

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3553-20

J.B.-M.,

Plaintiff-Appellant,

v.

J.B.,

Defendant-Respondent.

Submitted December 14, 2022 – Decided January 12, 2023

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey,
Chancery Division, Family Part, Gloucester County,
Docket No. FV-08-1358-21.

Rutgers Law Associates, attorneys for appellant (Amy
L. Braunstein, of counsel; Daniel Moeller, J.D.,
appearing pursuant to Rule 1:21-3(b), on the brief).

Respondent has not filed a brief.

PER CURIAM

In this one-sided appeal, plaintiff J.B.-M.¹ challenges the June 24, 2021 order denying her request for a final restraining order (FRO) and dismissing her temporary restraining order (TRO). Because we conclude the trial court abused its discretion in denying plaintiff's request for additional time to prepare her case for trial, we vacate the June 24 order and remand for further proceedings.

I.

On May 2, 2021, plaintiff filed for a TRO against her former boyfriend, defendant J.B. She alleged defendant harassed her "for the last [four] years" by repeatedly calling and texting her from "anonymous phone numbers" over a four-year period, accessing her personal information, such as her home address and place of employment, and "trespass[ing] on her new property."

On May 24, plaintiff retained a law graduate (LG) from Rutgers Law Associates² to represent her on the domestic violence matter and the same day,

¹ We use initials to protect the identities of the parties and to preserve the confidentiality of the proceedings. See R. 1:38-3(d)(9)-(10).

² According to the Rutgers Law School website, "Rutgers Law Associates is a one-year postdoctoral fellowship program that trains new law school graduates, who provide legal services to New Jersey residents at a significantly reduced rate." Rutgers Law School, <http://njlaw.rutgers.edu/collections/oal> (last visited Jan. 3, 2023).

he reviewed plaintiff's file and attempted to contact the Cumberland County Family Division, where plaintiff obtained her TRO, to inquire about a missing docket number on the TRO.³ The LG did not receive a call back until two days later, when he learned the case was transferred to Gloucester County.

Despite his repeated efforts to contact court staff in Gloucester County, the LG was unable to obtain the docket number for plaintiff's transferred case until June 9, when he was informed the matter, along with a "companion case" involving plaintiff's husband and defendant, were scheduled for trial the next day. The LG immediately sought an adjournment; his request was denied.

When the parties virtually appeared for trial on June 10, the judge concluded plaintiff's case and the companion case should be heard separately. Also, upon learning the LG received only one day's notice of the trial date, the judge adjourned the case for one week. After the LG advised the judge he was

³ Pursuant to Rule 1:21-3(b):

[a] third year law student at, or graduate of, a law school approved by the American Bar Association may appear before a trial court . . . in accordance with a program approved by the Supreme Court.

An LG qualified under Rule 1:21-3 is "permitted to . . . prosecute or defend an action in any court of this State." R. 1:21-1(a); see also State v. Simon, 421 N.J. Super. 547, 555 (App. Div. 2011).

"planning more subpoenas for testimony" based on information he received, the judge responded, "I'm not putting this out for a week to allow witnesses to be subpoenaed The matter's been pending for over a month." Additionally, he directed the case would proceed on June 17, with "witnesses or not."

Prior to June 17, plaintiff moved for a venue transfer, arguing the matter should return to Cumberland County, where she lived and obtained the TRO, and several acts of domestic violence purportedly occurred. When the parties appeared virtually for trial on June 17, the judge denied the motion, reasoning,

[t]his is the vicinage of Gloucester, Cumberland, and Salem counties [W]e're doing this via Zoom. There's not an inconvenience here to the parties. There is an overriding issue with these matters that they are to be heard quickly. The statutory framework with these matters indicates the first hearing on the case is supposed to [occur] within roughly ten days of the issuance of the temporary restraining order.

. . . .

[T]he matter needs to be heard. It's over a month old.

[(Emphasis added).]

Also, during the June 17 proceeding, plaintiff moved to formally amend the TRO to include an incident from June 2020. When the judge questioned the timing of the amendment request, the LG explained, "the original

complaint [was] filed without the background knowledge of understanding that specific acts need to be included." He added, "[s]ince I . . . stepped [i]nto the matter[,] . . . I've compiled more information about the history . . . [and] determined . . . there's more that needed to be added to that complaint." The judge denied the amendment request without prejudice, finding the proposed amendment was "more of an explanation of what the comment of 'harassing [plaintiff] for the last four years' may have [entailed]."

Next, the judge addressed the LG's most recent request to adjourn the matter "for the purposes of . . . further preparation." He denied the request, stating, "we're here a month and a half after the latest restraining order and the proceeding[s] are . . . the subject of discussion for further delay because of things not being submitted, so . . . I'm not going to delay the case."

During the trial, plaintiff first addressed the predicate act of harassment, N.J.S.A. 2C:33-4, testifying that after she ended the parties' relationship and they ceased living together in January 2019, she began receiving anonymous harassing text messages. She believed defendant sent the messages because her "friends . . . received the same ones" and the messages had "the same vocabulary, . . . even the same misspelling[s]." Plaintiff also testified although she relocated from her residence, defendant discovered her new address.

Further, she believed defendant established a GoFundMe page and posted certain YouTube videos because the postings referred to her in a disparaging manner.

Plaintiff testified she sought a TRO on May 2 after she and her husband received the same text message on their phones with images of defendant, his car, and his new home. The message read:

[t]hank you for showing me who she really was and how I never had a friendship with you. But now I get to have the good life in retirement with a 2021 Nissan [A]rmada and a [\$]300,000 home in a very ritzy neighborhood . . . , you two enjoy the Karma that will come along with your cracked foundation home[.] Lmao.⁴

Plaintiff stated she was unaware of any crack in her home's foundation until she read the text message and "search[ed] around the house" to find it. She believed defendant sent the message, given the pictures attached to it, and she surmised the only way he would know about the crack she found in her home's foundation was if he trespassed onto her property. Plaintiff stated she was "scared for her life" to think defendant was on her property, despite that she "changed phone numbers, changed everything, locked everything," and she contemplated "pack[ing] it up" and moving again.

⁴ Plaintiff testified the acronym, "Lmao," meant "laugh[ing] my ass off."

Based on this testimony, the LG attempted to admit into evidence the screenshots of the message and images plaintiff received on May 2, as well as other exhibits supporting plaintiff's harassment allegations. Because the exhibits were not provided to the court or exchanged with defendant's attorney in advance of trial, the judge stated:

This is where we are in the case. There was a complaint on May 2nd, which to say is vague is maybe an apt description . . . , and now there are things that are being supplemented to reference specifically what's in the complaint, which says received numerous phone calls and messages by anonymous phone numbers. It says . . . she's relocated. Talks about personal information, . . . YouTube, [and] about [defendant] trespass[ing] on new property in the past. So, the issues and the items that are being referenced weren't submitted before today.

Rather than bar admission of the new exhibits, the judge reserved on their admissibility and concluded defense counsel should have a chance to review and object to them before cross-examining plaintiff. The judge also found plaintiff amended her complaint through her testimony, so defense counsel should have time to review the "sum and substance of what the amendment was here today." Accordingly, the judge adjourned the hearing for a week, directed the LG to submit the proposed exhibits "by the close of business today," and stated, "I just want to emphasize, the amendment that's

been made It's not going to be, now we're going to come back with more items or more issues."

The parties returned to court on June 24. Before plaintiff resumed her testimony, the judge granted her request to amend her complaint to include the predicate act of cyber-harassment, N.J.S.A. 2C:33-4.1(a)(2), given her allegation defendant disparaged her on Facebook. Once her direct examination concluded, plaintiff conceded on cross-examination she did not "have any proof [regarding] who used [a] spoof number" to send out derogatory Facebook messages about her. She also acknowledged she did not "know definitely" who anonymously sent various pejorative text messages to her, but suspected defendant did because the unsigned communications "had the same misspellings and the same vernacular that [defendant] uses." Further, plaintiff assumed defendant created a certain GoFundMe page to denigrate her because the website accused her of falsifying abuse allegations against him. She also stated she thought defendant posted "a YouTube video for the whole world to see," because in the post, defendant acknowledged he hacked into her phone.

Plaintiff's husband's testimony was relatively consistent with plaintiff's. Although he acknowledged knowing about the foundation crack in his home

before receiving the May 2 text message, he asserted, "there's no way someone could know I have a cracked foundation because I ha[d it] covered."

Defendant denied the bulk of plaintiff's allegations. He stated "[t]o [his] knowledge," he had no contact with her after their relationship ended. Even though he conceded he created a GoFundMe page about prior domestic violence cases initiated by plaintiff, he testified he established the page to defray legal expenses he incurred from those proceedings and to share his "point of view [of] what had transpired" — not "to harass or annoy anybody." He also denied sending information about the GoFundMe page directly to plaintiff or directing third parties to do so.

At the conclusion of the hearing, the judge denied plaintiff's request for an FRO, finding she failed to prove the predicate act of harassment or cyber-harassment. He stated:

As to the proofs submitted . . . in this hearing, I know they were extensive[.] I considered what has been submitted. . . . [T]he issue of proving who did what can be proven by different means. Here, those means have not been addressed. There has been testimony . . . plaintiff believes that it was [defendant] sending those texts . . . to her about a car, about the house, about her house. The language . . . seems to indicate it was sent to someone referring to "she." Even if it was sent to [plaintiff], . . . I don't have proofs here that establish . . . it was [defendant] that sent it. There's a lot of things going on here between

the parties apparently on the internet and on Facebook and comments being made.

As to [defendant's] comment, I don't in any way endorse anything he's saying, but by the same token, I cannot say . . . his comments and his opinions are something that I have a right to limit because I do not find . . . there's been any act of domestic violence proven here and beyond that, there are certain issues of free speech that apply in these situations. I understand that it may not be pleasant if someone is mentioned in these posts . . . and I understand that sometimes these comments, if they are made publicly, can cross lines. There are . . . recourses for addressing things that . . . cross the line. . . .

[T]he point here is the [Prevention of] Domestic Violence Act is a very specific Act that requires very specific proofs. Those proofs have not been met in this case to establish . . . [defendant] committed a predicate act of harassment, nor has it been established . . . he's committed a predicate act of cyber-harassment.

[(Emphasis added).]

Additionally, the judge stated:

I don't find . . . the allegations . . . of harassment or cyber-harassment have been proven as to identity or as to the content of what was sent. . . . There have been things that apparently have been posted. Who posted them? Why? [I]t goes to the issue of was it opinion and if it was an opinion, who posted it?

. . . .

[W]hat's clear is there was something received, but who sent it, who it was sent to, and the content of it do not establish harassment because the proofs of who sent it are not clear and not proven. . . . [A]nd the contents have not been proven to be designed to cause annoyance or alarm. . . . Now if [defendant] said how he knew about the crack in the foundation, which apparently existed, I don't know, but, again, that's a proof issue I can't enter any conjecture on these matters. For those reasons, the matter's dismissed.

[(Emphasis added).]

II.

On appeal, plaintiff contends the judge abused his discretion by: (1) denying her requests to adjourn the case so she could subpoena witnesses and "determine the source of anonymous text messages" sent to her; (2) denying her motion to formally amend the TRO; and (3) rejecting her application to transfer venue back to Cumberland County. Although plaintiff's second and third arguments are unavailing, we agree with her first argument. Accordingly, we vacate the June 24 dismissal order, remand for further proceedings and direct reinstatement of the May 2 TRO pending the conclusion of those proceedings.

We review a trial court's grant or denial of a motion for an adjournment "under an abuse of discretion standard." Escobar-Barrera v. Kissin, 464 N.J. Super. 224, 233 (App. Div. 2020) (quoting State ex rel. Comm'r of Transp. v.

Shalom Money St., LLC, 432 N.J. Super. 1, 7 (App. Div. 2013)). Whether the court abused its discretion depends on "the amount of prejudice suffered by the aggrieved party." Ibid. (citing State v. Smith, 66 N.J. Super. 465, 468 (App. Div. 1961)). "[R]efusal to grant an adjournment will not lead to reversal 'unless an injustice has been done.'" Ibid. (quoting Nadel v. Bergamo, 160 N.J. Super. 213, 218 (App. Div. 1978)).

Trial courts "have broad discretion to reject a request for an adjournment that is ill founded or designed only to create delay, but they should liberally grant one that is based on an expansion of factual assertions that form the heart of the complaint for relief." J.D. v. M.D.F., 207 N.J. 458, 480 (2011) (emphasis added). This is especially true in domestic violence cases where "courts are empowered to continue temporary restraints during the pendency of an adjournment, thus fully protecting the putative victim while ensuring that defendant's due process rights are safeguarded as well." Ibid. (citation omitted).

We recognize "allegations of domestic violence are often 'difficult to prove due to the[ir] private nature,' and there are 'usually few, if any, eyewitnesses to . . . domestic violence.'" Crespo v. Crespo, 408 N.J. Super. 25, 36 (App. Div. 2009) (quoting Roe v. Roe, 253 N.J. Super. 418, 428 (App.

Div. 1992)). Thus, whether a plaintiff obtains an FRO "often depends upon the ability of a victim to obtain relief in situations where proof is scarce, parties' contentions are in sharp contrast, and a judge may often be relegated to deciding the case based solely on credibility findings." Ibid.

In that regard, the New Jersey Legislature enacted the Prevention of Domestic Violence Act of 1991 (PDVA), N.J.S.A. 2C:25-17 to -35, "to assure the victims of domestic violence the maximum protection from abuse the law can provide." N.J.S.A. 2C:25-18. And because "courts exist for the sole purpose of rendering justice according to law[, n]o eagerness to expedite business, or to utilize fully the court's time, should be permitted to interfere with our high duty of administering justice in the individual case." State v. Ruffin, 371 N.J. Super. 371, 389 (App. Div. 2004) (citations omitted); see also Escobar-Barrera, 464 N.J. Super. at 234.

Mindful of these standards, we note here, the judge did not find plaintiff's requests for more time to prepare her case or to subpoena witnesses to identify the source of the harassing communications she, her husband, and friends received were "ill[-]founded or designed only to create delay." J.D., 207 N.J. at 480. Yet, the judge directed her to proceed to trial on June 17, with "witnesses or not." We are satisfied plaintiff was prejudiced by these denials,

considering the judge repeatedly stated in his findings he was unsure who was responsible for sending the offensive communications. Given these findings, it is conceivable that had plaintiff been given the opportunity to subpoena witnesses to identify the source of the harassing communications, the judge might have evaluated the communications differently. In short, we are persuaded depriving plaintiff of the time needed to subpoena witnesses and prepare for trial amounted to "a manifest denial of justice under the law." Escobar-Barrera, 464 N.J. Super. at 236 (quoting Wright v. Bernstein, 23 N.J. 284, 296 (1957)).

Next, plaintiff argues the judge erred by (1) denying her the right to amend her complaint in writing; and (2) failing to rule "on whether the predicate act of criminal trespass had been established, presumably because it was not before the [c]ourt in a formal amended TRO." We decline to address plaintiff's criminal trespass argument, which is raised for the first time on appeal. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (declining to consider questions or issues not properly presented to the trial court unless the matter is addressed to the jurisdiction of the trial court or concerns matters of great public interest). Because plaintiff's criminal trespass argument does not relate to the jurisdiction of the trial court or concern matters

of great public interest, we need only discuss whether the judge abused his discretion in denying plaintiff's request to amend her complaint in writing.

A trial court's decision to grant or deny a motion to amend a complaint is reviewed for abuse of discretion. Port Liberte II Condo. Ass'n, Inc. v. New Liberty Residential Urb. Renewal Co., LLC, 435 N.J. Super. 51, 62 (App. Div. 2014) (citing Kernan v. One Wash. Park Urb. Renewal Assocs., 154 N.J. 437, 457 (1998)). Although trial courts have broad authority to permit such amendments, courts must consider whether an amendment will result in undue prejudice as balanced against "the overriding need to seek justice." Kernan, 154 N.J. at 457 (quoting Adron, Inc. v. Home Ins. Co., 292 N.J. Super. 463, 475-76 (App. Div. 1996)).

We recognize domestic violence plaintiffs may not include all details in their TRO applications. In that regard, our Supreme Court has observed:

plaintiffs seeking protection under the [PDVA] often file complaints that reveal limited information about the prior history between the parties, only to expand upon that history of prior disputes when appearing in open court. And it is frequently the case that the trial court will attempt to elicit a fuller picture of the circumstances either to comply with the statutory command to consider the previous history, if any, of domestic violence between the parties, see N.J.S.A. 2C:25-29(a)(1), or to be certain of the relevant facts that may give content to otherwise ambiguous communications or behavior, see H.E.S.[v. J.C.S.],

175 N.J. [309,] 327 [(2003)] (commenting that "parties" past history, when properly presented, helps to inform the court regarding defendant's purpose, motive and intended use of information . . .).

[J.D., 207 N.J. at 479.]

Thus, a plaintiff is not limited "to the precise prior history revealed in a complaint," because testimony beyond the four corners of a complaint "might reveal . . . there are additional prior events that are significant to the court's evaluation, particularly if the events are ambiguous." Ibid. Additionally, the New Jersey Domestic Violence Procedures Manual⁵ expressly provides for the amending of a TRO, explaining

[w]hen the allegations in the plaintiff's complaint are incomplete and/or it becomes evident at the final hearing that the plaintiff is seeking a restraining order based upon acts outside the complaint, the court, either on its own motion or on a party's motion, shall amend the complaint to include those acts.

However, the right to amend is not without limits. See L.D. v. W.D., Jr., 327 N.J. Super. 1, 4 (App. Div. 1999) (noting "it is clearly improper to base a finding of domestic violence upon acts or a course of conduct not even mentioned in the complaint"). Also, as our Supreme Court has cautioned, if a

⁵ Sup. Ct. of N.J. & Off. of the Att'y Gen., State of New Jersey Domestic Violence Procedures Manual § IV(F)(5)(b)(2) (2022).

trial court "allows [a plaintiff's prior] history to be expanded, it has permitted an amendment to the complaint and must proceed accordingly" to ensure a defendant is afforded "the protections of due process," including "an adequate opportunity to be apprised of those [new] allegations and to prepare." J.D., 207 N.J. at 479-80 (citation omitted).

Here, the record reflects that at the June 24 hearing, the LG acknowledged the judge permitted plaintiff's TRO "to be amended orally on the record" the week prior. In fact, the LG asked for confirmation the judge understood "with that amendment and a prior act added[,] . . . the predicate act[s] of harassment and cyber-harassment . . . would be advanced." In response, the judge agreed he "allow[ed] for the amendment to allege cyber-harassment based on the testimony previously elicited." Accordingly, we cannot conclude plaintiff was prejudiced by the lack of an order granting her the right to amend her TRO in writing. Further, we note the judge properly allowed defendant's attorney additional time to digest the "sum and substance" of plaintiff's amendment and any corresponding exhibits by continuing the hearing for a week before plaintiff's testimony resumed.

Notwithstanding our determination, because we have determined this matter must be remanded, and to avoid any confusion about the predicate acts

to be addressed at the remand hearing, plaintiff should not be precluded from renewing her request to formally amend the TRO if the application is made before the remand occurs and defendant is given ample time to respond to the request.

Lastly, plaintiff argues the judge erred by denying her request for a venue transfer. She contends after she obtained her TRO in Cumberland County, where she lives and the predicate acts occurred, she was prejudiced by receiving late notices of the transfer to Gloucester County and the initial trial date, causing a "rush to trial." Again, we disagree.

Rule 5:7A(b) provides as follows:

venue in domestic violence actions shall be laid in the county where either of the parties resides, in the county where the domestic violence offense took place, or in the county where the victim of domestic violence is sheltered. The final hearing is to be held in the county where the ex parte restraints were ordered, unless good cause is shown for the hearing to be held elsewhere.

[(Emphasis added).]

Motions for a change of venue are reviewed under an abuse of discretion standard. State v. Nelson, 173 N.J. 417, 476-77 (2002). The denial of a motion to change venue "must be neither arbitrary, vague[,] nor fanciful[,] and

must be in consonance with well[-]established principles of law." State v. Collins, 2 N.J. 406, 411 (1949).

Applying these principles, we discern no error in the denial of the venue transfer. As the judge noted, the case was heard in the same vicinage where plaintiff obtained her TRO. He also found the case was "over a month old," the venue issue was of "little import," and because the trial was conducted virtually, neither party was inconvenienced by the existing venue. However, because we assume the remand trial will occur in person, and because of the express terms of Rule 5:7A, plaintiff should not be precluded from renewing her application for a transfer of venue upon remand.

In sum, we affirm the denial of plaintiff's motions for a written amendment and transfer venue, subject to renewal of those applications on remand, if plaintiff wishes. We also vacate the June 24 order dismissing plaintiff's TRO and denying her request for an FRO. The TRO is reinstated pending further order from the remand court.

Affirmed in part; vacated in part and remanded for further proceedings in conformance 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