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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0502-21**

STEVE J. HOURAN,

Plaintiff-Appellant,

v.

WESLY REID, and CHRISTINE
FULLERTON,

Defendants-Respondents.

Submitted May 18, 2022 – Decided June 6, 2022

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Law
Division, Essex County, Docket No. L-0146-20.

Hegge & Confusione, LLC, attorneys for appellant
(Michael Confusione, of counsel and on the brief).

Fazzio Law Offices, attorneys for respondents (John P.
Fazzio, III and John J. Boulton, on the brief).

PER CURIAM

In this home-renovation case, plaintiff Steve J. Houran appeals from an order denying his motion to reinstate his complaint after it had been dismissed without prejudice for failure to prosecute pursuant to Rule 1:13-7(a). Plaintiff argues the motion judge abused his discretion in denying the motion. We agree and reverse.

I.

On December 31, 2019, plaintiff, representing himself, filed a complaint against defendants Wesly Reid and Christine Fullerton, alleging they had failed to pay \$72,699 due for renovation work completed on their property. According to affidavits of service dated March 16, 2020, defendants were served personally with the complaint on March 15, 2020. Unfortunately, plaintiff did not file those affidavits of service when he received them, and defendants did not file an answer to the complaint. Plaintiff incorrectly believed the court automatically had entered default against defendants.

On August 18, 2020, the trial court issued written notice the case would be dismissed for lack of prosecution within sixty days if plaintiff did not undertake certain action. In an October 16, 2020 order, the trial court dismissed the plaintiff's complaint without prejudice for lack of prosecution pursuant to Rule 1:13-7. According to plaintiff, he did not receive the notice or order

because he had moved on January 27, 2020, and had not notified the trial court about his change of address.

Plaintiff asserts the COVID-19 pandemic and the resulting lockdown "forced [him] to immediately focus [his] time and attention on dealing with the resulting work stoppages, labor shortages, and the cascading effects to the projects on which [his construction company] was then working" and on the "extraordinarily high demand for construction services that followed" when "construction work was able to recommence"

Plaintiff retained counsel at the end of August 2021 "to perfect [his] presumed judgment against [d]efendants and commence collection efforts" He then learned the court had dismissed his complaint on October 16, 2020.

On September 20, 2021, plaintiff moved to reinstate his complaint pursuant to Rule 1:13-7(a), to have all his claims relate back to the original filing date of the complaint, and for entry of default against defendants pursuant to Rule 4:43-1. In support of the motion, plaintiff filed his certification and the affidavits of service. Defendants submitted a proposed answer and counterclaim but opposed the motion. The trial court denied the motion, stating as its reason: "Plaintiff has failed to show good cause to vacate order of dismissal for lack of prosecution entered almost a year ago. R. 1:13-7(a). Failure to notify the [c]ourt

or defendants of an address change does not constitute good cause under the circumstances here." The trial court made no finding that service on defendants, as attested to in the affidavits of service, was improper or insufficient, and made no finding of any prejudice defendants would experience if the court were to reinstate the complaint.

Plaintiff appeals the aspect of the order denying the reinstatement of his complaint. Plaintiff argues the trial court abused its discretion by finding plaintiff had not met the good-cause standard. Plaintiff contends he showed a meritorious claim and proper service and argues defendants, who according to plaintiff opposed his motion only with legal argument and with no affidavit or certification, failed to demonstrate any unfair prejudice if the court were to reinstate the complaint.

In response, defendants do not dispute they submitted only legal argument in opposition to plaintiff's motion and now argue, with no supporting affidavit or other record evidence, they were never properly served with the complaint, the affidavits of service were insufficient, and they would be prejudiced by the reinstatement of the complaint.

II.

"We review the denial of a motion to reinstate a complaint dismissed for lack of prosecution for abuse of discretion." Est. of Semprevivo v. Lahham, 468 N.J. Super. 1, 11 (App. Div. 2021). A trial court abuses its discretion when it makes a decision "without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." Ibid. (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)). We review de novo a trial court's legal determinations. Ibid. A "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Ibid. (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Rule 1:13-7(a) provides "the bases for an administrative dismissal of a complaint for lack of prosecution" as well as "the standards and procedures for reinstatement, permitting a plaintiff whose complaint has been dismissed to file a motion to reinstate the complaint." Est. of Semprevivo, 468 N.J. Super. at 11.

After dismissal, . . . [i]f the defendant has been properly served but declines to execute a consent order, plaintiff shall move on good cause shown for vacation of the dismissal. In multi-defendant actions in which at least one defendant has been properly served, the consent order shall be submitted within 60 days of the order of dismissal, and if not so submitted, a motion for reinstatement shall be required. The motion shall be

granted on good cause shown if filed within 90 days of the order of dismissal, and thereafter shall be granted only on a showing of exceptional circumstances.

[R. 1:13-7(a).]

In Estate of Semprevivo, 468 N.J. Super. at 12, we held the exceptional-circumstances standard "applies in a multi-defendant case that has proceeded against a properly served defendant prior to the filing of a motion to reinstate" and we applied in that case the good-cause standard because the case had not proceeded against any of the defendants, id. at 14. Given that this case had not proceeded against either defendant, the trial court correctly applied the good-cause standard; it just incorrectly decided the motion under that standard.

"[T]he term, 'good cause,' evades a precise definition." Id. at 14. "[C]ourts applying the good cause standard must exercise 'sound discretion in light of the facts and circumstances of the particular case considered in the context of the purposes of the Court Rule being applied.'" Ibid. (quoting Ghandi v. Cespedes, 390 N.J. Super. 193, 196 (App. Div. 2007)). Providing only for dismissals without prejudice, Rule 1:13-7(a) "is an administrative rule 'designed to clear the docket of cases that cannot, for various reasons, be prosecuted to completion.'" Ghandi, 390 N.J. Super. at 196 (quoting Mason v. Nabisco Brands, Inc., 233 N.J. Super. 263, 267 (App. Div. 1989)). "Accordingly, the

right to 'reinstatement is ordinarily routinely and freely granted when plaintiff has cured the problem that led to the dismissal even if the application is made many months later.'" Ibid. (quoting Rivera v. Atl. Coast Rehab. & Health Care Ctr., 321 N.J. Super. 340, 346 (App. Div. 1999)). "[A]bsent a finding of fault by the plaintiff and prejudice to the defendant, a motion to restore under the rule should be viewed with great liberality." Id. at 197.

Like the defendants in Baskett v. Kwokleung Cheung, 422 N.J. Super. 377, 384 (App. Div. 2011), and Estate of Semprevivo, 468 N.J. Super. at 15, defendants have not presented any evidence to support their general assertion they would be prejudiced by the reinstatement of the complaint. And the trial court made no finding of prejudice. The evidence in the record demonstrates defendants were personally served with the complaint within three months after plaintiff filed the complaint. That timing is not indicative of prejudice. Cf. Baskett, 422 N.J. Super. at 384 (holding trial court should have granted motion to reinstate, even though thirty-three months had elapsed between the filing of the complaint and its service on defendant). We recognize in response to plaintiff's appeal, defendants assert the complaint was never properly served on them, but nothing in the record supports that assertion. Moreover, nothing in the record provided to us on appeal indicates defendants made that assertion to

the trial court. See Zaman v. Felton, 219 N.J. 199, 226-27 (2014) (noting appellate courts generally decline to consider issues not presented to the trial court). The trial court certainly made no finding that plaintiff had failed to establish proof of service.

The sole basis for the trial court's denial of plaintiff's motion was its conclusion "[f]ailure to notify the [c]ourt or defendants of an address change does not constitute good cause." We are mindful that plaintiff's failure to provide the court with his new address to ensure he received all court notices means he is not blameless, but we are equally mindful of "our paramount duty to administer justice in the individual case." Audubon Volunteer Fire Co. No. 1 v. Church Constr. Co., 206 N.J. Super. 405, 406 (App. Div. 1986). Consistent with that duty and applying with "great liberality" the good-cause standard articulated in Ghandi, 390 N.J. Super. at 197, we are convinced plaintiff's minor error should not have the effect of rendering "the courthouse doors . . . locked and sealed to prevent [plaintiff's] claims from being resolved in the judicial forum," especially when there is not a "scintilla of evidence" supporting defendants' claim of prejudice. Baskett, 422 N.J. Super. at 385.

In light of these circumstances, we conclude the trial court abused its discretion in denying plaintiff's motion to reinstate his complaint. Accordingly, we reverse and remand for proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION