

RECORD IMPOUNDED

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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-0482-16T1

S.S.,

Plaintiff-Respondent,

v.

C.F.,

Defendant-Appellant.

Submitted November 9, 2017 – Decided December 14, 2017

Before Judges Currier and Geiger.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Middlesex
County, Docket No. FV-12-0356-17.

Thomas Carroll Blauvelt, LLC, attorneys for
appellant (Aqua G. Etuk, on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant C.F. appeals a September 9, 2016 final restraining
order (FRO) entered in favor of plaintiff S.S., pursuant to the
New Jersey Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17

to -35 (the Act). After a careful review of the facts and the applicable legal principles, we affirm.

We discern these facts from the trial of September 9, 2016. Plaintiff filed for, and obtained, a temporary restraining order (TRO) against her son-in-law on the ground of simple assault based upon the events of August 12, 2016. On that date, the parties were quarrelling over keys to a vehicle, which allegedly led to defendant repeatedly punching plaintiff in the chest and left arm with a closed fist causing injury. At the time of the incident, plaintiff was sixty-nine years old; defendant was thirty-six years old.

Both parties testified and presented a witness. The trial court found plaintiff to be far more credible than defendant and his wife, who testified on his behalf. In particular, the court did not believe defendant and his wife's version of the incident. The court observed bruising on plaintiff's left hand. Photographs depicted significant bruising on plaintiff's arm and left hand. The court found by a preponderance of the evidence that defendant had committed the predicate act of assaulting plaintiff and had also previously assaulted her. The court also found that plaintiff and defendant had resided in the same household from September 2015 to November 2015, conferring jurisdiction under the Act. The court further found that there was a need to protect plaintiff

from further abuse based on the prior history of domestic violence and the disturbing nature of the assault committed by defendant. Based on those findings, the court issued an FRO in favor of plaintiff.

On appeal, defendant argues the trial court erred in finding defendant qualified as a household member under the Act because the parties failed to share the requisite domestic relationship.

Our scope of review of a trial court's factual findings is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). "The general rule is that 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. Investors Ins. Co., 65 N.J. 474, 484 (1974)). "Because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." 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)); see also Pascale v. Pascale, 113 N.J. 20, 33 (1988).

In determining whether to issue an FRO under the Act, the court must perform a two-step analysis. Silver v. Silver, 387 N.J. Super. 112, 125-26 (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. Second, "upon a finding of the commission of a predicate act of domestic violence," the court must determine whether it "should enter a restraining order that provides protection for the victim." Id. at 126.

The record supports the trial court's credibility determinations and factual findings. Plaintiff and defendant were in-laws and had resided together from September 2015 to November 2015. Because the defendant was a prior household member, the court found the relationship qualified to provide jurisdiction under the Act. We agree.

Jurisdiction under the Act is conferred when the victim has been subjected to domestic violence by a "person who is a present household member or was at any time a household member." N.J.S.A. 2C:25-19(d).¹ See R.G. v. R.G., 449 N.J. Super. 208, 219-20 (App. Div. 2017) (holding jurisdiction was established even though the two brothers involved had not resided together in thirty-six years). Defendant's reliance on case law interpreting the pre-amendment version of the statute is misplaced. See ibid. Given

¹ A 2015 amendment expanded the jurisdictional scope of the Act to provide protection to any person who "was at any time a household member." L. 2015, c. 98, § 2, eff. Aug. 10. 2015.


their relationship through marriage coupled with recently residing together as members of the same household, the trial court properly found plaintiff qualified as a victim of domestic violence conferring jurisdiction under the Act.

Ample evidence also supports the trial judge's finding that defendant committed the predicate act of simple assault. A simple assault is committed 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). The court gave credence to plaintiff's version of events, which was corroborated by the bruising she displayed and the photographs of her hand and arm.

We are satisfied as well that the record supported the need to protect plaintiff from further abuse based on the prior history of domestic violence and the "disturbing" nature of the assault. See Silver, 387 N.J. Super. at 127.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION