

SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

Vivian Crespo v. Anibal Crespo (A-28-09)

(NOTE: This Court wrote no full opinion in this case. Rather, the Court's affirmance of the judgment of the Appellate Division is based substantially on the reasons expressed in Judge Fisher's opinion below.)

Argued January 6, 2010 -- Decided February 18, 2010

PER CURIAM

On this appeal, the Court addresses the constitutionality of the Prevention of Domestic Violence Act (act), N.J.S.A. 2C:25-17 to -35.

Vivian and Anibal Crespo were married in 1984 and divorced in 2001. Despite their divorce, the parties continued to live in the same two-family house; defendant Anibal Crespo lived on the second floor with his parents while plaintiff Vivian Crespo lived with the Crespo children on the first floor. In 2004, after a dispute over child support, plaintiff filed a domestic violence complaint alleging present and past verbal and physical abuse. An ex parte temporary restraining order (TRO), which restricted defendant from communicating with or contacting plaintiff, was immediately entered. Defendant was served with the complaint and TRO and, after a two-day trial, a final restraining order (FRO) was entered in Vivian's favor. Defendant appealed and the Appellate Division affirmed that decision on June 6, 2006.

On June 15, 2007, defendant moved before a different judge to vacate the FRO, asserting that the Act is unconstitutional. Defendant argued that the Act essentially converted what should be a criminal prosecution into a civil proceeding, thereby depriving the parties of their right to a jury trial. In addition, he argued that the Act denied him due process by failing to provide sufficient notice prior to the final hearing, by applying a preponderance-of-the-evidence standard instead of a clear-and-convincing standard, and by failing to permit discovery or a right to counsel. The trial court found for the defendant, determining that the Act's "practice and procedure" components violate the separation of powers doctrine and that the Act's preponderance standard of proof violates due process principles.

On appeal, the Appellate Division reversed, finding the Act constitutional. The panel reasoned that the Supreme Court, rather than viewing the Act's procedural components as usurping its exclusive authority over practices and procedures utilized in the courts, has embraced and enhanced the Act's procedural components by adopting Rule 5:7A and by participating with the Attorney General in the creation of the Domestic Violence Manual that incorporates the procedures contained in the Act. Accordingly, the panel found without merit defendant's argument that the various procedural aspects of the Act violate the New Jersey Constitution.

In addition, the Appellate Division held that the previously determined case of Roe v. Roe bound the trial judge and required that he reject defendant's arguments in respect of the constitutional sufficiency of the preponderance standard in an action brought pursuant to the Act and, as such, the judge erred in refusing to follow Roe. In conformity with its holding in Roe, and because the interests at stake and the fact-finding required of Family Part judges in domestic violence matters is not at all similar to those matters in which courts have compelled application of the clear-and-convincing standard, the panel concluded that a standard of proof more demanding than the preponderance standard would undermine the social purposes of the Act.

The Appellate Division also rejected defendant's argument that the Act permits a deprivation of an individual's Second Amendment right to bear arms because it allows for the seizure of a defendant's firearms upon a finding of domestic violence. The appellate panel found nothing in the U.S. Supreme Court decision in District of Columbia v. Heller that suggests a limitation on a state's right to bar persons who have been found to have committed acts of domestic violence from possessing firearms. The Appellate Division determined that, absent a

clear and binding announcement from the United States Supreme Court to the contrary, the Act's prohibition on the possession of firearms by a person found to have committed domestic violence is a valid, appropriate, and sensible limitation on an individual's Second Amendment rights.

The Appellate Division addressed defendant's additional arguments regarding the ten-day hearing requirement, the ability to take discovery, the right to counsel and the right to a jury trial and found them to be without merit.

The Supreme Court granted defendant's motion for leave to appeal.

HELD: Judgment of the Appellate Division is **AFFIRMED** substantially for the reasons expressed in the thorough opinion of Judge Fisher. The Prevention of Domestic Violence Act is constitutional.

1. The appellate panel correctly held that: a) defendant's argument that the various procedural aspects of the Act violates the NJ Constitution, Article VI, Section 2, Paragraph 3 is without merit; b) that Roe v. Roe required the rejection of defendant's arguments in respect of the constitutional sufficiency of the preponderance standard brought pursuant to the Act; c) that the preponderance standard, as applied in domestic violence matters, conforms with due process requirements; d) that defendant's argument that by allowing the seizure of his firearms upon a finding of domestic violence, the Act permits a deprivation of a person's second Amendment right to bear arms must be rejected; e) that defendant's claim that the Act's requirement that a final hearing be held within ten days of the complaint deprived him of due process lacked merit; and f) the right to trial by jury does not attach when the alleged victim of domestic violence chiefly seeks a restraining order, even if other ancillary relief, such as damages, are sought. (Pp. 2-3)

2. To the extent that defendant raised whether the Second Amendment's right to bear arms applies to the states, the Court notes that the issue of "[w]hether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment's Privileges or Immunities or Due Process Clauses" presently is before the Supreme Court of the United States and therefore, this Court need not reach that point because the right to possess firearms clearly may be subject to reasonable limitations. (Pp. 3-4)

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN, WALLACE, RIVERA-SOTO, and HOENS join in this opinion.

SUPREME COURT OF NEW JERSEY
A-28 September Term 2009

VIVIAN CRESPO,

Plaintiff,

v.

ANIBAL CRESPO,

Defendant-Appellant,

and

STATE OF NEW JERSEY,

Intervener-Respondent.

Argued January 6, 2010 - Decided February 18, 2010

On appeal from the Superior Court, Appellate Division, whose opinion is reported at 408 N.J. Super. 25 (2009).

David N. Heleniak argued the cause for appellant (O'Donnell, McCord & DeMarzo, attorneys).

Melissa H. Raksa, Assistant Attorney General, argued the cause for respondent (Anne Milgram, Attorney General of New Jersey, attorney; V. Nicole Langfitt, Deputy Attorney General, on the briefs).

Lawrence S. Lustberg submitted a brief on behalf of amicus curiae New Jersey Coalition For Battered Women (Gibbons, attorneys; Mr. Lustberg and Eileen M. Connor, a member of the New York and California bars, on the brief).

Andrew L. Schlafly submitted a brief on behalf of amicus curiae Eagle Forum Education & Legal Defense Fund.

PER CURIAM

The judgment of the Appellate Division is affirmed substantially for the reasons expressed in the thorough opinion by Judge Fisher. Crespo v. Crespo, 408 N.J. Super. 25 (App. Div. 2009).

The panel correctly determined that the Prevention of Domestic Violence Act (Act), N.J.S.A. 2C:25-17 to -35, was constitutional. Specifically, the panel properly concluded (1) that defendant's "argument that the various procedural aspects of the Act violate N.J. Const. art. VI, § 2, ¶ 3, [was] utterly without merit[,]” id. at 34; (2) that Roe v. Roe, 253 N.J. Super. 418 (App. Div. 1992), required the rejection of "defendant's arguments regarding the constitutional sufficiency of the preponderance standard in actions brought pursuant to the Act," id. at 37; (3) that "the preponderance standard, as applied in domestic violence matters, conforms with the requirements of due process[,]” ibid.; (4) that "defendant's argument that by allowing the seizure of a defendant's firearms upon a finding of domestic violence, the Act permits a deprivation of an individual's Second Amendment right to bear arms" also must be rejected, id. at 41; (5) that defendant's claim that "the Act's requirement that a final hearing be held

within ten days of the filing of the complaint, see N.J.S.A. 2C:25-29(a), deprived him of due process" lacked merit, id. at 43; and (6) that "when the alleged victim of domestic violence . . . chiefly seeks a restraining order -- even if other ancillary relief, such as damages, is also sought -- the right to trial by jury does not attach[,]" id. at 46-47. We add only the following.

To the extent defendant raised whether the Second Amendment's right to bear arms, U.S. Const. amend. II, applies to the states, id. at 41-43, we note that the issue of "[w]hether the Second Amendment right to keep and bear arms is incorporated as against the States by the Fourteenth Amendment's Privileges or Immunities or Due Process Clauses" presently is pending before the Supreme Court of the United States. McDonald v. City of Chicago, 567 F.3d 856 (7th Cir. 2009), cert. granted, ___ U.S. ___, 130 S.Ct. 48, 174 L. Ed. 2d 632 (2009). We need not reach that point because the right to possess firearms clearly may be subject to reasonable limitations. See District of Columbia v. Heller, ___ U.S. ___, ___, 128 S. Ct. 2783, 2816-17, 171 L. Ed. 2d 637, 678 (2008) (holding that "[l]ike most rights, the right secured by the Second Amendment is not unlimited" and endorsing "longstanding prohibitions on the possession of firearms").

The judgment of the Appellate Division is affirmed.

CHIEF JUSTICE RABNER and JUSTICES LONG, LaVECCHIA, ALBIN,
WALLACE, RIVERA-SOTO, and HOENS join in this opinion.

SUPREME COURT OF NEW JERSEY

NO. A-28

SEPTEMBER TERM 2009

ON APPEAL FROM Appellate Division, Superior Court

VIVIAN CRESPO,

Plaintiff,

v.

ANIBAL CRESPO,

Defendant-Appellant,

And

STATE OF NEW JERSEY,

Intervener-Respondent.

DECIDED February 18, 2010

 Chief Justice Rabner PRESIDING

OPINION BY Per Curiam

CONCURRING/DISSENTING OPINION BY

DISSENTING OPINION BY

CHECKLIST	AFFIRM	
CHIEF JUSTICE RABNER	X	
JUSTICE LONG	X	
JUSTICE LaVECCHIA	X	
JUSTICE ALBIN	X	
JUSTICE WALLACE	X	
JUSTICE RIVERA-SOTO	X	
JUSTICE HOENS	X	
TOTALS	7	