

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-2324-16T4
A-2325-16T4

A.M.S.,

Plaintiff-Respondent,

v.

M.L.S.,

Defendant-Appellant.

A.M.S.,

Plaintiff-Respondent,

v.

K.L.S.,

Defendant-Appellant.

Submitted February 5, 2018 – Decided March 8, 2018

Before Judges O'Connor and DeAlmeida.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex
County, Docket Nos. FV-12-0986-17 and FV-12-
0996-17.

Law Offices of Susheela Verma, attorneys for appellants (Susheela Verma, of counsel and on the brief; Mildred V. Spiller, on the brief).

Dwyer Bachman & Newman, LLC, attorneys for respondent (Howard A. Bachman, of counsel and on the brief; Lauren Conway, on the brief).

PER CURIAM

In these appeals, calendared back-to-back, and consolidated for the purpose of this opinion, defendants challenge the entry of Final Restraining Orders (FROs) against them pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. The trial court concluded that the FROs were warranted because defendants assaulted plaintiff during a family argument and plaintiff is in need of protection from defendants' future acts or threats of violence. Defendants argue that the trial court's findings are not supported by the evidence. We affirm.

I.

The trial court found the following facts after an evidentiary hearing during which plaintiff, defendants and another witness testified. Plaintiff A.M.S. and defendant M.L.S. were married in 2015.¹ They resided together with M.L.S.'s mother, D.S., and his father, L.S. At the time of the relevant incident, M.L.S.'s

¹ We use initials throughout this opinion because these appeals involve domestic violence litigation. R. 1:38-3(a).

sister, defendant K.L.S., and her infant child, also were staying in the home.

Approximately a week prior to November 21, 2016, A.M.S. began an extended stay at the home of her mother to assist with her mother's affairs. On November 21, 2016, A.M.S. returned to the marital home to retrieve clothing and personal items. Plaintiff's husband and his family members who resided in the home were present when A.M.S. arrived.

It is undisputed that a conversation among A.M.S., her husband, and her husband's family commenced in an upstairs bedroom. Although the tenor and subject of the conversation were disputed at trial, the court found that the discussion was "hostile and volatile and loud," and concerned the relationship between A.M.S. and M.L.S. and his family. The court found that during the conversation A.M.S. decided to leave the residence. As A.M.S. attempted to go downstairs, M.L.S. grabbed her ankle, causing A.M.S. to fall, and tried to pull her back into the bedroom by dragging her across the floor. The judge determined that this constituted an assault on A.M.S. by M.L.S., which resulted in physical injuries to A.M.S., including bruising to her knees and a cracked big toe toenail.

In addition, the court found that during M.L.S.'s assault on A.M.S., her sister-in-law, K.L.S., pulled A.M.S.'s hair, and

attempted to pull from A.M.S.'s neck a religious necklace signifying her marriage to M.L.S., as well as attempted to forcibly remove A.M.S.'s engagement ring from her finger. The court found that these acts constituted an assault on A.M.S. by K.L.S., which resulted in physical injury, including a scratch on A.M.S.'s finger.

The court also determined that A.M.S. was in need of protection from future acts or threats of violence by both M.L.S. and K.L.S. The court reasoned that A.M.S. had by the time of the hearing initiated divorce proceedings, that M.L.S. and K.L.S. had displayed significant anger during the assaults, that they had both assaulted A.M.S. as she was attempting to leave the family residence, and that during a recorded telephone conversation shortly after the assaults, M.L.S.'s mother told A.M.S. that she had to learn to handle M.L.S.'s anger. The court also found credible A.M.S.'s testimony that, although there had been no reported prior acts of physical violence between A.M.S. and M.L.S., he had previously engaged in "controlling behavior" toward A.M.S.

As a result of these conclusions, the court entered FROs against both M.L.S. and K.L.S., and associated monetary penalties,

an award of emergent support to assist A.M.S. to relocate from the marital home, and attorney's fees.²

On appeal, M.L.S. and K.L.S. argue that the trial court's findings are not supported by sufficient, credible evidence, that the judge overlooked inconsistencies in A.M.S.'s testimony, did not consider the two-day gap between the assaults and plaintiff's application for TROs against defendants, and failed to consider A.M.S.'s alleged improper motivation – to gain an advantage in the divorce proceedings – for seeking FROs against defendants.

II.

A judge must apply the two-factor test set forth in Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006), to determine whether to grant a FRO pursuant to the PDVA. "First, the judge must determine whether the plaintiff has proven, by a preponderance of the credible evidence, that one or more of the predicate acts

² Plaintiff also sought a FRO against M.L.S.'s father, L.S., and mother, D.S. Although the court found that L.S. committed an act of harassment against A.M.S. during the November 21, 2016, episode, it determined that A.M.S. was not in need of protection from future acts or threats of violence from L.S. The court, therefore, declined to enter a FRO against L.S. and vacated a temporary restraining order (TRO) that had been entered against him. The court also determined that plaintiff did not establish by a preponderance of the evidence that D.S. committed an act of domestic violence against A.M.S. on November 21, 2016. The court, therefore, declined to enter a FRO against D.S. and dismissed the TRO previously entered against her. These orders were not appealed.

set forth in N.J.S.A. 2C:25-19(a) has occurred." Id. at 125. If the judge finds that defendant committed one of the predicate acts, the judge must determine whether a restraining order is required to protect the plaintiff from future acts or threats of violence. Id. at 126. This determination requires evaluation of:

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

[N.J.S.A. 2C:25-29(a); see also Cesare v. Cesare, 154 N.J. 394, 401 (1998).]

The judge must also consider whether a restraining order is necessary to protect the victim from an immediate danger or to prevent further abuse. Silver, 387 N.J. Super. at 127.

When reviewing a trial court's decision to issue a FRO after a hearing, we are bound by the trial court's factual findings if they are "supported by adequate, substantial, [and] credible evidence." Cesare, 154 N.J. at 411-12 (citing Rova Farms Resort,

Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). Such deference 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). A greater degree of deference is to be accorded to the Family Part as it possesses "special jurisdiction and expertise," and we "should accord deference to the family court factfinding." Cesare, 154 N.J. at 413. We are not, however, bound by the judge's interpretations of the legal consequences that flow from established facts. Manalapan Realty, LP v. Twp. Comm., 140 N.J. 366, 378 (1995).

Here, Judge John A. Jorgensen, heard the testimony of plaintiff, both defendants and another witness, reviewed evidence, including photographs of plaintiff's injuries, and listened to a recording of a heated telephone conversation shortly after the events in question between plaintiff, M.L.S., and M.L.S.'s parents. The court considered, and rejected on credibility grounds, the testimony of M.L.S. and K.L.S. that the family's interactions with A.M.S. on November 21, 2016, were peaceful attempts at reconciliation, and that A.M.S. brought baseless claims against them. Defendants assert no convincing argument that the trial court's credibility determinations should be set aside.

In addition, having reviewed the hearing record, we are confident that Judge Jorgensen's fact findings and legal conclusions are based on substantial, credible evidence. There is ample support in the record for the court's conclusion that both defendants assaulted A.M.S. during the November 21, 2016 incident and that A.M.S. is in need of the protections provided by the FROs entered against defendants.

Affirmed.³

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



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³ In the "preliminary statements" in their briefs, defendants assert that "[d]uring the trial of the matter, an unknown amount of testimony was not recorded." They do not mention this claim in the point headings of their briefs or expound on it at length in their written arguments. A transcript of the December 6, 2016 hearing notes during plaintiff's testimony "[a]t this point the witness's microphone is turned off and remains off for the remainder of the hearing, rendering portions of the testimony inaudible." Seventy-eight pages of testimony follow this notation. On those pages the notation "(inaudible)" appears a few times, mostly mid-sentence. Defendants did not move to settle the record, R. 2:5-5, and given their failure to include any reference to the adequacy of the transcript in the point headings of their briefs, R. 2:6-2(a)(6), we deem any argument on this issue waived.