

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-0861-21

J.R.,¹

Plaintiff-Appellant,

v.

M.A.R.,

Defendant-Respondent.

Argued November 30, 2022 - Decided January 31, 2023

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Atlantic County, No.
FV-01-0053-22.

Lindsay A. McKillop argued the cause for appellant
(The Law Office of Rajeh A. Saadeh, LLC, attorneys;
Rajeh A. Saadeh and Lindsay A. McKillop, on the
brief).

Respondent has not filed a brief.

¹ We use initials to protect the domestic violence victim's privacy. R. 1:38-3(d)(10).

PER CURIAM

Plaintiff appeals from the trial judge's order denying her application for attorney's fees after the court granted a final restraining order (FRO) against defendant, her husband. Because the trial court mistakenly exercised its discretion in denying the fee request, we reverse and remand for proper consideration of plaintiff's fee application.

Plaintiff applied for and was granted a temporary restraining order (TRO) against defendant. At the time, the parties were involved in divorce proceedings. After a trial on October 27, 2021, the court granted plaintiff an FRO.

Plaintiff asked for counsel fees. In considering the request, the court stated:

An award of attorney[']s fees is a discretionary call that I make. . . . From my perspective, if I order the payment of attorney[']s fees, I'm just shifting money back and forth. At someplace during this FM proceeding there's going to be a decision by the judge about child support, parenting time. There may be, although I tend to doubt it with the length of time that you've been married, a decision with respect to alimony, but I tend to doubt that's part of it. There's going to have to be an agreement with respect to how the property that the two of you acquired during the course of the marriage is going to be distributed. By me ordering attorney[']s fees, what I think I'm doing is throwing another wrench into any possibility of an amicable resolution of the different issues that are going to be raised in the FM matter. I'm going to exercise my discretion and deny

the application for . . . attorney's fees, but I will order the FRO.²

On appeal, plaintiff contends she is entitled to reasonable counsel fees under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35 (the Act). A trial court's determination regarding attorney's fees "will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Packard-Bamberger & Co., Inc. v. Collier, 167 N.J. 427, 444 (2001) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)).

Although we disagree with plaintiff's contention that the Act mandates attorney's fees for a domestic violence victim, we agree the court's reason for denying them was a misapplication of its discretion and the court erred in not properly considering her application for fees.

Under the Act, a trial judge is authorized to award legal fees and costs to a victim of domestic violence. The statute provides that a judge "may" enter "[a]n order requiring the defendant to pay the victim monetary compensation for losses suffered as a direct result of the act of domestic violence." N.J.S.A.

² The FRO did not reference the court's denial of counsel fees. We remanded to the trial court for the limited purpose of entering an order to include the denial of plaintiff's request for attorney's fees. On January 20, 2022, the court issued an amended FRO that contained an addendum stating that plaintiff's application for attorney's fees was denied for the reasons previously set forth on the record.

2C:25-29(b)(4) (emphasis added). Compensatory losses include "reasonable attorney's fees." Ibid.

This provision is included "to make the victim whole." Wine v. Quezada, 379 N.J. Super. 287, 293 (Ch. Div. 2005). The Legislature permitted counsel fees only for victims, not for prevailing parties, to "avoid a chilling effect on the willingness of domestic violence victims to come forward with their complaints and have their day in court." Id. at 291-92 (citing M.W. v. R.L., 286 N.J. Super. 408, 411, 412 (App. Div. 1995)). The Act was intended to "provide victims of domestic violence the maximum protection from abuse that the law could provide and to ensure full access to the protections of the legal system." Id. at 292 (citing Grandovic v. Labrie, 348 N.J. Super. 193, 196-97 (App. Div. 2002)).

Because the fees and costs are granted as compensatory damages, the awards are "not subject to the traditional analysis" under N.J.S.A. 2A:34-23 for legal fees in matrimonial claims. McGowan v. O'Rourke, 391 N.J. Super. 502, 507 (App. Div. 2007) (quoting Schmidt v. Schmidt, 262 N.J. Super. 451, 453 (Ch. Div. 1992)); see also Wine, 379 N.J. Super. at 292. "[T]he parties' financial circumstances have no relevance whatsoever." Wine, 379 N.J. Super. at 293. "To hold otherwise could create a chilling effect on claims made by bona fide victims who might have the ability to pay." Ibid.

In determining whether a defendant should pay plaintiff's attorney's fees, the Act requires only that fees are "a direct result of . . . domestic violence," that they are reasonable, and that they are presented in an affidavit as mandated by Rule 4:42-9(b). Schmidt, 262 N.J. Super. at 454.

However, the award of fees remains "within the discretion of the trial judge." McGowan, 391 N.J. Super. at 508 (citing Packard-Bamberger & Co., 167 N.J. at 443-44). The court in McGowan concluded that if after considering the factors in Rule 4:42-9(b), which incorporate the factors stated in Rule of Professional Conduct 1.5., the court finds the plaintiff's legal fees are reasonable and incurred directly from the domestic violence, the court may exercise its discretion in awarding attorney's fees. Ibid.


A trial judge's determination concerning a fee award will only be disturbed where there is a clear abuse of discretion. Ibid. Here, the court mistakenly exercised its discretion in denying fees because of a speculative perceived effect the award might have on the pending divorce proceeding. The Act permits the award of attorney's fees to a victim of domestic violence upon the entry of an FRO. The fact the parties have a parallel dissolution action is irrelevant to the intent and purpose of the provision of the Act permitting an award of compensatory damages, including attorney's fees, to domestic violence victims.

It cannot be disputed that plaintiff's legal fees directly resulted from the domestic violence perpetrated by defendant, as the court entered an FRO after a trial. Therefore, the court should have considered an affidavit presenting plaintiff's attorney's fees and engaged in an analysis to determine whether the fees were reasonable. The trial judge made no findings regarding the three articulated requirements for awarding attorney's fees in a domestic violence matter and therefore did not conduct the appropriate analysis.

We reverse and vacate the order denying attorney's fees. We remand to the trial court. Plaintiff shall submit an affidavit of services under Rule 4:42-9(b) and the court will determine the reasonableness of the requested fees. It remains within the court's discretion whether to award fees. However, the court must issue a decision in accordance with Rule 1:7-4(a) providing reasons for its determination.

Reversed, vacated and remanded for further proceedings in accordance 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