SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1178-04T5

J.C.,

Plaintiff-Respondent,

v.

J.M.,

Defendant-Appellant.

Submitted May 30, 2006 – Decided July 12, 2006

Before Judges Parrillo and Holston, Jr.

On appeal from the Superior Court of New Jersey, Chancery Division, Mercer County, Docket No. FV-11-1455-04.

J.M., appellant pro se.

Szaferman, Lakind, Blumstein, Blader & Lehmann, attorneys for respondent (Brian G. Paul, of counsel and on the brief).

PER CURIAM

This is a domestic violence case. Defendant, J.M., appeals from the entry of a final restraining order against him. We affirm.

Plaintiff, J.C., and defendant had a five-year dating relationship, which ended on January 16, 2004, when plaintiff

told defendant it was over. However, for about one month thereafter, defendant persisted in leaving plaintiff numerous voicemail and e-mail messages to which she did not respond. Defendant's attempts to communicate with plaintiff continued at scattered intervals until April 23, 2004, forcing plaintiff to change her telephone number.

During April 2004, defendant twice appeared uninvited at plaintiff's place of employment in Princeton. The first time, on April 23, 2004, defendant handed plaintiff a written letter; the second time, on April 30, 2004, he persuaded her to talk with him. The two then went to a Denny's restaurant down the street where plaintiff informed defendant that she had read the letter, that there was nothing in it she liked, and that she wanted nothing to do with him.

That conversation did not deter defendant. On May 3, 2004, he again appeared at her place of employment, waiting for her in the parking lot. When plaintiff observed defendant, she got into her car and immediately sped away, only to be pursued by defendant in his car all the way to Bordentown. During the chase, defendant drove alongside plaintiff, "screaming things out his window at [plaintiff] and trying to get [plaintiff] to pull over." Defendant's pursuit was interrupted only when a police officer intervened. However, when she returned to her

home in Pennsylvania, defendant was there waiting for her. He left only when a neighbor, to whom plaintiff went for assistance, requested that defendant do so.

The next day, May 4, 2004, a Falls Township police officer advised defendant that plaintiff wanted nothing to do with him, and further instructed that defendant would be arrested if he contacted her again. Despite this warning, at 10:00 p.m. that same evening, defendant left a three-page, single spaced letter filled with coarse language on plaintiff's vehicle. In addition to the name calling and vulgar language, defendant's letter warns plaintiff, "- this treatment of me doesn't come for free - you have to FEEL THE PAIN, TOO!" Plaintiff found the letter threatening.

The very next day, May 5, 2004, plaintiff filed a domestic violence complaint alleging that defendant had harassed her by: (1) leaving a threatening note on her vehicle at work; (2) chasing her in her vehicle after she left work; and (3) continuing to contact her via telephone, letters and e-mail after she ended the relationship on January 16, 2004. That same day, plaintiff obtained a temporary restraining order (TRO) against defendant.

At the FRO hearing on July 20, 2004, defendant admitted repeatedly telephoning and e-mailing plaintiff over a period of

several months, without receiving any response from her; that he pursued plaintiff in his car from Princeton to Bordentown, and then, after a police officer interrupted his pursuit, appeared uninvited at her home; and that he left a three-page letter on plaintiff's vehicle immediately after receiving a telephone call from a police officer instructing him to have no further contact with plaintiff. At the conclusion of the evidence, the trial judge found that defendant had committed an act of domestic violence by harassing plaintiff, N.J.S.A. 2C:25-19(a)(13); N.J.S.A. 2C:33-4, and accordingly, entered a FRO against defendant. Finding the May 4, 2004 letter threatening in nature, the trial judge concluded:

> Because these things that are going on here, all right, are harassing in nature. I'm not saying there are terroristic threats in this letter, which are really threats to kill or things like that, but when people start talking about things like, "Fuck you too rotten bitch", I mean, this is not the language of love obviously. Okay? And I don't want to read all of this into the record, as I said three times already, all right, because it speaks for itself.
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> This is the kind of conduct that I find causes people to feel annoyed, seriously, all right? When people follow them down the road in the car, when -- from the place of work to someplace several miles, good miles away, that behavior doesn't make any sense. All right? It has no useful purpose, it has to be harassing in nature.

Defendant later moved to "[r]econsider, dissolve, or amend the [FRO]," which relief was denied.

On appeal, defendant raises the following issues:

I. THE HEARING WAS NOT HELD WITHIN TEN DAYS OF THE FILING OF THE PLAINTIFF'S COMPLAINT, IN VIOLATION OF N.J.S.A. 2C:25-29 a, CAUSING UNDUE BURDEN FOR THE DEFENDANT AND, THEREFORE, THE HEARING SHOULD HAVE PROCEEDED WITH COMPENSATORY LEGAL RELIEF FOR THE DEFENDANT, OR THE CASE SHOULD HAVE BEEN DISMISSED.

II. THE COURT DENIED THE DEFENDANT'S REQUEST TO ENTER A TIME-LINE OF RELEVANT EVENTS LEADING-UP TO THE PLAINTIFF'S COMPLAINT, DENYING THE DEFENDANT A FAIR OPPORTUNITY TO LAY-OUT AND ARGUE THE CASE IN CHRONOLOGICAL ORDER, AND DENYING THE DEFENDANT A FAIR CHANCE TO REBUT THE TIME-LINE OF EVENTS AS PRESENTED BY THE PLAINTIFF, WHICH PLACED THE DEFENDANT AT A DISADVANTAGE AT THE HEARING AND, THEREFORE, THE CASE SHOULD BE DISMISSED OR REHEARD.

III. THE COURT FAILED TO CONSIDER THE PREVIOUS HISTORY OF DOMESTIC VIOLENCE BETWEEN THE PLAINTIFF AND THE DEFENDANT IN MORE THAN CASUAL TERMS, AGAINST THE SPIRIT OF N.J.S.A. 2C:25-29 a (1), PLACING THE DEFENDANT AT A DISADVANTAGE IN BEHAVIORAL ASSESSMENTS MADE BY THE COURT AND, THEREFORE, THE DEFENDANT SHOULD NOT HAVE BEEN PLACED ON THE DOMESTIC VIOLENCE CENTRAL REGISTRY, AND THE CASE SHOULD BE DISMISSED OR REHEARD.

IV. THERE IS A POSSIBLE VIOLATION OF N.J.S.A. 2C:25-29 d, WHEREAS THE ORIGINAL JUDGE, OR A JUDGE WHO HAD ACCESS TO A COMPLETE RECORD OF THE

ORIGINAL HEARING, WAS NOT AVAILABLE TO HEAR THE DEFENDANT'S MOTIONS TO DISMISS OR MODIFY THE FINAL ORDER AND, THEREFORE, THE CASE SHOULD BE DISMISSED OR REHEARD BY A QUALIFIED JUDGE.

V. THE COURT RECEIVED AND CONSIDERED CORRESPONDENCE FROM THE PLAINTIFF WITHOUT NOTIFYING THE DEFENDANT OR SERVING HIM WITH A COPY OF THE CORRESPONDENCE, CONTRARY TO COURT RULE 1:5-1(a), PLACING THE DEFENDANT AT A DISADVANTAGE AT THE HEARING AND, THEREFORE, THE CASE SHOULD BE DISMISSED OR REHEARD.

We have considered each of these issues in light of the record, the applicable law, and the arguments of counsel and defendant pro se, and we are satisfied that none of them is of sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(A) & (E). We affirm substantially for the reasons stated by the trial judge in his oral opinion on July 20, 2004. We add only the following comments.

The scope of our review is limited. Our Supreme Court has explained that "[b]ecause of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court fact finding." Cesare v. Cesare, 154 N.J. 394, 413 (1998). Based on our review of the record, we are satisfied that there was sufficient, credible evidence for the trial judge to conclude that defendant committed an act of domestic violence against plaintiff.

Pascale v. Pascale, 113 N.J. 20, 33 (1988); Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 483-84 (1974); see also Bonnco Petrol, Inc. v. Epstein, 115 N.J. 599, 607 (1989) (holding that trial court's fact findings bind appellate court if supported by evidence, especially when the evidence is testimonial and "trial court has had the opportunity to observe the witnesses and determine their credibility").

N.J.S.A. 2C:25-19(a) defines domestic violence in terms of acts constituting a violation of certain specified provisions of the criminal code. One of those acts is harassment. N.J.S.A. 2C:33-4. The harassment statute provides:

> [A] person commits a petty disorderly persons offense if, with a purpose to harass another, he:
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> a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
>
> b. Subjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
>
> c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.
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> [N.J.S.A. 2C:33-4.]

In State v. Hoffman, 149 N.J. 564, 576 (1977), our Supreme Court set forth the elements of N.J.S.A. 2C:33-4(a):

> A violation of subsection (a) requires the following elements: (1) defendant made or caused to be made a communication; (2) defendant's purpose in making or causing the communication to be made was to harass another person; and (3) the communication was one of the specified manners or any other manner similarly likely to cause annoyance or alarm to its intended recipient.
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> [Hoffman, supra, 149 N.J. at 576.]

Here, the trial judge found not only that the three-page May 4, 2004 letter contained offensively coarse language, but was also threatening in nature, likely to cause plaintiff annoyance or alarm, in violation of N.J.S.A. 2C:33-4a, especially when considered in light of the previous day's car chase. The judge found, in addition, that the letter, together with the car chase and numerous unwanted contacts, amounted to a course of alarming conduct designed to seriously annoy plaintiff, in violation of N.J.S.A. 2C:33-4c. As noted, the record amply supports these findings and we find no reason, therefore, to interfere with the trial court's sound conclusions.

Affirmed.