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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1230-16T2

VICTOR PODOLEC,

Plaintiff-Appellant,

v.

JOSE R. TORRES, ESQ.,

Defendant-Respondent,

and

RONALD S. HEYMANN, ESQ. and
HEYMANN & FLETCHER, ESQS.,

Defendants.

Submitted January 17, 2018 – Decided January 29, 2018

Before Judges Fisher and Sumners.

On appeal from Superior Court of New Jersey,
Law Division, Morris County, Docket No.
L-1022-12.

Piekarsky & Associates, LLC, attorneys for
appellant (Justin J. Walker, on the brief).

Graham Curtin, attorneys for respondent
(Christopher J. Carey, of counsel; Adam J.
Adrignolo and Jennifer L. Casazza, on the
brief).

PER CURIAM

In this action, plaintiff Victor Podolec pursued professional negligence claims against his former attorneys during various stages of two earlier, now-dismissed suits against parties who had allegedly caused damage to his property. In an earlier appeal, we affirmed in part and reversed in part the summary judgment entered against Podolec, leaving for further proceedings only one of his claims. That last claim consisted of plaintiff's allegation that defendant Jose R. Torres failed to timely file a demand for trial de novo when representing Podolec in his claim against Tomco Construction, Inc., which had performed construction work on behalf of the municipality in the roadway abutting Podolec's property. Podolec v. Torres, No. A-1678-14 (App. Div. June 9, 2016) (slip op. at 9). To show Torres's negligence, Podolec was required to demonstrate he possessed a viable cause of action against Tomac.

In reversing the dismissal of the claim against Torres regarding his handling of the Tomco matter, we held the trial judge precipitously concluded plaintiff's expert – Roy Dedeic – provided only a net opinion in asserting that Tomco's construction work negligently caused an abrupt dip at the junction of plaintiff's driveway and the public roadway. Specifically, by

reference to Dedeic's written report in light of the parties' arguments, we concluded that Dedeic had

detailed the "three to four feet abrupt dip at the driveway/roadway junction" created by Tomco's construction of the roadway and estimated the corrective work "would cost about \$90,000 to \$100,000," attributing this estimate to "new re-grading, new retaining walls, [and] new longer driveway alignment." [Dedeic] further explained at his deposition that this estimate was based on his experience with comparable projects in the area. These opinions are not disqualified by the net opinion rule.

[Id. at 9.]

Following our remand and prior to trial, the judge conducted a hearing pursuant to N.J.R.E. 104(a). For reasons expressed in an oral decision, the judge found inadmissible Dedeic's opinions about the adequacy of Tomco's construction work and the cost to remediate the alleged problem. In the wake of that determination, plaintiff acknowledged his claim could not further proceed. Consequently, that remaining portion of the complaint was dismissed.

Plaintiff appeals, arguing:

I. THE TRIAL COURT'S RULING THAT MR. DEDEIC'S OPINION WAS NOT A "NET OPINION" AS TO THE DRIVEWAY AND DISMISSING [PLAINTIFF'S] CASE WAS CLEAR PLAIN ERROR REQUIRING REVERSAL.

II. DISMISSAL ON THE BASIS OF "NET OPINION" AFTER [PLAINTIFF] AND COUNSEL APPEARED AT COURT PREPARED TO PICK A JURY AND TRY THE CASE

PURSUANT TO THE APPELLATE DIVISION'S PRIOR
DECISION CONSTITUTED CLEAR PLAIN ERROR
REQUIRING REVERSAL (NOT RAISED BELOW).

We find insufficient merit in these arguments to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following brief comments.

The trial judge properly concluded that Dedeic failed to identify the "why or wherefore" of his opinions. See Townsend v. Pierre, 221 N.J. 36, 54 (2015). As the judge correctly observed, Dedeic failed to distinguish among the potential causes for the existing slope at the foot of plaintiff's driveway. That is, Dedeic was unable to express whether the construction work was consistent with the engineering plans prepared by someone other than Tomco or whether Tomco's construction work constituted a deviation from those plans. As the judge explained, Dedeic's testimony, if permitted, would let the jury speculate about whether the perceived problem was the result of "a design flaw or . . . a construction flaw" and Tomco could only be held liable for the latter.


The judge also found problematic Dedeic's estimation of the remediation costs because Dedeic derived that information only from his son, who operates a construction company. Although an expert in Dedeic's field might be entitled to rely on hearsay in buttressing his own opinions, in expressing a damages estimate, Dedeic clearly provided only someone else's opinion, and the

admission of such information would improperly "insulate[]" Dedeic's testimony "from cross-examination." Moreover, Dedeic's testimony revealed the driveway is "shared" by plaintiff, and Dedeic only generalized the extent to which plaintiff was injured in contrast to the extent to which plaintiff's nonparty neighbor was injured by the alleged faulty driveway, leaving, as the judge observed, "the jury . . . to speculate . . . what the appropriate damage award would be to the . . . plaintiff here."

In applying our standard of review, we find no abuse of discretion in the judge's analysis and determination of the disputes concerning the admissibility of Dedeic's expert testimony, Hisenaj v. Kuehner, 194 N.J. 6, 12 (2008), which we left open to further consideration in our prior decision.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION