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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-4422-15T1

CRANIO ASSOCIATES
a/s/o ADOLFO GARCIA,

Plaintiff-Appellant,

v.

STATE FARM INDEMNITY
COMPANY,

Defendant-Respondent.

Submitted June 6, 2017 – Decided July 14, 2017

Before Judges Reisner and Rothstadt.

On appeal from the Superior Court of New
Jersey, Law Division, Bergen County, Docket
No. L-2967-16.

Julie Lefkowitz, attorney for appellant.

Gregory P. Helfrich & Associates, attorneys
for respondent (Joseph J. Trefurt, on the
brief).

PER CURIAM

Plaintiff, Cranio Associates, a medical provider, appeals
from the Law Division's June 3, 2016 order dismissing its complaint
for frivolous litigation sanctions, R. 1:4-8, against defendant,

State Farm Indemnity Company, in its capacity as the personal injury protection (PIP) carrier for plaintiff's patient. Plaintiff claimed it was underpaid by defendant for medical treatment that plaintiff provided to defendant's insured and therefore pursued a PIP arbitration for additional payments. The dispute resolution professional (DRP) who considered the matter determined that because the limits of the patient's PIP coverage under defendant's policy had been exhausted, he could not consider a claim for additional sums.

According to plaintiff, it was entitled to sanctions because defendant waited until the day before the scheduled arbitration to advise plaintiff and the DRP that the limits of the insured's PIP coverage had been exhausted. Plaintiff sought sanctions from the DRP, who rejected the claim because he was without authority to consider it, and then from the court, by filing its complaint in the Law Division. Judge Charles E. Powers dismissed plaintiff's complaint, finding no legal basis to award sanctions under Rule 1:4-8. On appeal, plaintiff asserts defendant's "knowing defense of a PIP arbitration" while the "policy was exhausted" qualifies as "a frivolous defense, for the purpose of harassment or delay," entitling plaintiff to recover sanctions under Rule 1:4-8. Moreover, because defendant did not contest plaintiff's claim other than by asserting the exhaustion of its policy's limits,

plaintiff was a successful claimant thereby entitled to an award of fees and other relief. We disagree and affirm substantially for the reasons expressed by Judge Powers in the comprehensive rider attached to his June 3, 2016 order.

Generally, we review "[a] trial judge's decision to [not] award attorney's fees pursuant to Rule 1:4-8," under an abuse of discretion standard. McDaniel v. Lee, 419 N.J. Super. 482, 498 (App. Div. 2011); see also United Hearts, L.L.C. v. Zahabian, 407 N.J. Super. 379, 390 (App. Div.), certif. denied, 200 N.J. 367 (2009). "Reversal is warranted when 'the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error in judgment.'" Ferolito v. Park Hill Ass'n, 408 N.J. Super. 401, 407 (App. Div.) (quoting Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005)), certif. denied, 200 N.J. 502 (2009); see also Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002).

We conclude from our review that the judge properly exercised his discretion and dismissed plaintiff's complaint. We find plaintiff's arguments to the contrary to be without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION