

## 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-5230-15T3

A.L.I.,

Plaintiff-Appellant,

v.

D.W.,

Defendant-Respondent.

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Submitted May 23, 2017 – Decided July 12, 2017

Before Judges Fisher and Vernoia.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Morris County, Docket No. FV-14-0719-16.

Einhorn, Harris, Ascher, Barbarito & Frost, attorneys for appellant (Thomas J. Snyder, Bonnie C. Frost and Dorothy J. Kenney, on the brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff A.L.I. appeals the dismissal of an action she commenced against her second cousin, defendant D.W., pursuant to the Prevention of Domestic Violence Act (the Act), N.J.S.A. 2C:25-

17 to -35. The action was dismissed, at the conclusion of a four-day final hearing, because the trial judge found plaintiff was not a "victim of domestic violence," which, in relevant part, is defined in N.J.S.A. 2C:25-19(d) as a person who has been subjected to domestic violence by a person who "was at any time a household member." Based on his factual findings about the nature of the parties' relationship, to which we defer, Cesare v. Cesare, 154 N.J. 394, 410-11 (1998); D.N. v. K.M., 429 N.J. Super. 592, 596 (App. Div. 2013), certif. denied, 216 N.J. 587 (2014), we conclude the trial judge properly found plaintiff did not fit this statutory definition and we, therefore, affirm.

The Act's reach toward past household members has, at times, proved difficult for our courts. In considering the statute's prior language – which defined "victim of domestic violence" as including a person who has been subjected to domestic violence by "any person who is a present or former household member" – we rejected the Act's application to a dispute between adult siblings who lived together during their childhood but had "not resided together in the same household for twenty years." Jutchenko v. Jutchenko, 283 N.J. Super. 17, 20 (App. Div. 1995). We also recognized, when considering the former statutory language, that courts must look to determine whether the "perpetrator's past domestic relationship with the alleged victim provides a special

opportunity for abusive and controlling behavior." Tribuzio v. Roder, 356 N.J. Super. 590, 595 (App. Div. 2003); see also N.G. v. J.P., 426 N.J. Super. 398, 409 (App. Div. 2012).

The case at hand arose after August 10, 2015, the effective date of the amended statute. See L. 2015, c. 98, § 2. Recently, we held that the new definition, which changed the phrase "former household member" to a person who "was at any time a household member," widened the net of cases falling within the Act's jurisdiction. R.G. v. R.G., 449 N.J. Super. 208, 210 (App. Div. 2017). Indeed, the new statutory language would seem to cover even the circumstance we found insufficient in Jutchenko. Notwithstanding this broader scope, the Act was not amended to include family relations that were never members of the same household, as here.

As noted above, the parties are second cousins. The events that precipitated this action commenced when, in December 2015, defendant stayed in the home of her cousin, plaintiff, and plaintiff's husband, for ten days. When defendant ended this visit, plaintiff's husband went with her and they began cohabiting. In February 2016, defendant and plaintiff's husband ended a trip to Florida and, on the way to plaintiff's home in Boonton, defendant made threatening and abusive phone calls to plaintiff. On February 22, 2016, both defendant and plaintiff's husband arrived at

plaintiff's home. Defendant again spoke abusively toward plaintiff and physically attacked her, prompting plaintiff's filing of a complaint, which resulted in the issuance of a temporary restraining order on March 2, 2016.

A four-day trial occurred over the course of non-consecutive days in April, May and June 2016. At the conclusion of the hearing on June 20, 2016, the judge rendered an oral decision and concluded that the failure of the proofs to demonstrate plaintiff fell within N.J.S.A. 2C:25-19(d) required dismissal.<sup>1</sup> The family judge, however, stayed this final order pending "a resolution of plaintiff's appeal" – a ruling that presumably left in place the temporary restraining order.

Plaintiff appeals, arguing, in a single point, that "the scope and nature of the parties' relationship qualifies plaintiff as a 'victim'" as defined by N.J.S.A. 2C:25-19(d) "based on the remedial nature of the statute and the most expansive reading of the statute which seeks to prevent violence that occurs in a family or family[-]like settings." We disagree.

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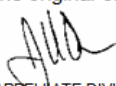
<sup>1</sup> Despite finding a lack of jurisdiction due to his findings regarding the relationship between the parties, the judge also found, in greater detail, that – if there was a sufficient relationship – defendant engaged in domestic violence that would have warranted entry of a final restraining order.

The judge correctly determined that plaintiff did not meet the definition of "victim of domestic violence." Although the judge applied the statute's prior iteration rather than the current version, the judge's findings, which are firmly grounded on the evidence deemed credible, demonstrate that the parties were never household members. They are second cousins. And, though they may have occasionally stayed under the same roof on visits to plaintiff's mother's condominium in Florida when they were young girls, or though they may have taken vacations together and had overnight visits in each other's home over the years, they were never, at any time, members of the same household.

Consequently, we reject the only argument posed by plaintiff in this appeal.

Affirmed.<sup>2</sup>

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

  
CLERK OF THE APPELLATE DIVISION

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<sup>2</sup> The stay imposed by the trial judge will remain in effect for fourteen days from today's date unless plaintiff moves for the continuation of the stay pending a petition for certification, and, in that instance, the stay will remain in effect until there is a ruling on that motion.