

# 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-1353-21

G.B.,

Plaintiff-Respondent,

v.

P.R.,

Defendant-Appellant.

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Argued February 1, 2023 – Decided February 23, 2023

Before Judges DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Burlington County,  
Docket No. FV-03-0701-22.

Michael J. Collis argued the cause for appellant (Hark  
& Hark, attorneys; Michael J. Collis, on the briefs).

Siwatu Wilson argued the cause for respondent (South  
Jersey Legal Services, Inc., attorneys; Siwatu Wilson  
and Kenneth Goldman, on the brief).

PER CURIAM

Defendant G.B. appeals from a December 15, 2021 final restraining order (FRO) entered against him pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35, based on the predicate act of assault. We affirm substantially for the reasons presented in Judge John L. Call's, thorough December 15, 2021 oral opinion.

We discern the following facts from the record. The parties had been dating for about ten years and are not married. During the relationship, the parties acquired a home under defendant's name<sup>1</sup> and had two children whom the parties claimed as their own.<sup>2</sup> Beginning in 2017, the parties resided at the property with the children, now aged ten and seven. The parties ended their relationship some time in 2020 and agreed that plaintiff and the children would move out of the residence on January 31, 2022.

Around July 2021, the parties and the children took Ancestry.com DNA tests. Upon receiving the results, the parties concluded that defendant was not the biological father of the children. Defendant moved out of the residence that same month. Plaintiff continued to reside in the home.

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<sup>1</sup> They decided that only defendant's name would be on the mortgage documents due to plaintiff's low credit score.

<sup>2</sup> Defendant is designated as the father on both birth certificates.

Though defendant no longer lived at the residence, he returned periodically to retrieve personal items. Plaintiff alleged a history of physically abusive conduct during a number of defendant's visits.

In July 2021, defendant entered the property and allegedly forced his way into plaintiff's barricaded bedroom, broke the bedroom door, and forced her to have sex. Plaintiff did not report the incident to the police. That same summer, defendant allegedly threatened to "hit [plaintiff] down," before throwing her to the ground and kicking plaintiff in the stomach. Plaintiff suffered pain in her stomach and her entire body but, again, did not call the police.<sup>3</sup>

On the night of September 27, 2021, defendant arrived at the residence to deliver court documents. Defendant attempted to forcibly enter the bedroom, but plaintiff barricaded the bedroom door and rebuffed his advances by warning him that she was recording his actions.

On September 29, 2021, the parties and defendant's girlfriend were involved in a physical altercation which resulted in defendant's arrest and plaintiff's brief hospitalization. Testimony and evidence submitted to the court—importantly, a video recording of the event—established that plaintiff and the girlfriend exchanged blows. The video was started by plaintiff on her

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<sup>3</sup> Defendant denies having kicked plaintiff during his testimony.

phone but was continued by defendant after she dropped her phone during the escalating altercation with defendant's girlfriend. In the video, defendant was heard encouraging the fight and encouraging harm to plaintiff.<sup>4</sup> At the hearing, the parties did not agree on who started the physical altercation and whether or not defendant physically assaulted plaintiff.

On September 30, 2021, plaintiff filed for, and was granted, a domestic violence temporary restraining order against defendant.

On December 15, 2021, the parties appeared for a final hearing.<sup>5</sup> Plaintiff testified to the altercations she had with the defendant, emphasizing the details of the September 29, 2021 assault. Plaintiff introduced the cell phone video and testified to defendant's history of domestic violence, including the July 2021, summer 2021, and September 27, 2021 incidents.

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<sup>4</sup> While defendant recorded, he urged his girlfriend to, "whup that b\*\*\*\* ass. Whup her f\*\*\*\*\* ass. . . ." Defendant also taunted plaintiff, "You getting' your ass whupped today." Defendant continued urging the girlfriend to "Beat her, Babe. Choke her, Babe."

<sup>5</sup> Prior hearings were held and adjourned on October 5, 2021, October 19, 2021, and November 8, 2021.

Defendant denied he assaulted plaintiff on September 29, 2021 and alleged that plaintiff instigated the fight.<sup>6</sup> Amongst this testimony, defendant testified that he had never assaulted plaintiff.<sup>7</sup> However, defendant's testimony revealed contradictions and unsupported statements. Defendant stated that he recorded the altercation to show that plaintiff was the aggressor, but then admitted to attempting to delete the video. Defendant stated that he was simply delivering court documents to plaintiff on September 27, 2021, but then admitted that he broke plaintiff's door and vanity. Defendant stated that he obtained a court order requiring plaintiff to leave the residence but upon cross-examination, admitted that the statement was not true.

After hearing the parties' and the girlfriend's testimony, the judge found that, on September 29, 2021, the defendant committed the PDVA predicate act of simple assault against plaintiff pursuant to N.J.S.A. 2C:12-1(a)(1). The judge relied on his credibility findings:

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<sup>6</sup> The girlfriend's testimony also alleged that plaintiff began the fight, but she did not corroborate defendant's statement that plaintiff slapped her to begin the fight.

<sup>7</sup> When asked by his counsel whether he put his hands on plaintiff, defendant responded, "No... she was recording at that time. So, no, I did not put my hands on her." When defendant's counsel asked defendant whether he punched plaintiff in the stomach in July 2021, defendant responded, "I couldn't punch her in her stomach. She had just done a procedure, so, no."

[Defendant]. . . was not simply the videographer, he was the cheerleader for the ongoing assault on [p]laintiff by [the girlfriend], and it is not a quantum leap[, w]hen I have to decide between [what] she said and [what] he said. . . . [B]ased on those statements, that attitude, that anger. . . [defendant] did not wish [p]laintiff anything good. And the [c]ourt has to conclude, based on that evidence, that the plaintiff is being truthful with regard to being assaulted by [defendant].

The judge emphasized that "the State of New Jersey does not have a one-punch or one-kick or one-[s]lap exception. Physically assaultive behavior, again, is an act of domestic violence, no matter what the provocation."

The judge concluded that pursuant to Silver v. Silver,<sup>8</sup> the evidence established a "physically assaultive incident," "the parties [were] still tied to each other by virtue of the residence," and an FRO was necessary for plaintiff's continued safety and protection.

Defendant raises the following issues on appeal:

POINT I

APPELLATE STANDARD OF REVIEW

POINT II

THE COURT FAILED TO MAKE ADEQUATE  
FINDINGS OF FACT AND APPROPRIATE

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<sup>8</sup> 387 N.J. Super. 112, 125 (App. Div. 2006).

CREDIBILITY DETERMINATIONS. (NOT RAISED BELOW)

POINT III

THE COURT INCORRECTLY INFERRED SIMPLE ASSAULT BY ACCESSORY. (NOT RAISED BELOW)

POINT IV

THE COURT FAILED TO MAKE ADEQUATE CONCLUSIONS OF LAW PURSUANT TO [SILVER. V. SILVER]. (NOT RAISED BELOW)

Our review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We typically accord deference to the Family Part judges due to their "special jurisdiction and expertise in family matters." Id. at 413. The judge's findings are binding so long as they are "supported by adequate, substantial, credible evidence." Id. at 412 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)). Deference is particularly warranted where, as here, "the evidence is largely testimonial and involves questions of credibility." Ibid. (quoting In re Return of Weapons of J.W.D., 149 N.J. 108, 117 (1997)). Such findings become binding on appeal because it is the trial judge who "sees and observes the witnesses," thereby possessing "a better perspective than a reviewing court in evaluating the veracity of

witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)). Therefore, we will not disturb a judge's factual findings unless convinced "they are so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice. . . ." Rova Farms, 65 N.J. at 484 (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)).

We review de novo "the trial judge's legal conclusions, and the application of those conclusions to the facts. . . ." Elrom v. Elrom, 439 N.J. Super. 424, 433 (App. Div. 2015) (quoting Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013)).

The protection of the PDVA and the issuance of an FRO may be appropriate where (1) the judge finds the plaintiff is a victim of domestic violence, or other protected party, as defined by the PDVA; (2) the plaintiff proves by a preponderance of the credible evidence that defendant committed an act of domestic violence as defined by N.J.S.A. 2C:25-19(a); and (3) the "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 125-27 (emphasizing that the judge must perform a two-prong analysis to determine

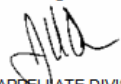


whether the predicate act was performed by a preponderance of the evidence and whether the victim must be protected from immediate danger or future harm).

After a careful examination of the record, we are satisfied that the evidence in the record amply supports the judge's factual findings and that his legal conclusion that an FRO was warranted is unassailable. The evidence largely rested on the credibility of the parties, and we see no reason to question the judge's finding that the plaintiff was more credible.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION