

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2492-21

D.L.,¹

Plaintiff-Respondent,

v.

S.J.-L.,

Defendant-Appellant.

Argued October 3, 2023 – Decided October 17, 2023

Before Judges Whipple and Mayer

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Union County, Docket
No. FV-20-0812-22.

Matthew W. Reisig argued the cause for appellant
(Reisig Criminal Defense & DWI Law, LLC, attorneys;
Matthew W. Reisig, on the brief).

Adam N. Saravay argued the cause for respondent
(McCarter & English, LLP, attorneys; Adam N.
Saravay and Ilana Levin, on the brief).

¹ We refer to the parties by their initials to protect their privacy and preserve the confidentiality of these proceedings. R. 1:38-3(d)(9) and (10).

PER CURIAM

Defendant S.J.-L. appeals from a February 3, 2022 final restraining order (FRO) entered in favor of plaintiff D.L. pursuant to the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35. The Family Part judge found defendant committed the predicate act of assault, N.J.S.A. 2C:12-1(a)(1), and that the FRO was necessary to protect plaintiff against future threats or acts of domestic violence committed by defendant. We affirm.

We recite the facts from the witnesses' testimony during the three-day domestic violence trial. The parties married in 2018. Prior to and throughout their marriage, the parties had a dysfunctional relationship.

In her application for a temporary restraining order (TRO) and an amendment to the TRO, plaintiff identified numerous instances of violence committed by defendant. Plaintiff claimed defendant bit her, threw things at her, broke a lamp across her back, broke the windshield of their car, broke the glass door of their shower, sprayed Lysol in her eyes, yanked a lock of her hair, and threatened her with a knife more than once. Plaintiff also claimed defendant threatened to kill her on multiple occasions. Specifically, plaintiff testified defendant threatened to use a gun to "put a hole in [her] head." Additionally, plaintiff testified that defendant sent her hostile and threatening emails.

Defendant denied committing any acts of violence toward plaintiff. Defendant also denied threatening to kill plaintiff. Regarding plaintiff's property damage claims, defendant testified any such damage was accidental. However, defendant did not deny sending hostile and threatening emails to plaintiff.

The incident leading to plaintiff's application for a TRO occurred on November 19, 2021. Shortly after midnight on that date, plaintiff took a telephone call on the balcony of the couple's two-bedroom apartment. During the telephone call, plaintiff discussed her marital problems.

Defendant, who had been asleep in the bedroom, woke as a result of plaintiff's telephone conversation. After overhearing part of plaintiff's telephone call, defendant sent plaintiff a hostile email that stated: "You are the one who will pay, mark my word." When plaintiff ended the telephone call and re-entered the apartment, defendant followed her, and the couple began to argue.

According to plaintiff, defendant then punched plaintiff in the eye, causing her eye to swell and bleed. While defendant admitted injuring plaintiff's eye, defendant denied doing so intentionally. According to defendant, plaintiff grabbed the back of defendant's shirt while defendant attempted to walk away and defendant then swung around and accidentally hit plaintiff in the eye.

After being struck in the eye, plaintiff left the apartment and called for an ambulance. While waiting for the ambulance, the police arrived, and plaintiff gave a statement to Officer Richard Rodriguez of the Elizabeth Police Department. Plaintiff received treatment for her eye injury at the local hospital. Thereafter, plaintiff applied for and received a TRO.

In the application for a TRO, plaintiff asserted defendant committed acts constituting harassment and assault under the PDVA. A few days later, plaintiff amended her domestic violence complaint to include additional acts of violence allegedly committed by defendant.

At the domestic violence trial, the judge heard testimony from plaintiff, plaintiff's cousin, Officer Rodriguez, defendant, defendant's brother, and defendant's aunt.²

Plaintiff testified regarding the prior incidents of domestic violence committed by defendant, including the following: biting plaintiff on the arm in 2014; threatening to kill plaintiff in 2014; striking plaintiff across her back with a lamp in 2015; threatening to shoot plaintiff in 2015; cracking the windshield of their car in February 2016; cracking a glass shower door in 2017; spraying

² Defendant's aunt lived in the apartment with plaintiff and defendant and was in the apartment at the time of the altercation on November 19, 2021.

Lysol in plaintiff's face and threatening to throw plaintiff off the balcony of their apartment in October 2021; threatening plaintiff while brandishing a kitchen knife in November 2021; and pulling out a lock of plaintiff's hair in November 2021.

Plaintiff also described a series of hostile emails sent by defendant on August 28, 2021. In the email chain, defendant wrote she would be plaintiff's "worst nightmare," and "when I get done with you [sic] will wish you never crossed me."

Regarding the incident on November 19, 2021, plaintiff testified she took a telephone call on the balcony of their apartment while defendant was asleep in the adjacent bedroom. During the call, plaintiff vented about her marital problems and other issues. Upon hearing plaintiff talking loudly on the balcony, defendant woke up.

Because plaintiff disrupted defendant's slumber, defendant sent an angry email to plaintiff. Defendant's email, using vile and vulgar language to describe plaintiff, stated: "You are the one who will pay, mark my word."

When plaintiff completed her telephone conversation, she exited the balcony and crossed through defendant's bedroom to get to the living room where plaintiff slept. Defendant then followed plaintiff.

According to plaintiff, she and defendant argued and "said horrible things to each other." Defendant denied saying the things plaintiff claimed. It is undisputed that plaintiff suffered an eye injury during this argument. However, the parties dispute the events immediately preceding plaintiff's eye injury.

Plaintiff claimed defendant punched her "directly in [the] right eye" causing the eye to bleed. Plaintiff then grabbed her pre-packed bags and called for an ambulance.

Defendant admitted striking plaintiff's eye but claimed it was an accident. According to defendant, plaintiff "grabbed [her] shirt from behind," and defendant "swung around and accidentally hit [plaintiff] in the eye with [defendant's] cell phone." Defendant told plaintiff she was sorry for hitting plaintiff in the eye.

Defendant's aunt also testified. She claimed plaintiff grabbed defendant's shirt. As a result, defendant, who was holding a cellphone, swung around and the cellphone struck plaintiff in the eye. The aunt stated defendant cried, told plaintiff she was sorry, and offered to help plaintiff seek treatment for her eye injury.

Defendant's brother also testified. He told the judge that plaintiff was physically larger and heavier than defendant. He also denied defendant ever

owned a gun. Further, defendant's brother testified he did not speak with defendant's attorney prior to the start of the domestic violence trial.

At the conclusion of the trial, the judge found defendant committed an assault under N.J.S.A. 2C:12-1(a)(1). The judge, relying on photographic evidence and plaintiff's testimony, concluded defendant purposely, knowingly, or recklessly struck plaintiff in the eye after a heated argument.

The judge found plaintiff to be more credible than defendant because plaintiff "was pretty detailed" and plaintiff's "injuries were absolutely supported by the photos." Regarding the testimony provided by defendant's brother, the judge determined his testimony was "not credible." Specifically, the judge noted defendant's brother frequently answered before a question was completed, leading the judge to conclude the brother "already figured out what he was going to say[,] [b]ecause he already knew what was going to be said by the plaintiff." Additionally, the judge found the brother's testimony "clearly biased" and "he clearly was not truthful about a couple of issues."

Regarding the testimony proffered by defendant's aunt, the judge had "some issues . . . with the accuracy of her testimony." While explaining defendant's aunt was a "sweetheart," he found her testimony "questionable"

because he was "not sure [defendant's aunt] totally remembers everything that happened in an accurate manner."

In finding defendant committed the predicate act of assault, the judge summarized plaintiff's testimony. He noted defendant's "blanket denial" of the incidents described by plaintiff during the trial. After observing the parties, the judge found "plaintiff's recitation of the history is more accurate." He further explained defendant's "conduct on November 19th, if not purposeful, if not knowing, was at the very least reckless conduct that [defendant] knew or should have known . . . could result in injury to the plaintiff and, indeed, it did[.]"

After determining defendant committed the predicate act of assault, the judge concluded an FRO was necessary to protect plaintiff against further danger and to prevent defendant from committing future acts of domestic violence against plaintiff.

On appeal, defendant contends the judge erred because there was insufficient evidence upon which to find defendant committed the predicate act of assault. Defendant further argues the judge improperly considered the parties' history of domestic violence in finding a predicate act under the PDVA. We disagree.

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)). In domestic violence cases, we owe substantial deference to a Family Part judge's findings, which "are binding on appeal when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 N.J. 394, 412 (1998) (citing Rova Farms Resort, Inc. v. Inv'rs Ins. Co. of Am., 65 N.J. 474, 484 (1974)). This is particularly true where the evidence is testimonial and implicates credibility determinations. Ibid. (citing In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)). We will not overturn a 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 reasonably credible evidence as to offend the interests of justice." Ibid. (quoting Rova Farms Resort, Inc., 65 N.J. at 484).

When determining whether to grant an FRO under the PDVA, a judge must undertake a two-part analysis. Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). First, "the judge 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. Second, the judge must determine whether a restraining order is necessary to protect the plaintiff from future acts or threats of violence. Id. at 126-27.³

Here, plaintiff alleged defendant committed the predicate act of assault, which is one of the delineated criminal offenses under the PDVA. N.J.S.A. 2C:25-19(a)(2). A person is guilty of simple assault where, they "purposely, knowingly or recklessly cause[] bodily injury to another"; "[n]egligently cause[] bodily injury to another with a deadly weapon"; or "[a]ttempt[] by physical menace to put another in fear of imminent serious bodily injury." N.J.S.A. 2C:12-1(a). "Bodily injury" is defined as "physical pain, illness or any impairment of physical condition." N.J.S.A. 2C:11-1(a). "Not much is required to show bodily injury. For example, the stinging sensation caused by a slap is adequate to support an assault." State v. Stull, 403 N.J. Super. 501, 505 (App. Div. 2008) (quoting N.B. v. T.B., 297 N.J. Super. 35, 43 (App. Div. 1997)).

Whether a defendant's conduct was designed to abuse or control the plaintiff should be assessed in the context of the "entire relationship between the

³ On appeal, defendant does not challenge the judge's finding that plaintiff required an FRO to protect her and to prevent defendant from committing future acts of domestic violence against her.

parties. . . ." Cesare, 154 N.J. at 405. Thus, the court may also look to other relevant factors not included in the statute. N.J.S.A. 2C:25-29(a); N.T.B. v. D.D.B., 442 N.J. Super. 205, 223 (App. Div. 2015) (noting the statutory factors are "nonexclusive").

Whether a plaintiff has established an act of domestic violence is not determined in a vacuum. As we have stated:

The law mandates that acts claimed by a plaintiff to be domestic violence must be evaluated 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. N.J.S.A. 2C:25-29(a)(1) and (2). This requirement reflects the reality that domestic violence is ordinarily more than an isolated aberrant act and incorporates the legislative intent to provide a vehicle to protect victims whose safety is threatened. This is the backdrop on which [a] defendant's acts must be evaluated.

[R.G. v. R.G., 449 N.J. Super. 208, 228-29 (App. Div. 2017) (quoting Corrente v. Corrente, 281 N.J. Super. 243, 248 (App. Div. 1995)).]

We first address defendant's argument that the judge erred in considering the parties' history of domestic violence in finding defendant committed the predicate act of assault. We reject this argument.

Under the PDVA, in determining whether a plaintiff has proven the allegations in a domestic violence complaint, the court shall consider, but is not limited to, the following factors:

- (1) The previous history of domestic violence between the plaintiff and defendant, including threats, harassment and physical abuse;
- (2) The existence of immediate danger to person or property;
- (3) The financial circumstances of the plaintiff and defendant;
- (4) The best interests of the victim and any child;
- (5) In determining custody and parenting time the protection of the victim's safety; and
- (6) The existence of a verifiable order of protection from another jurisdiction.

[N.J.S.A. 2C:25-29(a).]

"Although a court is not obligated to find a past history of abuse before determining that an act of domestic violence has been committed in a particular situation, a court must at least consider that factor in the course of its analysis." Cesare, 154 N.J. at 402 (emphasis omitted).

Here, the judge considered the parties' history of domestic violence as a factor in rendering his decision. The judge relied on plaintiff's testimony, which

he found to be more credible than defendant's testimony, and the photographic evidence in finding that defendant recklessly struck plaintiff in the eye and caused bodily injury to constitute an assault under the PDVA. The judge also considered the witnesses' testimony and assessed the witnesses' credibility, finding plaintiff's account to be more credible. We are satisfied the judge did not solely rely upon the prior history of domestic violence to find defendant assaulted plaintiff.

Moreover, we defer to the judge's factual findings and credibility determinations in a bench trial. Here, the judge saw the witnesses and heard their testimony. Based on the testimony and evidence, the judge found plaintiff more credible regarding the events of November 19, 2021, than defendant and defendant's witnesses. Having reviewed the record, including the judge's credibility findings, we are satisfied there was ample credible evidence in the record to support the judge's conclusion that defendant committed the predicate act of assault against plaintiff to support the entry of an FRO.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION