SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2946-15T4

DORIS ROBINSON,

Plaintiff-Appellant,

v.

FRANK PHILLIPS,

Defendant-Respondent.

Submitted December 19, 2017 – Decided January 11, 2018

Before Judges Carroll and Mawla.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Docket No. L-3398-13.

Doris Robinson, appellant pro se.

Chasan Lamparello Mallon & Cappuzzo, PC, attorneys for respondent (J. Nicholas Strasser, of counsel and on the brief).

PER CURIAM

This appeal arises out of a May 6, 2011 collision in Newark between vehicles driven by plaintiff Doris Robinson and defendant Frank Phillips. Plaintiff filed a complaint in the Law Division

on May 2, 2013, alleging defendant operated his vehicle negligently, causing her injury.

The case was bifurcated and tried as to liability only on July 28 and July 29, 2015. The parties were the only witnesses to testify. The jury returned a verdict in favor of defendant, finding plaintiff was seventy percent responsible for causing the accident. On August 26, 2015, the trial court formally entered a judgment of no cause of action.

On September 2, 2015, plaintiff filed a pro se motion for "stay of judgment and reconsideration of the judgment rendered by the jury." The trial judge denied the motion on October 9, 2015, finding it failed to meet the standard for granting a new trial pursuant to Rule 4:49-1. In his written statement of reasons, the judge explained:

> Plaintiff raises a number of factual issues. For example, [p]laintiff contends that the testimony of [defendant] was a lie. It is well settled that the veracity of a witness's testimony is a factual issue for the jury to weigh and determine. The court does not find that the jury's determination on the factual . . . issues raised by [p]laintiff amount[s] to a miscarriage of justice.

The judge also rejected plaintiff's contention that her trial counsel's "alleged mistakes and lack of preparation" warranted a new trial. The judge noted trial counsel was a certified trial

attorney and found plaintiff's allegations were unsupported by the record.

Plaintiff filed a motion for reconsideration on December 31, 2015, which the court denied on January 25, 2016. The trial judge first found the motion was time-barred, since plaintiff failed to file it within twenty days of service of the October 9, 2015 order, as required by Rule 4:49-2. The judge also denied the motion on the merits. Citing Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996), the judge found plaintiff failed to show: (1) the court's prior decision was palpably incorrect on the facts or law; (2) the court did not appropriately consider or appreciate evidence; or (3) any new information that could not have been brought previously.

Plaintiff thereafter filed a notice of appeal from the January 25, 2016 order. On appeal, plaintiff renews her factual challenges to the jury's verdict and her contention that her trial counsel was incompetent.

After reviewing the limited 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 remarks.

Rule 2:5-1(f)(3)(A) states, "[I]n civil actions the notice of appeal shall . . . designate the judgment, decision, action or

rule, or part thereof appealed from . . . ." Therefore, "it is only the judgments or orders or parts thereof designated in the notice of appeal which are subject to the appeal process and review." Pressler & Verniero, Current N.J. Court Rules, cmt. 6.1 on R. 2:5-1 (2017); see also Campagna ex rel. Greco v. Am. Cyanamid Co., 337 N.J. Super. 530, 550 (App. Div. 2001) (refusing to consider an order not listed in the notice of appeal).

"Consequently, if the notice [of appeal] designates only the order entered on a motion for reconsideration, it is only that proceeding and not the order that generated the reconsideration motion that may be reviewed." Pressler & Verniero, cmt. 6.1 on R. 2:5-1 (2017); see also W.H. Indus., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458-59 (App. Div. 2008) (considering only the order denying reconsideration because it was the sole order designated in the notice of appeal); Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 461-62 (App. Div. 2002) (reviewing only denial of the plaintiff's motion for reconsideration and refusing to review the original grant of summary judgment because that order was not designated in the notice of appeal).

As noted, plaintiff's notice of appeal listed the January 25, 2016 order denying reconsideration as the only order being

appealed. Therefore, we limit our review to the provisions of that order.

"[T]he decision to grant or deny a motion for reconsideration rests within the sound discretion of the trial court." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015) (citation omitted). "Reconsideration should be used only where '1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.'" Ibid. (quoting Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 383 N.J. Super. 299, 310 (App. Div. 2000)). "Thus, a trial court's reconsideration decision will be left undisturbed unless it represents a clear abuse of discretion." Ibid. (citing Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)).

Here, in denying the motion for reconsideration, the judge found it was not timely filed and plaintiff did not establish any of the grounds for reconsideration. On appeal, plaintiff does not argue to the contrary. We thus discern no abuse of discretion on the part of the trial court in denying the reconsideration motion.

In any event, we further conclude plaintiff has not demonstrated she is entitled to a new trial, contrary to her arguments before the trial court, which she renews on appeal. In

reaching this conclusion, we recognize the fundamental principle that jury trials are a bedrock part of our system of civil justice and that the fact-finding functions of a jury deserve a high degree of respect and judicial deference. See, e.g., Caldwell v. Haynes, 136 N.J. 422, 432 (1994). In terms of its assessment of the relative strength of the proofs, a jury verdict is "'impregnable unless so distorted and wrong, in the objective and articulated view of a judge, as to manifest with utmost certainty a plain miscarriage of justice.'" Doe v. Arts, 360 N.J. Super. 492, 502-03 (App. Div. 2003) (quoting Carrino v. Novotny, 78 N.J. 355, 360 (1979)).

Rule 4:49-1(a) provides that a trial judge shall grant a new trial if, "having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law." Jury verdicts are thus "entitled to considerable deference and 'should not be overthrown except upon the basis of a carefully reasoned and factually supported (and articulated) determination, after canvassing the record and weighing the evidence, that the continued viability of the judgment would constitute a manifest denial of justice.'" Risko v. Thompson Muller Auto. Grp., Inc., 206 N.J. 506, 521 (2011) (quoting Baxter v. Fairmont Food Co., 74 N.J. 588, 597-98 (1977)); see also

Boryszewski v. Burke, 380 N.J. Super. 361, 391 (App. Div. 2005) (indicating that "[j]ury verdicts should be set aside in favor of new trials only with great reluctance, and only in cases of clear injustice").

In reviewing a trial judge's decision on a motion for a new trial, we view the evidence in a light most favorable to the party opposing the new trial motion. Caldwell, 136 N.J. at 432. Moreover, we give substantial deference to the trial judge, who observed the same witnesses as the jurors, and who developed a "feel of the case." See, e.g., Carrino, 78 N.J. at 361; Baxter, 74 N.J. at 597-98; Dolson v. Anastasia, 55 N.J. 2, 7 (1969).

Here, our review is hampered because plaintiff has failed to provide the entire trial transcript as required by Rule 2:5-4(a). Rather, plaintiff has only submitted excerpts of her cross-examination and defendant's direct examination. We are unable to conclude that this limited record fairly and accurately encompasses the testimony and evidence the jury considered in reaching its verdict. Nor does it satisfy us that the evidence was such that the jury could not reasonably have found plaintiff was more culpable than defendant in causing the accident.

Affirmed.