NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3925-21

GEORGE CASTANO,

Plaintiff-Respondent,

v.

WENDELL D. AUGUSTINE, THE ESTATE OF WENDELL D. AUGUSTINE, and NFI INTERACTIVE LOGISTICS, LLC,

Defendants-Appellants.

APPROVED FOR PUBLICATION
March 6, 2023
APPELLATE DIVISION

Argued February 14, 2023 – Decided March 6, 2023

Before Judges Messano, Gilson and Rose.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Union County, Docket No. L-0137-20.

Mark N. Keddis argued the cause for appellants (Fishman McIntyre Levine Samansky, PC, attorneys; Mark N. Keddis, on the briefs).

Jonathan P. Holtz argued the cause for respondent (Bramnick, Rodriguez, Grabas, Arnold & Mangan, LLC, attorneys; Jonathan P. Holtz, on the brief).

The opinion of the court was delivered by

MESSANO, C.J.A.D.

Enacted as "part [of a statute] related to the ongoing endeavor in this State to reduce automobile insurance fraud and the cost of automobile insurance," Camp v. Lummino, 352 N.J. Super. 414, 417 (App. Div. 2002), N.J.S.A. 39:6A-4.5(b) provides:

> Any person who is convicted of, or pleads guilty to, operating a motor vehicle in violation of [N.J.S.A.] 39:4-50, [N.J.S.A. 39:4-50.4a],[1] or a similar statute from any other jurisdiction, in connection with an accident, shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of the accident.
>
> [(Emphasis added).]

This appeal requires us to consider whether, in the absence of a conviction or guilty plea to DWI, the statute nevertheless bars the claim of a plaintiff who was seriously injured in a traffic accident after admittedly drinking liquor and beer at several establishments during the day, and who may have had a blood alcohol concentration (BAC) that exceeded the legal limit at the time of the accident.

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[1] N.J.S.A. 39:4-50.4a punishes the refusal to submit to a breath test after being arrested for a violation of, among other statutes, N.J.S.A. 39:4-50. We refer to these two statutes throughout the opinion as driving while intoxicated, DWI.

The motion record reveals that plaintiff was driving his motorcycle southbound in the left lane of Tonnelle Avenue in Jersey City at approximately 1:15 a.m. on November 20, 2019. He had been to three different bars since approximately 2:00 p.m. the day before, drinking some beers or liquor at all three taverns. Plaintiff claimed that a tractor-trailer truck owned by NFI Interactive Logistics, LLC, and driven by its employee, Wendell Augustine, exited a convenience store parking lot onto Tonnelle Avenue. As Augustine negotiated the turn, the truck crossed into plaintiff's lane of travel. Plaintiff "brought [his] bike down" onto the roadway to avoid a collision, but he struck the truck's bumper and the wall dividing the southbound and northbound lanes of Tonnelle Avenue.

During his deposition, plaintiff sometimes admitted being "drunk" at the time of the accident; at other times he admitted having alcohol in his system but said he was not "drunk." He detailed the drinks that he had that day at three different bars until approximately twenty minutes before the crash. Plaintiff also admitted that he was speeding at the time of the crash.

Two EMTs who responded to the scene noted that plaintiff said he had been speeding and drinking, but neither had an independent recollection of his condition. One of the EMTs said she would have recorded in her report if plaintiff was intoxicated, but she did not, and the report stated plaintiff was

oriented to "person . . . place . . . [and] time" after the crash. Although police responded to the scene, it is undisputed that they never issued summonses to plaintiff for any motor vehicle offenses, including DWI.

Blood was drawn from plaintiff at the Jersey City Medical Center where he was treated for his injuries. Defendants' expert extrapolated from the alcohol level in the blood taken at the hospital that plaintiff had a BAC of .159 to .162 at the time of the accident, well in excess of the legal limit of .08. See N.J.S.A. 39:4-50(a) (defining the offense of DWI as "operat[ing] a motor vehicle . . . with a [BAC] of 0.08% or more").

Defendants moved for summary judgment, arguing that pursuant to N.J.S.A. 39:6A-4.5(b), plaintiff was legally intoxicated at the time of the accident and therefore could not, as a matter of law, pursue a negligence claim for damages. According to defendants, New Jersey's strong policy in favor of deterring drunk driving meant the statute should apply, even though plaintiff was neither convicted of, nor pled guilty to, DWI. Plaintiff argued there was a genuine dispute as to whether he was legally intoxicated, and, more importantly, because he neither pled guilty to, nor was convicted of, DWI, the statute simply did not apply.

The Law Division judge reasoned that although "public policy should result in summary judgment being granted [to defendants] in light of the

motion record, under a strict construction of the law" the motion had to be denied. The judge also concluded "[p]laintiff's intoxication at the time of the accident [was] in serious dispute." Finding that "genuine issues of material fact exist[ed]," the judge reasoned defendants were not entitled to summary judgment. The judge also denied defendants' motion for reconsideration, concluding he had considered all the motion evidence in denying summary judgment and his "reasoning was not based on a palpably incorrect basis."

We granted defendants leave to appeal from the orders denying them summary judgment and reconsideration. Defendants reiterate the arguments made in the Law Division, contending the judge "misapplied the law by strictly interpreting a single phrase in N.J.S.A. 39:6A-5(b)," contrary to the "legislative intent, overall purpose, and public policy" of the statute. Defendants also argue the judge mistakenly concluded there was a genuine dispute of fact regarding plaintiff's BAC at the time of the accident, which is "the sole criteria for" invoking the statutory bar to any claim for damages. Finally, defendants contend the judge's mistaken legal conclusion justified reconsideration of his earlier order and summary judgment dismissing plaintiff's complaint.

We disagree and affirm the orders under review.

I.

"The court's grant or denial of summary judgment is reviewed de novo, subject to the Rule 4:46-2 standard that governs a . . . ruling on a summary judgment motion." Schwartz v. Menas, 251 N.J. 556, 570 (2022) (citing Nicholas v. Mynster, 213 N.J. 463, 477–78 (2013); R. 4:46-2(c)). That standard requires us to "determine whether 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (quoting R. 4:46-2(c)). "To decide whether a genuine issue of material fact exists, [we] must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (second alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (2016)). "As with all issues of statutory construction, our review in this matter is de novo." Cashin v. Bello, 223 N.J. 328, 335 (2015) (citing Perez v. Zagami, LLC, 218 N.J. 202, 209 (2014)).

In construing N.J.S.A. 39:6A-5.4(b), we apply well-known canons of statutory interpretation. "The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the

statutory language." Garden State Check Cashing Serv., Inc. v. Dep't of Banking & Ins., 237 N.J. 482, 489 (2019) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)). "If a statute's plain language is clear, we apply that plain meaning and end our inquiry." Ibid. (citing State v. Fede, 237 N.J. 138, 147 (2019)).

However, "[i]f there is ambiguity in the statutory language that leads to more than one plausible interpretation, we may turn to extrinsic evidence, 'including legislative history, committee reports, and contemporaneous construction.'" Kocanowski v. Twp. of Bridgewater, 237 N.J. 3, 9–10 (2019) (quoting DiProspero, 183 N.J. at 492–93). "We may also turn to extrinsic guides if a literal reading of the statute would yield an absurd result, particularly one at odds with the overall statutory scheme." State v. Western World, Inc., 440 N.J. Super. 175, 189 (App. Div. 2015) (quoting Wilson by Manzano v. City of Jersey City, 209 N.J. 558, 572 (2012)). "Critically, '[a] court may neither rewrite a plainly-written enactment of the Legislature nor presume that the Legislature intended something other than that expressed by way of the plain language.'" W.S. v. Hildreth, 252 N.J. 506, 519 (2023) (alteration in original) (quoting O'Connell v. State, 171 N.J. 484, 488 (2002)).

On the other hand, our "standard of review on a motion for reconsideration is deferential." Hoover v. Wetzler, 472 N.J. Super. 230, 235

(App. Div. 2022). Reconsideration is appropriate only 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 . . . ." Triffin v. SHS Grp., LLC, 466 N.J. Super. 460, 466 (App. Div. 2021) (alterations in original) (quoting Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996)). "[T]he magnitude of the error cited must be a game-changer." Ibid. (quoting Palombi v. Palombi, 414 N.J. Super. 274, 289 (App. Div. 2010)).

II.

Here, the Legislature's language is plain and unambiguous. It evidences the clear intention to deny a plaintiff convicted of DWI the possibility of prevailing in a suit for damages arising from the subject motor vehicle accident by eliminating the convicted plaintiff's "cause of action." N.J.S.A. 39:6A-4.5(b). The Court has defined a "cause of action" as "the 'fact or facts which establish or give rise to a right of action, the existence of which affords a party a right to judicial relief.'" Alan J. Cornblatt, PA v. Barow, 153 N.J. 218, 232 (1998) (quoting Levey v. Newark Beth Israel Hosp., 17 N.J. Super. 290, 293–94 (Cty. Ct. 1952)). The Legislature chose to limit such a draconian

consequence only to those prospective litigants who actually had been convicted of DWI.

In their brief, and again during argument before us, defendants suggest that the Legislature's intent in enacting N.J.S.A. 39:6-4.5(b) was not only to reform the State's automobile insurance system but also to serve New Jersey's historic policy of deterring drunk driving. We accept that premise. See Caviglia v. Royal Tours of Am., 178 N.J. 460, 474 (2004) ("One public policy rationale behind N.J.S.A. 39:6A-4.5 is to deter drunk driving, the intentional use of automobiles as weapons, and drivers from operating uninsured vehicles." (emphasis added)). Defendants thereafter argue the Legislature's intent was not served by the motion judge's "strict interpret[ation of] a single phrase" in the statute, but rather was served better by eliminating that "single phrase" so that the statute should be read as follows: "Any person who is . . . operating a motor vehicle in violation of [N.J.S.A.] 39:4-50, [N.J.S.A. 39:4-50.4a] or a similar statute from any other jurisdiction, in connection with an accident, shall have no cause of action for recovery of economic or noneconomic loss sustained as a result of the accident."

While we are certainly mindful of New Jersey's strong policy against drunk driving, as we said in Woodworth v. Joyce, "though deterrence of drunk driving was one rationale behind [N.J.S.A. 39:6A-4.5(b)], effectuation of that

policy was neither the only, nor, in fact, was it the announced, goal of the no fault legislation in which it was included." 373 N.J. Super. 114, 122 (App. Div. 2004). We have in the past strictly construed N.J.S.A. 39:6A-4.5(b) consistent with the Legislature's comprehensive attempt to address motor vehicle insurance costs. See, e.g., Walcott v. Allstate N.J. Ins. Co., 376 N.J. Super. 384, 392 (App. Div. 2005) ("find[ing] no basis in the statutory scheme . . . to apply Section 4.5's bar to the recovery by drunk drivers of economic and non-economic losses to [personal injury protection] benefits"). More importantly, defendants' argument ignores a "bedrock assumption" of statutory interpretation, namely "that the Legislature d[oes] not use 'any unnecessary or meaningless language[.]' . . . Accordingly, '[w]e must presume that every word in a statute has meaning and is not mere surplusage.'" Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 587 (2013) (second alteration in original) (first quoting Patel v. N.J. Motor Vehicle Comm'n, 200 N.J. 413, 418-19 (2009); and then quoting Cast Art Indus., LLC v. KPMG LLP, 209 N.J. 208, 222 (2012)).

Defendants also cite several cases for the overriding proposition that courts have strayed from a strict interpretation of the plain language of N.J.S.A. 39:6A-4.5 to serve other policy goals. We accept that notion, but those other decisions have little application to the facts of this case.

In Perrelli v. Pastorelle, for example, the Court considered N.J.S.A. 39:6A-4.5(a), which denies a cause of action for injuries resulting from a motor vehicle accident to anyone "operating an uninsured automobile" at the time of the accident. 206 N.J. 193, 195 (2011). The plaintiff in Perrelli was injured "while a passenger in her own uninsured automobile" and argued the statute did not apply because she was not operating the car at the time of the accident. Id. at 195, 198. The Court rejected the plaintiff's contention, reasoning, "Given the purpose of N.J.S.A. 39:6A-4.5(a), there can be no doubt that the Legislature wanted to assure that all automobiles were covered by compulsory insurance by precluding those who do not have the required coverage from recovering from others merely by having someone else drive their car." Id. at 203. The Court rejected "[a] literal interpretation [that] would construe the provision as applying only to a driver of the automobile, and would allow the culpably uninsured person to violate the law and not suffer its consequences." Id. at 208 (emphasis added).

Here, of course, we deal with a different subsection of N.J.S.A. 39:6A-4.5 than was at issue in Perrelli and Caviglia. And the Court in Perrelli looked to numerous other provisions of Title 39 to reach its conclusion that an expansive interpretation of "while operating an uninsured automobile," as used in subsection (a), was entirely consistent with the Legislature's historic

objective of curbing the costs of automobile insurance in New Jersey. 206 N.J. at 201–03.

Defendants also cite our opinion, and the Court's affirmance of our judgment, in Voss v. Tranquilino, 413 N.J. Super. 82 (App. Div. 2010), aff'd. o.b. 206 N.J. 93 (2011). In Voss, the plaintiff was injured when his motorcycle collided with the defendant's car; at the time, the plaintiff's BAC was .196, and he pled guilty to DWI. Id. at 85. The plaintiff filed suit against the defendant and a restaurant he claimed negligently served him alcohol, alleging it was liable under the Dram Shop Act, N.J.S.A. 2A:22A-1 to -7. Ibid. Both defendants moved to dismiss the suit pursuant to N.J.S.A. 39:6A-4.5(b); the motion judge denied the restaurant's motion, which was the only one the plaintiff opposed. Id. at 86.

We affirmed, positing the issue as "whether in enacting N.J.S.A. 39:6A-4.5(b) the Legislature intended to repeal the Dram Shop Act's absence of immunity for liquor establishments from dram shop claims by patrons injured in accidents in connection with which they pled guilty to DWI." Id. at 90. Noting the "strong presumption against implied repealers," id. at 91, we concluded that "[t]he purposes of the two laws differed and w[ould] remain unaffected without repeal by implication," id. at 92. We agreed with the rationale expressed in our earlier decision in Camp, which involved "a social

host claim by a minor, namely that [N.J.S.A. 39:6A-4.5(b)] 'only implicates cases involving injuries or losses which are subject to coverage under Title 39.'" Ibid. (quoting Camp, 352 N.J. Super. at 417).

We understand defendants' point that Voss rejected a strict application of subsection (b) to service the public policies behind the Dram Shop Act. But we fail to see how the decision, which permitted the plaintiff in that case to pursue an entirely different statutory cause of action despite pleading guilty to DWI, has any relevance to this case. Here, defendants urge us to enforce certain language of N.J.S.A. 39:6A-4.5(b) that limits a plaintiff's access to the courts, something achieved only by omitting key words chosen by the Legislature.

Although we conclude that defendants are not entitled to summary judgment because plaintiff neither pled guilty to, nor was convicted of, DWI, we address their ancillary points because their resolution only supports our conclusion. Essentially, defendants argue that there was no genuine factual dispute that plaintiff was operating his motorcycle with a BAC in excess of .08, i.e., in violation of N.J.S.A. 39:4-50.

Plaintiff counters there were genuine disputed facts because his deposition testimony was equivocal at best, and, more importantly, defendants' expert's opinion lacked support in the record. According to plaintiff, to

support the defense expert's estimated BAC of .159 or more, he would have necessarily imbibed between twelve and sixteen drinks, more than three times the number of drinks plaintiff testified that he had before the accident. The motion judge concluded that on the record before him there were genuine factual disputes that foreclosed summary judgment, and so do we.

Of course, defendants' contention still hinges on a less than literal reading of N.J.S.A. 39:6A-4.5(b), which for the reasons already stated, we reject. But this aspect of defendants' argument only lends further support to our interpretation of subsection (b), and our conclusion that the statute only denies a cause of action to plaintiffs already convicted of DWI. By denying a cause of action to only those who have been adjudicated guilty of DWI beyond a reasonable doubt, the Legislature avoided the need for courts to resolve disputed facts, as in this case. A plaintiff already convicted of DWI is as easily discernible as the "culpably uninsured person," Perrelli, 206 N.J. at 208, similarly barred by the Legislature from bringing a cause of action under subsection (a). Applying the plain language of both subsections permits the early dismissal of motor vehicle accident claims brought by two classes of plaintiffs the Legislature declared have no causes of action. Doing so serves the "clear purpose and single object advanced by the omnibus insurance reform

legislation" of which N.J.S.A. 39:6A-4.5(a) and (b) were parts. Voss, 206 N.J. at 96.

Defendants' argument regarding the denial of their reconsideration motion requires no discussion in a written opinion. 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