RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2679-21

K.A.B.,[1]

Plaintiff-Respondent,

v.

L.M.B.,

Defendant-Appellant.

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Argued May 24, 2023 – Decided July 13, 2023

Before Judges Accurso and Firko.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Morris County, Docket No. FV-14-0678-22.

Stilianos M. Cambilis argued the cause for appellant (The Law Office of Rajeh A. Saadeh, LLC, attorneys; Rajeh A. Saadeh and Stilianos M. Cambilis, on the briefs).

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[1] We use initials to protect the privacy of the parties and the confidentiality of these proceedings. See R. 1:38-3(d)(10).

Angelo Sarno argued the cause for respondent (Snyder Sarno D'Aniello Maceri & da Costa, LLC attorneys; Angelo Sarno, of counsel and on the brief; Michelle Wortmann, on the brief).

PER CURIAM

Defendant L.M.B. appeals from a March 21, 2022 final restraining order (FRO) entered against him, in favor of his wife, plaintiff K.A.B., pursuant to the Prevention of Domestic Violence (PDVA), N.J.S.A. 2C:25-17 to -35, based on the predicate act of harassment, N.J.S.A. 2C:33-4. The Family Part judge determined an FRO was necessary to protect plaintiff from future acts of domestic violence. Defendant also appeals from an April 25, 2022 order granting plaintiff counsel fees as compensatory damages under N.J.S.A. 2C:25-29(b)(4), and an amended FRO entered on April 27, 2022, incorporating the counsel fee award.

On appeal, defendant contends there is insufficient evidence supporting the judge's finding he committed the predicate act of harassment, and therefore, the judge erred by concluding an FRO is necessary to protect plaintiff from future acts of domestic violence. He also challenges the counsel fee award to

plaintiff on the basis the judge did not analyze the second prong of Silver.[2] Unconvinced, we affirm.

I.

The facts were established at the one-day bench trial held on March 21, 2022. Represented by counsel, plaintiff testified in person on her own behalf. She also called her mother, P.K., Patrolman Rickey Ferriola, and Patrolman Michael Reilly as witnesses and introduced into evidence several exhibits. The witnesses testified virtually. Defendant was also represented by counsel, was called as plaintiff's first witness, testified again on his own behalf, and moved items into evidence. Defendant testified in person.

At the time of the FRO hearing, the parties had been married for ten years. They have two minor children, a nine-year-old daughter and a five-year-old son. The parties are in the midst of a contentious divorce. They physically separated in July 2020. Plaintiff remained in the former marital home with the two children. Defendant moved into a new residence with his girlfriend with whom he had a workplace extra-marital affair resulting in his termination. In September 2020, a complaint for divorce was filed.[3] The following spring or

[2] Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006).
[3] The record does not indicate the status of the divorce proceedings.

summer, plaintiff advised defendant that she was pregnant with her boyfriend's child.

On November 29, 2021, the parties entered into a final judgment fixing custody and parenting time (judgment). The parties agreed to share joint legal and fifty/fifty residential custody of their children. The judgment acknowledges plaintiff resides in the former marital home and defendant moved to a different town. The judgment states "neither parent shall disparage the other." In addition, the judgment provides "both parents understand that each of them has or may establish an emotional/romantic relationship with another adult." The parties agreed in their judgment that the exchange of the children would take place at their maternal grandmother's home, the gym where plaintiff was a member, a halfway point, "or as otherwise agreed by the parents." Notwithstanding the terms of their judgment, pick-ups and drop-offs of the children were done curbside or at the driveway of the former marital home where plaintiff resided, based on an informal agreement reached by the parties.

But despite the parties' "agreement" on this issue, plaintiff testified defendant did not abide by the terms of their pick-up and drop-off agreement, and his behavior "evolved" to the point that he started coming into the garage, the basement, and upstairs into the kitchen without her consent. In an effort to

stop this unwanted behavior, plaintiff testified her attorney sent defendant's attorney a letter advising defendant to cease coming into the house.[4] In December 2021, plaintiff gave birth to a son, who was three months old at the time of the FRO hearing.

On February 18, 2022, which was a Friday, plaintiff filed a domestic violence complaint and was issued a temporary restraining order (TRO). Plaintiff alleged earlier in the afternoon, defendant screamed in her face and "held his phone" in her face, called plaintiff "white trash," and gave her the middle finger. In addition, plaintiff alleged defendant stated he was going to "get her" and she is "finished" because he has "dirt" on her. The complaint states defendant "went upstairs to clean plaintiff's room" and took pictures of her closet. In terms of a prior history of domestic violence, plaintiff asserted there was prior domestic violence "with no restraining order."

On February 24, 2022, the complaint was amended to require defendant's mother accompany him for all pick-ups and drop-offs of the parties' two children and instructions for defendant to remain in his vehicle during the exchange. Defendant was also ordered to immediately disable his "iPad tracking function" for the duration of the case.

[4] The letter is not contained in the record and was not moved into evidence.

On March 2, 2022, plaintiff filed a second amended complaint to include a specific prior history of domestic violence. In January 2020, plaintiff alleged defendant "came home from work angry, yelled at [her] for the house being a mess . . . called [plaintiff] a bitch, and told [her] he wished he never married [her] or had children with [her]." The second amended complaint also alleged defendant told plaintiff "dinner sucked," she was "good for nothing," and that she "ruined his life." According to plaintiff, defendant slammed the door, and the children cried as a result of his actions, which they witnessed.

In the second amended complaint, plaintiff also alleged that in February 2020, defendant came home from work and started "yelling" at her about finances. He called plaintiff a "cunt," "threw a remote at the ground," argued in front of the children, and continued to call plaintiff names, such as "bitch" and "a piece of shit." Defendant left the house and did not return for the rest of the evening.

At trial, plaintiff testified to the allegations set forth in her complaints. Plaintiff also testified that prior to February 2022, defendant had a history of drug and alcohol abuse, specifically smoking marijuana and taking "hallucination drugs." Plaintiff claimed defendant "would come home very angry, " and would "yell" at her, put her down, call her names, complain about

the dinner she would prepare, and treated her "awful." Plaintiff described defendant would turn "red in the face," yell at her in front of their children, drink, and "storm off"—speeding away in his car and usually not coming back.

Plaintiff testified defendant engaged in this type of behavior "many times" during their marriage, and she became ill when he came home from work "because [she] knew he was coming in to take his anger out on [her]" because she was his "punching bag." According to plaintiff, defendant "blamed [her] for any financial struggles" because she was a stay-at-home mother, and she did not contribute to their family because she didn't earn a paycheck. Plaintiff testified defendant always complained about stress from his work in the insurance industry and yelled at her about the house being a mess. Plaintiff claimed defendant's behavior escalated after he moved out of the former marital home.

Plaintiff testified defendant became upset and "very, very angry" when she became pregnant with her boyfriend's child while they were still married. Plaintiff testified defendant hired private investigators to surveil her when the baby was born, and he tracked her location on their children's Gizmo watches and cameras the private investigator installed outside of her home and her boyfriend's home. Plaintiff testified defendant "hates" her and her newborn son, who resides with her and the parties' two children, in the former marital home.

Regarding the February 18, 2022 incident, plaintiff testified defendant arrived at her house around 2:45 p.m. to take their daughter to a 3:00 p.m. dental appointment and exercise parenting time with the children. Plaintiff testified she was in the living room feeding her newborn son while the other two children were waiting in the kitchen for defendant to arrive. Defendant surreptitiously entered plaintiff's home and searched the house, ostensibly looking for their son's sweater that defendant wanted to take on a snowtubing trip that upcoming weekend. Plaintiff testified the parties' daughter came into the living room and told her defendant was "upstairs in [plaintiff's] bedroom taking photos." Plaintiff testified she did not give defendant permission to search her bedroom, the master bathroom, or any part of the house to search for their son's sweater, which was never found.

Plaintiff testified defendant came downstairs and confronted her. Plaintiff told him to leave "five or six times," but he refused to do so. In addressing her, plaintiff testified defendant looked "crazy" and "angry," and called her a "bitch" and "white trash" before stating, "I have so much dirt on you. I'm going to get you . . . you're done," while screaming in her face. Defendant videotaped at least part of the interaction, which the parties' children observed and caused them to get very upset. Plaintiff claimed the baby was sleeping in her arms, but

she feared defendant might hurt the baby, or push her and the baby down the basement steps, or cause her to drop the baby.

Defendant left about ten minutes later with the children to take the parties' daughter to the dentist. Plaintiff called her mother, her boyfriend, and then the police. Plaintiff testified she was hysterical and shaking and wanted to talk to her mother to calm her down. When the police arrived several minutes after defendant left, plaintiff was advised of her right to seek a TRO but declined to do so initially. However, later that day, plaintiff changed her mind and obtained a TRO against defendant.

Plaintiff testified that her life was "peaceful" after the TRO was entered. Plaintiff explained she needed an FRO:

> [b]ecause [defendant's] not going to stop. He has not followed the rules through our divorce that the judge has set. He has no respect for authority, for the law. And I'm in fear if there's nothing in place that he'll keep coming for me, he's going to keep harassing me, this is going to keep happening in front of my children. He hates me and I think he blames me for his unhappiness. He blames our marriage and us having children. I don't think he's going to stop harassing me if it's not in place and I'm very scared.

Plaintiff specifically testified she was "scared" for her newborn because she "had [the] baby with someone else." Plaintiff maintained she "stopped listening to [defendant] during [the] divorce," refused to follow his rules, and

added "he likes to have control over me." Following their confrontation, plaintiff testified defendant sent her mother, her two sisters, and his parents a group text message informing them that plaintiff "called the police to no longer allow [him] to come into the . . . home." The group text message, which was moved into evidence, also stated plaintiff "is pretending not to be in a relationship with [her boyfriend] for alimony purposes" and defendant "took pics" at the home "showing that." The text goes on to say defendant "hired a private investigator to prove this cohabitation."

On cross-examination, plaintiff admitted that she agreed defendant could pick-up and drop-off the children at her home on February 18, 2022, and on prior occasions. Plaintiff denied being aware defendant was looking for their son's sweater that day in the children's bedrooms. On prior occasions, plaintiff consented to defendant entering the home to make cable repairs, install cameras and security devices after a neighborhood break-in, to change light bulbs, and bring in dog food when she was pregnant; but she did not acquiesce in allowing him in her home otherwise. Defendant insisted on doing some of these things himself to save money, and plaintiff reluctantly allowed him to do so.

Plaintiff agreed that cohabitation is an issue in her divorce case. Plaintiff testified her boyfriend keeps clothes in her closet. When plaintiff learned about

defendant's extra-marital affair with a co-worker sometime in February 2020, she admitted to cutting up his jacket, pouring bleach on his shirts, and cutting up his bracelets.

On re-direct, plaintiff testified that she did not seek TROs for the prior incidents of domestic violence because she "was afraid of the backlash" and "of angering [defendant] even more." Plaintiff explained that she ultimately realized defendant's behavior was abusive after undergoing therapy and speaking to someone at a battered women's organization. On re-cross, plaintiff testified defendant told her she was "finished" because he now had "stuff" on her.

P.K. briefly testified about the group text message defendant included her on after the incident. P.K. also testified she called plaintiff after receiving the text message because defendant sounded "aggressive." Patrolman Ferriola testified he went to plaintiff's home in response to a report of domestic violence. Ferriola observed plaintiff appeared "distraught" and was "crying" throughout their conversation. He did not see defendant that day. Ferriola advised plaintiff of her right to apply for a TRO, but she declined to do so at that time.

Defendant testified about the two video recordings he made on the date of the incident, which were played in court. He acknowledged calling plaintiff a

"liar" and added "it's an accurate statement." Defendant admitted calling plaintiff "white trash" but denied threatening her. Defendant testified he wanted to sit down with plaintiff and her boyfriend to "just figure out what we're doing" and not be "combative." According to defendant, plaintiff and her boyfriend denied they were cohabitating, and when defendant described going through each room and closets in plaintiff's house looking for the sweater and seeing "everything laid out," he "lost [his] mind." Defendant observed plaintiff's boyfriend's clothes and pictures of plaintiff, the boyfriend, and the children together "like a shrine." Defendant denied screaming in plaintiff's face and testified "nobody [was] scared," at the time of the incident.

Defendant testified he did not have a "purpose" to harass plaintiff that day—he only wanted to get their son's sweater and help the children gather "their things" so they had everything they needed for school on Monday morning. According to defendant, he video recorded the incident with plaintiff that day in order to "protect himself." He also disagreed with plaintiff's testimony that he was not allowed in the house. Defendant denied ever seeing a letter from plaintiff's counsel advising him not to enter the former marital home. Defendant denied telling plaintiff he wished he never had children with her or that she was good for nothing and ruined his life. Defendant testified he never called plaintiff

a "cunt," and her prior history of domestic violence abuse allegations was basically false.

Defendant testified there was no history of physical abuse between the parties. He also denied ever threatening to push plaintiff down the stairs or threatening to harm the baby. With regard to plaintiff damaging his clothing and jewelry, defendant testified there was no "backlash" against her, and his "stomach dropped" when he learned about what she did to his things because it "revealed" something about her.

On cross-examination, defendant admitted to selling his business interest and liquidating marital assets contrary to a court order but denied it meant he has a "very controlling" personality. Defendant also denied trying to sell the former marital home pendente lite against plaintiff's wishes. Defendant disagreed he wanted to retaliate against plaintiff because she was in a new relationship and recently gave birth. Defendant denied he invaded plaintiff's privacy when he rummaged the house and her closets. Defendant acknowledged on one of his video recordings he told plaintiff, "I'm not going anywhere. I don't have to leave. Call the police." Defendant stated he agreed not to enter plaintiff's house going forward. Defendant testified he is "not upset" about

plaintiff's alleged cohabitation and admitted he does not want to pay her alimony following their divorce.

Patrolman Reilly testified he served the TRO on defendant at his residence while the children were there. Patrolman Reilly stated he thought he smelled "alcohol" coming from defendant and suggested to his supervisor that plaintiff come to defendant's residence to pick up the children.

After considering the testimony and evidence, the judge placed his decision on the record. No finding was made as to jurisdiction under the PDVA, but jurisdiction is plain because the parties are married and have children in common. The judge found plaintiff's testimony was more "credible" and "consistent" than defendant's testimony and that she met her burden of proof by a preponderance of the evidence. In contrast, the judge applied the "false in one, false in all" doctrine in assessing defendant's credibility, noting if defendant had testified untruthfully in one instance, the judge could find his entire testimony to be untruthful.

The judge then highlighted that defendant "had no reason to be in the master bedroom . . . other than to gather evidence in . . . support of his case . . . for a finding of cohabitation." The judge highlighted defendant chose the word "shrine" to describe what he saw in plaintiff's bedroom, and there was a "design

to annoy or harass by being up there, by [defendant's] snooping around." The judge found defendant's description of what he observed in the bedroom was "telling" because it had photos and things not typically associated with a "shrine." The judge pointed out that the videos presented by defendant did not capture the entire interaction between the parties that day based on plaintiff's credible testimony recounting the behavior defendant engaged in.

The judge found plaintiff proved the predicate act of harassment under N.J.S.A. 2C:33-4, based on defendant's searching plaintiff's house and personal effects, then confronting her with threatening and "intimidating" remarks, while holding his phone and videotaping the interaction. After applying the two-prong test in Silver, the judge found an FRO was necessary to protect plaintiff from an immediate danger or to prevent further abuse, that plaintiff "remains scared" and threatened by defendant, and he continues to violate her privacy.

The judge noted defendant's "grossly inappropriate" actions—calling plaintiff a "bitch" and "white trash" in front of two young children—indicated defendant "has totally lost perspective" as to what is happening with this family, satisfying the second Silver prong. The judge concluded by stating defendant is "hell-bent on making his . . . soon-to-be ex-wife's life as miserable as possible,

hell-bent on annoying her" and "embarrassing her" in front of their children. This appeal followed.

II.

Our "review of a trial court's fact-finding function is limited." Cesare v. Cesare, 154 N.J. 394, 411 (1998). This is because "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 411-12 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)). "Deference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Id. at 412 (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). We "should 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.'" Ibid. (quoting Rova Farms, 65 N.J. at 484). We review a trial court's conclusions of law de novo. T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App. Div. 2017) (citing S.D. v. M.J.R., 415 N.J. Super. 417, 430 (App. Div. 2010)).

The purpose of the Act is to "assure the victims of domestic violence the maximum protection from abuse the law can provide." G.M. v. C.V., 453 N.J.

Super. 1, 12 (App. Div. 2018) (quoting State v. Brown, 394 N.J. Super. 492, 504 (App. Div. 2007)); see also N.J.S.A. 2C:25-18. Consequently, "[o]ur law is particularly solicitous of victims of domestic violence," J.D. v. M.D.F., 207 N.J. 458, 473 (2011) (quoting State v. Hoffman, 149 N.J. 564, 584 (1997)), and courts will "liberally construe [the Act] to achieve its salutary purposes," Cesare, 154 N.J. at 400.

N.J.S.A. 2C:33-4 states a person acts "with purpose to harass another, [if they]: a. Make, or cause to be made, one or more communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm . . . ." "For purposes of [N.J.S.A. 2C:33-4(a)],[5] there need only be proof of a single such communication, as long as defendant's purpose in making it . . . was to harass and as long as it was made in a manner likely to cause annoyance or alarm to the intended recipient." J.D., 207 N.J. at 477.

In order to determine whether a communication constitutes harassment, a court does "not measure the effect of the speech upon the victim; [it] look[s] to the purpose of the actor in making the communication," even if the

[5] The judge did not specify what subsection of N.J.S.A. 2C:33-4 he based his decision on. Based upon our review of the record, subsection (a) applies.

communication was "understandably upsetting to [the recipient]." E.M.B. v. R.F.B., 419 N.J. Super. 177, 182 (App. Div. 2011). A finding of purpose to harass must be supported by "some evidence that the actor's conscious object was to alarm or annoy; mere awareness that someone might be alarmed or annoyed is insufficient." J.D., 207 N.J. at 487. A purpose to harass may be inferred from the evidence. State v. McDougald, 120 N.J. 523, 566-57 (1990). A judge's common sense and experience may also color the analysis. Hoffman, 149 N.J. at 577.

We reject defendant's argument he did not commit harassment. Based on plaintiff's credible testimony, the judge found "there was no reason [for defendant] to be in [plaintiff's] master bedroom, none whatsoever, other than to gather evidence—in support of his case to . . . [find] a cohabitation." Despite defendant's claims, the judge rightfully rejected his "justification" for being in plaintiff's bedroom on the day of the incident. The record amply supports the judge's application of common sense and experience to infer defendant's intent was to harass. Ibid.

To determine whether the entry of an FRO is appropriate, the trial court must first "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." Silver, 387 N.J. Super. at 125. If the court finds a defendant committed a predicate act of domestic violence, then the second inquiry "is whether the court should enter a restraining order that provides protection for the victim." Id. at 126. Here, the judge determined defendant committed the predicate act of harassment, and we affirm that finding because it is supported by substantial credible evidence.

While the second inquiry "is most often perfunctory and self-evident, the guiding standard is whether a restraining order is necessary . . . to protect the victim from an immediate danger or to prevent further abuse." Id. at 127; see also J.D., 207 N.J. at 475-76.

When concluding under Silver that an FRO is necessary to ensure protection in the future, in some cases, "the risk of harm is so great" that the determination of whether a restraining order should be issued is "perfunctory and self-evident." J.D., 207 N.J. at 475-76, 488. In all cases, the critical inquiry under the second prong is, after considering the statutory factors, N.J.S.A. 2C:25-29(a)(1) to (6), [6] determining "whether a domestic violence restraining

[6] The six non-exclusive factors include:

order is necessary to protect [the] plaintiff from immediate danger or to prevent further acts of abuse." Silver, 387 N.J. Super. at 128.

In reaching the determination that a restraining order is necessary, a trial court must also "exercise [care] to distinguish between ordinary disputes and disagreements between family members and those acts that cross the line into domestic violence." R.G. v. R.G., 449 N.J. Super. 208, 225, 229-30 (App. Div. 2017) (citing J.D., 207 N.J. at 475-76) (reversing order granting FRO despite finding the defendant's acts of vulgar name-calling and assault by repeatedly shoving the plaintiff to the ground were "unacceptable and repugnant" because

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> (1) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;
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> (2) The existence of immediate danger to person or property;
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> (3) The financial circumstances of the plaintiff and defendant;
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> (4) The best interests of the victim and any child;
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> (5) In determining custody and parenting time the protection of the victim's safety; and
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> (6) The existence of a verifiable order of protection from another jurisdiction.
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> [N.J.S.A. 2C:25-29(a)(1) to (6).]

that finding did not support a conclusion that an FRO was necessary for the plaintiff's immediate protection or to prevent further abuse).

Also, although the court may look to other relevant factors not included in the statute, N.T.B. v. D.D.B., 442 N.J. Super. 205, 223 (App. Div. 2015), a court must consider the parties' previous history of abuse in its analysis before determining an act of domestic violence had been committed, Cesare, 154 N.J. at 401-02. This "second prong set forth in Silver requires [that] the conduct [be] imbued by a desire to abuse or control the victim." R.G., 449 N.J. Super. at 228 (citing Silver, 387 N.J. Super. at 126-27); see also Peranio v. Peranio, 280 N.J. Super. 47, 52 (App. Div. 1995) (defining domestic violence as "a pattern of abusive and controlling behavior injurious to its victims").

However, a prior history of domestic violence is not always required to support a court's determination because "the need for an order of protection upon the commission of a predicate act of 'domestic violence' . . . may arise even in the absence of such [a history] where there is 'one sufficiently egregious action.'" Silver, 387 N.J. Super. at 128 (quoting Cesare, 154 N.J. at 402). Here, the judge found there was a history of domestic violence when he considered the second Silver prong. The judge concluded an FRO was necessary to protect plaintiff from future acts of domestic violence based on plaintiff's credible testimony that

defendant hates her, blames her for his own issues, and the judge's determination that this type of annoying, harassing behavior would continue if defendant was to continue to be allowed in plaintiff's home and be in close contact with her. We see no reason to disturb the judge's finding under Silver's second prong.

III.

Lastly, we address the award of counsel fees and expenses to plaintiff. The judge granted plaintiff's application in part and awarded $9,572. Defendant opposed plaintiff's application for counsel fees. Under the PDVA, counsel fees are deemed compensatory damages. N.J.S.A. 2C:25-29(b)(4). Defendant asserts the award of counsel fees must be vacated because the judge did not analyze the second prong of Silver, and an FRO was unnecessary. Defendant does not challenge the sufficiency of plaintiff's counsel's certification of services, which has not been provided on appeal.

N.J.S.A. 2C:25-29(b)(4) is intended "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. "The 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 incorporates the factors stated in RPC 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.

Although the judge did not enumerate the factors he considered, it is obvious from his findings, and our review of the record, these factors applied to plaintiff's circumstances. The domestic violence history included harassment which clearly warranted the protection of an FRO.

To the extent we have not addressed defendant's other arguments, it is because they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.