SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1378-21

RICHARD M. BETTS,

Plaintiff-Appellant,

v.

DR. MARGARET NICHOLS, PH.D., INSTITUTE FOR PERSONAL GROWTH, FRANCES SCHWARTZ, MONROE TOWNSHIP BOARD OF EDUCATION, TOWNSHIP OF MONROE—NEW JERSEY, DR. DORI ALVICH, SCHOOL SUPERINTENDENT, and STEPHANIE SASSO, PSY.D.,

Defendants-Respondents,

and

DR. ARON JANSSEN, MELISSA RIVERA MARANO, PSY.D., and NYU LANGONE MEDICAL CENTER,

Defendants.

Submitted March 15, 2023 – Decided June 9, 2023

Before Judges Currier and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-1672-21.

Richard M. Betts, appellant pro se.

Anderson & Shah, LLC, attorneys for respondents Frances Schwartz, Dr. Dori Alvich, and Monroe Board of Education (Roshan D. Shah, of counsel and on the brief; Erin Donegan, on the brief).

Ruprecht Hart Ricciardulli & Sherman, LLP, attorneys for respondent Stephanie Sasso, Psy.D. (Meghan E. Walsh, of counsel and on the brief).

Rainone Coughlin Minchello, LLC, attorneys for respondent Township of Monroe (Thomas Schoendorf, on the brief).

Cozen O'Connor, attorneys for respondents Dr. Margaret Nichols, Ph.D., and Institute for Personal Growth (Alison M. Berson, of counsel and on the brief).

PER CURIAM

This action arises out of plaintiff's second complaint against defendants alleging medical negligence and other related claims regarding their treatment of plaintiff's child.[1] The court dismissed the first complaint against defendants either pursuant to a Rule 4:6-2 motion or by way of summary judgment. The

[1] The child turned eighteen in 2018, prior to the institution of this suit.

trial court dismissed the second complaint against all defendants under res judicata or the entire controversy doctrine.[2] We affirm.

Plaintiff and his former wife were divorced in 2007. Under a consent order entered in the matrimonial action, they agreed to consult on all major issues regarding their child and that neither parent would make a unilateral decision concerning the child's physical and mental health, schooling, and religious upbringing.

When plaintiff discovered he was not consulted regarding certain treatment being given to his child, he instituted suit in 2016 (first complaint). Plaintiff contended that in 2011, the child was diagnosed with "Gender Identity Disorder." At that time, defendant Frances Schwartz, a psychologist for defendant Monroe Township Board of Education (BOE), and the child's mother executed an authorization for the release of confidential information to enable the school to "communicate with an outside therapist, psychiatrist or mental health facility."

In 2012, the child began attending Gender Spectrum therapy sessions at defendant Institute for Personal Growth (IPG). Defendant Margaret Nichols,

[2] Plaintiff stipulated to the dismissal of his claims against defendants Melissa Rivera Marano, NYU Langone Medical Center, and Dr. Aron Janssen.

Ph.D., was the Executive Director of IPG. Defendant Stephanie Sasso, Psy.D., was a permit holder under the supervision of Nichols and treated the child at IPG for gender dysphoria. Plaintiff contends when he learned of Dr. Sasso's involvement, he contacted her. Sasso stated she would provide plaintiff with the child's medical records and offered to meet with plaintiff. Plaintiff did not contact her again. In the ensuing years, plaintiff agreed to the administration of hormone medications and treatment.

Plaintiff filed the first complaint in April 2016 against IPG, Sasso, and Nichols, alleging defendants were medically negligent for failing to include him in the child's treatment; tortious interference with child custody rights; and intentional and malicious harm to another.

In late December 2016 or early 2017, plaintiff contacted the State Board of Psychological Examiners (Board) and learned that Sasso was not a licensed psychologist when she was treating the child, but instead was a permit holder under licensure. Thereafter, plaintiff filed a complaint against Nichols with the Board. The complaint alleged Nichols failed to obtain consent from plaintiff prior to treating the child and Nichols permitted an unlicensed psychologist (Sasso) to treat the child. Nichols responded to the allegations, admitting she

relied on the child's mother's representation that she had sole custody of the minor and did not review any divorce records.

Plaintiff moved for leave to amend the first complaint, which the court granted in April 2018. The amended complaint included claims against Sasso of "tortious interference with child custody rights," "intentional and malicious harm to another," and "fraudulent concealment of material facts"; claims of "fraudulent concealment of material facts" regarding Nichols; "civil conspiracy to fraudulently conceal material facts" and "civil conspiracy to commit an intentional tort and malicious harm to another" against Sasso, Nichols, and IPG. Plaintiff also alleged "fraudulent concealment of material facts" regarding Schwartz as agent of BOE; "fraudulent concealment of material facts," as to a social worker, Walter Bishop; and "civil conspiracy to fraudulently conceal material facts" as to Bishop and Schwartz. Although not given leave to do so, plaintiff added Bishop, BOE, and Township of Monroe-New Jersey (Monroe) as defendants.

Monroe moved to dismiss the complaint under Rule 4:6-2(e). In granting the motion with prejudice, the court noted the sole reference to Monroe in the complaint was that BOE was geographically within Monroe.

BOE and Schwartz moved for summary judgment, asserting the claim against them was time-barred because plaintiff filed the required notice of tort claim more than four years after Schwartz had any involvement with the child. N.J.S.A. 59:8-8 requires a plaintiff to file a tort claim notice ninety days after the accrual of a claim.

After a Lopez[3] hearing the court found October 21, 2016 was the latest date plaintiff knew or should have known of his claim because plaintiff responded to an interrogatory that he learned of communications between Sasso and BOE regarding the child's diagnosis on that date. Therefore, the August 29, 2017 notice of tort claim was untimely. The court granted BOE and Schwartz summary judgment.

Sasso moved to dismiss the complaint with prejudice under Rule 4:23-2 for plaintiff's failure to comply with a court order. The court granted the motion, finding plaintiff was ordered four times to appear for his deposition and to produce his expert reports. The court determined that a dismissal with prejudice was appropriate because "[t]his is not a situation where [plaintiff] has asked for a few extra weeks to produce an expert report. Rather, in the face of numerous [o]rders issued by [the court], [plaintiff] has effectively thumbed his nose at the

[3] Lopez v. Swyer, 62 N.J. 267 (1973).

[c]ourt." The court also dismissed the complaint against Nichols and IPG with prejudice for the same reasons.

In August 2019, the Board found Nichols violated N.J.A.C. 13:42-8.6(c), which requires the review of court documents to ascertain custody, and N.J.A.C. 13:42-4.4(f), for her failure to inform plaintiff that Sasso was treating the child as a permit holder. The Board agreed to a settlement of the matter conditioned on Nichols signing the consent agreement and paying a $1000 fine. Plaintiff was informed of the consent agreement.

In March 2021, plaintiff filed a second complaint against defendants. He alleged that the source of his new claims was the Board's consent agreement with Nichols, stating the agreement "caused [him] to suffer fresh tortious injuries and advanced affirmative evidence that [Nichols] and [Sasso] fraudulently conspired with other parties to gut [p]laintiff's earlier attempts to successfully sue for injuries. With the fraud now unearthed, [plaintiff stated he had] come to the [c]ourt where the fraudulent schemes took root."

The second complaint again listed Nichols, Sasso, IPG, Schwartz, Monroe and BOE as defendants, and listed several new defendants, including Dr. Dori Alvich, Monroe Township Superintendent of Schools. The second complaint

recounted the facts presented in the first complaint and set forth eighteen counts. As stated, plaintiff stipulated to the dismissal of several newly added defendants.

Monroe, represented by Thomas Schoendorf, moved to dismiss the complaint under Rule 4:6-2(e). Plaintiff cross-moved to disqualify Schoendorf. The court denied both motions on June 25, 2021. In dismissing the complaint against Monroe with prejudice, the court stated "[p]laintiff offer[ed] no plausible allegation that any employee of Monroe Township played any role in this matter, [and] the prior dismissal of [plaintiff's] claims against [Monroe] . . . bar[s] claims against [Monroe] . . . pursuant to the Tort Claims Act, the [e]ntire [c]ontroversy [d]octrine and the [p]rinciples of [r]es [j]udicata."

BOE, Schwartz, and Alvich moved for summary judgment. The court granted the motion and dismissed the complaint "and any and all claims against [BOE, Schwartz, and Alvich]" with prejudice on November 5, 2021. The court explained "these claims are essentially the same as the claims made in [the first complaint], where [plaintiff] alleged that [Schwartz] and [BOE] engaged in a civil conspiracy with other health care professionals to conceal material facts from [plaintiff] as to his child's medical condition," and "[w]hile the action of the [Board] against [Nichols] is evidence of some of the original claims made

by [plaintiff] that his child was treated without his consent, it does not create any 'fresh claims.'"

As to Alvich, the court found plaintiff should have included any claims against her in the first complaint as required by the entire controversy doctrine. In addition, the expired statute of limitations precluded the pursuit of any claims against Alvich.

Sasso filed a motion in lieu of an answer for an order dismissing the complaint with prejudice pursuant to Rule 4:6-2(e). The court granted the motion on June 25, 2021, stating "[a] review of [plaintiff]'s [first] complaint . . . indicates that [he] was aware that [Sasso] was practicing as a temporary permit holder and [plaintiff] specifically alleged that [Sasso] treated his child without obtaining his consent as required by an order of joint custody." Therefore, "under the legal principle of res judicata, the disciplinary action of the [Board] cannot be used to revive these claims since they involve the same subject matter as the claims that were dismissed with prejudice." The court denied plaintiff's subsequent motion for reconsideration on October 29, 2021.

Nichols and IPG also moved to dismiss the complaint under Rule 4:6-2(e), asserting the second complaint was barred under the doctrines of res judicata, collateral estoppel, lack of standing, and failure to state a claim. On October

22, 2021, the judge issued an oral opinion granting the dismissal motion. The court found "the vast majority of factual allegations, procedural history, and information contained in the [second] complaint is nearly identical to the [first] complaint. However, many of the paragraphs have been rephrased or updated with additional information."

Despite the addition of new facts regarding the consent agreement and the procedural history, the court found "the underlying operative facts relative to the settlement agreement also are the same as those contained in the [first] complaint." The court noted "[t]he [second] complaint . . . contained [eighteen] counts including medical malpractice negligence, civil conspiracy, intentional malicious harm to another, fraudulent concealment of material facts, civil conspiracy[,] gross negligence, civil conspiracy fraud, medical malpractice fraud, and damages," while "[t]he [first] complaint included claims for medical malpractice, tortious interference with child custody rights, intentional and malicious harm to another, fraudulent concealment of material facts, civil conspiracy to commit a[n intentional tort,] and malicious harm to another." The court also noted the facts underlying the consent agreement were known to plaintiff at the time he amended the first complaint since he made the complaint to the Board regarding Nichols. The court further found the consent agreement

was not a new claim, but was instead Nichols's acknowledgement of the charged conduct, the violation of two administrative regulations.

The court therefore determined the order dismissing the first complaint with prejudice was "a valid and final adjudication of the merits of the claim." Therefore, the second complaint could not be sustained under res judicata and collateral estoppel.

Furthermore, the court found the violations Nichols was charged with did not provide a private cause of action, and, therefore, dismissal under Rule 4:6-2(e) would be appropriate. Additionally, because the operative timeline of events predated the consent agreement, the statute of limitations had expired as to the negligence counts. A memorializing order issued the same day.

On appeal, plaintiff contends the court erred in dismissing his second complaint with prejudice and in denying the motion to disqualify Schoendorf.

We begin with the order dismissing the claims against Monroe. The trial court found dismissal was warranted under Rule 4:6-2 because plaintiff's claims were precluded under res judicata, the entire controversy doctrine and the time bar of the Tort Claims Act, N.J.S.A. 59:1-1 to -12-3.

We review a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 4:6-2(e) de novo. Baskin v. P.C. Richard &

Son, LLC, 246 N.J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019)). "A reviewing court must examine 'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" Ibid. (quoting Dimitrakopoulos, 237 N.J. at 107). Courts should search the complaint thoroughly "and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). But "if the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed." Ibid. (quoting Dimitrakopoulos, 237 N.J. at 107).

Res judicata "contemplates that when a controversy between parties is once fairly litigated and determined it is no longer open to relitigation." Selective Ins. Co. v. McAllister, 327 N.J. Super. 168, 172 (App. Div. 2000) (quoting Lubliner v. Bd. of Alcoholic Beverage Control, 33 N.J. 428, 435 (1960)). The doctrine "applies not only to 'all matters litigated and determined by such judgment but also as to all relevant issues which could have been

presented, but were not.'" Culver v. Ins. Co. of N. Am., 115 N.J. 451, 463 (1989) (quoting Anselmo v. Hardin, 253 F.2d 165, 168 (3d Cir. 1958)).

To establish res judicata, the following elements must be satisfied:

> (1) the judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one.
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> [Rippon v. Smigel, 449 N.J. Super. 344, 367 (App. Div. 2017) (citing Velasquez v. Franz, 123 N.J. 498, 505-06 (1991)).]

A "final adjudication on the merits" does not require a full trial on the merits of all substantive issues. Velasquez, 123 N.J. at 506. Judgments of involuntary dismissal and dismissals with prejudice "constitute[] an adjudication on the merits 'as fully and completely as if the order had been entered after trial.'" Id. at 507 (quoting Gambocz v. Yelencsics, 468 F.2d 837, 840 (3d Cir. 1972)).

The first complaint was dismissed with prejudice as to Monroe under Rule 4:6-2 because it did not allege any claims against Monroe. This constitutes a final judgment on the merits. See Velasquez, 123 N.J. at 507. The parties in both complaints are identical and the facts alleged against Monroe stem from the same events: plaintiff's mistaken belief that Schwartz was employed by

Monroe and the subsequent allegations against Schwartz. The only new information is the reference to the consent agreement. However, this does not change the fact that Schwartz was not employed by Monroe and there are no further allegations against Monroe. The second complaint as against Monroe is barred under res judicata. As a result, we need not consider any alternative grounds for dismissal.

We turn to the court's dismissal of the second complaint against Sasso. After plaintiff failed to comply with orders in the first litigation to produce documents and appear for depositions, the court dismissed the first complaint with prejudice. This was a final adjudication under Velasquez.

The remaining res judicata elements are also satisfied. Plaintiff and Sasso were parties in both complaints. The facts alleged against Sasso in the second action are nearly identical to those in the first; plaintiff asserted in both complaints that Sasso's permit holder status resulted in fraudulent diagnoses and charges. The only addition was the reference to the consent agreement in the second complaint.

However, contrary to plaintiff's contention, the consent agreement did not give rise to a new cause of action. Plaintiff was aware of the factual information in the consent agreement during the pendency of the first litigation because he

filed the complaint against Nichols. The trial court correctly dismissed the second complaint against Sasso as barred by res judicata.

We next address the order granting summary judgment to BOE, Schwartz, and Alvich.

We review the grant of summary judgment de novo. Samolyk v. Berthe, 251 N.J. 73, 78 (2022) (citing Woytas v. Greenwood Tree Experts, Inc., 237 N.J. 501, 511 (2019)). Summary judgment should be granted

> if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.
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> [Rule 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995).]

The trial court granted Schwartz and BOE summary judgment and dismissed the first complaint in 2018, finding plaintiff failed to comply with the requisites of the Tort Claims Act. Plaintiff did not serve a tort claims notice until after the ninety-days' notice period in N.J.S.A. 59:8-8. Nor did plaintiff seek relief under N.J.S.A. 59:8-9 to extend the notice deadline.

The grant of summary judgment is a final judgment on the merits. Velasquez, 123 N.J. at 507. The remaining res judicata elements are also satisfied. The parties and allegations in both complaints are identical. The only new fact is the reference to the consent agreement. As we have stated, that does not constitute a new cause of action. Therefore, the court properly granted Schwartz and BOE summary judgment on res judicata principles.

Alvich was not a party to the first complaint and therefore res judicata is not applicable to her. However, plaintiff's allegations against her are barred under Rule 4:30A and the entire controversy doctrine. The "doctrine requires that all issues of a single dispute between the parties must be completely determined in one action." Culver, 115 N.J. at 463. And it "encompasses a mandatory rule for the joinder of virtually all causes, claims, and defenses relating to a controversy between the parties engaged in litigation." Cogdell ex rel. Cogdell v. Hospital Ctr. at Orange, 116 N.J. 7, 16 (1989). "This doctrine attempts to avoid the delay, waste and expense of fragmented litigation." Culver, 115 N.J. at 464 (citations omitted).

Plaintiff's sole allegation against Alvich was that she protected Schwartz from discipline. This contention is intertwined with plaintiff's assertions against

Schwartz arising out of the same course of events. Plaintiff has proffered no reason why this claim against Alvich was not asserted in the first complaint.

As to the dismissal of the second complaint against Nichols and IPG, for reasons already stated, we discern no error.

The first complaint against Nichols and IPG was dismissed with prejudice because of plaintiff's failure to comply with court orders. This is a final judgment on the merits. As noted with other defendants, the parties and core facts giving rise to the claims were the same in both complaints, excepting the allegations surrounding the consent agreement. As discussed above, the agreement did not give rise to a new cause of action as the factual information was known to plaintiff during the pendency of the first litigation.

We see no merit in plaintiff's contentions regarding Schoendorf. Plaintiff did not demonstrate grounds for the attorney's or his firm's disqualification.

Affirmed.