

## 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-4943-15T3

M.F.,

Plaintiff-Respondent,

v.

R.W.,

Defendant-Appellant.

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Submitted July 18, 2017 – Decided July 28, 2017

Before Judges Reisner and Suter.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Mercer County,  
Docket No. FV-11-1425-16.

R.W., appellant pro se.<sup>1</sup>

Respondent has not filed a brief.

PER CURIAM

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<sup>1</sup> The brief submitted by R.W. includes the name of his former attorney, but it is signed by R.W. in a self-represented capacity.

R.W.<sup>2</sup> appeals the entry of a final restraining order (FRO) on July 7, 2016 under the Prevention of Domestic Violence Act (the Act), N.J.S.A. 2C:25-17 to -35. We affirm.

M.F. (Mary) is the adult daughter of R.W. (Ryan). They are former members of the same household. Mary testified that she had been living in Florida, but recently moved back to Trenton at the urging of D.W., Mary's grandmother and Ryan's mother (grandmother), to assist with grandmother's care. Ryan and his brother had been providing care for grandmother, who may have dementia. Grandmother testified she asked Mary to return to New Jersey because she understood Mary had no other place to go.

On May 17, 2016, just two days after Mary returned from Florida, a confrontation occurred between Ryan and Mary at grandmother's house. During the confrontation, Mary said Ryan grabbed her clothing as she was ascending the stairs, pulled her down the steps, "stomped" on her chest and head, and kicked her. Mary called the police, but according to her, they asked her to leave the premises. She went to the hospital and was admitted overnight for a lung contusion.

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<sup>2</sup> We use initials and pseudonyms throughout the opinion because of the underlying domestic violence litigation. R. 1:38-3.

Ryan denied he was the aggressor in the confrontation, testifying that he intervened during Mary's argument with a home health aide. He testified he did not have physical contact with Mary except he did "grab" her to keep from falling, and as a consequence, they both landed on the floor. Neither the home health aide nor grandmother, both of whom were present, saw the reported physical confrontation between Ryan and Mary, although they both testified that at some point Ryan threw Mary's clothes down the steps to the first floor.

Mary applied for and obtained a temporary restraining order (TRO) against Ryan. The predicate offenses alleged were assault, N.J.S.A. 2C:12-1; harassment, N.J.S.A. 2C:33-4; and terroristic threats, N.J.S.A. 2C:12-3. See N.J.S.A. 2C:25-19(a) (listing predicate offenses). A few days later, Ryan also obtained a temporary restraining order (Ryan's TRO) against Mary.<sup>3</sup>

The cases were adjourned to enable Mary to obtain counsel, but she did not do so and represented herself at trial. After two days of testimony, the trial judge found "a large part of the testimony of both parties was simply not credible. It was prone

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<sup>3</sup> Ryan's TRO under docket number FV-11-1465-16 was not referenced in his appeal. It was tried together with Mary's request for a final restraining order, and was dismissed, but there is no order to this effect in the record.

to exaggeration." However, because of the hospital record that indicated Mary had suffered a lung contusion, the court was satisfied Mary had proven that an assault occurred. The court found "there was a contusion to the chest sufficient enough for them to prescribe pain medication, to encourage her to return at a future date."

The trial court concluded that Mary had proven the predicate acts of assault and harassment by a preponderance of the evidence, but that she had not proven the predicate act of terroristic threats, which claim was dismissed.<sup>4</sup> Based upon Mary's allegation that there had been two prior incidents of domestic violence, the court found there was a need to protect her from Ryan. The court accepted this portion of Mary's testimony about past domestic violence, finding Ryan's denials were not credible. The court entered the FRO on July 7, 2016 that restrained Ryan from contact with Mary.

On appeal, Ryan contends that Mary failed to prove the acts of assault or harassment, that the FRO was not supported by sufficient credible evidence in the record, and that on remand the case should be heard by a different judge.

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<sup>4</sup> Mary did not appeal nor file a brief in this appeal.

Our standard of review of the trial court's factual findings is limited. Factual findings are "binding on appeal when supported by adequate, substantial, and credible evidence." Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974) (citation omitted). Findings and conclusions of the trial judge are entitled to enhanced deference in family court matters. Cesare v. Cesare, 154 N.J. 394, 413 (1998). We also defer to credibility assessments made by a trial court unless they are manifestly unsupported by the record, because the trial court had the critical ability to observe the parties' conduct and demeanor during the trial. Weiss v. I. Zapinsky, Inc., 65 N.J. Super. 351, 357 (App. Div. 1961).

The entry of a final restraining order requires the trial court to make certain findings. See Silver v. Silver, 387 N.J. Super. 112, 125-26 (App. Div. 2006). The court "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. The court should make this determination "in light of the previous history of violence between the parties." Ibid. (quoting Cesare, supra, 154 N.J. at 402). Next, the court must determine whether a restraining order is required to protect the party seeking

restraints from future acts or threats of violence. Id. at 126-27. That means "there must be a finding that 'relief is necessary to prevent further abuse.'" J.D. v. M.D.F., 207 N.J. 458, 476 (2011) (quoting N.J.S.A. 2C:25-29(b)).

Here, the record supports the trial court's credibility determinations and factual findings. The trial judge found that neither party was entirely credible, but because there was medical documentation to support Mary's claim that her lung was injured by Ryan when he "stomped" on her chest, the court found her credible in this regard.

There was ample evidence to support the court's finding that the predicate act of simple assault was established. 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 Mary's version of events to the extent corroborated by her medical records, because "[t]here's no other explanation for [the contusion to the chest]" other than Mary's testimony that Ryan caused her injury. Given the court's credibility determination, there was ample

evidence in the record to support its finding that an assault occurred.

A person commits the offense of harassment if, "with purpose to harass another, he . . . [s]ubjects another to striking, kicking, shoving, or other offensive touching, or threatens to do so." N.J.S.A. 2C:33-4(b). We agree with the court that the record supports a finding of harassment based upon the confrontation that occurred between the parties on May 17 and the medical record confirmation of an injury.

A restraining order will not issue based solely on the commission of a predicate offense listed in the Act. Bittner v. Harleysville Ins. Co., 338 N.J. Super. 447, 454 (App. Div. 2001) (citing N.B. v. T.B., 297 N.J. Super. 35, 40 (App. Div. 1997)). A court must also consider additional factors that include "(1) [t]he previous history of domestic violence between the [parties], including threats, harassment and physical abuse; (2) [t]he existence of immediate danger to person or property; . . . [and] (4) [t]he best interests of the victim and any child[.]" N.J.S.A. 2C:25-29(a)(1), (2) and (4). Indeed, "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 -29(a)(6), to

protect the victim from an immediate danger or to prevent further abuse." Silver, supra, 387 N.J. Super. at 127.

We agree with the court that the record supported the need to protect Mary against Ryan's acts of domestic violence based on the court's credibility determination about the earlier acts of domestic violence, and Mary's fear he would repeat the violence. We are satisfied that the record supported the entry of the FRO.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION