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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

M.F., Plaintiff–Respondent,
v.
M.B., Defendant–Appellant.

A-0905-13T3
|
Argued Oct. 7, 2014.
|
Decided Oct. 22, 2014.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Burlington County, Docket No. FV–03–284–14.

Attorneys and Law Firms

Jeffrey M. Pollock argued the cause for appellant (**Fox Rothschild** LLP, attorneys; Mr. **Pollock**, of counsel and on the brief; Eliana T. Baer, on the brief).

Frances A. Hartman argued the cause for respondent (Hartman Group, LLC, attorneys; Ms. Hartman, of counsel and on the brief).

Before Judges FISHER, NUGENT and ACCURSO.

Opinion

PER CURIAM.

***1** The parties to this action are both attorneys. They lived together and worked in the same law office until their relationship's disintegration, a glimpse of which is revealed here.

Plaintiff M.F. commenced this action, pursuant to the Prevention of Domestic Violence Act of 1991 (the Act), *N.J.S.A.* 2C:25–17 to –35, alleging defendant M.B. engaged in a course of assaultive and harassing conduct. The judge found most of the events of which plaintiff complained were only "ordinary domestic contretemps,"[1] but one particular aspect—during which defendant repeatedly shouted "give me the fucking keys" while opening a mudroom door so as to cause it to come into contact with plaintiff—constituted harassment that warranted entry of a final restraining order (FRO), from which defendant appeals, arguing:

> I. THE TRIAL COURT'S CONCLUSION THAT THE DEFENDANT COMMITTED THE PREDICATE ACT OF HARASSMENT WAS AGAINST THE WEIGHT [O]F THE EVIDENCE AND CONSTITUTED AN IMPROPER APPLICATION OF *N.J.S.A.* 2C:33–4.
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> II. THE TRIAL COURT FAILED TO SUFFICIENTLY CONCLUDE THAT THE DEFENDANT ACT [ED] WITH THE INTENT REQUIRED TO SUPPORT A FINDING OF "PURPOSE TO HARASS" UNDER *N.J.S.A.* 2C:33–4.
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> III. THE TRIAL COURT FAILED TO CONDUCT A PRINCIPLED ANALYSIS THAT A RESTRAINING ORDER WAS NECESSARY TO PROTECT THE PLAINTIFF FROM DANGER OR FURTHER ACTS OF ABUSE, ITS FINDINGS CANNOT STAND.

We find insufficient merit in these arguments to warrant discussion in a written opinion, *R.* 2:11–3(e)(1)(E), and add only the following comments.

Briefly, the record reveals the parties commenced a dating relationship in or around 2006 that led to plaintiff working as an attorney in defendant's law office. By 2008, they were living together in defendant's home, title to which was changed to a joint tenancy. According to the judge's findings, defendant's attitude changed in June 2013. As defendant "became more erratic," their romantic and business relationships ended and their home life was "like walking on egg shells." The judge found there was "extraordinary tension in [the] household" that summer as the parties disputed plaintiff's employment status and the disposition of the jointly-titled residence.

Plaintiff filed her complaint and obtained a temporary restraining order on August 16, 2013,[2] regarding occurrences in the home in the preceding few days; she alleged both physical abuse as well as harassing conduct. On August 28, 2013, the judge heard extensive testimony from the parties, as well as plaintiff's twenty-one-year-old son. The judge later rendered an oral decision and entered the FRO under review.

In considering defendant's arguments, we start with the premise that an appellate court must defer to a trial judge's

factual findings when they are supported by adequate, substantial and credible evidence, particularly when, as here, the evidence is largely testimonial and turns on the credibility of the witnesses; appellate courts also give additional deference to family court judges, who possess "special expertise" in this field. *See Cesare v. Cesare,* 154 *N.J.* 394, 411–13 (1998); *N.J. Div. of Child Prot. & Permanency v. J.A.,* 436 *N.J.Super.* 61, 67 n.2 (App.Div.2014). Here, the judge repeatedly mentioned she found plaintiff credible. The judge had the opportunity to observe and hear the witnesses testify and, thus, a better perspective as to where the truth lies. We, therefore, will not disturb or second-guess the judge's factual findings.

***2** We next consider the facts relevant to the judge's finding that defendant engaged in an act of domestic violence. It is well-established that to obtain an FRO, the plaintiff must prove a relationship falling within the Act's scope, a predicate act, and an existing need for protection. *See, e.g., S.K. v. J.H.,* 426 *N.J.Super.* 230, 232 (App.Div.2012). There is no dispute that the parties' relationship met the first requirement; they were members of the same household. *N.J.S.A.* 2C:25–19(d). The pivotal issues concerned whether defendant committed a predicate act—something more than "ordinary domestic contretemps"—and whether plaintiff was in need of protection through the issuance of a restraining order.

Although plaintiff alleged and testified to a series of events, the judge rejected her contention that an assault occurred, finding there was either no physical contact or merely inadvertent or unintended contact.[3] The judge, instead, considered whether the events credibly attested to by plaintiff and her son constituted harassment within the meaning of *N.J.S.A.* 2C:33–4. The judge described defendant's general conduct in the household in or around the dates in question in the following way:

> Plaintiff in her credible testimony spoke of defendant's pattern of playing loud music late at night or early morning, that she was able only to sleep several hours at night. She further testified that she planned a trip to California, canceled it due to defendant's threats to throw her belongings away and threats that if she should come to the office her items would not be there. Threatened to file a domestic violence complaint, the defendant, that is, against her and there were also allegations of charges of embezzlement, jail.
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> [Plaintiff] attested to [defendant's] anger and threats and escalation of same. This conduct was somewhat corroborated by her son's credible testimony that the defendant came home at seven and sometimes left and returned about 11 or the latest at midnight, made noise in the kitchen, talked on his cell phone, played loud music, would argue with [plaintiff], was yelling, yelling was going on.
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> In addition, the judge made findings that by numerous text messages or otherwise, defendant threatened plaintiff's "exclusion from the house and the office." The judge, however, concluded that she was "left without ... sufficient evidence with respect to the nature or the tenor of these communications," and ultimately determined that "I don't consider that to be domestic violence."

In short, the judge determined these earlier events were not sufficient to reach beyond the "ordinary domestic contretemps" standard announced in *Corrente* and *Peranio.* But it is important to emphasize that the judge found these things occurred, implicitly providing context for the judge's finding of harassment.[4] In that regard, the judge ultimately determined that, on August 14, the following occurred:

> ***3** [D]efendant was outside of the house. [Plaintiff] was attending the dogs. The oldest dog was choking. Defendant was asking for the key to the office. Plaintiff said she had been locked out of that office for over a week and she indicated that she was uncertain as to whether or not she had that key. Defendant was persistent, con-tinued to yell at her, asking ["]where is the F-ing key.["] He wanted and demanded that key at that moment. Plaintiff brought the choking dog into the mud room.
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> ....
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> Defendant opened the door, according to plaintiff, kept yelling about the key. He wanted ["]the F-ing key. ["] ... [Plaintiff] alleges that [defendant] stood over her according to her screaming about the key. He wanted the key. Kept repeating it over and over. He wanted the key. Now, quote, are you ready to give me the key? She says he thrust the door into her body three or four times. I don't accept that three or four times. I accept that he opened the door, thrust the door into the plaintiff.[5]

The judge found there was no assault, because there was "no apparent intent on the part of the defendant to do so," but the judge determined that defendant's conduct—his "continuous

outraging demand for the key ..., his unrelenting diatribe regarding that key, his consistent verbal battering, outrageous demand in my view"—constituted harassment.

Defendant contends that domestic violence "is a term of art which describes a pattern of abuse and controlling behavior," citing *Corrente.* This is not entirely correct. We only held in *Corrente* that "ordinarily" domestic violence represents "more than an isolated aberrant act." *Corrente, supra,* 281 *N.J.Super.* at 250. A single act may often be sufficient.

But defendant's argument that no pattern was proven also misapprehends the judge's findings. Although the judge found the earlier conduct represented "ordinary domestic contretemps," she nevertheless found that those events occurred. Consequently, we do not examine the mudroom event of August 16 as, in defendant's words, an "isolated aberrant act" but as part of a course of conduct that finally ripened into domestic violence.

The argument that the judge's findings do not clearly identify the part of the harassment statute upon which the judge relied has some merit, but we do not find that uncertainty fatal to the FRO. In reviewing such a ruling, we may be limited in our examination of the fact findings, but not with the legal conclusions drawn from the found facts. Implicit in the judge's findings is her determination that defendant had engaged in a course of conduct that not only had all household members "walking on egg shells" but also was highly antagonistic toward plaintiff. Although the earlier parts of that course of conduct, according to the judge, could not be viewed as anything more than "ordinary domestic contretemps" when viewed in isolation, the judge implicitly concluded that this series of events achieved an alarming or seriously annoying stage with the mudroom incident. *See N.J.S.A.* 2C:33–4(c). Moreover, even if the judge's findings are compared to the requirements of *N.J.S.A.* 2C:33–4(a), we find no cause to second-guess the judge's conclusion that defendant's repeated and hostile demand for the keys, while pushing the mudroom door into plaintiff, was "a communication" that would "likely ... cause annoyance or alarm."

***4** We lastly reject defendant's argument that the judge "failed to make the requisite finding" that plaintiff "needed the protection of a restraining [o]rder." *See Silver v. Silver,* 387 *N.J.Super.* 112, 126–27 (App.Div.2006) (holding that "the commission of one of the enumerated predicate acts of domestic violence [does not] automatically mandate[ ] the entry of a domestic violence restraining order"; the judge must also determine "whether the court should enter a restraining order that provides protection for the victim"). The judge found that plaintiff required protection not only because of the existing circumstances but also because of those circumstances as viewed through the prism of a past assault:

> [T]here was one incident of prior history in this matter ... in July of 2012 at the shore when there was an argument between the parties and apparently there was an inadvertent touching of defendant's foot and as a result with a closed fist [defendant] made contact with [plaintiff's] shoulder and then later apologized. That in my view constitutes a prior incident.
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> In addition to that, having considered the totality of the circumstances here, the fact that the parties were having a deteriorating relationship and the fact that I find that harassment occurred on the date that I've indicated and this incident of prior history, I find that the plaintiff has to be protected from immediate harm in this matter.

Silver does not mandate extensive, detailed findings on this subject. "[M]ost often" a determination of whether a restraining order is required is "perfunctory and self-evident." *Id.* at 127. Having found a prior act of physical abuse, together with the course of conduct described in the judge's findings, there were ample reasons for the judge to conclude that the FRO was warranted. We will not second-guess the judge's determination on this point. *Cesare, supra,* 154 *N.J.* at 411–13.

Affirmed.

All Citations

Not Reported in A.3d, 2014 WL 5343675

Footnotes

1 Referring to then Appellate Division Judge (later Justice) Long's comments in *Corrente v. Corrente,* 281 *N.J.Super.* 243, 250 (App.Div.1995) and *Peranio v. Peranio,* 280 *N.J. Super .* 47, 57 (App.Div.1995), that family judges should be careful not to convert "ordinary domestic contretemps" into a basis for entry of a restraining order.

2 Approximately a week before this action's commencement, the parties and their attorneys participated in a conference in an attempt to settle their disputes.

3 The judge analyzed the evidence regarding an alleged incident on August 5 in the following way:

> Plaintiff asserts that defendant came out of the [laundry] room with a bunch of laundry in his hand, that she told him to leave it for the cleaning person, that she shut the door and defendant purposely said, quote, you want to see how fast you're going to go through that door? [Plaintiff] contends he threatened to push her into the door. She suffered as she says a blow to the back of her head and elbow. He replied, defendant that is, according to the plaintiff, why don't you call the police, end quote. Defendant counters that it didn't happen that way, that he did not touch her, he did not get near her. Having evaluated ... the testimony of both parties, I conclude that there is insufficient evidence to conclude that an assault took place or more importantly that there was evidence of an intent to assault.

4 For that reason, we reject defendant's attempt to ignore these events and his argument that we must reverse because, in his words, this appeal presents nothing more than whether a "single, isolated statement 'Give me the fucking keys' " may constitute anything more than "ordinary domestic contretemps."

5 We assume by this that the judge meant the door came into contact with plaintiff only once.

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