

## RECORD IMPOUNDED

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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-0490-15T4

B.M.,

Plaintiff-Respondent,

v.

C.C.,

Defendant-Appellant.

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Submitted March 28, 2017 – Decided July 28, 2017

Before Judges Rothstadt and Sumners.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Gloucester  
County, Docket No. FV-08-178-16.

Rebel Brown Law Group, L.L.C., attorneys for  
appellant (Kourtney A. Borchers, on the  
brief).

Klineburger and Nussey, attorneys for  
respondent (Natalie E. Wentz and Carolyn G.  
Labin, on the brief).

PER CURIAM

Defendant C.C. (Cindy)<sup>1</sup> appeals from an August 13, 2015 final restraining order (FRO) issued in accordance with the Prevention of Domestic Violence Act (the Act), N.J.S.A. 2C:25-17 to -35. For the reasons that follow, we reverse and remand.

At the FRO hearing, only plaintiff B.M. (Bill) was represented by counsel. After appearances were entered, the parties advised the trial court that they would be the only witnesses and that they were ready to proceed. The court, without further comment, instructed counsel to proceed with the direct examination of Bill. Cindy did not exercise her right to cross-examine Bill, but was cross-examined when she testified.

The following facts were revealed. Bill and Cindy are the unmarried parents of three young children and resided together for the last ten years of their almost twelve-year relationship. They broke up following incidents in the summer of 2015, which became the subject of Bill's complaint under the Act.

On July 13, Cindy and Bill argued over Bill's involvement with another woman. Cindy then pushed Bill against his car, and punched him in the back of his head and in the face causing a

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<sup>1</sup> To protect the parties' confidentiality, we utilize first name pseudonyms for the convenience of the reader, and intend no disrespect.

black eye and abrasion under his eye. Bill did not seek any legal redress.

On August 5, after Bill came home around midnight, the parties again argued over his relationship with the other woman, and Cindy hit him. She then drove to the woman's house and yelled at the woman while outside of her home. Later that day, Bill obtained a temporary restraining order (TRO) against Cindy.

After Cindy was served with the TRO approximately a week before the FRO hearing, she tried to commit suicide and was treated at a hospital crisis unit. She admitted hitting Bill on both occasions because he was cheating on her.

The court determined

based on the credible testimony of [Bill] that [Cindy] has a substance abuse issue, that the domestic violence is escalating, children were present during both incidents, [Cindy] acknowledges that after the August 5 incident she threatened suicide, taken to [c]risis and tested positive for crack cocaine, the [c]ourt will order a[n] [FRO] against [Cindy] based on the assault[s] that took place on July 13 and August 5 of 2015.

The court did not set forth any legal conclusions in its decision.

On appeal, Cindy contends that the FRO should be vacated because the court failed to make adequate findings of fact and conclusions of law pursuant to Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006), regarding a predicate act of domestic

violence and the need for entry of the FRO. She also contends that the court violated her due process rights by not advising her of the serious nature of the matter and her right to obtain counsel.

We first address the due process argument. Domestic violence is a civil offense, and defendants are not entitled to full criminal procedural protection. J.D. v. M.D.F., 207 N.J. 458, 474 (2011). Nonetheless, due process allows litigants a meaningful opportunity to defend against a complaint in domestic violence matters, which would include the opportunity to seek legal representation, if requested. Franklin v. Sloskey, 385 N.J. Super. 534, 540-41 (App. Div. 2006). Such determinations are often fact-sensitive. D.N. v. K.M., 429 N.J. Super. 592, 606-07 (App. Div. 2013). "[E]nsuring that defendants are not deprived of their due process rights requires our trial courts to recognize both what those rights are and how they can be protected consistent with the protective goals of the [Domestic Violence] Act." J.D. v. M.D.F., 207 N.J. 458, 479 (2011).

This case is unlike the situation in D.N., where we held that

the trial judge adequately questioned [the defendant] regarding her decision to decline the opportunity to obtain legal representation. The judge asked [the defendant] whether she desired the opportunity to seek counsel, particularly pointing out [the plaintiff] was represented. She

questioned whether [the defendant] understood what would result if [the plaintiff's] request for entry of an FRO was granted, briefly outlining such possible consequences, including the civil penalty, entry in the domestic violence registry, and requirement of fingerprinting. She also advised [the defendant] she could request an adjournment to consult with an attorney, or to prepare for the final hearing. [The defendant] denied the need to do so, believing hers was the stronger case. That her confidence was ill-founded is not a basis to conclude the court erred. The record also discloses the judge had presided over prior domestic violence matters involving the parties, and [the defendant's] responses, in part, reflect her familiarity with trial procedures and the results of an FRO.

[D.N., supra, 429 N.J. Super. at 607.]

Here, after the parties' appearances were entered and the court inquired as to who would testify, the court did not advise Cindy of her right to counsel. Further, there is no indication in the record that Cindy was mindful of the domestic violence hearing process or the consequences of being found guilty. We therefore conclude that she did not understand her right to employ counsel, nor the impact of an FRO order, and reverse and remand for a new hearing. See Mazdabrook Commons Homeowners' Ass'n v. Khan, 210 N.J. 482, 505-06 (2012) (discussing requirements for the waiver of constitutional right).

In reaching our decision, we need not consider Cindy's remaining argument that the court failed to make adequate findings

of fact and conclusions of law pursuant to Silver. However, given our remand, we briefly mention our concerns with respect to the court's determination that an FRO was necessary to protect Bill.

Findings by the trial court "are binding on appeal when supported by adequate, substantial, credible evidence." Id. at 412 (citing Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974)). In Silver, we held that once the trial court has determined that a defendant has committed a predicate act, it then must decide whether to issue a restraining order to protect the victim. Silver, supra, 387 N.J. Super. at 126. The commission of a predicate act does not automatically require that a restraining order be issued. Id. at 126-27. Rather, the court will only issue a restraining order if it 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. Here, the court's mere statement that "domestic violence is escalating" clearly does not set forth sufficient facts or legal analysis supporting its decision to enter an FRO to protect Bill from future acts of domestic violence by Cindy.

We reverse and remand for a new hearing consistent with this opinion. On remand, the case should be reassigned. R. 1:12-1(d); Pressler & Verniero, Current N.J. Court Rules, comment 4 on R.

1:12-1 (2013) ("[A] matter remanded after appeal for a new trial should be assigned to a different trial judge if the first judge had, during the original trial, expressed conclusions regarding witness credibility."). We do not retain jurisdiction.

Reversed and remanded.

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



CLERK OF THE APPELLATE DIVISION