TRAVELERS INSURANCE COMPANY OF NEW JERSEY, Plaintiff-Appellant,

v.

SOUTH JERSEY HEALTH & WELLNESS CENTER, a/s/o JOSEPHINE RICKERT, Defendant-Respondent.

No. A-0476-11T1.

Superior Court of New Jersey, Appellate Division.

Argued March 20, 2012.
Decided April 3, 2012.

Michael Eatroff argued the cause for appellant (**Methfessel** & **Werbel**, attoneys; Mr. Eatroff, of counsel; Mr. Eatroff and Leonard V. Don Diego, on the brief).

Sean T. Hagan argued the cause for respondent (Law Offices of Sean T. Hagan, attorneys; Mr. Hagan, on the brief).

Before Judges Fisher, Nugent and Maven.

NOT FOR PUBLICATION

PER CURIAM.

Plaintiff Travelers Insurance Company of New Jersey filed this appeal, seeking our review of a trial court order that confirmed a decision rendered by a dispute resolution professional (DRP) pursuant to the Alternative Procedure for Dispute Resolution Act (APDRA), N.J.S.A. 2A:23A-1 to-19. The DRP applied an equitable estoppel theory in rejecting Travelers' defense to certain portions of defendant South Jersey Health and Wellness Center's claim, and the Law Division judge confirmed the award by dismissing the complaint. Because N.J.S.A. 2A:23A-18(b) bars any "further appeal or review" of such a trial court order, we dismiss the appeal.

The record reveals that Josephine Rickert was injured in an accident in Atlantic City on August 24, 2008. At the time, Rickert was covered by a Travelers' automobile insurance policy that contained $250,000 in personal injury protection (PIP) coverage and $10,000 in extended medical expense benefits (Med-Pay) coverage. Because Rickert was injured while a passenger on a jitney — a commercial vehicle — the PIP coverage did not apply and only the Med-Pay coverage was available to pay her medical expenses. Rickert was treated by South Jersey, which understood from Travelers' responses at times and silence at others that Travelers was handling the matter as a PIP claim. A dispute arose as to the payment of South Jersey's bills beyond the $10,000 Med-Pay limit, and South Jersey, which had obtained authorization from Rickert, demanded arbitration pursuant to APDRA.

The arbitration association appointed a DRP, who received documentary evidence and heard the arguments of counsel. A few weeks later, the DRP rendered a written decision, awarding South Jersey a portion of its claim because Travelers failed to communicate its view that South Jersey's bills were covered by Med-Pay, not PIP.

Travelers thereafter commenced this action, seeking the vacation of the DRP award. On the return date of an order to show cause, Travelers argued that the DRP's determination was erroneous within the meaning of N.J.S.A. 2A:23A-13(c)(5), which permits a judge to vacate, modify or correct an arbitration award if the arbitrator "committed prejudicial error by erroneously applying law to the issues and facts presented." After hearing counsel's argument, Judge Francis J. Orlando concluded, in a thorough and thoughtful opinion, that the DRP had not committed prejudicial error. As a result, Judge Orlando dismissed Travelers' complaint.

Travelers appealed, arguing:

> I. APPEALS FROM LAW DIVISION DETERMINATIONS UNDER N.J.S.A. 2A:23A-13(c)(5) ARE COGNIZ-ABLE IN SITUATIONS SUCH AS THIS WHERE THE ARBITRATION AWARD IN ISSUE CONSTITUTES A

> REFORMATION OF AN INSURANCE POLICY.
>
> II. THERE WAS NO BASIS TO INVOKE THE DOCTRINE OF ESTOPPEL TO REFORM THE POLICY OF INSURANCE BECAUSE THE ELEMENTS OF ESTOPPEL WERE NOT PROVEN.

In responding, South Jersey argued that Travelers' appeal was filed out of time, that there is no merit to Travelers' criticism of either the DRP's determination or Judge Orlando's decision, and that this court lacks jurisdiction to review Judge Orlando's decision. We reject South Jersey's argument that the appeal was untimely but conclude, as South Jersey has forcefully and correctly urged, that we lack appellate jurisdiction.

Whether we have jurisdiction to hear this appeal turns on the meaning and scope of N.J.S.A. 2A:23A-18(b), which states:

> Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered by the court in conformity therewith and be enforced as any other judgment or decree. There shall be no further appeal or review of the judgment or decree.
>
> [Emphasis added.]

With increasing frequency, we have been asked to examine the extent to which this court may intervene in such matters. In considering the scope of N.J.S.A. 2A:23A-18(b), the Supreme Court recognized in Mt. Hope Dev. Assocs. v. Mt. Hope Waterpower Project L.P., 154 N.J. 141, 152 (1993), that there are exceptions to this statute. For example, the Court held that APDRA's general elimination of appellate jurisdiction does not apply to child support orders or counsel fee awards and recognized that there may be other circumstances "where public policy would require appellate court review." Ibid.

In Mt. Hope, the Court also observed that appellate review may occur when necessary for the court to carry out "its supervisory function over the courts." Ibid. In Morel v. State Farm Ins. Co., 396 N.J. Super. 472, 476 (App. Div. 2007), Judge Coburn explained that this "supervisory function" permits our exercise of jurisdiction when a trial court has exceeded its jurisdiction:

> Plaintiff was entitled to a ruling applying the relevant statutory standards. Had the judge made such a ruling, the proper course would be dismissal of the appeal under N.J.S.A. 2A:23A-18. But the statutory denial of a right to appeal in this court is based on the assumption that the trial judge will decide the case by applying the principles dictated by the Legislature. When a judge fails to carry out that legislative direc-tion, as occurred here, our supervisory role requires consideration of the appeal and reversal and remand for application of the statutory standards. Otherwise, the statute would be rendered meaningless.

We have since adhered to this interpretation in a number of instances. See, e.g., Liberty Mut. Ins. Co. v. Garden State Surgical Ctr., L.L.C., 413 N.J. Super. 513, 520-21 (App. Div. 2010); Fort Lee Surgery Ctr. v. Proformance Ins. Co., 412 N.J. Super. 99, 104 (App. Div. 2010); Riverside Chiropractic Grp. v. Mercury Ins. Co., 404 N.J. Super. 228, 240 (App. Div. 2008); N.J. Citizens Underwriting Reciprocal Exch. v. Kieran Collins, D.C., LLC, 399 N.J. Super. 40, 50 (App. Div.), certif. denied, 196 N.J. 344 (2008).

Indeed, in adhering to Morel's approach and our deference to the Legislature's decision to eliminate review beyond that exercised in the trial court in such matters, we have concluded that appeals to this court must be dismissed even when we think the trial judge was mistaken in finding the DRP committed error. In Fort Lee Surgery Ctr., supra, 412 N.J. Super. at 104, we examined whether the trial judge adhered to the limits of APDRA and found the judge had applied N.J.S.A. 2A:23A-13(c)(5), which permits trial court intervention upon a finding that the DRP committed prejudicial error in the application of the law to the facts. In explaining the approach that has developed since Mt. Hope, we held:

> Certainly, not every instance in which a judge utters the phrase "prejudicial error" will preclude appellate review. The exercise of our supervisory function cannot be talismanically eliminated by the mere invocation of the words of the statute. But, when a trial judge is able to provide a rational explanation for how the arbitrator committed prejudicial error, N.J.S.A. 2A:23A-18(b) requires a dismissal of an appeal of that determination regardless of whether we may think the trial judge exercised that jurisdiction imperfectly. Any broader view of appellate jurisdiction would conflict with the Legislature's expressed desire in enacting APDRA to eliminate appellate review in these matters.
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> [Fort Lee Surgery Ctr., supra, 412 N.J. Super. at 104.]

As our interpretation of N.J.S.A. 2A:23A-18(b) has developed through the many attempts by litigants to have us review such matters, it becomes increasingly clear that the opportunity for appellate review is extremely limited.

Recognizing this, Travelers has seized upon our recent decision in Open MRI & Imaging of Rochelle Park v. Mercury Ins. Grp., 421 N.J. Super. 160 (App. Div. 2011). There, the DRP determined that a request for reformation of a policy was not within her authority; the Law Division judge found that the DRP had committed prejudicial error within the meaning of N.J.S.A. 2A:23A-13(c)(5), and that reformation was appropriate. Open MRI, supra, 421 N.J. Super. at 163. We reviewed the judge's determination because we concluded that N.J.S.A. 2A:23A-18(b) barred appellate review only of orders "confirming, modifying or correcting an award," and that the Law Division order fit none of those descriptions. Open MRI, supra, 421 N.J. Super. at 166 (citing Liberty Mut. Ins. Co., supra, 413 N.J. Super. at 520-21).

Nothing like what occurred in Open MRI occurred here. The DRP here did not reform the policy but simply barred Travelers, through application of the doctrine of equitable estoppel, from asserting a position that medical bills were covered by Med-Pay rather than PIP in light of Travelers' communications and failure to communicate otherwise with South Jersey; indeed, in rejecting other aspects of South Jersey's claim, the DRP's award was faithful to the provisions of Traveler's policy that Travelers believes were reformed. In addition, the order under review here confirmed the DRP's award, thus falling within the parameters of N.J.S.A. 2A:23A-18(b).

We dismiss the appeal because, in reviewing the record, it is clear that the DRP acted well within the scope of her authority, and Judge Orlando acted well within the scope of his authority in concluding that the DRP did not commit an error within the meaning of N.J.S.A. 2A:23A-13(c)(5). The circumstances do not permit the exercise of supervisory jurisdiction. Had we jurisdiction in this matter, we would affirm substantially for the reasons set forth in Judge Orlando's oral decision. But our role does not extend so far.

Appeal dismissed.