RECORD IMPOUNDED

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0422-05T1

JORDAN CHANDLER,

Plaintiff-Appellant,

v.

EVAN CHANDLER,

Defendant-Respondent.

Submitted May 23, 2006 - Decided June 8, 2006

Before Judges Coburn and Lisa.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Hudson County,
FV-09-524-06B

Ceconi & Cheifetz, attorneys for appellant
(Brian M. Schwartz, on the brief).

Koles, Burke & Bustillo, attorneys for respondent
(Raoul Bustillo, on the brief).

PER CURIAM

On August 5, 2005, plaintiff obtained a temporary restraining order against defendant under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35. The restraints were continued by an order dated August 19, 2005. After plaintiff rested his case, defendant moved for dismissal pursuant to Rule 4:37-2(b). The judge granted the motion, and plaintiff appealed. The final order provided for continuance of the temporary

restraints pending the outcome of the appeal. We reverse and remand for further proceedings consistent with this opinion.

The judge found that plaintiff had proved that he and his father, the defendant, were members of the same household when defendant struck him on the head from behind with a twelve and one-half pound weight and then sprayed his eyes with mace or pepper spray and tried to choke him. The judge also found that the weight could cause serious bodily injury or death. Thus, the judge was satisfied that plaintiff had provided evidence, which if believed, would support a finding of aggravated assault. Despite that finding, the judge refused to issue a final restraining order, reasoning as follows:

> I'm persuaded, at this point, that the allegation . . ., while serious in and of itself, is not a pattern of abusive and controlling behavior.
>
> For that reason, I would dismiss the complaint. The restraining order [will] be vacated.

After further argument, the judge acknowledged that plaintiff did not have to prove a pattern of abusive behavior but said that he would not grant the final restraining order because "this incident [did] not persuade [him] that [plaintiff] [was] entitled to a restraining order as an act of domestic violence."

When considering a motion to dismiss under Rule 4:37-2(b), a trial court performs a function that the Supreme Court has described as "quite . . . mechanical." Dolson v. Anastasia, 55 N.J. 2, 5 (1969). In carrying out that mechanical function, the "trial court is not concerned with the worth, nature or extent (beyond a scintilla) of the evidence, but only with its existence, viewed most favorably to the party opposing the motion." Id. at 5-6. Because the judge ultimately did not specify what plaintiff failed to prove, reviewing his decision is difficult. Perhaps he thought, as defendant suggests, that plaintiff failed to prove

that there was an "immediate danger to . . . [plaintiff's] person." Corrente v. Corrente, 281 N.J. Super. 243, 248 (App. Div. 1995). We will assume for the purposes of this opinion that plaintiff was obliged to prove immediate danger. Given the nature of the attack, it would appear that a trier of fact could infer immediate danger from the evidence submitted. We will not comment now on whether the judge should ultimately so decide, but we are satisfied that given the stage of the proceedings when he ruled, namely at the end of plaintiff's case, the motion to dismiss should have been denied.

Reversed and remanded for trial.