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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3439-21**

SAMUEL WHITE,

Plaintiff-Appellant,

v.

**BRYAN L. SALAMONE,
BRYAN L. SALAMONE AND
ASSOCIATES, P.C.,
KATHERINE SACIOLO, and
BRANDON DRUEK,**

Defendants-Respondents.

Submitted June 7, 2023 – Decided June 15, 2023

Before Judges Haas and Mitterhoff.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Docket No. L-0299-22.

Stephanie Mc Clure, attorney for appellant.

Tressler LLP, attorneys for respondents (Timothy M.
Jabbour, on the brief).

PER CURIAM

Plaintiff Samuel White appeals from the Law Division's June 10, 2022 order that dismissed his legal malpractice complaint against defendants Bryan L. Salamone, Esq., Bryan L. Salamone and Associates, P.C., Katherine Saviolo, Esq., and Brandon Drucek, Esq. Because the motion court did not provide any notice to plaintiff that it was going to conduct oral argument on defendants' motion to dismiss the complaint, and heard the matter with only defendants' attorney being present, we reverse and vacate the June 10, 2022 order and remand for further proceedings.

These are the salient facts. Plaintiff is a resident of New Jersey and defendants are based in New York. Plaintiff saw an advertisement for defendants' legal services and, in June 2020, retained them to represent him in a divorce matter. Defendants planned to render their services in a New York court. Sometime in October or November 2020, plaintiff became dissatisfied with defendants' efforts and terminated their representation.

Plaintiff retained an attorney, who filed a legal malpractice complaint against defendants in January 2022. In March 2022, defendants filed a motion to dismiss the complaint. They argued that New Jersey lacked jurisdiction to consider plaintiff's action because they were based in New York. In April 2022,

plaintiff's attorney filed a written response in opposition to defendants' motion. The motion was returnable on May 13, 2022.

While the motion was pending, the parties' respective attorneys exchanged a series of emails concerning a possible amicable resolution of the parties' dispute. On May 10, 2022, defendants' attorney sent a letter to the motion court stating that "[t]he parties have reached a settlement agreement and are in the process of exchanging the necessary closing paperwork." The attorney asked the court to carry defendants' motion until "May 27, 2022, to permit the parties time to finalize their settlement agreement."

An ECourts notice sent to defendants' attorney stated the court had rescheduled the motion for May 27, 2022 and that the parties were not to appear for oral argument. However, on June 8, 2022, another notice was electronically mailed to defendants' attorney. This notice stated: "Oral argument has been scheduled with [the motion court] on Friday, June 10, 2022 in person. Counsel shall appear at [the courthouse] at 2:30 p.m. Movant shall notify the parties of the date, time, and place."

The court did not send this this notice to either plaintiff or his attorney. On June 9, 2022, defendants' attorney emailed notice of the oral argument to plaintiff's attorney, but he did not respond.

On the morning of the June 10, 2022 oral argument, defendants' attorney left a couple of voicemails for plaintiff's attorney alerting him to that afternoon's proceeding. Eventually, defendants' attorney received a reply text message that stated:

I no longer represent [plaintiff] and am actually not in private practice at all anymore. I'm working for a company and cannot represent anyone else. [Plaintiff] knows this and should be appearing with new counsel today (I'm assuming you have not been contacted by another lawyer yet?). I have informed the court and [plaintiff] knows he must appear today. Sorry for the confusion – been extremely busy in new position.

Plaintiff's attorney never filed a substitution of attorney as required by Rule 1:11-2(a)(1).¹ Plaintiff has denied ever receiving notice of the June 10, 2022 oral argument from his attorney or the court.

Defendants' attorney appeared at the oral argument; plaintiff did not. At the beginning of the hearing, the motion court stated that the court "had some communication with [plaintiff's attorney] where he indicated to a law clerk that he has been fired and he's not coming. According to the case docket, he's still the attorney of record." However, the court took no steps to attempt to contact

¹ Rule 1:11-2(a)(1) states that "an attorney may withdraw [from a civil action] upon the client's consent provided a substitution of attorney is filed naming the substituted attorney or indicating that the client will appear pro se."

plaintiff that day. It did not consider adjourning the matter in order to give plaintiff the opportunity to respond to the motion in person or through a new attorney.

Instead, the motion court proceeded to hear only defendants' attorney on the pending motion to dismiss. Defendants' attorney did not mention his May 10, 2022 letter to the court stating that the matter had been settled. The court did not raise any questions concerning the letter.

After hearing defendants' attorney's one-sided presentation, and briefly stating that he had considered plaintiff's attorney's opposition papers,² the motion court ruled in defendants' favor on the jurisdictional issue and dismissed plaintiff's complaint with prejudice. This appeal followed.

On appeal, plaintiff argues that the June 10, 2022 order should be vacated "and the matter remanded for re-argument on the motion to dismiss." We agree.

² The parties' motion papers are not part of the appellate record. However, the motion court stated during its colloquy with defendants' attorney that plaintiff's attorney asserted that plaintiff found an advertisement for defendants on the internet while he was in New Jersey, and had provided a computer printout related to plaintiff's Google search for an attorney. The record does not disclose whether the parties engaged in any jurisdictional discovery to ensure that the record concerning the question of jurisdiction was fully developed. See Rippon v. Smigel, 449 N.J. Super. 344, 359 (2017).

The motion court made several mistakes in its handling of this matter. First, the court did not give an electronic notice to plaintiff or his attorney concerning the scheduling of the June 10, 2022 oral argument. The court only sent the notice to defendants' attorney. While that attorney did send an email notifying plaintiff's counsel of the argument the day before it was to occur, there is no discernible reason in the record supporting the court's decision only to notify one party of the proceeding. Defendants' attorney did follow up on the day of the argument by calling plaintiff's attorney, who belatedly acknowledged he was aware of the proceeding.

But that attorney no longer represented plaintiff. Whether plaintiff fired the attorney or the attorney left because he had obtained other employment or thought that the matter was settled is not relevant. Regardless of how his relationship with plaintiff ended, plaintiff's attorney had an obligation to file a substitution of attorney as required by Rule 1:11-2(a)(2) and he failed to do so. As a result, plaintiff had no attorney to represent him and he denies that his attorney ever told him of the June 10, 2022 oral argument. Under these circumstances, plaintiff should not be held responsible for his former attorney's actions. See Jansson v. Fairleigh Dickinson Univ., 198 N.J. Super. 190, 194

(App. Div. 1985) (stating that the "sins or faults of an errant attorney should not be visited upon his client absent demonstrable prejudice to the other party").

At the beginning of the argument, the motion court noted that plaintiff's office had told a law clerk that he was not going to appear. Even though the court stated that plaintiff's counsel was "still the attorney of record[,] and that plaintiff was not present either alone or with a new attorney, the court decided to proceed to hear only defendants' attorney's oral argument on a dispositive motion.

The primary goal of a court must be to "adjudicate cases fairly and impartially." Klier v. Sordoni Skanska Const. Co., 337 N.J. Super. 76, 83 (App. Div. 2001). A fair and impartial disposition requires adherence to the court rules governing process. Adherence to the rules requires notice and an opportunity to be heard – not afforded to plaintiff in this case. Id. at 84 (citing Doe v. Poritz, 142 N.J. 1, 106 (1995)).

To achieve this goal, the motion court should have considered other options in this case. It could have had court staff reach out to plaintiff to obtain an explanation for his absence that afternoon. Perhaps more appropriately, the court could have ordered a brief adjournment of the matter to obtain that information. Depending on the response it received, the court could have even

considered imposing sanctions on plaintiff's attorney or on plaintiff for not appearing at the argument. See R. 1:2-4 (listing sanctions that a trial court may impose upon a party who, "without just excuse or because of failure to give reasonable attention to the matter," does not appear at a court proceeding).

However, on this record, we are convinced that the motion court should not have dismissed plaintiff's complaint with prejudice. Clearly, the meager information available at the beginning of the argument showed that something had gone awry. An attorney who had not filed a substitution of attorney had failed to appear and plaintiff was also absent. The argument notice had only been sent to one party and had only gone out two days before the return date of the motion. The attorney who was present had earlier advised the court that the matter had been settled. Basic fairness required a short timeout to clear up these matters.

Because that did not occur, we reverse and vacate the June 10, 2022 order and remand for further proceedings. On remand, the assigned judge should promptly schedule a case management conference to discuss the scheduling of a new oral argument on defendants' motion to dismiss plaintiff's complaint. At that conference, the parties should also discuss with the judge whether plaintiff

should file a motion to enforce the alleged settlement before defendants' motion to dismiss is considered.

Reversed and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION