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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0686-21**

NALINI JAGMOHAN,

Plaintiff-Appellant,

v.

SHAWN ROSS,

Defendant-Respondent.

Argued January 10, 2023 – Decided April 25, 2023

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-3761-19.

David M. Wasserman argued the cause for appellant (Andrew Park, PC, attorneys; David M. Wasserman, on the brief).

Amanda Hickey argued the cause for respondent (Law Offices of James H. Rohlfing, attorneys; Amanda Hickey, of counsel and on the brief).

PER CURIAM

Plaintiff was injured in an accident when defendant lost control of her car, striking plaintiff's car. Plaintiff sued defendant, claiming she suffered a permanent injury to satisfy the verbal threshold. See N.J.S.A. 39:6A-8(a).

The initial discovery end date was November 20, 2020, due to an extension by consent on October 26. Discovery was extended a second time by a January 8, 2021 court order for ninety days, and a third time, by an April 16 court order for another ninety days to July 26. The latter order also scheduled arbitration for August 5.

On July 7, plaintiff filed a third motion to extend the discovery period and adjourn the court-ordered arbitration scheduled for August 5. At that time, only defendant had served a medical expert report. According to plaintiff, she had been unable to serve her expert report because the office of her treating doctor, Dr. Sumeet Goswami, was operating at a reduced capacity due to the COVID-19 pandemic. After plaintiff notified the court on or about July 20 that Dr. Goswami was unable to provide an expert report, she sought a report from a different doctor.

On July 23, the trial court denied plaintiff's motion, explaining, in an oral decision, that the case was already approximately twenty months old, and, despite three prior discovery extensions, plaintiff showed no exceptional

circumstances to justify another extension. The court also stated plaintiff showed no diligence in providing an expert report before the extended discovery end date.

On August 5, arbitration was held as scheduled. The arbitrator found defendant 100% liable and awarded damages of \$95,000 to plaintiff.

On August 9, plaintiff filed a motion for reconsideration of the order denying an extension of discovery. Following oral argument, the trial court issued an oral decision and entered an order denying plaintiff's motion for reconsideration. The trial court reiterated that plaintiff failed to show diligence in providing an expert's report before the discovery end date. The court further explained the discovery end date concluded over a month prior, and arbitration was completed weeks before. It also noted that plaintiff did not raise any new arguments which would warrant reconsideration.¹

The court stated plaintiff waited almost five months without receiving a report from Dr. Goswami's office before filing her motion to extend discovery on July 20. It maintained that, in plaintiff's initial motion, as well as the motion for reconsideration, there were no dates indicating when Dr. Goswami's office

¹ Plaintiff's attorney revealed he had not actually read the record transcript of the court's oral decision denying the original motion to renew and extend discovery.

was contacted to obtain an expert report. The court thus reasoned no exceptional circumstances warranted a further extension of discovery.

On the same day the motion for reconsideration was denied, defendant filed a motion for summary judgment. On September 13, nearly two months after the close of discovery, plaintiff received expert report from another treating doctor, Dr. Ningning He, and provided it to defendant. Plaintiff also opposed defendant's summary judgment motion, claiming there was a dispute of facts as to whether she had a permanent injury to vault the verbal threshold as required by N.J.S.A. 39:6A-8(a). Approximately one week later, defendant filed a motion to bar plaintiff's late expert report. Plaintiff opposed this motion and filed a cross-motion to reopen and extend the discovery period.

On October 4, the trial court granted summary judgment to defendant, setting forth its reasons in a written decision. The court determined plaintiff could not meet the verbal threshold because she failed to prove she suffered a "permanent injury."

On October 8, the trial court entered orders denying both defendant's motion to bar plaintiff's expert report and plaintiff's motion to reopen discovery as moot because of the summary judgment dismissal of plaintiff's complaint four days earlier.

In her appeal, plaintiff argues the summary judgment order should be reversed because the trial court disregarded a genuine dispute of material facts. She further asserts the conflicting motions—defendant's motion to bar the expert report and her motion to extend the discovery period—were pending when summary judgment was granted. She also contends the court abused its discretion in denying her motion to extend discovery to allow her to submit an expert report. We are unpersuaded.

We conduct a de novo review of an order granting a summary judgment motion, Gilbert v. Stewart, 247 N.J. 421, 442 (2021), applying "the same standard as the trial court," State v. Perini Corp., 221 N.J. 412, 425 (2015). In considering a summary judgment motion, "both trial and appellate courts must view the facts in the light most favorable to the non-moving party," which in this case is plaintiff. Bauer v. Nesbitt, 198 N.J. 601, 604 n.1 (2009). Summary judgment is proper if the record demonstrates "no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment . . . as a matter of law." Burnett v. Gloucester Cnty. Bd. of Chosen Freeholders, 409 N.J. Super. 219, 228 (App. Div. 2009) (quoting R. 4:46-2(c)). Issues of law are subject to the de novo standard of review, and the trial court's determination of

such issues is accorded no deference. Meade v. Twp. of Livingston, 249 N.J. 310, 326-27 (2021); Kaye v. Rosefelde, 223 N.J. 218, 229 (2015).

Reconsideration is a matter within the sound discretion of the court. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). "It is not appropriate merely because a litigant is dissatisfied with a prior ruling or wishes to reargue a motion." Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010). Instead, reconsideration should be limited to those cases "in which either 1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Ibid. (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)).

The trial court did not abuse its discretion in essentially denying plaintiff's motion to extend discovery by granting summary judgment to defendant while the motion was pending. When discovery ended, plaintiff did not have an expert report. The court further found plaintiff failed to show due diligence in obtaining an expert report from Dr. Goswami prior to the extended discovery end date by not identifying dates when plaintiff's treating doctor's office was contacted. Plaintiff's motion for reconsideration neglected to provide any new information to address the original deficiencies.

Furthermore, the trial court did not abuse its discretion by refusing to extend the discovery period again, even considering the COVID-19 pandemic. When plaintiff filed her complaint in October of 2019—before the COVID-19 pandemic—she knew she needed an expert report to fulfill the statutory requirements. Although the pandemic caused significant disruption to the judicial process, parties still had an obligation to make every effort to litigate their matters, absent any unsurmountable forces beyond their control. The record shows that plaintiff failed to exercise diligence by neglecting to follow up with Dr. Goswami's office until weeks after expert reports were originally due. The trial court thoroughly explained why plaintiff was denied the relief she sought, and the court's orders are within the confines of the guiding court rules and statute. The court was within its discretion to determine plaintiff's counsel did not exercise diligence in obtaining the expert report necessary to overcome the verbal threshold and maintain a claim.


Our Supreme Court issued several omnibus orders relating to the pandemic and its effect on judicial proceedings, which gave the trial court the opportunity and discretion, but not the requirement, to be more lenient. See Eleventh COVID-19 Omnibus Order (Mar. 23, 2021). The trial court correctly focused on the absence of any factual assertions by plaintiff demonstrating the

pandemic was an obstacle to providing a medical expert report after the extended discovery deadline. Because plaintiff did not timely produce proof she sustained a permanent injury from the car accident, the trial court did not err in granting summary judgment to defendant.

To the extent we have not addressed any arguments raised by plaintiff, they lack sufficient merit to warrant 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