AMENDED BRIEF #1

Brief in support of appeal in the matters pled via docket #: A-001755-23T4

PHILIP HAHN Plaintiff vs. Bergen Regional Medical Center, LP Defendant	: Superior Court of New Jersey : Appellate Division : Docket No: A-001755-23T4 : : On Appeal from: : Superior Court of New Jersey : Law Division, Bergen County : : Sat below: : Hon. Estela De La Cruz : Docket #: BER-L-1852-07 :

BRIEF IN SUPPORT OF APPEAL

Philip Hahn
610 Falmouth Avenue
Paramus, NJ 07652
Philhahn456@aol.com
(800)322-6169 x6391

Philip Hahn on the brief
Dated: May 30, 2024/June 10, 2024

Table of Contents: **Page**

1) Table of judgments 4

2) Table of citations 5-7

3) Preliminary statement 8-10

4) Procedural history 11-14

5) Statement of facts 15

6) Legal argument

Point 1: As a matter of law, the plaintiff is entitled to judgment versus the Bergen Regional Medical Center, LP. (Not argued below) **16**

POINT 2: Absent a jury trial of a presiding judge's order, I have no way to really know what was decided in a matter brought to the bar (Not argued below) **17**

POINT 3: Catuogno's order needs to be confirmed by a jury of 12, notwithstanding the order is erroneous (Not argued below) **18**

POINT 4: Whether a matter at the bar sounds in ordinary negligence or malpractice is an issue of fact for jury. A cause of action via a breach of statute does not sound in malpractice or negligence in one's profession. (Not argued below) **19-20**

POINT 5: There is avenue for recovery via a jury trial (Not argued below) **21-22**

POINT 6: Per New Jersey statutory law any change in the meaning of language is irrelevant (Not argued below) **23**

POINT 7: The laws created by the past Congresses of the United States are still valid (Not argued below) **24**

POINT 8: Supreme court opinions are facts that cannot **25**

be otherwise re-examined (Not argued below)

POINT 9: New Jersey common laws are facts that cannot be otherwise re-examined (Not argued below) 26

POINT 10: There is a right to trial by jury via the 7th amendment per the 73rd Congress (Not argued below) 27

POINT11: There is a right to trial by jury via *Slocum v. New York Life Insurance Co.*, 228 US 364. (Not argued below) 28

POINT 12: The right to trial by jury is to remain inviolate per the New Jersey constitution and New Jersey statutory law. (Not argued below) 29

POINT 13: All crimes are to be tried by jury (Not argued below) 30

POINT 14: The Supreme court can issue an order to incarcerate, or otherwise fine, a judge that is denying the right to trial by jury (Not argued below) 31-32

POINT 15: New Jersey law allows for a transactionally related action to relate back to the original filing date of the complaint (Not argued below) 32-33

Point 16: The Doyne order relied upon is not binding common law (Not argued below) 34-36

Point 17: The Doyne order is an illegal Bill of Attainder (Not argued below) 37-38

POINT 18: A Rule of the court of the state of New Jersey does not have the effect of binding law. 39

POINT 19: The laws of the United States, made by congress, are the supreme law of the land. 40-42

7) Conclusion 43

8) Appendix

TABLE OF JUDGMENTS

1) Erroneous Hon. Carol V. Novey Catuogno dismissal order (AB17-AB18)

2) Erroneous Peter E. Doyne order (AB19-AB40)

3) Erroneous De La Cruz summary judgment order (AB74-AB75)

TABLE OF CITATIONS

Page

United States Constitutional law

1) Article I, Section 1 24
2) Article I, Section 8 24
3) Article III, Section 1 31
4) Article III, Section 2 30, 31
5) Article IV, Section 3 24
6) Article IV, Section 4 24
7) Article VI 31
8) The 7th amendment .

25

9) The 10th amendment 14

Supreme court decisions

1) *Cummings v. The State of Missouri*, 71 U.S. 277 37
2) *Insurance Company v. Folsom*, 85 US 237 25,26
3) *Schick v. United States,* 195 US 65 14
4) *Slocum v. New York Life Insurance Co.,* 228 US 364 13, 14, 18, 28
5) *United States v. Lovett,* 66 S.Ct. 1073 37

TABLE OF CITATIONS

Page

Federal Statutory law

1) 73d CONGRESS. SESS. II . CHS. 651 JUNE 19, 1934 — 13, 27

2) Title 18 section 242 — 14

New Jersey constitutional law

1) Section 1, Article 9 — 13, 29

New Jersey statutes

1) N.J.S.A. 1:1-1. General rules of construction — 23

2) N.J.S.A. 2B:23-1 — 13, 14, 29

3) N.J.S.A. 4:30-27.9 (b) — AB48a

4) N.J.S.A. 4:30-27.20 — AB48a

New Jersey common law

1) *Badiali v. New Jersey Mfrs. Ins. Group*, 220 N.J. 544 — 34

2) *Brown v. Kennedy Memorial Hosp.-University Medical Center (Cherry Hill Div.),* 312 N.J.Super. 579 — *32*

3) *Daniel v. Brunton*, 7 N.J. 102, 107 — AB41a

TABLE OF CITATIONS

Page

4) *Di Cosala v. Kay*, 91 NJ 159 AB52a

5) *Ochs v. Public Service Railway Company,* 81 N.J.L. 661 AB41a

6) *Szczuvelekv v. Harborside Healthcare*, 182 N.J. 275 21, AB69a

Rules Governing the Court of the State of New Jersey

1) New Jersey Court Rule of civil procedure R. 4:5-2 AB17a

2) New Jersey Courts Rule of civil procedure *RULE 1:36-2* 33

3) New Jersey Courts Rules of civil procedure R. 4:6-4 AB17a

4) New Jersey Courts Rule of civil procedure 4:9-3 32

5) New Jersey Court Rules of civil procedure R. 4:46 AB18a

PRELIMINARY STATEMENT

I have personal knowledge of all matters contained herein.

Our entire legal system is geared toward a trial of the facts of a matter by jury. The facts of a matter usually consist of the law of the matter at the time of the cause of action and the facts giving rise to a cause of action.

Per a law of a congress of the United States - 73d CONGRESS. SESS. II . CHS. 651. JUNE 19, 1934. - there is a 7th amendment right to trial by jury. The size of the jury is 6 in the state of New Jersey per New Jersey statutory law.

Per the Supreme court rulings in *Insurance Company v. Folsom*, 85 US 237 and *Slocum v. New York Life Insurance Co.*, 228 US 364 there is a right to trial of all evidence presented by a pleading by a jury of 12.

Per the New Jersey Constitution, and New Jersey statutory law, the right to trial by a jury of 6 is to be held inviolate.

Per the Constitution, the 10th amendment and *Schick v. United States*, 195 US 65 all infractions of public laws are crimes that must be tried by a jury. The size of the jury is 6 in the state of New Jersey per New Jersey statutory law.

While a judge can act illegally and remain immune from action per a prior Supreme court opinion, the fact remains that the denial of the right to trial by jury is a crime per title 18 section 242 and that crime has to be tried by jury regardless of whether the presiding judge will remain immune from action none-the-less.

If a presiding judge were to deny the right to trial by jury, by more than just a judge-jury of one, in a matter brought to the bar, every judge in the country would be legally obligated to preserve the right to trial by jury, per *Slocum v. New York Life Insurance Co.,* 228 US 364, Article III and Article VI of the Constitution, by bringing the case to Washington, DC, where the offending judge would not be immune from action, for trial of the matter by the Supreme court of the United States. The Supreme court could then issue an order for the incarceration, or fine, of the offending judge, per title 18 section 242, in either the judge's state of residence, or Washington, DC.

With the above referenced in mind, the judges in the appellate court of New Jersey can properly attend to the matters that I seek to bring to the bar by directing that a jury trial commences with regard to the matters that I seek to bring to the bar.

Note: Judges can completely lie and remain immune from action from every other government body besides the Supreme court, - i.e. a judge can illegally cite a prior court opinion, in this case The Doyne order, and remain immune from action. Even if the Doyne order was binding common law, via the principal of stare decisis Phil Hahn is still due a judgement as a matter of law.

Judge De La Cruz granted summary judgment on January 7, 2010, for the failure to file an Affidavit of Merit and for a lack of expert testimony, in the absence of a jury confirmation of her finding of fact.

Clearly, judge De La Cruz's granting of motion for summary judgment was in error as sufficient law was in existence to find in the plaintiff's favor

Just because judge was unaware of the law, does not mean it did not exist or bind the defendant

STATEMENT OF THE CASE - PROCEDURAL HISTORY

The original claim was filed circa March 12, 2007, - within two years of the cause of action versus the Bergen Regional Medical Center. However, the claim was amended to include Bristol-Myers Squibb and Otsuka Pharmaceuticals circa August of 2007 and March of 2008 respectively.

Summary judgment was issued by judge De La Cruz January 7, 2010 with regard to claims versus all parties.

Timely appeal of the summary judgment order was made and appeal was heard circa 2010 by a three-member appellate judge panel that affirmed the lower court summary judgment via docket #: A-2869-09T2

The issue of whether the facts of the matter of the summary judgement order had to be confirmed by a jury of 6 or 12 was never decided by any court.

Request for Certification was made to the New Jersey supreme court. The New Jersey supreme court declined to certify the case, - in the absence of any oral argument in the New Jersey supreme court.

Further, no court ever sought to supplement the record with regard to any law with regard to the matters brought to the bar.

Motion on for declaratory judgment with regard to the right to trial by jury was made on October 28, 2022.

Motion for declaratory judgment was dismissed in error by judge Mizdol on November. 17, 2022.

The illegal dismissal order was based on an unrelated and unpublished judge Doyne order filed on March 9, 2012.

Timely appeal of the illegal Mizdol order was made on November 28, 2022.

Oral argument was made with regard to appeal made via docket #: A-001029-22.

No decision was made by the appellate court in the matters appealed via docket #: A-001029-22.

Motion for judgment was made in the matters at the bar of circa December 4, 2023

Motion for judgment was dismissed in error by the Honorable judge Catuogno on December 12, 2012, - the Pro Se plaintiff was never served with the erroneous notice of dismissal.

Brief in support of motion for judgement was resubmitted to the Superior Court of Bergen County (in order to have a time received stamped copy) on January 5, 2024.

Another brief supporting amendments relating back to the original filing date of the claim was filed in the Superior Court of Bergen County on January 5, 2024.

Timely appeal was made on February 2, 2024.

Brief in support of request for oral argument in the matters at the bar was submitted to the appellate court on March 1, 2024.

Brief in support of appeal in the matters at bar was submitted to the appellate court within the time limitations of the appellate court order.

STATEMENT OF FACTS

There is a right to trial by jury, of more than just a judge-jury of one, of the judge's finding of fact – i.e. judge Carol V. Novey Catuogno order - in the matters at the bar. No action can be taken in the lower court in the absence of a jury confirmation of the court's finding of fact.

There is sufficient law in record, and evidence of a cause of action, for a jury to find in Philip Hahn's favor in the matters at the bar via a breach of statute negligence claim, - in spite of a summary judgment order issued January 7, 2010 for the failure to submit an Affidavit of Merit, or expert testimony, as neither is required for a breach of statute negligence claim.

There is further opportunity for recovery via a malpractice action established via evidence adduced at a jury trial.

POINT 1: As a matter of law, the plaintiff is entitled to judgment versus the Bergen Regional Medical Center, LP. (Not argued below)

The evidence of law, and evidence of the cause of action via brief filed in support of award of judgment in the lower court - in record - merely need to be confirmed by a jury empaneled by the presiding judge at this point in order to find in Philip Hahn's favor.

(See appendix pp. AB41a - AB59a for copy of brief in support of judgment filed in lower court via a breach of statute negligence claim)

As there is sufficient law to sustain a recovery, the January 7, 2010 De La Cruz summary judgment order was in error. Summary judgment can be granted when there is insufficient law to sustain a recovery.

Neither an Affidavit of Merit, nor expert testimony is required to establish a negligence claim via breach of statute as there is no allegation of malpractice or negligence in one's profession.

POINT 2: Absent a jury trial of a presiding judge's order – i.e. finding of fact, I have no way to really know what was decided in a matter brought to the bar (Not argued below)

Notwithstanding that there is no avenue for a court, without more, to dismiss the claim at the bar for the failure to state a claim upon which relief can be granted, or via summary judgment, any fact none-the-less needs to be established via a jury decision of more than just a judge-jury of one or I have no way to know what was decided.

Slocum v. New York Life Insurance, Co., reading in pertinent part as follows:

'....Coughran v. Bigelow recognizes that this is the true conception of trial by jury, for it is there said, "if the evidence be not sufficient to warrant a recovery, it is the duty of the court to instruct the jury accordingly, and, if the jury disregard such instruction, to set aside the verdict."

Why instruct the jury in such a case if they have no office to perform? Why contemplate that they may not conform to the instruction if it be immaterial whether they do or not? And why take their verdict or have any concern about it if none is required? The answers are given in prior decisions, which hold, as before shown, that in such a case it is essential "that the jury make its verdict, albeit in conformity with the order of the
Page 228 U. S. 398 court," and that, if there be a verdict, "the action is ended, unless a new trial be granted, either upon motion or upon appeal...."

What was the law is an issue of fact for jury.

POINT 3: Catuogno's order needs to be confirmed by a jury of 12, notwithstanding the order is erroneous (Not argued below)

In the event that judge Hon. Carol V. Novey Catuogno concurred with the erroneous Peter E. Doyne order, or any other erroneous order issued by a judge with regard to the matters at the bar, that finding of fact is based on newly adduced evidence.

Therefore that finding of fact by judge Carol V. Novey Catuogno has to be confirmed by more than just a judge-jury of one, - i.e. a jury of 6 or 12 per New Jersey statutory law or the previous decisions of the courts established by the Constitution.

Slocum v. New York Life Insurance Co., 228 US 364 is clear where a jury is to perform its office, regardless of whether the presiding judge is going to accept the verdict.

POINT 4: Whether a matter at the bar sounds in ordinary negligence or malpractice is an issue of fact for jury. A cause of action via a breach of statute does not sound in malpractice or negligence in one's profession. (Not argued below)

By definition a malpractice action, or action via negligence in one's profession is an action where specialize knowledge – i.e. knowledge beyond the ken of the typical citizen – is required to prove a matter. Therefore, the absence of expert testimony, when required, will result in the failure to state a claim upon which relief can be granted.

On the other hand, a claim sounding in ordinary negligence is a claim sounding in evidence of fact that is within the realm of the knowledge of the typical citizen.

It is an issue of fact for jury whether a claim sounding in breach of statute is a matter of a claim sounding in ordinary knowledge and therefore a common knowledge negligence claim, rather than a claim sounding in malpractice or negligence in one's profession and therefore subject to the Affidavit of Merit Act.

Therefore, summary judgment order on January 10, 2010 cannot be relied upon to dismiss the matters at the bar. In an absence of a jury confirmation of the validity of the court's summary judgment order.

POINT 5: There is avenue for recovery via a jury trial (Not argued below)

At issue on appeal is whether there is sufficient law to enable a recovery in the plaintiff's favor.

Expert testimony can be adduced at a jury trial that will negate the requirement of an Affidavit of Merit in the matters at the bar, - the basis for the summary judgment order issued on January 7, 2010.

If the testimony was tried to be fact, then no Affidavit of Merit would be required as there would be no allegation of negligence, - i.e. the fact would have been proven.

As a result, the court is in error for dismissing a claim sounding in malpractice when evidence of the fact can be adduced at trial.

Further, the discovery rule via *Szczuvelekv v. Harborside Healthcare*, 182 N.J. 275

reads in pertinent part as follows:

*'....The statute of limitations sets forth the period of time within which a party may file a complaint. In the case of a medical malpractice claim, suit must be filed within two years of the accrual date, which generally is the date of [***17] the negligent act or omission. Martinez v. Cooper Hosp., 163 N.J. 45, 52, 747 A.2d 266 (2000). HN3 To avoid the harsh effects of a mechanical application of statute of limitations, we adopted the discovery rule first announced in Fernandi v. Strully, 35 N.J. 434, 173 A.2d 277 (1961). Ibid. "The discovery rule is essentially a rule of equity." Lopez v. Swyer, 62 N.J. 267, 273, 300 A.2d 563 (1973). The rule "provides that in an appropriate case a cause of action will be held not to accrue until the injured party discovers, or by an exercise of reasonable diligence and intelligence should have discovered that he [or she] may have a basis for an actionable claim." Id. at 272, 300 A.2d 563.*

HN4 It is not every belated discovery that will justify an application of the rule lifting the bar of the limitations statute. The interplay of the conflicting interests of the competing parties must be considered. The decision requires more than a simple factual determination; it should be made by a judge and by a judge conscious of the equitable nature of the issue before him [or her].

*[[***18] Id. at 275, 300 A.2d 563.]*

Thus, HN5 it is necessary to identify the equitable claims of each party and evaluate and weigh those claims in determining whether it is appropriate to apply the discovery rule. The crucial inquiry is "whether the facts presented would alert a reasonable person exercising ordinary diligence that he or she was injured due to the fault of another. The standard is basically an objective one--whether plaintiff 'knew or should have known' of sufficient facts to start the statute of limitations running." Martinez, supra, 163 N.J. at 52, 747 A.2d 266....'

As an issue of fact regarding malpractice, or negligence in one's profession, is beyond the ken of the typical citizen, a cause of action sounding in malpractice must be established via expert testimony.

Therefore, via the discovery rule, an instance of malpractice cannot accrue in a malpractice claim until, without more, expert testimony is given at a jury trial.

POINT 6: Per New Jersey statutory law any change in the meaning of language is irrelevant (Not argued below)

N.J.S.A. 1:1-1. General rules of construction reads as follows:

'....In the construction of the laws and statutes of this state, both civil and criminal, words and phrases shall be read and construed with their context, and shall, unless inconsistent with the manifest intent of the legislature or unless another or different meaning is expressly indicated, be given their generally accepted meaning, according to the approved usage of the language. Technical words and phrases, and words and phrases having a special or accepted meaning in the law, shall be construed in accordance with such technical or special and accepted meaning....'

The above referenced passage from the New Jersey statutes is self-authenticating.

As far as previously enacted law, and court decisions – both Supreme court and other courts – are concerned, the matter is irrelevant as to whether the meaning of language has changed.

In other words, while there is no way to really know what the original drafters of a law, or court opinion, had in mind at the time, the New Jersey statutes allows for the law to be interpreted according to the standards of the day that the law, or court interpretation, is read.

Clearly, to me, at-the-least, what matters in a charge to jury with regard to the facts of a matter is the present day meaning of the passage, regardless of the intent at the time of the drafting of the law, or court opinion.

POINT 7: The laws created by the past Congresses of the United States are still valid (Not argued below)

The Constitution reading in pertinent part as follows:

Article. I.

Section. 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 8.

The Congress shall have Power... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article. IV.

Section. 3.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;

Section. 4.

The United States shall guarantee to every State in this Union a Republican Form of Government,

There is nothing at the bar stating that a law passed by a prior Congress becomes void upon a change in the composition of a Congress of the United States.

POINT 8: Supreme court opinions are facts that cannot be otherwise re-examined (Not argued below)

Insurance Company v. Folsom, 85 US 237 reading in pertinent part as follows:

'....By the terms of the Act of Congress permitting issues of fact in civil cases to be tried and determined by the court without the intervention of a jury, it is provided that the finding of the court upon the facts may be either general or special, and that the finding shall have the same effect as the verdict of a jury....'

My understanding of the matter is that juries decide facts. As a result, per the 7th amendment a decision of the Supreme court is a fact that cannot be otherwise re-examined as the Supreme court is a court of the United States.

The 7th amendment reading as follows:

'....In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law....'

The 7th amendment is clear where no fact decided by a jury shall be otherwise re-examined in a court of the United States.

POINT 9: New Jersey common laws are facts that cannot be otherwise re-examined (Not argued below)

Insurance Company v. Folsom, 85 US 237 reading in pertinent part as follows:

'....By the terms of the Act of Congress permitting issues of fact in civil cases to be tried and determined by the court without the intervention of a jury, it is provided that the finding of the court upon the facts may be either general or special, and that the finding shall have the same effect as the verdict of a jury....'

Clearly, *Folsom* applies to the creation of New Jersey common law by the New Jersey supreme court, and other courts of the state of New Jersey.

POINT 10: There is a right to trial by jury via the 7th amendment per the 73rd Congress (Not argued below)

73d CONGRESS. SESS. II . CHS. 651 JUNE 19, 1934 reading in pertinent part as follows:

'....Provided, however, That (in such union of rules) the right of trial by jury as at common law and declared by the seventh amendment to the Constitution shall be preserved to the parties inviolate....'

Approved, June 19, 1934.

POINT 11: There is a right to trial by jury via *Slocum v. New York Life Insurance Co.*, 228 US 364. (Not argued below)

Slocum v. New York Life Insurance Co., 228 US 364 reading in pertinent part as follows:

*'....wherein it uniformly has been held (a) that we must look to the common law for a definition of the nature and extent of the right of trial by jury which the Constitution declares "shall be preserved;" (b) that the right so preserved is the right to have the issues of fact presented by the pleadings tried by a jury of twelve, under the direction and superintendence of the court; (c) that the rendition of a verdict is of the substance of the right, because to dispense with a verdict is to eliminate the jury which is no less a part of the tribunal charged with the trial than is the court, and (d) that [****57] when the issues have been so tried and a verdict rendered they cannot be reexamined otherwise than on a new trial granted by the court in which the first trial was had or ordered by the appellate court for some error of law affecting the verdict....'*

As words are to be taken to have their plain meaning, one can only conclude that there is a right to trial by jury of 12 per the jury decision that the Supreme court opinion in *Slocum* represents.

Notably the Supreme court put to rest any possibility of a state court judge re-examining a Supreme court opinion via the language of *Slocum*, above referenced.

POINT 12: The right to trial by jury is to remain inviolate per the New Jersey constitution and New Jersey statutory law. (Not argued below)

The New Jersey constitution reading in pertinent part as follows:

'....Article I, section 9. The right of trial by jury shall remain inviolate; but the Legislature may authorize the trial of civil causes by a jury of six persons. The Legislature may provide that in any civil cause a verdict may be rendered by not less than five-sixths of the jury. The Legislature may authorize the trial of the issue of mental incompetency without a jury....'

N.J.S.A.2B:23-1. Number of jurors reading as follows:

a. Juries in criminal cases shall consist of 12 persons. Except in trials of crimes punishable by death, the parties in criminal cases may stipulate in writing, before the verdict and with court approval, that the jury shall consist of fewer than 12 persons.

b. Juries in civil cases shall consist of 6 persons unless the court shall order a jury of 12 persons for good cause shown.

POINT 13: All crimes are to be tried by jury (Not argued below)

The Constitution reading in pertinent part as follows:

Article. III, Section. 2.

'....The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed....'

Schick v. United States, 195 US 65 reading in pertinent part as follows:

'....In this treatise, vol. 4, p. 5. is given a definition of the word "crimes:"

"A crime or misdemeanor, is an act committed or omitted in violation of a public law either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors, which, properly speaking, are mere synonymous terms, though in common usage the word 'crimes' is made to denote such offenses as are of a deeper and more atrocious Page 195 U. S. 70 dye; while smaller faults and omissions of less consequence are comprised under the gentler name of 'misdemeanors' only."

While the use of the word *'dye'* in the definition of the words *'crimes'* may be unknown, the fact remains that via the exclusive language of the word *'only'* with regard to *'misdemeanors'* - only one conclusion can be drawn in the matter of the Supreme court opinion delivered in *Schick*, - all misdemeanors are crimes and all crimes are misdemeanors.

Therefore, via Article III of the constitution, the appellate court judges are legally obligated to have the matter of the denial of my right to trial by jury, by a judge acting under the color of law, tried by a jury of 6 in the state of New Jersey.

POINT 14: The Supreme court can issue an order to incarcerate, or otherwise fine, a judge that is denying the right to trial by jury (Not argued below)

Article VI of the Constitution reading in pertinent part as follows:

'....This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding....'

Article III or the Constitution reading in pertinent part as follows:

Article. III, ***Section. 1.***

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2.

The judicial Power shall extend to all Cases,....'

As a result, a judge operating in the District of Columbia is not bound by the Constitution, and any associated Supreme court opinion holding a judge immune from action. However, the judge can still take action via title 18 section 242, as it is the supreme law of the land, and find a judge guilty of denying the right to trial by jury while acting under the Color of Law.

Then, the Supreme court could issue a binding order directing that an offending judge is either fined, or incarcerated, for denying the right to trial by jury that would be binding via the provisions of Article III of the Constitution.

POINT 15: New Jersey law allows for a transactionally related action to relate back to the original filing date of the complaint (Not argued below)

The Rules of the courts of the state of New Jersey, as written into law by a court of the state of New Jersey, allows for an amendment to relate back to the original filing date of a claim.

Rules of the court of the state of New Jersey R.4:9-3 reading as follows:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading; but the court, in addition to its power to allow amendments may, upon terms, permit the statement of a new or different claim or defense in the pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party to be brought in by amendment, that party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party to be brought in by amendment.

Rule 4:9-3 was written into law via *Brown v. Kennedy Memorial Hosp.-University Medical Center (Cherry Hill Div.),* 312 N.J.Super. 579 reading in pertinent part as follows:

'....An amendment to a pleading relates back to the date of the original pleading "[w]henever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or

occurrence set forth or attempted to be set forth in the original pleading." R. *4:9–3. The rule accomplishes "substantial justice on the merits by permitting a technical and otherwise fatal flaw to be corrected where such correction will not materially prejudice another party." Pressler,* Current N.J. Court Rules, *comment 2 on* R. *4:9–3 (1998). When a period of limitation has expired, only distinctly new or different claims are barred, not those pertaining to the same subject matter.* Harr v. Allstate Ins. Co., *54* N.J. *287, 299–300, 255* A.*2d 208 (1969). A germane claim is entitled to relation back, and it is within the discretion of the court to decide whether a new and different claim relates back.* See Wimmer v. Coombs, *198* N.J.Super. *184, 188, 486* A.*2d 916 (App.Div.1985)....'*

As a result, any claim made after the expiration of a statute of limitations can be saved via R. 4:9-3.

Judge Catuogno may have overlooked the existing law regarding the relation back rule.

Newly adduced evidence of law does not change the fact that the law existed at the time of the violation.

Point 16 — The Judge Doyne ruling relied upon by Carol V. Novey Catuogno is not binding common law. (Not argued below)

The procedure for a court ruling to become precedential common law binding on all courts is as follows:

RULE 1:36-2 Publication

(a) *Appellate Opinions. All opinions of the Supreme Court shall be published except where otherwise directed by the Court. Opinions of the Appellate Division shall be published only upon the direction of a majority of the panel members issuing the opinion and with the approval of the Part's presiding judge.*

(b) *Committee on Opinions; Trial Court Opinions. The Chief Justice shall appoint a Committee on Opinions to review formal written opinions submitted for publication by a trial judge. Except in extraordinary circumstances, the Committee shall not review a trial court opinion until the time for appeal from the final judgment in the cause has expired. If an appeal has not been taken, the Committee shall determine whether to approve publication of the trial court opinion. If an appeal has been taken, the Appellate Division panel, in the manner described in paragraph (a), shall determine, when it decides the appeal, whether the trial court opinion shall be published. A trial judge submitting an opinion for review for publication shall file it with the Administrative Office of the Courts in triplicate with the notation on its face that it is being submitted for publication.*

(c) *Request for Publication. Any person may request publication of an opinion by letter to the Committee on Opinions explaining the basis of the request with specificity and with reference to the guidelines prescribed by paragraph (d). In the case of Appellate Division opinions, the Committee shall transmit the request to the presiding judge of the panel together with its recommendation, but the court shall retain the publication decision which will be exercised in the manner described in paragraph (a).*

(d) *Guidelines for Publication. An opinion in appropriate form, excluding letter opinions and transcripts of oral opinions, shall be published where the decision (1) involves a substantial question under the United States or New Jersey Constitution, or (2) determines a new and important question of law, or (3) changes, reverses, seriously questions or criticizes the soundness of an established principle of law, or (4) determines a substantial question on which the only case law in this State antedates September 15, 1948, or (5) is based upon a matter of practice and procedure not theretofore authoritatively determined, or (6) is of continuing public interest and importance, or (7) resolves an apparent conflict of authority, or (8) although not otherwise meriting publication, constitutes a significant and non-duplicative contribution to*

legal literature by providing an historical review of the law, or describing legislative history, or containing a collection of gases that should be of substantial aid to the bench and bar.

There is no evidence at the bar to prove that the judge Doyne order relied upon ever became binding common law in the state of New Jersey.

A judge presiding over a court can pretend that another court's ruling is binding common law, in spite of the fact that it is not. However, even though a judge can completely lie in a matter and remain immune, it would not change the fact of the matter that the judge is lying and illegally relying on an unrelated order.

From *Badiali v. New Jersey Mfrs. Ins. Group*, 220 N.J. 544 we have in pertinent part:

'....The use and authority of unpublished opinions is governed by Rule 1:36—3. That rule provides:

No unpublished opinion shall constitute precedent or be binding upon any court. 'Except for appellate opinions not approved for publication that have been reported in an authorized administrative law reporter, and except to the extent required by res judicata, collateral estoppel, the single controversy doctrine or any other similar principle of law, no unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel... '

[R. 1:36-3.]

This rule has been affirmed time and again by this Court. See Guido v. Duane Morris LLP, 202 N.J. 79, 91 n. 4, 995 A.2d 844 (2010); Mount Holly Twp. Bd. Of Educ. v. Mount Holly Twp. Educ. Ass'n, 199 N.J. 319, 332 n. 2, 972 A.2d 387 (2009); In re Allegedlmproper Practice, 194 N.J 314, 330 n. 10, 944 A.2d 611 cert. denied, 555 U.S. 1069, 129 S.Ct. 754, 172 L.Ed.2d 726 (2008)....'

Again, while it completely within a judge's prerogative to use another court's fictitious order in an effort to get to the truth of a matter, the fact remains in the matters at the bar, the Doyne order cannot be relied upon by Catuogno or any other court.

In other words, while Catuogno can use a verbatim copy of the Doyne order to try to trick me into believing that she can dismiss my action in the absence of a jury trial of more than just a judge-jury of one, the fact remains that the Doyne order itself has no precedential value via *Batali*.

Point 17 — The Doyne order is an illegal Bill of Attainder (Not argued below)

Clearly, judge Catuogno is either unaware of the Supreme court holdings in *Cummings* and *Lovètt* or she is operating under the premise that her court is not bound by the prior Supreme court opinions.

Per Article Ill of the Constitution there is to be only one Supreme court. Certainly, the current Supreme court is not comprised of the same members of the Supreme court that . rendered the opinions in *Cummings* and *Lovett.*

Absent the prior Supreme court opinions being facts that cannot be otherwise reexamined, there is nothing at the bar to prove that judge Catuogno is bound by the prior Supreme court opinions.

As I believe that I have proved that the Supreme court opinions are facts that cannot be otherwise re-examined, per the following, the Doyne order is an illegal Bill of Attainder:

The Constitution Article. I, Section. 9, reads as follows:

'....No Bill of Attainder or ex post facto Law shall be passed... '

United States v. Lovett, 66 S.Ct. 1073 reads in pertinent part as follows:
'....They stand for the proposition that legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution....'

Cummings v. The State of Missouri, 71 U.S. 277, reads in pertinent part as follows:

*'....The theory upon which our political institutions rest is, that all men have certain inalienable rights—that among these are life, liberty, and the pursuit of happiness; and that in the pursuit of happiness ãll avocations, all honors, all positions, are alike open to every one, and that in the protection *322 of these rights all are equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined.*

Punishment not being, therefore, restricted, as contended by counsel, to the deprivation of life, liberty, or property, but also embracing deprivation or suspension of political or civil rights, and the disabilities prescribed by the provisions of the Missouri constitution being in effect punishment, we proceed to consider whether there is any inhibition in the Constitution of the United States against their enforcement....'

Between the three, clearly the Doyne order relied upon by judge Catuogno is an illegal Bill of Attainder as the order subjects just one person to a deprivation of....the right to pursue happiness.. ..via the denial of the right to trial by jury, or via failing to hold the right to trial by jury inviolate.

POINT 18: A rule of the court of the state of New Jersey does not have the effect of binding law. (Not argued below)

A Rule of the court of the state of New Jersey is not a Federal Rule of Civil Procedure. Therefore, the rules of the court of the state of New Jersey cannot be used to dismiss a claim in spite of the law of the matter.

Dismissal via R. 4:5-2, R. 4:6-4 or R. 4:46 et seq. (summary judgment) is illegal in the absence of a jury confirmation of the court's finding of fact, or a jury confirmation of R. 4:5-2, R. 4:6-4 or R. 4:46 et seq. being written into law.

POINT 19: The laws of the United States, made by congress, are the supreme law of the land. (Not argued below)

Article VI of the Constitution reads in pertinent part as follows:

'....This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding....'

At first glance there appears to be two avenues that can be taken where the *'.... Laws of the United States....'* will not be the *'....supreme Law of the Land....'*

Note: *'....Laws of the United States which shall be made in Pursuance....' of '....This Constitution....'* are not part of the Constitution.

However, from *McCulloch v. Maryland*, 17 U.S. 316 we have:

*"....But this question is not left to mere reason: the people have, in express terms, decided it, by saying, *406 'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' and by requiring that the members of the state legislatures, and the officers of the executive and judicial departments of the states,*

shall take the oath of fidelity to it. The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, 'anything in the constitution or laws of any state to the contrary notwithstanding.'....''

As a result, either '*....this constitution,....' or '....the laws of the United States....'* could be the supreme law of the land.

Fortunately, from *Schick v. United States*, 195 US 65 we have in pertinent part:

*'....If there be any conflict between these two provisions, the one found in the Amendments must control, under the well-understood rule that the last expression of the will of the lawmaker prevails over an earlier [*69] one....'*

So, the above referenced part of Article VI starts with, *'....This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;....'*

Clearly, *'....the Laws of the United States....'* is written after *'....This Constitution....'*

As a result, *'....the Laws of the United States....'* is the *'....the last expression of the will of the lawmaker....'* on the matter.

It follows that *'....the laws of the United States....'* are the supreme law of the land rather than *'....This Constitution....'*

CONCLUSION:

There is sufficient evidence in record to find in the plaintiff's favor

Via a jury trial a malpractice claim can be still a valid cause of action.

Evidence supporting a claim for relief can be adduced at trial. Therefore, the court is in error for denying the opportunity to adduce evidence via a jury trial.

The court is in error for rendering an opinion without a jury confirmation of the judge's finding of fact

PHILIP HAHN, Plaintiff-Appellant, v. BERGEN REGIONAL MEDICAL CENTER, Defendant-Respondent.	SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DOCKET NO. A-001755-23 CIVIL ACTION ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY, LAW DIVISION – BERGEN COUNTY DOCKET NO. BER-L-1852-07 SAT BELOW: HON. CAROL V. CATUOGNO, A.J.S.C.

AMENDED DEFENDANT/RESPONDENT BERGEN REGIONAL MEDICAL CENTER'S BRIEF

William Buckley, Esq. (002131994)
wjb@spsk.com
Of Counsel

Matthew Morales, Esq. (412032022)
mmorales@spsk.com
Of Counsel & On the Brief

SCHENCK, PRICE, SMITH & KING, LLP
220 Park Avenue, P.O. Box 991
Florham Park, New Jersey 07932
Phone: (973) 539-1000
Fax: (973) 540-7300
Attorneys for Defendant-Respondent Bergen Regional Medical Center

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

TABLE OF JUDGMENTS, ORDERS & RULINGS iii

PRELIMINARY STATEMENT 1

PROCEDURAL HISTORY 2

STATEMENT OF FACTS 4

LEGAL ARGUMENT 7

I. THE TRIAL COURT DID NOT ERR OR ABUSE ITS DISCRETION IN DISMISSING PLAINTIFF'S NOTICE OF MOTION PURSUANT TO ASSIGNMENT JUDGE DOYNE'S 2012 INJUNCTIVE ORDER [Issue raised below at AB17a – AB18a; AB19a – AB30a; and Da31 – Da35].. 7

II. PLAINTIFF WAS NOT ENTITLED TO FILE HIS SECOND OR THIRD APPEAL AFTER EXHAUSTING HIS INITIAL APPEAL IN THIS SAME MATTER. [Issue not raised below] 11

CONCLUSION 13

TABLE OF AUTHORITIES

Cases

M.C. v. Div. of Med. Assistance & Health Servs., 2019 N.J. Super. Unpub. LEXIS 14 (App. Div. 2019) 11

Midler v. Heinowitz, 10 N.J. 123, 129 (1952) 10

Mortgageling Corp. v. Commonwealth Land Title Ins. Co., 142 N.J. 336, 346 (1995) 7

Rosenblum v. Borough of Closter, 333 N.J. Super. 385, 391 (App. Div. 2000) 8

Shimm v. Toys From The Attic, Inc., 375 N.J. Super. 300, 304 (App. Div. 2005) 11

State v. Fletcher, 174 N.J. Super. 609, 614 (App. Div. 1980) 10

State v. Lefante, 14 N.J. 584, 591 (1954) 10,12

Velasquez v. Franz, 123 N.J. 498, 505 (1991) 7

Statutes

N.J.S.A. 2A:14-2 4

N.J.S.A. 30:4-27.7 4

Rules

R. 2:12-7 8

R 1:4-8(c) 5, 8, 9

R 2:11-3(e)(1)(E) 11

R 4:5-2 6

R 4:6-4 6

TABLE OF JUDGMENTS, ORDERS & RULINGS

Injunctive Order directing that Plaintiff's lawsuits must be reviewed by the Assignment Judge for a determination of dismissal (entered March 9, 2012).....Da31

Order Dismissing Plaintiff's July 11, 2022 Notice of Motion (entered July 13, 2022).....Da17

Order Dismissing Plaintiff's November 14, 2022 Notice of Motion (entered November 17, 2022).....Da29

Appellate Court Written Decision (entered September 27, 2023).....Da31

Order Dismissing Plaintiff-Appellant's December 4, 2023 Notice of Motion (entered December 12, 2023)..... AB17a

PRELIMINARY STATEMENT

This current appeal brought by Plaintiff-Appellant Philip Hahn ("Plaintiff") is a frivolous attempt at relitigating controversy that not only has been long since adjudicated in the trial court but has already been before this Appellate Court two times prior to this current appellate action. This appeal was brought by Plaintiff in connection with a December 12, 2023 Order *sua sponte* dismissing Plaintiff's Notice of Motion to re-open a matter (BER-L-1852-07) which was disposed of over a decade ago by way of summary judgment in favor of Bergen Regional Medical Center ("BRMC") on January 7, 2010. This Appellate Court affirmed that dismissal Order on June 23, 2011 and Plaintiff did not file a petition for certification with the Supreme Court. By all accounts, this matter concluded then and there.

Over a decade later, on July 11, 2022 Plaintiff filed a Notice of Motion seeking to essentially re-open this matter, which was denied by the trial court. Plaintiff then filed an identical, second Notice of Motion on November 14, 2022, which was also denied by the trial court. This Appellate Court affirmed the trial court's November 14, 2022 Order on September 27, 2023. Not even three months later, on December 4, 2023, Plaintiff filed the Notice of Motion which is the subject of this current appeal. Respectfully, Plaintiff's current appeal upends BRMC's right to finality and repose under the doctrine of res judicata and should

not be entertained by this Court. Accordingly, BRMC respectfully submits that the trial court did not err and appropriately dismissed Plaintiff's December 12, 2023 Notice of Motion.

PROCEDURAL HISTORY

On or about March 12, 2007, Plaintiff filed a Complaint alleging he had been misdiagnosed with a psychiatric illness and therefore improperly admitted to Defendant BRMC's facility.[1]

On January 7, 2010, the trial court entered a dismissal order granting BRMC's summary judgment motion. [AB74a - AB75a].

On June 23, 2011, this Appellate Court affirmed the January 7, 2010 trial court dismissal order granting summary judgment to BRMC. [Da1 - Da6].

On March 9, 2012, the Bergen County assignment judge entered an injunctive order directing that "all lawsuits filed by Hahn shall be reviewed by the Assignment Judge as soon as practicable after having been filed but before service is effectuated, with this court to then have the opportunity to determine,

[1] Plaintiff's March 12, 2007 Complaint has been archived and is unavailable to download from the New Jersey e-courts website. Plaintiff did not include a copy of his March 12, 2007 Complaint in his appendix. Please see this Appellate Court's September 27, 2023 written opinion at [Da32] for the description of the Complaint referenced in this brief.

for good cause, whether to sua sponte dismiss any patently frivolous or non-meritorious lawsuit." [AB19a - AB40a].

On July 11, 2022, Plaintiff submitted to the trial court a "Notice of Motion" seeking a declaratory judgment that the trial court is "bound by prior Supreme Court opinions" and asserting that the summary judgment motion deprived him of his right to a jury trial. [Da7 - Da16].

On July 13, 2022, the Bergen County assignment judge entered an order *sua sponte* dismissing Plaintiff's July 11, 2022 Notice of Motion as frivolous pursuant to the prior assignment judge's March 9, 2012 injunctive order. [Da17 - Da18].

On November 14, 2022, Plaintiff again submitted to the trial court a "Notice of Motion" seeking a declaratory judgment that the trial court is "bound by the prior Supreme Court opinions" and asserting that the summary judgment motion deprived him of his right to a jury trial. [Da19 - Da28].

On November 17, 2022, the Bergen County assignment judge entered an order *sua sponte* dismissing Plaintiff's November 14, 2022 Notice of Motion as frivolous pursuant to the prior assignment judge's March 9, 2012 injunctive order. [Da29 - Da30].

On September 27, 2023, this Appellate Court affirmed the trial court's November 17, 2022 dismissal order. [Da31 - Da35].

On December 4, 2023, Plaintiff submitted another Notice of Motion in this matter seeking to "establish the liability of the Bergen Regional Medical Center, LP via a breach of Statute Negligence Claim occurring on April 18, 2005." [AB12a - AB16a].

On December 12, 2023, the current Bergen County Assignment Judge entered an order *sua sponte* dismissing Plaintiff's December 4, 2023 Notice of Motion as frivolous pursuant to the March 9, 2012 injunctive order. [AB17a - AB18a].

On February 2, 2024, Plaintiff filed the subject Notice of Appeal of the trial court's December 12, 2023 Order. [AB1a - AB16a]

STATEMENT OF FACTS

On January 7, 2010, the trial court granted BRMC's summary judgment motion and entered a dismissal order based on legal issues, including the lack of an affidavit of merit and expert reports, statutory immunity under N.J.S.A. 30:4-27.7, and the statute of limitations under N.J.S.A. 2A:14-2. [AB74a - AB75a].

On March 9, 2012, the Bergen County assignment judge at the time, the Hon. Peter E. Doyne, entered an order directing that "all lawsuits filed by Hahn shall be reviewed by the Assignment Judge as soon as practicable after having been filed but before service is effectuated, with this court to then have the

opportunity to determine, for good cause, whether to *sua sponte* dismiss any patently frivolous or non-meritorious lawsuit." [AB19a - AB20a]. In the ten-page opinion that accompanied the March 9, 2012 injunctive order, Judge Doyne described plaintiff as a "frequent pro se filer," finding he had filed approximately seventeen lawsuits in five years, nearly all of which had been dismissed. [AB21a – AB22a] Judge Doyne found that Plaintiff's "actions patently demonstrate[d] a willful desire to abuse the judicial process and absorb State and judicial resources" and that other sanctions would not be effective. [AB29a]. Judge Doyne held that an injunction was "the only alternative which remain[ed] to protect against future frivolous litigation." [AB30a].

More than a decade later, on July 11, 2022, Plaintiff submitted to the trial court a "Notice of Motion" seeking a declaratory judgment that the trial court is "bound by the prior Supreme Court opinions" and asserting that the summary judgment motion deprived him of his right to a jury trial. [Da7 - Da16].

On July 13, 2022, the Bergen County assignment judge at the time, the Hon. Bonnie J. Mizdol, entered an order *sua sponte* dismissing Plaintiff's July 11, 2022 Notice of Motion as frivolous pursuant to prior Assignment Judge Doyne's March 9, 2012 injunctive order. [Da17 - Da18].

On November 14, 2022, Plaintiff submitted to the trial court a "Notice of Motion" nearly identical to his July 11, 2022 Notice of Motion, seeking a

declaratory judgment that the trial court is "bound by the prior Supreme Court opinions" and asserting that the summary judgment motion deprived him of his right to a jury trial. [Da19 - Da28].

On November 17, 2022, the Bergen County assignment judge, the Hon. Bonnie J. Mizdol, again, entered an order *sua sponte* dismissing Plaintiff's November 14, 2022 Notice of Motion as frivolous pursuant to prior Assignment Judge Doyne's March 9, 2012 injunctive order. [Da29 - Da30].

On September 27, 2023, this Appellate Court affirmed the trial court's November 17, 2022 dismissal order, concluding that there was no legal error or abuse of discretion in the assignment judge's dismissal of Plaintiff's Notice of Motion as frivolous. [Da35]. This Appellate Court observed that, pursuant to Rule 1:4-8(c), where traditional sanctions have failed to deter a litigant from his pattern of bringing repetitive, meritless, and harassing actions, an assignment judge may enjoin a litigant from bringing further actions. [Da34]. Having affirmed under 1:4-8(c), this Appellate Court declined to address the Assignment Judge's application of Rules 4:6-4 and 4:5-2. [Da35].

On December 4, 2023, Plaintiff submitted another Notice of Motion in this matter seeking to "establish the liability of the Bergen Regional Medical Center, LP via a breach of Statute Negligence Claim occurring on April 18, 2005." [AB12a - AB16a].

On December 12, 2023, the current Bergen County assignment judge, the Hon. Carol Novey Catuogno, entered an order *sua sponte* dismissing Plaintiff's December 4, 2023 Notice of Motion as frivolous pursuant to the March 9, 2012 injunctive order and pursuant to Rules 4:6-4 and 4:5-2 for "non-compliance and failure to set forth a statement of facts on which the claim is based or that would place Defendant on notice of a justiciable claim so that a responsive pleading could be framed." [AB17a - AB18a].

On February 2, 2024, Plaintiff filed the subject Notice of Appeal of the trial court's December 12, 2023 Order. [AB1a - AB16a]

LEGAL ARGUMENT

I. THE TRIAL COURT DID NOT ERR OR ABUSE ITS DISCRETION IN DISMISSING PLAINTIFF'S NOTICE OF MOTION PURSUANT TO ASSIGNMENT JUDGE DOYNE'S 2012 INJUNCTIVE ORDER. [Issue raised below at AB17a – AB18a; AB19a – AB30a; and Da31 – Da35].

The doctrine of res judicata is a fundamental principle of law that bars the relitigation of claims or issues that have already been adjudicated. Velasquez v. Franz, 123 N.J. 498, 505 (1991). The rationale underlying res judicata recognizes that fairness to the defendant and sound judicial administration require a definite end to litigation. Id. citing Restatement (Second) of Judgments, § 19 comment a (1982). The doctrine evolved in response to the

specific policy concerns of providing finality and repose for the litigating parties, avoiding the burdens of relitigation for the parties and the court, and maintaining judicial integrity by minimizing the possibility of inconsistent decisions regarding the same matter. Id.

For a judicial decision to be accorded res judicata effect, it must be a valid final adjudication on the merits of the claim. Id. at 507 citing Restatement (Second) of Judgments, supra, § 27. A judgment of dismissal with prejudice, such as the trial court's December 12, 2023 Order dismissing Plaintiff's Notice of Motion, constitutes an adjudication on the merits "as fully and completely as if the order had been entered after trial." Mortgagelinq Corp. v. Commonwealth Land Title Ins. Co., 142 N.J. 336, 346 (1995) quoting Velasquez v. Franz, supra,123 N.J. at 507.

Consonant with these res judicata principles, under Rule 1:4-8(c), a trial court on its own initiative can impose sanctions on a pro se party for filing frivolous litigation. R. 1:4-8(c). Even further, the Appellate Division has held that, where traditional sanctions have failed to deter a litigant from his pattern of bringing repetitive, meritless, and harassing actions, due process is not impaired when a court enjoins a pro se litigant who has filed numerous frivolous lawsuits. Rosenblum v. Borough of Closter, 333 N.J. Super. 385, 391 (App. Div.

2000) (holding that, "where a pattern of frivolous litigation can be demonstrated, the Assignment Judge can prevent the complaint from being filed.").

In the instant matter, Plaintiff's December 4, 2023 Notice of Motion blatantly eviscerates the underlying principles of res judicata and upsets BRMC's right to finality and repose. In just this docket alone (BER-L-1852-07), this Notice of Motion is Plaintiff's third attempt to re-open a matter which was disposed of over a decade ago by summary judgment dismissal. The January 7, 2010 summary judgment order must be accorded res judicata effect as it was a valid, final adjudication on the merits which was affirmed by this Appellate Court on June 23, 2011. If Plaintiff disagreed with the outcome of that appeal, Plaintiff had the opportunity to file a petition for certification with the Supreme Court within twenty (20) days of this Appellate Court's June 23, 2011 decision. R. 2:12-7. The point being, Plaintiff was afforded every opportunity to litigate his case within the normal course of the judicial process. Plaintiff should not, then, over a decade later, be permitted to circumvent our judicial process by filing a Notice of Motion seeking to relitigate the trial court's summary judgment dismissal of his case. Yet, Plaintiff has attempted to do so; not once, but three times.

On July 13, 2022, Assignment Judge Mizdol entered an order *sua sponte* dismissing Plaintiff's July 11, 2022 Notice of Motion as frivolous pursuant to

prior Assignment Judge Doyne's March 9, 2012 injunctive order. [Da17 - Da18]. Thereafter, Plaintiff filed a nearly identical Notice of Motion on November 14, 2022, which Assignment Judge Mizdol, again, *sua sponte* dismissed on November 17, 2022 as frivolous pursuant to prior Assignment Judge Doyne's injunctive order. [Da29 - Da30]. On September 27, 2023, this Appellate Court affirmed the Trial Court's November 17, 2022 dismissal order, concluding that there was no legal error or abuse of discretion in dismissal pursuant to Assignment Judge Doyne's injunctive order directing that all of Plaintiff's lawsuits be reviewed by the assignment judge for a determination of dismissal. [Da35]. In its September 27, 2023 opinion, this Appellate Court held that, pursuant to Rule 1:4-8(c), an assignment judge may enjoin a litigant from bringing further actions where traditional sanctions have failed to deter that litigant from his pattern of bringing repetitive, meritless, and harassing actions. [Da34].

Here, Assignment Judge Catuogno's December 12, 2023 Order *sua sponte* dismissing Plaintiff's December 4, 2023 Notice of Motion, which is the subject of this appeal, is virtually identical in its circumstance and reasoning as Assignment Judge Mizdol's November 17, 2022 dismissal order which, as discussed above, was affirmed by this Appellate Court. [AB17a - AB18a]. For the same reasons held by this Appellate Court in its September 27, 2023 opinion,

and in the interest of preserving judicial consistency, BRMC respectfully submits that the trial court did not err or abuse its discretion in dismissing Plaintiff's December 4, 2023 Notice of Motion pursuant to Assignment Judge Doyne's March 9, 2012 injunctive order.

II. PLAINTIFF WAS NOT ENTITLED TO FILE HIS SECOND OR THIRD APPEAL AFTER EXHAUSTING HIS INITIAL APPEAL IN THIS SAME MATTER. [Issue not raised below].

Under our judicial system, a party is entitled to only "one appeal as of right to a court of general appellate jurisdiction."(emphasis added) Midler v. Heinowitz, 10 N.J. 123, 129 (1952); State v. Fletcher, 174 N.J. Super. 609, 614 (App. Div. 1980). In that one appeal as of right, the appellant "must present all arguments in support of his stand" and, if the party "fails to present all of the points on which he rests his case[,] [the party] is deemed to have waived them and . . . cannot at some later stage in the same proceeding . . . argue points which [the party] has in effect abandoned." State v. Lefante, 14 N.J. 584, 591 (1954). Accordingly, "the filing of separate appeals by the same party from the same judgment is an obvious, untenable, and intolerable violation of the overriding policy of judicial administration that litigation be conducted expeditiously, economically, and efficiently." Shimm v. Toys From The Attic, Inc., 375 N.J. Super. 300, 304 (App. Div. 2005) quoting In re Unanue, 311 N.J. Super. 589,

598-99 (App. Div. 1998); see, e.g., M.C. v. Div. of Med. Assistance & Health Servs., 2019 N.J. Super. Unpub. LEXIS 14 (App. Div. 2019).

In M.C. v. Div. of Med. Assistance & Health Servs., the appellant filed three successive appeals all challenging the alleged failure of the Department of Human Services, Division of Medical Assistance and Health Services to afford her a hearing on her request for an undue hardship waiver. M.C. v. Div. of Med. Assistance & Health Servs., supra, 2019 N.J. Super. at 2 . This Appellate Court observed that the appellant has "already had two bites at the apple" and that the third appeal addressed the same issue as the first two. Id. Accordingly, this Appellate Court dismissed the appellant's third appeal solely on the basis of the appeal's impropriety, citing to Rule 2:11-3(e)(1)(E) which enables the Appellate Court to affirm without an opinion where an appellant's arguments are without sufficient merit to warrant discussion in a written opinion. Id. at 3; R. 2:11-3(e)(1)(E)

In the instant matter, just like the appellant in M.C. v. Div. of Med. Assistance & Health Servs., Plaintiff has filed three successive appeals on the exact same issue. Here, Plaintiff's successive appeals all challenge the June 23, 2011 summary judgment dismissal of Plaintiff's case. [Da6, Da31, and AB1-AB16]. Plaintiff's second and third appeals are especially egregious as they were filed over a decade after his initial appeal was disposed of by this Appellate

Court. Any new arguments that Plaintiff may be raising in his third appeal were required to be presented in his initial and only appeal as of right; they are otherwise deemed waived. State v. Lefante, supra., 14 N.J. at 591.

Given the foregoing, it is respectfully submitted that this Appellate Court can and should dismiss Plaintiff's third-filed appeal solely on the basis of its impropriety.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the lower court properly exercised its discretion in dismissing Plaintiff's December 4, 2023 Notice of Motion pursuant to Assignment Judge Doyne's March 9, 2012 injunctive order. Accordingly, the lower court's decision should be affirmed in its entirety and Plaintiff's appeal should be denied.

SCHENCK, PRICE, SMITH & KING, LLP
Attorneys for Defendant
Bergen Regional Medical Center

Matthew C. Morales, Esq.

Dated: April 16, 2025