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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5716-13T1

LAURA BROWN,

Plaintiff-Appellant,

v.

JOSEPH SCALZO and
NORGLEN, INC.,

Defendants-Respondents.

Submitted December 9, 2015 – Decided January 8, 2016

Before Judges Ostrer and Manahan.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-3395-11.

Pascarella & Associates, P.C., attorneys for appellant (Stephen M. Pascarella, on the brief).

Law Offices of Styliades and Jackson, attorneys for respondents (Denise F. Tunney, on the brief).

PER CURIAM

Plaintiff Laura Brown appeals from a November 22, 2013 order entered by the trial judge in favor of defendants Joseph Scalzo and Norglen, Inc. (collectively, defendants). The pre-trial order barred any and all reference to plaintiff's

cognitive damages claim at trial and dismissed her claim for cognitive damages as well. We affirm.

This appeal arises from a motor vehicle accident that occurred on March 1, 2010. Plaintiff was traveling eastbound in a non-designated lane of travel on County Road 520 when defendant Joseph Scalzo, traveling west bound and operating a motor vehicle owned by defendant Norglen, Inc., made a left-hand turn in front of plaintiff and struck her. The EMS were called to the scene, and plaintiff was subsequently removed from her vehicle and placed in an ambulance. Plaintiff was transported to the Riverview Medical Center for evaluation. Upon plaintiff's release, she subsequently began treatment with Dr. Eisenberger, a chiropractor, and Dr. Glastein, an orthopedist, concerning injuries she allegedly sustained in the motor vehicle accident.[1]

Plaintiff filed a complaint on July 19, 2011. Plaintiff sought damages and alleged severe and permanent physical injuries from the accident. During discovery, defendants moved to bar any and all reference to plaintiff's claim for cognitive damages at trial. The motion was unopposed by plaintiff. The trial judge granted defendants' motion without a hearing and

[1] Plaintiff testified at trial that she visited a neurologist as well.

entered an order dated November 22, 2013, which barred "any and all reference to [p]laintiff's claim for cognitive damages[,]" and ordered that "[p]laintiff's claim for cognitive damages . . . is hereby dismissed." The order also contained a stamped notation that read, "This motion is meritorious on its face and is unopposed. It has been granted essentially for the reasons expressed herein."

The jury trial commenced on April 29, 2014. Dr. Eisenberger testified on plaintiff's behalf. Defendants presented the testimony of Ryu Washborne, the investigating police officer, and Dr. Lopano, who evaluated plaintiff's injuries on defendants' behalf. A verdict was reached in favor of plaintiff on April 30, 2014. A final order of judgment was entered on May 27, 2014. The judge ordered that "[j]udgment be entered in favor of the plaintiff . . . against the defendant, Norglen, Inc.[,] in the amount of $21,257.52; said judgment consisting of $20,000.00 for pain and suffering and prejudgment interest of $1,257.52."

On August 11, 2014, plaintiff moved to file a notice of appeal out of time. We denied plaintiff's motion on September 16, 2014, reasoning that plaintiff failed to provide proper proof of service. Plaintiff resubmitted her motion with the

appropriate proof of service on September 19, 2014. Plaintiff's motion was granted on October 15, 2014. This appeal follows.

Plaintiff raises the following points on appeal:

POINT [I]

> PLAINTIFF-APPELLANT'S CLAIM FOR COGNITIVE DAMAGES WAS IMPROPERLY BARRED BY THE COURT[']S ORDER OF NOVEMBER 22, 2013.

POINT [II]

> THE COURT FAILED TO PLACE REASONS ON THE RECORD SUPPORTING ITS DECISION BARRING PLAINTIFF[']S COGNITIVE DAMAGES.

Plaintiff argues that the judge improperly barred her claim for cognitive damages. She further contends that the judge's November 22, 2013 order barring any and all reference to her cognitive injuries is "improper, leading to an unjust result and a manifest denial of [her] right to a fair trial."

Plaintiff also argues that the November 22, 2013 order is "defective" and it "denies [her] a complete record for purposes of appellate review." Plaintiff also contends that the judge's notation on the order, which stated that the motion was "meritorious on its face and unopposed" and had been "granted essentially for the reasons expressed herein[,]" is "wholly wanting for lack of a better description."

Plaintiff's first argument relates to the merits of the decision on the motion she did not oppose. Plaintiff claimed to

have sustained cognitive injuries as a result of the accident. However, as argued in defendants' brief, and sustained by the discovery record, plaintiff provided insubstantial proof to support her claim. Particularly, plaintiff's claim required the opinion of a medical expert which was not produced.

Pursuant to N.J.R.E. 702, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise." Although N.J.R.E. 702 contains permissive language on its face, expert testimony is generally required when the matter at issue is "so esoteric that jurors of common judgment and experience cannot form a valid judgment as to whether the conduct of the party was reasonable." Butler v. Acme Markets, Inc., 89 N.J. 270, 283 (1982). Here, plaintiff's claim for cognitive damages was "so esoteric" that it required expert testimony. Since no expert was provided in discovery by plaintiff to substantiate the claim, we find no reason to disturb the judge's ruling.

We next address plaintiff's second argument. Pursuant to Rule 1:7-4(a), "[t]he court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its

conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right . . . ." We held in Vartenissian v. Food Haulers, Inc., 193 N.J. Super. 603, 612 (App. Div. 1984), that a judge's reliance on the reasons posited by a party when granting or denying a motion for a new trial was not fatal for the trial court on appeal. See also In re Trust Agreement Dec. 20, 1961, 399 N.J. Super. 237, 253-54 (App. Div. 2006), aff'd, 194 N.J. 276 (2008). However, when relying on the reasons advanced by one of the parties, a judge should "make the fact of such reliance explicit, and its failure to do so is tantamount to making no findings at all." Pressler & Verniero, Current N.J. Court Rules, comment 1 on R. 1-7:4 at 103 (2016); see also Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 301 (App. Div. 2009).

We conclude that the judge's reliance on the reasons proffered by defendants in support of their unopposed motion was "not fatal." See Vartenissian, supra, 193 N.J. Super. at 612. In reaching the determination to grant defendants relief, the order recited the reasons for the decision. In accord with our holding in Allstate Ins. Co., the judge noted his reliance on the reasons posited by defendants and did so explicitly. Therefore, we discern no error.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION