NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0887-13T4

NEW JERSEY MANUFACTURERS
INSURANCE COMPANY,

Plaintiff-Appellant,

v.

DANIEL DITULLIO,

Defendant,

and

THE RUTHERFORD VOLUNTEER
FIRE DEPARTMENT, and
THE WEST END FIREHOUSE,

Defendants-Respondents.

Argued October 15, 2014 – Decided October 24, 2014

Before Judges Yannotti, Fasciale and Whipple.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-5260-12.

Jeffrey D. Noonan argued the cause for appellant (Pomeroy, Heller & Ley, L.L.C., attorneys; Daniel J. Pomeroy and Karen E. Heller, on the brief).

Ian C. Doris argued the cause for respondents (Keenan & Doris, L.L.C., attorneys; Mr. Doris, of counsel; Bernadette M. Peslak, on the brief).

PER CURIAM

In this personal injury protection (PIP) reimbursement case, plaintiff New Jersey Manufacturers Insurance Company ("NJM") appeals from a September 4, 2013 order dismissing its complaint and granting summary judgment to two public entities, The Rutherford Volunteer Fire Department (the "Fire Department") and The West-End Firehouse (the "Firehouse") (collectively referred to as "defendants"). We affirm.

Defendants invited Daniel DiTullio,[1] an auxiliary firefighter, to an event at the Firehouse and served him alcohol. He became intoxicated, left the Firehouse driving his Ford Expedition, and collided with a Honda Accord insured by NJM. The individuals in the Honda sustained injuries and NJM paid PIP benefits on their behalf.

NJM filed this complaint for PIP reimbursement pursuant to N.J.S.A. 39:6A-9.1a ("Section 9.1a"). NJM alleged that under Section 9.1a, defendants were considered tortfeasors and were obligated to reimburse NJM the amount of the PIP payments that NJM paid. NJM also asserted that defendants were responsible for willfully serving alcohol to DiTullio knowing that he was

[1] NJM named DiTullio as a defendant for discovery purposes only. Counsel represented to us at oral argument that NJM does not have a direct claim against DiTullio. He is not involved in this appeal.

intoxicated, and were therefore liable as social hosts pursuant to N.J.S.A. 2A:15-5.6 to -5.8.

Defendants moved for summary judgment relying on Hanover Ins. Co. v. Borough of Atl. Highlands, 310 N.J. Super. 599 (Law. Div. 1997), aff'd, 310 N.J. Super. 568 (App. Div.), certif. denied, 156 N.J. 383 (1998). In Hanover, we held that the Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3, barred PIP reimbursement claims against public entities because "absent unambiguous statutory [language], the sweeping rule of public entity tort immunity dominant in Title 59 must continue to remain applicable to direct actions brought under [Section 9.1a]." Hanover, supra, 310 N.J. Super. at 572. NJM conceded that Hanover would bar its Section 9.1a claim, but only if defendants' conduct was protected by the TCA. NJM maintained that defendants' service of alcohol to DiTullio was not protected by the TCA, thus our holding in Hanover did not bar its PIP-reimbursement lawsuit.

The judge agreed with defendants, rendered a written opinion, and entered the order under review. She concluded that the Hanover decision barred NJM's lawsuit without any limitation. The judge also rejected NJM's social host liability theory.

On appeal, NJM argues that the judge misread Section 9.1a and the Hanover decision. NJM contends that the phrase "any tortfeasor" in Section 9.1a should be read broadly to include public entities. NJM further maintains that Hanover bars a Section 9.1a PIP reimbursement claim only if defendants' conduct was protected by the TCA. NJM asserts secondarily that the judge erred by rejecting its social host liability theory.

Section 9.1a provides in pertinent part that

> [a]n insurer, . . . paying . . . [PIP] benefits . . . as a result of an accident occurring within this State, shall, . . . have the right to recover the amount of payments from any tortfeasor who was not, at the time of the accident, required to maintain [PIP] . . . coverage, other than for pedestrians . . . .
>
> [N.J.S.A. 39:6A-9.1a (emphasis added).]

It is undisputed that defendants are not required to maintain PIP coverage pursuant to N.J.S.A. 39:6-54. Therefore, the question on appeal is whether defendants are considered "any tortfeasor" within the meaning of Section 9.1a.

In reviewing a grant of summary judgment, we apply the same standard under Rule 4:46-2(c) that governed the trial court. Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 564 (2012). Construing Section 9.1a and Hanover, however, involve legal questions. We accord no deference to the motion judge's conclusions on issues of law, Manalapan Realty, L.P., v. Twp.

Comm. of Manalapan, 140 N.J. 366, 378 (1995), which we review de novo.

I.

We begin by summarizing some basic rules of statutory construction. "The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492 (2005). In interpreting a statute, we give words "'their ordinary meaning and significance,' recognizing that generally the statutory language is 'the best indicator of [the Legislature's] intent.'" Tumpson v. Farina, 218 N.J. 450, 467-468 (2014) (alteration in original) (quoting DiProspero, supra, 183 N.J. at 492). We read each statutory provision "in relation to other constituent parts so that a sensible meaning may be given to the whole of the legislative scheme." Wilson, supra, 209 N.J. at 572. "[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." DiProspero, supra, 183 N.J. at 492-93 (citation and internal quotation marks omitted).

The New Jersey Supreme Court previously determined that the term "any tortfeasor" in Section 9.1a is "not unambiguous."

State Farm Mut. Auto. Ins. Co. v. Licensed Bev. Ins. Exch., 146 N.J. 1, 5 (1996). As a result, we look to extrinsic evidence to discern the legislative intent of the term "any tortfeasor" in Section 9.1a.

II.

We identify the following legislative history leading to the enactment of Section 9.1a. In 1972, the Legislature passed the "New Jersey Automobile Reparation Reform Act," N.J.S.A. 39:6A-1 to -35, commonly known as the "No-Fault" law. The Legislature's intent was to lower automobile insurance premiums and provide a quick means of compensating injured motorists. Garden State Fire & Cas. Co. v. Commercial Union Ins. Co., 176 N.J. Super. 301, 305 (App. Div. 1980). Prior to the enactment of the No-Fault law, insurers had the right to file subrogation lawsuits against other insurance companies to recover medical expense payments. State Farm, supra, 146 N.J. at 6. The No-Fault law eliminated this type of litigation. Ibid.

In Aetna Ins. Co. v. Gilchrist Bros., Inc., 85 N.J. 550 (1981), the Court precluded Aetna, the PIP carrier, from subrogating against the tortfeasor's commercial insurer to recover the PIP payments that Aetna paid to the injured party. Id. at 567. The Court reasoned that Aetna's subrogation rights were derivative in nature and that it obtained "only the

right[s] of the insured against the tortfeasor." Id. at 560-61. Applying the evidential exclusion rule,[2] the Court reasoned that any contrary result would have constituted double recovery. Id. at 562-63.

In Aetna, Justice Sullivan issued a dissenting opinion stating that the practical effect of the decision would result in "private automobile owners 'subsidizing' the cost of insurance on non-PIP-covered commercial vehicles in this State." Id. at 567. He maintained that this result was inequitable and in conflict with the premium-reducing objective of the No-Fault law. Id. at 567-68.

In 1984, the Legislature responded to this inequity by passing Section 9.1a, which partially overruled Aetna. State Farm, supra, 146 N.J. at 10. "The legislative intent behind [enacting Section 9.1a] was to alleviate the imbalance identified by Justice Sullivan by reducing the cost of insurance for automobile owners and allowing automobile insurers to recover PIP through reimbursement." Id. at 9. Allowing PIP reimbursement suits to proceed would therefore (1) "enable PIP

[2] N.J.S.A. 39:6A-12 (indicating that evidence of the amounts collectable or paid as part of an auto insurance policy, for medical expenses, and benefits under a special auto insurance policy to an injured person including deductibles, co-payments, or exclusions, is inadmissible for recovery for damages of bodily injury). This is otherwise referred to as the collateral source rule.

carriers to pass on PIP costs to the parties responsible for the injuries"; and (2) ensure that the "courts [would not] be[] overrun with litigation by insurance companies seeking PIP reimbursement." Id. at 14-15.

III.

Against this legislative history, we reject NJM's contention that the judge misread Section 9.1a and our holding in Hanover. Because defendants are public entities, we consider NJM's arguments mindful of the legislative design to establish immunities for public entities, N.J.S.A. 59:1-2, and reduce automobile insurance premiums, State Farm, supra, 146 N.J. at 14.

A.

NJM relies on State Farm to support its argument that defendants are considered "tortfeasors" under Section 9.1a, but such a reliance is misplaced. The Court in State Farm did not analyze whether a public entity is considered a "tortfeasor" as that term is used in Section 9.1a. Rather, the issue in State Farm was "whether a tavern is a 'tortfeasor' under [Section 9.1a], who [would be] potentially responsible for reimbursing [PIP] benefits paid by a private passenger automobile carrier to one of its insureds because of the tavern's negligence." Id. at 3.

The State Farm Court reconciled another section of the No-Fault law[3] with Section 9.1a and concluded that the language "other than for pedestrians" in Section 9.1a was intended to "ensure the inclusion of owners and operators of commercial vehicles under the statute, not to exclude all otherwise eligible tortfeasors." Id. at 13 (emphasis added). The Court did not determine whether a public entity is considered to be an "eligible" tortfeasor under Section 9.1a. The Court reached its holding, that "the reimbursement right conferred by [S]ection 9.1[a] encompasses all tortfeasors that are not subject to the No-Fault law," id. at 15, by solely considering whether a PIP carrier can seek PIP reimbursement against a tavern, a non-owner of a commercial vehicle.

B.

We reaffirm our holding in Hanover by construing the meaning of "any tortfeasor" with the need to harmonize the policy reasons behind the TCA and the No-Fault Law.

The TCA provides that "[n]o insurer or other person shall be entitled to bring an action under a subrogation provision in an insurance contract against a public entity or public employee." N.J.S.A. 59:9-2e ("Section 2e"). We understand that

[3] N.J.S.A. 17:28-1.3 (requiring commercial vehicles to provide PIP coverage for pedestrians).

a Section 9.1a PIP-reimbursement claim is a "direct right of action against . . . tortfeasors" and is therefore different than the subrogation claims referenced under Section 2e. Hanover, supra, 310 N.J. Super. at 603-04.

Because defendants are public entities, we read Section 9.1a understanding that it impacts the "more encompassing legislative design to establish immunities for public entities." Id. at 604. The general rule of liability for public entities under the TCA is that they are immune from suit unless a specific statutory provision provides otherwise. Polzo v. Cnty. of Essex, 209 N.J. 51, 65 (2012). The TCA "is strictly construed to permit lawsuits only where specifically delineated." Gerber ex rel. Gerber v. Springfield Bd. of Educ., 328 N.J. Super. 24, 34 (App. Div. 2000). Here, Section 9.1a does not so specifically delineate.

The Legislature approved Section 9.1a to allow PIP reimbursement claims in the hopes of reducing the overall cost of insurance. State Farm, supra, 146 N.J. 9-10, 14. Permitting PIP carriers to seek PIP reimbursement from public entities would potentially shift the cost of private automobile insurance to the public at large which undermines the very purpose of the TCA. See Travelers Ins. Co. v. Collella, 169 N.J. Super. 412, 415 (App. Div. 1979) (noting that insurance companies are in a

better position to withstand the losses for which they contract as compared to public entities). PIP reimbursement claims are generally resolved in arbitration and do not threaten to overrun the courts by litigation. State Farm, supra, 146 N.J. at 14-15. Allowing Section 9.1a claims against public entities contravenes the legislative design of establishing immunities for public entities and may increase future litigation in the courts because claims against public entities are less likely to be resolved swiftly in arbitration.

It is well-established that "the Legislature is presumed to be aware of judicial construction of its enactments." DiProspero, supra, 183 N.J. at 494 (citation and internal quotation marks omitted). Our interpretation in Hanover of Section 9.1a is further supported by a long period of legislative acquiescence or failure to amend Section 9.1a indicating agreement with our holding in Hanover. Macedo v. Dello Russo, 178 N.J. 340, 346 (2004).

Any interpretation of Section 9.1a permitting PIP carriers to seek PIP reimbursement from public entities, therefore, should not be allowed without "some clearer indication that the Legislature . . . intended to create an exception to the policy governing governmental limitations on liability reflected in . . . the [TCA]." See Robinson v. Zorn, 430 N.J. Super. 312,

324 (App. Div.) (alteration in original) (citation and internal quotation marks omitted) (refusing to require New Jersey Transit to provide uninsured motorist coverage absent a clear indication from the Legislature), certif. denied, 216 N.J. 8 (2013). Such important public policy questions should be left to the wisdom of the Legislature. Ibid.

C.

Finally, NJM's argument that the judge misread Hanover is equally unavailing. In 1998, and again today, we stated that it was "the probable intent of the Legislature that, absent unambiguous statutory exception, the sweeping rule of public entity tort immunity dominant in Title 59 must continue to remain applicable to direct actions brought under [Section 9.1a]." Hanover, supra, 310 N.J. Super. at 572. Our holding in Hanover placed no requirement, contrary to NJM's contention, that the judge must analyze the public entities' conduct to determine if a PIP carrier can bring a PIP reimbursement claim.

In view of our decision, we need not reach NJM's second contention that the judge below erred by rejecting its social host liability theory.

Affirmed.