

RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2804-20

A.A.R.,

Plaintiff-Respondent,

v.

J.R.C.,

Defendant-Appellant.

APPROVED FOR PUBLICATION

April 25, 2022

APPELLATE DIVISION

Submitted March 24, 2022 – Decided April 25, 2022

Before Judges Alvarez, Mawla, and Mitterhoff.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Cumberland County,
Docket No. FV-06-0937-21.

Hark & Hark, attorneys for appellant (Michael J.
Collis, on the brief).

Respondent has not filed a brief.

The opinion of the court was delivered by

MITTERHOFF, J.A.D.

Defendant appeals from an April 14, 2021 final restraining order (FRO)
entered under the Prevention of Domestic Violence Act (PDVA), N.J.S.A.
2C:25-17 to -35, based on a predicate act of assault, N.J.S.A. 2C:12-1. We

agree with defendant's argument that procedural due process requires trial judges, before trial, inform defendants in domestic violence proceedings both of the serious consequences resulting from the entry of an FRO and of their right to retain legal counsel. See D.N. v. K.M., 429 N.J. Super. 592, 606-07 (App. Div. 2013). Because the trial judge in this case did not advise defendant of his legal exposure or of his due process right to counsel, we are constrained to vacate the FRO and remand for a new trial.

Plaintiff commenced this action based on allegations that defendant assaulted her by punching her in the mouth and shoving her into the side of his car. That account was corroborated by plaintiff's boyfriend, who witnessed the assault. Defendant filed a cross-complaint alleging domestic violence against plaintiff.

Neither party was represented by counsel at trial. At the beginning of the FRO hearing, the judge asked defendant if he was ready to proceed with trial, and defendant answered in the affirmative. The judge did not inform defendant of his right to retain counsel, or of the serious consequences that could ensue if an FRO was entered against him prior to trial.

At the conclusion of the trial at which plaintiff, defendant, and plaintiff's boyfriend testified, the judge rendered detailed findings of fact and entered an FRO in plaintiff's favor. The judge also dismissed defendant's cross-

complaint.¹ It was only at this point that the judge detailed the consequences of the FRO, including the fact that defendant's fingerprints and photographs would be included in the New Jersey Domestic Violence Registry. As the judge imposed those consequences, defendant stated "I feel like . . . [a]t this point, I'm going to need a lawyer[.]" The judge, however, denied defendant's request because he "already heard the case." This appeal followed.

On appeal, defendant presents the following arguments for our consideration:

POINT II²

THE COURT FAILED TO ADDRESS DEFENDANT'S LACK OF ADEQUATE SERVICE OF THE TEMPORARY RESTRAINING ORDER [(TRO)] FILED BY PLAINTIFF.

POINT III

THE COURT DID NOT PROVIDE THE PARTIES WITH THE CONSEQUENCES OF [AN FRO] NOR DID IT ADVISE DEFENDANT OF HIS RIGHT TO AN ATTORNEY.

POINT IV

¹ Defendant has not appealed the dismissal of his complaint.

² Defendant's first point heading read, "Appellate Standard of Review."

THE COURT FAILED TO MAKE ADEQUATE FINDINGS OF FACT AND APPROPRIATE CREDIBILITY DETERMINATIONS.

POINT V

THE COURT FAILED TO MAKE ADEQUATE CONCLUSIONS OF LAW PURSUANT TO SILVER V. SILVER.³

Parties to a domestic violence action are entitled to certain procedural due process rights. J.D. v. M.D.F., 207 N.J. 458, 478 (2011). Our Supreme Court has explained that "ordinary due process protections apply in the domestic violence context, notwithstanding the shortened time frames for conducting a final hearing . . . that are imposed by the statute[.]" Ibid. (citations omitted). Thus, the Court has explained that "ensuring that defendants are not deprived of their due process rights [in a domestic violence matter] requires our trial courts to recognize both what those rights are and how they can be protected consistent with the protective goals of the [PDVA]." Id. at 479.

The right to seek counsel is an important due process right that affords defendants "a meaningful opportunity to defend against a complaint in domestic violence matters[.]" D.N., 429 N.J. Super. at 606. In that regard, we held that due process does not require the appointment of counsel for indigent

³ 387 N.J. Super. 112 (App. Div. 2006).

defendants in a domestic violence proceeding seeking an FRO. Ibid. Nevertheless, due process does require that a defendant understands that he or she has a right to retain legal counsel and receives a reasonable opportunity to retain an attorney. Ibid.

Relatedly, we conclude that due process also requires trial courts to apprise domestic violence defendants, in advance of trial, of the serious consequences should an FRO be entered against them. "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 quotation marks omitted); see also N.J.S.A. 2C:25-18.

Once [an FRO] is entered, a defendant is subject[ed] 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 non-indictable domestic violence contempt offense requires a minimum term of thirty days imprisonment. N.J.S.A. 2C:25-30. The issuing court may also impose a number of other wide-reaching sanctions impairing a defendant's interests 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).]

"Furthermore, familial relationships may be fundamentally altered when a restraining order is in effect." Chernesky v. Fedorczyk, 346 N.J. Super. 34, 40 (App. Div. 2001).

The Franklin trial judge's failure to inform the defendant of the serious consequences associated with the entry of a domestic violence restraining order, advise defendant of his right to an adjournment, or suggest defendant retain an attorney, were all significant but non-dispositive factors in our decision to vacate the TRO. See Franklin, 385 N.J. Super. at 541.

In contrast, in D.N., we found that the plaintiff voluntarily relinquished her right to seek counsel where the trial judge asked her (1) whether she wanted the opportunity to obtain counsel, pointing out that the opposing party was represented; (2) whether she understood what would happen if an FRO was entered; and (3) whether she knew that she might be subject to civil penalties and other consequences. D.N., 429 N.J. Super. at 599–600. The judge also advised D.N. that she could request an adjournment to consult with an attorney or further prepare for the trial. Id. at 607. Given that advice, we held that D.N.'s waiver of her right to seek counsel was clear and knowing. Ibid.

Here, defendant was not advised in advance of trial that he had a right to retain legal counsel. That alone requires reversal – defendant did not clearly and knowingly waive his right. Moreover, the judge did not inform defendant of the significant consequences of an FRO, including placement on a domestic abuser registry, until after he issued a decision. Although we cannot know whether defendant would have waived his right to counsel if properly advised, his immediate expression of a desire to retain an attorney upon hearing the consequences suggests he may well have sought representation. In any event, advising any defendant of their right to retain counsel without also explaining legal exposure is simply an empty platitude. Had defendant been informed of those consequences at the outset, he would have had a more meaningful basis to decide whether to retain counsel. Under the circumstances, we conclude defendant was not afforded the procedural due process to which he was entitled.

Accordingly, we vacate the FRO and do not reach the balance of the arguments raised on appeal. The TRO is reinstated, and the matter is remanded for a new trial.

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