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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0658-21

CHRISTIAN BROTHERS ACADEMY,

Plaintiff-Respondent,

v.

JAMES L. MARCHESE,

Defendant-Appellant,

and

AMBER MARCHESE and REBECCA GRANDE,

Defendants.

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Submitted June 9, 2022 – Decided July 6, 2022

Before Judges Mawla and Mitterhoff.

On appeal from the Superior Court of New Jersey , Law Division, Monmouth County, Docket No. L-3959-20.

James L. Marchese, appellant pro se.

Giordano, Halleran & Ciesla, and Connell Foley LLP, attorneys for respondent (Paul E. Minnefor and Jeffrey W. Moryan, of counsel and on the brief).

PER CURIAM

Defendant James Marchese appeals from an October 7, 2021 order denying reconsideration of two August 16, 2021 orders, which granted plaintiff Christian Brothers Academy's (CBA) motion for summary judgment and dismissed defendant's counterclaims. We affirm, substantially for the reasons articulated by Judge Linda Grasso Jones in her thoughtful and well-reasoned opinions.

We discern the following facts from the record. Defendant and Rebecca Grande divorced in 2004 and had two children from the marriage, J.M.M. and S.M.[1] On December 20, 2013, defendant and Grande entered into a post-judgment consent agreement. Pursuant to the consent agreement, the parents had joint legal and custodial custody, and defendant was the primary residential parent. Additionally, upon reaching ninth grade, both children would attend CBA "or a school of mutual assent, if for good cause the children cannot attend [CBA] with expense born[e] by [defendant]."

[1] We use initials to protect the privacy interests of the parties.

Both J.M.M. and S.M. enrolled at CBA in September 2015 and September 2017, respectively. In January 2018, defendant claimed he had discovered that an organization at CBA called Pegasus was sending racist, anti-Catholic/semitic, and pornographic material to his children.

On January 16, 2018, J. Bryan Smith, a counselor at CBA, issued a letter describing information relayed to him by J.M.M. and indicating "[a]t this point in time, based on [J.M.M.'s] account, it does not appear as though his current living arrangement is in the best interest of his well[-]being." Defendant alleges Smith provided the letter to Grande so that she could initiate a custody dispute. On January 17, 2018, a judge granted Grande's emergent order to show cause, awarding Grande residential custody of the children, establishing parenting time, and referring the parties to mediation. The order also stated, "[b]y consent of the parties, [defendant will] continue paying [the] tuition bill for both children's enrollment at [CBA]."

Between April 2018 and August 2018, defendant emailed plaintiff several times attempting to withdraw J.M.M. and S.M. from CBA. However, defendant's unilateral withdrawal was not sufficient because the 2013 consent order required mutual assent from both defendant and Grande to change the

children's school, and the children were enrolled in CBA for the 2018-2019 school year.

Beginning in January 2019, defendant failed to pay any tuition or fees for the children. J.M.M. graduated from CBA in May 2019. Defendant failed to pay the tuition and fees until S.M.'s graduation in May 2021, despite S.M.'s continued enrollment at CBA. During that time, CBA sent multiple letters to defendant and Grande regarding the outstanding tuition and fees.

On January 2, 2019, after a series of motions in family court, the judge issued an order that indicated the parties were discharged from attending mediation and would instead attend arbitration. One of the issues to be addressed at arbitration was "education expenses." The order additionally granted Grande's "request to reimburse Christopher Grande the $2,400 paid to [CBA] on behalf of the [defendant's] children within [ten] days[,]" granted Grande's "request to order [defendant] to pay [the] outstanding balance of $9,180 and set up a FACTS[2] account or to continue the payment plan prior to October 30, 2018[,]" and granted defendant's "request to order [Grande] reimburse [defendant] $10,314 for [a] tax refund and cost of mediation or apply [the] payments toward [CBA] tuition[.]"

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[2] The FACTS system is the program used by CBA to process tuition payments.

In two orders issued in September 2019, the judge vacated his January 2019 order and scheduled a trial to begin on December 4, 2019. One of the issues to be addressed at the trial was "[e]ducational expenses associated with [CBA.]"

On February 3, 2020, the judge issued an order, which provided in relevant part that defendant "shall be responsible for reimbursing all outstanding and to-be incurred tuition expenses on behalf of the unemancipated children to [CBA]. The below child support order . . . contemplates and considers that obligation. Should [defendant] fail to pay such tuition . . . Grande may seek revision of the child support." On April 6, 2020, the judge denied defendant's request that the court vacate the order requiring him to pay CBA, denied defendant's request that he receive credit for overpayment of child support and that Grande apply that amount to CBA's invoices, denied defendant's request that Grande pay him for the costs of mediation and arbitration and to apply those costs to CBA's tuition, and denied defendant's request that Grande be responsible for outstanding tuition to CBA. On July 2, 2020, a second judge granted Grande's request for an order compelling defendant to pay all outstanding CBA invoices and stated "[defendant] shall provide proof within [thirty] days that he has been in contact with CBA and that he has arranged to pay the bill or made a payment

arrangement[]." Finally, on October 19, 2020, the judge issued an order stating in pertinent part that "[p]ayment of balances due to [CBA] is a matter between [defendant] and the Academy." She also ordered that defendant "is responsible for any obligation owed to the Academy."

On December 8, 2020, plaintiff filed a complaint against defendant, his now wife Amber Marchese, and Grande for non-payment of tuition and fees for the children at CBA, amounting to $67,594. The complaint contained the following counts: breach of contract (count one); unjust enrichment (count two); quantum meruit (count three); equitable estoppel (count four); and breach of the covenant of good faith and fair dealing (count five).

On January 7, 2021, defendant filed an answer and counterclaim against plaintiff, alleging breach of the Consumer Fraud Act, N.J.S.A. 56:8-1 to -227 (count one); breach of contract (count two); breach of the covenant of good faith and fair dealing (count three); negligent misrepresentation and silent fraud (count four); interference with a contract (count five); breach of fiduciary duty (count six); and intentional infliction of emotional distress (count seven).

On February 11, 2021, plaintiff moved to dismiss defendant's counterclaims for failure to state a claim upon which relief can be granted. While plaintiff's motion to dismiss was pending, on April 6, 2021, defendant

moved for summary judgment on plaintiff's claims in the book account action. On May 3, 2021, plaintiff cross-moved for summary judgment in the book account action. On July 9, 2021, the parties appeared before Judge Linda Grasso Jones on all of the motions.[3]

On August 16, 2021, the judge, in two orders and an opinion, granted plaintiff's motion to dismiss the counterclaims, denied defendant's motion for summary judgment, and granted plaintiff's cross motion for summary judgment against defendant on the book account claims.

On September 1, 2021, defendant moved for reconsideration of both the order granting CBA summary judgment on the book account claims and the order dismissing his counterclaims. On October 7, 2021, after hearing from the parties, the judge denied defendant's motion. This appeal followed.

On appeal, defendant presents the following arguments for our consideration:

> POINT I
>
> THE TRIAL COURT ERRED BY DENYING THE DEFENDANT'S MOTION FOR RECONSIDERATION BY FAILING TO RECOGNIZE THE CHANCERY DIVISION-FAMILY

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[3] Judge Grasso Jones also heard two motions regarding co-defendant Amber Marchese, but because she is not appealing the decision, we do not address those motions.

PART PROCEDURAL INADEQUACIES WHICH PREVENTED A MOTIVATED FAIR AJUDICATION OF THE ISSUES AND INCREASED THE DEFENDANT'S BURDEN OF PROOF THEREBY PROHIBITING THE USE OF COLLATERAL ESTOPPEL.

POINT II

THE TRIAL COURT ERRED BY DENYING THE DEFENDANT'S MOTION FOR RECONSIDERATION THEREBY DISMISSING N.J.S.A 56:8-1 NEW JERSEY CONSUMER FRAUD AND COMMON LAW FRAUD COUNTERCLAIMS BY INCORRECTLY INITIATING THE S[T]ATUTE OF LIMITATIONS IN 2013.

POINT III

THE TRIAL COURT ERRED BY DENYING THE DEFENDANT'S MOTION FOR RECONSIDERATION AWARDING PLAINTIFF $67,594 BY INCORRECTLY OPINING THAT DEFENDANT FAILED TO CONTEST THE INADEQUACY OF PLAINTIFF'S DAMAGE PROOF IN DEFENDANT'S SUMMARY JUDGMENT FILING AND IN DEFENDANT'S RESPONSE TO PLAINTIFF'S CROSS MOTION FOR SUMMARY JUDGMENT.

We review the decision of a motion for reconsideration for an abuse of discretion. Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996). "A motion for reconsideration is designed to seek review of an order based on the evidence before the court on the initial motion . . . not to serve as a vehicle to

introduce new evidence in order to cure an inadequacy in the motion record." Cap. Fin. Co. of Del. Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008).

For these reasons, reconsideration should only be granted in "those cases which fall into that narrow corridor 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." Cummings, 295 N.J. Super. at 384 (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). Therefore, we have held that "the magnitude of the error cited must be a game-changer for reconsideration to be appropriate." Palombi v. Palombi, 414 N.J. Super. 274, 289 (App. Div. 2010). We review legal determinations de novo. Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016).

Collateral estoppel, otherwise known as issue preclusion, "bars relitigation of issues previously litigated and determined adversely to the party against whom [it] is asserted." Barker v. Brinegar, 346 N.J. Super. 558, 565-66 (App. Div. 2002) (alteration in original) (quoting Kortenhaus v. Eli Lilly & Co., 228 N.J. Super. 162, 164 (App. Div. 1988)). The doctrine is designed "to

promote efficient justice by avoiding the relitigation of matters which have been fully and fairly litigated and fully and fairly disposed of." Ibid. (quoting Kortenhaus, 228 N.J. Super. at 166). The doctrine of collateral estoppel requires a showing that:

> (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.
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> [In re Est. of Dawson, 136 N.J. 1, 20-21 (1994) (internal citations omitted).]

"Even where these requirements are met, the doctrine, which has its roots in equity, will not be applied when it is unfair to do so." Pace v. Kuchinsky, 347 N.J. Super. 202, 215 (App. Div. 2002). Collateral estoppel should not be imposed where:

> (1) The party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action; or
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> (2) The issue is one of law and (a) the two actions involve claims that are substantially unrelated, or (b) a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws; or

> (3) A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them; or
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> (4) The party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action; the burden has shifted to his adversary; or the adversary has a significantly heavier burden than he had in the first action; or
>
> (5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.
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> [Ensslin v. Twp. of N. Bergen, 275 N.J. Super. 352, 370 (App. Div. 1994).]

Guided by these legal principles, we reject defendant's argument that Judge Grasso Jones erred in applying collateral estoppel. In her well-reasoned written opinion, the judge correctly applied collateral estoppel because

> [a]fter initially agreeing that JMM and SM should attend CBA, and that he would pay the costs associated

with their attendance, [defendant] had the opportunity to argue in [f]amily [c]ourt that the boys should not attend CBA, and if the boys did attend CBA, that he should not be required to pay for it. The issue was addressed and decided by the Family [Part] on multiple occasions. [Defendant] had initially consented to the boys' attendance at CBA, and when he no longer consented to their attendance, or to pay for their tuition, the issue of boys' attendance at CBA, and [his] obligation to pay for it, was litigated before the court. [Defendant] had the opportunity to present his arguments and evidence to the Family Division as to - why the boys should not attend CBA — the school was not sufficiently Catholic and was not appropriately supervised by the Archdiocese; [he] had the right to withdraw the boys from CBA and had chosen to do so; proper warning was not provided on increases in tuition costs; . . . and all other issues that have been raised by [defendant] in his counterclaim filed in this matter. The Family [Part] considered all arguments and evidence presented by [defendant] and Rebecca Grande and ordered that the boys would continue to attend CBA, and that [his] obligation to pay for their attendance would continue. As indicated in the court's February 3, 2020 order, [defendant's] obligation to pay for the boys' education at CBA was factored into his child support obligation, meaning that [he] paid less in child support than he otherwise would have because he was required to pay for the boys' education at CBA. The orders were entered post-judgment, as the parties were divorced in 2004. While [defendant] could have pursued an appeal of any of the post-judgment orders entered by the court, the court has received no information indicating that he filed an appeal on any of the orders.

. . . . The decision was made, again and again — the boys would attend CBA, and [defendant] was

required to pay the costs associated with their attendance at the school.

We add only the observation that the judge considered and implicitly rejected any exceptions to collateral estoppel both in her written opinion and her oral opinion regarding reconsideration. As the judge reiterated during the motion for reconsideration hearing, "the [f]amily [c]ourt consistently held that [defendant] would pay for [tuition], and [defendant] received a reduction in child support as a result of being required to pay[.]" After a careful review of the record, we discern no abuse of discretion warranting reversal as there is no evidence that the judge rested her decision upon a palpably incorrect or irrational basis or failed to appreciate the significance of probative, competent evidence.

We also reject defendant's argument that the judge should have applied the discovery rule to toll the statute of limitations on his fraud claims. The common law discovery rule is a rule of equity that defers a cause of action's accrual date to the date the plaintiff knew or was chargeable with knowing an injury has occurred and the injury is the fault of another. <u>See</u> <u>Lopez v. Swyer</u>, 62 N.J. 267, 273-74 (1973). "Whether the discovery rule applies depends on 'whether the facts presented would alert a reasonable person, exercising ordinary diligence that he or she was injured due to the fault of another.'" <u>Ben Elazar v.</u>

Macrietta Cleaners, Inc., 230 N.J. 123, 134 (2017) (quoting Caravaggio v. D'Agostini, 166 N.J. 237, 246 (2001)).

Under the discovery rule, the running of the statute of limitations begins when the plaintiff is aware "through the exercise of reasonable diligence, the facts that form the basis for an actionable claim against an identifiable defendant." The Palisades at Ft. Lee Condo. Ass'n, Inc. v. 100 Old Palisade, LLC, 230 N.J. 427, 435 (2017) (citing Caravaggio, 166 N.J. at 246). "The standard is basically an objective one — whether plaintiff 'knew or should have known' of sufficient facts to start the statute of limitations running." Ben Elazar, 230 N.J. at 134 (quoting Caravaggio, 166 N.J. at 246). A plaintiff seeking application of the discovery rule bears the burden of showing "that a reasonable person in her [or his] circumstances would not have been aware, within the prescribed statutory period, that she [or he] had been injured by [the] defendant['s]" conduct. Kendall v. Hoffman-La Roche, Inc., 209 N.J. 173, 197-98 (2012).

Defendant failed to sustain that burden here because there was no information that was hidden from defendant in order for him to pursue his claims. Defendant's fraud claims primarily relate to CBA's representation of being a Catholic school governed by the Archdiocese, but these alleged

misrepresentations were discovered by defendant back in 2013 during his search for a Catholic school. Defendant then relied on these alleged misrepresentations in agreeing to have the boys attend CBA in the 2013 consent order. As Judge Grasso Jones correctly found there was "no basis for application of the discovery rule."

Finally, we reject defendant's argument that the judge erred in awarding plaintiff $67,594. As the judge stated during the motion for reconsideration hearing "I didn't hear anything from [defendant] indicating that he was challenging the amount . . . . There was no argument presented that the amount was wrong." The judge further reasoned that she "absolutely can rely on a certification that's provided by CBA as to the amount that's due and owing. That certification language was not challenged [by defendant.]" The money judgment was properly awarded because the evidence supporting the book account claim was unrebutted. Thus, defendant has failed to show that the judge rested her decision upon a palpably incorrect or irrational basis.

To the extent we have not addressed defendant's remaining arguments, we find they lack sufficient merit to warrant discussion in a written opinion. See 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