

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2491-21

S.N.,

Plaintiff-Respondent,

v.

M.G.R.,

Defendant-Appellant.

Submitted June 1, 2023 – Decided June 20, 2023

Before Judges Enright and Fisher.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex County,
Docket No. FV-12-1296-22.

Mazraani & Liguori, LLP, attorneys for appellant
(Joseph M. Mazraani, of counsel and on the brief).

Parker, Ibrahim & Berg, LLP, attorneys for respondent
(Susan E. Radzinski, on the brief).

PER CURIAM

Defendant M.G.R.¹ appeals from a February 11, 2022 final restraining order (FRO) entered in favor of plaintiff S.N. under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. We affirm.

I.

The parties were married for over four years and have no children together. On December 13, 2021, plaintiff filed a complaint and obtained a temporary restraining order (TRO) against defendant, based on allegations he committed the predicate acts of: sexual assault, N.J.S.A. 2C:14-2(c)(1); assault, N.J.S.A. 2C:12-1; harassment, N.J.S.A. 2C:33-4; and false imprisonment, N.J.S.A. 2C:13-3. She amended her TRO complaint several weeks later to include allegations of criminal sexual contact, N.J.S.A. 2C:14-3, and contempt, N.J.S.A. 2C:25-19(a)(17).

During a two-day FRO trial, plaintiff testified about the various allegations in her amended TRO complaint. She initially stated defendant forced her to have sexual relations with him when the parties were on vacation in January 2021. Plaintiff also testified that during an argument in the parties' home in May 2021, she was in a closet when defendant threw her phone at her,

¹ We use initials to protect plaintiff's privacy. R. 1:38-3(d)(10).

hitting her foot. According to plaintiff, after she briefly left the room, defendant told her to "forgive" him and said the couple should "go back to bed." Plaintiff testified that once the parties were in bed, defendant "wanted to have sex with" her. As she attempted "to push him away," he grabbed her hands, lifted her arms to her head, and "put his leg between [her] legs," "forcing himself on" her.

Plaintiff also testified that on November 13, 2021, when she was angry with defendant, she "went to sleep . . . on the closet floor." Defendant entered the closet and "said he wanted to talk." Plaintiff told him she "no longer wanted to be with him because of the way . . . he treated [her and] the mistreatment [she] got from him." In response, defendant "came onto" plaintiff, "lung[ed] himself toward" her and "got physical." She stated defendant was able to force himself on top of her by grabbing her hands while she "was laying on the floor" of the closet. Plaintiff further testified that although the parties had sexual relations, "it was forced because he wanted to have sex with [her] and [she] didn't want to do that."

Additionally, plaintiff testified that in or "about mid-November 2021," when the parties were watching television and defendant was "calm," she told him she wanted him to "change the way" he treated her, given "the mistreatment [she was] receiving from" him. Defendant told her she was "just crazy" and

"saying things that [were not] true." When plaintiff stood up to leave the room, defendant "came at" her, grabbed her by both wrists, and told her, "You're not going anywhere." According to plaintiff, defendant also threw her on the parties' bed, continued to hold her by her wrists "[f]or about five minutes," and repeated she was "not going to get out." Plaintiff stated later that night, defendant forced her to engage in sexual intercourse with him by ripping off her underwear, grabbing her hands, and opening her legs "with one of his legs" before "penetrat[ing]" her.

Finally, plaintiff testified that approximately two weeks after she obtained her TRO in December 2021, she saw defendant in his car by her driveway. She stated defendant had been served with the TRO by this point.

Defendant denied each of plaintiff's allegations when he testified. He also called a co-worker to testify on his behalf. The witness refuted plaintiff's testimony that she saw defendant in his car near her driveway in violation of the TRO in December 2021.

At the conclusion of the trial, the judge allowed counsel to make their closing arguments before he outlined the statutory definitions of each of the predicate acts set forth in plaintiff's amended TRO complaint. The judge found defendant committed the predicate acts of sexual assault and criminal sexual

contact on May 18, and November 13, 2021. However, he concluded that based on the parties' "conflicting testimony" and certain portions of plaintiff's testimony, which he deemed "vague," plaintiff failed to prove "by a preponderance of the evidence" that any other predicate acts of domestic violence occurred.

Additionally, the judge found defense counsel "erroneously" advanced the argument in his summation that plaintiff was not credible because she was "crying throughout" her testimony. The judge concluded plaintiff was not "crying throughout for two days. She [was] crying at different points of time when the testimony that . . . she was providing or that she was hearing was particularly difficult for her." He added, "I don't find . . . plaintiff was crying for my benefit. I find that plaintiff was crying because of . . . the events that transpired." Turning to defendant's testimony, the judge stated he "had an opportunity to review and observe defendant," and found "at times," "his testimony [was] somewhat strident in factual denial."

Regarding plaintiff's testimony about the May 18 incident, the judge noted "defendant ha[d] a blanket denial of all acts of domestic violence," but he admitted plaintiff went "into the closet at times. Apparently to sleep on the floor or . . . be[] on the floor." Bearing that in mind, the judge found plaintiff's

description of the events on May 18 "was sexual assault." Further, he stated, "There [was] no consent to do that and it was in the nature that [defendant] certainly was in control." The judge also found "the Alpha dog in the relationship certainly was defendant."

Turning to the November 13, 2021 incident, the judge concluded plaintiff was in the parties' closet again when defendant approached her and after she told defendant she did not want to be with him,

[he got] on top of her. . . . She d[id] not consent to having sex and they ha[d] sex. Both times[, in May and November 2021,] [she felt] extremely bad about it.

So, I do find . . . defendant did, in fact, commit both sexual assault and criminal sexual contact against . . . plaintiff on . . . May 18[] of 2021 and November 13[] of 2021. . . . I do find that there was actual domestic violence. I don't find the other acts occurred.

After making these findings, the judge spoke directly to defendant, telling him, "Yes, [sir,] on at least two instances, you sexually assaulted your wife. That's domestic violence."

After finding defendant committed the predicate acts of sexual assault and criminal sexual contact, the judge acknowledged he then needed to determine if plaintiff required an FRO for her protection. In that regard, he stated it was

incumbent on the court "to look to see if there's been [a] past history" of domestic violence. He added:

Certainly, an incident of sexual assault [i]n May and in November indicates to the court that there is an ongoing need for protection. It's also instructive that one incident in and of itself that can be considered viol[ent] in nature, as is . . . sexual assault and . . . criminal sexual contact, is enough [to establish the need] for the protection of the plaintiff.

But here, . . . there's been a pattern at least twice that [plaintiff's] proven to the [c]ourt by the preponderance of the evidence . . . [t]hat it is necessary for her protection that I issue a final restraining order against [defendant] and I'm going to do that at this time.

Accordingly, the judge granted plaintiff's request for an FRO.

II.

On appeal, defendant argues the judge "failed to articulate sound reasoning for his findings of fact and the FRO must be vacated." He also contends the judge's "findings of fact concerning the May 18, . . . and November 13, 2021, incidents were woefully inadequate," and the judge did not express "any basis for finding [p]laintiff credible other than the fact . . . she mentioned a closet[,] which defendant did not dispute . . . existe[d]." We disagree. Findings by a trial court are generally binding on appeal, provided they are "supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154

N.J. 394, 411-12 (1998) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)); see also Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016). We defer to the trial court's findings unless those findings appear "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, 65 N.J. at 484).

We owe a trial court's findings deference especially "when the evidence is largely testimonial and involves questions of credibility." Ibid. (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). Further, we "accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters." Harte v. Hand, 433 N.J. Super. 457, 461 (App. Div. 2013) (quoting Cesare, 154 N.J. at 412). However, "all legal issues are reviewed de novo." Ricci v. Ricci, 448 N.J. Super. 546, 565 (App. Div. 2017) (citing Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)).

It also is well settled Rule 1:7-4(a) requires a trial court to "find the facts and state its conclusions of law thereon in all actions tried without a jury." The trial court also must generally state its credibility findings even when they "may not be susceptible to articulation in detail." Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 1:7-4(a) (2023) (citing State v. Locurto, 157 N.J. 463,

474 (1999)). But a trial court's credibility findings need not be set forth in detail so long as "the reasons supporting its determinations of the witnesses' relative credibility may be inferred from, and are well-supported by, the account of the facts and witnesses' testimony presented in its decision." Locurto, 157 N.J. at 472-74. When adequately supported, those determinations are entitled to deference since they "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." Id. at 474 (citation omitted).

In deciding whether to grant a final restraining order, a trial court must engage in a two-step inquiry. Silver v. Silver, 387 N.J. Super. 112, 125 (App. Div. 2006). The court must first determine whether the plaintiff proved, "by a preponderance of the credible evidence," that the defendant committed one of the predicate acts listed in the PDVA. Ibid. Second, if a trial court finds the defendant committed a predicate act, it must decide whether to issue a restraining order. Id. at 126-27. The court should issue a restraining order if it is necessary to protect a victim from further abuse. Id. at 127.

Although a determination on the second Silver prong "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),² to protect the victim from an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 127. This "second [Silver] prong . . . requires the conduct [be] imbued by a desire to abuse or control the victim." R.G. v. R.G., 449 N.J. Super. 208, 228 (App. Div. 2017) (citing Silver, 387 N.J. Super. at 126-27). Whether a defendant's conduct was designed to abuse or control the plaintiff should be assessed in the context of the "entire relationship between the parties," Cesare, 154 N.J. at 405, so the court may look to other relevant factors not included in the statute, see N.T.B. v. D.D.B., 442

² N.J.S.A. 2C:25-29 provides in part:

The court shall consider but not be limited to the following factors:

- (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; and
- (6) The existence of a verifiable order of protection from another jurisdiction.

N.J. Super. 205, 223 (App. Div. 2015) (noting the statutory factors are "nonexclusive").

Sexual assault and criminal sexual contact are two of the predicate acts listed in the PDVA. See N.J.S.A. 2C:25-19(a)(7) and (8). Pursuant to N.J.S.A. 2C:14-2(c)(1), a person is "guilty of sexual assault if the actor commits an act of sexual penetration with another person" "using coercion or without the victim's affirmative and freely-given permission." And under N.J.S.A. 2C:14-3(b), a person is guilty of criminal sexual contact if the actor "commits an act of sexual contact with the victim under any of the circumstances set forth in . . . [N.J.S.A.] 2C:14-2(c)."

Here, the judge considered the demeanor of the witnesses, including that: plaintiff cried during certain testimony she provided and heard on defendant's behalf; defendant "strident[ly]" denied plaintiff's allegations of wrongdoing; defendant demonstrated he was "the Alpha dog in the relationship," and "certainly was in control" over plaintiff when he sexually assaulted her on May 18. The record also demonstrates the judge implicitly credited plaintiff's testimony over defendant's "blanket denial" about the May 18 and November 13, 2021 incidents, finding "there was actual domestic violence" and defendant "commit[ted] both sexual assault and criminal sexual contact against the

plaintiff" on those dates.

It is also evident the judge believed plaintiff's testimony over that of defendant by finding: the November 13 incident was "similar to [the incident on] May 18th of 2021"; "there's been a pattern" of abusive behavior by defendant, given plaintiff proved "at least twice . . . by [a] preponderance of the evidence" defendant committed the predicate acts of sexual assault and criminal sexual contact against her. Because these findings are supported by competent credible evidence, they are entitled to our deference. Our conclusion is further bolstered by the fact the judge assessed the parties' contradictory testimony regarding plaintiff's other allegations of domestic violence, and found she failed to satisfy her burden under Silver as to those allegations.

We also have no basis to disturb the judge's findings on the second Silver prong. As the judge properly noted, certain predicate acts, including sexual assault, are violent in nature, making the need for a final restraining order "self-evident." Silver, 387 N.J. Super. at 127. Indeed, the need for an order of protection can be justified based on "one sufficiently egregious action." Cesare, 154 N.J. at 402. Governed by these principles and considering the judge found defendant twice committed sexual assault and criminal sexual contact against plaintiff in May and November 2021, we perceive no basis to second-guess his

finding that plaintiff required an FRO to protect her from further abuse by defendant.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION