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SUPERIOR COURT OF NEW JERSEY
Chancery Division: Hudson County
Docket No. FV-09-1482-23

MAYERLIN KANTERMAN,

Plaintiff,

-vs-

ERIC KANTERMAN,

Defendant.

OPINION

FILED

JUL 17 2023

GARY POTTERS, J.S.C.

Decided: July 17, 2023

Motion Hearing: July 17, 2023

Krenar Camili, Esq. Plaintiff – Respondent (Camili & Capo, P.A. attorneys)

Alix Claps, Esq. for Defendant – Movant (Heymann & Fletcher attorneys).

POTTERS, J.S.C.

OPINION

This matter comes before the Court on defendant Eric Kanterman's motion for attorneys' fees following the May 30, 2023, Final Restraining Order trial wherein plaintiff's request for issuance of a Final Restraining Order was found to be unsubstantiated. Neither party on this motion obtained the transcript of the May 30, 2023, adjudication. The Court notes at the outset there was no finding of bad faith by plaintiff in either seeking issuance of the Temporary Restraining Order or continuing with the matter through trial.

Procedural Posture

On December 5, 2022, plaintiff was issued a Temporary Restraining Order that was amended the same day by the issuing Superior Court Judge to address a non-substantive clerical error. The TRO and First Amended TRO are based on an incident that occurred on December 3, 2022, in the school of the parties' child, [REDACTED]. The incident involved a physical altercation between plaintiff and defendant's girlfriend. The predicate acts alleged are assault and harassment.

On December 12, 2022, the Complaint was amended to include additional prior history. On January 5, 2023, the Complaint was further amended to include an additional incident. On April 17, 2023, the

Complaint was amended for a third time to include an allegation of contempt against defendant related to an incident involving the parties' dog wherein plaintiff alleged defendant violating the TRO by entering her building leaving the dog outside.

The matter was tried on May 30, 2023 and the Court found plaintiff's claim to be unsubstantiated. After receiving defendant's motion for attorneys' fees, the Court set a briefing schedule by Order entered on June 12, 2023.

Other Actions Involving Parties

There are numerous proceedings involving these parties. Under FM-09-2026-19, the parties are involved in a contentious post-judgment custody dispute. On June 30, 2022, Mr. Kanterman was granted a Final Restraining Order against Ms. Kanterman under FV-09-480-22. Under FO-09-246-22, Ms. Kanterman was charged with contempt. On July 6, 2022, this contempt proceeding was dismissed.

On October 12, 2022, Ms. Kanterman's application for a Temporary Restraining Order was denied under FV-09-1072-23. On December 3, 2022, Ms. Kanterman's application for a Temporary Restraining Order under FV-09-1476-23 was denied.

Subject Action

The subject action was tried over the course of an entire day on May 30, 2023. The plaintiff's case consisted of plaintiff's testimony concerning the December 3, 2022, incident, seven (7) prior incidents of alleged domestic violence and presentation of numerous videos. At the close plaintiff's case, defense counsel moved for a directed verdict. The Court denied this motion. In accordance with R. 4:37-2(b), the Court is required to accept as true all testimony of the plaintiff, provide plaintiff with all reasonable inferences and finally, the Court is specifically precluded from making any determination of credibility of the non-moving party. Following the defendant's testimony and after identifying all exhibits admitted into evidence, the Court rendered its ruling denying plaintiff's request for a Final Restraining Order.

Defendant's Motion for Attorneys' fees

On this application, the Court reviewed and considered defendant's notice of motion, June 9, 2023, letter brief, June 9, 2023, Certification of Counsel, Attorney Certification of Services, proposed form of Order, July 3, 2023, letter brief in opposition to defendant's motion, and July 11, 2023, supplemental letter brief of defendant in further support of his application.

There are two avenues to pursue the collection of attorneys' fees as a defendant in domestic violence actions: The Article V Rules governing the Family Part, and in particular R. 5:3-5(c) and N.J.S.A. 2A:15-59.1, the Frivolous Lawsuit Statute. The Court notes at the outset of this legal analysis the strong admonition of then Judge Long sitting in the Appellate Division in M.W. v. R.L., 286 N.J. Super. 408, 411(App. Div. 1995) regarding the chilling effect to protected persons, or victims, of domestic violence if they confronted fee shifting in these actions. Further, the New Jersey Prevention of Domestic Violence Act only provides for attorneys' fees to plaintiffs. N.J.S.A. 2C:25-29b(4). Judge Long's opinion in M.W. precludes an award of attorneys' fees under R. 4:42-9(a)(1).

A question arises, while not briefed, concerning R. 5:3-5 (c) which permits attorneys' fees in a number of specifically identified family matters. The lists a number of family type matters, but does not include on this list domestic violence actions. The Rule continues by providing a catch all phrase at the end, "and claims relating to family type matters." Based on the analysis of Judge Long in M.W., this Court concludes the catch all phrase was not intended and therefore cannot reasonably be read to include domestic violence actions.

The only avenue for an award of attorneys' fees left open to a defendant in a domestic violence case is found under N.J.S.A. 2A:15-59.1, the frivolous lawsuit statute. M.W. at 411 – 412. Critical to such an application is a prerequisite finding of bad faith. In no part of this Court's decision rendered on May 30, 2023, was any finding made of bad faith on the part of the plaintiff in either initiating this proceeding by way of seeking a temporary restraining order or continuing this matter through the Final Restraining Order trial.

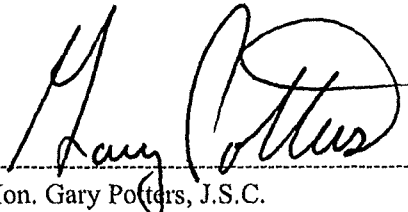
Perhaps in recognition of this, movant's counsel in his application references the two prior denied TRO's; however, there is no transcript of either of these proceedings. That a TRO was declined does not ipso facto mean it was sought in bad faith. Aside from the lack of transcripts of either proceeding, the Court is at a loss to understand how two unrelated proceedings relate to the attorneys' fees sought in this proceeding, other than the identification of the same parties.

None of the litany of cases cited by defendant wherein attorneys' fees were awarded under the Frivolous Lawsuit Statute apply to domestic violence cases. What is pertinent is the well-settled law regarding strict compliance with the procedural requirements of R. 1:4-8. Toll Bros., Inc. v. Twp. Of W. Windsor, 190 N.J. 61, 72 (2007). Here, defendant's R. 1:4-8

correspondence is dated January 18, 2023; however, the Complaint was amended on April 17, 2023. There is no new safe harbor notice provided by defendant to plaintiff. On this basis alone, defendant's application must be and is denied.

A further reason to deny defendant's application is there was no finding of bad faith on the part of defendant. The Court acknowledges the extreme contentiousness between these parties, the litany of prior matters and the ongoing post-judgment custody dispute in the FM docketed matter. However, this does not translate into a finding this matter was commenced and/or pursued in bad faith. To the contrary, the Court rendered its rulings on the content of the testimony, the admitted evidence and after making credibility determinations of both parties. That the Court found defendant more credible than plaintiff does not translate to bad faith on the part of the plaintiff.

For these reasons, defendant's application for attorneys' fees is denied.



Hon. Gary Potters, J.S.C.