

RECORD IMPOUNDED

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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5562-15T3

J.V.N.,¹

Plaintiff-Respondent,

v.

M.D.,

Defendant-Appellant.

Argued November 28, 2017 – Decided January 29, 2018

Before Judges Fasciale and Summers.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Essex County,
Docket No. FV-07-2691-16.

Angelo Sarno argued the cause for appellant
(Snyder, Sarno, D'Aniello, Maceri & Da Costa,
LLC, attorneys; Angelo Sarno, of counsel and
on the brief).

Mara L. Dooskin argued the cause for
respondent (Cipriano Law Offices, PC,
attorneys; Mara L. Dooskin, of counsel and on
the brief).

PER CURIAM

¹ We use the parties' initials because this case concerns domestic violence.

During a final restraining order (FRO) hearing, the trial court denied defendant's request for a brief adjournment to allow him to retain counsel in order to represent him for the balance of the hearing. At the conclusion of the hearing, the court issued a FRO against defendant based upon its credibility finding that defendant committed acts of domestic violence against plaintiff, his recently divorced wife, as set forth in the Prevention of Domestic Violence Act of 1991 (the Act), N.J.S.A. 2C:25-17 to -35. Two weeks later, defendant, now represented by counsel, filed a motion for a new trial under Rule 4:49-1(a) because the court did not permit him to retain counsel. The same court denied the motion and awarded attorney fees to plaintiff.

Before us, defendant contends the denial of his motion for a new trial was a miscarriage of justice. Defendant maintains his self-representation impeded his ability to "expose the inconsistencies and lack of credibility in [p]laintiff's testimony." Without counsel, defendant asserts his testimony was ineffective, he failed to call critical witnesses for his defense, and he did not effectively cross-examine plaintiff and her witness. We reverse and remand for a new trial, albeit for different reasons.

We begin with the premise that the granting or denial of an adjournment request is at the discretion of the trial judge.

Kosmowski v. Atl. City Med. Ctr., 175 N.J. 568, 575 (2003). Our courts have long and consistently held to the general standard of review that an appellate court will reverse for failure to grant an adjournment only if the trial court abused its discretion, causing a party a "manifest wrong or injury." State v. Hayes, 205 N.J. 522, 537 (2011) (citation omitted). "Calendars must be controlled by the court, not unilaterally by [counsel], if civil cases are to be processed in an orderly and expeditious manner." Vargas v. Camilo, 354 N.J. Super. 422, 431 (App. Div. 2002).

In considering whether the court mistakenly applied its discretion, we examine the proceeding in question and the reason defendant sought an adjournment. As the court was conducting a FRO hearing, it was required to determine if defendant was guilty of acts of domestic violence. Domestic violence is a civil offense, and defendants are not entitled to full criminal procedural protection. J.D. v. M.D.F., 207 N.J. 458, 474 (2011). Nonetheless, due process allows litigants a meaningful opportunity to defend against a complaint in domestic violence matters, which would include the opportunity to seek legal representation, if requested. Franklin v. Sloskey, 385 N.J. Super. 534, 540-41 (App. Div. 2006). "[E]nsuring that defendants are not deprived of their due process rights requires our trial courts to recognize both

what those rights are and how they can be protected consistent with the protective goals of the Act." J.D., 207 N.J. at 479.

Guided by these principles, we conclude the court mistakenly applied its discretion in denying defendant's request for an adjournment to retain counsel. Prior to the commencement of the hearing, the court appropriately asked defendant if he understood the ramifications of the hearing and if he wanted to retain counsel, whereupon defendant responded that he understood, he would represent himself, and he was ready to proceed. However, during his cross-examination of plaintiff, defendant commented, "[I] might need to recuse myself as counsel[,] I don't think I can do this." He then stated, "Your Honor, I might need [c]ounsel to come in and help me. I'm too emotional. This is outside of the realm of what I feel comfortable doing." After a brief recess, defendant repeated his concerns in continuing without an attorney and advised the court that he secured funding to retain counsel and requested a one-week adjournment to do so.

The court denied the request explaining:

This matter was scheduled for trial this date. I asked you at the beginning of this proceeding if you were ready to proceed. You have indicated in your application seeking a continuance that you have discussed this matter with an attorney. So, obviously, you made a financial determination. This is not a matter in which you have the right to [c]ounsel. I asked you at the outset if you

were ready to proceed, you said yes, and I'm going to hold you to that.

Under the circumstances presented to the judge, defendant's request to adjourn the hearing for a one-week period in order to retain counsel was appropriate and should have been granted. Considering the court's docket, we appreciate the need to complete the hearing, especially after defendant sought an adjournment after declining the opportunity to obtain counsel. However, defendant's adjournment request to retain counsel to ensure his due process rights at the hearing overrides the judge's concern that the request was made after the hearing started and the belated ability to secure the funds needed to retain counsel. The request was sought during his cross-examination of plaintiff, the first of six witnesses² to testify, when defendant realized the proceeding was more complicated than he initially thought. Significantly, we discern no prejudice to plaintiff considering the temporary restraining order would have remained in effect. Accordingly, we conclude the court mistakenly applied its discretion in denying defendant the opportunity to retain counsel.

In reaching our decision, we do not address the particulars of defendant's argument as to how his lack of representation affected his defense. Defendant's request to counsel should have

² This includes defendant.

been honored, and the manner in which his self-representation affected the outcome of the hearing is of no import.

We reverse and remand for a new hearing consistent with this opinion. Our reversal vacates the FRO and the award of attorney fees to plaintiff, however, the TRO shall be reinstated. On remand, the case should be reassigned to another judge. R. 1:12-1(d); Pressler & Verniero, Current N.J. Court Rules, cmt. 4 on R. 1:12-1 (2018) ("[A] matter remanded after appeal for a new trial should be assigned to a different trial judge if the first judge had, during the original trial, expressed conclusions regarding witness credibility."). We do not retain jurisdiction.

Reversed and remanded.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION