SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1014-16T1
A-1651-16T1

VICTOR PODOLEC,

Plaintiff-Appellant,

v.

FRANK BLATTERMAN,

Defendant-Respondent.

Telephonically Argued March 2, 2018 –
Decided March 26, 2018

Before Judges Fisher and Moynihan.

On appeal from Superior Court of New Jersey, Law Division, Morris County, Docket No. L-2599-15.

Justin J. Walker argued the cause for appellant (Piekarsky & Associates, LLC, attorneys; Scott B. Piekarsky, of counsel and on the brief).

Clara S. Licata argued the cause for respondent (Law Office of Clara S. Licata, attorneys; Clara S. Licata, on the brief).

PER CURIAM

In these appeals, which we now consolidate, we consider an order that dismissed plaintiff Victor Podolec's complaint because

its commencement was precluded by either res judicata, collateral estoppel, the entire controversy doctrine, or laches; we also examine a counsel-fee award in defendant Frank Blatterman's favor. Finding no infirmity in the orders under review, we affirm in all respects.

In February 2008, plaintiffs Victor and Christine Podolec (the Podolecs) filed an action against their neighbor — defendant Blatterman — regarding their abutting Butler properties; the complaint and a later amended complaint alleged that in 1998 the Podolecs agreed to convey a "pizza slice" portion of their property to Blatterman for $5000. Blatterman hired a surveyor (the first surveyor) to map out the terms of their agreement; a municipal board granted a subdivision in 1999. Deeds memorializing this move of the parties' boundary line were recorded in June 2000. Six years later, Blatterman hired another firm (the second surveyor) to prepare a survey and began construction of a retaining wall in the vicinity of the adjusted border; he also removed large trees and shrubbery from the same general area. The amended complaint alleged that the Podolecs were damaged by the first and second surveyors' negligence and by Blatterman's negligence in the manner and location of the construction work and the tree and shrubbery removal. They also alleged Blatterman committed a fraud by

"knowingly [taking] a greater portion of [their] land than agreed" in 1998.

The parties engaged in arbitration as required by Rule 4:21A in 2010. The arbitrator found that the Podolecs failed to demonstrate the retaining wall was improperly constructed or that it caused an increase flow of water onto their property. The arbitrator also found the Podolecs failed to show a diminution of their property and they offered no expert opinion on the claims that the surveyors were negligent. The Podolecs did not seek a trial de novo, thereby ending that lawsuit.[1] See R. 4:21A-6.

In 2015, Victor Podolec[2] filed this action against Blatterman, alleging a dispute about "the dividing line between the[ir] two

[1] But, as Yogi Berra once said, "it ain't over till it's over." Due to the failure to demand a trial de novo, Victor Podolec filed a negligence action which included claims against his attorneys in the suit against Blatterman and the surveyors — as well as his attorneys in another matter. Those claims were dismissed and Podolec appealed; we affirmed in part, reversed in part, and remanded. Podolec v. Torres, No. A-1678-14 (App. Div. June 9, 2016). Subsequent proceedings resulted in entry of a final order which rejected all Podolec's remanded claims; we recently affirmed that order. Podolec v. Torres, No. A-1230-16 (App. Div. Jan. 29, 2018).

[2] With the exception of Podolec's deposition testimony that his wife "doesn't want to be bothered with it," no explanation is provided as to why Christine Podolec — a plaintiff in the first action then alleged to also have an ownership interest in the property — is not a plaintiff in this action. In light of our disposition of these appeals, we need not decide whether she is an indispensable party.

properties" and seeking, pursuant to N.J.S.A. 2A:28-1, the appointment of commissioners to resolve that boundary dispute. An amended complaint added a second count, which alleged "excess and inordinate water run-off and sewage run-off" from Blatterman's property; Podolec alleged this conduct constituted "a nuisance[,] trespass and negligence." Blatterman obtained summary judgment in September 2016 and an award of $7476.68 in counsel fees and costs a few months later.

Podolec appeals both those orders, arguing: (1) the judge, when granting summary judgment, misapplied collateral estoppel, res judicata, the entire controversy doctrine, and laches; (2) the judge erred in granting summary judgment in light of the alleged continuing trespass; and (3) the judge mistakenly awarded counsel fees. We find insufficient merit in these arguments to warrant further discussion in a written opinion, R. 2:11-3(e)(1)(E), and add only a few brief comments.

We recognize that the manner in which the first action was adjudicated leaves uncertainty as to which preclusion doctrine applies. That uncertainty, however, makes no difference because the boundary dispute alleged in this second action was either actually adjudicated or could have been adjudicated in the first action. In either circumstance, one of the preclusion doctrines relied upon by the judge — either collateral estoppel, res

judicata, or the entire controversy doctrine — barred Podolec's pursuit of the boundary dispute in this second action. That is, Podolec alleged in the first action that Blatterman constructed a retaining wall and removed trees and shrubs from what Podolec claims was his side of the boundary line. Such a claim presupposes a disagreement about the boundary's location. Because Podolec failed to convince the arbitrator that Blatterman reached beyond the limits of his property, the arbitrator necessarily concluded that the boundary line is where Blatterman believed it was and that the retaining wall was installed on — and trees and shrubbery were removed from — Blatterman's land, not Podolec's. When Podolec failed to demand trial de novo, the arbitrator's award became a final adjudication of the claims asserted, R. 4:21A-6(b), and that final adjudication, if it actually encompassed a dispute about the boundary's location, provided a sound basis for the preclusion of the current action's assertion of a dispute about the boundary's location. See Konieczny v. Micciche, 305 N.J. Super. 375, 384-85 (App. Div. 1997). If we assume the claims in the first action did not encompass or were not dependent on a resolution of a dispute about the boundary's location, the assertion of such a boundary dispute in this second action violates the entire controversy doctrine because that dispute arose "from related facts or the same transaction or series of transactions" at issue in the first

action. DiTrolio v. Antiles, 142 N.J. 253, 267 (1995); see also Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 605 (2015).[3]

The orders under review in these consolidated appeals are affirmed.

[3] In light of this disposition, we need not determine whether the filing of the second action was barred by the doctrine of laches.