SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2805-21

N.S.,

Plaintiff-Respondent,

v.

L.C.S.,

Defendant-Appellant.

Submitted June 7, 2023 – Decided June 14, 2023

Before Judges Enright and Fisher.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Mercer County, Docket No. FV-11-0616-22.

The Law Offices of Nazario & Parente, LLC, attorneys for appellant (Thales A. Nazario, on the brief).

Arndt, Sutak & Miceli, LLC attorneys for respondent (Lauren A. Miceli, on the brief).

PER CURIAM

Plaintiff N.S. commenced this action under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, alleging her husband, defendant L.C.S., assaulted her. At the conclusion of a one-day final hearing, Judge Robert Lougy rendered findings of fact and conclusions of law, determining an assault occurred and plaintiff required the protections afforded by a final restraining order (FRO). Defendant appeals, arguing the FRO should be reversed or vacated, and the order denying his reconsideration motion should be reversed, claiming: (1) he was deprived of due process; (2) the judge abused his discretion in denying a request for an adjournment of the final hearing; (3) plaintiff failed to sustain her burden of persuasion; and (4) the judge erred in denying reconsideration. Defendant's first, second, and fourth arguments all revolve around the judge's decision to go forward with, rather than adjourn, the final hearing. We reject those arguments[1] because we find no error or abuse of discretion in the judge's decision to proceed with the final hearing more than three months after the action was commenced.

The record reveals that, on October 22, 2021, plaintiff filed a complaint and sought and obtained a temporary restraining order from a Warren County

[1] We find insufficient merit in defendant's third argument, as well as all arguments other than those that relate to the judge's denial of an adjournment of the final hearing, to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

municipal judge. Three days later, the Assignment Judge transferred the matter to the Mercer Vicinage, and fixed November 17, 2021, as the date for the final hearing. The final hearing did not go forward on that adjourned date. But defendant did then appear and was advised of his rights, including the right to retain counsel; he was also served with an amended temporary restraining order that rescheduled the final hearing to occur on February 9, 2022. That date gave defendant nearly three months to retain counsel and prepare for the final hearing.

It was not until February 7, 2022 – two days before the final hearing – that an attorney filed an appearance for defendant; the attorney simultaneously requested an adjournment because he also represented a client who had another family matter scheduled to be heard in Middlesex County on February 9, 2022. Plaintiff's counsel opposed the request, citing the fact that two police officers from Warren County had been subpoenaed to appear in person because defendant had refused to consent to allow them to testify remotely. The judge's staff advised defense counsel on February 8, 2022, that because this matter was older than the Middlesex case, and because the officers had been subpoenaed to appear the next day, the matter would not be adjourned. The staff member also advised that the judge was willing to conduct a telephonic conference that afternoon, presumably to discuss and work around the logistical problems

caused by defense counsel's other matter. Defense counsel did not accept the judge's invitation; instead, with defendant's consent, the attorney withdrew from this matter.

The next day, February 9, 2022, plaintiff, her attorney, and the subpoenaed police officers appeared, as did the unrepresented defendant. At the outset, the judge asked defendant if he had "any application," to which defendant responded that he "tried to get a lawyer" but the lawyer he retained "couldn't join the case so I'm representing myself the best I can." Defendant added that he "really d[id]n't know how to proceed" and that he "wish[ed] [he] could have [his] lawyer." In response, Judge Lougy briefly recounted the circumstances surrounding the appearance and withdrawal of defendant's attorney and the fact that two subpoenaed police officers from another county were then present and ready to testify. The judge explained to defendant that he would allow plaintiff to proceed, that the police officers would testify out of turn for their convenience,[2] and, at the conclusion of plaintiff's case, defendant could "ask for a continuance" so he could "prepare [his] case in defense."

[2] Plaintiff's attorney advised the judge that the officers had worked a night shift before coming to court.

The hearing then proceeded. The two officers and plaintiff testified, and defendant was afforded and accepted the invitation to examine the witnesses.[3] Once plaintiff rested her case, defendant testified on his own behalf without seeking the continuance the judge had earlier expressed a willingness to permit. After hearing the summations of plaintiff's counsel and defendant, the judge rendered his findings, explaining why he was persuaded that defendant committed an act of domestic violence and plaintiff was in need of protection from future domestic violence. The FRO now under review was then entered.

In considering defendant's argument that the judge wrongfully denied him an adjournment, we are mindful that, in this context, due process requires, at a minimum, that a defendant receive notice of the issues and "an adequate opportunity to prepare and respond." H.E.S. v. J.C.S., 175 N.J. 309, 321 (2003) (quoting McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 559 (1993)); see also J.D. v. M.D.F., 207 N.J. 458, 478 (2011). What is adequate or appropriate must be understood from the standpoint that a defendant in a domestic violence matter is generally afforded little time to retain an attorney and prepare for a final hearing. The Act presupposes the rapid disposition of

[3] One of the officers was actually defendant's witness. The judge posed questions to the witness to elicit the testimony defendant sought to present.

domestic violence cases by requiring that "[a] hearing shall be held . . . within 10 days of the filing of a complaint." N.J.S.A. 2C:25-29(a). The Supreme Court has recognized, however, that this statutory command must yield to the requirements of due process and has held that N.J.S.A. 2C:25-29(a) "does not preclude a continuance where fundamental fairness dictates allowing a defendant additional time." H.E.S., 175 N.J. at 323 (quoting H.E.S. v. JC.S., 349 N.J. Super. 332, 342-43 (App. Div. 2002))

Considering the legislative desire that domestic violence matters be quickly and efficiently adjudicated, and considering all that occurred prior to the final hearing, defendant's argument that he was deprived of due process in the scheduling of this matter or by the denial of additional time to retain counsel, is without merit. This is not a case in which defendant was seeking an adjournment of a hearing scheduled within the ten-day statutory requirement. This action was commenced on October 22, 2021, and, as required by the Act, the initial hearing was scheduled to occur six days later. But the final hearing was delayed when the action was transferred to Mercer County and further delayed when it was rescheduled to occur on February 9, 2022. Putting aside the thirty days that had already elapsed from the suit's commencement, defendant knew on November 22, 2022, that he had eighty-two days to retain an

attorney and do whatever else he needed to do to prepare a defense, an extraordinary length of time from inception to final hearing for a domestic violence matter. As it turns out, despite all that time, defendant did not secure the appearance of counsel until two days before the hearing and, even then, defendant consented to that attorney's withdrawal the day before the final hearing. The judge expressed a willingness to work with counsel and attempt to resolve the not unusual circumstance that counsel was obligated to appear in two adjoining counties on the same day, but the invitation was declined and defendant consented to his attorney's withdrawal. We conclude from all these circumstances that defendant's lack of representation at the final hearing was a self-inflicted injury, not a deprivation of due process. If defendant was prejudiced, it was caused only by his own indifference to the considerable time he had already been afforded.

Affirmed.