SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0301-21

CHERYL KING,

Plaintiff-Appellant,

v.

IQVIA, and MARIE A. THOMAS,

Defendants-Respondents.

Submitted June 2, 2022 – Decided June 14, 2022

Before Judges Hoffman and Geiger.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-1694-19.

Garruto & Calabria, attorneys for appellant (Andrew F. Garruto, on the brief).

Law Offices of Linda S. Baumann, attorneys for respondent IQVIA Holdings, Inc. (Angela E. Cameron, of counsel and on the brief).

Romanek & Associates, attorneys for respondent Marie A. Thomas (Megan K. Christie, on the brief).

PER CURIAM

This case arises out of a hit-and-run accident that damaged plaintiff Cheryl King's vehicle while it was parked in the parking lot of her employer, defendant IQVIA Holdings, Inc. (IQVIA). The case proceeded to mandatory arbitration, where the arbitrator found defendants IQVIA and Marie A. Thomas not liable and did not award plaintiff damages. Plaintiff did not file or serve a demand for trial de novo within thirty days of the arbitration award. Defendants moved to confirm the arbitration award. Plaintiff cross-moved for leave to file a demand for trial de novo out-of-time. Plaintiff appeals from a Law Division order that granted defendants' motion to confirm the arbitration award, denied plaintiff's cross-motion, and dismissed the complaint with prejudice. We affirm.

We take the following facts from the limited record on appeal. On February 25, 2019, plaintiff parked her car in the parking lot at work. While there, it was allegedly struck and damaged by a hit-and-run driver. Plaintiff did not witness the accident. Her vehicle required towing and repair. Plaintiff alleged she incurred property damages for repair and towing costs, alternate means of transportation while the car was being repaired, and resulting diminution of the value of her car.

On May 8, 2019, plaintiff filed a complaint against the unnamed hit-and-run driver and IQVIA (for discovery purposes only). Following an

administrative dismissal for lack of prosecution, the complaint was reinstated on July 24, 2020.

IQVIA provided plaintiff with surveillance footage of the parking lot and a certification from its Associate Director of Security, William Armstrong, explaining that all footage was provided to plaintiff and none of it was altered.[1] Plaintiff identified a woman in the video as Marie A. Thomas, a coworker. The video depicts Thomas parking her car and entering the building, but does not depict Thomas's car coming into contact with plaintiff's car.

On July 28, 2020, plaintiff filed an amended complaint naming Thomas as an additional defendant. Defendants filed answers contesting liability and asserting various affirmative defenses. Thomas filed a motion to extend discovery ninety days to August 29, 2021, and to postpone the mandatory arbitration scheduled for June 3, 2021, as the parties had not yet been deposed. On May 28, 2021, the trial court denied the motion because an arbitration date was scheduled and Thomas "failed to make a showing of exceptional circumstances as required by [Rule] 4:24-1[(c)]." Plaintiff and Thomas

[1] Although plaintiff's car was parked in the lot for approximately ten hours, IQVIA provided three videos that showed a total of fifty-two minutes. IQVIA claimed the other footage was destroyed.

nevertheless agreed to continue discovery and their depositions took place on June 4, 2021.

The arbitration took place as scheduled on June 3, 2021. The arbitration was conducted by video due to the pandemic. The arbitrator issued an award in favor of defendants, finding them zero percent liable and awarding plaintiff no damages. The Report and Award of Arbitrator dated June 3, 2021, was filed that day. It included the following standard language:

> Parties desiring to reject this award and obtain a trial de novo must file with the division manager a trial de novo request together with a $200 fee within thirty (30) days of today. Parties requesting a trial de novo may be subject to payment of counsel fees and costs as provided by R. 4:21A-6(c). Note that unless otherwise expressly indicated this award will be filed today.

Neither party filed a demand for trial de novo within thirty days, which expired on July 6, 2021. On July 7, 2021, Thomas filed a motion to confirm the arbitration award, returnable July 23, 2021. On July 8, 2021, plaintiff filed a request for a trial de novo. On July 14, 2021, plaintiff filed a cross-motion for leave to file a trial de novo out-of-time. On July 19, 2021, IQVIA filed a cross-motion to confirm the arbitration award. Plaintiff filed opposition to both defense motions. Following oral argument on August 4, 2021, the trial court issued an August 16, 2021 order and written statement of reasons that granted

defendants' motions to confirm the arbitration award, denied plaintiff's motion for leave to file a demand for trial de novo out-of-time, and dismissed the amended complaint with prejudice.

After recounting the facts and procedural history, the court noted that N.J.S.A. 39:6A-25(a) mandated arbitration and Rule 4:21A-6(b) provides:

> Dismissal. An order shall be entered dismissing the action following the filing of the arbitrator's award unless:
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> (1) within 30 days after filing of the arbitration award, a party thereto files with the civil division manager and serves on all other parties a notice of rejection of the award and demand for a trial de novo and pays a trial de novo fee as set forth in paragraph (c) of this rule; or
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> . . . .
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> (3) within 50 days after the filing of the arbitration award, any party moves for confirmation of the arbitration award and entry of judgment thereon.

Emphasizing that the timing for challenging an arbitration award is mandated by statute and court rule, and that the Legislature intended N.J.S.A. 2A:23A-26 to be "strictly enforced," the court explained that its authority to enlarge the thirty-day filing period should be exercised "sparingly" and "only in extraordinary circumstances." The court found that plaintiff's counsel "attended the arbitration" by video "and was aware of the arbitration award."

The court concluded that plaintiff did not demonstrate "extraordinary circumstances" that would warrant enlarging the thirty-day filing period. This appeal followed.

Plaintiff raises the following point for our consideration:

> THE TRIAL COURT ERRED IN GRANTING DEFENDANT[S'] MOTION TO CONFIRM THE ARBITRATION AWARD NOTWITHSTANDING PLAINTIFF'S ARGUMENT OF EXCEPTIONAL CIRCUMSTANCES.

In essence, plaintiff argues that the thirty-day deadline to file a demand for trial de novo should be relaxed because she has demonstrated exceptional circumstances due to the impact of COVID-19 on the law office of her attorney.[2] We disagree.

Because this appeal involves the interpretation of the court rules governing arbitration, our review is de novo. Vanderslice v. Stewart, 220 N.J. 385, 389 (2015). Applying this standard, we discern no reason to disturb the trial court's ruling.

[2] Contrary to Rule 2:6-1(a)(1)(I), the record on appeal does not include the certification that plaintiff's counsel filed in support of plaintiff's motion that presumably set forth the facts that plaintiff contends established exceptional circumstances. Moreover, plaintiff's appellate brief recounts those facts in significantly greater detail than stated by plaintiff's counsel during oral argument on the motion.

We begin our analysis by reviewing the requirements imposed by statute and court rule and the case law interpreting those requirements. The timing for challenges to an arbitration award is mandated by statute as well as court rule. See N.J.S.A. 2A:23A-26; N.J.S.A. 39:6A-31; R. 4:21A-6. 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). Thus, "Rule 4:21A-6(b)(1) 'set[s] a short deadline for filing a [trial] de novo demand' to 'ensure[] that the court will promptly schedule trials in cases that cannot be resolved by arbitration.'" Vanderslice, 220 N.J. at 392 (alterations in original) (quoting Nascimento v. King, 381 N.J. Super. 593, 597 (App. Div. 2005)). "The Legislature intended [that rule] . . . to be strictly enforced." Hartsfield v. Fantini, 149 N.J. 611, 616 (1997) (alterations in original) (quoting Hart v. Prop. Mgmt. Sys., 280 N.J. Super. 145, 147 (App. Div. 1995)). Thus, our courts have cautioned that

> when neither party has made a timely motion for a trial de novo, the court's power to extend the time frame [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."

> [Martinelli v. Farm-Rite, Inc., 345 N.J. Super. 306, 310 (App. Div. 2001) (quoting Mazakas v. Wray, 205 N.J. Super. 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 (App. Div. 1985). The circumstances must not arise from mere carelessness or lack of due diligence. Martinelli, 345 N.J. Super. at 310 (citing Hartsfield, 149 N.J. at 618).

To determine if exceptional circumstances are present, the court conducts "a fact-sensitive analysis in each case." Hartsfield, 149 N.J. at 618. The attorney must prove that circumstances for missing the filing deadline were "exceptional and compelling." Id. at 619 (quoting Baumann v. Marinaro, 95 N.J. 380, 393 (1984)). In Hartsfield, the Court held that an attorney's failure to check his calendar and supervise his secretary did not constitute the exceptional circumstances necessary to satisfy extending the thirty-day time limit, even though two of his associates, who handled over 1,000 cases for the firm, resigned. Id. at 614, 619-20; see also Sprowl v. Kitselman, 267 N.J. Super. 602, 609 (App. Div. 1993) (explaining that "[f]ailure to supervise one's secretary does not ordinarily present such 'extraordinary circumstances' as will permit an attorney to make a late demand for a trial de novo."). Similarly, an attorney's

excuse of "being too busy or [] having too heavy a work load to properly handle litigation or to supervise staff must be rejected as insufficient to constitute extraordinary circumstances." Hart, 280 N.J. Super. at 149 (citing Pybas v. Paolino, 869 P.2d 427, 433-34 (1994)).

On the other hand, a secretary's injury the night before she was going to mail notice of motion for a trial de novo that left her unable to work for a month constituted exceptional circumstances for the purpose of the service requirement in Rule 4:21A-6(b)(1). Flett Assocs. v. S.D. Catalano, Inc., 361 N.J. Super. 127, 134 (App. Div. 2003). Here, although plaintiff's counsel contends that his firm was experiencing ongoing staffing shortages, the failure to file a timely demand for trial de novo did not result from the sudden illness of a secretary assigned to mail an already prepared demand. Moreover, Flett involved the failure to serve the demand for trial de novo on opposing counsel, which is subject to review under the lesser standard for substantial compliance, not the more stringent standard for exceptional circumstances. Id. at 129-130, 134.

We first note that the thirty-day filing period has been in place for decades. Next, plaintiff's counsel participated in the arbitration. The Report and Award of Arbitrator form, which was uploaded on eCourts on the day of the arbitration, reminded counsel of the requirement to file a timely demand for trial de novo

and the consequences of failure to do so. Plaintiff's counsel does not claim he was unaware of this requirement. Instead, he claims that the failure to file the demand within time was due to the impact of COVID-19 and an oversight in not placing the filing deadline on diary.

Here, there was no attempt to file the demand for trial de novo within thirty days, much less substantial compliance. Plaintiff only moved for leave to file a demand for trial de novo out-of-time after being served with Thomas's motion to confirm the arbitration award. We are mindful of the Supreme Court's Omnibus Order dated April 24, 2020, which recognizes the effects of COVID-19 and allows courts to extend deadlines consistent with Rule 1:1-2(a), "in the interests of justice."[3] But here, the increased workload experienced by plaintiff's counsel and staffing shortages that occurred prior to the arbitration did not constitute exceptional circumstances. Those circumstances did not prevent plaintiff's counsel from attending the deposition of a party the day after the arbitration. Filing a timely demand for trial de novo is not an arduous or time-consuming task.

[3] New Jersey Supreme Court, Covid-19 - Second Omnibus Order On Court Operations And Legal Practice - More Operations To Be Conducted Remotely; Limited Discovery Extensions And Tolling Periods, NJCOURTS.GOV (Apr. 24, 2020), https://www.njcourts.gov/notices/2020/n200424a.pdf.

While we are sympathetic to the difficulties experienced by plaintiff's counsel's law firm, applying the unequivocal thirty-day period to file a trial de novo under Rule 4:21A-6(b)(1), coupled with the legislative intent to strictly enforce that time period, we affirm the trial court's order granting defendants' motions to confirm the arbitration award and denying plaintiff's motion to file an untimely trial de novo.

Affirmed.