RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4781-15T4

M.C.,

Plaintiff-Respondent,

v.

G.T.,

Defendant-Appellant.

APPROVED FOR PUBLICATION

January 2, 2018

APPELLATE DIVISION

Argued telephonically December 4, 2017 – Decided January 2, 2018

Before Judges Fisher, Sumners[1] and Moynihan.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FV-20-1510-16.

Amanda F. Wolf argued the cause for appellant (Randolph H. Wolf, attorney; Randolph H. Wolf, on the brief).

Respondent has not filed a brief.

The opinion of the court was delivered by

FISHER, P.J.A.D.

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[1] Judge Sumners did not participate in oral argument. He joins the opinion with counsel's consent. R. 2:13-2(b).

Plaintiff M.C. (Monica) filed a complaint against defendant G.T. (George)[2] — whom she dated for a while — alleging he harassed her, pursuant to the Prevention of Domestic Violence Act (the Act), N.J.S.A. 2C:25-17 to -35. At the trial's conclusion, the judge expressed concern about both parties' credibility and, ultimately, concluded the evidence failed to support a finding of domestic violence; the judge specifically determined that Monica failed to prove George acted with a purpose to alarm or annoy. See N.J.S.A. 2C:33-4. The judge, however, invoked her "equitable powers" and entered a restraining order in Monica's favor. In appealing, George contends the judge exceeded her authority. We agree.

In reversing, we need not delve into the parties' factual assertions or the judge's findings about what transpired between these parties. We defer to the judge's findings that no act of domestic violence occurred. See Cesare v. Cesare, 154 N.J. 394, 411-13 (1998). We focus only on the judge's invocation of her equitable powers to enter a restraining order despite the absence of an act of domestic violence.

In support of the order under review, the judge relied solely on P.J.G. v. P.S.S., 297 N.J. Super. 468 (App. Div. 1997). There,

[2] The parties' names utilized in this opinion are fictional.

the parties filed cross complaints pursuant to the Act, alleging the other engaged in assaultive conduct. After a joint hearing on both matters, the judge found P.S.S. (Paul) sustained his claim against P.J.G. (Patricia); he entered a final restraining order. In Patricia's action against Paul, the judge found Patricia was unable to prove Paul committed an act of domestic violence but he entered restraints against Paul notwithstanding. A panel of this court vacated the restraints entered in Patricia's favor and remanded for dismissal of her complaint against Paul; the panel reasoned that "unless a finding is made that the person charged with conduct violative of the Act has committed an act of domestic violence, the court lacks a jurisdictional basis to enter a final restraining order." Id. at 471. We agree; the Act does not authorize entry of a final restraining order absent preponderating evidence that the defendant committed an act of domestic violence. See Silver v. Silver, 387 N.J. Super. 112, 125 (App. Div. 2006). But, in P.J.G., the panel also held that in the absence of a required element, such as an act of domestic violence, a family judge may still — so long as consistent with the Act's intendment, id. at 471-72 — enter restraints through invocation of the judge's "ample inherent power," id. at 471. Consequently, the P.J.G. panel held that Paul's own domestic violence action, id. at 473 — in which he proved that Patricia assaulted him and in which he

demonstrated an entitlement to a final restraining order for his protection — also provided a vehicle for the imposition of restraints against him despite Patricia's inability to prove Paul committed an act of domestic violence. In reaching this arguably incongruent conclusion, the P.J.G. panel relied on N.B. v. T.B., 297 N.J. Super. 35, 42 (App. Div. 1997), where another panel concluded a family judge may use evidence elicited during a failed domestic violence action to support the issuance of restraints in the parties' pending matrimonial action.

There is no doubt that P.J.G.'s holding, particularly when compared to N.B., upon which it was based, permits only the imposition of restraints — based on evidence heard in the failed domestic violence action — in another pending case between the parties. In N.B., the restraints were entered in a pending matrimonial action, and in P.J.G. the restraints were entered in Patricia's favor and against Paul in Paul's cross-complaint. Whatever we might think of these holdings, they do not support what occurred in the matter at hand. Here, the judge entered restraints against George and in Monica's favor in the very action that resulted in Monica's failure to prove George committed an act

of domestic violence.[3] There being no other pending action, not even N.B. or P.G.S. permitted the restraints entered here.

The restraining order is vacated and the matter remanded for entry of a dismissal order.

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

CLERK OF THE APPELLATE DIVISION

[3] Even if we were to agree that P.G.S. and N.B. were correctly decided — a question not warranting further exploration in light of our narrow holding — we would caution against the imposition of restraints in another pending action based on evidence adduced at a domestic violence hearing without, at the very least, sufficient notice to the restrained party of the potential for such an outcome. Due process and fundamental fairness requires at least that.