SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3854-15T2

MED-X MEDICAL
MANAGEMENT SERVICES,

Plaintiff-Respondent,

v.

BATIA GRINBLAT,

Defendant-Appellant.

Submitted October 19, 2017 – Decided December 15, 2017

Before Judges Haas and Rothstadt.

On appeal from Superior Court of New Jersey, Law Division, Special Civil Part, Bergen County, Docket No. DC-9702-10.

Batia Grinblat, appellant pro se.

Respondent has not filed a brief.

PER CURIAM

Defendant, Batia Grinblat, appeals from the Law Division's denial of her pre-trial motion to dismiss and from the judgment entered against her after a jury returned a verdict in favor of plaintiff, Med-X Medical Management Services. We affirm.

We previously vacated a judgment entered against defendant in 2010 after a bench trial, so that the matter could be tried before a jury. See Med-X Med. Mgmt. Servs. v. Grinblat, No. A-0167-10 (App. Div. Nov. 21, 2012) (slip op. at 8). In our earlier opinion, we set forth the facts relating to plaintiff's claim for payment of bills dating back to 2007. See id. at 1-2. They need not be repeated here for our purposes. We summarize from the record the facts leading to the matter being listed for retrial in 2016 and those relating to the denial of defendant's pre-trial motion.

Despite our remand, the matter laid dormant until 2015 when the court listed it for a conference after plaintiff's counsel made inquiries about the matter to the court. After the conference, and prior to the new trial, a Law Division judge denied defendant's motion to dismiss the complaint after rejecting defendant's argument that N.J.S.A. 2A:14-28[1] barred plaintiff from pursuing its complaint.

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[1] The statute provides in pertinent part:

> If, in any of the actions or proceedings specified in sections 2A:14-1 to 2A:14-19, sections 2A:14-22 to 2A:14-25 or section 2A:14-27 of this Title, judgment is given for the plaintiff therein, and such judgment is reversed on appeal, or, if a judgment pass for the plaintiff and, upon motion for relief from

The motion judge's December 11, 2015 order set forth his findings and conclusions of law regarding the applicability of the statute. The judge found that the delay in scheduling a retrial in accordance with our remand was due to "additional appeals regarding the [third parties,]" the court's "clerical error," and plaintiff's counsel's "diligent effort to 're-locate' the case so that he could re-file on time." Turning to the statute, the judge stated it was inapplicable to plaintiff's claim because plaintiff was pursuing its "common-law right to recover unpaid funds for services [it] provided," which required that the statute "be interpreted with strict construction." Applying that standard, the judge concluded the statute did not control because it only referred to "cases that are reversed; not reversed and remanded." The judge entered an order denying the motion and directing the court's clerk to "schedule this matter for trial and notify all parties in the normal course."

> the judgment, judgment is given against him, the plaintiff, his heirs, executors or administrators, may commence a new action within [one] year next after the judgment is reversed or judgment is given against plaintiff, and not thereafter.
>
> [N.J.S.A. 2A:14-28.]

Defendant filed a motion for a stay and leave to appeal with our court on December 30, 2015, without first filing an application with the motion judge in accordance with Rule 2:9-5(b). The motion was not decided until March 2, 2016, when we denied the application.[2]

While the motion was pending, the court scheduled the matter for a trial to be held on February 22, 2016. According to defendant, she received notice of the trial date first through a telephone call from the Special Civil Part's designated supervising judge's (DSJ) secretary on February 12, 2016 and then through a written notification from the court. Defendant never requested an adjournment of the trial date nor did she subpoena any witnesses.

On the scheduled trial date, the DSJ held a conference on the record at which defendant, through her husband, again raised the issue of the statute barring plaintiff's ability to proceed. The judge rejected the application as untimely, criticized defendant for not making a motion earlier and characterized her application as an attempt to "ambush" plaintiff.[3] During the conference,

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[2] The order was entered under docket number AM-0310-15.

[3] The transcript of the hearing reveals that the judge did not have a firm understanding of the procedural history of the case and had, in fact, confused the matter with another case in which

defendant did not ask for an adjournment, other than commenting that she might need a witness who was one of the third-party defendants previously dismissed from the matter.

The judge sent the matter to another judge for trial. The matter was tried before a jury that returned a verdict against defendant, upon which the trial judge entered judgment against defendant on March 29, 2016, for $6078.81, including interest, fees and costs.

Defendant appeals from the December 11, 2015 denial of her pre-trial motion,[4] and from the entry of the March 29, 2016 judgment, arguing that the motion judge incorrectly applied the statute and, even if the statute did not bar the action, defendant's rights were violated when the court failed to follow

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defendant was also being sued. The judge's comments reflected his misunderstanding about the nature of the motion defendant had filed that was denied on December 11, 2015.

[4] Defendant's appellate case information statement indicates she is also appealing from the DSJ's denial of her February 22, 2016 oral application. Because defendant did not file a written motion and the DSJ did not enter an order, we do not consider the DSJ's denial an appealable decision. See Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001) ("[A]ppeals are taken from orders and judgments and not from opinions, oral decisions, informal written decisions, or reasons given for the ultimate conclusion." (citations omitted)).

Rule 6:5-2[5] regarding notice of the trial date. Finally, she contends that because there was no evidence adduced at trial of either an express or implied contract between her and plaintiff, the judgment cannot be sustained.

Our review of a motion judge's legal determination of a motion to dismiss based upon the applicability of a provision of the statute of limitations is de novo. See Smith v. Datla, 451 N.J. Super. 82, 88 (App. Div. 2017) (citing Royster v. N.J. State Police, 227 N.J. 482, 493 (2017); Town of Kearny v. Brandt, 214 N.J. 76, 91 (2013)). In our review, the "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Ibid. (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).[6]

[5] The Rule provides in pertinent part that "the clerk shall inform the parties or their attorneys of the trial date at least [thirty] days before trial. For good cause shown, the court may order a longer or shorter notice in any action." R. 6:5-2(a).

[6] Our review is somewhat hampered by the fact that defendant has not supplied us with any submissions from either party to the motion judge that would allow us to consider her legal argument while relying upon the same information that was before the motion judge. Similarly, there is no transcript of oral argument, if any, considered by the judge, even though the judge's order notes that the parties received a copy of the order in court on the day it was entered.

N.J.S.A. 2A:14-28 is a one-year "saving statute" that extends the filing period under the applicable statute of limitations for one year after a reversal or entry of a judgment against a plaintiff. Zaccardi v. Becker, 88 N.J. 245, 263 n.3 (1982) (Schreiber, J., concurring and dissenting). In considering whether the one-year limitation of the statute should be applied, a court must consider the same factors that apply to the enforcement of any statute of limitation. See, e.g., Hartford Accident & Indem. Co. v. Baker, 208 N.J. Super. 131, 139 (Law Div. 1985) (addressing the applicability of the statute to out-of-state judgments). "The principal consideration underlying the enactment of statutes of limitation is fairness to the defendant. Though giving repose to human affairs is another of the important policy considerations embodied in a statute of limitations, the statute should not be used inequitably as a shield against legitimate claims." Ibid. (citations omitted).

Applying these guiding principles, we agree with the motion judge's determination that the statute did not apply as a bar to plaintiff's claim. Here, plaintiff filed a timely complaint and obtained a judgment on the merits after a bench trial. Although our earlier opinion stated that the trial court's judgment was "reversed," we vacated the judgment but did not dismiss the complaint. As a result, there was no reason for plaintiff to file

a new complaint in order to preserve its claim as contemplated by the statute. Defendant's arguments to the contrary are without any merit.

Even if the statute applied, the unusual circumstances that occurred after the remand would have justified allowing the plaintiff's action to proceed. When we remanded the matter, we anticipated that the court would immediately schedule the matter for a new trial. By court rule, the onus was on the court, not the parties, to have the matter scheduled. See R. 6:5-2(a). Instead, the court essentially lost track of the file. Plaintiff should not be responsible for the court's failure to act.

As to defendant's remaining arguments relating to an alleged deficiency in the court's notice of trial, and her belief that the weight of the evidence was contrary to the jury's verdict, we choose to not address their merits as defendant never raised either issue before the trial judge. We "decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (quoting State v. Robinson, 200 N.J. 1, 20 (2009)); see also R. 2:10-1 ("[W]hether a jury verdict was against the weight of the evidence shall not be

cognizable on appeal unless a motion for a new trial on that ground was made in the trial court.").

Affirmed.

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

CLERK OF THE APPELLATE DIVISION