

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3912-12T2

MICHAEL TAFFARO,

Plaintiff-Appellant,

v.

SUSAN TAFFARO,

Defendant-Respondent.

Argued March 10, 2015 – Decided June 5, 2015

Before Judges Messano and Hayden.

On appeal from the Superior Court of New Jersey, Law Division, Special Civil Part, Bergen County, Docket No. DC-23222-12.

Robert Pentangelo argued the cause for appellant (Michael Taffaro, pro se, on the brief).

Respondent Susan Taffaro has not filed a brief.

PER CURIAM

After decorations and flowers he placed near his mother's gravestone were removed, plaintiff Michael Taffaro filed a complaint against his half-sister, defendant Susan Taffaro, in the Special Civil Part. Plaintiff alleged defendant took the items, and he sought damages for conversion (count one), invasion of privacy (count two), intentional infliction of

emotional distress (count three), and negligent infliction of emotional distress (count four). The motion judge dismissed counts two, three and four, finding the alleged facts occurred outside the applicable statute of limitations. A bench trial was held before a second judge on the remaining conversion count. At the end of plaintiff's case-in-chief, the judge dismissed the complaint, concluding plaintiff abandoned the items and failed to prove defendant had taken them.

On appeal, plaintiff argues it was error to dismiss the three counts of the complaint based upon the applicable statute of limitations. He also contends that the trial judge erred in concluding plaintiff abandoned the items. Having considered the arguments in light of the record and applicable legal standards, we affirm.

The parties have been estranged since a dispute over their mother's estate in 1999. Plaintiff began attaching paper items, frequently directed towards defendant and referencing the dispute, to his mother's gravestone. On a date undisclosed by any evidence in the record, some of these items were removed. Believing defendant took the items, plaintiff unsuccessfully pursued criminal charges against her in 2010. He then filed a lawsuit against defendant seeking compensation for the items' removal and for the emotional distress he claimed to have

suffered. Plaintiff later withdrew the suit but, on October 11, 2012, he filed a new complaint that is the subject of this appeal.

Defendant asserted that she had not been to the cemetery since the criminal charges were filed. She moved for summary judgment, asserting the statute of limitations on the invasion of privacy count and the emotional distress counts had run because the alleged acts had occurred, at the latest, on the date plaintiff filed his police report, September 17, 2010. At the motion hearing, plaintiff's counsel conceded the counts were outside the statute of limitations but informed the judge that plaintiff "may want to give some testimony on that."

Plaintiff then personally asserted that defendant took a Christmas wreath in December 2010 and a decorative Halloween ghost from the gravesite in October or November 2010. He presented no evidentiary support for his allegations regarding the wreath. Regarding the ghost, plaintiff pointed to a photograph attached to defendant's answer to the complaint. The photograph was taken at the cemetery and featured a wooden ghost with a card on it. The writing on the card cannot be seen. Anticipating its removal, plaintiff, before placing it near the grave, took a photograph of the card, which was dated October 25, 2010. Plaintiff argued that defendant's photograph was

evidence the item had been removed after October 25, 2010, i.e., within the two-year limitations period. Relying primarily on plaintiff's counsel's concession that the only materials defendant admitted to taking were removed more than two years prior to the complaint, the judge granted summary judgment.

On appeal, plaintiff argues the judge improperly disregarded defendant's photograph of the ghost, thereby essentially deciding a disputed fact as to when it was removed. Plaintiff asserts that if it was removed within the two-year limitations period, defendant's motion should have been denied.

"An appellate court reviews an order granting summary judgment in accordance with the same standard as the motion judge." Bhagat v. Bhagat, 217 N.J. 22, 38 (2014) (citing W.J.A. v. D.A., 210 N.J. 229, 237-38 (2012); Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 330 (2010)). We "must review the competent evidential materials submitted by the parties to identify whether there are genuine issues of material fact and, if not, whether the moving party is entitled to summary judgment as a matter of law." Ibid. (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); R. 4:46-2(c)).

[A] determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to

the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

[Brill, supra, 142 N.J. at 540.]

We then decide "whether the motion judge's application of the law was correct." Atl. Mut. Ins. Co. v. Hillside Bottling Co., 387 N.J. Super. 224, 231 (App. Div.), certif. denied, 189 N.J. 104 (2006). We owe no deference to the motion judge's conclusions in this regard and review issues of law de novo. Ibid. (citing Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995)).

Whether a claim is barred by the statute of limitations is normally a question of law. See Churchill v. State, 378 N.J. Super. 471, 478 (App. Div. 2005). The statute of limitations for invasion of privacy, intentional infliction of emotional distress, and negligent infliction of emotional distress is two years. N.J.S.A. 2A:14-2.

Here, the only purported evidence that any item was taken within the two year limitations period was the photograph of the card dated October 25, 2010. The photograph was clearly taken at the cemetery, but no facts in the record support plaintiff's assertion that this particular item was even removed from the site. Assuming it was, plaintiff presented no evidence that defendant removed it or took the photograph in question.

Defendant's contention that she had not been to the site since at the latest September 17, 2010, was unrebutted. Additionally, plaintiff's counsel conceded the acts alleged were outside the limitations period. Giving plaintiff as the non-moving party the benefit of the favorable evidence and inferences in the record, no rational factfinder could conclude that defendant took the items within the limitations period.

At the trial on the conversion count, the only witness called by plaintiff was defendant. She reiterated that she had not been to her mother's grave since 2009 or 2010. Defendant admitted previously removing various paper items placed at the gravesite but denied removing the wooden ghost as well as the wreaths and flowers.¹ At the close of plaintiff's case, defendant moved for dismissal pursuant to Rule 4:37-2(b).

The trial judge granted the motion and dismissed the complaint, reasoning plaintiff had failed to prove conversion because plaintiff had abandoned the items by leaving them on the grave. The judge also declined to draw an inference that defendant removed the wreaths and bouquets from her admission that she took paper items from the gravestone previously.

¹ The statute of limitations for conversion is six years. N.J.S.A. 2A:14-1.

Plaintiff argues the judge erred as a matter of law in determining that items left at a gravestone were abandoned and in ruling there was insufficient evidence from defendant's testimony that she took the wreaths and flowers.²

A motion to dismiss under Rule 4:37-2(b) must be denied when "the evidence, together with the legitimate inferences therefrom, could sustain a judgment in plaintiff's favor." Ibid. In deciding, a court must "accept[] as true all the evidence which supports the position of the party defending against the motion and accord[] him the benefit of all inferences which can reasonably and legitimately be deduced therefrom." Filqueiras v. Newark Public Sch., 426 N.J. Super. 449, 456 (App. Div.) (quoting Verdicchio v. Ricca, 179 N.J. 1, 30 (2004)) (internal quotation marks omitted), certif. denied, 212 N.J. 460 (2012).

Following a bench trial, we "normally defer to the trial judge with respect to findings of fact based upon the credibility of witnesses." J.N.S. v. D.B.S., 302 N.J. Super. 525, 530 (App. Div. 1997). The Court, however, owes no such deference to the trial court's legal conclusions, which are reviewed de novo. Avalon Manor Improvement Ass'n, Inc. v. Twp.

² Plaintiff's contention that the abandonment defense had previously been decided in his favor lacks sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

of Middle, 370 N.J. Super. 73 (App. Div.), certif. denied, 182 N.J. 143 (2004).

Conversion is the "unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of an owner's rights." LaPlace v. Briere, 404 N.J. Super. 585, 595 (App. Div.) (quoting Barco Auto Leasing Corp. v. Holt, 228 N.J. Super. 77, 83 (App. Div. 1988)) (internal quotation marks omitted), certif. denied, 199 N.J. 133 (2009). To maintain an action for conversion, the plaintiff must "be the owner of the property claimed to be converted or . . . be in possession or entitled to possession at the time of the alleged conversion. . . . A special, qualified, limited title is sufficient to enable the plaintiff to maintain the action." 18 Am. Jur. 2d Conversion § 68 (2004).

Property is abandoned when its possessor voluntarily relinquishes "all right, title, claim and possession," of the property "with the intention of not reclaiming it." State v. Bailey, 97 N.J. Super. 396, 400-01 (App. Div. 1967) (internal quotation marks omitted). It follows then that abandonment is a complete defense to conversion. Accord 18 Am. Jur. 2d Conversion § 102. The burden of proving abandonment by clear

and convincing evidence is on the party asserting the defense. See Fairclough v. Baumgartner, 8 N.J. 187, 189 (1951).

We agree with the trial judge that the items were abandoned by plaintiff. The necessary overt act occurred when plaintiff placed the items on his mother's grave. His intent to abandon is shown by the ephemeral nature of the cards and decorative items, which were made of paper and left outside. Moreover, the record on appeal indicates these items were placed in the cemetery with the intent of harassing defendant rather than honoring the memory of plaintiff's mother. Additionally, plaintiff admits that such items are routinely removed by groundskeepers at the cemetery.

Finally, the judge correctly concluded plaintiff could not prove defendant took plaintiff's wreaths and flowers. There was simply no evidence of such a fact. The trial judge heard defendant's testimony, in which she denied taking the plants, and clearly found it credible.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION