

SUPREME COURT OF NEW JERSEY
DOCKET NO. 51958

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STATE OF NEW JERSEY, :
 :
Plaintiff-Petitioner : Criminal Action
-v- :
 :
NOEL REYES, :
 :
Defendant-Respondent, : Sat Below:
 : Hon. Stephen Skillman, J.A.D.
 : Hon. Joseph F. Lisa, J.A.D.
 :
 :
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BRIEF OF AMICUS CURIAE LEGAL SERVICES OF NEW JERSEY

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TABLE OF CONTENTS

	<u>PAGE (S)</u>
TABLE OF AUTHORITIES.....	ii
Introduction to Argument.....	1
POINT I	
THE APPELLATE DIVISION ERRED IN DISMISSING A CIVIL FINAL RESTRAINING ORDER IN THE CONTEXT OF A CRIMINAL APPEAL.....	2
POINT II	
THE APPELLATE DIVISION ERRED IN DETERMINING THAT DOMESTIC VIOLENCE OCCURRED ONLY IN NEW YORK.....	4
a. The New Jersey court had personal jurisdiction over defendant-respondent.....	7
POINT III	
THE NEW JERSEY COURT HAD JURISDICTION TO GRANT A FINAL RESTRAINING ORDER AGAINST DEFENDANT-RESPONDENT EVEN BASED ON OUT OF STATE ACTS OF DOMESTIC VIOLENCE..	8
CONCLUSION.....	10

TABLE OF AUTHORITIES

PAGE(S)

CASES

Brennan v. Orban, 145 N.J. 282 (1996) 10

Cesare v. Cesare, 154 N.J. 394 (1998) 9, 10

Community Realty Management v. Harris, 155 N.J.
212 (1998) 7

J.F. v. B.K., 308 N.J. Super. 387 (App. Div. 1998) 6

J.N. v. D.S., 300 N.J. Super. 647 (Ch. Div. 1996) 9, 10

In the Matter of Eileen W. v. Mario A., 644 N.Y.S.
2d 452 (Fam. Ct.1996) 8

L.D. v. W.D., 327 N.J. Super 1 (App. Div. 1999) 6

Waste Management, Inc. v. Admiral Insurance Co., 138 N.J.
106 (1994) 7

STATUTES

N.J.S.A. 2C:33-4 6

N.J.S.A. 2C:1-3(a) 8

N.J.S.A. 2C:25-18 8, 9

RULES

Rule 4:4-4(a) 7

Rule 4:6-2 8

Rule 4:9-2 6

ARTICLES

J. Zorza, "Protecting the Children in Custody Disputes When One Parent Abuses the Other," *Clearinghouse Review* Vol. 29, No. 12 (April 1996)..... 10

B. Hart, "Children of Domestic Violence: Risks and Remedies," *Child Protective Services Quarterly*, Pittsburgh, PA: Pittsburgh Bar Association, Winter, 1992, available at <http://www.mincava.umn.edu/hart/risks&r.htm>..... 10

Introduction to Argument

This case involves acts of domestic violence in both New Jersey and New York that resulted in both a civil domestic violence action against defendant-respondent and a separate criminal action against him for contempt of the domestic violence order. Defendant-respondent sought to overturn the Final Restraining Order (FRO) entered against him in the civil proceeding, not by appealing the civil case decision, but by filing an appeal in the separate criminal action for contempt of the domestic violence order. The initial appeal constituted an impermissible collateral attack on the trial court's decision in the civil case, and the Appellate Division exceeded its authority by dismissing the FRO. As a consequence of defendant-respondent's improper filing, Florinda Silva, the domestic violence victim who obtained the restraining order, was not even a party to the appeal in which it was dismissed.

The Appellate Division also mistakenly concluded that defendant-respondent's only act of domestic violence occurred in New York, and that New Jersey courts lack jurisdiction over out of state acts of domestic violence. Not only did defendant-respondent commit domestic violence in New Jersey, but nothing prevents New Jersey courts from

assisting victims merely because the domestic violence occurred outside of New Jersey. Further, regardless of where the domestic violence occurred in this case, the New Jersey court had personal jurisdiction over defendant-respondent and properly entered a FRO. Finally, consistent with New Jersey's strong policy of protecting domestic violence victims to the fullest extent possible, New Jersey courts must have the ability to protect victims who flee from violence in other states.

POINT I

THE APPELLATE DIVISION ERRED IN DISMISSING A CIVIL FINAL RESTRAINING ORDER IN THE CONTEXT OF A CRIMINAL APPEAL.

The Appellate Division in this case dismissed a civil FRO in the appeal of a separate criminal action for contempt of the domestic violence order. The domestic violence victim who obtained the FRO, Florinda Silva, was not a party to the appeal. The appeal constituted an improper collateral attack on the FRO and the Appellate Division erred in dismissing it.

Defendant-respondent was involved in two separate proceedings stemming from his acts of domestic violence. The first was a May 4, 2000 civil proceeding in Family Part, in which the trial court granted a FRO in favor of Ms. Silva, the plaintiff in that case, under docket number

FV 18-1071-00. Pa6. Having been charged twice with violating the Temporary Restraining Order (TRO), defendant then participated in a criminal contempt proceeding on June 15, 2000, under separate docket numbers: FO-18-309-00 and FO-18-315-00. Pa16. He pled guilty to one charge and the other was dismissed.

Four days later, on June 19, 2000, defendant-respondent filed a Notice of Appeal with the Appellate Division. Although he used the civil docket number, he filed the appeal under the caption of the criminal case in which he pled guilty. Defendant-respondent named the State of New Jersey as the respondent, not Ms. Silva, the plaintiff in the domestic violence case. Consequently, Ms. Silva was not a party to the appeal, even though the relief defendant-respondent sought and obtained was reversal of the FRO issued to her in the domestic violence case. Defendant-respondent also improperly submitted the transcript of the criminal plea hearing to the Appellate Division, in addition to the civil domestic violence hearing transcript. The Appellate Division had no authority to dismiss Ms. Silva's FRO in the context of the criminal appeal. In doing so, it deprived her of essential protections without her participation, in violation of her right to due process.

POINT II

THE APPELLATE DIVISION ERRED IN DETERMINING THAT DOMESTIC VIOLENCE OCCURRED ONLY IN NEW YORK.

Even if the domestic violence restraining order was properly before the court, the Appellate Division mistakenly concluded that it was based solely on an act of domestic violence that occurred in New York. It ignored the trial testimony concerning defendant-respondent's substantial conduct in New Jersey. The trial transcript reveals that after assaulting his wife in New York on the morning of April 27, defendant-respondent followed her later that day to her sister's apartment in New Jersey. 1T7-9 to T8-6. He repeatedly rang the bell and knocked on the door, creating a disturbance and refusing to leave. 1T8-13 to 19.

Although the complaint and TRO were not in the court record, the Appellate Division asserted that both were limited to "the incident in New York, and not anything that occurred in Somerville later that evening." Slip op. at 2. Contrary to the court's assertion, the transcript of the May 4 hearing does not support that conclusion.

The transcript reveals that the victim requested and obtained a TRO only after defendant-respondent followed her to her sister's house in New Jersey. T8-19 to 21. In its

own summary of the facts, the Appellate Division acknowledged that defendant's New Jersey conduct precipitated Ms. Silva's request for a TRO:

That evening, defendant came to the Somerville residence. He knocked repeatedly, and Silva denied him entry. She called the Somerville Police, who responded. Slip op at 2.

Its next statement that "Silva requested a Domestic Violence Temporary Restraining Order (TRO) based on the incident in New York" simply does not follow logically. Further, without the complaint and TRO, the Appellate Division could not properly determine their contents.

In addition, Ms. Silva focused on defendant-respondent's conduct in New Jersey at trial. She testified that he followed her to her sister's apartment in New Jersey, rang the bell, knocked on the door and created a disturbance, and that when he refused to leave, the police came and arrested him. 1T8-10 to 21. Defendant-respondent concedes that he followed Ms. Silva to New Jersey and was arrested. 1T9-20 to 25.

While the trial court's very brief findings, consisting of six lines in the transcript, 1T14-2 to 7, only refer specifically to the assault in New York, Ms. Silva's testimony about defendant-respondent's conduct in New Jersey was adequate to support a finding of domestic

violence as well. His repeated ringing and knocking at the door coupled with his refusal to leave, especially when viewed in the context of his actions earlier that day-- assaulting her in New York and following her to New Jersey, constitute "a communication...likely to cause annoyance or alarm," consistent with New Jersey's harassment statute, *N.J.S.A. 2C:33-4*.

The trial court clearly believed Ms. Silva's testimony about the events in New Jersey, explicitly finding that Ms. Silva was the only credible party:

I find the testimony of Ms. Silva to be believable, and I find the testimony of Mr. Reyes to be not believable. 1T14-2 to 4.

The court's failure to make separate, specific findings about each allegation of abuse cannot justify a reversal of the FRO when the record demonstrates that domestic violence occurred.

Even if plaintiff's complaint did not explicitly address New Jersey conduct, both parties testified about it, and there was no objection or issue of prejudice to the defendant-respondent. Accordingly, the court had the power to treat these issues as if they were raised in the pleadings or to conform the pleadings to the evidence.

Rule 4:9-2. The holdings of *L.D. v. W.D.*, 327 N.J. Super 1 (App. Div. 1999) and *J.F. v. B.K.*, 308 N.J. Super. 387

(App. Div. 1998) that findings of domestic violence cannot be based on allegations not mentioned in the complaint apply only where a defendant's due process rights are violated. In addition, *pro se* parties must not be penalized for failing to allege a legal claim completely and properly when there is no prejudice to the adverse party. See e.g., *Community Realty Management v. Harris*, 155 N.J. 212 (1998) (Court ordered special protective rules for *pro se* tenants).

a. The New Jersey court had personal jurisdiction over defendant-respondent.

Moreover, the circumstances in this case amply support the New Jersey court's assumption of personal jurisdiction over the defendant-respondent, regardless of where the underlying domestic violence occurred. First, the defendant-respondent was personally served with a TRO in New Jersey, Pa9, giving the New Jersey Family Part personal jurisdiction over him. Rule 4:4-4(a). Second, defendant-respondent's substantial conduct in New Jersey, including following his wife to New Jersey, committing additional acts in New Jersey, which resulted in two charges of violating plaintiff's TRO, and being arrested in New Jersey, constitute adequate "minimum contacts" to support personal jurisdiction. See e.g., *Waste Management, Inc. v.*

Admiral Insurance Co., 138 N.J. 106 (1994). Third, defendant-respondent submitted to the court's jurisdiction by appearing and participating in the domestic violence hearing. He made no claim that the court lacked personal jurisdiction over him, and consequently waived any potential claim to that effect. See Rule 4:6-2.

POINT III

THE NEW JERSEY COURT HAD JURISDICTION TO GRANT A FINAL RESTRAINING ORDER AGAINST DEFENDANT-RESPONDENT EVEN BASED ON OUT OF STATE ACTS OF DOMESTIC VIOLENCE.

The New Jersey Family Part had jurisdiction to grant a FRO in this action even if the only act of domestic violence occurred out of state. Nothing in the Prevention of Domestic Violence Act prevents family courts from deciding domestic violence cases for that reason. See *N.J.S.A. 2C:25-18 et seq.* Nor does the criminal code prevent New Jersey family courts from hearing domestic violence cases based on out of state acts. New Jersey's Criminal Territorial Applicability statute states that "a person may be *convicted* under the law of this State" for conduct that "occurs within this State." *N.J.S.A. 2C:1-3(a)* (emphasis added). That statute applies only to criminal cases and in no way limits the power of New Jersey family courts to grant relief in civil actions. See e.g., *In the Matter of Eileen W. v. Mario A.*, 644 N.Y.S. 2d 452

(Fam. Ct. 1996) (holding geographical limitation in criminal procedure law inapplicable to family court proceedings).

The claim that an out of state act of domestic violence bars jurisdiction in the New Jersey courts was explicitly rejected in *J.N. v. D.S.*, 300 *N.J. Super.* 647 (Ch. Div. 1996). In *Cesare v. Cesare*, 154 *N.J.* 394, 400 (1998), this Court endorsed the *J.N.* court's decision to assume jurisdiction as a positive example of the expansive protection to which victims are entitled under the Prevention of Domestic Violence Act. Although the Appellate Division in *Reyes* distinguished *J.N.* because the parties were both New Jersey residents, that was not the basis of the *J.N.* decision.

Indeed, even in cases where personal jurisdiction over the defendant is an issue, New Jersey courts must have the ability to protect victims who flee from domestic violence in another State. The Prevention of Domestic Violence Act's broad legislative intent of assuring "victims of domestic violence the maximum protection from abuse the law can provide," *N.J.S.A.* 2C:25-18, requires no less. Such protection is consistent with this Court's recognition that domestic violence poses a very serious and pervasive societal threat and New Jersey's role "in the forefront of

states that have sought to curb domestic violence."

Brennan v. Orban, 145 N.J. 282, 299 (1996); *Cesare v. Cesare*, 154 N.J. 394, 397-400 (1998).

Domestic violence victims cannot be limited to filing for protection where the domestic violence occurs or being forced to "wait, in fear, for the alleged abuser to commit an additional act of domestic violence, this time in New Jersey." *J.N.*, 300 N.J. Super. at 651. Research documents that domestic violence victims are often at greatest risk when they leave their abuser and that the violence may escalate as the abuser attempts to prevent her escape. J. Zorza, "Protecting the Children in Custody Disputes When One Parent Abuses the Other," *Clearinghouse Review* Vol. 29, No. 12 (April 1996); B. Hart, "Children of Domestic Violence: Risks and Remedies," *Child Protective Services Quarterly*, Pittsburgh, PA: Pittsburgh Bar Association, Winter, 1992, available at <http://www.mincava.umn.edu/hart/risks&r.htm>.

CONCLUSION

Amicus urges this court to reverse the Appellate Division's decision in this case, ensure that victims will not be denied relief simply because the domestic violence

