

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-3443-15T2

A.R.,

Plaintiff-Respondent,

v.

R.H.,

Defendant-Appellant.

Submitted June 19, 2017 – Decided July 10, 2017

Before Judges Fisher and Fasciale.

On appeal from the Superior Court of New
Jersey, Chancery Division, Family Part,
Passaic County, Docket No. FV-16-001387-16.

Banks Law Offices, LLC, attorneys for
appellant (James Harrison Banks, on the
brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff commenced this action, pursuant to the Prevention
of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, based on an
allegation that defendant threatened her on Valentine's Day in
2016. At the conclusion of a final hearing at which only the

parties testified,¹ the judge rendered findings of fact and entered a final restraining order (FRO).

Defendant appeals, arguing:

I. PLAINTIFF FAILED TO PROVE BY A PREPONDERANCE OF CREDIBLE EVIDENCE THAT [DEFENDANT] ENGAGED IN TERRORISTIC THREATS.

II. AN [FRO] IS NOT NECESSARY IN ORDER TO PROTECT [PLAINTIFF].

We find insufficient merit in these arguments to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following brief comments.

Our standard of review requires deference to findings of fact that are based on "adequate, substantial, credible evidence"; that is "especially" true when, as here, "'the evidence is largely testimonial and involves questions of credibility.'" Cesare v. Cesare, 154 N.J. 394, 412 (1998) (quoting In re Return of Weapons of J.W.D., 149 N.J. 108, 117 (1997)). Such findings become binding on appeal because it is the trial judge who "sees and observes the witnesses," thereby possessing "a better perspective than a reviewing court in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 65 N.J. Super. 1, 5 (App. Div. 1961)). We, therefore, will not disturb

¹ Plaintiff represented herself; defendant was represented by counsel.

a judge's factual findings unless convinced "they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)).

After considering the parties' testimony, the judge found plaintiff to be a "very credible" witness; he did not find defendant credible. The judge determined – not only because of plaintiff's credible testimony about defendant's threat but also because of the illumination provided by defendant's earlier menacing accusations in other arguments between the parties that were recorded and played at trial – that defendant's angry exclamation to plaintiff on February 14, 2016, that he would "fuck her up," constituted a terroristic threat within the meaning of N.J.S.A. 2C:12-3(a). We find no principled reason for second-guessing this determination.

After careful examination of the record, we also are satisfied that this same evidence more than amply supported the judge's determination that plaintiff was in need of an FRO to protect her

from further domestic violence. Silver v. Silver, 387 N.J. Super.
112, 126-27 (App. Div. 2006).²

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

² With the finding of a predicate act, there could be no dispute that plaintiff met the definition of "victim of domestic violence," N.J.S.A. 2C:25-19(d), because the parties had a child in common. In fact, the threat in question, as well as prior arguments described in the record, arose from disputes about parenting time.