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By: Paul G. Kostro, Esq. — Attorney for Mrs. Mary A

MARY A [a fictitious name],
Plaintiff/Appellant,

v.

ED A [a fictitious name],
Defendant/Respondent.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
UNION COUNTY

Civil Action

Docket No.

A-xxx-04T1

FV-20-xxx-06

**Appellant's Brief
&
Appendix**

On the Brief: Paul G. Kostro, Esq.

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Preliminary Statement

The legal issues before this Court are: (1) whether the Prevention of Domestic Violence Act of 1991 provides protection to a minor step-daughter who is a victim of numerous sexual assaults by her step-father; (2) whether a mother may seek relief pursuant to the Act on the basis of her consequential fears for her daughter; and (3) whether financial protection needs to be specifically requested in a Domestic Violence Complaint for it to be granted at a Final Restraining Order Hearing.

Procedural History

On July 22, 2005, when Mrs. Mary A [the Plaintiff/Appellant; hereafter referred to as the "Mother"] learned from her 15-year old daughter [referred to by her initials, "MP"; hereafter referred to as the "Daughter"] that the Mother's current husband, Ed A [the Defendant/Respondent; hereafter referred to as the "Defendant"], had been sexually assaulting the Daughter since the Daughter was 8 or 9 years old, the Mother called the police. After a police investigation, the Defendant was arrested and charged with Aggravated Sexual Assault [N.J.S.A. 2C:14-2a(2)(c)].

On July 26, 2005, the Mother filed a Complaint against the Defendant pursuant to the Prevention of Domestic Violence Act of

1991 [N.J.S.A. 2C:25-17, et seq.], and a Temporary Restraining Order was issued.

At the Final Restraining Order Hearing [August 3, 2005] the Trial Court ruled that the Prevention of Domestic Violence Act of 1991 does not provide protection to a minor step-daughter [by the Mother's prior marriage] who is a victim of sexual assaults by her step-father; and that a mother may not seek relief pursuant to the Act on the basis of her consequential fears for her daughter – and dismissed the Temporary Restraining Order.

After the dismissal, the Mother's attorney promptly filed an Emergent Motion seeking a stay of the dismissal pending an appeal. That motion was denied on August 4, 2005; and the instant appeal followed shortly thereafter.

Statement of Facts

On July 22, 2005, 15-year old Daughter [by a prior marriage - T1¹ @ 8:15 - 19] told her Mother that the Mother's current husband, the Defendant, had been sexually assaulting the Daughter since the Daughter was 8 or 9 years old. [T1 @ 13:16 - 13:19] The Mother called the police, and the Defendant was arrested and charged with Aggravated Sexual Assault [N.J.S.A. 2C:14-2a(2)(c)] [T1 @ 13:24 - 14:3].

Notwithstanding the Defendant's arrest and incarceration, the Mother continued to fear for the safety of her family, especially when she learned that the Defendant may post bail and be released from jail. [T1 @ 14:4 - 14:7]

The Defendant did post bail and was released from jail [T2 @ 9:21 - 24] - on July 26, 2005, the Mother, who has difficulties with the English language,² went to the Police without an attorney, and filed a Complaint against the Defendant pursuant to the

¹ T1 refers to the Transcript from the August 3, 2005 Final Restraining Order Hearing.

T2 refers to the Transcript from the August 4, 2005 Emergent Motion Hearing.

² At the August 3, 2005 Hearing, the Mother testified with the help of an Interpreter. [T1 @ 3:4 - 9]

Prevention of Domestic Violence Act of 1991 - a Temporary Restraining Order was issued. [T1 @ 4:8 - 4:11]

At the start of the Final Restraining Order Hearing [August 3, 2005] the Mother's attorney advised the Trial Court:

MR. KOSTRO: Good morning, Your Honor, my name is Paul Kostro, I'm an attorney from Linden and I represent Mrs. Mary A, who's here in a dual capacity. She's here on behalf of herself and also as the mother of her daughter. So there's -

[...]

So there's two plaintiffs in this matter.

THE COURT: There are -- no, there's one plaintiff in this matter, sir, that's Mary A. That's what the complaint says.

[T1 @ 3:12-25]

And again, shortly thereafter:

MR. KOSTRO: May I be heard on what I started before, Your Honor, as to the number of plaintiffs in the case?

THE COURT: Sir, there's only one plaintiff in the case. The plaintiff is named in the complaint. She is Mary A. I don't think there's any need for further discussion with regard to that. I'm just asking you if you're ready to proceed.

MR. KOSTRO: I am, Your Honor, but I would ask to be allowed to place on the record the argument as to why there's two plaintiffs.

THE COURT: Counsel, it's -- it's -- there's no need for that argument. If there's someone else listed on the complaint as a protected party, that's fine, that's not a problem. It doesn't mean that they're a complainant.

She is the complainant. She filed the domestic violence complaint.

MR. KOSTRO: I understand that, but in a dual capacity.

THE COURT: There's no -- there's no need for any further discussion on that issue, Counsel.

[T1 @ 5:8 - 6:3]

At the Hearing, the Mother's attorney was ready to present testimony from the Mother and the Daughter [T1 @ 6:4 - 12]; however, relating to the Daughter, the Trial Court ruled:

THE COURT: I think we need to clarify something here and I understand the argument you were trying to make, Counsel, but Mrs. A cannot obtain a restraining order on behalf of someone else. Allegations of either criminal conduct or domestic violence as they pertain to someone else -- someone else is not relevant here in these proceedings.

She has to prove that the defendant committed an act of domestic violence against her and not someone else. So if it's your attempt to bring out this information with regard to some conduct against the daughter, it's not going to be relevant. I'm not going to consider it. I'm letting you know that now.

[T1 @ 14:9 - 21]

Even after the Mother's attorney made an offer of proof,³ that the allegation is that the Defendant raped the Daughter [T1 @ 15:3 - 5], the Trial Court held fast [T1 @ 15:6 - 16:10]:

THE COURT: And if that's her allegation and she files a criminal complaint, that's fine. It has no place here,

³ Police Reports [1-a to 5-a] are attached hereto as an additional offer of proof of the testimony that would have been presented had the Trial Court allowed it.

except for the issue with regard to adding protected parties if she prevails on her application for a domestic violence restraining order.

MR. KOSTRO: And that's what I was driving at the beginning, Your Honor, that she's in a dual capacity.

THE COURT: She is no -- there is no dual capacity is what I've said to you three or four times now.

MR. KOSTRO: I realize that, Your Honor.

THE COURT: She has a complaint, it's hers. It is not her daughter's. It's hers. She must prove by a preponderance of the evidence that the defendant committed an act of domestic violence against her. After she prevails with regard to that, if she does, then I would hear testimony with regard to whether or not anyone else, whether it's her daughter, cousin, brother, anyone else, should be included as a protected party.

MR. KOSTRO: Is it the Court's ruling that a mother cannot seek a domestic violence proceeding on behalf of her minor daughter?

THE COURT: Correct.

MR. KOSTRO: So I might understand, Your Honor, why is that the Court's ruling?

THE COURT: Because there is no law with regard to that respect. The statute on domestic violence does not provide for that.

The Mother testified that although the Defendant had been abusing alcohol [T1 @ 12:13 - 13:3], and had been violent towards the Mother [T1 @ 9:25 - 10:16; 11:8 - 17; 21:19 - 23], prior to learning of the sexual assaults against the Daughter, the Mother

considered her marriage to the Defendant to have been "not bad."

[T1 @ 24:15 - 18]

However, the Mother also testified:

THE COURT: [...] Mrs. A, your complaint says that your husband has verbally threatened your life. Your complaint is dated July 26, 2005. Do you recall your complaint that you filed in Linden Municipal Court?

THE WITNESS: Well, yes, when I went there to court to file for the restraining order I was telling me that I was afraid because I was afraid, you know, for my daughter.

THE COURT: Were you ever afraid for yourself?

THE WITNESS: Well, no, or sometimes he was using abusive language, calling me that I was nothing, that I'm not going to be able to manage here in this country because I didn't know any English, but you know, I was always trying to live -- live in that relationship for my children.⁴

[T1 @ 18:13 - 19:3]

[...]

MR. KOSTRO: Did you come to my office and tell me that you were afraid?

THE WITNESS: Well, yes, yes, I was afraid, but I was afraid for, you know, my family. What had happened in my family, it was like you see things in movies, you know. No one can understand really what happened and what happened to me in that.

[T1 @ 19:7 - 13]

MR. KOSTRO: Tell the Judge what you said to me when you came to my office.

⁴ In addition to the Daughter, the Mother and the Defendant were the parents of an eight-year old son. [T1 @ 9:5 - 12]

THE WITNESS: That I am afraid for myself, I'm afraid for my children. I'm afraid to go to bed, to sleep, to be alone in the house. I'm afraid to basically live.

[T1 @ 20:7 - 11]

MR. KOSTRO: Mrs. A, the Judge wants to hear about your relationship with your husband.

THE WITNESS: Well, I can't say -- I can't say that our marriage was a bad marriage. Once again, I did not come here for -

THE COURT: Yourself?

THE WITNESS: Yes, I came for my children and for myself.

THE COURT: What for yourself, ma'am?

THE WITNESS: Because I got scared for the fact what he had done toward [the Daughter].

THE COURT: Scared of what?

THE WITNESS: Because he's been doing - having sex three years now with her and I was afraid - I'm alone here.⁵

THE COURT: Afraid of what, ma'am?

THE WITNESS: Of him.

THE COURT: What about him? What are you afraid of?

THE WITNESS: Because what he had done to my daughter I do not know now what else he could do to us.

[T1 @ 24:15 - 25:10]

⁵ The Mother emigrated from xxxx 15 years ago [approximately 1990], when she was 23 years old; she is now 38 years old. [T1 @ 7:18 - 8:1]

During the Hearing, the Trial Court ruled that any danger to, and violence against, the Mother's children was not relevant to the proceedings:

MR. KOSTRO: Do you feel that your children are in danger?

MR. ATTNY: Objection. It's irrelevant to this proceeding.

THE COURT: Sustained.

[T1 @ 17:13 - 16]

MR. KOSTRO: Did you ever observe your husband hit any of your children?

MR. ATTNY: Objection, leading.

THE COURT: Leading and not relevant, unless we can establish some act of domestic violence against the plaintiff, and then I could, therefore, take into consideration how that act of domestic violence, and any other conduct the defendant has engaged in toward the children --

[T1 @ 23:13 - 21]

After the Mother testified, the Trial Court dismissed the Domestic Violence Complaint [T1 @ 25:19 - 26:13]:

All right. Counsel, I'm afraid that we've heard enough testimony from Ms. A to establish that there aren't any allegations of domestic violence as they pertain to Mr. A directed at her.

Although her complaint says one thing, it's very clear from her testimony here in court today that she sought the issuance of a temporary restraining order solely to protect her children, because of some allegation of sexual assault against her daughter.

And as I stated previously, quite clearly, she cannot obtain a domestic violence restraining order in New Jersey on behalf of her daughter. It might very well be that there is a pending criminal complaint against Mr. A that he will have to deal with those criminal charges as they pertain to her daughter and, as a result of those criminal charges, if he is convicted, certainly there would be, as a part of his sentence, some precautions taken to protect the daughter, but the state of the law in New Jersey with respect to domestic violence does not provide a vehicle for mothers to seek restraining orders on behalf of their daughters or sons.

So based upon the testimony that I have heard, and no indication and, Counsel, you tried valiantly to get some information from Mrs. A which would indicate that either an act of domestic violence was committed against her, or that she was, indeed, fearful of defendant. It's not there. It's simply not there.

And based upon that, I'm afraid I'll have to dismiss the domestic violence complaint against Mr. A.

After the dismissal, the Mother's attorney promptly sought a stay of the dismissal, pending an appeal. [T2 @ 3:19 - 24]

During the Hearing on the Motion for a stay of the dismissal of the Temporary Restraining Order, the following was stated, giving further insight into the Trial Court's reasoning:

MR. KOSTRO: Your Honor, there's two minor children, as from the testimony yesterday, there's two minor children in the household and I understand the Court's ruling, as I understood it, that the mother could not seek protection under the Domestic Violence Act on behalf of her minor daughter on basis of allegations that the daughter was sexually molested by the stepfather, and also that the mother couldn't - unless the mother was personally fearful or had some personal reasons for the domestic violence protection -- in other words, that the family's involvement is not good enough for the mother to receive protection.

THE COURT: Right. Quite simply put, she was the complainant and she would have to allege an act of domestic violence against her. She would have to be the victim and she would have to prove, by a preponderance of the evidence, that an act of domestic violence was committed against her and that she was in immediate danger and was in need of a domestic violence restraining order. That basically was my ruling.

MR. KOSTRO: Right. Okay. I am seeking to appeal the Court's ruling, and pending that appeal I'm seeking the stay of the Court's dismissal of the TRO.

THE COURT: I understand what you're asking for, but why are you asking for that? In other words, if you give me -- give me some law with respect to the issuance of the stay. Give me some reason for the issuance of that stay.

Are you alleging that somehow these children are at risk? And what are they at risk of? What's the danger? What's the problem?

MR. KOSTRO: They're at risk, Your Honor, because -- Mr. A is a sexual predator against children, that's what he has been arrested for.

THE COURT: That's what's alleged, yes. That's what is alleged. He has been charged with something. He's not been convicted of anything, but - however, the daughter in question has nothing to do with the son, correct? She didn't seek a restraining order on behalf of her son, just her daughter, correct? Was that her testimony in court? She sought the restraining order to protect her daughter. Is that correct?

MR. KOSTRO: I believe she said her children.

THE COURT: I believe she said she got it for her daughter, because she alleges sexual assault in her complaint. The only sexual assault could be with respect to the daughter, correct? There's no allegation of sexual assault against his own son, correct?

MR. KOSTRO: That's correct.

THE COURT: Okay.

MR. KOSTRO: That's correct.

THE COURT: Now this is not his daughter, correct?

MR. KOSTRO: That's correct.

THE COURT: All right. So what -

MR. KOSTRO: It's my client's daughter.

THE COURT: That's correct. How is she - how is that daughter at risk?

MR. KOSTRO: She lives in the household. She's 15 years old. She lives in the household and -

THE COURT: She no longer lives with Mr. A, right?

MR. KOSTRO: Well, once Your Honor dismissed the TRO, he could have contact with her. Now I believe -- my adversary's told me that he believes that generally, in cases like this, there's a no contact order.⁶ I asked, can they fax me a copy of such a provision that applies in this case. They said they did not have one last night and they would not send it to me unless -

THE COURT: A no contact provision attached to what?

MR. KOSTRO: To the bail.

THE COURT: Okay.

MR. KOSTRO: But -

⁶ On this issue, the Defendant's attorney advised the Trial Court:

THE COURT: Do you know whether or not that exists?

MR. ATTN: I don't know for sure. We don't have a copy of it.

T2 @ 9:12 - 15.

THE COURT: Is there -- do you know whether or not there is a no contact provision in his bail?

MR. KOSTRO: No, I do not, and my adversary would not confirm this.

THE COURT: That certainly would be an option. Did someone go -- someone contact -

MR. KOSTRO: He's already out on bail.

THE COURT: I understand that, but certainly someone could contact the Prosecutor to seek a no contact provision being added to the bail so if he does attempt to have contact with the daughter, his bail would be revoked. That is an option, but that's not what we're here to discuss today.

MR. KOSTRO: That's not why we're here. I agree, Your Honor, that those are options.

What I'm here is seeking the protection of the Domestic Violence Act to protect my client's family from Mr. A. I have -- the Domestic Violence Act provides, in addition to, for example, no contact, it provides for maintaining the economic stability of the family unit.

THE COURT: Which is not an issue here, because she never asked for anything with respect to economic support, so we're just talking about -

[T2 @ 4:9 - 8:10

At the end of the Motion Hearing, the motion for a stay was denied:

THE COURT: Well, there was no evidence of sexual assault because I wouldn't allow it basically. He's saying that had he been given the opportunity, he could have provided that evidence, but the first hurdle that we're trying to get over here is whether or not a parent can apply for a restraining order on behalf of the child.

That's really the focus of this issue here and Mr. Kostro, you're basically saying -- is he saying that the statute doesn't exclude the opportunity for a parent to do so and -- and you -- you present this case, South v. North,⁷ which has language in it that says that basically anyone can, but -- and as you said, that's a Chancery Division case, but what it's saying is that anyone can as long as they fit the description as set forth under the Domestic Violence statute.

And the Domestic Violence statute, I believe is clear as to who can file for a restraining order.

MR. KOSTRO: I understand that that is Your Honor's belief and ruling and I seek the opportunity to challenge that in the Appellate Division, and while I'm doing that, I'm seeking the stay of Your Honor's dismissal.

THE COURT: Well, I have no justification for that stay. There is no justification for the stay. There's no allegation that the child is currently at risk because of this defendant. There's nothing that would even indicate that the stay is necessary at this time. They're not living in the same household obviously. They're not going to be living in the same household, that's not her father.

MR. KOSTRO: Well, it's not obvious - number one, Your Honor said "obviously." That's not obvious because everybody's talking about the possibility of there being a no contact order, but nobody has yet shown me one. And second of all -

THE COURT: And as I said, you always have the option of going to the Prosecutor and asking for a bail hearing for a no contact provision. Has anyone explored that?

MR. KOSTRO: Your Honor, I was not involved in those procedures.

THE COURT: You're representing Ms. A. You're asking this Court to take some action on her behalf. Same thing, can you ask the Prosecutor to take some action on

⁷ South v. North, 304 N.J. Super. 104 (Ch. Div., 1997)

behalf -- if you think her daughter is at risk, why aren't you asking the Prosecutor for a no contact provision in the bail?

MR. KOSTRO: Because at this moment I'm before Your Honor, you know.

THE COURT: Okay. And I -- and I'm saying I still find no justification for the entrance of a final restraining order and I don't see anything -- I don't have a motion before me in writing from you. I have no legal basis for granting a stay and I don't see any other reason for granting a stay.

So basically I'm going to have to tell you, Counsel, that your stay is -- your request for a stay is denied.

Legal Argument of Appellant

Point I

Pursuant to the Prevention of Domestic Violence Act, a 15-year Old Step-daughter Is Entitled to Protection from Her Step-father's Repeated Sexual Assaults.

N.J.S.A. 2C:25-19(d) states:

1 "Victim of domestic violence" means a person protected
2 under this act and shall include any person who is 18
3 years of age or older or who is an emancipated minor and
4 who has been subjected to domestic violence by a spouse,
5 former spouse, or any other person who is a present or
6 former household member. "Victim of domestic violence"
7 also includes any person, regardless of age, who has been
8 subjected to domestic violence by a person with whom the
9 victim has a child in common, or with whom the victim
10 anticipates having a child in common, if one of the
11 parties is pregnant. "Victim of domestic violence" also
12 includes any person who has been subjected to domestic
13 violence by a person with whom the victim has had a
14 dating relationship.

As was argued below [T2 @ 11:24 - 13:19], the Prevention of Domestic Violence Act defined "Victim of domestic violence" in inclusive terms, i.e., a victim of domestic violence means a person protected under the Act, **including** (BUT, the Act does NOT state: LIMITED TO):

1. any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic

violence by a spouse, former spouse, or any other person who is a present or former household member;

2. any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant; and
3. any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.⁸

The New Jersey Domestic Violence Procedures Manual, issued jointly by the New Jersey State Judiciary and the Department of Law and Public Safety [28-a; available on the Internet at: <http://www.judiciary.state.nj.us/family/dvprcman.pdf>], similarly to the Prevention of Domestic Violence Act, states that the a "Victim of Domestic Violence" is a person protected by the Act (which **INCLUDES** [but is NOT LIMITED TO] certain specified groups of individuals) [29-a]; however, later, explicitly states that: "**A victim may be below the age of 18.**" [30-a; emphasis added].

⁸ If need be, in a perverse sort of way, in this case, the Defendant could be viewed as having had a "dating relationship" with the Daughter in that they were participating in periodic sexual activities outside of normal family-life. For a discussion of the meaning of a "dating relationship" see: Andrews v. Rutherford, 363 N.J. Super. 252, 256-261 (Ch. Div. 2003).

The only category of individuals explicitly EXCLUDED under the Act are PERPETRATORS [NOT VICTIMS] of domestic violence who are minors.

For many years now, the Court has recognized that domestic violence is a grave **threat to children** - "Domestic violence persists as a grave threat to the family, particularly to women and children. In the Prevention of Domestic Violence Act, the Legislature has made clear its intention to 'assure the victims of domestic violence the maximum protection from abuse the law can provide.' N.J.S.A. 2C:25-18. Recognizing the decisive role of the judiciary, the Legislature declared that 'it is the responsibility of the courts to protect victims of violence that occurs in a family or family-like setting by providing access to both emergent and long-term civil and criminal remedies and sanctions.' Ibid." [State v. Chenique-Puey, 145 N.J. 334, 340 (1996).]

Analyzing the provisions of the Act, the Appellate Division recently held that: "The Act further provides that when considering the terms of a restraining order, the court must consider, *inter alia*, '[t]he best interests of the victim and **any child**[,]'" N.J.S.A. 2C:25-29a(4)". [State v. Haas, (Unpublished; App. Div. A-2772-04T5, October 21, 2005); 26-a; emphasis added.]

In South v. North, 304 N.J. Super. 104, 109 (Ch. Div. 1997), the Court ruled that the Prevention Of Domestic Violence Act covers ANY person who has a close relationship with his or her batterer.

In Desiato v. Abbott, 261 N.J. Super. 30, 32-33 (Ch. Div. 1992), the Court ruled [emphasis added]:

[T]he Legislative Declaration under N.J.S.A. 2C:25-18 states, in part, that "... it is the responsibility of the Courts to protect the victims of violence that occurs in a family or family-like setting by providing access to both emergent and long-term civil and criminal remedies and sanctions, and by ordering those remedies and sanctions that are available to assure the safety of the victims and the public. To that end, the Legislature encourages ... the **broad application** of the remedies available under this Act in the civil and criminal Courts of this State."

This stated **legislative intent mandates this court to liberally construe the remedies available and to protect any victim of violence occurring in a "family or family-like setting"**.

As news accounts often reveal, and as is evident in this case, children are victims of domestic violence, and because of a child's dependant state, children are most in need of the Court's protection.

Point II

A Mother May Seek Relief Pursuant to the Prevention of Domestic Violence Act on the Basis of Her Consequential Fears for Her Minor Daughter Who Is the Victim of Her Step-father's Repeated Sexual Assaults.

It is generally recognized that sexual predators, when they prey on children, particularly within a family setting, use intimidation to keep the child quiet. The threat made by the predator to the child is "no one will believe you" and "if you tell, you will be punished." Similarly, mothers of abused children often are immobilized by fear of the economic consequences of reporting the crime perpetrated by their husbands.

In this case, even though the Mother had judged her marriage to have been "not bad", the instant she learned of the violence perpetrated by her husband against her daughter, she instantly called the police. However, she then began to fear for the safety of her family, particularly her children. To protect her children, the Mother sought the protection of the Prevention of Domestic Violence Act.

The fears suffered by mothers of children who are victims of domestic violence are real fears - they are not fantasies. These fears can cause more suffering than any bruise ever could.

Perpetrators of psychological domestic violence should not be protected by the courts simply because the fear felt by the victim is for all that is dearest to her, and not for her personal safety.

If nothing else, such abusive behavior may be viewed as harassment [see Costante v. Costante, Unpublished; App. Div. A-349-04T1, August 15, 2005; 23-a].

Harassment was presented to the Trial Court, but it was rejected by the court [T1 @ 23:22 - 24:11]:

MR. KOSTRO: Your Honor, I believe that we have established the fact that he -- there has been harassment, if nothing else.

THE COURT: I have no allegation of harassment whatsoever from this plaintiff to form the basis for this restraining order. The only thing she has testified about is something that happened four years ago, other acts in the past, which I have absolutely no time frame for, and name calling.

I have absolutely nothing that would indicate why she filed for this restraining order to protect herself now, other than her statement that she didn't do it for herself, just her children.

THE WITNESS: Because that's why I came to court.

Point III

At a Final Restraining Order Hearing, the Court May Grant Financial Protection to the Victim, Even If Such Financial Protection Was Not Specifically Requested When the Domestic Violence Complaint Was Filed.

The Trial Court ruled that a victim of domestic violence is not entitled to judicially imposed economic safety and relief, UNLESS the victim had requested such relief when the domestic violence complaint was originally filed. The following exchange details the Trial Court's ruling:

MR. KOSTRO: [... .] What I'm here is seeking the protection of the Domestic Violence Act to protect my client's family from Mr. A. I have -- the Domestic Violence Act provides, in addition to, for example, no contact, it provides for maintaining the economic stability of the family unit.

THE COURT: Which is not an issue here, because she never asked for anything with respect to economic support,
[T2 @ 7:25 - 8:10]

It is respectfully submitted that the Trial Court's ruling was contrary to law. N.J.S.A. 2C:25-29 provides in relevant part:

a. A hearing shall be held in the Family Part of the Chancery Division of the Superior Court within 10 days of the filing of a complaint

b. In proceedings in which complaints for restraining orders have been filed, the court shall grant any relief necessary to prevent further abuse. [...]. At the hearing the judge of the Family Part of the Chancery Division of the Superior Court may issue an order granting any or all of the following relief:

(4) An order requiring the defendant to pay to the victim monetary compensation for losses suffered as a direct result of the act of domestic violence. [...]. Compensatory losses shall include, but not be limited to, loss of earnings or other support, including child or spousal support, out-of-pocket losses for injuries sustained, cost of repair or replacement of real or personal property damaged or destroyed or taken by the defendant, cost of counseling for the victim, moving or other travel expenses, reasonable attorney's fees, court costs, and compensation for pain and suffering. Where appropriate, punitive damages may be awarded in addition to compensatory damages.

(8) An order requiring that the defendant make or continue to make rent or mortgage payments on the residence occupied by the victim if the defendant is found to have a duty to support the victim or other dependent household members [...].

(9) An order granting either party temporary possession of specified personal property, such as an automobile, checkbook, documentation of health insurance, an identification document, a key, and other personal effects.

(10) An order awarding emergency monetary relief, including emergency support for minor children, to the victim and other dependents, if any. An ongoing obligation of support shall be determined at a later date pursuant to applicable law.

(11) An order awarding temporary custody of a minor child. The court shall presume that the best interests of the child are served by an award of custody to the non-abusive parent.

(14) An order granting any other appropriate relief for the plaintiff and dependent children, provided that the plaintiff consents to such relief, including relief requested by the plaintiff at the final hearing, whether or not the plaintiff requested such relief at the time of the granting of the initial emergency order.

A victim who is traumatized by domestic violence seeks the protection of the law, initially for the victim's safety; and usually does not even think about the financial consequences of such a filing. Consequently, the law doe NOT require the victim to plead all potentially needed relief when the Complaint is filed - the law places all defendants on notice that such financial relief may be sought at the time of the Final Restraining Order Hearing.

Of course, the law does not preclude the possibility that the Court will grant an extension of time for a defendant to prepare to meet the allegations and demands once they are made; however, the law does NOT require a victim to seek all possible relief when the Temporary Restraining Order is issued, under penalty of loss of such relief if it was not initially sought.

Conclusion

The Trial Court in this case did a great disservice to the victims of Defendant's domestic violence. When a sex crime is reported, the court should NOT express: "What's the danger? What's the problem? ... That's what is alleged. He has been charged with something. He's not been convicted of anything."

Pursuant to the Prevention of Domestic Violence Act, a 15-year old step-daughter is entitled to protection from her step-father's repeated sexual assaults.

Furthermore, a mother may seek relief pursuant to the Prevention of Domestic Violence Act on the basis of her consequential fears for her minor daughter who is the victim of her step-father's repeated sexual assaults.

Finally, at a Final Restraining Order Hearing, the Court may grant financial protection to the victim, even if such financial protection was not specifically requested when the domestic violence complaint was filed.

Dated: January ___, 2006

Respectfully submitted,

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By: _____
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