SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0519-15T2

OLD BRIDGE FUNERAL HOME, LLC,

Plaintiff-Respondent,

v.

KENNETH PRUCKOWSKI, ANTHONY CASTIGLIONE, Individually and as Executor of the Estate of MARIE CONCETTA PRUCKOWSKI, THERESA MARY DONNELLY and THE ESTATE OF MARIE CONCETTA PRUCKOWSKI,

Defendants-Respondents,

and

PAUL PRUCKOWSKI,

Defendant-Appellant.

Argued October 6, 2016 – Decided February 21, 2017

Before Judges Messano and Suter.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-10927-14.

Michael P. Laffey argued the cause for appellant Paul Pruckowski (Messina Law Firm, attorneys; Mr. Laffey and Susan P. Friedel, on the briefs).

Lisa M. Leili argued the cause for respondents The Estate of Marie Concetta Pruckowski and Anthony Castiglione (Vella, Singer and Martinez, P.C., attorneys; Maureen E. Vella, of counsel; Ms. Leili, on the brief).

PER CURIAM

Paul Pruckowski (Pruckowski) appeals an order denying his motion to file a cross-claim for indemnification against the Estate of Marie Concetta Pruckowski (Estate) and Anthony Castiglione, individually and as Executor of the Estate (Castiglione or Executor), for the costs of his mother's funeral.

When Marie Pruckowski (decedent) passed away in October 2014, she was survived by her children, Paul Pruckowski, Kenneth Pruckowski and Theresa Mary Donnelly, (the children) and her brother, Anthony Castiglione. Her estate was modest, consisting of a house located in Old Bridge, subject to a reverse mortgage, and a car. She did not have life insurance.

In March 2011, decedent executed a Last Will and Testament (Will) in which she directed that all her "just debts and funeral expenses" were to be fully paid and satisfied. The Will expressly made "no provision" for her three children. Rather, she devised her automobile to her nephew, and directed that the

proceeds from the sale of her home and its contents "be given, devised and bequeathed" to St. Jude Children's Hospital along with "the rest, residue and remainder of [her] estate." Her brother was designated as the executor. She did not name a funeral agent to address her funeral arrangements. See N.J.S.A. 45:27-22(a).

Two weeks before the decedent's death, Castiglione obtained a $13,000 price quote for her funeral from his nephew, who was funeral director at a funeral home in Union. The price quote included a family discount. The Union funeral home agreed to accept payment after the Estate was settled.

The children wanted a funeral closer to Old Bridge, where the decedent's family and friends lived. Pruckowski claimed that Castiglione told him to plan the funeral, without imposing any financial restrictions. After obtaining two similar price quotes from nearby funeral homes, Pruckowski "booked" the funeral with Old Bridge Funeral Home (Funeral Home) for $30,789. He signed a "Payment Policy" that required full payment before the funeral services.

By the morning of the funeral, only a small deposit had been paid. When the Executor would not pay the remainder and the Funeral Home insisted on payment to proceed with the funeral, the children each signed a "Contract/Promissory Note,"

agreeing to pay the balance remaining of $26,374. The contract provided that payment was a personal obligation "in addition to the liability imposed by law upon the estate and others."

The Funeral Home filed suit for breach of contract and other causes of action when the outstanding balance was not paid, naming as defendants the children, Castiglione (as Executor and in his individual capacity) and the Estate. In their answer, counterclaim and cross-claim, Castiglione and the Estate denied financial responsibility for the funeral because the children had made the funeral arrangements, although the Estate was willing to pay for reasonable funeral expenses. Pruckowski filed an answer, which requested an accounting because, he contended, there should have been available estate funds for the funeral from the decedent's reverse mortgage. The other children were defaulted when they did not answer the complaint.

All of the parties filed motions for summary judgment. Pruckowski asked for judgment against the Estate to require it to pay for the funeral. Decedent's house had been sold by this time and the title company escrowed $50,000 that could be used to pay the Funeral Home. The Funeral Home requested judgment against the children, the Executor and Estate for the unpaid balance of the funeral or the value of its services. The

Executor and Estate asked for summary judgment against the children.

Following oral argument on May 5, 2015, the trial court reserved on the motions. While the decision was pending, Pruckowski filed a motion to assert a cross-claim for indemnification[1] against the Estate and Executor, because he contended they had an obligation under the Will to pay the funeral expenses and had not done so.

On July 6, 2015, the trial judge granted summary judgment to the Funeral Home and against the children, granted the Estate and Executor's summary judgment motion against the children, and denied Pruckowski's motion for summary judgment. The court rejected Pruckowski's argument that he was subjected to duress through "wrongful pressure" by the Funeral Home because "it was expected the funeral arrangements would require a payment." Then, the court found the children were financially responsible for the cost of the funeral arrangements, as they had "knowingly chose[n] to incur the $30,000 expense of a funeral on their own." The trial judge reasoned that the Executor, as the decedent's brother, had legal authority to direct the funeral under N.J.S.A. 45:27-22 because the children, whose rights would

[1] The record on appeal does not include a copy of the proposed pleading.

have been superior under the statute, had been left out of the Will, rendering invalid their "right to control the funeral" under the statute.

The court denied Pruckowski's motion to assert a cross-claim because both the Will and the "Payment Policy" were "clear and unambiguous," making "futile" any cross-claim Pruckowski could assert against the Estate. The order denying the amendment was entered on July 15, 2015. Thereafter, on September 15, 2015,[2] a judgment for $30,416.10 was entered against the children, jointly and severally, in favor of the Funeral Home.[3] Pruckowski appeals only the order that denied his motion to amend the pleadings, claiming the court erred by denying his ability to seek indemnification from the Estate.

We agree the trial court erred by denying the motion to amend the pleadings to include a cross-claim for indemnification against the Estate, and in finding the children had no right to control the funeral under N.J.S.A. 45:27-22. Generally, "motions for leave to amend [under R. 4:9-2 are to] be granted liberally." Kernan v. One Wash. Park Urban Renewal Assocs., 154

[2] By this time, the Estate and Executor had entered into a settlement with the Funeral Home, rendering moot any judgment by the Funeral Home against these parties.

[3] The judgment included an assessment of attorney's fees and deducted the amount paid by the Estate in settlement of its claims with the Funeral Home.

N.J. 437, 456 (1998). "The determination of a motion to amend a pleading is generally left to the sound discretion of the trial court . . . ." Franklin Med. Assocs. v. Newark Pub. Sch., 362 N.J. Super. 494, 506 (App. Div. 2003). That "exercise of discretion will not be disturbed on appeal, unless it constitutes a 'clear abuse of discretion.'" Ibid. (quoting Salitan v. Magnus, 28 N.J. 20, 26 (1958)). "When the trial court's order is based on a mistaken understanding of the applicable law, however, such deference is inappropriate." Spinks v. Twp. of Clinton, 402 N.J. Super. 454, 459 (App. Div. 2008) (citation omitted), certif. denied, 197 N.J. 476 (2009).

In determining whether to allow the amendment of a pleading, courts must determine "[w]hether the non-moving party will be prejudiced, and whether granting the amendment would nonetheless be futile." Notte v. Merchs. Mut. Ins. Co., 185 N.J. 490, 501 (2006). Decisions on motions for leave to amend "must be made in light of the factual situation existing at the time [the] motion is made." Ibid. (internal quotation marks and citations omitted). See Verni ex rel. Burstein v. Harry M. Stevens, Inc. of N.J., 387 N.J. Super. 160, 196 (App. Div. 2006), certif. denied, 189 N.J. 429 (2007); Bldg. Materials Corp. of Am. v. Allstate Ins. Co., 424 N.J. Super. 448, 485 (citing Kimmel v. Dayrit, 154 N.J. 337, 343 (1998)), certif.

denied, 212 N.J. 198 (2012). "[C]ourts are free to refuse leave to amend when the newly asserted claim is not sustainable as a matter of law." Notte, supra, 185 N.J. at 501 (citation omitted).

The trial court's decision to deny the amendment to add a claim for indemnification was based on the mistaken notion that the children could not control the funeral because no provision for them had been made in the Will. N.J.S.A. 45:27-22(a) provides that if a testator appoints a person "to control the funeral and disposition of the human remains, the funeral and disposition shall be in accordance with the instructions of the person so appointed." However, if no such person has been appointed, and no other direction has been given by a court, then the statute sets forth a hierarchy of individuals to control the funeral and disposition of remains. Specifically,

> [i]f the decedent has not left a will appointing a person to control the funeral and disposition of the remains, the right to control the funeral and disposition of the human remains shall be in the following order, unless other direction has been given by a court of competent jurisdiction:
>
> (1) The surviving spouse of the decedent of the surviving domestic partner.
>
> (2) A majority of the surviving adult children of the decedent.
>
> (3) The surviving parent or parents of the decedent.

> (4) A majority of the brothers and sisters of the decedent.
>
> (5) Other next of kin of the decedent according to the degree of consanguinity.
>
> (6) If there are no known living relatives, a cemetery may rely on the written authorization of any other person acting on behalf of the decedent.
>
> [N.J.S.A. 45:27-22(a).]

Here, the court found that "[b]ecause the children are explicitly written out of the will . . . the statute clearly indicates that [brother] had the legal authority to direct the funeral."

In interpreting a statute, "we look first to the plain language of the statute, seeking further guidance only to the extent that the Legislature's intent cannot be derived from the words that it has chosen." Marino v. Marino, 200 N.J. 315, 329 (2009) (quoting Pizzullo v. N.J. Mfrs. Ins. Co., 196 N.J. 251, 264 (2008)). In Marino, the Court found that as originally enacted in 1971, the interment statute,

> created a hierarchy as among survivors for purposes of determining which of them would be authorized to control the disposition of remains. At the same time, however, the statute expressed a preference for carrying out the wishes of the decedent by referring to the right of the decedent to give directions and by authorizing others to act only in the absence of such directions.

[Id. at 324 (citation omitted).]

This enumeration was necessary to make clear "who may decide on burial . . . to avoid, or to end quickly," disputes regarding burial. Id. at 332.

Decedent's Will could have named a person to control the funeral arrangements, but did not give any direction about interment nor mention whether the children were barred from participation. The Will only provided for payment of "just debts and funeral expenses." Because her Will did not name a funeral agent, the statutory hierarchy applied. As the surviving adult children of the decedent, the children had a higher priority right to control the funeral than decedent's brother, the Executor. See N.J.S.A. 45:27-22(a)(2), (4).

There is nothing in the statute providing that the statutory hierarchy shall be modified based on whether the children inherit under the will. Their exclusion from the Will could reflect decedent's charitable nature, that the children were provided for otherwise during decedent's lifetime, or that they did not require a bequest. Here, the court simply assumed because the children were not provided for that they were not entitled to priority under the statute. Thus, because the children had the statutory right to decide the funeral

arrangements, the court erred in concluding that Pruckowsky's proposed amendment seeking indemnification was futile.

There was no prejudice to the Estate or Executor by permitting an amendment to include a claim for indemnification. Here, "the newly asserted claims [were] based on the same underlying facts and events set forth in the original pleading." Notte, supra, 185 N.J. at 501. Where the newly asserted claims are grounded on the same conduct already alleged, the opposing party has "no cause to complain." Ibid. The Estate acknowledged its obligation to pay reasonable funeral expenses. There was no apparent trial date and the litigation was relatively new.

Under the Will, the decedent directed that her "just debts and funeral expenses" be fully paid and satisfied. It was the Executor's task to "settle and distribute the estate . . . in accordance with the terms of any . . . will." N.J.S.A. 3B:10-23. This obligation included the payment of funeral expenses. With that said, however, when a third person makes funeral arrangements for a decedent at the expense of the estate, "all of the authorities uniformly hold that the expenses incurred must be reasonable." Haeberle v. Weber, 56 N.J. Super. 428, 433 (Law Div. 1959). In Haeberle, a wife unilaterally made funeral arrangements for her husband, but the Estate refused to pay for

the cost, stating it was unreasonable. Id. at 430. The court held that the Estate was liable for reasonable funeral expenses and the wife was liable for anything above what was reasonable. Id. at 433. The cost of the funeral expenses and burial of the decedent should take into account her "circumstances and social condition . . . and the value of [her] estate." Ibid.

The Executor has acknowledged an obligation by the Estate to pay for reasonable funeral expenses. However, the trial court did not find what funeral expenses were reasonable for decedent, nor is the record sufficient for this determination. Because of this, we remand this issue to the trial court.

Pruckowski did not challenge on appeal and remains obligated on the judgment entered against him by the Funeral Home. Technically, he also did not appeal the July 6, 2015 order that granted summary judgment to the Estate and Executor. However, that order was based on the erroneous conclusion that Pruckowski and his siblings could not control the funeral and could not amend the pleadings to add a cross-claim. The underlying premise of that order was flawed and is inconsistent with our decision.[4]

[4] See N. Jersey Neurosurgical Assocs., P.A. v. Clarendon Nat'l Ins. Co., 401 N.J. Super. 186, 198 (App. Div. 2008) (electing to reverse an order not listed on the notice of appeal where it was (continued)

Therefore, the July 15, 2015 order denying amendment of the pleading is reversed. To the extent the July 6, 2015 order granting summary judgment to the Estate and Executor foreclosed Pruckowski's cross-claim for indemnification, it is reversed. We remand to the trial court the sole issue of determining what funeral expenses were reasonable, the determination of which shall take into account any credit Pruckowski may have received from the Estate's settlement with the Funeral Home. We do not retain jurisdiction.

(continued)
clear that the judge's decision was premised on a flawed legal analysis).