RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2061-20

L.A.C.,

Plaintiff-Respondent,

v.

S.H.,

Defendant-Appellant.

Argued April 26, 2022 – Decided May 23, 2022

Before Judges Currier and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FV-13-0908-21.

Matthew W. Reisig argued the cause for appellant (Reisig Criminal Defense & DWI Law, LLC, attorneys; Matthew W. Reisig, on the brief).

Respondent has not filed a brief.

PER CURIAM

In this appeal, defendant argues the evidence presented at trial did not support entry of a final restraining order (FRO) pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C: 25-17 to -35. Defendant's claims are all belied by the record, where the trial court made specific and appropriate findings of fact and law, and credibility determinations. We affirm.

Defendant[1] contends the trial court erred in finding he had tampered with a witness – plaintiff – in an effort to keep her from testifying in a related criminal proceeding. He states because tampering with a witness is not one of the nineteen enumerated predicate acts in the PDVA, the trial court failed to find a predicate act pursuant to the statute. He also argues, pursuant to the second prong of Silver[2], an FRO should not have issued because there is no immediate threat to plaintiff, as the relationship has ended and there has been no contact between the parties since entry of the temporary restraining order (TRO).

The parties were involved in an alleged physical altercation on November 17, 2020, that ended their relationship and resulted in criminal cross complaints, which were still pending at the time of the FRO hearing. Plaintiff sought a TRO

[1] Both parties appeared self-represented at the virtual FRO hearing on February 16, 2021. Plaintiff did not file a brief or otherwise participate in this appeal.

[2] Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006).

not on the basis of the November 17 incident, but because defendant allegedly harassed her by sending her text messages after the incident.

When determining whether to grant an FRO pursuant to the PDVA, a court must undertake a three-part analysis and find: the relationship between the parties is one protected by the PVDA; one or more of the predicate acts set forth in N.J.S.A. 2C:25-19(a) occurred by a preponderance of the credible evidence; and a restraining order is necessary to protect the plaintiff from future danger or threats of violence. Id. at 125-27.

In Cesare v. Cesare, 154 N.J. 394, 411-12 (1998), our Supreme Court addressed the standard of review applicable to domestic violence matters. "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Ibid. (citing Rova Farms, Inc. v. Inv. Ins. Co., 65 N.J. 474, 484 (1974)). "Deference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Id. at 412 (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). Furthermore, unless the factual findings and legal conclusions of the trial court are "manifestly unsupported by or inconsistent with the competent, relevant, and reasonably credible evidence," we should refrain from disturbing the trial court's findings, "[b]ecause a trial court hears the case, sees

and observes the witnesses . . . it has a better perspective than a reviewing court in evaluating the veracity of witnesses." Ibid.

"Where our review addresses questions of law, a trial judge's findings are not entitled to the same degree of deference . . . [t]he appropriate standard of review for conclusions of law is de novo." T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App. Div. 2017) (citations omitted).

Because this case turned almost exclusively on the testimony of the parties, we defer to the Family Part judge's credibility findings, as he had the opportunity to listen to them and observe their demeanor. See Gnall v. Gnall, 222 N.J. 414, 428 (2015). On this record, we discern no basis to disturb the judge's credibility determinations or the legal conclusions that flow from those determinations.

Pursuant to the first prong of Silver, and contrary to defendant's assertions, the court found defendant committed the predicate act of harassment by a preponderance of the evidence. Harassment occurs where, "with [the] purpose to harass another" a person:

> a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm; [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 - 4(c).]

What does or does not constitute harassment is a fact-sensitive analysis. See State v. Hoffman, 149 N.J. 564, 580-81 (1997). A court may glean intentional harassment from attendant circumstances. See C.M.F. v. R.G.F., 418 N.J. Super 396, 404-05 (App. Div. 2011), and may consider the totality of such circumstances in determining whether the harassment statute has been violated. Cesare, 154 N.J. at 404; Hoffman, 149 N.J. at 585; 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.

The trial court found plaintiff testified credibly and "gave clear, direct responses to the questions. Her story was logical and cogent, and she supported the story with evidence, the photographs of the remaining marks to the back of her leg, as well as the text messages, which are not in dispute." In contrast, the trial court stated "I did not find [defendant] to be credible. He was aggressive throughout his testimony, especially at the very end when he started to rant about how he was going to keep going after [plaintiff]." The trial court found

defendant sent plaintiff various text messages following the November 17 incident. Plaintiff testified she never replied to them but defendant kept sending them. She did not seek a restraining order initially because she feared defendant, and did not want to incite him, but when the text messages were still being sent in January, with the intention of intimidating her or annoying her in an effort to withdraw the charges against him, she finally sought a restraining order.

Relying primarily on defendant's admission he sent the text messages, the court found plaintiff proved harassment pursuant to N.J.S.A. 2C:33-4 because the text messages were meant to annoy and intimidate her. Although the trial judge did make extraneous comments with respect to witness tampering, a crime which is not one of the nineteen predicate acts enumerated in the PDVA, he was careful to distinguish those comments from his findings of harassment, granting the FRO predicated on a finding of harassment, not witness tampering. After the judge addressed witness tampering, he specifically excluded evidence of witness tampering from his findings of harassment.

The crux of the predicate finding of harassment was not the substantive issue defendant was texting about -- attempting to get plaintiff to drop the criminal charges and not testify against him -- but defendant's admission of sending the text messages, the number of texts sent from November through

January, and the intention to intimidate her in some of the texts. The court found defendant's attempts to get plaintiff to drop the charges was a purpose to harass: "[i]t satisfies the mens rea element of harassment."

Contrary to defendant's assertion, there is no "novel" legal issue presented regarding whether communications involving a non-predicate alleged criminal act, here witness tampering, may form a basis to "bootstrap" the court's grant of an FRO. Regardless of the substance of the communications, pursuant to the totality of the circumstances, plaintiff proved by a preponderance of the evidence the communications were meant to alarm or seriously annoy her.

Defendant's additional contention that the judge erred in finding an FRO was required to protect plaintiff from future acts of harassment because the parties were no longer together, had not communicated since entry of the TRO, and plaintiff was in no immediate danger, also lacks merit. In determining whether a restraining order is necessary, the judge must evaluate the factors set forth in the PDVA and, applying those factors, decide whether an FRO is required "to protect the victim from an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 127 (emphasis added).

The judge specifically found there was a prior history of domestic violence before the harassing text messages were sent. He found plaintiff's

testimony reliable as to the November 17 incident and did not find defendant's testimony reliable. He witnessed defendant's demeanor throughout the hearing, found it troubling, and found defendant voiced an intention to continue harassing plaintiff. He relied primarily on defendant's testimony in concluding an FRO was necessary to protect plaintiff from further harassment. Specifically, he found the following testimony concerning:

> No, I got nothing your Honor. There's – There's nothing to present. I – I sent the text messages. I'm not lying. I'm not going to lie to the court. There's nothing for me to lie. I – not to anything [sic] threatening or alarming or anything. I'm telling her that I'm going full after her now. I'm – I'm suing the hell out of her. And I'm going to put her away, because she admitted to my mother, and I have it on camera[3], and that's – that's what's going to happen, and I don't care how much I got to spend in order to do it . . . . This is what happens when you piss [refers to himself in the third person] off and you make lies about him, he will go full strong against you, but I will – I will do it the right way, and I will do it by the law.

The trial court found defendant's "rant," reiterating many of the same statements he sent to plaintiff by text over a period of two months, warranted a FRO, observing he appeared to be "[un]hinged" and "that was very troubling, doubling down on problematic behavior again." Even in court at the FRO

[3] No video evidence was offered by defendant at the FRO hearing.

hearing, defendant felt the need to warn and threaten plaintiff of the consequences of not complying with his texted demands. Those statements proved an FRO was necessary to prevent further abuse by a preponderance of the evidence.

To the extent we have not specifically addressed any of defendant's remaining arguments, we conclude they are without sufficient merit and do not 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