

**NOT FOR PUBLICATION WITHOUT THE  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-3018-15T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MICHAEL MUSTO and RAPID RELEASE BAIL  
BONDS, INC.,

Defendants,

and

CRUM & FOSTER INDEMNITY CO.,

Defendant-Appellant.

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Argued telephonically October 10, 2017 –  
Decided October 25, 2017

Before Judges Hoffman and Mayer.

On appeal from Superior Court of New Jersey,  
Law Division, Monmouth County, Indictment No.  
13-06-1188.

Richard R. Capone argued the cause for  
appellant.

Malcom V. Carton, Special County Counsel,  
County of Monmouth, argued the cause for  
respondent.

PER CURIAM

Defendant Crum and Foster Indemnity Co., Inc. (the Surety) appeals from the January 29, 2016 order denying reconsideration of a September 22, 2015 order vacating bail forfeiture conditioned upon the payment of \$2000 to the State of New Jersey. We affirm.

According to the Surety's notice of appeal, the order on appeal is the January 29, 2016 order denying reconsideration. The September 22, 2015 order setting aside the bail forfeiture and reinstating bail was not appealed.<sup>1</sup>

This appeal emanates from a criminal case wherein Michael Musto (Musto) was released on a bail bond in the amount of \$40,000, posted by Rapid Release Bail Bonds, Inc.<sup>2</sup> and backed by the Surety. When Musto failed to appear in court, bail was forfeited. Musto subsequently appeared in court; however, the trial judge did not reinstate bail.

The Surety then moved to set aside the bail forfeiture and exonerate the Surety. The motion judge vacated the bail forfeiture conditioned upon the payment of five percent of the bond, amounting

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<sup>1</sup> The Surety's appellate brief addresses the merits of the September 22, 2015 order and offers no legal argument as to the January 29, 2016 order denying reconsideration.

<sup>2</sup> Rapid Release Bail Bonds, Inc. filed bankruptcy during the pendency of this appeal.

to \$2000, to be paid to the State, and reinstated the balance of the bond.

The Surety moved for reconsideration. On January 29, 2016, the motion judge issued an order denying the Surety's reconsideration motion. The motion judge repeated his earlier ruling from September 22, 2015 that a party seeking to set aside a forfeiture bears the burden of proving "it would be inequitable to insist upon forfeiture and that forfeiture is not required in the public interest." (quoting State v. Childs, 208 N.J. Super. 61, 64 (App. Div.), certif. denied, 104 N.J. 430 (1986)). The motion judge found that the Surety failed to: (1) prove the court's original decision was palpably incorrect or irrational; or (2) identify any new issues of fact or law which the Surety believed the court overlooked, as required to prevail on reconsideration.

On appeal, the Surety argues error as to the underlying September 22, 2015 order, not the January 29, 2016 order. Our Court Rules provide that "[i]n civil actions the notice of appeal . . . shall designate the judgment, decision, action or rule, or part thereof appealed from." R. 2:5-1(f)(3)(A). "[I]t is clear that it is only the judgments or orders or parts thereof designated in the notice of appeal which are subject to the appeal process and review." Pressler & Verniero, Current N.J. Court Rules, comment 6.1 on R. 2:5-1(a) (2018); see also Campagna ex rel. Greco

v. Am. Cyanamid Co., 337 N.J. Super. 530, 550 (App. Div.) (declining to address plaintiffs' argument for reversing the trial court's denial of their summary judgment motion, where plaintiffs failed to identify that order in their notice of appeal), certif. denied, 168 N.J. 294 (2001). "An appellant . . . proceeds at his or her peril by insufficiently completing the notice of appeal or CIS. The appellant should explicitly designate all judgments, orders and issues on appeal in order to assure preservation of their rights on appeal." Fusco v. Bd. of Educ. of Newark, 349 N.J. Super. 455, 461 n.1 (App. Div.) (deciding only the appeal of the reconsideration order and not the underlying summary judgment order, where appellant only identified the reconsideration order in the notice of appeal), certif. denied, 174 N.J. 544 (2002).

Reconsideration is a matter within the sound discretion of the trial court and we review for abuse of discretion. See Palombi v. Palombi, 414 N.J. Super. 274, 288–89 (App. Div. 2010). Reconsideration is not intended for a litigant who is merely dissatisfied with a court's decision; the movant must prove the judge's decision was arbitrary, capricious, palpably incorrect or irrational, or that the judge "obvious[ly]" failed to consider or appreciate probative evidence. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

The Surety argues that: (1) the trial judge failed to follow applicable law when he declined to reinstate bail; (2) the motion judge erred in reinstating the bail, less the forfeiture amount; and (3) the motion judge abused his discretion by following the remittitur guidelines such that a five percent forfeiture was excessive.

The Surety's arguments on appeal mirror those presented to the motion judge in its original motion and reconsideration motion seeking to set aside the forfeiture. The Surety failed to identify any specific case or fact which it believes was overlooked or improperly determined by the motion judge. The Surety's appeal is a third bite at the apple seeking to set aside the forfeiture and the Surety failed to demonstrate the motion judge abused his discretion in denying the motion for reconsideration.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION