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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1622-15T1

RICHARD F. WURZBURG, by
his Attorney-In-Fact,
EDWIN G. WURZBURG, III,

Plaintiff-Respondent,

v.

ROBERT A. WURZBURG, GRACE
C. WURZBURG-FAUCI, and
ESTATE OF GRACE C. WURZBURG-
FAUCI, Individually, Jointly,
Severally and/or in the
Alternative,

Defendants-Appellants.

Submitted March 16, 2016 – Decided March 29, 2017

Before Judges Lihotz and O'Connor.

On appeal from Superior Court of New Jersey,
Law Division, Burlington County, Docket No.
L-0782-13.

William R. Edleston, attorney for
appellants.

Law Office of McInerney and Schmidt, L.L.C.,
attorneys for respondent (Sandford F.
Schmidt, on the brief).

PER CURIAM

Defendants Robert A. Wurzburg and the Estate of Grace C. Wurzburg-Fauci appeal from the November 6, 2015 Law Division order denying their motion for reconsideration of the September 18, 2015 order, which denied their motion to vacate the default judgment entered against them. We affirm.

In April 2013, plaintiff Richard F. Wurzburg filed a complaint against defendants, alleging they were retaining money that belonged to him.¹ Defendant Robert A. Wurzburg is plaintiff's brother and defendant Grace C. Wurzburg-Fauci was his mother. During the litigation, Grace C. Wurzburg-Fauci died and the complaint was amended to add defendant Estate of Grace C. Wurzburg-Fauci.

The background is uncomplicated. Plaintiff and defendants owned property in Delaware, which was the subject of a condemnation proceeding. This proceeding resulted in a net award of \$505,728.56 to the parties, after the mortgage against the property was satisfied. Each party was to receive one-third of the net proceeds, or \$168,576.18. Plaintiff claimed defendants failed to disburse to him and wrongfully retained his one-third share.

¹ Plaintiff suffered a stroke which caused him to sustain some physical limitations, but he is not mentally incapacitated. His brother, Edwin G. Wurzburg, III, acts as plaintiff's attorney-in-fact.

Defendants failed to file an answer to the complaint and eventually default was entered against them. In December 2014, plaintiff filed a motion for entry of default judgment. The unopposed motion was granted, and the trial court entered a default judgment against defendants for \$168,576.18, plus interest of \$7,504, for a total of \$176,080.18.

Seven months later, defendants moved to vacate the default judgment, contending they had a meritorious defense. Specifically, defendants claimed plaintiff received his one-third share of the award and thus the allegations in the complaint lacked merit. Although we do not have a copy of plaintiff's response to the motion, the record informs defendants failed to address why they did not file a responsive pleading to the complaint and, later, the amended complaint. We further discern that, in his response to the motion, plaintiff contended he had not received his one-third share of the award and thus contested defendants' assertion they had a meritorious defense.

On September 18, 2015, the court entered an order denying defendants' motion. Citing Rule 4:50-1(a) and decisional authority interpreting this rule, the court found defendants failed to show excusable neglect and a meritorious defense. Defendants filed a motion for reconsideration. The court's

decision on this motion was not provided, but we gather from the record defendants merely repeated the arguments proffered in support of their original motion. On November 6, 2015, the court entered an order denying defendants' motion for reconsideration.

On appeal, defendants contend the court erred when it failed to consider Rule 4:50-1(e), which in pertinent part provides a court may relieve a party from a final judgment if that judgment has been satisfied. Defendants also assert the court should have applied Rule 4:50-1(f), which allows a court to consider any other reason justifying relief from the operation of the judgment.

Finally, defendants argue the trial court overlooked their argument they have a meritorious defense to the allegations in the amended complaint. Although not explicitly articulated, we understand defendants' argument to be the trial court erred when it denied their original motion on the ground they failed to show they were entitled to relief under Rule 4:50-1(a) and, thus, the motion for reconsideration should have been granted.

We first address whether the trial court erred when it failed to vacate the default judgment pursuant to Rule 4:50-1(a). This rule provides a court may relieve a party from a final judgment for "mistake, inadvertence, surprise, or

excusable neglect." R. 4:50-1(a). A party seeking relief under this rule must show the neglect to answer was excusable under the circumstances and that the party has a meritorious defense. Marder v. Realty Constr. Co., 84 N.J. Super. 313, 318 (App. Div.), aff'd, 43 N.J. 508 (1964). "Excusable neglect" for failing to file an answer "may be found when [a] default was 'attributable to an honest mistake that is compatible with due diligence or reasonable prudence.'" Deutsche Bank Nat'l Trust Co. v. Russo, 429 N.J. Super. 91, 98 (App. Div. 2012) (quoting US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 468 (2012)).

The scope of our review is limited. A trial court's decision under Rule 4:50-1 is entitled to "substantial deference, and should not be reversed unless it results in a clear abuse of discretion." Guillaume, supra, 209 N.J. at 467. A motion to vacate a judgment under Rule 4:50-1(a) "should be granted sparingly, and is addressed to the sound discretion of the trial court, whose determination will be left undisturbed unless it results from a clear abuse of discretion." Fineberg v. Fineberg, 309 N.J. Super. 205, 215 (App. Div. 1998) (citation omitted) (quoting Pressler, Current N.J. Court Rules, comment 1 on R. 4:50 (1998)).

Applying this deferential standard of review, we discern no abuse of discretion in the trial court's denial of defendants'

application to set aside the default judgment pursuant to Rule 4:50-1(a). Defendants asserted before the trial court they had a meritorious defense, but they did not address the issue of excusable neglect. In their brief before us, defendants do not explain why they omitted addressing this issue when before the trial court. We need not reach whether defendants presented grounds for a meritorious defense because, in the absence of proving excusable neglect for ignoring a summons and complaint, the presence of a meritorious defense is inconsequential under Rule 4:50-1. Guillaume, supra, 209 N.J. at 468; Marder, supra, 84 N.J. Super. at 318.

When defendants filed a motion for reconsideration seeking a review of the same argument they had presented in their previous motion, the trial court was well within its discretion to deny the motion. A motion for reconsideration is addressed to the "sound discretion of the [c]ourt, to be exercised in the interest of justice." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). Reconsideration is reserved for "cases which fall into that narrow corridor" where the prior decision was "based upon a palpably incorrect or irrational basis," failed to consider or appreciate "probative, competent evidence," or where a "litigant wishes to bring new or

additional information to the [c]ourt's attention which it could not have provided on the first application." D'Atria, supra, 242 N.J. Super. at 401.

Here, the court's decision did not meet any of these three criterion. We therefore conclude the trial court's denial of defendants' reconsideration motion was an appropriate exercise of its discretion.

As for the argument the trial court erred for failing to consider Rule 4:50-1(e) and (f) as bases for relief, when before the trial court, defendants did not request relief under either one of these two subsections of the rule. "Generally, an appellate court will not consider issues, even constitutional ones, which were not raised below." State v. Galicia, 210 N.J. 364, 383 (2012). Even if defendants had done so, the trial court did not address whether defendants were entitled to relief under these subsections and, thus, we decline to do so in the first instance. Duddy v. Gov't Emps. Ins. Co., 421 N.J. Super. 214, 221 (App. Div. 2011).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION