

# 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-3116-20

M.Z., JR.,

Plaintiff-Appellant,

v.

M.Z., SR.,

Defendant-Respondent.

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Submitted May 10, 2022 – Decided May 19, 2022

Before Judges Fisher and Smith.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Middlesex County,  
Docket No. FV-12-1877-21.

Gomperts Penza McDermott & Von Ellen, LLC,  
attorneys for appellant (Marisa Lepore Hovanec, of  
counsel and on the brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff M.Z., Jr., appeals an order dismissing, at the conclusion of a two-day hearing, the action he brought against his father – defendant M.Z., Sr. – under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35. Because plaintiff was not given a fair opportunity to either present evidence or cross-examine defendant about the need for a restraining order, and because there is uncertainty in the record about whether plaintiff fits the statutory definition of a domestic violence victim, we remand for further proceedings.

Plaintiff's complaint alleged that he had purchased a home in 2016 with defendant's help and that defendant had since made unrequested repairs to the home. Plaintiff claimed that defendant asked for payment and, when plaintiff refused, defendant texted him to say he would come to plaintiff's home to undo what had been fixed. Plaintiff claimed that defendant followed through by coming to his home and causing damage to the home's porch railings, among other things. Plaintiff also alleged that defendant later sent him the following message:

I will turn your world upside down and there would not  
be any turning back the cho[ic]e is yours and don't try  
me. This would be your last BD your going to  
remember. The cho[ic]e is yours.

In an amended complaint filed on May 20, 2021, plaintiff alleged that defendant left him a threatening voice mail on April 7, 2021, saying: "I would

appreciate it if you get back to me before this gets really ugly. Once it's gone, there ain't no turning back, the choice is yours." Plaintiff also alleged that defendant had driven by his home numerous times on May 13 and 19, 2021; he claimed that on May 19, as plaintiff was backing out of his driveway, defendant "swerved his car" toward him.

The final hearing started on May 21, 2021. Before the hearing progressed very far, it became apparent that neither the judge nor defendant had been provided with plaintiff's amended complaint. The matter was adjourned and taken up again less than a week later.

In the abbreviated proceeding on May 21, defendant admitted his destructive conduct at plaintiff's home. When the matter resumed on May 26, defendant again admitted his destructive conduct and the statements attributed to him. While plaintiff complains of the judge's questioning the unrepresented defendant first, we find no error since the judge was simply attempting to ascertain what was and wasn't disputed. Although we agree with the general assertions of plaintiff in his merits brief that domestic-violence proceedings should be orderly, we find no error – particularly when one of the parties, as here, was representing himself – in a judge appropriately jumping from party to party or from issue to issue for the sake of judicial economy so long as basic

procedural due process rights are preserved. See N.J.R.E. 611(a). Indeed, plaintiff was not harmed by the judge's initial questioning of defendant since it resulted in defendant's acknowledgement of his commission of a predicate act.

But we do agree that plaintiff did not have a full and fair opportunity to either present evidence or cross-examine defendant about the so-called second Silver prong,<sup>1</sup> which requires a finding that plaintiff has a need for a restraining order to ward off future acts of domestic violence. Rather than either allow plaintiff to testify or his attorney to cross-examine defendant on that subject, the judge only questioned defendant before concluding that plaintiff did not require a restraining order.

Although not raised on appeal, we conclude that further proceedings are required on the question of whether plaintiff fits the definition of "[v]ictim of domestic violence" found in N.J.S.A. 2C:25-19(d). There appears to have been an assumption in the trial court that plaintiff was entitled to seek a final restraining order against his father because they had once been members of the same household. To be sure, N.J.S.A. 2C:25-19(d) includes within in its definition of "[v]ictim of domestic violence" an individual over the age of eighteen "who has been subjected to domestic violence by . . . [a] person who

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<sup>1</sup> Silver v. Silver, 387 N.J. Super. 112, 126-27 (App. Div. 2006).

. . . was at any time a household member." Testimony elicited from plaintiff at the hearing revealed that the parties lived in the same household until plaintiff was "20 or 21 years old" and that he was then thirty-one-years old, thereby demonstrating he and defendant had not been members of the same household for about ten years. He also acknowledged that until the complained of events, there had been no domestic violence between them in the preceding ten years.

Whether a former household member falls within the definition contained in N.J.S.A. 2C:25-19(d) depends on six factors. N.G. v. J.P., 426 N.J. Super. 398, 410 (App. Div. 2012). There was no analysis of these factors. Since we must remand for further proceedings on Silver's second prong, we also direct that the parties be given an opportunity to develop their factual support for a finding as to whether plaintiff fits the definition of a "[v]ictim of domestic violence."

Lastly, we decline plaintiff's invitation to exercise original jurisdiction. The case is most decidedly uncondusive to such an approach. See Price v. Himeji, LLC, 214 N.J. 263, 294-95 (2013) (discouraging the exercise of original jurisdiction under Rule 2:10-5 when fact finding is required). Nor do we find any reason for directing that the remand proceedings occur before a different judge. We do, however, conclude that it is appropriate to return the parties to

the status quo existing prior to the judge's decision to dismiss the action and until such time as the parties are back before the trial judge for the continuation of the proceedings to address the matters we have discussed in this opinion. Accordingly, we vacate the order of dismissal, reinstate the temporary restraining order, and remand for further proceedings in conformity with this opinion.

Vacated and remanded for further proceedings. We do not retain jurisdiction.

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

  
CLERK OF THE APPELLATE DIVISION