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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-1024-21**

TONY PING YEW, individually  
and as Executor of the Estate of  
JOHN Y. WEI,

Plaintiff-Appellant,

v.

ROBERT WOOD JOHNSON  
UNIVERSITY HOSPITAL, RN  
ALEXIS SAMPLE, AVERY  
CASTILLO, and LORRAINE  
MARTINO,

Defendants-Respondents.

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Submitted November 29, 2022 – Decided December 12, 2022

Before Judges Geiger and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law  
Division, Middlesex County, Docket Nos. L-3502-21,  
L-3506-21, and L-5456-21.

Tony Ping Yew, appellant pro se.

Ronan, Tuzzio & Giannone, attorneys for respondents  
(Lauren Zalepka, of counsel and on the brief; Robert G.  
Maglio, on the brief).

PER CURIAM

In these consolidated actions brought under the Wrongful Death Act, N.J.S.A. 2A:31-1 to -6, pro se plaintiff Tony Ping Yew alleged medical malpractice, wrongful death, material misrepresentation, fraudulent concealment, negligent infliction of emotional distress, and falsification of medical records. He appeals from a series of Law Division orders that dismissed his complaints with prejudice and denied reconsideration. We find no merit in the arguments he raises in this appeal and affirm.

This matter arises from the medical care and treatment rendered to the eighty-one-year-old decedent John Y. Wei during his hospitalization at defendant Robert Wood Johnson University Hospital (RWJUH) from December 28, 2016 to January 6, 2017. The certificate of death stated the cause of death was cardiac arrest due to hypoxia and chronic MAI infection.<sup>1</sup> The record shows that decedent also suffered from the following co-morbidities: congestive heart

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<sup>1</sup> Chronic MAI infection is an infection of the lungs caused by a group of bacteria called Mycobacterium avium complex, a type of nontuberculous mycobacteria, in persons with certain risk factors. MAC Lung Disease, American Lung Ass'n, <https://www.lung.org/lung-health-diseases/lung-disease-lookup/mac-lung-disease#> (last visited December 5, 2022).

failure, diabetes, hypertension, paroxysmal atrial fibrillation, benign prostatic hypertrophy, gout, coronary artery disease, and chronic obstructive pulmonary disease. His admitting diagnosis was pneumonia, weakness, and hyponatremia. On January 6, 2017, decedent became unresponsive. A Code Blue was initiated, decedent was revived, and transferred to the Intensive Care Unit, where he went into cardiac and respiratory arrest three more times. Resuscitation efforts the fourth time were unsuccessful. Plaintiff is the godson of the decedent.

This matter has a complicated procedural history. Plaintiff filed five separate complaints individually and as executor of decedent's estate. Over the course of time, all five complaints were dismissed with prejudice by various trial courts.

Defendants moved to dismiss the two pro se complaints filed by plaintiff in 2018, which were consolidated under Docket No. L-7564-18, based on plaintiff's violation of Rule 1:21-1(a), his lack of standing, and violation of the advocate-witness rule. On April 10, 2019, the trial court found that plaintiff: (1) lacked standing to bring the wrongful death claim; (2) could not bring the action pursuant to Rule 1:21-1(a) because plaintiff is not an attorney; and (3) could not bring the action pro se because it would violate the advocate-witness rule. The court ordered plaintiff to retain an attorney no later than May 10, 2019,

and if he failed to do so the complaint would be dismissed with prejudice. Plaintiff failed to retain counsel, and on May 28, 2019, the trial court dismissed the complaint with prejudice. Plaintiff filed several motions for reconsideration. In August 2019, the trial court denied plaintiff's motions for reconsideration.

On February 24, 2020, we denied plaintiff's motion for leave to appeal and leave to represent the decedent's estate. The order stated:

Appellant, Tony Ping Yew, is not a licensed attorney authorized to practice law in New Jersey, and so is not permitted to represent the estate of decedent under R. 1:21(a). The motion for leave to appeal is denied as there are motions pending disposition in the trial court in the consolidated trial court matter. This appeal is dismissed without prejudice.

In turn, the Supreme Court denied plaintiff's motion for leave to appeal.

Thereafter, on June 1, 2021, plaintiff filed two new pro se complaints in his individual capacity and as executor of the decedent's estate under Docket Nos. L-3502-21 and L-3506-21, raising identical claims. On September 10, 2021, plaintiff filed a third pro se complaint under Docket No. L-5456-21, again raising the same claims and adding nurses Avery Castillo and Lorraine Martino and CCT Doe as additional defendants. The lengthy complaint included extended legal arguments.

Defendants filed motions pursuant to Rule 4:6-2(e) to dismiss the three new complaints for failure to state a claim upon which relief can be granted based on the doctrine of res judicata, lack of standing, and the complaints being barred by the applicable statute of limitations. The motions were granted by the trial court.

Plaintiff filed several motions for reconsideration of the dismissals and to reinstate the complaints. On September 28, 2021, each motion was denied by the trial court. The court found "[t]his issue has already been adjudicated in defendant[s'] favor multiple times. Defendant[s'] arguments in their papers are sound; particularly, with regard to res judicata."

Plaintiff is not an attorney licensed to practice law in New Jersey. At one point, the trial court made a referral to the Middlesex County Prosecutor's Office for unauthorized practice of law because of plaintiff's repetitious pro se complaint filings.

Plaintiff filed another motion for leave to appeal, to vacate the dismissal, and to disqualify the judge. On December 2, 2021, we denied the motion.

This appeal followed and relates to: (1) orders dated September 28, 2021, that dismissed plaintiff's complaints under Docket Nos. L-3502-21 and L-3506-21; (2) the order dated October 27, 2021, that denied reconsideration and

reinstatement of the complaint under Docket No. L-3502-21; (3) the order dated November 12, 2021, that dismissed plaintiff's complaint under Docket Nos. L-5456-21; (4) the order dated November 12, 2021, that denied reconsideration and reinstatement of the complaint under Docket No. L-3506-21; and (5) the order dated January 5, 2022, that denied reconsideration of the dismissal of the complaint under Docket Nos. L-5456-21 and L-3506-21.

Plaintiff, who remains self-represented, argues on appeal:

POINT I

[THE] DISMISSAL SHOULD BE VACATED DUE TO THE UNSUPPORTED RES JUDICATA BASIS FOR DISMISSAL AND THE IMPROPER MANNER [THE] JUDGE . . . DISMISSED PLAINTIFF[S] COMPLAINTS WITH THREAT OF REFERRAL TO THE MIDDLESEX COUNTY PROSECUTOR'S OFFICE IN AN ATTEMPT TO INFLUENCE THE OUTCOME OF THIS COMPLAINT.

- a. Detailed Argument Against Res Judicata in Point V Below Against [the] Judge . . . Deemed Incorporated Here.
- b. There Was No Executor of Estate in Initial Complaints Attorney Caption So There is No Res Judicata Basis to Dismiss the New Complaints.
- c. The Application of Res Judicata is a Question of Law.
- d. Threat of Criminal Prosecution is Sufficient Basis for Remand.

e. Incomplete Appeal Means Res Judicata Should Not Even Be Considered as Basis for Dismissal.

f. Violation of Statutes in Pro Se Counts 2, 3, 4 Does Not Permit These Counts to be Dismissed.

## POINT II

PLAINTIFF[']S] COMPLAINTS SHOULD BE REMANDED AS THERE WAS AN ABUSE OF DISCRETION AND JUDICIAL POWER IN BOTH THE DISMISSAL AND MOTION FOR RECONSIDERATION.

## POINT III

DISMISSAL ORDER SHOULD BE VACATED FOR IMPROPER BUNDLING OF TWO DOCKETS IN ONE DISMISSAL ORDER WITHOUT CONSOLIDATION AND ALSO FOR ARBITRARINESS AND AN ABUSE OF JUDICIAL POWER.

a. Defendant Made an Improper Order for Dismissal which the Court Signed Off Without Explaining Why a Pro Se and Executor Attorney Caption Can Be Combined in One Order.

b. Defendant[']s] Deficient Notice of Motion Addressing Only Tony Ping Yew Pro Se Means the Wrongful Death Docket [No.] MID-L-3506-21 Cannot be Dismissed.

## POINT IV

REMAND IS PROPER BECAUSE THE AFFIDAVIT OF MERIT AND WRITTEN REPORT SHOW

PLAINTIFF['S] COMPLAINT IS INHERENTLY MERITORIOUS.

POINT V

THERE IS NO RES JUDICATA BASIS FOR DISMISSAL SINCE THE MERITS WERE NEVER ACTUALLY ARGUED; DISMISSAL WAS NOT ARGUED ON PRIOR [RULE] 1:21-1(a) BASIS FOR DISMISSAL AND SOME COUNTS VIOLATED STATUTORY LAW.

- a. The Merits Were Never Actually Argued and the Affidavit of Merit Overlooked.
- b. Dismissal Was Not Based on Prior [Rule] 1:21-1(A) Basis For Dismissal.
- c. This Estate Action in [the Judge's] Court Is the Third Unjoined Complaint.
- d. Incomplete Appeal Means Res Judicata Should Not Even Be Considered as Basis for Dismissal.

POINT VI

[THE] JUDGE . . . NOT CITING ANY LEGAL AUTHORITY WHY PLAINTIFF['S] INITIAL COMPLAINT WHICH WAS FILED ON TIME CAN BE DISMISSED IN THIS ACTION REQUIRE[S] REMAND.

POINT VII

PLAINTIFF['S] EXTENSIVE ARGUMENT SUPPORTING STANDING AND [THE] JUDGE . . . CITING NO LEGAL AUTHORITY TO SUPPORT



DISMISSAL DUE TO LACK OF STANDING  
REQUIRE[S] REMAND.

- a. The Prior Court Dismissal Was in Error and Plaintiff Did Not Violate [Rule] 1:21-1(a).
- b. Korea Trade Ins. Corp. v. Nuvico Inc., No. A-3889-18 (N.J. Super. June 11, 2020).
- c. [The] Judge['s] . . . Analysis [of] Lack of Standing.
- d. The Standing of Unrepresented Attorney Entities are Deemed Legitimate Due to [the] Judge['s] . . . Failure to Adjudicate.

POINT VIII

[The] JUDGE['S] . . . DOUBLE RULING ON DOCKET NO. MID-L-3506-21 WHICH WAS DISMISSED BY [ANOTHER] JUDGE . . . ALREADY REQUIRE[D] VACATING THIS ORDER.

POINT IX

UNAUTHORIZED PRACTICE OF LAW COMMITTEE FINDING PLAINTIFF CAN SUE ON HIS OWN BEHALF WARRANT[S] REMAND.

POINT X

AUTOMATIC REMAND IS NECESSARY BECAUSE [THE] JUDGE['S] . . . DISMISSAL WITHOUT CITING ANY LEGAL AUTHORITY IN BOTH THE COMPLAINT ITSELF AND MOTION FOR RECONSIDERATION IS UNREVIEWABLE.

POINT XI

THE MOTION TO RECUSE BEING INTIMATELY TIED TO THE MOTION FOR RECONSIDERATION IS ARGUED HERE TO SUPPORT REMAND.

- a. [The] Judge['s] . . . Circular Reasoning Denial of Motion to Recuse.
- b. [The] Judge . . . Should Have Ruled the Motion for Recusal First.

POINT XII

THIS COMPLAINT SHOULD BE REMANDED BECAUSE OF [THE] JUDGE['S] . . . INCOMPLETE[] DISPOSAL OF THE COMPLAINT.

POINT XIII

EVEN THOUGH NO BASIS FOR DISMISSAL, PLAINTIFF ARGUE[S] AGAINST THE ENTIRE CONTROVERSEY DOCTRINE IN THE EVENT THIS COURT CONSIDER THIS DOCTRINE AS BASIS FOR DISMISSAL.

- a. The Initial Court [Order] . . . Dismissed the Pro Se Complaint as a Misjoined Party, Not On Lack of Standing.
- b. Entire Controversy Doctrine Specific to . . . Docket No[s]. [MID-L-3502-21] and [MID-L-3506-21].
- c. Entire Controversy Doctrine Specific to . . . Docket No: MID-L-5456-21.

Our careful review of the record convinces us that plaintiff's arguments lack sufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(1)(E), and we affirm substantially for the reasons expressed by the trial court. We add the following comments.

"In considering a motion to dismiss under Rule 4:6-2(e), courts search the allegations of the pleading in depth and with liberality to determine whether a cause of action is 'suggested by the facts.'" Rezem Fam. Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 114 (App. Div. 2011) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). "They must 'ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.'" Ibid. (quoting Printing Mart, 116 N.J. at 746). "A pleading should be dismissed if it states no basis for relief and discovery would not provide one." Id. at 113-14 (citing Camden Cnty. Energy Recovery Assocs., L.P. v. N.J. Dep't of Env't. Prot., 320 N.J. Super. 59, 64 (App. Div. 1999), aff'd, 170 N.J. 246 (2001)).

On appeal, we apply a plenary standard of review to a trial court's decision to dismiss a complaint pursuant to Rule 4:6-2(e), Rezem, 423 N.J. Super. at 114 (citing Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005)), including the trial court's determination to dismiss based on lack of standing,

Courier-Post Newspaper v. Cnty. of Camden, 413 N.J. Super. 372, 381 (App. Div. 2010), or the application of a statute of limitations, Barron v. Gersten, 472 N.J. Super. 572, 576 (App. Div. 2022). "We owe no deference to the trial court's conclusions." Rezem, 423 N.J. Super. at 114.

The doctrine of "[r]es judicata prevents relitigation of a controversy between the parties." Brookshire Equities, LLC v. Montaquiza, 346 N.J. Super. 310, 318 (App. Div. 2002) (citing Selective Insurance Co. v. McAllister, 327 N.J. Super. 168, 172 (App. Div. 2000)). In order for res judicata to apply, there must be "(1) a final judgment by a court of competent jurisdiction, (2) identity of issues, (3) identity of parties, and (4) identity of the cause of action." Id. at 318-19 (citing McAllister, 327 N.J. Super. at 172-73).

Plaintiff was not represented by counsel at any stage in the proceedings. Individual litigants generally do not have standing "to assert the rights of third parties." Stubaus v. Whitman, 339 N.J. Super. 38, 47-48 (App. Div. 2001). And, under our court rules, an individual who is not a licensed attorney in this State generally cannot appear on behalf of a third party. See R. 1:21-1(a) (except as otherwise provided by Rule 1:21-1, no person is permitted to practice law in this State unless they are a licensed attorney). Thus, an individual acting as a fiduciary or in another representative capacity, asserting claims for a decedent

or an estate, cannot appear and prosecute the claim pro se. Kasharian v. Wilentz, 93 N.J. Super. 479, 482 (App. Div. 1967); R. 1:21-1(a); accord Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 1:21-1 (2023) ("prohibit[ing] such appearances by non-lawyer fiduciaries where the action involves another's beneficial interests").

Wrongful Death Act lawsuits are filed on behalf of third parties, not an individual plaintiff. See Kasharian, 93 N.J. Super. at 482 (explaining that a plaintiff prosecutes a wrongful death action "solely as administrator [a]d prosequendum in the interests of the entire class of the next of kin of the decedent"). Thus, the plaintiff in a wrongful death action is not permitted to file and prosecute the action without representation by an attorney. Additionally, "[i]t is well established that 'a judgment of involuntary dismissal or a dismissal with prejudice constitutes adjudication on the merits 'as fully and completely as if the order had been entered after trial.'"" In re Estate of Gabrellian, 372 N.J. Super. 432, 447 (App. Div. 2004) (quoting Velasquez v. Franz, 123 N.J. 498, 507 (1991)).

The trial court findings were amply supported by the record and its decisions comported with applicable legal principles. Plaintiff's three new complaints raised the same claims as the complaints filed in 2018 that were

previously dismissed with prejudice. The four elements of res judicata are present in this case. Accordingly, the trial court correctly found the claims raised in the new complaints were barred by the doctrine of res judicata.

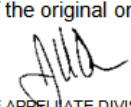
The claims were also time-barred by N.J.S.A. 2A:31-3, which imposes a two-year statute of limitations in wrongful death actions, N.J.S.A. 2A:15-3, which imposes a two-year statute of limitations in survivor's actions, and N.J.S.A. 2A:14-2, which likewise imposes a general two-year statute of limitations for injuries caused by wrongful acts. In addition, plaintiff lacked standing and the pro se complaints violated Rule 1:21-1(a).

For each of these independent reasons, the complaints were properly dismissed with prejudice for failure to state a claim upon which relief can be granted.

Considering our decision, we do not separately address the denial of plaintiff's motions for reconsideration.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION