SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1912-21

GRIGGS FARM, INC.,

Plaintiff-Respondent,

v.

LIDIYA YAKOVLEVA and
YANA L. VASILYEVA,

Defendants-Appellants.

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Submitted February 8, 2023 – Decided May 8, 2023

Before Judges Currier and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. LT-001410-21.

Lidiya Yakovleva and Yana L. Vasilyeva, appellants pro se.

Joseph L. Mooney, III, PC, attorney for respondent (Joseph L. Mooney, on the brief).

PER CURIAM

In this residential landlord-tenant dispute, self-represented defendants

Lidiya Yakovleva and her daughter, Yana Vasilyeva, appeal from a January 18, 2022 order denying their motion to transfer their tenancy matter to the Civil Part. They also challenge a February 4, 2022 order denying their requests to adjourn the tenancy trial and recuse the trial judge, and granting judgment of possession in favor of plaintiff Griggs Farm, Inc. Further, defendants appeal from a February 7, 2022 order denying their motion to consolidate the tenancy matter with their Civil Part action, and a February 11, 2022 order denying their requests to vacate the February 4 judgment and for a new trial. We affirm all challenged orders, substantially for the reasons set forth in the cogent oral and written opinions of Judge William Anklowitz.

I.

Plaintiff, a not-for-profit entity, owns an affordable housing complex in Princeton. Defendants lived at the complex for well over twenty years. On June 3, 2019, defendants executed a one-year lease for their unit. Under paragraph 26 of the lease, defendants were required to give plaintiff access to their unit "at reasonable time[s] to perform routine maintenance services." Pursuant to paragraph 28 of the lease, plaintiff could terminate defendants' tenancy if they defaulted on the terms of the lease. And under paragraph 28(j), "refusing inspections/access per [p]aragraph 26" constituted a default. On June 3, 2021,

defendants executed a one-year renewal of the 2019 lease; the renewal lease mirrored the prior lease, but for limited amendments unrelated to this appeal.[1]

After executing the 2019 lease, defendants complained to plaintiff that they had insufficient hot water for their unit. On May 28, 2021, plaintiff's property manager, Necall Durrant, emailed defendants, advising them that plaintiff would "replace the existing hot water heater inside [their] rental unit with a new, more efficient [thirty]-gallon hot water heater" and a technician would come to their unit on June 4, 2021 between the hours of 12:00 and 2:00 p.m. to accomplish this task. On May 29, Vasilyeva wrote to plaintiff, advising the June 4 visit could not "take place," and the technician would not be allowed to enter their unit at the appointed date and time because the "issue of [the] hot water tank installation should be adjudicated in court." Vasilyeva also stated if a technician "enter[ed the] apartment by force, [they would] have to commit assault and battery upon [Vasilyeva] and [her] disabled mother."

Durrant and her maintenance crew went to defendants' home on June 4 and again asked for access to the unit to install the hot water heater. Defendants refused them access, contrary to paragraph 26 of their lease. Accordingly, on

[1] The record does not reflect whether the parties executed a lease for the period between June 2020 and June 2021.

June 9, plaintiff served defendants with a notice to cease, warning that if they continued to deny plaintiff access to their unit, their "tenancy [would] be terminated and an action for [their] eviction commenced."

Durrant emailed defendants again in July 2021, advising them a technician needed access to their unit on August 4, between the hours of 8:30 and 9:00 a.m., to install "a new, more efficient [thirty]-gallon hot water heater." Defendants responded via email two days later, notifying Durrant that she should "not attempt any installation of any equipment" on August 4. Their email further instructed, "do not come on August 4, 2021."

Based on defendants continuing refusal to allow plaintiff access to their unit, plaintiff's attorney sent defendants a notice to quit, informing them their tenancy would be terminated as of September 1, 2021. In August 2021, defendants filed a Civil Part action against plaintiff, alleging breach of contract, nuisance, assault, defamation-libel per se, defamation-slander per se, and invasion of right to privacy-false light.

Defendants failed to surrender possession of their unit by the September 1 deadline. Accordingly, later that month, plaintiff filed the subject summary dispossess action against defendants in the Special Civil Part. In October 2021, defendants filed a motion in the Special Civil Part and another motion in the

Civil Part, seeking to have the tenancy matter transferred to the Civil Part.

Judge Anklowitz heard argument on the dual transfer motions on November 30, 2021 and reserved decision. During the November 30 hearing, Vasilyeva was sworn and testified the tenancy case should be transferred to the Civil Part because it was "very complex" and did not allow for "equitable relief." She also stated the tenancy matter should be transferred based on defendants' need for discovery, explaining a transfer would "afford [defendants] 300 days to deal with" their claims against plaintiff in the Civil Part action. Vasilyeva further testified the Civil Part was "the only . . . place where [defendants could] assert" their rights.

On January 18, 2022, Judge Anklowitz entered an order: denying defendants' Special Civil Part motion to transfer; dismissing without prejudice the parallel Civil Part motion to transfer; and scheduling trial on the tenancy matter for February 4, 2022.[2] In an accompanying written opinion, the judge found the Civil Part motion to transfer should have been filed with the Office of the Special Civil Part, pursuant to Rule 6:4-1(g). He also concluded there was no need to transfer the tenancy matter based on defendants' purported need for

[2] The January 18 order states the judge "prepared an opinion and order on November 30, 2021, but it was never uploaded to the file."

additional discovery, noting "[b]oth sides were present on June 4, 2021, when the plumber stopped by to visit" so the parties "already witnessed what happened. Further, there have been no particular discovery demands to show that anything might be forthcoming in discovery."

Additionally, Judge Anklowitz rejected defendants' argument that a transfer was warranted due to the complexity of the tenancy matter, stating, "[t]he issues presented are not unusual in landlord tenant court." He also noted "[n]o class action was pled" and "[n]o other tenants [were] joined or named in the Civil Part case." Further, the judge concluded that regardless of the outcome of the summary dispossess trial, defendants could "still pursue their claims in the Civil Part" because "nothing about the[ir] complaint . . . require[d defendants] to reside in the unit to bring their claims for money damages." Judge Anklowitz also found that although defendants contended a transfer was necessary to enable them to pursue equitable relief, their Civil Part complaint was "lacking and oral argument was vague and unpersuasive as to what that [equitable relief] might be."

On January 24, 2022, defendants wrote to the court seeking an adjournment of the February 4 trial date. They also moved to consolidate the Special Civil Part action with the Civil Part matter.

Defendants renewed their request for an adjournment during the virtual trial on February 4. As the hearing began and Vasilyeva was sworn, she informed Judge Anklowitz that Yakovleva was present but could not hear him, and that her mother was "very dizzy" and "her blood pressure [was] very high." Vasilyeva stated she thought she would take Yakovleva "to [the] emergency room after this proceeding, but she's unable to hear."

Next, Vasilyeva argued the hearing should be adjourned based on her pending motion to consolidate. She also asked for a postponement, explaining she was "in the process of filing another motion and this motion will be filed in both . . . Special Civil Part and Civil Part under Rule 1:12-2." Plaintiff's counsel responded that defendants were attempting "an end [run] around the court's earlier ruling precluding the . . . transfer[] to the Civil Part" and that plaintiff was "entitled to the speedy remedy that a summary dispossess action allows."

Vasilyeva countered that defendants were "not ready to proceed . . . at all because . . . Yakovleva [was] a witness, [and could not] participate." Further, Vasilyeva stated, "I'm filing motions, there are two more to come. . . . I need extra time." She added, "I need to take [Yakovleva] to [the] emergency room . . . . [S]he might have a stroke . . . , so we do need . . . time to address things."

Next, Vasilyeva reiterated her desire to adjourn the trial due to her pending motion to consolidate and asked the judge to "consider the [recusal] motion before . . . hear[ing] the motion on consolidation." Although Vasilyeva stated she was "not discussing . . . . Rule 1:12" that day, when Judge Anklowitz inquired about "the reason for [his] disqualification," she answered, "[p]rejudice and bias expressed on paper in your opinion dated January 18th."

Additionally, Vasilyeva advised the court "the landlord is trying to install [a] hot water heater tank . . . one week from today." After a further colloquy with the judge, she asked if she could "come back for a moment to the hot water tank issue because [she] didn't finish it."

When the parties again addressed defendants' adjournment request based on Yakovleva's purported illness, plaintiff's counsel asked for "a proffer as to what [Yakovleva] would testify about," pointing out that Yakovleva "didn't say a word" when the transfer motion was argued at length. Vasilyeva told the judge, "you [can] ask her but she [is] unable to speak. . . . Let's see what she says."

With the assistance of an interpreter, the judge asked Yakovleva, "Where are we then?" Yakovleva answered, "I feel sick. I have high blood pressure. I have ringing in my ears and I don't hear anything."

The judge orally denied defendants' request for his recusal, along with their requests for an adjournment and consolidation. Judge Anklowitz stated there was no basis for his disqualification, "just because a party was the losing party on a given ruling." He also agreed with plaintiff's counsel that defendants were attempting to do "an end run" around his previous denial of their motions to transfer, and there was no reason to consolidate the Special Civil Part action with the Civil Part case. He reasoned, "the same exact parties" were involved in both matters "so it's really a motion to transfer the landlord tenant case all over again."

In denying the adjournment request, the judge found Yakovleva stated she could not hear, but "if she couldn't hear, she wouldn't have responded to [my] question. So, she can hear and . . . I'm not really finding her inability to testify to be credible based on what I just saw and what I just heard. That's a . . . feint."

Despite the judge's rulings, Vasilyeva renewed her objection to continuing the trial, telling the judge, "[y]ou cannot be impartial." The judge responded that she could have filed her motions sooner "if [she] really cared about" the issues she raised, "instead of trying to delay" the matter, and directed plaintiff's counsel to call his first witness.

Durrant was plaintiff's only witness. According to her testimony,

defendants violated their lease by refusing to give plaintiff's maintenance staff access to defendants' unit to install a replacement hot water heater on June 4 and August 4, 2021. Therefore, defendants were served with notices to cease and quit. Durrant also testified about various documents admitted into evidence in support of her testimony, including the parties' 2019 lease and renewal lease, and the emails exchanged between the parties showing plaintiff tried to secure access to defendants' home to install the hot water heater.

Vasilyeva declined to cross-examine Durrant, offered no objection to plaintiff's exhibits being admitted into evidence, provided no testimony to refute Durrant's statements, and chose not to make a closing argument, although Judge Anklowitz afforded these opportunities to her. Similarly, Yakovleva did not refute Durrant's testimony, although the judge offered her the chance to testify.

Before the hearing ended, Vasilyeva again asked the judge to postpone the hearing, stating she needed to "drive her [mother] to [the] emergency room." She also asked the judge to "keep" one of plaintiff's exhibits until the parties returned to court.

The judge rendered an oral decision. He noted that at no time during the trial did Vasilyeva call for an ambulance service or emergency medical technician for Yakovleva, despite arguing Yakovleva was seriously ill. Judge

Anklowitz concluded Vasilyeva's argument that her mother was "too ill to proceed . . . just [didn't] sound true" and "sounds like it's a feint." Ultimately, the judge credited Durrant's testimony that plaintiff tried to "replace a water heater and was refused entry [by defendants,] despite the fact that the lease allows [the] landlord entry on reasonable notice to be able to conduct . . . repairs." Accordingly, he entered a judgment for possession in plaintiff's favor.

On February 7, 2022, Judge Anklowitz issued a supplemental order and an accompanying written opinion, explaining more fully why he denied defendants' motions for recusal and consolidation. Regarding defendants' motion for his recusal, he stated, "trial judges routinely handle pre-trial and trial related matters in the same case," so any rulings he made prior to trial did not serve as a basis for his recusal. Further, the judge explained he denied defendants' motion to consolidate based on Rule 6:3-4(a), noting the Rule provides, in part, "[s]ummary actions between [a] landlord and tenant for the recovery of premises shall not be joined with any other cause of action." He added that with the entry of the judgment for possession, "[t]here [was] no further landlord tenant case to join with the Civil Part matter."

Defendants subsequently sought a six-month hardship stay of the judgment for possession, pursuant to N.J.S.A. 2A:42-10.1. Additionally, they

requested a new trial and vacatur of the judgment.

On February 11, 2022, Judge Anklowitz heard argument on defendants' motions and allowed Vasilyeva to speak at length about issues raised during the summary dispossess trial. During argument, Vasilyeva urged the judge to "vacate the judgment, . . . and order [a] new trial," yet she also testified "[t]he case should be dismissed completely because" plaintiff's case consisted of "absolute lies." Further, Vasilyeva testified she did "not know what [Durrant] said" during the trial, yet she also stated she wanted to "contradict everything [Durrant] said" because Durrant stated defendants "violated rules." Vasilyeva added, "It's not a huge violation when . . . we told them not to come [to replace the hot water heater]."

Following argument, Judge Anklowitz entered an order, accompanied by a written opinion, granting a hardship stay to defendants through March 31, 2022, "without prejudice to . . . [their filing] another hardship application for an extension." The judge found the stay was appropriate, considering "new housing would take some time [for defendants] to locate."

Next, Judge Anklowitz denied defendants' requests for a new trial and vacatur of the judgment for possession. Regarding the application for a new trial, the judge rejected Vasilyeva's testimony that she "didn't hear a single

word" of Durrant's trial testimony due to Yakovleva's poor medical condition on the day of the trial. He found this argument was entitled to "no weight" and made "no sense" considering Vasilyeva's contradictory testimony on February 11 that she "want[ed] to contradict everything [Durrant] said" at trial.

Further, the judge found there was no basis for a new trial because defendants had "not proposed any new evidence or defense" and the evidence at trial showed plaintiff "wanted to replace [defendants'] water heater and [they] refused to cooperate." The judge also rejected defendants' argument that they had insufficient "time to submit documents and . . . subpoena witnesses" before the trial, noting "[t]he case [was] going on for quite some time and there [was] sufficient opportunity to provide[] documents prior to trial." Additionally, Judge Anklowitz observed that "[n]o reports or statements of any experts of township officials [were] provided." Moreover, he pointed to the fact Vasilyeva asked "to have the case dismissed" and stated "a new trial [was] unnecessary," yet presented "contradictory arguments," hoping to secure a new trial.

II.

On appeal, defendants argue the judge abused his discretion in denying their motions for: a transfer of the tenancy matter to the Civil Part; consolidation of the tenancy and Civil Part actions; the judge's recusal; an adjournment of the

summary dispossess trial; a new trial; and vacatur of the judgment of possession. We are not persuaded.

Preliminarily, we detail the standards that guide our analysis. Our review of a trial court's final determination in a non-jury case is limited. We will not disturb the judge's factual findings and legal conclusions unless convinced they are so unsupported by, or inconsistent with, "the competent, relevant and reasonably credible evidence as to offend the interests of justice." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (citations omitted); Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974).

A summary dispossess action is a creature of statute, designed as an expeditious alternative to an ejectment action under the common law. Hous. Auth. of Morristown v. Little, 135 N.J. 274, 280 (1994). "The only remedy that can be granted in a summary[]dispossess proceeding is possession; no money damages may be awarded." Ibid. (citations omitted). "[J]urisdiction to grant the remedy [of possession] requires a showing that one of the statutory grounds for eviction exists." Id. at 281 (citing Levine v. Seidel, 128 N.J. Super. 225, 229 (App. Div. 1974)).

The summary dispossess statute, N.J.S.A. 2A:18-61.1(e)(1), provides grounds for removal if:

> [t]he person has continued, after written notice to cease, to substantially violate or breach any of the covenants or agreements contained in the lease for the premises where a right of reentry is reserved to the landlord in the lease for a violation of such covenant or agreement, provided that such covenant or agreement is reasonable and was contained in the lease at the beginning of the lease term.

A trial court presiding over a summary dispossess action lacks general equitable jurisdiction. Benjoray, Inc. v. Acad. House Child Dev. Ctr., 437 N.J. Super. 481, 488 (App. Div. 2014) (citing WG Assocs. v. Est. of Roman, 332 N.J. Super. 555, 563 (App. Div. 2000)). "The equitable jurisdiction of the Special Civil Part in a summary dispossess action is limited to matters of defense or avoidance asserted by the tenant." Chau v. Cardillo, 250 N.J. Super. 378, 385 (App. Div. 1990).

When a trial court finds a statutory basis for eviction and compliance with notice requirements under the summary dispossess statute, the "judgment for possession is conclusive" if the tenant presents no countervailing defense. Carteret Props. v. Variety Donuts, Inc., 49 N.J. 116, 123-24 (1967) (citations omitted). The summary dispossess statute allows for eviction when the tenant "commit[s] any breach or violation of any of the covenants or agreements . . . contained in the lease." N.J.S.A. 2A:18-53(c)(4).

"N.J.S.A. 2A:18-51 to -61[] was designed to provide landlords with a

swift and simple method of obtaining possession." Benjoray, Inc., 437 N.J. Super. at 486 (citing Carr v. Johnson, 211 N.J. Super. 341, 347 (App. Div. 1986)). Still, either a landlord or tenant may seek to have a summary dispossession action transferred to the Civil Part, and the court may grant the transfer "if it deems it of sufficient importance." N.J.S.A. 2A:18-60.

In general, a motion to transfer a summary dispossess action to the Civil Part is granted when "the procedural limitations of a summary action . . . would significantly prejudice substantial interests either of the litigants or of the judicial system itself, and . . . those prejudicial effects would outweigh the prejudice that would result from any delay caused by the transfer." Twp. of Bloomfield v. Rosanna's Figure Salon, Inc., 253 N.J. Super. 551, 563 (App. Div. 1992). A trial court should consider the following factors in deciding a motion to transfer:

> [(1)] The complexity of the issues presented, where discovery or other pretrial procedures are necessary or appropriate;
>
> [(2)] The presence of multiple actions for possession arising out of the same transaction or series of transactions, such as where the dispossesses are based upon a concerted action by the tenants involved;
>
> [(3)] The appropriateness of class relief;
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> [(4)] The need for uniformity of result, such as where

> separate proceedings are simultaneously pending in both the Superior Court and the County District Court arising from the same transaction or set of facts, and
>
> [(5)] The necessity of joining additional parties or claims in order to reach a final result.
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> [Id. at 562-63 (citation omitted).]

We review a trial court's ruling on a motion to transfer for an abuse of discretion. See Master Auto Parts, Inc. v. M. & M. Shoes, Inc., 105 N.J. Super. 49, 53 (App. Div. 1969). 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 Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (citation omitted).

Based on our deferential review, we are convinced Judge Anklowitz did not mistakenly exercise his discretion in denying defendants' motion to transfer. Indeed, the record reflects the judge carefully considered the Bloomfield factors and found the summary dispossess action was not complex. Further, he concluded "[n]o class action was pled" and "[n]o other tenants [were] joined or named in the Civil Part case." The judge also determined defendants could "still pursue their claims in the Civil Part," regardless of the outcome of the summary dispossess trial. These findings are well supported in the record, considering the parties' summary dispossess action did not involve multiple parties and

simply called upon the judge to resolve straightforward issues such as whether defendants breached their lease by refusing plaintiff access to their unit and failed to relinquish possession of their unit after they were duly served with notices to cease and quit. Therefore, we are satisfied there is no basis to disturb the January 18 order denying defendants' motion to transfer.

Likewise, we find no merit to defendants' argument that the judge erred in denying their motion to consolidate the Special Civil Part and Civil Part actions. "A trial court's decision to grant or deny a party's motion to consolidate actions is discretionary." Moraes v. Wesler, 439 N.J. Super. 375, 378 (App. Div. 2015) (citations omitted).

Here, Judge Anklowitz accurately stated that when it comes to summary actions for possession of premises, Rule 6:3-4(a) "eschews joinder" and specifically provides, in part, "[s]ummary actions between [a] landlord and tenant for the recovery of premises shall not be joined with any other cause of action." Given the plain language of the Rule and its "evident purpose" to obtain a "prompt disposition" "in a landlord-tenant summary action for dispossess," Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 6:3-4 (2023), we discern no basis to conclude the judge erred in denying defendants' motion for consolidation.

Next, defendants argue the judge abused his discretion in denying their request for adjournment. Again, we disagree.

"[W]e review a trial court's denial of a request for an adjournment 'under an abuse of discretion standard.'" Escobar-Barrera v. Kissin, 464 N.J. Super. 224, 233 (App. Div. 2020) (quoting State ex rel. Comm'r of Transp. v. Shalom Money St., LLC, 432 N.J. Super. 1, 7 (App. Div. 2013)). "Thus, refusal to grant an adjournment will not lead to reversal 'unless an injustice has been done.'" Ibid. (quoting Nadel v. Bergamo, 160 N.J. Super. 213, 218 (App. Div. 1978)). Importantly, "[o]ur courts have broad discretion to reject a request for an adjournment that is ill founded or designed only to create delay, but they should liberally grant one that is based on an expansion of factual assertions that form the heart of the complaint for relief." J.D. v. M.D.F., 207 N.J. 458, 480 (2011).

Here, less than two weeks before the February 4 trial, defendants moved to adjourn it; Vasilyeva also repeatedly sought to postpone the trial after it began, based on defendants' pending motion for consolidation, their request for Judge Anklowitz's recusal, and Yakovleva's purported illness. As we have discussed, Judge Anklowitz disposed of the consolidation motion at the outset of the trial, found there was no basis for his recusal, and determined Vasilyeva's assertion that the trial should be adjourned due to Yakovleva's illness was "a

feint." Further, he found defendants improperly sought to delay the trial. Under these circumstances, we have no reason to conclude the judge mistakenly exercised his discretion in denying defendants' requests to adjourn the trial.

Defendants next argue Judge Anklowitz should have recused himself from this matter because he made "prejudicial statements" against them prior to trial. They specifically contend his "bias . . . was ro[o]ted in [an] opinion" resulting from their motion to transfer. Further, they argue the judge showed his bias against them by commenting on their indigent status. These contentions are belied by the record.

Generally, recusal motions are "entrusted to the sound discretion of the judge and are subject to review for abuse of discretion." State v. McCabe, 201 N.J. 34, 45 (2010). Under Rule 1:12-2, "[a]ny party, on motion made to the judge before trial or argument . . . may seek that judge's disqualification." The grounds for recusal are set forth in Rule 1:12-1. Pursuant to Rule 1:12-1(g), a judge can be disqualified "when there is . . . [a] reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so."

"[I]t is not necessary to prove actual prejudice on the part of the court[;]" rather, "the mere appearance of bias may require disqualification." State v.

Marshall, 148 N.J. 89, 279 (1997). "However, before the [judge] may be disqualified on the ground of an appearance of bias, the belief that the proceedings were unfair must be objectively reasonable." Ibid.

That a judge may have rendered decisions in a case adverse to the party seeking recusal—even a decision we have reversed on appeal—is insufficient grounds for recusal. Id. at 276; Hundred E. Credit Corp. v. Eric Schuster, 212 N.J. Super. 350, 358 (App. Div. 1986). A judge is not disqualified "because of having given an opinion . . . on any question in controversy in the pending action in the course of previous proceedings therein." R. 1:12-1.

Here, the record shows Judge Anklowitz carefully considered each issue raised by defendants and afforded them extensive argument on those issues before ruling on them, free of bias. We also find no merit to defendants' contention that the judge demonstrated prejudice against them by referring to their application for indigency in their Civil Part action. Indeed, the record reflects the judge impartially considered their financial constraints and need for affordable housing, as evidenced by his decision to grant defendants a hardship stay after the summary dispossess trial, and the reference in his January 18 written opinion to a "list of resources" defendants could access to prevent homelessness. In short, our review of the record confirms the judge properly

declined to recuse himself from this matter.

Next, defendants argue the judge erred in denying their request for a new trial. This argument fails.

Generally, a motion for a new trial is within the sound discretion of the trial court. Lindenmuth v. Holden, 296 N.J. Super. 42, 48 (App. Div. 1996) (citation omitted). A trial judge must grant a motion for a new trial if "it clearly and convincingly appears that there was a miscarriage of justice under the law." R. 4:49-1(a). We apply the same standard on appeal. R. 2:10-1.

"When a motion for a new trial is made under [Rule] 4:49-1 to produce additional evidence, such a motion should be granted when that evidence would probably alter the judgment and by due diligence could not have been discovered before the court announced its decision." Quick Chek Food Stores v. Twp. of Springfield, 83 N.J. 438, 445 (1980) (citation omitted) (emphasis added). "[T]he burden of showing diligence . . . is substantial." Id. at 446 (citation omitted).

Defendants argued during the February 11 hearing that they were entitled to a new trial because Vasilyeva "didn't hear [a] single word" of Durrant's testimony, due to Yakovleva's purported illness, and because Vasilyeva would provide the court with "new evidence" that was "coming in." But as already noted, Judge Anklowitz did not find Yakovleva's purported illness credible. He

also concluded Vasilyeva's argument that "she did not hear [Durrant's] testimony" made "no sense" because she also testified on February 11 that she "want[ed] to contradict everything [Durrant] said." Additionally, Judge Anklowitz determined Vasilyeva presented "contradictory arguments" when seeking a new trial because she also testified no new trial was needed and the case should be dismissed based on what she had presented.

Further, as we have mentioned, the judge saw no need for a new trial based on defendants' desire to present "newly discovered" evidence, considering "[t]he case ha[d] been going on for quite some time and there [was] sufficient opportunity to provide[] documents prior to trial and . . . [with] the [February 11] application." The judge also noted defendants' failure to subpoena witnesses for trial or secure "reports or statements [from] any experts or township officials" to support their request for a new trial. Under these circumstances, we cannot conclude the judge erred in denying defendants' request for a new trial.

Finally, defendants argue Judge Anklowitz abused his discretion in denying their motion to vacate the judgment for possession. Again, we disagree.

Relief under Rule 4:50-1,[3] except for relief from default judgments, 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. (citations omitted). 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, 135 N.J. at 283.

Rule 4:50-1 "is designed to reconcile the strong interests in finality of

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[3] Rule 4:50-1 allows a trial court to relieve a party from a final judgment or order for the following specified reasons:

> (a) mistake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under R[ule] 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; (e) the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120-21 (1977) (citations omitted). The movant bears the burden of demonstrating entitlement to relief. Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425-26 (App. Div. 2003).

Guided by these principles and for the reasons Judge Anklowitz articulated in his February 11 opinion, we are satisfied he properly denied defendants' Rule 4:50-1 motion after concluding they failed to provide "any new evidence or defense" warranting vacatur.

Defendants' remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.