

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

E.P.,

Appellant,

v.

LAKELAND POLICE DEPARTMENT,

Appellee.

No. 2D20-2121

August 13, 2021

Appeal from the Circuit Court for Polk County; William Bruce Smith, Judge.

Jason D. Sammis and Leslie M. Sammis of Sammis Law Firm, P.A, Tampa, for Appellant.

David R. Carmichael of Boswell & Dunlap, LLP, Bartow, for Appellee.

ATKINSON, Judge.

E.P. appeals from a final order granting risk protection following a virtual hearing (conducted by way of audio-visual

technology over the internet) that E.P. did not attend. Because the trial court erred by entering the final order granting risk protection without providing E.P. proper notice that the final hearing would take place virtually instead of in the courtroom as set forth in the temporary order, we reverse.

On May 31, 2020, the Lakeland Police Department filed a petition for a risk protection order against E.P. The petition alleged that E.P., a concealed weapons permit-holder and owner of several firearms, posed a significant danger of causing personal injury to himself or others in the near future. After responding to a report from a family member, law enforcement officers transported him to Peace River Center for examination before transporting his firearms and ammunition to the Lakeland Police Department for safe keeping.

The court issued a temporary ex parte risk protection order on May 31, 2020, pursuant to section 790.401(4), Florida Statutes (2020). The hearing on the final order granting risk protection was scheduled for June 12, 2020, at 2:00 p.m. "in the court facility located at 255 N. Broadway Ave., Bartow, FL." A copy of the Temporary Ex Parte Risk Protection Order and Notice of Further

Proceedings was forwarded to law enforcement for personal service on E.P., which service was effectuated on May 31, 2020, at 6:56 a.m. at the Peace River Center. The compliance hearing, during which the court is presented with "proof that the respondent has surrendered any firearms or ammunition owned by the respondent in the respondent's custody, control, or possession," § 790.401(7)(f), occurred on June 3, 2020. The court's order on compliance, which was mailed to E.P., did not provide another date for the final hearing and did not indicate that the proceedings would not be conducted at the courthouse.

The final hearing on the risk protection order was conducted virtually on June 12, 2020, at 2:00 p.m., but E.P. did not attend. The court found that E.P. "was personally served with the dates to appear in this proceeding and elected not to attend the final hearing on June 12, 2020." The court entered a final order granting the petition for risk protection.

On July 10, 2020, E.P. filed an affidavit in which he stated that he went to the courthouse at 255 N. Broadway Ave., Bartow, Florida for the compliance hearing on June 3, 2020. He stated that the attorney for the Lakeland Police Department told him that he

could not attend the compliance hearing but that "the final hearing would be at the same location on June 12, 2020, at 2:00 p.m., as indicated on the temporary [risk protection order] paperwork."¹ He arrived at the courthouse for the final hearing on June 12, 2020, at 1:30 p.m. and remained there until 3:00 p.m. E.P. stated that he was not let into the courtroom; nor was he aware that the hearing would take place virtually or how to attend. He timely appealed.

On appeal, E.P. argues that the county court erred by entering the final order granting risk protection without providing him adequate notice that the proceedings would take place virtually as opposed to in the physical courtroom listed on the Temporary Ex Parte Risk Protection Order and Notice of Further Proceedings. Pursuant to section 790.401(3)(b), a "court must issue a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months," if it "finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having

¹ The parties filed a stipulated statement regarding the underlying facts pursuant to Florida Rule of Appellate Procedure 9.200(a)(3).

in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition" but only "[u]pon notice and a hearing on the matter."

It is undisputed that E.P. was not given proper notice of the virtual final hearing on the risk protection petition. Rather, E.P. was informed after the compliance hearing that the final hearing would occur at the courthouse location listed on the Temporary Ex Parte Risk Protection Order and Notice of Further Proceedings.

"Procedural due process requires both fair notice and a real opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Dep't of Highway Safety & Motor Vehicles v. Hofer*, 5 So. 3d 766, 771 (Fla. 2d DCA 2009) (quoting *Keys Citizens for Responsible Gov't, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001)). In this case, E.P. was not provided with adequate notice regarding the final hearing and was therefore deprived of his right to be heard. As such, the final order was entered in contravention of E.P.'s right to procedural due process and must be reversed.

Reversed.

BLACK and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.