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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3661-21**

ARELIS RODRIGUEZ,

Plaintiff-Appellant,

v.

**SHONTA SINGLETON and
JOESPH BEZICK,**

Defendants-Respondents.

Argued October 18, 2023 – Decided October 27, 2023

Before Judges Susswein and Vanek.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-1997-20.

Eric D. Dakhari argued the cause for appellant (Hinson Snipes, LLP, attorneys; Tracey C. Hinson and Eric D. Dakhari, on the briefs).

Margaret Wessner argued the cause for respondents (Law Office of Michael G. David, attorneys; Margaret Wessner, on the brief).

PER CURIAM

On October 24, 2018, plaintiff Arelis Rodriguez was involved in a two-vehicle accident with a car driven by defendant Joseph Bezick and owned by defendant Shonta Singleton. Plaintiff filed a complaint on November 6, 2020 asserting that defendants' negligent and reckless conduct with respect to the accident caused her to sustain physical injuries. The trial judge granted defendants' motion to dismiss plaintiff's complaint with prejudice for failure to state a claim because the complaint was filed after the expiration of the statute of limitations. We affirm.

In moving to dismiss the complaint with prejudice, defendants asserted that since the accident occurred on October 24, 2018, plaintiff's claim was filed thirteen days after the two-year statute of limitations had expired. In opposing the motion, plaintiff argued that the statute of limitations for her personal injury claim expired on December 19, 2020 because in the Fourth Omnibus Order, the Supreme Court added fifty-six days to all statutes of limitations that ran through the period from March 16, 2020 to May 10, 2020.

Following oral argument, the trial court granted defendants' motion to dismiss with prejudice. A memorializing order was filed on June 30, 2021. The trial court found that the statute of limitations in this case had expired on October 24, 2020 based upon the two-year statute of limitations under N.J.S.A. 2A:14-

2(a). Since plaintiff's complaint was filed thirteen days later, the trial court found the action was time-barred.

Plaintiff filed a timely motion for reconsideration which was denied in a written decision issued on July 27, 2022. The court found plaintiff had not shown that its decision was based upon a palpably incorrect or irrational basis or that the court failed to appreciate the significance of probative, competent evidence as required for the court to reconsider its decision under Rule 4:49-2.

The trial court cited to our decision in Barron v. Gersten, 472 N.J. Super. 572 (App. Div. 2022), as a basis for rejecting plaintiff's claim that the Supreme Court's omnibus orders had extended statutes of limitations for fifty-six days due to the COVID-19 pandemic. The court further found that the Fourth Omnibus Order established that the period from March 16 through May 10, 2020 was a legal holiday consistent with Barron.

On appeal, plaintiff renews the assertion that the Supreme Court's Fourth Omnibus Order issued on June 11, 2020 added fifty-six days to all statutes of limitations that ran through the period from March 16, 2020 to May 10, 2020. Plaintiff further argues that any ambiguity in the language of the Fourth Omnibus Order must be construed in favor of extending the statute of limitations in this case and, in the alternative, the doctrine of equitable tolling should be

applied. Plaintiff does not dispute that the two-year statute of limitations in N.J.S.A. 2A:14-2(a) applies to her cause of action.

We review de novo a decision to dismiss a complaint as barred by a statute of limitations. Smith v. Datla, 451 N.J. Super. 82, 88 (App. Div. 2017) (finding that "when analyzing pure questions of law raised in a dismissal motion, such as the application of a statute of limitations, we undertake a de novo review").

A trial court's decision on a motion for reconsideration pursuant to Rule 4:49-2 shall be disturbed on appeal only if we find an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). To this end, reversal of the trial court is only proper when we find that there has been a manifestly unjust exercise of discretion under the circumstances. Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011). "A court abuses its discretion when its 'decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" State v. Chavies, 247 N.J. 245, 257 (2021) (quoting State v. R.Y., 242 N.J. 48, 65 (2020)) (internal quotation marks omitted).

We first address plaintiff's argument that the Supreme Court's Fourth Omnibus Order added an additional fifty-six days to the statute of limitations

for filing the complaint. In Barron, we rejected that argument, holding the orders do not add days to any statute of limitations, but rather treated the relevant time period as a legal holiday.

In Barron, we considered the language in four omnibus orders, including the Fourth Omnibus Order which "affirms the provisions of the Court's prior orders." 472 N.J. Super. at 579-80. We found that the Fourth Omnibus Order "gave no indication that it was amending or revising its prior omnibus orders as to the computation of time" or that the Court intended anything different in the fourth order than it had ordered in the first and subsequent COVID-19-related orders. Id. at 580. We determined that the Supreme Court had directed that the entirety of the period that fell within the scope of those orders collectively to be a legal holiday and that they "did not have the effect of adding days to any statute of limitations." Id. at 579.

We disagree with plaintiff's contention that there is ambiguity in the language of the omnibus orders that must be construed in plaintiff's favor. The interpretation of the plain language of the omnibus orders, as it pertains to their effect on statutes of limitations, was already decided by this court in Barron. The plaintiff in Barron was not entitled to extra time to file a complaint under the Fourth Omnibus Order.

We similarly find in this case that plaintiff's complaint was appropriately dismissed by the trial court as time-barred. Plaintiff's accident occurred on October 24, 2018. Accordingly, plaintiff had until October 24, 2020 to file the complaint under N.J.S.A. 2A:14-2(a). Plaintiff's complaint was not filed until November 6, 2020, two years and thirteen days after the accident. Under Barron, the Fourth Omnibus Order establishing a legal holiday several months prior does not extend plaintiff's statutory deadline for commencing litigation.

We turn to plaintiff's assertions regarding equitable tolling. We review a trial court's decision regarding equitable remedies for an abuse of discretion. See Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354 (1993). We are satisfied that the trial court properly found the remedy of equitable tolling was inapplicable under these circumstances.

A court may equitably toll a statutory limitations period "under very limited circumstances." Barron, 472 N.J. Super. at 577. The remedy may be appropriate "(1) [if] the defendant has actively misled the plaintiff, (2) if the plaintiff has 'in some extraordinary way' been prevented from asserting his [or her] rights, or (3) if the plaintiff has timely asserted his [or her] rights mistakenly in the wrong forum." Ibid. (alterations in original) (quoting F.H.U. v. A.C.U., 427 N.J. Super. 354, 379 (App. Div. 2012)). "Absent a showing of intentional

inducement or trickery by a defendant, [equitable tolling] . . . should be applied sparingly and only in the rare situation where it is demanded by sound legal principles and in the interest of justice." Binder v. Price Waterhouse & Co., L.L.P., 393 N.J. Super. 304, 313 (App. Div. 2007) (quoting Freeman v. State, 347 N.J. Super. 11, 31 (App. Div. 2002)).

We find that plaintiff has not met the requirements to be afforded the extraordinary relief of equitable tolling. Plaintiff did not argue that equitable tolling was appropriate based upon the particular facts of this case under any of the limited circumstances recognized in Barron. Instead, plaintiff proffered a generalized assertion that the COVID-19 pandemic was in itself an unprecedented circumstance warranting equitable tolling.

Although all facets of life were affected by the COVID-19 pandemic generally, plaintiff has not presented specific facts to support any inability to file the complaint within the two-year statute of limitations. This is especially so given that plaintiff filed the complaint almost six months after the extended legal holiday ended on May 10, 2020 under the Fourth Omnibus Order. Accordingly, we find that there was no abuse of discretion by the trial court in determining that equitable tolling should not be applied in this case.

To the extent we have not addressed plaintiff's remaining arguments, 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.



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