

To: New Jersey Law Revision Commission
From: Renee Wilson
Re: Evidentiary Standard for Final Restraining Order (*B.C. v. V.C.*) - N.J.S. 2C:14-16
Date: July 9, 2018

MEMORANDUM

Executive Summary

In *B.C. v. V.C.*, the Court considered whether the Sexual Assault Survivor Protection Act of 2015 (SASPA) applied retroactively to allegations in a complaint, resulting in the issuance and ultimate dismissal of a Final Restraining Order (FRO).¹ Another issue mentioned in the case, but not fully addressed by the Appellate Division, was the constitutionality of N.J.S. 2C:14-16.

Background

The Plaintiff in *BC v. VC* appealed family court orders dismissing complaints she filed on behalf of her minor children, seeking FRO's against their father, the defendant, pursuant to the Sexual Assault Survivor Protection Act of 2015 (SASPA).² The Trial Court found that N.J.S. 14:14-16 was unconstitutional as applied to the defendant because the entry of such an order bars contact with his children based on proof of the underlying allegations by a preponderance of the evidence.³ In the Trial Court's opinion, this standard was too low. N.J.S. 14:14-16 states, in relevant part, that a:

hearing shall be held in the Superior Court within 10 days of the filing of an application pursuant to section 3 of P.L.2015, c.147 (C.2C:14-15) in the county where the temporary protective order was ordered, unless good cause is shown for the hearing to be held elsewhere. A copy of the application shall be served on the respondent in conformity with the Rules of Court. If a criminal complaint arising out of the same incident which is the subject matter of an application for a protective order has been filed, testimony given by the applicant, the alleged victim, or the respondent in accordance with an application filed pursuant to this section shall not be used in the criminal proceeding against the respondent, other than contempt matters, and where it would otherwise be admissible hearsay under the rules of evidence that govern when a party is unavailable. At the hearing, the standard for proving the allegations made in the application for a protective order shall be a preponderance of the evidence.⁴

The Trial Court concluded, in a comprehensive opinion, that since a final restraining order

¹ *B.C. v. V.C.*, 2017 WL 2705443 (App. Div. 2017).

² *Id.* at 1.

³ *Id.*

⁴ N.J.S. 14:14-16.

would bar the defendant from having any contact with his children, the preponderance of the evidence standard in N.J.S. 2C:14–16 was constitutionally insufficient to protect defendant’s due process liberty interest in having a parental relationship with his children.⁵ The court further surmised that issuing a SASPA restraining order barring contact between a parent and child requires proof by clear and convincing evidence and therefore N.J.S. 2C:14–16 was unconstitutional as applied to the SASPA claims against the defendant.⁶

In this matter, the Appellate Division did not address the issue of the constitutionality of N.J.S. 2C:14–16, stating, “we conclude it was unnecessary for the court to decide the constitutional issue because SASPA did not retroactively apply to the allegations in the complaints and, therefore, the complaints should have been dismissed on that basis”.⁷

We are mindful that we should not decide issues of constitutional magnitude unless required for the proper disposition of a matter...Here, we have carefully considered the record and the parties' arguments and find it unnecessary to decide the constitutional issue upon which the trial court based its dismissal order. Instead, we are constrained to affirm the dismissal of the complaints on more basic grounds; plaintiff's children are not entitled to SASPA relief because the statute was not in effect when the alleged conduct took place and SASPA does not apply retroactively.⁸

Other courts before and since this case have also not addressed the constitutionality issue presented by N.J.S. 2C:14–16 as identified by the Trial Court. Courts have, instead, followed the statute as written, using the preponderance of the evidence standard when deciding on the issuance of FRO’s.

However, as the Family Court in this matter indicated, N.J.S. 2C:14–16 as applied can be considered unconstitutional due to the low burden of proof it requires. Since the issuance of an FRO can bar a defendant from contact with their minor children, as indicated by the family court, the burden should be much higher. Therefore, a clear and convincing evidence standard would be more appropriate.

Conclusion

Staff seeks authorization to conduct additional research and outreach regarding the constitutionality issue identified in *BC v. VC* to determine if any modification to the statute could

⁵ *B.C. v. V.C.*, 2017 WL 2705443, 1 (App. Div. 2017).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 2.

be of use in addressing that issue with regard to N.J.S. 2C:14–16. At this time, no other cases have addressed the constitutionality issues identified by the Trial Court in N.J.S. 2C:14–16.