RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3140-22

A.D.,[1]

Plaintiff-Respondent,

v.

D.M.,

Defendant-Appellant.

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Submitted May 30, 2024 – Decided June 6, 2024

Before Judges Firko and Vanek.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Camden County, Docket No. FV-04-2903-23.

David M. Lipshutz, attorney for appellant.

South Jersey Legal Services, Inc., attorneys for respondent (John P. Pendergast, Cheryl Turk Waraas, and Kenneth Mark Goldman, on the brief).

PER CURIAM

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[1] We identify the parties by initials to protect the identity of the domestic violence victim. R. 1:38-3(d)(10).

Defendant D.M. appeals from a May 2, 2023 final restraining order (FRO) entered against him pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, based on the predicate act of harassment, N.J.S.A. 2C:33-4(b). The Family Part judge determined an FRO was necessary to protect plaintiff A.D., defendant's wife, from future acts of domestic violence.

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. Unconvinced, we affirm.

I.

The facts were established at the one-day bench trial held on May 2, 2023. Represented by counsel, plaintiff testified on her own behalf and introduced several photographs into evidence. Defendant was also represented by counsel, testified on his own behalf, and moved text messages into evidence. No other witnesses testified.

The parties are married and have a daughter, who was three years old at the time of trial. On March 25, 2023, plaintiff filed a domestic violence complaint and was issued a temporary restraining order (TRO). Plaintiff alleged that defendant committed the predicate act of assault, N.J.S.A. 2C:12-1(a). In

her complaint, she alleged defendant "became physically aggressive after a verbal argument" and "aggressively pushed" her across the room using his chest. Plaintiff also alleged that defendant attempted to remove their daughter from their apartment. According to plaintiff, she was "forced to defend herself by pushing [defendant] away and calling the police." The complaint states that plaintiff was "not injured" during the incident and "refused medical evaluation and treatment." In terms of prior history, plaintiff alleged there were prior verbal and physical incidents reported to the police, but no charges or restraining orders were filed.

At trial, plaintiff testified as to the allegations set forth in her complaint. Plaintiff testified that on the day of the incident, the parties got into a verbal argument, defendant "shove[d]" her "with his chest across the household," picked up their daughter, and removed her from their home. Plaintiff stated defendant called her "a s*** mother" and "physically mov[ed] [her] body across" the living room floor. Plaintiff testified defendant screamed in her face that she was a "horrible mother" and "spouse."

When plaintiff threatened to call the police, she testified that defendant put their daughter down and left. Defense counsel objected when plaintiff started to testify about prior acts of domestic violence that were not contained

in her complaint but reported to the police. Citing J.D. v. M.D.F., 207 N.J. 458 (2011), the judge offered defendant an adjournment in order to prepare his defense. The judge stated:

> If you need additional time to speak to your client, I will give you that opportunity. If you need an adjournment to obtain evidence or witnesses with regard to this additional information, or the prior verbal physical incidents that were reported to the police, I will give you an adjournment.

However, defense counsel declined the opportunity for an adjournment. Plaintiff then proceeded to testify about the history of domestic violence with defendant. According to plaintiff, defendant smacked her across the face over her right eye, which left a slap mark as depicted in a photograph moved into evidence. Plaintiff explained that the slap made her feel "[v]ery worthless" and "very upset." Plaintiff next testified about a prior incident when the parties argued over money, and defendant broke the glass on the stove after "he threw his phone into it," as depicted in a photograph moved into evidence.

Plaintiff also testified about another prior incident following a "physical altercation." She stated defendant left the home and told her he wasn't coming back. Plaintiff used the chain lock on the front door but testified that defendant came back, "busted" the front door chain lock off the door frame, and was sleeping on the couch. Plaintiff sought an FRO because she feared defendant

would come after her "out of aggression" and "retaliation." Plaintiff testified that defendant "would probably try to take my daughter from me," and if he was allowed to return to the home, she would "[l]eave" and probably go to a domestic violence shelter with her daughter because she did not have the financial means to afford a new place to live.

Following the completion of plaintiff's direct testimony, the judge asked defense counsel if he wanted to take a break and speak to defendant before conducting cross-examination of plaintiff. Defense counsel asked for a five-minute recess, which was granted.

On cross-examination, plaintiff indicated she retained a divorce attorney and wanted defendant out of the house. She was confronted with text messages that were exchanged on the date of the incident about the demise of their marriage, defendant not wanting to spend time with their daughter, not having a car seat for her, and asking about her plans once the apartment lease ended in August. Plaintiff was questioned about another text message involving defendant's parenting ability.

At the close of plaintiff's case, defendant moved to dismiss the complaint on the grounds the predicate act of assault[2] was not established, and she did not demonstrate the need for the protection of an FRO. In opposition, plaintiff's counsel moved to amend the complaint and TRO to include the predicate act of harassment under N.J.S.A. 2C:33-4(b), because plaintiff testified that defendant shoved her across the living room and screamed in her face. Under subsection (b) of the harassment statute, plaintiff's counsel argued defendant subjected plaintiff to "striking, kicking, shoving, or other offensive touching," and that she established a prima facie case of domestic violence. Plaintiff's counsel also stated that plaintiff "doesn't control how the data is entered" on the complaint or what boxes are checked off.

The judge ruled that the TRO only pled assault as the predicate act, and not harassment. The judge acknowledged that defendant's due process rights

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[2] N.J.S.A. 2C:12-1(a) defines the predicate act of assault as:

> (1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or
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> (2) Negligently causes bodily injury to another with a deadly weapon; or
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> (3) Attempts by physical menace to put another in fear of imminent serious bodily injury.

allow him to know exactly what he is being charged with. However, the judge also considered plaintiff's right to amend the complaint and TRO.

Again citing J.D., 207 N.J. 458, the judge held that plaintiff was permitted to introduce evidence of domestic violence beyond what is set forth in the complaint. The judge also cited our decision in L.D. v. W.D., 327 N.J. Super. 1, 4 (App. Div. 1999), and explained the remedy in such an instance is to grant defendant a continuance. The judge denied defendant's motion to dismiss and granted plaintiff's motion to amend the complaint and TRO to include the predicate act of harassment. The judge offered defense counsel a continuance, which was declined.

Defendant testified that he was unaware that plaintiff retained a divorce attorney. He stated he no longer wanted to live with her. Defendant testified that he works in security at a casino. He testified that on the day of the incident, he came home from work and had planned to watch the parties' daughter while plaintiff went to a doctor's appointment. Instead, defendant testified the daughter went with plaintiff, and after taking a nap, he did some errands and visited his father. Defendant denied he was going to take the daughter without a car seat. He also denied pushing or hitting plaintiff. According to defendant, he never slammed his daughter against the wall as plaintiff alleged.

On cross-examination, defendant admitted he lost his temper and shattered the glass on the oven and admitted unscrewing the deadbolt lock on the front door. Defendant testified he was undergoing counseling for post-traumatic stress disorder and has anger management issues.

After considering the testimony and evidence, the judge found the parties were married at the time of the incident giving rise to jurisdiction under the PDVA. In his opinion, the judge found plaintiff "credible" and did not accept defendant's version of events. The judge stated plaintiff "made appropriate eye contact with the [c]ourt" and "her testimony was consistent." The judge highlighted that although defendant testified he didn't push or hit plaintiff, he stated he has "anger issues" and admitted he broke the glass on the oven. The judge noted that defendant is seeking therapy, and "to his credit," he admitted he has a problem with anger management. Defendant confirmed the altercation with plaintiff on the day in question occurred. Thus, the judge concluded that defendant harassed plaintiff pursuant to N.J.S.A. 2C:33-4(b).

The judge applied the two-prong test under Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006) and found there was a need for plaintiff to be granted an FRO because she credibly testified she is "scared" of defendant and feared he would take her daughter. The judge further credited plaintiff's

testimony that absent an FRO, plaintiff testified she would have to go to a domestic violence shelter and emphasized "[i]t's clear that she is fearful." The judge determined there was an attempt "to cause this fear of imminent danger" based on the harassment that occurred. The judge found defendant did not physically assault plaintiff, but intent was established because there was "an offensive touching," which under Silver, 387 N.J. Super. at 128, constitutes a "perfunctory and self-evident" basis to issue an FRO. This appeal followed.

Before us, defendant claims due process and case law prohibits a trial court from converting a hearing on a complaint alleging one act of domestic violence into a hearing on another predicate act of domestic violence. He also contends there is insufficient evidence supporting the judge's finding he committed the predicate act of harassment. More particularly, defendant argues the record lacks evidence he acted with the purpose to harass plaintiff. Defendant challenges the judge's finding that he did not commit a simple assault but committed harassment under subsection (b) of the statute because that conclusion is logically inconsistent.

II.

Generally, "findings by a trial court are binding on appeal when supported by adequate, substantial, credible evidence." Gnall v. Gnall, 222 N.J. 414, 428

(2015). "We accord substantial deference to Family Part judges, who routinely hear domestic violence cases and are 'specially trained to detect the difference between domestic violence and more ordinary differences that arise between couples.'" C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020) (quoting J.D., 207 N.J. at 482). "[D]eference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" MacKinnon v. MacKinnon, 191 N.J. 240, 254 (2007) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)).

We will not disturb a trial court's factual findings unless "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. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). However, we do not accord such deference to legal conclusions and will review such conclusions de novo. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016).

The purpose of the PDVA 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., 207 N.J. at 473 (alteration in original) (quoting State v. Hoffman, 149 N.J. 564, 584 (1997)), and courts will "liberally construe[] [the PDVA] to achieve its salutary purposes," Cesare, 154 N.J. at 400.

When determining whether to grant an FRO pursuant to the PDVA, the judge must make two determinations. See Silver, 387 N.J. Super. at 125-27. Under the first Silver prong, "the judge 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)).

If the court finds the 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. While the second prong inquiry "is most often perfunctory and self-evident, the guiding standard is whether a restraining order is necessary, upon an evaluation of the factors 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." Id. at 127.

"[T]he Legislature did not intend that the commission of one of the enumerated predicate acts of domestic violence automatically mandates the

entry of a domestic violence restraining order." Silver, 387 N.J. Super at 127. The factors which the court should consider include, but are not limited to:

> (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).]

Although the court is not required to incorporate all of these factors in its findings, "the [PDVA] does require that 'acts claimed by a plaintiff to be domestic violence . . . be evaluated in light of the previous history of violence between the parties.'" Cesare, 154 N.J. at 401-02 (quoting Peranio v. Peranio, 280 N.J. Super. 47, 54 (App. Div. 1995)). 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, 248-49 (App. Div. 1995).

The 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 (App. Div. 2017). The PDVA is not intended to encompass "ordinary domestic contretemps." Corrente, 281 N.J. Super. at 250 (emphasis added). Rather, "the [PDVA] is intended to assist those who are truly the victims of domestic violence." Silver, 387 N.J. Super. at 124 (quoting Kamen v. Egan, 322 N.J. Super. 222, 229 (App. Div. 1999)). The second Silver prong "requires the conduct must be imbued by a desire to abuse or control the victim." R.G., 449 N.J. Super. at 228 (quoting Silver, 387 N.J. Super. at 126-27).

Applying these principles, we conclude there is no basis to disturb the judge's factual findings or legal conclusions. He had the opportunity to hear and consider the testimony of the parties and the evidence. The judge had the opportunity to assess the parties' credibility based on believability and demeanor. His factual findings are supported by substantial credible evidence, and those facts were correctly applied to the law.

The judge found plaintiff's testimony was corroborated by the photographs and text messages between the parties to establish plaintiff's version of events. The judge found she met her burden of proof to establish defendant committed the predicate act of harassment. Defendant points to no evidence in the record that undermines the judge's findings. We discern no error.

A person is guilty of harassment where, "with purpose to harass another," they:

> a. Make or cause to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;
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> b. Subject another to striking, kicking, shoving, or other offensive touching, or threatens to do so; or
>
> c. Engage in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.
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> [N.J.S.A. 2C:33-4.]

Harassment requires the defendant to act with the purpose of harassing the victim. See J.D., 207 N.J. at 487. A judge may use "[c]ommon sense and experience" when determining a defendant's intent. Hoffman, 149 N.J. at 577.

Physical abuse is not the only type of domestic violence contemplated by the PDVA; the Act is also designed to address emotional abuse. See R.G., 449

N.J. Super. at 228 (finding an FRO is warranted where the defendant's conduct is "imbued by a desire to abuse or control the [plaintiff]") (emphasis added) (citing Silver, 387 N.J. Super. at 126-27).

Although harassment is "one of the most frequently reported" predicate acts of domestic violence, it also "presents the greatest challenges to our courts." J.D., 207 N.J. at 475. A harassment claim presents such a challenge because it "confounds [the court's] ability to fix clear rules of application" between "acts that constitute harassment" and acts that are "ordinary domestic contretemps." L.M.F. v. J.A.F., Jr., 421 N.J. Super. 523, 534 (App. Div. 2011) (quoting J.D., 207 N.J. at 475).

Only by considering the parties' prior relationship and the parties' conduct under the totality of the circumstances can a court determine whether a communication constituted harassment. Compare Pazienza v. Camarata, 381 N.J. Super. 173, 182-84 (App. Div. 2005) (finding, based on the defendant's repeated prior unwanted contact with the plaintiff, that a single text message to the plaintiff about the show she was watching at the moment the defendant sent the text message constituted harassment), with L.M.F., 421 N.J. Super. at 535-37 (holding an isolated incident of the defendant making a remark to the plaintiff

when he was angry, and they were divorcing was not harassment under the circumstances).

Critical to this analysis is whether the defendant's actions were taken with a purpose to harass. R.G., 449 N.J. Super. at 226. "'[P]urpose' is the highest form of mens rea contained in our penal code, and the most difficult to establish." State v. Duncan, 376 N.J. Super. 253, 262 (App. Div. 2005). "A person acts purposely with respect to the nature of [their] conduct or a result thereof if it is [their] conscious object to engage in conduct of that nature or to cause such a result." Id. (quoting N.J.S.A. 2C:2- 2(b)(1)). We may infer "a 'purpose to harass another' 'from the evidence presented' and from 'common sense and experience.'" Id. (quoting Hoffman, 149 N.J. at 577).

Here, the judge determined that the parties had a verbal argument that escalated to an "altercation." The judge found plaintiff credibly testified that defendant "pushed her across the room" with his chest, constituting an act of harassment under N.J.S.A. 2C:33-4(b). The record supports that finding. Moreover, defendant admitted he had anger issues and broke the glass on the oven in the past. He also admitted to breaking or unscrewing the deadbolt lock on the front door of the parties' home. The judge found the FRO was necessary

to protect plaintiff by relying on her credible testimony that she was frightened by defendant's behavior.

"Whether the victim fears the defendant" is a factor the trial judge may consider upon an application for an FRO. See G.M., 453 N.J. Super. at 13 (considering victim's continued fear when modifying an FRO) (citation omitted).

Here, the judge correctly determined defendant's unrelenting course of conduct directed at plaintiff over a period of time and his anger—which was not isolated—support the judge's finding an FRO was necessary to protect plaintiff against future acts of domestic violence. The judge heard testimony from the parties and had ample opportunity to assess credibility. There exists sufficient evidence in the record to support both Silver prongs, and we see no evidentiary errors, oversight, logical inconsistencies, or abuse of discretion.

III.

Defendant next argues that the judge's decision to permit plaintiff to amend her complaint during the FRO trial to testify about the prior history of domestic violence and then to amend the complaint to allege the predicate act of harassment instead of assault deprived him of due process. We disagree.

Our Court has held that "[d]ue process is 'a flexible [concept] that depends on the particular circumstances.'" H.E.S. v. J.C.S., 175 N.J. 309, 321 (2003) (alteration in original) (quoting Doe v. Poritz, 142 N.J. 1, 106 (1995)). "What that means is that '[a]t a minimum, due process requires that a party in a judicial hearing receive notice defining the issues and an adequate opportunity to prepare and respond.'" J.D., 207 N.J. at 478 (alteration in original) (quoting McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 559 (1993) (internal quotations omitted)).

> There can be no adequate preparation where the notice does not reasonably apprise the party of the charges, or where the issues litigated at the hearing differ substantially from those outlined in the notice. It offends elemental concepts of procedural due process to grant enforcement to a finding neither charged in the complaint nor litigated at the hearing.
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> [Nicoletta v. N. Jersey Dist. Water Supply Comm'n, 77 N.J. 145, 162 (1978) (quotation omitted).]

Our Supreme Court examined due process concerns arising in domestic violence hearings in two opinions that guide our analysis here. In H.E.S., the trial court, over the defendant's objection, permitted the plaintiff to testify about both an alleged predicate act and several alleged prior acts of domestic violence that were not set forth in the complaint. 175 N.J. at 317. Those allegations were raised for the first time during plaintiff's testimony at the hearing. Ibid.

At the close of plaintiff's testimony, the court permitted a one-day continuance to allow defendant to consult with his counsel prior to presenting his case-in-chief. Id. at 318. After the one-day continuance, defendant's counsel asked for an additional continuance, arguing he needed more time to prepare a defense to the allegations first raised during plaintiff's testimony and to subpoena the police officers who responded to the newly alleged incidents. Ibid.

The trial court denied the request. Ibid. Ultimately, the trial court determined it would not consider the prior acts of domestic violence raised for the first time during the plaintiff's testimony because they were too remote in time from the predicate acts and did not establish a pattern of violent behavior. Ibid. The court did, however, find that plaintiff had proven the predicate act of domestic violence first raised during her testimony and relied on that predicate act as a basis for issuance of an FRO. Id. at 319.

On appeal, we held that the trial court's reliance on the predicate act not alleged in the complaint did not violate the defendant's due process rights because he was given a one-day continuance to prepare a defense. Ibid. The Supreme Court reversed. The Court held that the defendant's "due process rights were . . . violated by the trial court's refusal to grant an adjournment after plaintiff alleged an incident of domestic violence not contained in the complaint

. . . and by the court's decision to grant a FRO on the basis of that allegation." Id. at 324.

As the Court explained, "it constitutes a fundamental violation of due process to convert a hearing on a complaint alleging one act of domestic violence into a hearing on other acts of domestic violence which are not even alleged in the complaint." Id. at 325 (quoting J.F. v. B.K., 308 N.J. Super. 387, 391-92 (App. Div. 1998)). "The fact that defendant's counsel had overnight to consider his response does not diminish defendant's due process rights in this case." Ibid. (quotations and citation omitted). Therefore, the Court vacated the FRO. Ibid.

In J.D., our Court addressed the due process rights of a defendant with respect to prior acts of domestic violence identified for the first time at an FRO hearing. 207 N.J. at 466-68. There, the plaintiff filed a domestic violence complaint alleging, in addition to a predicate act, four prior acts of domestic violence. Ibid. At the hearing, in response to an open-ended question from the court, the plaintiff testified with respect to multiple prior acts of domestic violence not alleged in the complaint. Ibid.

At the conclusion of the plaintiff's testimony, the defendant told the court that he was not prepared to respond to the plaintiff's testimony about the prior acts of domestic violence not alleged in the complaint. Id. at 468-69.

Notwithstanding defendant's statement, the trial court proceeded to take testimony from defendant regarding the alleged past acts. Id. at 469. The trial court subsequently relied on the past acts of domestic violence not alleged in the complaint when reaching its decision that the alleged predicate act constituted harassment. Id. at 470.

On appeal to this court, the defendant argued, among other things, that he was denied due process because the trial court permitted testimony about the past acts of domestic violence not alleged in the complaint. Ibid. We affirmed, concluding that the contested testimony was properly admitted. Id. at 470-71.

The defendant raised the same argument before our Court. Id. at 471. Our Court noted that during FRO hearings parties often expand upon the history of domestic abuse alleged in their complaints. Id. at 479. In addition, the Court found that trial courts often will attempt to elicit a fuller picture of the history of the parties' relationship during a hearing. Ibid. Our Court held by eliciting testimony that "allows" the prior history alleged in the complaint "to be expanded," the trial court "permitted an amendment to the complaint and must proceed accordingly." Id. at 479-80. As the Court explained,

> To be sure, some defendants will know full well the history that plaintiff recites and some parties will be well-prepared regardless of whether the testimony technically expands upon the allegations of the

> complaint. Others, however, will not, and in all cases the trial court must ensure that defendant is afforded an adequate opportunity to be apprised of those allegations and to prepare. See H.E.S., 175 N.J. at 324 (concluding that allowing defendant only twenty-four hours to prepare violates due process).
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> When permitting plaintiff to expand upon the alleged prior incidents and thereby allowing an amendment to the complaint, the court also should have recognized the due process implication of defendant's suggestion that he was unprepared to defend himself. Although defendant's assertion that he needed time to prepare was not cloaked in the lawyer-like language of an adjournment request and was made as part of a longer response to a question, it was sufficient to raise the due process question for the trial court and it should have been granted. Our courts have broad discretion to reject a request for an adjournment that is ill founded or designed only to create delay, but they should liberally grant one that is based on an expansion of factual assertions that form the heart of the complaint for relief.
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> [Ibid.]

Our Court noted that granting an adjournment to give defendant time to prepare to address new allegations of prior acts of domestic violence poses "no risk to plaintiff" because "courts are empowered to continue temporary restraints during the pendency of an adjournment," which will fully protect the plaintiff while affording the defendant due process. Ibid. Thus, our Court held that the denial of the defendant's adjournment request, along with other errors, warranted reversal of the FRO and remand for a new trial. Id. at 481-82, 488.

Applying these controlling principles here, we discern no error and no abuse of discretion. Unlike the facts before our Court in J.D. and H.E.S., the two separate adjournments offered by the judge in the matter under review would have provided defense counsel sufficient time to prepare a defense to the new allegations raised by plaintiff during the FRO hearing: first, when plaintiff testified about the prior history of domestic violence; and second, at the close of her case-in-chief when she sought to amend the predicate act alleged from assault to harassment. We, therefore, reject defendant's contention that he was denied due process, and there was no resulting prejudice.

To the extent we have not addressed them, any remaining contentions raised by defendant lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.