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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2143-20**

DAMARIS CHANDLER,
as administrator ad prosequendum
of the estate of JOSEPH E.
CHANDLER, JR., deceased,

Plaintiff-Respondent,

v.

TODD W. KASPER,

Defendant-Appellant,

and

THOMAS C. KASPER,

Defendant,

and

KAZZ, INC., d/b/a KASPER'S
CORNER and KASPER'S
AUTOMOTIVE,

Defendants-Respondents.

Argued September 13, 2021 – Decided October 7, 2021

Remanded by Supreme Court March 8, 2022
Resubmitted May 9, 2022 – Decided June 14, 2022

Before Judges Sabatino and Rothstadt.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-4710-18.

Sweeney & Sheehan, PC, attorneys for appellant (Frank Gattuso, Jacqueline M. DiColo, and Neal A. Thakkar, on the briefs).

Kuttner Law Offices and Foley & Foley, attorneys for respondent Damaris Chandler (Robert Kuttner and Timothy J. Foley, on the briefs).

Thomas, Thomas & Hafer, LLP, attorneys for respondents Kazz, Inc. and Kasper's Automotive (Mark R. Sander, of counsel and on the brief).

PER CURIAM

In our earlier unpublished opinion in this matter, we reversed the trial court's January 22, 2021 denial of "defendants' motion for partial summary judgment, and [its order] permitting plaintiff to amend her previously filed complaint to correct her standing by designating herself both as Administrator Ad Prosequendum [(AAP)] and the General Administrator of her deceased father's estate." Chandler v. Kasper (Chandler I), No. A-2143-20 (App. Div. Oct. 7, 2021) (slip op. at 2). "We reverse[d] . . . and remand[ed] for entry of orders dismissing plaintiff's Survivor's Act[, N.J.S.A. 2A:15-3,] action for lack

of standing because plaintiff's original complaint was a nullity and any amendment sought after the statute of limitations ran could not relate back to that complaint." Id. at 3. We did so because we concluded that although plaintiff instituted the Survivor's Act action in her capacity as AAP of her deceased father's estate, no letters of administration had been issued when she filed her complaint and therefore plaintiff as AAP, did not have standing to bring that action.

Two pertinent events occurred after we issued our decision. On October 29, 2021, plaintiff filed a motion with the Supreme Court for leave to appeal. While that motion was pending, on January 18, 2022, the Governor signed into law Assembly Bill 6133 that amended N.J.S.A. 2A:15-3 to allow an AAP to file a Survivor's Act action on behalf of a decedent. See L. 2021 c. 481. According to its express language, the amendment became effective "immediately" and applies to "any action commenced prior to the effective date and not yet dismissed or finally adjudicated as of the effective date." Ibid.

In response to those two events, the Supreme Court issued an order on March 8, 2022, granting plaintiff's motion and "summarily remand[ing] to [us] to consider the impact of [the] new legislation . . . in the first instance." We now consider the issue of whether the new legislation is applicable to plaintiff's

complaint and, if so, whether it revives the Survivor's Act claim that we ordered to be dismissed.

The facts pertinent to our consideration of the issue are well known to the parties and set forth in our earlier opinion. Chandler I, slip op. at 3-7. We need not repeat them here. Instead, we focus on the enactment of the amendment to the statute.

Assembly Bill 6133 was introduced on December 6, 2021. The bill amended the Survivor's Act to permit "[e]xecutors, administrators, and [AAPs]" to file such actions, and added the following language in a new subsection (2):

In the case of a plaintiff qualified for appointment as administrator who was not yet appointed administrator at the time the plaintiff commenced an action under this section, the court may allow the plaintiff to be designated administrator for the purposes of this section and to allow the plaintiff to amend pleadings nunc pro tunc relating back to the plaintiff's first filed pleading to reflect the designation.^[1]

[L. 2021 c. 481 (emphasis added).]

In an accompanying statement, the bill's sponsors explained that the legislation was proposed in direct response to our holding in Chandler I.

¹ The same bill amended the Wrongful Death Act as well. It added similar language to section (b) of N.J.S.A. 2A:31-2. L. 2021 c. 481.

Sponsor's Statement to A. 6133 3-4 (L. 2021 c. 481). Specifically, they stated the following:

When a person dies without a will, the county surrogate will appoint a [G]eneral [A]dministrator of the estate who, among other duties, is authorized to file any civil actions under the [S]urvivor's [A]ct. The surrogate will appoint an [AAP] (generally the same person who is appointed [G]eneral [A]dministrator) to file any civil actions under the [W]rongful [D]eath [A]ct.

In an unpublished decision, [Chandler I] the Appellate Division held that the decedent's daughter did not have standing to file a lawsuit under the [S]urvivor's [A]ct because she had not yet been appointed [G]eneral [A]dministrator of her father's estate; she had been appointed only as [AAP], which entitled her to file suit under the [W]rongful [D]eath [A]ct (but not under the [S]urvivor's [A]ct). According to the daughter, the county surrogate had advised that it was necessary for her only to be appointed as [AAP] in order to file the lawsuit, and disagreements with her siblings had led to a delay in her being able to seek appointment as [G]eneral [A]dministrator.

In the view of the sponsor, [Chandler I] can lead to many cases brought under the [W]rongful [D]eath [A]ct or the [S]urvivor's [A]ct being dismissed on a technicality.

This bill is intended to address the issue by providing that the court may appoint a person as an administrator or [AAP] even if the person was not yet appointed as such at the time the person filed a lawsuit under the [W]rongful [D]eath [A]ct or [S]urvivor's [A]ct. The bill provides that the court could allow the person filing suit to be designated [AAP], executor, or administrator

with the will annexed, as the case may be, and to allow the plaintiff to amend any pleadings relating back to the plaintiff's first filed pleading to reflect the designation.

The bill would take effect immediately. It would apply to any action commenced on or after the effective date and to any action commenced prior to the effective date and not yet dismissed or finally adjudicated as of the effective date.

[Ibid.]

As already noted, when the bill was enacted in 2022, plaintiff's motion for leave to appeal was pending before the Supreme Court. Defendants here do not contend that this case was not "in the pipeline" when the Legislature acted, and we conclude the express language of the statute made the amendment applicable to pending cases. See Diamond Beach, LLC v. March Assocs., Inc., 457 N.J. Super. 265, 276-77 (App. Div. 2018) ("[W]e recognize three circumstances that justify affording a statute retroactive effect: (1) when the Legislature expresses its intent that the law apply retroactively, either expressly or implicitly; (2) when an amendment is curative; or (3) when the expectations of the parties so warrant." (quoting Ardan v. Bd. of Rev., 231 N.J. 589, 610 (2018))).

In light of the express language of the amendment and the accompanying statement, and the fact that plaintiff's motion had not been finally adjudicated by the Supreme Court, we would have to review this matter through blinders to

conclude the amendments are not applicable to plaintiff's ability to pursue a Survivor's Act action under the amended statute.

The issue therefore is only whether the amended Survivor's Act cloaked plaintiff with the standing we previously held she was without. In supplemental briefing on remand filed by plaintiff, she argues that the amended statute "expressly authorizes [her as] an [AAP] to maintain such a claim."

Not surprisingly, defendant Todd W. Kasper takes a different view.² According to him, the Legislature's inclusion of a "relation back" provision in section (2) of the amended Survivor's Act would be superfluous unless plaintiff was actually qualified to be appointed as administrator at the time the complaint was filed. For support, defendant relies upon the first clause of the amendment's new section (2) which, as already noted, states the following: "In the case of a plaintiff qualified for appointment as administrator who was not yet appointed administrator at the time the plaintiff commenced an action under this section," According to defendants, in this case, because the other heirs would not consent to plaintiff being appointed administrator at the time of her filing the complaint, she was not qualified to be an administrator at that time,

² Defendants-Respondents Kazz, Inc and Kasper's Automotive did not file a brief on remand.

and therefore, under the relation back provision, she was not someone qualified to be appointed administrator and should not be allowed to pursue the claim, even though she was later qualified when the other heirs consented.

Plaintiff rejects defendant's position, arguing that "[t]he determinative provision is N.J.S.A. 2A:15-3(a)(1), which expressly amends the statute to include [AAPs] as proper parties to bring an action on behalf of an estate. There is no dispute that plaintiff was authorized to act as [AAP] when the [c]omplaint was filed."

We conclude that based on the express language of the statute as amended, plaintiff became qualified to pursue her late father's Survivor's Act claim because, at the time she filed the complaint, she was acting in her capacity as an AAP.

As noted, we reach our conclusion based on the language of the amended Act. We construe the statute at issue in accordance with familiar principles. A statute's plain language serves as "the best indicator" of the Legislature's intent. DiProspero v. Penn, 183 N.J. 477, 492 (2005). "When the provisions of a statute are clear and unambiguous, they should be given their literal significance, unless it is clear from the text and purpose of the statute that such meaning was not intended." Turner v. First Union Nat'l Bank, 162 N.J. 75, 84 (1999). When we

discern the meaning of the Legislature's selected words, we may "draw inferences based on the statute's overall structure and composition." State v. S.B., 230 N.J. 62, 68 (2017). If the Legislature's intent is clear on the face of the statute, then the "interpretive process is over." Richardson v. Bd. of Trs., PFRS, 192 N.J. 189, 195 (2007).

Applying these guiding principles here, it could not be any clearer that under the amendment to section (1) of the Act, the Legislature intended to permit AAPs to file in the first instance complaints under the Survivor's Act and that amendment applied to cases that were still pending at the time of its enactment. Contrary to defendant's argument, the relation back provision of section (2) applies when a complaint has been filed by an individual who is neither an executor, administrator, nor an AAP at the time of the filing, but later qualifies for appointment while the action is pending.

Under these circumstances, we now rescind our original pre-amendment opinion and affirm the two January 22, 2021 orders under appeal.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION