SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0229-22

MAUREEN ROBINSON,

Plaintiff-Appellant,

v.

JACOB PLAWNER and
BENJAMIN PROMERANC,

Defendants-Respondents.

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Submitted May 14, 2024 – Decided June 3, 2024

Before Judges Smith and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. SC-000335-22.

Maureen Robinson, appellant pro se.

Respondents have not filed a brief.

PER CURIAM

Plaintiff Maureen Robinson appeals from an August 30, 2022 Special Civil Part judgment, entered following a bench trial, which dismissed with

prejudice her breach of contract claims against defendants Dr. Jacob Plawner and Dr. Benjamin Promeranc. Following our review of plaintiff's arguments, the record, and the applicable law, we affirm.

I.

We recite only the facts pertinent to the issues on appeal. In November 2021, plaintiff consulted defendants seeking dental services. On December 6, plaintiff executed a contract with defendants for a crown insertion, crown lengthening, and a "Valplast lower partial flex" denture. The total treatment estimate was $3,591.

After defendants began taking impressions to create the denture, it was discovered plaintiff's dental anatomy had a bony growth called a mandibular tori.[1] On January 4, 2022, Dr. Plawner advised that a different type of denture was better suited to accommodate the boney growth and recommended "a combination hybrid partial" denture with a "cast chromium bar." Plaintiff signed a contract modification memorializing: "I . . . understand that my lower partial will have a metal cast bar because I have a mandibular tori [and] by signing I

[1] Mandibular tori is a "common and harmless" condition consisting of a "rounded projection of bone . . . on the inner aspect of the mandible." Bernard J. Hennessy, Oral Growths, MSD MANUAL Professional Version (Jan. 2024), https://www.msdmanuals.com/professional/dental-disorders/symptoms-of-dental-and-oral-disorders/oral-growths.

agree to push forward with [the] final product." Dr. Promeranc testified that the hybrid denture was more expensive, but plaintiff was not charged an increased amount.

Defendants provided plaintiff a crown, charging $1,632, which she paid. On February 25, Dr. Plawner inserted the finished hybrid metal bar denture. After multiple adjustments, however, plaintiff advised it was uncomfortable. As the new owner of the practice, Dr. Promeranc offered to make a new Valplast flexi denture "from scratch" as originally contemplated in the initial contract. He testified to submitting new molds and covering the lab costs. Plaintiff returned three times in March before ceasing further services from defendants, never obtaining the new denture. Dr. Promeranc testified plaintiff was advised if she returned the original denture, he would refund "the monies that she paid for the denture and . . . the money to the insurance company."

Plaintiff testified she had signed the written contract modification but claimed not "all of the information" was explained to her. She acknowledged seeking a second opinion from another dentist and ultimately did not finish her services with defendants, reasoning: "if you go to someone and they're not treating you in the manner which you feel that you should be treated as a patient, are you going to go back?" Plaintiff attempted to testify regarding the new

dentist's opinion that the denture "was not Valplast," and relayed she "hired them to make another denture, which cost . . . $716." The trial judge precluded the testimony regarding what another dentist "told [plaintiff,] which [wa]s hearsay." Plaintiff explained she filed a breach of contract complaint seeking $3,591 because she "wanted [her] money back" and admittedly "refused to return [the denture] . . . unless the judge" told her "to return it."

After trial, the judge entered judgment in favor of defendants, finding plaintiff failed to satisfy her burden of proving a breach of contract. In an oral opinion, the judge found the dental contract was modified to provide a new hybrid metal bar denture, accommodating plaintiff's bony growth. The judge noted when plaintiff expressed dissatisfaction with the denture, defendants agreed to fix the issue with a new denture. Plaintiff, however, never "finished the process[], get[ting] what she paid for." The judge reasoned that while plaintiff allegedly did not understand the change to the lower partial denture, she did not dispute signing the contract modification. Concluding plaintiff failed to meet her burden of proof, the judge found: the "contract was amended, you weren't happy, you were given an option to come back to finish it, at no cost to you[,] . . . and you chose not to follow through with the original version of the contract. You breached your responsibility."

On appeal, plaintiff argues the judge erred in: ruling in favor of defendants; relying on defendants' documentary evidence; and failing to consider her created "evidentiary memo" and hearsay testimony.

II.

We begin by recognizing the well-established standard of review of an appeal from a bench trial. We "review a 'trial court's determinations, premised on the testimony of witnesses and written evidence at a bench trial, in accordance with a deferential standard.'" Nelson v. Elizabeth Bd. of Educ., 466 N.J. Super. 325, 336 (App. Div. 2021) (quoting D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013)). Ordinarily, "[t]he scope of [our] review of a trial court's fact-finding function is limited." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting Cesare v. Cesare, 154 N.J. 394, 411 (1998)). "[W]e defer to the trial court's credibility determinations, because it '"hears the case, sees and observes the witnesses, and hears them testify," affording it "a better perspective than a reviewing court in evaluating the veracity of a witness."'" City Council of Orange Twp. v. Edwards, 455 N.J. Super. 261, 272 (App. Div. 2018) (quoting Gnall v. Gnall, 222 N.J. 414, 428 (2015)). We will "'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported

by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg v. Township of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

To prevail on a breach of contract claim, a plaintiff must prove by a preponderance of the evidence:

> [F]irst, that "[t]he parties entered into a contract containing certain terms"; second, that "plaintiff did what the contract required [her] to do"; third, that "defendant[s] did not do what the contract required [them] to do," defined as a "breach of the contract"; and fourth, that "defendant[s'] breach, or failure to do what the contract required, caused a loss to the plaintiff."
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> [Globe Motor Co. v. Igdalev, 225 N.J. 469, 482 (2016) (first, third, fourth, and fifth alterations in original) (quoting Model Jury Charge (Civil), 4.10A, "The Contract Claim—Generally" (approved May 1998)).]

"The plain language of the contract is the cornerstone of the interpretive inquiry; 'when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement as written, unless doing so would lead to an absurd result.'" Barila v. Bd. of Educ. of Cliffside Park, 241 N.J. 595, 616 (2020) (quoting Quinn v. Quinn, 225 N.J. 34, 45 (2016)). "A contract modification is 'a change in one or more respects which introduces new elements into the details of a contract and cancels others but leaves the general

purpose and effect undisturbed.'" Wells Reit II-80 Park Plaza, LLC v. Dir., Div. of Tax'n, 414 N.J. Super. 453, 466 (App. Div. 2010) (quoting Int'l Bus. Lists, Inc. v. Am. Tel. & Tel. Co., 147 F.3d 636, 641 (7th Cir. 1998)). After forming the contract, the parties "may, by mutual assent, modify it." County of Morris v. Fauver, 153 N.J. 80, 99 (1998). "The interpretation of a contract is generally subject to de novo review." Arbus, Maybruch & Goode, LLC v. Cogen, 475 N.J. Super. 509, 515 (App. Div. 2023).

III.

Plaintiff's contention that the judge erred in determining a breach of contract claim was unsubstantiated is unsupported by the record. Plaintiff admits signing the contract modification but maintains she did not understand it was for a different denture. Notably, the modification explicitly provides for a denture with "a metal cast bar." Relevantly, plaintiff acknowledged that on February 25, 2022, after she was unhappy with the hybrid denture, defendants agreed to make a new replacement "Valplast denture at no cost" and a "preliminary impression" was sent to the lab. However, plaintiff failed to avail of receiving the replacement denture.

We reject plaintiff's contention that defendants breached their agreement because when she returned six days after the new impression was taken, "there

was no replacement denture ready." Plaintiff's argument is unavailing because she canceled her final appointment and refused to return the original denture despite knowing that if it was returned, a refund would have been given. The judge's finding that plaintiff "failed to show . . . that the contract was breached by" defendants is supported by the credible evidence in the record. According deference to the judge's well-supported factual findings, and reviewing the questions of law de novo, we discern no error.

As plaintiff's additional arguments were not raised before the judge, which would have provided an opportunity for the issues to be addressed and a record to be created, we could decline to address them. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973); see also Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (recognizing claims that are not presented to a trial court are inappropriate for consideration on appeal). However, having considered plaintiff's remaining contentions for the sake of completeness, we conclude they lack sufficient merit to warrant expanded discussion in a written opinion, R. 2:11-3(e)(1)(E), and add only the following comments.

We discern no abuse of discretion in the judge's evidentiary rulings. It is well established "evidentiary rulings 'are reviewed under the abuse of discretion standard because, from its genesis, the decision to admit or exclude evidence is

one firmly entrusted to the trial court's discretion.'" State v. Prall, 231 N.J. 567, 580 (2018) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)). Under this deferential standard, a trial court's evidentiary rulings are reviewed only for "a clear error of judgment." Belmont Condo. Ass'n v. Geibel, 432 N.J. Super. 52, 95 (App. Div. 2013) (quoting State v. Marrero, 148 N.J. 469, 484 (1997)). We conclude the judge was within her discretion to decline the admission of plaintiff's "provide[d] . . . synopsis of what . . . happen[ed] with the case." See N.J.R.E. 802; see also Neno v. Clinton, 167 N.J. 573, 580 (2001) ("A prior consistent statement offered [solely] to bolster a witness' testimony is inadmissible." (alteration in original) (quoting Palmisano v. Pear, 306 N.J. Super. 395, 402 (App. Div. 1997))). Further, the judge appropriately declined to admit plaintiff's hearsay testimony regarding what another dentist stated. See N.J.R.E. 802. Finally, the judge did not err in admitting the signed contract modification and plaintiff's patient "Dentrix Computerized Ledger." See N.J.R.E. 803(c)(6) (permitting the admission of "[a] statement contained in writing" that was "made in the regular course of business").

Affirmed.