SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3576-21

DORIS BOHORQUEZ,

Plaintiff-Appellant,

v.

MARIA LUISA PIRAQUIVE DE MORENO and IGLESIA DE DIOS MINISTERIAL DE JESUCRISTO INTERNACIONAL, INC.,

Defendants-Respondents.

Submitted September 19, 2023 – Decided October 20, 2023

Before Judges Smith and Perez Friscia.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-0592-22.

The Law Office of Rajeh A. Saadeh, LLC, attorneys for appellant (Rachel L. Baxter, on the briefs).

Pinilis Halpern, LLP, attorneys for respondents (William J. Pinilis, on the brief).

PER CURIAM

Plaintiff Doris Bohorquez appeals the trial court's order dismissing her complaint with prejudice for failure to state a claim and enjoining her from filing further lawsuits against defendants Iglesia De Dios Ministerial De Jesucristo Internacional, Inc., and Maria Luisa Piraquive de Moreno on certain matters. The trial court relied in part on the entire controversy doctrine and the doctrine of res judicata to reach its conclusion. We affirm dismissal of the complaint on other grounds and reverse the portion of the trial court's order enjoining plaintiff from filing new claims, for the reasons that follow.

I.

Piraquive de Moreno is a founder and leader of Iglesia de Dios Ministerial de Jesucristo Internacional Inc., (IDMJI) a religious and political organization originally registered in the country of Colombia. IDMJI maintains six church branches in New Jersey. Plaintiff is a dual citizen of Colombia and the United States who has resided in the United States for the past 40 years. She was a member of IDMJI from 2000 to 2014. In 2014, plaintiff stopped attending the church and ceased further association with IDMJI after learning of allegations involving the church and possible money laundering schemes in Colombia. During this time, plaintiff became a witness for the Bogota, Colombia

prosecutor in an ongoing investigation into alleged money laundering crimes involving both defendants, among others.

Since 2015, plaintiff and defendants litigated extensively against each other in state and federal court in New Jersey, as well as in Colombia. During this ongoing legal conflict, plaintiff learned that a criminal investigation had been opened against plaintiff in Colombia based on claims made by defendants. After Colombian authorities apparently dropped the charges in September of 2019, plaintiff filed a complaint against IDMJI, Piraquive, and seven other defendants in the Law Division in August of 2020 setting forth claims for malicious prosecution, tort, defamation, intimidation, terroristic threats, conspiracy, emotional stress, and harassment. Defendants moved to dismiss, and Judge James F. Hyland granted the motion, dismissing the complaint with prejudice. The judge's order directed that "Plaintiff is enjoined from filing further lawsuits against [Defendants] . . . related to the within subject matter."

After dismissal of her complaint, in October 2021, plaintiff was again notified by Colombian prosecutors in Bogota that defendants had made new accusations, and that new charges were being brought against her. Plaintiff then filed the present action against defendants, alleging malicious prosecution, intentional infliction of emotional distress, intentional or malicious harm,

negligent misrepresentation, bias, and invasion of privacy. Defendants moved to dismiss the complaint pursuant to Rule 4:6-2(e). The trial court granted dismissal on June 8, 2022 and provided an oral statement of reasons that relied primarily on Judge Hyland's prior orders, including the December 8, 2020, order. Those orders enjoined plaintiff from filing further lawsuits against defendants. The trial court stated:

> Judge Hyland's prior [o]rders have concluded that, quote, "any claims relating to conduct by the Colombian government must be brought against the Colombian government and not these defendants, and this Court knows that any such action by the plaintiff in this regard would be brought before the Colombia Courts, not before this Court."

On appeal, plaintiff contends that the trial court erroneously dismissed claims which "arose from one or both [d]efendants' conduct occurring after final disposition of the prior litigation," and erred by enjoining plaintiff from filing further lawsuits related to the matters pleaded.

II.

Motions to dismiss for failure to state a claim upon which relief can be granted under Rule 4:6-2(e) are reviewed 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 a 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).

Dismissals for failure to state a claim "are ordinarily without prejudice. Yet, a dismissal with prejudice is 'mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted,' or if 'discovery will not give rise to such a claim.'" Mac Prop. Grp. LLC & The Cake Boutique LLC v. Selective Fire & Cas. Ins. Co., 473 N.J. Super. 1, 17 (App. Div. 2022), cert. denied sub nom. MAC Prop. Grp. LLC v. Selective Fire & Cas. Ins. Co., 252 N.J. 258 (2022), and cert. denied sub nom. MAC Prop. Grp. LLC v. Selective Fire & Cas. Ins. Co., 252 N.J. 261 (2022) (quoting Rieder v. State,

221 N.J. Super. 547, 552 (App. Div. 1987)) (citing Dimitrakopoulos, 237 N.J. at 107).

The equitable doctrine of forum non conveniens, "is firmly embedded in the common law of this State." Kurzke v. Nissan Motor Corp. in U.S.A., 164 N.J. 159, 164 (2000) (quoting Civic S. Factors Corp. v. Bonat, 65 N.J. 329, 332 (1974)). "It empowers a court to decline to exercise jurisdiction when a trial in another available jurisdiction 'will best serve the convenience of the parties and the ends of justice.'" Yousef v. Gen. Dynamics Corp., 205 N.J. 543, 557 (2011) (quoting Gore v. U.S. Steel Corp., 15 N.J. 301, 305 (1954)). Although "there is a strong presumption in favor of retaining" the jurisdiction of the plaintiff's choice, such a choice is "not dispositive." Ibid. (quoting Kurzke, 164 N.J. at 171; Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255 (1981)). Ultimately, "whenever the ends of justice indicate a trial in the forum selected by the plaintiff would be inappropriate," a court may decline jurisdiction. Kurzke, 164 N.J. at 164-65 (quoting D'Agostino v. Johnson & Johnson, Inc., 225 N.J. Super. 250, 259 (App. Div. 1988)).

The first step in a forum non conveniens inquiry is to determine whether there is an adequate alternative forum to adjudicate the dispute. Varo v. Owens-Illinois, Inc., 400 N.J. Super. 508, 519 (App. Div. 2008). If an adequate forum

exists, courts then weigh the public and private interest factors set forth in Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-09 (1947), to determine whether the plaintiff's choice of forum is appropriate. Kurzke, 164 N.J. at 165-66. The private-interest factors include: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process for attendance of unwilling witnesses and the cost of obtaining the attendance of willing witnesses; (3) whether a view of the premises is appropriate to the action; and (4) all other practical problems that make trial of a case "easy, expeditious and inexpensive," including the enforceability of the ultimate judgment. Yousef, 205 N.J. at 558 (quoting Gulf Oil, 330 U.S. at 508). The public-interest factors include: (1) consideration of trial delays; (2) whether jurors should be compelled to hear a case that has no or little relationship to their community; (3) the benefit of "having localized controversies decided at home"; and (4) whether the law governing the case will be the law of the forum. Ibid. (quoting Gulf Oil, 330 U.S. at 508-09)).

In general, a defendant bears the heavy "burden of persuasion on all elements of the analysis," Varo, 400 N.J. Super. at 519, and the trial court's decision "may be reversed only when there has been a clear abuse of discretion," Piper, 454 U.S. at 257 (1981).

III.

As we consider the record in light of plaintiff's unique claims, we conclude dismissal on the grounds of forum non conveniens is warranted. We first note the elements of a malicious prosecution claim and in turn conduct a forum non conveniens analysis based on the undisputed facts in the record.

The civil tort of malicious prosecution arises when a person "recklessly institutes criminal proceedings without any reasonable basis." Lind v. Schmid, 67 N.J. 255, 262 (1975). The essence of the tort of malicious prosecution is the misuse of legal machinery for an improper purpose. 52 Am. Jur. 2d Malicious Prosecution § 1. In New Jersey, the elements of a claim for malicious prosecution are well defined. A party must establish: "(1) a criminal action was instituted by [the] defendant against [the] plaintiff; (2) the action was motivated by malice; (3) there was an absence of probable cause to prosecute; and (4) the action was terminated favorably to the plaintiff." LoBiondo v. Schwartz, 199 N.J. 62, 90 (2009) (citing Lind, 67 N.J. at 262).

"The essence of the cause of action is lack of probable cause, and the burden of proof rests on the plaintiff. The plaintiff must establish a negative, namely, that probable cause did not exist." Lind, 67 N.J. at 262-63. Significantly, malicious prosecution "is not a favored cause of action because of

the policy that people should not be inhibited in instituting prosecution of those reasonably suspected of a crime," or in seeking redress in the courts. Id. at 262. "On the other hand, one who recklessly institutes criminal proceedings without any reasonable basis should be responsible for such irresponsible action." Ibid.

In its oral statement of reasons supporting the dismissal order, the trial court recognized that the Colombian courts are the proper alternative forum to adjudicate the dispute, but it did not complete a forum non conveniens analysis. We now finish the analysis and consider the Gulf Oil private interest factors to determine whether New Jersey is a "demonstrably inappropriate" forum.

When we do so, we find plaintiff's malicious prosecution claim implicates Colombian law to a much greater extent than New Jersey or federal law. Plaintiff holds citizenship in both America and Colombia and has lived in the United States for forty years. Piraquive de Moreno resides in Florida and is the founder and general supervisor of IDMJI, who is also a named defendant. IDMJI is registered as a non-profit corporation in Florida as well as in Colombia. Plaintiff has been a witness in the past for Colombian law enforcement authorities in Bogota regarding an investigation of both defendants on alleged money laundering charges. However, the record is unclear as to whether that investigation remains active.

All parties in this lawsuit have ties to both the United States and Colombia. However, plaintiff's malicious prosecution claim is based on charges grounded in Colombian law and brought by Colombian authorities. If this matter were to proceed in New Jersey, securing live witness testimony would be difficult. In turn, potential out-of-country witness unavailability makes litigating the veracity of defendant's criminal accusations in Colombia extremely challenging.

New Jersey choice of law rules apply when determining whether New Jersey law or another state's law will govern. In re Accutane Litig., 235 N.J. 229, 254 (2018); McCarrell v. Hoffmann-La Roche, Inc., 227 N.J. 569 at 583 (2017). The Restatement (Second) of Conflict of Laws provides that, "[t]he rights and liabilities of the parties for malicious prosecution or abuse of process are determined by the local law of the state where the proceeding complained of occurred." § 155 (1971) (Am. Law Inst. 1971). The comments further explain that "[t]he state where the proceeding complained of occurred has a natural interest in determining the extent to which resort to its legal processes is to be inhibited by the possibility that a person making use of these processes will be held liable for malicious prosecution or abuse of process." Id., cmt. b. Thus, because the criminal prosecution was brought in a foreign country, with its own

constitutional requirements for bringing criminal charges, Colombian law should apply when determining whether defendants were responsible for infringing upon plaintiff's rights in Colombia.

We next consider the Gulf Oil public interest factors. They also weigh in favor of dismissal on forum non conveniens grounds. If we accept the premise that the malicious prosecution claim is cognizable, there is still no reason why federal or state courts in New Jersey would have a compelling interest in deciding the claim, as compared to Colombia—where the conduct allegedly occurred. The federal or state factfinder, whether it be judge or jury, would be disadvantaged in deciding facts based on events in Colombia, and applying Colombian law. Ultimately, plaintiff's residence is the only tether to New Jersey.

All of plaintiff's malicious prosecution claims originate in another country, and her other theories which flow from those claims are collectively grounded in alleged tortious acts committed in South America. Since plaintiff must show defendants, and perhaps Colombian authorities, misused the Columbian criminal justice system to cause her harm, those theories fail too.

We briefly address the trial court's order restricting plaintiff's ability to further litigate issues against these defendants. The Fourteenth Amendment's

due process clause "imposes upon state actors an obligation to refrain from preventing individuals from obtaining access to the civil courts." Rosenblum v. Borough of Closter, 333 N.J. Super. 385, 389-90 (App. Div. 2000) (quoting Brown v. Grabowski, 922 F.2d 1097, 1113 (3d Cir. 1990). "[T]he complete denial of the filing of a claim without judicial review of its merits would violate the constitutional right to access of the courts." Parish v. Parish, 412 N.J. Super. 39, 48 (App. Div. 2010) (quoting Rosenblum, 333 N.J. Super. at 390). At the same time, "courts have the inherent authority, if not the obligation, to control the filing of frivolous motions and to curtail 'harassing and vexatious litigation.'" Ibid. (quoting Rosenblum, 333 N.J. Super. at 387, 391). The court's power to deem pleadings frivolous under N.J.S.A. 2A:15-59.1(b)(1) and R. 1:4-8(a)(1) is the source of this authority. Id. at 48-49. The "discretionary exercise of the extreme remedy of enjoining or conditioning a litigant's ability to present his or her claim to the court must be used sparingly; it is not a remedy of first or even second resort." Parish, 412 N.J. Super. at 54.

Our standard of review for a trial court's order to enjoin further filings by a litigant is abuse of discretion. See, Parish, 412 N.J. Super. at 51; Rosenblum, 333 N.J. Super. at 392. The trial court stated, "to the extent that . . . plaintiff files yet another complaint that is essentially alleging the same claims once

again the court will strongly consider imposition of appropriate sanctions against . . . plaintiff which may include an award of counsel fees." The trial court made no findings concerning enjoining plaintiff. The record shows only a reference to Judge Hyland's prior enjoinment order from December 8, 2020. The court concluded by dismissing the complaint with prejudice and granting defendant's motion. The corresponding written order, dated June 10, 2022, contains language enjoining plaintiff from filing further lawsuits against defendants. The record contains no findings supporting such extreme relief, and we conclude this portion of the trial court's order was a mistaken exercise of discretion.

We affirm the trial court's dismissal order on the alternate grounds of forum non conveniens, and we reverse the portion of the order enjoining plaintiff from bringing further litigation against defendants. We do not retain jurisdiction.