

# 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-1053-21

C.M.C.A.,

Plaintiff-Respondent,

v.

A.S.,

Defendant-Appellant.

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Submitted January 17, 2023 – Decided March 23, 2023

Before Judges Smith and Marczyk.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Somerset County,  
Docket No. FV-18-0319-22.

Carlos Diaz-Cobo, attorney for appellant.

Legal Services of Northwest Jersey, attorneys for  
respondent (Kelsey Mulholland, on the brief).

PER CURIAM

Defendant A.S.<sup>1</sup> appeals a final restraining order (FRO) issued against him in an action brought by plaintiff C.C. under the Prevention of Domestic Violence Act (the Act), N.J.S.A. 2C:25-17 to -35. Defendant argues the trial court erred in granting plaintiff an FRO because it: misapplied the law to the facts; made erroneous credibility findings based on unrecognized factors; found the FRO necessary to protect plaintiff even though defendant now lives out of state and the relationship has ended; and made findings not supported by the evidence. We affirm.

## I.

Defendant and plaintiff met on a dating app and began a romantic relationship in October 2020. At the time the parties met, defendant lived in Georgia but moved to New Jersey to be closer to plaintiff. The parties began living together in January of 2021 and got engaged shortly afterwards. Plaintiff's minor son from another relationship also lived with the parties. They stopped living together on October 3, 2021. Over the course of the relationship, plaintiff was subjected to escalating acts of domestic violence.

Plaintiff filed a temporary restraining order (TRO) against defendant on October 3, 2021, and amended her TRO on November 5, 2021. A final

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<sup>1</sup> To protect privacy interests we use initials pursuant to Rule 1:38-3(d).

restraining order (FRO) was granted on December 2, 2021. Defendant filed a Notice of Appeal on December 9, 2021.

At the FRO hearing, the parties testified about events of October 3, 2021. Plaintiff testified that during a disagreement over her engagement ring, defendant put his fist up to her chin, grabbed her by the hair and dragged her from the kitchen to the bathroom. He then grabbed her by the arm and forced her to her knees, pointing out the ring on the floor. Plaintiff suffered a bruised arm and testified she had pain in her hands, left leg and shoulder as a result of this encounter. Plaintiff also testified that defendant choked her using her seatbelt while he was driving her home from work later that same day. Plaintiff recounted her attempt to escape the moving car, and how defendant grabbed her by the shirt to stop her. When they arrived home, plaintiff told defendant she was going to call the police and get a restraining order. Defendant then left the property taking one of his guns with him.

Defendant claimed there was no argument and no physical altercation in the home on October 3. He admitted to "grabbing" plaintiff by the hand but claimed he did not do so forcefully. Defendant offered an alternate explanation for the choking incident in the car, claiming plaintiff told him she wanted to break up. He admitted to screaming and cursing at her in the car. He confirmed

plaintiff attempted to get out of the moving car, but he denied choking her with the seatbelt. Defendant offered no explanation for why she attempted to jump out of a moving vehicle.

Plaintiff testified to a history of domestic violence, stating that on September 14, 2021, defendant pulled her by the hair and scratched her face because he was angry that she wanted to go for a walk. Plaintiff's son called the police, but plaintiff, fearful of defendant, did not tell them what happened. After the police left, defendant grabbed plaintiff by the arm and put her in the shower, telling her if she had told the police, she would have been deported and her son would have been taken away from her.

The trial court found plaintiff credible, noting no evidence was presented to support defendant's argument that plaintiff fabricated her story to get a U-visa.<sup>2</sup> The court did not find defendant credible, citing his demeanor and concluding that much of his testimony was fabricated.

The trial court found plaintiff successfully proved the predicate act of assault pursuant to N.J.S.A. 2C:25-19(a) occurred. The trial court also found a history

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<sup>2</sup> A U-Visa allows victims of domestic violence who are undocumented to pursue legal status in the United States. See 8 CRF 214.14.

of domestic violence and that the events that occurred on September 14 constituted assault.

The trial court concluded plaintiff met her burden under Silver v. Silver, 387 N.J. Super. 112 (App. Div. 2006), finding: a prior history of domestic violence in which defendant assaulted plaintiff and threatened her; immediate danger to plaintiff despite defendant's move to Georgia; and that plaintiff remained fearful for her life, her son's life and her mother's life. The judge found both prongs of Silver were satisfied and granted the FRO.

"In [appellate] review of a trial court's order entered following trial in a domestic violence matter, we grant substantial deference to the trial court's findings of fact and the legal conclusions based upon those findings." N.T.B v. D.D.B., 442 N.J. Super. 205, 215 (App. Div. 2015) (quoting D.N. v. K.M., 429 N.J. Super. 592, 596 (App. Div. 2013)). "We defer to the credibility determinations made by the trial court because the trial judge 'hears the case, sees and observes the witnesses, and hears them testify,' affording it 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)). We also recognize because of "the family courts' special jurisdiction and expertise in family matters, appellate courts should accord

deference to family court factfinding." Cesare, 154 N.J. at 413. However, we do not defer to the judge's legal conclusions if "based upon a misunderstanding of . . . applicable legal principles." T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App. Div. 2017) (quoting N.T.B., 442 N.J. Super. at 215).

Defendant contends the trial court erred by finding plaintiff credible and defendant not credible. Defendant suggests the trial court focused on credibility factors outside of our jurisprudence. Specifically, defendant takes issue with the judge's comments that defendant's lack of eye contact (and, by contrast, plaintiff's appropriate eye contact) was an inappropriate basis for establishing credibility. We are not persuaded. The trial court stated:

Additionally, his story just didn't make sense. He says he sees this ring on the . . . floor of the bathroom and asks the plaintiff where is the ring. She says I don't know. And he admits - - well, she said I don't know and then he accused her of lying to him.

Now, let's look at this. Does this make . . . sense? . . . The normal response is not to say you're lying, because she said I don't know where it is. He says you're lying. That's not a normal response. That doesn't make sense.

. . . .

I don't find the defendant was honest and I find that the defendant fabricated that testimony [regarding the incident in the car]. Again, his demeanor wasn't appropriate and really . . . the motive is simply that he

doesn't want a restraining order entered against him, which is understandable but I don't find him credible at all with the very main points.

[(Emphasis added.)]

While demeanor is a permissible consideration in determining witness credibility, it was only one of the factors the court considered. The court found defendant's explanations not credible, placing on the record exactly why it found the explanations did not make sense.

Defendant also challenges the court's findings as to plaintiff, claiming: the court gave too much weight to her demeanor; her amended TRO adding other domestic violence incidents damaged her credibility; and plaintiff's undocumented status. It stated:

The plaintiff testified consistent with the allegations in the temporary restraining order as well as the amended restraining order. I find that her story did make sense and I really don't find that she made up the testimony, and I find that she was honest. Her answers were responsive to . . . the questions of counsel.

. . . .

. . . I don't find any ulterior motive by the plaintiff. Even if one tried to find an ulterior motive, one would be hard-pressed to find such a motive. Now, the defense has brought up the plaintiff's legal status as going to her credibility. Generally speaking, that's irrelevant to a court's determination. Although the defense brought that up specifically to say that they

were trying to advance a theory that the . . . plaintiff was . . . fabricating this whole thing so she could get some kind of status in the country. A U visa was mentioned . . . . [T]he court finds no evidence to suggest that.

. . . .

Again, everything seems to be consistent and . . . believable. It makes sense.

[(Emphasis added).]

The record shows the court clearly weighed factors in addition to demeanor in finding plaintiff credible. Defendant's suggestion that plaintiff's amended TRO hurts her credibility is meritless on this record.

To obtain an FRO under the Act, a plaintiff must satisfy the two-prong test set forth in Silver, 387 N.J. Super. at 123. The Silver test requires a finding that: defendant committed a predicate act within N.J.S.A. 2C:25-19(a); and an FRO is necessary to protect the victim from immediate danger or to prevent further abuse. Ibid. Defendant argues the Silver prongs were not met. We disagree.

The trial court properly found plaintiff proved the predicate act of assault occurred on October 3. The record contains sufficient credible evidence to support the judge's findings, including a photograph of the bruising plaintiff suffered as a result of the home assault and the credible testimony of plaintiff.



The court also found another assault occurred on September 14. There is more than sufficient evidence in the record to support the judge's finding that plaintiff established a predicate act in violation of N.J.S.A. 2C:25-19(a).

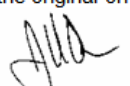
Defendant next advances several arguments that the FRO is not necessary to protect plaintiff for several reasons, among them: defendant no longer lives in New Jersey; the parties' relationship has ended; the parties' lease has expired; and defendant has no other ties to New Jersey.

The trial court found "there's enough of a history here to satisfy the court that there is a danger of physical harm to the plaintiff if a restraining order is not entered." The court concluded an FRO was necessary to protect plaintiff from further abuse based on the following factors: plaintiff testified she was afraid; defendant's statement to plaintiff, "you're mine until death;" plaintiff's testimony that she continued to feel unsafe despite defendant living outside of New Jersey; and the history of physical abuse.

We conclude there is ample record to support a finding that prong two of Silver has been satisfied.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION