

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

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-3569-21

T.D.,¹

Plaintiff-Appellant,

v.

A.L.,

Defendant-Respondent.

Submitted June 20, 2023 – Decided July 20, 2023
Remanded by Supreme Court May 7, 2024
Resubmitted June 3, 2024 – Decided June 17, 2024

Before Judges Sumners,² Rose and Messano.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Gloucester County,
Docket No. FV-08-0371-22.

¹ Consistent with our prior opinion, we use initials pursuant to Rule 1:38-3(d)(10).

² Chief Judge Sumners has been added to the panel because former Chief Judge Messano, who was on the panel that initially decided the matter by opinion filed on July 20, 2023, retired prior to the Supreme Court's summary remand.

Legal Services of New Jersey, attorneys for appellant (Shoshana Gross, of counsel and on the briefs; Mary McManus-Smith, on the briefs).

Respondent has not filed a brief.

PER CURIAM

This matter returns to us after the Supreme Court granted plaintiff T.D.'s petition for certification and summarily remanded the matter for reconsideration in view of its recent decision in C.R. v. M.T., 257 N.J. 126 (2024). For the reasons that follow, we affirm.

The facts and procedural history are set forth at length in our prior opinion, T.D. v. A.L., No. A-3569-21 (App. Div. July 20, 2023) (slip op. at 3-6), and need not be reiterated. Relevant here, plaintiff appealed from a trial court order that denied her request for a final protective order (FPO) and dismissed a temporary protective order (TPO) entered in her favor against defendant A.L. under the then-titled Sexual Assault Survivor Protection Act (SASPA), N.J.S.A. 2C:14-13 to -21.³ Id. at 2. We reversed the court's findings on the first prong for reasons that are not pertinent to this appeal, but affirmed the court's

³ Effective January 1, 2024, SASPA now provides broader protection to victims of certain predicate acts, and is now known as the Victim's Assistance and Survivor Protection Act or VASPA. We use SASPA for consistency with our prior opinion and the Court's majority in C.R.

conclusion that plaintiff failed to demonstrate "the possibility of future risk to [her] safety or well-being" under the second prong. See N.J.S.A. 2C:14-16(a)(2). Accordingly, we affirmed the court's decision denying plaintiff an FPO.

In reaching our decision, we considered plaintiff's argument that "the court failed to consider that the parties were acquainted for years prior to the incident; have mutual friends; plaintiff lives and works in close proximity to defendant's home; and defendant knows where she resides and works." Id. at 11. Plaintiff further asserted "the court misconstrued defendant's lack of contact prior to trial" "while the TPO was pending." Ibid. We agreed "that defendant's compliance with the temporary restraints does not necessarily forecast his future conduct," but we concluded plaintiff did not show "the possibility of future risk to [her] safety or well-being." Ibid.

After granting plaintiff's petition for certification in this matter, our Supreme Court clarified the alleged victim's burden under the second SASPA prong. C.R., 257 N.J. at 158. Quoting the plain terms of N.J.S.A. 2C:14-16(a)(2), the Court held "'the possibility of future risk to the safety or well-being of the alleged victim,' creates a permissive standard that is easily satisfied" under the second SASPA prong. Id. at 145. The Court elaborated:

The plain language of factor two thus requires a court to consider whether there is a chance that a survivor may be exposed to physical danger, risk, or injury, or may be exposed to something emotionally unwelcome or unpleasant that could make them feel uncomfortable, unhealthy, or unhappy. And because the language of factor two is centered on the safety or well-being of the victim-survivor, a survivor's own testimony regarding possible future risks to their safety or emotional well-being can suffice.

[Id. at 146.]

Notably, however, the majority opinion in C.R. disagreed with the concurring opinion that a victim who satisfies the first SASPA prong, "'is automatically entitled to an FPO' under N.J.S.A. 2C:14-16(e)." Id. at 149-50.

In supplemental briefing submitted at our invitation following the Court's remand order, plaintiff urges us to reverse our prior order and issue an FPO.⁴ Plaintiff claims she demonstrated "'there is a chance' of exposure to 'physical danger, risk, or injury,'" and that "[f]uture contact" with defendant is "likely to 'make [her] feel uncomfortable, unhealthy, or unhappy'" under the C.R. standard. See 257 N.J. at 146. To support her argument, plaintiff references her trial testimony concerning the parties' prior relationship, common friends, and proximity to each other, summarized above. Plaintiff also cites her exchange

⁴ Defendant did not file a supplemental brief. Nor did he file an initial responding brief.

with counsel during direct examination, that is, plaintiff testified she felt "uncomfortable" about "getting into the car with [defendant]" after the incident.

Having reconsidered our decision in view of the Court's recent guidance in C.R., the trial record, and plaintiff's supplemental argument, we conclude she failed to demonstrate the evidence adduced at the May 16, 2022 hearing consisted of anything other than the theoretical "possibility of future risk to [her] safety or well-being." See C.R., 257 N.J. at 147. Although plaintiff testified about the possibility of future contact with defendant, there is no evidence in the record explaining how she would feel about intentional or inadvertent future contact with defendant.⁵ Further, although plaintiff testified she felt uncomfortable in defendant's car just after the incident, there was no evidence adduced at trial to suggest she would feel "uncomfortable, unhealthy, or unhappy" in defendant's presence in the future.

Unlike the plaintiff's testimony in C.R., plaintiff's testimony in the present matter was not sufficient to satisfy the second SASPA prong. Cf. 257 N.J. at 145. In particular, there is no evidence in the record concerning the effect the incident would have on plaintiff's future well-being. On this record, we

⁵ We glean from the absence of any reference in plaintiff's supplemental submission that she has had no contact with defendant since the incident.

therefore cannot conclude plaintiff satisfied the second SASPA prong. See N.J. Div. of Child Prot. & Permanency v. A.L., 213 N.J. 1, 28 (2013) ("Judges at the trial and appellate level cannot fill in missing information on their own or take judicial notice of harm."); see also C.R., 257 N.J. at 150 (holding an FPO is not automatic when the first SASPA prong is satisfied and the mere possibility of future contact, without more, is not enough to satisfy the second prong). We therefore decline to disturb our initial decision.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION