

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1509-20**

RUPERT BAPTISTE,

Plaintiff-Appellant,

v.

FATOU JALLOW,

Defendant-Respondent.

Submitted March 8, 2022 – Decided May 26, 2022

Before Judges Fisher and DeAlmeida.

On appeal from the Superior Court of New Jersey, Law
Division, Union County, Docket No. L-2893-19.

Rupert Baptiste, appellant pro se.

Jalloh & Jalloh, LLC, attorneys for respondent (Bernice
M. Jalloh and May H. Wedlund, on the brief).

PER CURIAM

Plaintiff Rupert Baptiste appeals from the December 23, 2020 order of the
Law Division vacating a default judgment previously entered against defendant

Fatou Jallow and dismissing his fraud complaint on res judicata grounds. We affirm.

I.

The parties were married in 1997. Jallow had previously been married in Gambia. That marriage ended in divorce. Baptiste subsequently became convinced that Jallow was never divorced from her first husband.

In 2004, an attorney wrote to Jallow informing her that he and Baptiste had "discussed a possible cause of action concerning an annulment based on your previous marriage and your failure to produce divorce papers." Later that year, Baptiste filed a complaint for divorce alleging acts of extreme cruelty. One such act, the complaint alleged, was that

[t]hroughout the course of the marriage between the parties, [Jallow] lied about her previous marriage. She indicated that she could not produce papers concerning her previous divorce. The papers have never been produced despite the plaintiff's request.

The 2004 divorce complaint was dismissed for lack of prosecution.

In 2006, Baptiste filed a second complaint for divorce. That complaint also sought annulment of the marriage, alleging Jallow "is still married and was never eligible to marry" Baptiste. He alleged that despite his requests, Jallow "never produced any divorce papers."

Baptiste's counsel in the second divorce action obtained from Jallow's counsel an "Authentication of Divorce Certificate," as well as a "Form B Register of Divorces." The second document was stamped by the Kanifing Islamic Court, Republic of Gambia. The documents state that Jallow and her first husband were divorced on March 16, 1996.

In 2007, the parties settled the divorce complaint. After they put their settlement on the record, the court issued a judgment of divorce incorporating the terms of their agreement, which expressly stated that they had settled all claims each had raised against the other.

Post-judgment litigation concerning the marital home resulted in a second settlement agreement between the parties. A 2008 consent order directs Baptiste to pay Jallow \$70,000 from the proceeds of the sale of the home.

Baptiste made several additional post-judgment applications, including one that resulted in an August 24, 2012 order denying his motion for reconsideration of two orders dated June 22, 2012. Among other things, the June 22, 2012 orders rejected Baptiste's motion to vacate the judgment of divorce because of Jallow's alleged fraudulent misrepresentation of her marital status when the parties wed.

We affirmed the August 24, 2012 order to the extent it concerned Jallow's prior marriage. We held Baptiste's objections to that provision of the order had

insufficient merit to warrant more than the brief discussion that follows. R. 2:11-3(e)(1)(E). The judge properly denied [Baptiste's] motion to reconsider the provisions of the June 22, 2012 order denying a plenary hearing on his request to . . . vacate the judgment due to [Jallow's] misrepresentations of her marital status when they wed.

. . . .

With respect to the allegation of [Jallow's] fraud at the time of the marriage, the complaint [Baptiste] filed in this action sought an annulment on that ground or, in the alternative, a divorce. A pertinent decretal paragraph of the 2007 judgment states: "IT IS FURTHER ORDERED AND ADJUDGED that all issues pleaded and not resolved by the judgment are deemed abandoned." While [Baptiste] was seeking to vacate the judgment, not an annulment, the fraud that warrants relief from a judgment pursuant to Rule 4:50-1(c) is fraud not previously discoverable by reasonable diligence. Pavlicka v. Pavlicka, 84 N.J. Super. 357, 365 (App. Div. 1964). Having alleged the same misrepresentation as grounds for an annulment and having acquired the information submitted on this motion himself, plaintiff was in no position to prevail under that standard.

[Baptiste v. Jallow-Baptiste, No. A-0679-12 (App. Div. Apr. 9, 2014) (slip op. at 12).]

Baptiste also filed a complaint in the United States District Court asserting that his marriage to Jallow was null and void and a product of fraud. He sought

monetary damages for the losses he alleged to have sustained as a result of the judgment of divorce. On June 6, 2019, the district court dismissed Baptiste's complaint for lack of jurisdiction.¹

Baptiste filed the complaint in the present action in 2019. He asserts claims of marital tort, fraud, and intentional infliction of emotional distress, based on allegations that Jallow intentionally misrepresented that she was divorced at the time she married Baptiste. As damages, he seeks a monetary amount equal to the benefits Jallow received as a result of the settlement agreement incorporated into the divorce judgment, as well as additional damages, and punitive damages.

On September 23, 2020, the trial court entered a default judgment against Jallow based on Baptiste's certification that he had served her with the complaint, which she failed to answer, by registered mail. He submitted a signed return receipt card in support of his motion.

¹ Baptiste also filed suit against the attorney who represented him in the original divorce action alleging fraud and legal malpractice. He alleged the attorney failed to exercise due and proper care to determine whether the documents produced by Jallow concerning her Gambian divorce were valid. The trial court dismissed that complaint as untimely because Baptiste knew or through the exercise of reasonable diligence should have known of his attorney's alleged acts prior to the expiration of the statute of limitations.

Jallow subsequently moved pursuant to Rule 4:50-1 to vacate the default judgment and pursuant to Rule 4:6-2(a) to dismiss the complaint for failure to state a claim. She argued that Baptiste falsely certified that he had effectuated service of the complaint on her and that his claims of fraud relating to her prior marriage were barred by the principles of res judicata.

On December 23, 2020, the trial court issued an oral opinion granting Jallow's motion. The court found that Baptiste had not served Jallow because the copies of the complaint he mailed to her were returned by the postal service undelivered. In addition, the court found that Jallow had moved promptly to vacate the default judgment once she became aware of its existence, and had a meritorious defense to the complaint. Thus, the court concluded, Jallow had established that the default judgment entered against her should be vacated.

With respect to Jallow's motion to dismiss, the court found that Baptiste had on several occasions in judicial actions previously raised his claim that Jallow defrauded him because she was still married to her first husband when she married Baptiste. Those prior claims, the court concluded, had been resolved against Baptiste and were barred from being raised again by him under principles of res judicata. A December 23, 2020 order memorializes the court's decision.

This appeal follows. Baptiste argues that the trial court misapplied its discretion when it vacated the default judgment and erred as a matter of law when it dismissed the complaint.²

II.

Rule 4:50-1 provides, in relevant part:

[o]n motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: . . . (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; . . . or (f) any

² On February 4, 2021, the trial court entered an order, for the reasons stated on the record, sanctioning Baptiste \$9,835 pursuant to Rule 1:4-8 for having filed the complaint in bad faith. Baptiste claims that on March 21, 2021, he filed an amended notice of appeal to include a challenge to the February 4, 2021 order. The court, however, has no record of Baptiste having filed an amended notice of appeal mentioning the February 4, 2021 order. He includes in the appendix to his brief a notice of appeal dated March 24, 2021, which mentions only the December 23, 2020 order and contains no indication that it was filed with the court. In addition, Baptiste includes in his appendix a case information statement dated January 15, 2020, which indicates that he is appealing the February 4, 2021 order entered more than a year after the date on the case information statement. This document contains no indication it was filed with the court and the court record contains no case information statement mentioning the February 4, 2021 order. There is, therefore, an absence of a record entry establishing an appeal of the February 4, 2021 order. In addition, even if Baptiste had appealed the February 4, 2021 order, he failed to perfect that appeal because he did not file a copy of the transcript of the trial court's statement of reasons supporting the order. See R. 2:5-3(a); Cipala v. Lincoln Tech. Inst., 179 N.J. 45, 55 (2004). We do not, therefore, consider Baptiste's arguments with respect to the February 4, 2021 order. On April 26, 2021, we denied Baptiste's motion for a stay of the February 4, 2021 order.

other reason justifying relief from the operation of the judgment or order.

An application to set aside an order pursuant to Rule 4:50-1 is addressed to the motion judge's sound discretion, which should be guided by equitable principles. Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994). A trial court's determination under Rule 4:50-1 is entitled to substantial deference and will not be reversed in the absence of a clear abuse of discretion. US Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). To warrant reversal of the court's order, Baptiste must show that the decision was "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Ibid. (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

In determining whether a party should be relieved from a judgment or order, courts must balance "the strong interests in the finality of litigation and judicial economy with the equitable notion that justice should be done in every case." See Jansson v. Fairleigh Dickinson Univ., 198 N.J. Super. 190, 193 (App. Div. 1985). Where a procedural violation is involved, additional considerations are implicated, namely, "[t]he defendant's right to have the plaintiff comply with procedural rules[, which] conflicts with the plaintiff's right to an adjudication of the controversy on the merits." Abtrax Pharms. v. Elkins-Sinn, 139 N.J. 499, 513 (1995) (quoting Zaccardi v. Becker, 88 N.J. 245, 252 (1982)).

In all cases, however, "justice is the polestar and our procedures must ever be moulded and applied with that in mind." Jansson, 198 N.J. Super. at 195 (quoting N.J. Highway Auth. v. Renner, 18 N.J. 485, 495 (1955)).

Relief under Rule 4:50-1(f) is available only when "truly exceptional circumstances are present." Little, 135 N.J. at 286 (quoting Baumann v. Marinaro, 95 N.J. 380, 395 (1984)). "The movant must demonstrate the circumstances are exceptional and enforcement of the judgment or order would be unjust, oppressive or inequitable." Johnson v. Johnson, 320 N.J. Super. 371, 378 (App. Div. 1999) (quoting Quagliato v. Bodner, 115 N.J. Super. 133, 138 (App. Div. 1971)).

We have carefully reviewed the record and find no basis on which to conclude that the trial court mistakenly exercised its discretion when it vacated the default judgment against Jallow. The default judgment was based on Baptiste's representations that he had served Jallow with the complaint by registered mail and that she failed to file an answer. His motion was supported by a signed return receipt card associated with the relevant mailings.

However, once Jallow became aware of the complaint when she received notice that a proof hearing had been scheduled, she promptly moved to vacate the default judgment. Her motion was supported by postal service records that

unequivocally establish that the copies of the complaint that Baptiste mailed to Jallow were returned by the postal service undelivered. Because the mail had not been delivered by the postal service, the validity of the signed return receipt card was called into question. The record also establishes that Jallow had a meritorious defense to the complaint, further justifying the trial court's decision to vacate the default judgment.

III.

We apply a de novo standard of review to trial court's order dismissing a complaint under Rule 4:6-2(e). See Stop & Shop Supermarkets Co. v. Cty. of Bergen, 450 N.J. Super. 286, 290 (App. Div. 2017) (quoting Teamsters Loc. 97 v. State, 434 N.J. Super. 393, 413 (App. Div. 2014)). Under the rule, we owe no deference to the motion judge's conclusions. Rezem Fam. Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 114 (App. Div. 2011). "[O]ur inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). However, "[a] pleading should be dismissed if it states no basis for relief and discovery would not provide one." Rezem Fam. Assocs., 423 N.J. Super. at 113.

"The application of res judicata is a question of law" Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 173 (App. Div. 2000). "The term 'res judicata' refers broadly to the common [] law doctrine barring re[-]litigation of claims or issues that have already been adjudicated." Velasquez v. Franz, 123 N.J. 498, 505 (1991). "The application of res judicata doctrine requires substantially similar or identical causes of action and issues, parties, and relief sought." Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460 (1989). "In addition, there must be a 'final judgment by a court or tribunal of competent jurisdiction.'" Ibid. (quoting Charlie Brown of Chatham v. Bd. of Adjustment, 202 N.J. Super. 312, 327 (App. Div. 1985)). The doctrine was created to avoid burdening the parties and the courts with re-litigation, and to prevent inconsistent decisions on the same matters. Velasquez, 123 N.J. at 505. The principle "contemplates that when a controversy between parties is once fairly litigated and determined it is no longer open to re[-]litigation." Lubliner v. Bd. of Alcoholic Beverages Control, 33 N.J. 428, 435 (1960).

The record amply supports the trial court's conclusion that Baptiste raised his claim that Jallow fraudulently married him while still married to her first husband in more than one judicial forum. Baptiste alleged that claim in his divorce complaint. He subsequently settled the divorce action in 2007,

abandoning all claims he raised against Jallow. Baptiste again raised his fraud claim in post-judgment applications, attempting to vacate the judgment of divorce because Jallow was married to her first husband when she married him. Those claims were rejected by both the trial court and, in 2014, by this court.

The allegations in the present complaint are nothing more than a reiteration of Baptiste's allegations regarding Jallow's first marriage. As the trial court concluded, Baptiste had a full and fair opportunity to prove his claim that his marriage to Jallow was invalid in the original divorce proceeding. He decided to settle that claim. He is barred by the principles of res judicata from repeatedly raising his allegations of fraud in an attempt to vacate his divorce judgment and avoid the financial obligations he has to Jallow as a result of the settlement.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION