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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-2675-21

P.A.,

Plaintiff-Respondent,

v.

S.A.,

Defendant-Appellant.

Submitted February 28, 2023 – Decided April 6, 2023

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FV-02-1747-22.

Kates Nussman Ellis Farhi & Earl, LLP, attorneys for
appellant (Michael Farhi, on the briefs).

Harold P. Cook, III, attorney for respondent.

PER CURIAM

This appeal arises from entry of a final restraining order (FRO).
Defendant challenges the trial court rulings and argues it committed reversible

error by disregarding on-going civil litigation between the parties, incorrectly considering certain testimony while disregarding other testimony, and asserts there was no prior history of domestic violence between the parties warranting entry of an FRO. We discern no error by the trial court and affirm.

Plaintiff was seventy-two years old on February 27, 2022, the date of the incident. She had been married to defendant's father for twenty-nine years until her husband's death five months earlier. For the duration of their marriage, the two resided at a two-floor "Cape Cod" style home decedent owned in Fair Lawn. In approximately March 2020, plaintiff and her husband installed an interactive doorbell with audio and visual intercommunication capacities (Ring camera) which streamed video directly to plaintiff's phone. Although plaintiff contended her husband or a family friend installed the doorbell, at trial defendant maintained he installed the device.

In September 2020, approximately one year before his father's death, defendant, and his girlfriend¹ moved into second floor of the Fair Lawn home. When defendant's father passed away in September 2021, defendant and his girlfriend continued occupying the second floor, while plaintiff, his stepmother, continued occupying the ground floor. Following decedent's death, plaintiff and

¹ Defendant's girlfriend was not a party to the proceedings, nor did she testify.

defendant became opposing parties in litigation involving a will contest challenging the type and duration of estate decedent left to plaintiff regarding the Fair Lawn home. The litigation was ongoing at the time of the FRO hearing although it is not clear from the record whether that litigation has since resolved.

On February 27, 2022, defendant unilaterally removed the Ring camera. The same day, plaintiff filed a complaint and obtained a temporary restraining order. At the FRO hearing, plaintiff testified the Ring camera allowed her to virtually monitor who came and went from the house and provided her with a sense of safety. She testified that on the day of the incident, defendant removed the Ring camera without asking her, leaving behind only the mounting plate where the device used to be, and defendant never replaced it.

Defendant testified he removed the Ring camera because he had purchased a new and improved doorbell the day prior and was planning on replacing the old one in anticipation of his plans to travel out-of-state. Defendant admitted he never consulted with plaintiff or obtained her permission to remove the Ring camera, nor did he present a receipt at the FRO hearing to substantiate his testimony regarding his intent to replace the device. He also did not explain why he did not immediately replace the old device with the new one if he

purchased it prior to removing the old device. At trial, the new device had still not been installed.

The trial court made findings of fact, credibility, and law. Although the trial court found both parties had an interest in the outcome of the FRO hearing because of the will contest, it found only plaintiff was credible with respect to the reasonableness of her testimony. The court found defendant committed the predicate act of harassment pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-19(a)(13) and N.J.S.A. 2C:33-4. The court further found an FRO was necessary for plaintiff's protection pursuant to Silver v. Silver, 387 N.J. Super. 112, 128 (App. Div. 2006).

Our review of an FRO is limited. See C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020). To find whether the entry of an FRO is appropriate, the trial court must "'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.'" D.M.R. v. M.K.G., 467 N.J. Super. 308, 322 (App. Div. 2021) (quoting Silver, 387 N.J. Super. at 125). The PDVA defines "domestic violence" by listing nineteen predicate acts and according to each act the definition it is proscribed in the criminal code. N.J.S.A. 2C:25-19(a).

In matters involving domestic violence, the findings of a trial court "are binding on appeal when supported by adequate, substantial, credible evidence." T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App. Div. 2017) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). "We accord substantial deference to Family Part judges, who routinely hear domestic violence cases and are 'specially trained to detect the difference between domestic violence and more ordinary differences" C.C. v. J.A.H., 463 N.J. Super. at 428 (quoting J.D. v. M.D.F., 207 N.J. 458, 482 (2011)). "Deference is especially appropriate '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)). Because the trial court is better positioned to evaluate witness credibility, qualifications, conclusions on credibility are given great weight unless clearly lacking in reasonable support. Ibid.

However, questions of law "are not entitled to that same degree of deference if they are based upon a misunderstanding of the applicable legal principles." R.G. v. R.G., 449 N.J. Super. 208, 218 (App. Div. 2017) (quoting N.T.B. v. D.D.B., 442 N.J. Super. 205, 215 (App. Div. 2015)). Findings and conclusions of law are, therefore, reviewed de novo. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016).

The trial court correctly determined defendant committed the predicate act of harassment. Pursuant to N.J.S.A. 2C:25-19(a)(13) and N.J.S.A. 2C:33-4(c) the court found defendant removed the Ring camera without plaintiff's permission, did not reinstall it when she requested, and did not replace it with a newer device. The court found defendant's testimony regarding his reason for removing the device not credible.

A finding that the perpetrator acted with intent "may be inferred from the evidence presented" and "[c]ommon sense and experience may inform that determination." State v. Hoffman, 149 N.J. 564, 577 (1997). It may also be inferred from the parties' history. J.D., 207 N.J. at 483, 487.

In finding defendant intended to harass plaintiff, the trial court noted the ongoing will contest between the parties, and the "safety net" provided by the Ring camera to seventy-two-year-old plaintiff, who lived on the first floor of the shared residence. The court stated, "taking down the item in and of itself is not harassment," but observed failing "to put another one up immediately and to connect the plaintiff's phone to it, when this is something she's been using for three years" was done with the intention to alarm or seriously annoy plaintiff.

Defendant relies solely on N.B. v. T.B., 297 N.J. Super. 35 (App. Div. 1997) for the proposition the trial court committed reversible error entering an

FRO because there was on-going litigation involving the rightful owner of the Fair Lawn home following decedent's death. This reliance is misplaced. In N.B., the reviewing court was constrained to remand where the trial court failed to make findings about the defendant's intent to harass by engaging in a course of alarming conduct. 297 N.J. Super. at 41. The court held "the absence of [those] findings" precluded a finding of a predicate act of harassment. Ibid. The trial court here made the very determinations lacking in N.B., rendering N.B. inapposite and limiting our review.

Moreover, an FRO granting exclusive temporary physical possession to real property is not legally dispositive or even applicable to a legal dispute regarding title of real property. See J&M Land Co. v. First Union Nat'l Bank ex. rel. Meyer, 166 N.J. 493, 506 (2001). The argument that the Family Part predetermined the will contest by entering the FRO which granted exclusive temporary physical possession of the residence to plaintiff misstates the law as an FRO is not determinative of title to real property. See generally R. 5:1; see also N.J.S.A. 3B:1-1 to :31-84 (estate administration); N.J.S.A. 2A:35-1 to -3 (actions to determine rights in real property); N.J.S.A. 46:3-1 to -33 (estates and interests in real property); N.J.S.A. 2A:56-1 to -14 (partition statutes).

After finding a predicate act pursuant to N.J.S.A. 2C:25-19(a), "the judge must determine whether a restraining order is necessary to protect the plaintiff from future danger or threats of violence." D.M.R., 467 N.J. Super. at 322. "Although this second determination — whether a domestic violence restraining order should be issued — is most often perfunctory and self-evident, the guiding standard is 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), to protect the victim from an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 127.

N.J.S.A. 2C:25-29 provides the court shall consider but not be limited to consideration of six factors, including the previous history of domestic violence between the parties. "[W]hether the victim fears the defendant" is an additional factor the trial court may consider. G.M. v. C.V., 453 N.J. Super. 1, 13 (App. Div. 2018).

The trial court found there was no prior history of domestic violence between the parties. However, noting the "Cape Cod" style of the home and the living arrangement of the parties whereby the parties were forced to have frequent interactions in close living quarters, the trial court reasoned there was animosity between the parties as a result of the will contest. The trial court

found the elderly plaintiff relied on the Ring camera for security, and defendant's act of removing it was an act of abuse and control because of the parties' domestic relationship. Defendant argues his actions were not egregious, and the trial court improperly considered plaintiff's testimony regarding prior instances where she was fearful of the defendant.

As noted, prior history of domestic violence between the parties is a factor the court must consider but not necessary for issuance of an FRO. Where a predicate act has been found to have occurred, the analysis proceeds to whether an FRO is necessary "to protect the victim from an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 127. Regarding plaintiff's testimony about her fear of defendant, the court noted it was limiting its consideration of such testimony for state of mind purposes only. N.J.R.E. 803(c)(3).

Defendant's explanations for his behavior were not found to be credible and are not sufficient grounds for reversal given our deferential standard of review. We are bound by the factual findings made by the trial court where they are supported by record evidence. The trial court had the opportunity to elicit testimony and distinguish between objective harassment and mere domestic contretemps and found only plaintiff was credible in her testimony. J.D., 207

N.J. at 482. We have no basis to second guess the trial court's credibility and factual findings. Those findings were supported by the evidence in the record, and we affirm.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION