

RECORD IMPOUNDED

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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-1508-16T4

M.M.,

Plaintiff-Appellant,

v.

A.S.,

Defendant-Respondent.

Argued March 15, 2018 – Decided May 31, 2018

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Hudson
County, Docket No. FV-09-2663-16.

Vijaysen Yellareddigari argued the cause for
appellant (Chugh, LLP, attorneys; Laurie L.
Newmark and Janet B. Coven, on the brief).

A.S., respondent, argued the cause pro se
(Neeпа P. Patel, on the brief).

PER CURIAM

Plaintiff, M.M., appeals from the Family Part's October 28,
2016 order dismissing her complaint against her husband,
defendant A.S., and denying her application for a final

restraining order (FRO), under the Prevention of Domestic Violence Act of 1991 (PDVA), N.J.S.A. 2C:25-17 to -35. On appeal, plaintiff argues that the trial court failed to make adequate findings of fact and conclusions of law in accordance with Rule 1:7-4 and Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006). For the reasons that follow, we agree with plaintiff and vacate the order dismissing the complaint and remand the matter so that the trial court can make the required findings.

The conflicting evidence presented by the parties at trial is summarized as follows. The parties have been married for approximately five years and have one child.¹ On June 7, 2016, plaintiff filed an amended domestic violence complaint alleging as predicate acts: assault, N.J.S.A. 2C:12-1; criminal mischief, N.J.S.A. 2C:17-3; and harassment, N.J.S.A. 2C:33-4. The complaint also set forth a prior history of domestic violence during the years 2012 to 2015.

At trial, plaintiff testified that she was subjected to defendant's physical and verbal abuse on three separate occasions spanning from May 29 to May 31, 2016. According to plaintiff, the first incident occurred when defendant called her

¹ On July 6, 2016, defendant filed for divorce and the divorce action is currently pending.

a "cunt" and a "whore" in front of their child and defendant's grandmother after an argument occurred between plaintiff and defendant's grandmother in the car on their way to an amusement park. Plaintiff stated that defendant slapped her across the face, "causing a scratch mark a little above [her] left lip[,] on [her] cheek[, a]nd then[] he grabbed [her] by [her] neck and squeezed[.]" Plaintiff alleged that defendant further abused her that day by keeping their child away from her while they were at the amusement park.

The second incident occurred on May 30, 2016, when the parties went for coffee, and on their way they began to argue about money, specifically plaintiff's lack of an income. When plaintiff turned to look out of the car window, defendant "grabbed [her] by [her] face . . . and pressed his nails against [her] face causing a scratch under [her] right eye, which gradually after some time turned into . . . swelling[.]"

The third incident occurred on May 31, 2016, while the parties were home. Plaintiff testified that defendant called her into their bedroom, asked her to "lie down on the bed" and then "he lied on top of [her] and he forced [her] down[,] restrain[ing her] hands above [her] head[,]" and demanded sex. Plaintiff managed to escape, and texted her friend, who lived in her apartment building, to ask if she could come to her

apartment unit to call the police. At that moment, defendant "snatched the phone from [her] hand and he read" her text messages. When plaintiff tried to run out of the apartment, defendant pulled her hair to prevent her from leaving. After managing to break free from defendant's grasp, and getting to her friend's apartment, plaintiff called the police. After speaking with the responding officers, plaintiff went to the hospital for treatment.

One of the responding police officers, Adriana Nunez, testified that plaintiff's primary complaint was about an argument she had with defendant's family. When asked if there were any other reasons that plaintiff provided for calling the police, the officer responded that there were not. Nunez noted that plaintiff did not "make any allegations regarding any criminal actions by her husband[,]" and that she did not observe any physical injuries on plaintiff.

Another police officer, Eric Rodriguez, stated that he observed plaintiff at the hospital with an injury to her lip, after police were called by the hospital staff. Rodriguez testified that the photographs shown to him at trial accurately depicted plaintiff and her injuries as he remembered them at the hospital. He also testified that plaintiff "looked like she was very scared."

Plaintiff also testified at the trial that there were prior acts of domestic violence committed by defendant approximately two and four years earlier when the parties were in India. Plaintiff testified that in 2014 defendant hit plaintiff and her father, which led to a police report being filed.² According to plaintiff, in 2012, defendant also slapped her multiple times on various occasions when she was pregnant. Plaintiff produced an email defendant sent in January 2015, where he apologized to plaintiff and her father, and stated that he had "been working on anger management with a positive approach, so [she doesn't] have anything to fear." She stated that she believed she still needed the protection of an FRO to prevent defendant from further abusing her or her son. According to plaintiff, defendant has sent her threatening messages in the past, and has twisted their son's ears and placed his hand on the child's mouth to stop him from crying.

Defendant testified and denied all allegations of domestic violence. He stated that plaintiff was the aggressor and the

² Plaintiff's brother, H.M., testified to the injuries that resulted from these prior acts of domestic violence while the parties were in India, however, he stated that he had not witnessed the acts. He also testified that plaintiff sent him pictures of her injuries that resulted from the incidents in May, but again that he did not witness the acts that caused them as he was living in California at the time.

one who became upset and violent after he told her he wanted a divorce. According to defendant, plaintiff abducted their son when they flew to India for a wedding, and would not return to the United States. When plaintiff and her family insisted that defendant enter an agreement where plaintiff would have sole custody of the child in the event of a divorce, defendant sought the assistance of the FBI to try to get into contact with his son. Defendant testified that although the parties were able to eventually reconcile their issues, plaintiff had her visa to reenter the United States revoked due to the child abduction issues, and he had to help her obtain a waiver for reentry.³

After considering the evidence, the trial court placed its decision on the record. It began by identifying the witnesses, except the court made no mention of Rodriguez being a witness. It observed plaintiff's testimony "at times sounded quite rehearsed as if she were reading a memorized script[or] reciting from a memorized script." The court concluded that

her demeanor during the course of her testimony describing [the] various incidents and the unlikely description she gave of the parties' respective positions in the car and [defendant's] movements that caused the injuries [were] not sufficiently credible to

³ Defendant's grandmother also testified at trial, but as the trial court noted, her "testimony was not terribly helpful as to anything."

support a finding by a preponderance of the evidence that [defendant] assaulted her[.]

In support of its finding that no assault occurred, the court cited Nunez's testimony that plaintiff "said nothing to her about any injuries, . . . any physical altercation between" her and defendant. It concluded plaintiff's "testimony does not establish the commission of any of the predicate acts she alleged[,]" dismissed the complaint, and denied the entry of a FRO. This appeal followed.

We conclude from our review that the trial court did not fulfill its obligation to make findings of fact and set forth its conclusions of law as required by Rule 1:7-4 and under Silver. In every case decided by a judge, he or she is required to make specific findings of fact and state his or her conclusions of law. R. 1:7-4(a); see also Shulas v. Estabrook, 385 N.J. Super. 91, 96 (App. Div. 2006). "Failure to make explicit findings and clear statements of reasoning [impedes meaningful appellate review and] 'constitutes a disservice to the litigants, the attorneys, and the appellate court.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Curtis v. Finneran, 83 N.J. 563, 569-70 (1980)). Thus, although our standard of review is generally limited, see Cesare v. Cesare, 154 N.J. 394, 411 (1998), where inadequate findings of fact are made or where

issues are not addressed, we are constrained to remand for further proceedings. See Elrom v. Elrom, 439 N.J. Super. 424, 443 (App. Div. 2015).

In domestic violence cases in particular, the judge is obligated to set forth specific findings as required by the PDVA. In these matters, the trial judge has a "two-fold" task. Silver, 387 N.J. Super. at 125. The judge must first "determine whether the plaintiff has proven, by a preponderance of the credible evidence, that" the defendant committed one of the predicate acts referenced in N.J.S.A. 2C:25-19(a), which includes harassment and assault. Id. at 125. 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) (citations omitted); 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, 387 N.J. Super. at 126-27). Whether a

restraining order should be issued depends on the seriousness of the predicate offense, on "the previous history of domestic violence between the plaintiff and defendant including previous threats, harassment[,] and physical abuse[,] and on "whether immediate danger to the person or property is present." Corrente v. Corrente, 281 N.J. Super. 243, 248 (App. Div. 1995) (citing N.J.S.A. 2C:25-29(a)(1) and (2)); see also Cesare, 154 N.J. at 402.

Here, plaintiff alleged assault and harassment as predicate acts.⁴ The court found plaintiff not credible as to her allegations about assault, concluding that there was none, without any consideration being given to the testimony of Officer Rodriguez or plaintiff's evidence concerning the parties' history of domestic violence, neither of which the court mentioned. Significantly, it did not address plaintiff's allegations of harassment at all.

The trial court's failure to make sufficient findings of fact as to all of the predicate acts alleged in plaintiff's complaint as required by Rule 1:7-4, prevents us from conducting

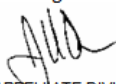
⁴ The court made no findings as to plaintiff's allegation of criminal mischief. At oral argument before us, however, plaintiff conceded that there were no facts in the record to support that claim.

a full review of plaintiff's claim. We are constrained to remand the matter for further proceedings.

The order dismissing plaintiff's complaint is vacated and the matter is remanded to the Family Part for findings of fact and conclusions of law as to plaintiff's complaint.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION