

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NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION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-3608-22

F.H.R.,

Plaintiff-Respondent,

v.

A.N.,

Defendant-Appellant.

Submitted June 18, 2024 – Decided June 27, 2024

Before Judges Mawla and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Gloucester County,
Docket No. FV-08-0821-23.

Lynda L. Hinkle, LLC, attorney for appellant (Lynda L.
Hinkle, on the brief).

Cockerill, Craig & Moore, LLC, attorneys for
respondent (Jeffrey S. Craig, on the brief).

PER CURIAM

Defendant A.N.¹ appeals from a June 29, 2023 final restraining order (FRO) entered against him in favor of plaintiff F.H.R. pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35. We affirm.

On November 30, 2022, plaintiff filed a domestic violence complaint. She alleged that on February 20, 2022,² while the parties were visiting family in another country, defendant harassed and assaulted her by slapping and punching her in the face causing her to fall to the floor. Defendant then hit plaintiff's head against the ceramic floor and "busted" her lip. When plaintiff was able to leave and return to New Jersey several months later, she learned defendant had changed the locks on the marital residence. The complaint also alleged defendant refused to let the parties' children return to the United States, was dissipating marital assets, and preventing plaintiff from accessing marital bank accounts.

The complaint alleged a history of domestic violence, including physical abuse since 2019 and sexual abuse. Plaintiff also alleged defendant controlled

¹ We use the parties' initials pursuant to Rule 1:38-3(d)(10).

² The complaint stated the incident occurred on April 20, 2022. However, plaintiff's testimony clarified it was the February date and the April date of the predicate act in the complaint was due to a mistranslation.

whether she and the children could travel. The court granted plaintiff a temporary restraining order.

The matter was tried over the course of six days. Both parties testified, plaintiff adduced testimony from the parties' overseas neighbor who witnessed plaintiff flee the parties' residence in February 2022, and defendant adduced testimony from his brother.

Plaintiff testified that while the parties were vacationing and visiting family abroad in 2019, defendant confiscated her passport and green card, as well as the children's travel documents. When plaintiff confronted defendant, he hit her, forcing her to flee. Defendant then obtained a court order from the foreign jurisdiction preventing plaintiff from leaving the country.

On February 20, 2022, plaintiff heard a beeping noise and discovered it came from a device defendant had planted in the children's room to surveil plaintiff. When she objected to defendant's conduct, he responded by telling her he could do "everything that [he] wish[es] to do." He then punched her in the face and pushed her hard, causing her to fall on the ground. Defendant then sat on her and "slammed [her] head on the floor." She was "so scared [she] brought up [her] hands in order to protect [her]self." At some point, defendant got off plaintiff and went into the bathroom to take pictures of himself. While he was

distracted, she attempted to escape the home, wearing only a sleeping gown. In the bathroom mirror, defendant noticed plaintiff was about to open the door and flee, and he "grabbed [her] from behind . . . [and] brought [her] back inside the house." Plaintiff shouted for help and the neighbors came to help her. She remained with the neighbors until police arrived.

Plaintiff explained that defendant's assault caused: her lower lip to bleed; injured her forehead and right arm; and the slamming of her head against the floor affected her eyesight, causing her to need eyeglasses. She said her "body just turned blue." Plaintiff required medical attention because of the incident. She saw a doctor who prepared a report detailing her injuries.

The neighbor testified plaintiff knocked loudly on her door the night of the predicate incident. She was wearing a nightgown, appeared to be "very scared," and was crying and shivering. She wanted to come inside the neighbor's home. While the neighbor and plaintiff waited for police to arrive, plaintiff complained about the pain in her head. The neighbor observed "marks of violence" on plaintiff's face. Plaintiff's "face was aglow and . . . [she had] blue marks." There were marks around her eyes, biceps, upper arm, and neck.

The neighbor testified defendant emerged from the parties' home and was angry and had to be calmed down. She did not observe any injury on him. The

neighbor noted that during the three years in which the parties resided at the home, "they were continuously fighting or were having arguments." On one occasion, she heard defendant slap plaintiff and then saw plaintiff emerge from the apartment "screaming loudly and complaining about the pain in her ear. And she was saying that he had smacked her in the face"

Plaintiff traveled to a third country to obtain a new green card and ultimately returned to New Jersey in November 2022. Prior to her return, defendant threatened to take the children away from her and have them live with his brother. Plaintiff also testified regarding the prior history of assault by defendant as set forth in the complaint.

Defendant acknowledged the February 2022 incident had occurred. However, he claimed plaintiff began the assault by punching him "on [his] head[,] . . . back and . . . neck." When he turned around, plaintiff attacked his face and scratched him with her fingernail. Defendant claimed he retreated into the bathroom and used his phone to take pictures of his injury. He then saw plaintiff exit the apartment and call the neighbors for help. He claimed she had pre-planned the incident, including running to the neighbors for help wearing only her nightgown. The police came and while he was at the police station, he claimed plaintiff took all his personal belongings, paperwork, and money, and

cut the power to their apartment. Defendant acknowledged he placed cameras inside the home, but claimed they were to protect the children from plaintiff's family. He also claimed he sought medical attention for his injuries. Defendant conceded that following the predicate incident, he was convicted of assault by the court in the foreign jurisdiction.

Defendant claimed he had no contact with plaintiff afterwards because she had abandoned him and the children. According to defendant, plaintiff had abandoned the family even before the February 2022 incident and only contacted him and the children "for . . . purpose[s] of stealing [his] personal property." He asserted the February 2022 incident was one such attempt to steal his belongings. He claimed plaintiff was acting at the behest of her family, who wanted him to pay money he owed pursuant to a marriage contract. As a result, defendant and the parties' children were banned from leaving the foreign jurisdiction and could not return to the United States until he paid the money due under the marriage contract. Even though defendant claimed he was restrained from returning to the United States, he testified that plaintiff was able to return to the United States because she bribed foreign passport officials.

Although defendant claimed he was stranded abroad, he testified conversely that the parties were living abroad and had permanently left New

Jersey. However, he admitted the parties continued to own and insure their vehicles in New Jersey. Moreover, defendant remained employed in New Jersey until he resigned from his job in December 2022. Although defendant claimed he could not leave the foreign jurisdiction, he conceded he had in fact traveled to the United States since the predicate domestic violence incident. Defendant also conceded that in September 2019, he obtained a court order in the foreign jurisdiction barring plaintiff's travel. He filed a complaint for divorce in the foreign jurisdiction on February 22, 2022, alleging plaintiff "had refrained from general and sexual submission" as grounds for divorce.

Defendant denied a history of domestic violence or sexual assault. He noted that while the parties were abroad, plaintiff slept in a separate bedroom.

Defendant's brother's testimony was cut short due to an internet problem. He managed to say he never witnessed defendant abuse or mistreat plaintiff in his presence. He was never recalled to testify.

The trial judge found plaintiff credible; she testified in a calm, reasonable manner, and displayed the appropriate level of emotion. On the other hand, defendant's testimony "lacked credibility[;] . . . he was . . . defensive, [e]vasive and argumentative on cross-examination." Defendant "decline[d] or refuse[d]

to answer simple direct questions, and instead [took] a different route altogether and change[d] the subject of a question."

The judge credited plaintiff's testimony regarding the predicate act of assault. He found her description of the assault was corroborated by the medical report, which noted a scratch on her lower lip and forehead, and swelling of her arm, neck, and head. The judge noted defendant provided no explanation for the other injuries aside from the scratches he claimed were self-inflicted. Pursuant to N.J.S.A. 2C:12-1(a)(1), he concluded plaintiff had proven defendant "attempted to cause bodily injury by striking her in [the] face and slamming her head into the ceramic floor." She also proved defendant intended to harass her by committing the assault pursuant to N.J.S.A. 2C:33-4(b).

The trial judge further found plaintiff "convincingly testified with respect to two occasions of domestic violence in her past," namely when "defendant closed her in a door" and when he "slapped her across the face in front of their children." The judge concluded plaintiff needed an FRO and rejected defendant's claim she did not because he had no intention of returning to the United States. He noted defendant "was sure to qualify his answer . . . about whether he intended to return by stating 'not at this time.'" The judge inferred

"[f]rom that carefully worded response . . . that [defendant] is reserving his right . . . to return to the United States at some point in the undetermined future."

I.

On appeal, defendant argues the judge erred in finding he committed harassment, because the judge never explained how defendant's "actions were done with an intent to annoy or alarm." He asserts the evidence showed the parties assaulted each other, and the judge failed to address the parties' credibility regarding the predicate incident.

Defendant also challenges the trial judge's finding that plaintiff needed an FRO. He notes the record proved he could not return to the United States. Moreover, the record was devoid of evidence showing the parties had any contact after the predicate incident. Defendant claims the judge failed to consider whether the predicate act constituted domestic violence or a marital contretemps by making "specific findings as to prior history."

Our scope of review of a Family Part judge's fact-finding is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We owe substantial deference to Family Part judges' findings of fact because of their special expertise in family matters. Id. at 413. "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)). A judge's fact-finding is "binding on appeal when supported by adequate, substantial, credible evidence." Ibid. (citing Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). We owe no special deference to the trial judge's "interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citing State v. Brown, 118 N.J. 595, 604 (1990)).

A trial judge deciding whether to grant an FRO must undertake a two-part inquiry. Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). "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 set forth in N.J.S.A. 2C:25-19(a) has occurred." Id. at 125 (citation reformatted). Second, the judge must determine whether a restraining order is necessary "to protect the victim from an immediate danger or to prevent further abuse." Id. at 126-27. Whether an FRO should issue depends on the seriousness of the predicate offense, "the previous history of domestic violence between the plaintiff and defendant including previous threats, harassment," and "whether immediate danger to the person or property is present." Corrente v. Corrente, 281 N.J. Super. 243, 248 (App. Div. 1995) (citing N.J.S.A. 2C:25-29(a)(1) to (2)).

N.J.S.A. 2C:33-4(b) states a person commits purposeful harassment if they "[s]ubject[] another to striking, kicking, shoving, or other offensive touching, or threaten[] to do so." Our Supreme Court has stated "[a] finding of a purpose to harass may be inferred from the evidence presented," based on "[c]ommon sense and experience." State v. Hoffman, 149 N.J. 564, 577 (1997). "Subsection (b) . . . deals with touchings or threats to touch, and it does not require the intended victim to be annoyed or alarmed." Id. at 580.

Assault occurs when a person "[a]ttempts to cause or purposely, knowingly or recklessly causes bodily injury to another." N.J.S.A. 2C:12-1(a)(1). "'Bodily injury' means physical pain, illness or any impairment of physical condition." N.J.S.A. 2C:11-1(a). "Not much is required to show bodily injury. For example, the stinging sensation caused by a slap is adequate to support an assault." N.B. v. T.B., 297 N.J. Super. 35, 43 (App. Div. 1997). "When the predicate act is an offense that inherently involves the use of physical force and violence, the decision to issue an FRO 'is most often perfunctory and self-evident.'" A.M.C. v. P.B., 447 N.J. Super. 402, 417 (App. Div. 2016) (quoting Silver, 387 N.J. Super. at 127).

Having considered defendant's arguments in light of the record and the aforementioned legal principles, we affirm for the reasons expressed in the trial judge's opinion. We add the following comments.

We decline to second-guess the trial judge's findings regarding the predicate act because they are supported by the credible evidence in record, which point to the fact defendant was the aggressor. Plaintiff's injuries corroborated her description of the assault. Moreover, this case turned on credibility. Our review of the parties' testimony convinces us the judge's assessment of the parties' credibility, specifically defendant's lack of credibility, was unassailable.

The evidence showed the assault and harassment was anything but marital contretemps. Indeed, the record supported the judge's finding of a history of assaultive and controlling behavior by defendant. Even without a history of domestic violence, the assault and harassment that occurred in February 2022 was sufficient for an FRO. A judge may enter an FRO "in the absence of such a pattern where there is 'one sufficiently egregious action[.]'" Silver, 387 N.J. Super. at 128 (alteration in original) (quoting Cesare, 154 N.J. at 402).

Finally, defendant's assault and harassment of plaintiff readily demonstrated an FRO was necessary to protect her from further harm. The

physical abuse plaintiff suffered made the entry of an FRO self-evident and perfunctory. To the extent we have not addressed an argument raised on appeal, it is because it lacks sufficient merit to warrant discussion in a written opinion.

R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION