SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2377-21

J.H.,[1]

Plaintiff-Respondent,

v.

G.H.,

Defendant-Appellant.

Submitted February 14, 2023 – Decided March 20, 2023

Before Judges Messano and Rose.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Warren County, Docket No. FV-21-0570-08.

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

Respondent has not filed a brief.

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[1] We identify the parties by initials to protect the identity of the domestic violence victim. R. 1:38-3(d)(10).

PER CURIAM

Defendant G.H. appeals from a March 31, 2022, Family Part order denying his motion to dissolve a May 27, 2008 final restraining order (FRO) entered pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, in favor of plaintiff J.H. based on the predicate act of harassment. This is defendant's second attempt to vacate the FRO. Because we conclude the record supports the motion judge's determination that defendant failed to demonstrate a substantial change of circumstances warranting relief under the factors established in Carfagno v. Carfagno, 288 N.J. Super. 424 (Ch. Div. 1995), we affirm.

I.

A. The FRO Trial

The facts adduced at the FRO trial are set forth at length in our prior opinion affirming the trial court's order, and need not be repeated in the same detail. See J.H. v. G.H., No. A-5039-07 (App. Div. Apr. 7, 2010) (slip op. at 1 - 13). Pertinent to this appeal, the parties were married in September 1995 and plaintiff filed for divorce in February 2008, when the parties' only child was eleven years old. Id. at 1-2. The following month, plaintiff sought restraints against defendant. As we explained in our prior opinion:

> On March 13, plaintiff applied for and received a [temporary restraining order] under the Act. In her complaint, she alleged that defendant had engaged in threatening conduct beginning in January and culminating that day when she discovered that defendant had possession of "numerous guns that were supposed to be locked up." Plaintiff alleged that these events amounted to harassment, N.J.S.A. 2C:33-4. Regarding prior incidents of domestic violence, plaintiff referenced those "reported" to the judge on March 7, the date of the hearing on her order to show cause in the matrimonial case[, i.e., defendant's use of drugs, fondness for firearms, psychological problems, and suicide threats].
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> On March 20, plaintiff filed an amended complaint under the Act . . . list[ing] other incidents of alleged domestic violence. Included in that list were references to a prior restraining order issued against defendant in favor of his prior wife, C.H., in Pennsylvania in 1993. The complaint indicated that defendant had threatened his prior wife with a gun, physically abused her, and raped her.
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> [Id. at 3-4.]

Following the six-day trial, "the same judge who heard plaintiff's application for an order to show cause in the divorce action," id. at 4, "issued a lengthy oral decision from the bench," id. at 12. The judge found defendant committed at least seven acts between January 24, 2008 and March 12, 2008, establishing a "'course of conduct' . . . that demonstrated harassment, the necessary predicate act of domestic violence." Id. at. 12-13. Those acts

included defendant's: repeated suicide threats after the parties argued and he produced a gun; recorded statement to plaintiff that he had three firearms that were not locked in a safe; acknowledgment that he smoked marijuana; threats to publish a letter plaintiff had written to her counselor; and threats to "print nude photos he had taken of plaintiff, and 'make use of them.'" Id. at 8-11.

Because the trial judge found "plaintiff's version of the events credible, and defendant's not," she "concluded that defendant had engaged in a course of conduct commencing in January 2008 and culminating on March 12, 2008, with the purpose to alarm and seriously annoy plaintiff, and that he achieved his intended purpose." Id. at 16. Based on the totality of the circumstances, including defendant's misrepresentation about "his immediate access to weapons," the judge further determined an FRO was necessary to protect plaintiff from future harm. Id. at 19-20.

B. Defendant's Initial Application

In 2016, defendant filed his initial application to dissolve the FRO. On the return date, the motion judge, who had not presided over the FRO trial, determined there were "hotly" disputed facts that warranted a hearing even though "the parties . . . did not want a hearing." During the ensuing plenary hearing, defendant was represented by counsel and plaintiff appeared pro se.

Plaintiff called one witness, who testified about her knowledge of plaintiff's 2010 contempt charge against defendant. Defendant produced the transcript of the contempt hearing, indicating he was found not guilty of the charge. Defendant also moved into evidence the certification of the parties' son.

Following the hearing, the judge reserved decision. Thereafter, the judge issued an order and accompanying statement of reasons denying defendant's motion.[2] The judge thoroughly considered "the nature of the FRO," and qualitatively assessed the Carfagno factors. Defendant did not appeal from the April 22, 2016 order.

C. Defendant's Present Application

Six years later, in January 2022, defendant filed the present motion to dissolve the FRO. In his accompanying certification, defendant claimed he was a sixty-five-year-old chiropractor, who sought to dissolve the FRO to "move beyond this period in [his] life." Without elaborating, defendant claimed the FRO "has tarnished [his] background and it [wa]s very shameful to explain that [he is] registered as a domestic violence perpetrator." Asserting he "own[ed] a

[2] At our request, defendant provided the first motion judge's order, written statement of reasons, and transcript of the hearing.

busy office and work[ed] approximately [ten to eleven] hours per day," defendant claimed the FRO "has the ability to tarnish [his] name professionally."

Defendant further stated: the parties had not communicated with each other since issuance of the FRO, but they attended family functions in August 2019 and August 2021 without incident, which evinced plaintiff's "lack of fear"; he had no "other restraining orders against [him]," was "not suffering from any mental health issues[,] and d[id] not have any substance abuse problems"; and their son was now twenty-five years old. Defendant claimed those changes in circumstances demonstrated plaintiff no longer feared defendant or needed protection from him. Rather, the restraints were "serving as a means of punishment."

Plaintiff did not file a responding brief. Instead, she set forth her position in a February 24, 2022 pro se letter to the motion judge, who had neither entered the FRO nor decided defendant's initial application.[3] Explaining that she had "recently remarried and moved several hours away from [her] previous home" in Warren County, plaintiff stated she did not oppose defendant's motion. However, plaintiff apprised the judge of "the history of this FRO . . . so if

[3] We gather from plaintiff's correspondence that the motion was adjourned because she had not been served.

anything in the future should occur, there is clear documentation that there has been more to the story than the minimization of events implied in [defendant's m]otion." Plaintiff claimed that history included "numerous post[-]judgment accusations and motions . . . many of which were deemed frivolous and later dismissed," and defendant's "direct attempts to jeopardize [her] high school teaching job."

Although plaintiff "decided NOT to oppose [d]efendant's motion this time," she further asserted: "I am still uneasy and do not trust the [d]efendant. I likely will always feel that way, however, reliving old scars and the anguish of going back through old case files is not beneficial to either of us." Plaintiff elaborated:

> This FRO is the last cord keeping me tied to [d]efendant. There are no more financial ties to [d]efendant as his alimony obligations ceased as of my remarriage. I still do not desire to have any type of contact or communication with the [d]efendant, ever. If we should see each other at an event for one of the children or grandchildren, I will still desire to keep a distance and have no communication at all. Frankly, having the adult children around in proximity to [d]efendant has proved to be a safeguard for me in the past.[4]

[4] We glean from the record that the parties had children from other relationships prior to their union.

> To be clear: My decision to leave this [m]otion unopposed is not that I feel comfortable with the [d]efendant, but that it is my sincere hope this will be the very last time we are in court together and we will be done with it, once and for all.

On the March 31, 2022 return date, defendant was represented by counsel and plaintiff appeared pro se. Defense counsel primarily relied on his brief and argued plaintiff's February 24, 2022 letter conveyed her "quasi[-]consent . . . to have the FRO removed." Plaintiff rested on her letter. Neither party requested a plenary hearing. The judge then issued an oral decision denying relief.

Recognizing he had neither presided over the FRO trial nor defendant's first application to dissolve restraints, the motion judge assured the parties he had reviewed the transcripts of those prior hearings and was "fully . . . familiar with the whole history of the case." See N.J.S.A. 2C:25-29(d) (providing the application should be heard by "the same judge who entered the order, or has available a complete record of the hearing or hearings on which the order was based"). Citing the governing law, the judge noted defendant's present contentions were substantially similar to those advanced in his 2016 motion, which had been rejected by the first motion judge. Addressing the Carfagno factors, the judge concluded defendant again failed to demonstrate a substantial change in circumstances that would constitute good cause for dissolution of

restraints. The court entered the March 31, 2022 order without prejudice and this appeal followed.

In his overlapping arguments before us, defendant asserts the motion judge incorrectly assessed the Carfagno factors and, as such, erroneously concluded defendant failed to demonstrate a substantial change of circumstances warranting dissolution of the FRO. Defendant seeks reversal of the judge's order. As an alternate means of relief, and for the first time on appeal, defendant claims a plenary hearing is warranted on disputed issues of fact.

Plaintiff filed a pro se letter of non-participation, stating she "respect[ed] the wisdom of the [motion judge]'s decision" and all prior rulings, and urging us to "review in detail all of the previous decisions regarding this FRO." Addressing defendant's request for a plenary hearing, plaintiff noted "this matter has been over-litigated" and "the material facts and truth have already been thoroughly explored." Accordingly, she "absolutely d[id] not intend to be subjected to any more hearings that require [her] to rehash [the parties'] issues all over again."

II.

Generally, findings by a Family Part judge are "binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154

N.J. 394, 412 (1998). "[T]he Family Part has special jurisdiction and expertise in these matters." Id. at 413. Accordingly, an appellate court should not disturb the trial court's factfinding unless the court is "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." Id. at 412 (quoting Rova Farms Resort, Inc. v. Invs Ins. Co., 65 N.J. 474, 484 (1974)).

The Act is designed to assure victims of domestic violence "the maximum protection from abuse the law can provide." N.J.S.A. 2C:25-18. However, "[t]he Legislature did not intend that every final restraining order issued pursuant to the Act be forever etched in judicial stone." A.B. v. L.M., 289 N.J. Super. 125, 128 (App. Div. 1996). Accordingly, the Act expressly provides that a defendant may move to dissolve or modify an FRO upon a showing of "good cause." N.J.S.A. 2C:25-29(d).

"Generally, a court may dissolve an injunction where there is 'a change of circumstances [whereby] the continued enforcement of the injunctive process would be inequitable, oppressive, or unjust, or in contravention of the policy of the law.'" Carfagno, 288 N.J. Super. at 433–34 (alteration in original) (quoting Johnson & Johnson v. Weissbard, 11 N.J. 552, 555 (1953)). "Only where the movant demonstrates substantial changes in the circumstances that

existed at the time of the final hearing should the court entertain the application for dismissal [of a domestic violence FRO]." Kanaszka v. Kunen, 313 N.J. Super. 600, 608 (1998).

That determination is subject to the trial court's consideration of the non-exhaustive factors set forth in Carfagno. 288 N.J. Super. at 434-35; see also Sweeney v. Honachefsky, 313 N.J. Super. 443, 447-48 (App. Div. 1998). These factors include:

> (1) whether the victim consented to lift the restraining order; (2) whether the victim fears the defendant; (3) the nature of the relationship between the parties today; (4) the number of times that the defendant has been convicted of contempt for violating the order; (5) whether the defendant has a continuing involvement with drug or alcohol abuse; (6) whether the defendant has been involved in other violent acts with other persons; (7) whether the defendant has engaged in counseling; (8) the age and health of the defendant; (9) whether the victim is acting in good faith when opposing the defendant's request; (10) whether another jurisdiction has entered a restraining order protecting the victim from the defendant; and (11) other factors deemed relevant by the court.
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> [Carfagno, 288 N.J. Super. at 435.]

The relevant factors are to be weighed "qualitatively, and not quantitatively." Id. at 442. When applying and weighing the relevant factors, trial courts must remain mindful of the Act's foundational principle so that

domestic violence victims remain assured that they are protected under the law. See N.J.S.A. 2C:25-18. As we explained in Kanaszka: "With protection of the victim the primary objective, the [trial] court must carefully scrutinize the record and carefully consider the totality of the circumstances before removing the protective shield." 313 N.J. Super. at 605.

"The party asking to modify or dissolve the FRO has the 'burden to make a prima facie showing [that] good cause exists for dissolution of the restraining order prior to the judge fully considering the application for dismissal.'" G.M. v. C.V., 453 N.J. Super. 1, 12-13 (2018) (alteration in original) (quoting Kanaszka, 313 N.J. Super. at 608). We have recognized the purpose underlying the movant's burden is to spare the victim from "repeatedly relitigating issues with the perpetrator" because such litigation "can constitute a form of abusive and controlling behavior." Kanaszka, 313 N.J. Super. at 608. Thus, courts should only order a plenary hearing when the "burden is met and there are 'facts in dispute material to a resolution of the motion.'" G.M., 453 N.J. Super. at 13 (quoting Kanaszka, 313 N.J. Super. at 608). "Conclusory allegations should be disregarded." Ibid. (quoting Kanaszka, 313 N.J. Super. at 608).

With those legal principles in view, we turn to defendant's present application. Similar to the first motion judge, the present judge determined all

Carfagno factors, except factors four (defendant has not been convicted of violating the FRO) and ten (no other jurisdiction has issued restraints against defendant) weighed against dissolution of the restraining order. Defendant essentially challenges the motion judge's application of all factors weighed against his application, arguing: plaintiff did not oppose his application (factor one), indicate that she feared defendant (factor two), or demonstrate good faith in opposing the application (factor nine); the parties' son is emancipated, and defendant's alimony obligation to plaintiff has ceased (factor three); and defendant is prejudiced by continued restraints (factor eleven). Defendant further argued the judge failed to make any findings as to whether defendant: continued to use alcohol or drugs (factor five); engaged in any violent acts (factor six); or participated in counseling (factor seven). Nor did the judge address defendant's age and health (factor eight).

As a preliminary matter, we reject defendant's contention that material issues of fact warranted a plenary hearing. Although defendant had not sought a plenary hearing, the motion judge recognized defendant's arguments were conclusory. As one notable example, the judge stated defendant's contention that "the final restraining order has the ability to tarnish his name professionally as a chiropractor" was "just a generalization." Defendant "showed no way,

again, for the second time, how [the FRO] affect[ed] his . . . employment." Nor did plaintiff contest the general "[c]onclusory allegations" set forth in defendant's certification. G.M., 453 N.J. Super. at 13 (quoting Kanaszka, 313 N.J. Super at 608). Simply put, there was no need for a plenary hearing.

Turning to defendant's substantive claims, the record supports the judge's determination that the contentions raised in defendant's present application were "previously advanced to the court in 2016" or were unsupported. For example, defendant's certification made a conclusory statement that his son was twenty-five years old, unmarried, and without children, without elaborating as to the parties' relationship with their son. Similar to his first application, defendant failed to provide documentary evidence to support his allegations that he did "not suffer[] from any mental health issues" or "substance abuse problems."

Nor do we find any error in the judge's conclusion that plaintiff did not consent to dissolve restraints or no longer feared defendant. See Carfagno, 288 N.J. Super. at 437-38 (recognizing when considering whether the victim fears the defendant, the court must look at objective fear, not subjective fear). Referencing plaintiff's submission, the judge stated:

> So, clearly, we . . . don't have a change in circumstances where the plaintiff is no longer in fear of the defendant. If that was the case she could simply enter into a voluntary dismissal, but we don't have that

> here. It's clear that the plaintiff still is in fear of the defendant. She essentially says she doesn't feel comfortable with him, but she's not opposing the motion because she just doesn't want to have to go to court anymore. That does not convey to the court that she's not afraid of defendant. She's saying she wants the final restraining order dismissed so the parties don't have to go to court anymore. She's not saying she wants the FRO dismissed because she doesn't . . . fear [him] anymore; she doesn't need protection. She's just saying I just . . . don't want to go to court anymore. So, nothing regarding factors one and two have changed.

Given our deferential standard of review, we discern no basis to disturb the motion judge's decision, which is supported by the record evidence. See Cesare, 154 N.J. at 412. We conclude, as did the judge, that defendant failed to demonstrate a substantial change in circumstances that would warrant dissolution of the FRO. See Kanaszka, 313 N.J. Super. at 608. To the extent not specifically addressed, defendant's remaining contentions lack sufficient merit to warrant discussion in this opinion. R. 2:11-3(e)(1)(E).

Affirmed.