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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3054-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LUIS F. RODRIGUEZ and
MIMIAMELIA, LLC,

Defendants-Appellants.

Argued December 13, 2022 – Decided April 19, 2023

Before Judges Sumners and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Municipal Appeal Nos. 2020-009, 2020-011 and 2020-013.

Michelle Conroy argued for the appellants (Kessler Law, LLC, attorneys; Michelle Conroy and David Kessler, on the briefs).

Mark Y. Moon argued the cause for the respondent (Trenk Isabel PC, attorneys; Richard D. Trenk, of counsel and on the brief; Shefali M. Kotta, on the brief).

PER CURIAM

Defendants Luis F. Rodriguez and his solely owned business, Mimiamelia, LLC, appeal from the Law Division's order denying their trial de novo appeal to reverse: (1) the municipal court judge's denial of their recusal motion; (2) the guilty findings of the Township of West Orange (Township) municipal code violations; and (3) the imposition of fines arising from three separate Township municipal court trials. Because we conclude the municipal court judge abused his discretion in denying the recusal motion, we vacate the Law Division's order and remand for retrial before another municipal court judge. Given our remand, we take no position regarding defendants' arguments challenging his convictions and fines.¹

I

On February 29, 2020, defendants were directed by the Township to remove illegally stored construction equipment from 33 Gregory Avenue—located in a gated community and owned by Mimiamelia—no later than March 13, 2020. Rodriguez resides at the neighboring property, 31 Gregory Avenue. After a subsequent inspection by the Township's Zoning Officer revealed that

¹ Defendants contend there was insufficient evidence of their violations, the municipal court judge misinterpreted the municipal code, and excessive fines were imposed.

although no construction was taking place on the property, the equipment had not been removed as ordered, summonses were issued against defendants.

At the beginning of the July 14, 2020 trial, defendants unsuccessfully moved to have the municipal court judge recuse himself based on prior rulings by the judge involving Rodriguez's use of his home for commercial purposes. Almost two years earlier, on August 29, 2018, the municipal court judge, acting on a citizen's complaint, found Vilu Construction LLC—owned and represented by Rodriguez without legal counsel—guilty of unlawfully parking commercial vehicles in a residential zone on Gregory Avenue and fined the business \$156. On June 27, 2019, approximately ten months after that determination, the judge held Vilu—again self-represented by Rodriguez—in contempt for violating certain provisions of the earlier order and issued fines of \$27,900, based upon a daily violation rate of \$100. The judge's finding was supported, in part, by photographs provided by neighbors Robert and Lorraine Meares depicting violation of the judge's order to remedy municipal code violations of parking commercial vehicles on residential property. Following trial de novo appeal to the Law Division, Judge Arthur J. Batista, on September 26, 2019, affirmed the conviction and fines, but he vacated the contempt order and sanctions due to significant procedural errors.

In their recusal motion, defendants asserted the photographs were sent to the municipal court judge via an ex-parte unsigned letter dated February 11, 2019, which was hand-delivered to the municipal court clerk. In key part, the letter stated: "Mr. Sayers [(Township Business Administrator)], through Mr. Lepore [(Township engineer)], said that you requested photos of the current situation. Enclosed please find same (most dated 1/6/19) of the storage pod, commercial vehicles and heavy equipment that are still on [the property]." (Emphasis added.) The letter ended: "On behalf of all of us who reside in the Old Miele Estate, thank you for helping us to clear this would-be idyllic residential neighborhood of this visual and hazardous blight to all our properties."

In his bench decision denying the motion, the municipal court judge stated:

That letter, as I understand it, was hand delivered to the Court Clerk through the window here in the Municipal Court. I had not seen that letter. Apparently[,] there were photographs attached to the letter. At the contempt hearing some, if not all of those photographs, I don't know having not seen the letter, were admitted after they were properly authenticated, in my opinion.

The most interesting thing, I looked at the letter this morning, because as I said . . . it was not delivered to me. I had no conversation with the Meares regarding it other than any statements I'd made on the bench from

time to time, that if there are things that a litigant or witness believes is important[,] they should take photographs of it if it's an item and make sure that the people are present in order to authenticate that.

I say that all the time. I'm sure I've said it when they may or may not have been in court. I'm sure I've said it when [] Rodriguez may or may not have been in court. That's my standing opinion.

But the letter says, and I read it today, quite frankly, for the first time. The letter says that [] Sayers (phonetic) said [] Lepore said I said. . . . I think, really shows what the pitfalls of hearsay are. . . . I never had a . . . conversation with [] Lepore probably in the last 25 years. That's not because I don't like [] Lepore or anything. There's just been no reason for our paths to cross.

He is a Township Engineer. So[,] I had no such conversation. Whether or not [] Lepore had a conversation with [] Sayers regarding something that I said, I have no idea. Whether [] Sayers had a conversation with Mr. Meares about what I said, I have no idea. I now know that Mr. Meares may have said that, but he did drop off a letter here addressed to [the municipal court judge]. It was dropped off at the court, put in a file. I would assume along with some photographs and I don't think the fact that someone sends a letter to a judge should in any way disqualify the judge from that matter, particularly if he hasn't read it.

But even if I did I don't think that's even meaningful. So[,] I don't find that argument compelling in this regard.

Following four trial days and a day for closing arguments, the judge issued an order on August 25, 2020, finding defendants guilty of violating Township ordinances: (1) Section 25-9.11, failure to obtain a permit for a storage unit on

residential property for fifty-nine days of violations; and (2) Section 25-12.4(b), unlawful storage of construction equipment on a residential property for ninety-two days of violations. Defendants were assessed fines totaling \$78,416, plus court costs.

In a second trial, defendants were found guilty of violating: (1) Section 25-9.11, for failure to obtain a permit for a storage unit on residential property for 108 days of violations; (2) Section 25-12.4(b)(6), unlawful storage of construction equipment on a residential property for 110 days of violations; and (3) Section 25-8.4(b), construction of a fence over six feet without a permit for fifty-five days of violations. Defendants were assessed fines totaling \$209,250, plus court costs.

In a third trial, defendants were found guilty of violating Section 14-8.2(a)(2), property maintenance for failure to maintain landscaping for ten days of violations. Defendants were assessed fines totaling \$12,500, plus court costs.

II

Defendants' present trial de novo appeal to the Law Division, contesting the denial of their recusal motion and the subsequent convictions and fines resulting from the three trials, was denied.

The Law Division found there was no basis for the municipal court judge to have recused himself under either the objective or subjective standards. Examining the objective standard and relying on DeNike v. Cupo, 196 N.J. 502 (2008), the Law Division reasoned:

The simple fact that [the municipal court judge] previously heard a case involving the defendant and found him guilty is not a basis for recusal nor is Judge Batista's reversal of [the municipal court judge's] verdict of contempt and sentence. Judge Batista's September 26, 2019 decision makes clear the contempt conviction was vacated and dismissed because the contempt proceeding was not properly initiated as a contempt proceeding, was prosecuted by an attorney other than the Attorney General or the County Prosecutor without the required good cause finding, insufficient factual findings about what portion of the extensive parking ordinance defendant was guilty of violating, the imposition of penalties in excess of the maximum \$1,000 fine provided for in the criminal code, and the imposition of fines as if defendant was charged with and convicted of a series of new parking violations. On this last point, Judge Batista also noted that if the court intended the imposition of fines exceeding \$1,000 under a contempt, the defendant may have had a right to a jury trial. All these reasons are procedural and substantive flaws, but none indicates any bias on [the municipal court judge's] part that would cause a reasonably informed person to doubt the judge's impartiality in a future proceeding. Significantly, Judge Batista upheld [the municipal court judge's] findings on the underlying ordinance violation.

Moving to the subjective standard regarding the Meares' submission of photographs, the Law Division, relying on our decision in Magill v. Casel, 238 N.J. Super 57, 63 (App. Div. 1990), evaluated the recusal and found:

[The municipal court judge] stated he did not read the letter related to the prior contempt proceeding until the day of trial in this matter, and only to address the recusal motion. [The municipal court judge] stated that he had no such conversation with [] Lepore as alleged in the letter and had not spoken to [] Lepore in approximately twenty-five years. [The municipal court judge], with personal knowledge of his own interactions, properly found there was no basis to recuse himself under the subjective standard. This court finds no appearance of impropriety under the objective standard in [the municipal court judge] conducting the later trials, particularly where he had not seen the letter. Nor did the letter level any accusation that was so inflammatory as to call [the municipal court judge's] impartiality into question. It simply alleged, through hearsay, that a conversation took place that did not. No record was developed at the trial level, nor did defendant seek an interlocutory appeal of the order denying his motion. That is not dispositive, this court only mentions it for completeness. These facts and circumstances did not create a situation where [the municipal court judge's] impartiality could be reasonably questioned.

Turning to the convictions, the Law Division determined they were based on credible factual findings and proven beyond a reasonable doubt. As for the fines, the Law Division rejected defendants' Eighth Amendment challenge,

finding the municipal court judge did not abuse his discretion because the fines were supported by the record and permissible under the Township code.

III

We disagree with the Law Division order upholding the municipal court's judge's denial of Rodriguez's recusal motion. Considering the totality of the circumstances, we conclude the municipal court judge mistakenly applied his discretion in denying the recusal motion. See Goldfarb v. Solimine, 460 N.J. Super. 22, 30 (App. Div. 2019) ("[R]ecusal motions are 'entrusted to the sound discretion of the judge and are subject to review for abuse of discretion.'") (quoting State v. McCabe, 201 N.J. 34, 45 (2010)); McCabe, 201 N.J. at 45 (appellate courts conduct a de novo review as to whether the motion judge applied the proper legal standard).

Rule 1:12-1(g) provides that a judge should not sit when there is "any . . . reason which might preclude a fair and unbiased hearing . . . , or which might reasonably lead counsel or the parties to believe so." The standard for recusal is whether "a reasonable, fully informed person [would] have doubts about the judge's impartiality[.]" State v. Dalal, 221 N.J. 601, 606 (2015) (quoting DeNike, 196 at 517). Accordingly, our Supreme Court, in citing Canon 2A of the Code of Judicial Conduct, held that "[j]udges are to 'act at all times in a

manner that promotes public confidence,' and 'must avoid all impropriety and appearance of impropriety.'" DeNike, 196 N.J. at 514 (emphasis and citations omitted). Judges must "refrain . . . from sitting in any causes where their objectivity and impartiality may fairly be brought into question." Id. at 514 (quoting State v. Deutsch, 34 N.J. 190, 206 (1961)). "In other words, [they] must avoid acting in a biased way or in a manner that may be perceived as partial. To demand any less would invite questions about the impartiality of the justice system and thereby 'threaten[] the integrity of our judicial process.'" Id. at 514 (alteration in original) (emphasis omitted) (quoting State v. Tucker, 264 N.J. Super. 549 (App. Div. 1993)). A litigant need not "'prove actual prejudice on the part of the [judge]' to establish an appearance of impropriety; an 'objectively reasonable' belief that the proceedings were unfair is sufficient." Id. at 517 (quoting State v. Marshall, 148 N.J. 89, 279 (1997)).

Our de novo review of the record demonstrates there was such an appearance of prejudice in the municipal court judge's consideration of the allegations against defendants that his recusal was appropriate. Our conclusion is based on the Meares' letter and photographs to the judge regarding Rodriguez's continuing code violations, combined with the way the June 27, 2019, contempt hearing was improperly conducted.

With respect to the Meares' letter and photographs, we do not question the municipal court judge's claims he: (1) did not request the letter and photographs from the Meares; (2) had no conversation with Township Engineer Lepore about the alleged violations, as stated in the letter; and (3) had not seen these documents prior to the morning of the court proceeding. We also do not believe the judge acted in an unfair or biased manner in denying Rodriguez's recusal motion. For that is not the test we apply when considering the motion's denial. We conclude, however, that a reasonable person, aware of the relevant facts, would have a reasonable basis to doubt the judge's ability to impartially adjudicate the matter because of the Meares' ex-parte letter, forwarding proof of Rodriguez's continued violation of municipal ordinances and contending the judge requested the evidence. Moreover, the Meares were not questioned in court concerning their representation that the municipal court judge requested evidence of Rodriguez's guilt. An inquiry was clearly warranted. Hence, a reasonable person might reasonably suspect there was something amiss by not having them testify regarding about the circumstances surrounding the letter and photographs.

Our concerns about the municipal court judge's decision to adjudicate the charges against Rodriguez are compounded by the improper manner in which he

conducted the contempt hearing. In dismissing the municipal court judge's contempt order and sanctions, Judge Batista found Rodriguez and his company were "denied due process of law by virtue of the significant procedural irregularities in the charging and prosecution of the alleged contempt below." Judge Batista found the municipal court judge failed to comply with the applicable court rules and case law by not: (1) providing proper notice of the charges to Rodriguez; (2) issuing an arrest order; (3) crafting and serving an order to show cause; (4) generating an appearance notice containing the docket number of the violation for which Rodriguez was found guilty; (5) specifying in his bench decision the specific subsection(s) of the extensive township parking ordinance that Rodriguez violated; and (6) having the contempt charges prosecuted by the Attorney General's Office or the Essex County Prosecutor's Office without any good cause findings as to why the Township Attorney had to prosecute in their stead. In addition, he determined that issuing a fine exceeding \$1,000, Rodriguez was entitled to a jury trial, not a municipal court bench trial. In sum, Judge Batista determined "[i]t is difficult to decipher why the municipal court proceeded in the manner it did, or the legal justification for same given the lack of an [o]rder [t]o [s]how [c]ause in this case."

Had the municipal court judge merely failed to follow a minor or technical contempt hearing guideline, his recusal in a subsequent proceeding involving Rodriguez and his business might not have been warranted. However, that is not the situation here. In this case, Judge Batista had previously determined on trial de novo appeal that the judge blatantly disregarded several core procedural guidelines of contempt hearing. Hence, the appearance of impropriety justifies recusal of the municipal court judge.

In sum, whether Rodriguez could be afforded a fair and impartial trial was clouded where the municipal court judge, having denied he solicited the Meares' photographs, admitted them into evidence without having the Meares testify, and his contempt findings and fines were reversed due to the problematic adjudication of the hearing. It was therefore objectively reasonable for defendants to believe potential prejudice or bias existed. See State v. Flowers, 109 N.J. Super. 309, 312 (App. Div. 1970). It was preferable for the judge to grant the motion because his "duty to sit where appropriate is as strong as the duty to disqualify oneself where sitting is inappropriate." Goldfarb, 460 N.J. Super. at 31. Retrial before a different municipal court judge is necessary. Accordingly, we do not address defendants' substantive challenge to their conditions and fines.

We reverse defendants' conviction and remand to the municipal court for retrial. 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