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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1334-21

PAUL MARINACCIO,

Plaintiff-Appellant,

v.

ROMAN HERNIAK,¹ EAST
HANOVER POLICE DEPARTMENT,
EAST HANOVER TOWNSHIP,
PAULA MASSARO, POLICE CHIEF
CHRISTOPHER CANNIZZO, CAPT.
JACK AMBROSE, POLICEMAN
ROBERT CHIAZZO, POLICEMAN
DANIEL MCCLURE, POLICEMAN
JEFFREY A. DELLA PIAZZA,
POLICEMAN MATTHEW
CERRATO, POLICEMAN JASON
HAWISZCZAK, POLICEMAN
ROBERT JORDAN, POLICEMAN
MARIUSZ ZAMOJOWSKI,
POLICEMAN DONNARD JUSTIN,
POLICEMAN KEITH GUNTHER,
POLICEMAN MICHAEL LIOTTA,
POLICEMAN BRIAN STEVENS,
ALAVARO LEAL, LISA
THOMPSON, and STEVEN KURZA,

¹ Defendant Roman Hirniak was improperly pleaded as Roman Herniak.

Defendants-Respondents.

Argued April 18, 2023 – Decided August 15, 2023

Before Judges Messano and Gummer.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-1452-21.

Paul Marinaccio, appellant pro se.

William G. Johnson argued the cause for respondents Roman Hirniak, East Hanover Township Police Department, Township of East Hanover, Paul Massaro, Christopher Cannizzo, Jack Ambrose, Roberto Chiazzo, Daniel McClure, Jeffrey A. DellaPiazza, Matthew Cerrato, Jason Hawiszcak, Robert Jordan, Mariusz Zamojski, Donnard Justin, Keith Gunther, Michael Liotta, and Brian Stevens (Johnson & Johnson, attorneys; William G. Johnson, of counsel and on the brief).

Alan J. Baratz argued the cause for respondents Alvero Leal, Lisa Thompson, and Steven Kurza (Weiner Law Group, LLP, attorneys; Alan J. Baratz, of counsel; Donald A. Klein, on the brief).

PER CURIAM

The Law Division entered an order on September 16, 2021, dismissing without prejudice plaintiff Paul Marinaccio's first amended complaint for failure to state a cause of action pursuant to Rule 4:6-2(e). Neither the judge's order nor his written statement of reasons addressed plaintiff's pending cross-motions

to file second and third amended complaints. The judge sua sponte entered an order on October 22, 2021, clarifying plaintiff's motions to amend had also been denied, and noting that in considering plaintiff's pending motion for reconsideration, the judge would "review all . . . [p]roposed a[mended] [c]omplaints to determine whether the September 16[,], 2021 [o]rder granting dismissal . . . w[as] proper."

The judge's November 9, 2021 order denied plaintiff's reconsideration motion. In his statement of reasons contained within the order, the judge explained plaintiff's second and third amended complaints, like the first amended complaint, failed to state a cause of action pursuant to Rule 4:6-2(e). Citing Notte v. Merchant's Mutual Insurance Co., 185 N.J. 490, 495 (2006), the judge reasoned, "permitting . . . [p]laintiff to amend his complaint would have been futile."

The judge also determined the doctrine of qualified immunity was "particularly relevant" to plaintiff's claims against defendant Police Officer Steven Kurza and was "also applicable to other [d]efendants in this matter." Lastly, the judge determined defendants Lisa Chadwick Thompson and Alvaro Leal were immune from liability pursuant to the Tort Claims Act, N.J.S.A. 59-1-1 to -12-3.

Plaintiff now appeals from the November 9, 2021 order, essentially arguing that all his pleadings adequately stated a cause of action.

I.

Plaintiff's claims had their genesis in his conviction for municipal ordinance violations issued in 2016 by defendant East Hanover Police Officer Roberto Chiazzo. State v. Marinaccio, No. A-0271-20 (App. Div. Feb. 23, 2022) (slip op. at 3). The matters were transferred to the Parsippany-Troy Hills Municipal Court. Id. at 1 n.1. We reversed plaintiff's conviction on appeal, concluding the State had failed to rebut plaintiff's affirmative defense that the municipality had not posted notice of the ordinance as required by N.J.S.A. 39:4-198. Id. at 16–17.

Plaintiff filed a civil suit against East Hanover Township, the East Hanover Police Department, Paula Massaro, Police Chief Christopher Cannizzo, Police Captain Jack Ambrose, and Police Officers Chiazzo, Ted Pribulla, Daniel McClure, Jeffrey A. Della Piazza, Matthew Cerrato, Jason Hawiszczak, Robert Jordan, Mariusz Zamojowski, Donnard Justin, Keith Gunther, Michael Liotta, and Brian Stevens (the East Hanover Defendants). Defendant Roman Hirniak, an attorney, represented the East Hanover Defendants in that litigation.

As we can best discern, plaintiff alleged he had attempted to serve confidential discovery on Hirniak or his staff Hirniak's Morris Plains office. Hirniak refused to accept the material, so plaintiff dropped it at his feet on the floor without entering the office. Hirniak told plaintiff to leave the building and then called police when plaintiff refused to pick up the material.

Kurza, an officer with the Parsippany-Troy Hills Police Department, responded. Plaintiff said Kurza had tried to hand the materials back him, threatening to leave them on the floor if plaintiff did not take them. Concerned about the confidentiality order entered in the civil litigation, plaintiff took the materials and mailed them to Hirniak. The proposed third amended complaint alleged that Hirniak "and his clients" conspired to deprive plaintiff of his First Amendment rights "to disseminate info" in order to interfere with plaintiff's right "to meaningful access to the [c]ourts." Plaintiff also alleged that by ordering him to leave the premises, Hirniak and Kurza had denied plaintiff's constitutional right to "loiter" in violation of the Due Process Clause of the Fourteenth Amendment and plaintiff's "state constitutional right of expression."

Plaintiff's allegations against defendants Lisa Chadwick Thompson, the Parsippany-Troy Hills Municipal Court prosecutor, and Alvaro Leal, the court administrator, are more obscure. Plaintiff made requests for the municipal court

file in 2019. He claimed that Chadwick Thompson, Leal, or other court personnel, had violated his "right to receive info and court records pursuant to the [First] Amendment and [R]ule 1:38[,] and [his] right against fraud and . . . misrepresentation . . . were obstructed and deprived under" the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2. Plaintiff also alleged that Leal had "interfered with and obstructed [his First A]mendment rights to info and to court records" by making certain court documents "disappear."

II.

Although this appeal comes to us from the November 2021 order denying plaintiff's motion for reconsideration, it is clear from the October 2021 clarifying order that the judge intended to address the merits of plaintiff's proposed amended complaints in the context of the reconsideration motion and, as the November order bears out, he did. In these circumstances, and because defendants have not objected, we consider the merits of plaintiff's argument that the judge erred by dismissing his first amended complaint and denying his motion to amend because in all their iterations the pleadings failed to state a cause of action pursuant to Rule 4:6-2(e). See, e.g., N. Jersey Neurosurgical Assocs., PA v. Clarendon Nat'l Ins. Co., 401 N.J. Super. 186, 196 (App. Div. 2008) (addressing interlocutory order despite appellant's notice of appeal not

including the interlocutory order because the judge addressed the issue in deciding order under appeal).²

"Our review of a trial court's ruling on a motion to dismiss is de novo, without deference to the judge's legal conclusions." Mueller v. Kean Univ., 474 N.J. Super. 272, 283 (App. Div. 2022) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, PC, 237 N.J. 91, 108 (2019)). "Like the trial court, a reviewing court must 'pass no judgment on the truth of the facts alleged' in the complaint and must 'accept them as fact only for the purpose of reviewing the motion to dismiss.'" Ibid. (quoting Banco Popular N. Am. v. Gandi, 184 N.J. 161, 166 (2005)). "Although the review of the factual allegations of a complaint on a motion to dismiss is to be 'undertaken with a generous and hospitable approach,' '[a] pleading should be dismissed if it states no basis for relief and discovery would not provide one.'" Ibid. (alteration in original) (first quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J.

² Defendants have argued that the appeal should be dismissed because plaintiff was twenty-three days late in filing his appeal. We reject the argument, treating the notice of appeal as a motion to file the appeal as within time. See Seltzer v. Isaacson, 147 N.J. Super. 308, 311–12 (App. Div. 1977) (extending the notice of appeal deadline pursuant to Rule 2:4-4(a) sua sponte where the appeal was filed nine days late because appellant "could have" obtained such relief by a timely application and because "the issues have been fully briefed").

739, 746 (1989); and then quoting Rezem Fam. Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div. 2011)).

"We review a trial court's decision to grant or deny a motion to amend the complaint for abuse of discretion." Port Liberte II Condo. Ass'n v. New Liberty Residential Urb. Renewal Co., 435 N.J. Super. 51, 62 (App. Div. 2014). "'Rule 4:9-1 requires that motions for leave to amend be granted liberally' and that 'the granting of a motion to file an amended complaint always rests in the court's sound discretion.'" Notte, 185 N.J. at 501 (quoting Kernan v. One Wash. Park Urb. Renewal Assocs., 154 N.J. 437, 456–57 (1998)). "In exercising that discretion, a court must go through 'a two-step process: whether the non-moving party will be prejudiced, and whether granting the amendment would nonetheless be futile.'" Grillo v. State, 469 N.J. Super. 267, 275 (App. Div. 2021) (quoting Notte, 185 N.J. at 501). "The court determines whether the proposed amendment would be futile by asking 'whether the amended claim will nonetheless fail and, hence, allowing the amendment would be a useless endeavor.'" Id. at 275–76 (quoting Notte, 185 N.J. at 501).

Applying these standards here, we consider the allegations plaintiff made in his proposed third amended complaint and assess whether they were sufficient to state a cause of action against defendants. Because we conclude the third

amended complaint failed to state a cause of action, the judge properly determined the amendment would have been futile and correctly denied plaintiff's motion to file a third amended complaint. We therefore affirm the November 2021 order denying reconsideration.

As the East Hanover Defendants correctly assert, none of plaintiff's pleadings alleged any facts establishing a claim against them. We affirm the September, October, and November 2021 orders as they relate to the East Hanover Defendants.

Plaintiff's contentions that Officer Kurza and Hirniak conspired to deny him access to the courts or violated his due process or freedom of movement fail to allege a viable cause of action. Plaintiff suffered no harm as a result of Hirniak's refusal to accept a hand-to-hand transfer of discovery materials because, as plaintiff acknowledged in all the complaints, he proceeded to mail the discovery to Hirniak. See, e.g., Oliver v. Fauver, 118 F.3d 175, 177–78 (3d Cir. 1997) ("[C]laims involving so-called central aspects of the right to court access require a showing of actual injury").

Hirniak's refusal to accept discovery from plaintiff did not deprive plaintiff of any First Amendment right to disseminate information to the public. As plaintiff readily admits, the discovery was subject to a confidentiality order,

and his concern for a possible violation of that order if the discovery were left outside Hirniak's office prompted him to pick it up from the ground and mail it to the attorney.

Plaintiff alleges that Hirniak and Kurza told him to take back the tendered discovery and leave the building in a threatening manner. His pleadings state that besides housing Hirniak's law offices, the building included a bank, in which plaintiff was a depositor. From this, plaintiff alleges a violation of his constitutional liberty interests. The contention lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm the orders as they relate to Kurza and Hirniak.

The proposed third amended complaint failed to state a cause of action against Leal or Chadwick Thompson. As best we can discern, plaintiff argues their mishandling of documents in the municipal court file violated his right to access the courts and his right to public information under Rule 1:38. Plaintiff fails to state how the alleged violation infringed on his rights to access the courts; he ultimately succeeded on appeal and proceeded to file a civil suit against the East Hanover defendants presumably based on his successful defense of the alleged municipal ordinance violations.

Additionally, it is well-accepted that violation of a court rule does not provide a basis for a cause of action. See, e.g., Johnson v. City of Hoboken, ___ N.J. Super. ___, ___ (App. Div. 2023) (slip op. at 8–10) (noting Rule 1:38-7, which excludes confidential personal identifiers from all court records, does not provide for a private right of action if violated).

To the extent we have not otherwise addressed plaintiff's arguments, they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION