

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3405-16T2

J.L.H.,

Plaintiff-Respondent,

v.

C.J.F.,

Defendant-Appellant.

Submitted May 16, 2018 – Decided June 4, 2018

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Camden County,
Docket No. FV-04-2116-17.

Fridie Law Group, LLC, attorneys for appellant
(James R. Fridie, III, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant C.J.F. appeals from a February 28, 2017 final restraining order (FRO) entered in favor of plaintiff J.L.H., pursuant to the Prevention of Domestic Violence Act (the ACT), N.J.S.A. 2C:25-17 to -35. For the reasons that follow, we vacate the FRO and remand for further proceedings.

We discern these facts from the trial of February 28, 2017. The only witnesses who testified were plaintiff and defendant. Plaintiff and defendant were in an on and off dating relationship, shared an apartment, and had a child together. On February 12, 2017, plaintiff filed a complaint seeking a temporary restraining order (TRO) against defendant. In her complaint, plaintiff alleged on February 12, 2017, defendant assaulted her "by grabbing her by [the] neck and punching her several times with a closed fist." Plaintiff alleged simple assault, N.J.S.A. 2C:12-1(a), as the predicate act. She does not allege any prior history of domestic violence.

Plaintiff testified that while defendant was driving, she argued with him about paying for the baby formula for their six-month-old daughter. Plaintiff grabbed defendant's cell phone as they headed back to their apartment. She stated defendant started pulling her by her hair because she had his cell phone. She also testified he choked her, punched her, grabbed her, and "let go of the steering wheel with our daughter in the car." During this incident their vehicle almost struck three cars. Plaintiff told defendant she would give him back his cell phone and she did so after he finally let go of her.

After arriving at their apartment, plaintiff told and texted defendant "don't come back" and "go somewhere for the night, and

if you do come back, stay on the couch." Defendant returned to the apartment at about 2 a.m. Plaintiff testified defendant dragged her off the bed by my hair, choked her, and threw her phone across the bedroom. A lengthy argument ensued. Plaintiff told defendant "if he put his hands on [her] again that [she] would kill him." The argument ended when plaintiff fell asleep. Plaintiff testified she had bruises on her inner thighs from the incident, and had photographs depicting the bruising.

Plaintiff and defendant starting arguing again the following morning and threw water on each other. Plaintiff then called the police.

Plaintiff also alleged defendant hid her thyroid cancer medicine. Plaintiff went to the hospital because she was without the prescribed medicine.

Defendant moved to dismiss the complaint at the end of plaintiff's case. The trial court denied the motion.

Defendant denied the argument in the car was over paying for baby formula. He testified the argument started when plaintiff grabbed his cell phone while he was driving. He explained she was angry because he was receiving phone calls and text messages from other females. Defendant denied grabbing plaintiff by the neck or hair, choking her, or punching her with a closed fist in the car.

Defendant also denied dragging plaintiff out of bed, choking her, or throwing her cell phone across the bedroom. Defendant claimed plaintiff threatened him with a box cutter in the bedroom and told him "to sleep with one eye open." Defendant also denied hiding plaintiff's medication or being involved in any altercation the following morning.

Defendant admitted poking plaintiff's side and pinching her thigh while trying to get his cell phone back, causing the bruising on her leg. He also admitted taking plaintiff's cell phone and putting it under their bed. He further admitted the car swerved during their argument.

In his oral decision, the judge found plaintiff's testimony credible with regard to the incident in the car and her cancer medication. He found defendant had injured plaintiff by pinching her, causing bruising. The judge considered defendant's conduct of fighting while driving, pinching plaintiff, and hiding her medication, to be outrageous. The judge granted an FRO to plaintiff, finding "continuing inappropriate conduct" and that the "[p]arties should not be together." This appeal followed.

On appeal, defendant argues the trial court's findings were "manifestly unsupported by the competent, relevant and reasonably credible evidence," and there was insufficient proof defendant committed an act of simple assault. Defendant further argues the

trial court did not engage in any analysis regarding plaintiff's need for a restraining order.

When reviewing "a trial court's order entered following trial in a domestic violence matter, we grant substantial deference to the trial court's findings of fact and the legal conclusions based upon those findings." D.N. v. K.M., 429 N.J. Super. 592, 596 (App. Div. 2013) (citing Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). We do not disturb the "factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Cesare, 154 N.J. at 412 (quoting Rova Farms Resort, Inc. v. Inv'rs Ins., Inc., 65 N.J. 474, 484 (1974)). Deference is particularly appropriate when the evidence is testimonial and involves credibility issues because the judge who observes the witnesses and hears the testimony has a perspective the reviewing court does not enjoy. Pascale v. Pascale, 113 N.J. 20, 33 (1988) (citing Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)).

The Act defines domestic violence by referring to a list of predicate offenses found within the New Jersey Criminal Code. J.D. v. M.D.F., 207 N.J. 458, 473 (2011) (citing N.J.S.A. 2C:25-19(a)). "[T]he commission of a predicate act, if the plaintiff meets the

definition of a 'victim of domestic violence,' N.J.S.A. 2C:25-19(d), constitutes domestic violence" Ibid. Simple assault is a predicate offense under the Act. N.J.S.A. 2C:25-19(a)(2).

The entry of a final restraining order requires the trial court to make certain findings. See Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). The court "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 (citing N.J.S.A. 2C:25-29(a)). Next, the court must determine whether a restraining order is required to protect the party seeking restraints from future acts or threats of violence. Id. at 126-27. This need for protection is established by "a finding that 'relief is necessary to prevent further abuse.'" J.D., 207 N.J. at 476 (quoting N.J.S.A. 2C:25-29(b)).

Here, the judge concluded defendant committed simple assault. A person commits the disorderly persons offense of simple assault if he "[a]ttempts to cause or purposely, knowingly or recklessly causes bodily injury to another." N.J.S.A. 2C:12-1(a)(1). We are satisfied the record supports the trial court's credibility determinations, factual findings, and legal conclusions. There

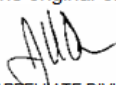
was substantial credible evidence defendant committed the predicate act of simple assault.

"The second-prong of Silver requires the trial court to evaluate the factors set forth in N.J.S.A. 2C:25-29(a)(1) to -(6) to determine whether [an FRO] should be issued." A.M.C. v. P.B., 447 N.J. Super. 402, 416 (App. Div. 2016).

Here, plaintiff does not allege any prior history of domestic violence. The trial court did not evaluate the statutory factors and made no findings as to whether an FRO is necessary to provide protection for "the victim from an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 127 (citing N.J.S.A. 2C:25-29(b)). Consequently, we are constrained to vacate the FRO, reinstate the temporary restraining order, and remand the matter for a further hearing that focuses on the second prong of the Silver analysis. Specifically, having found defendant committed the predicate act of simple assault, the trial court shall "determine whether a domestic violence restraining order [was] necessary to protect plaintiff from immediate danger or further acts of domestic violence." Id. at 128.

Vacated and remanded for further proceeding 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