

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D16109
G/gts

_____AD3d_____

Submitted - June 8, 2007

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
ANITA R. FLORIO
DANIEL D. ANGIOLILLO, JJ.

2006-04803

DECISION & ORDER

In the Matter of Grecia Jetter,
respondent, v Barry Jetter, appellant.

(Docket No. O-141812-05)

Yasmin Daley Duncan, Brooklyn, N.Y., for appellant.

Michael B. Palillo, P.C., New York, N.Y., for respondent.

In a family offense proceeding pursuant to Family Court Act article 8, the husband appeals from an order of protection of the Family Court, Kings County (Silber, J.), dated February 9, 2006, which, after a hearing, directed him to refrain from, inter alia, committing any criminal offense against the wife until February 8, 2008.

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 in accordance herewith; and it is further,

ORDERED that the temporary order of protection dated November 30, 2005, is reinstated pending the new determination.

A party in a Family Court Act article 8 proceeding has the right to be represented by counsel (*see* Family Ct Act § 262 [a][ii]; *Matter of Otto v Otto*, 26 AD3d 498, 499). That party, however, can waive the right to counsel and opt for self-representation (*see People v Arroyo*, 98 NY2d 101, 103; *People v Smith*, 92 NY2d 516, 520; *People v Anderson*, 125 AD2d 580, 581). Prior to permitting a party to proceed pro se, the court must determine that the decision to do so is made

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knowingly, intelligently, and voluntarily (*see People v Arroyo, supra*). To ascertain whether a party's waiver of counsel meets these requirements, the court must conduct a "searching inquiry" of that party (*People v Slaughter*, 78 NY2d 485, 491). Although there is no "rigid formula" as to the questions the court needs to ask for counsel waivers, there must be a showing that the party "was aware of the dangers and disadvantages of proceeding without counsel" (*People v Providence*, 2 NY3d 579, 582-583).

Here, the Family Court failed to advise the husband of the risks of self-representation. As such, there was no knowing, intelligent, and voluntary waiver of counsel (*see People v Arroyo, supra; People v Smith, supra; Matter of Hassig v Hassig*, 34 AD3d 1089; *Matter of Rachel P.*, 286 AD2d 868). Accordingly, we reverse the order of protection and remit the matter to the Family Court, Kings County, for a new hearing and determination.

The husband's remaining contention is without merit.

SPOLZINO, J.P., SANTUCCI, FLORIO and ANGIOLILLO, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court