SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1406-22

GIANINA ROJAS,

Plaintiff-Appellant,

v.

MICHAEL DREHER,
KATHLEEN FELICCIA,

Defendants-Respondents,

KATHLEEN FELICCIA,

Defendant-Third Party
Plaintiff,

v.

ANTHONY FRANCO'S
PIZZERIA,

Third-Party Defendant.

Argued April 30, 2024 – Decided May 28, 2024

Before Judges Natali and Bergman.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-5549-19.

Kevin C. Decie argued the cause for appellant (Birkhold & Maider, LLC, attorneys; Kevin C. Decie, of counsel and on the brief).

Daniel J. Pomeroy argued the cause for respondent (Pomeroy, Heller, Ley, DiGasbarro & Noonan, LLC, attorneys; Daniel J. Pomeroy and Karen E. Heller, on the brief).

PER CURIAM

Plaintiff Gianina Rojas appeals from a December 16, 2022 order that denied her motion to reinstate her complaint as well as her request for substituted service on defendant Kathleen Feliccia's insurance carrier, New Jersey Manufacturer's Insurance Company (NJM). After a thorough review of the record and the applicable legal principles, we reverse and remand for further proceedings as set forth in this opinion.

I.

In her July 2019 complaint, plaintiff alleged defendant Michael Dreher was negligent in the operation of an automobile owned by Feliccia on Route 17 in Paramus. She specifically asserted Dreher negligently operated his vehicle, causing it to strike her vehicle resulting in her sustaining significant bodily injuries.

Plaintiff effectuated personal service of the complaint on Feliccia, but she was unable to successfully serve Dreher. The police report from the accident indicated that Dreher resided in Florida and provided his Florida address obtained from his driver's license.

In August 2019, plaintiff attempted to serve Dreher personally at the Florida address listed on the police report and an affidavit of non-service was returned which stated defendant was not known at that address and the current tenant had resided there for two years. Plaintiff tried to personally serve Dreher again in October 2019 at a different apartment at the same Florida address, but the affidavit of non-service indicated the leasing office informed the process server that Dreher had moved out "long ago", and no forwarding address was available.

That same month, both Feliccia and Dreher filed an answer, third-party complaint and civil case information statement (CIS). The first page of the answer, attorney signature page and CIS all stated the pleading was filed on behalf of both defendants, including Dreher. The body of the answer, however, inconsistently stated it was provided only on behalf of Feliccia. The court accepted the answer in its filing system for both defendants and also entered defense counsel's appearance for both defendants.

Thereafter, asserting he mistakenly believed Dreher had answered the complaint and was joined, plaintiff's counsel made no further attempts to locate or serve the complaint on Dreher until sometime in February 2022. During this time period Feliccia's counsel disclosed a "typo" had mistakenly included Dreher in the filed answer and she did not represent Dreher since he was not yet served with plaintiff's complaint. Counsel for Feliccia formally informed the court of the error by a letter dated February 28, 2022, more than two years after the initial answer was filed.

Based on instructions from the court, on March 2, 2022 counsel for Feliccia filed an amended answer and third-party complaint, removing Dreher as an answering party. This effectively made him an unserved defendant who was no longer joined in the litigation, which had been pending for over two- and one-half years at that point.

On February 7, 2022, prior to Feliccia's amended answer being filed, plaintiff submitted a postal request for Dreher's change of address information in Florida. The response to this request is not in the record.

On March 4, 2022, two days after the amended answer was filed, Feliccia filed a motion for summary judgment requesting the dismissal of the complaint with prejudice due to her lack of agency with Dreher, the operator of the vehicle.

Plaintiff did not oppose this motion, but on March 24, 2022 she filed a separate motion for substituted service on Dreher through NJM. In her motion, plaintiff included evidence of the two previous 2019 service attempts and the new February 2022 postal search. Feliccia opposed the motion arguing a lack of sufficient diligent inquiry to locate and serve Dreher on plaintiff's part.

The court granted Feliccia's unopposed motion for summary judgment and an order was entered on April 6, 2022 dismissing the complaint with prejudice against her only. The parties agree at approximately the same time as the dismissal of the complaint against Feliccia, the complaint against Dreher was also dismissed, but according to the parties, for different reasons.

Feliccia claims there was a trial listing on April 11, 2022, for which plaintiff failed to appear or request an adjournment, leading to a dismissal of the complaint without prejudice as against Dreher. Plaintiff claims her complaint against Dreher was mistakenly dismissed by the court clerk as part of the April 6, 2022 order which, as noted, granted summary judgment to Feliccia only. The April 6 order does not address Dreher in any way and there is no order dismissing the complaint against Dreher in the record which would shed light on the circumstances leading to the reason for the dismissal. The record provides evidence the plaintiff's motion for substituted service remained

pending on the date of the April 6, 2022 order, and at the time of the trial date on April 11, 2022.

Plaintiff's motion for substituted service was heard and after oral argument, the court denied her motion without prejudice for reasons stated on the record. In summary, the judge found that plaintiff did not fulfill the diligent inquiry requirement of Rule 4:4-4 by the two service attempts made in August and October, 2019 and by the postal search form sent out to determine Dreher's address in Orlando, Florida; did not diligently prosecute the case as evidenced by her counsel's lack of pursuit of any discovery from Dreher; did not diligently review the answer filed by defendant(s) as a review would have shown defense counsel was only representing Feliccia; and further found plaintiff has only "turn[ed] its [sights] to the vehicle driver to correct the procedural deficiencies that existed all along since…2019 when plaintiff filed her complaint." The judge found "to reopen this litigation [and] reassign a new discovery [end] date and basically turn back the clock [would be] denied. Th[e] [reinstatement motion was] not permitted by rule, and [she could] not grant this relief with a clear [conscience]."

An order was entered on the same date denying the plaintiff's motion for substituted service without prejudice. There is no indication in the judge's oral

decision that plaintiff's complaint had been dismissed previously. The order entered from the motion did not reference the complaint was dismissed as against Dreher.

On June 2, 2022, plaintiff filed a motion to reconsider the May 13, 2022 order. In support, she provided proof of additional attempts to locate and serve Dreher made between the filing date of her prior motion on March 24, 2022 and the June 2, 2022 filing date for her motion for reconsideration. The additional information consisted of an affidavit of non-service detailing an attempt to personally serve Dreher at his mother's address in Beach Haven on May 17, 2022. Dreher's mother represented he did not live there and would not provide a forwarding address.

Additionally, plaintiff included a request for information from the Motor Vehicle Commission of New Jersey (NJMVC) from May 19, 2022. The results of this search revealed that the records available as of May 18, 2022 indicated Dreher was licensed in New Jersey and had a mailing address in Brant Beach. Feliccia, who was previously dismissed with prejudice, filed opposition to the motion for reconsideration.

Additionally, plaintiff's counsel filed a certification in support of the motion for reconsideration which stated the prior April 6, 2022 order mistakenly

dismissed the plaintiff's complaint as against Dreher, which was erroneous and the complaint should be reinstated as no basis existed for his dismissal as part of the prior summary judgment motion concerning only Feliccia.

A different judge denied the motion for reconsideration by order of June 24, 2022, for reasons set forth in a written Rider. The judge analyzed the motion under Rule 4:49-2, finding the May 13, 2022 order and statement was not arbitrary or capricious. The judge further found that plaintiff's counsel "provid[ed] no new evidence of any further attempts to serve [d]efendant Dreher while litigation continued in this matter for almost three years." Again, despite plaintiff informing the court the complaint had been mistakenly dismissed as against Dreher, neither the court's decision nor order addressed this issue.

After the denial of her motion for reconsideration, on September 19, 2022, plaintiff's counsel made another unsuccessful attempt at personal service on Dreher at the Brant Beach address discovered from the earlier NJMVC search. On November 23, 2022, plaintiff filed a motion to reinstate her complaint and for substituted service of the complaint on Dreher through NJM. Plaintiff's counsel filed a certification outlining all the postal and NJMVC searches, addresses received from those searches and four non-service affidavits returned from the date of complaint to the filing date of the motion.

The court denied the motion under an order dated December 16, 2022. In its decision the court found

> Plaintiff's [m]otion for [s]ubstituted [s]ervice was denied by [the previous judge] on May 13, 2022. This [c]ourt denied [p]laintiff's motion for [r]econsideration of the aforementioned denial on June 24, 2022. Further, [p]laintiff's complaint was dismissed on April 6, 2022.
>
> Plaintiff failed to timely appeal any of the above motions and her attempted relitigation of these motions before this [c]ourt is precluded by the law of the case doctrine.

Plaintiff appeals from this order.

II.

Before us, plaintiff asserts the trial court erred in its December 16, 2022 order by denying both her motion to reinstate her complaint and motion for substituted service. Plaintiff argues the trial court's findings that (1) her failure to timely appeal the two prior orders denying her previous motions and (2) her motion was precluded from consideration by the law of the case doctrine were misapplications of the law. Plaintiff asserts the court failed to recognize the previous orders denying her motion for substituted service were entered without prejudice and were not final orders and the law of the case doctrine did not apply to her motion.

Defendant asserts the trial court's order denying plaintiff's third motion

for substituted service and reinstatement of her complaint was correct as the matter was over five years old and plaintiff still had not exhibited the required diligence to locate and serve Dreher.

We are satisfied the court erred in denying plaintiff's request to reinstate her complaint.[1] In this instance, neither party nor the record provides the specific reasons for the complaint's dismissal, inhibiting our review, since these reasons are pivotal in determining the applicable standard of review we must utilize.

"Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her [order]." Strahan v. Strahan, 402 N.J. Super. 298, 310 (App. Div. 2008) (quoting Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990)).

Nevertheless, although we are unable to specifically determine the reasons for the dismissed status of the plaintiff's complaint as against Dreher, based on the parties' arguments and our thorough analysis of the record, we conclude there are two possible reasons for the dismissal: (1) plaintiff failed to

[1] At oral argument before us, neither party was able to specifically identify an order, clerk notice or other document in the record which dismissed the complaint against Dreher or provided reasons for the dismissal. We assume since neither party to this appeal has argued the complaint was dismissed with prejudice as against Dreher, the entry of the dismissal was without prejudice.

appear at an April 11, 2022 trial date[2] and the trial call judge dismissed the matter, or (2) the motion judge or clerk mistakenly entered a dismissal status for Dreher as part of the April 6, 2022 summary judgment order dismissing only co-defendant, Feliccia.

We specifically address the factual and procedural history and the two possible reasons for the dismissed status of Dreher at the time of the trial court's December 16, 2022 order under appeal.

A.

Initially, we address the first scenario surrounding the dismissal if it was based on her failure to appear at the April 11, 2022 trial date.

The applicable rule pertaining to a party's failure to appear at trial is Rule 1:2-4(a), which provides in relevant part

> if without just excuse or because of failure to give reasonable attention to the matter, no appearance is made on behalf of a party . . . on the day of trial, . . . the court may order any one or more of the following: (a) the payment by the delinquent attorney or party or by the party applying for the adjournment of costs, in such amount as the court shall fix, . . . ; (b) the payment by the delinquent attorney or party or the party applying for the adjournment of the reasonable expenses, including attorney's fees, to the aggrieved party; (c) the dismissal of the complaint, cross-claim, counterclaim

[2] The record before us does not contain any order, notice to the parties or other document establishing a trial date for April 11, 2022.

> or motion, or the striking of the answer and the entry of judgment by default, or the granting of the motion; or (d) such other action as it deems appropriate.

We review the trial court's [dismissal] for [an] abuse of discretion. See Gonzales v. Safe & Sound Sec. Corp., 185 N.J. 100, 115 (2005). However, we cannot defer to a decision that is not supported by the record or otherwise rests "on an impermissible basis." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (citation omitted).

Although we are unable to fully discern from the record whether the plaintiff's complaint was dismissed for failure to appear at the trial listing on April 11, 2022 because no order, notice of dismissal or reasons for the dismissal were provided in the appeal record, we determine under the circumstances a dismissal on the listed trial date for plaintiff's failure to appear was not supported by the record since there are no reasons in the record providing the basis for the dismissal. Based on these reasons we determine there was a misapplication of discretion.

Initially, based on the amended answer filed by Feliccia, the only other defendant in the matter, Dreher had not been served and a motion filed by plaintiff for substituted service on Dreher was pending on the April 11, 2022 trial date. In short, no trial would have been possible because Feliccia had been

dismissed with prejudice five days earlier and Dreher, the only remaining defendant had not been served. We conclude, even if plaintiff had appeared, the trial could not have proceeded since there was no active defendant joined in the matter. The only possible reasonable outcome for the court would have been to adjourn the trial date until plaintiff's pending motion for substituted service was decided. We assume the judge calling the trial list on April 11, 2022 may not have been aware of the procedural status of the case due to the recent dismissal of Feliccia only five days earlier and Dreher being "un-joined" from the matter approximately one month earlier.

We can certainly understand the trial court's need to control its schedule and to enforce trial scheduling dates; however, the trial call judge had other options to address this scenario. Under Rule 1:2-4, the court could have imposed monetary sanctions for plaintiff's failure to appear at the trial date. We hasten to add the purpose of such sanctions is to provide incentive for compliance rather than to punish a litigant or attorney. We refer to monetary sanctions only to indicate that alternatives to dismissal of plaintiffs' complaint were available to the court. That is so, because of the lack of prejudice to any party since the only remaining defendant was not presently joined at the time of the April 11, 2022 trial date call and a motion for substituted

service on Dreher was pending for May 13, 2022. In addition, there are no proofs in the appeal record that a trial notice was sent to plaintiff which required her and her counsel's appearance on April 11, 2022.

The foregoing factual circumstances and legal arguments of plaintiff were not addressed in the trial court's written reasons in its December 16, 2022 order. The absence of any facts or reasons in the record that the dismissal of the plaintiff's complaint was for failure to appear, alone, was sufficient evidence in the record which supported the reinstatement of plaintiff's complaint. We determine in its December 16, 2022 order and decision, the trial court failed to address or recognize these factual and procedural circumstances and the failure to address these circumstances was a misapplication of its discretion.

B.

We now address the remaining possible reason for the dismissal of the complaint, being Dreher was mistakenly dismissed by the court or court clerk as part of the summary judgment dismissal order in favor of Feliccia. The judge's statement of reasons attached to the December 16, 2022 order states the complaint against Dreher was dismissed on April 6, 2022. We are uncertain as to the basis for this finding because the summary judgment motion and April 6 order only dismissed defendant, Feliccia.

Rule 1:13-1 permits clerical errors in judgments or orders to be corrected on the court's own initiative or on motion by a party. In this instance, plaintiff's complaint as against Dreher should have been reinstated due to a clerical error by the mistaken entry of a dismissal against him. On the face of the April 6, 2022 order, it clearly only concerned co-defendant Feliccia. If these factual circumstances were the reason for dismissal as against Dreher, the court should have corrected the mistaken entry on its own or at the time the motions for substituted service were heard after the dismissal was entered.

We again conclude the foregoing factual circumstances in the record were not addressed in the trial court's decision denying plaintiff's motion to reinstate her complaint. We determine the dismissal of Dreher due to what would seem to be a clear filing mistake was sufficient credible evidence in the record to support the reinstatement of the complaint. Under these unusual procedural circumstances, we determine the court's denial of plaintiff's motion to reinstate her complaint in its December 16, 2022 order was too harsh of a penalty and was a misapplication of discretion.

We also conclude there would have been minimal prejudice, if any, to Dreher if the complaint was reinstated by the trial court. For reasons unknown to us, NJM seemed to have been able to locate Dreher while investigating the

accident, as the record contains a statement of Dreher taken by an NJM investigator in November 2017. We also discern that liability does not seem to be a substantial issue because in the police report Dreher admitted he did not see plaintiff before switching lanes and striking her vehicle.

Although he later changed his version of the accident in the statement taken by NJM, we determine it is fair to assume that NJM can locate Dreher allowing him to participate and NJM to effectively defend him in the litigation and at trial, if necessary, based on its prior contact. In addition, we conclude the record also establishes at least an inference that Dreher was avoiding service since he was unable to be served at four separate addresses, one of which was his mother's residence where she denied he lived nor would she provide a forwarding address. In addition, two of the personal service attempts failed at locations his drivers' licenses listed as his mailing addresses.

III.

Having determined the plaintiff's complaint requires reinstatement, we turn to the remaining issue before us on appeal concerning the trial court's denial of plaintiff's motion for substituted service. After our review of the record and legal principles governing these issues, we conclude the court's denial of plaintiff's motion for substituted service on NJM was also a misapplication of

its discretion.

Rule 4:4-4(b)(1) provides that personal jurisdiction may be obtained by substituted service "[i]f it appears by affidavit . . . that despite diligent effort and inquiry personal service cannot be made." "[I]n an automobile collision case where the driver of a vehicle was a New Jersey resident who could not be found for the service of process upon him, such service could be made upon the automobile liability carrier without violating rules of due process." Austin v. Millard, 164 N.J. Super. 219, 222 (App. Div. 1978) (citing Feuchtbaum v. Constantini, 59 N.J. 167 (1971)); see also Houie v. Allen, 192 N.J. Super. 517, 521-22 (App. Div. 1984) (determining Rule 4:4-4 does not include any specific language limiting service to any particular type of case).

In Feuchtbaum, the court held where the driver of a vehicle involved in an automobile accident was a New Jersey resident who could not be personally served, such service could be made upon the automobile liability carrier under Rule 4:4-4, without violating rules of due process. Feuchtbaum, 59 N.J. at 167. In reaching this result, the court invoked a balancing test, weighing four factors: "the plaintiff's need, the public interest, the reasonableness of plaintiff's efforts under all the circumstances to inform the defendant, and the availability of other safeguards for the defendant's interests." Id. at 177.

Initially, the information received from plaintiff's search inquiry for Dreher's address made through the NJMVC in May of 2022 provided he was licensed in New Jersey with a residence address in Brant Beach. The license was issued on January 7, 2022 and expired on February 13, 2026. We determine Dreher possessing a valid New Jersey driver's license during the time period the matter and motions were pending to be sufficient evidence in the record satisfying the residency requirement set forth in Feuchtbaum.

In addition, the parties seem to agree, or at least no dispute exists in the record, that Dreher was a permissive user of Feliccia's vehicle at the time of the accident and is covered under Feliccia's automobile liability policy with NJM. We have permitted substituted service on the automobile liability carrier of an owner on behalf of a permissive driver determining substituted service on the carrier did not offend due process requirements. Austin, 164 N.J. Super. 222.

When applying the balancing test as required by Feuchtbaum, we conclude the court misapplied its discretionary powers when denying plaintiff's application for substituted service of the complaint on NJM pursuant to Rule 4:4-4(b)(3). We determine plaintiff had a great need to join Dreher as he was the driver of the other motor vehicle and had initially admitted to liability for the accident to the police as evidenced by the police report in the record. Several

unsuccessful service attempts were made on Dreher both in New Jersey and Florida. Plaintiff performed address and NJMVC searches and made attempts to serve Dreher at several addresses supplied by these searches. The latest NJMVC search made in May 2022 disclosed Dreher had a New Jersey driver's license and it was registered to a Brant Beach address which resulted in another unsuccessful service attempt by plaintiff.

As referenced in this opinion previously, the record reflects plaintiff made four attempts to personally serve Dreher in both Florida and New Jersey. Personal service was attempted at an address in New Jersey where Dreher's mother resided but she refused service stating he did not live there. Service was unsuccessfully attempted at the two addresses listed on his driver's licenses in New Jersey and Florida. Two further unsuccessful attempts were also made at different addresses obtained through the investigation by plaintiff's counsel.

We determine these inquiries and service attempts were sufficient to satisfy the diligent inquiry requirement of Rule 4:4-4(b)(1). We further determine Dreher was able to be located by NJM, which has not disputed he was a permissive user of Feliccia's vehicle and is entitled to a defense in the litigation and at trial. We conclude NJM's ability to locate Dreher and provide him with legal defenses through Feliccia's liability policy provide sufficient safeguards

which protect Dreher's interests.

Dreher was also aware through the contact made with him by NJM taking his statement that he was involved in an accident, he could possibly be a defendant and the plaintiff could possibly make claims against him. As we stated in Austin, 164 N.J. Super. at 224, "[d]efendant knows of the accident, that people were injured, and that a claim may be made against him. He can keep in touch with either his insurance carrier or the injured victim in order to protect himself against not receiving actual notice." We determine the same rationale applies herein. Dreher could have kept in touch with NJM or plaintiff to make sure he had notice of any claims. Based on the above, we conclude, in her motion, plaintiff had satisfied the diligence requirements of Rule 4:4-4(b)(3) and the weighing test under Feuchtbaum and the trial court should have entered an order permitting substituted service on NJM.

Although we concur with the trial judge's skepticism concerning the varying reasons given by plaintiff's counsel for not being able to locate and serve Dreher or to engage in discovery over an approximate three-year period while the case was pending, the record clearly establishes the clerk entered an answer on behalf of Dreher and he was a joined defendant during the majority of this period. Not until March 2, 2022, approximately two years and seven months

from the filing date of the complaint and about one month prior to the trial date, were the issues concerning Dreher's legal representation and lack of service of the complaint on him fully addressed by Feliccia's filing of an amended answer and third-party complaint. Until then, the court record reflected Dreher was represented by the same attorney as Feliccia, an answer had been filed joining him and several documents from defendants' counsel sent after the answer was filed indicated counsel represented both Feliccia and Dreher. We conclude defense counsel had no untoward motives by the inconsistent answer filed, but we also conclude plaintiff's belief Dreher was joined and represented by counsel until the amended answer was filed was reasonable.

We also conclude plaintiff's decisions to serve minimal written discovery and to not depose Dreher during the time the court record indicated he was joined and represented by counsel were not so unusual. The police report from the accident includes Dreher's admission to causing the accident. Despite his later retraction, plaintiff may have decided this admission provided a strong theory of liability against Dreher and significant discovery concerning him was not required. We surmise the most significant reason to propound discovery on Dreher would be if there were plausible contested issues as to liability which plaintiff may have discerned are not present. In short, we cannot conclude

plaintiff's discovery strategies or lack thereof were so deficient or dilatory to support the denial of her motion for substituted service.

We conclude the trial court's December 16, 2022 order and findings denying plaintiff's motion for substituted service failed to address the totality of the service attempts and address searches made by plaintiff both before and after the initial motion for substituted service was denied in the May 2022 order. The court also failed to address whether those additional searches and service attempts after the May 2022 order were sufficiently diligent to permit substituted service under Rule 4:4-4. The court did not provide any reasons in its hand-written decision, attached to the December 16, 2022 order under appeal, as to why plaintiff's actions did not provide sufficient proofs of diligent inquiry to permit substituted service on NJM. The judge's reasons for the denial of the motion were: (1) that no timely appeal was taken from any of the previous orders which denied her motion for substituted service and (2) the plaintiff's attempted re-litigation of those orders was precluded by the "law of the case doctrine".

Initially, we conclude the prior orders denying plaintiff's requests for substituted service were interlocutory orders, not final orders subject to appeal. Rule 2:2-3. Those interlocutory orders were also subject to further review and modification based on "the interests of justice", not the standards concerning

final orders under Rule 4:49-2. See Lawson v. Dewar, 468 N.J. Super. 128, 134 (App. Div. 2021) (quoting R. 4:42-2).

In addition, the law of the case doctrine provides "that a legal decision made in a particular matter 'should be respected by all other lower or equal courts during the pendency of that case.'" Lombardi v. Masso, 207 N.J. 517, 538 (2011) (quoting Lanzet v. Greenberg, 126 N.J. 168, 192 (1991)).

We conclude under the factual and procedural circumstances in this matter the law of the case doctrine did not apply to the plaintiff's motion for substituted service which resulted in the order under appeal. The factual circumstances in that motion were different than those considered as part of the previous denial order in May 2022 and the order denying reconsideration in June 2022. After the entry of the May 2022 order, plaintiff performed additional postal address searches, NJMVC searches and attempted service on Dreher at two additional addresses.

In addition, even if we were to determine, as suggested by the court's findings in its May 2022 order, plaintiff's counsel did not exhibit the required diligence pursuant to Rule 4:4-4 by (1) not making reasonable efforts in locating and serving Dreher, (2) not thoroughly reviewing the answer and (3) not engaging in any meaningful discovery concerning Dreher; "courts should be

reluctant to penalize a blameless client for the mistakes of the attorney." Familia v. Univ. Hosp. of Univ. of Med. & Dentistry of N.J., 350 N.J. Super. 563, 568 (App. Div. 2002). "[I]n the absence of demonstrable prejudice to the other party [,] it is neither necessary nor proper to visit the sins of the attorney upon his blameless client." Jansson v. Fairleigh Dickinson Univ., 198 N.J. Super. 190, 196 (App. Div. 1985). As previously determined, there is insufficient prejudice towards Dreher if the complaint was reinstated against him to penalize plaintiff by denying her ability to bring her claim to court.

Our courts are committed to, among other things, fairness and quality service. The judiciary must strive to follow a policy in favor of generally deciding contested matters on their merits rather than based on procedural deficiencies. See Woodward-Clyde Consultants v. Chem. & Pollution Scis., Inc., 105 N.J. 464, 472-74 (1987). "'Cases should be won or lost on their merits and not because litigants have failed to comply precisely with particular court schedules, unless such noncompliance was purposeful and no lesser remedy was available.'" Irani v. K-Mart Corp., 281 N.J. Super. 383, 387 (App. Div. 1985) (quoting Connors v. Sexton Studios, Inc., 270 N.J. Super. 390, 395 (App. Div. 1994)).

While we can certainly understand the significant age of this case and

appreciate the trial court's need for final disposition of the matter, we conclude plaintiff's strong right to a determination on the merits outweighs the minimal prejudice, if any, to Dreher by the reinstatement of plaintiff's complaint.

Based on the exceptional factual and procedural circumstances presented in this matter surrounding the dismissal of the plaintiff's complaint and our conclusion plaintiff made sufficient inquiries to locate and serve Dreher, we are constrained to reverse the trial court's order and remand the matter for further proceedings. We direct the trial court to enter an order reinstating plaintiff's complaint and permitting plaintiff to serve the complaint on Dreher by substituted service on NJM. On remand, we leave to the discretion of the trial court to determine what further pre-trial proceedings are necessary, including but not limited to setting a reasonable time period for plaintiff to serve NJM, for Dreher to file responsive pleadings and to set parameters for further discovery, if any, deemed necessary by the court prior to the setting of a trial date.

Reversed and remanded. We do not retain jurisdiction.