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Examining Harassment Under the PDVA

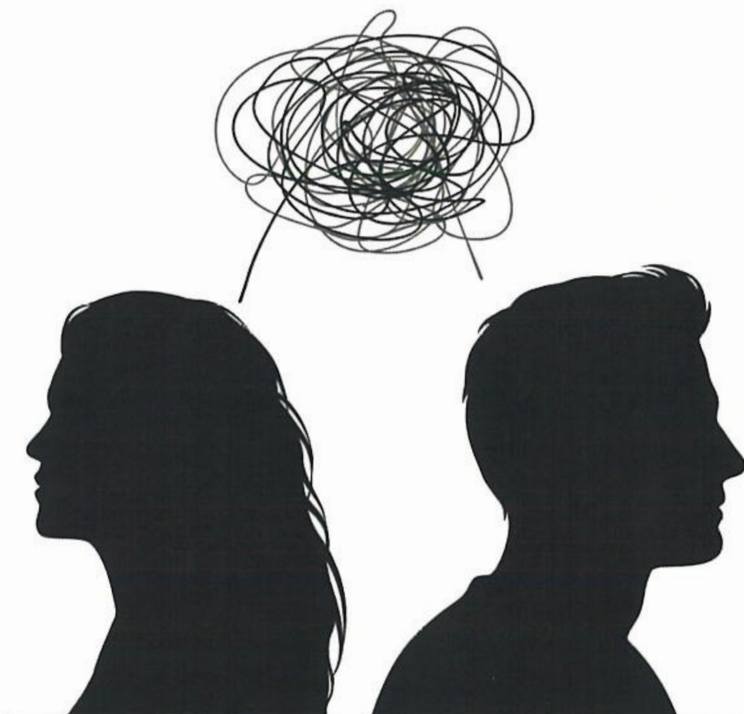
When does 'annoying' or 'alarming' behavior warrant protection?

By Tracy E. Julian

Nearly half of the 65,000 domestic violence complaints reported in New Jersey each year are based on claims of "harassment." Our judicial system expends extensive time and effort, case by case, to determine which of those claims qualify as true domestic violence under the Prevention of Domestic Violence Act (PDVA). Given the volume of allegations made in the name of harassment, the courts have cautioned litigants against wasting resources and trivializing the plight of genuine victims by asserting frivolous harassment claims.

Prevention of Domestic Violence Act.

The legislature first passed the PDVA in 1981 to clearly define this state's public policy against domestic violence and to provide a system for protecting the victims on an emergent and long-term basis. The act did not create a new class of offenses, but instead ensured that individuals who were subject to criminal conduct by significant others would have emergent access to the court system and a means of physical, psychological and financial protection when necessary.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N.J.S.A. 2C:25-19(a) defines "domestic violence" as the occurrence of one or more of 18 acts inflicted upon a person protected under the act, including acts of harassment. It can involve individuals in married, dating, cohabiting, co-parenting and adult child/parent relationships. Accordingly, the statute protects any adult or emancipated minor who is subjected to an act of domestic violence by a spouse, former spouse, co-parent or any other person who is a present or past household member. N.J.S.A. 2C:25-19(d).

Once an individual raises a claim, the PDVA enables a victim to obtain a temporary restraining order (TRO) against a defendant on an emergent basis. N.J.S.A. 2C:25-29. The courts must then hold a civil trial within 10 days of the TRO to determine by a preponderance of the evidence whether the defendant has committed one of the 18 predicate acts. If the plaintiff meets the burden, the court may enter a final order awarding various forms of relief, including: (1) restraining the defendant from further acts of domestic violence; (2) restraining the defendant from contact with the plaintiff and others; (3) awarding possession of a residence or property to the plaintiff; (4) establishing parenting time; or (5) awarding monetary support. N.J.S.A. 2C:25-29(b). This list is not exhaustive and the courts have broad discretion to grant "any relief necessary to prevent further abuse."

In conducting the analysis of whether an incident of domestic violence occurred and the appropriate remedies of relief, the court must also consider the following factors (N.J.S.A. 2C:25-29):

1. The previous history of domestic violence between plaintiff and defendant, including threats, harassment and physical abuse;
2. The existence of immediate danger to person or property;
3. The financial circumstances of plaintiff and defendant;
4. The best interests of the victim and any child;
5. In determining custody and parenting time, the protection of the victim's safety;
6. The existence of a verifiable order of protection from another jurisdiction.

Harassment and Domestic Violence

N.J.S.A. 2C:33-4 defines "harassment" as a petty disorderly persons offense when an individual engages in the following behavior with the intent to harass:

(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

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(c) Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

While subsection (b) is self-explanatory, the question of what constitutes communication that is "likely to cause annoyance or alarm" per subsection (a), or repeated conduct made with the purpose "to alarm or seriously annoy" another as set forth in subsection (c), is less clear. This is particularly true where a litigant claims harassment during the demise of a romantic relationship at a time when arguments and offensive communication are par for the course. Consequently, our judicial system is flooded with cases where the courts must decide when "annoying" or "alarming" behavior rises to the level of domestic violence and warrants protection.

Sword or Shield?

An abundance of case law analyzes the elements of harassment in the context of domestic violence with courts repeatedly cautioning against permitting litigants to utilize the PDVA as a "sword" rather than as the protective "shield" it is intended to be. Even where litigants make claims in good faith, the court's resources and relief offered under the act do not exist to protect litigants from drama often inherent at the conclusion of a relationship.

Whether an individual's behavior or communication rises to the level of domestic violence requires fact-sensitive analyses made by the trial courts on a case-by-case basis. A review of the opinions interpreting the domestic violence and harassment statutes is instructive in determining when a claim of PDVA harassment is appropriate.

• *Murray*

Murray v. Murray, 267 N.J. Super. 406 (App. Div. 1993), was one of the first appellate opinions analyzing harassment under the PDVA after the statute was revised in 1991. In that case, the defendant made statements to his wife that he did not love her or desire her sexually and that he might hit her if she tried to stop him from leaving. The trial court found that the defendant intended to demean the plaintiff and inflict emotional abuse on her. The court ordered support and granted the plaintiff possession of an automobile and the marital residence.

The Appellate Division reversed and stated that there was no evidence that the defendant made the statements *with the intent* to alarm or annoy the plaintiff. In so doing, the court expressed concern about "the serious policy implications of permitting allegations of this nature to be branded as domestic violence." The court further cautioned against permitting either spouse to utilize the statute to "secure rulings on critical issues such as support, exclusion from the marital residence and property disposition" when a matrimonial action is pending or imminent.

• *Peranio*

In *Peranio v. Peranio*, 280 N.J. Super. 47 (App. Div. 1995), the plaintiff alleged that the defendant "forced entry" into her home, pushed her and their child, and stated "I'll bury you" and other foul language. The trial court found that the defendant's language could have been construed as alarming and in fact did cause the plaintiff annoyance and alarm. The trial judge entered a final restraining order and the Appellate Division reversed. The court opined that, while the defendant's behavior was "not exemplary," use of the PDVA in those circumstances would diminish "the suffering of true victims of domestic violence" and misused the statute that was created to protect them.

• *Corrente*

Immediately after *Peranio*, the Appellate Division reiterated nearly identical concepts in *Corrente v. Corrente*, 281 N.J.Super. 243 (App. Div. 1995). There, the trial court issued a final restraining order where the plaintiff alleged that the defendant husband said he would take "drastic measures" to obtain support from her; terminated her telephone service; and called her office twice per day. The Appellate Division reversed and held that the legislature did not contemplate the type of conduct exhibited by the defendant "when it addressed the serious social problem of domestic violence." The court further opined that, while the defendant's conduct may have been childish, it did not subject the plaintiff to harm or potential injury. The court again held that invoking the PDVA with such insignificant facts "trivialized" domestic violence and abused the statute. The court further stated that the PDVA was created to "address matters of consequence, not ordinary *domestic contretemps*."

• *Hoffman*

In *State v. Hoffman*, 149 N.J. 564 (1997), Mary and Brian Hoffman were married for seven years with a history of domestic violence. In August 1992, Brian was sentenced to probation and 364 days in jail for entering Mary's home in violation of a restraining order. While in jail, he sent Mary a notice of motion, financial statement and torn-up support order. She received a second package with the same items the following day.

The trial court convicted the defendant on four charges of harassment and contempt. The Appellate Division reversed, finding that the mailings were not likely to alarm or seriously annoy a reasonable person. On appeal, the New Jersey Supreme Court held that the defendant's prior conduct and the relationship history must be considered in an inquiry of whether behavior violates the harassment statute. The *Hoffman* court further opined that the system should not permit litigants to use the domestic violence process as "*a sword rather than as a shield*."

• *Cesare*

The Supreme Court further interpreted the PDVA at length in *Cesare v. Cesare*, 154 N.J. 394 (1997). There, the court reiterated the State's strong public policy against domestic violence and held that courts must consider whether there was a history of abuse in harassment claims.

In *Cesare*, the plaintiff filed a domestic violence complaint against her husband alleging terroristic threats and harassment after the two argued on July 9, 1996. The plaintiff testified that the parties were having an argument when the defendant threatened that she would never obtain custody of their children or proceeds from the marital residence. The plaintiff said that the defendant went upstairs to bed afterwards and then repeatedly asked her when she was coming up to bed. She said he came back downstairs and asked her again with "fire in his eyes." Given the fact that the defendant owned guns and had threatened the plaintiff's life in the past, she testified that she feared for her life, left the home in her pajamas and went to the police station to seek a restraining order.

The trial court considered the parties' history and found that the defendant's behavior constituted an act of domestic violence and warranted a final restraining order. The Appellate Division reversed on the grounds that an "ordinary person" would not have considered the defendant's language to be a threat.

The Supreme Court reversed the Appellate Division and held that a domestic violence analysis must consider any history of violence or threats between the parties and whether there is immediate danger to person or property. It stressed that, while one "egregious" action could constitute domestic violence under the PDVA where there is no history of abuse, an "ambiguous incident" could likewise constitute a violation if there is a history of violence.

• *Silver*

While *Silver v. Silver*, 387 N.J.Super. 112 (App. Div. 2006), involved allegations of criminal trespass and assault (and not harassment), the holding is significant to the evolution of PDVA analysis. There, the plaintiff filed a complaint for divorce on March 9, 2004. The parties filed mutual PDVA complaints on July 27, 2004, and the court held a final hearing on Jan. 5, 2005.

The trial court dismissed all of the complaints. The Appellate Division vacated the order dismissing the plaintiff's domestic violence complaint, reinstated the TRO, and remanded the matter to the trial court to make findings of whether a restraining order was "necessary to protect plaintiff from immediate danger or further acts of domestic violence."

The court held that a trial court must implement a two-pronged test prior to entering a restraining order. First, it must consider any history of violence or threats in deciding whether the defendant committed an act of domestic violence under N.J.S.A. 2C:25-19(a). Next, it should make findings as to whether a restraining order is necessary to protect the victim from immediate danger or prevent further abuse.

Conclusion

With 30,000 claims of domestic-violence harassment claims utilizing our court's resources each year, litigants should closely consider appropriate circumstances under which to file such complaints—such as whether the defendant intended to annoy or alarm the victim, whether the victim was in fact annoyed or alarmed (perhaps in light of a history of abuse), and whether a restraining order is necessary to prevent immediate danger or further abuse. ■

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