

# 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-0223-21

P.C.C.,

Plaintiff-Respondent,

v.

R.H.,

Defendant-Appellant.

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Submitted May 2, 2022 – Decided May 23, 2022

Before Judges Messano and Marczyk.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Gloucester County,  
Docket No. FV-08-0319-22.

Anthony J. Harvatt II, attorney for appellant.

Respondent has not filed a brief.

PER CURIAM

Defendant R.H. appeals from a final restraining order (FRO) entered against him pursuant to the Prevention of Domestic Violence Act, N.J.S.A.

2C:25-17 to -35 (PDVA). Following our review of the record and applicable legal principles, we reverse and remand for further findings.

I.

Plaintiff P.C.C. and defendant were students at Rowan University and lived together in an off-campus apartment. The parties owned four cats, and the apartment became infested with fleas. The dispute between the parties arose from a disagreement over who was responsible for vacuuming the apartment to help mitigate the flea problem. Both parties were unrepresented at the hearing in the Family Part.

Plaintiff testified that on September 7, 2021, defendant returned to the apartment after being away for five days while working. He began texting her as to why she had not vacuumed the apartment. She indicated he was getting "very hostile" with her. Plaintiff believed it was her responsibility to do the laundry, but not to vacuum, and asserted defendant subsequently burst into her room and started screaming and telling her he was going to go crazy if her friends did not leave. In addition, he was shaking his fists, and plaintiff was terrified. She further stated this was not the first time this had happened and that she was previously brought to the "brink of suicide" because of how intense things were in the apartment. She said she was scared of being threatened.

Plaintiff alleged she was in in-patient treatment for three weeks trying to recover from the emotional and "almost physical" abuse that occurred over the past year of being defendant's roommate. The trial judge then asked defendant if he had any other place to live. Defendant responded he did not and that he sleeps in his car.

Plaintiff's friend M.C. was at the apartment during the incident and testified on plaintiff's behalf. She indicated plaintiff and defendant got into an argument over vacuuming the flea-ridden apartment. She claimed defendant continued to become belligerent and eventually raised his fists and shook them at plaintiff as if he was going to get physical.

Defendant testified he worked a second job and was away from the apartment from Friday afternoon until late Monday night. Prior to leaving, he alleged the parties agreed defendant would pick up medicine for the cats, and plaintiff would be responsible for vacuuming the apartment. After arguing back and forth through text messaging, he went into her room and tried to "reason it out," but things quickly escalated. He conceded he raised his voice and began shaking due to his anxiety and because he "wasn't being listened to." He asked plaintiff's friends to leave the apartment, but they refused. He is not sure why they believed he was going to get violent, but surmised it was because of his

stature and because he was shaking and being loud. He further acknowledged he may have been talking with his fists closed, however, he never intended to provoke fear and he is not a violent person. Police arrived and a temporary restraining order (TRO) was subsequently issued.

## II.

Immediately following the hearing, the trial court rendered an oral decision. Specifically, the court indicated:

[O]n September 7th, [plaintiff] indicates that the argument began over laundry, cat fleas, vacuuming.

She indicates that when she asked [defendant] to participate in those activities that he became essentially irate. He basically confirms that. He indicates that he did, in fact, approach her with a closed fist, and he doesn't really know why they felt that they were threatened, although he assumed that it was because of his stature, his demeanor and his threatening with his closed fists. And likewise through the testimony of the witness who confirmed [plaintiff's] testimony.

Regrettably, this is the Superior Court of New Jersey and we're talking about domestic violence[.]

....

[I]t would be very simple for you simply to move out.

At that point, defendant responded, "[o]f course." The trial court then continued, "[b]ut since you're reluctant to do that, I'm going to enter a final restraining

order, so you're going to move out. You're not going back there." This appeal followed.

Defendant contends the trial court failed to make a specific finding regarding a predicate offense. Defendant further argues the trial court never determined defendant's conduct had a purpose to harass, and the verbal insults or arguments were akin to domestic contretemps and did not rise to the level of harassment. Defendant avers the trial court's decision is not supported by adequate, credible evidence. Defendant further asserts the trial court failed to follow the two-step procedure articulated in Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006). Lastly, defendant claims the trial court failed to make appropriate findings of fact and conclusions of law.

### III.

Our scope of review is limited when considering an FRO issued by the Family Part. See D.N. v. K.M., 429 N.J. Super. 592, 596 (App. Div. 2013). That is because "[w]e grant substantial deference to the trial court's findings of fact and the legal conclusions based upon those findings." Ibid. "The general rule is that findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 411-12 (1998). Deference is particularly appropriate where the evidence is largely

testimonial and hinges upon a court's ability to make assessments of credibility. Id. at 412. We review de novo the court's conclusions of law. S.D. v. M.J.R., 415 N.J. Super. 417, 430 (App. Div. 2010).

The entry of an FRO requires the trial court to make certain findings, pursuant to a two-step analysis. See Silver, 387 N.J. Super. at 125-27. Initially, 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 trial court should make this determination "in light of the previous history of violence between the parties." Ibid. (quoting Cesare, 154 N.J. at 402). Secondly, the court must determine "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, 387 N.J. Super. at 127 (citing N.J.S.A. 2C:25-29(b) (stating, "[i]n proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse")); see also J.D. v. M.D.F., 207 N.J. 458, 476 (2011).

A trial court is required to make specific findings of fact and state its conclusions of law. R. 1:7-4(a) (requiring the court in non-jury trials "by an

opinion or memorandum decision, either written or oral" to "find the facts and state its conclusions of law"); see also Elrom v. Elrom, 439 N.J. Super. 424, 443 (App. Div. 2015). As our Supreme Court has long recognized, the lack of sufficient findings of fact and conclusions of law does a disservice to this court's informed review of any matter. See Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (observing "[n]aked conclusions do not satisfy the purpose of R. 1:7-4"). As the Court stated in R.M. v. Supreme Court of New Jersey, 190 N.J. 1, 12 (2007), factual findings are "fundamental to the fairness of the proceedings and serve[] as a necessary predicate to meaningful review . . . ." See also Ducey v. Ducey, 424 N.J. Super. 68, 74 (App. Div. 2012). "The absence of adequate findings . . . necessitates a reversal . . . ." Heinl v. Heinl, 287 N.J. Super. 337, 347 (App. Div. 1996).

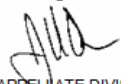
Based on the current record, we cannot determine from the trial court's truncated oral decision the rationale for its determination to grant the FRO. The court failed to address the elements of harassment and made no reference to harassment as a predicate offense under the PDVA. N.J.S.A. 2C:33-4; N.J.S.A. 2C:25-19(a)(13). The court also made no finding that defendant acted "with a purpose to harass." Moreover, with respect to Silver's second prong, the court conducted no analysis as to whether restraints were necessary "to protect the

victim from immediate danger or to prevent further abuse." 387 N.J. Super. at 127. Finally, the court did not articulate any credibility findings.

We take no position on whether there are grounds in the record to establish a predicate offense or whether plaintiff can satisfy the second prong of Silver. Instead, because the trial court failed to sufficiently articulate its factual findings and conclusions of law, we vacate the FRO and remand the matter to the trial court to amplify its findings as to both Silver prongs based on the existing record. The TRO shall remain in place until the remand is completed. We do not retain jurisdiction.

Reversed and remanded.

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



CLERK OF THE APPELLATE DIVISION