SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3164-21

WILLIAM ZENGEL,

Plaintiff-Appellant,

v.

COUNTY OF MIDDLESEX,

Defendant-Respondent.

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Argued March 28, 2023 – Decided April 10, 2023

Before Judges Geiger and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-0629-20.

Randi S. Greenberg argued the cause for appellant (Shamy and Shamy, LLC, attorneys; George J. Shamy, Jr., of counsel and on the brief; Randi S. Greenberg, on the brief).

Clark W. Convery argued the cause for respondent (Convery, Convery & Shihar, PC, attorneys; Clark W. Convery, of counsel and on the brief).

PER CURIAM

In this slip and fall personal injury case, plaintiff William Zengel appeals from orders: (1) granting defendant County of Middlesex summary judgment dismissing plaintiff's complaint with prejudice; (2) denying plaintiff's cross-motion to extend discovery; and (3) denying reconsideration. We affirm.

I.

We take the following facts from the record. With respect to the summary judgment motion, we view the facts in a light most favorable to the non-moving plaintiff, and afford plaintiff all reasonable inferences therefrom. See Richter v. Oakland Bd. of Educ., 246 N.J. 507, 515 (2021).

Plaintiff was an inmate at the Middlesex County jail when the accident occurred. On February 5, 2018, he slipped and fell on a bar of soap discarded by another inmate while taking a shower. Plaintiff suffered a fractured ankle and underwent open reduction orthopedic surgery.

On January 27, 2020, plaintiff filed a complaint against the County.[1] Paragraph three of the complaint alleged:

> Defendant[] County of Middlesex, negligently and carelessly failed to maintain said premises in a reasonably safe condition for use by the [p]laintiff[], in that it permitted . . . a dangerous and hazardous

[1] This personal injury action was designated a Track II case, with 300 days of discovery. See R. 4:24-1(a); R. 4:5A-1; Pressler & Verniero, Current N.J. Court Rules, Appendix XII-B1 to R. 4:5A-1, www.gannlaw.com (2023).

> condition to exist in the shower and/or negligently and carelessly failed to enforce its own rules and regulations by allowing inmates to discard their unused soap on the shower floor instead of returning the unused soap for proper disposal.

During oral argument before this court, plaintiff's counsel indicated that plaintiff's initial theory of the case was that the dangerous condition was created by a defect in the shower. However, paragraph three of the complaint shows that counsel was already aware that the dangerous condition was caused by discarded soap, not a defect in the shower, when the case was commenced.

Plaintiff's counsel nevertheless claimed he recognized that the dangerous condition was not caused by a defect in the shower after deposing several correctional employees in January 2022. He then focused on the jail's revised policy of providing inmates with smaller "hotel bar" sized soap, rather than ordinary sized bars, and instruction to inmates to discard the smaller bars when they completed their showers.

Plaintiff claims that when inmates improperly discarded the smaller bars of soap, the shower room floor became slippery, causing a dangerous condition that was not ameliorated by inspections and shower cleanings. Plaintiff alleges the dangerous condition proximately caused his slip and fall, and the County's

inspection and cleaning policy was palpably unreasonable. The County filed an answer on March 31, 2020.

Discovery ensued. The initial discovery end date (DED) was January 25, 2021. It was first extended to March 26, 2021. A subsequent consent order extended discovery to August 26, 2021.[2] A second consent order extended discovery to November 30, 2021.[3]

On November 3, 2021, plaintiff filed a motion to further extend discovery because the deposition of defendant's expert was scheduled for December 15, 2021, and plaintiff's "liability expert" still needed to inspect the area of the fall.[4] Plaintiff asserted that defendant had "failed to provide" previously requested medical records. Shortly thereafter, defendant satisfied plaintiff's prior discovery requests.

On November 15, 2021, defense counsel wrote to plaintiff's counsel requesting the name of plaintiff's liability expert. He received no response.

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[2] The order scheduled the arbitration for September 9, 2021, and the trial for November 8, 2021.

[3] The order rescheduled the arbitration for December 14, 2021, and the trial for February 14, 2022.

[4] While the supporting certification referred to plaintiff's "liability consultant" as "[p]laintiff's liability expert," counsel acknowledges that the consultant was never named as an expert in plaintiff's answers to interrogatories.

On November 19, 2021, the trial court granted a 120-day discovery extension, required plaintiff to serve expert reports by January 15, 2022, required defendant to serve expert reports by February 15, 2022, and required that all expert depositions be completed by March 15, 2022. Accordingly, the new DED was March 30, 2022. The order also rescheduled the arbitration to March 29, 2022, and the trial date to May 23, 2022, and stated: "No further adjournments absent unforeseen exceptional circumstances. This matter will have had 730 days of discovery."

On January 18, 2022, plaintiff deposed three jail maintenance employees. Plaintiff states "[t]his additional discovery made it clear that there was nothing physically wrong with the shower stall." The maintenance personnel testified the floor was a "one piece shower installment" made of "concrete." They stated the floor was "slip proof," that there were "no cracks in it," and that they "never had to maintain" it. The only work done to the area consisted of hanging shower curtains, installing shower heads and valves, and unclogging drains of accumulated hair.

The maintenance personnel also testified they did not clean the shower area, and instead, inmate trustees were responsible for doing so. When deposed, correction officers also testified that inmate trustees were responsible for

cleaning the showers, but added that correction officers supervised this work. The correction officers stated that the "general cleaning minimum" was for the showers to be cleaned "at least once a day." They added that the showers could be cleaned more than once a day if the officers or inmate trustees felt it was necessary, or if the inmates complained about conditions.

Plaintiff engaged an engineer who was going to opine as to any defects in the shower. Plaintiff's counsel also engaged a "liability consultant," who was going to render a report as to any deficiencies in the method of operation on the shower, but never named the consultant as a liability expert or served a liability expert report. Ultimately, in February 2022, the liability consultant unexpectedly withdrew from the case. Thereafter, counsel attempted to locate a correctional operations liability expert, but never retained or named a liability expert.

On March 15, 2022, defendant filed a motion for summary judgment, contending plaintiff could not prove liability, because without a liability expert, plaintiff was unable to prove that a dangerous condition existed and that the County's policies or operations were palpably unreasonable, which were required elements to establish liability under the New Jersey Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3. Plaintiff does not dispute that a liability expert

is necessary to prove his case. The motion was returnable on April 14, 2022. Defendant also moved to bar the late serving of plaintiff's liability expert's report.

On March 16, 2022, plaintiff filed a cross-motion for a further discovery extension to retain a liability expert and serve an expert report, and argued that summary judgment was inappropriate before the completion of necessary discovery. The motion was nominally returnable on April 1, 2022, two days after the DED. Plaintiff's counsel's supporting certification stated:

> A corrections facility operations expert was initially retained by me and has been a consultant for me in this case. I was intending to have him serve as an expert witness. However, approximately thirty [] days ago he advised me that he was withdrawing from his participation in this case.
>
> I have since been frantically searching for an appropriate expert with the proper qualifications. I now have a good lead but cannot represent to the [c]ourt, at this time, that a new expert is on board. I expect that I will retain an expert in the very near future.
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> Plaintiff requires additional time for [his] liability expert report.
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> Thereafter, expert witness depositions remain to be conducted.
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> It is [p]laintiff's position that these are exceptional circumstances which warrant an extension of the discovery end date.

The trial court considered the cross-motion as plaintiff's opposition to summary judgment.

The trial court heard oral argument on the cross-motions on April 14, 2022. By that point, plaintiff had still not retained or named a liability expert. During oral argument, plaintiff's counsel explained his theory of liability, and how it affected the discovery process. Counsel stated that he originally retained: (1) an engineering expert because he believed the floor conditions or shower layout might have been dangerous; and (2) an operational consultant because he believed the shower procedures might have been dangerous. However, counsel eventually found that nothing was wrong with the "condition" of the shower itself, and that instead, the "jailhouse procedures" were dangerous. Counsel explained:

> [T]here was a time when the inmates were given a standard size bar of soap to use and [] each inmate would maintain that soap as they would maintain their toothbrush. At some point in time, a decision was made to provide them with these hotel size bars of soap which are about a quarter of an inch thick and maybe two by four inches[,] which were meant to be used as one-time use soap. The inmates were told to use the soap and discard the soap . . . in [the] garbage. What happens as a practical matter is that the inmates use the soap and discard that soap on the[] basin of the shower stall.
>
> . . . .

> [Plaintiff] is in the shower one day. . . . [H]e's taking a shower. There's . . . soap that is caked from residual soap from one of these hotel bars and he slips and he suffers a very significant fracture of his ankle.

Based on these facts, counsel "abandoned" the engineering expert, and intended to rely on a correctional procedures and operational consultant. With this backdrop, counsel explained why discovery needed to be extended:

> [Discovery] was initially delayed for some time because of [] COVID, and then [there was] at least six depositions taken . . . with regard to the maintenance of the shower, when that maintenance [was] done, and the like.
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> During the course of this . . . I had a consultant, if you will, with regard to jailhouse procedures.
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> . . . .
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> A short time ago . . . the consultant bailed out on me. Apparently, he's concerned [about] a conflict . . . .

Plaintiff's counsel acknowledged that "without an expert" defendant was "entitled to summary judgment." He recognized that "proper jailhouse operations" were not known by "the average layperson," and an expert was needed to explain why "the type of soap and the instructions to the inmates" created a "dangerous condition." The court asked plaintiff whether the consultant was "ever identified as an expert," and plaintiff responded, "no." However, counsel stated "the consultant was intended to be the expert . . . when

[] discovery was completed," but that the case "hadn't gotten to that point." The court then asked plaintiff's counsel whether he had a new expert, and plaintiff responded, "I do not have that but I have a strong lead." Plaintiff argued that extending discovery would not result in prejudice to defendant because defendant had not lost any witnesses.

The trial court noted the case was filed in early 2020, there were four prior discovery extensions, plaintiff had not named the liability consultant as an expert, and the trial was scheduled for May 23, 2022. The court rejected plaintiff's arguments, reasoning:

> [N.J.S.A.] 59:4-2 lays out the concept that the plaintiff must prove a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment that created the dangerous condition. Now, I don't see any evidence that anybody who worked for the jail was throwing bars of soap in the showers to create a dangerous condition – and before I proceed, a shower is by definition . . . going to be wet. There could be soap. There could be shampoo. . . . [P]eople have to be on guard about slipping because it's going to be wet; that's what it's going to be.
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> To the extent that any soap or anything like that created this condition, I've seen the procedures for cleaning the shower stalls. The idea that someone should have been in there every time, I don't think that's a reasonable requirement, and that's why [] there's no evidence of actual notice . . . [and] no evidence of constructive notice.

> So I think even before we get to the expert issue, I don't think plaintiff has satisfied the requirements for proceeding against [defendant]. So I think I have to grant summary judgment . . . [on] that basis alone . . . .
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> That moots the whole issue with the expert but . . . I'm going to put something on the record anyway.
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> Now, with regard to the [discovery] extension, I understand that I've granted extensions where [a party] had an expert suddenly back[] out at the last minute. . . . I think that could satisfy exceptional circumstances sometimes. Here, though, we had a consulting expert. It's understood th[at] consultants [are] not trial experts. Maybe he was going to become the trial expert at the end but the simple fact is there was no identified trial expert. Discovery came and went. There was no motion. . . . [A]nd I'll tell you gentlemen . . . the COVID-19 world where [we were] very lenient on extending trial dates, that's coming to an end.
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> [T]his is a personal injury case. . . . I would say it's more likely than not you would have been going to trial on May 23rd. This case had four discovery extensions. . . . So, when you factor that in with there being no expert, [plaintiff's counsel] is very candid with me saying he doesn't even have an expert yet and he may have a strong lead on one but that's still not an expert and we're here on April 14th with a May 23rd trial date.
>
> So I would [have] denied the motion to extend and granted the motion to bar as well.

The court entered orders: (1) denying a discovery extension; (2) granting summary judgment dismissing the complaint with prejudice; and (3) denying defendant's motion to bar plaintiff's liability expert report as moot.

On May 3, 2022, plaintiff filed a motion for reconsideration. The court heard oral argument on May 27, 2022. When asked by the court whether plaintiff had a liability expert, plaintiff's counsel stated:

> I can't tell you I have a confirmed expert. I have a good lead, as I said before, and frankly, Your Honor, it'll cost my money at this point to have gotten that report, and [given] the status of this case I don't think that would be appropriate for me to do. So, frankly, I'm no further along with that than I was before because again the case was dismissed.

The court issued an order and oral decision denying reconsideration. The court noted it "will grant extensions" when counsel presents an expert report, but plaintiff did not do that. The court also remarked that plaintiff could not meet the palpably unreasonable standard even if he had a liability expert. This appeal followed.

II.

Plaintiff raises the following points for our consideration:

> I. PLAINTIFF'S MOTION TO EXTEND DISCOVERY SHOULD HAVE BEEN DECIDED UNDER THE "GOOD CAUSE" STANDARD, RATHER THAN "EXCEPTIONAL CIRCUMSTANCES." ASSUMING ARGUENDO THAT THE "EXCEPTIONAL CIRCUMSTANCES" STANDARD APPLIED, THE UNANTICIPATED WITHDRAWAL OF PLAINTIFF'S LIABILITY EXPERT IN FEBRUARY 2022 WARRANTED THE

REOPENING AND EXTENSION OF DISCOVERY IN THIS CASE.

II. ASSUMING ARGUENDO THAT PLAINTIFF'S COUNSEL ERRED IN FAILING TO NAME HIS LIABILITY CONSULTANT AS AN EXPERT AND/OR IN FAILING TO FILE THE MOTION TO EXTEND DISCOVERY AS SOON AS HE LEARNED THAT HIS CONSULTANT WAS UNWILLING TO TESTIFY, IT WAS AN ABUSE OF DISCRETION FOR THE TRIAL COURT TO HAVE DENIED PLAINTIFF HIS DAY IN COURT DUE TO THE CONDUCT OF COUNSEL.

A.

We first address the denial of plaintiff's motion to extend discovery. "In reviewing trial court decisions related to matters of discovery, we apply an abuse of discretion standard." Conn v. Rebustillo, 445 N.J. Super. 349, 352 (App. Div. 2016). "That is, '[w]e generally defer to a trial court's disposition of discovery matters unless the court has abused its discretion[,] or its determination is based on a mistaken understanding of the applicable law.'" Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371 (2011) (alteration in original) (quoting Rivers v. LSC P'ship, 378 N.J. Super. 68, 80 (App. Div. 2005)). This deferential standard applies to discovery extensions. Ibid. "However, 'we review legal determinations based on an interpretation of our court rules de novo.'"

Hollywood Café Diner, Inc. v. Jaffee, 473 N.J. Super. 210, 216-17 (App. Div. 2022) (quoting Occhifinto v. Olivo Constr. Co., 221 N.J. 443, 453 (2015)).[5]

Pursuant to Rule 4:24-1(c), parties may consent to a sixty-day discovery extension "prior to the expiration of the discovery period." Id. at 217 (quoting R. 4:24-1(c)). However, "[i]f the parties do not agree or a longer extension is sought, a motion for relief shall be filed . . . and made returnable prior to the conclusion of the applicable discovery period." R. 4:24-1(c). "The 'good cause' standard applies to motions to extend discovery unless an arbitration or trial date is fixed." Tynes v. St. Peter's Univ. Med. Ctr., 408 N.J. Super. 159, 168 (App. Div. 2009) (quoting Leitner v. Toms River Reg'l Schs., 392 N.J. Super. 80, 91-92 (App. Div. 2007)). "[T]he 'exceptional circumstances' standard [] applies when the court has fixed an arbitration or trial date." Id. at 169; accord R. 4:24-1(c) ("No extension of the discovery period may be permitted after an arbitration or trial date is fixed, unless exceptional circumstances are shown."). However, "when [a] court chooses to send out arbitration and trial notices during the discovery period, judges evaluating a timely motion to extend discovery may not utilize the 'exceptional circumstances' standard, but rather the judge 'shall

[5] We recognize that the opinion in Hollywood Café Diner was issued after the motions to extend discovery and for reconsideration in this case were decided.

enter an order extending discovery' upon a showing of 'good cause.'" Hollywood, 473 N.J. Super. at 220 (quoting R. 4:24-1(c)).

The trial court applied the exceptional circumstances test, rather than the good cause standard, and denied the motion to extend discovery. We discern no abuse of discretion.

Plaintiff's motion to extend discovery was filed before the DED, but was but made returnable after the DED. Accordingly, it was untimely. See R. 4:24-1(c) (to be timely, a motion to extend discovery must be "filed . . . and made returnable prior to the conclusion of the applicable discovery period").

In Hollywood, we addressed the confusion caused when an order that sets a new DED also sets an arbitration of trial date, as occurred here. 473 N.J. Super. at 219. There, a discovery extension motion was filed in a timely manner as permitted by Rule 4:24-1(c). We held that "when the court chooses to send out arbitration and trial notices during the discovery period, judges evaluating a timely motion to extend discovery may not utilize the 'exceptional circumstances' standard, but rather the judge 'shall enter an order extending discovery' upon a showing of 'good cause.'" Id. at 220 (emphasis added) (quoting R. 4:24-1(c)).

Here, in contrast, plaintiff's motion was untimely as it was returnable after the DED. Therefore, although the order that set the DED also scheduled the arbitration for March 29, 2022, and the trial for May 23, 2022, the exceptional circumstances standard applies. Under that standard, the movant must demonstrate:

> (1) why discovery has not been completed within time and counsel's diligence in pursuing discovery during that time; (2) the additional discovery or disclosure sought is essential; (3) an explanation for counsel's failure to request an extension of the time for discovery within the original time period; and (4) the circumstances presented were clearly beyond the control of the attorney and litigant seeking the extension of time.
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> [Rivers, 378 N.J. Super. at 79 (citing Vitti v. Brown, 359 N.J. Super. 40, 51 (Law Div. 2003)).]

The record fully supports the trial court's finding that plaintiff did not establish exceptional circumstances warranting a discovery extension. Plaintiff clearly did not meet the first, third, and fourth prongs of the standard. Consequently, we discern no abuse of discretion.

We further find that plaintiff's motion still fails under the less rigorous good cause standard. We have identified the following non-exhaustive list of factors courts may consider in determining whether good cause to extend discovery exists:

> (1) the movant's reasons for the requested extension of discovery;
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> (2) the movant's diligence in earlier pursuing discovery;
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> (3) the type and nature of the case, including any unique factual issues which may give rise to discovery problems;
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> (4) any prejudice which would inure to the individual movant if an extension is denied;
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> (5) whether granting the application would be consistent with the goals and aims of "Best Practices";
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> (6) the age of the case and whether an arbitration date or trial date has been established;
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> (7) the type and extent of discovery that remains to be completed;
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> (8) any prejudice which may inure to the non-moving party if an extension is granted; and
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> (9) what motions have been heard and decided by the court to date.
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> [Bldg. Materials Corp. of Am. v. Allstate Ins. Co., 424 N.J. Super. 448, 480 (App. Div. 2012) (quoting Tynes, 408 N.J. Super. at 169-70).]

Applying these factors, the record shows that plaintiff did not establish good cause for a discovery extension.

Our court rules have specific requirements for parties to designate expert witnesses during discovery. Rule 4:17-4(e) requires parties to provide opposing

parties with the names, qualifications, and expert reports if requested by interrogatory. Plaintiff did not name a liability expert or provide a liability expert report despite being requested to do so by interrogatory. In turn, Rule 4:17-7 requires amendments to answers to interrogatories to

> be served not later than [twenty] days prior to the end of the discovery period, as fixed by the track assignment or subsequent order. Amendments may be allowed thereafter only if the party seeking to amend certifies therein that the information requiring the amendment was not reasonably available or discoverable by the exercise of due diligence prior to the discovery end date. In the absence of said certification, the late amendment shall be disregarded by the court and adverse parties.

"The obvious purpose of these disclosure requirements for anticipated experts is to promote fair advocacy and to discourage gamesmanship or unfair surprise at trial." Rice v. Miller, 455 N.J. Super. 90, 105 (App. Div. 2018). Plaintiff did not amend his answers to interrogatories by naming a liability expert or providing an expert report.

Despite four prior discovery extensions, some 850 days of discovery, and months to name a liability expert after learning that there was no cause of action based on a defect in the shower, plaintiff had still not named a liability expert or served a liability expert report. When pressed on the reason why, plaintiff only offered that he had difficulty finding an expert but had a lead on one.

Plaintiff's reasons for seeking the discovery extension are not persuasive. The failure to name a liability expert despite the passage of 850 days of discovery in a simple slip and fall case bespeaks a lack of diligence and the absence of good cause. See Tynes, 408 N.J. Super. at 176 (finding the plaintiffs "failed to establish 'good cause'" "for a further discovery extension," noting the plaintiffs "failed to produce expert reports to support their claims" despite "numerous discovery extensions"). Indeed, the failure to name a liability expert continued during the subsequent six-weeks that elapsed before plaintiff's motion for reconsideration was heard. This case does not involve unique factual issues giving rise to discovery problems. Granting the application would not have been consistent with the goals and aims of "Best Practices."

In sum, plaintiff did not demonstrate exceptional circumstances or good cause to further extend discovery. Accordingly, we affirm the denial of plaintiff's motion to extend discovery.

B.

We next address the summary judgment dismissal of plaintiff's complaint in light of our ruling that denial of a further discovery extension was appropriate. Because plaintiff sought the discovery extension to retain a liability expert, and the summary judgment dismissal was based on the lack of a liability expert

report, the denial of further discovery directly impacted plaintiff's opposition to summary judgment in favor of defendant.

We review a grant of summary judgment "de novo and apply the same standard as the trial court." Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021). Summary judgment will be granted when "the competent evidential materials submitted by the parties," viewed in the light most favorable to the non-moving party, show there are no "genuine issues of material fact," and that "the moving party is entitled to summary judgment as a matter of law." Grande v. Saint Clare's Health Sys., 230 N.J. 1, 23-24 (2017) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)). We must give the non-moving party "the benefit of the most favorable evidence and most favorable inferences drawn from that evidence." Est. of Narleski v. Gomes, 244 N.J. 199, 205 (2020) (quoting Gormley v. Wood-El, 218 N.J. 72, 86 (2014)). We owe no special deference to the motion judge's legal analysis. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018).

"Generally, summary judgment is inappropriate prior to the completion of discovery." Wellington v. Est. of Wellington, 359 N.J. Super. 484, 496 (App. Div. 2003) (citing Velantzas v. Colgate–Palmolive Co., 109 N.J. 189, 193 (1988)). "When 'critical facts are peculiarly within the moving party's

knowledge,' it is especially inappropriate to grant summary judgment when discovery is incomplete." Velantzas, 109 N.J. at 193 (quoting Martin v. Educ. Testing Serv., Inc., 179 N.J. Super. 317, 326 (Ch. Div. 1981)). "Where discovery on material issues is not complete the respondent must, therefore, be given the opportunity to take discovery before disposition of the motion." Pressler & Verniero, cmt. 2.3.3 on R. 4:46-2. For example, a motion for summary judgment should be adjourned to allow the non-moving party an opportunity for discovery as to facts first disclosed in a recent deposition. Lenches-Marrero v. L. Firm of Averna & Gardner, 326 N.J. Super. 382, 387-88 (App. Div. 1999).

Here, the material facts were not within only defendant's knowledge. Nor was the additional discovery needed because of facts first disclosed in a recent deposition. On the contrary, discovery depositions completed in January 2022 revealed that neither the shower nor the shower room floor was defective. Plaintiff acknowledged he could not prevail without a liability expert.

Plaintiff counsel claims he learned there was no basis to recover due to a defect in the shower room after completing fact witness depositions in January 2022. While plaintiff's counsel claims he shifted his focus to jail operations at that point, this was not a new theory. Paragraph three of the complaint alleged

defendant "negligently and carelessly failed to enforce its own rules and regulations by allowing inmates to discard their unused soap on the shower floor instead of returning the unused soap for proper disposal."

The subsequent motion chronology is also telling. Defendant filed its motion for summary judgment on March 15, 2022. The motion was argued and granted on April 14, 2022, almost three months after learning there was no defect in the shower. Plaintiff had still not named any liability expert, much less a correctional operations liability expert, and did not have a favorable liability expert report. On that basis, summary judgment dismissing plaintiff's complaint was appropriate. See Tynes, 408 N.J. Super. at 176 (explaining that "because plaintiffs[] failed to produce expert reports to support their claims, the court correctly found that defendants were entitled to summary judgment"). Indeed, during oral argument before this court, plaintiff's counsel acknowledged that plaintiff still does not have a liability expert.

C.

Lastly, we address the denial of plaintiff's motion for reconsideration. Rule 4:49-2 governs reconsideration motions. Reconsideration is appropriate where (1) the court based its decision on "a palpably incorrect or irrational basis," (2) the court "did not consider, or failed to appreciate the significance of

probative, competent evidence," or (3) the moving party is presenting "new or additional information . . . which it could not have provided on the first application." Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). "Reconsideration cannot be used to expand the record and reargue a motion," and "[a] litigant should not seek reconsideration merely because of dissatisfaction with a decision of the [c]ourt." Cap. Fin. Co. of Del. Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008) (second alteration in original) (quoting D'Atria, 242 N.J. Super. at 401).

"We review the trial court's denial of plaintiff's motion for reconsideration for abuse of discretion." Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (citing Kornbleuth v. Westover, 241 N.J. 289, 301 (2020)). "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.'" Kornbleuth, 241 N.J at 302 (quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015)).

The motion for reconsideration was heard and denied on May 27, 2022, some eleven weeks after the summary judgment motion was filed and six weeks after summary judgment was granted. Despite that additional time, plaintiff still

had no liability expert or an expert report. As we have explained, plaintiff did not demonstrate exceptional circumstances or good cause for a further discovery extension. Without a favorable liability expert report, plaintiff acknowledges he cannot prevail on his negligence claim. The denial of reconsideration was not an abuse of discretion.

Affirmed.