RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0322-21

Y.G.,

Plaintiff-Appellant,

v.

BOARD OF EDUCATION FOR THE TOWNSHIP OF TEANECK, LENNOX SMALL, and CHARLES CLARK,

Defendants-Respondents.

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Argued November 14, 2022 – Decided December 28, 2022

Before Judges Whipple, Mawla and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-0857-21.

Jennifer McAndrew Vuotto argued the cause for appellant (McAndrew Vuotto, LLC, attorneys; Robert W. McAndrew and Jennifer McAndrew Vuotto, of counsel and on the briefs).

Sean M. Pena argued the cause for respondents (Weiner Law Group, LLP, attorneys for respondent Board of Education for the Township of Teaneck;

Vaughn L. McKoy, Nicholas A. Grieco and Alyssa E. Spector, on the joint brief).

Klingeman Cerimele, attorneys for respondents Lennox Small and Charles Clark (Ernesto Cerimele, and Henry Klingeman, on the joint brief).

PER CURIAM

Plaintiff appeals from the July 23, 2021 order dismissing her complaint against her former school and its employees, as well as the September 22, 2021 order denying her motion to reconsider. For the reasons that follow, we affirm.

From the years 2000 to 2003, plaintiff Y.G. was sexually abused by a teacher at her middle school in Teaneck. When the abuse started, she was only thirteen years old. In 2008, when she was twenty-two, she filed a lawsuit against her teacher James Darden; his employer the Teaneck Board of Education (BOE); Charles Clark, a teacher and/or guidance counselor at the middle school; and Lennox Small, another teacher at the middle school. Plaintiff alleged that Small and Clark were aware of Darden's actions yet did nothing. She further alleged the BOE had a duty to protect her and was liable for its employees' conduct. She brought this claim under the Child Sexual Abuse Act, (CSAA), N.J.S.A. 2A:61B-1.

Plaintiff successfully recovered against Darden, but the trial court in the 2008 lawsuit granted the BOE, Small, and Clark summary judgment. At the time, the CSAA only established two types of abusers: "[T]hose persons who inflict the abuse (active abusers), and those persons who stand in loco parentis within the household who know of the abuse and who fail to protect the child (passive abusers)." Hardwicke v. Am. Boychoir Sch., 188 N.J. 69, 86 (2006). Because public day schools were not within the definition of "household," the CSAA did not cover plaintiff's claims against the BOE, Small, and Clark. The complaint as to these defendants was dismissed with prejudice. We affirmed. Y.G. v. Bd. of Ed. Teaneck, No. A-5146-09 (App. Div. Apr. 19, 2011).

In 2019, the Child Victims Act (CVA), N.J.S.A. 2A:14-2a, became law. The CVA "extend[ed the] statute of limitations in civil actions for sexual abuse claims; expand[ed] categories of potential defendants in civil actions; [and] create[d a] two-year window for parties to bring previously time-barred actions based on sexual abuse." S. 477 (2018).

Due to the enactment of the CVA, plaintiff filed a new complaint against the BOE, Small, and Clark in October 2020. The 2020 complaint, like the 2008 complaint, alleges defendants knew about Darden's abuse of plaintiff, yet did nothing to stop it. It asserts seven common-law claims: Negligence as to

all defendants; negligent supervision by the BOE; negligent hiring and retention by the BOE; gross negligence by all defendants; intentional infliction of emotional distress by all defendants; breach of fiduciary duty by the BOE; and punitive damages as to all defendants.

The defendants moved to dismiss, arguing the 2008 lawsuit was fully litigated and, thus, res judicata and the entire controversy doctrine (ECD) barred the 2020 action. The court dismissed the 2020 complaint with prejudice and issued a written opinion concluding "[p]laintiff had a fair and reasonable opportunity to have fully litigated her common law tort-based claims in the 2008 [a]ction." The court reasoned the 2008 and 2020 actions were based on the same conduct by Darden and defendants, and plaintiff knew or should have known of the tort claims asserted in her 2020 action when she filed her CSAA suit in 2008.

The court found the statute of limitations had not run against her tort claims at the time of plaintiff's 2008 complaint because she could have asserted the discovery rule. It concluded plaintiff knew this because she asserted the discovery rule for the single count in her 2008 complaint.[1] It also

[1] Plaintiff relied on the CSAA language to place the filing within two years of the "reasonable discovery of the injury and its causal relationship to the act of sexual abuse." N.J.S.A. 2A:61B-1(b).

rejected plaintiff's argument the CVA made her 2020 complaint possible, noting the CVA did not apply to claims that have already been previously adjudicated, and concluded the 2020 complaint was barred under res judicata and the ECD.

Plaintiff moved for reconsideration, arguing the court improperly accepted defendants' factual allegations as true, contrary to the correct standard on a motion to dismiss. The court denied plaintiff's motion to reconsider on September 22, 2021. This appeal of that order and the July 23, 2021 order dismissing plaintiff's complaint followed.

"Rule 4:6-2(e) motions to dismiss for failure to state a claim upon which relief can be granted are reviewed de novo." Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019)). We review a trial judge's decision on whether to grant or deny a motion for rehearing or reconsideration under Rule 4:49-2 for an abuse of discretion. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021).

The ECD is found in Rule 4:30A, which reads in relevant part: "Non-joinder of claims required to be joined by the [ECD] shall result in the preclusion of the omitted claims to the extent required by the [ECD] . . . ."

This doctrine "embodies the principle that the adjudication of a legal controversy should occur in one litigation in only one court." Dimitrakopoulos, 237 N.J. at 108 (quoting Cogdell ex rel. Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 15 (1989)). It "seeks to impel litigants to consolidate their claims arising from a 'single controversy' whenever possible." Thornton v. Potamkin Chevrolet, 94 N.J. 1, 5 (1983) (internal citations omitted).

In evaluating whether certain claims must be asserted in the same action, our initial inquiry is whether they "arise from related facts or the same transaction or series of transactions." Dimitrakopoulos, 237 N.J. at 109 (citing DiTrolio v. Antiles, 142 N.J. 253, 267 (1995)). The claims are not required to have common legal issues for the ECD to bar the subsequent claim. Ibid. "[T]he determinative consideration is whether distinct claims are aspects of a single larger controversy because they arise from interrelated facts." DiTrolio, 142 N.J. at 271.

Nevertheless, the ECD "remains an equitable doctrine whose application is left to judicial discretion based on the factual circumstances of individual cases." Dimitrakopoulos, 237 N.J. at 114 (quoting Highland Lakes Country Club & Cmty. Ass'n v. Nicastro, 201 N.J. 123, 125 (2009)). "[A] court should

not preclude a claim under the [ECD] if such a remedy would be unfair in the totality of the circumstances and would not promote the doctrine's objectives of conclusive determinations, party fairness, and judicial economy and efficiency." Id. at 119.

The "polestar of the application of the rule is judicial 'fairness.'" DiTrolio, 142 N.J. at 272 (quoting Reno Auto Sales, Inc. v. Prospect Park Sav. and Loan Ass'n, 243 N.J. Super. 624, 630 (App. Div. 1990)). "In considering whether application of the doctrine is fair, courts should consider fairness to the court system as a whole, as well as to all parties." Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 605 (2015). "Fairness in the application of the [ECD] focuses on the litigation posture of the respective parties and whether all of their claims and defenses could be most soundly and appropriately litigated and disposed of in a single comprehensive adjudication." DiTrolio, 142 N.J. at 277. "In considering fairness to the party whose claim is sought to be barred, a court must consider whether the claimant has 'had a fair and reasonable opportunity to have fully litigated that claim in the original action.'" Gelber v. Zito P'ship, 147 N.J. 561, 565 (1997) (quoting Cafferata v. Peyser, 251 N.J. Super. 256, 261 (App. Div. 1991)).

Res judicata is similar to the ECD in that it "serves the purpose of providing 'finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness[.]'" Wadeer, 220 N.J. at 606 (alteration in original) (quoting First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007)). It "contemplates that when a controversy between parties is once fairly litigated and determined it is no longer open to relitigation." Ibid. (quoting Lubliner v. Bd. of Alcoholic Beverage Control, 33 N.J. 428, 435 (1960)).

For res judicata to apply, there must be "substantially similar or identical causes of action and issues, parties, and relief sought" and a final judgment. Ibid. (citing Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460 (1989)). "Thus, '[w]here the second action is no more than a repetition of the first, the first lawsuit stands as a barrier to the second.'" Ibid. (citing Culver, 115 N.J. at 460). Additionally, res judicata bars "not only . . . 'all matters litigated and determined by such judgment but also as to all relevant issues which could have been presented, but were not.'" Culver, 115 N.J. at 463 (citing Anselmo v. Hardin, 253 F.2d 165, 168 (3d Cir. 1958)).

Here, it is undisputed the parties in the 2008 and 2020 lawsuits are the same (the only exception being that Darden is not a party to the 2020 lawsuit). The facts alleged are also the same, as is the wrong for which redress is sought: Plaintiff alleges defendants knew or should have known of Darden's abuse and did nothing to stop it.

Unsurprisingly, the same evidence would support both actions as well. This would include the same documents and testimony from school officials and employees, the parties, as well as experts to testify on plaintiff's medical and psychological condition. If any evidence would differ, plaintiff did not include it.

The theories of recovery in the 2020 complaint based on negligence, negligent supervision, gross negligence, and even intentional infliction of emotional distress are substantially the same as those in the 2008 complaint. Plaintiff might have argued negligent hiring and retention as a different theory of recovery, requiring slightly different facts and evidence, see Culver, 115 N.J. at 463, but she does not raise this argument.

Lastly, "[a] dismissal with prejudice 'constitutes an adjudication on the merits as fully and completely as if the order had been entered after a trial.'" Feinsod v. Noon, 261 N.J. Super. 82, 84 (App. Div. 1992) (citing Velasquez v.

Franz, 123 N.J. 498, 508 (1991)). Here, the trial court granted defendants' motion for summary judgment and dismissed the 2008 lawsuit with prejudice. We affirmed. This was a final judgment on the merits.

Plaintiff argues the trial judge erred because he did not accept as true plaintiff's factual allegation she could not have legally brought any tort claims as part of her 2008 lawsuit. However, whether a cause of action is barred by a statute of limitations is a legal question, not a factual one, subject to de novo review. Save Camden Pub. Schs. v. Camden City Bd. of Educ., 454 N.J. Super. 478, 487 (App. Div. 2018) (citing Catena v. Raytheon Co., 447 N.J. Super. 43, 52 (App. Div. 2016)); J.P. v. Smith, 444 N.J. Super. 507, 520 (App. Div. 2016). The trial court, therefore, was not required to accept plaintiff's assertion as true.

We therefore address plaintiff's argument she could not have brought the tort claims in 2008 because the statute of limitations had run. For the following reasons, we reject her argument.

"Ordinarily, a cause of action accrues when any wrongful act or omission resulting in any injury, however slight, for which the law provides a remedy, occurs." Beauchamp v. Amedio, 164 N.J. 111, 116 (2000) (citations omitted). The Torts Claims Act (TCA) allows a party to bring a claim until

two years after the accrual date. N.J.S.A. 59:8-8(b). The accrual date is tolled for a minor until she reaches the age of eighteen. N.J.S.A. 59:8-8. However, there is one exception to the two-year statute of limitations—the discovery rule—when "the victim either is unaware that he has been injured or, although aware of an injury, does not know that a third party is responsible." Beauchamp, 164 N.J. at 117 (citations omitted). The discovery rule applies to claims brought under the TCA. Ibid. In sum, if a plaintiff discovers her injury after the fact, she has two years after that discovery to bring a claim under the TCA.

Plaintiff alleged in her 2008 complaint "[i]t was not until mid-2007[] that [she] was able to recognize that the actions of . . . Darden constituted sexual abuse, and that the illness for which she was seeking medical and psychological treatment[] was causally related to the sexual abuse." Plaintiff now asserts she was able to bring this claim under the CSAA, but not under the TCA, because the CSAA allowed filing within two years of the "reasonable discovery of the injury and its causal relationship to the act of abuse." N.J.S.A. 2A:61B-1(b).

This is incorrect. The typical two-year statute of limitations under the TCA had run by 2008 because plaintiff was four years past the age of majority

at twenty-two. But the provision in the CSAA she invoked to bring that claim is a codification of the discovery rule, which, as noted, is applicable to the TCA. Beauchamp, 164 N.J. at 117. Plaintiff could have invoked the discovery rule in 2008 to bring claims under the TCA. She would have had two years from the discovery of her injuries in mid-2007 to bring the TCA claims.

We now address plaintiff's argument she could not have filed the TCA claims because she did not comply with the TCA's notice requirement. To file a claim against a public entity under the TCA, the claimant must give notice to the public entity within ninety days of the accrual of the cause of action. N.J.S.A. 59:8-8. "The claimant shall be forever barred from recovering against a public entity or public employee if . . . the claimant failed to file the claim with the public entity within [ninety] days of accrual of the claim except as otherwise provided in N.J.S.[A.]59:8-9 . . . ." N.J.S.A. 59:8-8(a). N.J.S.A. 59:8-9 allows a court to permit a party to file a late notice claim if they show "sufficient reasons constituting extraordinary circumstances for" their failure to timely file notice.

In Beauchamp, our Supreme Court explained the three-step inquiry for deciding whether a notice of claim has been timely filed:

> The first task is always to determine when the claim accrued. The discovery rule is part and parcel of such

> an inquiry because it can toll the date of accrual. Once the date of accrual is ascertained, the next task is to determine whether a notice of claim was filed within ninety days. If not, the third task is to decide whether extraordinary circumstances exist justifying a late notice.
>
> [164 N.J. at 119-20.]

Plaintiff argues she could not bring the suit because she did not meet the notice requirement. However, if she discovered the injury in 2007, as alleged in her 2008 complaint, there is no reason she could not have 1) provided notice to the BOE, or 2) if she did fail to provide notice within ninety days of her discovery, petitioned the court showing extraordinary circumstances. Plaintiff's failure to meet deadlines does not allow her to circumvent the ECD and res judicata. Because it is clear plaintiff could have brought these claims in 2008, both the ECD and res judicata bar her 2020 tort claims.

Plaintiff's reliance upon W.S. v. Hildreth, 470 N.J. Super. 57 (App. Div. 2021), does not assist her. W.S. held that a plaintiff bringing a claim pursuant to the CVA does not have to comply with the notice requirement of the TCA. Id. at 70. It reiterated claims against public employees or employers are subject to the new statute of limitations in N.J.S.A. 2A:14-2a(a)(1), "for which the Legislature chose to permit timely filing of a complaint before a plaintiff reaches the age of fifty-five, regardless of when the events occurred, i.e., 'prior

to, on or after' December 1, 2019, and without regard to when the cause of action accrued." Ibid.

The issue in this case is whether plaintiff's 2008 lawsuit was a cause of action "finally adjudicated or dismissed" prior to December 1, 2019, such that the expansions in the CVA would not apply to her 2020 lawsuit. The amendments expanding the statute of limitations did not apply to plaintiff's 2020 cause of action because her 2008 claim against defendants had been adjudicated and dismissed. There is no indication the Legislature intended to provide to a victim of sex abuse a second or further opportunity to litigate the same or similar claims.

Affirmed.