

Record Impounded

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J. C. ,

Plaintiff,

v.

B. S.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY
CHANCERY DIVISION
FAMILY PART

DOCKET NO. FV-15-352-16

CIVIL ACTION
OPINION

Decided: September 14, 2015

Plaintiff, pro se

Defendant, pro se

L. R. Jones, J.S.C.

This case concerns the interplay between New Jersey's Prevention of Domestic Violence Act and elder abuse. While elder abuse has apparently not been specifically addressed in prior reported New Jersey case law interpreting the Domestic Violence Act, the issue is clearly of critical social importance.

For the reasons set forth in this opinion, the court finds the following:

(1) Some senior citizens, by virtue of advanced age and/or physical limitations, may be particularly vulnerable to abuse, in certain instances by their own family members living under the same roof.

(2) Elder abuse can be physical or emotional in nature, and emotional abuse may be as harmful as physical abuse.

(3) Chronic verbal use of obscenities by an adult child towards a senior parent, especially in the parent's own home, may be substantial enough to constitute harassment and domestic violence under the two-pronged test of Silver v. Silver, 387 N.J. Super 112 (App. Div. 2006).

(4) Defendant's pervasive and shocking use of verbal obscenities and profanities towards his mother, an elderly, physically compromised woman, in her own home, along with other conduct, constitutes unacceptable harassment, and under the totality of the circumstances warrants the issuance of a domestic violence restraining order ejecting defendant from plaintiff's home.

FACTUAL BACKGROUND

Plaintiff is a 73 year old senior citizen. She has incurred two mini-strokes and has recently undergone two back operations and a hip replacement. She is physically frail, and has difficulty walking. Nonetheless, she still lives independently in her own home, along with a friend. Further, she has gratuitously allowed defendant, her adult son, to stay with her at her house.

Defendant has no ownership interest in plaintiff's home, nor is there any formal lease agreement or tenancy arrangement between mother and son.

Plaintiff has now filed a domestic violence complaint against defendant, seeking a final restraining order removing defendant from her home on the grounds of ongoing harassment on a near-daily basis. Specifically, plaintiff's credible testimony reflects that defendant has verbally abused plaintiff by chronically calling her names such as "bitch", "whore", "cunt," and making other disrespectful references to her female anatomy. He has also angrily asserted that the only reason that plaintiff has what she has in life is because she has a female sex organ (defendant using obscene words to his mother to describe same). Plaintiff testified that defendant's outbursts are generally tied to his consumption of alcohol.

Additionally, plaintiff testified that defendant has repeatedly and forcefully poked her in angry fashion with his finger, which on at least one recent occasion nearly caused her to fall. Plaintiff further detailed that on another recent occasion, defendant put his hands around her throat. While she added that he did not physically squeeze his hands, plaintiff nonetheless felt threatened and harassed by this disrespectful and ominous conduct. Plaintiff further indicated that there were times she wanted to call the police,

and defendant tried to obstruct same, including attempting to grab her phone away from her. Plaintiff also called an eyewitness to the stand who is very familiar with both parties, and who also credibly testified, stating that she has personally heard defendant call his mother names such as “cunt”, “bitch” and “loser.”

On August 26, 2015, plaintiff did call through to the police, seeking assistance after defendant came home drunk and again began verbally abusing and berating her with more obscene language. In particular, plaintiff testified that defendant called her a “whore”, that she “should lick someone’s ass”, and referenced her female anatomy. Against this backdrop, the court granted plaintiff’s request for a temporary restraining order and scheduled the matter for a final hearing.

Throughout the final hearing, plaintiff presented as introverted and low-speaking, appearing upset over having to be in court in the first place. Reciprocally, defendant presented as verbally aggressive and abrupt, and much younger, larger and stronger than his mother. During his testimony in the courtroom, he referred to his mother as “this damn lady,” and insisted that he had “never laid a finger” on her. While defendant did admit to using

profanities towards plaintiff in the past, he denied doing so on a regular and pervasive basis.

Defendant also contended that his mother was in fact mean and aggressive towards him, and that she allegedly chased him around the house. He did not clearly explain, however, how or why she allegedly “chased” him, or how she was able to do so after two back operations, a hip replacement, and mini-strokes. Defendant also did not credibly indicate that he was in any type of fear of his mother. Moreover, he offered the court no reason as to why, as a grown adult, he continued to voluntarily stay indefinitely under his mother’s roof if his mother was abusive to him. Defendant’s only explanation for continuance of the living arrangements was that, from his perspective, he and his mother “help each other out.”

At the conclusion of the proceedings, the court found that plaintiff’s testimony was substantially more credible than defendant’s testimony, and that defendant had in fact been verbally harassing plaintiff on an ongoing basis through constant verbal obscenities. Further, the court found that defendant acted with hostility and intent to harass, as evidenced and corroborated by his inappropriate physical conduct towards his mother in her house, including

the repeated poking, placing his hands around her neck, and obstructing her attempts to call the police.

As to whether defendant's conduct constitutes domestic violence warranting a restraining order, the court finds in the affirmative.

LEGAL ANALYSIS

Pursuant to N.J.R.E. 201(b), the court may take judicial notice of facts and principles which cannot be the subject of reasonable dispute. One such point is the social reality that some elderly citizens of advanced age and compromised health may be particularly vulnerable to abuse of a physical or emotional nature, even in their own homes and by their own family members.

On its official website, the State of New Jersey expressly states and recognizes that while "senior citizens are supposed to be one of society's most valued, respected demographic groups, . . . at times they are our most vulnerable." <http://www.state.nj.us/nj/safety/senior/>. Moreover, the New Jersey Legislature has expressly recognized that senior citizens may be particularly susceptible to abuse and neglect by their own family members. See N.J.S.A. 2C:24-8 (endangering welfare of elderly or disabled persons). The

issue is a serious and compelling one.¹ As a matter of public policy, there is a clear recognition of the need for special protection and care to be afforded to senior citizens against elder abuse and domestic violence.

New Jersey's Domestic Violence Act, N.J.S.A. 2C:25-17 et. seq., does not expressly create a special, independent category for "elder abuse". Yet, when an elderly and physically frail senior citizen is allegedly the target of intra-family abuse from an adult "child" who is staying or living in the senior's home, a court may logically consider the defendant's conduct in the light of the particular vulnerabilities which the senior may have in such circumstance. As a general proposition, it is fundamentally inappropriate for an adult child to subject an elderly parent to physical manhandling, or to chronic verbal abuse and harassment. Such conduct cuts against the very core of basic civility and respect for senior citizens which society rightfully demands, and younger generations are expected to extend, to elders as a matter of human decency.

The court recognizes that a significant portion of the present case involves defendant's use of verbal profanities. For certain, not every single case

¹ As reflective of the present social significance of the topic, earlier this year at the Stockton University of New Jersey, approximately 200 judges, attorneys, guardianship monitoring volunteers, state judiciary staff and county surrogates attended and participated the Superior Court of New Jersey's Elder Abuse Awareness Conference at the college in recognition of the tenth anniversary of World Elder Abuse Awareness Day. See <http://njtoday.net/2015/06/15/200-attended-superior-courts-elder-abuse-awareness-conference>.

involving solely or primarily verbal profanities automatically requires entry of a restraining order. To the contrary, depending upon the factual circumstances, a court may in its discretion grant, or to decline to grant, a restraining order when the case is based solely or primarily upon the alleged use of profanities. In some instances, such speech may be evidence of domestic disagreements or contretemps, rather than harassment or other forms of domestic violence. Even when one's conduct is less than model, such conduct does not automatically require the issuance of a restraining order in every case. See Corrente v. Corrente, 281 N.J. Super 243 (App. Div., 1995); Peranio v. Peranio, 280 N.J. Super 47 (App. Div. 1995).

The specific case before the court, however, is about more than simply incidental profanities used in everyday speech, or in the midst of a heated but isolated argument. Rather, this is a matter where an angry adult child is emotionally abusing an elderly, physically compromised mother in her own home on a chronic and near-daily basis by repeatedly berating her with shocking obscenities and profanities in a way which, from an objective standpoint, is socially unacceptable and crosses over from domestic contretemps into harassment and domestic violence. The nature and frequency of same, when coupled with defendant's physical actions toward plaintiff,

demonstrates defendant's unacceptable hostility towards his mother, with purpose to cause plaintiff emotional upset, pain, and injury to her own self-esteem. No person, senior or otherwise, should be expected to tolerate this type of mistreatment and disrespect in his or her own house, particularly from an adult child, who for whatever personal reason is staying indefinitely with the parent instead of establishing an independent residence.

The basic protection which the Domestic Violence Act seeks to assure victims is the right to be left alone. See State v. Hoffman, 149 N.J. 564, 584-85. (1997). Further, the scales of justice remind us that people have an inherent right to feel safe when in their own homes. Id. This concept takes on particular importance when regarding senior citizens and the elderly. In this case, plaintiff's right to be left alone has been violated by her own son.

While plaintiff's complaint regarding the predicate act of August 26, 2015 primarily addresses verbal and emotional abuse, domestic violence does not have to be physical to be real. Emotional abuse can be just as detrimental, if not more so, than physical abuse. Harassment can be highly injurious to a recipient's mental health and self-image, and may be even more painful when the perpetrator of the harassment is one's own flesh and blood. Further, as previously noted, plaintiff has credibly testified that, as regarding prior history, there were in fact physical components to defendant's harassment as well.

N.J.S.A. 2C:25-19 defines multiple forms of domestic violence, physical and otherwise, including harassment. By statutory definition, harassment may include communication, with purpose to harass, “in offensively coarse language, or any other manner likely to cause annoyance or alarm.” N.J.S.A. 2C:33-4.² In this case, the court finds that more likely than not, defendant lived with his mother in her home because it was financially self-advantageous for him to do so. Moreover, defendant had been accepting the benefits of staying in his mother’s house while, simultaneously and ironically, harassing and mistreating her at the same time. Very possibly fueled by inappropriate misuse of alcohol, defendant’s conduct disturbingly began to gravitate and escalate beyond verbal harassment to physical harassment, such as unnecessarily and forcefully poking his mother and placing his hands around her neck, even if as plaintiff stated, he did not squeeze. A litigant in plaintiff’s position is not compelled to wait until he or she suffers a black eye, broken nose, or worse before requesting relief. The Legislature has seen fit to name the domestic violence statute as the Prevention of Domestic Violence Act,

² Under N.J.S.A. 2C:33-4, one commits harassment under if, with purpose to harass another, he or she (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.

N.J.S.A. 2C:25-17 to 33, because its purpose is not only to address past violence, but hopefully to prevent ongoing future violence before it occurs.

In Silver v. Silver, 387 N.J. Super 112 (App. Div. 2006), the appellate court held that the trial court's task in considering whether to enter a final restraining order involves a two-pronged analysis. Under the first prong, the court must determine whether the plaintiff has proven, by a preponderance of the credible evidence, that a predicate act of domestic violence has occurred, which may include harassment with the action evaluated in light of the previous history of violence between the parties. Id. at 125-26.

Under the second prong, even if a predicate act of violence has occurred, the court must next decide whether there is an immediate danger to person or property warranting entry of a final restraining order Id. at 126. While this determination is in some cases self-evident, the guiding standard is whether a restraining order is necessary to protect the victim from "immediate danger" or to prevent further abuse. Id. (quoting N.J.S.A. 2C:25-29(b), stating that the court shall grant any relief necessary to prevent further abuse). In the present case, there is no convincing evidence that, absent a restraining order, defendant's conduct towards plaintiff is going to change. While defendant has always been free at all times to leave plaintiff's home, he is not free to stay while harassing and verbally abusing plaintiff on a constant basis. Nor is he

free to poke her, or to put his hands on her neck, or to stop her from calling the police when she wishes to do so.

Even had there been no physical components to defendant's past actions, the level and nature of the verbal misconduct would arguably still have been sufficient to warrant a restraining order on its own. Defendant's comments to his mother were pervasive, objectively harassing, and spoken with an intent to harass and to demean plaintiff. Whether conduct does or does not constitute harassment is a fact-sensitive analysis. See State v. Hoffman, 149 N.J. 564, 580-81 (1997). A court may glean intentional harassment from attendant circumstances. See C.M.F. v. R.G.F., 418 N.J. Super 396, 404-405 (App Div. 2011), and may consider the totality of such circumstances in determining whether the harassment statute has been violated. Cesare, supra, 154 N.J. at 404; State v. Hoffman, 149 N.J. 564, 585 (1997); H.E.S. v. J.C.S. 175 N.J. 309, 326 (2001). A finding of a defendant's purpose to harass may be inferred from the evidence presented, and from common sense and experience. H.E.S., supra, 175 N.J. at 327; State v Hoffman, supra, 149 N.J. at 577. The court may consider demeanor and character of witnesses as well. See State v Locruto 157 N.J. 463, 475 (1999). Defendant's demeanor in courtroom reflects a son who is clearly hostile towards his mother, even after the entry of the initial restraining order. If defendant angrily refers to his infirm and elderly mother as "this damn lady"

on the record, in the middle of a public court proceeding about his alleged harassment, one can only imagine how he treats his mother outside of court, off the record, in the privacy of her own home.

Plaintiff shall not be required to live out her Golden Years under these conditions. Her application for a restraining order is well-founded and wholly reasonable under the circumstances. The New Jersey Legislature has 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 are not themselves physically assaulted, suffer deep and lasting emotional effects from exposure to domestic violence. N.J.S.A. 2C:25-18. One does not have to be a psychologist to understand and appreciate that, reciprocally, the same logic may well apply to elderly parents who are emotionally harassed and abused by their own adult children. Indeed, our courts have noted that domestic violence persists as a grave threat to the family. See State v. Chenique-Puey, 145 N.J. 334, 340 (1996). Moreover, there is no such thing as an act of domestic violence that is not serious. Brennan v. Orban, 145 N.J. 282, 298 (1996).

For all of the foregoing reasons, the court grants plaintiff's request for a final restraining order, and prohibits defendant from re-entry into plaintiff's

home unless and until further court order. Defendant may, however, remove his items from his mother's house, under police supervision, at a pre-arranged date and time.