SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0401-22

GEORGE VELOSO and
SOUAD VELOSO, his wife,

Plaintiffs-Respondents,

v.

MCGINLEY BUILDING
SERVICES, INC.,

Defendant-Appellant,

and

DEL-SANO CONTRACTING
CORPORATION,

Defendant-Respondent.

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Argued March 7, 2023 – Decided March 31, 2023

Before Judges Susswein and Berdote Byrne.

On appeal from an interlocutory order of the Superior Court of New Jersey, Essex County, Law Division, Docket No. L-7415-17.

Andrew G. Marone argued the cause for appellant (McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys; Richard J. Williams, Jr., of counsel and on the brief).

Ian J. Antonoff argued the cause for respondent Del-Sano Contracting Corporation (Marshall, Dennehey, Warner, Coleman & Goggin, attorneys, join in the brief of appellant McGinley Building Services, Inc.).

Craig M. Rothenberg argued the cause for respondents George Veloso and Souad Veloso (Law Office of Craig M. Rothenberg, attorneys; Craig M. Rothenberg, of counsel; Susan Ferreira, on the brief).

PER CURIAM

By leave granted, defendant McGinley Building Services, Inc. (McGinley) appeals an interlocutory discovery order quashing trial subpoenas for the de bene esse depositions of two doctors who performed neuropsychological evaluations of plaintiff George Veloso as part of the workers' compensation process. Plaintiff was injured at a construction site and has been paid workers' compensation benefits by his employer. He and his wife[1] seek damages from the general contractor at the site and one of its subcontractors. McGinley, the subcontractor, wants the doctors to testify as fact witnesses regarding the tests they administered. However, they were not

[1] Veloso's wife is a named plaintiff under a loss-of-consortium theory.

specifically named as fact witnesses before discovery closed. After carefully reviewing the record and the arguments of the parties, we affirm the trial court's decision to quash the subpoenas.

I.

The record shows that on October 22, 2015, plaintiff was working for Phil Neto Construction at a construction site in Orange, New Jersey. Del-Sano Contracting Corporation (Del-Sano) was the general contractor at that site but had subcontracted with Phil Neto Construction and McGinley. Plaintiff alleges McGinley employees were constructing a wall, part of which fell and severely injured plaintiff.

On October 16, 2017, plaintiff and his wife filed their complaint against McGinley and Del-Sano. McGinley served answers to form interrogatories on August 24, 2018, identifying fact witnesses. Plaintiff served answers to form interrogatories on November 8, 2018, identifying fact witnesses as well as his treating physicians. On October 25, 2020, the trial court granted partial summary judgment in favor of Del-Sano on its cross claims against McGinley.[2] Discovery ended on January 15, 2022.

[2] McGinley has been ordered to "defend and fully indemnify Del-Sano."

McGinley retained new counsel on January 21, 2022, after the discovery end date had passed. On April 25, 2022, McGinley's new counsel served notices of de bene esse trial subpoenas upon Dr. Jasdeep Hundal and Dr. Martin Diorio. On June 2, 2022, plaintiff filed a motion to quash the subpoenas. The trial court heard oral argument, much of which focused on whether the doctors were treating physicians, after which it granted the motion to quash, rendering an oral opinion.

McGinley raises the following contention for our consideration:

> THE TRIAL COURT'S ORDER QUASHING THE TRIAL SUBPOENAS ISSUED TO DR. HUNDAL AND DR. DIORIO LACKS ANY RATIONAL LEGAL BASIS AND SHOULD BE REVERSED.

II.

At oral argument before us, both parties agreed that we apply an abuse of discretion standard of review in this matter. State v. Brown, 170 N.J. 138, 147 (2001). Under that standard, "an appellate court should not substitute its own judgment for that of the trial court, unless the trial court's ruling was so wide of the mark that a manifest denial of justice resulted." Ibid. (internal quotation marks omitted) (quoting State v. Marrero, 148 N.J. 469, 484 (1997)). We add that "it is well-settled that appeals are taken from orders and judgments and not

from . . . oral decisions . . . or reasons given for the ultimate conclusion." Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001).

The record shows the subpoenas were issued months after the years-long discovery period ended. The reports from the doctors' neuropsychological evaluations, moreover, were available to the parties during discovery and, in fact, were studied and relied upon by experts retained by both parties.

We are satisfied McGinley had ample opportunity during the extensive discovery period to specifically name Drs. Hundal and Diorio as fact witnesses. McGinley also had ample opportunity to depose them before discovery closed. We recognize there was a late substitution of counsel, but that circumstance does not automatically reopen discovery that had already closed. Any motion to reopen discovery would, of course, be vested in the trial court's discretion.

We are concerned that taking new de bene esse depositions at this stage in the litigation would further delay these proceedings, especially considering that both parties would undoubtedly request to reopen discovery to allow their experts to review the new depositions and modify their reports and opinions as needed. We are satisfied the need to enforce the discovery deadline provides sufficient support for the trial court's decision to quash the subpoenas.

We add that if, for any reason, the trial court exercises its discretion to reopen discovery, nothing in this opinion should be construed to preclude McGinley from seeking to name the doctors as fact witnesses in accordance with discovery rules and practices.

To the extent we have not addressed them, any remaining arguments raised by McGinley lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.