IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

TEJASH DUNGARANI, M.D., HEALTH FIRST MEDICAL GROUP, LLC, HEALTH FIRST PHYSICIANS, INC. AND CAPE CANAVERAL HOSPITAL, INC. D/B/A CAPE CANAVERAL HOSPITAL,

Appellants,

v. Case No. 5D19-139

CHARLES BENOIT, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DEBORAH BENOIT, EMILY COSTELLO, ARNP, BRANDON TAIVAL, D.O., SPACE COAST EMERGENCY PHYSICIANS, PLC AND HOLMES REGIONAL MEDICAL, ETC., ET AL,

Appellees.

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Opinion filed August 7, 2020

Appeal from the Circuit Court
for Brevard County,
Jeffrey Mahl, Judge.

Wilbert R. Vancol and Mary Jaye Hall, of McEwan, Martinez, Dukes & Hall, P.A., Orlando, for Appellants.

Adam Richardson and Phillip M. Burlington, of Burlington & Rockenbach, P.A., West Palm Beach, and David J. Halberg and Ryan A. Fogg, of Halberg and Fogg, PLLC, West Palm Beach, for Appellees.

SASSO, J.

Tejash Dungarani, M.D., Health First Medical Group, LLC, Health First Physicians, Inc., and Cape Canaveral Hospital, Inc. D/B/A Cape Canaveral Hospital (collectively "Appellants") appeal the final judgment entered in favor of Charles Benoit, as personal representative of the estate of Deborah Benoit ("Benoit"). Appellants argue that the trial court erred when it struck their timely request for a trial de novo after a nonbinding arbitration. We agree and reverse. Although the plain language of section 44.103(5), Florida Statutes (2018), prohibits requests that seek to accept some portions of an arbitration award and trial de novo as to others, we nonetheless conclude that the trial court erred in striking Appellants' request. The request alternatively sought trial de novo "on all the issues in the case," which satisfied the applicable legal requirements.

## FACTUAL AND PROCEDURAL BACKGROUND

Benoit sued Appellants following Mrs. Benoit's death allegedly caused by an infection she acquired during a series of epidural steroid injections administered by Dr. Dungarani. Benoit alleged that Dr. Dungarani deviated from the acceptable standard of care in: (1) causing a break in the sterile technique in formulating and administering the epidural steroid injections, (2) in failing to appreciate a break in the sterile technique, and (3) in failing to diagnose the infection Mrs. Benoit acquired from the epidural steroid injection. Benoit also asserted vicarious liability claims against Health First Medical Group, LLC, Health First Physicians, Inc., Health First, Inc., and Cape Canaveral Hospital for the negligence of Dr. Dungarani. Over Appellants' objection, the trial court granted Benoit's motion for court ordered nonbinding arbitration.

The arbitration resulted in a decision awarding Benoit $3,640,726 in damages. In reaching that decision, the arbitrator acknowledged that Benoit advanced two separate

bases for liability against Dr. Dungarani. As to the first basis, that Dr. Dungarani had negligently performed the injection causing bacteria to enter Mrs. Benoit's body, the arbitrator found that "there was no negligence on the part of Tejash Dungarani, M.D. in the actual administration of any epidural spinal injection occurring before May 29, 2012." The arbitrator specifically determined that Benoit failed to meet his burden with regard to how the infection occurred. Even so, the arbitrator found that Dr. Dungarani was negligent as to the second theory of liability advanced: that Dr. Dungarani failed "to recognize a change in Mrs. Benoit's condition and fail[ed] to evaluate that change prior to performing another epidural spinal injection on May 31, 2012." The arbitrator found Cape Canaveral Hospital, Inc., but not Health First, Inc., vicariously liable for the negligence of Dr. Dungarani. The arbitrator made no conclusions as to Health First Medical Group, LLC, or Health First Physicians, Inc.

Following the arbitrator's decision, Appellants filed their request for a trial de novo, seeking a trial de novo "as to any determinations of negligence, liability, responsibility or damages pertaining to them outside the Arbitrator's liability decision regarding the administration of any epidural spinal injection on May 29, 2012." In the wherefore clause, Appellants alternatively requested a trial de novo on "all the issues in the case."

Benoit filed a motion to strike Appellants' request for trial de novo. In the motion, Benoit argued that because the request sought trial de novo regarding an injection on a date when such an injection did not take place,[1] the request did not address an issue that was actually presented in the arbitration and was therefore invalid. Benoit further argued

[1] Dr. Dungarani administered epidural steroid injections on March 12, 2012, April 12, 2012, May 24, 2012, and May 31, 2012. On May 29, 2012, Dr. Dungarani evaluated Mrs. Benoit but did not administer an injection.

the primary request was improper because it sought trial de novo as to one theory of negligence against Dr. Dungarani, rather than all the issues in dispute between the parties. Benoit's motion to strike did not address Appellants' alternative request for a trial on all issues but nevertheless concluded that request should be stricken "in toto."

Appellants submitted a written response to Benoit's motion to strike. They clarified the substance of their request, emphasized that the request was legally appropriate under the facts of the case, and reiterated their alternative request for a trial de novo on all issues.

After a hearing on the issue, and in an unelaborated order, the trial court granted Benoit's motion, struck Appellants' request in its entirety, and ultimately entered a final judgment against them.

## STANDARD OF REVIEW

When a party timely requests a trial de novo following nonbinding arbitration, this Court reviews the denial of the request de novo. *Bacon Family Partners, L.P. v. Apollo Condo. Ass'n*, 852 So. 2d 882, 887 (Fla. 2d DCA 2003).

## ANALYSIS

Together, section 44.103 and Florida Rule of Civil Procedure 1.820 govern court-ordered nonbinding arbitration. Section 44.103 prescribes the substance: courts are permitted to refer any contested civil action to nonbinding arbitration. Once a case is referred, an arbitration decision "shall be final if a request for **a trial de novo** is not [timely] filed." § 44.103(5), Fla. Stat. (emphasis added). If a request is not filed, the arbitrator's decision is referred to the presiding judge who enters such orders and judgments as required to carry out the terms of the decision. *Id.* If a request is filed, section 44.103

provides for fee shifting in the event a requesting plaintiff fails to obtain a judgment at least twenty-five percent less, or a requesting defendant twenty-five percent more, than the judgment. § 44.103(6), Fla. Stat.

Florida Rule of Civil Procedure 1.820(h) prescribes the procedure for requesting a trial de novo. Specifically, that rule provides:

> (h) **Time for Filing Motion for Trial**. Any party may file a motion for trial. If a motion for trial is filed by any party, any party having a third party claim at issue at the time of arbitration may file a motion for trial within 10 days of service of the first motion for trial. If a motion for trial is not made within 20 days of service on the parties of the decision, the decision shall be referred to the presiding judge, who shall enter such orders and judgments as may be required to carry out the terms of the decision as provided by section 44.103(5), Florida Statutes.

Both the statute and rule are largely silent as to the substance and form that any particular request for a trial de novo must take. Consequently, Appellants argue that nothing in the rule or statute prohibits their primary request, which sought trial de novo on only one theory of liability against Dr. Dungarani (failure to recognize the infection) rather than both of the theories alleged (break in sterile technique and failure to recognize the infection). Contrary to Appellants' argument though, the plain language of section 44.103(5) prohibits partial requests. We reach this conclusion by examining the text, context, and structure of the statute and rule. *See, e.g.*, *Regions Bank v. Legal Outsource PA*, 936 F.3d 1184, 1192 (11th Cir. 2019) ("[A] 'judicial interpreter [should] consider the entire text, in view of its structure and of the physical and logical relation of its many parts,' when interpreting any particular part of the text." (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 24, at 167 (2012))).

Starting with the text, section 44.103 requires only that a party file a request for "a trial de novo," but it does not define that phrase. *See* § 44.103(5), Flat. Stat. Thus, we

consider the ordinary meaning of "a trial de novo." *Accord Rollins v. Pizzarelli*, 761 So. 2d 294, 298 (Fla. 2000) ("When a term is undefined by statute, '[o]ne of the most fundamental tenets of statutory construction' requires that we give a statutory term 'its plain and ordinary meaning.'" (quoting *Green v. State*, 604 So. 2d 471, 473 (Fla. 1992))). Viewed in context, "a trial de novo" is referenced technically, as a specific type of legal proceeding, and thus we may consult legal dictionaries to define it. *See, e.g.*, *United States v. Obando*, 891 F.3d 929, 934 (11th Cir. 2018) (noting that ordinary meaning of term "will yield when term has 'a technical meaning' or is a 'term of art'") (citation omitted); *Davis v. Strople*, 39 So. 2d 468, 470-71 (Fla. 1949) (Barns, J., concurring in part, dissenting in part) (noting that technical legal words are deemed to have been statutorily used as they are legally defined). In doing so, it becomes clear that "a trial de novo" is a term-of-art that contemplates a trial of the *entire* case in the circuit court. *See, e.g.*, *Trial De Novo*, Ballentine's Law Dictionary (3d ed. 1969) (defining "trial de novo" as "[t]rying anew the matter involved in an administrative determination the same as if it had not been heard before and as if no decision had been previously rendered"); *Trial De Novo*, Black's Law Dictionary (6th ed.1990) (defining "trial de novo" as "a new trial or retrial in which the whole case is retried *as if no trial whatever had been held in the first instance*") (emphasis added); *Trial De Novo*, Merriam-Webster's Dictionary of Law, 498 (2d ed. 2016) (defining "trial de novo" as "a trial . . . in which all the issues of fact or law . . . are reconsidered as if no previous trial had taken place").

What is more, the term "trial de novo" has deep roots in common law jurisprudence and was understood as a different concept than a new trial. *See, e.g.*, Larry M. Roth, *Trial De Novo and Evidentiary Presumptions Under the "Lemon Law": Analysis and Comment*,

24 Nova L. Rev. 407, 467 (1999) (noting distinctive circumstances at common law where de novo second trial was grantable, as distinguished from new trial). "Trial de novo" was generally held to mean a trial anew of the entire controversy, including the hearing of evidence as though no previous action had been taken. *Id*. (collecting citations). Thus, the historical common law understanding of "a trial de novo" supports the legal definition. *Accord Fla. High. Patrol v. Jackson*, 288 So. 3d 1179, 1183 (Fla. 2020) ("[I]f a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it." (citing Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947))).

This interpretation is clarified even further when comparing the technical meaning of "a trial de novo" and "a new trial." In contrast from the end product of a trial de novo, a "new trial" is typically understood as a retrial or reexamination of on all *or some* of the issues determined in an earlier judgment in the same court. *Compare New Trial*, Black's Law Dictionary (6th ed.1990) (defining "new trial" as "a post-judgment retrial or reexamination of some or all of the issues determined in an earlier judgment"), and *New Trial*, Merriam-Webster's Dictionary of Law 323 (2016) (defining "new trial" as "a repeat inquiry by the same court into all or some of the issues in an action for the purpose of correcting a problem . . . in the prior trial . . . ."), *with* the definitions of "trial de novo" cited *supra*. And of course, we presume that the legislature appreciated the distinct meaning of "trial de novo" and intentionally chose that term. *See Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 115 (2011) (Thomas, J., concurring in the judgment) ("[W]here Congress borrows terms of art, this Court presumes that Congress knows and adopts the cluster of ideas that were attached to each borrowed word . . . and the meaning its use will convey

to the judicial mind.") (citation omitted).[2] Finally, this interpretation is consistent both with the design of the statute and the operative effect of each of its provisions.

Having concluded that the statutory reference to "trial de novo" proscribes partial requests, we recognize that the language of rule 1.820 is less precise. Pursuant to section 44.103(5), the Florida Supreme Court adopted "hearing procedures for non-binding arbitration." *See* § 44.103(1), Fla. Stat.; Fla. R. Civ. Pro. 1.820. As to the requests for a trial de novo as contemplated by section 44.103, the rule only references procedures for filing a "motion for trial," thus omitting the words that provide insight into the scope of issues such requests may reach. But of course, even in enacting a procedural rule to effectuate a legislative grant, separation of powers prohibits the judiciary from amending it. Thus, we ascribe the same meaning to "request for a trial de novo" as referenced in section 44.103 and "motion for trial" as referenced in rule 1.820, despite the rule's incongruous replication of the phrase.

To summarize, we disagree with Appellants that section 44.103 permits requests for a partial trial de novo. Even so, we agree with Appellants that the trial court erred in striking its request. This is because Appellants' request for trial de novo sought, alternatively, a trial de novo "on all the issues in the case"—precisely the type of request contemplated and permitted by section 44.103 and rule 1.820. And where a valid request is made, "[n]othing in the language of the statute or the rule supports the conclusion that the trial court has the discretion to deny a party's timely motion for trial." *Bacon Family Partners, L.P.*, 852 So. 2d at 888; *see Preferred Mut. Ins. Co. v. Davis*, 629 So. 2d 259,

[2] We note the legislature has consistently referenced "trial de novo" as opposed to a "new trial" in other statutes providing for arbitration. *See, e.g.*, §§ 718.1255, 723.0381, 681.1095, Fla. Stat.

260-61 (Fla. 4th DCA 1993) (observing that nonbinding arbitration under rule 1.820 "simply does not suffice as a substitute for trial to which parties are entitled" and may be vacated upon simple timely filing of request or motion for trial de novo); *see also de Acosta v. Naples Cmty. Hosp., Inc.*, 44 Fla. L. Weekly D2402 (Fla. 2d DCA Sept. 25, 2019) (reiterating that rule 1.820(h) does not require specific language, only some notice to opposing party that movant rejects arbitration award and demands trial).

Benoit suggests that Appellants' alternative request for a full trial de novo was also invalid because it was too broad: the request was not limited to only those causes of action between Appellants and Benoit and improperly sought to join other co-defendants to their request. However ably argued though, we reject Benoit's contention. First, we agree with Appellants that Benoit's argument in this regard is premised on a strained reading of Appellants' request. To be sure, the language of the request only references the range of issues for which Appellants sought trial de novo and was silent as to the parties. Furthermore, the request was only made on behalf of Appellants and did not reference any other person or entity. Finally, at the time of Appellants' request for a trial de novo, Benoit had already requested a trial de novo against all remaining co-defendants on all issues between Benoit and those co-defendants. So, even construing Appellants' request as Benoit wishes, Appellants' request did not incorporate any claims or any defendants that were not already parties to the trial de novo by virtue of previously filed requests. In sum, Appellants' request for a trial de novo on all issues in the case comported with all legal requirements, and the trial court had no legally justified reason to strike it.

## **CONCLUSION**

For the foregoing reasons, we reverse the final judgment and order granting Benoit's motion to strike Appellants' request for a trial de novo and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

COHEN and GROSSHANS, JJ., concur.