

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-6082-04T2

SHIRLEY L. NORCIA,

Plaintiff-Respondent,

v.

MICHAEL L. NORCIA,

Defendant-Appellant.

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Submitted March 1, 2006 – Decided June 29, 2006

Before Judges Fall and Parker.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FV-02-2527-05.

Sunshine, Atkins, Minassian & Tafuri, attorneys for appellant (Marvin H. Sunshine and Joshua T. Buckner, on the brief).

John E. Ten Hoeve, Jr., attorney for respondent.

PER CURIAM

Defendant Michael L. Norcia appeals from a final domestic violence restraining order (FRO) entered on June 28, 2005, pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35. We affirm.

The parties were divorced in January 2004. In March 2005, plaintiff sought to move to Kentucky with the parties' child.

While that application was pending, plaintiff filed a domestic violence complaint in June 2005 alleging that defendant threatened verbally and in anonymous letters to implicate plaintiff and her family in an accusation of the premeditated homicide of plaintiff's aunt Deanna.

The threatening letters were postmarked from Westchester, New York, Queens, New York, Stamford, Connecticut and Baltimore, Maryland. The four letters were identical and stated that there were audiotapes to incriminate plaintiff and her family members. The concluding paragraph of each letter states:

I'm told "Fair Warning" was already spoken of. This matter is impervious and from inception date, an immediate decision must be made. I've tried to forbear the party, but patience and tolerance are not part of the equation. The party is not giving you this last chance, I am. The consequences will impact every aspect of you[r] life. You will receive copies from three different states mailed on the same day as proof of my profession.

Plaintiff testified that this was the same language defendant used in a verbal threat outside the mediation room at the courthouse on May 11, 2005. When she received the letters, plaintiff knew they had come from defendant and "was terrified."

Beverly Gurney, plaintiff's sister, testified that she accompanied plaintiff to the mediation session at the courthouse on May 11, 2005 and heard defendant state, "don't forget I've

got the tapes of your aunt Deanna and that this is your fair warning."

Defendant testified that he did not author, nor did he see, the four letters marked into evidence. Moreover, he denied ever being in Stamford, Connecticut, or Baltimore, Maryland, and claimed the last time he was in Queens, New York, was 1980, when he was fifteen. He also denied asking anyone to mail the letters for him and denied that he confronted plaintiff at the mediation session or used the phrase "fair warning."

After hearing the testimony and the arguments of counsel, the trial judge pointed out that this was obviously a credibility question. He took into account the parties' demeanor, as well as their interest in the outcome of the pending application for removal and the inherent believability of their testimony. He found plaintiff's testimony more credible than defendant's and that "either the defendant or an agent of the defendant" was responsible for sending the letters; and that defendant's conduct "was part of a pattern of domestic violence" involving power and control over plaintiff. The final restraining order was entered against defendant.

In this appeal, defendant argues:

POINT ONE

THE TRIAL COURT ERRED IN NOT APPLYING THE  
UNDERLYING STATUTORY VIOLATION TO THE

ALLEGED ACT OF DOMESTIC VIOLENCE IN  
IMPROPERLY FINDING THAT THE DEFENDANT  
COMMITTED AN ACT OF DOMESTIC VIOLENCE

POINT TWO

THE TRIAL COURT ABUSED ITS DISCRETION AS THE  
RECORD BELOW DOES NOT SUPPORT A FINDING OF  
DOMESTIC VIOLENCE

In essence, defendant argues that the trial judge failed to articulate that defendant violated the harassment statute, N.J.S.A. 2C:33-4, and failed to find a "purpose to harass" as required under the statute.

The harassment statute provides in pertinent part:

[A] person commits a petty disorderly persons offense if, with a purpose to harass another, he:

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[.]

Although the judge did not make a specific finding that defendant violated the statute, he did find that defendant was attempting to exercise control over plaintiff and threatened her. Since the trial judge found plaintiff's testimony credible, the record clearly supports the inference that defendant sent the letters to plaintiff with a purpose to harass her.

Credibility is always for the fact finder to determine. Ferdinand v. Agric. Ins. Co., 22 N.J. 482, 492 (1956). "A case

may present credibility issues requiring resolution by a trier of fact even though a party's allegations are uncontradicted." D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). We are not at liberty to disturb the fact finder's credibility determinations when they are supported by the record. State v. Locurto, 157 N.J. 463, 470-71 (1999).

Moreover, our scope of review is circumscribed in these cases. Cesare v. Cesare, 154 N.J. 394, 411-13 (1998). "[F]indings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12. We will not disturb the findings of fact and conclusions of law made by the trial judge unless we are convinced that they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Id. at 412 (quoting Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)). And, we are particularly mindful of the "special expertise" possessed by the Family court in the field of domestic violence. See Cesare, supra, 154 N.J. at 412-13.

The evidence clearly supports the trial judge's findings.  
R. 2:11-3(e)(1)(A).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION