SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5633-14T4
A-1413-15T4

KATHARINE LAI,

Plaintiff-Appellant,

v.

METUCHEN BOROUGH, THERESA DELANEY and MIDDLESEX COUNTY MUNICIPAL JOINT INSURANCE FUND,

Defendants-Respondents.

KATHARINE LAI,

Plaintiff-Appellant,

v.

SUSAN K. O'CONNOR,

Defendant-Respondent,

and

GARY J. HOAGLAND and HOAGLAND, LONGO, MORAN, DUNST & DOUKAS, LLP,[1]

Defendants.

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[1] Improperly pled as Hoagland & Hoagland, Longo, LLP.

Submitted March 22, 2017 – Decided April 18, 2017

Before Judges Alvarez and Accurso.

On appeal from Superior Court of New Jersey, Law Division, Middlesex County, Docket Nos. L-6695-13 and L-2522-15.

Katharine Lai, appellant pro se.

Hoagland, Longo, Moran, Dunst & Doukas, attorneys for respondents (Susan K. O'Connor, of counsel and on the briefs in A-5633-14 and A-1413-15; Timothy R. Koch, on the brief in A-5633-14).

PER CURIAM

In these two appeals calendared back-to-back and consolidated here, plaintiff Katharine Lai appeals in A-5633-14 from orders dismissing her complaint against defendants Borough of Metuchen, the Middlesex County Municipal Joint Insurance Fund (MCMJIF), and MCMJIF's employee Theresa Delaney and, in A-1413-15 against the lawyers who represented defendants in that action, defendants Hoagland, Longo, Moran, Dunst & Doukas, LLP, Gary J. Hoagland and Susan K. O'Connor. She also appeals from an order in A-1413-15 sanctioning her for filing a frivolous complaint. Because there is no record of plaintiff having ever served the Borough of Metuchen, Gary J. Hoagland or Hoagland, Longo, and she has failed to state any legally cognizable claim

against the remaining defendants, we affirm the dismissals of plaintiff's complaints.

We, however, vacate the sanction order entered pursuant to Rule 1:4-8 in favor of the lawyers. Sanctions under that rule are not available to lawyers representing themselves, as defendant lawyers did here. Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn, 410 N.J. Super. 510, 547 (App. Div. 2009), certif. denied, 203 N.J. 93 (2010); see also Segal v. Lynch, 211 N.J. 230, 264 (2012). Because this is far from the first frivolous suit plaintiff has filed, however, we remand the matter to the Assignment judge to consider whether a sanction in the form of a penalty payable into court is appropriate as well as whether an injunction against further frivolous filings in accordance with Rosenblum v. Borough of Closter, 333 N.J. Super. 385, 395-97 (App. Div. 2000) is necessary.

The genesis of these appeals was a municipal court order directing plaintiff to appear in Metuchen Municipal Court in connection with an apparent code violation in Highland Park.[2]

[2] The record on this point is scant. Defendants claim plaintiff was responding to a contempt citation and that the matter was being heard in Metuchen because plaintiff had already sued several municipal officials in Highland Park. See Lai v. Feng Li, No. A-1658-12 (App. Div. Apr. 15, 2014); Lai v. Wei, No. 07-179 (DRD) (D.N.J. June 26, 2007). Plaintiff has not disputed those allegations.

After receiving the order, plaintiff sent a letter to the judge on March 2, 2013, objecting to having to appear and inquiring as to whether the Borough would be liable for damages in the event she were to fall in the municipal building. She wrote:

> If you still insisted me to come on 03/08/13 to your court. I am willing to come, because I already proved to you that I did nothing wrong at all. But if I fall down in Metuchen Municipal Building property on that day, Your Borough has to pay for my personal injury damages. No matter what, Correct?
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> My St. Barnabas Hospital in Livingston, NJ is very lucky to have a big heavy duty carpet on their entrance door to save me from my fall on last Dec. I am afraid I could not be so lucky again in anywhere again and again.

The municipal judge ordered plaintiff to appear, notwithstanding her letter. While attending court, plaintiff claims she fell in the "handicapped bathroom" and was injured. She subsequently filed a tort claim notice against the Borough. Defendant Delaney acting on behalf of MCMJIF, the Borough's claims administrator, denied the claim on the basis that the configuration of the bathroom did not constitute a dangerous condition of public property.

On October 17, 2013, plaintiff filed an eight-count complaint against the Borough, MCMJIF and Delaney, accusing them of negligence and violations of 42 U.S.C.A. § 1981, 42 U.S.C.A.

§ 1983, the Americans with Disabilities Act, the Law Against Discrimination, the constitutions of the United States and the State of New Jersey and N.J.S.A. 59:4-3, and demanding compensatory damages of $20,000,000, as well as interest, costs of suit, attorney's fees "plus punitive damages based on their FRAUDULENT ACTS." Nine months later, on July 3, 2014, the court advised plaintiff her complaint against the Borough had been dismissed without prejudice pursuant to Rule 1:13-7 for lack of prosecution, presumably for failure to file proof of service, and a formal notice of motion would be required to restore it to active trial status.

On July 9, 2014, plaintiff emailed a lawyer at Hoagland, Longo threatening to file a notice of default against the Borough, without advising him that her complaint against his client had already been dismissed without prejudice. See Weber v. Mayan Palace Hotel & Resorts, 397 N.J. Super. 257, 264 (App. Div. 2007) (noting the obligation on a plaintiff attempting reinstatement of a defendant to advise that defendant of the dismissal under Rule 1:13-7). Hoagland, Longo attempted to file an answer on behalf of the Borough the next day. The pleading was rejected and the firm advised that reinstatement of the complaint was necessary before an answer could be filed for the municipality.

Hoagland, Longo and Susan O'Connor thereafter filed a motion to dismiss the complaint against MCMJIF and Delaney for failure to state a claim.[3] Plaintiff opposed the motion and demanded the court enter an order compelling defendants to settle with her. Plaintiff argued O'Connor lied in maintaining plaintiff's complaint did not state a claim for relief, insisting she "stated it before [her] Jury Demand."

The Law Division judge issued a preliminary decision holding "[t]he moving defendants cannot be held liable for any allegedly dangerous conditions that may have been present on the day that Ms. Lai allegedly suffered her injuries because these defendants did not owe any duty to the Plaintiff regarding the condition of the premises." Both sides declined oral argument and an order dismissing the complaint was entered on November 21, 2014. Plaintiff's motions for reconsideration, and reinstatement and default of the Borough were denied, as was a subsequent motion for clarification.

Plaintiff filed a notice of appeal on March 19, 2015 and the suit against O'Connor, Hoagland and Hoagland, Longo on April

[3] In their brief in support of the motion, counsel represented that the Borough of Metuchen had never been served with the complaint, and that counsel had repeatedly advised plaintiff they were not authorized to accept service on its behalf. Plaintiff claims she served the Borough clerk. There is no proof of service in the record.

28, 2015.[4] In her complaint against the lawyers, plaintiff alleged O'Connor succeeded in having plaintiff's complaint against the Borough dismissed by falsely accusing her of failing to state a claim on which relief could be granted and convincing the judge to issue a decision "LYING about Metuchen Borough Building did NOT belong to Metuchen Borough." Plaintiff further alleged O'Connor "dared to asking NJ State Police Det. Santiago to call and sent emails to [her] Husband's office in New York City, [her] son's Office in West Coast to Threatening them BOTH to remove [her] computer from [her]."

Plaintiff sought the same relief, minus damages for violations of Title 59, against the lawyers as she did in her complaint against the Borough in the same eight-count claims alleging violations of 42 U.S.C.A. § 1981, 42 U.S.C.A. § 1983, the Americans with Disabilities Act, the Law Against Discrimination, the constitutions of the United States and the State of New Jersey and asserting claims for negligence and fraud. She sought the same $20,000,000 "Civil Rights Discrimination Damages" along with punitive damages, interest, costs of suit and attorney's fees.

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[4] Plaintiff only effected service on defendant O'Connor. There is nothing in the record before us to indicate service on defendant Hoagland or the law firm.

Defendant O'Connor thereafter served plaintiff with a safe harbor notice pursuant to Rule 1:4-8 advising plaintiff her complaint was frivolous, and the firm would seek sanctions if it were not withdrawn as it had when plaintiff filed a similarly frivolous action in federal court. See Lai v. Wei, No. 07-179 (DRD) (D.N.J. June 26, 2007) (slip op. at 12). Specifically, O'Connor advised plaintiff her factual allegations were incorrect and that plaintiff had already been advised by Judge Shwartz's order in Lai v. Highland Park, No. 06-3402 (D.N.J. Dec. 8, 2006), and Judge Debevoise's opinion in Lai v. Wei, affirmed as modified by the Third Circuit, Lai v. Huilin Wei, 331 F. App'x 143 (3d Cir. 2009), that the lawyers were not state actors, and that her claims against them were not valid legal claims.

Plaintiff responded to the safe harbor notice by terming the letter shameless. She reiterated the allegations of her complaint that O'Connor had filed "a fake motion" to dismiss plaintiff's personal injury complaint against Metuchen by falsely accusing her of having failed to state a legal claim for relief. She also claimed O'Connor caused the Law Division judge and his law clerk to "illegally" dismiss her case, resulting in the judge's discipline by the Advisory Committee on Judicial

Conduct.[5] She further claimed O'Connor and her firm caused the State Police to visit her home and threaten her with arrest.[6] Finally, she advised it was "NO use to threatening [her] with any Judgment" as she had "sold [her] property to [her] charity Non-Profit Golden Eagle Foundation Inc. for $10 – already." She went on to say she had "no income, no car and no property at all" and her "husband has a very good job to support [her]. Nothing to do with any funny judgment. Correct?"

The judge signed the order granting the motion to dismiss the complaint on August 21, 2015, placing his reasons on the record on August 27, 2015.[7] Reviewing the allegations of the

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[5] This claim, as many others plaintiff makes, is patently false. None of the various judges who have presided over plaintiff's many matters has ever faced discipline in connection with their duties in those cases.

[6] The email in the appendix to plaintiff from the State Police asking that she cease sending harassing emails to the judge and his staff indicates the inquiry originated with the Middlesex County Sheriff's Office, the entity charged with security of the courthouse.

[7] Although the order states the complaint is dismissed with prejudice, the judge stated on the record the dismissal would be without prejudice. Dismissals for failure to state a claim are customarily rendered without prejudice, see Smith v. SBC Commc'ns, Inc., 178 N.J. 265, 282 (2004), and where a judge's reasons as stated on the record conflict with the terms of the written order, the record controls, see Taylor v. Int'l Maytex Tank Terminal Corp., 355 N.J. Super. 482, 498 (App. Div. 2002). Although both points would lead one to conclude the dismissal should have been without prejudice, we find no error in the (continued)

complaint, to the extent they were discernable, the judge found no possible cause of action against the lawyers suggested by the facts pled.

On September 11, 2015, O'Connor filed a motion seeking a monetary sanction against plaintiff sufficient to reimburse O'Connor and Hoagland, Longo for their expenses in defending against plaintiff's complaint and an injunction precluding plaintiff from filing additional lawsuits without prior judicial approval. The motion recounted plaintiff's long history of filing frivolous complaints in State and federal court, including against O'Connor and Hoagland, Longo and the sanctions imposed on plaintiff under Rule 1:4-8 in State court and Rule 11 in federal court as a result. See Lai v. Li, No. A-3960-10 (App. Div. May 1, 2012) (slip op. at 6) (upholding counsel fee sanction under N.J.S.A. 2A:15-59.1; R. 1:4-8); Lai v. Huilin Wei, supra, 331 F. App'x at 144-46 (upholding $13,680 attorney fee sanction and filing injunction under Rule 11 but vacating

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order as written as plaintiff has no ability to cure the defects in her pleading to assert a valid cause of action against the Borough's lawyers. See Nostrame v. Santiago, 213 N.J. 109, 128 (2013).

$5000 penalty for lack of notice). O'Connor also recounted plaintiff's past threats made to her personally.[8]

Plaintiff opposed the motion arguing that O'Connor lied in saying the judge had granted her motion to dismiss.[9] Plaintiff claimed she "proved to all parties that [O'Connor] is not only repeatedly filed her FAKE MOTIONS to dismiss my Mid-L-2522-15 case AGAIN. She even DARED to LIED about [the judge] GRANTED her FAKE motion on 09/11/2015, in order for me to report [the judge] to ACJC for disciplined too?"

The judge granted O'Connor's motion for sanctions on the record, in open court, with the parties and a Mandarin interpreter present. The judge cataloged the history of plaintiff's many State and federal suits against tenants, municipalities, police departments, her own lawyers and those of her adversaries as well as suits against judges and district

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[8] Included in the appendix is an email from plaintiff to O'Connor sent in 2007 following the shooting at Virginia Tech entitled "MASSACRE ALERT!!!" and accompanying police report. In the email, plaintiff advised O'Connor to "increase your own security after I post [on the internet] your abusive acts toward me! Not to do anything illegal or criminal anymore, money cannot buy or remove anger from the public."

[9] Plaintiff apparently based her argument on the Civil Division's failure to post the order dismissing her complaint on the internet. She insisted the failure to post the order meant "Somebody must INTENTIONALLY signed [the dismissal] order UNLAWFULLY to Ms. O'Connor after over a month [after the return date] and committed a forgery CRIME and FRAUDULENT ACTS too!"

ethics committees. He quoted the late Judge Debevoise, who dismissed a 2007 federal suit plaintiff filed against O'Connor and Hoagland, Longo, among others, who commented on plaintiff's "extensive history of abuse of the judicial system." Lai v. Wei, No. 07-179 (DRD) (D.N.J. May 14, 2007) (slip op. at 13). He noted the Third Circuit found plaintiff's "gross misuse of the judicial process warranted the imposition of sanctions under Rule 11" and an injunction barring the clerk of the court from accepting any future filings from plaintiff without the permission of the court. Lai v. Huilin Wei, supra, 331 F. App'x at 145.

Finding the suit against O'Connor as utterly without merit and that plaintiff was on notice of that fact both before and after she filed her complaint, the judge awarded O'Connor and her firm $10,000 for their fees and costs. In light of plaintiff's history of abusing the justice system, and the failure of prior sanctions to have deterred her conduct, the judge also enjoined plaintiff from filing "any other lawsuits in the Superior Court of New Jersey without approval of the [A]ssignment judge of the particular county."

Plaintiff appeals, reprising her arguments to the trial court in A-5633-14 that it was O'Connor's failure to file a motion to reinstate the Borough as a defendant that caused the

wrongful dismissal of plaintiff's tort claim action, that Delaney lied and intentionally cheated her by claiming the bathroom was not in a dangerous condition and that the judge lied in granting O'Connor's "fake motion" and "[e]ven Lied about Metuchen Borough Building is NOT belong to Metuchen Borough." In A-1413-15, plaintiff repeats her claim that "O'Connor is intentionally discriminating [her] as an old, multiple disabled, Chinese, Woman. She used her law firm's position in Middlesex County to cheat me and NJ Justice System."

Plaintiff's claims are utterly devoid of merit and do not warrant discussion in a written opinion. See R. 2:11-3(e)(1)(E). Plaintiff's suit against the Borough of Metuchen was dismissed because she offered no proof of having ever made service on the Borough. Her claims against MCMJIF and Delaney were dismissed because they do not own the municipal building where she allegedly fell and thus owed no duty to her.

Plaintiff's claims against O'Connor, the only one of the lawyer defendants plaintiff served with her complaint, copy the allegations she has made previously against this lawyer, which have been dismissed and resulted in plaintiff being sanctioned for frivolous litigation in federal court. They are no more meritorious in the retelling. Plaintiff has no concept of the elements of the causes of action she reflexively repeats in the

complaints she files and thus does not grasp why her allegations fail to state a cognizable legal claim for relief.

We agree with the trial court that plaintiff's repeated frivolous filings are an abuse of her adversaries and the judicial system. Notwithstanding, the sanction in favor of O'Connor and her firm cannot stand because Rule 1:4-8 does not permit parties to recover fees they have not incurred. Alpert, Goldberg, supra, 410 N.J. Super. at 547. Sanctions under that rule are not available to lawyers who represent themselves, as O'Connor and Hoagland, Longo did here. Ibid.; see also Segal, supra, 211 N.J. at 264.

Plaintiff's conduct, however, should not go unaddressed because of that error. The judge is obviously correct that past sanctions and filing prohibitions have to date been ineffective in curbing plaintiff's abusive filings. "[C]ourts have the inherent authority, if not the obligation, to control the filing of frivolous motions and to curtail 'harassing and vexatious litigation.'" Zehl v. City of Elizabeth Bd. of Educ., 426 N.J. Super. 129, 139 (App. Div. 2012) (quoting Rosenblum, supra, 333 N.J. Super. at 387, 391). We have held "an Assignment judge can prevent the filing of a complaint, or issuance of a summons thereon, when the plaintiff's prior litigation demonstrates a

pattern of frivolous pleadings." Rosenblum, supra, 333 N.J. Super. at 387.

Accordingly, although affirming the dismissal of the complaints in these cases, we vacate the sanction order entered in favor of O'Connor and Hoagland, Longo and remand the matter to the Assignment judge of the vicinage to consider the sanction anew. If the Assignment judge deems a filing injunction justified in accordance with Rosenblum, it must be narrowly tailored to achieve its ends and enforceable in a practical manner, which may involve a prohibition on the clerk's acceptance of a pleading for filing or the issuance of a summons without Assignment judge approval. See R. 1:5-6; 1:6-8; 1:34-2.

Affirmed in part, vacated in part, and remanded.