SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2438-20
A-0524-21

SYLVIA HAGANS,

Plaintiff-Respondent,

v.

ALAN NICKERSON, ESQ.,

Defendant,

and

GEORGE L. FARMER, ESQ.,

Defendant/Third-Party
Plaintiff-Appellant,

v.

MARK MOLZ, ESQ.,

Third-Party Defendant.

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GEORGE L. FARMER, ESQ.,

Plaintiff-Appellant,

v.

SYLVIA HAGANS, and
MARK MOLZ, ESQ.,

Defendants-Respondents.

Argued October 18, 2022 – Decided December 15, 2022

Before Judges Susswein and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket Nos. L-0355-17 and L-0332-21.

George L. Farmer, appellant, argued the cause pro se.

Mark J. Molz argued the cause for respondents Sylvia Hagans in A-2438-20 and Sylvia Hagans and Mark J. Molz, Esq. in A-0524-21.

PER CURIAM

These two appeals arise from orders entered in separate proceedings in the Law Division involving common parties and claims regarding the enforceability of a fee arbitration agreement and George L. Farmer's right to reinstate or file anew claims that were previously dismissed or not pursued until after a completed appeal. We scheduled the appeals back-to-back and consolidate them now for the purpose of issuing a single opinion.

We are asked to determine whether the Law Division correctly found Farmer's numerous procedural missteps precluded him from reducing his fee arbitration award to a judgment eight years after its entry. Separately, we are asked to determine whether, despite those missteps, Farmer was entitled to prosecute his third-party complaint, which the trial court previously dismissed with prejudice, and he did not appeal, or alternatively refile various causes of action he claims to have previously dismissed without prejudice and did not revive prior to the entry of an order on appeal of the final order in the case.

Based upon our review of the record, and considering the applicable law, we are satisfied the Law Division correctly determined Farmer the statute of limitations had run when Farmer finally sought to reduce the fee arbitration award to a judgment. We also conclude the Law Division correctly denied reinstating Farmer's claims, and, when he filed them anew in a separate action, the Law Division correctly granted summary judgment to Hagans and Molz, and denied Farmer's cross-motion for summary judgment, regardless of any claims of res judicata, because no rational fact-finder could find those claims meritorious. Farmer failed to preserve his counterclaims or third-party complaint on the first appeal, either by seeking an appeal, a limited remand, or by filing a cross-appeal to plaintiff's appeal of the final order granting summary

judgment, and he was not entitled to revive those claims thereafter. When Farmer filed a new complaint in the Law Division asserting the same causes of action as his previously dismissed third-party complaint and counterclaims, the trial court correctly granted summary judgment dismissing the complaint. We affirm all trial court orders subject to these two appeals.

The L-355-17 Appeal

In this procedural morass, defendant George L. Farmer[1] appeals a trial court order denying his motion for counsel fees and costs as sanctions for frivolous litigation, alternatively allowing him to reinstate his counterclaims and third-party complaint for malicious abuse of process and malicious prosecution, and declining to reduce his fee arbitration award to a judgment. Farmer filed the motion following disposition of plaintiff's previous appeal from an award of summary judgment to Farmer, which we affirmed, and resulted in the dismissal of the matter entirely with respect to all parties. We affirm.

Because of the previous appeal between the parties, Hagans v. Nickerson, No. A-3824-18 (App. Div. July 31, 2020) (slip. op.), we do not delve into the

[1] Although defendant is self-represented, he is an attorney at law in the State of New Jersey.

full history between these parties which gave rise to the underlying litigation, save a few relevant procedural facts and dates.

Plaintiff Sylvia Hagans retained Farmer for legal representation after she fired prior counsel. They entered a written retainer agreement whereby Farmer substituted as counsel for defendant Nickerson.[2] Hagans and Farmer were not successful in prosecuting her claims in the previous litigation and plaintiff owed Farmer money per their written retainer agreement. Farmer successfully arbitrated fees he charged Hagans pursuant to Rule 1:20A-3, and on July 1, 2013, obtained a fee arbitration award determining Hagans owed him $7,892.60. Despite obtaining this award, it is undisputed Farmer did not file a summary enforcement action to collect the award pursuant to Rule 4:67, as contemplated by the court rule[3] until February 3, 2021, almost eight years after its entry.

On January 24, 2017, Hagans filed a legal malpractice complaint against Farmer, who was, by then, her former counsel. On April 10, 2017, Farmer filed an answer, affirmative defenses, and two counterclaims against Hagans for

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[2] Defendant Nickerson is no longer an active party to the ongoing dispute between appellant and respondent.

[3] See Rule 1:20A-3(e), which states, in pertinent, "the attorney or client may, by summary action brought pursuant to Rule 4:67, obtain judgment in the amount of the fee or refund as determined by the Fee Committee."

malicious use of process/malicious prosecution, and malicious abuse of process. Farmer also filed a third-party complaint against Mr. Molz, Hagan's new counsel, alleging three counts: malicious use of process/malicious prosecution, malicious abuse of process, and tortious interference.

Farmer represents that in May 2017, he voluntarily dismissed his counterclaims against plaintiff "without prejudice" by stating so in a brief. It is undisputed no order reflecting this alleged dismissal was ever entered. On June 9, 2017, the first trial judge who presided over the matter dismissed the third-party complaint "with prejudice" for reasons stated on the record, finding no basis for any of the claims pled against Mr. Molz. However, no order reflecting the dismissal was ever entered. Farmer did not appeal that dismissal.

At the conclusion of discovery, Farmer moved for summary judgment which was granted by the second trial judge to preside over the matter, resulting in the dismissal of the entire action with prejudice on March 27, 2019. Hagans filed a notice of appeal as of right from summary judgment. While the appeal was pending, Farmer filed a motion for counsel fees and costs before the trial court.

On May 14, 2019, noting a pending motion in the trial court, and that further proceedings were scheduled, our court inquired if the notice of appeal

was truly appealable as of right from a final order. The letter cautioned if the appeal was not final, then procedurally, Hagans required leave to appeal an interlocutory order.

On May 24, 2019, the trial court issued an oral statement of reasons denying Farmer's motion for counsel fees, citing the pending appeal. The trial court's oral decision stated it was denying sanctions and fees "without prejudice" but the order entered indicated only "denied."

On May 29, 2019, following the denial of sanctions and attorney's fees, Hagans certified all issues regarding all parties were determined with finality, and no further proceedings were scheduled in the trial court. On June 25, 2019, Farmer wrote to our court indicating although the order denying sanctions and fees was stamped "denied," the motion had been denied without prejudice. He made no mention of his voluntarily dismissed counterclaim, or the third-party complaint dismissed by the trial court, nor did he seek to dismiss the appeal as interlocutory. Given the orders in the record, we scheduled and considered the appeal as of right from a final order.

On July 31, 2020, we affirmed summary judgment, dismissing all remaining claims. Because Farmer had already voluntarily dismissed his counterclaims, the first trial judge had dismissed the third-party complaint with

prejudice, and the second trial judge had denied his motion for sanctions and fees, there was nothing pending before any court.

One week later, on August 6, 2020, Farmer filed an omnibus motion seeking, for the first time, to reduce his 2013 fee arbitration award to a judgment, not by order to show cause pursuant to Rule 4:67, but instead pursuant a breach of contract theory. Additionally, he sought sanctions for frivolous litigation and attorney's fees and costs pursuant to Rule 1:4-8. And, in the event the court did not award sanctions, Farmer sought to reinstate his counterclaims and third-party complaint.

On January 29, 2021, a third trial judge heard oral argument on the motion and denied all three of Farmer's requests on the record, due, in part, to there being a final judgment and completed appeal in the case. First, the trial court found the third-party complaint had been dismissed with prejudice. Second, the trial court found there was a final judgment dismissing the complaint and counterclaims. Third, the trial court found because of the final judgments in the case, "there [wasn't] anything to reinstate." Fourth, the trial court denied sanctions because Hagans, regardless of the disposition on appeal, had a reasonable, good faith basis to pursue the merits of her claim. Lastly, because the trial court denied re-opening the case following appeal, it also found

reducing the fee arbitration to a judgment was inappropriate because "it's not clear to the court that whole issue belongs here."

Farmer sought to vacate the January 29, 2021 order pursuant to Rule 4:50-1. After a hearing on March 31, 2021, the trial court declined to vacate the order on April 1, 2021. The court noted "Farmer has not articulated reason under Rule 4:50-1 for this court to vacate its January 29 order. And it is clear as he has not even cited to the rule or any case supporting his position for vacating the January 29, 2021 order."

This appeal followed, in which Farmer requests we reverse the trial court's April 1, 2021 order, or alternatively, invoke original jurisdiction pursuant to Rule 2:10-5 to make a complete determination of the facts supporting reinstatement and determination of his counterclaims and third-party complaint, which he alleges the trial court overlooked.

The L-332-21 Action

Four days after the trial court in L-355-17 denied Farmer's omnibus motion, on February 3, 2021, Farmer filed a new verified complaint in the Law Division accompanied by an order to show cause to reduce his fee arbitration award to a judgment in L-332-21. Farmer's new complaint mirrored the

counterclaims and third-party complaint which had been dismissed in the previous action.

At the return hearing on the order to show cause on April 23, 2021, a fourth trial judge declined to enter the order to show cause, finding it was time-barred by the general six-year statute of limitations contained in N.J.S.A. 2A:14-1. On May 28, 2021, the Law Division declined a motion to reconsider entering the order to show cause pursuant to N.J.S.A. 2A:14-4, a sixteen-year statute of limitations governing leases under seal. Instrumental to the trial court's reasoning was Farmer did not argue N.J.S.A. 2A:14-4 was applicable on the original motion for an order to show cause, and, irrespective of the original motion, the statute was inapplicable to an unsealed fee arbitration award.

Defendants in the newly filed action, Hagans and Molz, ultimately moved for summary judgment on the balance of claims contained in Farmer's verified complaint, which the trial court granted on September 24, 2021. The trial court did not apply claim preclusion, but rather found the merits of the counts alleged were specious such that no rational trier of fact could find otherwise. Despite Farmer's cross-motion for summary judgment, the trial court found he could not succeed on the merits of his claims and dismissed the new complaint in its entirety.

We begin our review by noting its peculiar procedural posture of this appeal: summary judgment was granted in L-355-17, Hagans appealed from a final order as of right, and while the appeal was pending, Farmer applied to the same trial court for sanctions and fees, which were denied. Although Farmer was apparently confused about the finality of the order denying his motion for sanctions and fees, he never sought clarification from the trial court, never sought a limited remand from the appellate panel, and never preserved any other actions originally contained in his counterclaims and third-party complaint during the first appeal by way of a cross-appeal. See R. 2:5-6(c).[4]

[4] The rule states, in full:

> Applications for leave to cross appeal from interlocutory orders and administrative decisions or actions as to which leave to appeal has not already been granted shall be made by serving and filing with the appellate court a notice of motion within 20 days after the date of service of the court order or administrative decision appealed from or after notice of the agency or officer's action taken or, if no cross motion is filed, within 20 days following decision of a motion for reconsideration as provided by R. 2:5-6(a). If an appeal from an interlocutory order, decision or action is allowed, an application for leave to cross appeal (if the application has not been previously denied) may be made by serving and filing with the appellate court a notice of motion within 10 days after the date of service of the order of the appellate court allowing the appeal.

Once the appeal in L-355-17 was completed, Farmer attempted to seek additional relief at the same docket, or alternatively, reinstate his previous claims. When Farmer was unsuccessful, he filed a new action at L-332-21, which was wholly unsuccessful for entirely different reasons. He appeals orders from both dockets. Farmer's current arguments regarding the trial court's rulings in L-355-17 are based on a misguided understanding of the law of the case doctrine and the rule of finality.

As a matter of policy, New Jersey courts "do not approve of piecemeal adjudication of controversies." Hudson v. Hudson, 36 N.J. 549, 552-553 (1962); see also Frantzen v. Howard, 132 N.J. Super. 226, 227-228 (App. Div. 1975) ("Piecemeal reviews, ordinarily, are anathema to our practice . . . ."). Thus, in most court cases, an appeal will not be allowed "unless final judgment has been entered disposing of all issues as to all parties." Hudson, 36 N.J. at 553. This is known as the "finality rule." See also Mandel, Appellate Practice, §2:3 "The Finality Rule" (2023). "Our State has long favored uninterrupted proceedings at the trial level, with a single and complete review, so as to avoid the possible inconvenience, expense and delay of a fragmented adjudication." In re Uniform Admin. Procedure Rules, 90 N.J. 85, 100 (1982); See also Harris v. City of Newark, 250 N.J. 294, 312 (2022) (noting the "general policy in favor of

'restrained appellate review of issues relating to matters still before the trial court' to avoid piecemeal litigation").

Although we note it is not uncommon for a notice of appeal to be filed prior to a motion for attorneys' fees and costs being filed, dismissing an attorney's fee application without prejudice as a means to foist jurisdiction on the Appellate Division is prohibited. Grow Co. v. Chokshi, 403 N.J. Super. 443, 460 (App. Div. 2008). In such instances, we have held "if an appeal is improvidently filed before resolution of such issue, the party seeking fees should move before this court for a limited remand, or for dismissal of the appeal as interlocutory." NJ Mfrs. Ins. v. Prestige Health, 406 N.J. Super. 354, 358-359 (App. Div.). See also Shimm v. Toys from the Attic, Inc., 375 N.J. Super. 300, 304 (App. Div. 2005). Farmer took neither action.

Appeal of a final order also gives parties occasion to appeal interlocutory orders entered previously within that case. See generally Silviera-Francisco v. Bd. of Educ., 224 N.J. 126, 141 (2016) (citing In re Contempt of Carton, 48 N.J. 9, 15 (1966)) ("An interlocutory order is preserved for appeal with the final judgment or final agency decision if it is identified as a subject of the appeal"); Sutter v. Horizon Blue Cross, 406 N.J. Super. 86 (App. Div. 2009) ("'[a]n appeal from a final judgment raises the validity of all interlocutory orders' previously

entered in the trial court"). If an issue is not preserved for appeal, it is deemed "waived." See Zavodnick v. Leven, 340 N.J. Super. 94, 103 (App. Div. 2001) (holding failure to present any argument relating to cross-appeal challenge to trial court's denial deemed abandonment of that issue on appeal).

A decision in an appeal following a grant of leave to appeal is, in all respects, on the merits of the issue or issues as to which leave was granted, or "law of the case." As explained by the court in State v. Hale, 127 N.J. Super. 407, 410 (App. Div. 1974):

> It has been generally stated that the "law of the case" doctrine "applies to the principle that where there is an unreversed decision of a question of law or fact made during the course of litigation, such decision settles that question for all subsequent stages of the suit." ... This rule is based upon the sound policy that when an issue is once litigated and decided during the course of a particular case, that decision should be the end of the matter. ... "Law of the case" most commonly applies to the binding nature of appellate decisions upon a trial court if the matter is remanded for further proceedings, or upon a different appellate panel which may be asked to reconsider the same issue in a subsequent appeal.
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> [Ibid.]

It is therefore critical that a party seeking review of an interlocutory order preserve its challenge on the appeal of the final order, to avoid waiving the opportunity to challenge the decision, because failure to preserve it will

constitute grounds barring revisitation. See e.g. State v. Vujosevic, 198 N.J. Super. 435, 447 (App. Div.) (rejecting defendant's claim that he "may not have advanced at the time of the interlocutory appeal all the arguments" he could have advanced and concluding "defendant was free to present any argument in support of the result reached in the trial court . . . Accordingly, . . . our earlier decision is the law of the case"). As we have previously cautioned, "a disposition on the merits when leave to appeal is granted should not be regarded by counsel or the parties as tentative and subject to more leisurely review at a later date." State v. Stewart, 196 N.J. Super. 138, 144 (App. Div.)(1984).

Farmer claims Hagans' appeal was not an appeal of a final order but an interlocutory appeal because he informed us the motion for fees had been denied without prejudice. We disagree because he did not move for a limited remand, move to dismiss the appeal as interlocutory, cross-appeal or otherwise communicate with us once we determined the appeal was from a final order of the trial court. Regardless, even if we consider the first appeal interlocutory, Farmer waived any right he had to assert his counterclaims or third-party complaint. He urges us to revive claims he did nothing to preserve before and after Hagans filed her appeal. This we decline to do.

"An order granting summary judgment and disposing of the case is a final judgment . . . ." Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 384 n.8, (2010). Moreover, although summary judgment may not be considered final if the issue of attorney's fees is reserved, Smith v. Jersey Cent. Power & Light Co., 421 N.J. Super. 374, 383-84 (App. Div. 2009), Farmer's motion for summary judgment was not accompanied by a motion for fees; the issue of fees arose only after summary judgment.

We therefore affirm the Law Division order entered in L-355-17 declining to allow Farmer to revisit the motion for attorney's fees and costs and declining to reinstate his malicious abuse of process and prosecution counterclaims and third-party complaint.

We next address Farmer's multiple applications to the Law Division to reduce his fee arbitration award to a judgment. Farmer obtained his fee arbitration award in July 2013, and first attempted to reduce this award to a judgment in August 2020, not as a summary action order to show cause as required by the rules, but rather pursuant to a breach of contract theory in the same action, L-355-17, which had been subject to a completed appeal.

The trial court correctly noted the impropriety of that motion. On February 3, 2021, Farmer attempted to correct course, filing for the first time a

verified complaint and order to show cause in a separate Law Division action, L-332-21, pursuant to Rule 1:20A-3(e) and Rule 4:67. Farmer conceded in this new action he failed to follow the appropriate procedure in the previous action, L-355-17, by attempting to reduce the fee arbitration award to judgment by way of a deficient motion, and noted "the rule requires a separate action brought as a summary action." The trial court in L-332-21 denied his summary action order to show cause as untimely.

We review the trial court's order de novo because "a trial court's interpretation of the law and legal consequences that flow from established facts are not entitled to any special deference." Rowe v. Bell & Gosset Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty L.P. v. Twp. of Comm. of Manalapan, 140 N.J. 366, 378 (1995)). N.J.S.A. 2A:14-1(a), the general statute of limitations, provides, in relevant part:

> Every action at law for trespass to real property, for any tortious injury to real or personal property, for taking, detaining, or converting personal property, for replevin of goods or chattels, for any tortious injury to the rights of another not stated in N.J.S.2A:14-2 and N.J.S.2A:14-3, or for recovery upon a contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within six years next after the cause of any such action shall have accrued.

[N.J.S.A. 2A:14-1(a).]

There are two exceptions contemplated in this general statute of limitations. N.J.S.A. 2A:14-2 governs actions at law for injuries to a person, and generally imposes a stricter limitations period of two years. N.J.S.A. 2A:14-3 imposes an even stricter one-year period of limitations for libel and slander actions. Neither exception is applicable here. Further, N.J.S.A. 2A:14-4 imposes a sixteen-year statute of limitations for contracts under seal.

The trial court in L-332-21 correctly determined, because the fee arbitration award was not under seal, it was governed by the general six-year statute of limitations. The time to bring an action to enforce the award expired on July 1, 2019. Farmer made no attempts to reduce the award to a judgment, even after the legal malpractice complaint was filed on January 24, 2017, until February 3, 2021. Farmer did not raise any equitable tolling arguments either to the trial court or on appeal. We therefore decline to disturb the Law Division findings in both L-355-17 and L-332-21, refusing to reduce the fee arbitration award to a judgment, because Farmer failed to follow procedural guidelines, and once he followed those procedures, his order to show cause was barred by the statute of limitations.

Lastly, we address Farmer's claim that, irrespective the trial court findings in L-355-17, and the previous appeal, the trial court in L-332-21 erred by granting summary judgment to defendants Hagans and Molz when Farmer filed a new complaint seeking to relitigate issues previously dismissed. The trial court did not rely on claim preclusion in its ruling; rather it made detailed findings stating res judicata did not bar Farmer from filing a new complaint. Neither party appeals the judge's findings upon res judicata grounds, and we therefore do not address that issue. See generally Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001) (holding it is "well-settled that appeals are taken from orders and judgments and not from opinions, oral decisions, informal written decisions, or reasons given for the ultimate conclusion").

In granting summary judgment to Hagans and Molz, the trial court in L-332-21 instead made findings regarding the attenuated arguments Farmer advanced in support of his complaint for malicious prosecution, and malicious abuse of process, the only claims which remained by the time summary judgment was argued in this second complaint, and the only claims subject to this appeal.

The court, citing Lobiondo v. Schwartz, 199 N.J. 62, 90 (2009), found five elements are necessary to support a claim for malicious prosecution. First, a

civil suit was instituted against the party making the claim. Second, the suit must be motivated by malice. Third, there was an absence of reasonable or probable cause to bring the action. Fourth, the action was terminated in favor of the party making the claim. Fifth, the plaintiff suffered a special grievance caused by the institution of the underlying civil action.

The court noted the warning in Lobiondo, 199 N.J. 91-92, that a litigant prosecuting a claim in good faith must be shielded from retaliation, and found Hagans' expert report informing the legal malpractice action constituted an exemplary good-faith basis, defeating both the malice element of malicious prosecution, and the ulterior motive element of abuse of process.

"In reviewing a grant of summary judgment, 'we apply the same standard governing the trial court we view the evidence in the light most favorable to the non-moving party.'" Steinberg v. Sahara Sam's Oasis, LLC, 226 N.J. 344, 349-50 (2016) (quoting Qian v. Toll Bros. Inc., 224 N.J. 124, 134-35 (2015)). We consider the factual record and reasonable inferences that can be drawn from those facts, "in the light most favorable to the non-moving party" to decide whether the moving party was entitled to judgment as a matter of law. IE Test, LLC v. Carroll, 226 N.J. 166, 184, (2016) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

We accord no special deference to a trial court's assessment of the documentary record as the decision to grant or withhold summary judgment does not hinge upon a judge's determinations of the credibility of testimony rendered in court but instead amounts to a ruling on a question of law. See Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Applying these principles, we find no reason to disturb the Law Division's order, which was supported by detailed and well-reasoned conclusions regarding the lack of viability of Farmer's claims. We therefore affirm for those same reasons.

All trial court orders are affirmed.