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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2158-21

C.R.,

Plaintiff-Respondent,

v.

M.T.,

Defendant-Appellant.

Argued January 10, 2023 – Decided January 20, 2023

Before Judges Gilson and Rose.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Gloucester County, Docket No. FV-08-0021-19.

Leah A. Vassallo argued the cause for appellant (Kennedy & Vassallo, attorneys; Leah A. Vassallo, on the briefs).

Andrew Vazquez argued the cause for respondent (South Jersey Legal Services, Inc., attorneys; Andrew Vazquez and Kenneth M. Goldman, on the brief).

PER CURIAM

Defendant M.T. (defendant or Martin) appeals from the entry of a final protective order (FPO), issued in favor of plaintiff C.R. (plaintiff or Clara) under the Sexual Assault Survivor Protection Act (SASPA or Act), N.J.S.A. 2C:14-13 to -21.[1] Because we conclude plaintiff satisfied her burden of demonstrating a predicate act as defined under the first prong of SASPA, and there exists a possibility of future risk to her safety or well-being as required by the Act's second prong, we affirm.

I.

A.

This is the second time this matter is before us. At issue is whether plaintiff consented to sexual activity with defendant during their June 27, 2018 encounter. In our prior decision, we reversed the issuance of the August 7, 2018 FPO under the Act's first prong, and remanded for the trial court to apply "the prostration of faculties standard" to determine whether plaintiff was too intoxicated to consent. C.R. v. M.T., 461 N.J. Super. 341, 351 (App. Div. 2019). We noted that standard also applies where a criminal defendant interposes intoxication as a defense. Id. at 350 (citing N.J.S.A. 2C:2-8). We permitted the

[1] We use initials and pseudonyms to protect the victim's identity. R. 1:38-3(d)(10).

judge to "reopen the record to allow for additional testimony on this or any other subject if he conclude[d] it would be helpful in analyzing and reconsidering not only the intoxication issue but all aspects of the consent issue." Id. at 353.

In view of our decision, we did not reach defendant's argument that plaintiff failed to demonstrate "'the possibility of future risk to [her] safety or well-being.'" Id. at 344 (quoting N.J.S.A. 2C:14-16(a)(2)). As with prong one, we "d[id] not foreclose the judge's receipt of additional testimony or his further amplification of his second prong findings." Id. at 353.

Plaintiff appealed, and the Supreme Court reversed our judgment. C.R. v. M.T., 248 N.J. 428, 448 (2021). The Court rejected the prostration of faculties standard because it "focuses on the mental state of the defendant" in a criminal matter. Id. at 431. The Court held: "The standard for consent for an alleged victim in a SASPA case should be no different than the standard for consent for an alleged victim in a criminal sexual assault case," "which is applied from the perspective of the alleged victim." Ibid. (citing State in Interest of M.T.S., 129 N.J. 422, 445 (1992)). "The M.T.S. standard requires a showing that sexual activity occurred without the alleged victim's freely and affirmatively given permission to engage in that activity." Ibid.

The Court thus "remand[ed]the matter to the trial court for reconsideration of the final restraining order and whether the sexual activity was consensual or nonconsensual utilizing the M.T.S. affirmative consent standard." Id. at 447. Noting the trial court's terse findings on the second SASPA prong, the remand order also permitted the trial court to "expand upon its abbreviated discussion of prong two and make additional findings of fact that support a determination either that the prong has been satisfied, or not, in deciding whether to issue the final restraining order." Ibid.

Another judge conducted the remand hearing on November 8, 2021. Citing the above procedural posture, and noting he had not presided over the first trial, the judge permitted the parties to present additional testimony as to both SASPA prongs – over defense counsel's objection. Plaintiff again testified on her own behalf. Her testimony was brief and consistent with her initial account.[2] Defendant declined the opportunity to testify, relying instead on his testimony from the first hearing. As he did in the first hearing, defendant presented the testimony of his cousin, S.S. (Sylvia). Neither party introduced documentary evidence at the remand hearing; plaintiff relied upon her medical

[2] Plaintiff's testimony at the first trial spanned sixty transcript pages; her testimony at the remand hearing spanned twenty-five transcript pages.

report and photographs of her injuries, which were admitted in evidence at the first trial.

B.

We summarize the pertinent facts from the record before the remand court. In essence, the parties knew each other through Sylvia, who had been Clara's best friend for several years prior to the early morning, June 27, 2018 incident. The parties never had "any relations" before that day; they had one "Snapchat" conversation the prior year.

The parties do not dispute Clara, then twenty-one years old, had consumed several alcoholic beverages in the hours leading up to the incident. At Sylvia's house, Clara drank Smirnoff Ice and two shots; Sylvia consumed four shots. Thereafter, Sylvia's roommate drove both women to two local bars.

Clara and Sylvia imbibed at the first bar "until the bartender refused to serve them because Sylvia was being 'really loud' and 'really inappropriate for that setting.'" C.R., 248 N.J. at 432. Sylvia and Clara then called defendant to join them but he "declined, stating he had to work early the next morning and that they should 'go home' because they were drunk." Ibid.

Instead of returning home, however, "Sylvia's roommate picked up Clara and Sylvia and took them to [the second bar], where Clara had two more drinks."

Ibid. Around 11:00 p.m., the bartender contacted Martin, whom he knew, advising that the women "'seem to be all fired up.'" Ibid. When defendant arrived to pick up the women, Clara chugged her unfinished drink at defendant's suggestion.

Because he had to work in the morning, defendant drove Sylvia and Clara to his home. Clara consumed three more alcoholic beverages at Martin's home. Acknowledging he had "a couple" of drinks with the women, Martin denied he was intoxicated.

Clara and Martin disagree about the events that transpired thereafter. Clara testified at the first hearing that "after Sylvia went back to bed, Martin put Clara over his shoulder and carried her into the garage." Id. at 433. Clara tried to leave several times, but defendant, who "was 'at least double [Clara's] size,'" blocked the door. Ibid.

Clara initially refused Martin's demands to remove her pants but she eventually did, feeling "terrified because [she] didn't see . . . another way out." Ibid. "Clara explained that Martin 'was intimidating' and that she 'was terrified.'" Ibid. "The next thing she recalled was 'being on [her] forearms and [her] shins and [Martin's] head was behind [her and] between [her legs].'" Ibid. Clara

repeatedly told Martin: "'I don't want this', . . . but Martin did not listen to her." Ibid. Clara asserted Martin performed vaginal intercourse and oral sex on her.

Following the encounter, Clara left the garage, entered Sylvia's room, and laid down next to Sylvia, who was asleep. The following day, Clara returned home, told another friend what happened, and reported the encounter to the police. Clara was taken to the hospital, where her bruises from the encounter were documented, and a sexual assault kit was completed.

Martin testified at the first hearing to a vastly different version of the events, asserting the parties' sexual encounter was consensual. He claimed he was in his bedroom when "Clara came in and asked for a blanket." Martin gave Clara the blanket from his bed and she "took it to a couch in another room." Id. at 434. Because it was "'really cold,'" Martin left his bed and "laid down on the couch with Clara." Ibid.

The Supreme Court recounted Martin's testimony about the sexual encounter as follows:

> Martin explained, "things started getting like a little hot and heavy," with them "mutually kissing." Martin said that Clara looked at him and asked if he had any condoms, to which he responded "[a]re you sure you still want to do this?" Clara replied, "Yes. But we have to go out to the garage because [Sylvia] already thinks I'm a whore."

> Next, Martin remembered they went to the garage and Clara took her pants off. He stated that he "performed oral" sex on Clara, after which Clara "got down on her hands and knees and [Martin] went to penetrate." Martin testified that Clara then performed oral sex on Martin, crawling across the concrete floor on her hands and knees. Afterwards, they went to their respective bedrooms. . . . Clara never indicated that she wanted to stop their sexual activities and he viewed the encounter as a "one-night stand." However, he acknowledged that Clara was intoxicated.
>
> [Ibid.]

At the remand hearing, Clara expounded upon her need for an FPO under the second SASPA prong. Although defendant had not contacted her since the incident, Clara claimed she continues to be "traumatized" by the occurrence, stating:

> I am affected by what happened every day. I've seen multiple therapists and I lay in bed at night and I can't sleep because I still feel like I'm in the garage sometimes.
>
> I have terrible intimacy issues. I can't date because I don't trust anyone. . . . I have a hard time making friends because I don't trust my friends anymore. . . . [I]t destroyed me, honestly.
>
> Like, I've lost my sense of self-worth. I lost everything. . . . [S]ome days, I feel like I'll never not be in that garage, honestly. Like, I wonder how I can ever not be traumatized by this, and I don't think that's a possibility.

When asked whether she feared for her safety, Clara stated:

> I do. I really, I do. I think the only reason I have any sort of peace of mind is because I know I have this temporary [restraining order] right now and I'm so terrified that if I didn't have it, he would be angry that I've spent three years just asking for this.
>
> Just asking for a sense of security [sic]. I think he would definitely harass me for challenging it. . . . I can't even begin to explain the, like, terror that I feel every day when I am unsure of my surroundings. . . .
>
> I have a hard time even going shopping by myself because what if something happens? How will I defend myself? And if there's no protective order, then he has no consequences.

Following oral argument, the trial judge reserved decision. The judge permitted the parties to submit additional briefs and requested the transcript of the initial trial.

On February 2, 2022, the trial judge issued a cogent written decision, concluding Clara established both prongs under the Act. The judge squarely addressed the issues raised in view of the Court's remand order and the SASPA statute. Further, the judge made factual and credibility findings based on the testimony adduced at both hearings and the documentary evidence presented at the first trial. According to the judge:

> In sum, the facts reveal that [Clara] was intoxicated, that she was physically carried into the

> garage by [Martin], tried to leave the garage on several occasions and told [Martin,] "I don't want this" three times. The preponderance of the evidence establishes that consent was not affirmatively and freely given. The evidence and facts do not support any inference of consent.

Referencing defendant's competing version of the events, the judge found

> In light of [Clara's] injuries and the surrounding circumstances, [Martin]'s version was not credible. This [c]ourt agrees that [Martin] was not truthful . . . during his testimony. The prior [c]ourt noted that [Martin] was significantly physically larger than [Clara]. That she was intoxicated and that she was carried into the garage by [Martin]. That she sustained significant injuries to her arms and lower extremities. In short, there was no consent to the acts.

Turning to the second SASPA prong, the trial judge noted defendant had not attempted to contact plaintiff "since the event occurred, either directly or indirectly." But that lack of contact "d[id] not foreclose the possibility of risk to her safety or well-being." The judge elaborated:

> [Clara] testified that she has seen several therapists to deal with the trauma that she has endured. She has ongoing difficulty sleeping. She has intimacy issues. The long-term effects are real and traumatizing to her. It is clear that without the protection of this [FPO], any efforts she has made in therapy could be eviscerated. Her testimony that the only peace of mind she has is the security that [the FPO] has provided to her, with the attendant consequences to [Martin] should he violate the [FPO], is legitimate and truthful. There is a

> significant risk to her psychological well-being should [the FPO] not remain in effect.

Accordingly, the judge concluded plaintiff satisfied "the possible risk to her well-being" under the second SASPA prong.

Having determined plaintiff satisfied both SASPA prongs, the trial judge concluded the FPO previously entered on August 7, 2018 "shall remain in effect." This appeal followed.

On appeal, defendant argues plaintiff failed to satisfy her burden of proof under SASPA. Defendant first contends the judge erroneously found plaintiff satisfied the second requirement of SASPA, N.J.S.A. 2C:14-16(a)(2). Defendant maintains the parties engaged in consensual sexual activity. He seeks reversal of the FPO based on the lack of credible evidence supporting the possibility of future risk to plaintiff's safety or well-being. Defendant further claims the Court's remand order did not permit additional factual findings as to the first SASPA prong and, as such, the trial judge impermissibly disregarded the first judge's credibility and factual findings. We are not persuaded.

II.

Our scope of review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). Because of its special expertise in family matters, we owe substantial deference to the Family Part's findings of fact. Id. at 413.

"[D]eference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" MacKinnon v. MacKinnon, 191 N.J. 240, 254 (2007) (quoting Cesare, 154 N.J. at 411-12). "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 412. However, we owe no special deference to the trial court's legal conclusions, which we review de novo. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016).

Enacted in 2016, SASPA provides, in pertinent part:

> [T]he standard for proving the allegations made in the application for a protective order shall be a preponderance of the evidence. The court shall consider but not be limited to the following factors:
>
> > (1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim; and
> >
> > (2) the possibility of future risk to the safety or well-being of the alleged victim.
>
> [N.J.S.A. 2C:14-16(a).]

As a preliminary matter, we find no merit to defendant's challenges to the scope of the remand hearing. Nothing set forth in the Court's opinion restricted the trial court's application of the M.T.S. standard to the record before the initial

judge. Expansion of the record on both prongs was particularly appropriate here, where a different judge conducted the remand hearing. Moreover, defendant was afforded the opportunity to testify at the remand hearing but declined to do so. Instead, he chose to present the testimony of Silvia, who testified at the first hearing. We do not discern any impropriety in the manner in which the remand proceeding was conducted, including the judge's decision to make factual and credibility findings anew.

In considering the first SASPA prong, the trial judge thoroughly assessed whether plaintiff's consent was affirmatively and freely given under the M.T.S. standard pursuant to the Court's remand order. We are satisfied the judge's finding that Martin engaged in nonconsensual sexual conduct with Clara was "supported by adequate, substantial, credible evidence," and therefore warrants our deference. Cesare, 154 N.J. at 412. Defendant's contentions otherwise lack sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

As to the second SASPA prong, defendant argues plaintiff failed to present any evidence that he is a threat to her. Defendant challenges the judge's finding that plaintiff needs the FPO for her "peace of mind." Characterizing plaintiff's fear as "irrational," defendant argues it is undisputed "that the parties

do not see each other, that she has not seen [him] for years, and that she no longer associates with his cousin."

In C.R., the Court rejected the first trial judge's finding that even though Martin did not attempt to contact Clara after their encounter, because plaintiff instituted the proceedings, defendant "'may now harbor a grudge against the plaintiff.'" 248 N.J. at 448. According to the Court, if "simply filing for a protective order" satisfied the requirements of N.J.S.A. 2C:14-16(a)(2), "prong two would be met in every single SASPA case." Ibid. Similarly, under the Prevention of Domestic Violence Act (PDVA), "the Legislature did not intend that the commission of one of the enumerated predicate acts of domestic violence automatically mandates the entry of" a final restraining order. Silver v. Silver, 387 N.J. Super. 112, 126-27 (App. Div. 2006).

Under N.J.S.A. 2C:14-16(a)(2), plaintiff must demonstrate "the possibility of future risk to [her] safety or well-being." Notably, the Act does not define any of these terms. Nor did the Court in C.R. establish guidelines for determining whether the plaintiff has satisfied the second SASPA prong. Cf. Silver, 387 N.J. Super. at 127 (recognizing in all cases under the PDVA, "the guiding standard is whether a restraining order is necessary, upon an evaluation

of the factors included 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").

We therefore turn to the plain meaning of the terms set forth in N.J.S.A. 2C:14-16(a)(2), recognizing statutory language should also be considered in the context of the whole Act, and accorded a common sense meaning that advances the legislative purpose. See e.g., Voges v. Borough of Tinton Falls, 268 N.J. Super. 279, 285 (App. Div. 1993). The dictionary defines the relevant terms, in pertinent part, as follows: "risk"[3] includes the "possibility of loss or injury"; "safety"[4] encompasses "the condition of being safe from undergoing or causing hurt, injury, or loss" and "well-being"[5] is "the state of being happy, healthy, or prosperous."

Having reviewed the record, in view of the trial judge's credibility and factual findings, we are satisfied plaintiff demonstrated the possibility of the future risk of harm to her well-being or safety. Although Martin has not

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[3] Risk, Merriam-Webster, https://www.merriam-webster.com/dictionary/risk (last visited Jan. 12, 2023).

[4] Safety, Merriam-Webster, https://www.merriam-webster.com/dictionary/safety (last visited Jan. 12, 2023).

[5] Well-being, Merriam-Webster, https://www.merriam-webster.com/dictionary/well-being (last visited Jan. 12, 2023).

contacted Clara since 2018, the judge credited plaintiff's account that she has suffered anxiety since the incident, including loss of sleep, "intimacy issues," and treatment with "several therapists to deal with the trauma that she has endured." We therefore discern no reason to disturb the judge's finding that there exists "a significant risk to [Clara's] psychological well-being" without the FPO.

Affirmed.

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