SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1931-20

STEVEN FERRARA,

Plaintiff-Appellant,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Defendant-Respondent.

Argued May 2, 2022 – Decided June 10, 2022

Before Judges Messano and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-2374-20.

Kenneth W. Thomas argued the cause for appellant (Lanza Law Firm, LLP, attorneys; Kenneth W. Thomas, of counsel and on the briefs).

Curtis J. Turpan argued the cause for respondent (Harwood Lloyd, LLC, attorneys; Curtis J. Turpan, of counsel and on the brief; Paul E. Kiel, on the brief).

PER CURIAM

Plaintiff Steven Ferrara appeals from the March 1, 2021, order vacating the default judgment entered in his favor, enforcing a settlement of plaintiff's uninsured motorist (UM) claim over his objection, and dismissing his personal injury protection (PIP) claim so it can be resolved through arbitration. Following our review of the record, arguments of counsel, and applicable legal principles, we affirm in part, reverse in part, and remand for further proceedings.

I.

We derive the following from the record. Plaintiff maintains he sustained serious injuries stemming from an automobile accident on August 1, 2018. The other vehicle was allegedly driven by an unidentified driver who fled the accident scene. Plaintiff filed a complaint against defendant Government Employees Insurance Company (GEICO) on July 24, 2020. Plaintiff asserted a UM claim and that GEICO denied payments of PIP benefits to him in bad faith, which prevented him from receiving the necessary medical treatment in a timely manner. Default was entered against GEICO on September 2, 2020. Thereafter, plaintiff filed a motion for final judgment by default as to liability only, which the trial judge granted on October 16, 2020. The judge then scheduled a proof hearing for October 28, 2020, and entered default judgment on November 5, 2020, in the amount of $376,511, representing $300,000 for compensatory

damages for pain and suffering, and $76,511 for unpaid medical bills. GEICO did not receive notice of the proof hearing until November 3, 2020 – six days after the proof hearing.

On December 30, 2020, after receiving plaintiff's motion to enforce litigant's rights, GEICO filed a motion to vacate the default judgment, dismiss plaintiff's PIP claim, and enforce a purported settlement agreement regarding the UM claim. On March 1, 2021, the trial court determined the judgment against GEICO was void as a matter of law and vacated the default judgment pursuant to Rule 4:50-1(d). Although not entirely clear from the opinion, it appears the court found the judgment was void because GEICO did not receive notice of the proof hearing; the PIP claim should have been addressed in arbitration; and the parties settled the UM claim. The trial court also rejected plaintiff's argument that he could assert a bad faith claim in the context of a wrongful denial of PIP benefits. The trial court dismissed the complaint with prejudice. This appeal followed.

II.

Plaintiff argues the trial court erred in vacating the default judgment pursuant to Rule 4:50-1(d). Moreover, plaintiff asserts GEICO failed to demonstrate excusable neglect or a meritorious defense under Rule 4:50-1(a),

and there were no exceptional circumstances under Rule 4:50-1(f). Plaintiff further contends the trial court abused its discretion by enforcing a settlement when all competent evidence established there was no agreement reached between the parties. Specifically, plaintiff's attorney advised GEICO he would "recommend" the settlement offer, but never indicated the case was resolved. Moreover, plaintiff's certification clearly indicates he never agreed to any settlement. Plaintiff further maintains the trial court erred in determining plaintiff's exclusive remedies for the wrongful denial of PIP benefits were limited to interest on overdue PIP benefits and attorney's fees. Lastly, plaintiff avers he should have been permitted to amend his complaint if the trial court was going to vacate the judgment.

GEICO counters the trial court correctly vacated the default judgment pursuant to Rule 4:50-1(d) because the judgment was void as a matter of law. GEICO further argues both Rule 4:50-1(a) and (f) provide alternative bases to vacate the default judgment. GEICO alleges there is no legal basis for plaintiff's UM claim because GEICO agreed to pay the $15,000 UM policy limits shortly after plaintiff made a demand. GEICO asserts the trial court correctly dismissed the UM claim and determined the matter was settled because plaintiff could not recover any more than $15,000, and the agreement to pay the policy limits was

"tantamount to a settlement."[1] Lastly, GEICO submits the trial judge correctly determined there was no basis for plaintiff's bad faith claim regarding the alleged failure to pay PIP payments pursuant to Endo Surgi Center, P.C. v. Liberty Mutual Insurance Co., 391 N.J. Super. 588 (App. Div. 2007).

III.

It is not clear from the trial court's decision why the default judgment was vacated under Rule 4:50-1(d). There is certainly a basis for vacating under Rule 4:50-1(d), because the PIP claim should not have been addressed at the proof hearing. To the extent the trial court vacated the default judgment based on its decision to enforce a settlement agreement, we disagree as discussed below. Notwithstanding that there may have been another basis under Rule 4:50-1 to vacate the default judgment, we examine whether the default judgment could also have been vacated under Rule 4:50-1(a).

"The trial court's determination under [Rule 4:50-1] warrants substantial deference and should not be reversed unless it results in a clear abuse of discretion." U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). An abuse of discretion "arises when a decision is 'made without a rational

[1] GEICO concedes the trial court did not specifically articulate its reasons for enforcing the settlement.

explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigr. & Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)).

The motion judge is obligated to review a motion to vacate a default judgment "'with great liberality,' and should tolerate 'every reasonable ground for indulgence . . . to the end that a just result is reached.'" First Morris Bank & Tr. v. Roland Offset Serv. Inc., 357 N.J. Super. 68, 71 (App. Div. 2003) (alteration in original) (quoting Mancini v. EDS ex rel. N.J. Auto. Full Ins. Underwriting Ass'n, 132 N.J. 330, 334 (1993)). "All doubts . . . should be resolved in favor of the parties seeking relief." Mancini, 132 N.J. at 334.

A motion to vacate default judgment implicates two often competing goals: the desire to resolve disputes on the merits, and the need to efficiently resolve cases and provide finality and stability to judgments. "The rule is designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." Manning Eng'g Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977); see also Hodgson v. Applegate, 31 N.J. 29, 43 (1959) (interest in finality must be balanced with the goal of doing justice in

the case); Nowosleska v. Steele, 400 N.J. Super. 297, 303 (App. Div. 2008) (stating courts have liberally exercised power to vacate default judgments "in order that cases may be decided on the merits").

In balancing these two goals, our system is sympathetic to the party seeking relief, because of the high value we place on deciding cases on the merits. Although the movant bears the burden of demonstrating its failure to answer should be excused and default judgment vacated, Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425-26 (App. Div. 2003), close issues should be resolved in the movant's favor. Mancini, 132 N.J. at 334. The decision whether to grant or deny a motion to vacate a default judgment must be guided by equitable considerations. Prof'l Stone, Stucco & Siding Applicators, Inc. v. Carter, 409 N.J. Super. 64, 68 (App. Div. 2009) (holding "Rule 4:50 is instinct with equitable considerations.").

A motion to vacate on the basis of excusable neglect under Rule 4:50-1(a) must be brought "within a reasonable time," but not later than one year after judgment. R. 4:50-2. Although not expressly included in Rule 4:50-1(a), it is well-settled a defendant claiming excusable neglect must also demonstrate he or she has a meritorious defense. Marder v. Realty Constr. Co., 84 N.J. Super. 313, 318 (App. Div. 1964).

We have recognized a defendant's promptness in moving to vacate a default judgment is a factor favoring granting the motion. Reg'l Constr. Corp. v. Ray, 364 N.J. Super. 534, 541 (App. Div. 2003) (finding excusable neglect "when examined against the very short time period between the entry of default judgment and the motion to vacate"); Jameson, 363 N.J. Super. at 428 (noting the "speed and diligence with which A & P moved to attempt to vacate the default judgment"); Morales v. Santiago, 217 N.J. Super. 496, 504-05 (App. Div. 1987) (reversing denial of motion to vacate because, among other factors, "[s]ellers moved to vacate the judgment soon after it was entered"). As noted above, the motion to vacate implicates the interest in finality and repose. However, when the ink has barely dried on the default judgment, the interest in repose does not loom as large. "[W]here the judgment has been in effect for only a brief period of time before the motion to vacate is filed . . . a plaintiff's expectations regarding the legitimacy of the judgment and the court's interest in the finality of judgments are at their nadir." Ray, 364 N.J. Super. at 545.

Related to the promptness with which a defaulting party moves to correct his or her oversight is the prejudice to the plaintiff if default judgment is vacated. Here, we refer to prejudice beyond the burden to plaintiff of proving entitlement to relief. Rule 4:50-1 authorizes the court to condition an order vacating default

judgment "upon such terms as are just." A court may compel a defendant seeking to vacate default to reimburse the plaintiff for the fees and costs "in pursuit of the default judgment or in responding to the motion to vacate." Ray, 364 N.J. Super. at 543. However, in some cases, a plaintiff may detrimentally rely on the default judgment and adjust his or her affairs accordingly, such that unwinding the judgment would result in significant or irreparable harm. The absence of such prejudice is a factor favoring a decision to vacate default judgment.

Ordinarily, the failure of a sophisticated business to develop procedures for the forwarding of papers within its organization is not excusable neglect. Mancini, 132 N.J. at 335. However, Mancini involved a significant delay — over one year — in a party moving to vacate a default judgment. Id. at 333. That is not the case here. GEICO moved promptly to vacate the default judgment once it became aware of the situation, and the principles of finality and repose were not implicated. Moreover, there is no suggestion plaintiff suffered any legal prejudice from the relatively short delay in GEICO moving to vacate the default judgment. Again, the default judgment was entered on November 5, 2020, and GEICO moved to vacate the default judgment the following month.

GEICO did not provide a certification substantiating its claim that although the complaint was served on GEICO's registered agent, it was not apparently forwarded to GEICO's claims department. However, we are mindful of the disruptions in business operations during the first year of the COVID-19 pandemic. More importantly, the record reveals GEICO was actively engaged in settlement discussions with plaintiff for several months prior to plaintiff filing the complaint and was purportedly advised plaintiff would provide a courtesy copy of the complaint if one was filed in the event plaintiff did not accept the settlement offer.[2] Further, GEICO never received timely notice of the proof hearing, and it rapidly responded when it received a motion to enforce litigant's rights. In short, the relatively short delay should not operate as a bar to this case being adjudicated on the merits. Although not a model of efficiency, we find GEICO's actions excusable under the circumstances.

[2] A GEICO representative certified the parties were in communication for over a year and engaged in settlement discussions, and GEICO was under the impression the case was going to be resolved. Specifically, on March 11, 2019, GEICO received a demand letter seeking the $15,000 UM limit of the GEICO policy. On April 18, 2019, a representative from GEICO spoke with plaintiff's counsel and "agreed to settle" the UM claim for $15,000. Thereafter, GEICO indicated it made numerous requests from September 2019, through September 2020, for the return of an executed release. GEICO further notes plaintiff's counsel's office agreed to provide a courtesy copy of plaintiff's complaint if a suit had to be filed due to plaintiff refusing to sign the release.

GEICO also clearly articulated a meritorious defense. First, the PIP claim was properly dismissed and referred to arbitration. Second, the UM policy limits were $15,000 which would have effectively capped the damages at the proof hearing. These defenses undermine the court's ruling at the proof hearing. In short, GEICO satisfied the meritorious defense prong.

Based on our own review of the record, and mindful of the liberality with which motions to vacate default judgment should be considered, we discern sufficient grounds for finding both excusable neglect and a meritorious defense under Rule 4:50-1(a). We therefore remand for further proceedings as addressed below.

IV.

A disputed motion to enforce a settlement agreement is governed by the same standard as a motion for summary judgment. Amatuzzo v. Kozmiuk, 305 N.J. Super. 469, 474-75 (App. Div. 1997) (requiring that a hearing be held "unless the available competent evidence, considered in a light most favorable to the non-moving party, is insufficient to permit the judge, as a rational factfinder, to resolve the disputed factual issues in favor of the non-moving party." (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995))). In reviewing such a decision, we apply the same standard as the trial court.

Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div. 1998) (citing Antheunisse v. Tiffany & Co. Inc., 229 N.J. Super. 399, 402 (App. Div. 1988)).

Not every factual dispute triggers the need for a plenary hearing; a hearing is only required where "the evidence shows the existence of a genuine issue of material fact." Eaton v. Grau, 368 N.J. Super. 215, 222 (App. Div. 2004). However, "trial judges cannot resolve material factual disputes upon conflicting affidavits and certifications." Harrington v. Harrington, 281 N.J. Super. 39, 47 (App. Div. 1995). A party moving to enforce a settlement bears the burden of demonstrating that one exists in the first place. Amatuzzo, 305 N.J. Super. at 475.

The trial court's opinion regarding the settlement issue falls short of what is required for appellate review. A trial court has a duty to make findings of fact and conclusions of law "on every motion decided by a written order that is appealable as of right." R. 1:7-4(a). Failure to perform this duty "'constitutes a disservice to the litigants, the attorneys and the appellate court.'" Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (quoting Kenwood Assocs. v. Bd. of Adjustment, 141 N.J. Super. 1, 4 (App. Div. 1976)). Moreover, "[n]aked conclusions do not satisfy the purpose of [Rule] 1:7-4." Curtis, 83 N.J. at 570.

"Rather, the trial court must state clearly its factual findings and correlate them with the relevant legal conclusions." Ibid. "The absence of adequate findings . . . necessitates a reversal." Heinl v. Heinl, 287 N.J. Super. 337, 347 (App. Div. 1996).

The trial court failed to provide a factual or legal basis for its order enforcing the settlement of the UM claim. Based on our review of the record, we are satisfied the certifications from plaintiff and his attorney are sufficient to raise a material and substantial issue of fact as to whether there was an agreement to settle. Plaintiff clearly states he never agreed to any settlement, and plaintiff's attorney communicated to GEICO he would "recommend" the settlement to his client. However, there is no indication plaintiff ever agreed to the settlement offer. Accordingly, the trial court had no basis to conclude there was a settlement given the competing certifications from GEICO and plaintiff. We therefore reverse the trial court's order insofar as it enforced a settlement of the UM claim.

V.

We are not persuaded by plaintiff's argument that the trial court erred by relying on Endo Surgi Center and concluding plaintiff's exclusive remedies for the wrongful denial of PIP benefits were limited to interest and attorney's fees.

391 N.J. Super. at 594-95. We decline plaintiff's request to depart from our holding in Endo Surgi Center and permit plaintiff to advance a bad faith claim under the facts in this case.

Our Supreme Court has recognized "an insurance company owes a duty of good faith to its insured in processing a first-party claim." Pickett v. Lloyd's, 131 N.J. 457, 467 (1993).[3] Further, in defining what constitutes a bad faith refusal to pay a first-party claim, the Court stated "[i]f a claim is 'fairly debatable,' no liability in tort will arise." Id. at 473 (quoting Bibeault v. Hanover Ins. Co., 417 A.2d 313, 319 (R.I. 1980)). The Pickett Court held, "[t]o show a claim for bad faith, a plaintiff must show the absence of a reasonable basis for denying benefits of the policy and the defendant's knowledge or reckless

[3] The Pickett Court noted:

> [A]n insurance company may be liable to a policyholder for bad faith in the context of paying benefits under a policy. The scope of that duty is not to be equated with simple negligence. In the case of denial of benefits, bad faith is established by showing no debatable reasons existed for denial of the benefits. In the case of processing delay, bad faith is established by showing no valid reasons supported the delay. In either case (denial or delay), liability may be imposed for consequential economic losses that are fairly within the contemplation of the insurance company.
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> [Id. at 481.]

disregard of the lack of a reasonable basis for denying the claim." 131 N.J. at 473 (quoting Anderson v. Cont'l Ins. Co., 271 N.W.2d 368, 376-77 (1978)).

Notably, however, in the PIP context, we determined in Endo Surgi Center, "the sole remedy for a wrongful denial of PIP benefits is an award of the interest mandated by N.J.S.A. 39:6A-5(h)." 391 N.J. Super. at 594. Further, "[that conclusion] is also supported by the statutory mandate that either the insured or the insurer may require submission of any dispute regarding payment of PIP benefits to the alternative dispute resolution procedures provided by N.J.S.A. 39:6A-5.1." Ibid.[4] In Endo Surgi Center, we noted the Pickett Court similarly recognized a claim for failure to pay statutorily mandated benefits such as PIP should be treated differently than a claim not subject to statutory regulation:

> We also concur with the Court's holding, in the highly-regulated area of personal injury protection, see N.J.S.A. 39:6A-5, that wrongful failure to pay benefits, wrongful withholding of benefits or other violation of the statute does not thereby give rise to a claim for punitive damages.

[4] We held in Endo Surgi Center, "if an insured (or an insured's assignee) were allowed to pursue a common law claim for an alleged bad faith denial of PIP benefits, under which there would be an entitlement to a jury trial, this would open the door to circumvention of the statutorily mandated alternative dispute resolution procedure provided by N.J.S.A. 39:6A-5.1." 391 N.J. Super. at 594-95.

> [Endo Surgi Center, 391 N.J. Super. at 595 (citing Pickett, 131 N.J. at 475-76).]

We further determined in Endo Surgi Center:

> The [Pickett] Court also indicated that even though a punitive damages claim is not maintainable for an alleged bad faith denial of a statutorily regulated insurance benefit, an insured still may pursue a claim for compensatory and punitive damages for an "independent tort" committed by an insurance carrier in response to a claim for benefits, "such as threats by the insurer's agents to kill the insured and the insured's children . . . ."
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> [Endo Surgi Center, 391 N.J. Super. at 595 (citing Pickett, 131 N.J. at 475).]

There is no indication in the record evidencing GEICO committed such a tort in this case. Accordingly, we affirm the trial court's dismissal of plaintiff's bad faith claim regarding PIP benefits.[5] Moreover, consistent with Endo Surgi Center, we conclude the trial judge correctly determined plaintiff is only entitled to payment of improperly denied benefits, plus interest thereon, coupled with attorney's fees to collect those benefits, which may be pursued in arbitration. The trial court appropriately found plaintiff is not entitled to compensatory or

[5] To the extent plaintiff alleges GEICO engaged in such egregious conduct, plaintiff may move to amend his complaint on remand to assert these claims.

punitive damages for defendant's alleged bad faith stemming from the alleged delay in paying PIP benefits.

VI.

In sum, given that we conclude there was no valid settlement agreement and because we vacate the default judgment under Rule 4:50-1(a), we remand for further proceedings to allow plaintiff, to the extent supported by the record, to amend his complaint to advance an independent tort claim as discussed in Endo Surgi Center, a UM bad faith claim, and any other cause of action that may exist. We take no position on the merits of plaintiff's allegations, but merely give plaintiff the opportunity to pursue his claims and conduct any necessary discovery. GEICO, of course, is not foreclosed from moving for summary judgment at the appropriate juncture. We likewise express no opinion as to the merits of GEICO's defenses. Finally, the PIP claim shall be addressed at arbitration as appropriately determined by the trial judge.

To the extent we have not otherwise addressed plaintiff's arguments, they lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

We affirm in part, reverse in part, and remand for further proceedings.