SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3250-20

J.E.H.,

Plaintiff-Respondent,

v.

M.M.,

Defendant-Appellant.

Submitted May 18, 2022 – Decided June 14, 2022

Before Judges Hoffman and Whipple.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket No. FV-12-1893-21.

Schwartz Barkin & Mitchell, attorneys for appellant (Gail J. Mitchell, on the briefs).

Central Jersey Legal Services, attorneys for respondent (Kevin R. Kieffer, on the brief).

PER CURIAM

Defendant M.M. appeals from a final restraining order (FRO) that was entered against her in favor of plaintiff J.H. on June 2, 2021. We affirm.

The parties are married and have two children together, ages eighteen and twelve. They both conceded a long history of domestic violence between them, including numerous calls to police over the course of their relationship. Plaintiff commenced this action, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, based on an allegation that defendant assaulted him by striking him and scratching his chest. The allegation arose from an incident on April 12, 2021, where the parties had an argument that escalated to a physical altercation. Plaintiff was granted a temporary restraining order.

After hearing both parties testify at an FRO trial, the court rendered an oral opinion and judgment granting an FRO against defendant, finding the evidence satisfied both prongs of Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006). The judge found defendant committed simple assault, N.J.S.A. 2C:12-1. The judge concluded that an FRO was warranted based on past turmoil between the parties, including a prior domestic violence incident, and the need to establish solid boundaries to avoid future incidents. This appeal followed.

On appeal, defendant presents the following arguments for our consideration:

POINT I

THE ACRIMONY IN THIS CASE SHOULD NOT BE USED BY THE PLAINTIFF TO GET A LEG UP IN THE DIVORCE MATTER.

POINT II

THE COURT COMMITTED REVERSIBLE ERROR ON THE LAW WHEN IT FOUND THAT THE DEFENDANT COMMITTED AN ACT OF ASSAULT AGAINST THE PLAINTIFF AS DEFINED BY 2C:12-1(a).

POINT III

THE COURT ABUSED ITS DISCRETION BY NOT ALLOWING THE POLICE REPORTS INTO THE RECORD AND BY NOT CONSIDERING THE TOTALITY OF THE FACTS AND CIRCUMSTANCES OF THIS CASE.

Our standard of review on appeal in domestic violence cases is deferential to the trial court's findings, especially where, as here, "the evidence is largely testimonial and involves questions of credibility." Cesare v. Cesare, 154 N.J. 394, 412 (1998) (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)).

Those findings become binding on appeal because the trial judge "observes the witnesses," thereby possessing "a better perspective than a reviewing court in evaluating the veracity of witnesses." Pascale v. Pascale, 113

N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)). Accordingly, we will not disturb a court's factual findings unless convinced "they are so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice . . . ." Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)).

After considering the testimony submitted at trial, the judge agreed with plaintiff's version of the events. After careful examination of the record, we are satisfied that the evidence amply supported the judge's determination that the predicate act of assault was satisfied by defendant scratching plaintiff's chest and that an FRO was necessary to protect plaintiff from further harm.

"A person is guilty of assault if the person . . . [a]ttempts to cause or purposely, knowingly, or recklessly causes bodily injury to another. . . ." N.J.S.A. 2C:12-1(a)(1). To constitute an assault under the Prevention of Domestic Violence Act, "[n]ot much is required to show bodily injury." See N.B. v. T.B., 297 N.J. Super. 35, 43 (App. Div. 1997). Plaintiff testified that defendant scratched him when she attacked him. The trial court reviewed the testimony and found that defendant had committed an act of assault. The court

also considered a prior event where defendant broke plaintiff's windshield as a demonstration of a sufficient risk to plaintiff to justify the imposition of an FRO under the second prong of Silver. See 387 N.J. Super. at 126-28.

Early in the proceeding, defendant tried to use prior police reports between the parties. The judge told defense counsel that unless they had the police officers testify about the reports, the court would not look at them. "A police report may be admissible to prove the fact that certain statements were made to an officer, but, absent another hearsay exception, not the truth of those statements." Manata v. Pereira, 436 N.J. Super. 330, 345 (App. Div. 2014). To admit such evidence, "the proponent is required to present a custodian of records, if not the particular officer who prepared the report." Id. at 346. Defendant failed to cite any rules of evidence that would allow the court to receive the reports into evidence without a custodian or officer and failed to have either person testify about the reports. Therefore, the trial court properly barred the police reports from the record as inadmissible hearsay.

We also find no merit to defendant's argument that plaintiff was using the domestic violence proceeding to advance his position in the pending divorce. Nothing in the record supports that conclusion.

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

Affirmed.

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

CLERK OF THE APPELLATE DIVISION