SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2281-21

LESLIE J. DEANS,

Plaintiff-Appellant,

v.

VISTA 2016 LLC,

Defendant-Respondent.

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Submitted March 28, 2023 – Decided June 14, 2023

Before Judges Messano and Gilson.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-3110-20.

Safren & Weinberg, LLP, attorneys for appellant (Jonathan H. Kaplan, on the brief).

CP Law Group, attorneys for respondent (Jill Cantor-Burns, on the brief).

PER CURIAM

Plaintiff Leslie J. Deans appeals from a March 4, 2022 order denying her motion to vacate the dismissal of her action and to reinstate her complaint

against defendant Vista 2016 LLC. Plaintiff's complaint was dismissed after she and her counsel had failed to appear for a court-ordered arbitration, a no cause of action had been awarded to defendant, and plaintiff had failed to request a trial de novo. Because plaintiff failed to demonstrate extraordinary circumstances to support her untimely request for arbitration, we affirm.

Plaintiff filed a complaint on September 20, 2020, alleging that she slipped, fell, and was injured while walking in defendant's parking lot. On November 30, 2021, plaintiff and her counsel failed to appear at a court-ordered arbitration scheduled in accordance with Rule 4:21A-1. The record establishes the following timeline concerning the notices of the arbitration:

1. On October 6, 2021, all counsel were sent an email notifying them that the arbitration had been scheduled for November 30, 2021.

2. Before the arbitration took place, all counsel were sent, via email, a link to join the arbitration by a video conference using a Zoom meeting.

3. On November 29, 2021, all counsel were sent an email reminding them of the start time for the arbitration hearing the next day.

4. That same day, counsel for plaintiff and defendant were sent an email from the arbitrator requesting their arbitration statements.

5. Defendant's counsel responded via email by submitting an arbitration statement and copying plaintiff's counsel on that email response.

6. On November 30, 2021, defendant's counsel appeared for the arbitration but neither plaintiff's counsel nor plaintiff appeared. The arbitrator called plaintiff's counsel's office but got no response.

7. All the notices that had been sent to plaintiff's counsel via email were sent to the email address he regularly uses for email correspondence.

The arbitration was conducted without plaintiff or her counsel. Based on the submission presented at the arbitration, the arbitrator made an award in favor of defendant and effectively entered a no cause of action award. In making that award, the arbitrator found no fault by defendant and awarded no damages to plaintiff. The following day, on December 1, 2021, notice of the arbitration award and a link to the award were emailed to all counsel, including plaintiff's counsel.

Plaintiff did not request a trial de novo within thirty days of the arbitration award. Neither party moved to confirm the arbitration award or enter a judgment on that award within fifty days of the arbitration. Consequently, on January 20, 2022, the trial court dismissed plaintiff's action in accordance with Rule 4:21A-

6(b). Notice of that dismissal was sent to all counsel via an eCourts notification the next day.

On February 7, 2022, plaintiff moved to vacate the dismissal and reinstate her complaint. In support of that motion, plaintiff's counsel submitted a certification stating that (1) he "never received prior notice from the court of the date and time for the arbitration hearing"; (2) "at the time the arbitration was conducted [he] was out of his office attending an in person arbitration in the Court of Common Pleas for Philadelphia County"; (3) he "never filed for trial de novo within thirty (30) days of the filing of the arbitration award"; and (4) he "did not learn of the arbitration decision in [d]efendant's favor until February 1, 2022, when he looked at the court's docket to check the status of the case and saw the case had been dismissed." Based on her attorney's certification, plaintiff argued that she had shown good cause to vacate the dismissal of the action, to reinstate the complaint, and to have a new "non-binding arbitration."

The trial court heard argument on the motion on March 4, 2022. That same day, the court denied the motion, explaining the reasons on the record and entering an order. The trial court confirmed with plaintiff's counsel that his email address was the same email address used to send all the notifications. The court also found that the record established that the arbitrator had called

plaintiff's counsel's office on the day of the arbitration and neither plaintiff's counsel nor anyone else from his office ever followed up on that direct contact. Based on those indisputable notices, the trial court found that plaintiff's counsel had not shown excusable neglect and that, even under a more relaxed standard, plaintiff had not shown the circumstances for vacating the dismissal.

On appeal, plaintiff argues that the trial court erred and failed to follow our decision in Sprowl v. Kitselman, 267 N.J. Super. 602 (App. Div. 1993). We disagree and affirm.

Rule 4:21A-1 provides for mandatory arbitration for certain types of cases, including personal injury actions. R. 4:21A-1(a)(2). The only exception to the arbitration of personal injury actions are actions involving professional malpractice or product liability. Ibid.

Rule 4:21A-4 requires the appearance of all parties at the arbitration hearing and provides that "[i]f the party claiming damages does not appear, that party's pleadings shall be dismissed." R. 4:21A-4(f). Rule 4:21A-6(b) goes on to provide that an order shall be entered dismissing the action following the filing of the arbitration award, unless (1) within thirty days a demand for a trial de novo is filed; or (2) within fifty days the parties submit a consent order

settling the matter; or (3) within fifty days any party moves to confirm the arbitration award and for entry of a judgment on the award.

The purpose of Rule 4:21A-6(b)(1) "is to require a prompt demand for a trial de novo in cases subject to mandatory arbitration." Corcoran v. St. Peter's Med. Ctr., 339 N.J. Super. 337, 344 (App. Div. 2001). The thirty-day deadline is meant "to 'ensure[] that the court will promptly schedule trials in cases that cannot be resolved by arbitration.'" Vanderslice v. Stewart, 220 N.J. 385, 392 (2015) (alteration in original) (quoting Nascimento v. King, 381 N.J. Super. 593, 597 (App. Div. 2005)). Accordingly, we have cautioned:

> [W]hen neither party has made a timely motion for a trial de novo, the court's power to extend the timeframe [under Rule 4:21A-6] "must be sparingly exercised with a view to implementing both the letter and the spirit of the compulsory arbitration statute and the rules promulgated pursuant thereto, to the end that the arbitration proceedings achieve finality."
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> [Martinelli v. Farm-Rite, Inc., 345 N.J. Super. 306, 310 (App. Div. 2001) (quoting Mazakas v. Wray, 205 N.J. 367, 372 (App. Div. 1985)).]

Although courts "possess the power to enlarge" the thirty-day period to file a demand for a trial de novo, "such power should be exercised only in extraordinary circumstances." Mazakas, 205 N.J. Super. at 371. The party seeking relief must prove that the circumstances for missing the filing deadline

were "exceptional and compelling" and did not arise from an attorney's carelessness or lack of due diligence. Hartsfield v. Fantini, 149 N.J. 611, 618-19 (1997) (quoting Baumann v. Marinaro, 95 N.J. 380, 393 (1984)).

Here, the record establishes that plaintiff's counsel was sent four different notices of the arbitration before it was conducted. While plaintiff's counsel contends that he did not receive those notices, he admitted that the notices were sent to his email address, and he provided no explanation of why he did not access those emails. Moreover, on the day of the arbitration, the arbitrator called plaintiff's office, but no one ever responded to that call.

Given those facts, we discern no abuse of discretion in the trial court's decision to deny plaintiff's motion to vacate the dismissal of her action. An attorney's lack of diligence or inadvertent failure to act timely, is generally insufficient to satisfy the circumstances requiring relief from an arbitration award. See Hartsfield, 149 N.J. at 619 (explaining that "an attorney's failure to supervise staff or heavy workload [is] insufficient to satisfy the 'extraordinary circumstances' requirement").

In seeking to overturn the denial of the motion to vacate the dismissal, plaintiff relies almost exclusively on our decision in Sprowl. That case is distinguishable because it involved "an unimpeached representation that

plaintiffs' counsel had no notice of the arbitration hearing." 267 N.J. at 609-10. Based on that undisputed fact, we held that the party seeking a new arbitration hearing did not have to meet the extraordinary circumstances standard that otherwise governs. Id. at 610. Importantly, we went on to state that trial courts "may apply a more relaxed standard in dealing with applications for relief from the fifty-day dismissal provisions of R. 4:21A-6(b), when such relaxation promotes the finality of an arbitration award." Ibid.

Plaintiff's requests to vacate the dismissal and for a new arbitration do not promote the finality of the arbitration award. Indeed, granting those requests would have the opposite effect because plaintiff is seeking to vacate the arbitration award that was made. Moreover, plaintiff has not shown the circumstances justifying relief from the clear provisions of the Rule even under a "more relaxed standard."

Affirmed.