SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2897-14T3

J.D.,

Plaintiff-Respondent,

v.

V.D.,

Defendant-Appellant.

Argued November 10, 2016 – Decided December 8, 2017

Before Judges Simonelli, Carroll and Gooden Brown.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FV-07-1785-15.

Richard S. Diamond argued the cause for appellant (Diamond & Diamond, PA, attorneys; Richard S. Diamond and Lynn M. Matits, on the briefs).

Amy L. Miller argued the cause for respondent (Jacobs Berger, LLC, attorneys; Amy L. Miller, of counsel and on the brief; Jani Wase Vinick, on the brief).

The opinion of the court was delivered by

GOODEN BROWN, J.A.D.

Defendant (husband) appeals from a January 13, 2015 final restraining order (FRO) entered against him in favor of plaintiff (wife) pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. He also appeals from an April 6, 2015 Family Part order awarding plaintiff $9075 in attorney's fees. We affirm.

I.

The relevant facts are as follows. The parties married in 2000. In 2010, they adopted a sixteen-month-old special-needs child, A.D., from Russia. A.D. suffered from several cognitive deficits for which he was undergoing treatment. He was also taking prescription medication for impulse control. His behavioral challenges resulted in his removal from two preschool programs and a summer camp. The parties clashed over their conflicting parenting styles, which, in part, led to the deterioration of their marriage and discussions about divorce. Plaintiff described defendant's parenting style as "cruel" and rigid, while defendant believed plaintiff was too lenient and spoiled A.D. "a little bit too much." Ultimately, plaintiff filed a complaint for divorce around the end of December 2014.

On December 20, 2014, prior to filing the divorce complaint, plaintiff filed a complaint against defendant seeking injunctive relief under the PDVA. In her complaint, plaintiff alleged that

defendant committed an act of domestic violence, specifically, harassment, by "harassing [her] constantly and not giving her a moment of peace." Plaintiff alleged she was "fearful for her life as well as her son's life." In a handwritten statement accompanying the complaint, plaintiff described two occasions where defendant inflicted physical harm on A.D., once in November 2014, and once in December 2014. Plaintiff stated defendant "ha[d] been continually escalating his level of rage and harassment" and had "emotionally and verbally abuse[d] [her] and [their] son" because "he [could] not control his temper and anger." On January 5, 2015, plaintiff amended her complaint by alleging both assault and harassment as predicate acts. She incorporated a February 24, 2014 email to her mother, describing "[a]nother long night arguing[,]" as well as a typed document cataloguing a series of incidents from October 2013 to December 2014, during which she alleged defendant became enraged and verbally abusive.

The Family Part judge conducted an evidentiary hearing on January 8 and January 12, 2015, during which both parties were represented by counsel and both parties testified. Plaintiff's sister also testified on plaintiff's behalf. At the hearing, plaintiff testified in detail about the incidents included in her December 20, 2014 written statement and the course of conduct described in her January 5, 2015 amended complaint. First, she

testified that on December 19, 2014, at about 6:20 p.m., she and defendant attended a holiday party with their son at their son's Taekwondo studio. All the children were eating and running "up and down the hallway under the tables[,]" including A.D., who was then five years old. However, defendant took A.D.'s snacks away and told him to "stop running around" because he was "out of control." When A.D. failed to heed the warning, defendant chased A.D. around the room and eventually grabbed him, "started man-handling him[,]" and told plaintiff it was time to leave.

While defendant carried A.D. outside, A.D. was kicking and screaming. Plaintiff grabbed A.D.'s shoes, coat, and hat and followed them outside, where an argument about A.D.'s behavior ensued. After defendant placed A.D. in plaintiff's car, A.D. stated to plaintiff, "Daddy bit me[,]" and showed plaintiff his right arm. Plaintiff was unable to see because of the poor lighting. However, once they got home, plaintiff observed "bite marks" surrounded by bruising. According to plaintiff, "[i]t was a full set of teeth." Photographs of the injury were admitted into evidence.

Later that night, when plaintiff confronted defendant, he admitted biting A.D. and said "he wanted a divorce[.]" Plaintiff responded that she wanted to talk about defendant's parenting, not a divorce. Plaintiff told defendant "to take parenting classes"

and seek "anger management" counseling to address his "anger" and "rage issues" because his "therapists" and "psychiatrists" were not helping him. Plaintiff claimed that after their discussion, she "was worried all night" and "fearful that something could happen to [A.D.] and [her]."

The next morning, she awoke to defendant "stomping around up and down the hallway" and "banging closet doors[.]" He was "ranting and raving about different things" before leaving to run errands. Plaintiff took A.D. out for breakfast, and when she returned home, defendant continued yelling. Plaintiff explained that she was "scared" and "couldn't take it anymore." After speaking to her attorney, she went to the police station with A.D. where the responding officer interviewed A.D. and took photographs of his injuries. The officer also advised plaintiff about her rights under the PDVA, and, as a result, plaintiff opted to file a complaint seeking a restraining order.

Defendant's version of events differed from plaintiff's. Defendant testified that at the Taekwondo holiday party, he was concerned about A.D.'s safety because he was "running underneath the tables of food[,]" which also held "heavy objects" such as pressure cookers and chafing dishes. Defendant knew A.D. was "out of control" because he "was loaded up with sugar" and "doesn't do very well in unstructured environments[.]" After he told plaintiff

they "need[ed] to leave," defendant took A.D. and waited for her in the waiting area. A.D. was "hitting" and "kicking" him because he wanted to return to the party. After waiting for plaintiff for about five minutes, defendant motioned to plaintiff from the entryway "to say let's go, come on." When plaintiff arrived with A.D.'s belongings, she told defendant he had "embarrassed [her] in front of everybody."

While they walked to the car, A.D. continued "hitting and kicking and whacking [defendant] in the face[,]" until defendant bit A.D.'s "shoulder" to stop his onslaughts. Defendant testified that he regretted biting A.D., but denied breaking A.D.'s skin or causing the bite marks depicted in plaintiff's photographs. Defendant admitted he later apologized to A.D. at plaintiff's request, and acknowledged that he told plaintiff he wanted a divorce instead of discussing the incident. The following morning, defendant tried to kiss A.D. before leaving to do his errands. However, plaintiff insisted against it because she was afraid it would wake A.D. Defendant denied yelling or screaming that morning and claimed "it was just a conversation." Defendant admitted however that after the December 19, 2014 incident, he looked into anger management counseling and enrolled in an online class.

Regarding the second incident described in her written statement, plaintiff testified that on November 8, 2014, defendant

was bathing A.D. when she and her sister heard a loud scream coming from the third floor of their three-story townhome. She ran upstairs and observed "marks that were bleeding" on the right side of A.D.'s face. A.D. told plaintiff, "Daddy hurt me." On cross-examination, plaintiff admitted that in her prior written statement, she did not indicate that there was any piercing of the skin or bleeding. Rather, in her statement she had indicated that "as a result of [defendant] grabbing [A.D.'s] cheeks, there were fingerprint impressions on [one] cheek[.]" However, plaintiff testified that defendant eventually admitted to her that he "grabbed [A.D.] . . . to pinch his cheeks," and "lost control." Photographs of A.D.'s injuries were admitted into evidence.

Plaintiff's sister, who was visiting from Rhode Island at the time of this incident, confirmed plaintiff's account. She acknowledged observing A.D.'s face after hearing the altercation upstairs and described A.D.'s face as "very red" with "scratch marks" and a "gouge." In contrast, defendant denied injuring A.D. by piercing or puncturing his skin. Defendant testified that after giving A.D. a bath, he "squeezed" A.D.'s cheek to get A.D. to stop "lung[ing] at [him] . . . to bite [his] ankles." However, he did not cause any bruising or any other type of injury to A.D.'s face, and he denied hurting A.D. when plaintiff inquired. Defendant testified that the "gash on [A.D.'s] cheek" depicted in

plaintiff's photograph was caused by an incident between A.D. and another boy at school.

Plaintiff also testified about the course of conduct described in her amended complaint, beginning in October 2013, during which defendant's outbursts became "more and more frequent" and "out of control." Plaintiff testified she "was doing her best to always stay on [her] best behavior" and not "provoke or engage [defendant]," or "cause him to get mad at [her and A.D.,] or make any mistakes that would upset him[.]" However, defendant's outbursts became so frequent that she would go to work "crying because [she] was so scared about what was going to happen next." During his testimony, defendant denied engaging in a course of harassing conduct directed at plaintiff. Defendant also denied having an anger problem and testified that the actions plaintiff viewed as harassment were not intended to harass her but "to work together to parent [their] son[.]"

As to specific incidents, plaintiff testified that in October 2013, they argued about parenting styles. Defendant told plaintiff that "he struggles at [parenting]" while she "made it too easy to parent[.]" He told her "he hated [her] for that." He also told her that A.D. "was ruining [their] life[,]" a sentiment he had previously expressed "several different times," but not as aggressively as on that occasion. Contrary to plaintiff's view,

defendant believed they both "need[ed] parenting counseling together."

Plaintiff testified further that one day in November 2013, defendant woke her and A.D. "screaming . . . about how [plaintiff's] car broke down when he had backed it up into the middle of the street." Defendant "kept screaming" that she had "to deal with this" because "he had to get to work[.]" That day, plaintiff had a biopsy scheduled for suspected breast cancer. She ultimately arranged for alternate transportation for herself. Defendant denied yelling or screaming at plaintiff when her car broke down. Rather, he simply asked her to "help [him] push the car out of the street so it wouldn't block traffic[,]" and he later arranged her transportation at her request.

Next, plaintiff testified that on December 23, 2013, while she was preparing to go to the hospital for a second biopsy, "he started ranting and raving" about the pressures of the holidays and the attendant family visits. After her procedure, when she awoke from the anesthesia, he continued yelling at her, which prompted her to ask him to leave the room. Plaintiff testified that she was "really sick" and "scared[.]" Defendant acknowledged that he was "upset." He said he asked plaintiff if they could stay home for the holidays before going "to Boston to visit her friends" so that they could "relax and recoup from what then had

been a trying four months." He testified that plaintiff "was yelling" and "telling [him] to leave" because she did not want to change their holiday plans. He ultimately acquiesced to her wishes.

Plaintiff also recalled an incident on February 24, 2014, during which defendant pushed A.D. against the wall while bathing him but said "he didn't mean it." When plaintiff confronted defendant about his increasingly uncontrollable anger and volatile behavior, A.D. hid behind her as she tried "to protect him" from defendant who kept "lunging at [them,]" before he finally left. Later that night, as defendant became "more and more erratic[,]" plaintiff wrote an email to her mother stating that she "actually feared" for her and A.D.'s lives. She also feared for defendant's life because she "didn't know what he could do to himself either." She explained in the email that they continued to criticize each other's parenting style, and she repeatedly told him that he needed to take "parenting classes" and "his medication." Although he later apologized for insulting her parenting, she did not sleep all night.

In yet another incident, plaintiff testified that in August 2014, while on vacation in Cape Cod with family and friends, plaintiff awoke one night "to the bed shaking" and observed "[defendant's] hand moving up and down[.]" She asked him if he

was "touching" himself, but he did not respond. At the time, A.D. was sleeping in the bed with them. She told defendant that it was "disgusting" and "inappropriate[,]" and "he got up and went to the bathroom." This occurred a second time during the trip. She was outraged by defendant's conduct and wondered if he was doing this in her absence. During his testimony, defendant denied plaintiff's accusation that he was masturbating while A.D. slept in the bed with them.

Plaintiff testified further that in September 2014, defendant was again bathing A.D. to get him ready for bed. Suddenly, A.D. ran to plaintiff, and she shielded him from defendant, who was screaming at him for not listening. According to plaintiff, while she was standing in the corner with A.D. behind her, defendant "came lunging at [them]." She was "terrified" because "there[] [was] a window behind [them.]" She said that "if he pushed [her], . . . he could really hurt [them]" because she did not "have anywhere to escape." She threatened to call the police if he did not leave the room. Defendant replied, "[i]t'll be your word against my word" and continued screaming. Finally, defendant "packed his bags and left the house for several hours" but later returned home. In contrast, defendant denied screaming at A.D. or lunging at plaintiff and A.D. in any violent or inappropriate

way. He testified that he had asked plaintiff for help because A.D. was "raging out of control," but she did nothing.

Plaintiff testified about another November 2014 incident that occurred shortly after she returned from a week-long business trip, during which her sister stayed at the house with defendant and A.D. at plaintiff's request. Plaintiff, who was a Vice President in charge of risk management for Sony Corporation, left on November 12, 2014. Upon her return, while plaintiff and defendant were in the car with A.D., they began arguing. During the argument, defendant called her various names and said "[she] was lazy, overweight, fat," and feigning her complaints about back pain. He told her "he had a peaceful week with [her] sister[,]" and said "he wished [she] wasn't here." Defendant denied calling plaintiff derogatory names.

To show his good intentions, defendant testified that he sent an email to plaintiff on November 20, 2014, expressing his gratitude to her and complimenting her "intelligence," her "operation skill, et cetera[,]" because he heard a story from a co-worker who had a child with behavioral issues. Defendant explained that he was "very thankful" that plaintiff possessed "all these qualities." Defendant also testified that he and plaintiff went on various trips alone, including his nephew's wedding in January 2014, his second cousin's wedding in Florida

in July 2014, and a spa trip for plaintiff's birthday in November 2014. At no time during those outings did plaintiff express to him any concerns about her safety or well-being.

On cross-examination, plaintiff acknowledged receiving a complimentary message from defendant on November 20, 2014. She also acknowledged going on various outings alone with defendant. Plaintiff explained that she believed "it was [defendant's] way of trying to make up for his behavior and conduct[.]" She felt that if she refused the spa trip, it "would upset" or "enrage him." Plaintiff stated "[t]here was a constant pattern" of defendant "trying to hurt [her] and then trying to take it back[.]" She "felt intimidated constantly by him" and "didn't know what to believe or not to believe[.]"

In an oral opinion rendered on January 13, 2015, the court found that the entry of an FRO was justified. First, the court found jurisdiction under the PDVA, predicated on the parties' marital relationship. Next, the court found plaintiff's testimony "credible" and "believable" based on "[her] body language and demeanor[.]" In contrast, the court noted "defendant's body language and demeanor . . . demonstrate[d] to the [c]ourt that his testimony on . . . critical matters . . . cannot be believed." Although the court agreed with defendant that "a number of [plaintiff's] allegations . . . would not support a domestic

violence complaint[,]"[1] the court found defendant had committed the predicate act of harassment under N.J.S.A. 2C:33-4(a) and (c).

Relying on E.K. v. G.K., 241 N.J. Super. 567 (App. Div. 1990), the court acknowledged that "[t]he attacks on A.D." during which defendant "bit [A.D.]," "squeezed his face," and exploded while bathing A.D., while "troubling," were inadequate to establish that "[A.D.] was harmed in an effort to purposely harass the plaintiff." "[R]ather, those incidents show overall, his inability to control his emotions[,] and when his emotions run away with him[,] the defendant loses control." Likewise, the court recognized that incidents such as plaintiff's claim that "[defendant] was masturbating under the covers[,]" while upsetting to plaintiff, "did not rise to the level of domestic violence" because defendant was not doing it with a purpose to harass her.

[1] The court "did not find that there was an assault of the plaintiff," but rather of the child. Relying on M.A. v. E.A., 388 N.J. Super. 612 (App. Div. 2006), the court concluded that A.D. did not meet the definition of a victim under the PDVA, and plaintiff was not allowed to file a domestic violence complaint on his behalf. While we agree with the court's determination in that regard, we note parenthetically that the Legislature amended the PDVA in August 2015 to add the predicate act of criminal coercion, which may encompass inflicting third-party harm to a child, as grounds for a restraining order. See L. 2015, c. 98, § 2, eff. Aug. 10, 2015.

However, the court found that "defendant's explosive behavior," as "credibly recited by the plaintiff . . . in the context of the series of events . . . where the defendant was unable to control himself[,]" established harassment pursuant to N.J.S.A. 2C:33-4(a). The court pointed to defendant's conduct during the December 23, 2013 incident at the hospital as evidence of defendant's purpose to "control" and "harass [plaintiff] to get his way[.]" Further, the court found that defendant's behavior on the morning of December 20, 2014, when he "didn't get his way," "wasn't able to kiss [A.D.]," and "started to rage[,]" established a course of alarming conduct with the purpose to alarm or seriously annoy plaintiff under N.J.S.A. 2C:33-4(c). According to the court, "when defendant was exploding at . . . plaintiff[,] his purpose was to disturb, irritate or bother her so that he could impose his will."

The court recognized that defendant "[was] not always abusive" and that there were "instances where defendant caught himself, realized what he did[,] and then tried to correct his action[.]" However, the court noted, "it is difficult to predict when the explosion will occur." The court found defendant engaged in the behavior with the purpose to harass plaintiff by forcing her "to engage in [a] parenting style [that] followed his view." According to the court, "when he became frustrated, [defendant]

exploded[,] and the explosion was an effort by . . . defendant to control plaintiff." In ascertaining defendant's intent in this regard, the court noted:

> Defendant testified about a letter that he wrote to the plaintiff in November, . . . in which he told the plaintiff what a wonderful mother she was, how lucky he was to be married to her, and that he was very grateful for the relationship. Later on[,] when he was confronted about the reasons for filing the divorce case, he said that he wasn't going to pretend anymore. He never explained to the [c]ourt what he meant by his unwillingness to pretend; however[,] . . . in spite of . . . writing the email a month earlier, when he was pressed on cross-examination, he said the events that led up to his . . . wanting a divorce were . . . occurring over a three or four-month period, the very time period when he wrote this email to the plaintiff telling her how wonderful she was. So when he said that he wasn't going to pretend anymore, the [c]ourt's view, based on the totality of . . . his testimony, is that defendant was making it clear that . . . at that point in time he was not going to any longer accept the plaintiff's parenting style, and therefore he exploded.

The court further determined that the FRO was necessary to protect plaintiff and prevent further abuse. In that regard, the court "could see by looking at [plaintiff's] face that it was genuinely upsetting her[.]" The court noted it "becomes very [scary] to [plaintiff]" when defendant "blows up" and "goes into a fit of rage" that "he can't control[.]" Given defendant's

pattern, the court found that plaintiff was "afraid it's going to happen again." The court concluded:

> [T]he [c]ourt understands, and appreciates, that drawing a line between acts that constitute harassment for the purpose of issuing a domestic violence restraining order and those that fall instead [into] the category of ordinary domestic [contretemps] [is] [oftentimes] difficult to assess, but the [c]ourt is satisfied that the conduct, in this case, is clear that defendant was exploding at [plaintiff] on the dates [e]numerated, and there was a pattern of explosions that would reasonably cause fear in another party, and . . . because [he] is not []able to control his temper, there is also the reasonable probability that without a restraining order his behavior will be repeated.
>
> . . . [T]he [c]ourt was very careful to focus on the incidents . . . [that] evidence . . . defendant's efforts to control the plaintiff. The [c]ourt also . . . believes that the acts of domestic violence in this case are egregious; however[,] . . . even if the single acts . . . were not egregious[,] . . . the history of domestic violence presents the [c]ourt with a context [that] gives meaning to what happened on [December] 20th, and . . . shows that . . . the acts were . . . acts of harassment and were done with the purpose to control the plaintiff. Essentially it's the [c]ourt's view that . . . defendant wants control, and when he does not get his way[,] he explodes to get his way, and that is the type of behavior . . . the domestic violence act is designed to protect the victims [from], and the [c]ourt will enter an order of protection[.]

Subsequently, plaintiff moved for an award of $16,022.50 in counsel fees, pursuant to N.J.S.A. 2C:25-29(b)(4). A supporting

certification of services by her attorney accompanied the submission. On April 6, 2015, the court entered an order awarding plaintiff $9075 in counsel fees. In its statement of reasons, the court denied portions of the requested fees "because it was not clear to the [c]ourt that the work was for the domestic violence action and not the matrimonial matter." The court also deducted $2500 "from the total fee amount[,] as one[-]half of the [$5000] retain[er] [was] paid to [plaintiff's attorney] from joint funds." This appeal followed.

On appeal, defendant raises the following points for our consideration:

> I. THERE WAS NO PREDICATE ACT OF DOMESTIC VIOLENCE; THEREFORE[,] IT WAS REVERSIBLE ERROR BY THE LOWER COURT TO ENTER A FINAL RESTRAINING ORDER.
>
> > (A) PRECIPITATING EVENT IS NOT A PREDICATE ACT.
> >
> > (B) PLAINTIFF'S TESTIMONY AS TO DEFENDANT'S ACTIONS DIRECTED AT THEIR SON DID NOT CONSTITUTE A PREDICATE ACT OF DOMESTIC VIOLENCE.
> >
> > (C) THE LOWER COURT ERRED IN FINDING A PREDICATE ACT UNDER SUBSECTION (A) OF THE HARASSMENT STATUTE.
> >
> > (D) THE LOWER COURT ERRED IN FINDING A PREDICATE ACT UNDER SUBSECTION (C) OF THE HARASSMENT STATUTE.

II. THE EVIDENCE PRESENTED DID NOT ESTABLISH THAT DEFENDANT ACTED WITH A PURPOSE TO HARASS THE PLAINTIFF.

III. THE COURT ERRED IN FINDING THAT THE ENTRY OF THE FINAL RESTRAINING ORDER WAS NECESSARY TO PROTECT THE PLAINTIFF FROM FUTURE ACTS OF DOMESTIC VIOLENCE.

IV. THE LOWER COURT ERRED IN AWARDING PLAINTIFF COUNSEL FEES.

II.

We begin our analysis with the standard of review. Factual findings of the trial court should not be disturbed unless they "are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Cesare v. Cesare, 154 N.J. 394, 412 (1998) (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). "Deference to a trial court's fact-findings is especially appropriate when the evidence is largely testimonial and involves questions of credibility[,]" In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997), and "[b]ecause of the family courts' special jurisdiction and expertise in family matters[.]" Cesare, supra, 154 N.J. at 413. Reversal is warranted only "if the court ignores applicable standards[.]" Gotlib v. Gotlib, 399 N.J. Super. 295, 309 (App. Div. 2008).

The PDVA provides that an FRO may be issued if the court determines "by a preponderance of the evidence[,]" N.J.S.A. 2C:25-

29(a), that the defendant has committed an act of domestic violence upon a spouse. See N.J.S.A. 2C:25-19(a), (d). "Domestic violence" is defined in N.J.S.A. 2C:25-19(a) as "the occurrence of one or more" specified acts, known as predicate acts, including harassment. N.J.S.A. 2C:19(a)(13). A person commits harassment "if, with purpose to harass another," he: (a) "[m]akes, 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;" or (c) "[e]ngages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person." N.J.S.A. 2C:33-4(a), (c).

"[S]ubsection (a) proscribes a single act of communicative conduct when its purpose is to harass. Under that subsection, annoyance means to disturb, irritate, or bother." State v. Hoffman, 149 N.J. 564, 580 (1997). "In contrast to subsection (a), which targets a single communication, subsection (c) targets a course of conduct. Subsection (c) proscribes a course of alarming conduct or repeated acts with a purpose to alarm or seriously annoy an intended victim." Ibid. "[S]erious annoyance under subsection (c) means to weary, worry, trouble, or offend[,]" while "the annoyance or alarm required by subsection (a) need not be serious[.]" Id. at 581.

Harassment requires that the defendant act with the purpose of harassing the victim, and judges must be mindful that "a party may mask an intent to harass with what could otherwise be an innocent act." J.D. v. M.D.F., 207 N.J. 458, 488 (2011). "A finding of a purpose to harass may be inferred from the evidence presented," and a judge may use "[c]ommon sense and experience" when determining a defendant's intent. Hoffman, supra, 149 N.J. at 577. To that end, an analysis of whether an underlying act of harassment in the context of domestic violence has occurred requires consideration of the totality of the circumstances. Id. at 584-85.

Pursuant to Silver v. Silver, 387 N.J. Super. 112, 125-26 (App. Div. 2006), when determining whether to grant an FRO under the PDVA, the judge must make two determinations. Under the first Silver prong, the judge "must determine whether the plaintiff has proven, by a preponderance of the credible evidence, that one or more of the predicate acts set forth in N.J.S.A. 2C:25-19(a) has occurred." Id. at 125.

> Although a court is not obligated to find a past history of abuse before determining that an act of domestic violence has been committed in a particular situation, a court must at least consider that factor in the course of its analysis. Therefore, not only may one sufficiently egregious action constitute domestic violence under the Act, even with no history of abuse between the parties, but a

> court may also determine that an ambiguous incident qualifies as prohibited conduct, based on a finding of [abuse] in the parties' past.
>
> [Cesare, supra, 154 N.J. at 402 (emphasis omitted).]

Under the second Silver prong, a judge must also determine whether a restraining order is required to protect the plaintiff from future acts or threats of violence. Silver, supra, 387 N.J. Super. at 126-27. Although this determination "is most often perfunctory and self-evident, the guiding standard is whether a restraining order is necessary, upon an evaluation of the factors 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." A.M.C. v. P.B., 447 N.J. Super. 402, 414 (App. Div. 2016) (emphasis omitted) (quoting Silver, supra, 387 N.J. Super. at 127).

Here, we are satisfied there is sufficient credible evidence in the record to support the judge's finding that defendant committed the predicate act of harassment. We are also convinced that the record supports the judge's determination that an FRO was required to protect plaintiff and prevent further acts of domestic violence. We reject defendant's arguments to the contrary, and we reject his reliance on unpublished opinions to support his position. See R. 1:36-3 ("No unpublished opinion shall constitute precedent or be binding on any court."); see also Guido v. Duane

Morris LLP, 202 N.J. 79, 91 n.4 (2010) (rejecting use of unpublished decisions as precedent).

Defendant argues that the court misapplied E.K., supra, 241 N.J. Super. at 567. We disagree. In E.K., the parties' prior marital discord was exacerbated by the adoption of a second special-needs child from Poland. Id. at 568. The husband filed a complaint against his wife under the PDVA, alleging harassment predicated "upon the adverse impact suffered by him as a result of [her] persistence upon methods of discipline with which he differed." Id. at 570. We concluded that, even assuming the trial judge found that the wife purposely harmed the child by acting violently towards him on one occasion, "this would be inadequate to establish the requisite element of purpose to harass [her husband.]" Ibid. We explained, "[i]t is not enough that [the husband] felt emotionally abused. The statute requires that [the wife] be found to have injured the child in order to harass [her husband]." Id. at 571. We reversed because the trial judge failed to make such a finding, and the record did "not support a determination that any actions towards [the child] were purposely directed at harassment of [the husband]." Ibid.

Here, the court painstakenly parsed through the series of incidents to identify only those that manifested defendant's purpose to harass plaintiff, rather than simply a divergence in

parenting styles. The court determined that defendant's actions towards A.D. and his disagreement with plaintiff's parenting style were relevant to shed light on defendant's intent and evinced yet another way, in the totality of the circumstances, in which defendant's fits of rage and anger were designed to harass and control plaintiff. "As was demonstrated here, those who commit acts of domestic violence have an unhealthy need to control and dominate their partners[.]" Hoffman, supra, 149 N.J. at 585.

"We recognize that in the area of domestic violence . . . some people may attempt to use the process as a sword rather than as a shield." Id. at 586. However, we defer to the trial court's finding that domestic violence occurred in this case. We reject defendant's implication that the allegations were merely incidental to plaintiff's request for a divorce and intended to gain an unfair advantage in a companion matrimonial or custody action as occurred in N.B. v. T.B., 297 N.J. Super. 35, 42 (App. Div. 1997) and Murray v. Murray, 267 N.J. Super. 406, 410 (App. Div. 1993).

Finally, defendant argues the court's award of counsel fees to plaintiff was "improper and reversible error." Defendant asserts that plaintiff's attorney failed to submit a separate or supplemental retainer agreement for representing plaintiff in the domestic violence proceeding, as required by the divorce retainer

agreement, and failed to submit a breakout of the time spent by counsel between the two separate proceedings. Defendant further claims that plaintiff's counsel did not identify the source of $10,000 paid by plaintiff towards her fees.

"[S]ince attorney's fees are expressly included in the [PDVA] as compensatory damages, the considerations which apply to an award of counsel's fees in a matrimonial action are inapplicable." McGowan v. O'Rourke, 391 N.J. Super. 502, 507 (App. Div. 2007); see also N.J.S.A. 2C:25-29(b)(4). "[T]o hold otherwise would create a chilling effect on claims made by bona fide victims who might have the ability to pay." McGowan, supra, 391 N.J. Super. at 507 (quoting Wine v. Quezada, 379 N.J. Super. 287, 293 (Ch. Div. 2005)).

Because the PDVA specifically provides for an award of attorney's fees, "they are permitted by the Court Rules." Id. at 507-08; see also R. 4:42-9(a)(8). However,

> The reasonableness of attorney's fees is determined by the court considering the factors enumerated in [Rule] 4:42-9(b). That rule incorporates the factors stated in [Rule of Professional Conduct] 1.5. If, after considering those factors, the court finds that the domestic violence victim's attorney's fees are reasonable, and they are incurred as a direct result of domestic violence, then a court, in an exercise of its discretion, may award those fees.
>
> [McGowan, supra, 391 N.J. Super. at 508.]

Any "determinations by trial courts [regarding legal fees] will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)). In accordance with that deferential standard of review, we find no abuse of discretion by the court in awarding counsel fees in this case. The court applied the pertinent principles, reduced the requested amount by $4,447.50, and credited defendant with $2500, representing his share of the marital funds used.

Affirmed.