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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3627-21**

**EXECUTOR TONY PING
YEW OF ESTATE OF JOHN
Y. WEI,**

Plaintiff-Appellant,

v.

**PENN NATIONAL INSURANCE,
and INSERVCO INSURANCE
SERVICES, INC.,**

Defendants-Respondents.

Submitted May 16, 2023 – Decided August 9, 2023

Before Judges Messano and Gummer.

On appeal from the Superior Court of New Jersey, Law
Division, Middlesex County, Docket No. L-0876-22.

Tony Ping Yew, appellant pro se.

Margolis Edelstein, attorneys for respondents (Emery
J. Mishky, of counsel; Rizzlyn M. Melo, on the brief).

PER CURIAM

Plaintiff Tony Ping Yew, executor of the estate of John Y. Wei, filed this pro se complaint against defendants Penn National Insurance Company (Penn National) and Inservco Insurance Services, Inc. (Inservco). Penn National insured Robert Wood Johnson University Hospital (RWJUH), and Inservco was the hospital's third-party claims administrator. The complaint alleged that Wei, plaintiff's godfather, had died because of medical malpractice while a patient at RWJUH. Plaintiff's claim against these defendants was that they had engaged in bad-faith insurance practices by improperly delaying consideration of and ultimately denying claims for compensation. Plaintiff asserted he was "an intended third[-]party beneficiary of the medical malpractice liability policy . . . [Penn National] provide[d] to . . . RWJUH."

Defendants moved to dismiss the complaint for failure to state a claim pursuant to Rule 4:6-2(e). They noted plaintiff had brought as an individual separate lawsuits against Penn National and Inservco making the same allegations. Both suits were dismissed, both dismissals were affirmed on appeal, and the Supreme Court denied plaintiff's petitions for certification in each case. See Ping Yew v. Inservco Ins. Servs., (Ping Yew I), No. A-4604-18 (App. Div. June 22, 2020) (slip op. at 2), certif. denied, 248 N.J. 530 (2021); Ping Yew v. Penn Nat'l Ins., (Ping Yew II), No. A-1526-19 (App. Div. Oct. 28, 2020) (slip

op. at 2), certif. denied, 246 N.J. 310 (2021). Defendants contended that plaintiff was barred from bringing this latest complaint by the doctrine of res judicata.

Plaintiff opposed the motion and filed what was denominated as a cross-motion, ostensibly seeking judgment in his favor. Plaintiff contested the rationale for the prior dismissals and our opinions affirming those dismissals and claimed exceptional circumstances permitted this suit. Plaintiff also contended this complaint was brought by a different party, i.e., the executor of Wei's estate. Nevertheless, plaintiff reiterated the same arguments advanced and rejected in his prior filings, specifically that his bad-faith claims were cognizable because he was Wei's sole beneficiary and, therefore, a third-party beneficiary of insurance policies issued by Penn National and administered by Inservco.

In reply, defendants challenged plaintiff's assertion that he was the executor of Wei's estate.¹ They contended that if he were the executor, the new complaint was also barred by the entire controversy doctrine (ECD).

Plaintiff did not appear for oral argument on the motion and cross-motion. The judge said that plaintiff had indicated was waiving oral argument, but the

¹ The appellate record includes the October 31, 2017 Executor's Certificate issued by the Middlesex County Surrogate appointing plaintiff executor of Wei's estate.

judge's staff advised plaintiff that defendants had requested oral argument and, therefore, plaintiff should appear. The judge noted she waited to see if plaintiff would appear and proceeded only after he had failed to appear.

In an oral opinion that directly followed defendants' argument, the judge concluded all "the elements of res judicata [we]re met." She determined "the previous judgments did . . . address the same issues as the current complaint, including negligence, bad faith, denial and delay." The judge also concluded "the distinction that [plaintiff] attempt[ed] to draw, distinguishing [himself] as a pro se plaintiff from [himself] as executor of the estate of . . . Wei, [wa]s really an attempt to do an end-[run] around the identit[ies] of the parties." Alternatively, the judge reasoned even if the current suit had been brought by a "distinct" entity, i.e., plaintiff as executor, it "would still be barred under the [ECD]." The judge summarized her conclusions as follows:

I am satisfied . . . that they are not, in fact, different parties, for purposes of . . . res judicata Plaintiff cannot continue to re-litigate this case indefinitely under the guise of using a separate entity. Finally, I note that the cause of action in all three complaints, that being the two prior complaints, as well as the current complaints, all rise out of the same allegations related to [RWJUH]'s alleged medical malpractice and negligence in treating . . . Wei prior to his death.

Plaintiff's opposition explicitly states . . . that his complaint has "the same underlying controversy," so

that factor is met. Plaintiff's assertion that it does not matter that this case wasn't litigated previously is incorrect. He has had a full and fair opportunity to litigate this case. The Court finds it is barred by the principles of res judicata and that, if necessary, as well as the [ECD], as it applies to the estate itself, and that plaintiff has, thus, ultimately failed to state a claim upon which relief can be granted.

The judge went back on the record shortly thereafter to supplement her opinion by quoting the first paragraph of the general allegations pled in plaintiff's complaint:

Plaintiff[/]executor Tony Ping Yew and unrepresented attorney[/]executor Tony Ping Yew, and beneficiary Tony Ping Yew, are [the] same indistinguishable[,] inseparable legal entities. . . . This action is to benefit plaintiff [/]executor Tony Ping Yew, who will distribute proceeds of the settlement, or judgment, to the ultimate claimant, the sole beneficiary, Tony Ping Yew, of the [E]state of . . . Wei.

The judge entered the April 29, 2022 order dismissing plaintiff's complaint for failure to state a claim and denying his cross-motion.

Plaintiff moved for reconsideration and to recuse the judge. The judge denied the motion for recusal by order dated May 27, 2022, supported by a short, written decision. On June 10, 2022, the judge denied plaintiff's motion for reconsideration and a stay, supported again by a short, written decision. Plaintiff filed this appeal from all three orders.

As best we can discern, before us plaintiff reiterates his claim that neither res judicata nor the ECD apply because this complaint was brought by a different party; the judge failed to consider his cross-motion; the judge should have recused herself, and her failure to do so was grounds for reconsideration of the order dismissing the complaint; and res judicata does not apply because of erroneous rulings by the Law Division and this court in dismissing the prior complaints against defendants. Having considered these contentions, we affirm all three orders substantially for the reasons expressed by the motion judge. We add only the following.

"A court considering a Rule 4:6-2(e) motion examines 'the legal sufficiency of the facts alleged on the face of the complaint,' limiting its review to 'the pleadings themselves[.]'" Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, PC, 237 N.J. 91, 107 (2019) (first quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989); and then quoting Roa v. Roa, 200 N.J. 555, 562 (2010)). "[R]eview of a complaint's factual allegations must be 'undertaken with a generous and hospitable approach.'" Ibid. (quoting Printing Mart, 116 N.J. at 746). "Nonetheless, if the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed." Id. at 107–08 (citing Rezem

Fam. Assocs., LP v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div. 2011)).

"Res judicata, like the entire controversy doctrine, serves the purpose of providing 'finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness[.]'" Wadeer v. N.J. Mfrs. Ins. Co., 220 N.J. 591, 606 (2015) (alteration in original) (quoting First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007)).

"Application of res judicata 'requires substantially similar or identical causes of action and issues, parties, and relief sought,' as well as a final judgment." Ibid. (quoting Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460 (1989)). "A dismissal specifying that it is 'with prejudice constitutes an adjudication on the merits as fully and completely "as if the order had been entered after trial."' " A.T. by T.T. v. Cohen, 231 N.J. 337, 351 (2017) (quoting Velasquez v. Franz, 123 N.J. 498, 507 (1991)).

We agree with the motion judge. Plaintiff's contention that this complaint was brought by a different party than the two earlier complaints is disingenuous and unavailing. The judge's opinion included a verbatim recitation of the complaint's general allegation that plaintiff as executor and plaintiff individually

were "the same indistinguishable[,] inseparable legal entities." Moreover, we noted in our earlier opinion on plaintiff's appeal from the dismissal of his prior individual complaint against Penn National that plaintiff had argued then, as he does now, he was an "intended third-party beneficiary" of Wei's estate "with regard to any settlement or judgment." Ping Yew II, slip op. at 6.

In any event, we rejected that argument because "plaintiff [wa]s precluded from filing a direct claim against [the] defendant absent an assignment of rights." Ibid. We reached the same conclusion in considering plaintiff's appeal from the dismissal of his individual claim against Inservco. See Ping Yew I, slip op. at 5 ("Yew is neither the insured, nor the insured's assignee. 'An insurer's duty of good faith and fair dealing . . . has never been applied in New Jersey to recognize a bad-faith claim by an individual or entity that is not the insured or an assignee of the insured's contract rights.'" (quoting Ross v. Lowitz, 222 N.J. 494, 514 (2015))).


In other words, whether plaintiff filed these suits individually or as executor of Wei's estate, the complaints were all properly dismissed because they failed to state of cause of action. See, e.g., Tarus v. Borough of Pine Hill, 189 N.J. 497, 520 (2007) ("recogniz[ing] that 'the term "res judicata" refers

broadly to the common-law doctrine barring relitigation of claims or issues that have already been adjudicated'" (quoting Velasquez, 123 N.J. at 505)).

Plaintiff's arguments regarding the orders denying recusal and reconsideration lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.²

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


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² After the briefs were filed in this appeal, we affirmed the dismissal of complaints plaintiff brought individually and as executor of Wei's estate against RWJUH. Ping Yew v. Robert Wood Johnson Univ. Hosp., (Ping Yew III), No. A-1024-21 (App. Div. Dec. 12, 2022) (slip op. at 2). Among the myriad reasons for our judgment, we noted "an individual acting as a fiduciary or in another representative capacity, asserting claims for a decedent or an estate, cannot appear and prosecute the claim pro se." Id. at 12–13 (citing Kasharian v. Wilentz, 93 N.J. Super. 479, 482 (App. Div. 1967)). Our reasoning there applies with equal force here.