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This opinion shall not "constitute precedent or be binding upon any court."  
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-0531-15T2

ALEX GLOUCK,

Plaintiff-Respondent,

v.

ANTON SKVORTSOV,

Defendant-Appellant,

and

IRINA G. HYMAN,

Defendant.

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Argued November 29, 2016 – Decided July 28, 2017

Before Judges Messano and Espinosa.

On appeal from Superior Court of New Jersey,  
Law Division, Bergen County, Docket No L-4409-  
13.

Michael Confusione argued the cause for  
appellant (Hegge & Confusione, LLC, attorneys;  
Mr. Confusione, of counsel and on the brief).

Robert G. Ricco argued the cause for  
respondent.

PER CURIAM

Defendant Anton Skvortsov<sup>1</sup> appeals from a default judgment entered following a proof hearing after he refused to participate in a scheduled trial. We affirm.

Plaintiff filed a complaint against Skvortsov and his mother, Irina Hyman, in June 2013, alleging negligence, assault and battery, and intentional infliction of emotional distress. According to the complaint, plaintiff visited business premises owned by Hyman in the Dominican Republic to examine the inventory of her food-importing business. Defendant, who met plaintiff upon his arrival, became angry, walked away and then returned with a machete which he used to attack plaintiff, injuring him.

Defendants filed an answer, denying the allegations, and a counterclaim, which was later withdrawn. They dismissed their attorney in the spring of 2015 and appeared pro se thereafter.

Trial was initially scheduled for June 8, 2015. The trial date was adjourned to July 27, 2015, after defendants filed notice they were dismissing their attorney.

On June 5, 2015, defendant filed a motion to dismiss the complaint for lack of subject-matter jurisdiction, forum non conveniens, lack of standing and failure to state a claim upon

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<sup>1</sup> The trial judge dismissed all charges against Irina Hyman and she is not a party to this appeal. When "defendant" is used in this opinion, it refers to Skvortsov.

which relief can be granted. Plaintiff filed a cross-motion for summary judgment. Both motions were denied by the trial judge as untimely in light of the July 27 trial date.

On July 27, the parties appeared for trial. Defendant announced at the outset he was "not ready to proceed with the trial" because, he contended, despite the trial judge's ruling on his prior motion, he had the right to a plenary hearing on his arguments. The trial judge explained that the trial scheduled for that date was the hearing defendant sought.

The trial judge reviewed with defendant and Hyman that it was their choice to proceed without an attorney and then asked if they had any request before the trial commenced. Defendant stated:

I would like to state only for the record I am not ready to proceed with trial because the — the jurisdiction, which has been challenged, and it can be challenged at any time, even as late as the appeal process.

This challenge has issued to this Court, and I require that this jurisdiction will be established, as along as — along with plaintiff's standing in front of this Court before we can proceed to any trial.

[(Emphasis added).]

In short, although defendant's motion had been denied, he insisted his arguments be addressed on the merits before a trial could proceed. After questioning the parties, the trial judge noted plaintiff was a resident of Bergen County; defendants were

residents of Hudson County; defendants had availed themselves of the jurisdiction of the court by filing an answer and counterclaim through counsel; and defendants' challenge to the court's jurisdiction was made approximately two years after the complaint was filed. The trial judge declined to dismiss the complaint, finding the court had jurisdiction over the matter.

After the trial judge stated her reasons for denying his request, defendant stated,

Your Honor, I believe that I gave sufficient reason and I am not ready to proceed with the trial. And if there's nothing else, I cannot — I stand by my paperwork, Your Honor, respectfully.

The trial judge proceeded to question plaintiff's counsel and then defendant as to whether they had submitted a pretrial exchange. Defendant's response and the ensuing colloquy with the court follow:

[DEFENDANT]: If I may, though, I understand your question, Your Honor, but because I know that — I believe there's no basis, that I don't believe that I am required to go through the trial until the matter — until this matter is addressed. So, I have nothing else to say.

THE COURT: Okay, what do you mean that you're not required to go to trial?

[DEFENDANT]: I am not ready to proceed with the trial, Your Honor, because that I still don't see — because there's still the matter of plaintiff's standing, and the Court's subject matter jurisdiction have not been addressed.

We owed no duty to [the plaintiff] . . . . And I am not willing to submit to this Court's jurisdiction until the duty that we supposedly owed to [plaintiff] has been established.

THE COURT: So, you're not going to participate in this trial?

[DEFENDANT]: I am not going to participate in this trial until this matter is addressed. I refuse to be a victim to my lawyers [sic] incompetent — whatever he was doing.<sup>[2]</sup>

[(Emphasis added).]

After further dialogue about defendant's decision not to hire another attorney, this exchange occurred:

THE COURT: All right. So, your request was denied. Do you understand that?

[DEFENDANT]: I understand, Your Honor.

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<sup>2</sup> Defendant contended that his attorney ignored his directions by filing a counterclaim rather than a motion challenging jurisdiction.

THE COURT: All right. And your position now is that you refuse to proceed with the trial?

[DEFENDANT]: Your Honor, may I respectfully ask —

THE COURT: What I can do is this — it's ten of 3:00 — what I can do is, respectfully, give you the rest of the afternoon and you come back tomorrow with a fresh, clear mind, and you can collect your thoughts, and be ready to proceed to defend the claims that are presented.

That's what I can do for you, not to ram it through right now at the — at this point. . . . Now, I've heard the application to dismiss for lack of jurisdiction, and to dismiss for forum non conveniens. That's been denied. The matter is here for trial. All the parties live in New Jersey, plaintiff in Bergen County, defendant in Hudson County.

. . . .

It's more or less not unusual to see this type of claim for compensation. They could be awarded. They could be dismissed. I have no idea what will happen. But . . . for you to say, I simply refuse to go ahead, that's going to push the issue to a very negative result, and, perhaps, even default being entered against

you, which I would rather not  
have to do.

[(Emphasis added).]

Although he stated he understood, defendant asked "on whose authority" the court was denying him his "due process" rights. The trial judge stated again that the application had been denied and, noting defendant had not requested time to obtain another attorney, the trial would proceed and defendant could appeal the denial of his motion.

Defendant then asked for "an Order from this hearing, and . . . sufficient time to be able to review everything that's been said during the session," which he later modified to a request for one week. The trial judge denied the adjournment request and said defendant would have to pursue that with the presiding judge.

After the trial judge questioned plaintiff's counsel regarding the jury demand, defendant yet again made "one last request" -- that the trial judge "state only for the record the reason for denial of [his] request and [his] paperwork." The trial judge replied she had already given the reasons and then arranged for the parties to appear before the presiding trial judge the following morning.

We do not have a transcript of the proceeding before the presiding judge. However, the account provided by plaintiff's

counsel to the trial judge is not disputed. Counsel stated that when they appeared before the presiding trial judge, defendant "did not ask for an adjournment, technically . . . . He said he didn't need an adjournment. He went back into the discussion about jurisdiction. So, . . . there's no adjournment is the net result."

When the trial judge addressed defendant and Hyman to ascertain if they understood the matter had been assigned back to trial, defendant repeated the same objection:

Excuse me, Your honor. I'm not ready to proceed with the trial until only for the record this Court states how it has — under which presumed jurisdiction — under which assumed jurisdiction, and until plaintiff proves its standing in front of the Court.

The trial judge then directed that opening statements should proceed. Defendant objected, stating, "Please, could you state them only for the record why you are denying me my due process." The trial judge replied she had already ruled on the motion. Defendant then stated,

For the record show . . . that the [j]udge refuse to state — state under which presumed jurisdiction, assume jurisdiction without the plaintiff proving their standing on my demand, that the [c]ourt is still intending to proceed to trial.

Once again, the trial judge confirmed that both defendants had been residents of Hudson County since at least as early as



2012 when the incident occurred. She then stated the trial would start.

At this point, plaintiff's counsel made an oral motion for default against defendant and Hyman "if [defendant is] going to continue to object as to proceeding on the trial" on the ground that defendant and Hyman were "refusing to participate in the trial." The trial judge engaged in the following colloquy with defendant:

THE COURT: Mr. Skvortsov, are you now going to proceed and defend on this case?

[DEFENDANT]: I am not going to proceed with the trial for the reasons stated on the . . . record.

THE COURT: All right. So, you are not going to participate and defend yourself through the course of plaintiff's presentation. Correct?

[DEFENDANT]: I stand by my paperwork. I stand by the statements I made only for the record.

Based on these statements, the trial judge granted the request of plaintiff's counsel to enter default against defendant and Hyman on liability and to proceed to an assessment of damages. Plaintiff testified that defendant cut him with a machete, twice to the head, and slashed him to the bone on his left forearm, severing all his nerves, tendons and blood vessels. During the

course of plaintiff's testimony, defendant rose and asked the court:

Excuse me, Your Honor. Since I'm not participating . . . in these proceedings on the reasons stated on the record, may I please leave and be notified when we will have to recess to appear here?

The trial judge asked if he wished to be excused; he stated he did. The trial judge sought further clarification:

THE COURT: All right. Okay. We'll stop for now, take a — a short recess. You can be excused and leave. If — is that what you['re] asking to leave —

[DEFENDANT]: No, I'm asking —

. . . .

I'm asking permission to leave, and can you please tell me when to be back here once you're done with the proceedings, and after the recess that you're going to take after hearing the . . . plaintiff's case?

THE COURT: Well, what I intend to do is to issue a written decision based on the presentation now this morning.

[DEFENDANT]: Uh-huh. I understand.

THE COURT: You're welcome to stay and continue to listen and participate as best you can as a defaulted defendant. But if you're asking, instead, for

permission to leave, I  
have . . . no problem with  
that if you want to.

Defendant stated he "really appreciate[d] [the court] accommodating" him and Hyman and elected to leave. After hearing the remainder of plaintiff's testimony regarding his injuries, medical treatment and impact on his life, the trial judge entered an order awarding plaintiff \$153,200 against defendant and set forth her reasons in a sixteen-page written decision.

Defendant did not seek to vacate the default or file a motion to vacate the default judgment entered against him pursuant to Rule 4:50-1. Instead, he filed a direct appeal from that judgment, arguing the judgment should be vacated because the trial judge erred in entering default against defendants and proceeding with a proof hearing (Point I). He argues further that the trial court violated his right to a trial by jury (Point II); erred in failing to dismiss the complaint on forum non conveniens grounds (Point III); erred in failing to apply the laws of the Dominican Republic (Point IV); and erred in refusing to grant his adjournment request (Point V).

The only argument that merits discussion is defendant's challenge to the entry of default against him.

Rule 4:43-1 states, in pertinent part:

If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules or court order, or if the answer has been stricken with prejudice, the clerk shall enter a default on the docket as to such party.

[(Emphasis added).]

Significantly, the basis for entering a default is not limited to a failure to defend as required by the Rules; it applies to a defendant's failure to "defend as provided by" the Rules. Ibid.

"As a general matter, there are various ways in which a party's failure to adequately fulfill conditions imposed by a court order in discovery or in preparation for trial may ultimately permit the dismissal of a claim or the entry of default." N.J. Div. of Youth & Family Servs. v. P.W.R., 410 N.J. Super. 501, 506 (App. Div. 2009), rev'd on other grounds, 205 N.J. 17 (2011). More typical examples of such failures include "[f]ailures to file responsive pleadings or to appear when required to litigate the matter." N.J. Div. of Youth & Family Servs. v. M.G., 427 N.J. Super. 154, 168 (App. Div. 2012).

A defendant represented by counsel does not necessarily fail to defend by refusing to attend or participate at trial because the attorney can litigate the defense on his behalf. See P.W.R., supra, 410 N.J. Super. at 506 ("Because a party represented by counsel may defend at trial without being physically present,

default may not be entered when a party is not present at a trial absent evidence that the party has not otherwise defended as required by rule or court order." ).

In this case, defendant appeared pro se and declined the trial judge's suggestion that he secure another attorney. Therefore, both his physical presence and participation were required in order for him to "defend as provided by" the Rules. R. 4:43-1. And, his stated reason for refusing to participate failed to justify his failure to defend.

Defendant first refused to participate in the trial on the ground that his motion had been denied on procedural grounds and demanded it be decided on the merits. The trial judge explained the procedural basis for the denial but went further, to decide the motion on the merits. Despite her acceding to his request, defendant continued to demand she state reasons for denying his motion to dismiss and was adamant that he would not participate in the trial.

In response, the trial judge advised defendant that she had decided the motion and the matter would be tried. When he continued to refuse to participate, she offered to adjourn for the day, to "give [him] the rest of the afternoon and . . . come back tomorrow with a fresh, clear mind," so he could "collect [his] thoughts, and be ready to proceed to defend the claims that are

presented." She also cautioned him as to the consequence of refusing to participate in the trial:

[F]or you to say, I simply refuse to go ahead, that's going to push the issue to a very negative result, and, perhaps, even default being entered against you, which I would rather not have to do.

Despite this caution, defendant doggedly persisted in refusing to participate. In effect, he insisted his motion to dismiss be granted and would not brook the trial court's decision to deny the motion and proceed to trial.

In addition to unequivocally refusing to defend himself, defendant chose to absent himself from trial. Here, again, the trial judge attempted to encourage him to engage in the litigation, advising that if he stayed, he could "continue to listen and participate as best [he could] as a defaulted defendant."


Certainly, the procedure followed here, to enter default against a recalcitrant defendant, would only be appropriate in very rare circumstances. We are satisfied that such circumstances existed here, where defendant repeatedly and unequivocally refused to participate in or attend the trial after being adequately advised by the trial judge as to the consequences of his action. His conduct clearly constituted a failure to defend, falling within the grounds for a default under Rule 4:43-1. Moreover, in light of his continuing refusal, we discern no logical basis for the

trial court to expend the resources necessary to conduct a full-scale trial, impaneling a jury to consider what, in effect, would have been the proof hearing that was conducted.

Defendant's remaining arguments lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION