SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1436-21

M.M., a minor, by his guardian ad litem WOODELYNE NATHAN MILBIN and RALPH MILBIN, on behalf of M.M., a minor,[1]

Plaintiff-Appellant,

v.

DR. LENA EDWARDS ACADEMIC CHARTER SCHOOL, JAMES BREWER, Principal, JEFFREY MOHR, Assistant Principal, and YVETTE MORTON, Teacher,

Defendants-Respondents.

Submitted February 7, 2023 – Decided February 24, 2023

Before Judges Gilson and Rose.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-3892-19.

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[1] Improperly pled as "Woodlyne Nathan Milbin."

Afonso Archie & Foley, PC, attorneys for appellants (Kerlin Hyppolite, on the brief).

Adams Gutierrez & Lattiboudere, LLC, attorneys for respondents (Cherie L. Adams, of counsel and on the brief; Geovanny M. Mora, on the brief).

PER CURIAM

Plaintiff M.M., a minor, by his parents, Woodelyne Nathan Milbin and Ralph Milbin, appeals from a July 31, 2021 Law Division order confirming an arbitration award and entering a $25,000 judgment in plaintiff's favor.[2] Because plaintiff failed to demonstrate extraordinary circumstances to support his untimely request for a trial de novo following the arbitrator's April 21, 2021 award, we affirm.

The underlying facts and procedural history are not complicated. From the spring of 2017 through the spring of 2018, plaintiff was enrolled at Dr. Lena Edwards Academic Charter School in Jersey City. Plaintiff claimed he was assaulted on several occasions by his classmates, verbally abused by his English teacher, Yvette Morton in April 2018, and physically assaulted by Morton the following month.

[2] M.M.'s parents did not file a derivative claim. We therefore refer to plaintiff in the singular. For ease of reference, we refer to plaintiff's mother by her first name. We intend no disrespect in doing so.

Represented by counsel, in October 2019, plaintiff filed a complaint against the school, Principal James Brewer, Assistant Principal Jeffrey Mohr, and Morton (collectively, defendants). Defendants moved to dismiss in lieu of answer, R. 4:6-2(e), but withdrew their motion without prejudice, permitting plaintiff to file an amended complaint.

In March 2020, plaintiff filed an amended ten-count complaint, seeking damages for pain and suffering against defendants based on various negligence theories, and violations of the Anti-Bullying Bill of Rights Act, N.J.S.A. 18A:37-13.2 to -37, and the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50. The complaint also asserted a single count of battery against Morton. Two counts of the complaint, including plaintiff's LAD claim, were dismissed following defendants' ensuing motions.

Mandatory non-binding arbitration was scheduled for February 25, 2021. At plaintiff's request, the hearing was adjourned to April 21, 2021. In the interim, the trial court denied as untimely plaintiff's motion to remove the matter from arbitration.

On April 21, 2021, the arbitrator issued an award, assessing 100 percent liability to the school and awarding plaintiff $25,000. The arbitrator attributed

no liability to the individual defendants, and found plaintiff's injuries did not meet the tort claim threshold, N.J.S.A. 59:9-2.

Thereafter, on June 7, 2021, defendants moved to confirm the arbitration award and enter judgment, R. 4:21A-6(b)(3). On June 15, 2021, plaintiff moved pro se for a trial de novo, R. 4:21A-6(c), and other relief.[3] In support of the motion, Woodelyne annexed a letter to the court, contending the family had "quickly rejected" the arbitrator's award, but counsel failed to file a timely motion for a trial de novo. According to Woodelyne: "Since [counsel] used to always give us excuses based on his health and that of other members of his family, we thought that perhaps this may have caused the requisite exigent circumstances that interfered with him filing this trial [d]e [n]ovo timely. Or he has just been negligent!"

On July 13, 2021, the court granted defendants' motion. In its statement of reasons accompanying the order, the court considered plaintiff's motion as

[3] Plaintiff's application was styled as a "Motion to Permit Discovery." "[F]ormally reject[ing] th[e arbitrator's] offer," plaintiff sought: a "trial de novo"; to "extend discovery"; "to release" counsel; and fifteen days to retain another lawyer.

opposition to defendants' motion.[4] Recognizing plaintiff's motion was filed beyond the thirty-day deadline prescribed by Rule 4:21A-6(b)(1), the judge found plaintiff failed to demonstrate extraordinary circumstances to extend the deadline. The court elaborated:

> Numerous cases have held that an attorney's heavy workload or improper supervision of staff does not constitute "extraordinary circumstances." In Behm v. Ferreira, 286 N.J. Super. 566, 574 (App. Div. 1996), the court observed that "[t]he excuse that an attorney is too busy or has too heavy a workload to properly handle litigation or to supervise staff is insufficient to constitute extraordinary circumstances." Likewise, in Hart v. Property Management Systems, 280 N.J. Super. 145, 149 (App. Div. 1995), the Appellate Division held that the "[f]ailure to supervise one's secretary does not ordinarily present such 'extraordinary circumstances' as will permit an attorney to make a late demand for trial de novo." (quoting Sprowl v. Kitselman, 267 N.J. Super. 602, 609 (App. Div. 1993)).
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> There is no dispute that the request for de novo trial was untimely. The [c]ourt further finds that under the precedents, [p]laintiff['s] situation does not rise to the level of extraordinary circumstances. Plaintiffs may have a valid claim for malpractice arising out of this issue, but this issue is not before this [c]ourt. At this time, the [c]ourt only finds that [d]efendants'

[4] The July 13, 2021 order did not expressly deny plaintiff's motion and the parties did not provide an executed order addressing plaintiff's June 15, 2021 application. Notably, however, plaintiff was represented by counsel when his pro se motion was filed.

> motion to confirm the arbitration award must be granted.

Thereafter, plaintiff's attorney moved to withdraw as counsel.[5] Plaintiff retained new counsel, who filed this appeal.

On appeal, plaintiff acknowledges the authority cited by the trial court is "clear" and he failed to demonstrate extraordinary circumstances. Instead, plaintiff urges us to reverse the trial court's order in the "interest of justice."

Having considered plaintiff's contentions in view of the applicable law and the motion record, we conclude they lack sufficient merit to warrant extended discussion in our written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the reasons expressed by the trial court in its cogent statement of reasons, adding only the following remarks.

The timing for challenges to an arbitration award is mandated by statute and Rules of Court. See N.J.S.A. 2A:23A-26; N.J.S.A. 39:6A-31; R. 4:21A-6. Rule 4:21A-6 states in pertinent part:

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[5] In their responding appendix on appeal, defendants included the certification of plaintiff's attorney that supported his motion. Plaintiff neither moved before this court to strike the certification from defendants' appendix nor filed a reply brief. Nonetheless, because the certification was not available for the trial court's review when deciding the present motion, we decline to consider its contents. See Zaman v. Felton, 219 N.J. 199, 226-27 (2014).

> (b) Dismissal. An order shall be entered dismissing the action following the filing of the arbitrator's award unless:
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> > (1) within 30 days after filing of the arbitration award, a party thereto files with the civil division manager and serves on all other parties a notice of rejection of the award and demand for a trial de novo and pays a trial de novo fee as set forth in paragraph (c) of this rule; or
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> > . . . .
> >
> > (3) within 50 days after the filing of the arbitration award, any party moves for confirmation of the arbitration award and entry of judgment thereon.

The purpose of Rule 4:21A-6(b)(1) "is to require a prompt demand for a trial de novo in cases subject to mandatory arbitration." Corcoran v. St. Peter's Med. Ctr., 339 N.J. Super. 337, 344 (App. Div. 2001). "Rule 4:21A-6(b)(1) 'set[s] a short deadline for filing a [trial] de novo demand' to 'ensure[ ] that the court will promptly schedule trials in cases that cannot be resolved by arbitration.'" Vanderslice v. Stewart, 220 N.J. 385, 392 (2015) (alterations in original) (quoting Nascimento v. King, 381 N.J. Super. 593, 597 (App. Div. 2005)). Thus, we have cautioned:

> [W]hen neither party has made a timely motion for a trial de novo, the court's power to extend the time frame [under Rule 4:21A-6] "must be sparingly exercised with a view to implementing both the letter

> and the spirit of the compulsory arbitration statute and the rules promulgated pursuant thereto, to the end that the arbitration proceedings achieve finality."
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> [Martinelli v. Farm-Rite, Inc., 345 N.J. Super. 306, 310 (App. Div. 2001) (quoting Mazakas v. Wray, 205 N.J. Super. 367, 372 (App. Div. 1985)).]

Although courts "possess the power to enlarge" the thirty-day period to file a demand for a trial de novo, "such power should be exercised only in extraordinary circumstances." Mazakas, 205 N.J. Super. at 371. The proponent must prove that the circumstances for missing the filing deadline were "exceptional and compelling." Hartsfield v. Fantini, 149 N.J. 611, 619 (1997) (quoting Baumann v. Marinaro, 95 N.J. 380, 393 (1984)). The circumstances must not arise from mere carelessness or lack of due diligence. Martinelli, 345 N.J. Super. at 310 (citing Hartsfield, 149 N.J. at 618). The analysis is fact sensitive. Hartsfield, 149 N.J. at 618.

In the present matter, plaintiff alleged counsel failed to reject the arbitration award and move for a trial de novo, speculating his health issues were the cause of his inaction. Plaintiff's bald assertions fell far short of establishing extraordinary circumstances. We therefore discern no reason to disturb the trial court's order.

Affirmed.