SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2569-14T2

ELDRIDGE HAWKINS, II,

Plaintiff-Appellant,

v.

ROBERT D. PARISI, Individually and Officially, TOWNSHIP OF WEST ORANGE,

Defendants-Respondents,

and

STEVE MANNION, Individually, DECOTIIS FITZPATRICK AND COLE,

Defendants.

Submitted February 2, 2017 – Decided June 7, 2017

Before Judges Hoffman and O'Connor.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Docket No. L-1665-11.

Eldridge Hawkins, II, appellant pro se.

Trenk, DiPasquale, Della Fera & Sodono, P.C., attorneys for respondents Robert D. Parisi and Township of West Orange (Richard D. Trent, of counsel; Mark Y. Moon and Franklin Barbosa, Jr., on the brief).

DeCotiis, FitzPatrick & Cole, LLP, attorneys for respondents Steve Mannion and DeCotiis, FitzPatrick & Cole, join in the brief of respondents Robert D. Parisi and Township of West Orange.

PER CURIAM

Plaintiff Eldridge Hawkins, II, appeals from a December 19, 2014 Law Division order denying his motion for reconsideration of a June 6, 2014 order dismissing his fifth amended complaint with prejudice, and other orders. After reviewing the record and applicable legal principles, we affirm.

I

In 2010, plaintiff filed his original complaint in this wrongful termination action. Over the course of this litigation, plaintiff amended his complaint five times. The defendants and claims included in the original and first through fourth amended complaints were dismissed with prejudice. Although the court granted leave to plaintiff to file a fifth amended complaint, it restricted him from asserting any claim that accrued prior to a certain date.

Plaintiff eventually filed a fifth amended complaint acceptable to the court. In that complaint he named four defendants. Two defendants and all but one count were dismissed with prejudice in February 2014. The remaining count and defendants were dismissed with prejudice by order dated June 6,

2014. That order also definitively declared, "Plaintiff's Fifth Amended Complaint be and is hereby dismissed with prejudice in its entirety." Another order entered that day denied as moot plaintiff's motion to dismiss with prejudice defendants' counterclaim. The court found plaintiff's motion moot because "no counterclaim exists any more."

Five months later, in November 2014, plaintiff filed a notice of motion to "reconsider and to clarify the status of these proceedings and all of this court's orders, to reinstate the original . . . complaint and subsequent dismissals without prejudice, and allow plaintiff to file a sixth amended complaint . . . and . . . reopen[] . . . the discovery period for 120 days." Plaintiff's notice of motion stated he was seeking reconsideration under Rule 4:42-9 and Rule 4:50-1.

In his motion papers, plaintiff argued he was entitled to file a sixth amended complaint and that Rules 4:42-9 and 4:50-1 supported his request for reconsideration. The arguments on these issues were limited to the following:

> [Plaintiff suggests] that this Court allow plaintiff to file yet another (6^{th}) amended complaint, alleging all causes of action against all defendants other than Parisi and West Orange, which have apparent dismissal with prejudice recorded. Of course, said allowance might be considered by the co-defendants as being prejudicial to them as their procedural strategies may have

> been planned with the expectations of not being in the case without West Orange. Thus, it might be considered that the only appropriate way to proceed is pursuant to R. 4:49-2 and R. 4:50-1, 2, to vacate all Orders of dismissal, require answers to be filed to a newly filed complaint and discovery to take place before any dispositive motions are allowed to be filed.

On December 19, 2014, the court denied plaintiff's motion. In its written opinion, the court stated it denied plaintiff's motion for reconsideration for the reasons expressed by those defendants who had filed a response to the motion. In their response, defendants contended plaintiff was time-barred under Rule 4:49-2 from seeking reconsideration of the June 6, 2014 or any other order. In addition, the court further stated it purposely did not cross-out a provision in plaintiff's form of order because "that part of the order is undeniably correct." That provision stated, "[T]he complaint against all defendants in the within case whether or not ever previously dismissed or dismissed with or without prejudice are hereby dismissed with prejudice."

We note the trial court did not in its December 19, 2014 order in fact dismiss any additional defendants. There were no defendants to dismiss; the last had been dismissed on June 6, 2014. Although the record reflected all parties had been dismissed with prejudice, in his certification in support of his

motion, plaintiff requested the court state in an order whether the "remaining parties of record in this case were dismissed with prejudice;" hence, the apparent reason plaintiff provided the subject provision in his form of order.

II

On appeal, plaintiff presents the following arguments for our consideration:

> POINT I: PLAINTIFF-APPELLANT'S NOV 19, 2014 NOTICE OF MOTION FOR RECONSIDERATION SHOULD HAVE BEEN GRANTED AND FAILURE TO DO SO WAS A CLEAR ABUSE OF JUDICIAL DISCRETION CAUSING PLAINTIFF-APPELLANT A MANIFEST INJUSTICE
>
> POINT II: THE MOTION JUDGE ABUSED HIS DISCRETION BY INTER ALIA, NOT DECIDING PLAINTIFF'S MOTIONS OR DISMISSING SAME WITHOUT STATING FACTS OR REASONS
>
> POINT III: PLAINTIFF-APPELLANT'S FACTS, CIRCUMSTANCES AND DENIAL OF DUE PROCESS RIGHTS WERE SO EGREGIOUS AS TO NECESSITATE A RECONSIDERATION AND AN APPELLATE COURT'S INTERVENTION TO DECLARE THE MOTION JUDGE'S DENIAL OF PLAINTIFF'S RECONSIDERATION MOTION AND THE DECEMBER 19, 2014 ORDER TO BE DECLARED EXTRAORDINARY CIRCUMSTANCES REQUIRING AND VACATING OF ALL THE ORDERS REFERENCED IN THE DECEMBER 19, 2014 ORDER[1]

In his notice of appeal, plaintiff sought the review of twenty-two orders entered by the trial court from October 2011 through December 19, 2014. Defendants filed a motion before us

[1] There were no orders referenced in the December 19, 2014 order.

seeking to limit plaintiff's appeal of any order to only those which had been entered not later than seventy-five days before March 3, 2015, the day he filed his notice of appeal. We entered an order providing the following:

> The trial court's June 6, 2014 order dismissed plaintiff's Fifth Amended Complaint "with prejudice in its entirety." Plaintiff's "reconsideration" motion filed November 19, 2014 was ineffective to preserve his appeal rights with respect to the June 6, 2014 order and all orders entered prior to that date. Defendant's notice of appeal was timely only as to the December 19, 2014 order denying reconsideration. This appeal is limited to that order.

After carefully reviewing the record and the briefs, we conclude plaintiff's arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add the following comments.

Plaintiff contends the court failed to provide, as required by Rule 1:7-4(a), its reasons for entering the December 19, 2014 order. This rule states, "[t]he court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right . . . ." Plaintiff overlooked the written opinion attached to the December 19, 2014 order, in

which the court expressly stated it was denying plaintiff's motion for reconsideration for the reasons set forth in defendants' response.

We recognize "the clearly better practice is for the court to make its own statement." See Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 1-7:4 (2017). However, a court's reliance on the reasons posited by a party when granting or denying a motion is permissible, as long as the court "make[s] the fact of such reliance explicit." Ibid.; see also Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 301 (App. Div. 2009).

Here, we conclude a court's adoption of the reasons proffered by defendants in their response to plaintiff's motion was sufficient. In reaching the determination to deny plaintiff relief, the court explicitly stated it based its decision on the reasons advanced by defendants. Therefore, we discern no error.

As for the substantive issues before us, there is no question plaintiff's attempt to seek reconsideration of any orders on or before June 6, 2014 was well out of time. See R. 4:49-2 (mandating that a motion for reconsideration "shall be served not later than 20 days after service of the judgment or order").

Plaintiff also argues he was entitled to relief under Rule 4:50-1. However, before the trial court, plaintiff did not

articulate the basis for which he was entitled to relief under this rule, failing to identify even the subsection of this rule, see R. 4:50-1(a)-(f), upon which he relied.

Plaintiff now argues he is entitled to relief under subsections (a) and (b) of Rule 4:50-1, which provide in pertinent part:

> On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49 . . . .

However, these arguments were not raised before the trial court and, "[g]enerally, 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 these arguments had been raised, the trial court did not address the applicability of Rule 4:50-1 in its opinion and, thus, we decline to do so in the first instance. See Duddy v. Gov't Emps. Ins. Co., 421 N.J. Super. 214, 221 (App. Div. 2011).

Affirmed.