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SUPERIOR COURT OF NEW JERSEY
Chancery Division: Hudson County
Docket No. FV-09-2455-21

JOEL T. CHICANTEK,

Plaintiff,

-vs-

ARIANNE MUNOZ,

Defendant.

AMENDED OPINION

Decided: August 18, 2023

Trial Days: March 14 and 20, May 15, 16, 22 (conference and argument only), July 10, 18 and 27, 2023

Steven B. Cohen, Esq. for Plaintiff Joel T. Chicantek (Moskowitz Law Group, attorneys).

Lesley Renee Adams, Esq. for Defendant Arianne Munoz (Adams & Caughman, attorneys).

POTTERS, J.S.C.

OPINION

Introduction

This case presents two issues of first impression under the New Jersey Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17 to -35 ("PDVA"). First, to what extent may a defendant in a Final Restraining

Order ("FRO") trial under the PDVA interpose a defense predicated on "diminished capacity" on the issue of whether defendant intended to engage in actions and/or conduct constituting predicate acts containing a volitional or intent requirement? Trial Courts in FRO proceedings are encouraged to employ common sense in analyzing the facts and applying the statutory and decisional case law to adjudicate whether plaintiff has met their burden of establishing a predicate act of domestic violence. H.E.S. v. J.C.S., 175 N.J. 309, 327 (2003). The diminished capacity defense is predicated on perinatal depression, which is recognized by both the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, and the National Institute of Mental Health. While the Court considered the proofs presented by defendant on this defense, the Court finds (1) plaintiff met his burden of proof establishing by a preponderance of the evidence defendant committed predicate acts of domestic violence and (2) defendant's diminished capacity defense (based on perinatal depression) related to the volitional element of several of the predicate acts is inconsistent with the well-articulated decisional case law liberally construing the protections accorded under the PDVA.

The second issue presented concerns the standard to evaluate a plaintiff's expressed need for a final restraining order. While the decisional

case law references an objective standard, close scrutiny of this law informs the standard is a hybrid standard. That is, the need is evaluated from an objective perspective considering the prior history of domestic violence. This language most certainly constitutes an objective standard, as the decisional case law makes clear. But the language in the controlling case law continues. It requires the Court, in applying several statutory factors, to consider the impact of that prior history on the individual plaintiff seeking issuance of a final restraining order. This language requires the Court to evaluate the impact of the prior history on the subject plaintiff, which is necessarily subjective.

Procedural History

The initial Temporary Restraining Order ("TRO") in this matter was granted on June 28, 2021. Plaintiff alleged the predicate acts of assault and harassment. Plaintiff alleged several acts of physical assault committed against him by defendant spanning from June 12 to June 20, 2021. The TRO granted Plaintiff temporary custody of the parties' child Noah S. Chicantek (DOB: July 14, 2020) along with exclusive possession of the parties' residence. Noah was listed as a protected person in the TRO, and defendant was prohibited from exercising any parenting time.

On July 6, 2021, Plaintiff, now represented by counsel, filed a Certification in Support of an Amended Temporary Restraining Order. The same day, the Court entered an Amended TRO which added the predicate act of terroristic threats and many additional alleged prior incidents of domestic violence dating back to August 2020.

On November 18, 2021, defendant filed an Application for Modification of the Domestic Violence Restraining Order. Defendant sought supervised parenting time with Noah with her mother and sister to act as supervisors. Defendant argued she was compliant with her medications for postpartum depression and was being treated by a psychiatrist and therapist, who both recommended she receive parenting time as part of her recovery. This was the first time defendant's psychiatric condition was raised and placed before the Court.

On December 1, 2021, before defendant's Application for Modification was ruled on by the Court, defendant filed an Application for an Appeal of the TRO seeking the same relief. On December 9, 2021, plaintiff filed a Notice of Cross-Motion seeking to prohibit defendant from exercising any supervised visitation pending the outcome of a risk assessment, psychological evaluation and home assessment as well as defendant's completion of an anger management program. Plaintiff also

sought child support payments from defendant. On December 9, 2021, the Court entered an Order denying defendant's request for appeal.

On December 15, 2021, the Court entered an Amended TRO allowing defendant virtual visits with Noah for fifteen minutes twice a week. The matter was relisted to January 19, 2022, with a request for the New Jersey Division of Child Placement and Permanency ("DCPP") to investigate and report to the Court. On January 19, 2022, the Court held a conference regarding the DCPP investigation and relisted the matter for February 8, 2022. Also on January 19, 2022, defendant filed another Application for Appeal of the TRO again seeking parenting time. Defendant proposed for her mother and sister to supervise the first two weeks of her parenting time with Noah and for parenting time thereafter to be unsupervised. On January 21, 2022, defendant's Appeal was denied based on the identical issue having been considered and adjudicated pursuant to the December 9, 2021, Order.

On January 24, 2022, defendant filed an Order to Show Cause seeking unsupervised parenting time, which the Court granted, in part, the same day. Defendant was granted supervised visits with Noah three days per week. The matter was relisted to February 7, 2022, to review an updated DCPP report and "psychiatric collateral and therapist report."

On February 7, 2022, the matter was adjourned at the request of counsel and relisted for February 18, 2022. On February 18, 2022, an Amended TRO was entered to reflect a parenting time schedule consented to by the parties, under which defendant was awarded supervised visits with Noah four days each week and fifteen-minute video calls on the remaining three days.

On March 2, 2022, Karen D. Wells, Psy.D., authored her first Psychological Consultation Report on behalf of defendant to assess defendant's capacity to provide care safely and effectively to her son.

On March 10, 2022, defendant filed an Application for Appeal of the TRO seeking unsupervised and overnight parenting time. On March 11, 2022, the Court conferenced the matter. On March 23, 2022, the Court heard defendant's Application for Appeal and entered an Amended TRO lifting the restrictions on defendant's parenting time. Defendant was granted overnight, unsupervised parenting time starting the third week following the entry of the Order.

On March 24, 2022, the matter was relisted to April 18, 2022. On March 26, 2022, Dr. Wells authored a second narrative report that is virtually identical to the March 2, 2022 report. On April 18, 2022, the

matter was relisted for a status conference. On May 9, 2022, the matter was relisted to June 1, 2022 for a conference.

On May 31, 2022, Plaintiff filed a Notice of Cross-Motion. (This should have been denominated as a motion because there was no other pending application at that time.) Plaintiff sought to compel defendant to undergo a risk assessment and psychological evaluation with Dr. Mark Singer. Plaintiff also sought to require defendant to produce to Dr. Singer records of her prior treatment and evaluation by Be Well Psychotherapy, Riverside Medical Group, Riverside Behavior and Mental Health and any other documentation provided to Dr. Karen D. Wells as part of her evaluation of defendant. This is the first time the issue of experts, including evaluations and reports, was explicitly raised before the Court. In his Certification in Support of the Cross-Motion, plaintiff noted defendant retained Dr. Wells as an expert to conduct a risk assessment and psychological evaluation. While the risk assessment conducted by Dr. Wells focused on whether defendant posed a danger to Noah and informed on the Court's prior ruling lifting the restrictions on defendant's parenting time, the psychological evaluation used defendant's diagnosis of postpartum depression to "explain" the acts of domestic violence committed by defendant on plaintiff. In his Cross-Motion, plaintiff argued defendant had

called her mental health into question and he must therefore be permitted to retain an expert to evaluate defendant. The basis of plaintiff's application was his disagreement with the opinions contained in Dr. Wells' report. Plaintiff argued defendant suffered from more severe mental health issues beyond the postpartum depression noted by Dr. Wells and these alleged conditions were relevant. Plaintiff disagreed with Dr. Wells' conclusion that defendant's progress in treatment no longer rendered defendant a threat to plaintiff. Because defendant placed her mental status before the Court, plaintiff sought permission of the Court to have his own expert examine defendant.

Thus, the first time the issue of expert evaluations was raised in this matter was the request by plaintiff to have his own expert examine defendant, after defendant already retained an expert who had prepared reports. The issue of whether expert discovery and/or testimony is permissible in a domestic violence action was not, at this point, explicitly addressed by the parties or the Court. Rather, Plaintiff simply characterized his request for relief in the Cross-Motion as basic fairness; namely, plaintiff must be permitted to retain an expert to rebut the defendant's expert.

On June 1, 2022, the Court relisted the matter for a June 22, 2022 hearing on plaintiff's Cross-Motion. On June 12, 2022, defendant filed a

Notice of Cross-Motion. In this application, defendant sought to deny plaintiff's motion in its entirety, order plaintiff's counsel to produce the evidence intended to be used at trial, and obtain additional overnight parenting time. In a supporting Certification, defendant's counsel stated she had not put defendant's mental health at issue and noted plaintiff did not cite a Court Rule or Statute supporting the relief sought in plaintiff's Cross-Motion. Defendant also questioned the timing of plaintiff's application: She argued that it was suspect given the Court had already permitted defendant to begin exercising overnight unsupervised parenting time.

On June 21, 2022, plaintiff filed a Reply Certification again arguing defendant made her mental health condition an issue by retaining an expert who authored a report asserting defendant's postpartum depression was the reason for her attacks on plaintiff. Plaintiff noted defendant intended to call Dr. Wells as an expert witness at trial. Plaintiff did not specifically address the permissibility of expert testimony in domestic violence actions; rather, he sought permission to retain his own expert to rebut the opinions of defendant's expert, Dr. Wells.

On June 22, 2022, the Court relisted the matter for June 29, 2022 whereupon the Court conducted a hearing on the parties' respective applications. On July 15, 2022. the Court entered an Amended TRO ruling

on the parties' applications. The Amended TRO granted plaintiff's motion and compelled defendant to comply with his expert's evaluation, directed counsel to exchange all collaterals involving both experts, denied both parties' requests for counsel fees and denied defendant's motion to expand parenting time.

The matter was relisted for July 22, 2022, and on August 4, 2022, the matter was relisted for a status conference on September 9, 2022. On September 8, 2022, the matter was adjourned at the request of plaintiff's counsel and relisted for September 27, 2022. On September 27, 2022, the matter was scheduled for trial on December 6, 2022. On November 2, 2022, Mark Singer, Ed.D. authored a report on behalf of the plaintiff that addressed the need for a Final Restraining Order. (The report was subsequently amended on November 8, 2022 to correct typographical errors.) On November 14, 2022, the matter was assigned a new trial date of January 24, 2023.

On November 30, 2022, the Court conducted a pre-trial conference and entered a pre-trial Order setting forth a briefing schedule for trial briefs as well as a schedule for counsel to exchange witness and exhibit lists. Thereafter, the Court conducted a single off-the-record telephone conference and several on-the-record additional conferences for the purpose of

addressing compliance with the pre-trial Order and to ensure trial readiness on the scheduled trial date. On December 27, 2022, Dr. Wells authored her third report based on receipt of additional information and Dr. Singer's report.

Trial Testimony with Pertinent Factual Findings

Dr. Mark Singer, Plaintiff's Psychological Expert

With the consent of defendant's counsel and counsel stipulating to the qualifications of the other party's expert witnesses, plaintiff's first witness on the first day of trial, March 14, 2023, was Dr. Mark Singer, a psychologist who was engaged by plaintiff to conduct a psychological evaluation of the defendant assessing defendant's psychological functioning, behavior and risk to the parties' child. Dr. Singer's testimony took up the entire first day of trial.

Dr. Singer's experience with domestic violence dates back to his time as a police officer and college professor, from which he is retired. He began performing evaluations and providing therapy in 1997 and has been engaged in this practice full time.

Dr. Singer's methodology for performing the psychological evaluation on defendant included psychological testing and collecting data from collateral sources, including plaintiff, the Be Well therapist, the owner of Be

Well, defendant's sister Jennifer Munoz, defendant's mother Zaritza Bru, the review of a number of records identified in his written narrative report including the Temporary Restraining Order and the review of a number of audio and video recordings. The more information obtained, the better the recommendations and conclusions.

The data informs the defendant went through a very difficult time with major depression with perinatal onset. On this, there is agreement by Dr. Singer with defendant's expert, Dr. Karen D. Wells, Psy.D. Specifically, Dr. Singer noted defendant experienced a difficult pregnancy with documented sequelae, including a shortened cervix and neuropathy. The data further informs defendant does not present an unacceptable risk to the parties' child and that defendant's behavior is geared to plaintiff and influenced by her emotional and physical state. Other factors that may explain and/or impact on defendant's conduct and behavior include defendant's immigration to the United States, her conflicted and unsatisfactory relationship with the plaintiff which preceded the pregnancy, that she is a child of divorce and was previously married, and her difficult pregnancy. Dr. Singer opined defendant needs to address these other factors and that if they are not addressed defendant could present a risk of repeating the behaviors which are the subject of this proceeding. Dr. Singer further

noted the lack of any prior history of aggressive behavior of the defendant and the directing of all aggression towards the plaintiff. The Court notes the former bears on the issue of the impact of defendant's diagnosed perinatal depression on the actions and conduct of the defendant and the latter bears on the issue of the need for an FRO.

Dr. Singer is concerned by the recordings, which show inappropriate touching of plaintiff by defendant and defendant's physical aggression (hitting) the plaintiff, to which Noah was, and should not have been, exposed. Defendant needs to develop coping skills to address these concerns. The Prozac prescription and therapy have helped defendant with her depression and anxiety. Noah needs both his parents to work together in a therapeutic environment. It is important for defendant's therapist to have a vehicle to obtain information from plaintiff. Dr. Singer stated several times defendant's diagnosis does not define her behavior because defendant is more complicated than her diagnosis of perinatal depression, meaning the violence is caused by more than perinatal depression.

Dr. Singer's recommendations are as follows: (1) no direct contact between the parties unless mediated, (2) the parties need to work together in co-parenting therapy, (3) defendant needs to continue individual therapy, (4) if defendant's psychiatrist or other medical provider recommends a

prescription, then defendant should abide the recommendation, (5) defendant needs to address her physical ailments, such as the neuropathy, and (6) defendant needs to address her low self-esteem and body image issues. The last two psychological conditions contributed to defendant's overall functioning and aggression, which was directed solely against the plaintiff.

On cross-examination, Dr. Singer testified he worked on only one or two cases in the police department involving perinatal depression. He believes men can suffer from major depressive disorder with perinatal onset and repeatedly stated that postpartum depression or perinatal depression is not a diagnosis, but rather a layperson's term.

Defendant spent quite a bit of time cross-examining Dr. Singer on a pamphlet put out by the National Institute of Mental Health ("NIMH") related to perinatal depression. The NIMH is part of the National Institute of Health. Dr. Singer characterized the pamphlet as informative for a general audience but does not view it as scientific. Dr. Signer was shown the pamphlet for the first time at trial.

After taking the time to read the pamphlet in its entirety, he agreed it focuses on women and not men. He strongly prefers the DSM-V medically recognized diagnostic term of major depressive disorder with perinatal onset. While postpartum psychosis can occur during pregnancy, Dr. Singer

would not concede that pregnancy is the sole cause of psychosis. Defendant strongly advocates her pregnancy was the sole cause of her perinatal depression and Dr. Singer maintained his position that people are much more complicated than a diagnosis.

The factors noted by Dr. Singer to determine whether defendant's psychosis was solely caused by her pregnancy include testing, more information about her pregnancy (this was not specified), recognizing there was no known prior history of aggression by defendant, the experiences of defendant related to her family and therapeutic history, exposure to domestic violence, product of divorce, educational level and whether defendant went to college. On identifying a cause for defendant's conduct and actions other than perinatal depression, Dr. Singer's testimony was not compelling. He never provided any information on how any of these other factors could inform on any alternative cause of defendant's psychosis beyond her pregnancy and concomitant perinatal depression. In response to a number of hypotheticals, Dr. Singer was not able to identify any alternative cause or explanation of defendant's actions and conduct other than perinatal depression. Rather, Dr. Singer merely identified other things to consider, for which no other actual cause was provided in his testimony.

Quite a bit of time was spent on defendant's counsel's use of the term perinatal depression from the NIMH pamphlet and Dr. Singer's reliance on the medically accepted term contained in the DSM-V of major depressive disorder with perinatal onset. Dr. Singer acknowledged the terms postpartum depression and perinatal depression are frequently used interchangeably and stated these are subsumed under the DSM-V diagnosis of major depressive disorder with perinatal onset.

While gestational carrying is the same for all human females, Dr. Singer opined that environmental factors may impact whether pregnancy is the sole cause of a psychosis. Culture, languages, attitudes and beliefs will not impact gestational carrying, but very well may impact the pregnancy. There is no monolithic American culture, and this is why Dr. Singer stated he needs to sit with the person.

Dr. Singer is aware that defendant felt poorly mentally during the pregnancy. He acknowledged plaintiff and defendant did not initially tell the doctors because of concerns the baby would be taken from defendant. He conceded women cannot control bodily processes such as hormones; although some therapists try to control these using biofeedback and some individuals use herbal supplements. While one cannot control the process of

pregnancy, one can mitigate the impact of hormones if they are conscious of how they are feeling and acknowledge same.

It was alleged in the TRO that defendant was taking controlled substances and threatened to kill herself. Dr. Singer conducted a mental status exam on both suicidality and homicidality. Both were negative at the time of the examination. However, defendant taking pills is suicidal behavior which will result in an emotional reaction in others. Defendant tried at least two or three times to take her life. Whether she intended on going through with this, she was engaged in self-destructive behavior and was both obviously depressed and in need of help. Dr. Singer stated this behavior is consistent with major depressive disorder with perinatal onset. Dr. Singer did not make inquiry into the medication defendant was taking even though he knew plaintiff was taking a medication for depression and medication for the neuropathy pain. Zoloft, which defendant was taking for depression, can increase the risk of suicide in younger people. Prozac and Zoloft produce similar benefits with people suffering from depression. While no foundation was laid and specifically reserving on the issue of admissibility of the document referenced by defendant from the FDA related to Lyrica, the Court permitted Dr. Singer to read this document and confirm a potential adverse side effect is suicidal thoughts.

Defendant's counsel sought to have Dr. Singer comment on exhibit P-5, which is an audio, that was not capable of being heard by either the Court or the witness. The most the Court could discern was defendant asking plaintiff a question about not responding and something about Noah being dead. Apparently, in this inaudible recording, there is a reference to the plaintiff finding the child dead. The Court could not discern much from this audio. Plaintiff was soft spoken in this recording.

Dr. Singer concluded defendant poses no imminent risk of harm to either herself or Noah; but, the data suggests defendant would benefit from a program focusing on ways of coping with anger and aggression towards the plaintiff to reduce the replay of earlier events. The cause of the earlier events, which are the subject of the temporary restraining order, include affective issues, namely the major depressive disorder with perinatal onset, trauma associated with her immigration experience which resulted in the report of a PTSD diagnosis by defendant's prior therapist, her relationship with her mother and father, separation from her son following his birth and the initially supervised parenting time with her son. Also, Dr. Singer noted the relationship of the parties where plaintiff was a trigger to defendant which resulted in defendant directing her aggression solely against the

plaintiff. Defendant is engaged in therapy and should continue to address these issues as noted above as they relate to the plaintiff.

The Court notes the limited information on the history provided by and related to the defendant and the absence of any records to fully document an apparent prior therapy report identifying PTSD associated with defendant's immigration experience. Nothing was presented by either party on any of the specifics or documents related to the PTSD. It is reasonable to conclude there was an absence of information available.

Dr. Wells, defendant's expert, agrees with the major depressive perinatal disorder diagnosis; but, disagrees with Dr. Singer's opinion that defendant continues to present a threat to plaintiff. Dr. Singer gives defendant credit for the improvements made in therapy and medication, he nonetheless believes her therapy needs to be broader and deeper to address her interactional issues with the plaintiff. Both defendant's mother and sister agree defendant is doing well currently. While acknowledging there are other ways beyond a final restraining order to limit or prohibit contact between the parties, such as a no-contact order, Dr. Singer remains concerned about the parental behavior. Specifically, his concerns extend to not wanting Noah to act out based on the parents inability to get along. He is adamant the parents must have no contact with one another. While

defendant's pregnancy was a major factor, Dr. Singer would not concede this is the sole factor or provide a percentage basis on the amount the pregnancy contributed to defendant's actions and conduct.

Further to the issue of the need for a Final Restraining Order, beyond the testimony of Dr. Singer on the absolute need for these parties to have no contact with one another, Dr. Singer noted the aggression and violence by defendant towards the plaintiff ceased upon issuance of the temporary restraining order. Further, much of the violence occurred while the defendant was receiving therapy. Regardless of whether a Final Restraining Order issues, Dr. Singer opined the parties need a vehicle for communication, aside from direct communication, with regulation of the defendant's emotional reaction to the plaintiff for the benefit of Noah.

Plaintiff Joel Chicantek

Predicate Act

Plaintiff's testimony commenced on March 20, 2023 and took up the entire day of testimony. The predicate acts which led plaintiff to seek the issuance of a Temporary Restraining Order occurred between June 12 and June 26, 2021. This synopsis follows the order in which the testimony was presented.

Plaintiff and defendant were in a dating relationship for three years which produced a son, Noah, born on July 14, 2020. The parties commenced living together in October 2019, in West New York, New Jersey, after the third year of their relationship.

On June 12, 2021, defendant got upset about her stomach following the birth of the parties' child. Defendant wanted cosmetic surgery to fix an umbilical hernia and stretching, both produced by her pregnancy, and for which plaintiff was supportive. Plaintiff readily acknowledged defendant experienced a difficult pregnancy. While plaintiff supported the surgery, he wanted to plan and address costs. Defendant wanted the surgery immediately and for plaintiff to pay for it. Plaintiff wanted to figure out how to pay for the surgery. He works as a bartender in New York City.

Defendant was not happy about plaintiff's job and wanted him to do something else. Defendant wrote a resume for plaintiff; yet, she did not know anything about his work history. Defendant claimed plaintiff was not motivated. Plaintiff, on the other hand, testified this was all part of defendant trying to control him.

As plaintiff was leaving for work, the defendant slapped him three times unprovoked. Plaintiff recorded this incident, and the defendant then became upset. Defendant made fun of the lack of intimacy since conceiving

the parties' child. Plaintiff countered that the lack of intercourse was the result of directions from defendant's doctors at each stage of her pregnancy and that after the delivery, plaintiff understood they should wait a period of six weeks before resuming intercourse. Plaintiff was not interested in sex while defendant was violently abusing him, making fun of him and accusing him of being gay. During once such exchange, the door to the apartment was opened and a neighbor overheard these accusations by defendant. This caused the plaintiff to feel humiliated and hurt by what she was saying.

On June 19, 2021, while plaintiff was changing, the defendant pulled plaintiff down because she was upset about a comment plaintiff made that defendant should consider taking a bus to a party she sought to attend in the Fort Lee/Clifton area. Plaintiff was concerned because he could have been caused to fall on Noah by defendant pulling him down. Plaintiff testified that with defendant, the actions and conduct of the defendant does not end.

A few hours later, defendant scratched, hit and bit plaintiff, starting in the kitchen, proceeding to the living room and then in Noah's room. Plaintiff recorded the damage defendant did to him with his phone. While in the kitchen, at first defendant did not know plaintiff was recording. After defendant realized plaintiff was recording, defendant took a knife she was holding and put it at her side. Plaintiff told defendant to stop, and defendant

responded to plaintiff for him to stop. Then, defendant began punching plaintiff repeatedly and biting him on the face.

P-3 is a 9 second video showing the defendant hitting the plaintiff in the bathroom. P-4 is a picture of a bitemark on plaintiff from defendant from June 18, 2021, taken at 5:49 p.m. The bite mark is markedly visible on the left side of plaintiff's face with two concave continuous red marks with a red area in a circle close to the top portion of the bite mark.

Plaintiff testified everything just kept continuing without abatement regarding the threats and attacks by defendant. Defendant took the knife and prescription medication into the bedroom and threatened plaintiff she was going to overdose on the pain medication. Plaintiff informed defendant always referred to the pain medication as a controlled substance. Defendant previously threatened to kill herself many times by overdosing with pain pills. Plaintiff characterized these threats as constant and repeated emotional abuse.

This incident continued the next day. Defendant took a ride share to the party and was apparently dropped off at the wrong location. Plaintiff was having a busy night at work and saw late into his shift defendant tried contacting him 40 times by text and phone. Based on the prior actions and conduct of the defendant, plaintiff was alarmed by this number of attempts

to reach him because in the past defendant engaged in this conduct to harass him. After returning home and waking up, defendant fed Noah and was angry claiming plaintiff does not care for her. Defendant was also still angry about plaintiff not having given her a present on Mother's Day. While plaintiff was laying on the couch, defendant struck plaintiff several times on his chest by pounding his chest with a closed fist.

Defendant left the apartment and her mother and sister arrived. After defendant returned several hours later, defendant was still angry. Plaintiff opened the refrigerator, and defendant proceeded to slam the door shut breaking a piece of the refrigerator off. Plaintiff said she cannot do this because the refrigerator is his property and defendant should not break things that are not hers. Defendant became furious and started to strangle plaintiff. Plaintiff asked the defendant to stop choking him. Defendant stopped choking, but then hit plaintiff and then proceeded to slam the door to the third bedroom several times. Defendant's sister, Jennifer, tried to calm the defendant down.

Plaintiff stated he wanted to leave because he wanted some peace and defendant pressed to accompany him on his walk. Defendant said she wanted to buy a house together. Plaintiff was afraid the situation would again escalate; so, he proceeded to go to work. Plaintiff said there was no

peace, no harmony and defendant blamed him for things he did not do, which plaintiff characterized as emotional abuse and manipulation.

On June 20, 2021, at approximately 9:00 a.m., defendant was making plans to attend a party about one hour away in either Fort Lee or Clifton. The parties discussed how defendant would get there and back, and after a number of options, plaintiff suggested defendant take a bus. Defendant accused plaintiff of not caring for her safety and became furious. She yelled at plaintiff and then in the middle of her anger, she got even angrier about the Father's Day present she gave to plaintiff. Plaintiff said the defendant was pretending to be nice with the present; but, in reality, the present was an Apple tracking device. That plaintiff was not pleased with this present only made defendant angrier. Plaintiff said defendant misconstrued his reaction to the present. The baby at this time was 11 months old and plaintiff wanted their resources focused on the baby and not on presents for one another.

On June 26, 2021, plaintiff was feeding Noah black beans that defendant's mother made, and the child was not eating well. Defendant got angry at plaintiff and misconstrued plaintiff's concern about the child not eating with plaintiff being critical of defendant's mother. Defendant became very angry, walked into the room, asked "Who the fuck do you think you are" and accused plaintiff of trying to control the feeding of the child.

Plaintiff asked defendant to leave the room because she was very loud and disturbing the child during feeding. Defendant misconstrued this comment as plaintiff trying to control her. At this point, the child started to cry as defendant's anger escalated to screaming at plaintiff.

Plaintiff tried to soothe Noah. Defendant returned and continued with her angry tirade against plaintiff. Plaintiff asked defendant to leave. As plaintiff was getting ready for work in the third bedroom, defendant stood in the doorway preventing plaintiff from exiting. Plaintiff asked defendant to get out of the way. Defendant refused and asked to see plaintiff's private parts. Defendant was upset plaintiff would not change his clothes in front of her. Plaintiff was not comfortable changing in front of the defendant because of the ongoing abuse. Plaintiff went to the bathroom to complete getting ready for work. Plaintiff felt violated and that defendant did not respect his wishes concerning viewing his private parts despite plaintiff having made it clear he did not want her to see them.

Prior History

There is an extensive prior history of allegations of domestic violence by defendant on plaintiff.

On June 3, 2021, plaintiff did not feel safe with the defendant and the defendant did not feel safe living in West New York. Defendant told

plaintiff that if they moved, then the defendant would "stop being like this," meaning hitting the plaintiff and threatening suicide by overdosing on medication. Plaintiff suggested they separate and said that everyone was suggesting that they separate. Defendant got upset and angry. She pulled on his arm, side, and neck while scratching him. Plaintiff tried to get away and recorded defendant. Defendant then stated she was going to kill herself because plaintiff wanted to separate.

As plaintiff was lying in bed, defendant came into the bedroom with the prescription medication which she previously threatened to commit suicide with. Plaintiff was scared defendant might kill herself, hurt Noah, or kill him. A week before, on May 29, defendant said to plaintiff that he may find Noah dead. Defendant put a handful of pills into her mouth and started chewing them. The pills were no longer in solid form and were mushy. Plaintiff testified this is the closest defendant came to carrying out the threatened suicide. Plaintiff told her to spit it out and defendant proceeded to spit the mushy pills into plaintiff's face. Defendant then accused the plaintiff of doing nothing, to which plaintiff responded he told her to spit out the pills, which is something.

Plaintiff previously called the suicide hotline and would hang up because he knew defendant would decline assistance.

Defendant called a friend, Yessenia, a psychiatrist in Colombia, and told her plaintiff did nothing while she was threatening suicide. Plaintiff said again he did something by telling plaintiff to spit the pills out. Defendant then proceeded to punch and hit the plaintiff on his body and head while she was on the phone.

On May 29, 2021, while plaintiff was at work, defendant tried to call twenty times. When plaintiff saw these calls, he did not want to call back because it was very late and he did not want to wake the defendant. Also, plaintiff informed that when he has received so many calls from the defendant in the past, they were always of a harassing nature.

When plaintiff arrived home, defendant confronted him and said, "fucking answer your phone and do you want to find your son dead?" Plaintiff asked why the son would be dead and plaintiff shook the medication bottle for pain in front of plaintiff and again said she was going to take these pills. Plaintiff said that defendant could have called the manager if there was a true need to speak. Plaintiff said that defendant's statement about Noah is one of the worst things that could be said. Of particular note, plaintiff testified that words matter and words are a warning. This was compelling testimony by the plaintiff.

P-5 is an audio from May 29, 2021, that, while a little better than the version played during Dr. Singer's examination, was still largely inaudible. What could be discerned is set forth below. The identification of the content was placed on the record and then both counsel were given the opportunity to supplement on the record with anything they felt the Court either overlooked and/or did not identify. This was done with all video evidence proffered by both parties, and each time the Court identified the gist of what is depicted in the video and both counsel at times supplemented and/or requested to watch and/or listen again. In this manner, there is no disagreement over the content of what is summarized for each video and audio.

For each of the videos that follow, plaintiff's counsel first questioned his client without plaintiff having the TRO in front of him. Then, when plaintiff's counsel was done with the examination for each separately identified incident, plaintiff's counsel played a video. On each occasion, the video comported almost precisely with the content of plaintiff's testimony. The Court details this process to avoid confusion in the following continuing synopsis of plaintiff's testimony because it may appear the Court is being duplicative; however, the first part of the summary is plaintiff's testimony

and the second part is then a description of what appears on the video evidence per the process set forth above.

Defendant stated, "I'm telling you – you don't want to answer the phone." There was a short back on forth on the nature of the emergency and defendant then stated, "Do you when you come home want to find your son dead." Plaintiff asked why he would be dead and what happened.

Plaintiff testified there was no emergency and defendant was simply angry because he would not respond to her calls or texts. Plaintiff felt horrified by defendant threatening to find the son dead and her threat to kill herself. It scared him because the defendant could follow up on these threats. Plaintiff characterized this as emotional abuse.

On May 9, 2021, after plaintiff returned home from work, he left a Mother's Day card and flowers for the defendant on the counter and went to sleep on the floor next to Noah, which he did often when Noah was an infant. Defendant was furious about the flowers and repeatedly asked plaintiff why he got her flowers. According to plaintiff, defendant wanted a new Apple Watch. Defendant was yelling and very angry. She grabbed plaintiff's face with her nails and twisted it. She did all of this in front of Noah because plaintiff was holding Noah at the time.

In P-6, we hear defendant ask, “Why did you buy me flowers, horrible flowers?” Defendant asked this repeatedly while she was screaming directly into plaintiff’s face. Plaintiff is heard saying “stop” and “the baby is resting.” Defendant persisted in being in very close proximity to plaintiff’s face and is heard saying, “the most cheap thing, the shittiest thing, this is what I deserve” and then she again grabs plaintiff’s face twice. Defendant then walks away and is heard saying, “Are you happy for what you’ve done? Are you happy for ruining my day. You did this to hurt me.” Plaintiff again asks defendant to “stop.” Defendant gets back into plaintiff’s face and repeats, “this is what I deserve” and again grabs plaintiff’s face, digging her nails into the right side of plaintiff’s face. Plaintiff gets up and walks away and sees the flowers thrown into the sink.

At around 3:00 p.m., defendant returned to the room with a dress on. Plaintiff says, “let’s get a nice lunch today” to which defendant responds “who says I want to have lunch with you?” Defendant then covers plaintiff’s face, mouth and nose with her hands making it difficult for plaintiff to breathe. Noah is present during this incident. Plaintiff asks defendant to stop and says Noah should not see this.

Defendant then proceeds to sit on plaintiff and plaintiff asks her to get up. Defendant slides down to plaintiff’s private area and says, “We are

going to have fun." Plaintiff asks her to stop and defendant responds, "oh really." Defendant then proceeds to grind on plaintiff's private parts in a sexual manner. Plaintiff says, "This is sexual assault and I do not consent." Defendant is heard saying "not going to fuck your woman" and then places her hands inside of plaintiff's pants. Defendant states, "you don't have an erection" several times and then asks "if plaintiff is going to call the police and send her to jail?" Plaintiff says he will call the police and defendant responds, "what are you going to say, that you won't have sex with your woman" and then calls the plaintiff "gay." Noah was in his crib the entire time during this incident. Defendant is also heard saying, "Parents have sex in front of their kids."

P-7 is a video taken shortly thereafter on the same day. Defendant says "don't talk to me anymore." The video shows defendant's hands on plaintiff's mouth, nose and neck with twisting. Plaintiff says, "Get off of me." Defendant says, "Going to put me in jail." Plaintiff again says to "get off" and defendant says "want to have fun." In this video, defendant slides down and is grinding on plaintiff's private parts and puts her hand inside of his pants. Defendant asks, "Are you rejecting me?" and proceeds to take her dress off leaving defendant in a piece of lingerie that is akin to a one-piece bathing suit with a high cut in the groin area. Plaintiff says, "I don't consent

to this" and defendant asks, "Do I look bad" and "sex in front of child/babies" is OK, or words to this effect. Defendant touches plaintiff's private parts and says he does not have an erection and repeats this several times. Plaintiff says this is an assault, repeats this and then says it is a sexual assault to which he did not consent.

Defendant states, "you don't want to have sex with me" and plaintiff responds that he is going to call the police, to which defendant states you are "going to call the police you don't want to have sex with your woman." Plaintiff repeatedly says, "I don't consent to this." Defendant than states, "you are gay, we know the reality and I prove it today you are a gay man, get out of the closet."

After the video ended, plaintiff made his way to the bedroom. Defendant was furious about not getting an Apple Watch and attacked him by punching, hitting and twisting his face, nose and ears. Defendant also hit plaintiff with her phone and strangled plaintiff. Defendant then looked at her phone and said look what other people are doing on Mother's Day. She then, while the plaintiff used a pillow to cover his face, proceeded to hit him with the phone in his back.

P-8 is another video from May 9, 2021. Here, plaintiff says stop and defendant than grabs and squeezes his neck, and pulls and twists his left ear.

Plaintiff is heard saying, “Get off of me.” Defendant says, “you want to have fun with me” and then punches plaintiff on the left side of his head and left ear. At this time, the baby is another room and is making normal baby sounds. Defendant then puts a brace, part of which is plastic, on her left wrist and says repeatedly, “You want to punish me with flowers.” Plaintiff says the flowers were “professional flowers.” With braces on both hands, defendant then grabs plaintiff’s left ear and plaintiff is heard saying “stop.” Defendant says, “You want revenge” and she proceeds to squeeze and push in the left side of plaintiff’s face. She then chokes plaintiff by putting her entire left arm and elbow around plaintiff’s neck multiple times, repeating “doing it for revenge” and twisting plaintiff’s left ear. There are more baby sounds heard in the background at this time.

Plaintiff states, “Your behavior is inappropriate” and defendant responds, “How about yours?” At this time, the baby is in need as the sounds are far louder and urgent in contrast to the two prior sounds from the child that were pleasant sounds commonly made by babies not in any distress. Defendant then chokes the plaintiff with both hands and asks, “Are you happy?” Defendant is sitting on plaintiff and after she gets up, plaintiff puts a pillow over his head. There is inaudible talking. Plaintiff’s left ear and side of his face are markedly red. Defendant asks, “Are you going to

put me in jail after inviting my mother for lunch?" Plaintiff just looks up at the ceiling with a blank stare. Defendant then hits plaintiff on the face with her phone and grabs at his ear and twists it, to which plaintiff says, "Stop." Defendant then says, "What you did to me; I am the mother of your son." Defendant hits plaintiff twice on his arm with her phone. While plaintiff is standing covering his face with a pillow, the defendant then strikes plaintiff in the back with her phone and pursues him.

Defendant's counsel correctly supplemented this summary of the video by noting defendant kept using the word "misogynist." Shortly after minute marker 6:00, defendant's counsel believes that plaintiff then smiled or smirked while sitting in bed. The Court does not see this as a smile; rather, for a microsecond, plaintiff's lips on both sides move from a static position outward and then back inward. The Court is not able to characterize this as either a smile or smirk. The Court reviewed this segment many times.

The braces worn by defendant contain hard plastic along with Velcro straps to keep them in place. Defendant purchased these braces for pain. Plaintiff was unclear about what type of pain. Plaintiff said defendant used the braces to inflict greater pain on him because the plastic hurts due to its hardness.

Plaintiff looked in the mirror at his injuries from defendant's attacks and went to the back room. Defendant entered his room and proceeded to hit him while he was on the bed. Plaintiff at this point gave up and called the police. As soon as plaintiff made this call, defendant was in control of herself. She stopped the verbal and physical abuse, apologized and asked plaintiff to not do this to her mother; that is, call the police knowing her mother was coming over. Plaintiff checked on Noah, picked him up and defendant repeatedly apologized, and followed plaintiff into the bedroom saying she would not do this again, will move out, do not ruin her life, doesn't want to lose her job, doesn't want to go to jail and asked the plaintiff to call the police back and tell them not to come. Clearly, plaintiff's call to the police immediately resulted in a dramatic change in defendant's behavior. Her aggression ceased; she was apologetic; she pleaded with plaintiff to rescind the call to the police; and, she very much appeared, despite being upset that plaintiff had called the police, to be in control of her faculties.

After plaintiff buzzed the police in, he stated to the police he did not want to ruin her life; but, she would not stop hitting me. Defendant said they were arguing, which plaintiff denied. Defendant stated she has postpartum depression.

P-10 is the final video from May 9, 2021, after the police were called up to the time including their arrival.

Defendant is upset and holding the baby. She states repeatedly to Joel, "don't do that" and in a non-violent manner touches plaintiff's chin twice. She is begging and pleading for plaintiff to listen to her, she doesn't want to go to jail, don't do this to her all while crying and asking why are you doing this to me. Defendant continues with, "Joel please, listen to me, what are you doing, going to lose my job, going to lose everything, will ruin my life, don't destroy my life, I'm begging you, I'm going to leave now, talk to me Joel, I'm going to stop, why are you doing this and don't do this to my mother." Plaintiff walks away and buzzes the police in. Defendant is heard saying repeatedly, "Don't put charges on me". Plaintiff asks defendant to stop and advises the baby is upset.

When the police enter, defendant's demeanor markedly changes again. The police ask plaintiff what is going on and he says the defendant has been hitting him and he doesn't know what to do. He identified defendant as his girlfriend with their child and reiterated he does not want to ruin her life. Defendant tells the police they were having an argument, repeats this twice and then states she has postpartum depression. Plaintiff is heard disputing they were having an argument.

Plaintiff testified he called the police because he wanted the violence to stop and was scared. The first-time plaintiff called the police and told them defendant was hitting him, he did not press charges because the defendant said she would stop. Plaintiff said this was a mistake because the hitting did not stop. As soon as the police left, defendant then blocked his way from leaving his room and was upset that plaintiff called defendant's sister.

On the prior occasion where plaintiff called the police and after the defendant's mother and sister arrived, plaintiff and defendant discussed that defendant was not contributing towards expenses, which greatly upset defendant. Defendant then transferred approximately $1,200–$1,300 and plaintiff then said let's go get the Apple Watch, hoping this would make defendant happy. While driving to Best Buy to purchase the Apple Watch, defendant punched plaintiff in the face while he was driving because she was mad that he called the police.

Plaintiff said this was the worst day of his life and he does not want to live like this. He gave up and called the police for help and was hopeful the defendant would change. Significantly, plaintiff testified "defendant can start and stop this when she wants, like a switch, defendant can control it."

On January 31, 2021, defendant wanted to throw out a rusty stainless-steel garbage can plaintiff positioned to catch water, which is why it rusted. Plaintiff explained he could clean off a new identical bucket and this way the rust would not accumulate. Defendant was furious plaintiff did not listen to her, her opinion did not matter and he did not obey her right away. Plaintiff said he was not going to accept this abuse. Defendant than started throwing things around the apartment and tipped over the child's Pack n' Play. Plaintiff was concerned because if Noah was in this, it would have caused the child harm. After throwing more things in the apartment, defendant then asked the plaintiff to not call her father and approached plaintiff with a knife, pointed outwards and not at plaintiff. But this nonetheless scared the plaintiff. Plaintiff wanted the violence to stop and thought that if defendant's family knew about it, they would help stop it.

On November 26, 2020, the parties were to attend Thanksgiving at defendant's mother's home. Defendant was unhappy with their lives, meaning where they lived, unhappy with plaintiff and plaintiff's job. Defendant told plaintiff she needed another man to "fuck" her and that she did not want him to go to the family gathering. Plaintiff went and took Noah, and defendant eventually arrived. After they returned home, defendant threw things about the apartment. While the doctor instructed for

the parties to put Noah in his own bed, defendant insisted Noah sleep by her in the bassinet. While plaintiff relented, defendant proceeded to rip his shirt off, which made plaintiff scared and afraid of escalation.

On November 6, 2020, defendant returned home from work and opened a medical bill for Noah's birth, which sent her into a rage. Defendant insisted plaintiff pay for this. Plaintiff responded they need to have a conversation about how to address the bills, which included this bill and also defendant wanting to get cosmetic dentistry to repair damage to her teeth. Defendant became furious and grabbed plaintiff's face with her left hand underneath plaintiff's left lip. She then struck him with the letter multiple times, about twelve. Defendant then punched plaintiff in the face with the incident continuing to escalate. Plaintiff jumped into the end of the bathtub to protect himself. This is recorded on video.

P-13 shows defendant grabbing plaintiff's face. Defendant is agitated. Plaintiff is heard telling defendant to leave him alone. This video shows defendant hitting the plaintiff with the letter while stating "this is not fair." Plaintiff asks defendant to stop. Defendant is heard telling plaintiff he does not care about her suffering. There is reference to defendant's teeth, which plaintiff informed defendant wanted to get fixed. Plaintiff wanted to figure things out, which he said meant how to pay all of the bills, including Noah's

bill and the cosmetic dentistry. Plaintiff said this incident made him scared, hurt, and also he hurt physically from the hitting by defendant. Plaintiff said this was part of defendant wanting to control him.

On September 28, 2020, plaintiff wanted to do the parties' and Noah's laundry in the public laundromat. Defendant became angry because she did not want Noah's clothes washed in a public laundromat. Plaintiff claims defendant felt this was beneath her station and not good for her image. Defendant hit plaintiff with her hands on his head and arm. Plaintiff responded orally this was not good for Noah to be exposed to. Plaintiff testified this incident made him feel unsafe. Plaintiff said this violence went on for hours with defendant striking him and that he had marks all over.

P-14 is a photograph taken by plaintiff on September 28, 2020, and reveals marks on plaintiff's forehead, top of nose, bottom of nose, and red marks underneath his right eye and below his right lip. P-15 is a photograph taken by plaintiff on September 29, 2020, depicting injuries to the left side of his face. There are multiple red marks on his face with a red welt in the middle of his face and a scratch mark on one eye. P-16 is a photograph depicting a bite mark on plaintiff's right arm made by defendant during this attack. Plaintiff felt shocked, terrified and was afraid of what defendant

would do next. Plaintiff testified he looked like he was in an MMA match. This characterization is apt.

On September 4, 2020, defendant became furious after she learned plaintiff had recordings documenting the abuse. She told plaintiff to call the police, that she was going to kill him, and he would not enjoy his son. While plaintiff was on the couch, defendant grabbed his neck and shoulders while she was on top of him. Plaintiff was scared about the escalation. This incident started in the kitchen and continued through the hallway into the living room. P-17 is a video showing defendant in a rage. Defendant is heard calling plaintiff a "fucking monster," "will kill you today," "call police," "going to kill you," and "you are not going to enjoy your son." While shouting these words, defendant is seen grabbing plaintiff. Plaintiff was scared about the threats to kill him and concerned things would get even worse.

On August 30, 2020, plaintiff wanted to go to work but defendant did not want him to return to work because she did not like his job. Defendant became furious and strangled plaintiff in anger, hit him with a shoe, said that they both would kill each other and threatened suicide by holding a knife to her wrist in Noah's room while plaintiff was holding Noah. Plaintiff tried to calm defendant down, which she eventually did.

At the start of defendant's cross-examination of the plaintiff, two additional prior incidents of domestic violence were elicited by defendant's counsel, for which defendant's counsel expressly waived any due process concerns about these incidents not being in any of the amended TROs. First, in mid-December 2019, plaintiff said defendant pushed him when she was angry; but, that they slept together in the same bed that evening. Second, in January, 2020, defendant hit plaintiff on the upper part of his body. This testimony was elicited by defendant's counsel as part of questioning on that part of the end of the addendum to the amended TRO which provides there was physical violence throughout their relationship. Plaintiff did not recall any physical violence during the months of February through June, 2020, although he repeatedly testified there were acts of violence that wounded him.

Prior to concluding the cross-examination of the plaintiff on May 15, 2023, and before completing the testimony for the day on May 15, plaintiff was directed to conduct a search for any additional videos and photographs. At the start of the continued trial (day 4) on May 16, 2023, the Court marked as exhibits the following and testimony was elicited from the plaintiff by way of reopened direct examination concerning additional evidence. No photographs were located, but new videos and one audio were located. The

Court proceeded to view the videos and listen to the audio, sometimes rewatching and relistening multiple times.

P-18 is a two-second video of an incident that occurred on December 18, 2019. Defendant is observed moving toward the plaintiff aggressively with her eyes bulging. Defendant's lips come together and the defendant's hands go out. Contact is made by the defendant into the plaintiff. P-20 is a video denominated part II of the December 18, 2019 incident. Defendant is heard saying "stop recording me." Defendant's left arm is observed to be pulled back toward her right shoulder and the camera is jerked away. Plaintiff made these recordings because he was scared. In the second video, plaintiff made clear defendant took a swing at him and struck him on his forearm.

P-21 is primarily an audio, although there is less than two seconds of video at the beginning and also an additional two seconds of video at the 1:32 minute mark on this 4:42 audio. The screen is dark and there is ruffling throughout, the source of which is unknown. Defendant is in an agitated state and says, "Tell me when I did that; tell me when I opened the envelope; liar." Plaintiff responds, "you left it there." Plaintiff is heard telling the defendant to go away. Much of the remainder is not discernable and includes partially understood things that defendant said, including, "I'm

going to wash my face; don't wait; ugly man; … fucking this; this is the life; do you think I am Martha." Plaintiff is heard stating at the very end, "You just Arianne, don't hit me."

Plaintiff provided context for this video. Defendant was angry about messiness in the condo. She yelled and degraded plaintiff, and in response, plaintiff pointed out the open mail on the counter was left there by the defendant. This made the defendant furious. Plaintiff characterized defendant's repeated accusations of something being his fault—in this instance the messy mail—as abuse. He turned on the camera to document her yelling and physical abuse of him. Sometimes, the camera would deescalate the situation; but, in this instance, it did not work and the defendant struck the plaintiff.

P-22 is a 44-second video taken on March 27, 2020, and again, defendant is in an agitated state. Plaintiff is heard saying, "don't hit me." Defendant asks, "why are you doing this to me?" Plaintiff states he is not hiding. Then, defendant is on the floor hitting the plaintiff. Plaintiff stated defendant then said, "you gonna still in front of me," presumably referring to the plaintiff recording the defendant. Defendant is visibly pregnant and prior to being seated is observed holding her hand below her belly.

P-23 is the full version of P-5. Initially, the parties are lying down and speaking calmly to one another. Defendant says quietly that plaintiff did not buy anything for her on purpose (for Mother's Day), yet he bought something for his mother. In response, plaintiff says they will have a nice lunch. Defendant states, "who says I want a nice lunch with you. You didn't buy anything for me for real? My Mom takes care of your son three days a week; what did you buy for her? How about me? I am the mother of your son, your partner. Why no gift? Not living a life like this. Not giving me any gift now."

Plaintiff says, "your behavior is unacceptable." Defendant replies, "it's Mother's Day." Plaintiff says, "a gift is not necessary." Defendant says, "you want revenge; let's see who is going to." At this point, defendant becomes agitated and after saying a few more things, attacks the plaintiff. Defendant is observed trying to cover the plaintiff's nose and mouth. Plaintiff tells defendant to get off him. Defendant then states, "you gonna put me in jail today?" Plaintiff tells defendant to get off, and this language goes back and forth several times. This is the part of the video that was not previously reviewed.

Plaintiff testified he previously said this incident occurred in January; but, from the date of the video, he corrected his testimony to identify this

incident occurred on March 27, 2020. Defendant was hitting the plaintiff earlier before the video started. He went to the back room and she followed him. Plaintiff told her he did not want to get hit anymore and that if she wants to leave, then she should leave. Defendant accused plaintiff of hiding and struck him with a closed fist more than once in the legs, which hurt him. Plaintiff got up, went into another room and defendant followed him. Defendant is seen on the video picking up an object that he believes she intended to use to hit him.

The December 2019, January 2020 and March 2020 incidents are not in any of the TROs because plaintiff did not have sufficient time to include them and nobody asked. Defendant's counsel, on questions put to her by the Court, expressly waived any due process concerns, did not seek an adjournment or request for plaintiff to further amend the TRO and stated in no uncertain terms her strong preference to continue with the trial.

Need for Final Restraining Order

Plaintiff testified defendant's behavior continued to escalate prior to his obtaining a Temporary Restraining Order ("TRO"). He is afraid of the defendant and seeks protection from continued abuse. He is not seeking a Final Restraining Order ("FRO") out of spite and is not angry with the defendant. Indeed, plaintiff said the current parenting time schedule is

working. Rather, plaintiff said absent the TRO, the abuse would have continued. Plaintiff seeks for defendant to attend batterer's intervention. This testimony must be examined in conjunction with how plaintiff felt after each incident of domestic violence, as summarized in detail above. All of the acts aforesaid with documented physical injuries, coupled with plaintiff's testimony on the emotional pain and injuries suffered from each incident of domestic violence make plaintiff scared and afraid of defendant.

Except for the report of Dr. Singer, all of plaintiff's evidence was moved and admitted into evidence with no objection to any of the evidence by defendant's counsel.

Cross-Examination of Plaintiff

On cross-examination, defendant sought to establish the domestic violence and abuse commenced after defendant became pregnant in or about October 2019. Prior to moving in together in October 2019, defendant did get angry at the plaintiff; but there was no physical abuse or violence. The arguments escalated during the time they started living together. Plaintiff testified defendant wanted a condo with a washer and dryer in the unit, and this became an issue later; but, defendant complained about this from the time they moved in together.

Defendant's counsel drew a distinction between their sizes: Plaintiff is 5'11" and weighed approximately 180 pounds while defendant is between 5'4" and 5'6" and weighed 135 pounds.

Plaintiff denied stating that if defendant did not close the bank account she had with her sister that the relationship would not move forward. On redirect, plaintiff explained there was an incident where money was withdrawn from the joint account by accident and when this occurred a second time, plaintiff asked whether the same thing happened.

Plaintiff was unsure when defendant became pregnant (he was unsure if it was in October or November 2019), whether he knew that defendant experienced vaginal bleeding that led to a trip to the emergency room during the pregnancy and whether he ever stated this trip was not an emergency. Ultimately, plaintiff testified this could have been handled by an urgent care center.

Plaintiff knew this was a high-risk pregnancy due to defendant's age. Plaintiff denied telling Dr. Singer that Noah was born safely with a caesarean section. Plaintiff was confused by the medical terminology for whether there was a suction cup or vacuum used to assist in the birth by vaginal delivery. Plaintiff did not know if defendant had an episiotomy and did not know what this is. Plaintiff testified defendant had four hours of

labor; but, after it was established defendant's water broke on July 13 at approximately 6:00 p.m. and Noah was born on July 14 at approximately 8:00 p.m., plaintiff informed of his belief that "labor" is from the time of crowning to the delivery, which was approximately four hours. Plaintiff did acknowledge the birthing process necessitated the need for recovery for the defendant.

Plaintiff attended all of the OB visits prior to the birth of Noah and after COVID, plaintiff would take defendant and sit in the car. Neither plaintiff nor defendant told the OB about the physical violence. Plaintiff testified defendant said multiple times the baby would be taken from her if they disclosed the physical violence. Two times before the COVID restrictions went into effect, plaintiff told the doctor that defendant was "very nervous." The doctor directed them to the back of the insurance card and to call the number.

Plaintiff testified to both physical violence and verbal, emotional and psychological violence. Examples of the latter include two incidents. In July 2019, plaintiff put on a sweater and defendant called him a "fucking asshole" and an "asshole" for doing so. Plaintiff said this made him feel that he did something wrong, and he characterizes this as mental violence and abuse. In hindsight, plaintiff testified he wished he broke up with defendant

back then, now that he has learned about abuse. Second, in October 2019, the first day they moved in together, defendant was very upset she had to park a few blocks away from the parties' condominium and proceeded to yell and swear, blaming plaintiff for the distance. Plaintiff said defendant was taking something out on him, should not be mad at him, and was blaming plaintiff for their living location.

An additional example of emotional abuse prior to the pregnancy is whether the apartment belonged to both of them or just plaintiff. Plaintiff on prior testimony said the apartment was their home; but, plaintiff would not agree when defendant would state the apartment was both of theirs. This is evidential of what both experts noted is the extreme animosity between these parties. Another incident relates to whether plaintiff bought too much or not enough supplies.

After Noah was born, the violence increased. Plaintiff knew defendant did not fill out the postpartum questionnaire accurately. Again, plaintiff attributed this to the fear of defendant that the baby would be taken away. When asked directly by a nurse, defendant simply said she had new mom worries. Plaintiff did not tell the doctors because he did not want to make defendant upset.

Plaintiff is aware that in defendant's culture both parents' names go on the birth certificate. Plaintiff said defendant made the choice of what went on the birth certificate.

There was extensive testimony about breastfeeding and whether plaintiff was supportive or not. Plaintiff testified he did say defendant was not doing what the lactation specialist advised, which is to stimulate the breast every three hours.

There was also extensive testimony about when plaintiff learned of defendant's postpartum diagnosis. Plaintiff did not recall if a doctor diagnosed defendant with postpartum depression. In the fall, plaintiff called a hotline and was told defendant had postpartum depression. At the six-week post-birth visit, the doctor told defendant she would feel better after a run; but, this doctor did not tell plaintiff of any diagnosis.

Plaintiff learned of the postpartum diagnosis in the fall of 2020, from Be Well. Plaintiff's mother told defendant during the pregnancy that defendant's behavior would get better after the birth; per plaintiff, it did not. Plaintiff asked defendant's family members to get her help to stop doing what she was doing to him. Plaintiff testified defendant told him she had postpartum depression before he learned this from Be Well. Plaintiff called a hotline and told defendant to do something about this after speaking with the

person on the hotline. Plaintiff asked the hotline about whether lying is a part of postpartum depression but did not ask if violence was a part of postpartum depression.

Plaintiff also called a DV hotline several times and he recalls specifically doing so after the September 28, 2020 incident. Plaintiff knew about the postpartum depression before he made this call.

On one occasion in or about June/July of 2020, before Noah was born, plaintiff called defendant a "fucking bitch." This was in response to defendant criticizing plaintiff's employment after plaintiff cleaned the apartment, made meals for the defendant and defendant criticized the meals. Plaintiff apologized.

It is unclear when, but at some point, the counselors at Be Well and the parties' couples' counselor Dave were told about the violence and according to plaintiff, both said the violence needed to end immediately.

Plaintiff does not link the postpartum depression and the violence. Plaintiff claims defendant could control her violent outbursts, such as turning it off to go to sleep, after purchases were made, during her work and turning it on when waking up, harassing plaintiff during her lunch break and most significantly because nobody else experienced any violence by the defendant. Defendant, when committing the acts of violence, told plaintiff

he deserved it and that part of her treatment was for plaintiff to purchase a new car for her. Plaintiff informed none of the purchases or actions he took stopped the violence including purchasing a camera, a luxury watch, Apple Watch, shoe stand, new coat rack and nursery furniture. Plaintiff said defendant was manipulative and engaged in falsehoods by constantly telling people things that were not true.

On cross-examination, defendant's counsel had plaintiff review much of the previously reviewed video evidence and established the videos were taken at a point in time and did not capture the entire dispute. Plaintiff would turn off the video recording once he felt safe. The taking of the videos made plaintiff feel safe.

Plaintiff made clear he has no video or audio records or photographs prior to December 2019. Plaintiff also made clear defendant's behavior changed after she became pregnant.

Defendant's counsel questioned plaintiff and showed a video from June 19, 2021 that was used during earlier proceedings in this matter related to defendant's parenting time applications. Defendant's counsel made clear the wavier of any due process issue based on her being the proponent of this incident which is not included in the controlling TRO. Defendant is crying, hysterical and is observed holding a six-inch knife to her side by her right

hip area. Defendant is in an agitated state and asks plaintiff, "You want the knife; what are you doing; what are you gonna do to me; why are you doing this?" Initially, plaintiff objected, and then withdrew the objection. Defendant violently attacked him and plaintiff had marks on his face. Plaintiff again characterized defendant's accusations against him as emotional abuse, as if to make the plaintiff feel that he did something wrong. Plaintiff was scared by the defendant pointing the knife at herself and stopped recording to try and deescalate the situation.

Defendant's counsel had the Court listen to the audio on P-5 many times. Defendant's counsel believes defendant is heard referring to her alleged medication, pregabalin. However, as with the presentation of this audio previously, the Court largely found this audio incapable of being discerned, and this after the Court put its ear directly to the speaker and listened to this audio several times.

Plaintiff does not know if defendant was taking pregabalin, but stated defendant threatened to overdose on her pain medication. In response to this incident, plaintiff located an attorney.

Plaintiff informed he tried to help the defendant by trying to support her in the way she wanted to be supported. Sometimes, her mother and

sister would stay with her. Plaintiff denied that defendant's mother took care of Noah three days per week.

Regarding the invoice for $900 for an emergency visit, plaintiff informed he paid a number of other bills and wanted to discuss because defendant did not pay plaintiff back for Amazon bills for things she ordered.

After the conclusion of plaintiff's testimony, plaintiff rested. All of Plaintiff's evidence was admitted.

Defendant's Motion to Dismiss following Plaintiff Resting

Defendant made a motion to dismiss following the close of plaintiff's case on four different grounds: (1) failure of the plaintiff to identify the defendant in Court, (2) need for an FRO under the second prong of Silver v. Silver as it relates to defendant suffering postpartum depression, (3) domestic contretemps and (4) need for an FRO predicated on all the violence having occurred after defendant became pregnant. Whether characterized as a motion for involuntary dismissal or directed verdict, motions at this stage of the proceeding require the Court to (1) accept everything plaintiff testified to as true, (2) give plaintiff all reasonable inferences and (3) not address credibility.

Identification has no bearing in a civil case, especially given the visual depictions of the actual violence by the defendant on the plaintiff who are

both clearly identified in the numerous videos admitted into evidence. Defendant offered no legal authority requiring there to be identification testimony in an FRO trial akin to what is required in a criminal trial.

The actual violence belies the claim that what occurred between these parties is domestic contretemps. Finally, on the "need" based motions, accepting everything plaintiff testified to as true, giving plaintiff all reasonable inferences and not assessing credibility, there can be no question that plaintiff established a prima facie case for issuance of an FRO. That defendant had postpartum depression which may have produced and/or contributed to her actions and conduct does not vitiate, at this state of the proceeding, plaintiff's statement of a prima facie case warranting issuance of an FRO. Therefore, all four motions were denied.

Jennifer Munoz

Jennifer is the older sister of defendant. Jennifer denied any childhood trauma to defendant prior to coming to this country or any mental illness. There were issues resulting from the immigration to the US, including learning the language.

On the day when Noah was brought home from the hospital, Jennifer decorated the condo and arranged for memento photographs to capture the day. Plaintiff and defendant's mother put Noah in his room. Pumping was

difficult because defendant's breasts needed to be massaged to stimulate milk production, which was extremely painful. Defendant entered the kitchen crying.

Prior to becoming pregnant, plaintiff and defendant were happy and in love with common interests, including the gym. Defendant saw plaintiff on Tuesdays and Sundays for three years until the parties moved in together. After becoming pregnant, defendant experienced mood swings, sadness, anger and her "behavior was getting worse and worse and worse."

Defendant called Jennifer during her pregnancy and was always upset, crying, and complaining, and said that plaintiff was mean. Jennifer was certain in her testimony that defendant, both during and after the pregnancy, was not the same person she was prior to becoming pregnant.

Jennifer told plaintiff he has a chance to tell the doctor during the pregnancy visits about defendant not being herself. Jennifer sent the plaintiff text messages, which plaintiff did not respond to, related to the OB/GYN being able to prescribe defendant something that would not interfere with her pregnancy.

Jennifer told plaintiff to discuss defendant's symptoms with the nurse while defendant sought medical treatment in Hoboken. Plaintiff told Jennifer about what defendant was doing, namely, crying, being unhappy,

arguing and hitting. Jennifer responded that we need to find a way to help her. Jennifer said the person that defendant became is "not her sister" and repeated this language several times.

Defendant called Jennifer and said she was "not happy, doesn't know what is happening to me and doesn't want to live her life." Jennifer was upset in providing this testimony because of the threat by defendant to take her life and not knowing what was going on with her sister.

After delivering Noah, defendant's belly was destroyed due to a hernia pushing out her belly button and she had pain in her hands.

Jennifer relayed an incident where at first plaintiff was in a hurry to go to the grocery store, then sat down, and it took an hour for the parties and Jennifer to go to the grocery store. Jennifer felt this demonstrates plaintiff's insensitivity to defendant.

Jennifer offered for defendant and defendant's mother to stay with her, which would afford defendant time to rest while Jennifer and her mother took care of Noah. Plaintiff did not agree, informing he wanted to see Noah every day in the morning.

Prior to concluding the first day of Jennifer's direct examination, defendant's counsel sought to address numerous pieces of evidence that were not previously identified in compliance with the pretrial Order. The

Court directed counsel to confer and if not resolved, the Court would set a briefing schedule. By letter dated June 16, 2023, plaintiff's counsel informed that subject to laying the proper foundation, he does not object to the additional evidence.

The testimony of Jennifer continued and was completed on July 10, 2023. After defendant became pregnant, plaintiff informed Jennifer of defendant's outbursts, anger, crying, throwing things and being upset about everything. D-C is a text exchange between the plaintiff and Jennifer where in September 2020, plaintiff advises defendant hit him and a friend of his died. Jennifer's response, by text in the exhibit, expresses remorse for the loss of plaintiff's friend. Jennifer's testimony was different than the exhibit. In Court, Jennifer stated she responded that the illness is tough and that Joel needs to help her. This is not found in the text exchange. Later in the text exchange, in response to Jennifer writing about postpartum, plaintiff writes defendant's problems are more than postpartum.

Initially, Jennifer testified about defendant having mood swings before becoming pregnant, and then stated the mood swings occurred after the pregnancy. After becoming pregnant, defendant was upset because of pain, body aches, problems with her belly and how her appearance was impacted. Defendant was crying and upset frequently.

On cross-examination, Jennifer admitted knowledge that defendant was hitting plaintiff and that plaintiff sustained injuries. Jennifer never called 911 or emergency medical services and while at one doctor appointment, never tried to speak with the doctor about defendant's actions.

Jennifer claimed she spoke with plaintiff about defendant and Jennifer staying at their mother's house, but plaintiff would not permit this because he did not like the baby going out with defendant alone. Jennifer and her mother could have taken the baby out, but Jennifer claims this was not permitted by plaintiff.

Jennifer knew defendant started with therapy in September 2020; yet, Jennifer also acknowledged the issues between plaintiff and defendant continued throughout the therapy.

On redirect, Jennifer identified defendant's medical issues post pregnancy as including hernia, neuropathy and postpartum depression. Jennifer did not contact anyone, but her mother did by calling the postpartum depression hotline. Jennifer is disabled due to a condition that affects her muscles which impacts her ability to walk. This was discernable to the Court when Jennifer walked to and from the witness stand.

Zaritz Bru

Ms. Bru is the mother of both defendant and Jennifer Munoz. She testified on July 10, 2023.

Ms. Bru testified that prior to Defendant becoming pregnant, the parties enjoyed a loving relationship with hugging, going out, traveling and attending family functions. After Defendant became pregnant, Ms. Bru noticed changes in defendant's behavior, including becoming angry, upset, and crying. Defendant told her mother she was not feeling good and had mood swings.

Early in the pregnancy, defendant called her mother because of vaginal bleeding and said she needed to go to the hospital. Initially, Ms. Bru said plaintiff told her directly defendant did not need to go to the hospital; however, subsequently, Ms. Bru admitted she was told this by the defendant and not by the plaintiff. Similarly, when the bill for this hospital visit arrived, Ms. Bru initially testified plaintiff became angry; but, again, Ms. Bru did not see or hear this directly; rather, she was told this information by the defendant.

Ms. Bru planned on staying with the parties for two months but wound up staying only seven weeks. No explanation was provided for why this time was cut short by one week. Ms. Bru did not identify any incident

that occurred when the baby came home from the hospital. Rather, she testified generally to defendant needing to rest, being upset and crying a lot.

Ms. Bru did not observe any breastfeeding directly and only heard from another room in bits and pieces that plaintiff believed defendant was not trying hard enough to make the baby breastfeed. The parties did have a lactation consultant.

She observed arguments and told plaintiff to not call defendant crazy when plaintiff made a crazy motion by drawing a circle with his finger by his ear. Ms. Bru instructed plaintiff to not provoke the defendant.

Ms. Bru was aware of the postpartum depression diagnosis. In August 2020, she called the postpartum depression hotline. When people showed up to the property and despite the efforts of plaintiff, defendant would not let the people upstairs. Ms. Bru echoed what was alluded to in earlier testimony: Defendant did not want people upstairs because she was afraid the baby would be taken away from her. Ultimately, Ms. Bru conceded plaintiff's efforts in trying to convince defendant to permit the people to come upstairs did not constitute provoking.

During the pregnancy, defendant's behavior changed completely. She screamed, was frequently upset and constantly was crying. Ms. Bru

informed Jennifer told defendant to tell the doctor what defendant was experiencing.

On arrival home from the hospital, defendant had a hernia, neuropathy, and postpartum depression. Defendant was unable to take the baby out herself because of the pain in her hands. Ms. Bru did not recall if she offered to take the baby out, but defendant only left the house with the baby with plaintiff.

In May/June, 2021 Ms. Bru told plaintiff she was going to move out of the house as soon as she secured an apartment and wanted to take defendant, the baby and Jennifer with her. Plaintiff was silent in response.

While Ms. Bru knew her daughter was in therapy, she believes defendant was not getting the help she needed. She claims plaintiff told defendant she was crazy and to leave the house. In April 2021, Ms. Bru testified plaintiff told defendant she was free to leave. Also, during this time, Ms. Bru said she was going to call plaintiff's mother to which plaintiff responded by getting in Ms. Bru's face. Ms. Bru testified she felt threatened but not scared and did not call the police.

On cross-examination, Ms. Bru admitted defendant hit plaintiff, but claimed it was only once or twice. She ultimately admitted plaintiff told her

many times that defendant was hitting him. Ms. Bru struggled to admit that it is not proper for one person to hit another.

Ms. Bru believes plaintiff was controlling defendant; yet, neither Ms. Bru nor the defendant ever called the police. Ms. Bru believes the postpartum depression is completely responsible for the change in defendant's behavior, the anger, screaming, pacing back and forth, etc.

Defendant Arianne Munoz

Defendant testified commencing July 10, 2023 and concluding on July 18, 2023.

The parties dated for three years before moving in together in October 2021. Defendant became pregnant almost immediately after they moved in together.

Defendant denies any violence in her past. She was previously married and got divorced in a Colombia proceeding after she came to the US based on the infidelity of her former husband. Defendant testified the only trauma experienced was due to needing to learn the language and also the delay in securing employment commensurate with her abilities. She has the equivalent of a B.S. degree. In Colombia, she worked as a chemist. In the US, after stints in a restaurant and other low-paying work, she is now working for a pharmaceutical company. She denied any mental illness,

therapy, work problems, arrests, or tickets in Colombia prior to coming to the US. In November 2020, she became a US citizen.

After becoming pregnant, defendant became aware of changes in her behavior including becoming prone to outbursts of anger. She related an incident involving coming home from work, having purchased lentil soup and getting very angry to the point of throwing things based on plaintiff putting the large television set in the bedroom and the small television set in the living room. Defendant at trial was aware of her very strong reaction to such a small thing.

Defendant testified to feeling badly for hitting the plaintiff. She remembers hitting the plaintiff, but not why she did this. She testified repeatedly she was in crisis and would get so angry that any single thing, such as dirty plates or a dirty sink would result in her not being able to control herself.

Defendant initially said repeatedly things were happening to her body; but, as the Court clarified based on an apparent language issue, defendant was referring to changes in her mind.

While defendant worked eight hours per day, the pregnancy impacted her ability to work. The pandemic also resulted in less work. Ultimately,

defendant stopped working during the pandemic from March 2020 to September 2020.

About two months after becoming pregnant, in December 2021, defendant experienced vaginal bleeding and insisted on going to the emergency room where she was diagnosed with a urinary tract infection and respiratory infection. Her sac was broken, which is what produced the bleeding. When the bill arrived, plaintiff initially said he would help with the bill and then said he was not going to pay the bill. The parties frequently argued about monthly expenses and at this point, the relationship had a lot of conflict according to the defendant.

Defendant was diagnosed with a short cervix which precluded an amniocentesis, which plaintiff was insisting on and defendant was reluctant to undergo.

Defendant recalled the video depicting an incident on March 27, 2020 (marked D-D), where she calls the plaintiff a fucking asshole and plaintiff accuses defendant of being a liar. This video depicts scratches on both of plaintiff's arms and by his left breast. Defendant admitted causing these scratch marks on the plaintiff. She testified this was very early in her pregnancy and that she had mood swings, anger and could not control herself.

Regarding an April 3, 2020, video, defendant initially did not recall but then testified she remembers this incident. In this video, marked D-E, plaintiff states defendant argues with everyone all the time. There is a dispute between the parties with cursing by both and a further dispute on whether plaintiff told defendant to leave.

Prior to the birth of Noah, defendant admits the parties had disputes and claims this is because she was in crisis. A June 6, 2020, video taken by plaintiff is marked D-F. Defendant is apparently naked, there is back and forth between the parties and the entire content of the video as discerned by the Court and confirmed by counsel is noted on the record. This video shows defendant in an extremely agitated state. A second viewing of this video shows scratches on the plaintiff by his left breast, below his right breast and a possible bruise to his right bicep.

(The Court conducted a brief conference in chambers whereupon plaintiff's counsel sought and was granted permission to produce another video taken by plaintiff of this subject incident. This permission was placed on the record following the conference.)

D-G is a video of part one of an incident that occurred on May 19, 2020. Plaintiff is heard saying "lay down with me" and then states to defendant that "you said you wanted to pay your fair share of everything."

Defendant responds she does not know what fair share means. Plaintiff is seated and defendant is agitated, crying and becomes hysterical. She is heard stating: "How do you want me to stay with you?"

After Noah was born, defendant had a hernia and neuropathy for which she was prescribed pregabalin for pain in her hands and neck. She also had pain in her back from scoliosis which was diagnosed during her pregnancy but which she had for life. She learned about the side effects of the prescribed medication by reading the information provided with the prescription. Defendant claims to have experienced all of the side effects identified on the FDA exemplar marked D-B for Lyrica.

Defendant was not able to articulate a reason why she concealed from the prescribing neurologist the confirmed diagnosis of postpartum depression dating back to August 2020, and her symptomatology experienced since becoming pregnant. Based on the defendant's testimony, the prescribing neurologist had no knowledge of her diagnosis or any of her symptoms, including the frequent and increasingly violent incidents.

On July 18, 2023, defendant's testimony resumed and was concluded.

Defendant did not tell the neurologist about her symptoms because she was afraid, confused, ashamed, had mood swings, was in pain in her neck, and was suffering mentally. Even though she was in therapy, she was

not on medication. Defendant's testimony on the impact of the postpartum depression was compelling. As noted in the credibility section, there is no doubt defendant was experiencing substantial symptomatology. The question begs if defendant disclosed her symptomatology to her treating neurologist whether she would have been placed on medication sooner. The absence of any medical records presented at the time of trial remains noteworthy.

Defendant was diagnosed by her OB/GYN with postpartum depression in August 2020. In September, defendant started therapy with Be Well. The delay was occasioned by COVID and difficulty locating a therapist. Defendant was seen once per week by Victoria Fajein. Defendant was not getting better and Ms. Fajein suggested her OB/GYN consider hormone therapy; however, the OB/GYN did not return Ms. Fajein's calls. Ultimately, defendant's OB/GYN told her she did not need hormone therapy and acknowledged to defendant receiving calls from defendant's therapist.

In October 2020, defendant is heard telling plaintiff on video Exhibit D-H she is sick and has postpartum depression. Defendant acknowledged she was sick and that her behavior changed. Plaintiff would call her a bad mother and according to defendant, plaintiff became a monster. Defendant acknowledged she was getting worse. Defendant's counsel elicited the work

schedule of plaintiff, which frequently resulted in defendant being home alone, after assistance from either her mother during the week until around 9:00 p.m. or her sister on the weekend. Defendant was frequently alone from 9:00 p.m. until as late as 3:00 or 4:00 a.m. the following morning.

In December 2020, Defendant had a crisis and attempted to do something to herself. She tried to take pills and put a knife in her hand. Defendant testified she was in crisis from December 2020 through April 2021. Sometime during this period, Be Well told defendant she needed medication.

Without any medical records, it is not possible to know when this recommendation for medication was made. Defendant stated Lauren, the owner of Be Well, sent her emails and texts recommending she leave the house. None of these documents were produced at the time of trial. Defendant did not want to leave because plaintiff would not let her take her son. Given defendant's acknowledgement she was in crisis, query how she could have left with her son in her acknowledged condition?

Defendant described "crisis" as crying, feeling hopeless, high anxiety, hysterical crying, throwing things about the home, fighting with plaintiff verbally and getting aggressive. She acknowledged her aggressiveness in the videos presented by plaintiff. When in crisis,

defendant would call her therapist who would return the call and try to calm defendant down. This included breathing exercises.

From December 2020 through January 2021, the parties attended couples therapy with David Kaplan who was referred by Be Well. They stopped because plaintiff did not want to continue. They discussed defendant's postpartum depression and Mr. Kaplan recommended defendant take medication. Defendant was getting worse in January 2021 even with the therapy from Be Well. No records from Mr. Kaplan were introduced at trial.

In February or March 2021, defendant stopped therapy with Be Well because she needed a break and was feeling overwhelmed.

While defendant acknowledged her mother's testimony about grabbing her in April 2021, defendant had no recollection of this, other than her mother's testimony. In April 2021, she resumed therapy and increased to two times per week.

Defendant had no recollection of the Mother's Day fight in May 2021, other than through her viewing of the video evidence of same.

On June 28, 2021, plaintiff left the house and did not respond to defendant's texts or calls. When she arrived home, the police provided her with the Temporary Restraining Order in favor of plaintiff. In a remote

Court appearance around Independence Day, defendant learned of the amendment to the TRO. She moved in with her mother and in July 2021, started therapy with a psychiatrist, Catherine Shaloub, who prescribed Zoloft. In or about August or September 2021, defendant stopped taking the pregabalin after being given a shot in her hands that provided relief. Defendant did not obtain the Amended TRO until November or December 2021, when she went to the West New York police department with a church leader. No records of Dr. Shaloub were introduced at trial.

Defendant reduced the Zoloft from 50 to 25 mg, and about six to eight weeks ago, further reduced from 25 to 12.5. One week before July 18, 2023, defendant stopped the Zoloft altogether. There were no medical records introduced at trial. Defendant's expert, Dr. Wells, did not have access to complete therapy records and instead relied on information communicated to her by a representative of Be Well, as opposed to defendant's treating therapist. No explanation was provided on why Defendant's treating therapist's records were not introduced.

Currently, defendant feels much better, is motivated, hopeful about life, sees her son and is bonding well with him and dreams about her life and career. In looking back, she understands her illness better. She has no relationship with the plaintiff other than to co-parent their child.

Cross-Examination of Defendant

Defendant readily acknowledged hitting, scratching and biting plaintiff. She did this because of her illness and inability to control her anger and emotions, and due to being in crisis. Defendant would not initially concede her extremely aggressive behavior on Mother's Day 2021 changed dramatically after plaintiff called the police. The video evidence, P-9, documents a significant change in defendant's behavior after she learned plaintiff called the police.

Plaintiff on Recall based on Defendant's submission of Video Evidence

As noted above, the Court permitted the defendant to refer to and introduce evidence after the start of the trial that was not addressed by defendant in compliance with the pretrial Order. Plaintiff's counsel did not object and preserved his right to challenge the admissibility based on foundation. In exchange, defendant's counsel agreed to permit plaintiff to be recalled for additional direct testimony based on this new evidence.

Plaintiff's counsel insisted the Court view the entirety of P-24, the plaintiff's video of the June 6, 2020 incident. The Court offered for defendant to leave the courtroom to not view herself in an unclothed state and defendant accepted. The Court viewed this video in its entirety.

On June 6, 2020, defendant became angry at plaintiff because he did not have her lunch ready. Plaintiff testified defendant was hitting him all day and things continued to spiral with defendant attacking plaintiff by punching and hitting his upper body. Plaintiff's video is taken late at night, around 11:18 p.m. Plaintiff is shown trying to hide from the defendant in the third bedroom off the kitchen. Plaintiff testified he was scared and did not want to get hit again. Plaintiff separated from the defendant to deescalate and tried to hide. In response, defendant followed him, called him a kid, told him to "get balls" and insulted him. Plaintiff began recording because the situation was not deescalating and he felt unsafe. Plaintiff stated defendant removed her clothes without his consent and believes she did this to deflect from her having hit him repeatedly.

Plaintiff was concerned about defendant going into premature labor based on her being at 32–33 weeks of pregnancy and doctors having told her to rest and not exert herself. This is the only video presented by the parties from before the birth of their child.

The video, marked P-24, starts with defendant's clothes on. Defendant proceeds to fully disrobe and question plaintiff on why he is recording. The lights are turned off, according to plaintiff by him, and defendant turns the lights back on. Plaintiff leaves the room and defendant pursues him.

Defendant continues to ask plaintiff why he is recording her. After proceeding through the kitchen, defendant continues to pursue plaintiff into a bedroom. Defendant then starts to record plaintiff. At this point, both parties are recording the other. Plaintiff tells defendant she needs to see her therapist and get on medication. Defendant responds, "really, really." Defendant states she has a big problem being recorded naked. The lights again are turned off and defendant is heard telling plaintiff he has no balls. Plaintiff walks away and defendant again pursues him. In response to defendant asking where his balls are, plaintiff states he is protecting himself. Defendant states her mother has a problem with what plaintiff is doing. Plaintiff responds the recording is due to her behavior and defendant says it is plaintiff's behavior. Defendant states "plaintiff has something on his phone, she is going to figure it out, she is concerned with what plaintiff is doing (referring to the recordings) and that he may be stealing her money."

At times, plaintiff directs the camera away from defendant, who is still unclothed, and at other times refocuses on her when she is speaking. Defendant is pursuing plaintiff repeatedly but is not in the same hyper-emotional and highly agitated state as depicted in the videos introduced by plaintiff's counsel from after the birth of the child.

Regarding defendant's video from October 2020, marked D-H, plaintiff believes this incident occurred on September 28, 2020 and not in October. Plaintiff was eating lunch when defendant summoned him to her room concerning Noah. Plaintiff placed his dirty dish to the side of the sink and went to defendant, who bolted out of the bedroom and proceeded to get angry and scold plaintiff for leaving his dish to the side of the sink. Plaintiff asked if defendant was crazy and said he responded to her call for assistance. This response set off the defendant further and she seized on the word "sick." Plaintiff testified he used these words to describe defendant's actions and conduct because defendant specifically requested for him to use the word "sick" to describe her actions and conduct.

Cross-Examination of Plaintiff on Recall

Initially, plaintiff would not concede defendant was "sick" as of June 6, 2020. He used the word "sick" because this is the preferred word by defendant. Plaintiff claimed defendant was trying to manipulate the situation to try to establish he did something wrong. Because defendant said "psychological problems" in the video, plaintiff referred to defendant being sick and in need of medication.

Plaintiff reiterated he was afraid of the defendant on June 6, 2020; yet, he slept together in the same bed that evening because things calmed down.

He did not call a hospital because defendant did not want him to. He did the best he could.

Plaintiff used the words "conspiracy theory" to refer to psychological abuse by defendant as evidenced, according to plaintiff, by defendant removing her clothes to falsely accuse plaintiff of doing something wrong by recording. While Plaintiff could have used audio instead of video, he used video because it shows what is happening.

The recall examination of the plaintiff and cross-examination of the defendant demonstrated the continued extreme acrimony between these parties, which remains completely unabated.

Dr. Karen Wells: Defendant's Forensic Expert

Dr. Wells is a Psy.D, having attended four years of college, two years to obtain a master's degree and four years for her doctorate. She practiced clinical psychology from 1985 until about 1996, when her practice become more evaluative/forensic. The difference between a Ph.D and a Psy.D is the former focuses on research and the latter is practice/therapeutic oriented. Dr. Wells is neither trained nor able to prescribe medication. By evaluative, Dr. Wells works collaboratively with other providers, such as the DCPP, Office of the Law Guardian and Office of Parental Services. She follows up on

recommendations, including where medication is recommended and prescribed by others.

Perinatal mood disorder and perinatal depression are umbrella terms, and postpartum/baby blues are common language expressions of the same condition.

Dr. Wells agrees with Dr. Singer that men can have postpartum depression. It can manifest with outward aggression, anxiety, being overwhelmed and, in men only, is triggered solely by external factors. In contrast, women's postpartum depression is triggered internally by hormones. Because it is hormonal in women, the length of time men experience postpartum depression is shorter than in women. Specifically, women have progesterone and estrogen. After delivery, these hormones drop significantly and can affect mood (sadness, happiness, anger, irritability, processing and judgment) and ability to exercise control. Lability is defined as fluctuations in mood and is based on hormones.

"Perinatal" is defined as the period during pregnancy and immediately after birth and "postpartum" is defined as the period after delivery for two to four weeks.

A forensic expert, which is the role of Dr. Wells in this matter, looks at the body of material, interviews the subject, and evaluates. A therapeutic expert is responsible for diagnosis and treatment.

Initially, Dr. Wells was engaged as a forensic expert to determine if defendant could exercise unsupervised parenting time with the parties' child. Dr. Wells issued her first report on February 27, 2022. She prepared a second report on March 26, 2022, which is virtually identical to the first report, and a third report on December 27, 2022, after reviewing Dr. Singer's report at the request of counsel. (Dr. Wells' reports were not marked for identification or presented to Dr. Wells by either attorney during the trial. The Court notes this information on the number and dates of reports from the pretrial submission by defendant's counsel.)

Dr. Wells interviewed defendant and elicited a personal and work history, defendant's future plans, assessed defendant's then-current situation, and observed defendant's interaction with the child and noted this was positive. She obtained collateral information, spoke with people who interact with the defendant every day and then authored her initial report. Dr. Wells noted there was no police involvement, threats of suicide, depression, or dysregulation of mood prior to defendant's pregnancy. She reviewed five videos. In the videos, defendant was violent with bulging

eyes and in a state of rage. This is in stark contrast to how defendant presented in February 2022, namely, calm, in control and with intact judgment.

Dr. Wells administered subjective Edinburgh testing and noted a score of 8 compared with a prior score of 16 back in 2020, meaning defendant was in a much better place regarding depression in 2022 than in 2020. On the Beck Depression scale, there were no significant clinical findings.

Regarding Dr. Singer's criticism that this testing does not contain falsification criteria, Dr. Wells is able to determine through her experience when a party is falsifying. She is aware defendant minimized how she was feeling after the baby was born.

Dr. Wells distinguishes alcoholism and use of illicit drugs from perinatal depression. In the former, the individual is making a choice on whether to control their cravings whereas a woman suffering from perinatal depression, based on the hormonal imbalance, is unable to exercise such control. With medication, the postpartum depression can be controlled. The gynecologist, therapist and psychiatrist should all work together.

Even with the absence of any medical records having been presented by either party to the Court, Dr. Wells is aware defendant was recommended to obtain prescription medication to treat her perinatal depression in August

2020 and did not commence pharmacological treatment until almost one year later in July 2021. Further, for reasons Dr. Wells could not explain, defendant's treating therapist at Be Well stopped therapy for one or two months in January/February 2021, knowing that defendant was in crisis. Dr. Wells testified if defendant started prescription medication in August 2020, she would have experienced significant improvement. Dr. Wells further testified if plaintiff waited to file the TRO until after the commencement of pharmacological treatment, he would have seen the improvement in defendant's condition in real time.

Without any medical records, it is not possible to evaluate, other than accepting the testimony of defendant, the timing of diagnosis and the commencement of pharmacological treatment. It is not disputed, however, that defendant admitted (1) being advised to consult a psychiatrist to secure medication in August 2020, and (2) waiting one year until July 2021, after the issuance of the TRO, to get on medication.

Dr. Wells distinguishes between recovery, which involves the potential for relapse that can occur decades later, and abatement, which means the condition is over. By analogy, Dr. Wells referenced schizophrenia. One cannot change their frontal lobe abnormality in the brain. While medication can modulate the actions and conduct, the condition will

not go away. The same applies for other conditions such as anxiety disorder, personality disorder, psychosis, and post-traumatic stress disorder; namely, all can be treated with medication. With medication, the symptoms can abate.

Dr. Wells disagrees with Dr. Singer's conclusion that seeing the child with plaintiff may be a trigger capable of producing violent behavior in the defendant. Dr. Wells testified the parties live near one another, have had interchanges with the child and are present in court, all with no violence.

Dr. Wells views the TRO favorably because it produced a needed change in environment. If defendant was started on Zoloft, the episodes of violence would not have happened. Dr. Wells concedes the violence and abuse and offered an analogy. If you step on someone's foot, whether intentional or unintentional, the foot will hurt. That you may not have intended to step on the foot does not change the fact that stepping on the foot is abuse.

According to Dr. Wells, defendant's prognosis is good and not guarded. She is functioning, working, living her life, emotionally stable, enjoying and bonding with her son and has not manifested any violent behavior. She disagrees with Dr. Singer's opinion that defendant may be

triggered and denies the TRO had any role in changing the defendant's behavior; the change is due to the medication.

The difference in the expert opinions is that Dr. Wells is certain there will be no further incidents of violence and Dr. Singer opines there may be new incidents of violence.

Cross-Examination

Dr. Wells did not watch all the video and audios, only five. She is aware defendant falsified her depression at the time it manifested and thereafter. Dr. Wells did not speak with any of the medical, therapeutic or other providers.

Dr. Wells rejects the notion the violence stopped because of limited contact and the control in place due to the TRO. Rather, she believes defendant's condition has abated due to the medication.

Per Dr. Wells, there is no threat to the plaintiff to a reasonable degree of psychological certainty or any certainty. This is due to the medication and the juxtaposition of defendant's pre-pregnancy condition (no issues) with her current condition (no issues). According to Dr. Wells, there is nothing in defendant's past that presents any concerns of manifesting in the future. This is why Dr. Wells focuses on the condition of plaintiff pre-pregnancy

and post-medication. In her opinion, all the actions and conduct by the defendant were produced by the postpartum depression.

However, Dr. Wells concedes that if defendant becomes pregnant, she is at a 30-50% increased likelihood of another onset of postpartum depression, based on having suffered from this with her first pregnancy.

Redirect

Dr. Wells did not need to view or listen to all the videos and audio. Violence is violence, and she conceded such.

Women do not talk about symptoms associated with postpartum depression because there is a stigma, fear of the unknown, fear the baby will be taken, fear of some kind of retaliation, and one may be in a state of terror. This is all due to the hormones being unregulated in the absence of medication.

Recross

Defendant was only violent towards the plaintiff and not her sister, mother or any of her co-workers. Dr. Wells conceded that just because one responds in an impulsive manner does not mean one has amnesia about the consequences. One can be aware of the consequences but nonetheless not be in control due to impulsivity.

At the conclusion of the defendant's defense, all exhibits proffered by the defendant were admitted without objection.

Credibility Findings

The Court provides the credibility findings of the witnesses in the order they testified.

Dr. Mark Singer

The Court finds Dr. Singer to be a credible witness. His appearance and demeanor on the stand were direct, responsive, not argumentative and polite, even when his answers were at times initially not permitted to be completed. His body language, facial expressions and eye contact with counsel and the Court were relaxed and unflappable. On cross-examination by defendant's counsel, he did not deviate in any manner from the opinions set forth during his direct examination and throughout the cross-examination, his body language, facial expressions and eye contact were steady, confident and secure. He was well prepared and detailed in his findings and conclusions. The Court finds his testimony was persuasive and convincing in its content and presentation. He was not emotional or inconsistent. The Court finds he knew well what he was testifying about. He answered all questions in a direct and responsive manner. He expressed no

reluctance to answer any question. The Court finds his testimony to be reasonable. He did not seek to embellish or extrapolate.

While Dr. Singer listed several factors beyond the major depressive disorder with perinatal onset that contributed to defendant's aggression towards plaintiff, he did not address how each factor may have contributed to defendant's actions and conduct. That Dr. Singer was not able to state on a percentage basis the role each factor played in causing or contributing to defendant's actions and conduct does not, however, impact negatively on his credibility. Again, while there are no medical records in evidence, there is no dispute defendant suffered from postpartum depression. The issue is to what extent this condition vitiates the volitional elements of certain of the predicate acts of domestic violence and whether, if the condition is abated, there is a need for the issuance of an FRO. These are the ultimate issues addressed in this Opinion. The lack of a documented alternative theory of causation by Dr. Singer to explain defendant's actions and conduct other than postpartum depression does not detract from Dr. Singer's credibility.

Further, the testimony of Dr. Singer was persuasive on the plaintiff serving as a trigger for defendant and the need for defendant to address all enumerated factors in continued therapy, deeper and broader, to avoid a

repeat of the prior series of events. The extreme acrimony between these parties was palpable during the entire trial.

That Dr. Singer did not probe into the name of each medication taken by defendant and threatened to be taken by defendant as part of her suicidal threats, whether real or as part of attention-seeking behavior, also does not nullify Dr. Singer's credibility. The significance of the names of the medications was never explicated by defendant, other than to note Dr. Singer failed to obtain their names. This, alone, does not impact negatively on Dr. Singer's credibility.

There was no competent testimony on drug interaction and cause and effect. Indeed, it remains unknown after trial precisely when medications were prescribed, by whom, for what specific identified condition presumably noted in the medical records, how the medications worked for the symptoms for which they were prescribed, and finally whether there was any notation of drug interaction in the records. Neither expert was possessed of any of this information, other than the generality of defendant waiting one year to see a psychiatrist to obtain medication after she was previously directed to do so.

Three final points on Dr. Singer's credibility. On cross-examination, defendant's counsel focused on the incongruity between the softness of

plaintiff's voice and the spoken words of the defendant in P-5 (to the extent the spoken words included a reference to finding your son dead). The precise purpose of this inquiry to Dr. Singer is unclear because Dr. Singer was not engaged to perform a psychological evaluation of the plaintiff and the audio was not capable of being fully discerned. This area of examination—presumably whether plaintiff was scared or alarmed by the statement by defendant about finding the son dead—is properly directed to the plaintiff and not Dr. Singer.

Second, Dr. Singer withstood well an effective cross-examination designed to cast doubt on his opinions and secure from him an admission the sole cause of defendant's actions and conduct was major depressive disorder with perinatal onset.

Finally, during the cross-examination of plaintiff, plaintiff denied telling Dr. Singer that Noah was born by C-section. The Court was not presented with any medical records for review. The statement in Dr. Singer's report to this effect is in error; however, this error, while a ding against his credibility, does not render Dr. Singer's analysis and opinions void. The error is noted.

For the above reasons and noting this single error, the Court finds Dr. Singer to be an honest and credible witness.

Plaintiff: Joel T. Chicantek

Mr. Chicantek testified over four days, including March 14 and 20, May 15, and July 18, 2023. He presented well, was dressed appropriately, focused on the questions asked and demonstrated a strong and accurate memory of the several instances of alleged domestic violence that form the basis of the predicate acts together with the extensive prior history going back well over a year before the incidents which led to his seeking issuance of the initial Temporary Restraining Order.

While very soft spoken and needing to be repeatedly prodded to keep his voice elevated by both the Court and his attorney, he was an earnest witness, testifying directly and with candor on issues of a very personal nature, including allegations by defendant during violent episodes by her accusing him of not being able to get an erection and of being gay.

Plaintiff's demeanor on the stand was steady and precise. He answered questions directly without embellishment or exaggeration. He was not argumentative in any manner. His eye contact, body language and facial expressions were focused on the questioner, including both counsel and the Court. He did not look away, twitch, or demonstrate any other manifestation of lack of comfort when one is not testifying truthfully. His answers were detailed without the need to review the extensive history contained in the

Amended Temporary Restraining Orders. Moreover, his testimony was directly corroborated by the extensive video evidence of the several violent incidents captured by plaintiff and presented to the Court following his testimony. The videos are corroborative of the prior testimony offered by plaintiff and without exception were entirely consistent with the plaintiff's testimony. Plaintiff knew well what he was testifying about. His testimony was accurate, as corroborated directly by the videotapes. Plaintiff did not make up or fabricate any part of his testimony.

On cross-examination, plaintiff was not sure of the month in which defendant became pregnant. Plaintiff was unable to answer questions related to whether he was critical of defendant for seeking an emergency room visit during the pregnancy, ultimately conceding he did state his belief a visit to an urgent care center would have been just as appropriate. Much was made of this; however, while constituting a ding against plaintiff's credibility, this is not fatal and does not warrant anything more than this mention.

Another small issue bearing note is the failure to include the December 2019, January 2020 and March 2020, incidents in the TRO. Plaintiff's explanation is plausible. While there is pressure to complete the TRO process during intake, plaintiff was represented by counsel and there very well could have been an amendment to include these other acts.

Plaintiff's response is there was so much violence over this period that he was not able to recall all the incidents of physical violence. This is reasonable.

On recall testimony on July 18, 2023, much time was spent on the June 6, 2020 video and why plaintiff continued to record defendant after she disrobed. Plaintiff did not offer this video in his initial case in chief and only provided this video in response to the use by defendant of a video taken on the same date by her which was not identified in compliance with the pretrial Order and only came to light during the trial. Plaintiff's purpose in showing the video is to demonstrate the defendant's repeated pursuit of him, while plaintiff walks away several times attempting to deescalate the situation. The Court does not find plaintiff's continued filming to constitute a ding against his credibility. The video depicts the lights being turned off at least once by plaintiff and turned back on twice by the defendant. Indeed, the plaintiff's video depicts the defendant repeatedly pursing him after plaintiff retreated.

Consistent with defendant's theme of plaintiff's failure to help her with her condition, counsel probed why plaintiff did not call the hospital on June 6, 2020 if he was truly concerned about a possible premature birth given that Defendant was 32–33 weeks pregnant. Plaintiff's answer is

consistent with his initial testimony regarding his actions and conduct when the postpartum people appeared in response to the hotline call. Namely, plaintiff did what he could. As depicted in the video, he repeatedly walked away and defendant pursued him. He did not elevate his voice. All of his actions were an attempt to deescalate the situation. Plaintiff withstood this assertive cross-examination. His testimony was consistent on how he was endeavoring to address defendant's condition.

For the foregoing reasons, the Court finds plaintiff to be a credible witness.

Jennifer Munoz: Defendant's Sister

Ms. Munoz testified over two days on May 16 and July 10, 2023. She presented well and answered questions directly and completely. Appropriate eye contact was maintained with the Court and counsel. Her testimony was very candid at times including when she informed all she wanted was for her sister to get better.

As the defendant's sister, Ms. Munoz has a familial bias. However, excepting one portion of her testimony where she mischaracterized the content of a September 2020, text exchange between her and the plaintiff (as noted above in the synopsis of her testimony), she did not seek to extrapolate, expand or otherwise embellish her testimony. While she

indicated plaintiff should have helped her sister, she subsequently conceded the efforts of both her and her mother to help her sister did not produce success. Her testimony was responsive to all questions on direct, cross and redirect with nothing by way of body language or facial expressions indicating discomfort or unease that would be consistent with a lack of truthfulness.

The Court finds Jennifer Munoz to be a credible witness.

Zaritza Bru: Defendant's Mother

Ms. Bru was at times a very good historian, especially as it relates to the time immediately following the birth of Noah when she stayed with the parties for approximately seven weeks. Her testimony overall was informative on the condition of the defendant and the interaction between the parties. However, the natural bias of a parent to a child was evident in other aspects of her testimony, which in her case adversely impacts her credibility.

Initially, Ms. Bru testified she spoke with plaintiff about the pre-birth bleeding emergency hospital visit by the defendant and that plaintiff expressed to her that he did not want the defendant to go to the hospital. However, subsequently, Ms. Bru admitted she did not speak with the plaintiff and learned this from her daughter. The same applies to the dispute

over payment of this hospital bill. Ultimately, Ms. Bru confirmed she learned about the plaintiff's position by speaking with her daughter and not directly from the plaintiff. It did not matter from whom she learned this information; but her initial testimony that she spoke directly with the plaintiff about both issues was ultimately contradicted by her admission she learned the information on both issues directly from the defendant and not the plaintiff. The presentation of learning this information directly from the plaintiff cast plaintiff in a poor light, as if he is controlling. That in fact Ms. Bru learned this information from the defendant creates doubt about her testimony that plaintiff was controlling. It is also an odd theory to pursue; namely, that somehow actions and conduct by the perpetrator of domestic violence may be explained and/or justified by the allegation the victim was controlling in their relationship with the abuser. Violence is never justified.

In addressing defendant's refusal to permit the postpartum people who responded to Ms. Bru's contact to the emergency hotline, Ms. Bru struggled to concede that plaintiff seeking to get defendant to meet with the responders to the hotline call did not constitute plaintiff provoking the defendant because defendant obviously needed assistance. Ms. Bru testified she told plaintiff to not provoke the defendant. However, on cross-examination, Ms. Bru conceded defendant's reactions to things were based on the postpartum

depression. The use of the word "provoke" by Ms. Bru appeared designed to cast plaintiff as controlling. But her concession that defendant's condition informed defendant's actions and conduct detracts from the effort to paint plaintiff as controlling and adversely impacts her credibility.

On the issue of defendant hitting the plaintiff, Ms. Bru also struggled to ultimately concede it is not proper for one person to hit another person, whether sick or not. It is not understandable why Ms. Bru had such difficulty making this concession, other than her apparent belief this concession may adversely impact defendant in this proceeding.

While it is understandable that a mother will seek to protect their child, based on these aspects of her testimony Ms. Bru's credibility is diminished.

Defendant Arianne Munoz

Defendant was compelling on the symptoms associated with postpartum depression. Overall, she was a credible witness, with some concerns noted below. On the one hand, defendant answered questions directly without embellishment, maintained appropriate eye contact with counsel and the Court and did not demonstrate any actions or behavior inconsistent with telling the truth, such as fidgeting, looking away, twitching or rapid leg movement. It bears repeating her testimony was particularly

compelling on living through postpartum depression. She candidly admitted to the extreme violence over an extended period and expressed remorse. On these aspects of defendant's testimony, she was a credible witness.

An initial concern regarding defendant's testimony relates to her refusal to tell her health care providers what she was experiencing. This, however, was explained by Dr. Wells as symptomatology associated with postpartum depression, where sufferers are often fearful and embarrassed by what is occurring due to their illness. While this is a plausible explanation for defendant's reluctance to share information about her symptoms with her health care providers, the delay by defendant in following the direction of her health care providers to see a psychiatrist and get on medication in August 2020 until July 2021 cannot be explained completely by the postpartum symptomatology. Indeed, Dr. Wells stated that one does not have amnesia regarding what is occurring; rather, they cannot control it. The absence of any explanation for this delay by defendant is one issue negatively impacting defendant's credibility.

Another issue with defendant's credibility concerns the 2021 Mother's Day incident. Clearly, from the video evidence, defendant's entire demeanor radically changed after the plaintiff informed defendant the police

were called. That defendant did not readily concede this based on the video evidence negatively impacts defendant's credibility.

Finally, defendant did not address the fact that she only saw a health care provider that put her on medication and followed the direction of this provider by filling the prescription and taking the medication after the issuance of the TRO. This as well negatively impacts defendant's credibility.

Again, the absence of any health care records is noted because presumably these records would address precisely how defendant went through the process to get on medication.

Defendant's Forensic Expert: Dr. Karen Wells

Dr. Wells is a credible witness. She testified directly, was responsive to all questions, did not seek to embellish, made appropriate eye contact with counsel and the Court and was forthright in her presentation and content. Dr. Wells readily admitted what was beyond the scope of her expertise (prescription and administration of medication). Her testimony was precise, and to the point with no hyperbole or extrapolation. Most importantly, Dr. Wells conceded information that was not known to her, including why defendant's therapists did not press for defendant to commence pharmacological treatment much sooner and how, when defendant was in crisis, these same therapists permitted defendant to cease therapy for one or

two months during the very time defendant was in need of prescription medication. Dr. Wells, like Dr. Singer, was a very strong witness.

Post-trial Submissions of Counsel

At the conclusion of the trial, counsel requested and the Court permitted a short post-trial submission by each side.

Regarding the defendant's submission, in par. 6(d), the Court notes there was no credible evidence presented on the issue of the side effects of the drug pregabalin/lyrica or the interaction of this drug with any diagnosis and/or symptomatology experienced by the defendant. The Court permitted cross-examination of Dr. Singer by defendant on the side effects of pregabalin noted in Exhibit D-B; however, defendant abandoned the examination of her expert on the side effects and drug interactions, likely predicated on the Court's prior admonition noting the absence of qualified expert testimony on these issues. Thus, the point advanced in this paragraph is misplaced.

In par. 9, the Court notes the therapy alone had absolutely no impact on the actions and conduct of the defendant. Defendant was in therapy for almost a year and the violent incidents increased. Only after the TRO was

issued and defendant commenced taking a prescription medication did her behavior change.

The continued reliance by defendant on criminal law is misplaced.

Under the legal section, the import of the following sentence is lost on the Court: "Joel wants to punish Arianna because he did not feel he could react to her behavior because she is a woman." The documented video evidence of overt and intentional violence and the restraint exercised by plaintiff remain noteworthy.

Analysis

Introduction

In both her attorneys' pre-trial letter brief submitted pursuant to this Court's pre-trial Order and during the FRO trial, the defendant states plaintiff's burden of proof as requiring proof of both a bad thought and a bad act. Defendant's counsel states in her letter brief: "Mr. Chicantek's burden of proof for each element is a preponderance of the evidence to make his case, [sic] those elements have two components, a bad act coupled with a bad thought. He must prove both to sustain his burden." This Court has found no legal authority, nor was any presented by counsel, using such language to characterize plaintiff's burden of proof in an FRO trial. To this Court, a bad thought does not directly equate with "intent" under several of

the predicate acts of domestic violence. A bad thought presupposes a conscious deliberative process, which can be very different from intent, which is something less than a premeditated thought and subsequent course of action in furtherance of that bad thought. Defendant's expert's analogy is instructive. Even if one does not intend to step on another's foot, it is still abuse. Further, continuing with Dr. Wells' language, just because a person may not be able to control their actions and/or conduct does not mean they have amnesia regarding it. Establishing intent is therefore less onerous than proving that another had a "bad thought" prior to engaging in a course of action. Acceptance of defendant's proffered language of "bad thought, bad act" would increase a plaintiff's burden of proof from a preponderance of the evidence to something more stringent. No authority was presented warranting a restatement of the well-established burden of proof in FRO trials.

Putting aside the issue of the language used by defendant, the question of first impression raised by defendant during this trial is whether perinatal depression may be used as a defense in a domestic violence action. Defendant asserts this defense vitiates the intent requirements under the three subject predicate acts, and even if a predicate act(s) is/are found, there

is no need for an FRO because defendant is no longer a risk to the plaintiff because the perinatal depression has abated with the medication.

The seminal decision in Silver v. Silver, 387 N.J. Super. 112, 125–27 (App. Div. 2006) requires, as part of a two-pronged analysis, for the Judge to first "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. There is no mention or reference in the Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17 to -35, the New Jersey Domestic Violence Manual, 2022 Edition or decisional case law remotely approximating the enhanced burden advanced by defendant's counsel requiring the plaintiff in an FRO trial to prove by a preponderance of the evidence that defendant engaged in a "bad thought and bad act." That some predicate acts under the PDVA require a volitional or intentional element is not in dispute.

Jurisdiction

There is subject matter jurisdiction based on the prior romantic relationship between the parties, their being former household members and having a child in common.

There is personal jurisdiction and venue is proper because this Court has jurisdiction over the place where the alleged act of domestic violence occurred.

Plaintiff is a protected person under the New Jersey PDVA. N.J.S.A. 2C:25-19(d).

Predicate Acts

Three predicate acts are alleged in plaintiff's Complaint and in the Amended Temporary Restraining Order: Assault, terroristic threats and harassment.

Pursuant to the PDVA, assault occurs where there is an "[a]ttempt to cause or purposely, knowingly or recklessly cause bodily injury to another …" N.J.S.A. 2C:12-1(a)(1). "Bodily injury is defined as 'physical pain, illness or any impairment of physical condition.'" N.B. v. T.B., 297 N.J. Super. 35, 43 (App. Div. 1997) (quoting 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." Ibid. (citing State v. Bazin, 912 F. Supp. 106, 115 (D.N.J. 1995) ("Even the slightest physical contact, if done intentionally, is considered a simple assault under New Jersey law."). "When the predicate act is an offense that inherently involves the use of physical force and violence, the decision to issue an FRO 'is most often

perfunctory and self-evident.'" A.M.C. v. P.B., 447 N.J. Super. 402, 417 (App. Div. 2016) (quoting Silver, 387 N.J. Super. at 127).

Terroristic threats is defined under the PDVA by referencing N.J.S.A. 2C:12-3 which, requires the defendant to threaten to commit any crime of violence "with the purpose to terrorize another." Cesare v. Cesare, 154 N.J. 394, 403 (1998) specifically references an objective standard to evaluate whether (1) the defendant in fact threatened the plaintiff, (2) the defendant intended to so threaten the plaintiff and (3) a reasonable person would have believed the threat. Cesare was reaffirmed in State v. Dispoto, 189 N.J. 108 (2007), which held the abuser does not have to communicate the threat directly to the victim for the threat to be actionable under the PDVA. Proof of terroristic threats is measured by an objective standard. State v. Smith, 262 N.J. Super. 487, 515 (App. Div. 1993). It is not necessary for the victim to fear death or be under the imminent apprehension that he is about to be killed; rather, as held in State v. Nolan, 205 N.J. Super. 1, 4 (App. Div. 1985), "the statute merely requires that the threat be made under circumstances under which it carries the serious promise of death."

Harassment is defined under N.J.S.A. 2C:33-4 and has three separate sections. All the harassment offenses require the actions and/or conduct to have been pursued "with the purpose" to harass. State v. Hoffman, 149 N.J.

564 (1997). Section (a) refers to making or causing to be made a communication anonymously, or at extremely inconvenient hours, or in offensively coarse language, or in any manner to cause annoyance or alarm. Section (b) refers to sticking, kicking, shoving or other offensive touching or threatening to do so. Section (c) refers to engaging in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy.

"A finding of a purpose to harass may be inferred from the evidence presented. Common sense and experience may inform that determination." State v. Hoffman, 149 N.J. 564, 577 (1997) (internal citation omitted). Annoyance under subsection (a) is defined as to disturb, irritate or bother. Id. at 580. "[S]erious annoyance under subsection (c) means to weary, worry, trouble, or offend." Id. at 581. In assessing whether there is harassment under the PDVA, the court must "consider the totality of the circumstances to determine whether the harassment statute has been violated[,]" including "an evaluation of the [victim's] circumstances." Cesare, 154 N.J. at 3. The totality of the circumstances includes the propensity of abusers to "have an unhealthy need to control and dominate their partners . . . ." Hoffman, 149 N.J. at 585. Indeed, "[d]omestic violence is a term of art which describes a pattern of abusive and controlling behavior

which injures its victim." Corrente v. Corrente, 281 N.J. Super. 243, 246 (App. Div. 1995).

In her trial letter brief and during the trial, defendant argues her diagnosis of perinatal depression is implicated in the first prong of the Silver analysis, namely whether plaintiff has met his burden of establishing by a preponderance of the credible evidence establishment of any predicate act(s) of domestic violence. In support for this position, defendant cites to N.J.S.A. 2C:4-2 together with a newly enacted law addressing perinatal depression in Illinois, Public Act 100-0574 (2018).

N.J.S.A. 2C:4-2 provides in criminal cases that evidence of mental disease is admissible when relevant to prove the defendant did not have the state of mind to commit the act which is an element of the offense. Without citing any legal authority, Defendant seeks to extrapolate this criminal defense, predicated on mental capacity and the concomitant impact of such capacity on the applicable mens rea to the crime charged, to a civil domestic violence FRO trial. That the burdens of proof in criminal and civil FRO trials are at polar opposites (guilt beyond a reasonable doubt in a criminal case and mere preponderance of the evidence in a civil FRO trial) was not addressed by defendant.

Defendant argues she lacked the requisite intent under all three predicate acts (assault, harassment, and terroristic threats) based on her suffering from perinatal depression. By using the words "bad thought and bad act," defendant goes even further than arguing a lack of intent or volitional conduct. Defendant argues she cannot be found to have committed any predicate act of domestic violence because the perinatal depression precluded her from being cognizant of her bad thoughts and subsequent actions of violence. Essentially, without expressly so stating, defendant's argument boils down to the contention that she was completely not in control of any of her actions and/or conduct and therefore did not even possess a bad thought. It is for this reason the Court distinguished between bad thought and intent at the start of the legal analysis. There is simply no legal support for the argument advanced by defendant, and this Court's independent research has not unearthed any authority in New Jersey or elsewhere. Plaintiff's burden to establish the element of intent by a preponderance of the evidence for the three predicate acts at issue is not heightened by a further requirement for plaintiff to establish defendant had a bad thought followed by a subsequent bad act.

Defendant's continued argument is women should not be penalized for the unavoidable consequences, read perinatal depression, of the life-

giving condition of pregnancy and giving birth. There is no dispute concerning the manifestation of defendant's postpartum depression symptomatology in the several videos admitted into evidence. All of the symptoms identified by both experts are present, namely anger, hostility, mood swings, etc. The effort by defendant, however, to negate any responsibility by her for the many acts of domestic violence by asserting that a failure to accept her defense will penalize women for becoming pregnant and giving birth is misplaced. FROs are routinely granted where the defendant is under the influence of illicit substances, suffers from alcoholism, has mental health issues and is otherwise in an altered state. The opinion of Dr. Wells that drug abuse and alcoholism are essentially self-induced by the actor not exercising control of their cravings and contrasting that essentially alleged voluntary condition with perinatal depression which is caused by an internal hormonal imbalance that is beyond the ability of an individual to control is beyond the competency of Dr. Wells. She is not an addiction expert and while offered in good faith, no doubt addiction experts and the authors of the DSM-V would strenuously disagree with the "voluntariness" of addiction. No explanation was offered by Dr. Wells on whether one who becomes addicted to prescribed pain medication and engages in acts of domestic violence is acting based on a change in their

internal wiring, with the addiction superseding the ability to exercise control. Finally, with mental illness, where FROs are also routinely granted, surely defendant and Dr. Wells would need to acknowledge that mental illness is very similar to perinatal depression based on the actor not possessing an ability, without medication, to exercise control of internal processes. Yet, FROs are routinely granted precisely because of the public policy sought to be addressed by the PDVA.

What remains significant is the lack by either defendant or Dr. Wells of any explanation for the one-year delay in plaintiff's compliance with the prior direction of her health care providers to get on medication. To accept defendant's argument will completely exonerate defendant from any responsibility for acts of domestic violence, which is directly at odds with the very core of the PDVA.

Finally, defendant concludes her argument by stating if the Court finds she committed predicate acts of domestic violence, thereby discounting defendant's perinatal depression, the courts will return to the pre-Andrea Yates thinking on the impact of perinatal depression on the actions and conduct of pregnant and postpartum women.

Notably, defendant's expert did not testify that perinatal depression causes diminished mental capacity rendering one incapable of appreciating

the consequences of their actions and conduct. To the contrary, Dr. Wells offered a useful analogy. If one steps on another's foot, the person whose foot is stepped on still feels the pain and the act of stepping on the other person's foot is still an act of abuse. Dr. Wells further conceded that defendant was not in a state of amnesia. According to Dr. Wells, while defendant could not control her actions and conduct, she was aware of her actions and conduct.

The only reference in the PDVA regarding mental state is found in N.J.S.A. 2C:25-28(h), which provides that if a victim is physically or mentally incapable of appearing, a TRO may be sought by a Surrogate if there are exigent circumstances and sufficient grounds exist. The only case remotely applicable, which goes against the argument advanced by the defendant, is C.M.F. v. R.G.F., 418 N.J. Super. 396 (App. Div. 2002). There, the Court affirmed the granting of a Final Restraining Order predicated on harassment, expressly rejecting defendant/appellant's contention that his anger outbursts were "transitory" thereby precluding a finding that he acted with "intent" under the harassment statute. Notably, the Appellate Division specifically rejected defendant's argument that his anger negated the ability of the trial court to find he acted with the intent to harass. The Court stated that it does "not view these mental states as mutually

exclusive." Id. at 404. That one is angry does not ipso facto preclude a finding of intent.

The only legal authority cited by defendant is contained in Illinois Public Act 100-0574 (2018), which permits the introduction into evidence of postpartum illnesses, such as depression and psychosis, among others, for the purpose of serving as mitigating factors in sentencing in criminal matters. Defendant's counsel is correct in stating this is the first criminal law in the United States recognizing how perinatal mental illness can affect the behaviors of new mothers and pregnant women.

N.J.S.A. 2C:4-2 and Illinois Public Act 100-0574 have in common their applicability to criminal matters, where mens rea is directly implicated in the nature of the offense charged. To the contrary, the New Jersey Prevention of Domestic Violence Act is a civil statute with a substantially lower burden of proof—proof by a preponderance of the evidence. While the PDVA relies on several criminal statutes as the defined predicate acts thereunder, a Final Restraining Order trial remains a civil proceeding with the lower burden of proof under the preponderance of the evidence standard. Crespo v. Crespo, 201 N.J. 207 (2010). To be clear, there are certain predicate acts under the PDVA requiring "intentionality," including harassment, N.J.S.A. 2C:33-4 ("with purpose to harass," Corrente, 281 N.J.

Super. at 249), assault under N.J.S.A. 2C:12-1(a)(1)("attempts to cause or purposely, knowingly or recklessly causes bodily injury to another"), and terroristic threats, N.J.S.A. 2C:12-3 ("threaten to commit a crime of violence with the purpose to terrorize another"). The civil burden of mere preponderance stands in stark contrast to the substantially higher burden in criminal matters. See State v. Duncan, 376 N.J. Super. 253, 262 (App. Div. 2005), where the Appellate Division commented that purposeful conduct is the highest form of mens rea in the penal code and must therefore be difficult to establish. That comment is obviously directed solely at criminal matters.

To accept defendant's argument that perinatal depression serves as a defense to plaintiff establishing a predicate act by nullifying any intentionality or volitional action and/or conduct would turn the protections intended to be accorded victims or protected persons under the PDVA on their head. It is easy to envision an alcoholic, drug addict or person suffering from a mental illness to readily and quickly defend charges of domestic violence with the claim that alcohol treatment, drug treatment and/or mental health treatment has abated the prior manifestation of the condition, thereby either rendering the defendant incapable of having possessed the requisite intent to commit the predicate act, if based on intent, and/or vitiating any

professed need for a Final Restraining Order because their symptoms are now held at bay due to treatment and recovery.

The PDVA and decisional case law are entirely inconsistent with and incapable of being reconciled with defendant's theory. To accept defendant's argument would vitiate the very protections intended to be accorded to protected persons/victims of domestic violence and render the PDVA inutile.

The New Jersey Legislature enacted the Prevention of Domestic Violence Act of 1991, N.J.S.A. 2C:25-17 to -35, "to assure the victims of domestic violence the maximum protection from abuse the law can provide." N.J.S.A. 2C:25-18; G.M. v. C.V., 453 N.J. Super. 1, 12 (App. Div. 2018) (quoting State v. Brown, 394 N.J. Super. 492, 504 (App. Div. 2007)). Consequently, "[o]ur law is particularly solicitous of victims of domestic violence." J.D. v. M.D.F., 207 N.J. 458, 473 (2011) (quoting State v. Hoffman, 149 N.J. 564, 584 (1997)). The courts have consistently and frequently construed the PDVA liberally to achieve its salutary purposes. Cesare, 154 N.J. at 400. In addressing the salutary purposes of the PDVA and providing the maximum protections, the Court in Brennan v. Orban, 145 N.J. 282 (1996) made clear there is no such thing as an act of domestic violence that is not serious. "Every action of recent legislatures has been

intended to underscore the serious nature of the domestic violence problem in our society." Id. at 298.

Defendant argues her perinatal depression caused a lack of control and therefore she lacked the intent to commit any predicate act of domestic violence. Putting aside Dr. Wells' lack of addiction qualifications, the larger point concerns the civil nature of this proceeding. The Legislature enacted the PDVA to address an identified harm in society and through the Act endeavored to create an efficient legal remedy to provide safety and security to protected parties.

Based on the testimony of all the witnesses, there can be no question that defendant committed the predicate acts of assault, harassment and terroristic threats. Regarding assault, the videos document numerous incidents of violence perpetrated by defendant on plaintiff between June 19 and June 26, 2021, the time period which forms the basis for the predicate acts. The Court will not restate in detail the prior synopsis and notes the pertinent testimony previously summarized in detail.

By way of brief overview, on June 19, 2021, in response to arguments concerning defendant taking the bus to a party with plaintiff allegedly not concerned with defendant's safety and defendant becoming angry at plaintiff's reaction to a present she gave him, defendant hit plaintiff

repeatedly, scratched him, and bit his face. Defendant threatened to kill herself, grabbed prescription medication along with a knife and pointed it to her side. This continued for four hours.

On June 20, 2021, defendant was still angry about the exchange from the day before. While plaintiff was on the couch, defendant pounded on his chest with her fists. Later, defendant slammed the door to the refrigerator so hard that pieces of it broke off. This continued for about two hours.

On June 26, 2021, plaintiff would not permit defendant to see him change his clothes. Defendant called him a "fucking asshole".

There is no dispute concerning the bodily injuries sustained by plaintiff in these incidents. P-3 is a video of the June 19, 2021, incident. Plaintiff's testimony on the injuries was not rebutted. Defendant admitted committing acts of violence on the plaintiff.

The Court rejects defendant's volitional/lack of intent defense predicated on perinatal depression for the reasons set forth above. The Court concludes defendant committed assault by attempting to and purposely causing bodily injury to plaintiff based on the incidents that took place from June 19 through June 26, 2021.

Defendant's threat to kill herself, putting a knife to her side and grabbing her prescription medication constitutes terroristic threats. The

actions and statements were made to terrorize the plaintiff. Plaintiff felt threatened and a reasonable person would believe that plaintiff felt threatened. Defendant intended to so threaten the plaintiff by these actions and this conduct.

For the same reason, the Court finds defendant acted with the purpose to harass the plaintiff by the nonconsensual offensive touching that occurred, which was not rebutted by the defendant. In addition to this finding under section (b), the actions and conduct of defendant are also violative of section (c). There is no doubt they were committed with the purpose to annoy and/or seriously harass.

Need for an FRO

The second prong of Silver requires the Court to determine whether a restraining order is necessary to protect the plaintiff from future acts or threats of violence. Silver, 387 N.J. Super. at 126–27. In determining whether a restraining order is necessary, the judge must evaluate the factors set forth in N.J.S.A. 2C:25-29(a)(1) to -29(a)(6) and, applying those factors, decide whether an FRO is required "to protect the victim from an immediate danger or to prevent further abuse." Silver, 387 N.J. Super. at 127. These statutory factors include: The previous history of domestic violence, existence of immediate danger to person and/or property, financial

circumstances of the parties, best interests of the protected person and any child, protection of the protected person's safety in determining custody and parenting time, existence of a verifiable order of protection from another jurisdiction, and other factors related to the escalating nature of defendant's actions and conduct together with the quantity of actions and conduct by the defendant.

On the second prong, defendant argues, the analysis is purely objective and that "plaintiff's subjective desire for a TRO is not part of the analysis under Silver and is statutorily prohibited." See defendant's pre-trial letter brief at p. 4 (note, there are no page numbers affixed to defendant's counsel's submission.) The analysis of this issue is informed by the decisional case law.

The courts employ an objective standard in evaluating a plaintiff's professed fear, specifically rejecting consideration of the victim's actual fear. However, the language employed by the controlling decisional authority provides, "the courts must still consider a plaintiff's individual circumstances and background in determining whether a reasonable person in that situation would have believed the defendant's threat." Cesare, 154 N.J. at 403. "[I]n a domestic violence context, a court should regard any past history of abuse by a defendant as part of a plaintiff's individual

circumstances and, in turn, factor that history into its reasonable person determination." Ibid. No decision has reconciled this oft-quoted language in Cesare with the use of the words "objective standard." Given Cesare's instruction and mandate for the trial courts to consider plaintiff's individual circumstances and background, and the prior history of domestic violence experienced by the subject plaintiff, the analysis of need cannot be purely objective. By this very language, the standard is properly characterized as a hybrid standard, as opposed to a pure objective standard.

The analysis of plaintiff's expression of need, whether predicated on fear or otherwise, is to be assessed by the Court using an objective, reasonable person standard as all the cited cases instruct. However, this analysis is not performed in a vacuum. Specifically, decisional case law instructs trial courts to consider the plaintiff's individual circumstances and background based on any prior history of domestic violence experienced by that plaintiff. The Judge must construe any such acts of current domestic violence considering the parties' history to better "understand the totality of the circumstances of the relationship and to fully evaluate the reasonableness of the victim's continued fear of the perpetrator." Kanaszka v. Kunen, 313 N.J. Super. 600, 607 (App. Div. 1998). Then, and only then, does the trial court employ the objective analysis of evaluating plaintiff's expression of

need. Justice Garibaldi held in Cesare on this issue as follows: "[I]n a domestic violence context, a court should regard any past history of abuse by a defendant as part of a plaintiff's individual circumstances and, in turn, factor that history into its reasonable person determination." Id. Thus, while the articulated test is objective (not plaintiff's stated fear, as an example, but whether a reasonable person would experience fear), it remains incumbent on the trial judge in evaluating plaintiff's claimed need for an FRO to consider the plaintiff's individual circumstances and background and then evaluate the claimed need under the "reasonable person" objective standard. This is precisely why the statute requires, among the other factors, for the Court to specifically consider and address any prior history of domestic violence. The evaluation of prior history of domestic violence is by definition subjective, i.e., what happened to this plaintiff on prior occasions?

In citing to the prior history statutory factors in particular, the Court in State v. Hoffman, 149 N.J. 564 (1997), referenced the need of domestic violence perpetrators to "control and dominate" their partners. Id. at 585. The following year, in Cesare v. Cesare, 154 N.J. 394 (1998), the Court expressly instructed consideration of plaintiff's "individual circumstances and background" in assessing whether a reasonable person would believe defendant's threat. Id. at 403. The assessment of individual circumstance is

therefore predicated on the prior history of domestic violence. It can only be subjective, because it is fact-specific to an individual plaintiff. In Kanaszka v. Kunen, 313 N.J. Super. 600, 607 (App. Div. 1998), the Appellate Division provided further explication on the hybrid nature of this inquiry in stating:

> [w]e add, for emphasis, that the previous history of domestic violence between the parties must be fully explored and considered to understand the totality of the circumstances of the relationship and to fully evaluate the reasonableness of the victim's continued fear of the perpetrator.

Dr. Wells concludes defendant's condition is abated. Yet, there is no explanation for why defendant was only violent towards the plaintiff. Dr. Wells testified defendant was with the plaintiff most often. However, defendant spent considerable time with her mother, her sister and co-workers; yet, there was no violence manifested to any of these people at any point in time. The lack of any explanation for why the defendant was only violent to the plaintiff weighs heavily in this Court's determination of need.

Defendant asserts that with therapy and medication, there is no risk. Plaintiff counters that there has been no further violence precisely because of the issuance of the TRO. It bears noting that therapy alone, which defendant was undergoing continuously excepting one or two months in early 2021, did absolutely nothing to control any of the defendant's violent episodes. The Court will not restate the prior history detailed earlier in this Opinion,

except to note it is extensive, occurred over an extended period and at times was extremely violent.

Dr. Wells is certain there will be no further violence; yet, her analysis is purely forensic. It remains unknown what, if any records of Be Well were received by her. She obtained information on the therapy by speaking with a representative of Be Well. No explanation was provided for why the therapy records or the therapist were not produced during the trial. To the contrary, Dr. Singer concludes defendant may present a risk of future harm.

It is noteworthy Dr. Wells concedes that defendant, by virtue of previously suffering from perinatal depression, is at a 30–50% increased risk of suffering from perinatal depression if she becomes pregnant. Defendant testified it is not her intention to become pregnant. However, it is unknown if defendant may meet someone and decide in the future to have another child. The point is not to question the future but rather to assess the need for an FRO. Another pregnancy is conceded by defendant's expert to increase the likelihood of another bout of perinatal depression. The Court cannot overlook this.

Dr. Singer opines the defendant may be triggered by seeing the plaintiff with the parties' child. Dr. Wells dismisses this concern because the parties have been in Court with one another, have done drop offs and

pick-ups of the child and live in proximity, all without incident. While a credible witness, Dr. Wells did not account for the presence of a Sheriff's Officer in Court, which very likely explains why both parties were very much under control during the eight days of trial. Further, the Court does not accept Dr. Wells' wholesale rejection of the contention that the TRO played no role in the actions and conduct of the defendant. Regarding timing, it was only after plaintiff obtained the TRO that defendant finally, one year later, met with a medical professional, obtained a prescription for Zoloft and took the prescription. This timing was not addressed by either defendant or Dr. Wells. It is reasonable to conclude the issuance of the TRO produced a rational response in the defendant which resulted in seeking the medical attention recommended one year earlier and following the prior direction to commence pharmacological treatment. The Court cannot state with any degree of certainty the cessation in violence was due solely to the prescription for Zoloft. It is reasonable to conclude the TRO played at least a part in stopping the violence. The separation of the parties, for one, is a significant factor in the cessation of violence, and the Court must evaluate the potential consequences if this forced separation is removed.

With the extensive history of documented violence, it is 'almost perfunctory' that an FRO issue. S.K. v. J.H., 426 N.J. Super. 230, 233 (App.

Div. 2012). The extreme acrimony between the parties presents a substantial concern of danger to both plaintiff's person and property. Dr. Singer goes so far as to insist there be a no-contact order entered. While the therapy and Zoloft have apparently adjusted defendant's hormones and the perinatal depression has abated, the Court cannot state from an objective analysis that plaintiff's concerns are unfounded or that there is no risk of any further violence.

There was no testimony presented on the financial circumstances of the parties. Both parties currently work and appear to be supporting themselves and are providing for the needs of Noah.

The Court finds plaintiff in need of protection especially on the issues of custody and parenting time. While the current parenting time arrangement according to both parties is working, this is because there is a TRO in effect. The parties have a lifetime of parental interaction ahead addressing all the stages of raising a child. Again, the plaintiff's fear and concerns objectively are well warranted.

There is no order of protection from another jurisdiction.

There is an absence by the defendant of recognition of the impact of her actions and behavior on the plaintiff, the father of the parties' child, other than a general statement of remorse. Defendant asserts the perinatal

depression prevented her from being in control of her emotions, actions and conduct and recognizing how the plaintiff was impacted. Perinatal depression is real and the ruling of this Court in no manner denigrates this reality and the suffering of those who endure it, including defendant. Perinatal depression, like substance abuse, anger management issues and mental health issues very well may provide an explanation for the actions and conduct of individuals. However, neither perinatal depression nor alcoholism, substance abuse, anger management issues and/or other mental health issues provide an absolute defense or an excuse from the legal consequences that attach to certain behaviors, actions and/or conduct. That defendant engaged in repeated violent provocative instances of conduct most certainly violative of the PDVA is not in dispute. There are consequences that attach where a plaintiff in an FRO proceeding meets their burdens of going forward and proof by a preponderance of the evidence that are not negated or legally excused by reliance on any number of documented conditions, such as perinatal depression, alcoholism, substance abuse and/or mental health issues.

Were this Court to accept defendant's argument, the protections intended to be provided by the PDVA would be diluted and potentially nullified. It is easy to envision domestic violence trials devolving into a

battle of the experts for those that can afford it. Acts of domestic violence constitute a breach of the social contract inherent in any relationship; that is, there is a modicum of trust and reasonable expectations of what will be provided by the other, and stated differently, what is reasonable to not expect from the other, includes physical violence, verbal abuse and other forms of communication the effect of which is to demoralize, diminish and produce fear and trepidation in the protected person/victim. With domestic violence, this social contract completely breaks down. The Court acknowledges defendant's progress through treatment and regimented pharmacological prescriptions, like the recovered alcoholic who successfully completes a twelve-step program, a drug addict who successfully completes rehabilitation and a mentally ill person who with treatment and pharmacological intervention is able to function in society. However, the reentry into society by any of these individuals does not permit a complete abrogation or waiver of the legal consequences preceding such treatment. To hold otherwise will invariably lead to a breakdown in the orderly functioning of society.

LISTING OF EXHIBITS

March 14, 2023

P-19	11/2/22	Dr. Singer Psychological Evaluation of Plaintiff
D-1	Undated	Nat'l Institute of Mental Health Publication
P-2		Amended TRO
P-5	5/29/21	Audio of early morning conversation between P & D, recorded by P; but, almost completely inaudible to the Court D seek to establish D said she takes pregabalin for pain
D-B	4/20/20	FDA Medication Guide for Lyrica (pregabalin)

March 20, 2023

P-3	6/19/21	Video Afternoon
P-4		Photo of bitemark
P-6	5/9/21	Video 3:21
P-7	5/9/21	Video 4:45
P-8	5/9/21	Video 10 minutes
P-10	5/9/21	Video 6:54

May 15, 2023

P-13	11/6/20	Video
P-14	9/28/20	Photo of Face
P-15	9/29/20	Photo of Left side of face

P-16	9/29/20	Photo of bite mark
P-17	9/4/20	Video

May 16, 2023

P-18	12/18/19	Video Part I 2 seconds
P-20	12/18/19	Video Part II 2 seconds
P-21	1/29/20	Audio (some video) 4:42
P-22	3/27/20	Video 44 seconds
P-23	5/9/21	Video (full length) 7:57

July 10, 2023

D-C	2020	Text Messages, 44 pages, focus on pp. 32 -35
D-D	3/27/20	Video 1:18
D-E	4/30/20	Video 15 seconds
D-F	6/620	Video 2:21
D-G	5/19/20	Video 1:21 part one

July 18, 2023

D-H	10/2020	Video 16 seconds
P-24	June 6, 2020	Video 5: 57
P-9	May 9, 2021	Video