

RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-6122-04T1

JESSICA NIEVES,

Plaintiff-Respondent,

v.

CHRISTOPHER REECE,

Defendant-Appellant.

Submitted May 31, 2006 - Decided June 21, 2006

Before Judges Coburn and S.L. Reisner.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Passaic County,
FV-16-2616-05.

Matthew T. Priore, attorney for appellant.

Respondent did not file a brief.

PER CURIAM

Defendant, Christopher Reece, appeals from the entry of a final restraining order issued pursuant to the Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17- to -35 (the "Act").

At the conclusion of the testimony, which was presented pro se by the parties, the judge ruled as follows:

I've taken testimony from both parties concerning an incident that occurred on June 4th, essentially involving, for the most part, plaintiff's sister, as well as a confrontation between the parties on that time. I've also taken testimony as to prior incidents.

Quite frankly, the incident with the sister is not that relevant to the situation, except that -- a note that the defendant testified that no punches were thrown. Nothing happened, nothing happened. And yet I saw photographs that perceive -- perceive to --

After a brief interruption from defendant, the judge went on to say this:

THE COURT: -- looks to me like something did happen. There were marks on the girl's neck and face [referring to the sister]. Also questioned as to any prior violence between the parties. Plaintiff claimed that she had been assaulted in the past. Defendant denied it.

When we have testimony that is so divergent, such as this, the Court has to make a call based on credibility. And I do believe the plaintiff's story is more believable. I think she's a more credible witness.

I am therefore going to make the restraints final.

The only direct evidence from plaintiff about anything happening between her and defendant during the subject incident, which occurred on June 4, 2005, was as follows:

Q. Okay. And when you arrived at the scene of the incident, the defendant

threatened you, stating that he was going to "F you up"?

A. Yes.

A restraining order may not be issued under the Act unless the judge finds that defendant committed one of the offenses defined in N.J.S.A. 2C:25-19. Cesare v. Cesare, 154 N.J. 394, 400 (1998). Moreover, mere commission of the offence is not enough by itself. Id. at 401-02. In addition, the judge must consider the parties' history, previous threats and physical abuse, as well as whether there is immediate danger to the plaintiff. Ibid.; N.J.S.A. 2C:25-29(a).

The judge's declaration that he found plaintiff more credible than defendant failed to satisfy his duty to make reviewable findings of fact and conclusions of law. The record is further marred by the judge's almost exclusive reliance on inappropriately leading questions on the key points. Moreover, the judge relied in part on photographs not introduced in evidence. Therefore, a new trial is in order.

Reversed and remanded for a new trial.

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


CLERK OF THE APPELLATE DIVISION