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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1497-21**

WILLIAM KWASNIK,

Plaintiff-Appellant,

v.

**OMNI INSURANCE GROUP
and PERSONAL SERVICE
INSURANCE COMPANY,**

Defendants-Respondents,

and

GISELA CARINO,

Defendant.

Submitted March 29, 2023 – Decided April 13, 2023

Before Judges Vernoia and Natali.

On appeal from the Superior Court of New Jersey, Law
Division, Camden County, Docket No. L-4685-17.

William M. Kwasnik, appellant pro se.

Gerolamo McNulty Divis & Lewbart, PC, attorneys for respondents (Daniel T. Lewbart, on the brief).

PER CURIAM

Plaintiff William Kwasnik appeals from a December 3, 2021 order denying his motion for reconsideration of a July 23, 2021 order denying his Rule 4:50-1(b) motion to vacate an April 9, 2020 order granting defendants Omni Insurance Group and Personal Service Insurance Company summary judgment and dismissing plaintiff's complaint. We affirm.

I.

We observe at the outset our task of discerning and summarizing the pertinent facts and procedural history in this matter is made difficult by plaintiff's failure to comply with the Rules applicable to the prosecution of an appeal. For example, plaintiff's merits brief does not include the required "references to the appendix and transcript[s]" supporting his assertions of fact, R. 2:6-2(a)(5), and does not contain any point headings setting forth the legal arguments supporting his appeal, R. 2:6-2(a)(6). Plaintiff also fails to include in the appendix the pleadings filed in the action, R. 2:6-1(a)(1)(A), and the other parts of the record, including the papers filed in connection with the various motions at issue on appeal, R. 2:6-1(a)(1)(I).

We recognize plaintiff appears as a self-represented litigant. We note plaintiff's failure to comply with the Rules because the record presented renders it difficult to precisely set forth the pertinent facts and, as we explain, prevents proper review of the argument plaintiff asserts in support of the appeal. Given the limitations imposed by the scant record, we endeavor to set forth the facts and procedural history, giving plaintiff the benefit of a broad, but fair, reading of the record presented.

Plaintiff filed a complaint alleging defendants wrongfully transferred and paid to a third party, Gisela Carino, commissions for insurance services plaintiff claimed were due him.¹ Plaintiff asserted causes of action for breach of contract, breach of his contract rights as an alleged third-party beneficiary, and breach of the covenant of good faith and fair dealing.² Defendants later moved for

¹ Plaintiff's complaint avers he settled his claims against Gisela Carino.

² We summarize the claims asserted in the complaint included in defendants' appendix to their brief on appeal that defendants represent is the operative complaint in this matter, which bore Docket No. CAM-L-4685-17 in the trial court. We note plaintiff's appendix includes a different complaint in a different matter bearing Docket No. CAM-L-1815-15. We do not address the allegations in the complaint bearing Docket No. CAM-L-1815-15 because plaintiff does not appeal from any orders in that matter and, as a result, the allegations in the complaint in that matter are not before us. See Park Crest Cleaners, LLC v. A Plus Cleaners & Alterations, Corp., 458 N.J. Super. 465, 472 (App. Div. 2019) ("A party's failure to seek review of cognizable trial court orders or

summary judgment.³ The court granted defendants' summary judgment motion, entered an April 9, 2020 memorializing order, and dismissed plaintiff's complaint with prejudice.

Plaintiff subsequently moved to vacate the April 9, 2020 order pursuant to Rule 4:50-1(b), apparently asserting the summary judgment order should be vacated based on what he claimed was newly discovered evidence — tax forms showing payment information he asserted undermined the court's summary judgment award to defendants.⁴ It appears the court denied plaintiff's motion in part because plaintiff filed the motion beyond the one-year deadline set forth in Rule 4:50-2, but also because plaintiff failed to demonstrate under Rule 4:50-1(b) that the proffered tax forms "by due diligence could not have been discovered in time to move for a new trial under [Rule] 4:49." The court entered

determinations . . . by identifying them in the notice of appeal" deprives a reviewing court of jurisdiction over the admitted order).

³ The summary judgment motion record is not included in the record presented on appeal.

⁴ The record submitted to the court in connection with plaintiff's motion to vacate the summary judgment order is not included in the record on appeal. We summarize the motion proceeding, as best we can, based on the parties' arguments and the motion court's description of those proceedings in the subsequent proceedings on plaintiff's motion for reconsideration.

a July 23, 2021 order denying plaintiff's motion to vacate the summary judgment order and reinstate plaintiff's complaint.

Plaintiff moved for reconsideration of the July 23, 2021 order.⁵ It does not appear the court heard argument on the motion. The record on appeal, however, includes a transcript of the court's bench opinion on the motion. The court noted plaintiff claimed the court erroneously denied his motion to vacate the summary judgment order based on an alleged clerical error in the court clerk's office concerning the motion's filing date. Plaintiff argued the error resulted in the court's incorrect conclusion plaintiff did not timely file his motion to vacate the summary judgment order within the one-year period allowed under Rule 4:50-2 for the filing of motions to vacate a final order based on newly discovered evidence under Rule 4:50-1(b).⁶

The motion court rejected plaintiff's argument, explaining that based on its review of the record, including the transcript of the prior proceeding during

⁵ Plaintiff did not include the motion papers filed by the parties in connection with the motion for reconsideration of the July 23, 2021 order.

⁶ Under Rule 4:50-1(b), a court may relieve a party from a final judgement or order by reason of "newly discovered evidence which would probably alter the judgment or order and which by due diligence would not have been discovered in time to move for a new trial under [Rule] 4:49." A motion for relief from a judgment under Rule 4:50-1(b) must be made "not more than one year after the judgment . . . was entered or taken." R. 4:50-2.

which the court denied the motion to vacate the summary judgment order, the denial of the motion to vacate under Rule 4:50-1 was not based solely on the alleged untimeliness of that motion. The motion court explained the judge who entered the July 23, 2021 order denying plaintiff's motion to vacate the summary judgment order

did not deny plaintiff's motion based on a technicality or merely because plaintiff did not file in a timely manner as plaintiff is once again suggesting.

The [c]ourt had denied plaintiff's motion to reopen his case in accordance with [Rule] 4:50-1 and [Rule] 4:50-2. The [c]ourt had found not only that the motion was not timely but that plaintiff had failed to demonstrate due diligence during the initial litigation, which meant 624 days of discovery and 7 discovery extensions. And plaintiff's efforts to dig out files is not (inaudible) due diligence to be demonstrated under the rule, nor was it a reason to reinstate this case.

The motion court also found the documents upon which plaintiff relied did not constitute newly discovered evidence warranting vacatur of the summary judgment order under Rule 4:50-1(b). The court further found "the documents in question would not have caused a different outcome because the years at issue in this case are different than the documents plaintiff is stating."⁷ Thus, the court

⁷ In support of its determination, the court cited to the transcript of the hearing on plaintiff's motion to vacate the summary judgment order, as well as to a

concluded plaintiff did not demonstrate the July 23, 2021 order denying his motion to vacate the summary judgment order "was palpably incorrect, irrational[,] or the [c]ourt failed to consider or appreciate the . . . significance of probative competent evidence."

The court entered a December 3, 2021 order denying plaintiff's motion for reconsideration of the July 23, 2021 order. This appeal followed.

II.

We review a trial court's order on a reconsideration motion for an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Gold Tea Spa, Inc. v. PD Nail Corp. et al., ___ N.J. Super. ___, ___ (App. Div. 2023) (slip op. at 6). Reconsideration under Rule 4:49-2 "is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue" Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). Reconsideration is limited to "those cases which fall into that narrow corridor in which either 1) the [c]ourt expressed its decisions based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent

transcript of plaintiff's deposition testimony. Plaintiff does not include either transcript in the record on appeal.

evidence." Ibid. (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

"Thus, a trial court's reconsideration decision will be left undisturbed unless it represents a clear abuse of discretion." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015). "An abuse of discretion 'arises when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'"" Ibid. (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

Here, plaintiff argues on appeal the court erred by denying his motion for reconsideration of the July 23, 2021 order based on the singular claim the July 23, 2021 order was based on the erroneous conclusion he submitted the tax forms he claimed constituted newly discovered evidence supporting his motion to vacate the summary judgment order under Rule 4:50-1(b) beyond the one-year period permitted under Rule 4:50-2. We reject the argument for two separate but equally dispositive reasons.

First, we cannot properly consider plaintiff's argument because he does not provide the motion papers submitted in support of the motion to vacate the summary judgment order pursuant to Rule 4:50-1(b), and the record is otherwise

bereft of the motion papers submitted to the court in connection with the motion for reconsideration of the July 23, 2021 order. "We are not 'obliged to attempt review of an issue when the relevant portions of the record are not included.'" State v. D.F.W., 468 N.J. Super. 422, 447 (App. Div. 2021) (quoting Cnty. Hosp. Grp., Inc. v. Blume Goldfadden Berkowitz Donnelly Fried & Forte, PC, 381 N.J. Super. 119, 127 (App. Div. 2005)). Those are the precise circumstances under which plaintiff seeks our review of his argument on appeal.

Second, the motion court rejected the identical argument plaintiff presents on appeal that the denial of his motion to vacate the summary judgment order was based solely on the alleged untimeliness of his Rule 4:50-1(b) motion. As noted, the court found plaintiff's Rule 4:50-1(b) motion was properly denied based on reasons unrelated to the timeliness issue. The court determined plaintiff's Rule 4:50-1(b) motion was correctly denied because plaintiff failed to demonstrate the purported newly discovered evidence could not have been timely obtained through the exercise of due diligence as required under the Rule, and the documents upon which plaintiff relied would not have changed the outcome of the summary judgment motion. See, e.g., Quick Chek Food Stores v. Twp. of Springfield, 83 N.J. 438, 445 (1980) (explaining a party seeking relief from a judgment based on newly discovered evidence must demonstrate "the

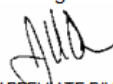
evidence would probably have changed the result, that it was unobtainable by the exercise of due diligence for use at the trial, and that the evidence was not merely cumulative.").

Missing from plaintiff's arguments on appeal is any claim the motion court erred in making those determinations, or that the court's reliance on those determinations resulted in an abuse of the court's discretion in its denial of the reconsideration motion. And, based on our review of the limited record presented on appeal, we discern no basis to conclude the court's denial of the reconsideration motion constitutes an abuse of discretion. Plaintiff otherwise fails to demonstrate the court abused its discretion and offers no basis supporting a reversal of the court's December 3, 2021 order.

To the extent we have not expressly addressed any of plaintiff's arguments, we find they are without 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