

RECORD IMPOUNDED

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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2424-15T1

A.C.,

Plaintiff-Respondent,

v.

M.P.C.,

Defendant-Appellant.

Argued May 9, 2017 – Decided June 14, 2017

Before Judges Fisher and Moynihan.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Passaic County, Docket No. FV-16-0154-16.

Douglas J. Kinz argued the cause for appellant.

Janet L. Porro argued the cause for respondent (Porro Law Group, LLC, attorneys; Ms. Porro and Kristen M. Porro, on the brief).

PER CURIAM

Defendant, M.P.C., appeals the entry of a final restraining order (FRO) in favor of his wife, A.C. Defendant contends the trial court failed to make factual findings that defendant intended

to cause bodily injury to A.C. and, incongruously, that the trial court's finding that defendant intended to cause bodily injury to A.C. "was based on rank speculation rather than any credible facts." We disagree with both arguments and affirm for the sound reasons expressed by Judge Adrianzen in her oral opinion.

Our review of the trial court's conclusions is limited. We are bound by the court's factual findings if they are "supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998) (citation omitted). We defer to the trial judge's assessment of witnesses' credibility because of the perspective the judge gains from seeing and hearing testimony. Id. at 412.

Judge Adrianzen gave detailed reasons why she found A.C. credible and M.P.C. incredible.¹ She observed the demeanor of the witnesses on the stand and the manner in which they testified, considered how they allegedly gained knowledge of the events about which they testified, evaluated the plausibility of their versions of events, and examined their motives and biases. Her well-grounded findings deserve our full deference.

¹ Contrary to defendant's argument, the judge's credibility findings were not based only on the finding that A.C.'s "demeanor was consistent with that of a victim of domestic violence," a reason decried by defendant.

Based on the credible testimony of A.C., the judge found that the dual-element test set forth in Silver v. Silver, 387 N.J. Super. 112, 125-28 (App. Div. 2006) was met, justifying the issuance of the FRO.

The judge concluded that defendant committed the predicate act of assault, satisfying the first prong of Silver. Id. at 125. Judge Adrianzen found that, after A.C. threw a pot of his tools into his office/storage room, defendant picked up a heavy fruit bowl, ran toward A.C., and threw it directly at her "with full force" from a close distance. These circumstances presented evidence of motive and intent sufficient to prove that it was defendant's conscious object to cause A.C. bodily injury, establishing the elements of the predicate offense. N.J.S.A. 2C:12-1a(1); 2C:2-2b(1).

The second prong of the Silver test was also supported by the evidence. Silver, supra, 387 N.J. Super. at 126-28. Although the determination of the second prong may be "perfunctory and self-evident, the guiding standard is whether a restraining order is necessary . . . to protect the victim from immediate danger or to prevent further abuse," considering the factors set forth in N.J.S.A. 2C:25-29a(1) to -29a(6). Id. at 127. A.C.'s credible testimony regarding the history of domestic violence between the parties, N.J.S.A. 2C:25-29a(1), and the existence of immediate

danger to A.C., N.J.S.A. 2C:25-29a(2), substantiated the judge's determination that an FRO was necessary to prevent future acts of domestic violence. Judge Adrianzen credited A.C.'s description, "in convincing detail," of defendant chasing her around the house on November 7, 2014, and grabbing her by the arm with such force that it caused visible bruising. Photographs evidenced the injury. A second act of domestic violence was proved by A.C.'s testimony that defendant forced her to have sexual intercourse in May 2015. The judge also found that defendant's massive cache of weapons, and the manner in which they were stored,² contributed to the reasonable belief that A.C. feared for her safety. The judge found a FRO was necessary to prevent further abuse based on "all of the foregoing circumstances."

Defendant argues the introduction of evidence regarding his weapons, and the manner in which they were stored, was improper because there was no mention of same in the complaint. When asked if defendant engaged in any other conduct that raised concerns for her safety and that of her daughter, A.C. testified about the weapons. Defendant's counsel objected that the testimony was "beyond the scope." A.C.'s counsel countered that the evidence

² The weapons were stored in a "bunker", the entrance to which was "guarded" by two mannequins. A.C. expressed her long-standing fear of dolls and claustrophobia as reasons why the weapons were so kept.

went to A.C.'s fear of defendant; the judge overruled the objection.

At no time did defendant contend that he was not prepared to meet the evidence regarding the weapons. His counsel never asked for a continuance. This was not an issue about which defendant lacked knowledge; he never indicated it needed further investigation. Further, he did not deny the existence of the weapons. This was one of those instances foretold by our Supreme Court in J.D. v. M.D.F., 207 N.J. 458, 480 (2011), when it held, "To be sure, some defendants will know full well the history that plaintiff recites and some parties will be well-prepared regardless of whether the testimony technically expands upon the allegations of the complaint."

This was not a case where one predicate act of domestic violence, unaccompanied by any threat or violent act, was set forth in the complaint and defendant was forced to defend against multiple other prior acts of which he had no notice until the day of the hearing. J.F. v. B.K., 308 N.J. Super. 387 (App. Div. 1998). This was not a case where "much of the testimony" about prior acts of domestic violence involved incidents not mentioned in the complaint. L.D. v. W.D., 327 N.J. Super. 1, 4 (App. Div. 1999). Judge Adrianzen found that a restraining order was necessary to protect the victim based on two other prior acts that

were set forth in the complaint, not only on the weapons possessed by defendant.

Defendant also contends that the trial court made no specific findings with regard to the two other prior incidents of domestic violence. We find no merit in this argument. Judge Adrianzen made credibility findings and commented on the quality of the evidence presented regarding those prior acts. The restraining order was properly granted.

Affirmed.

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



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