

RECORD IMPOUNDED

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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
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-2459-15T2

S.M.E.,

Plaintiff-Respondent,

v.

A.E.,

Defendant-Appellant.

Argued March 21, 2017 – Decided April 11, 2017

Before Judges Koblitz and Rothstadt.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Morris County,
Docket No. FV-14-000496-16.

Lynne M. Machtemes argued the cause for
appellant (Iacullo Martino, LLC, attorneys;
Ms. Machtemes, on the brief).

Peter G. Bracuti argued the cause for
respondent (Gomperts Penza & McDermott, LLC,
attorneys; Mr. Bracuti, on the brief).

PER CURIAM

A.E. appeals from a January 5, 2016 final restraining order (FRO) entered after a finding that he assaulted his wife, S.M.E. at her residence and threatened her when the couple was in the process of obtaining a divorce. We affirm substantially for the reasons expressed in Judge David J. Weaver's thorough oral opinion rendered before he entered the FRO.

Judge Weaver found plaintiff's testimony to be "consistent and credible." He found her testimony of being assaulted was corroborated by a photograph of a bruise on her body. The judge also found credible plaintiff's mother's testimony that she heard a loud crash and heard plaintiff calling out "he's attacking me." The judge found that defendant's claim that plaintiff injured herself when she knocked the doorknob against herself was not credible, nor was it consistent with the way the door was constructed, as depicted in a photograph of the door. In light of the current violent incident as well as prior threats over past years, Judge Weaver found that plaintiff was in need of an FRO for her protection.

Our review of a trial judge's fact-finding function is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). A judge's fact-finding is "binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12. The judge sees witnesses firsthand and has a "feel of the case that can never be

realized by a review of the cold record." N.J. Div. of Youth & Family Servs. v. G.M., 198 N.J. 382, 396 (2009) (citations and internal quotation marks omitted). We give additional deference to the factual findings of family court judges because they have special expertise, ibid., and we do not second-guess their exercise of sound discretion. Hand v. Hand, 391 N.J. Super. 102, 111 (App. Div. 2007).


When determining whether to grant a FRO pursuant to the Prevention of Domestic Violence Act (Act), N.J.S.A. 2C:25-17 to -35, the judge must first determine whether the plaintiff has proven by a preponderance of the evidence that the defendant committed one of the predicate acts referenced in N.J.S.A. 2C:25-19(a), which incorporates simple assault, N.J.S.A. 2C:12-1(a), and terroristic threats, N.J.S.A. 2C:12-3, as conduct constituting domestic violence. Silver v. Silver, 387 N.J. Super. 112, 125-26 (App. Div. 2006). The judge must construe any such acts in light of the parties' history to better "understand the totality of the circumstances of the relationship and to fully evaluate the reasonableness of the victim's continued fear of the perpetrator." Kanaszka v. Kunen, 313 N.J. Super. 600, 607 (App. Div. 1998); N.J.S.A. 2C:25-29(a)(1). If a predicate offense is proven, the judge must then assess "whether a restraining order is necessary, upon an evaluation of the facts set forth in N.J.S.A. 2C:25-

29(a)(1) to -29(a)(6), to protect the victim from an immediate danger or to prevent further abuse." J.D. v. M.D.F., 207 N.J. 458, 475-76 (2011) (quoting Silver, supra, 387 N.J. Super. at 127). "When the predicate act is an offense that inherently involves the use of physical force and violence, the decision to issue an FRO 'is most often perfunctory and self-evident.'" A.M.C. v. P.B., 447 N.J. Super. 402, 417 (App. Div. 2016) (quoting Silver, supra, 387 N.J. Super. at 127).

We defer to Judge Weaver's findings, which were based on substantial credible evidence in the record.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION