SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3361-21

PENN NATIONAL INSURANCE,
as subrogee of SAMUEL R. BERGER,

Plaintiff-Respondent,

v.

DANIELLE & BROS. EXPRESS,
and SILVIO VILLAREJO,

Defendants-Appellants.

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Submitted October 11, 2023 – Decided October 23, 2023

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey, Law Division, Somerset County, Docket No. DC-004036-21.

Florio Perrucci Steinhardt Cappelli Tipton & Taylor, LLC, attorneys for appellants (Susan A. Lawless, of counsel and on the briefs).

Roy H. Binder & Associates, LLC, attorneys for respondent (Michele S. Kupferberg, on the brief).

PER CURIAM

Defendants Danielle & Bros. Express and Silvio Villarejo appeal from a June 27, 2022 order entering judgment in the amount of $8,491.90 in favor of plaintiff Penn National Insurance (Penn National) as subrogee of Samuel R. Berger. For the reasons that follow, we reverse and remand for a new trial.

We recite the facts from the testimony in this one-day bench trial. At trial, the judge heard testimony from Berger and Villarejo on the issue of liability.

On September 18, 2020, after exiting from Route 80 onto Route 287 southbound, Villarejo, the owner and sole employee of Danielle & Bros. Express, drove the company tractor-trailer past Exit 30A on Route 287. This section of Route 287 has three lanes. At some point, either Villarejo's truck hit the rear left corner of Berger's car, or Berger's car hit Villarejo's truck from the right-hand side. Berger and Villarejo testified they were in the center lane of Route 287 at the time of the collision.

Penn National filed suit against defendants to recover the amount it paid for the damage to Berger's car. The parties stipulated to the amount recoverable as damages. Liability for the happening of the accident was the sole issue to be resolved at trial.

During the trial, Villarejo testified he travelled from Route 80 onto Route 287 south. He explained the exit ramp from Route 80 placed his truck in the

center lane on Route 287 South. At this point, the judge interrupted Villarejo's testimony and began a discussion with plaintiff's counsel.

The judge stated he "spent a lot of time" travelling on Route 287. Based on the judge's personal knowledge, he explained Villarejo could not have merged directly into the center lane of Route 287. The judge stated he was "99.9 percent confident" that Villarejo could not have merged into the center lane of Route 287 from Route 80 eastbound. The judge also stated he was "reasonably confident" Villarejo could not have done so from Route 80 westbound. After the judge's colloquy regarding the road configuration, the judge "apologized" because his discussions on the subject "didn't have a lot of relevance during the trial."

At the conclusion of the trial, the judge found both witnesses to be credible and their testimony "reasonable . . . [and] inherently believable." However, based on the judge's personal knowledge of, and familiarity with, the merge pattern from Route 80 onto Route 287, he found Villarejo's testimony "very problematic" and "flat wrong." Thus, the judge deemed Villarejo's statements "inaccurate" and his testimony "inconsistent with what [the judge] underst[ood] the layout [of] the road to be." As a result, the judge found Berger to be the more credible witness and entered judgment for Penn National.

On appeal, defendants contend the trial judge erred made improper credibility determinations based on the judge's personal knowledge rather than the parties' testimony. We agree.

On appeal from a bench trial, we "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). We will "'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant, and reasonably credible evidence as to offend the interests of justice.'" Ibid. (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

After reviewing the record, we are satisfied the judge's factual findings were not based on competent or credible evidence in the record. Rather, the factual findings were based on the judge's personal knowledge of Route 287 rather than the parties' trial testimony.

A trial judge is permitted to take judicial notice of certain facts not in evidence under N.J.R.E. 201(b). The Rule allows for judicial notice provided:

> (1) such specific facts and propositions of generalized knowledge as are so universally known that they cannot reasonably be the subject of dispute;

> (2) such facts as are so generally known or are of such common notoriety within the area pertinent to the event that they cannot reasonably be the subject of dispute;
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> (3) specific facts and propositions of generalized knowledge which are capable of immediate determination by resort to sources whose accuracy cannot reasonably be questioned; and
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> (4) records of the court in which the action is pending and of any other court of this state or federal court sitting for this state.
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> [N.J.R.E. 201(b).]

Under N.J.R.E. 201(b)(1), a judge may take judicial notice of facts so "certain and indisputable" that "everyone of average intelligence and knowledge . . . can be presumed to know [them]." State v. Flowers, 328 N.J. Super. 205, 214 (App. Div. 2000).

N.J.R.E. 201(b)(2) permits a judge to take judicial notice of facts that "are so generally known or of such common notoriety within the area pertinent to the event that they cannot reasonably be questioned." A judge should not take judicial notice where the facts are genuinely disputed. See RWB Newton Assocs. v. Gunn, 224 N.J. Super 704, 711 (App. Div. 1988). Moreover, a judge's private knowledge of facts that lack common notoriety are not proper for taking judicial notice. See Amadeo v. Amadeo, 64 N.J. Super. 417, 424 (App. Div. 1960) ("A judge's private knowledge is no substitute for required proof, no

matter how accurate such knowledge might prove to be."). "[T]he judge is not to use from the bench, under the guise of judicial knowledge, that which he knows only as an individual observer." State v. LiButti, 146 N.J. Super. 565, 571 (App. Div. 1977).

Here, the layout of the roadway merger between Route 80 and Route 287 was not "everyday knowledge." Neither counsel nor the court consulted a map or other external source during the trial to confirm the actual configuration of the roads or the judge's belief as to the traffic pattern at this interchange.

Further, the discussion regarding the roadway configuration was between plaintiff's counsel and the judge rather than the testifying witness. Defense counsel attempted to object to the colloquy between plaintiff's counsel and the judge regarding the roadway pattern. However, plaintiff's counsel moved on to another area of inquiry before defense counsel placed a formal objection on the record.

Nor was the judge's belief concerning the road configuration beyond reasonable dispute. In fact, the parties clearly disputed the merge pattern of the roadways. Thus, the judge mistakenly applied his personal knowledge to determine liability contrary to N.J.R.E. 201(b).

We are satisfied the judge's reliance on his own personal knowledge to resolve the issue of liability was not based on competent evidence of record in this matter. Thus, we reverse and a remand for a new trial on liability.

Reversed and remanded. We do not retain jurisdiction.