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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-5322-15T4

EMILIO VIDAL-NUNEZ and MAYOBANEX
ARIAS-QUEZADA,

Plaintiffs-Appellants,

v.

BRIAN K. MCGUIRE and BOGOMIL I.
IVANOV,

Defendants-Respondents,

and

NEW JERSEY PROPERTY LIABILITY
INSURANCE GUARANTY ASSOCIATION,
NEW JERSEY PERSONAL AUTO INSURANCE
PLAN, UNSATISFIED CLAIM AND
JUDGMENT FUND, and RYDER TRUCK RENTAL,

Defendants.

Argued February 27, 2018 - Decided March 27, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Docket No.
L-5848-13.

Michael A. Mark argued the cause for appellants (Blitz & Associates, LLC, attorneys; Robert N. Blitz, of counsel; Jean-Claude Labady, on the brief).

Respondents have not filed briefs.

PER CURIAM

Plaintiffs Emilio Vidal-Nunez and Mayobanex Arias-Quezada appeal from the following orders: (1) an April 10, 2015 order denying reinstatement of the complaint as to defendant Brian K. McGuire; (2) a June 3, 2015 order denying plaintiffs' motion for reconsideration of the April 10, 2015 order and denying leave for substituted service of the summons and complaint upon defendant Bogomil I. Ivanov; and (3) an October 23, 2015 order denying plaintiffs' motion to vacate the stipulation of dismissal as to defendant Ryder Truck Rental (Ryder) and reinstate the complaint as to all defendants.¹ We reverse.

Vidal-Nunez suffered personal injuries as a result of two automobile accidents. Plaintiffs² filed a personal injury action one day prior to the expiration of the two-year statute of limitations. However, plaintiffs' counsel was unable to serve

¹ We understand plaintiffs resolved their claims against all defendants except McGuire and Ivanov. Plaintiffs' appeal relates to these defendants only.

² Arias-Quezada filed a per quod claim arising from her husband's injuries.

defendants with the complaint in a timely manner. As a result, the matter was dismissed by the court for lack of prosecution in accordance with Rule 1:13-7(a).

After dismissal of the complaint, plaintiffs moved to reinstate as against McGuire. The motion judge denied plaintiffs' motion with a handwritten notation explaining plaintiffs "failed to make a showing of exceptional circumstances under R. 1:13-7." On June 3, 2015, the motion judge denied plaintiffs' reconsideration motion seeking reinstatement of their claims against McGuire and requesting substituted service of the complaint upon Ivanov. In denying that motion, the judge noted plaintiffs "fail[] to demonstrate exceptional circumstances as required by R. 1:13-7." Plaintiffs then filed a motion to vacate a stipulation of dismissal as to Ryder and reinstate the complaint as to Ryder, McGuire, and Ivanov. Although plaintiffs' counsel requested oral argument, the judge denied the request and ruled based on the papers submitted. By order dated October 25, 2015, the judge noted the "[m]otion is denied because no exceptional circumstances per R. 1:13-7 [were] shown to vacate the Stip[ulation] of Dismissal and reinstate [the] complaint."

Plaintiffs appealed. On appeal, plaintiffs argue the motion judge misapplied her discretion in denying the motions based on the lack of exceptional circumstances. The motion judge then

issued a written amplification of her rulings pursuant to Rule 2:5-1(b).

In his certification seeking reinstatement of the complaint, plaintiffs' counsel explained why service of process was not effected immediately. Counsel explained that the paralegal in charge of serving the summonses and complaints left her position at the law firm in July 2014. Plaintiffs' counsel stated that no one at the law firm knew plaintiffs' complaint had not been served in the six months between the complaint's filing date and the paralegal's departure from the law firm. Plaintiffs' counsel also explained that around the same time as the paralegal's departure, the law firm's process server restructured the law firm's account and service of complaints were no longer accomplished automatically. Plaintiffs' counsel stated that his clients were without fault and utterly unaware their complaint had not been served.

We review an order "denying reinstatement of a complaint dismissed for lack of prosecution . . . under an abuse of discretion standard." Baskett v. Kwokleung Cheung, 422 N.J. Super. 377, 382 (App. Div. 2011). We "decline[] to interfere with [such] matter of discretion unless it appears that an injustice has been done." St. James AME Dev. Corp. v. City of Jersey City, 403 N.J. Super. 480, 484 (App. Div. 2008) (alteration in original) (quoting

Cooper v. Consol. Rail Corp., 391 N.J. Super. 17, 23 (App. Div. 2007)). We are not bound by a trial court's legal conclusions or its "interpretation of the law and the legal consequences that flow from established facts." Alfano v. BDO Seidman, LLP, 393 N.J. Super. 560, 573 (App. Div. 2007) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Motions for reconsideration are also reviewed for abuse of discretion. Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996). We "may only disturb the decision below if [we] find[] error which is 'clearly capable of producing an unjust result.'" Casino Reinvestment Dev. Auth. v. Teller, 384 N.J. Super. 408, 413 (App. Div. 2006) (quoting R. 2:10-2).

Rule 1:13-7(a) provides for reinstatement of a dismissed complaint in a multi-defendant case "on a showing of exceptional circumstances" where more than ninety days have transpired since the issuance of a dismissal notice. The exceptional circumstances standard "was intended to avoid delay where a case has been proceeding against one or more defendants, and the plaintiff then seeks to reinstate the complaint against a previously-dismissed additional defendant." Giannakopoulos v. Mid State Mall, 438 N.J. Super. 595, 609 (App. Div. 2014) (citing Pressler & Verniero, Current N.J. Court Rules, cmt. 1.2 on R. 1:13-7 (2015)). "The Rules are to be construed so as to do justice, and ordinarily an

innocent plaintiff should not be penalized for his attorney's mistakes." Id. at 608. The court may also relax the requirements of the rule "if adherence to it would result in an injustice." Ghandi v. Cespedes, 390 N.J. Super. 193, 198 (App. Div. 2007) (quoting R. 1:1-2). "[T]he right to 'reinstatement is ordinarily routinely and freely granted when plaintiff has cured the problem that led to the dismissal even if the application is made many months later.'" Id. at 196 (quoting Rivera v. Atl. Coast Rehab. Center, 321 N.J. Super. 340, 346 (App. Div. 1999)).

"[A]bsent a finding of fault by the plaintiff and prejudice to the defendant, a motion to restore under the [R]ule should be viewed with great liberality." Id. at 197. Where there is no proof of prejudice from the delay in service and no evidence plaintiff was at fault, the interests of justice are not served by punishing plaintiff for his attorney's inattention to the matter. See Giannakopoulos, 438 N.J. Super. at 609.

The motion judge applied the "exceptional circumstances" standard in Rule 1:13-7 notwithstanding that application of the standard in this case failed to serve the purpose for which it was intended. Here, no defendant participated in this litigation and no discovery had been served. While plaintiffs' counsel may have been inattentive in serving the complaint promptly, counsel served, or attempted to serve, the complaint after realizing the

mistake. All defendants, except Ivanov, were served with plaintiffs' complaint within eight months of the issuance of the dismissal notice.

There is no indication in the record that plaintiffs were responsible for their attorney's failure to serve the complaint. Plaintiffs' attorney explained why service was deficient and the efforts to remedy the situation. There is nothing that suggests defendants will suffer prejudice as a result of reinstating the complaint.

We find the court rules must be relaxed in the interest of justice, particularly where plaintiffs are blameless for the failure to timely prosecute the complaint. On these facts, we determine the judge misapplied her discretion in denying reinstatement of plaintiffs' complaint and conclude that "the courthouse doors should not be locked and sealed to prevent [plaintiffs'] claims from being resolved in the judicial forum." Baskett, 422 N.J. Super. at 385 (citing Ghandi, 390 N.J. Super. at 197).

On remand, the motion judge should consider plaintiffs' application for substituted service on Ivanov. The judge did not issue findings of fact or conclusions of law on the motion for substituted service. Rule 1:7-4 requires a trial court, "by an opinion or memorandum decision, either written or oral, find the

facts and state its conclusions of law thereon . . . on every motion decided by a written order that is appealable as of right." The failure of a trial court to meet the requirements of the Rule "constitutes a disservice to the litigants, the attorneys and the appellate court." Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (quoting Kenwood Assocs. v. Bd. of Adjustment of Engelwood, 141 N.J. Super. 1, 4 (App. Div. 1976)).

We further note that Rule 1:6-2(d) requires oral argument as a matter of right for certain motions. Except for pre-trial discovery motions or motions addressed to a calendar, oral argument "shall be granted as of right" if a party requests it in the moving, answering, or reply papers. R. 1:6-2(d). Plaintiffs' counsel requested oral argument on the reconsideration motion and the motion to reinstate the complaint. Where a request for oral argument on a substantive motion is properly made, denial, absent articulation of specific reasons for denial on the record, constitutes error. Raspantini v. Arocho, 364 N.J. Super. 528, 531-34 (App. Div. 2003).

Reversed and remanded. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION