

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT**

Matter of Gugliara v. Gugliara

2017 NY Slip Op 4840 (App. Div. 2017) · No. 2016-05742 · Decided June 14, 2017

SUMMARY

The Appellate Division, Second Department, reversed an order of protection issued after a Family Court hearing and remitted the matter for a new hearing and determination. The court held that the appellant did not knowingly, voluntarily, and intelligently waive his statutory right to counsel because he did not understand the court's explanation of the risks of proceeding without counsel.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Ruth C. Balkin, J.P.; Sandra L. Sgroi; Jeffrey A. Cohen; Colleen D. Duffy
JURISDICTION	New York
DECIDED	June 14, 2017
DOCKET	2016-05742
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Lawrence Gugliara appealed from a Family Court order of protection entered after a hearing in a proceeding under Family Court Act article 8.
STANDARD OF REVIEW	Review for legal error; the order was reversed on the law.
PRECEDENTIAL VALUE	published
PARTIES	Lawrence Gugliara v. Philip Gugliara

TOPICS

[family law procedure](#) [domestic violence](#) [appellate procedure](#) [standard of review](#)

PRACTICE AREAS

[family law](#) [appellate procedure](#) [civil procedure](#)

QUESTIONS PRESENTED

1. Whether the Family Court adequately established that Lawrence Gugliara knowingly, voluntarily, and intelligently waived his statutory right to counsel in the Family Court Act article 8 proceeding.
2. Whether deprivation of the right to counsel required reversal of the order of protection without consideration of the merits.

HOLDINGS

1. A party may waive the right to counsel only if the waiver is made knowingly, voluntarily, and intelligently, and the Family Court must conduct a searching inquiry sufficient to establish that the party understands the dangers and disadvantages of proceeding without counsel.
2. Deprivation of a party's right to counsel under Family Court Act § 262 requires reversal without regard to the merits of the unrepresented party's position.

KEY QUOTATIONS

*“There is no rigid formula, but the record must demonstrate that the party has chosen to proceed without counsel despite being aware of and understanding the dangers and disadvantages of doing so” (*1)*

*“The deprivation of a party's right to counsel guaranteed by Family Court Act § 262 requires reversal without regard to the merits of the unrepresented party's position” (*2)*

FACTUAL BACKGROUND

Lawrence Gugliara was the subject of a Family Court Act article 8 proceeding that resulted in an order of protection concerning Philip Gugliara. Lawrence sought to proceed without counsel, and the Family Court attempted to explain the dangers and disadvantages of self-representation. The record showed that Lawrence was confused by the colloquy and did not understand the court's explanation, yet the court permitted him to proceed without counsel.

PROCEDURAL HISTORY

The Family Court, Kings County, entered an order of protection directing Lawrence Gugliara to refrain from certain conduct toward Philip Gugliara through May 8, 2018. During the proceeding, Lawrence expressed a desire to proceed without counsel, but the Family Court allowed him to do so despite a record showing that he did not comprehend the court's explanation of the dangers and disadvantages of self-representation. The Appellate Division reversed and remitted for a new hearing and determination, while continuing the order of protection temporarily pending the new determination.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Family Court, Kings County, must conduct a new hearing and determination on the petition with all convenient speed. At the new hearing, Lawrence Gugliara must either appear with counsel or knowingly, voluntarily, and intelligently waive the right to counsel. The existing order of protection remains in effect as a temporary order of protection pending the new determination.

CASES CITED

- Matter of Osorio v Osorio, 142 AD3d 1177, 1178
- Matter of McGregor v Bacchus, 54 AD3d 678, 678-679
- Matter of Tumminello v Tumminello, 82 AD3d 992, 993
- Matter of Belmonte v Batista, 102 AD3d 682, 683
- Matter of Rosof v Mallory, 88 AD3d 802, 802
- Matter of Stephen Daniel A. [Sandra M.], 87 AD3d 735, 736
- Matter of Spencer v Spencer, 77 AD3d 761, 762

OPINION

PER CURIAM.

Matter of Gugliara v Gugliara (2017 NY Slip Op 04840) Matter of Gugliara v Gugliara 2017 NY Slip Op 04840 Decided on June 14, 2017 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on June 14, 2017 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department RUTH C. BALKIN, J.P.

SANDRA L. SGROI JEFFREY A. COHEN COLLEEN D. DUFFY, JJ. 2016-05742 (Docket No. O-01242/14) [*1]In the Matter of Philip Gugliara, respondent, vLawrence Gugliara, appellant. Larry S. Bachner, Jamaica, NY, for appellant. DECISION & ORDER Appeal by Lawrence Gugliara from an order of protection of the Family Court, Kings County (Dean Kusakabe, J.), dated May 9, 2016.

The order of protection, after a hearing, directed him to refrain from certain conduct with respect to the petitioner until and including May 8, 2018. ORDERED that the order of protection is reversed, on the law, without costs or disbursements, and the matter is remitted to the Family Court, Kings County, for a new hearing and determination on the petition with all convenient speed, in accordance herewith; and it is further, ORDERED that pending the new determination, the order of protection shall remain in effect as a temporary order of protection.

A party in a proceeding pursuant to Family Court Act article 8 has the right to be represented by counsel (see Family Ct Act § 262[a][ii]; Matter of Osorio v Osorio, 142 AD3d 1177, 1178; Matter of McGregor v Bacchus, 54 AD3d 678, 678-679). A party, however, may waive that right,

provided that he or she does so knowingly, voluntarily, and intelligently (see *Matter of Osorio v Osorio*, 142 AD3d at 1178; *Matter of Tumminello v Tumminello*, 82 AD3d 992, 993).

To ensure that a party's waiver of the right to counsel is valid, the Family Court must conduct a "searching inquiry" (*Matter of Osorio v Osorio*, 142 AD3d at 1178 [internal quotation marks omitted]; *Matter of McGregor v Bacchus*, 54 AD3d at 679). There is no rigid formula, but the record must demonstrate that the party has chosen to proceed without counsel despite being aware of and understanding the dangers and disadvantages of doing so (see *Matter of Belmonte v Batista*, 102 AD3d 682, 683; *Matter of Rosof v Mallory*, 88 AD3d 802, 802; *Matter of Stephen Daniel A. [Sandra M.]*, 87 AD3d 735, 736).

Here, when the appellant expressed his desire to proceed without counsel, the Family Court tried to explain the dangers and disadvantages of doing so. The record shows, however, that the appellant was confused by the colloquy and did not comprehend the court's explanation.

The court nevertheless permitted him to proceed without counsel (see *Matter of Belmonte v Batista*, 102 AD3d at 683; *Matter of Spencer v Spencer*, 77 AD3d 761, 762). The deprivation of a party's right to counsel guaranteed by Family Court Act § 262 requires reversal without regard to the merits of the unrepresented party's position (see *Matter of Osorio v Osorio*, 142 AD3d at 1178).

Accordingly, [*2]we reverse the order of protection and remit the matter to the Family Court, Kings County, for a new hearing, at which the appellant shall either appear with counsel, or knowingly, voluntarily, and intelligently waive the right to counsel, and thereafter, a new determination on the petition. BALKIN, J.P., SGROI, COHEN and DUFFY, JJ., concur.

ENTER: Aprilanne Agostino Clerk of the Court