, by a preponderance of the

³ The court denied defendant's request for entry of an FRO against plaintiff, finding he failed to establish plaintiff committed a predicate act of domestic violence. Defendant did not appeal the denial of the requested FRO.

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 court should make this determination "in light of the previous history of violence between the parties." Ibid. (quoting Cesare v. Cesare, 154 N.J. 394, 402 (1998)).

Here, the trial court determined defendant committed harassment, one of the predicate acts set forth in the Act. N.J.S.A. 2C:25-19(a)(13). A person commits harassment if, "with purpose to harass another," he or she:

- (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.]

For a finding of harassment under N.J.S.A. 2C:33-4, the actor must have the purpose to harass. Corrente v. Corrente, 281 N.J. Super. 243, 249 (App. Div. 1995) (citing D.C. v. T.H., 269 N.J. Super. 458, 461-62 (App. Div. 1994); E.K. v. G.K., 241 N.J. Super. 567, 570 (App. Div. 1990)). Finding a party had the purpose to harass must be supported by "some evidence that the actor's

conscious object was to alarm or annoy; mere awareness that someone might be alarmed or annoyed is insufficient." J.D. v. M.D.F., 207 N.J. 458, 487 (2011) (citing State v. Fuchs, 230 N.J. Super. 420, 428 (App. Div. 1989)). A purpose to harass may be inferred from the evidence. See State v. McDougald, 120 N.J. 523, 566-67 (1990). Common sense and experience may also inform a determination or finding of purpose. State v. Hoffman, 149 N.J. 564, 577 (1997) (citing State v. Richards, 155 N.J. Super. 106, 118 (App. Div. 1978)). "[T]he decision about whether a particular series of events rises to the level of harassment or not is fact-sensitive." J.D., 207 N.J. at 484.

Next, 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)]([7]), to protect the victim from an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 127 (citing N.J.S.A. 2C:25-29(b)); see also J.D., 207 N.J. at 475-76. This determination requires evaluation of:

- (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;
- (6) The existence of a verifiable order of protection from another jurisdiction; and
- (7) Any pattern of coercive control against a person that in purpose or effect unreasonably interferes with, threatens, or exploits a person's liberty, freedom, bodily integrity, or human rights with the court specifically considering evidence of the need for protection from immediate danger or the prevention of further abuse

[N.J.S.A. 2C:25-29(a); see also Cesare, 154 N.J. at 401.]

"In our review of a trial court's order entered following trial in a domestic violence matter, we grant substantial deference to the trial court's findings of fact and the legal conclusions based upon those findings." D.N. v. K.M., 429 N.J. Super. 592, 596 (App. Div. 2013) (citing Cesare, 154 N.J. at 411-12). We should not disturb the "'factual findings and legal conclusions of the trial judge unless [we are] convinced that they are 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 Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). Deference is particularly appropriate when the evidence is testimonial and

involves credibility issues because the judge who observes the witnesses and hears the testimony has a perspective the reviewing court does not enjoy. Pascale v. Pascale, 113 N.J. 20, 33 (1988) (citing Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)).

After considering the factors set forth in N.J.S.A. 2C:25-29(a), the Family Part issued detailed findings supporting its conclusion that plaintiff was in need of protection from future acts of abuse by defendant. In reaching its decision, the court considered defendant's repeated pattern of harassing behavior toward plaintiff established at trial.

Having carefully reviewed defendant's arguments in light of the record and applicable legal principles, we affirm the June 28, 2023 FRO for the reasons stated in the trial court's thorough and well-reasoned written decision. The evidence supports the trial court's conclusion that defendant harassed plaintiff within the meaning of N.J.S.A. 2C:33-4(a) and that entry of an FRO to protect plaintiff from future acts of abuse by defendant was warranted.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION