SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2346-15T1

CARLOS BURGOS,

Plaintiff-Appellant,

v.

NEW JERSEY DEPARTMENT OF CORRECTIONS,

Defendant-Respondent.

Submitted March 27, 2017 – Decided April 5, 2017

Before Judges Nugent and Haas.

On appeal from Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-2370-12.

B. David Jarashow, attorney for appellant.

Christopher S. Porrino, Attorney General, attorney for respondent (Lisa A. Puglisi, Assistant Attorney General, of counsel; Benjamin E. Bryant, on the brief).

PER CURIAM

Plaintiff Carlos Burgos appeals from a September 19, 2014 Law Division order denying his motion to compel defendant New Jersey

Department of Corrections ("DOC") to respond to his demand for the production of documents and other items in discovery. We affirm.

We derive the following procedural history and facts from the record. On June 13, 2012, plaintiff filed a personal injury complaint against the DOC. In his complaint, plaintiff asserted that on June 28, 2010, while he was a State prison inmate, he "was attacked by an[other] inmate and then beaten by an employee and/or guard of the facility resulting in personal injuries to" him.

In response, the DOC filed a third-party complaint against the other inmate, Derek Miller. In a June 29, 2010 statement, Miller admitted that he got into a fight with plaintiff on June 28, 2010 and, after plaintiff "threw two punches at" him, Miller defended himself by striking plaintiff in self-defense.

At his deposition, plaintiff acknowledged that he was involved in a shoving match with Miller, but asserted that he then "blacked out" and did not "recall what took place." Plaintiff had no evidence that any DOC guard struck him during his altercation with Miller.

As part of discovery, plaintiff asked the DOC to provide him with a number of documents and other items, including disciplinary files for both himself and Miller, "memos from medical [personnel] regarding all officers that were seen by medical [staff] in connection with the incident," and the clothing the corrections

officers who took plaintiff for medical treatment were wearing on the day of the fight. In response, the DOC provided plaintiff with over 1100 pages of documents. The only items and documents that the DOC did not provide were those that: (1) were not contained within its files; (2) revealed security procedures at the prison; or (3) contained confidential personal or medical employee information.

Thereafter, plaintiff filed a motion to compel discovery. Following oral argument on September 19, 2014, the trial judge denied plaintiff's motion. In a thorough oral opinion, the judge found that the DOC had "provided all documents [requested by plaintiff] to the extent that they exist that are discoverable by law." These documents included "every document pertaining to plaintiff . . . that is in [the DOC's] possession and every document pertaining to the inmate who caused . . . plaintiff's injuries." The judge further found that the DOC had properly withheld DOC employee "personal medical records and records which would compromise safety" at the prison.

Plaintiff filed a motion for reconsideration in which he alleged that the trial judge had failed to consider a reply brief he filed with his initial motion. On November 21, 2014, the judge denied the motion after specifically finding that he had reviewed and considered plaintiff's reply brief.

Discovery continued and plaintiff took depositions from a number of corrections officers. He did not seek to depose any medical personnel.

At the end of the discovery period, the DOC filed a motion for summary judgment, asserting that plaintiff had no evidence that his injuries were caused by anyone other than Miller. On December 11, 2015, the trial judge found that the DOC was immune from liability under N.J.S.A. 59:5-2(b)(4), which states that "[n]either a public entity nor a public employee is liable for . . . any injury caused by . . . a prisoner to any other prisoner;" granted the DOC's motion for summary judgment; and dismissed plaintiff's complaint with prejudice.

This appeal followed. According to plaintiff's notice of appeal, his appeal is limited to a challenge to the trial court's September 19, 2014 order, denying his motion to compel the production of certain documents. Significantly, plaintiff did not appeal from the court's December 11, 2015 order dismissing his complaint with prejudice.

On appeal, plaintiff presents the following contentions:

POINT I

> THE TRIAL COURT FAILED TO CONSIDER THAT PLAINTIFF'S ADJUDICATION OF DISCIPLINARY CHARGES REGARDING THE INCIDENT OF JUNE 28, 2010 SHOULD HAVE BEEN PRODUCED OR THAT A NEGATIVE INFERENCE SHOULD HAVE BEEN DRAWN.

POINT II

IN DENYING PLAINTIFF'S REQUEST FOR THE MEDICAL RECORDS OF [DOC] CORRECTION OFFICERS . . . IN CONNECTION WITH THE JUNE 28, 2010 INCIDENT, THE TRIAL COURT FAILED TO CONSIDER THAT THE OFFICERS WERE BOTH "SPRAYED" WITH PLAINTIFF'S BLOOD DURING HIS ESCORT TO THE INFIRMARY.

POINT III

THE TRIAL COURT DENIED PLAINTIFF'S MOTION TO COMPEL ON SEVERAL ISSUES THAT WERE UNOPPOSED WITHOUT PROVIDING ANY FINDINGS OF FACT OR CONCLUSIONS OF LAW ADDRESSING THE REASONS FOR THE DENIAL.

POINT IV

THE TRIAL COURT FAILED TO CONSIDER THAT THERE WERE OTHER METHODS OF PROVIDING PLAINTIFF WITH ACCESS TO THE OFFICERS['] MEDICAL RECORDS ASIDE FROM PROVIDING DOCUMENTS FROM THEIR RESPECTIVE EMPLOYMENT FILES.

POINT V

IF ANY ISSUE IS REMANDED, THIS MATTER SHOULD BE HEARD BY A DIFFERENT JUDGE.

We have considered plaintiff's contentions in light of the record and applicable legal principles and conclude that they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add the following brief comments.

As noted above, plaintiff's notice of appeal states that he is only appealing from the trial court's September 19, 2014 discovery order. "It is a fundamental [principle] of appellate practice that we only have jurisdiction to review orders that have

been appealed to us." State v. Rambo, 401 N.J. Super. 506, 520 (App. Div.), (citing N.J. Div. of Youth & Family Servs. v. K.M., 136 N.J. 546, 561-62 (1994)), certif. denied, 197 N.J. 258 (2008), cert. denied, 556 U.S. 1225, 129 S. Ct. 2165, 173 L. Ed. 2d 1162 (2009). "[O]nly the judgment or orders designated in the notice of appeal . . . are subject to the appeal process and review." Ibid. (citing 1266 Apartment Corp. v. New Horizon Deli, Inc., 368 N.J. Super. 456, 459 (App. Div. 2004)).

However, "[a] party may not seek appellate review of an adverse interlocutory order without seeking relief from the outcome of the litigation as embodied in the judgment." Grey v. Trump Castle Assoc., L.P., 367 N.J. Super. 443, 448 (App. Div. 2005) (quoting Magill v. Casel, 238 N.J. Super. 57, 62 (App. Div. 1990)). Indeed, we have held that when a party does not appeal from the dismissal of his action, he or she is barred from "appeal[ing] [any prior] adverse discovery order[]. Discovery is provided to prepare for trial. In light of [the] dismissal of [plaintiff's] complaint, there will be no trial. Thus, the discovery issues are moot." Mack Auto Imports, Inc. v. Jaguar Cars, 244 N.J. Super. 254, 257 (App. Div. 1990).

Applying these principles, we conclude that because plaintiff does not contest the December 11, 2015 order dismissing his complaint with prejudice, he is barred from challenging the

September 19, 2014 interlocutory order denying his motion to compel the production of documents.[1] Therefore, his appeal is moot. Ibid.

Nevertheless, we have considered plaintiff's contentions regarding the discovery order and conclude that they lack merit. R. 2:11-3(e)(1)(E). The DOC provided plaintiff with all of the non-confidential information it had concerning plaintiff's fight with Miller, and plaintiff had the opportunity to depose a number of corrections officers about the incident. Under these circumstances, we detect no abuse of discretion in the trial judge's denial of plaintiff's motion to compel the production of additional documents or items. Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011) (quoting Rivera v. LSC P'ship, 378 N.J. Super. 68, 80 (App. Div. 2005)) (holding that an appellate court "generally defers to a trial court's disposition of discovery matters unless the court has abused its discretion or its

[1] In his reply brief, plaintiff asserts that if he were successful in his challenge to the denial of his discovery motion, he would then file a motion with the trial court to vacate the December 11, 2015 order under Rule 4:50-1. However, as we have stated on numerous occasions, a motion for relief from a judgment or order under Rule 4:50-1 "may not be used as a substitute for a timely appeal." Wausau Ins. Co. v. Prudential Prop. and Cas. Ins. Co. of N.J., 312 N.J. Super. 516, 519 (App. Div. 1998) (citing Di Pietro v. Di Pietro, 193 N.J. Super. 533, 539 (App. Div. 1984)). Thus, plaintiff's contention lacks merit.

determination is based on a mistaken understanding of the applicable law").

Affirmed.