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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4887-13T1

DENISE M. HENNESSEY,

Plaintiff-Appellant,

v.

WALLACE R. NEWBY,

Defendant-Respondent,

and

GEICO INSURANCE COMPANY,

Defendant/Intervenor-
Respondent.

Argued September 17, 2015 – Decided October 20, 2015

Before Judges Fisher and Currier.

On appeal from the Superior Court of New Jersey, Law Division, Cape May County, Docket No. L-0502-10.

Frank L. Corrado argued the cause for appellant (Barry Corrado & Grassi, P.C., attorneys; Stephen W. Barry, on the brief).

Walter H. Iacovone argued the cause for respondent GEICO Insurance Company (Margolis Edelstein, attorneys; Thomas L. Grimm, on the brief).

PER CURIAM

Plaintiff Denise Hennessey appeals the May 13, 2014 order denying the application of Rule 4:58-2 sanctions against GEICO. Our review of the record leads us to affirm the trial judge's ruling, but for different reasons.

The case arises out of a motor vehicle accident which occurred when a motorcycle being driven by defendant Wallace Newby struck the Hennessey car. Newby was insured by Rider Insurance Co. with $15,000 in liability coverage. Hennessey had an automobile policy with GEICO, which afforded her underinsured motorist (UIM) coverage of $50,000. Hennessey placed GEICO on notice of a UIM claim and GEICO thereafter filed a motion to intervene in the underlying action. The motion was granted and GEICO filed an answer in October 2011.

At this same time Newby's offer of his policy limits was rejected and thereafter the policy was deposited into court. In January 2012, Hennessey filed a motion, which was granted, to amend her complaint to add a punitive damages claim against Newby.

On June 1, 2012, Hennessey filed an offer to take judgment against Newby in the amount of $39,000.[1] The offer read: "Please take notice that plaintiff Denise Hennessey hereby makes an offer to take judgment against the defendant Wallace R. Newby

[1] Newby subsequently passed away in August 2012.

for . . . $39,000 without prejudice" (emphasis added). The document was served on counsel for Newby and GEICO. The offer was not accepted by either defendant.

Following a trial in April 2014, the jury found negligence as to both parties and awarded $200,000 in gross damages to Hennessey. The verdict was molded to $140,000 due to Hennessey's thirty percent comparative negligence.

Hennessey moved for counsel fees and interest under Rule 4:58-2(a)[2] as to GEICO. She argued that the molded jury verdict of $140,000 was in excess of 120 percent of the $39,000 offer of judgment as required under the rule, thus entitling her to counsel fees and prejudgment interest.

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[2] Rule 4:58-2(a) states:

> (a) If the offer of a claimant is not accepted and the claimant obtains a money judgment, in an amount that is 120% of the offer or more, excluding allowable prejudgment interest and counsel fees, the claimant shall be allowed, in addition to costs of suit: (1) all reasonable litigation expenses incurred following non-acceptance; (2) prejudgment interest of eight percent on the amount of any money recovery from the date of the offer or the date of completion of discovery, whichever is later, but only to the extent that such prejudgment interest exceeds the interest prescribed by R. 4:42-11(b), which also shall be allowable; and (3) a reasonable attorney's fee for such subsequent services as are compelled by the non-acceptance.

After oral argument, the judge ruled that the correct judgment to be entered against GEICO was $35,000 ($50,000 policy limits with the credit for the $15,000 Rider policy). Since that amount was not 120 percent of the offer of judgment, the judge held Hennessey was not entitled to counsel fees, interest or costs under Rule 4:58-2(a). Therefore, Hennessey's motion was denied.

We agree that the Rule 4:58 sanctions were not triggered in this matter, but reach our conclusion for different reasons than those expressed by the trial judge. Quite simply, we find that the offer of judgment was never applicable to GEICO as it was not filed against it.

At the time of the filing of the offer, GEICO was a party to this case. However, GEICO is not named as a defendant against whom judgment is being sought. It is not enough to notice GEICO's counsel on the document; the rules require that all counsel be served any paper that is being filed with the court on a particular case. See R. 1:5-1. GEICO can only be informed that judgment is being sought against it by being listed as a party on the notice. We reject Hennessey's argument that GEICO should have known the notice was directed to it, particularly in light of the facts here where Hennessey was seeking punitive damages personally against Newby. Hennessey

had not accepted the Rider policy and in fact had recently amended her complaint to seek excess damages against Newby personally. The offer of judgment as plainly read would reflect that intent.

Rule 4:58 was never applicable in this case to GEICO as no offer for judgment was ever filed against it. We, therefore, affirm the trial judge's ruling and find that Hennessey is not entitled to fees or interest under that rule. In light of this ruling, Hennessey's additional arguments are rendered moot.

Affirmed.