SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1486-21

HACKENSACK MERIDIAN HEALTH, a/s/o ANDREW J. MANLEY,

Plaintiff-Respondent,

v.

CITIZENS UNITED RECIPROCAL EXCHANGE,[1]

Defendant-Appellant.

———————————————————

Argued May 16, 2023 – Decided June 29, 2023

Before Judges Sumners, Geiger and Chase.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-6661-21.

Damian A. Scialabba argued the cause for appellant (Brennan and Sponder, attorneys; Damian A. Scialabba, of counsel and on the briefs).

---

[1] Improperly pled as CURE Auto Insurance.

Lynne A. Goldman argued the cause for respondent (Callagy Law, PC, attorneys; Lynne A. Goldman, of counsel and on the brief).

PER CURIAM

Auto insurer Citizens United Reciprocal Exchange (CURE) appeals from a Law Division order vacating a ruling by a Dispute Resolution Professional (DRP). The Law Division judge determined that Hackensack Meridian Health (Hackensack) did not manifest its intent to accept payment of its outstanding bills under accord and satisfaction law, as the DRP determined. However, because the appeal is interlocutory and because we lack jurisdiction, the appeal is dismissed.

I

Hackensack treated CURE's insured, Andrew Manley, after an auto accident on September 8, 2019. Manley was critically injured and spent twenty-five days in inpatient care. On October 8, 2019, Hackensack billed CURE $360,172.42 for Manley's medical services pursuant to personal injury protection (PIP) benefits under Manley's insurance policy. After receiving no response, on March 30, 2020, Hackensack sent a letter to CURE, reminding them of the outstanding bill and asked for all checks and correspondence to be sent directly to Hackensack.

On May 1, 2020, CURE wrote a letter to Hackensack disputing the billed amount. The letter expressed that CURE approved $67,445.67 for payment of services after a review by a nurse auditor to ensure same were customary and reasonable under PIP. The letter stated that a payment or explanation of benefits (EOB) would be issued shortly.

On May 4, 2020, CURE issued an EOB which approved the $67,445.67 and contained a reference that payment, if applicable, would be processed and mailed separately. The May 4 letter also contained an explanation of CURE'S PIP appeal process under CURE'S Decision Point Review Plan — a plan approved by the New Jersey Department of Banking and Insurance.

Two days later, on May 6, 2020, CURE issued a check for $69,169.52. The top part of the check stub stated that "depositing of the attached check constitutes [Hackensack's] acknowledgement that [they] have notice of this dispute and that [they] accept this check as a complete settlement of [their] claim with regards to these services." The letter then provided an address for the check to be returned to within 90 days if Hackensack did not accept the offer.

On May 18, 2020, pursuant to the May 4 letter and following CURE's PIP appeal process, Hackensack commenced an internal appellate process with CURE, seeking the full $360,172.42 originally sought for services rendered to

CURE's insured. Hackensack then filed for PIP Arbitration pursuant to the Alternative Procedure for Dispute Resolution Act [APDRA], N.J.S.A. 2A:23A-1 to -32. The parties proceeded and the DRP found in favor of CURE reasoning that, pursuant to accord and satisfaction law, Hackensack had manifested its intent to accept the offer by depositing the check.[2]

Hackensack appealed to the Law Division, arguing that CURE failed to comply with the requirements under the UCC, N.J.S.A. 12A:3-311[3] to deal in "good faith" regarding a "bona fide dispute." Hackensack claimed that CURE failed to comply missing their ninety-day deadline to respond to the original $360,172.42 invoice and by paying an amount significantly lower than what was

[2] In order to effectuate a discharge of debt under the doctrine of accord and satisfaction, the debtor must establish: (1) a bona fide dispute as to the amount owed; (2) a clear manifestation of intent by debtor to creditor that payment is in full satisfaction of the disputed amount; and (3) acceptance of satisfaction by the creditor. Zeller v. Markson Rosenthal & Co., 299 N.J. Super. 461 (App. Div. 1997). A creditor is deemed to have accepted the condition of full satisfaction by depositing the check for collection. Loizeaux Builders Supply v. Donald B. Ludwig Co., 144 N.J. Super. 556 (Law Div. 1976).

[3] Uniform Commercial Code Comment 4 to N.J.S.A. 12A:3-311 states as follows: Subsection (a) states three requirements for application of Section 3-311. "Good faith" in subsection (a)(i) is defined as not only honesty in fact, but the observance of reasonable commercial standards of fair dealing. . . Subsection 3-311 does not apply to cases in which the debt is a liquidated amount and not subject to a bona fide dispute. The person seeking the accord and satisfaction must prove that the requirements of subsection (a) are met.

owed. Hackensack claimed that CURE failed to make a good faith tender and failed to establish a bona fide dispute where ninety-seven percent of the agreed upon amount owed ($67,445.67) was rendered in the subsequent check ($69,169.52).

The trial court agreed and found the DRP erred by incorrectly applying accord and satisfaction to the facts. The court reasoned that because Hackensack filed an appeal pursuant to CURE's appeal process and the state regulations, it did not accept payment in full. Furthermore, the trial court held that CURE did not constitute an accord and satisfaction because the $67,445.67 was not in genuine dispute as both parties agreed at least that much was owed to Hackensack. The court held that the actual amount in dispute was the difference between the check CURE rendered and the amount of the original invoice.

CURE appeals the order finding accord and satisfaction did not apply and remanding the matter to APDRA.

I.

Our court rules that address interlocutory appeals are clear. We consider appeals from final orders of a trial court and other orders expressly designated as final for purposes of appeal. R. 2:2-3(a)(1), (3). "To be a final judgment, an order generally must 'dispose of all claims against all parties.'" Janicky v. Point

Bay Fuel, Inc., 396 N.J. Super. 545, 549-50 (App. Div. 2007) (quoting S.N. Golden Estates, Inc. v. Cont'l Cas. Co., 317 N.J. Super. 82, 87 (App. Div. 1998)). This "final judgment rule, reflects the view that piecemeal [appellate] reviews, ordinarily, are [an] anathema to our practice." Id. at 550 (alterations in original) (internal quotation marks and citations omitted). If an order is not final, or among those orders expressly designated as final for purposes of appeal, a party must seek leave to appeal from the Appellate Division. R. 2:5-6(a). A grant of leave to appeal from an interlocutory order is left to the discretion of this court, and that discretion is exercised sparingly and "in the interest of justice." R. 2:2-3(c); R. 2:2-4; Janicky, 396 N.J. Super. at 550.

CURE did not seek leave to appeal from the trial court order. We will not decide an appeal from an interlocutory order merely because the appellant's notice of appeal mischaracterized the order, the respondent did not move to dismiss, or the appeal was "fully briefed." Vitanza v. James, 397 N.J. Super. 516, 519 (App. Div. 2008) (recognizing but declining to follow cases in which the court has granted leave to appeal nunc pro tunc even though the appeal was fully briefed on the ground that the practice invites disregard of the court rules).

We recognize that we may, in appropriate cases, grant leave to appeal nunc pro tunc. R. 2:4-4(b)(2); see, e.g., Yuhas v. Mudge, 129 N.J. Super. 207,

209 (App. Div. 1974) (granting leave to appeal nunc pro tunc "in the interest of prompt disposition of the matter"). However, such relief is not automatic and should not be presumed. In dismissing an appeal as interlocutory after it was fully briefed, we stated:

> [I]f we treat every interlocutory appeal on the merits just because it is fully briefed, there will be no adherence to the Rules, and parties will not feel there is a need to seek leave to appeal from interlocutory orders. At a time when this court struggles to decide over 7,000 appeals a year in a timely manner, it should not be presented with piecemeal litigation and should be reviewing interlocutory determinations only when they genuinely warrant pretrial review.
>
> [Parker v. City of Trenton, 382 N.J. Super. 454, 458 (App. Div. 2006).]

A grant of leave to appeal nunc pro tunc "is most extraordinary relief . . . ." Frantzen v. Howard, 132 N.J. Super. 226, 227-28 (App. Div. 1975). This case does not warrant such relief. The order CURE has appealed from was not a final determination of all claims raised by the parties below.[4] The issue of the proper amount Hackensack was to be reimbursed had not yet been determined at the time CURE filed their appeal. CURE was aware that it was not a final order as

[4] After the trial court remanded the matter and the appeal was pending before us, the Dispute Resolution Professional awarded Hackensack $163,582.65 as the correct amount owed for Manley's medical services, which CURE has yet to pay.

the trial court's remand order was clear, and CURE later participated in the arbitration hearing for the reimbursement. Only the accord and satisfaction issue was resolved before this appeal was filed and CURE's use of accord and satisfaction in this case was a ploy to undermine the alternate dispute mechanisms available under PIP law.

II.

CURE is a New Jersey based auto insurer. As such, it is required to provide PIP benefits under its policies. The No-Fault Act, N.J.S.A. 39:6A-1 to -35, mandates that automobile liability insurance policies provide PIP coverage, including payment of "reasonable medical expenses," N.J.S.A. 39:6A-4(a). Cobo v. Market Transition Facility, 293 N.J. Super. 374, 384 (App. Div. 1996). Disputes regarding the appropriateness and amount of PIP coverage are determined in "dispute resolution." N.J.S.A. 39:6A-5.1(a); see Citizens United Reciprocal Exch. V. N. N.J. Orthopedic Specialists, 445 N.J. Super. 371, 376-77 (App. Div. 2016) (stating disputes between health care providers and insurers over billing disputes covered by PIP insurance provisions are typically settled through arbitration).

The forum for PIP Arbitration is APRDA, N.J.S.A. 2A:23A-1 to -32. Although proceedings under APDRA are frequently referred to as "arbitrations,"

and are indeed similar in style and substance to arbitrations, APDRA is distinct from the Arbitration Act, N.J.S.A. 2A:23B-1 to -32. An APRDA decision is binding, subject to "vacation, modification or correction" by the Superior Court in limited instances. N.J.S.A. 2A:23A-13(a). In matters where jurisdiction exists, an award may only be vacated if the rights of a party were prejudiced by:

> (1) Corruption, fraud or misconduct in procuring the award;
>
> (2) Partiality of an umpire appointed as a neutral;
>
> (3) In making the award, the umpire's exceeding their power or so imperfectly executing that power that a final and definite award was not made;
>
> (4) Failure to follow the procedures set forth in [this Act], unless the party applying to vacate the award continued with the proceeding with notice of the defect and without objection; or
>
> (5) The umpire's committing prejudicial error by erroneously applying law to the issues and facts presented for alternative resolution.
>
> [Selective Ins. Co. of Am. v. Rothman, 414 N.J. Super. 331, 341 (App. Div. 2010) (quoting N.J.S.A. 2A:23A-13).]

N.J.S.A. 2A:23A-18(b) makes clear, once the trial court, sitting as an appellate court, has issued an order "confirming, modifying or correcting" a decision, "[t]here shall be no further appeal or review of the judgment or

decree." Our Supreme Court upheld the constitutionality of N.J.S.A. 2A:23A-18(b) in Mt. Hope Dev. Associates. v. Mt. Hope Waterpower Project, L.P., 154 N.J. 141, 148-52 (1998). The Court ruled that "the language of APDRA unmistakably informs parties that by utilizing its procedures they are waiving [their] right" to appeal beyond the trial court, and that such a waiver generally must be enforced. Id. at 148. [Citizens United Reciprocal Exch. v. N. N.J. Orthopedic Specialists, 445 N.J. Super. 371, 375-76 (App. Div. 2016).]

While there are exceptions to the bar set by N.J.S.A. 2A:23A-18(b), they are limited. There are exceptions when it is "necessary for [the court] to carry out 'its supervisory function over the [trial] courts.'" Morel v. State Farm Ins. Co., 396 N.J. Super. 472, 475–76 (App. Div. 2010) (quoting Mt. Hope Dev. Assoc., 154 N.J. at 152). "Supervisory function" permits a reviewing court to exercise appellate jurisdiction when a trial court has exceeded its jurisdiction under the APDRA. See Morel, 396 N.J. Super. at 476. As the Supreme Court instructed in Mt. Hope, although arbitration is a favored procedure, there may be "'rare circumstances' grounded in public policy" that may warrant "limited appellate review" over trial court decisions in APDRA matters. Appellate review is thus allowed "where public policy would require" it. Id. at 152. One example identified by the Court is a child support order, ibid.; another example

is an award of attorney's fees. Allstate Ins. Co. v. Sabato, 380 N.J. Super. 463, 472-76 (App. Div. 2005). However, when the trial judge adheres to the statutory grounds in reversing, modifying or correcting an arbitration award, we have no jurisdiction to tamper with the judge's decision or do anything other than recognize that the judge has acted within his jurisdiction. Accordingly, we review the decision of the trial judge here for the limited purpose of determining whether he exceeded the authority granted to him by APDRA. N.J. Citizens Underwriting Reciprocal Exch. v. Kieran Collins, D.C., LLC, 399 N.J. Super. 40, 48 (App. Div 2008).

Based on our review of the record, CURE does not satisfy the high standard for appellate review of an arbitration award under the APDRA. Here, the trial court did not exceed its jurisdiction, properly addressed the issues, and did not "commit any glaring errors that would frustrate the Legislature's purpose in enacting the APDRA." Riverside Chiropractic Grp. v. Mercury Ins. Co., 404 N.J. Super. 228, 240 (App. Div. 2008); see also, Fort Lee Surgery Ctr., Inc. v. Proformance Ins. Co., 412 N.J. Super. 99, 103-04 (App. Div. 2010) (dismissing appeal where the trial judge "navigated within APDRA's parameters . . . ."). Moreover, this self-created dispute regarding accord and satisfaction and

posturing between two sophisticated entities does not rise to the level of a rare circumstance grounded in public policy that our Court envisioned.

CURE has not adhered to the rules. To have any other outcome would be an injustice to Hackensack. This issue is not one presenting a significant public policy question warranting our review. Morel, 396 N.J. Super. at 475-76. Neither was the decision of the trial court a final judgment. Accordingly, the appeal is dismissed.