

## RECORD IMPOUNDED

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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-2402-16T3

P.W.,<sup>1</sup>

Plaintiff-Respondent,

v.

G.M.C.,

Defendant-Appellant.

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Submitted February 27, 2018 – Decided March 28, 2018

Before Judges Carroll and DeAlmeida.

On appeal from Superior Court of New Jersey,  
Chancery Division, Family Part, Ocean County,  
Docket No. FV-15-0939-17.

Law Offices of Howard S. Teitelbaum, LLC,  
attorneys for appellant (Nicholas A. Moschella,  
Jr., on the brief).

Respondent has not filed a brief.

PER CURIAM

Defendant challenges the entry of a final restraining order  
(FRO) against him pursuant to the Prevention of Domestic Violence  
Act, N.J.S.A. 2C:25-17 to -35. He argues that the trial court

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<sup>1</sup> Pursuant to Rule 1:38-3(d)(9), we use initials to protect the  
parties' confidentiality.

abused its discretion when it denied his request for an adjournment of the FRO hearing to permit him to retain counsel. We agree, and reverse and remand for a new FRO hearing.

I.

In December 2016, plaintiff served defendant with a temporary restraining order (TRO) based on her allegations of harassment following the termination of their relationship. Eight days later, the parties appeared before the trial court for a hearing to determine whether plaintiff was entitled to the entry of an FRO against defendant. The proceeding began with defendant's request for an adjournment. He explained that three days prior to the hearing he was on his way to interview an attorney, who he named, when he was involved in a motor vehicle accident. Defendant was injured in the accident, required emergency medical treatment, and spent the remainder of the night at the hospital, missing his meeting with the attorney. Defendant told the court that the attorney advised him to request a short adjournment to allow them to meet, review the evidence, and prepare for the FRO hearing.

The judge acknowledged defendant's physical injuries from the accident, which were readily apparent. The court also recognized that when a party on a first appearance at an FRO hearing requests an adjournment to obtain counsel "our Rules are supposed to be flexible enough to let them obtain counsel" and that if he denied

the adjournment request, and ultimately entered an FRO against defendant, the trial court was "probably going to get reversed" because it "didn't allow [defendant] to get a lawyer." Plaintiff objected to the adjournment request, arguing that she was in fear of further acts of harassment by defendant.

The court denied the adjournment, apparently having concluded, based only on plaintiff's arguments in opposition to the adjournment request, that entry of an FRO against defendant was inevitable:

So, you know, it's pretty clear to the Court that these are two people that should not be around each other and that, you know — I'll take some more testimony and get established grounds for a Final Restraining Order — but I'm going to tell you what, in talking to both of you, what my direction is going to be in this matter. I hear, I understand the request, but the request where this is going is not going to be back, meaning even if you had a lawyer, the thing that's going to happen to you is that a Final Restraining Order is entered. I think there's going to be substantial testimony to support findings for a Final Restraining Order, and I'm going to hear it in a few moments. I'm not sure what a lawyer will do for you, you know, except to delay the matter, and that concerns me.

The court thereafter took testimony from plaintiff, defendant, and two witnesses. Plaintiff alleged that defendant sent her, her friends, and family members a series of text messages, circulated a letter via Facebook intended to jeopardize

plaintiff's continued receipt of alimony from her former spouse, went to restaurants in the hope of seeing her, and appeared at her place of business to ask her father, who was also her employer, questions about plaintiff. No witness, including plaintiff, testified as to any violent act or threats of violence by defendant. Although defendant cross-examined plaintiff's witness, the court did not offer him the opportunity to cross-examine plaintiff.

The court concluded that defendant committed harassment against plaintiff in violation of N.J.S.A. 2C:33-4, a predicate act of domestic violence. N.J.S.A. 2C:25-19(a)(13). Without engaging in the second prong of the two-prong analysis set forth in Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006) – that a restraining order is required to protect the plaintiff from future acts or threats of violence – the court entered an FRO against defendant, along with a \$50 civil penalty.

This appeal followed.

## II.

Adjournment requests are matters generally left to the discretion of the trial courts. Kosmowski v. Atlantic City Med. Ctr., 175 N.J. 568, 575 (2003). "Calendars must be controlled by the court, not unilaterally by the defense, 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). Our courts have long held 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) (citations omitted).

In considering whether the court mistakenly applied its discretion, we examine the proceeding in question and the reason defendant sought an adjournment. In this instance, both factors favor granting defendant's adjournment request.

"We have consistently recognized that the issuance of an FRO 'has serious consequences to the personal and professional lives of those who are found guilty of what the Legislature has characterized as a serious crime against society.'" Franklin v. Sloskey, 385 N.J. Super. 534, 541 (App. Div. 2006) (quoting Bresocnik v. Gallegos, 367 N.J. Super. 178, 181 (App. Div. 2004) (internal quotations omitted)).

Once a final restraining order is entered, a defendant is subjected to fingerprinting, N.J.S.A. 53:1-15, and the Administrative Office of the Courts maintains a central registry of all persons who have had domestic violence restraining orders entered against them, N.J.S.A. 2C:25-34. Violation of a restraining order constitutes contempt, and a second or subsequent nonindictable domestic violence contempt offense requires a minimum term of thirty days imprisonment. N.J.S.A. 2:25-30. The issuing court may also impose a number of other wide-reaching sanctions

impairing a defendant's interest in liberty and freedom in order "to prevent further abuse." N.J.S.A. 2C:25-29(b).

[Peterson v. Peterson, 374 N.J. Super. 116, 124 (App. Div. 2005).]

Domestic violence is a civil offense, and defendants are not entitled to the full criminal procedural protections. J.D. v. M.D.F., 207 N.J. 458, 474 (2011); see also D.N. v. K.M., 429 N.J. Super. 592, 606 (App. Div. 2013) (noting that despite the "serious consequences accompanying a finding of domestic violence" indigent parties in an FRO hearing are not entitled to appointed counsel). 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, 385 N.J. Super. at 540-41. "[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 that the court mistakenly applied its discretion in denying defendant's request for an adjournment to retain counsel. Defendant made a meaningful attempt to retain counsel in the short period between service of the TRO and the start of the hearing. His efforts were frustrated

by his sustaining injuries in a motor vehicle accident on his way to meet with prospective counsel. Plaintiff did not dispute the fact that the accident occurred, and the court observed defendant's physical injuries. Defendant named the attorney he intended to retain and, on her advice, requested a short adjournment so the two could meet, review the evidence, and prepare for the hearing.

The trial court recognized the reasonableness of defendant's request, acknowledging a likely reversal for denying the adjournment. The court explained that it was concerned with an escalation of defendant's behavior in the absence of an FRO. Yet, plaintiff did not allege that defendant threatened violence against her, or that he had ever previously been violent. In addition, a TRO had been entered and would have remained in place during any adjournment of the hearing. The trial court's concerns were insufficient to overcome defendant's interest in obtaining counsel.


In light of these conclusions, we reverse and remand for a new hearing consistent with this opinion. Because the denial of defendant's adjournment request is sufficient to warrant a new hearing, we do not comment on the trial court's apparent determination, prior to taking testimony from witnesses, that an FRO would be entered, or its observation that it would be pointless for defendant to be represented by counsel. Nor do we address

defendant's argument that the trial court expressed gender bias by stating "it's primarily the men that have the problem" with domestic violence and "it seems like it's harder for men to understand, you know, this is just, time is up, it's over, you know, move on, you know, that sort of thing." On remand, the case should be assigned 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.").

Accordingly, the FRO entered by the trial court is reversed and the TRO reinstated pending entry of a final judgment on plaintiff's application for a FRO.

Reversed and remanded for further proceedings in conformity with this opinion. 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