

# Appellate Division Upholds Dismissal Of Personal Injury Claim In Domestic Violence Case

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February 20, 2019 | by Thomas F. Dorn, Jr

In J.Z. v. E.R., et als. (A-2581-17T2), the Appellate Division addressed what viable personal injury claims a domestic violence victim involved in a love triangle could pursue. The facts of the case were: Defendant M.V. resided in a home owned by Defendant F.M. Defendant M.V. was dating Plaintiff J.Z. and was also dating defendant E.R. on and off. Defendant E.R. was the father of M.V.'s youngest child. E.R. and M.V. were never married. Prior to April 18, 2015, M.V. knew that E.R. was romantically involved with J.Z. but had never exhibited any violence in front of J.Z.; E.R. had met J.Z. about twenty times and knew that E.R. stayed in M.V.'s house several evenings a week. M.V. E.R. also knew that M.V. kept her house front door unlocked.

On April 18, 2015, E.R. was doing some work inside M.V.'s home and made plans with her to meet for dinner that night to discuss renewing a committed relationship. E.R. did not know that M.V. had dinner plans with J.Z. that evening. When E.R. never heard from M.V. about dinner he believed that M.V. had forgotten their plan and was at her house watching television. After 11 p.m., E.R. went to M.V.'s house to discuss their future. When he arrived he saw J.Z.'s car in M.V.'s driveway. E.R. texted M.V. and called her to tell her that he was coming into the house. E.R. went into the house and entered M.V.'s bedroom and saw J.Z. in M.V.'s bed. M.V. told E.R. to leave the house. E.R. then yelled at and struck M.V., causing her to fall to the floor. J.Z. then got into a wrestling match with E.R. During the struggle E.R. shoved J.Z. against a piece of furniture resulting in J.Z. losing his right eye.

J.Z. filed a personal injury case against the homeowner F.M., against E.R. and against M.V. Defendant F.M. filed a motion for summary judgment that was granted; J.Z. did not oppose F.M.'s motion. E.R. settled with J.Z. Defendant M.V. filed a motion for summary judgment. The Law Division judge granted the motion, finding that M.V. did not owe a duty to warn or protect J.Z. from E.R. The judge concluded that M.V. had no reasonable expectation that E.R. would come into her bedroom, start a fight with her, or anticipate that J.Z. would attempt to protect her from E.R.

On appeal, J.Z. argued that the judge below erred in finding that M.V. did not owe him a duty; J.Z. contended that the facts in this case presented a “perfect storm” and M.V. owed him a reasonable duty of care under the circumstances. J.Z.’s theory of liability was that M.V. owed him a duty to exercise care for his safety arising from her deceitful relationship with E.R. while she was having intimate relations with him.

The Appellate Division stated that there are four factors that have to be analyzed when determining whether an individual owes a duty of care toward another: (1) the relationship of the parties, (2) the nature of the attendant risk, (3) the opportunity and ability to exercise care and (4) public policy considerations. The court noted that there was no prior evidence of violence of the part of E.R. or prior confrontations between E.R. and M.V. regarding her relationships with other men. In analyzing the four factors the court found that there was no relationship between J.Z. and E.R. Also, the court stated that M.V. could not have foreseen that J.Z. would attempt to protect her from E.R.’s assault. In terms of opportunity and ability to exercise care, the court questioned: Is it that M.V. should not have engaged in a sexual relationship with two men simultaneously? Is it that M.V. should have locked the doors to her home? Or, should M.V. have instructed J.Z. to leave the house? These possibilities were too varied. Therefore, the court concluded that the facts did not compel the imposition of a new or expanded duty of care; the dismissal of J.Z.’s claim against M.V. was upheld.

This case shows that a detailed analysis of the facts must be made in every personal injury case. The fact that there was a horrific injury does not always mean that there is a finding of a duty of care; the court will examine the various relationships of the parties who are sued.