SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0780-21

LILIA ORELLANA,

Plaintiff-Respondent,

v.

ELIEZER ZAKLIKOVSKY,
CHANIE ZAKLIKOVSKY,
and CHABAD LUBAVITCH
JEWISH CENTER OF MONROE,

Defendants-Appellants.

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Submitted October 13, 2022 – Decided October 31, 2022

Before Judges Gooden Brown and Mitterhoff.

On appeal from the New Jersey Department of Labor and Workforce Development, Division of Workers' Compensation, Claim Petition Nos. 2017-30632, 2018-3620, 2018-3621, and 2019-31983.

Bathgate, Wegener & Wolf, PC, attorneys for appellants (Jonathan S. Fabricant, of counsel and on the briefs; Daniel J. Carbone, on the briefs).

Garces, Grabler & Lebrocq, attorneys for respondent (Robert B. White, III, on the brief).

PER CURIAM

Respondents appeal an October 5, 2021 order, entered by the Division of Workers' Compensation (DWC), granting petitioner, Lilia Orellana, temporary and permanent disability benefits against respondents, Rabbi Eliezer Zaklikovsky, Chanie Zaklikovsky, and Chabad Lubavitch Jewish Center of Monroe.[1] The October 5, 2021 order reaffirmed compensation awards set out in two previous orders, an April 16, 2018[2] order and a May 19, 2020 judgment, from which respondents also appeal. We affirm.

We discern the following facts from the record. Petitioner was employed by Chabad as a domestic helper for the Zaklikovskys. On August 23, 2017, petitioner was injured at the Zaklikovsky residence in the course of her employment. After being rushed to the hospital, petitioner was advised that she sustained a meniscal tear to her left knee, as well as lumbar and cervical herniations. Petitioner testified that hospital staff would not treat her for her injuries because they were work-related and "her employer had to be notified."

[1] The Zaklikovskys are the owners and principal operators of Chabad.

[2] The order was mistakenly dated January 16, 2018.

Petitioner filed a petition against Chabad for worker's compensation;[3] however, the center did not maintain workers' compensation insurance at the time of petitioner's accident. Thereafter, petitioner amended her petition to assert claims against the Zaklikovskys as Chabad's owners and principal operators.[4]

On April 16, 2018, after a hearing, the judge of compensation entered an order against Chabad, awarding petitioner temporary disability benefits and payment of forthcoming medical treatment. Thereafter, Chabad appealed,[5] arguing that the judge of compensation erred by (1) accelerating the pretrial conference to a motion for temporary disability and medical benefits, in violation of N.J.A.C. 12:235-3.2(a); (2) granting medical treatment and retroactive benefits to plaintiff because she failed to submit an affidavit or

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[3] Petitioner filed four petitions in this matter: one against Chabad and its carrier, Church Mutual Insurance; one against Chabad as an uninsured entity; and one against each of the Zaklikovskys individually. The petition against Chabad as an uninsured entity was amended to include the Zaklikovskys in their corporate capacity.

[4] Until October 5, 2021, Wysoker, Glassner, Weingartner, Gonzalez, and Lockspeiser were the attorneys of record for both Chabad and the Zaklikovskys.

[5] Respondents also appealed orders entered on March 26 and May 7, 2018. The March 26th order converted a pretrial conference to a motion for temporary disability and medical benefits. The May 7 order dismissed, without prejudice, a claim for benefits against the Rabbinical College of North America (RCA).

certification and medical report as required by N.J.A.C. 12:235-3.2(b)(2); (3) closing the record prematurely as to the potential claims against RCA, thereby depriving Chabad of worker's compensation coverage under N.J.S.A. 34:15-87; and (4) denying Chabad its due process rights because the center was given insufficient time to retain separate counsel for co-respondents. On October 9, 2019, we affirmed in an unpublished opinion. Orellana v. Chabad Lubavitch Jewish Ctr. of Monroe, A-4251-17 (App. Div. Oct. 9, 2019). Pertinent to this appeal, we found that respondents did not defend the motion and, therefore, relinquished the right to control petitioner's treatment. Id. at 10-11.

On May 19, 2020, after a hearing to address the amount of temporary disability benefits owed to petitioner,[6] the judge of compensation entered a judgement awarding petitioner both temporary and permanent disability benefits. Additionally, the judge placed the matter on the discontinuance list—which closed the case temporarily—until a new judge was assigned by Trenton, as he was stepping down from the bench. Respondents did not appeal the award.

[6] Prior to this hearing, in October of 2018, petitioner retained respondents' counsel's firm in connection with an intervening motor vehicle action. Respondents' counsel made a motion seeking to be relieved as counsel, citing a conflict of interest. The judge did not rule on this matter.

On May 8, 2021, petitioner filed a motion to, among other things, reinstate the matter from the discontinuance list as to the Uninsured Employers Fund (UEF).[7] Subsequently, respondents' counsel, still counsel of record for Chabad and the Zaklikovskys, advised the compensation court of its intention to file a motion to be relieved as counsel due to the alleged conflict of interest.[8]

On October 5, 2021, the compensation court held a hearing before a new judge of compensation to address the various motions of the parties. The judge first granted respondents' counsel's motion to be relieved, finding that a conflict of interest arose by virtue of the attorney-client relationship between the firm and petitioner. Next, the judge granted petitioner's request to reinstate the case from the discontinuance list; however, he then immediately closed the case. In so doing, the judge dismissed petitioner's request for additional compensation without prejudice and reaffirmed the judgments entered on April 16, 2018 and May 19, 2020 by the prior judge of compensation.[9] At no time during the October 5th hearing did respondents challenge the award of permanent disability

[7] N.J.S.A. 34:15-120.2 explains how the UEF functions in cases where the employer has not obtained workers' compensation insurance.

[8] On August 3, 2020, a case management order was entered, ordering respondents' counsel to file a formal motion to be relieved as counsel.

[9] The orders, when taken together, amount to an award of $86,776.42.

encompassed in the May 19, 2020 order. An order was entered on the same date, memorializing the new judge of compensation's rulings.

On appeal, respondents raise the following arguments:

> POINT I
>
> THE COMPENSATION COURT ERRED IN AWARDING PERMANENT DISABILITY BENEFITS WITHOUT APPLICATION AND CONSIDERATION OF ANY EVIDENCE.
>
> POINT II
>
> THE PRIOR WORKER[S'] COMPENSATION AWARDS WERE INTERLOCUT[O]RY AND NOT SUBJECT TO APPEAL.

Under Rule 2:4-1(a), "appeals from final judgments of courts, final judgments or orders of judges sitting as statutory agents, and final judgments of the [DWC] shall be filed within 45 days of their entry." We permit an appeal as of right by a respondent from an order granting temporary disability benefits to a petitioner under the limited rationale that, when a respondent pays temporary disability benefits, it is equivalent to a final judgment because "[i]t may be docketed in Superior Court and [immediately] executed upon. It is presently payable in the absence of a stay." Dell Rosa v. Van-Rad Contracting Co. Inc., 267 N.J. Super. 290, 294 (App. Div. 1993). This principle is bolstered by N.J.S.A. 34:15-58, which states that a DWC "decision, award, determination[,]

and rule for judgment . . . shall be final and conclusive between the parties and shall bar any subsequent action or proceeding, unless reopened by the [DWC] or appealed[.]"

Guided by these principles, and after careful examination of the record, we are convinced that both the April 16, 2018 and May 19, 2020 orders were final judgments of the DWC and, therefore, respondents' appeal is time-barred. In that regard, respondents timely appealed the April 16, 2018 order awarding petitioner temporary disability benefits, which we affirmed. We see no principled reason for continued discussion of that order. We conclude respondents' appeal of the May 19, 2020 order, which awarded petitioner permanent disability, is also time-barred. The time to appeal that order expired on June 29, 2020.

It bears noting that at no time in the underlying proceedings, including before or during the October 5, 2021 hearing, did respondents raise an objection to or move to vacate the May 2020 award. Indeed, the sole relief sought by respondents' counsel at that hearing was a request to be relieved in order to facilitate representation of petitioner in an unrelated motor vehicle accident. It is only now, on this appeal, that the challenge is raised for the first time. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) ("[O]ur appellate

courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'") (quoting Reynolds Offset Co. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)). Respondents' failure to raise the issue before the DWC is an additional, although superfluous, reason why they are not entitled to relief.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION