SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1950-15T2
A-1959-15T2

IN THE MATTER OF THE ESTATE
OF GUY LANDSTROM, DECEASED.

ROBIN NEGLIA,

Plaintiff-Appellant,

v.

WILLIAM CALDWELL,

Defendant-Respondent.

Argued September 27, 2017 – Decided October 24, 2017

Before Judges Fuentes, Manahan and Suter.

On appeal from Superior Court of New Jersey, Chancery Division, Hunterdon County, Docket No. 046667 and Law Division, Hunterdon County, Docket No. L-0403-13.

Jeffrey M. Advokat argued the cause for appellant Robin Neglia (Advokat & Rosenberg, attorneys; Mr. Advokat, on the briefs).

William J. Caldwell, respondent, argued the cause pro se.

PER CURIAM

In these back-to-back appeals, which we consolidate for purpose of this opinion, Robin Neglia, as beneficiary of the estate of Guy Landstrom, seeks reversal of an order granting summary judgment in favor of the executor, William Caldwell. Neglia also seeks reversal of an order quashing a subpoena. After consideration of the record and application of controlling law, we affirm.

Since we write solely for the parties who are well acquainted with the matter, we provide a brief factual and procedural history.

After Landstrom died, a Last Will and Testament (Will) dated May 15, 2010, was admitted to probate. Caldwell was named executor in that Will. Neglia contested the Will and sought to admit to probate a different Will dated May 1, 2012. After Neglia filed an action, the parties, including the two children of Landstrom and certain charitable interests, entered into a consent judgment.[1] Pursuant to the terms of the judgment, the May 15, 2010 Will was amended and admitted to probate. The sole matter unresolved by the judgment was the estate's accounting. Thereafter, Caldwell filed a final accounting in the Superior Court, Law Division, Probate Part.

[1] A cross-appeal filed by Landstrom's two children was dismissed on August 5, 2016, due to failure to prosecute their cross-appeal.

I.

Neglia filed exceptions to the final accounting. The exceptions included: (1) the sale price of the real property located in Flemington represented a significant loss in value;[2] (2) the expenses incurred as a result of a burst pipe at the property were not the responsibility of the estate but the responsibility of the executor; and (3) listed disbursements for repairs and maintenance were not an expense of the estate if they were incurred as a result of the burst pipe. On July 17 and September 21, 2015, a bench trial was conducted.

At the conclusion of the trial, the court rendered an oral opinion approving the accounting subject to some minor exceptions. In reaching its decision, the court held:

> There were also issues raised in the accounting in a — in challenges about the real property and the amount sold. I have no indication that the two [hundred] fifteen [thousand dollar sale price of the home] was wrong, unreasonable, inappropriate, a waste or otherwise, and I can take judicial notice of the fact that home values in this county have

[2] Under the terms of the consent judgment, Neglia had until July 1, 2013, to pay the estate $25,000 as payment of account for Neglia's share of her estimated transfer inheritance taxes due. She also had until August 1, 2013, to provide proof of a written mortgage commitment in the amount of $150,000, in furtherance of her desire to purchase the Flemington property. If Neglia did not satisfy the conditions, the estate was permitted to sell the property. It is unclear which condition Neglia failed to satisfy. The estate eventually sold the home for $215,000.

> been going all over the place over the last several years so I don't find any basis for upsetting the accounting on that basis.
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> With respect to the issue of the water and the frozen pipe, this is not a res ipsa case.[3] The fact that the pipes were frozen does not speak necessarily – that there was negligence. Lots of people have pipes frozen including yours truly. There are lots of reasons why it might happen. . . . There's no indication that [the executor] committed negligence. I have no testimony on that subject whatsoever and the burden is again on the plaintiffs [sic] to justify the showing that the – that there was negligence here and I've heard nothing really to indicate it.

While the probate action was pending, Neglia filed a separate action in the Law Division alleging that Caldwell engaged in conduct that would constitute common law and statutory waste and fraudulent concealment. Neglia averred that Caldwell failed to notify either Neglia or the insurance carrier about the burst pipe and the consequential damage, which decreased the value of the Flemington property.

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[3] This is a reference to the doctrine of "res ipsa loquitur," which permits the fact-finder "to infer negligence in certain circumstances, effectively reducing the plaintiff's burden of persuasion, but not shifting the burden of proof." Khan v. Singh, 200 N.J. 82, 91 (2009). Application of res ipsa loquitur requires three fundamental predicates: "(a) the occurrence itself ordinarily bespeaks negligence; (b) the instrumentality was within the defendant's exclusive control; and (c) there is no indication in the circumstances that the injury was the result of the plaintiff's own voluntary act or neglect." Ibid. (quoting Bornstein v. Metro. Bottling Co., 26 N.J. 263, 269 (1958)).

Neglia moved to consolidate the Law Division action with the probate action. The motion, opposed by Caldwell, was denied as was Caldwell's motion for dismissal. Neglia's motion for reconsideration was also denied. Thereafter, in 2013 and 2014, both parties filed motions and cross-motions for summary judgment and for dismissal, which were denied. Neither party has filed an appeal of those orders.

On November 16, 2015, Caldwell moved for summary judgment in the Law Division action arguing that the issues in contest were resolved by the probate action. Neglia opposed the motion and cross-moved for summary judgment. Subsequent to oral argument, the court granted summary judgment to Caldwell, dismissing the complaint. In reaching the decision, the court held:

> The issue in the probate matter was the appropriateness of the accounting and, among the challenges, were challenges to the values for the house, whether there was inappropriate conduct with respect to delay in selling the house, whether there was inappropriate conduct with respect to damages to the house that should have been accounted for or somehow referenced in the accounting.
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> . . . .
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> For the [c]ourt to allow this cause of action to continue would, in effect, be giving the plaintiff in this matter a second bite at the apple in saying well, there should be an effective re-litigation of the value of the house, a re-litigation of the executor's conduct in terms of protecting the house

> against harm, all of which were covered rather thoroughly in the accounting action.
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> . . . [The claim] may have a different name, waste and concealment, but the name isn't the substance. And many of our cases say we look at the substance of what's being alleged, not the title or the name given to it. And, in substance, the [c]ourt dealt with all these claims . . . finding that the handling of the house, as set forth in the accounting, was proper.
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> To get to that point, the [c]ourt had to find that there was no waste with respect to the house, that there was no need to account for any waste, that the price that ultimately sold for the house was reasonable under the circumstances and that there was no damage which should have been accounted — taken care of in the accounting.

II.

After the probate trial but prior to the entry of the order affirming the accounting, Neglia recalled that Landstrom had a legal matter pending in Clinton Township at the time of his death and that $6000 was held in Caldwell's trust account as a retainer. The Clinton Township case was dismissed upon Landstrom's death. The funds were not listed in the final accounting.

Neglia's counsel corresponded by letter to Caldwell seeking information as to the whereabouts of the trust funds. Caldwell replied that the information sought was subject to attorney-client privilege and "[n]o additional information concerning those representations [would] be provided[.]" Neglia's counsel again

corresponded by letter to Caldwell stating that if Caldwell did not reveal the information concerning the $6000 asset, a subpoena would be issued with a request for fees and sanctions. A subpoena was served on Caldwell requesting production of "any and all documentation which indicates the location of the [$6000] that was held for Guy Landstrom during 2011-[12]." Caldwell moved to quash the subpoena.

On the same date the court granted summary judgment on the Law Division case, the court granted Caldwell's motion to quash holding that at the time the subpoena was served, the probate case "was over." When Neglia's counsel objected, the court advised that the case would need to be re-opened and that "you can't just simply subpoena." An order was entered quashing the subpoena. No further motions were made by Neglia seeking relief from the judgment. See R. 4:50-1.

On January 14, 2016, Neglia filed a notice of appeal from the December 23, 2015 order for summary judgment and the order of same date quashing the subpoena.

On the appeal of the order granting summary judgment, Neglia raises the following arguments:

> POINT I
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> THE LOWER COURT'S ORDER OF DISMISSAL SHOULD BE REVERSED.

POINT II

DEFENDANT-RESPONDENT IS NOT ENTITLED TO SUMMARY JUDGMENT AS THERE ARE GENUINE ISSUES OF MATERIAL FACT WITH REGARD TO COUNTS ONE, TWO, THREE.

POINT III

PLAINTIFF-APPELLANT'S COMPLAINT SHOULD NOT BE DISMISSED WITH PREJUDICE BASED ON RES JUDICATA.

POINT IV

PLAINTIFF-APPELLANT'S COMPLAINT SHOULD NOT BE DISMISSED WITH PREJUDICE BASED ON COLLATERAL ESTOPPEL.

On the appeal of the order quashing the subpoena, Neglia raises the following argument:

POINT I

THE ORDER QUASHING THE SUBPOENA SHOULD BE REVERSED.

We have considered these arguments after consideration of the record and in application of relevant principles of law, and conclude they lack sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E). We add only the following.

At the outset we note that, while we affirm the order of summary judgment in favor of Caldwell, we do so for different reasons than those articulated by the motion court. Because we review judgments, not decisions, we may affirm on any ground.

Serrano v. Serrano, 367 N.J. Super. 450, 461 (App. Div. 2004) (quoting Isko v. Planning Bd. of Livingston Twp., 51 N.J. 162, 175 (1968)) ("Although we affirm for different reasons, a judgment will be affirmed on appeal if it is correct, even though 'it was predicated upon an incorrect basis.'"), rev'd on other grounds, 183 N.J. 508 (2005).

It is without dispute that Neglia has not appealed the judgment allowing the account in the probate action. As this court has held, a judgment allowing an account is final and exonerates the fiduciary. Matter of Will of Maxwell, 306 N.J. Super. 563, 577-78 (App. Div. 1997), certif. denied, 153 N.J. 214 (1998). In Maxwell, we held:

> A judgment allowing an account "after due notice [is] res adjudicata" as to all parties and "as to all exceptions which could or might have been taken to the account." N.J.S.A. 3B:17-8. Such judgment acts to "exonerate and discharge the fiduciary from all claims of all interested parties and of those in privity with or represented by interested parties except . . . [a]s relief may be had from a judgment in any civil action." Ibid.; see R. 4:50-1, -2. This concept of finality applies to judgments approving intermediate accountings as well as final accountings. In re Estate of Yablick, 218 N.J. Super. 91, 100 (App. Div. 1987).

Neglia filed exceptions to the accounting that involved the same waste and fraudulent concealment issues she alleged in the Law Division action against Caldwell in his capacity as fiduciary.

As such, the judgment affirming the accounting was res judicata as to those exceptions, as well as all claims Neglia instituted against Caldwell in the Law Division action.

We next turn to Neglia's appeal of the order to quash the subpoena. Neglia argues, without citing any legal authority, that "beneficiaries should always be allowed to find out what happened to assets, whenever they are discovered."

A trial court's decision to quash a subpoena is reviewed by an appellate court for abuse of discretion. State v. Medina, 201 N.J. Super. 565, 580-81 (App. Div.), certif. denied, 102 N.J. 298, 508 (1985). Reversal is warranted upon a finding that the trial court's determination "constituted an abuse or mistaken exercise of discretion[.]" State v. Johnson, 137 N.J. Super. 27, 30 (App. Div. 1975). A subpoena may be employed as a method to obtain pre-trial discovery. R. 1:9-2; R. 4:14-7.

Our Supreme Court has made clear that the purpose of the broad pre-trial discovery rules is to prevent surprise at trial and so that the parties are conversant with all available facts. See Payton v. N.J. Tpk. Auth., 148 N.J. 524, 535 (1997) (citing Jenkins v. Rainer, 69 N.J. 50, 56 (1976) ("Our court system has long been committed to the view that essential justice is better achieved when there has been full disclosure so that the parties are conversant with all the available facts."). On the other

hand, post-trial discovery permitted by rule is narrow. See R. 4:59-1(f) (supplementary proceedings in aid of judgment or execution).

Here, the subpoena was issued after the conclusion of the trial but before the entry of the order. This court has addressed the issue whether a case is over at the close of trial or over when the actual judgment is entered. See Parker v. Parker, 128 N.J. Super. 230 (App. Div. 1974). In Parker, the parties were seeking dissolution of their marriage. Several days before trial, the parties entered into a property settlement agreement. The agreement was approved by the court at trial, and the plaintiff signed the agreement. At the conclusion of trial, the judge stated, "I will grant a dual judgment of divorce to each against the other." A week later, the plaintiff's attorney submitted a proposed form of the final judgment to the defendant's attorney, however, it was never returned.

Approximately two weeks later, the plaintiff was killed in an occupational accident. The plaintiff's attorney then brought a motion to enter the divorce judgment nunc pro tunc and the court entered judgment. On appeal, the defendant argued that the entry of judgment was in error because the divorce action abated on the plaintiff's death. We upheld the entry of the judgment in holding:

> It is clear that upon the close of the divorce trial the court made a definitive adjudication of the controversy, reflecting its conclusive determination that each party be granted a divorce. In this context, we subscribe to the view that the entry of a written judgment is essentially a non-discretionary act by which evidence of the judicial act is recorded.
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> [Id. at 232-33.]

We have also held that "the oral pronouncement of a judgment in open court on the record constitutes the jural act and that the entry of the written judgment is merely a ministerial memorialization thereof." Mahonchak v. Mahonchak, 189 N.J. Super. 253, 256 (App. Div. 1983).

In this matter, the probate action concluded when the court held that the accounting "was affirmed for the reasons stated." Although the court granted the parties additional time to submit a fee affidavit, there was a definitive adjudication of the controversy. As the issue of the accounting was adjudicated, there was no authority by rule for the issuance of the subpoena, which was properly quashed.

Affirmed.