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APPROVAL OF THE APPELLATE DIVISION**

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-0827-22**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

PHILIP CARRINGTON,

Defendant-Appellant.

Submitted October 10, 2023 — Decided October 24, 2023

Before Judges Sabatino and Chase.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Docket No. L-2491-20.

Philip Carrington, appellant pro se.

Peter J. Baker, Jersey City Corporation Counsel,
attorney for respondent (Elizabeth Beaman, Assistant
Corporation Counsel, on the brief).

PER CURIAM

Defendant Philip Carrington appeals the denial of his motion to vacate a \$2,000 judgment entered against him for four violations of the Uniform Fire Safety Code, N.J.A.C. 5:70-1.1 to -4.20, claiming the judge erroneously concluded the State's witness at trial did not commit perjury. Having reviewed the record, in light of the applicable law, we affirm.

In 2017, Carrington was cited for several fire code violations on a mixed-use property he owned in Jersey City. The violations were litigated and upheld at an evidential hearing before the local Construction Board of Appeals. The Board ordered Carrington to abate the outstanding violations or be subject to penalties. When the violations remained unabated, the City issued two summonses to Carrington to appear in municipal court, under the Penalty Enforcement Act, N.J.S.A. 2A:58-10 to -12, and companion regulations, N.J.A.C. 5:70-2.12A. The Jersey City Municipal Court held a hearing and determined that fines should be imposed. Carrington appealed the fines to the Law Division, where the case was assigned to the Criminal Division as a "municipal appeal". The Criminal Division judge remanded the issue back to the municipal court.

The municipality appealed, and we vacated the order and remanded the matter to the Civil Part of the Law Division. State v. Carrington, Docket No.

A-5256-18 (App. Div. June 3, 2020) (slip op. at 2-6). On remand, Carrington was afforded the opportunity to file a motion for enlargement of the filing period to challenge the Board's findings by way of an action in lieu of prerogative writs. The remand order instructed that, should the judge deny Carrington's motion for enlargement of the filing period, then she should only consider issues "concerning the quantum of the fines imposed and any factual determinations as to noncompliance with the Construction Board of Appeals' findings."

Carrington's motion for enlargement of the filing period was denied, and a plenary hearing on the remaining issues was held. On May 18, 2022, the judge provided her written decision, which found Carrington liable for the remaining unabated fire code violations and imposed a fine of \$2,000.

Carrington subsequently filed with the trial court a "Notice for Relief of Summary Proceeding Judgement and Order Pursuant to R. 4:50-1(5.3) (c)." He asked for the judgment to be vacated, claiming that Jersey City Fire Inspector, Mary Watson, committed perjury. On August 26, 2022, the trial judge denied Carrington's motion.

Carrington subsequently filed this appeal of both the May 18, 2022 and August 26, 2022 orders. By prior order, we ruled that the appeal of the May 18,

2022 order was time-barred. Therefore, the only issue before us is Carrington's appeal of the denial of his Rule 4:50 motion to vacate the fine of \$2,000.

Rule 4:50-1(c) allows a trial court to relieve a party from a final judgment or order for "fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." Relief under Rule 4:50-1 is "granted sparingly," and in exceptional circumstances. F.B. v. A.L.G., 176 N.J. 201, 207 (2003). "The decision whether to vacate a judgment on one of the six specified grounds is a determination left to the sound discretion of the trial court, guided by principles of equity." Ibid.

On appeal, "[t]he decision granting or denying an application to open a judgment will be left undisturbed unless it represents a clear abuse of discretion." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994). See U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (trial court's determination under R. 4:50-1 "warrants a substantial deference and should not be reversed unless it results in a clear abuse of discretion"). "The Court finds an abuse of discretion when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Guillaume, 209 N.J. 449, 467-68 (2012) (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

"[A] functional approach to abuse of discretion examines whether there are good reasons for an appellate court to defer to the particular decision at issue." State v. R.Y., 242 N.J. 48, 65 (2020) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). "When examining a trial court's exercise of discretionary authority, we reverse only when the exercise of discretion was 'manifestly unjust' under the circumstances." Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting Union Cnty. Improvement Auth. v. Artaki, LLC, 392 N.J. Super. 141, 149 (App. Div. 2007)).

In his motion, Carrington argued that Watson committed perjury through fraud and misrepresentation by delivering misinformation during her testimony at the March 1, 2021 hearing. Carrington posits the trial court's reliance on Watson's varying "no" and "yes" answers was improper. The State opposes his appeal, asserting the trial court's consideration of Watson's testimony was proper and Carrington made no attempt to controvert or dispute Watson's qualifications or testimony.

The trial judge found Watson to be credible, having sufficiently established her credentials and experience at issuing fire code violations. Further, the trial judge noted that Carrington did not attempt to question,

discredit, or present contrary evidence that would undermine Watson's qualifications or her ability to properly issue fire code violations. Because Carrington was unable to provide or establish any evidence of fraud or misrepresentation, the trial court was in no position to vacate the order entering final judgment on those grounds. Given the deferential standard of review, the trial judge's well-reasoned decision to deny the motion to vacate is affirmed.

To the extent that we have not addressed any of Carrington's remaining arguments, we have determined they are without sufficient merit to warrant a 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