Vacating Restraining Orders

March 29, 2017 | by Einhorn Barbarito

Since the beginning of the domestic violence procedure in New Jersey, innumerable final restraining orders have been entered. Months or even years often pass, and the final restraining orders continue in full force and effect. Unless the order is removed, the final restraining order will continue to interfere with the ability of the defendant against whom it was entered to have contact with his children, a former wife or other people with whom he wishes to communicate.

There is a procedure for removing final restraining orders, provided by the Domestic Violence Act itself. As written, that procedure allows a court to dissolve or vacate the final restraining order, but only if the judge who dissolves or modifies the order is the same judge who entered the order or has access to a complete record of the hearing on which the order was based. In the past, the term "complete record" was interpreted to mean existence of a complete transcript of the hearing of the final restraining order that had been entered. This can be problematic, as some final restraining orders have been in existence for many years. For example, I was recently involved in a case that arose from a 1988 final restraining order. Efforts to obtain a copy of the transcript were unsuccessful since the transcripts could no longer be duplicated, and the attorney representing the plaintiff in the matter, who still wanted to hold on to the final restraining order, objected on grounds of absence of a complete transcript.

In a recent decision, E.M. v. F.M., our Appellate Division confronted such a dilemma. There, a transcript of the hearings in the domestic violence matter was not available, and there was little documentation to indicate the initial reasons why the restraining order was entered. The court that originally heard the application to vacate refused to do so, stating that a transcript and other records had not been provided. On appeal, it was argued that the "complete record" contained in the statute should not apply since the legislature's intent was to provide individuals the opportunity to be relieved of their restraints based upon multiple factors. In the past, courts had stated that to constitute the "complete record," all pleadings, orders and a complete transcript of the final restraining order hearing were required. The court in E.M. v. F.M. found that such an approach was unduly burdensome, and that the

application to vacate should not have been denied solely on the basis that there was no transcript. The court then recommended a procedure by which the record could be reconstituted. The purpose of any reconstruction of the record is to determine the testimony the original applicant presented in that proceeding. The burden of showing good cause to dissolve a final restraining order always remains with the defendant. The defendant, however, cannot be prohibited from obtaining vacation of the restraining order merely because relevant records no longer exist or have been destroyed.

The decision shows the flexibility of the court and its recognition that people should not be burdened by the continuing existence of final restraining orders when there continues to be no reason for them to exist. Mere technicalities should not stand in the way of removing such a blot from a person's record.