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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1690-16T4

IN THE MATTER OF THE ESTATE OF

YORAM KOBY, Deceased.

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Argued March 13, 3018 – Decided April 6, 2018

Before Judges Carroll and DeAlmeida.

On appeal from Superior Court of New Jersey, Chancery Division, Probate Part, Bergen County, Docket No. P-000332-16.

Paul E. Paray argued the cause for appellant Limor Elbaz (Paray Law Group, LLC, attorneys; Paul E. Paray, of counsel and on the briefs).

Robert S. Raymar argued the cause for respondent Rosi Goldberg (Hellring Lindeman Goldstein & Siegal, LLP, attorneys; Robert S. Raymar, of counsel and on the brief; Bruce S. Etterman and David N. Narciso, on the brief).

John M. Elias argued the cause for respondent Ariel M. Koby (Elias Sellitti, LLC, attorneys, join in the brief of respondent Rosi Goldberg).

PER CURIAM

In this probate matter, Limor Elbaz, the ex-wife of decedent Yoram Koby, challenges the trial court's jurisdiction to admit

decedent's will to probate and appoint a personal representative to administer the estate. The Chancery Division, Probate Part, found that decedent was a New Jersey domiciliary when he died, and that Elbaz lacked standing to assert a jurisdictional challenge. The court subsequently denied Elbaz's motion for reconsideration and imposed frivolous litigation sanctions. On appeal, Elbaz challenges the orders denying reconsideration and imposing sanctions. Having carefully reviewed the record and the applicable legal principles, we affirm, substantially for the reasons set forth in Judge Robert P. Contillo's well-reasoned opinions.

I.

This appeal arises from the following facts. Yoram Koby died unexpectedly on July 15, 2016, while visiting Israel. Yoram had immigrated to the United States from Israel in the 1980s, eventually becoming a United States citizen. He met his first wife, Yacobina, in 1988, and they married in September 1991.[1] Initially they lived in Demarest, New Jersey. After adopting two children at birth in 1998 and 1999, the family moved to Rio Vista Drive in Alpine, New Jersey in 2000. Yoram and Yacobina divorced in 2008, but continued to jointly own the Rio Vista Drive home

[1] Because Yoram and Yacobina share a common surname, we refer to them by their first names in this opinion for clarity and ease of reference. We intend no disrespect by this informality.

until July 2015. Yacobina and the children then moved to another house on Litchfield Way in Alpine.

Following the divorce, Yoram lived in various apartments in New York City, mostly in properties he owned individually or jointly with Yacobina. Almost a year and a half before he died, Yoram rented an apartment in Israel, where he then spent two or three months at a time. When he died, Yoram also had apartments in Florida and Spain.

Yoram married Elbaz in July 2012. Their marriage was brief, and they separated in November 2014, after entering into a Post-nuptial Agreement on July 18, 2014.

Yoram initially filed for divorce from Elbaz in Erie County, New York on February 5, 2015. Elbaz filed her own divorce action in New York County on August 11, 2015. Yoram and Elbaz subsequently executed a Stipulation of Settlement dated December 20, 2015, which recited it was "intend[ed] to settle all claims with respect to property, support and other issues arising from their marriage or otherwise . . . ." Among its other terms, the Stipulation of Settlement provided:

> Each party hereby irrevocably releases, waives, and relinquishes any and all present and future rights under the present or future laws of any jurisdiction or under any Will or testamentary writing now or hereafter in existence to share in or act as executor, administrator or trustee without limitations,

> in any capacity or for any reason with any right which may now or hereafter exist.
>
> This provision shall constitute a mutual waiver by the parties to take under any existing Will or testamentary writings, now or hereafter in force, under the present or future laws of any jurisdiction, and without limiting the foregoing, to relinquish any and all rights in and to each other's estate . . . .

A final judgment of divorce incorporating the Stipulation of Settlement was entered in New York County on April 13, 2016.

Despite living in New York City while married to Elbaz, Yoram continued to maintain a New Jersey driver's license. Until the Rio Vista Drive home was sold in 2015, Yoram kept three cars garaged there. He also kept a key to the Alpine marital home until its sale, and spent most of his time with his children at that home. After the house was sold, he moved two of the three cars to other locations in New Jersey.[2]

Additionally, Yoram never changed his voter registration and remained registered to vote in Alpine. A boat he purchased during his first marriage remained docked and maintained at Liberty Landing Marina in Jersey City. He also maintained insurance with

[2] Yoram's Rolls Royce (registered in New Jersey) was kept at the home of friends in Englewood Cliffs, New Jersey, and his Land Rover, which was titled in the name of a company in which he was a fifty-percent owner, was kept at the home of friends in Alpine.

a New Jersey address, the bills for which were sent to him in Alpine. Notably, Yoram continued to file New Jersey resident income tax returns through 2014.[3]

Under the terms of Yoram's 1999 will, his entire estate is placed in trust for his two children, who were sixteen and seventeen years old when he died in July 2016. In the will, Yacobina's sister, Rosi Goldberg, was designated to act as a co-executor and co-trustee in the event Yacobina failed to qualify in either capacity.[4]

On September 13, 2016, Goldberg filed a verified complaint and order to show cause seeking to probate Yoram's will in Bergen County. She also sought to be appointed temporary administrator of the estate pending her ultimate appointment as executrix and trustee of the trusts created under the will. In her complaint, Goldberg averred that, at the time of his death, Yoram was unmarried and domiciled in New Jersey, and that his two children were the only interested parties to the probate action. On September 19, 2016, Judge Contillo entered the order to show cause, set a return date, and appointed Goldberg temporary administrator

[3] Yoram had not yet filed his 2015 tax returns when he passed away.

[4] Yacobina did not contest that she was disqualified from acting as executrix and trustee as a result of her divorce from Yoram.

of the estate pending further order. A guardian ad litem (GAL) was also appointed to represent the interests of the youngest child, who had not yet turned eighteen.

Elbaz filed a contesting answer and counterclaim on September 30, 2016. In this pleading, Elbaz asserted she was currently domiciled in Florida. Among other things, she sought to remove Goldberg as temporary administrator, and a declaration that she was "a surviving spouse of Yoram Koby and a beneficiary of [his] [e]state."

On November 4, 2016, the court conducted oral argument and issued an order denying Elbaz's application to remove Goldberg as temporary administrator and dismissing her pleading for lack of standing. In his subsequent November 10, 2016 written opinion, Judge Contillo explained that: (1) despite having residences in various locations in the United States and internationally, and not having lived in New Jersey since his divorce from Yacobina in 2008, the evidence supported a conclusion that Yoram considered himself a New Jersey domiciliary at death; and (2) Elbaz was legally divorced from Yoram in New York on April 13, 2016, and consequently she lacked standing to contest the court's jurisdiction with respect to the estate.

The court admitted Yoram's will to probate and allowed Goldberg to continue as temporary administrator, but postponed her

appointment as executrix and trustee pending a supplemental report from the GAL about Goldberg's ability to perform her duties in an unbiased manner. On December 2, 2016, the GAL opined that Goldberg was qualified to "act in the best interests of the beneficiaries of the [e]state and the testamentary trusts established for their benefit."

On November 23, 2016, Elbaz filed a motion seeking reconsideration of the November 4, 2016 order. Elbaz disputed the court's determination that Yoram was a New Jersey domiciliary, and argued the court lacked jurisdiction as a result. On November 30, 2016, the estate served Elbaz's attorney with a "safe harbor" letter pursuant to Rule 1:4-8(b)(1) advising it would seek frivolous litigation sanctions unless the reconsideration motion was withdrawn.

Judge Contillo denied the motion on December 20, 2016. In his oral opinion, the judge found he had not overlooked any law or facts that would warrant reconsideration pursuant to Rule 4:49-2. The judge again found Elbaz lacked standing because she "remains neither a beneficiary, testate or intestate, nor a surviving spouse." Moreover, even if Elbaz was a creditor of the estate, as she claimed, that would not "provide [a] basis for standing to challenge the jurisdiction of the [c]ourt with respect

to the estate or to decide who the fiduciary of that estate would be."

On January 13, 2017, the estate filed a motion for sanctions based on its contention that Elbaz's reconsideration motion was frivolous. Judge Contillo granted the motion on February 10, 2017, and ordered Elbaz's attorney to pay the estate $12,500 as a frivolous litigation sanction. In his oral opinion, Judge Contillo emphasized that Elbaz focused her reconsideration motion entirely on the issue of whether Yoram was a New Jersey or New York domiciliary, but completely failed to address the court's threshold determination that she lacked standing to challenge the court's jurisdiction. The court agreed with the estate that the motion for reconsideration lacked merit and "was without any support under existing law or any good-faith extension of existing law that could have been contemplated." The judge noted that the estate was depleted by incurring unnecessary fees to defend the motion, and "that there is an appropriate basis for a sanction under Rule 1:4-8 . . . ." The judge entered a memorializing order on May 5, 2017.[5] This appeal followed.

[5] On May 24, 2017, the trial court stayed the May 5, 2017 order pending appeal.

II.

On appeal, Elbaz first challenges the December 20, 2016 order that denied her motion for reconsideration. Notably, Elbaz's notice of appeal does not reference the November 4, 2016 order that was the subject of the reconsideration motion.

Rule 2:5-1(f)(3)(A) states, "In civil actions the notice of appeal shall . . . designate the judgment, decision, action or rule, or part thereof appealed from[.]" Therefore, "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 (2018); see also Campagna ex rel. Greco v. Am. Cyanamid Co., 337 N.J. Super. 530, 550 (App. Div. 2001) (refusing to consider an order not listed in the notice of appeal).

"Consequently, if the notice [of appeal] designates only the order entered on a motion for reconsideration, it is only that proceeding and not the order that generated the reconsideration motion that may be reviewed." Pressler & Verniero, comment 6.1 on R. 2:5-1 (2018); see also W.H. Industr., Inc. v. Fundicao Balancins, Ltda, 397 N.J. Super. 455, 458-59 (App. Div. 2008) (considering only the order denying reconsideration because it was the sole order designated in the notice of appeal); Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 461-62 (App. Div.

2002) (reviewing only denial of the plaintiff's motion for reconsideration and refusing to review the original grant of summary judgment because that order was not designated in the notice of appeal).

As noted, defendant's initial notice of appeal listed the December 20, 2016 order denying reconsideration as the only order being appealed. Therefore, we limit our review to the provisions of that order.

A trial court's order on a motion for reconsideration will not be set aside unless shown to be a mistaken exercise of discretion. Granata v. Broderick, 446 N.J. Super. 449, 468 (App. Div. 2016) (citing Fusco, 349 N.J. Super. at 462). Reconsideration should only be granted in those cases in which the court based its decision "upon a palpably incorrect or irrational basis," or "did not consider, or failed to appreciate the significance of probative, competent evidence." Ibid. (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

A motion for "[r]econsideration cannot be used to expand the record and reargue a motion." Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008). It "is designed to seek review of an order based upon evidence before the court on the initial motion, not to serve as a vehicle to introduce new evidence in order to cure an inadequacy in the motion

record." Ibid. (citation omitted); Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (finding that a motion for reconsideration "is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue a motion").

A court may "in the interest of justice" consider new evidence on a motion for reconsideration only when the evidence was not available prior to the decision by the court on the order that is the subject of the reconsideration motion. D'Atria, 242 N.J. Super. at 401; see also Palombi, 414 N.J. Super. at 289 (finding that facts known to party prior to entry of an original order did not provide an appropriate basis for reconsideration); Fusco, 349 N.J. Super. at 462 (finding party not entitled to reconsideration where evidence was available but not submitted to the court on the motion for the original order).

We conclude that Elbaz failed to satisfy the exacting standards for reconsideration here. As she did before the trial court, on appeal Elbaz confines her argument to her contention that, because "subject matter jurisdiction is lacking in this probate matter[,] all orders entered by the [trial] court are void ab initio." In doing so, she again completely ignores the trial court's ruling that she lacked standing as an interested party to contest jurisdiction.

Elbaz contended she should still be considered married to Yoram at the time of his death because the written judgment of divorce entered by the court on April 13, 2016, was not filed by the County Clerk's Office until about three months later, after Yoram died. In his November 10, 2016 written opinion, Judge Contillo found Yoram and Elbaz were legally divorced as of April 13, 2016, before Yoram's death. This conclusion comports with New York law. See Cornell v. Cornell, 7 N.Y.2d 164, 170 (1959) (finding that where a final adjudication of divorce occurred during the lifetime of the parties, the entering of the final judgment by the clerk was a "mere ministerial act"). Moreover, by entering into the December 20, 2015 Stipulation of Settlement with Yoram, Elbaz relinquished any and all right to share in or serve as personal representative of Yoram's estate. In her motion for reconsideration, Elbaz did not argue that the court's legal conclusion was "palpably incorrect." Nor does she advance such argument on appeal.

Because we agree with the trial court that Elbaz failed to demonstrate the court erred in ruling she lacked standing, we need not reach the jurisdiction issue. Even were we to do so, however, we similarly conclude that Elbaz failed to meet the standard for reconsideration. In her reconsideration motion, Elbaz presented additional documentation to dispute the estate's claim that Yoram

was domiciled in New Jersey. However, she failed to demonstrate this information was unavailable at the time the initial application was heard. Accordingly, the motion for reconsideration was properly denied.

III.

In her amended notice of appeal, Elbaz also challenges the May 5, 2017 order imposing frivolous litigation sanctions. Counsel for Elbaz contends such sanctions were not warranted because he had a "'reasonable and good faith belief' that the lack of subject matter jurisdiction was a threshold issue that merited his filing a [m]otion for [r]econsideration."

Rule 1:4-8(a) provides, among other things, that by signing a pleading an attorney

> certifies to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances[, that] . . . the claims, defenses and other legal contentions therein are warranted by existing law . . . [and] the factual allegations have evidentiary support or, as to specifically identified allegations, they are either likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support . . . .

The rule "has a punitive purpose in seeking to deter frivolous litigation" and "seeks to compensate a party that has been victimized by another party bringing frivolous litigation."

Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn, 410 N.J. Super. 510, 545 (App. Div. 2009). The imposition of sanctions under the rule is not restricted to a situation where an attorney files a frivolous complaint. We have recognized in the context of the frivolous claims statute, N.J.S.A. 2A:15-59.1, "that continued prosecution of a claim or defense may, based on facts coming to be known to the party after the filing of the initial pleading, be sanctionable as baseless or frivolous even if the initial assertion of the claim or defense was not." Iannone v. McHale, 245 N.J. Super. 17, 31 (App. Div. 1990).

We review a trial court's award of sanctions pursuant to Rule 1:4-8 under an abuse of discretion standard. Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005). An "abuse of discretion is demonstrated if 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." Ibid.

Here, we conclude the trial court considered all relevant and appropriate factors, including the fact that, on reconsideration, counsel for Elbaz completely failed to address the court's threshold determination that she lacked standing to challenge the court's jurisdiction. Moreover, as Judge Contillo aptly recognized, the estate was depleted by incurring unnecessary fees

to defend the reconsideration motion, which lacked evidentiary and legal support as to the standing issue. Accordingly, the court did not abuse its discretion in awarding frivolous litigation sanctions.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION