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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-1490-21**

MARGARET R. RICHARDSON,

Plaintiff-Respondent,

v.

**ALYSE A. MILLER-MURDEN
and MARK MILLER,**

Defendants-Appellants.

Argued March 29, 2022 – Decided April 11, 2022
Motion for reconsideration granted
Submitted March 16, 2022 – Decided June 3, 2022

Before Judges Fisher, Currier and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law
Division, Union County, Docket No. L-2009-21.

Soriano, Henkel, Biehl & Matthews, attorneys for
appellants (Thomas W. Matthews, of counsel and on
the brief).

Gold, Albanese, Barletti & Locasio, LLC, attorneys for
respondent (James N. Barletti, on the brief).

PER CURIAM

Plaintiff's complaint, which alleged defendants' negligence caused an auto accident on June 2, 2019, was filed on June 9, 2021. Because the complaint was filed a week beyond the two-year limitations period in N.J.S.A. 2A:14-2, defendants moved to dismiss. The trial judge denied the motion by finding plaintiff substantially complied with the statute of limitations.

We granted leave to appeal and, by way of our April 11, 2022 opinion, reversed and remanded for entry of an order dismissing the complaint. Plaintiff now moves for reconsideration, arguing for the first time in either the trial court or this court that the Supreme Court's June 11, 2020 COVID-19 order extended the two-year statute of limitations by fifty-five days which, if true, would mean her complaint was timely filed. We invited defendants' response to the motion. Having considered the moving and opposing papers, we grant reconsideration but, having considered¹ this new issue, we find no reason to alter or amend our prior disposition of this appeal.

In ruling on this motion, we do not – although we could – reject plaintiff's argument because it was not raised either in the trial court or in the written and

¹ That is, plaintiff has not actually asked us to reconsider our prior holding but that we consider another reason, not previously raised, that would support the trial court order denying the motion to dismiss.

oral submissions presented to this court until now. See J.K. v. N.J. State Parole Bd., 247 N.J. 120, 138 n.6 (2021). Instead, we have exercised our discretion to consider the merits of plaintiff's new argument and reject it for the following reasons.

The Supreme Court's June 11, 2020 order was one of a series of orders issued as a response to the pandemic that hit this State in March 2020. An earlier order, entered by the Court on March 17, 2020, provided that March 16 to 28, 2020 "shall be deemed the same as a legal holiday." An order entered ten days later extended that "legal holiday" to April 26, 2020, and yet another order, entered on April 24, 2020, declared that "the period from March 16 through May 10, 2020 shall be deemed the same as a legal holiday."

In moving for reconsideration, plaintiff relies on the Court's June 11, 2020 order, which states that "in the computation of time periods under the Rules of Court and under any statute of limitations for matters in all trial divisions of the Superior Court, the period from March 16, 2020 through May 10, 2020 shall not be included in calculating those trial court filing deadlines." Although this particular order did not state that the described period would constitute a "legal holiday," as had the preceding orders, the June 11 order's preamble describes the Court's intent to extend further the time frames contained in its preceding

orders. We gather from this that the Court did not suddenly – and without explanation or comment – intend in its June 11 order to extend the statute of limitations rather than treat the period between March 16 and May 10 as a legal holiday. Indeed, it seems highly unlikely the Court intended to take the extraordinary, unnecessary, and likely unconstitutional² step of altering the Legislature's declaration of when a personal injury action may be commenced in this State without having even acknowledged that was its intent.

This determination is critical to plaintiff's motion and the survival of her complaint. If the Supreme Court had taken the unprecedented step of modifying

² While the New Jersey Constitution declares that it is the Supreme Court that makes rules governing the practice and procedure in our courts, N.J. Const. art. VI, § 2, ¶ 3; Winberry v. Salisbury, 5 N.J. 240, 243-48 (1950), it is the Legislature that makes laws governing the time for commencement of actions in our courts, see Rosenberg v. Town of N. Bergen, 61 N.J. 190, 199-200 (1972). Without getting into the sometimes troubling separation-of-powers questions that may arise along the border between the judiciary and the legislative branches, see, e.g., Busik v. Levine, 63 N.J. 351, 364 (1973), there is little doubt that the Supreme Court was empowered to declare the fifty-five days in question a legal holiday, while there is considerable doubt about whether the Court had the power to add fifty-five days to the two-year time limit contained in the applicable statute of limitations. Plaintiff's interpretation of the meaning of the Court's June 11 order, if adopted, would likely cause an unnecessary separation-of-powers controversy the Court has always assiduously sought to avoid. See, e.g., In re Request to Release Certain Pretrial Detainees, 245 N.J. 218, 226 (2021). We cannot imagine the Court intended such a result. So, even if the June 11 order's omission of the legal-holiday language contained in the earlier COVID-19 orders suggests an ambiguity, we would interpret the June 11 order to avoid the constitutional infirmity plaintiff's interpretation would generate.

the statute of limitations by adding fifty-five days to the two years prescribed by the Legislature, plaintiff's complaint would have been timely because it was filed two years and seven days after the auto accident that allegedly caused her injuries. But if the Court intended its June 11 order to be consistent with its prior orders on the same subject, the period between March 16 and May 10 would only be considered a "legal holiday." If that is so, then this extra fifty-five days would benefit those it was intended to benefit – those desirous of filing a complaint during the period when COVID-19 caused a lockdown and drastically interfered with a litigant's ability to accomplish that task – by staying the time within which a complaint could be filed until the day after this legal holiday, May 11, 2020. See R. 1:3-1. If that is the proper interpretation of the June 11 order – and we believe it is – the COVID-necessitated fifty-five-day legal holiday is irrelevant; plaintiff waited more than a year after that legal holiday ended before filing her complaint.

To summarize, we have reconsidered the matter in light of plaintiff's new argument but, having considered it, we find no reason to alter or amend our April 11, 2022 opinion.

So ordered.

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



CLERK OF THE APPELLATE DIVISION