SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4542-15T3

HELP GENESIS CLINTON AVENUE URBAN RENEWAL LP,

Plaintiff-Appellant,

v.

SHANTE BREEDLOVE,

Defendant-Respondent.

Submitted July 25, 2017 – Decided December 29, 2017

Before Judges Ostrer and Leone.

On appeal from Superior Court of New Jersey, Law Division, Special Civil Part, Essex County, Docket No. LT-005722-16.

The Law Office of Jeffrey R. Kuschner, attorneys for appellant (Lindsay R. Baretz, on the brief).

Respondent has not filed a brief.

The opinion of the court was delivered by

OSTRER, J.A.D.

Plaintiff Help Genesis Clinton Avenue Urban Renewal LP appeals from a Special Civil Part order denying its adjournment request, dismissing its non-payment of rent complaint, and

ordering a rent abatement in favor of defendant Shante Breedlove. We conclude the court mistakenly exercised its discretion in denying an adjournment. Even if that were not so, procedural errors in the subsequent default hearing warrant reversal of the court's decision.

We consider the adjournment issue first. In February 2016, plaintiff filed a complaint seeking $2086 in unpaid rent and fees. At the end of March, the court required defendant to pay $3764 in rent through April, and continue to pay rent each month, pending a Marini[1] hearing. Defendant complained in writing that the stove needed repairs; it would "smoke, no reason, [and] smell bad when turn[ed] on."[2] On April 29, 2016, the court notified the parties the Marini hearing would be held on June 3, 2016. Ten days before the hearing, plaintiff's counsel, by email, unsuccessfully sought defendant's consent to a one-week adjournment. Plaintiff contends its counsel then tried to secure an adjournment from the court,

[1] Marini v. Ireland, 56 N.J. 130 (1970); see also Daoud v. Mohammad, 402 N.J. Super. 57, 59 (App. Div. 2008) (noting that a defendant tenant may raise habitability issues in a summary dispossess action for non-payment of rent, and may obtain a hearing thereon, provided the tenant deposits the rent with the court clerk).

[2] Plaintiff contends defendant did not attend a court-scheduled mediation on April 27. The parties apparently also disagreed over a time for plaintiff to access the apartment to assess the stove and make repairs.

but staff advised that counsel had to present his request in person on the hearing date.

Counsel appeared on the hearing date and renewed the adjournment request, reporting that plaintiff's property manager and another indispensable witness were in Washington, D.C. for a Housing and Urban Development Department conference. Counsel also stated that his client's position was that defendant was not entitled to a rent abatement.

The court was dismissive of plaintiff's reasons for requesting an adjournment. Regarding the HUD conference, the judge stated, "It's sucking down coffee, eating pastries, having lunch all day, sitting with your colleagues chit-chatting, and in between you might listen to something that's educational." The court also noted that defendant had taken time to appear in court.

Defendant, without being sworn, asserted that the building manager was not at a conference because she saw the manager in her building that morning. Plaintiff's counsel repeated his understanding that she was unavailable. The court concluded, "She's not here. That's all I need to know," and proceeded to conduct a hearing.

Plaintiff contends that the court erred in denying an adjournment and proceeding to a hearing in its absence. We agree. We acknowledge that a trial court exercises broad discretion in

controlling its calendar, and granting or denying an adjournment. See, e.g., State v. Hayes, 205 N.J. 522, 537 (2011). However, that discretion should be based on a rational explanation, after considering relevant facts. State v. Kates, 216 N.J. 393, 396-97 (2014) (discussing necessity of a "reasoned, thoughtful analysis of the appropriate factors" in granting continuance to seek counsel); State v. Daniels, 38 N.J. 242, 249 (1962) (stating that a decision left to a court's discretion is one "founded on the facts and the applicable law"). While "[o]ur courts have broad discretion to reject a request for an adjournment that is ill founded or designed only to create delay, . . . they should liberally grant one that is based on an expansion of factual assertions that form the heart of the complaint for relief." J.D. v. M.D.F., 207 N.J. 458, 480 (2011). A denial of an adjournment must comport "with the fundamental principles of justice and fairness that must guide all judicial decisions." Berkowitz v. Soper, 443 N.J. Super. 391, 407 (App. Div. 2016).

The denial here was made without essential findings as to whether plaintiff's key witnesses had a just excuse for their absence. Relevant facts would include whether: counsel complied with the Rule governing adjournment requests, see R. 6:4-7(a); the witnesses were actually at a conference; their attendance at the conference was mandatory or their absence excusable; and they

delayed requesting an adjournment after receiving notice of the conference.

Although we share the court's concern about the inconvenience and costs, such as lost wages, that defendant might have suffered from an adjournment, the court had options short of proceeding in plaintiff's absence. The court could have required plaintiff to compensate defendant for her costs. See R. 1:2-4 (providing an escalating range of sanctions, including the imposition of fees or costs, when a party fails to appear without just excuse). The sanction of proceeding in the party's absence should be imposed sparingly, when no lesser sanction would address the prejudice to the non-delinquent party, and the imposition upon the court. See Kosmowsky v. Atlantic City Med. Ctr., 175 N.J. 568, 575 (2003); Connors v. Sexton Studios, Inc., 270 N.J. Super. 390, 393 (App. Div. 1994). In sum, we conclude the court erred and reversal is warranted.

Further, the hearing that followed was also problematic. The court elicited testimony from defendant and her child, despite any indication in the record they were sworn. The child was not even identified for the record. Yet, it is fundamental that "[b]efore testifying a witness shall be required to take an oath or make an affirmation or declaration to tell the truth under the penalty provided by law." N.J.R.E. 603. In the case of a child, the

court is obliged to assure that the child understands the duty to testify truthfully. See State v. Bueso, 225 N.J. 193, 204-05 (2016); State v. G.C., 188 N.J. 118, 131-34 (2006).

Defendant contended that her oven's on-off switch did not work; "the light would stay on"; and the oven would smell and smoke.[3] She said she was afraid to use it. She stated that plaintiff twice replaced the oven, and she now had a brand-new oven.

The court then questioned the eight-year-old child. The judge asked her if her mother ever baked her "a cake or anything" in the oven. The child replied, "No but my grandma did," which indicated that the stove was in some form of working order. Nonetheless, the court then asked, "So you had to go out and buy your birthday cake?" The child then replied that on her birthday, she went to a restaurant. The judge's response then recast the child's statement: "Oh, so you actually had to go out of your house to have your birthday party. Nice for you, but it cost your mother some money. Okay." The court also did not

[3] Plaintiff likely would have contested this assertion if it had the opportunity to present its witnesses. According to documents that plaintiff has provided — albeit without an appropriate motion for leave to supplement the record — plaintiff's staff maintained in a report of a prior inspection that defendant did not properly clean the stove, and it was grease covered, which likely contributed to the reported smell and smoking.

afford plaintiff's counsel an opportunity to cross-examine the two witnesses before proceeding to issue its decision. Plaintiff was thereby deprived of a fair hearing (assuming it was appropriate to conduct a hearing at all).

Although a judge may interrogate witnesses to develop proofs, N.J.R.E. 614, that authority must be exercised with "great restraint," and a court's questioning may not "give the jury an impression that it takes one party's side or that it believes one version of an event and not another." State v. Ross, 229 N.J. 389, 408-09 (2017); see Ridgewood v. Sreel Inv. Corp., 28 N.J. 121, 132 (1958) (stating that a judge may not cross "that fine line that separates advocacy from impartiality"). These principles have relevance to bench-trials as well. A judge "often has to focus the testimony and take over the questioning" of a pro se party, but "[t]hat should be done in an orderly and predictable fashion . . . and not at the expense of the parties' due process rights" by denying a party the right of cross-examination. Franklin v. Sloskey, 385 N.J. Super. 534, 543 (App. Div. 2006).

Here, the court's questioning could have led an objective observer to conclude the court believed defendant's side of the story before proofs were presented. Plaintiff was also denied its right to cross-examine defendant and her child. These errors further undermine the court's decision.

Reversed and remanded for a new trial before a different judge.