

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-1613-21

T.L.C.,

Plaintiff-Respondent,

v.

M.W.C.,

Defendant-Appellant.

Submitted November 15, 2022 – Decided January 19, 2023

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Cape May County,
Docket No. FV-05-0167-22.

Law Offices of Michael H. Schreiber, LLC, attorneys
for appellant (Michael H. Schreiber, on the brief).

Lisa M. Radell, attorney for respondent.

PER CURIAM

In this appeal, we are asked to consider whether the trial court erred in entering a Final Restraining Order (FRO) against defendant after trial. Because

we conclude the trial court failed to make any findings of fact or law and failed to make credibility determinations, we are constrained to reverse and vacate the FRO.

The parties were married for twenty-two years before filing for divorce in 2020. During a drop-off of one of the parties' children, the parties engaged in an altercation. Plaintiff called the police. Defendant was arrested and charged with simple assault. The parties then obtained temporary restraining orders (TRO) against each other. Plaintiff alleged assault, and defendant alleged harassment. Following a hearing on November 18, 2021, where plaintiff was represented by counsel and defendant was self-represented, the trial court granted plaintiff's FRO and dismissed defendant's TRO.

Our review of an FRO is generally limited. C.C. v. J.A.H., 463 N.J. Super. 419, 428 (App. Div. 2020). "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.'" Ibid. (quoting J.D. v. M.D.F., 207 N.J. 458, 482 (2011)); see also S.K. v. J.H., 426 N.J. Super 230, 238 (App. Div. 2012).

In matters involving domestic violence, the Supreme Court has held the findings of a trial court "are binding on appeal when supported by adequate,

substantial, credible evidence." T.M.S. v. W.C.P., 450 N.J. Super. 499, 502 (App. Div. 2017) (quoting Cesare v. Cesare, 154 N.J. 394, 411-12 (1998)). Further, "[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)); see also D.M.R. v. M.K.G., 467 N.J. Super. 308, 323 (App. Div. 2021) ("Since this case turned almost exclusively on the testimony of the witnesses, we defer to the Family Part judge's credibility findings, as he had the opportunity to listen to the witnesses and observe their demeanor."). We do not disturb the judge's factual findings and legal conclusions unless we are "convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonable credible evidence as to offend the interests of justice." Cesare, 154 N.J. at 412 (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co., 65 N.J. 474, 484 (1974)).

When determining whether to grant an FRO pursuant to the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, a trial court must make two determinations. Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). First, the court must determine whether the plaintiff has proven, by a

preponderance of the credible evidence, that one or more of the predicate acts set forth in N.J.S.A. 2C:25-19(a) has occurred. Id. at 125.

In this matter, the trial court made no findings of fact or law. It did not articulate a finding of the predicate act of assault, or state why the burden had not been met with respect to defendant's allegation regarding the predicate act of harassment. It did not make any credibility findings.

The trial court also did not make findings pursuant to the second prong of Silver. It is firmly established that the commission of one of the acts of domestic violence set forth in N.J.S.A. 2C:25-19(a) does not "automatically . . . warrant the issuance of a domestic violence [restraining] order." Corrente v. Corrente, 281 N.J. Super. 243, 248 (App. Div. 1995). The determination whether such an order should be issued must be made "in light of the previous history of domestic violence between the plaintiff and defendant including previous threats, harassment and physical abuse and in light of whether immediate danger to the person or property is present." Ibid.

The trial court only stated "Sir, I'm denying your complaint. And, [plaintiff's attorney], I'm granting your client's." The trial court's failure to make findings, and, particularly, failure to make credibility determinations, does not afford us any meaningful opportunity to review its conclusion, requiring our

reversal. Rule 1:7-4(a) requires a court to state the facts and conclusions of law in all actions tried without a jury.

Reversed.

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



CLERK OF THE APPELLATE DIVISION