SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1630-15T4

A.L.,

Plaintiff-Appellant,

v.

SHARON RYAN MONTGOMERY, PSY.D.,

Defendant-Respondent.

Argued telephonically November 1, 2017 – Decided November 17, 2017

Before Judges Simonelli and Haas.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-3195-15.

Adrian E. Bermudez argued the cause for appellant (Mr. Bermudez, attorney; A.L., on the pro se brief).

Christina M. Scarpa argued the cause for respondent (Giblin, Combs, Schwartz & Cunningham, LLC, attorneys; Ms. Scarpa, on the brief).

PER CURIAM

This is the fifth time plaintiff A.L. has been before this court in connection with his long-running dispute with his former

spouse over parenting time with their three children, only one of whom is still under the age of eighteen. In this case, plaintiff filed a complaint in the Law Division seeking damages against defendant, a court-appointed psychologist in the Family Part post-judgment proceedings, because he was unhappy with a report the psychologist prepared at the request of the judge in that proceeding.

In this appeal, plaintiff challenges the Law Division's November 5, 2015 order granting defendant's motion for summary judgment and dismissing plaintiff's complaint after the court found that defendant was protected by judicial immunity under P.T. v. Richard Hall Community Mental Health Center, 364 N.J. Super. 546 (Law Div. 2000), aff'd o.b., 364 N.J. Super. 460 (App. Div. 2003), certif. denied, 180 N.J. 150 (2004).[1] We affirm.

The parties are fully familiar with the facts and lengthy procedural history of this litigation and, therefore, only a brief summary as set forth in our earlier opinions is necessary here. Plaintiff and K.L. married in 1993, and divorced in 2004. K.L. v. A.L., (K.L. I), Nos. A-5645-09 and A-3401-10 (App. Div. Apr.

[1] Plaintiff also appeals from the Law Division's October 15, 2015 order, denying his request to file a reply to one of defendant's submissions on the summary judgment motion. We conclude that plaintiff's contentions regarding this order are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

16, 2012) (slip op. at 2-3), certif. denied, 212 N.J. 1999 (2012). They have three children, born in 1995, 1997, and 2000. Id. at 3. At the time of the divorce, K.L. and plaintiff agreed to share joint legal and physical custody of the children, with each parent spending equal parenting time with them. Ibid.

K.L. remarried in 2007. Id. at 4. Around that time, the shared parenting time arrangement began to disintegrate. Ibid. Plaintiff asserted that K.L. and her husband were "engag[ing] in a campaign to alienate the children from him." Ibid. K.L. disputed plaintiff's line of attack, and alleged that after plaintiff lost his job and she remarried, plaintiff "focused his frustration on the children and 'instituted an overly harsh, disciplinarian parenting style that the children were unfamiliar with.'" Ibid.

Several Family Part judges addressed the multiple post-judgment motions the parties thereafter filed. K.L. v. A.L., (K.L. III), Nos. A-2952-12 and A-1623-13 (App. Div. Nov. 10, 2014) (slip op. at 5), certif. denied, 221 N.J. 220 (2015).[2] With the consent of plaintiff and K.L., the judge handling the post-judgment motions then being considered appointed defendant "on June 4,

[2] Following the example set in our prior opinions, because we have no reason to distinguish among the Family Part judges involved, we do not.

2008, to conduct a 'best interest evaluation regarding parenting time and custody.'" K.L. I, supra, (slip op. at 4). After interviewing family members and other collateral sources, administering psychological tests, and reviewing court documents and correspondence between family members, defendant submitted a ninety-eight page report to the judge on June 20, 2009. Id. at 5-6. Among other things, defendant recommended that plaintiff and K.L. continue to share joint legal and physical custody of the children, continue psychotherapy with their children, and continue to work with a parenting coordinator.[3] Id. at 6.

When the disputes between plaintiff and K.L. also continued, and in the face of additional post-judgment motions, the parties consented to have the judge again appoint defendant to "evaluate and make recommendations regarding [A.L.'s] recent allegations of parental alienation, as well as the [parents'] acknowledgment that the psychiatrist appointed [by the judge in an earlier order was] no longer involved with the family." Id. at 9. The judge's October 18, 2011 order appointing defendant instructed her to

[3] After we issued our decision in Milne v. Goldenberg, 428 N.J. Super. 184, 205 (App. Div. 2012), in which we concluded that parenting coordinators should only be appointed if both parties consent, the judge in this case determined it was no longer appropriate to require the parties to use a parenting coordinator because plaintiff declined to consent. K.L. v. A.L., (K.L. II), No. A-1582-11 (App. Div. Apr. 8, 2013) (slip op. at 2-4).

"review the present assertions of [plaintiff] since her [first] report was issued and to make any further recommendations she deems appropriate[.]" The order also directed plaintiff and K.L. to cooperate with defendant during her evaluation. See K.L. III, supra, (slip op. at 14).

During that period, plaintiff and K.L. were battling over plaintiff's holiday parenting time and, in light of their ongoing allegations against each other, the judge decided to conduct a plenary hearing after defendant provided her report. Id. at 15-16. Defendant completed her sixty-three page written report on July 8, 2012 and submitted it to the court. Id. at 17. Once again, defendant based her recommendations on her "interviews of family members and the professionals involved with the family[,]" together with a review of pertinent documents. Id. at 25.

In her report,

> [defendant] found that both parents failed to appreciate the impact that the litigation and their inability to accept any responsibility for their own contributions to the problem had on their children. With [K.L.], it was not so much what she did but what she did not do, and with [plaintiff], it was his pursuit of equal parenting time that led him to lose sight of the children and what his effort to achieve equal time was doing to them.
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> . . . .
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> [Defendant's] recommendations included referral to a therapist for "therapeutic

> mediation" to address [plaintiff's] relationship with [the parents'] first child and develop a parenting plan that the child could realistically follow; referral of family members to an "experienced therapist in high-conflict divorces and in child alignments;" and possible restructuring of the parenting plan "to provide greater consistency and few[er] transitions" given the ages of the children. With regard to sanctions for non-compliance, [defendant] suggested a "make-up time policy."
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> [Id. at 26-28 (seventh alteration in original).]

The judge conducted the plenary hearing in July and September 2012. Id. at 17. Although plaintiff retained his own expert, who prepared a written report that was admitted in evidence, he did not call the expert as a witness at the hearing. Id. at 17, 45-46. Plaintiff's attorney also moved defendant's 2009 evaluation report into evidence. Id. at 22.

The judge provided the parents' attorneys with a copy of defendant's July 2012 report under a protective order. Id. at 17. Neither party called defendant as an expert witness at the hearing. "At the hearing, the judge recognized that the expert reports were hearsay, admissible subject to cross-examination pursuant to Rule 5:3-3(g). Ibid. He indicated that the reports would be admitted into evidence as part of the court's record but not considered for the truth." Id. at 17 n.6.

At the conclusion of the hearing, the judge entered a series of orders, including one establishing therapeutic parenting time between plaintiff and the parents' first child. Id. at 33. In February 2013, the judge issued several additional orders based on the parties' persistent litigation. Id. at 36.[4]

With this history in mind, we now turn to the matter that forms the basis for the present appeal. On October 22, 2014, plaintiff filed a complaint against defendant in the Law Division, which he later amended on November 13, 2014. In his eight-count amended complaint, plaintiff accused defendant of negligence (count one); gross negligence (count two); breach of contract (count three); unjust enrichment (count four); and fraud/fraud in performance (count five), in performing her duties as a court-appointed psychologist. Plaintiff also asserted that defendant violated his right to due process (count six), and the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c) (count seven). Alleging that defendant's "conduct . . . was malicious, willful[,] and wanton[,]"

[4] In January 2015, K.L.'s husband filed a petition to adopt K.L.'s and plaintiff's first child, who was then nineteen years old. In re Adoption of an Adult by A.S.C., No. A-5447-14 (Mar. 30, 2016) (slip op. at 2). The child consented to the adoption. Ibid. After the Family Part judge entered a final judgment of adoption, plaintiff filed a motion to intervene in the litigation, which the judge denied. Id. at 2-5. We affirmed, id. at 13-14, and the Supreme Court denied certification. In re Adoption of an Adult by A.S.C., 227 N.J. 246 (2016).

plaintiff sought punitive and exemplary damages (count eight). Defendant filed an answer and denied plaintiff's allegations.

Defendant thereafter filed a motion for summary judgment, asserting, among other things, that she was entitled to judicial immunity because she prepared her report and recommendations at the request of the Family Part judge. Following oral argument, Judge Estela De La Cruz rendered a comprehensive written opinion on November 5, 2015, granting defendant's motion and dismissing plaintiff's complaint.[5]

In finding that defendant was cloaked with judicial immunity for the work she performed as a court-appointed psychologist for the Family Part, Judge De La Cruz relied upon then-Judge Helen Hoens' exhaustive opinion on the subject in P.T., supra, 364 N.J. Super. at 546, a case with facts that are closely analogous to those presented here. In P.T., the Family Part appointed a psychologist "to conduct an evaluation and render a report to the [c]ourt with recommendations as to [the plaintiff's] further contact and visitation with his daughter." Id. at 548. The psychologist "conducted her evaluation and prepared and filed with the court her formal report and recommendations." Ibid.

[5] In her November 5, 2015 order, the judge also denied plaintiff's motion to amend his pleadings.

At some point thereafter, the plaintiff sued the psychologist in the Law Division alleging, as plaintiff does in this case, that the court-appointed psychologist failed to consider and apply certain research, delayed her report, allowed her personal feelings to influence her recommendations, and fraudulently held herself out as an expert. Id. at 548-49. The plaintiff also asserted that the psychologist violated his constitutional rights. Id. at 549.

In concluding that the psychologist was protected by judicial immunity, Judge Hoens found that the court-appointed expert

> was charged with conducting an evaluation, with preparing a report of her findings and with making a recommendation to the court for its consideration and review. She did so. In that context, she was not charged with privately representing a party, in the sense that a public defender assigned to represent a litigant is charged with representation as his or her principal role. Nor is there any evidence or any suggestion that she did perform such a role. On the contrary, the evidence is that her role, like that of the law guardian, was one which called upon her to look beyond the concerns of the adult parties and to look to the best interests of the child. . . . Her role was to assist the Family Part with her evaluation and her recommendations, without regard to the interests of the adults, much like the function performed by the law guardian. That being the case, . . . [the psychologist] enjoys absolute immunity from litigation in connection with her duties and her role in this underlying litigation.

[Id. at 555-56 (citation omitted).]

Under these circumstances, Judge Hoens observed "that to deny the protection of this court-appointed expert would be to exert a chilling effect on the court itself in the performance of its functions." Id. at 558-59. Thus, Judge Hoens concluded:

> The role played by the psychologist in this setting is one which that individual must be free to perform without fear of reprisal by parties to the proceedings who are, in the end, disappointed with the result or with the recommendations provided to the court. Moreover, it is essential to the proper functioning of the proceeding in which such an expert is appointed that the court be able to rely on the findings and the recommendations, a result which will not be served if the experts are unwilling to serve at all or are reluctant to perform their assigned task with complete candor. These concerns transcend the particular litigation and the interests of the specific parties, for the role assigned to the expert in this context is integral to the judicial process.
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> [Id. at 559.]

Applying these principles to the present case, Judge De La Cruz found that, like the court-appointed psychologist in P.T., defendant was selected by the Family Part to provide her candid evaluation and assessment of the issues facing plaintiff, K.L, and their children, so that the judge in that proceeding could make an informed decision concerning the measures that would further the best interests of those children. Thus, as in P.T., defendant

was appointed to serve the children by providing a candid report to the judge, and owed no duty to either plaintiff or K.L.

Judge De La Cruz noted that "[p]laintiff's core argument boils down to nothing more than a preference that [defendant] should have reached a different conclusion, than the one rendered in her report." Under these circumstances, the judge concluded that defendant, "based on her role as a [c]ourt-appointed psychologist, is afforded [j]udicial [i]mmunity, and any claims against her based on her role in conducting an evaluation and rendering a written report are to be dismissed. . . ."[6] This appeal followed.

On appeal, plaintiff presents the following contentions:

> POINT I
>
> THE TRIAL COURT ERRED IN FAILING TO APPLY CONTROLLING LEGAL PRINCIPLES WHICH PRECLUDE SUMMARY JUDGMENT WHEN THE MOVANT REFUSES TO COMPLY WITH DISCOVERY OR R. 4:46-2 AND A DISPUTE OVER GENUINE ISSUES OF MATERIAL FACTS EXISTS.
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> POINT II
>
> THE TRIAL COURT FAILED TO PROPERLY CONSIDER AFFIDAVITS OF TWO NATIONALLY NOTED EXPERTS

[6] Judge De La Cruz discerned "no conduct on [defendant's] part[] that [rose] to the level of gross negligence." The judge also found that plaintiff failed to provide any evidence concerning his other claims. As the judge observed, defendant "simply conducted an investigation, made findings, and submitted a report to the Family" Part judge, who was "not legally bound by the findings or assertions of" the court-appointed psychologist.

SUPPORTING THAT DEFENDANT'S WILLFUL MISCONDUCT AND OBSTRUCTION OF COURT FUNCTION IN VIOLATION OF LAW VOIDS IMMUNITY UNDER STATUTES, PRECLUDING SUMMARY JUDGMENT.

POINT III

THE TRIAL COURT FAILED TO NOTE DEFENDANT'S CLAIM TO CONDUCT A CUSTODY EVALUATION WHEN NO CUSTODY ISSUE WAS BEFORE THE COURT, ESTABLISHED A PATTERN OF FRAUD/MISREPRESENTATION AND THE CLEAR DISPUTE OF GENUINE ISSUES OF FACT, PRECLUDING SUMMARY JUDGMENT.

POINT IV

THE TRIAL COURT FAILED TO NOTE THAT AN EXPERT'S STATEMENT THAT DEFENDANT SUPPRESSED/ALTERED EVIDENCE OF HARM TO CHILDREN TO A TRIER OF FACT ESTABLISHED ISSUES OF CREDIBILITY AND THE CLEAR DISPUTE OF GENUINE ISSUES OF FACT, PRECLUDING SUMMARY JUDGMENT.

POINT V

A MULTITUDE OF ERRORS SUCH AS CONFLATING THE LEGAL STANDARDS FOR DISMISSAL AND SUMMARY JUDGMENT, CONTRADICTORY FINDINGS ON AMENDED PLEADINGS AND [MISSTATING] RELIEF SOUGHT, COMPEL REVERSAL OF THE ORDERS DATED OCTOBER 15, 2015 AND NOVEMBER 5, 2015.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court. Nicholas v. Mynster, 213 N.J. 463, 477-78 (2013). Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any

material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c).

We have considered plaintiff's contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). Because defendant was a court-appointed psychologist, charged by the Family Part with assisting it in determining the best interests of the children, she owed no duty to plaintiff and was obviously cloaked with judicial immunity against the type of vexatious litigation plaintiff filed against her in this case. P.T., supra, 364 N.J. Super. at 560. We are satisfied that Judge De La Cruz properly granted summary judgment to defendant, and affirm substantially for the reasons expressed in her thoughtful and thorough written opinion.

Affirmed.