SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3593-21

EBENEZER ODUKOYA,

Plaintiff-Appellant,

v.

TEMITOPE SOBAMOWO, a/k/a TEMITOPE SOBANJO, TAOFEEK ADEYEMI AKINOLU, her husband, and KEHINDE SOWOLE SOBANJO, a/k/a KENNY SOWOLE SOBANJO,

Defendants-Respondents.

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Submitted May 7, 2024 – Decided May 22, 2024

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey, Chancery Division, Middlesex County, Docket No. C-000010-22.

Andrew K. de Heer, attorney for appellant.

The Fasano Firm, attorneys for respondents (Karen Fasano, on the brief).

PER CURIAM

Plaintiff Ebenezer Odukoya appeals from a June 10, 2022 order dismissing his complaint against defendants Temitope Sobamowo a/k/a Temitope Sobanjo, Taofeek Adeyemi Akiolu, and Kehinde Sowole Sobanjo a/k/a Kenny Sowole Sobanjo (collectively defendants) for failure to state a claim under Rule 4:6-2(e). Additionally, plaintiff appeals from a July 25, 2022 order "fixing" an award of attorney's fees against him. We affirm both orders.

In 2022, Plaintiff filed a complaint in the Superior Court of New Jersey, Chancery Division (Chancery Division action), against defendants, alleging the fraudulent transfer of real property located on E. Prospect Avenue in Woodbridge (Woodbridge property) and seeking to quiet title to that property.

Plaintiff claimed he married Jennifer Sobanjo (Jennifer)[1] in Nigeria and remained married to her for twenty-nine years until he filed for divorce in 2015.[2] In August 2016, plaintiff's Essex County divorce complaint was dismissed

[1] Because certain defendants share the same last name, we refer to defendants by their first name. No disrespect is intended.

[2] Plaintiff filed two separate complaints for divorce: a February 11, 2015 divorce complaint filed in Middlesex County; and a December 18, 2015 divorce complaint filed in Essex County. The Middlesex County divorce complaint was dismissed without prejudice in a September 18, 2015 order, for failure to provide discovery, including documents evidencing plaintiff's marriage to Jennifer.

without prejudice pursuant to a stipulation of voluntary dismissal signed by the parties' attorneys.

Plaintiff and Jennifer then executed a May 9, 2017 settlement agreement (settlement agreement), addressing outstanding financial issues. Significantly, the settlement agreement was not a marital settlement agreement and nothing in the document stated plaintiff and Jennifer were married. The settlement agreement reflected the parties lived together at some point, had a child together, and separated with the intention of living apart. Plaintiff and Jennifer "accept[ed] the terms of [the settlement agreement] as being final, complete and binding as to all issues," except for specifically identified business interests to be valued by an accountant.

The settlement agreement identified Jennifer as the sole owner of a house located on Garfield Avenue in Colonia (Colonia property). In or around October 2016, Jennifer sold the Colonia property. Plaintiff was entitled to receive $93,000 from that sale under the settlement agreement.

The settlement agreement also stated:

> each party shall have the right to deal with, and dispose of, his or her separate property, both real and personal, now owned or hereafter separately acquired without interference from the other party. Each party may dispose of his or her property in any way, and each party hereby waives and relinquishes all rights he or she

> may now have or hereafter acquire under present or future laws of any jurisdiction to share in the property or the estate of the other . . . .

Under the clear terms of the settlement agreement, plaintiff waived any interest in real property other than the Colonia property.

In November 2019, plaintiff filed a motion to reopen the Essex County divorce action and enforce the settlement agreement. The motion judge dismissed the matter in a February 18, 2020 order because "there was no pending divorce action proceedings between the parties." In her written statement of reasons, the judge explained "[p]laintiff [was] required to file his [n]otice of [m]otion in the [n]on-[d]issolution docket" rather than the closed family matter docket.

Plaintiff appealed from the denial of his motion to reopen the Essex County divorce action, and we affirmed. Odukoya v. Sobanjo, No. A-3323-19 (App. Div. May 12, 2021). We subsequently granted Jennifer's motion seeking an award of attorney's fees incurred on appeal. In a July 14, 2021 order, we awarded $5,290 in counsel fees and costs to Jennifer.

In August 2021, Jennifer died in a car accident while visiting family in Nigeria. As a result of Jennifer's death, plaintiff apparently commenced a

probation action to recover outstanding monies due to him under the settlement agreement.

On January 28, 2022, plaintiff filed the Chancery Division action, seeking damages for an alleged conspiracy to defraud him with respect to the Woodbridge property and to quiet title to that property. In the Chancery Division action, plaintiff named Temitope, her husband Taofeek, and Kenny as defendants.[3]

Plaintiff claimed Jennifer used marital funds and assets to purchase the Woodbridge property in 2014. He alleged Temitope was a "straw buyer," and Temitope and Taofeek fraudulently transferred the Woodbridge property to Kenny in December 2021.

On April 25, 2022, defendants filed a motion to dismiss the Chancery Division action for failure to state a claim, or for summary judgment. Judge Thomas Daniel McCloskey heard arguments on June 10, 2022. Jennifer's attorney argued Jennifer never owned the Woodbridge property and Jennifer's name was not on the deed to the Woodbridge property. After hearing the

[3] Defendants are Jennifer's relatives.

arguments, Judge McCloskey granted defendants' motion to dismiss plaintiff's complaint.

In his oral decision, Judge McCloskey found "the undisputed fact remains that [Jennifer] never owned the [Woodbridge] property . . ., she never resided there with [] [p]laintiff, and [] [p]laintiff has no valid claim." Even if Jennifer had an interest in the Woodbridge property, the judge concluded plaintiff "waived any present or future claim against it in consideration for the global terms of the 2017 [settlement] agreement."

In determining there was no basis for plaintiff's cause of action, Judge McCloskey stated:

> There's been no nexus that has been established that exists between [] [p]laintiff[] and . . . this property in question.
>
> The cause of action in this complaint is premised upon an alleged improper transfer of marital funds or assets to [Jennifer]'s family. However, the complaint offered no proof to establish the nexus between [] [p]laintiff himself and the property, because no marriage existed; and thus, no marital funds could have possibly been implicated.
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> [] [P]laintiff's alleged wife, now deceased, never owned or held title to the property in question. And even if . . . a valid marriage exist[ed], the property would not have been subject to equitable distribution because the . . . May 9, 2017, settlement agreement between [] [p]laintiff and [Jennifer] addressed all

> interests arising out of their relationship, and did not include the property now in question.

In addition, Judge McCloskey noted plaintiff's Essex County divorce action was withdrawn with prejudice by plaintiff pursuant to the terms of the settlement agreement. The judge further stated the settlement agreement precluded plaintiff "from initiating claims for divorce in any jurisdiction, domestic or foreign, against [Jennifer]."

Regardless of whether plaintiff had proof of a valid marriage to Jennifer, Judge McCloskey relied on express language in the settlement agreement. The judge concluded the settlement agreement clearly and unambiguously "resolved all the financial issues between and including any claim to the real property that [was] the subject matter of this complaint, namely [the Woodbridge property]." In fact, the judge noted the settlement agreement listed Jennifer's address as the Woodbridge property. Thus, as of the date of the May 2017 settlement agreement, plaintiff knew Jennifer lived at the Woodbridge property. If plaintiff believed he was entitled to ownership of the Woodbridge property, he could have included that property in the settlement agreement. Plaintiff made no claim regarding the Woodbridge property until he filed the Chancery Division action in January 2022, five months after we affirmed the dismissal of plaintiff's motion to reopen the Essex County divorce action.

In addition to dismissing plaintiff's complaint, Judge McCloskey awarded counsel fees to defendants under the frivolous litigation statute, N.J.S.A. 2A:15-59.1. The judge found "the filing of th[e] complaint was without good faith or factual [or] legal basis, and therefore frivolous." The judge also awarded $5,290 to defendants as a result of plaintiff's failure to pay that sum awarded in our July 14, 2021 order. In his July 25, 2022 order, Judge McCloskey awarded a total of $11,163 in counsel fees to defendants.

On appeal, plaintiff asserts the judge erred in determining plaintiff was barred from filing the Chancery Division action based on our May 2021 decision. He also claims the judge erred in deciding the validity of his alleged foreign marriage to Jennifer. He further argues the judge erred in failing to convert defendants' motion to dismiss to a motion for summary judgment because defendants relied on evidence outside the pleadings. Additionally, plaintiff contends the judge erred in enforcing our July 2021 order awarding fees on appeal. We reject these arguments.

Our review of a judge's decision on a motion to dismiss for failure to state a claim under Rule 4:6-2(e) is de novo. Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019)). In considering a Rule

4:6-2(e) motion, "[a] reviewing court must examine 'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" Ibid. (quoting Dimitrakopoulos, 237 N.J. at 107). "The essential test [for determining the adequacy of a pleading] is simply 'whether a cause of action is "suggested" by the facts.'" Green v. Morgan Props., 215 N.J. 431, 451-52 (2013) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)).

Having reviewed the record, we are satisfied plaintiff misinterprets the basis for Judge McCloskey's June 10, 2022 order dismissing his complaint. After according all favorable inferences to plaintiff, the judge relied on the unequivocal language in the settlement agreement to conclude plaintiff failed to state a cause of action. The terms of the settlement agreement clearly stated plaintiff waived and relinquished any claims not contained in the document. Nowhere in the settlement agreement did plaintiff assert a claim to the Woodbridge property, despite Jennifer indicating she lived at the Woodbridge property when she signed the settlement agreement. The Colonia property was the only real property included in the settlement agreement. Plaintiff failed to include other real property as part of the settlement agreement.

Moreover, under the express terms of the settlement agreement, the parties agreed to accept the agreement "as being final, complete and binding as to all issues" except as to specific business interests. The parties further agreed "the terms and provisions of [the settlement agreement] act[ed] in full satisfaction of any and all claims either may have against the other" and each party "waive[ed] and relinquish[ed] all rights he or she [then] ha[d] or [t]hereafter acquire[d] under present or future laws of any jurisdiction to share in the property or the estate of the other . . . ." Moreover, the parties "release[d] and forever discharge[d] the other from any and all actions, suits, debts, claims, demands and obligations whatsoever, both in law and in equity, which either of them ever had, [then] ha[d] or m[ight t]hereafter have against the other . . . ." Significantly, the settlement agreement required plaintiff to "withdraw, with prejudice, his [then] pending [c]omplaint for [d]ivorce in Essex County" and "prohibited [plaintiff] from initiating claims for divorce in any jurisdiction, domestic or foreign, against [Jennifer]."

Having reviewed the record, we are satisfied the judge properly dismissed plaintiff's complaint because plaintiff had no viable cause of action based on the unambiguous language of the settlement agreement.

We also reject plaintiff's argument that the judge "abused [his] discretion by permitting defendants' counsel to offer extrinsic evidence without converting the motion to dismiss to a motion for summary judgment." Plaintiff contends the judge allowed defendants' attorney to testify during the motion hearing and thus converted the matter to a motion for summary judgment.

After reviewing the record, we discern no abuse of discretion in the judge's disposition of defendants' motion. The judge did not rely on statements made by counsel during oral argument on the motion. Rather, as we explained previously, the judge relied on the parties' settlement agreement in finding plaintiff failed to state a claim and dismissing plaintiff's complaint.

We next consider plaintiff's arguments regarding the award of counsel fees. We review an award of counsel fees for abuse of discretion. Litton Indus. v. IMO Indus., 200 N.J. 372, 386 (2009). Judge McCloskey awarded attorney's fees, including those previously awarded in our July 14, 2021 order, because he found plaintiff's complaint to be frivolous under N.J.S.A. 2A:15-59.1, based on the unambiguous provisions in the settlement agreement.

N.J.S.A. 2A:15-59.1 serves a dual purpose. Toll Bros., Inc. v. Twp. of W. Windsor, 190 N.J. 61, 67 (2007). The statute serves "a punitive purpose, seeking to deter frivolous litigation," and "a compensatory purpose, seeking to reimburse

'the party that has been victimized by the party bringing the frivolous litigation.'" Ibid. (quoting Deutch & Shur, P.C. v. Roth, 284 N.J. Super. 133, 141 (Law Div. 1995)). As our Supreme Court stated:

> The statute permits a court to award reasonable counsel fees and litigation costs to a prevailing party in a civil action if the court determines "that a complaint, counterclaim, cross-claim[,] or defense of the non[-]prevailing person was frivolous." N.J.S.A. 2A:15-59.1(a)(1). A complaint, counterclaim, cross-claim, or defense is deemed frivolous if it was "commenced, used[,] or continued in bad faith, solely for the purpose of harassment, delay[,] or malicious injury," N.J.S.A. 2A:15-59.1(b)(1), or if "[t]he non[-]prevailing party knew, or should have known, that the complaint, counterclaim, cross-claim[,] or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification[,] or reversal of existing law," N.J.S.A. 2A:15–59.1(b)(2).
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> [Ibid.]

Rule 1:4-8 sets forth the procedure for a party seeking attorney's fees under the frivolous litigation statute. Here, defendants' attorney served the required notice under Rule 1:4-8. Despite receipt of the Rule 1:4-8 letter, plaintiff failed to withdraw the Chancery Division action. In filing a motion to dismiss the Chancery Division action, defendants requested sanctions against plaintiff for frivolous litigation. The motion provided notice to plaintiff that defendants would seek attorney's fees related to the Chancery Division action,

as well as the unpaid appellate attorney's fees awarded in our July 14, 2021 order.

Judge McCloskey determined plaintiff's complaint was frivolous because the settlement agreement, which resolved all issues between plaintiff and Jennifer, did not include the Woodbridge property and plaintiff waived and relinquished any right to that property upon signing the document. Thus, Judge McCloskey did not abuse his discretion in awarding attorney's fees to defendants after determining the Chancery Division action was frivolous.

Plaintiff's remaining arguments lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.