

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-2836-20

K.H.,¹

Plaintiff-Respondent,

v.

W.H.,

Defendant-Appellant.

Submitted March 23, 2022 – Decided April 28, 2022

Before Judges Hoffman, Whipple and Susswein.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Monmouth County,
Docket No. FV-13-1380-21.

Law Offices of Jonathan F. Marshall, attorneys for
appellant (Jeff Thakker, of counsel; Abraham N. Basch,
on the briefs).

Michael A. Grasso, LLC, attorneys for respondent
(Michael A. Grasso and Robert W. Ratish, on the brief).

¹ We use initials to identify the parties to protect the identity of the victim. See
R. 1:38-3(c)(12).

PER CURIAM

Defendant W.H. appeals from a May 19, 2021 final restraining order (FRO) granted in favor of her husband plaintiff K.H. We affirm.

This dispute arose on April 25, 2021 when plaintiff was granted a temporary restraining order (TRO) against defendant, who was served with the TRO on the same date. At that time, the parties had been married for sixteen years, and they have two children together.

Plaintiff's TRO application alleged that on March 22, 2021, defendant punched him in the leg several times. On April 5, 2021, police responded to his home because he and defendant were arguing and were in the middle of a divorce. Plaintiff alleged that defendant then took his cell phone outside and smashed it against a brick and damaged his laptop. Plaintiff was not injured, and he did not complain of pain. Plaintiff alleged that defendant's actions constituted criminal mischief and harassment.

On May 18, 2021, the night before the FRO hearing, plaintiff's counsel uploaded exhibits. The following day, May 19, the Family Part judge conducted the FRO hearing via Zoom. Defendant participated pro se.

The following exchange with defendant occurred at the beginning of the hearing:

[The court]: This matter involves a temporary restraining order that was issued on April 25th by [a municipal court judge] out of Aberdeen. . . . And it was scheduled for the trial today on May 19th.

Is there any evidence that the parties have submitted? I do not see anything on my schedule. Is there any evidence?

. . . .

[The court]: And [defendant], do you have any evidence, anything that you want to submit?

[Defendant]: No, not at this time.

. . . .

[The court]: During plaintiff's testimony they will have an opportunity to submit any documentary reports that is relevant or supports the request for the final restraining order. As counsel has indicated there are eight pieces of evidence that he will submit to the [c]ourt. . . .

At the conclusion of plaintiff's case the defendant will have the opportunity to present their defense and testimony of witnesses or documents. The same procedure set forth above will be followed. The [process] is defendant testifies, plaintiff will have the opportunity to cross examine through questions. The process will be repeated for each of defendant's witnesses. The defendant will also have the opportunity to present for the [c]ourt's consideration, any documents that were submitted. And the defendant has indicated to the [c]ourt that there is no evidence to be submitted.

[The court]: Does either party have any questions?
Hearing that there are no questions –

[Defendant]: I have a question.

[The court]: For the record, this is [the judge].
Defendant just indicated she has a question.

[Defendant]: I want to know if I'm allowed to have the
TRO in front of me, the actual document?

[The court]: This is the [c]ourt, yes[,] you may have
the actual document in front of you.

[Defendant]: Okay, thanks.

Plaintiff submitted two photographs of his damaged cell phone, two photographs of a damaged laptop, a photograph of another damaged laptop, a photograph of a damaged cordless telephone, and a photograph of WiFi equipment, including a router and cords, in disarray.

Plaintiff testified that, on March 22, 2021, the parties got into an argument. Plaintiff was sitting on the couch and reached over her to pick up his laptop. When he opened the laptop, she yelled at him, "kept hitting [him] in the leg with the back of her [hand]" about five or six times, and punched him two or three times. This caused him "general annoyance," and he felt that her intent was to annoy him. She then "started yelling dirty mother fucker. You're a dirty mother fucker. You're a dirty dog." She slammed the keyboard on the top of

his hand. She picked up his laptop from the dining room table and smashed and kicked it. It was not operable. She also damaged the landline house phone. Prior to this incident, defendant did not hit or strike plaintiff, but she frequently threatened to throw him out of the house.

Plaintiff next testified that, on April 5, 2021, while he was texting his sisters, defendant took his phone outside, smashed it, and threw it over a fence. When plaintiff went to get his phone, defendant blocked him and told him "if you even touch me I'm going to call the police. . . . And as a matter of fact, I have my friend on the phone right now and she's ready to call 9-1-1 for you[r] ass. . . ." Defendant then smashed the phone on a brick. As the parties continued to argue, defendant smashed another of plaintiff's laptops, which was the second she broke in three weeks. Plaintiff used the laptops for schoolwork as he was attending classes. Defendant then began to pull off cables from the television, the router, and other equipment, and she tried to break off a fifty-inch television from its stand. Plaintiff did not feel safe and left the house. At that point, plaintiff called the police and filed a report. Plaintiff did not return to the home to sleep from April 5 to 25. Plaintiff explained:

Q: All right, you never went back to the home to sleep at the home from [April] 5th to the 25th. Is that correct?

A: No, I didn't feel that was a safe situation for me.

Q: Why didn't you feel it was safe?

A: I didn't feel it was safe because based on her previous actions in the past and the previous three weeks, I didn't think that that was something – I didn't want to endanger myself any further. And I didn't want her to try to annoy me in any way to – for me to cause any type of reaction. So I felt the safest thing to do was to just stay away. I didn't do it because I wanted to be out of the home, I did it because I felt like for my own self-preservation it was the best thing for me.

Q: You feel that her actions were intended to send some sort of message to you?

A: I – in hindsight, I would say so. But at the time I don't know. I know that she wanted me out of the house, whether those actions were intended for me to leave the house, or cause me to leave, or premeditated I would say I don't know. I don't know.

Q: Going back to the home – going back to the home, you felt was not a safe option for you. Is that what you're saying?

A: No. No, it was not.

Because his laptops were damaged, plaintiff missed classes and assignments. He felt that the only way he could be safe was by the court ordering an FRO in his favor. Defendant cross-examined plaintiff.

As defendant began her direct testimony, the following exchange occurred:

[The court]: And [plaintiff's] counsel, you've indicated that you've rested. So now it's your turn, [defendant]. You may tell the [c]ourt anything that you have with regard to the incident mentioned in the temporary restraining order.

[Defendant]: Okay, so I'm going to make an argument that the temporary order -- restraining order is false and that it should be dismissed. And the reason that --

[Plaintiff's counsel]: Objection -- objection, Your Honor, this is not an opening statement.

[The court]: That objection is sustained.

. . . .

[The court]: Now you will have an opportunity to sum up. But now you have an opportunity to tell me any facts that you want to tell me about that evening. If you have nothing that you want to specifically add and you want to sum up, then we can go right to summation.

Defendant denied hitting plaintiff on March 22. She testified that plaintiff was tracking her location via her phone without her permission. Plaintiff's counsel objected because "we need to keep [testimony] within the four corners of the complaint itself and the testimony that's already been given." The court noted counsel's objection and stated, "you just testified that you thought you were being tracked on this particular day. . . . And what did you do if anything as a result after that?" Defendant offered a screenshot from her phone, which the court did not permit her to testify to because she did not earlier submit it.

[Defendant]: But as [I] scrolled through my phone, I saw that I had taken a screen shot of him tracking me on my phone and tracking my location without my permission.

[Plaintiff's counsel]: Objection, Your Honor, there has been no submission of any proofs regarding any of this testimony. So I am going to ask at this point this testimony be barred as not relevant and in fact, there should've been -- if there were such evidence, it should've been presented to the [c]ourt. I cannot respond to evidence or statements that she's claiming, the statements of fact without having something to support those claims.

[The court]: The [c]ourt notes that objection and sustains that objection. Do you understand that, [defendant]? That means that you can't make reference to evidence that you haven't submitted. We did review this at the beginning of the trial, and you received notification from the [c]ourt that said any emails, texts, pictures or whatever needs to be sent in.

So because you did not submit that evidence and you don't have it, you can't testify to that. Do you understand that?

[Defendant]: Yes.

Defendant later continued to testify to plaintiff's location-tracking. Defendant denied that they were in the middle of a divorce. Defendant testified that plaintiff was intoxicated and became angry when she confronted him about the location-tracking.

[The court]: You understand that we need to stay within what this is about and testified that he was -- that was based on your observations. It was your testimony that on March 22nd, I just want to make sure I understand this, you say he was intoxicated?

[Defendant]: Yes.

Defendant next testified that on April 5, plaintiff was watching pornography on his phone. She asserted that because she wanted to see what he was doing on his phone, plaintiff threw his own phone over the fence and broke it because he was angry and intoxicated. Defendant alleged that plaintiff damaged the Wi-Fi equipment by the television. Defendant denied barring plaintiff from their home. She alleged plaintiff broke his laptop. She denied smashing the house phone and the laptop on April 5. She said they both used vulgar language towards each other. Defendant had previously asked for a TRO against plaintiff, which was not granted.

During defendant's cross-examination, the following exchange occurred:

Q: Okay. And isn't it true that [the Division of Child Protection and Permanency (DCPP)] is involved in your case?

A: Yes, [DCPP] came to my home and they found no evidence of child abuse or child neglect. That case is now closed. I'm waiting for the letter.

Q: So again, the case is not closed, you have not received a letter. Is that correct?

A: The [child protective services (CPS)] worker called me and told me that the case was closed.

. . . .

[Plaintiff's counsel]: Your Honor, direct the witness to answer the question specifically.

[The court]: Have you received the letter from [DCPP] stating that this case is closed?

A: As of today, no[,] I have not.

After defendant's cross-examination, both parties made summations.

Defendant addressed the DCPP issues.

[The court]: All right, [defendant], thank you very much for your summation.

[Defendant]: Can I say one more thing?

[The court]: Yes[,] you may.

[Defendant]: So the -- the CPS was called to my home. And the CPS worker came and did an investigation. She spoke with myself and my children.

[Plaintiff's counsel]: Objection, Your Honor, we don't have anyone from [DCPP] here to testify or cross[-]examine this is inappropriate.

[The court]: And so understand [defendant], there was a question posed to you with regard to [DCPP]. And I think that you testified that you had not received anything final from them. Correct?

[Defendant]: I received a phone call saying that the case was closed.

[Plaintiff's counsel]: Objection Your Honor, hearsay.

[The court]: So as a result -- so you just received a call back from [DCPP]. Right?

[Defendant]: Yes.

[The court]: But you cannot testify as to what was said on that call. All right.

[Defendant]: Okay.

[The court]: Does that conclude your remarks, your summation?

[Defendant]: Yes.

The court orally delivered its findings and granted the FRO against defendant. The court found plaintiff credible and defendant not credible:

In this case as the counsel has indicated this is a case of he said/she said. [D]efendant testified that . . . plaintiff . . . smashed his own technology, the cell phone, the laptops, not one laptop, but two laptops. And it was . . . plaintiff, defendant's testimony, that tried to take [] away all the Wi-Fi, the computer system, the television, tried to take the television off a hanging stand. And the [c]ourt does not find that believable. It's just not reasonable, and it's inherently unbelievable. It's incredible to be quite frank. And it doesn't make sense.

Therefore, I do not find that . . . defendant is credible. [P]laintiff, on the other hand, . . . plaintiff was prepared to testify. He was even toned. His demeanor was such

that he sincerely and genuinely tried to answer the question. He did not embellish, even though he could have done that. He did not. He provided straight answers. He knew what he was talking about. He did not avoid any questions that were posed to him. He was reasonable. It was inherently believable what he had to say as to the progress and the factual scenario that occurred, that I find occurred on March 22nd and on April 5th.

So from my observations, I do find that . . . plaintiff was credible in his testimony.

Thus, the court found plaintiff was a victim in accordance with N.J.S.A. 2C:25-19(d) and defendant committed acts of domestic violence pursuant to N.J.S.A. 2C:25-19(e). Defendant committed harassment pursuant to N.J.S.A. 2C:43-4(b) because she struck plaintiff with the back of her hand multiple times while yelling at him on March 22. Defendant also committed criminal mischief in accordance with N.J.S.A. 2C:17-3(a)(1) for purposely or knowingly damaging his property. Based on the escalation of defendant's behavior from March 22 to April 5, immediate danger existed to plaintiff or his property.

The FRO granted plaintiff exclusive possession of the home and forbade communications between the parties except to text each other regarding their children and emergencies. It provided that defendant would have parenting time every other weekend once she obtained housing. Defendant was also permitted telephone communication with her children. The FRO required defendant to

submit to fingerprinting pursuant to N.J.S.A. 53:1-15 and to pay a civil penalty of \$50 within thirty-five days. This appeal followed.

The scope of our review of an FRO is limited. C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div.), certif. denied, 244 N.J. 339 (2020). We do not disturb the "factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Cesare v. Cesare, 154 N.J. 394, 412 (1998) (quoting Rova Farms Resort, Inc. v. Inv. Ins. Co., 65 N.J. 474, 484 (1974)). We give deference to a trial judge's credibility findings. State v. Hubbard, 222 N.J. 249, 263-64 (2015).

"[An] abuse of discretion only arises on demonstration of 'manifest error or injustice[.]'" Hisenaj v. Kuehner, 194 N.J. 6, 20 (2008) (quoting State v. Torres, 183 N.J. 554, 572 (2005)), and occurs when the trial judge's "decision [was] 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Jacoby v. Jacoby, 427 N.J. Super. 109, 116 (App. Div. 2012) (quoting Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002)).

Defendant first argues that the trial court erred in denying her an opportunity to make a motion to dismiss the TRO "at the close of plaintiff's case." We disagree.

"A trial judge has the ultimate responsibility to control the trial in the courtroom and is given wide discretion to do so." Horn v. Vill. Supermarkets, Inc., 260 N.J. Super. 165, 175 (App. Div. 1992).

The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence to:

- (1) make those procedures effective for determining the truth;
- (2) avoid wasting time; and
- (3) protect witnesses from harassment or undue embarrassment.

[N.J.R.E. 611(a).]

The New Jersey Legislature enacted the Prevention of Domestic Violence Act of 1991 (PDVA), N.J.S.A. 2C:25-17 to -35, "to assure the victims of domestic violence the maximum protection from abuse the law can provide." N.J.S.A. 2C:25-18. "The PDVA and New Jersey Domestic Violence Procedures

Manual² 'ensure that individuals charged with committing domestic violence offenses are treated fairly and receive the full panoply of due process rights guaranteed by our federal and State constitutions.'" D.M.R. v. M.K.G., 467 N.J. Super. 308, 319 (2021) (footnote omitted) (quoting A.M.C. v. P.B., 447 N.J. Super. 402, 421 (App. Div. 2015)).

A pro se litigant may not be "deprived of a meaningful opportunity to be heard due to a lack of understanding of motion practice[.]" Ridge at Back Brook, LLC v. Klenert, 437 N.J. Super. 90, 99 (App. Div. 2014). "The denial of oral argument when a motion has properly presented a substantive issue to the court for decision 'deprives litigants of an opportunity to present their case fully to a court.'" Palombi v. Palombi, 414 N.J. Super. 274, 285 (App. Div. 2010) (quoting Mackowski v. Mackowski, 317 N.J. Super. 8, 14 (App. Div. 1998)).

"While a request for oral argument regarding a substantive motion may be denied . . . the reason for the denial of the request, in that circumstance, should itself be set forth on the record." Raspantini v. Arocho, 364 N.J. Super. 528, 531-32 (App. Div. 2003) (citations omitted). A court should consider a pro se

² STATE OF NEW JERSEY DOMESTIC VIOLENCE PROCEDURES MANUAL, SUPREME COURT OF NEW JERSEY AND THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY (July 2004) (rev. Oct. 2008), <https://www.njcourts.gov/courts/assets/family/dvprcman.pdf> (Domestic Violence Procedures Manual).

litigant's request even if "not cloaked in . . . lawyer-like language." J.D. v. M.D.F., 207 N.J. 458, 480 (2011).

Based on our review of the record, the trial court did not abuse its wide discretion in controlling the proceedings and interpreting defendant's remark as a summation rather than as a motion to dismiss. Horn, 260 N.J. Super. at 175. The record shows that after plaintiff's counsel rested, the court directed defendant to testify to the incident in the TRO. As she began her testimony, she stated, "I'm going to make an argument that the temporary order -- restraining order is false and that it should be dismissed." The court sustained plaintiff's counsel's objection that she did not make an opening statement.

The judge reasonably interpreted defendant's comments as an intent to begin summation because the judge specifically directed defendant to testify to events in the TRO. The court reminded her to do so multiple times, told her that it understood her as giving a summation, permitted her to cross-examine plaintiff, and give a summation after her testimony. The court also gave defendant ample opportunity to ask questions and offer additional remarks. Thus, we do not conclude the court denied defendant the opportunity to make a motion to dismiss; defendant simply failed to do so.

Defendant next argues that the trial court committed plain error in failing to offer to adjourn the FRO hearing sua sponte because plaintiff's testimony alleged predicate acts not contained in the TRO. Plaintiff counters that he testified as to the events on March 22 and April 5 as indicated in the TRO. Plaintiff adds that defendant received notice, did not tell the court she was unprepared to respond to his testimony, and was not prejudiced because she testified at length about the events on both dates. We find defendant's argument unpersuasive.

"[D]ue process forbids the trial court '[from] convert[ing] a hearing on a complaint alleging one act of domestic violence into a hearing on other acts of domestic violence which are not even alleged in the complaint.'" J.D., 207 N.J. at 478-79 (citations omitted). "A due process violation can easily be avoided by granting a party a reasonable adjournment if confronted by new allegations at the time of trial in order to afford the party an ample opportunity to meet the charges." Pazienza v. Camarata, 381 N.J. Super. 173, 185 (App. Div. 2005).

"Notwithstanding [the] defendant's failure to object [to a due process violation], the trial judge ha[s] an independent duty to determine the cause of this systematic failure." A.M.C., 447 N.J. Super. at 421. The Domestic Violence Procedures Manual obliges the court to "amend the complaint" and

then "make an inquiry as to whether the defendant needs additional time to prepare in light of the amended complaint." § 4.12.

However, we recognize that plaintiffs may not include all details in their TRO application. As our Supreme Court explained:

[P]laintiffs seeking protection under the [PDVA] often file complaints that reveal limited information about the prior history between the parties, only to expand upon that history of prior disputes when appearing in open court. And it is frequently the case that the trial court will attempt to elicit a fuller picture of the circumstances either to comply with the statutory command to consider the previous history, if any, of domestic violence between the parties, see N.J.S.A. 2C:25-29(a)(1), or to be certain of the relevant facts that may give content to otherwise ambiguous communications or behavior, see [*H.E.S. v. J.C.S.*, 175 N.J. 309, 327 (2003)] (commenting that "parties' past history, when properly presented, helps to inform the court regarding defendant's purpose, motive and intended use of information obtained through the video and audio surveillance of plaintiff's private acts"); [*Cesare*, 154 N.J. at 402] (observing that [the PDVA] requires [a] court to consider prior history, if any, of domestic violence).

That reality is not inconsistent with affording defendants the protections of due process to which they are entitled. Instead, ensuring that defendants are not deprived of their due process rights requires our trial courts to recognize both what those rights are and how they can be protected consistent with the protective goals of the [PDVA]. To begin with, trial courts should use the allegations set forth in the complaint to guide their questioning of plaintiffs, avoiding the sort of

questions that induced plaintiff in this appeal to abandon the history revealed in the complaint in favor of entirely new accusations. That does not mean that trial courts must limit plaintiffs to the precise prior history revealed in a complaint, because the testimony might reveal that there are additional prior events that are significant to the court's evaluation, particularly if the events are ambiguous. Rather, the court must recognize that if it allows that history to be expanded, it has permitted an amendment to the complaint and must proceed accordingly.

To be sure, some defendants will know full well the history that plaintiff recites and some parties will be well-prepared regardless of whether the testimony technically expands upon the allegations of the complaint. Others, however, will not, and in all cases the trial court must ensure that defendant is afforded an adequate opportunity to be apprised of those allegations and to prepare. See [H.E.S., 175 N.J. at 324] (concluding that allowing defendant only twenty-four hours to prepare violates due process).

When permitting plaintiff to expand upon the alleged prior incidents and thereby allowing an amendment to the complaint, the court also should have recognized the due process implication of defendant's suggestion that he was unprepared to defend himself. Although defendant's assertion that he needed time to prepare was not cloaked in the lawyer-like language of an adjournment request and was made as part of a longer response to a question, it was sufficient to raise the due process question for the trial court and it should have been granted. Our courts have broad discretion to reject a request for an adjournment that is ill founded or designed only to create delay, but they should liberally grant one that is based on an expansion of factual assertions that form the heart of the complaint for relief.

[J.D., 207 N.J. at 479-80.]

Here, we do not conclude that permitting plaintiff to testify to additional acts of criminal mischief – the damage to the laptop and house phone on March 22 and the damage to the Wi-Fi equipment on April 5 – was plain error capable of producing an unjust result. "[T]he question of whether plain error occurred depends on whether the error was clearly capable of producing an unjust result. Relief under the plain error rule, [Rule] 2:10-2, at least in civil cases, is discretionary and 'should be sparingly employed.'" Baker v. Nat'l State Bank, 161 N.J. 220, 225 (1998) (citing Ford v. Reichert, 23 N.J. 429, 435 (1957)).

At the outset, the trial court properly found that under the circumstances of defendant "yelling at plaintiff calling him a dirty mother fucker, you are a dirty dog," she had the purpose and intent to harass him by constantly striking his leg in the middle of the argument. Additionally, the court properly found defendant committed criminal mischief by damaging plaintiff's cell phone and laptop on April 5, which were specified in the TRO. Therefore, the only plain error inquiry here concerns the alleged acts of criminal mischief in connection with the damaged laptop and house phone on March 22 and the Wi-Fi equipment on April 5.

Plaintiff's counsel uploaded the exhibits showing the damage of two laptops, cell phone, house phone, and Wi-Fi equipment at 3:55 p.m. on May 18, fewer than twenty-four hours before the TRO hearing at 8:59 a.m. on May 19. Although defendant did not say she was unprepared to respond to the allegations and, in fact, testified to plaintiff's claims at length, the court had an "independent duty" to protect defendant's due process rights. See A.M.C., 447 N.J. Super. at 421. Further, the court did not amend the complaint in accordance with the Domestic Violence Procedures Manual § 4.12.

However, the court heard testimony only on the alleged predicate acts of harassment and criminal mischief on March 22 and April 5. Unlike the plaintiff in J.D. who testified to predicate acts occurring at different times and unconnected to the incidents in that complaint, 207 N.J. at 468, plaintiff here testified to two categories of offenses falling completely within the two dates at issue. Cf. J.F. v. B.K., 308 N.J. Super. 387, 391 (App. Div. 1998) (reversing FRO based on prior conduct not alleged in plaintiff's complaint and about which defendant did not receive notice until the day of the hearing); H.E.S., 175 N.J. at 324-25 (reversing FRO based on predicate acts not alleged in the TRO).

Evidence of the March 22 incident constituted prior history, which the court was required to consider. Cesare, 154 N.J. at 402. Although all details of

the March 22 incident were not in the TRO, plaintiff's testimony properly allowed the court to "elicit a fuller picture of the circumstances." J.D., 207 N.J. at 479. Moreover, the court heard defendant testify to her version of the incident, deny hitting plaintiff, and fail to deny damaging plaintiff's laptop and house phone on March 22. The court properly used these findings to conclude that defendant's behavior "[was] being escalated and . . . being repeated" between March 22 and April 5.

The last piece of evidence left to address is the photograph of the Wi-Fi equipment, which was excluded from the TRO and uploaded fewer than twenty-four hours before the hearing. Plaintiff alleged at the hearing the equipment was damaged on April 5. Defendant did not say she was unprepared to address this allegation. Rather, she inconsistently claimed plaintiff damaged the equipment on March 22 and April 5.

Notwithstanding this evidence of Wi-Fi equipment damaged on April 5, the date underlying the TRO, ample evidence in the record supports the court's conclusion that defendant committed criminal mischief by damaging plaintiff's laptop and cell phone. If the court excluded evidence of the Wi-Fi equipment, the result would have been the same. Therefore, because the court granted the FRO on the basis of findings only as to the predicate acts of harassment and

criminal mischief on March 22 and April 5, considering evidence of the Wi-Fi equipment was not a plain error capable of producing an unjust result.

Defendant next argues that the court erred in prohibiting her from testifying to plaintiff's alcohol use, location-tracking, and pornography consumption and in declining to consider evidence of the same. We disagree.

First, contrary to defendant's insistence that the court confined her testimony to the four corners of the TRO, the court permitted her to explain the matters she wished to raise over plaintiff's counsel's objections. Second, after hearing the evidence, observing the witnesses, and weighing their testimony, the court did not find defendant's testimony credible and declined to consider the evidence she presented in making its findings.

By contrast, the court found plaintiff credible as he was "even toned," "sincerely and genuinely tried to answer the question," "did not embellish," "provided straight answers," and "did not avoid any questions." Thus, the court accepted plaintiff's testimony on the March 22 and April 5 events. We must "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Gripenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). Therefore, we conclude the trial court did not err.

Defendant next argues that the trial court deprived her of due process because the "rule changes on documents were confusing and arbitrary." She explains the court's instructions that documents had to be submitted earlier to the court were confusing because the court told her that she would have the opportunity to present documents later. Plaintiff points out that defendant was notified to submit evidence prior to the hearing and she stated she had no evidence to present. We discern no plain error.

Although the record does not include the court's instructions to the parties to submit documents before the hearing, the court clearly explained the manner of submitting and presenting evidence at the beginning of the hearing. The court also specifically asked defendant whether she had any documents. She responded, "no." The court properly exercised its wide discretion to control the courtroom, Horn, 260 N.J. Super. at 175, and exercised reasonable control over the mode and order of presenting evidence, N.J.R.E. 611(a).

Defendant lastly argues that she was denied due process because the trial court did not permit her to present re-direct testimony. She argues that she sought to introduce re-direct testimony about the DCPD case after her cross-examination. The record does not show that defendant sought to offer re-direct testimony. Rather, the record shows she did respond to the DCPD questions,

and the court did not consider those issues in its findings. Again, we discern no plain error.

"Control of the examination of witnesses, particularly on redirect examination, is a matter which must be left largely to the discretion of the court." Wimberly v. City of Paterson, 75 N.J. Super. 584, 610 (App. Div.), certif. denied, 38 N.J. 340 (1962). Defendant did not indicate that she sought to offer re-direct testimony after cross-examination or during summation. She responded to the DCPD issues. Moreover, the court did not consider the DCPD issues in its findings. Thus, the absence of defendant's re-direct testimony was not "clearly capable of producing an unjust result." R. 2:10-2.

Finally, we add the court properly granted plaintiff an FRO against defendant based on substantial, credible evidence. The court found plaintiff credible. Ample evidence shows that plaintiff proved by a preponderance of the evidence that defendant committed predicate acts pursuant to the PDVA. N.J.S.A. 2C:25-29(a). Defendant harassed plaintiff when she hit his leg with the back of her hand, N.J.S.A. 2C:33-4(b), and committed criminal mischief when she purposely or knowingly damaged his property, N.J.S.A. 2C:17-3(1). Ample evidence also shows that an FRO was necessary to prevent further abuse because defendant's behavior escalated, leading plaintiff to leave the home and

seek refuge. N.J.S.A. 2C:25-29(b). We see no reason to disturb the trial court's ruling. Moreover, we note because the trial court properly developed the record in support of granting plaintiff's FRO application, this would likewise support a denial of defendant's motion to dismiss if she had made such a request.

To the extent we have not addressed defendant's remaining arguments, we are satisfied they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION