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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2278-20**

MARTIN V. ASATRIAN, ESQ.,

Plaintiff-Appellant,

v.

ROBERT C. WILSON,

Defendant-Respondent.

Argued May 5, 2022 – Decided May 17, 2022

Before Judges Haas and Mawla.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-3650-20.

Martin V. Asatrian, appellant, argued the cause pro se.

Michael T. Moran, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Acting Attorney General, attorney; Jane C. Schuster, Assistant Attorney General, of counsel; Michael T. Moran, on the brief).

PER CURIAM

Plaintiff Martin V. Asatrian, Esq. appeals from the Law Division's March 11, 2021 order granting defendant Robert C. Wilson's motion to dismiss his complaint for failure to state a claim. We affirm.

Plaintiff is a licensed attorney in New Jersey. Defendant is a Superior Court judge serving in Bergen County. In his complaint, plaintiff stated he has handled at least three civil litigation matters in which defendant was the presiding judge.

In one of these cases, A.A. v. Bergen Catholic High School, No. L-1440-18 (Bergen Catholic), plaintiff represented a relative in asserting, among other things, a claim for sexual assault against the school, the Newark Archdiocese, and several school employees. After another attorney took over the case, the Bergen Catholic defendants brought counterclaims against plaintiff and other individuals. During court appearances, plaintiff claims defendant "blamed" and "shamed" the alleged victim by making inappropriate comments on the record. Plaintiff also alleges defendant made incorrect rulings on discovery matters, and improperly issued an order requiring plaintiff to produce his telephone records.

In the second matter, Flugger v. A&A Ridgewood Registered Prof. Nurses Ass'n., No. L-7546-19, plaintiff complained that defendant insulted him on the record, "ruled adversely against [him]," and incorrectly dismissed the case with

prejudice. In the third case, Rivervale v. Khorozian,¹ plaintiff asserts defendant "ma[d]e fun of" plaintiff's name by calling him "Martin Khorozian" on the record, and erroneously dismissed the case with prejudice, allegedly in violation of plaintiff's rights under the Fifth Amendment and the Equal Protection Clause. Plaintiff also complained that defendant issued a "litigation shield" order precluding his law clerk from speaking to plaintiff about his cases before defendant, thus allegedly depriving plaintiff of his First and Fifth Amendment rights.

Plaintiff alleged defendant's conduct damaged his reputation and his earning capacity, and caused him to suffer "severe emotional distress with physical manifestations." Plaintiff sought compensatory and punitive damages, together with counsel fees and costs.²

Defendant filed a motion to dismiss the complaint based on a judicial immunity defense. Defendant asserted that even accepting all of plaintiff's allegations as true, defendant's actions were "judicial acts" taken in open court in litigation matters over which defendant clearly had jurisdiction. Therefore,

¹ The docket number for this case is not found in the record on appeal.

² The Bergen County Assignment Judge transferred venue of plaintiff's complaint to Passaic County.

defendant asserted he was immune from suit. Plaintiff argued defendant should have recused himself from cases involving plaintiff and, because he did not, defendant did not have jurisdiction over any of the proceedings listed in plaintiff's complaint.

Following oral argument, the trial court dismissed plaintiff's complaint based on the judicial immunity doctrine. In its comprehensive oral decision, the court held defendant was "entitled to absolute immunity as a matter of law" because he was only challenging defendant's "substantive rulings" in his capacity as a judge. Therefore, plaintiff's "recourse [wa]s either to the Appellate Division challenging [defendant's] rulings" or to the "Advisory Committee on Judicial Conduct."

On appeal, plaintiff contends "the Law Division committed reversible error by granting . . . defendant's motion to dismiss the complaint on the basis of judicial immunity." We disagree.

Rule 4:6-2(e) permits a court to dismiss a complaint for "failure to state a claim upon which relief can be granted[.]" In reviewing a motion to dismiss under this Rule, the trial court "must accept as true the facts alleged in the complaint, and credit all reasonable inferences of fact therefrom, to ascertain whether there is a claim upon which relief can be granted." Malik v. Ruttenberg,

398 N.J. Super. 489, 494 (App. Div. 2008) (citing Donato v. Moldow, 374 N.J. Super. 475, 483 (App. Div. 2005)). However, "the legal requisites for [the plaintiff's] claim must be apparent from the complaint itself." Edwards v. Prudential Prop. & Cas. Co., 357 N.J. Super. 196, 202 (App. Div. 2003). In reviewing a Rule 4:6-2(e) dismissal, we employ the same standard as that applied by the trial court. Donato, 374 N.J. Super. at 483.

Applying these principles, we are satisfied the trial court properly dismissed plaintiff's complaint because defendant was immune from liability for the claims plaintiff asserted against him. "Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction." Cleavinger v. Saxner, 474 U.S. 196, 199 (1985) (quoting Pierson v. Ray, 386 U.S. 547, 553-54 (1967)). This immunity is absolute. K.D. v. Bozarth, 313 N.J. Super. 561, 568 (App. Div. 1998). "Like other forms of official immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages." Mireles v. Waco, 502 U.S. 9, 11 (1991) (citing Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)).

The immunity applies even to judicial acts that are wrong, malicious, or beyond the judge's authority. Delbridge v. Schaeffer, 238 N.J. Super. 323, 334

(Law Div. 1989), aff'd o.b. sub nom., A.D. v. Franco, 297 N.J. Super. 1 (App. Div. 1993). Our Supreme Court has observed:

The doctrine that an action will not lie against a judge for a wrongful commitment, or for an erroneous judgment, or for any other act made or done by him in his judicial capacity, is as thoroughly established as are any other of the primary maxims of the law. Such an exemption is absolutely essential to the very existence, in any valuable form, of the judicial office itself; for a judge could not be either respected or independent if his motives for his official actions or his conclusions, no matter how erroneous, could be put in question at the instance of every malignant or disappointed suitor. Hence[,] we find this judicial immunity has been conferred by the laws of every civilized people. That it exists in this state in its fullest extent, has been repeatedly declared by our own courts.

[Bedrock Founds., Inc. v. Geo. H. Brewster & Son, Inc., 31 N.J. 124, 139-40 (1959) (quoting Grove v. Van Duyn, 44 N.J.L. 654, 656 (E. & A. 1882)).]

"Judicial immunity has two prerequisites: 1) the act complained of must be a 'judicial act;' and 2) the judge must have subject matter jurisdiction at the time he or she acts." K.D., 313 N.J. Super. at 568. To determine whether the act complained of is a "judicial act," the "reviewing court should scrutinize the nature of the act and the expectations of the parties, 'whether it is a function normally performed by a judge . . . [and] whether [the parties] dealt with the

judge in his judicial capacity." Malik, 398 N.J. Super. at 497 (alterations in original) (quoting Stump v. Sparkman, 435 U.S. 349, 362 (1978)).

The issue of whether a judge has "subject matter jurisdiction 'must be broadly construed' in the immunity context, such that 'immunity will be denied only where the judge acted in the clear absence of all jurisdiction,' as when a probate court tries a criminal case." K.D., 313 N.J. Super. at 568 (quoting Delbridge, 238 N.J. Super. at 336-37). "However, if a judge merely exceeds his jurisdiction—as when a criminal court judge convicts a defendant of a nonexistent crime—the judge would be immune." Id. at 568-69.

Applying these principles, it is clear that defendant's acts were "judicial acts" as required by the first prong of the judicial immunity doctrine. However, plaintiff argues that defendant is not entitled to judicial immunity "because his contemptuous conduct towards . . . [p]laintiff in various cases compelled his recusal from the underlying case." This argument lacks merit.

Plaintiff states he filed motions to require defendant to recuse himself in several matters and that defendant denied these motions. Defendant obviously had jurisdiction to consider and rule upon these motions. See Magill v. Casel, 238 N.J. Super. 57, 63 (App. Div. 1990) ("A motion for recusal must be made to the judge sought to be disqualified.").

Plaintiff fails to cite a single case holding that a court's denial of recusal motion, even if erroneous, calls into question that court's subject matter jurisdiction for purposes of the judicial immunity doctrine. Indeed, even in cases where an appellate court held that a trial court abused its discretion in failing to recuse, no jurisdiction issue was raised; rather, the proper remedy was, at most, retrial before a different judge. See, e.g., DeNike v. Cupo, 196 N.J. 502, 507-11 (2008) (reversing and remanding for a new trial after trial judge violated Rules of Professional Conduct by negotiating post-retirement employment with the plaintiff's counsel); Goldfarb v. Solimine, 460 N.J. Super. 22, 36-37 (App. Div. 2019) (holding trial judge erred in failing to recuse herself after ex parte communications, and exercising original jurisdiction to review judge's evidentiary rulings and remanding for a new trial on damages).

In support of his jurisdictional argument, plaintiff relies upon our unpublished decision in the Bergen Catholic matter, A.A. v. Bergen Cath. High Sch., No. A-1053-20 (App. Div. Aug. 16, 2021) (slip op. at 9-13), which held that defendant abused his discretion in compelling production of plaintiff's telephone records, and therefore reversed that discovery order. Because this discovery order was one of the judicial acts plaintiff cited in his complaint in this case, plaintiff asserts that our reversal "underscores the egregiousness of

. . . [d]efendant's treatment of . . . [p]laintiff in the various cases outlined in the [c]omplaint."

However, nothing in our decision supports plaintiff's contention that defendant lacked subject matter jurisdiction in ruling in the Bergen Catholic matter. Rather, it merely demonstrates that plaintiff properly availed himself of the appellate process to challenge the judicial ruling with which he disagreed. Cf. K.D., 313 N.J. Super. at 568 (judicial immunity doctrine is "justified by the availability of other safeguards against judicial error, especially the right to appeal."). Plaintiff provides no explanation why he would not be similarly able to avail himself of appellate review in the underlying cases to challenge defendant's denial of a recusal motion.

In sum, plaintiff failed to demonstrate that defendant lacked subject matter jurisdiction with respect to any of the judicial acts that plaintiff cites in his complaint. Therefore, the trial court correctly applied the judicial immunity doctrine and dismissed plaintiff's complaint.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION