NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0110-22

NASIR MEMUDU, Administrator
Ad Prosequendum and General
Administrator of the Estate of
NAJIM MEMUDU, deceased,

Plaintiff-Respondent,

v.

JOSHUA M. GONZALEZ,
W. CAMPBELL HOLDINGS,
LLC, CAMPBELL
FREIGHTLINER OF ORANGE
COUNTY, LLC, CAMPBELL
GROUP ASSOCIATES, LLC,
and W. CAMPBELL SUPPLY
COMPANY, LLC,[1]

Defendants-Appellants,

and

KHAWAJA A. HAMEED and
A-1 LIMOUSINE INC.,

Defendants.

APPROVED FOR PUBLICATION
February 27, 2023
APPELLATE DIVISION

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[1] Improperly pled as Campbell Supply Company.

Argued February 13, 2023 – Decided February 27, 2023

Before Judges Whipple, Smith, and Marczyk.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-8102-20.

Amanda J. Hickey argued the cause for appellants (Law Offices of James H. Rohlfing, attorneys; Amanda J. Hickey, on the briefs).

Charles D. Dawkins, Jr., argued the cause for respondent (Law Office of Charles Dawkins Jr. LLC, attorneys; Charles D. Dawkins, Jr., on the brief).

The opinion of the court was delivered by

MARCZYK, J.S.C., t/a

This appeal raises the novel issue of whether the statutory bar set forth in N.J.S.A. 39:6A-4.5(a) precludes plaintiff's[2] claims stemming from the second of two separate accidents occurring a half hour apart at the same location, the latter of which resulted in the death of Najim Memudu (decedent) as he attempted to retrieve a cell phone from his disabled vehicle. In considering this question, we must address whether decedent was "operating" his uninsured vehicle at the time of the second accident for the purposes of N.J.S.A. 39:6A-4.5(a). Based on our review of the record and the applicable

[2] Nasir Memudu, Administrator Ad Prosequendum and General Administrator of the decedent's estate (plaintiff).

legal principles, we conclude the statutory bar pursuant to N.J.S.A. 39:6A-4.5(a) is not implicated because decedent was not operating his vehicle.

On leave granted, Joshua M. Gonzalez; W. Campbell Holdings, LLC; Campbell Freightliner of Orange County, LLC; Campbell Group Associates, LLC; and W. Campbell Supply Company, LLC (defendants) appeal from an April 14, 2022 order denying their motion for summary judgment. We affirm.

I.

We derive the following from the summary judgment record. On October 26, 2019, decedent was driving a 2007 Lexus southbound on the New Jersey Turnpike in Edison. Defendant Khawaja Hameed was driving behind decedent, in a vehicle owned and operated by defendants Hameed and A-1 Limousine (A-1 defendants), when he rear-ended decedent's vehicle. After the accident, decedent's vehicle was disabled.

A tow truck driver, Brandon McMahon, who happened to be traveling southbound in the area of the accident, came upon the scene. He noticed debris on the road and decedent standing outside of his vehicle. McMahon turned on the beacon lights on the top of his vehicle, along with floodlights and hazard lights. He promptly contacted the police and exited his tow truck to render assistance. McMahon spent approximately fifteen minutes first assisting Hameed. Subsequently, he checked on decedent, who exhibited no

physical injuries from this initial accident. Decedent requested to use McMahon's cell phone light to search for his cell phone inside his Lexus. At that time, the front portion of decedent's vehicle was partially in the left travel lane, and the rear of the vehicle was on the shoulder.

McMahon remained on the left shoulder. As decedent was searching for his cell phone, McMahon observed a Ford Transit Van driven by Gonzalez crash into the front passenger side of the Lexus. McMahon subsequently observed decedent face down on the road outside of his vehicle. Approximately thirty minutes elapsed between the first and second accident. Decedent was pronounced dead at the scene.

Plaintiff subsequently filed a complaint, alleging claims under the Wrongful Death Act and the Survivor Act. N.J.S.A 2A:31-1 to -6; N.J.S.A 2A:15-3. Following the completion of discovery, defendants and the A-1 defendants filed motions for summary judgment asserting N.J.S.A. 39:6A-4.5(a) barred plaintiff's claim. The motion judge granted summary judgment as to the A-1 defendants on April 1, 2022. By order dated April 14, 2022, the

judge denied defendants' motion for summary judgment. Defendants thereafter filed for leave to appeal.[3]

II.

In reviewing whether the court erred in denying defendants' motion for summary judgment, we apply several well-established principles. On such a motion, the court must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); see also R. 4:46-2(c). If there is competent evidence reflecting materially disputed facts, the motion for summary judgment should be denied. See Parks v. Rogers, 176 N.J. 491, 502 (2003); Brill, 142 N.J. at 540. To grant the dispositive motion, the court must find that the evidence in the record "is so one-sided that one party must prevail as a matter of law." Brill, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). Our de novo review of an order

[3] We denied leave to appeal on May 23, 2022. By order dated September 7, 2022, the Supreme Court granted leave and remanded for the matter to be considered on its merits.

granting summary judgment must observe the same standards. See IE Test, LLC v. Carroll, 226 N.J. 166, 184 (2016) (citing Brill, 142 N.J. at 540).

III.

Defendants raise the following points on appeal:

POINT I

N.J.S.A. 39:6A-4.5(a) SHOULD APPLY WHERE DECEDENT'S UNINSURED VEHICLE IS INVOLVED IN A DOUBLE IMPACT MOTOR VEHICLE ACCIDENT.

A. The New Jersey Supreme Court's Interpretation of the Legislative Intent and Purpose of N.J.S.A. 39:6A-4.5(a) Supports a Broad Reading of the Term "Operating."

B. There is a Substantial Nexus Between the First and Second Impacts such that the Preclusion of Recovery in N.J.S.A. 39:6A-4.5(a) Should Apply in a Double-Impact Accident.

POINT II

THE DECISION BELOW IS INCONSISTENT WITH THE PUBLIC POLICY REASONS BEHIND N.J.S.A. 39:6A-4.5(A).

More particularly, defendants contend the trial court, in concluding decedent was not physically operating the vehicle at the time of the second accident, failed to consider the legislative intent and public policy rationale underpinning N.J.S.A. 39:6A-4.5(a). Defendants further rely on Perrelli v.

Pastorelle for the proposition that N.J.S.A. 39:6A-4.5(a) has been applied to the owner of an uninsured vehicle, even when the owner was injured while a passenger in the vehicle. 206 N.J. 193, 208 (2011). Defendants further assert there is a substantial nexus between the first and second impacts, and the court should look to the jurisprudence interpreting N.J.S.A. 39:6A-4 when analyzing this case. In short, defendants argue the second impact occurred "as a direct result of decedent's use and operation" of the uninsured vehicle, and, therefore, plaintiff should be barred from recovering economic or non-economic damages.

Plaintiff counters the plain language of N.J.S.A. 39:6A-4.5(a) is clear and should not bar plaintiff's claims because decedent was not "operating an uninsured vehicle." Plaintiff further contends Perrelli is distinguishable from this case.[4]

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[4] Plaintiff asserts various other arguments in opposition to the appeal. Plaintiff contends there are fact issues that remain unresolved, such as whether decedent had personal injury protection (PIP) coverage, and the court failed to distinguish between an uninsured vehicle and a driver who lacks "medical benefits coverage." Additionally, plaintiff asserts there are fact issues as to whether decedent's vehicle was garaged and maintained in New Jersey and whether decedent actually owned the vehicle. Plaintiff further contends there is a fact issue as to whether decedent was inside or outside (a pedestrian) of his vehicle at the time of the second accident. However, the trial court determined—for summary judgment purposes—decedent owned the vehicle, and it was uninsured at the time of the accident for the purposes of N.J.S.A. 39:6A-4.5(a). The motion court further found decedent was not operating the

IV.

The pivotal issue before us on appeal is whether N.J.S.A. 39:6A-4.5(a) operates to bar plaintiff's Wrongful Death and Survivor Acts claims as a result of decedent being uninsured at the time of the fatal accident. In addressing this question, we must determine whether decedent was "operating" his vehicle at the time of the second accident pursuant to N.J.S.A. 39:6A-4.5(a). Our courts have not previously addressed N.J.S.A. 39:6A-4.5(a) in the context of the facts presented in this case.

N.J.S.A. 39:6A-4.5(a) provides the following:

> Any person who, at the time of an automobile accident resulting in injuries to that person, is required but fails to maintain medical expense benefits coverage . . . shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of an accident while operating an uninsured automobile.

In Aronberg v. Tolbert, our Supreme Court noted N.J.S.A. 39:6A-4.5(a), "[o]n its face, . . . deprives an uninsured motorist of the right to sue for any loss

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vehicle at the time of the second accident, although it did not specifically address where decedent was when his car was struck. Plaintiff did not move for leave to appeal the trial court's decision regarding these issues. We therefore confine our decision to the issues raised on appeal and assume the vehicle was uninsured for the purposes of this appeal.

caused by another, regardless of fault."[5] 207 N.J. 587, 598 (2011). "Thus, if an uninsured motorist, while operating a vehicle, is injured by another driver who runs a red light, the uninsured motorist has no cause of action under N.J.S.A. 39:6A-4.5(a)." Id. at 598-99. Additionally, "[t]he statute's self-evident purpose is not to immunize a negligent driver from a civil action, but to give the maximum incentive to all motorists to comply with this State's compulsory no-fault insurance laws." Id. at 599.[6]

We review issues of statutory interpretation de novo. MasTec Renewables Constr. Co. v. Sunlight Gen. Mercer Solar, LLC, 462 N.J. Super. 297, 318 (App. Div. 2020) (citing Verry v. Franklin Fire Dist. No. 1, 230 N.J. 285, 294 (2017)). "The objective of all statutory interpretation is to discern and effectuate the intent of the Legislature[,]" Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012), and "the best indicator of that intent is the

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[5] In Aronberg, a mother brought a survival and wrongful death action on behalf of the estate of her son, an uninsured motorist who was killed in a motor vehicle accident. 207 N.J. at 591.

[6] The Court further indicated N.J.S.A. 39:6A-4.5(a) provides uninsured motorists with a "powerful incentive to comply with the compulsory insurance laws." Id. at 601. Moreover, the Court noted the Legislature intended to support a "statutory policy of cost containment by ensuring that an injured, uninsured driver," such as decedent in this case, "does not draw on the pool of accident-victim insurance funds to which he did not contribute." Ibid. (quoting Caviglia v. Royal Tours of Am., 178 N.J. 460, 471 (2004)) (internal quotation marks omitted).

statutory language[,]" which should be given its "ordinary meaning and significance . . . ." DiProspero v. Penn, 183 N.J. 477, 492 (2005). "We construe the words of a statute 'in context with related provisions so as to give sense to the legislation as a whole.'" Spade v. Select Comfort Corp., 232 N.J. 504, 515 (2018) (quoting N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 570 (2017)). If the language is clear, our job is complete. In re Expungement Application of D.J.B., 216 N.J. 433, 440 (2014). However, "when the statutory language is ambiguous and 'leads to more than one plausible interpretation,' [we] may resort to extrinsic sources, like legislative history and committee reports." MasTec Renewables, 462 N.J. Super. at 320 (quoting State v. Twiggs, 233 N.J. 513, 533 (2018)).

A.

The dispositive issue in this matter is whether decedent was fatally injured "while operating" his uninsured vehicle. We conclude he was not operating his vehicle for the purposes of N.J.S.A. 39:6A-4.5(a), and the trial court correctly denied defendants' motion for summary judgment. Based on the summary judgment record, decedent's vehicle was inoperable prior to the second and fatal accident, and considerable time passed between the two accidents. Decedent utilized McMahon's cell phone flashlight to enter his car to retrieve his own cell phone—not for any other purpose. Shortly thereafter,

Gonzalez's vehicle struck decedent's car. Even if we were to consider a broader reading of the "while operating" language under N.J.S.A. 39:6A-4.5(a), there is simply no evidence in the record decedent was operating or had any intent to operate the disabled vehicle at that juncture. In short, the language in the statute is clear and unambiguous, and we conclude decedent was not operating his vehicle for the purposes of N.J.S.A. 39:6A-4.5(a) when he was killed. Notwithstanding our analysis of the plain unambiguous language of the statute, we are mindful of Perrelli and address same below.

B.

The facts in Perrelli, which defendants rely upon, are far afield from the circumstances in the case before us. In Perrelli, the plaintiff was driving her uninsured vehicle with a friend as a passenger. 206 N.J. at 195. After stopping at a rest area, the plaintiff's friend took over driving, while the plaintiff became the passenger. Ibid. Shortly thereafter, Perrelli's vehicle was involved in an accident in which she was injured. Id. at 195-96.

The issue before the Court was whether the phrase "while operating" in N.J.S.A. 39:6A-4.5(a) required the plaintiff herself to have been actually operating the uninsured vehicle at the time of the accident. Id. at 197. After canvassing compulsory insurance provisions in other sections of Title 39, the Court observed, "[g]iven the purpose of N.J.S.A. 39:6A-4.5(a), there can be no

doubt that the Legislature wanted to assure that all automobiles were covered by compulsory insurance by precluding those who do not have the required coverage from recovering from others merely by having someone else drive their car." Id. at 203. The Court ultimately concluded:

> N.J.S.A. 39:6A-4.5(a) provides that an individual is barred from recovery if injured "while operating" an uninsured vehicle. A literal interpretation would construe the provision as applying only to a driver of the automobile, and would allow the culpably uninsured person to violate the law and not suffer its consequences. We thus hold that the preclusion of recovery contained in N.J.S.A. 39:6A-4.5(a) applies to the owner of an uninsured vehicle whether injured as a driver or passenger.
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> [Id. at 208.]

We agree a contrary interpretation would lead to an illogical and unintended result, and a culpably uninsured owner assuming the role of a passenger could circumvent the statute by having an unsuspecting driver operate the uninsured vehicle. The Perrelli Court, however, did not address the situation that confronts us in this matter—where an individual was injured unrelated to his or someone else's operation of the uninsured vehicle.

We are unpersuaded by defendants' argument Perrelli extends to the specific and unique facts in this case.[7] Although Perrelli determined the statutory bar to recovery of economic and non-economic damages applied to the owner of an uninsured vehicle even when the owner was injured while a passenger in the vehicle, the facts here are distinguishable. While decedent was operating an uninsured vehicle at the time of the first accident, he was killed in the second accident—which occurred more than thirty minutes after the first accident—when neither he nor anyone else was "operating an uninsured vehicle." Rather, it is undisputed decedent's vehicle was inoperable after the first accident. More importantly, not only is there no evidence to suggest decedent was operating the vehicle, but there is no indication he had an intent to operate the vehicle. He was merely trying to recover his phone. We reject defendants' overly expansive reading of N.J.S.A. 39:6A-4.5(a) and

[7] We further reject defendants' argument decedent would not have been injured in the second accident, but for the fact he was improperly operating his vehicle at the time of the first accident, and therefore he should not be able to recover damages pursuant to N.J.S.A. 39:6A-4.5(a). That logic would bar decedent from recovering if he was injured a week later when he went to the municipal tow lot to retrieve belongings from his disabled vehicle and was injured when another motorist struck his vehicle. Again, our decision turns on the fact decedent was not operating his vehicle under N.J.S.A. 39:6A-4.5(a) at the time of the fatal accident, and therefore the statutory bar does not operate to preclude plaintiff's claims.

find under the specific and unique circumstances in this case, the statutory bar is not applicable.

C.

We only briefly address defendants' argument there was a substantial nexus between the first and second impacts and we should adopt the approach we have taken in interpreting N.J.S.A. 39:6A-4. N.J.S.A. 39:6A-4 requires insurers to provide PIP benefits to policy holders and family members "as a result of an accident while occupying, entering into, alighting from or using an automobile[.]" In interpreting this statute, we have held "[t]here need only be a substantial nexus between the injury and the use of the car" and an insured's injury need not be "directly or proximately caused by the automobile itself or by its motion or operation." Svenson v. Nat'l Consumer Ins. Co., 322 N.J. Super. 410, 413 (App. Div. 1999) (alteration in original) (quoting Smaul v. Irvington Gen. Hosp., 209 N.J. Super. 592, 595 (App. Div. 1986)). Defendants argue the second impact occurred "as a direct result of decedent's use and operation" of the uninsured vehicle, and therefore plaintiff should be barred from recovering economic or non-economic damages. We are unpersuaded by this argument.

By its plain terms, N.J.S.A. 39:6A-4 was designed to provide PIP benefits in a broad range of circumstances not limited to injuries arising from

merely operating a vehicle. Rather, it applies whether an accident occurs as a result of "occupying, entering into, alighting from or using an automobile[.]" N.J.S.A. 39:6A-4. It has no application in the context of interpreting the narrower language of N.J.S.A. 39:6A-4.5(a), which is limited to situations where an individual is injured as a result of an accident "while operating an uninsured automobile." Ibid. (emphasis added.)[8] "We will not presume that the Legislature intended a result different from what is indicated by the plain language or add a qualification to a statute that the Legislature chose to omit." Tumpson v. Farina, 218 N.J. 450, 467-68 (2014) (citing DiProspero, 183 N.J. at 493).

V.

For the reasons set forth above, we conclude N.J.S.A. 39:6A-4.5(a) does not operate to preclude plaintiff's wrongful death and survivor claims under the specific facts in this case. To the extent we have not addressed the parties' remaining arguments, we are satisfied they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION

[8] This was not, as defendants suggest, a conventional double impact motor vehicle accident in which two collisions occur in rapid succession. These were two separate and distinct accidents that are easily differentiated as to the damages caused by each accident.