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APPROVAL OF THE APPELLATE DIVISION**

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-3529-15T2

JIMMIE GORE,

Plaintiff-Appellant,

v.

BENJAMIN WARD and CITY OF TRENTON,

Defendants-Respondents.

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Argued January 9, 2018 – Decided January 26, 2018

Before Judges Carroll and Mawla.

On appeal from Superior Court of New Jersey,  
Law Division, Mercer County, Docket No. L-  
2685-11.

Roger S. Mitchell argued the cause for  
appellant.

John Morelli argued the cause for respondent  
(Walter D. Denson, Acting Director of Law,  
City of Trenton, attorney; Peter J. Cohen,  
Assistant City Attorney, on the brief).

PER CURIAM

Plaintiff Jimmie Gore filed a complaint in the Law Division  
in October 2011, seeking damages for personal injuries he allegedly  
sustained on May 11, 2010, when the automobile he was driving

collided with a vehicle owned by defendant City of Trenton and operated by its employee, defendant Benjamin Ward. On April 5, 2013, the trial court granted defendants partial summary judgment dismissing plaintiff's claim for pain and suffering pursuant to N.J.S.A. 59:9-2(d) for failure to prove a permanent injury. The parties thereafter entered into a settlement, pursuant to which plaintiff received \$7500 and he in turn released defendants "for all claims for [personal injuries]" sustained in the May 11, 2011 accident. On December 15, 2013, a stipulation of dismissal with prejudice was filed with the court.

In January 2016, plaintiff filed a pro se motion seeking to vacate the April 5, 2013 order and restore the case to the trial calendar. Plaintiff contended the trial court inadvertently failed to consider his medical expert's report that asserted he sustained a permanent injury in the May 2010 accident. Plaintiff argued that, based upon the "fraudulent misrepresentation" that he had not suffered a permanent injury, he was denied a fair hearing and his due process rights were violated.

The trial court denied the motion on March 4, 2016. In an oral opinion, the court found plaintiff's motion was time-barred and otherwise failed to satisfy the standards for relief from judgment pursuant to Rule 4:50-1.

On appeal, plaintiff argues he was denied due process when the trial court ruled on defendants' motion for partial summary judgment without considering all the evidence, including his expert medical report. For the first time on appeal, plaintiff also argues the settlement should be vacated under Rule 4:50-1 because he was "misinformed and unaware of the true facts" and relied on "misleading inducements" by his attorney.

Having reviewed the record, we find plaintiff's arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following limited comments.

Under Rule 4:50-1, the trial court may relieve a party from an order or judgment for the following reasons:

(a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R. 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

Motions made under Rule 4:50-1 must be filed within a reasonable time. R. 4:50-2; see also Deutsche Bank Trust Co. Ams. v. Angeles, 428 N.J. Super. 315, 319 (App. Div. 2012). Motions based on Rule 4:50-1(a), (b), and (c) must be filed within a year of the judgment. Angeles, 428 N.J. Super. at 319. However, the one-year limitation for subsections (a), (b), and (c) does not mean that filing within one year automatically qualifies as "within a reasonable time." Orner v. Liu, 419 N.J. Super. 431, 437 (App. Div. 2011); R. 4:50-2.

[T]he one-year period represents only the outermost time limit for the filing of a motion based on Rule 4:50-1(a), (b)[,] or (c). All Rule 4:50 motions must be filed within a reasonable time, which, in some circumstances, may be less than one year from entry of the order in question.

[Orner, 419 N.J. Super. at 437.]

A motion for relief under Rule 4:50-1 should be granted sparingly and is addressed to the sound discretion of the trial court, whose determination will not be disturbed absent a clear abuse of discretion. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). "[A]buse of discretion only arises on demonstration of 'manifest error or injustice[,]'" Hisenaj v. Kuehner, 194 N.J. 6, 20 (2008) (quoting State v. Torres, 183 N.J. 554, 572 (2005)), and occurs when the trial court's decision is "made without a rational explanation, inexplicably departed from

established policies, or rested on an impermissible basis." Guillaume, 209 N.J. at 467 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)). Accordingly, this court's task is not "to decide whether the trial court took the wisest course, or even the better course, since to do so would merely be to substitute our judgment for that of the lower court. The question is only whether the trial judge pursued a manifestly unjust course." Gittleman v. Cent. Jersey Bank & Trust Co., 103 N.J. Super. 175, 179 (App. Div. 1967), rev'd on other grounds, 52 N.J. 503 (1968).

Here, we find no abuse of discretion by the trial court. Plaintiff's motion to vacate the April 5, 2013 order sought relief under subsection (a) of the rule, based on mistake, inadvertence, surprise, or excusable neglect. The motion was filed two and one-half years after entry of the order. Consequently, it was time-barred under Rule 4:50-2, as the motion judge properly found. To the extent plaintiff's motion can be construed as seeking relief under Rule 4:50-1(c) based on fraud, misrepresentation, or misconduct, Rule 4:50-2 similarly bars any such claim.


Finally, to the extent plaintiff now contends he is entitled to relief under Rule 4:50-1(f), we decline to consider arguments raised for the first time on appeal. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234-35 (1973) (discussing the limited

circumstances in which an appellate court will consider an argument first raised on appeal). However, even if we were to consider this contention, relief under this subsection of the rule is only available when "truly exceptional circumstances are present." Guillaume, 209 N.J. at 484 (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 286 (1994)). "The rule is limited to 'situations in which, were it not applied, a grave injustice would occur.'" Ibid. (quoting Little, 135 N.J. at 289).

Plaintiff's assertions fail to meet that standard here. Plaintiff was represented by counsel, and subsequent to the entry of partial summary judgment, he negotiated and accepted a settlement. No exceptional circumstances have been established more than two years later to warrant relief from the April 5, 2013 order or the settlement under Rule 4:50-1(f).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION