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This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2722-21

FREDRICK LEDRICH,[1]
individually and as administrator ad
prosequendum of the Estate of
SHIRLEY LEDRICH, deceased,

Plaintiff-Respondent,

v.

LILLIAN L. KIER,
CHRISTOPHER D. QUINN, and
WOODBURY NISSAN, INC.,

Defendants,

and

PLYMOUTH ROCK ASSURANCE,
UNDERWRITTEN BY PALISADES
SAFETY AND INSURANCE
ASSOCIATION,

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[1] Plaintiff's first name is alternatively referred to as Fredrick and Frederick in the record. We do not know which is correct. We will hereafter refer to him as Frederick. Regrettably, during the pendency of this appeal, Frederick passed away on April 28, 2022. The Estate of Shirley Ledrich is now administered by her sister, Kathryn Davis, and the pleadings are being amended to reflect the change of administration.

Defendant-Respondent,

and

CITIZENS UNITED RECIPROCAL EXCHANGE, d/b/a CURE AUTO INSURANCE,

Defendant-Appellant,

and

PALISADES SAFETY AND INSURANCE ASSOCIATION, i/p/a PLYMOUTH ROCK ASSURANCE,

Defendant/Third-Party Plaintiff,

v.

COOPER HOSPITAL MEDICAL CENTER,

Third-Party Defendant.

Argued October 26, 2022 – Decided November 21, 2022

Before Judges Accurso, Vernoia, and Firko.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Gloucester County, Docket No. L-0155-21.

Robert J. Cahall argued the cause for appellant (McCormick & Priore, PC, attorneys; Robert J. Cahall, of counsel and on the briefs).

Scott C. McKinley argued the cause for respondent Fredrick Ledrich, individually and as administrator ad prosequendum of the Estate of Shirley Ledrich (Brown, Novick & McKinley, attorneys; Milton Wayne Brown, of counsel; Scott C. McKinley, on the brief).

Miriam R. Rubin argued the cause for respondent Plymouth Rock Assurance, underwritten by Palisades Safety and Insurance Association.

PER CURIAM

By way of leave to appeal granted in this personal injury protection (PIP) coverage dispute, defendant Citizens United Reciprocal Exchange (CURE) seeks reversal of the February 8, 2022 Law Division orders granting defendant Plymouth Rock Assurance's (Plymouth Rock) motion for summary judgment, denying CURE's cross-motion for summary judgment, and the April 1, 2022 order denying CURE's motion for reconsideration. On appeal, CURE reprises its argument that the decedent, Shirley Ledrich, was a nonresident relative of her late brother Frederick's[2] household, as defined in his CURE automobile

[2] We refer to decedent and the parties by their first names for ease of reference intending no disrespect.

insurance policy, and therefore, CURE should not be required to pay PIP benefits on behalf of Shirley. We reject CURE's argument and affirm.

I.

We summarize the relevant facts from the record before the motion judge in a light most favorable to CURE. Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123, 135 (2017). On May 21, 2020, Shirley sustained catastrophic injuries while riding as the front-seat passenger in a vehicle owned and operated by her friend, defendant Lillian L. Kier. Defendant Christopher D. Quinn was driving a demonstrator automobile owned by defendant Woodbury Nissan, Inc., at the time of the accident. Shirley underwent extensive medical treatment for severe spinal and head injuries at defendant Cooper Hospital University Medical Center before her death and was on life support. She died eight days after the accident following hospice care. At his deposition, Frederick testified that Shirley's hospital bills were approximately $800,000.

The motion record reveals Shirley resided in Mantua prior to her demise in an apartment located over the garage on property owned by Frederick. He testified Shirley lived with him for forty years prior to the accident. At his deposition, Frederick testified Shirley had a sixth or seventh grade education, was illiterate, and could not manage money or use the internet. Frederick lived

in the house situated on the Mantua property approximately twenty feet away from the garage apartment he built for Shirley somewhere around 1975. Shirley used Frederick's street address and shared the same driveway to access her garage apartment. According to Frederick, Shirley was incapable of living alone without the assistance of family members.

Frederick testified Shirley did not pay him rent. All of her utilities—electric, gas, water, and sewer—were connected to Frederick's house, and he paid all the bills. Frederick installed a telephone in Shirley's apartment and paid for the service. He provided most of the furnishings. Frederick used the garage below Shirley's apartment. He paid for homeowner's insurance for the entire property—including Shirley's apartment—and all maintenance expenses.

Frederick shopped for food and necessities for Shirley and managed her finances. He made doctor appointments for her and "took care of" her medical bills. Shirley could not write a check and was unable to use a credit card. Frederick testified that Shirley had access to his house, assisted with cleaning the house prior to his wife's death, and did yardwork. There was only one mailbox on the property. Frederick and Shirley interacted on a daily basis, had coffee, and sometimes ate meals together. He considered himself to be her guardian and caretaker even though no formal documents were ever prepared.

A. The CURE Policy

Frederick sought PIP coverage for the extensive hospital, hospice, and funeral expenses incurred for Shirley under his CURE policy as a resident relative. Pursuant to an endorsement contained in the CURE policy for PIP benefits, medical expenses, income continuation benefits, essential services, death benefits, and funeral services were payable to "'named insureds' [and their] 'family members' who sustain[] 'bodily injury' while 'occupying' or using an 'auto.'" The CURE declaration page did not list Shirley as a named insured. Shirley was deemed disabled and collected Social Security disability benefits the entire time she lived in the apartment. She was incapable of driving a vehicle.

The CURE policy does not define "family member" in the PIP endorsement section of the policy. However, "family member" is defined in the definition section of the policy as "a person related to you by blood, marriage or adoption who is a resident of your household." In an amendment to the CURE policy, the term "civil union" is added.

B. The Plymouth Rock Policy

At the time of the accident, Lillian was the named insured on a standard personal automobile policy issued to her by Plymouth Rock. Her policy

contained an endorsement providing PIP benefits to "eligible insured person[s]," defined in the policy as "[a]ny other person who sustains bodily injury while, with the permission of the named insured, occupying, using, entering into or alighting from your covered auto." The PIP endorsement had a clause excluding from coverage "any 'insured' [o]ther than the 'named insured' or any 'family member' if that 'insured' is entitled to New Jersey [PIP] coverage as a named insured or family member under the terms of another policy." Shirley was not related to Lillian and did not reside with her.

Plymouth Rock denied PIP coverage under its exclusion clause based on its assessment that Shirley was a "named insured or relative resident under an active policy through . . . CURE." Four months later, CURE denied PIP coverage based on its finding that Shirley "was not a resident relative" of its insured—Frederick.

On March 1, 2021, Frederick filed an amended complaint[3] against Plymouth Rock and CURE seeking a declaration that PIP benefits were wrongfully denied to Shirley and her estate. Frederick averred Shirley and her estate were entitled to PIP benefits under Lillian's policy as a permissive

[3] The original complaint is not included in the appendices.

occupant of her vehicle. In the alternative, Frederick pled CURE should provide PIP benefits because Shirley was a household member insured under his automobile policy.[4]

The motion judge granted Plymouth Rock's motion for summary judgment and denied CURE's cross-motion for summary judgment. In a letter opinion, the judge found Shirley was a "household" member under Frederick's CURE policy, and that CURE was "responsible to pay out PIP benefits due to the catastrophic injuries sustained by Shirley" in the subject accident. Based on the facts largely provided by Frederick during discovery, the judge concluded Shirley met the definition of "household member" under Mazzilli v. Accident & Casualty Insurance Company, 35 N.J. 1 (1961), because she was, "by living in the apartment above Fred[e]rick's home, . . . analogous with the wife living in a bungalow on her husband's property."

The judge also highlighted Shirley and Frederick's "living situation establish[es] that there was a familial relationship between the two, that they did enjoy significant prerogatives of family life and had some degree of joint domesticity." See Fireman's Fund of N.J. v. Caldwell, 270 N.J. Super. 157, 167

[4] Frederick also asserted negligence claims against Lillian, Christopher, and Woodbury Nissan. Those claims remain pending in the trial court and are not part of this interlocutory appeal.

(Law Div. 1993). In his decision, the judge pointed to the undisputed facts that Frederick "controlled Shirley's finances because she was unable to do so on her own;" Shirley was "an integral part" of his daily life; she had access to his entire property; they ate meals together at his home; and Shirley did not pay for rent or utilities. A memorializing order was entered. The judge later denied CURE's motion for reconsideration.

On appeal, CURE contends the judge erred in granting Plymouth Rock's motion for summary judgment and denying its cross-motion for summary judgment because: (1) the unrefuted summary judgment record evidence confirmed Shirley lived separately from Frederick; and (2) the expectations of the contracting parties, not strangers to the contract such as Plymouth Rock, inform the determination of coverage.

II.

We review a summary judgment motion ruling de novo, applying the same standard governing the trial court. Conley v. Guerrero, 228 N.J. 339, 346 (2017) (citing Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016)). Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact

challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); see also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-29 (1995). We review issues of law de novo and "do not defer to interpretive conclusions by the trial court . . . that we believe are mistaken." Nicholas v. Mynster, 213 N.J. 463, 478 (2013) (citing Zabilowicz v. Kelsey, 200 N.J. 507, 512-13 (2009)).

"Insurance policies are contracts." Botti v. CNA Ins. Co., 361 N.J. Super. 217, 224 (App. Div. 2003). "The interpretation of [an] insurance policy is one of law." Powell v. Alemaz, Inc., 335 N.J. Super. 33, 37 (App. Div. 2000). A court interpreting an insurance policy "must start with the plain language of the policy." Hardy ex rel. Dowdell v. Abdul-Matin, 198 N.J. 95, 101 (2009). However, "insurance policies are subject to special rules of interpretation." Botti, 361 N.J. Super. at 224 (citing Araya v. Farm Fam. Cas. Ins. Co., 353 N.J. Super. 203, 206 (App. Div. 2002)). "[A]ny ambiguity in an insurance contract must be resolved against the insurer and in favor of coverage." Ibid. (citing Cruz-Mendez v. ISU/Ins. Servs. of S.F., 156 N.J. 556, 571 (1999); Doto v. Russo, 140 N.J. 544, 556 (1995)). "However, if there is no ambiguity present, an insurance contract will be enforced as written." Ibid.

Nevertheless, where "the plain language of a policy provision is based on statutory authority, the policy must be interpreted and construed in a manner consistent with the statute." Hardy ex rel. Dowdell, 198 N.J. at 102. We examine the CURE and Plymouth policies guided by those principles.

III.

We first address CURE's argument that Shirley was not a resident of Frederick's household on May 21, 2020. There are two components to CURE's argument. First, CURE contends Shirley "maintained an independent, separate existence." Second, CURE asserts Shirley's "unspecified disability [did] not deprive her of the right to form her own expectations and desires as to independent living."

N.J.S.A. 39:6A-4 provides in relevant part:

> [E]very standard automobile liability insurance policy . . . shall contain [PIP] benefits for the payment of benefits without regard to negligence, liability or fault of any kind, to the named insured and members of [their] family residing in [their] household who sustain bodily injury as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile . . . and to other persons sustaining bodily injury while occupying, entering into, alighting from or using the automobile of the named insured, with permission of the named insured.
>
> [(emphasis added).]

In the matter under review, CURE challenges the judge's finding that Shirley lived with Frederick for nearly forty years before the accident because she never resided in the same building with him. CURE also disputes the judge's finding that Frederick "took care of all of Shirley's needs" outside the home. CURE asserts the judge erroneously found Shirley had "occasional" meals with Frederick at his home because "they only ate meals together when extended family came for a holiday or something like that," which "was more of a rare occasion." CURE also disputes the judge's finding that Shirley helped Frederick clean his home based on testimony she did this years before its policy was issued.

"Generally, the words of an insurance policy are to be given their plain, ordinary meaning." Gibson v. Callaghan, 158 N.J. 662, 670 (1999). "In the absence of any ambiguity, courts 'should not write for the insured a better policy of insurance than the one purchased.'" Ibid. (quoting Longobardi v. Chubb Ins. Co., 121 N.J. 530, 537 (1990)). But when an insurance policy contains ambiguities, courts should interpret those ambiguities in favor of the insured. Gibson, 158 N.J. at 670. Ibid.; see also Mazzilli, 35 N.J. at 7 (commenting "[i]f the controlling language will support two meanings, one favorable to the insurer, and the other favorable to the insured, the interpretation sustaining coverage

must be applied."). Also, "where the policy provision under examination relates to the inclusion of persons other than the named insured within the protection afforded," courts should take "a broad and liberal view . . . of the coverage extended." Mazzilli, 35 N.J. at 7.

Our Supreme Court considered the breadth of PIP coverage in a pair of 1981 cases. In each case, the Court held that a liberal reading of a PIP coverage provision is consistent with the aims of the statute. In Amiano v. Ohio Casualty Insurance Company, the Court considered whether the plaintiff was an "eligible injured person" under the statute. 85 N.J. 85, 87 (1981). After answering in the affirmative, the Court reasoned, "the Act itself requires us to construe its provisions liberally in order to effect the legislative purpose to the fullest extent possible" and "[m]andated as a social necessity, PIP coverage should be given the broadest application consistent with the statutory language." Id. at 90.

Months later in Gambino v. Royal Globe Insurance Company, the Court considered whether the PIP claimant was an "income producer" under N.J.S.A. 39:6A-4(b) and rejected a "parsimonious reading" of the statute. 86 N.J. 100 (1981). The Court explained "[i]n interpreting the statute to give full effect to the legislative intent . . . the statutory language must be read, whenever possible,

to promote prompt payment to all injured persons for all of their losses." Id. at 107 (emphases added).

A decade later, in Sjoberg v. Rutgers Casualty Insurance Company, we considered the meaning of "household" under N.J.S.A. 39:6A-4. 260 N.J. Super. 159 (App. Div. 1992). We reiterated Amiano's and Gambino's endorsement of a liberal construction of ambiguous statutory terms, explaining that "[t]hese words were used by the Legislature to describe the extent of PIP coverage, and they must be given liberal interpretation so as to include all persons the Legislature intended to be covered by the umbrella of PIP protection." Sjoberg, 260 N.J. Super. at 162-63.

Although our Court has not considered the meaning of "household" under the PIP statute, it has interpreted "household" in the context of homeowners insurance policies. In Mazzilli, which predates the PIP statute, the Court considered whether an insured's estranged spouse was a "resident [relative] of the household" under the insured's homeowners policy. 35 N.J. at 3. The spouse and the parties' son lived in a bungalow 150 feet from the insured's home on the same property, and there were no physical barriers between them. Id. at 15. The insured supported his spouse and son, "maintain[ing] the bungalow[and] providing the fuel for heating." Ibid. The three appeared to have full access to

the shared property and enjoyed "continuance of a substantially integrated family relationship," id. at 19. Based on these facts, the Court held that it could not, as a matter of law, conclude the spouse was not entitled to coverage as a resident relative. Id. at 14.

The Court discussed the dynamic nature of the term "household," and found it "is not a word of art . . . confined within certain commonly known and universally accepted limits," despite the "[l]exicographers['] and encyclopedias['] suggest[ions]" to the contrary. Id. at 8. The Court found the facts of the particular case significant in reaching its conclusion: "[T]he term 'household' or 'resident of the household' cannot be so limited and strait-jacketed as always to mean, regardless of facts and circumstances, a collective body of persons who live in one house." Id. at 14.

In Gibson, the Court again considered whether an insured's relative was a "resident of [the] household" under the homeowners policy. 158 N.J. at 672. There, the insured's grandchildren moved into her vacant house while she was away recovering from an injury. Id. at 666. When the grandchildren's dog injured a woman at the park, the issue arose as to whether the grandchildren were "entitled to a defense and indemnification under [the] homeowners' policy" as relative residents of the insured's "household." Id. at 667. In holding that

they were, the Court explained the home was still the insured's household even though she lived away because she had intended to return to the home, where she continued to receive her mail, pay property taxes, and left most of her personal belongings. Id. at 677-78.

In Sjoberg, we considered whether a minor child who relocated to Florida for a few months to live with her mother. was a resident relative entitled to PIP coverage under her father's automobile insurance policy. 260 N.J. Super. at 162. We concluded the child was a resident relative, reasoning the issue "must be considered in the context of the contemporary family and the fluid nature of the care and responsibilities that divorced or separated parents of children are faced with in light of present-day mobility." Id. at 163. We reasoned the father had a "legal and moral obligation," absent any "indication . . . [they] undertook to sever their relationship," to provide for the child, who lived with him for years, was in his permanent custody by virtue of a court order, and "had the option and ability to return to her father's home for either visitation or permanent residence if she so desired." Id. at 164. The child's short absence "would not, in the absence of additional circumstances, compel the conclusion that she was no longer a resident of her father's household even if she nonetheless established residency at her mother's home." Ibid.

In Fireman's Fund of New Jersey, the trial court denied summary judgment to the insured's live-in sister because it could not determine from the record whether the sisters had "a familial relationship and enjoyed at least some significant prerogatives of family life including the sharing of companionship and some degree of joint domesticity." 270 N.J. Super. at 167-68. The trial court reached that conclusion based on its need "to speculate whether they purchased food and household goods jointly or separately, allocated homemaking and housekeeping responsibilities and dined together or independently," and "whether their living arrangements were temporary or permanent, the rent charged was at fair market value, and what additional arrangements may have been made respecting utilities." Id. at 167.

We have considered de novo CURE's contentions in view of the applicable law and conclude they lack merit. Our review of the record reveals there were no issues of material fact that precluded judgment as a matter of law on the PIP issue. Based on the undisputed facts, Frederick and Shirley shared a "substantially integrated family." See Mazzilli, 35 N.J. at 19. They had "established a familial relationship and enjoyed at least some significant prerogatives of family life including the sharing of companionship and some degree of domesticity." See Fireman's Fund, 270 N.J. Super. at 167. Therefore,

the motion judge properly granted Plymouth Rock's motion for summary judgment and properly denied CURE's cross-motion for summary judgment.

IV.

Next, CURE argues for the first time on appeal that the motion judge's failure to give greater weight to Shirley's wishes to live independently contravenes "[t]he clear public policy of this State . . . to respect the right of self-determination of all people, including the developmentally disabled." See In re M.R., 135 N.J. 155, 166 (1994). But in Gibson, the Court stressed the fact-sensitive contexts in which intent is relevant. 158 N.J. 662 at 675. CURE concedes intent in and of itself is not dispositive on the issue. Intent is just one factor for the court to consider. We cannot conclude that Shirley's desire to live as independent a life as she could, a desire her brother accommodated by building her an apartment on his property adjacent to his own home, rendered her a non-member of his household under his auto policy. We are unpersuaded by CURE's newly minted argument.

Finally, CURE argues the reasonable "expectations of the contracting parties, not strangers to the contract such as Plymouth Rock, inform the determination of coverage." Also, CURE contends Frederick reasonably expected, based on his decision not to include Shirley as a household member

under his policy, that she would not be covered. CURE relies on Flomerfelt v. Cardiello, which held "[a]n insurance policy is a contract that will be enforced as written when its terms are clear in order that the expectations of the parties will be fulfilled." 202 N.J. 432, 441 (2010). But where, as here, the terms are ambiguous, Mazzilli controls. See 35 N.J. at 8-9. The motion judge did not rewrite the insurance contract. On this record, we are satisfied that the reasonable expectations of the parties were met.

V.

CURE also appeals the motion judge's denial of its motion for reconsideration, which appears to have been filed under Rule 4:49-2. In its reconsideration motion, CURE asserted the judge based his decision upon a palpably incorrect or irrational basis.

"[T]he decision to grant or deny a motion for reconsideration rests within the sound discretion of the trial court." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015). Reconsideration is limited to those cases in which either: (1) "the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis"; or (2) "it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Fusco v. Bd. of Educ. of Newark, 349 N.J.

Super. 455, 462 (App. Div. 2002) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). "Thus, a trial court's reconsideration decision will be left undisturbed unless it represents a clear abuse of discretion." Pitney Bowes Bank, 440 N.J. Super. at 382 (citing Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)).

In ruling on CURE's reconsideration motion, the judge erroneously applied the Rule 4:49-2 standard, which governs the reconsideration of final orders. Instead, the judge should have applied Rule 4:42-2, which governs a trial court's consideration of interlocutory orders since the summary judgment decision was interlocutory in nature. Lawson v. Dewar, 468 N.J. Super. 128, 133-34 (App. Div. 2021). As we noted in Lawson, Rule 4:42-2 is a "far more liberal approach to reconsideration" that

> does not require a showing that the challenged order was 'palpably incorrect,' 'irrational,' or based on a misapprehension or overlooking of significant material presented on the earlier application. Until entry of final judgment, only 'sound discretion' and the 'interest of justice' guide [] the trial court, as Rule 4:42-2 expressly states.
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> [Id. at 134].

Based upon our affirmance on the motion judge's rulings on the summary judgment motions, the error on the reconsideration standard applied is of no

moment. We conclude the motion judge properly denied CURE's motion for reconsideration.

To the extent we have not specifically addressed any of CURE's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION