

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3960-22
A-0487-23

F.A.,

Plaintiff-Appellant,

v.

Z.R.B.,

Defendant-Respondent.

Z.B.,

Plaintiff-Respondent,

v.

F.A.,

Defendant-Appellant.

Argued November 20, 2024 – Decided March 18, 2025

Before Judges DeAlmeida and Puglisi.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, Docket Nos. FV-12-2555-23 and FV-12-2571-23.

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

Geraldene Sherr Duswalt argued the cause for respondent.

PER CURIAM

In these consolidated matters, F.A. (Felix)¹ appeals from the June 9, 2023 order of dismissal of a temporary restraining order (TRO) he obtained against Z.R.B. (Zara) pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, the June 9, 2023 final restraining order (FRO) Zara obtained against him, and the August 24, 2023 amended FRO denying Felix's motion for reconsideration. We affirm Zara's FRO against Felix, reverse the order of dismissal of Felix's TRO against Zara, and remand for further proceedings.

¹ We use initials and pseudonyms to protect the parties' privacy and maintain the confidentiality of the proceedings in accordance with Rule 1:38-3(d)(10). Z.R.B. is named as Z.B. in A-0487-23.

I.

The parties were married for fifteen years and had three children. On May 11, 2023, they got into a verbal and physical altercation which resulted in Felix's arrest. Following the incident, Zara was granted a TRO against Felix, alleging predicate acts of assault and false imprisonment and a prior domestic violence history of unreported assaults, later amended to identify specific incidents of physical and verbal domestic violence from 2009 to 2023.

Four days after the incident, Felix was granted a TRO against Zara, alleging predicate acts of assault and harassment from the May 11 incident and criminal mischief from an incident in April 2023. As a prior domestic violence history, Felix reported he sustained a bruise in April or May 2023 and Zara "mentioned suicide in the past."

On June 9, 2023, a Family Part judge conducted a consolidated trial on both applications, during which both parties were represented by counsel. At the outset of the hearing, the judge said he was "going to ask some preliminary questions with the permission of both counsel for judicial economy to get things started."

With the judge's prompting, Zara testified about the May 11 incident as follows. The disagreement started the night before because Zara refused to go

to a family barbecue Felix was attending. The next morning, the argument continued when the parties got into a verbal and physical altercation in their kitchen. Felix called Zara a coward and she called him a coward. He cursed at her and insulted her family members saying, "[Y]our dad is fucking coward, your mom is a fucking coward, your whole family is a fucking coward," screaming in her face while pushing her against the counter. As Zara tried to "break free," she saw a yogurt on the counter and "was trying to throw it at him" as he attempted to pin her to the counter.

After Zara broke free and left the kitchen, she cursed back at him. Felix then pushed her and pinned her, "grabbing [her] whole body . . . against the wall" in the hallway, and she ripped his shirt trying to get free. Zara broke free again and started towards the living room. Felix continued yelling and Zara "started cursing his mom," which made Felix go "crazy." He "went absurd and . . . threw [her] on the sofa," where he was "on top of [her] holding [her] down with his whole body weight." He then held her neck down on her throat and shoved his fingers down her throat, continuing to curse at her. Zara "couldn't breathe," and she "broke free" by biting his finger.

Felix then went upstairs and Zara ran back to the kitchen to call 911. The operator advised Zara to hide somewhere safe until the police arrived, so she

went to the bathroom. Felix saw her on the phone, forced open the bathroom door, pushed her to the wall, and took her phone screaming "who are you calling?" Felix threw her phone to the floor while Zara locked herself in the bathroom. When police arrived, they questioned both parties and arrested Felix.

Police photographs of Zara's injuries² were considered by the judge although not admitted into evidence. The photos documented scratches, redness and cuts on Zara's face and above her eye, a lump on her forehead, scratches and bruises on her arms, and scratches and small cuts on her hands. Zara testified her throat was scarred, her neck was swollen, she could not swallow for a day, and she sought treatment for pain at an urgent care two days later.

After the judge questioned Zara about the allegations in her TRO, her counsel continued direct examination. Zara testified about the prior history of domestic violence between the parties, which she stated happened "once a month" when Felix would "slap [her] around." During a 2020 incident, Felix slapped her across the face. Zara also stated there often were "major incidents," for example in April 2023, when Felix screamed at her, "pinned [her] to the wall, and threw [her] onto the bed."

² On cross-examination, Zara clarified that one police photograph depicted a pre-existing scar. No trial exhibits were provided in the record on appeal.

Although she could not recall specific dates, Zara stated that in 2022, Felix "would verbally abuse [her] and hold [her] . . . really tightly and . . . grab [her], . . . leaving bruises on [her] arm." Zara also testified to Felix's history of cursing, degrading behavior, verbal and emotional abuse, and controlling where she went, what she wore, and whom she could meet.

Zara further testified that when she was four months pregnant in 2011, the parties argued about money the day of Zara's sister's wedding. After screaming and cursing at her in front of their children, Felix pinned Zara against the wall while holding her neck. He then threw her and she hit her head "really hard" against the corner of the wall "and became numb." After this incident, Zara stated she "really wanted to call the cops" and wished she had "but . . . was scared again because [she] was pregnant and [Felix] was threatening [her] and saying sorry."

Zara also testified that in 2009, while she was giving her young daughter a shower, the shower door glass broke and fell on them. Felix "turned around and slap[ped her] so hard on [her] face, . . . [she] fell."

Based on these incidents, Zara requested the entry of an FRO, stating she was afraid of Felix and feared for her safety.

After Felix's counsel cross-examined Zara, her counsel conducted re-direct examination and rested. The following colloquy then occurred:

THE COURT: Are you calling your client?

[FELIX'S COUNSEL]: Yes, Your Honor.

THE COURT: All right. Go right ahead.

[FELIX'S COUNSEL]: Were you going to proceed with the questioning the same—

THE COURT: Pardon me?

[FELIX'S COUNSEL]: I said were you going to proceed with the questioning the same way?

THE COURT: Well if you want me to, I can.

[FELIX'S COUNSEL]: Sure, Your Honor.

THE COURT: All right. [Felix], let's talk about what happened on May 11. Your wife has given us her version. You tell us in your words what happened.

Felix testified to the following. He agreed the parties argued about an event, but explained it was a wedding, not a barbecue. Felix stated he "made it clear that if she d[id] not want to attend, [that was] okay," but Zara continued to argue with him. She started "bring[ing] up [his] mother" and sister, escalating the argument by becoming "belligerent and disrespectful," calling his family

members names, and throwing a yogurt at him. Zara grabbed a fork,³ which Felix did not know whether she was "going to throw at [him] or possibly hurt herself, because she ha[d] mentioned self-harm numerous times to [him] in the past."⁴

Felix was "able to take away the fork," but Zara went for a knife near her. He pushed the knife out of her reach and she bit his finger. As Zara was biting his finger, she was "moving . . . very excitedly[and] . . . aggressively," which ripped Felix's shirt. Felix went upstairs to treat his wounds and change his shirt, and when he returned downstairs he found Zara in the bathroom calling the police. Felix also called the police. Photographs of Felix's injuries, including his bitten finger, were considered by the judge although not admitted into evidence.

After the judge questioned Felix about the allegations in his TRO, he said, "Counsel, go from there," at which point Felix's counsel continued direct examination until he had "no further questions."

³ On cross-examination, Zara denied grabbing a fork or any other object.

⁴ On rebuttal, Zara testified she never engaged in self-harm or threatened to do so, but considered suicide after having her third child because Felix "was always hitting" her.

On cross-examination, Felix maintained he was "trying to get away from [Zara]" and "didn't want to be . . . aggressive where she could fall." Felix "tried to walk away" and "didn't want to push her." He admitted Zara's comments about his mother and sister upset him, and acknowledged he "could have just walked away and left the kitchen."

Felix testified about the April 2023 incident alleged in his TRO as a predicate act. Felix stated Zara "was upset about a few things," "started yelling and cursing in front of [their son,] and then went upstairs in [their] bedroom and shattered the coffee table while [their] son was in the living room."⁵

Felix also testified about the parties' domestic violence history. Regarding the shower incident, he stated Zara "slammed the shower door . . . while she was giving [his] daughter a bath, and . . . pieces of the shower door fell on [his] daughter."

He also testified that in April 2023, Zara "held onto [his] arm with . . . two of her hands and then [he] . . . pushed her . . . [and] took [his] arm away."

⁵ On rebuttal, Zara admitted she broke the coffee table "because [Felix] was pinning [her] against the wall and when he left, [she] got upset and . . . went to go put something on the coffee table and it broke." Zara stated she did not mean to break the table.

Although he initially stated the incident left bruises on his hands, he clarified that the bruising was on his arm.

Felix requested the entry of an FRO based on Zara's physical, verbal, and emotional abuse, the fact she "br[oke] things and damage[d] things, sometimes in front of [the] kids," and because she "mention[ed] self-harm."

Following the parties' testimony, the judge noted that this case turned on credibility. The judge found Zara "more credible . . . because her story ma[de] more sense and . . . [wa]s more consistent." He explained Zara was candid when she could have exaggerated her claims or denied certain allegations that were unfavorable to her. In contrast, the judge found "right from the gate, [Felix's] story d[id not] make sense" because if Felix was "okay" with Zara's not wanting to attend the family event, "there would be no reason for the argument" or for Zara to grab a knife or fork.

Based on his credibility findings, which are not contested on appeal, the judge credited Zara's testimony that Felix screamed at her and pushed her against the kitchen counter, and she threw a yogurt to try to get away from him. He also found that in the hallway, Felix "grabbed [her], pinned [her] against the wall, and [they] started cursing at each other." Felix then grabbed Zara "around the

neck, around the face, around the jaw, [and] he put h[is] fingers down her throat."

Addressing the predicate acts alleged in Zara's TRO, the judge found by a preponderance of the evidence that Felix assaulted Zara:

[S]imple assault is either reckless[or] intentional[]—in this case, I'm going to say [this was] reckless[] because [the parties] got into a scuffle and [Felix] wanted to shut her up because she was saying some very hurtful things about his mother and his sister and . . . he was hell-bent on stopping her.

The judge then determined Zara failed to prove false imprisonment, because although the situation "spiraled out of control" and "there was an assault," Zara had "plenty of opportunities" to leave.

Turning to Felix's TRO, the judge found Zara committed the predicate act of criminal mischief in April 2023, based on Zara's admission⁶ she broke the coffee table because she "was angry and . . . upset because of what had happened moments before." The judge did not address the other predicate acts alleged in Felix's TRO, which claimed Zara committed assault and harassment on May 11.

In considering "whether . . . either party [was] entitled to or should be afforded the protection" of an FRO, the judge summarized Zara's testimony of

⁶ It is unclear from the record why the judge found Zara credible but disregarded her statement she did not mean to break the table.

the "significant history of domestic violence" between the parties. He reiterated his reasons for finding Zara's testimony credible, including her candor and ability to remember details of prior incidents. He then entered an FRO as necessary to protect Zara from future harm, denied Felix's request for an FRO, and dismissed Felix's TRO.

On June 29, 2023, Felix moved to reconsider the dismissal of his TRO against Zara and the entry of the FRO against him. Felix argued the judge failed to properly analyze the predicate acts of assault and harassment alleged in his TRO and, had he done so, Felix would have been granted an FRO.

During the August 24, 2023 argument on the motion, the following exchange occurred:

[FELIX'S COUNSEL]: . . . [I]t would be a plain error if you didn't go through the statute[s]. I think we can all agree that if you didn't go through the harassment statute or the assault statute for [Felix's] complaint, that's plain [error].

THE COURT: Not necessarily. Not necessarily. It depends on what I said. If I said I found her more credible, I don't have to go through that analysis. I don't have to do that.

[FELIX'S COUNSEL]: That's true. You did find her credible, but you said—well we'll do the transcript.

THE COURT: Did I find her more credible?

. . . .

[ZARA'S COUNSEL]: Yes, you did . . . find her more credible.

[FELIX'S COUNSEL]: You absolutely—yeah, you found her more credible, no doubt

Following argument, the judge denied the motion without prejudice to Felix's filing the transcript, and memorialized the decision in an amended FRO. This appeal follows.

II.

Our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We owe substantial deference to the Family Part's findings of fact because of its special expertise in family matters. Id. at 413. Deference is especially appropriate in bench trials 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 trial judge who observes witnesses and listens to their testimony is in the best position "to make first-hand credibility judgments about the witnesses who appear on the stand." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008).

As such, 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 the same deference to legal conclusions, which we review de novo. Thieme v. Aucoin-Thieme, 227 N.J. 269, 283 (2016).

Pursuant to Rule 1:7-4(a), a trial court must "find the facts and state its conclusions of law thereon in all actions tried without a jury." "Meaningful appellate review is inhibited unless the judge sets forth the reasons for [their] opinion." Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990). The trial court also must generally state its credibility findings even when they "may not be susceptible to articulation in detail." Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 1:7-4(a) (2025) (citing State v. Locurto, 157 N.J. 463, 474 (1999)).

A trial court's credibility findings need not be set forth in detail so long as "the reasons supporting its determinations of the witnesses' relative credibility may be inferred from, and are well-supported by, the account of the facts and witnesses' testimony presented in its decision." Locurto, 157 N.J. at 472-74. When adequately supported, those determinations are entitled to deference since they "are often influenced by matters such as observations of the character and

demeanor of witnesses and common human experience that are not transmitted by the record." Id. at 474.

In his appeal of the order dismissing his TRO, Felix contends the trial judge erred by failing to make findings as to whether Zara committed the other two predicate acts alleged in his TRO and failing to address whether Felix needed an FRO against Zara. In his appeal of the FRO entered against him, Felix contends the judge erred by failing to consider Zara's commission of the domestic violence act of criminal mischief in analyzing whether she needed protection from him. Felix also contends the judge erred by inappropriately conducting much of the parties' direct examination and by denying the motion for reconsideration based on the absence of a transcript.

We first address Felix's argument regarding the way the judge conducted the hearing. Felix claims the judge's questioning of the counseled parties was improper and the "trial was largely prosecuted by the trial court, not the parties' respective attorneys." As a threshold matter, this argument was not raised below. "Generally, issues not raised below, even constitutional issues, will not ordinarily be considered on appeal unless they are jurisdictional in nature or substantially implicate public interest." State v. Walker, 385 N.J. Super. 388, 410 (App. Div. 2006). Neither circumstance is present here.

Moreover, "[u]nder the invited error doctrine, 'trial errors that "were induced, encouraged or acquiesced in or consented to by defense counsel ordinarily are not a basis for reversal on appeal.'" State v. Muafo, 222 N.J. 480, 487 (2015) (quoting State v. A.R., 213 N.J. 542, 561 (2013)). "The doctrine acknowledges the common-sense notion that a 'disappointed litigant' cannot argue on appeal that [such] a prior ruling was erroneous" A.R., 213 N.J. at 561 (quoting N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 340 (2010)). "Some measure of reliance by the court is necessary for the invited-error doctrine to come into play." State v. Jenkins, 178 N.J. 347, 359 (2004).

In addition, a trial judge has "wide discretion in controlling the courtroom and the court proceedings," and any "[a]lleged misconduct by a trial judge must be reviewed within the context of the entire record in order to determine whether it had prejudicial impact." D.G. ex rel. J.G. v. N. Plainfield Bd. of Educ., 400 N.J. Super. 1, 26 (App. Div. 2008). "In a bench trial . . . , a judge may examine witnesses to clarify testimony, aid the court's understanding, elicit material facts, and assure the efficient conduct of the trial." D.M.R. v. M.K.G., 467 N.J. Super. 308, 320-21 (App. Div. 2021) (first citing State v. Medina, 349 N.J. Super. 108, 131 (App. Div. 2002); and then citing N.J.R.E. 614).

After consenting to the judge's initial questioning of Zara, Felix's counsel affirmatively asked for and agreed to the judge's examination of Felix in the same manner. The judge asked open-ended questions of both parties and provided counsel the opportunity to continue direct examination and conduct cross-examination. Having reviewed the record, we are satisfied the judge's questioning of both parties on direct examination, with the invitation and consent of counsel, did not have a prejudicial impact on the outcome of the trial. We therefore discern no abuse of discretion in the judge's handling of the proceeding.

We turn next to Felix's appeal of the FRO entered against him, wherein he contends the judge erred by failing to consider Zara's commission of criminal mischief in analyzing whether she needed protection from him.

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. v. M.D.F., 207 N.J. 458, 473 (2011) (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 considering an application for an FRO, a 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 v. Silver, 387 N.J. Super. 112, 125 (App. Div. 2006).

If the court finds a defendant committed at least one 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 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 -(6)], to protect the victim from an immediate danger or to prevent further abuse." Id. at 127.

It is well settled that when a court finds a defendant committed a predicate act involving physical violence, the issuance of an FRO is generally warranted. A.M.C. v. P.B., 447 N.J. Super. 402, 417 (App. Div. 2016). However, a court may "properly refuse to issue restraints" despite "finding that a defendant committed one of the predicate acts" if the court finds there is "(1) a lack of

evidence demonstrating a history of domestic violence or abuse; and (2) the commission of a predicate act that d[id] not involve physical violence against the victim." Id. at 414.

Here, the judge found Felix assaulted Zara, who was the victim of numerous prior acts of physical violence throughout the parties' marriage. While the judge did not specifically address whether Zara's commission of criminal mischief mitigated her need for an FRO, that act occurred a month prior to the May 11 incident and did not involve physical violence against Felix. Thus, we are satisfied the issuance of an FRO was well supported in the record and we affirm that order.

Turning to Felix's appeal of the dismissal of his TRO, we agree the judge erred by failing to address the other two predicate acts alleged in the TRO. It is unclear from the record whether the judge, in crediting Zara's version of events on May 11, implicitly rejected Felix's claims of assault and harassment stemming from that incident. But even if the judge did, he found Zara committed criminal mischief in April 2023 and therefore was required to consider the second prong of Silver regarding Felix's application. The record is bereft of this analysis.

Given this oversight, we are constrained to reverse the dismissal of Felix's TRO and remand for a new trial before a different judge. See R.L. v. Voytac, 199 N.J. 285, 306 (2009) ("Because the trial court previously made credibility findings, we deem it appropriate that the matter be assigned to a different trial court."). Felix's TRO against Zara shall remain in effect until further order of the trial court.

Lastly, we address Felix's appeal of the denial of his motion to reconsider the FRO against him.⁷ We review a trial judge's decision on a motion for reconsideration under Rule 4:49-2 for an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). "An abuse of discretion 'arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Kornbleuth v. Westover, 241 N.J. 289, 302 (2020) (quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015)).

The arguments raised by Felix's reconsideration motion challenged the judge's oral findings at trial. As the judge noted during argument on the motion,

⁷ Our reversal of the order dismissing Felix's TRO moots his appeal of the denial of his motion to reconsider that order. Redd v. Bowman, 223 N.J. 87, 104 (2015) (internal quotation omitted) (finding "[a]n issue is moot when [the appellate] decision sought in a matter, when rendered, can have no practical effect on the existing controversy").

he "literally tr[ied] hundreds of cases and this case [did not] stand out to him at all in terms of factual findings" he made. While there is no requirement for a movant to file a transcript with a motion for reconsideration, given the issues raised by Felix, here a transcript was necessary to enable the judge to consider the merits of the motion. Thus, we discern no abuse of discretion in the judge's denying the motion without prejudice for Felix to file a transcript.

Affirmed as to A-0487-23; reversed and remanded as to A-3960-22 for proceedings 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.

M.C. Hanley

Clerk of the Appellate Division