RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0122-21

M.A.D.,

Plaintiff-Appellant,

v.

B.L.D.,

Defendant-Respondent.

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Argued October 31, 2022 – Decided December 5, 2022

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County, Docket No. FV-13-1369-21.

M.A.D., appellant, argued the cause pro se (Stephanie Palo, on the brief).

Respondent has not filed a brief.

PER CURIAM

In this one-sided appeal, plaintiff M.A.D.[1] challenges the June 30, 2021 order denying her request for a final restraining order (FRO) against her former husband, defendant B.L.D. She also appeals from the August 20, 2021 order denying her motion to reconsider the June 30 order. We affirm.

I.

The parties were married in 1988 and divorced in 2018. They have five children together, three of whom are emancipated. Starting in 2015, as the parties' marriage began to significantly deteriorate, they resorted to litigation in the Family Part. Between 2015 and 2017, plaintiff obtained three temporary restraining orders (TROs) against defendant. She dismissed each TRO within days of securing it. In June 2015, plaintiff filed a complaint for divorce but then withdrew it.

Defendant initiated a second round of divorce proceedings in 2017, and following a trial, the parties' marriage was dissolved in February 2018 with the entry of a dual judgment of divorce (JOD). Under the JOD, the parties were awarded joint legal custody of their youngest daughters and plaintiff was designated the parent of primary residence, whereas defendant was awarded

[1] We use initials for the parties and their children to protect their privacy. See R. 1:38–3(d)(9) and (10).

parenting time on alternating weekends and mid-week. Also, per the JOD, the parties were ordered to sell the former marital residence. Pending its sale, plaintiff had exclusive possession of the home and was ordered to pay the shelter expenses starting in March 2018.

In June 2018, plaintiff obtained a fourth TRO. Although the matter was tried and dismissed, plaintiff's complaint was reinstated in October 2018. The next month, rather than retry the domestic violence matter, the parties entered into a consent order (CO) with civil restraints, prompting plaintiff to voluntarily dismiss the pending TRO.

In part, the CO allowed plaintiff to relocate to Florida with the parties' teenage daughters. She moved there with the girls in August 2019. Because the former marital residence was not yet sold, defendant resumed living there in October 2019, "to just clean it up [and] sell it."

By the following month, plaintiff realized the girls were "very unhappy" in Florida. She allowed them to return to New Jersey to temporarily live with defendant until she could sell her Florida home. By January 2020, plaintiff began living with defendant again in the former marital residence, based on a verbal agreement he would "move out in June [2020]." In the interim, the pandemic struck, and defendant did not move out as anticipated. As one might

expect, the parties' relationship further deteriorated under this arrangement.

II.

On April 23, 2021, plaintiff obtained a TRO against defendant, alleging he harassed and assaulted her the previous day. And on April 26, defendant obtained a TRO against plaintiff, alleging she assaulted him on April 22, 2021. In the complaints supporting their respective TROs, each party alleged a prior history of domestic violence; they later amended their complaints to include additional details about that history.

Both parties appeared for the final hearing with legal counsel. During plaintiff's direct examination, she testified about a series of predicate acts allegedly committed by defendant, starting with an incident on April 5, 2021. According to plaintiff, that day, defendant recorded a phone conversation she was having with one of the parties' daughters. He also purportedly called plaintiff a "monster." When defendant took the stand, he admitted he recorded plaintiff on April 5, but explained it was "the only way to actually get her to stop harassing me."

Plaintiff also testified that on April 7, 2021, after she told defendant he should not have taken a recent trip, he called her a "mother fucker" and threw a can of bug spray toward her. She conceded the can did not hit her. Defendant

denied throwing the bug spray at plaintiff and stated he threw it toward a nearby trash can. But he acknowledged he "probably" called plaintiff a "mother fucker."

Regarding an alleged incident on April 8, plaintiff testified defendant "flicked" water in her face while the parties were having a discussion in their kitchen. She stated that after this happened, she told him, "that's assault," and defendant "stepped back . . . to kick" her. She put out her hand "to stop it" and he kicked it.

Defendant admitted he "flicked" water at plaintiff as he went to dry his hand but explained this happened when he could not find a dish towel. He testified when he flicked the water at plaintiff, it was not due to an argument but as "a playful thing" while they "were just bantering about something." He also denied having any physical contact with plaintiff during this incident and stated he "never kicked her" but had been "doing knee exercises" in the kitchen.

According to plaintiff, on April 13, defendant again called her a "monster." He also purportedly called her a "narcissist" and told her, "your day is coming." Defendant did not deny making these statements but testified when he said, "your day is coming," he was referring to the parties going to

court.

Regarding the last predicate act listed in plaintiff's complaint, she testified that on the evening of April 22, 2021, she asked defendant if he would be home for parenting time over the upcoming weekend. Defendant did not answer her; instead, he walked past her and into the master bedroom, closing the door behind him.[2] Plaintiff followed defendant and immediately opened the bedroom door, at which point defendant yelled out in pain, telling her she hit him in the elbow.

Although plaintiff had been audio recording this exchange, she switched to video recording defendant after opening his door "because he was saying [she] had hit his elbow and [she] . . . knew [she] didn't hit him at all. . . . [She] had just opened the door."[3] As plaintiff held up her phone to video record defendant, he grabbed it and threw it past her while she stood in his doorway. She testified he then shoved her out of the doorway.

During her cross-examination, plaintiff conceded it was "possible" defendant was "hit by the door" when she opened it. Additionally, she

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[2] Plaintiff admitted during cross-examination that defendant "was solely occupying" the master bedroom during this period of time.

[3] Both the audio and video recordings of the April 22 incident were admitted into evidence, along with recordings of other incidents referenced in the TRO.

acknowledged that on April 22, she "reinitiated the conversation that [defendant] was clearly trying to leave."

Defendant testified he "never shoved" and "never touched" plaintiff during the April 22 incident. He recalled he came home earlier that day, after working a midnight shift, and gotten his "second COVID shot." Defendant stated he was "really fatigued" when plaintiff questioned him about parenting time, so he retreated to his bedroom as plaintiff followed him there. He agreed with plaintiff that he closed the door behind him as he walked away from her, but she immediately opened it again. Further, defendant testified when plaintiff opened his bedroom door, it hit his left arm, the same "arm [he] just got the shot in," and he felt pain in his left elbow. Defendant also stated that when plaintiff held up her phone to video record him, he grabbed it and threw it past her before closing his door again.

On cross-examination, defendant stated he did not think plaintiff "tried to intentionally hit [him] with the door," but he believed "her barging into [his] space, and confronting [him] . . . was harassment." Defendant also stated he "got [a TRO] because she got one against [him], and . . . she's got no boundaries . . . . she is destructive." Additionally, he testified that whether or not he obtained an FRO, he had no intention of returning to the parties' home.

Asked why he did not simply answer plaintiff when she questioned him about his upcoming parenting time, defendant answered, "[s]he knew . . . I was going to be there. . . . the whole thing was just contentious. [She] was looking for an argument." But he also testified he responded to plaintiff's question about parenting time, via email, once she left his room. His email read:

> Yes to your question. I will have the children this weekend. That means you will have to leave until Sunday after 7 p[.]m. [I']m not going to have you here harassing me and . . . stressing out the children like it's your job. What you just did calls for a restraining order! I'm not going to press the issue as long as you leave for the weekend.

Plaintiff emailed the following response approximately ten minutes later:

> Holy shit!! You are out of your fucking mind!! You aren't going to press the issue?!?! I didn't do ANYTHING that would call for a restraining order, lol, but since you know that, once again, I have proof of your violent behavior, you are going to try to gaslight me and tell me that I am the violent dangerous person and I have had enough of it!

The next morning, plaintiff obtained her fifth TRO. After doing so, she admittedly returned to the former marital residence twice while defendant was still in the home. She conceded under cross-examination she did not call the police either time to let them know defendant was still there. And when she returned home the second time, she entered the room where defendant was

seated and speaking with "the Division worker, [the] child services worker."[4] Plaintiff recalled defendant was "telling the guy what happened and then he went upstairs." She testified that although she did not call the police, she "was scared" the second time she went back to the house and saw defendant because she "assumed . . . the Division worker . . . told him that [she] had a restraining order."[5]

Plaintiff also alleged defendant violated the April 23 TRO. Specifically, she claimed that on May 5, 2021, she found a dead fish on the lawn and considered it to be "a threat of death," because she "believe[d defendant] was behind it." She acknowledged she did not know if defendant "did it or . . . had somebody else do it." Approximately two weeks later, plaintiff found a USB camera plugged into defendant's bedroom wall. She contended the fact defendant left this camera functioning after he was restrained from the home constituted another act of "contempt."

Defendant denied leaving a dead fish on the parties' lawn. He also

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[4] Presumably, this testimony from plaintiff referred to the presence of a caseworker from the Division of Child Placement and Permanency.

[5] The record is devoid of evidence defendant knew when plaintiff came home twice on the morning of April 23 that she had secured a TRO. Nor does plaintiff allege defendant violated the TRO by being at the home that morning.

rejected the notion he violated the TRO by having installed a "security camera" in his bedroom. He testified he installed the camera there before the April 23 TRO existed, to make sure no potential buyers removed any items from his closet when realtors conducted showings at the house. Further, he stated he "completely forgot about it being on" when he briefly came back to the home to retrieve his belongings after entry of the April 23 TRO.

In describing their prior history of domestic violence, the parties testified about numerous incidents. It is unnecessary for us to address each incident in detail. Instead, we confine our comments to a limited number of them to provide context for the trial court's orders and our opinion.

Plaintiff testified about incidents in 2015 when defendant broke one of her mirrors and sawed off a post on her four-poster bed. She also stated he tried to choke her one night in 2015 before "smashing" her phone and accusing her of recording him while the parties lay in bed. Additionally, plaintiff testified that between 2016 and 2017, defendant put a GPS device in plaintiff's car when she was absent from the home for long periods of time, and he suspected she was dating. According to plaintiff, during this same timeframe, defendant broke some of the parties' kitchen bar stools and threatened to punch her in the face. Defendant did not dispute this testimony except to state he did

not attempt to choke plaintiff during the 2015 incident.

Each party also accused the other of engaging in acts of domestic violence after entry of the JOD. In that vein, plaintiff testified defendant routinely called her a "bitch" and a "slut"; defendant testified plaintiff called him "worthless," a "piece of shit, or piece of garbage, things of that nature" "[m]ultiple times a day." He also stated plaintiff constantly initiated arguments and threatened to withhold contact between him and his children and grandchildren. Moreover, he testified she belittled him after he set up an area in the basement to sit and watch television, and would "say all the time, go down and sit in your pity chair."

Plaintiff described another incident from March 2021. By this time, the parties had been ordered to list their home for sale by the end of that month.[6] Plaintiff stated she was inside the home and heard defendant power washing in the garage. She went to talk to him and as she entered the garage, she saw water "spraying all over." Plaintiff told defendant he was getting her "stroller all wet," but he "ignore[ed]" her and kept power washing. As she was video

[6] Plaintiff admitted the disposition of the marital home was a source of contention "for years," because she did not want to sell it. Accordingly, she had filed a motion in February 2021 requesting it not be sold until June 2022, when one of the children was due to graduate from high school.

recording this interaction, "he turned around and shot [her] with the . . . power washer." On cross-examination, she conceded she could have "walked past [defendant], picked up [the] stroller, and moved it onto the grass." She also admitted she "could have walked out the front door, c[o]me around, picked up the stroller and moved it out of the way." Further, she acknowledged defendant "resolved the situation by moving the stroller to end the interaction."

Defendant denied any wrongdoing during this incident. He testified that on the day in question, he was power washing the floor of the parties' garage to "make it presentable" for potential buyers. When plaintiff confronted him, he recalled he turned to talk to her and had the power washer in his hand, but "didn't hit her" with the water because he "wouldn't do that."

As the FRO trial continued, plaintiff acknowledged she testified about the parties' domestic violence history during the divorce trial and was found "not credible as a witness" and "not credible with regard to [her] claim for domestic violence." When asked if the judge presiding over that trial found plaintiff was "evasive, argumentative, inconsistent with answers, and non-responsive to questions," plaintiff answered, "Yes, he did."

Several audio and video recordings were introduced into evidence by plaintiff at the FRO trial, but she estimated she had "video and audio

recordings of [defendant], probably in the hundreds." Further, she conceded during cross-examination that after she reviewed her recordings, she "picked . . . the ones that would be most beneficial for" her at trial.

III.

At the conclusion of the parties' testimony, the judge issued an oral decision from the bench. She denied the parties' requests for FROs, finding their proofs were "in equipoise" as to the alleged predicate acts. The judge also concluded much of what the parties characterized as a predicate act, or an incident of prior domestic violence amounted to "domestic contretemps." Further, she concluded the parties did not need FROs to protect them against future acts of domestic violence.

Citing Silver v. Silver,[7] and noting "the attorneys know the law in this area, and . . . we know the statutes, and . . . know all the . . . cases," the judge stated she would first address the parties' credibility, "because [she had] to look at whether . . . [she had proof of] . . . a predicate act either way." In that regard, she stated, "I do not find [plaintiff] credible. . . . There is testimony throughout the case . . . where she shifted and pivoted." To emphasize plaintiff's "lack of credibility," the judge remarked, "I've got plenty of

[7] Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006).

examples where I think [plaintiff] contradicted herself, where I literally went back and said wait a minute, didn't she say that before and then changed." Further, the judge stated, in "look[ing] at the prior history here, . . . the way it was presented in the initial case by [plaintiff] was quite different than how it appeared to have been at the end of the story. . . . [A]nd it really concerns me about her credibility."

Regarding any testimony plaintiff provided in prior proceedings about domestic violence, the judge concluded plaintiff initially did not leave her with "the impression" "there were questions of credibility by prior judges" about such testimony. But the judge stated, "I appreciate she's not going to say that. I get that."

The judge also considered plaintiff's recordings when assessing her credibility. For example, the judge noted when plaintiff testified, she said defendant was "screaming all the time" and she had "to teach him a lesson." Yet, after plaintiff admitted she continually recorded defendant and had "hundreds of videos," the recordings she chose to place in evidence showed defendant "didn't . . . scream [at plaintiff] once." Moreover, the judge said of the selected recordings:

> I hear her setting him up . . . . And [plaintiff] is setting him up in conversation after conversation.

> Again, doing it after the incident. . . . [B]ut we have this calm [plaintiff] who is prodding him and prodding him. If you look back at these transcripts [from her recordings], she is prodding him. . . . [M]aybe about [twenty] percent [were] genuine[] . . . and the rest was . . . "let me set him up.". . . . And that's the best she's got. I didn't find domestic violence in any of it.

In determining whether plaintiff established the need for an FRO, the judge stated, "I do not find [plaintiff] a victim of domestic violence. I do not find her afraid. I do not find her in fear. But I find her to be melodramatic, and to be very manipulative of everything around her." The judge concluded plaintiff routinely confronted defendant after arguments with her "phone in [his] face" and went "after him and after him," demonstrating that while defendant was not without fault, "[plaintiff] is not afraid. She is no victim."

In that same vein, the judge pointed to the fact that after the parties divorced and plaintiff moved out of the former marital residence in 2019, she "came back in the house." Further, the judge found that on April 23, after plaintiff secured her TRO, she went "[b]ack in the house two times," while defendant was still inside the home, further exhibiting she was "not a person in fear."

Regarding her assessment of defendant's credibility, the judge found some of his testimony was not "quite right." Nevertheless, the judge stated she

"found him much more credible" than plaintiff, reasoning he "acknowledge[ed] prior bad . . . incidents" such as breaking "the mirror, the bed, . . . the chairs and all of that" prior to the parties' divorce. Further, in crediting defendant's testimony about the April 22 incident, the judge stated, "I took [defendant's] testimony as what happened, because, quite frankly, it's what made sense." She added,

> I am satisfied he got hit in the arm because there was nothing else in the testimony of [defendant] through any of the incidences where I heard him puffing up situations or drumming up fake scenarios.

The judge also found that on April 22, after plaintiff asked defendant about exercising parenting time and he retreated to his bedroom, plaintiff

> was about a foot behind him. . . . He doesn't want her to follow him. He shuts the door to his bedroom. He is exhausted. He is going to bed. But [plaintiff] is in charge. She opens that door, boom, hits him in the elbow. . . . She didn't say, "I'm sorry." . . . . No. She had a goal. . . .
>
> I also don't think he would have said the words . . . "I could get a TRO here". . . unless his elbow got hit, because he has been down t[his] road, and he knows what the rules are. . . .
>
> And then what happens? Phone in the face. . . . [C]harging after him, and he needs to be taught a lesson? Because that's what this is all about. . . . I'm not saying he's without fault. But [plaintiff] is not

> afraid. She is no victim. And she goes after him and after him.

Additionally, the judge determined defendant throwing plaintiff's phone on April 22 was not "domestic violence. . . . [But] a response to a very offensive phone in the face when he's . . . closing his door." Also, the judge observed plaintiff "didn't knock on the door" before stepping into defendant's room, so she "had no right or business to open that door."

Next, the judge declined to conclude defendant violated the April 23 TRO by allegedly leaving a dead fish on the parties' lawn and for leaving a camera in his bedroom. She stated, "I don't know where the fish came from. . . . But I don't make a finding that [defendant] did it. . . . And if he did, . . . it's not going to bring me to the place where I find that there's enough for a restraining order, even under the harassment statute." Likewise, the judge noted, "a lot was made of the camera in the bedroom," but it had "[n]o audio" and "[t]he only place we see video is in his room where she is not supposed to be."

Finally, when referring to the series of alleged predicate acts precipitating the entry of the April 23 TRO, the judge characterized the acts as "[a] lot of nothing," adding, "[t]he fact of the matter is . . . there's not enough here currently." Also, in finding neither party established the need for an

FRO, the judge stated the parties' proofs were "in equipoise." In addition, the judge referenced the parties' history of domestic violence and concluded that although defendant improperly destroyed some of plaintiff's belongings and was "clearly wrong" when he installed a GPS in plaintiff's car several years ago, this history was insufficient to warrant granting plaintiff an FRO.

It was approximately 5:40 p.m. in the evening when the judge concluded her remarks. Given the late hour, the judge asked counsel "to let [her] staff know if [they] want[ed] a more amplified decision," and if so, she would render a supplemental decision "orally, and . . . go through each and every piece [of evidence] . . . and all the testimony at much more great length." Neither party sought amplification of the June 30 opinion. Instead, plaintiff moved for reconsideration of the dismissal of her TRO. In response, defendant cross-moved for an award of counsel fees.

On August 20, 2021, the judge heard argument on the parties' cross-applications before denying both. In rebuffing plaintiff's bid for reconsideration, the judge found plaintiff failed to demonstrate the denial of the FRO rested on an incorrect basis or that the court overlooked competent evidence which militated in favor of granting plaintiff an FRO. Further, the judge rejected plaintiff's argument that she relied on the credibility

determinations of other judges to find plaintiff lacked credibility, emphasizing other judges' findings "absolutely did not sway her" because she "always made [her] own determinations" and "rule[d] for [her]self based on [the] evidence." Aside from reiterating plaintiff's testimony was "less credible" than defendant's, the judge stated she "remember[ed] very clearly at the beginning of [plaintiff's] testimony . . . that every incident" she alleged to be "current domestic violence" "appeared to be initiated by" her.

Further, the judge recalled plaintiff testified "several times" that she was "trying to make [defendant] understand what he was doing wrong," but it was plaintiff who mocked defendant's "safe chair as his pity chair" and directly confronted him when he was power washing the garage, despite that she could have worked around the problem by walking out the front door to move her belongings or by telling defendant she would move them "out of the waterway." The judge noted these were some of the facts that "put [her] over the line . . . with [her] decision."

Additionally, the judge steadfastly maintained that what the parties considered predicate acts of domestic violence were "domestic contretemps," emphasizing, "no matter what, this is domestic contretemps." The judge also explained that when she considered each party's request for a TRO, she found

"there was giving and getting on both sides," each of the TRO complaints were "based on a lot of the same . . . inciden[ts]," and there was no basis to reconsider the dismissal of the TROs because the parties' proofs were "in equipoise."

When revisiting "the second prong of Silver," the judge again said she saw no "need for protection in the future for either" party and in particular, it "would be inappropriate" to grant plaintiff an FRO. Also, she concluded the parties ought to "just conduct [themselves] properly," and given the anticipated sale of the former marital residence, they should "move forward." She explained the parties had "children in common," and "there's a lot that needs to be repaired." Based on these findings, the judge determined there was no basis to reconsider the June 30, 2021 order.

IV.

On appeal plaintiff argues the judge: "erred by not making specific findings as to whether the alleged predicate acts . . . were acts of either harassment, assault, or contempt"; abused her discretion in denying plaintiff an FRO even though plaintiff "both established the alleged predicate acts and a need for the" FRO; and misinterpreted plaintiff's testimony about the disposition of previously filed TROs, leading the judge to mistakenly discredit

plaintiff's testimony and ignore the parties' domestic violence history. Lastly, she contends she was deprived of a fair trial due to the virtual trial format. None of these arguments are persuasive.

Our review of a decision by a judge assigned to the Family Part is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). A family judge's findings should be affirmed if supported by "adequate, substantial, [and] credible evidence." Id. at 411-12 (citing Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)).

Deference is especially appropriate in bench trials when the evidence is "largely testimonial and involves questions of credibility." Id. at 412. A trial judge who observes witnesses and listens to their testimony is in the best position to "make first-hand credibility judgments about the witnesses who appear on the stand." N.J. Div. of Youth & Fam. Servs. v. E.P., 196 N.J. 88, 104 (2008).

We also note that our review of a trial court's decision to deny a motion for reconsideration is limited. Such a denial will be upheld on appeal unless the motion court's decision was an abuse of discretion. Granata v. Broderick, 446 N.J. Super. 449, 468 (App. Div. 2016). However, if a judge makes a discretionary decision under a legal misconception, we need not accord the

usual deference. See Gotlib v. Gotlib, 399 N.J. Super. 295, 309 (App. Div. 2008) (reversing where the court "ignores applicable standards").

The purpose of the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, is to "'assure the victims of domestic violence the maximum protection from abuse the law can provide.'" G.M. v. C.V., 453 N.J. Super. 1, 12 (App. Div. 2018) (quoting State v. Brown, 394 N.J. Super. 492, 504 (App. Div. 2007)); see also N.J.S.A. 2C:25-18. It is "intended to address matters of consequence, not ordinary domestic contretemps." Peranio v. Peranio, 280 N.J. Super. 47, 57 (App. Div. 1995).

When a trial court considers whether the entry of a FRO is appropriate, it first 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." Silver, 387 N.J. Super. at 125. (emphasis added). The judge must construe any such acts in light of the parties' history to better understand the totality of the circumstances of the relationship and to give context to otherwise ambiguous behavior. See J.D. v. M.D.F., 207 N.J. 458, 479 (2011). It is well established that not every bothersome, offensive, or rude behavior rises to the level of domestic violence. See id. at 483. Accordingly, Family Part judges "have been specially trained to detect the

difference between domestic violence and the more ordinary differences that arise between couples, and . . . [because of that expertise,] their findings are entitled to deference." Id. at 482.

If a judge finds a defendant has committed a predicate act of domestic violence, then the second inquiry under Silver "is whether the court should enter a restraining order that provides protection for the victim." 387 N.J. Super. at 126. The "second prong set forth in Silver requires [that] the conduct [be] imbued by a desire to abuse or control the victim." R.G. v. R.G., 449 N.J. Super. 208, 228 (App. Div. 2017) (citing Silver, 387 N.J. Super. at 126-27). While the second inquiry "is most often perfunctory and self-evident, 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),[8] to

[8] N.J.S.A. 2C:25-29 provides in part:

> The court shall consider but not be limited to the following factors:
>
> (1) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;
> (2) The existence of immediate danger to person or property;
> (3) The financial circumstances of the plaintiff and defendant;

protect the victim from an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 127; see also J.D., 207 N.J. at 475-76.

Applying these principles, we discern no basis to question the judge's detailed credibility determinations. Similarly, we are satisfied that no reasonable factfinder could conclude, on the basis of plaintiff's incredible testimony, that defendant committed a predicate act of harassment, N.J.S.A. 2C:33-4, or assault, N.J.S.A. 2C:12-1 in April 2021, or that he violated the April 23 TRO. Although we agree with plaintiff that it would have been preferable for the judge to reference the statutory elements of the predicate acts at issue when weighing whether to grant or deny either party an FRO, our review of the record satisfies us the judge understood the elements of the applicable statutes. But more to the point, because the judge found plaintiff's testimony incredible, and that the predicate acts alleged by parties constituted mere "domestic contretemps," the judge's failure to recite any statutory elements of the alleged predicate acts was harmless error.

> (4) The best interests of the victim and any child;
> (5) In determining custody and parenting time the protection of the victim's safety; and
> (6) The existence of a verifiable order of protection from another jurisdiction.

In coming to this conclusion, we do not ignore the judge offered on June 30 to provide the parties with additional findings in a more "amplified opinion" if the parties so desired. We are satisfied the better practice would have been for the judge to adjourn the proceedings to the next available court date and to supplement her Silver findings if she believed her analysis was incomplete in some fashion. But we also are mindful plaintiff did not seek the amplification the judge offered; she offers no explanation on appeal for why that is so; and she fails to demonstrate how she was prejudiced by the lack of an amplified opinion, given that the judge supplemented her findings during the August 20, 2021 reconsideration hearing. As already noted, at the reconsideration hearing, the judge reinforced her findings that plaintiff was not credible in her testimony and the alleged predicate acts were mere "domestic contretemps." Thus, plaintiff failed to satisfy the first Silver prong.

But even if plaintiff had met her burden under the first Silver prong, she was not entitled to an FRO because she failed to satisfy the second Silver prong. In that regard, although the judge did not identify each statutory factor under N.J.S.A. 2C:25-29(a), it is evident she considered them, either explicitly or implicitly, before denying plaintiff's request for an FRO.

For example, regarding N.J.S.A. 2C:25-29(a)(1), the judge extensively commented on the prior history of domestic violence between the parties, finding defendant improperly destroyed some of plaintiff's personal property and installed a GPS in plaintiff's car several years ago. Also, consistent with N.J.S.A. 2C:25-29(a)(2), the judge implicitly addressed whether an immediate danger existed to plaintiff or her property when finding plaintiff did not need protection from defendant. In fact, the judge noted the parties were already separated and in the process of selling their home, and that plaintiff did not require an FRO for protection because she not only initiated the incidents which prompted her to seek a TRO in April 2021, but also was the aggressor during the incidents she identified as predicate acts. Further the judge concluded plaintiff was not in need of an FRO, given that she voluntarily moved back in with defendant after the parties divorced, stayed there for well over a year before seeking the most recent TRO, and had admittedly returned home twice after securing the April 23 TRO, despite that defendant was still there. It also was uncontroverted defendant had no intention of returning to the marital home, regardless of the outcome of the FRO trial, so presumably, this fact also militated against the entry of an FRO in plaintiff's favor.

Regarding N.J.S.A. 2C:25-29(a)(3), (4), and (5), the judge was aware the parties' financial, custody and parenting time arrangements were fixed under the JOD and other post-judgment orders. Finally, as to N.J.S.A. 2C:25-29(a)(6), there was no evidence either party had an order of protection from another jurisdiction. Under these circumstances, we perceive no reason to question the judge's finding plaintiff failed to satisfy the second Silver prong.

We also are not persuaded, as plaintiff contends, that the judge misinterpreted her testimony about previously filed TROs, leading the judge to question her credibility and mistakenly deny plaintiff an FRO. In fact, the record reflects the judge made extensive credibility findings without tying her findings to other judges' previous adjudications. Moreover, on plaintiff's motion for reconsideration, the judge directly addressed this argument and made clear she relied on plaintiff's audio and video recordings, as well as plaintiff's testimony, when making her credibility findings, stressing the findings of other judges "absolutely did not sway [her]" as she "always made [her] own determinations" and "rule[d] for [her]self based on [the] evidence."

Lastly, plaintiff raises for the first time argument that she was deprived of a fair trial due to the virtual format of the hearings. Again, we disagree. Typically, we do not consider an issue raised for the first time on appeal,

unless the jurisdiction of the court is implicated, or the matter substantially implicates the public interest. See R. 2:10-2; see also Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (citing Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). Although neither of these exceptions apply here, we address plaintiff's argument for the sake of completeness.

"Fundamentally, due process requires [notice and] an opportunity to be heard at a meaningful time and in a meaningful manner." Doe v. Poritz, 142 N.J. 1, 106 (1995) (citation omitted). And while "the use of technology, like all human undertakings, will not meet the test of perfection[,]. . . virtual . . . proceedings comply with the essential tenets of the fundamental fairness doctrine." State v. Vega-Larregui, 246 N.J. 94, 131 (2021).

Here, plaintiff cites D.M.R. v. M.K.G., 467 N.J. Super. 308, 320 (App. Div. 2021), to support her argument that she was deprived of due process. Her reliance on this case is misplaced. In D.M.R., we reversed the FRO entered by the trial court based on procedural informalities and irregularities that occurred in that case, including "the trial court's questioning of plaintiff's mother at times," which "approached advocacy," and the court's failure "to meet the requisite standard of impartiality." Id. at 321-22. Such trial irregularities did not occur in the instant matter.

In fact, a review of the record reflects the judge maintained the requisite formalities and remained impartial throughout the trial. Further, during the reconsideration hearing, the judge rejected plaintiff's argument that defendant might have been coached by his mother during the FRO trial, and specifically stated she "had no basis for any concern" that defendant was coached and "[c]ertainly . . . didn't see anything that told [her] . . . he was getting coached."

Although plaintiff also argues she was deprived of a fair trial because the judge was unable to hear the parties' testimony or plaintiff's recordings at times, this contention is belied by the record. While the record reflects several instances when the judge said she could not hear a party's response to a question, the judge consistently alerted the parties and their counsel to the issue and asked for a response to be repeated or clarified to ensure the integrity of the proceedings. Similarly, she requested transcripts of recordings if she could not make out the content of certain recordings. Not only were the transcripts admitted in her record, but the judge referred to them during her June 30, 2021 opinion. Thus, we decline to conclude plaintiff was deprived of a fair trial based on its virtual format.

In sum, we discern no basis to disturb the challenged orders. Any remaining arguments raised by plaintiff have not been addressed because they lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION