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SUPERIOR COURT OF NEW JERSEY
ESSEX VICINAGE
CHANCERY DIVISION, FAMILY PART
DOCKET NO. FV-07-2446-22

E.W.[1],

Plaintiff,

v.

W.M-H.,

Defendant.

**APPROVED FOR PUBLICATION**
**August 4, 2023**
**COMMITTEE ON OPINIONS**

Decided: January 5, 2023

Richard Harris Preston, Esq., for plaintiff (Richard Preston Law, attorneys)

Howard B. Leopold, Esq., for defendant (Leopold Law LLC, attorneys)

SANDERS, J.S.C.

## I. PROCEDURAL HISTORY

This matter comes to the court by way of E.W.'s March 3, 2022, application for a final restraining order. After several counts were dismissed by

[1] The court uses initials to identify the parties to protect the identity of the victim. See R. 1:38-3(d)(10).

the court at the close of E.W.'s case, the sole remaining allegation is whether W.M-H. committed the predicate act of harassment based upon the following:

> [On] March 3, 2022, at approximately 4:30pm, [the Division of Child Protection and Permanency ("DCPP")] responded to her residence and stated that an anonymous person made a complaint against her. Complainant stated she's been harassed with false allegations. [E.W.] believes it's [W.M-H.] due to she was [sic] threatened by him in the past that if she made any kind of report or allegations that he would harm or kill her if he finds out. [E.W.] stated that [W.M-H.] told her in the past "he has family and friends that works for DCPP that would make false statements about her."

A post-trial brief was submitted by W.M-H. and oral argument by both counsel was conducted as to whether N.J.S.A. 9:6-8.13, Immunity, applies to complaints made to DCPP in the realm of domestic violence under the Prevention of Domestic Violence Act ("PDVA"), N.J.S.A. 2C:25-17 to -35, precluding any finding of harassment under N.J.S.A. 2C:33-4.

## II. FINDINGS OF FACT

The parties were involved in a brief relationship, spanning a period of approximately one month. Of note, during this short period, E.W. avers that W.M-H. requested, and was provided, tens of thousands of dollars from E.W. She also testified about a fantastical backstory provided by W.M-H. wherein he

was a purported government assassin as at least a partial basis for the monies that he successfully obtained from her. After the relationship ended, E.W. filed a criminal complaint in Bloomfield, New Jersey, against W.M-H. seeking the return of these monies.

After the criminal complaint had been filed, E.W. then filed a civil complaint against W.M-H. seeking replevin of the monies. The day after W.M-H. was served with the civil complaint, DCPP commenced an investigation into E.W. based upon a call to the DCPP hotline.

E.W. thereafter sought a temporary restraining order against W.M-H. W.M-H. denied making any complaint to DCPP.

In deciding what testimony to believe, the court must determine the credibility of witnesses who testify before it. The court may consider: (1) the witness' interest, if any in the outcome of this case; (2) the accuracy of the witness' recollection; (3) the witness' ability to know what he/she is talking about; (4) the reasonableness of the testimony; (5) the witness' demeanor on the stand; (6) the witness' candor or evasion; (7) the witness' willingness or reluctance to answer; (8) the inherent believability of the testimony; (9) the presence of any inconsistent or contradictory statements. Model Jury Charge (Civil), 1.12K, "Credibility" (approved Nov. 1998). The court is further guided

by the Model Jury Charge entitled "False In One – False In All," wherein fact finders are instructed that, "[i]f you believe that any witness or party willfully or knowingly testified falsely to any material facts in the case, with intent to deceive you, you may give such weight to his or her testimony as you may deem it is entitled. You may believe some of it, or you may, in your discretion, disregard all of it." Model Jury Charge (Criminal), "False in One – False in All" (rev. Jan. 14, 2013).

Throughout this hearing, the court had the opportunity to consider and watch the witnesses' demeanor as they testified. Further, the court had the opportunity to assess their credibility, their truthfulness, and the manner in which they comported themselves. Overall, the court finds that the testimony of E.W. was credible and truthful. Her testimony was consistent and forthright. Her recollection was candid, reasonable, and she was not evasive in any way. Her testimony was believable.

However, credibility is not necessarily dispositive in this matter. Through counsel, W.M-H. does not challenge that DCPP investigated E.W. for purportedly using marijuana around the minor child. Instead, again through counsel, he denies making any report to DCPP and points to evidence in the record that other individuals knew of E.W.'s marijuana use and could have made

a referral to DCPP. There is no direct evidence as to the person responsible for the DCPP complaint. Rather, E.W. places heavy reliance on the circumstantial timing of the DCPP referral as substantiating her belief that W.M-H. is responsible for making the complaint to DCPP. She also points to alleged prior statements by W.M-H. wherein he advised that he would seek revenge against her through the filing of a complaint with DCPP.

The court notes that it is well established a party is not limited to offering direct evidence and may prove its case in whole or in part through circumstantial evidence, provided that evidence "is so clear and strong" as to demonstrate guilt by the requisite standard. State v. Donohue, 2 N.J. 381, 389 (1949); see also State v. Phelps, 96 N.J. 500, 511 (1984). Indeed, circumstantial evidence is often "more certain, satisfying and persuasive than direct evidence." State v. O'Connor, 134 N.J.L. 536, 539 (Sup. Ct. 1946); see also State v. Dancyger, 29 N.J. 76, 84 (1959). Here, the DCPP investigation commenced the day after W.M-H. was served in conjunction with his alleged prior threats to contact DCPP. Given that the standard of proof in domestic violence cases is by a preponderance of the evidence, and based upon the entirety of this record, the court finds that it is more likely than not that W.M-H. did, in fact, make a complaint to DCPP regarding E.W.'s marijuana use around the minor child.

As for any good faith basis for contacting DCPP, while there may be some truth to W.M-H.'s allegations about others knowing of E.W.'s marijuana usage, which the court here does not decide, given the timing of the referral, the court finds that that defendant primarily made contact with DCPP to harass E.W. and specifically with purpose to alarm or seriously annoy her. At core, his contacting of DCPP was in retaliation for the ongoing litigation.

## III. LEGAL ANALYSIS

To secure a final restraining order ("FRO") under the Prevention of Domestic Violence Act, E.W. must establish that W.M-H. committed a predicate act of domestic violence, as defined in N.J.S.A. 2C:25-19(a), and that a restraining order is required to protect her from further acts of domestic violence. Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). The predicate acts in N.J.S.A. 2C:25-19(a) include harassment under N.J.S.A. 2C:33-4.

As the Court has found that W.M-H. made a referral to DCPP as retaliation for, among other things, the filing of the civil complaint against him, the first step that the court must undergo is whether W.M-H. is to be afforded immunity in relation to making such a claim.

The immunity statute relating to DCPP referrals is found at N.J.S.A. 9:6-8.13. That statute provides, in pertinent part:

> Anyone acting pursuant to this act in the making of a report under this act shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such person shall have the same immunity with respect to testimony given in any judicial proceeding resulting from such report.
>
> A person who reports or causes to report in good faith an allegation of child abuse or neglect pursuant to section 3 of P.L.1971, c. 437 (C. 9:6-8.10) and as a result thereof is discharged from employment or in any manner discriminated against with respect to compensation, hire, tenure or terms, conditions or privileges of employment, may file a cause of action for appropriate relief in the family part of the Chancery Division of the Superior Court in the county in which the discharge or alleged discrimination occurred or in the county of the person's primary residence.

The court first focuses upon the language "[a]nyone acting pursuant to this act in the making of a report under this act shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed." Ibid. (emphases added).

The court need not focus on whether there is a good faith requirement for immunity to apply. Reading both paragraphs of N.J.S.A. 9:6-8.13 in pari materia, the court notes the inclusion of the language "in good faith" in the

second paragraph with the concomitant exclusion of that language in the first paragraph. In faithfully applying the canon of statutory interpretation expressio unius est exclusio alterius, the court finds that there is no good faith requirement in order for an individual making a referral to DCPP to have immunity under this first paragraph. The court must assume that the absence of a good faith requirement in the first paragraph is purposeful given its presence in the second paragraph. As such, the court does not find that good faith is necessary for immunity to apply. In fact, as noted in defense counsel's filing, as of 2010, only New Jersey, California, and New York do not require good faith as a condition precedent for immunity.

The overriding goal of statutory interpretation is for the court to "determine as best [it] can the intent of the Legislature, and to give effect to that intent." State v. Robinson, 217 N.J. 594, 604 (2014). To ascertain legislative intent, the court must "begin with the statute's plain language and give terms their ordinary meaning." State v. S.B., 230 N.J. 62, 68 (2017). It may also "draw inferences based on the statute's overall structure and composition," to "construe the meaning of the Legislature's selected words." Ibid. "If the Legislature's intent is clear on the face of the statute, then the 'interpretative process is over.'" Ibid. (quoting State v. Hupka, 203 N.J. 222, 232 (2010)).

However, if the statute's language is ambiguous, the court may "consider extrinsic interpretative aids, including legislative history." Ibid. Ultimately, statutory language "should be . . . construed in a common-sense manner," and in a way that will not render any part of the enactment "superfluous." State in Interest of K.O., 217 N.J. 83, 91 (2014).

However, "[a] literal reading of them which would lead to absurd results is to be avoided when they can be given a reasonable application consistent with their words and with the legislative purpose." Haggar Co. v. Helvering, 308 U.S. 389, 394 (1940); see also Clinton v. City of New York, 524 U.S. 417, 429 (1998) ("Acceptance of the Government's new-found reading of [the disputed statute] 'would produce an absurd and unjust result which Congress could not have intended.'") (quoting Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 574 (1982)); see generally John F. Manning, The Absurdity Doctrine, 116 Harv. L. Rev. 2387, 2390 (2003) ("Despite the absurdity doctrine's deep roots, recent intellectual and judicial developments have undermined the doctrine's strong intentionalist foundations."). As the New Jersey Supreme Court taught in State v. Harper, 229 N.J. 228, 237-38 (2017), courts

> look to extrinsic aids if a literal reading of the law would lead to absurd results. Burnett v. County of Bergen, 198 N.J. 408, 425 (2009); see also State v. Provenzano, 34 N.J. 318, 322 (1961) ("It is axiomatic

> that a statute will not be construed to lead to absurd results.").
>
> In addition, a law that is part of a broader "statutory framework should not be read in isolation"; we instead consider the text "in relation to other constituent parts so that a sensible meaning may be given to the whole of the legislative scheme." Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 572 (2012).

Starting with the immunity statute at bar, the court concludes that the Legislature intended to protect children as a primary purpose in enacting the immunity statute and that the expansive use of the words and phrases "anyone," "shall have immunity from any liability," and "any such person" must be given their plain meaning and effect within the confines of the immunity statute.

Here, however, the court must harmonize the immunity statute with the Prevention of Domestic Violence Act. The PDVA is intended to assure victims of domestic violence the maximum protection from abuse the law can provide. New Jersey law has a strong policy against domestic violence. Because the PDVA is remedial in nature, it is to be construed liberally to achieve its salutary purpose. Cesare v. Cesare, 154 N.J. 394 (1998). The Legislature, therefore, encourages broad application of the PDVA to confront the problem of domestic violence. State v. Harris, 211 N.J. 566, 579 (2012). Through this lens, the court

looks at the application of the immunity statute in the realm of domestic violence.

While there is a credible theoretical argument that the Legislature made a policy choice to protect children over victims of domestic violence, the court cannot find any support in the legislative history of the immunity statute for that proposition. The immunity statute was enacted in 1974 to further the "legislature's paramount consideration of protecting children from injury or abuse." State v. Snell, 314 N.J. Super. 331, 335 (App. Div. 1998). The Legislature enacted the PDVA in 1991, and that body expressly found and declared that domestic violence is a serious crime against society, that there is a positive correlation between spousal abuse and child abuse, and that children, even when they themselves are not physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. N.J.S.A. 2C:25-18. Given this proclamation, the court cannot find that the Legislature elected to protect children over victims of domestic violence, when, in fact, children themselves are also victims of domestic violence as expressly stated in N.J.S.A. 2C:25-18.

Considering these express statements by the Legislature and finding them to be essentially synergistic and complimentary in purpose, the court concludes

that the application of immunity to purported harassing conduct by way of DCPP referrals would render an absurd result. Both statutes place primacy on the protection of children either directly or derivatively. To apply the immunity statute in the context of domestic violence would legalize the weaponization of DCPP referrals as a mechanism of harassment, which would further victimize children as being exposed to such acts of domestic violence. It is that result that this court finds to be absurd as it contravenes the purpose of both statutes.

Put more specifically, applying the immunity statute, which is primarily employed as a mechanism to protect children, to DCPP referrals made as harassing conduct in the domestic violence arena, would put children at risk of being exposed to domestic violence by virtue of an unrestrained ability to use such referrals as a legal means to harass the putative victim. Thus, applying the immunity statute would contravene not only the PDVA, but also the underlying purpose of the immunity statute itself by putting children at risk of being exposed to harassment, and thus domestic violence, by DCPP referrals. Therefore, while recognizing the absolute and inclusionary language in the immunity statute, the court finds that it is inapplicable in the realm of domestic violence as it would render an absurd result.

Thus, the court finds that it is more likely than not that W.M-H. made the referral to DCPP as a means of retaliation and that his conduct is not shrouded by the immunity statute. Next, the court must determine whether there is a need for a final restraining order considering all of the credible evidence in this record. See Silver, 387 N.J. Super. at 125-27. The court shall now address the statutory factors under N.J.S.A. 2C:25-29(a) seriatim.

As for any previous history of domestic violence between E.W. and defendant, including threats, harassment and physical abuse, there is no evidence of such in this record. The parties dated for a brief period of time, approximately one month. The court notes that there is an alleged history of prevarication by W.M-H. throughout their relationship, but there is no cognizable domestic violence history here. This factor weighs against the entry of a final restraining order.

Next, the court looks to the existence of immediate danger to person or property. While there were allegations as to purported violent capabilities of W.M-H., the court views those through the lens of embellishment and puffery. There is no evidence in this record that W.M-H. is anything other than someone who is alleged to have engaged in a persona for the purpose of courtship. While W.M-H. may have taken advantage of E.W.'s generosity in relation to the large

sums of money provided to him, E.W. is engaging in the appropriate legal venues for the return of that money. The court is hard pressed to find that there is an immediate danger to E.W.'s person or property. This factor weighs against the granting of a final restraining order.

The court only briefly pauses to address the financial circumstances of E.W. and defendant. While there is evidence, contested to be sure, as to a large outstanding debt owed to E.W. by W.M-H., there is not in this case the type of intertwined and interconnected finances that would cause the court to find that E.W. needs a final restraining order to equalize any imbalance. There is simply insufficient evidence in this record for this factor to support the entry of a final restraining order.

With regard to the best interests of the victim and any child, the court notes that that minor child herein is not W.M-H.'s child. The court also highlights the short nature of the parties' relationship. The court also notes that the parties' relationship ended months before E.W. sought a restraining order and that she only sought that restraining order after pursuing remedies in both the civil and criminal realms. But for the ongoing issue of the monies provided to W.M-H. by E.W., there would be no contact between the parties. Any future contact will likely be confined to various court appearances in efforts to resolve

that concurrent litigation. In looking to the totality of the circumstances in this case, the court is constrained to find that this factor does not support the entry of a final restraining order.

The court need not address any evidence as to determining custody and parenting time and the protection of the victim's safety, given the factual underpinnings of this case. Suffice to say that the court is convinced that W.M-H. is not as he allegedly presented himself to E.W., to wit as a government assassin, in the beginning of their courtship. Again, the court cannot find that this factor favors the entry of a final restraining order.

Finally, there is no evidence as to the existence of a verifiable order of protection from any another jurisdiction. This likewise does not favor the entry of a final restraining order.

Given these findings, the court finds that E.W. has not met her burden of proof as to a continuing need for a restraining order. E.W. has failed to satisfy the second prong of Silver, 387 N.J. Super. at 126-27, and the court shall dismiss the application for a final restraining order.

## IV. CONCLUSION

For the foregoing reasons, authority cited, having reviewed the filings, considered the evidence in this record, and based upon the court's findings and

the predicate acts alleged, E.W. has proven by a preponderance of credible evidence that W.M-H. committed the predicate act of harassment. While E.W. has satisfied the first prong of Silver, the court finds that E.W. has failed to satisfy the second prong. 387 N.J. Super. at 125-27. Therefore, the court finds that a final restraining order is not necessary to protect E.W. from an immediate danger and to prevent further abuse.

E.W.'s application for a final restraining order is hereby DENIED. The complaint is dismissed, and the temporary restraining order is dissolved.