

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-1124-21
A-1434-21

R.H.,

Plaintiff-Respondent,

v.

C.R.,

Defendant- Appellant.

C.R.,

Plaintiff-Appellant,

v.

R.H.,

Defendant-Respondent.

Submitted December 13, 2022 – Decided February 16, 2023

Before Judges Susswein and Fisher.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Camden County,
Docket Nos. FV-04-1420-22 and FV-04-1437-22.

Zucker Steinberg and Wixted, PA, attorneys for
appellant (David W. Sufrin, on the brief).

Respondent has not filed a brief.

PER CURIAM

C.R.¹ appeals from a November 16, 2021 Family Part order entering a final restraining order (FRO) against him in favor of his former girlfriend, R.H., pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. He also appeals the order entered at the same time dismissing his temporary restraining order (TRO) against her.² The cross-complaints were tried together in a single hearing before Judge Thomas J. Shusted, Jr. The judge rendered an oral decision, concluding that C.R. committed the predicate act of assault and that an immediate danger to R.H. existed. On C.R.'s cross-complaint, Judge Shusted concluded R.H. committed the predicate act of harassment, but C.R. failed to establish the need for an FRO to protect him from

¹ We use initials to refer to the parties pursuant to R. 1:38-3(d)(9).

² C.R.'s appeals are docketed under separate numbers—A-1434-21 and A-1124-21. We consolidate the appeals for purposes of issuing a single opinion.

further abuse. After carefully reviewing the record in light of the arguments of the parties, we affirm both orders.

We need only briefly summarize the relevant facts and procedural history. C.R. and R.H. had been in a three-year dating relationship, during which time C.R. was married to another woman. The relationship between C.R. and R.H. deteriorated and eventually ended sometime between June and October 2021.

On October 29, 2021, the Camden County Police Department responded to a domestic disturbance at R.H.'s residence. She reported to police that C.R. hit her in the face with a closed fist. On November 4, 2021, R.H. filed for and received a TRO against C.R., alleging assault and harassment related to that incident. On November 2, 2021, C.R. obtained a TRO against R.H., alleging that she was harassing him through unwanted telephone communications.

Judge Shusted found R.H. proved the predicate act of assault under N.J.S.A. 2C:12-1 "because of her testimony saying she was struck a number of times by the fist of the defendant. I also see shattered vases as a result, corroborating what she said occurred on that particular matter in the photographs." The judge noted that while there were no photos of the injuries, R.H. provided documentation that she went to the hospital a week after the incident, corroborating the assault.

With respect to C.R.'s complaint, Judge Shusted found that R.H.'s conduct was harassing, but "because there's no previous history and because I don't feel there's an immediate danger to him by [R.H.], I am not going to issue a [f]inal [o]rder against her because she's listened to my admonition as to not to contact him and go forward from there."

C.R. raises the following contentions on appeal:

POINT I

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ENTERED A FINAL RESTRAINING ORDER WITHOUT TESTIMONY SUFFICIENT TO DESCRIBE A PREDICATE OR A NEED FOR AN FRO.

POINT II

THE TRIAL COURT FAILED TO DISCUSS OR EXAMINE THE SILVER FACTORS REQUIRE[D] BY SILVER V. SILVER.

The scope of appellate review of a Family Part judge's findings following a bench trial is limited. N.T.B. v. D.D.B., 442 N.J. Super. 205, 215 (App. Div. 2015) (citing Cesare v. Cesare, 154 N.J. 394, 411 (1998)). Generally, "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." Cesare, 154 N.J. at 411–12. We "accord substantial deference to Family Part judges, who routinely hear domestic violence cases and

are 'specially trained to detect the difference between domestic violence and more ordinary differences that arise between couples.'" C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020) (quoting J.D. v. M.D.F., 207 N.J. 458, 482 (2011)). Moreover, "[d]eference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Cesare, 154 N.J. at 412 (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). Accordingly, we will not disturb the factual findings of the trial judge unless they are so "manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." C.C., 463 N.J. Super. at 428 (quoting S.D. v. M.J.R., 415 N.J. Super. 417, 429 (App. Div. 2010)).

An FRO under the PDVA may be issued if two criteria are met. Silver v. Silver, 387 N.J. Super. 112, 125–27 (App. Div. 2006). The plaintiff seeking the FRO must prove by a preponderance of the evidence that: (1) "one or more of the predicate acts set forth in N.J.S.A. 2C:25-19(a) has occurred," and (2) that the order is necessary to protect plaintiff "from an immediate danger or to prevent further abuse." Id. at 125, 127.

There is ample support in the record for Judge Shusted's finding that C.R. committed the predicate act of assault. The judge accredited R.H.'s testimony

that "she was struck a number of times by the fist of the defendant." There also is ample support for the judge's finding that R.H. established the second prong of the two-part Silver test, the need for an FRO, especially considering that "[w]hen the predicate act is an offense that inherently involves the use of physical force and violence, the decision to issue an FRO 'is most often perfunctory and self-evident.'" A.M.C. v. P.B., 447 N.J. Super. 402, 417 (App. Div. 2016) (quoting Silver, 387 N.J. Super. at 127).

We likewise find no basis upon which to disturb Judge Shusted's decision to dismiss C.R.'s domestic violence complaint against R.H. The judge found that while her conduct constituted the predicate act of harassment, C.R. failed to establish the need for an FRO under the second Silver prong, reasoning, "there's no previous history and . . . I don't feel there's an immediate danger to him by [R.H]." The judge further explained that an FRO was not needed because R.H. accepted his instruction to stop contacting C.R.

Finally, we address C.R.'s contention the trial judge infringed on his right to procedural due process. C.R. claims he was unable to adequately present full and complete testimony "as the result of the trial court's regular practice of cutting him off as he testified and directing his testimony." The record shows

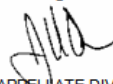
the judge did not "cut off" C.R.'s testimony, but rather asked C.R. questions just as he did during R.H.'s testimony.

Nor was C.R. denied the opportunity to make his case. C.R. was asked to present his proof to the court and was also asked if he had "anything else." C.R. was informed of his right to cross-examine R.H. and was invited to do so. C.R. declined, opting instead to challenge her testimony with his own. He did not submit any exhibits or call any witnesses beyond himself. Nor did he indicate any desire to present additional evidence. Therefore, C.R.'s claim that he was denied due process is without merit.

To the extent we have not addressed them, any remaining arguments raised by C.R. 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