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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-1656-21**

LUIS CANALES-FLORES,

Plaintiff-Respondent,

v.

**JOHN TOLERICO and RALPH
CLAYTON & SONS,**

Defendants-Appellants,

and

**AUTO ONE INSURANCE
COMPANY,**

Defendants.

Argued January 17, 2023 – Decided May 2, 2023

Before Judges Mawla and Smith.

On appeal from the Superior Court of New Jersey, Law
Division, Hudson County, Docket No. L-1137-13.

Anthony M. Prieto argued the cause for appellants
(Anthony M. Prieto, attorney; Anthony M. Prieto, of

counsel and on the briefs; Randi S. Greenberg, on the briefs).

Timothy J. Foley argued the cause for respondent (Law Offices of Carlos H. Acosta, Jr., LLC, attorneys; Carlos H. Acosta, Jr., and Timothy J. Foley, of counsel and on the brief).

PER CURIAM

After a jury verdict in favor of plaintiff Luis Canales-Flores in a personal injury suit, defendants John Tolerico and Ralph Clayton & Sons (Clayton) appeal from the trial court's reinstatement of plaintiff's complaint pursuant to Rule 1:13-7(a). The complaint had been dismissed for lack of prosecution nearly seven years earlier. Defendants argue on appeal the trial court committed error when it granted reinstatement without support in the record. Because plaintiff did not present any evidence to explain the nearly seven-year delay between the filing and service of his complaint, its dismissal without prejudice, and his motion to reinstate, we reverse.

Tolerico, driving a vehicle owned by Clayton, struck plaintiff's vehicle, injuring him. Plaintiff filed suit against defendants on March 5, 2013. Clayton was served on May 3, 2013, and Tolerico was served on May 6, 2013. Neither Clayton nor Tolerico answered. Plaintiff was unable to serve co-defendant Auto One Insurance Company (Auto One). Plaintiff did not move to enter default

pursuant to Rule 1:13-1(b) nor took any other action. Pursuant to Rule 1:13-7(a), the complaint against Auto One was dismissed due to lack of prosecution on September 20, 2013, and the complaint against Clayton and Tolerico was dismissed due to lack of prosecution on December 13, 2013.

Approximately six years later, on February 11, 2020, plaintiff moved to reinstate his complaint submitting a certification in support of the application. Plaintiff's counsel's certification confirmed two of the three named defendants, Tolerico and Clayton, were served. Plaintiff sought reinstatement as to both defendants. Without referencing Auto One by name, plaintiff's counsel stated that "earnest attempts to serve were made," but did not specify what those efforts were, nor to which defendant those efforts were directed. Plaintiff's counsel finally certified that "there has been no delay in the prosecution of this matter[,] nor will defendant suffer any prejudice." Defendant opposed the motion, contending the long delay would be prejudicial to the defense.

The trial court granted plaintiff's motion to reinstate the complaint without argument. In its order dated February 28, 2020, the court attached a written statement of reasons:

The [c]ourt can use its sound discretion in light of the facts and circumstances of the particular case. The standard is good cause[,] and the [c]ourt is satisfied that, absent a finding of fault by the plaintiff and

prejudice to the defendant, a motion to restore under the [R]ule should be viewed with great liberality. Here[,] there is no indication that [p]laintiff was at fault for the delay and the prejudice alleged by defendant's counsel is essentially potential prejudice and not actual.

Defendants moved for reconsideration and noted the court should have applied the exceptional circumstances standard instead of good cause. They also argued plaintiff's application failed to show "what occasioned the dismissal and the delay in moving to restore the matter over six . . . years and two . . . months later." The court rejected defendants' arguments and denied reconsideration. Defendants did not seek leave to appeal reconsideration. The parties completed discovery and went to trial.

The matter was tried by a different judge, and the jury returned a verdict for plaintiff in the amount of \$150,000 in damages and \$200 in costs. The court entered judgment for plaintiff, and defendants now seek reversal of the order reinstating the complaint, the order denying reconsideration, and the order of final judgment.

Defendants argue the trial court committed two errors: first, granting the reinstatement motion, finding good cause and absence of prejudice to defendant without support in the record; and second, denying defendants' motion for reconsideration.

We review the denial of a reconsideration motion for abuse of discretion, understanding that reconsideration is only available when "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." Fusco v. Bd. of Educ. of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citing State v. Brown, 118 N.J. 595, 604 (1990)).

We review a trial court's decision on a reinstatement motion for abuse of discretion, cognizant that Rule 1:13-7(a) is a "docket-clearing rule . . . designed to balance the institutional needs of the judiciary against the principle that a just result should not be forfeited at the hands of an attorney's lack of diligence." Baskett v. Kwokleung Cheung, 422 N.J. Super. 377, 379-83 (App. Div. 2011). An abuse of discretion "arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an

impermissible basis.'" Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. I.N.S., 779 F.2d 1260, 1265 (7th Cir. 1985)).

Turning to the merits, we note the trial court applied a good cause standard to decide the original motion for reinstatement. The pertinent section of Rule 1:13-7(a) reads:

[W]henever an action has been pending for four months . . . the court shall issue written notice to the plaintiff advising that the action as to any or all defendants will be dismissed without prejudice [sixty] days following the date of the notice In multi-defendant actions in which at least one defendant has been properly served, [a] consent order shall be submitted within [sixty] days of the order of dismissal, and if not so submitted, a motion for reinstatement shall be required. The motion shall be granted on good cause shown if filed within [sixty] days of the order of dismissal, and thereafter shall be granted only on a showing of exceptional circumstances.

[R. 1:13-7(a) (emphasis added).]

The record shows this is a multi-defendant action. It is undisputed two defendants, Tolerico and Clayton, were properly served, while Auto One was not. These facts required use of the exceptional circumstances standard under Rule 1:13-7(a), not the good cause standard applicable to a single defendant under the rule. The trial court applied the incorrect standard when hearing the reinstatement motion and compounded the mistaken application of the rule by

equating good cause with "absence of fault by the plaintiff," and finding, without any support in the record, there was "no indication [p]laintiff was a fault for the delay"

Even if the standard for reinstatement was good cause, plaintiff did not meet his burden for showing it. While the "record is devoid of any blame . . . directly attributable to plaintiff[]," Est. of Semprevivo v. Lahham, 468 N.J. Super 1, 15 (App. Div. 2021), we note the record is also devoid of any reason proffered by plaintiff or plaintiff's counsel that would explain the delay. There is nothing from which the trial court could have reached the conclusion that plaintiff met his burden.

Regardless of plaintiff's election not to seek reinstatement against Auto One, given the procedural posture of the matter before us, the standard to be applied here was exceptional circumstances. The trial court erred by applying the wrong standard under Rule 1:13-7(a) and by substituting the absence of fault for facts submitted by plaintiff in support of his motion to reinstate. For these reasons, we are constrained to conclude the trial court mistakenly exercised its discretion in denying defendant's motion for reconsideration.

We vacate the judgment for plaintiff and reverse. Plaintiff's complaint is dismissed.

Reversed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION