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	:	TRANSCRIPT
Plaintiff,	:	
	:	OF
vs.	:	
	:	FINAL RESTRAINING ORDER
KAMRIN MOORE,	:	COURT DECISION
	:	
Defendant.	:	
	:	

Date: August 14, 2019

THE HONORABLE FREDERIC R. MCDANIEL, J.S.C.

JAMES A. ABATE, ESQ., (Law Offices of James A. Abate)

PATRICIA GARRITY-SMITS, ESQ., (Patricia Garrity  
Smits, LLC),  
Attorney for the Defendant.

Audio Recorded By: A. Melillo

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I N D E X8/14/19DECISION

By the Court

Page

3

(Begin requested excerpt at 4:56:42 p.m.)

THE COURT: All right. So this, as I began at the very start of the hearing, is a final restraining order in which the plaintiff, [REDACTED] [REDACTED] alleges that the defendant, Kamrin Moore, committed an act of domestic violence against her. Specifically her complaint alleges assault.

As I explained at the outset, the plaintiff has the burden of proving that Mr. Moore committed an act of domestic violence/assault against her, specifically on July 11th, 2019.

So first of all the definition of assault. It's found in our New Jersey penal code at NJS 2C:12-1. And it states that a person is guilty of assault if, one, it's in three parts, one, a person attempts to cause or purposely, knowingly, or recklessly causes bodily injury to another.

Two does not apply in this particular case because there's no allegation of the use of a deadly weapon.

Part three, however, states that if a person attempts by physical menace to put another in fear of imminent serious bodily injury, you could find assault. Serious bodily injury means bodily injury, which can be physical pain, illness, or impairment of a physical

1 condition and which creates a substantial risk of death  
2 or which causes serious permanent disfigurement or  
3 protracted loss or impairment of the function of any  
4 bodily member or organ.

5 The allegation by plaintiff here is that on  
6 July the 11th she went to the defendant's home in  
7 Linden, New Jersey. The plaintiff resides in  
8 [REDACTED] Massachusetts. She testified that she  
9 traveled from Massachusetts first to, I believe, New  
10 York, perhaps Staten Island, to visit a friend. And  
11 that later that evening she contacted the defendant to  
12 tell him that she was in the area and was going to  
13 visit him.

14 The defendant, by text, told her not to go by  
15 his home. Through direct and cross-examination the  
16 plaintiff's testimony that she did anyway, failing to  
17 offer any reason why she decided to ignore the  
18 defendant's request, she arrived at his home and  
19 attempted to text him that she was now there. He did  
20 not respond. She texted him again asking why all of  
21 his lights were off. He did not respond. She texted  
22 again claiming that she, quote, "had to pee." Again,  
23 the defendant did not respond.

24 She testified that eventually a woman  
25 approached her car. That the plaintiff got out of the

1 car and that the two immediately began to fight. It  
2 was a physical fight.

3 She testified that the defendant came  
4 outside. He was running toward them and that while she  
5 was on the ground, he put his foot on her neck. She  
6 also testified that she was kicked in the face by the  
7 defendant's girlfriend.

8 She testified that when she says to the  
9 defendant, quote, "You know what you did," he punched  
10 her in the side of the face, rending her -- rendering  
11 her unconscious or at least semi-unconscious.

12 On cross-examination the plaintiff testified  
13 that she does not remember telling police or the judge  
14 that defendant told her not to come. She also admitted  
15 to contacting the defendant twice after she received  
16 the temporary restraining order.

17 She admitted that she had received messages  
18 from the defendant prior to July the 11th, 2019,  
19 including his imploring her to, quote, "Go away," and  
20 telling her that he will get her arrested if she tries  
21 to see him.

22 She also admitted to making numerous attempts  
23 to contact him after being blocked by using multiple  
24 phone numbers to contact him after he asked for no more  
25 contact.

When asked on cross-examination about who had caused her certain injuries, she responded with different answers; not the defendant, not sure, don't know, or it was the defendant's girlfriend. She never testifies that the defendant caused her injuries.

The plaintiff's witness, while seemingly credible because she's calm and seems pretty much straightforward, she contradicts the plaintiff and that is, I believe, a very important key.

The defendant testified that he had asked the plaintiff to leave him alone previously, but that she continued to attempt to contact him, even using nefarious means to do so such as attempting to circumvent the defendant's efforts to block her communications. I do note, however, that even though the defendant has testified that he tried on numerous occasions to get her to leave him alone, that as recent as a week before, he saw her in Massachusetts. So there are aspects of his conduct that I find wanting.

On one occasion the defendant drove the plaintiff to -- to Jersey City from Linden after she had spent the night with him in Linden in order to get her away from him apparently. Upon arrival in Jersey City, the defendant began the video of the event wherein the plaintiff refused to exit the defendant's

car. The video shows the defendant pleading with the plaintiff to get out and to leave. The plaintiff's reaction can only be described as pathetically juvenile. She's laughing, she's cursing, she's mocking the defendant, and it was typical stalking or harassing-type behavior by a person who refuses to acknowledge that the other person does not wish to continue in a true relationship.

As to July the 11th, 2019, the defendant testified that the plaintiff showed up at his home unwanted and that she would not leave. That he became concerned because his girlfriend was due to arrive from work. He testified that he purposely avoided going outside to see or confront her and that he was afraid she would enter through an open garage door if he attempted to leave.

He testified that from his window he -- he observed the plaintiff, quote, "charge his girlfriend and punch her." He testified that he ran outside to protect his girlfriend and attempted to break up the fight. He also testified that they were on the ground fighting and that both had a handful of the other's hair.

He described using his body to, quote, "pry them apart," and denies ever stepping on the

1 plaintiff's neck or striking her in the face.

2 He testified that his girlfriend did kick the  
3 plaintiff at some point in time and testified that the  
4 injuries reflected in photos of the plaintiff were  
5 caused by his girlfriend during the fight between the  
6 two. He testified that his girlfriend also suffered  
7 injuries, which were presented through photos.

8 The defendant's witness was his girlfriend at  
9 the time, Noelle Williams. She testified that she came  
10 home to the defendant's home, and she knew from the  
11 defendant that the plaintiff was there. She says that  
12 the defendant told her that the plaintiff was there.  
13 Upon arrival she states she confronted the plaintiff,  
14 and then a fight ensued. It stopped, and it started  
15 again. She takes full responsibility for the injuries  
16 that the plaintiff suffered resulting from the fight  
17 between the two.

18 As I stated previously, the plaintiff has the  
19 burden of proving by a preponderance of the credible  
20 evidence that the defendant assaulted her on July the  
21 11th. This Court concludes that the plaintiff failed  
22 to do so.

23 First of all, the Court finds that the  
24 plaintiff lacks some credibility. By her own admission  
25 she has attempted on numerous occasions to thwart the

1 defendant's efforts to end any relationship between the  
2 two. Her conduct both before the July 11th episode and  
3 after the issuance of a temporary restraining order  
4 paint a picture of the plaintiff as a manipulative,  
5 jilted ex-girlfriend, engaging in inappropriate conduct  
6 aimed at the defendant to either punish his decision to  
7 end their relationship, or it's a bizarre attempt to  
8 get him back in a manner ill-advised but common amongst  
9 unreasonable jilted paramours. It is consistent with  
10 her prior explanation that she will ruin his life.

11 The list of factors present that reflect on  
12 the plaintiff's credibility are as follows. One, is  
13 her claim that a week prior the defendant engaged in  
14 conduct with her in Massachusetts -- Massachusetts,  
15 which she said caused her to be threatened at gunpoint.  
16 While she signed her complaint stating that there was  
17 no history of domestic violence, she, here in court,  
18 claimed that the defendant caused her to be robbed and  
19 that that conduct was domestic violence committed by  
20 the defendant against her.

21 She also claimed that she found a picture in  
22 her home in Massachusetts that somehow connected the  
23 defendant to the person who she believes committed the  
24 robbery. It was incredible, misplaced, and undermines  
25 her claim that a week later she decides to pay him a

1 surprise visit, which somehow the defendant would  
2 welcome.

3 Number two, the video of the plaintiff  
4 refusing to exit the defendant's car shows an immature,  
5 unreasonable, again, jilted ex-girlfriend attempting to  
6 use childish conduct to avoid being rejected by the  
7 defendant.

8 Three, the plaintiff's decision to drive from  
9 Massachusetts to New York and then to New Jersey to see  
10 the defendant portrays her again as unreasonable and  
11 capable of exercising bad judgment.

12 Four, her refusal to leave his home, an  
13 attempt to compel him to see her is more of the same.

14 Five, the fact that she immediately left New  
15 Jersey without contacting the police but then returned  
16 two days later somewhat undermines her case, given  
17 consideration of all the facts because that alone would  
18 not necessarily call her conduct into question. Many  
19 domestic violence victims do not report immediately.  
20 But when I look at those circumstances, with all other  
21 factors, it does call her conduct into question.

22 Six, her testimony was that she doesn't  
23 remember him hitting her, but her statement was he  
24 punched her in -- with a fist in the face. I find that  
25 to be a contradiction.

1 Seven, the fact that she contacted the  
2 defendant twice after obtaining a temporary restraining  
3 order undermines her claim that she is fearful of the  
4 defendant. Someone who is afraid of the other person  
5 would not, at least a normal person, seek that person  
6 out by phone call or text messages knowing that there's  
7 a restraining order in place.

8 Eight, her claim that she fears that the  
9 defendant might hire or get someone to go to  
10 Massachusetts to harm her is not objectively  
11 reasonable. It appears to be a weak attempt to  
12 convince the Court that there is a reasonable fear even  
13 though they are miles apart. And, again, contacting  
14 the -- the defendant undermines that position.

15 Nine, overall the plaintiff's demeanor  
16 sometimes affects credibility. Her responses, her  
17 facial expressions, her constant shaking and rocking in  
18 her chair as she gave answers to questions, her legs  
19 and her body moving. She couldn't keep still. She was  
20 smiling. She was -- she had a snide look on her face.  
21 These are all examples of demeanor that the Court is  
22 allowed to consider when it considers whether or not a  
23 person is credible. She asked rhetorical questions to  
24 Counsel as well. It was consistent and certainly made  
25 sense based upon corroborating evidence such as emails,

1 texts, video, and -- and his witness as to that  
2 credibility.

3 Ten, the plaintiff's witness was not  
4 consistent with the plaintiff's testimony. As I said  
5 before, she seemed to be a somewhat credible  
6 individual, but it just seemed that she was perhaps  
7 supporting her girlfriend at a time that she felt she  
8 was in need. That is important. It's not a small  
9 thing that the plaintiff said I never had an  
10 opportunity to call the defendant on my way because I  
11 was driving. Never had the opportunity. And asked the  
12 question if she ever stopped for food or gas or the  
13 bathroom, I detected that wee pause before she decided  
14 to finally say nope, never stopped, contrary to the  
15 testimony of her girlfriend.

16 So with respect to establishing the predicate  
17 offense of assault, I find that there is not sufficient  
18 proof by a preponderance of the evidence to do so, no  
19 predicate act. I find that it cannot be found through  
20 the examination of any prior history to help establish  
21 that since there was no prior history of domestic  
22 violence. And I find that an examination of the second  
23 prong that's cited in Silver v. Silver, the plaintiff,  
24 although she claims fear based upon the fact that she  
25 believes he might send someone to harm her, is not in

1 any immediate danger from the defendant to property --  
2 to person or property.

3 So for all those reasons, the Court is  
4 compelled to dismiss the plaintiff's domestic violence  
5 complaint and corresponding temporary restraining  
6 order.

7 She has 45 days? Is it 30 or 45?

8 THE COURT CLERK: Thirty.

9 THE COURT: Forty-five?

10 THE COURT CLERK: Thirty, not 45.

11 THE COURT: Thirty days to appeal.

12 THE COURT CLERK: To appeal it is 45 days.

13 THE COURT: Forty-five days.

14 THE COURT CLERK: If it's for reconsideration  
15 it's 20.

16 THE COURT: Well, if -- if Counsel wants a  
17 motion for reconsideration she'll have to go to the  
18 rule book to determine how long that would require.

19 All right. For both parties I am signing an  
20 order of dismissal. You are going to get a copy of  
21 that so you can't leave until you do get a copy.

22 (Requested excerpt concluded at 5:14:57)

23  
24  
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## CERTIFICATION

I, Kelly Ford, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Union County Superior Court, Chancery Division, digitally recorded on August 14, 2019, Index No., 4:56:42 to 5:14:57 is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.



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KELLY FORD AD/T #561  
METRO TRANSCRIPTS, L.L.C.

Date: 8/15/19