

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3148-11T3

MICHAEL TAFFARO,

Plaintiff-Appellant,

v.

BOROUGH OF RIDGEFIELD and
ANTHONY R. SUAREZ,

Defendants-Respondents.

Argued November 28, 2012 - Decided June 21, 2013

Before Judges Simonelli and Koblitz.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-6677-09.

William H. Michelson argued the cause for appellant (William H. Michelson, attorneys; Mr. Michelson, on the briefs).

Ian C. Doris argued the cause for respondent Borough of Ridgefield (Keenan & Doris, LLC, attorneys; Thomas A. Keenan, of counsel; Bernadette M. Peslak, on the brief).

James M. McCreedy argued the cause for respondent Anthony R. Suarez (Wiley Malehorn Sirota & Raynes, attorneys; Mr. McCreedy, of counsel and on the brief; Carolyn R. Conway, on the brief).

PER CURIAM

Plaintiff Michael Taffaro filed a complaint against defendants Borough of Ridgefield (Ridgefield) and Anthony R. Suarez (Suarez),¹ alleging false arrest, false imprisonment, malicious abuse of process, intentional infliction of emotional distress, malicious prosecution, malicious use of process, and federal and State procedural due process violations. The allegations stemmed from plaintiff's arrest for violating N.J.S.A. 2C:28-3a by signing a false certification contained in a request for records pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13. Plaintiff alleged that Suarez, plaintiff's half-sister Susan Taffaro (Susan),² and Ridgefield agents and employees conspired to cause his arrest, and Suarez retaliated against him for a letter critical of Suarez that he sent to Ridgefield residents during Suarez's mayoral campaign.

Plaintiff appeals from the November 16, 2011 Law Division order, which granted summary judgment to defendants and dismissed plaintiff's complaint with prejudice. Plaintiff also appeals from the January 20, 2012 order, which denied his motion

¹ We shall sometimes collectively refer to Ridgefield and Suarez as defendants.

² Because the parties bear the same last name, we identify Susan Taffaro by her first name in order to avoid confusion. We mean no disrespect in so doing.

for reconsideration. Because the police had probable cause to arrest plaintiff and plaintiff presented no competent evidence connecting Suarez to the arrest, we conclude the trial judge properly granted summary judgment and denied reconsideration.

Plaintiff was involved in acrimonious litigation against Susan over his stepmother's estate. The litigation centered on the stepmother's home in Ridgefield, which Susan inherited. Suarez, an attorney and Susan's friend and neighbor, represented Susan in the litigation. Susan was employed by Ridgefield as a court stenographer, and was appointed to positions with the Ridgefield Planning Board after Suarez won the mayoral election.

In September 2003, Susan signed a criminal complaint against plaintiff based on terroristic threats. A Ridgefield municipal court judge found plaintiff guilty of an amended charge of harassment. The judge entered an order on January 27, 2004, restraining plaintiff from communicating with Susan "either personally, or by telephone, in writing, or in any other manner directly or indirectly." Following a trial de novo in the Law Division, plaintiff was found guilty of harassment. The Law Division judge entered an order on July 2, 2004, restraining plaintiff from having any direct or indirect contact with Susan "unless such contact occurs in a professional capacity."

Plaintiff violated the restraining order and was charged with fourth-degree contempt, N.J.S.A. 2C:29-9a. Following a jury trial, he was convicted and sentenced to a one-year probationary term. Plaintiff appealed the conviction, and we affirmed. State v. Taffaro, No. A-5419-04 (App. Div. Mar. 13, 2007). On May 15, 2007, our Supreme Court granted certification. State v. Taffaro, 191 N.J. 318 (2007).

On July 6, 2007, prior to the Supreme Court's decision, plaintiff signed and submitted a request for access to public records pursuant to OPRA, requesting records from the Ridgefield Building Department relating to construction on Susan's home (the OPRA request). The OPRA request contained the following certification:

The applicant hereby certifies that he or she has not been convicted of any indictable offense under the laws of this State, any other state or the United States and is not seeking government records containing personal information pertaining [to] the victim or the victim's family as provided by N.J.S.A. 47:1A-1 et seq.

Susan discovered that plaintiff had submitted the OPRA request and notified the Ridgefield police. Following an investigation, a Ridgefield police detective filed a complaint on August 6, 2007, charging plaintiff with making a written false statement, N.J.S.A. 2C:28-3a, a fourth-degree offense. An arrest warrant was issued. On August 16, 2007, a police officer

from the Moonachie Police Department³ arrested plaintiff and transported him to police headquarters, where plaintiff was allegedly strip searched. Plaintiff was then transported to the Ridgefield Police Department and then to the Bergen County jail.⁴

On July 1, 2008, the Court reversed plaintiff's contempt conviction and remanded for a new trial. State v. Taffaro, 195 N.J. 442, 456 (2008).⁵ As a result, because he had no indictable conviction, the written false statement charge was dismissed with prejudice.

Thereafter, plaintiff filed a civil complaint against Ridgefield and Suarez. The case was removed to the United States District Court for the District of New Jersey, where defendants moved for summary judgment. United States District Court Judge Kathryn Hayden found there was probable cause for plaintiff's arrest, emphasizing that plaintiff had admitted he had a conviction for an indictable offense when he signed the OPRA request. The judge granted summary judgment, dismissed

³ Plaintiff lived in Moonachie at the time of his arrest.

⁴ Plaintiff admitted he was not mistreated and was permitted to make a telephone call at the Ridgefield Police Department. He acknowledged that nothing improper occurred and he was treated no differently than other inmates at the Bergen County jail.

⁵ Plaintiff was re-tried and convicted of contempt in August 2011. Plaintiff's appeal of that conviction is pending.

plaintiff's federal constitutional claims and remanded the State-law claims to State court.

Defendants subsequently filed a summary judgment motion in the Law Division, and Suarez filed a motion to dismiss for failure to state a claim. In opposition, for the first time, plaintiff challenged the validity of N.J.S.A. 47:1A-2.2a, which provides:

Where it shall appear that a person who is convicted of any indictable offense under the laws of this State, any other state or the United States is seeking government records containing personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information, the right of access provided for in [N.J.S.A. 47:1A-1 to -13] as amended and supplemented shall be denied.

Judge Perez-Friscia granted defendants' motions. In a November 16, 2011 order and written opinion, the judge held that Judge Hayden's finding of probable cause was binding and barred plaintiff's State-law claims, which were all premised on false arrest, under the principles of collateral estoppel and res judicata. The judge also determined that absent Judge Hayden's ruling, there was no evidence supporting plaintiff's State-law claims, and the validity of N.J.S.A. 47:1A-2.2a was irrelevant to the issue of false arrest and probable cause. In a January

20, 2012 order and written opinion, the judge denied plaintiff's motion for reconsideration, finding he presented nothing to warrant reconsideration. This appeal followed.

On appeal, plaintiff raises the following contentions:

POINT I

THE CONDUCT FOR WHICH PLAINTIFF WAS ARRESTED DID NOT STATE A LEGITIMATE CRIMINAL CAUSE OF ACTION.

POINT II

AS APPLIED TO THIS PLAINTIFF, THE OPRA CERTIFICATION OF NO CONVICTION WAS UNCONSTITUTIONAL, AND HE SHOULD NOT HAVE BEEN CHARGED WITH A CRIMINAL OFFENSE AT ALL. [NOT RAISED BELOW].

POINT III

THIS CASE DID NOT MEET THE STANDARD EITHER FOR SUMMARY JUDGMENT OR FOR DISMISSAL.

POINT IV

THE PROCEDURAL AND FACTUAL HISTORY UNDERLYING PLAINTIFF'S COMPLAINT GIVES RISE TO SEVERAL STATE-LAW CIVIL CAUSES OF ACTION.

POINT V

[THE MAYOR] ACTED UNETHICALLY IN REPRESENTING [SUSAN] AGAINST [PLAINTIFF], AND IS LIABLE TO HIM FOR THE FALSE ARREST.

POINT V

[THE DISTRICT COURT JUDGE] DECLINED TO RULE ON PLAINTIFF'S STATE-LAW CLAIMS, THEREFORE HER DECISION HAS NO PRECLUSIVE EFFECT ON THEM.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court. Tymczyszyn v. Columbus Gardens, 422 N.J. Super. 253, 261 (App. Div. 2011), certif. denied, 209 N.J. 98 (2012). Thus, we consider, as the trial judge did, "'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)). Summary judgment must be granted "if 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." R. 4:46-2(c). If there is no genuine issue of material fact, we must then "decide whether the trial court correctly interpreted the law." Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007), certif. denied, 195 N.J. 419 (2008). We review issues of law de novo and accord no deference to the trial judge's conclusions on issues of law. Zabilowicz v. Kelsey, 200 N.J. 507, 512-13 (2009).

As for a motion for reconsideration, we have determined,

Reconsideration itself is a matter within the sound discretion of the [c]ourt, to be exercised in the interest of justice[.] It is not appropriate merely because a litigant is dissatisfied with a decision of the court or wishes to reargue a motion, but should be utilized only for 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.

[Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (citations omitted) (internal quotation marks omitted).]

We will not disturb a trial judge's denial of a motion for reconsideration absent an abuse of discretion. Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996).


We decline to address plaintiff's challenge to N.J.S.A. 47:1A-2.2a in Point I.⁶ This case is about false arrest, not the validity of OPRA. The sole question is whether the police had probable cause to arrest plaintiff for violating N.J.S.A. 2C:28-3a. "For probable cause to arrest, there must be probable cause to believe that a crime has been committed and 'that the person

⁶ We also decline to address plaintiff's argument in Point II that N.J.S.A. 47:1A-2.2a is unconstitutional "as applied" to him. Plaintiff did not raise this argument below, and it does not involve the court's jurisdiction or concern a matter of public interest. Alloway v. Gen. Marine Indus., L.P., 149 N.J. 620, 643 (1997).

sought to be arrested committed the offense.'" State v. Chippero, 201 N.J. 14, 28 (2009) (quoting Schneider v. Simonini, 163 N.J. 336, 363 (2000), cert. denied, 531 U.S. 1146, 121 S. Ct. 1083, 148 L. Ed. 2d 959 (2001)). Plaintiff had an indictable conviction when he signed the OPRA request and falsely stated he had no indictable convictions. Thus, in addition to the preclusive effect of Judge Hayden's finding of probable cause, Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 406 (1991), we conclude there was probable cause to arrest plaintiff for violating N.J.S.A. 2C:28-3a. His State-law claims, therefore, fail.

We have considered plaintiff's remaining contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). There is not a scintilla of credible evidence of a conspiracy to cause plaintiff's arrest or that Suarez, Susan or anyone else in Ridgefield, except the police acting on probable cause, played a role in the arrest. We are satisfied that Judge Perez-Friscia properly granted summary judgment and denied plaintiff's motion for reconsideration, and affirm substantially for the reasons expressed in her well-reasoned written decisions.

Affirmed.

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

CLERK OF THE APPELLATE DIVISION