SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5417-15T2

NACOLE JEANNETTE,

Petitioner-Appellant,

v.

GENERAL MILLS PROGRESSO,

Respondent-Respondent.

Argued October 12, 2017 – Decided February 6, 2018

Before Judges Rothstadt and Gooden Brown.

On appeal from the New Jersey Department of Labor and Workforce Development, Division of Workers' Compensation, Claim Petition No. 2013-34635.

Kenneth A. Dimuzio, Sr. argued the cause for appellant (Hoffman Dimuzio, attorneys; Kenneth A. Dimuzio, Sr., on the briefs).

James G. Serritella argued the cause for respondent (Biancamano & DiStefano, PC, attorneys; James G. Serritella, on the brief).

PER CURIAM

Petitioner Nacole Jeannette appeals from a July 7, 2016 order of the Division of Workers' Compensation (the Division) dismissing

her claim on behalf of herself and her minor son, Chase, for her husband's work-related death. The judge of compensation dismissed her claim as barred by the statute of limitations. Petitioner contends the dismissal was erroneous because her son's status as a minor tolled the statute of limitations on his claim. We disagree and affirm.

The essential facts are undisputed. Nacole[1] and Chase are the widow and surviving son of Scott. Scott was an employee of respondent General Mills Progresso (General Mills). On June 7, 2011, Scott was at work when he suffered cardiac arrest. Nine days later, on June 16, 2011, he died of complications from the cardiac arrest. Chase was four years old at the time.

Nacole filed a Dependency Claim Petition with the Division on December 20, 2013, over six months past the two-year statutory deadline for filing a claim. She argued that her own claim "[was] not barred because the statute of limitations was tolled by her temporary incapacity caused by her husband's death" and that the statute of limitations on her son's claim "was tolled due to his infancy." On March 7, 2014, General Mills filed an answer raising, among other things, "the [s]tatute of [l]imitations as a complete bar to the claim."

[1] We refer to the Jeannettes by their first names to avoid any confusion caused by their common surname. We intend no disrespect.

On March 31, 2016, Nacole moved to strike General Mills' statute of limitations defense. On July 7, 2016, after oral argument, the judge dismissed the claim with prejudice on the ground that the statute of limitations barred Nacole's claims on behalf of herself and her son. In denying Nacole's motion to strike, the judge explained:

> N.J.S.A. 34:15-41 clearly states that claims are barred after two years.
>
> . . . The Appellate Court has held in numerous cases that tort actions, death actions and workers' compensation proceedings are sufficiently distinctive in purpose, function and effect to rationally warrant legislative differentiation in the respect of limitation provisions including the incidence of tolling. Had the legislature intended the time limitations be tolled for an infant until he reaches majority, they could insert that provision. I can't, as a [j]udge of [c]ompensation . . . do what the legislature has express[]ly or inferentially [de]clined to do. I am bound by N.J.S.A. 34:15-41 and N.J.S.A. 34:15-51. The language in those statutes is unequivocal.

In rejecting Nacole's argument that LaFage v. Jani, 166 N.J. 412 (2001), mandated a contrary interpretation of the statute, the judge noted:

> There was an amendment to [N.J.S.A.] 34:15-51 in May of 2001 after the Lafage decision and there was no change to the two-year requirement . . . . [I]f the legislature was so inclined after the LaFage decision, they had the opportunity at that time or any time since February of 2001 when LaFage was decided

> to change our statute, but they have elected not to . . . .

The judge entered a memorializing order on the same date, and this appeal followed. Nacole appeals the dismissal of her son's claim only, raising the following points:

> POINT I
>
> THE [JUDGE OF COMPENSATION] ERRED BY STRICTLY CONSTRUING THE [TWO]-YEAR STATUTE OF LIMITATIONS ON [WORKERS' COMPENSATION] DEPENDENCY CLAIMS CONTRARY TO THE SUPREME COURT'S GUIDANCE IN [LAFAGE, 166 N.J. at 412].
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> POINT II
>
> THE [JUDGE OF COMPENSATION'S] REFUSAL TO APPLY MINORITY TOLLING IS NOT JUSTIFIED BY DIFFERENTIATING THE PURPOSE, FUNCTION, AND EFFECT OF THE [WORKERS' COMPENSATION ACT] FROM OTHER STATUTES . . . .
>
> POINT III
>
> STRICT APPLICATION OF THE [TWO]-YEAR STATUTE OF LIMITATIONS DENIES DECEASED WORKERS' CHILDREN EQUAL PROTECTION OF THE LAW . . . .
>
> POINT IV
>
> THE [JUDGE OF COMPENSATION] ERRED BY CITING THE GUARDIAN'S NEGLIGENCE TO INFERENTIALLY DISQUALIFY THE DEPENDENT MINOR FROM OBTAINING TOLLING PROTECTION.
>
> POINT V
>
> THE [JUDGE OF COMPENSATION] ERRED BY INFERRING THE LEGISLATURE'S DISAGREEMENT WITH THE [LAFAGE] DECISION BECAUSE THE LEGISLATURE DID NOT AMEND THE [TWO]-YEAR STATUTE OF

LIMITATIONS RESTRICTING A MINOR'S [WORKERS' COMPENSATION] DEPENDENCY CLAIM.

Because it is undisputed that Nacole failed to file her claim within two years of her husband's work-related death, the parties' dispute is solely one of law: whether a claimant's minority tolls the statute of limitations for workers' compensation claims. "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995). The same standard applies to the legal rulings of a judge of compensation; therefore, we review the issue de novo. See Sentinel Ins. Co., Ltd. v. Earthworks Landscape Constr., LLC, 421 N.J. Super. 480, 485-86 (App. Div. 2011).

When construing a statute, our primary purpose is to "discern the meaning and intent of the Legislature." State v. Gandhi, 201 N.J. 161, 176 (2010). We should look to the plain language of the statute first. See Perez v. Zagami, LLC, 218 N.J. 202, 209-10 (2014). Where the statute is clear and unambiguous, we apply the statute accordingly. See Richardson v. Bd. of Trs., Police & Firemen's Ret. Sys., 192 N.J. 189, 195 (2007); see also McCann v. Clerk of Jersey City, 167 N.J. 311, 320 (2001). Only if the statute lends itself to "more than one plausible interpretation," may the court consider extrinsic evidence, such as "legislative

history, committee reports, and contemporaneous construction" to discern the statute's meaning. DiProspero v. Penn, 183 N.J. 477, 492-93 (2005) (quoting Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75 (2004)).

N.J.S.A. 34:15-51 requires claimants to file their petitions for workers' compensation within two years of the date of the accident. The statute further provides that "[p]roceedings on behalf of an infant shall be instituted and prosecuted by a guardian, guardian ad litem, or next friend." Ibid. Any claims for personal injury or death not filed as prescribed by N.J.S.A. 34:15-51 within the two-year time period are "forever barred." N.J.S.A. 34:15-41. Other than its provision for claims by guardians, the statute does not treat claims by minors for a parent's work-related death differently from other claims.

Despite the absence of an express provision within the statute, Nacole asks us to apply N.J.S.A. 34:15-51 and N.J.S.A. 34:15-41 flexibly to allow her son's minority to toll the statute of limitations. Nacole relies heavily upon our Supreme Court's decision in Lafage, 166 N.J. at 434, in which the Court allowed surviving children to bring a claim under the Wrongful Death Act, N.J.S.A. 2A:31-1 to -6, for a parent's death even after the statute of limitations period had expired.

The Court reasoned that the applicable statute of limitations was procedural, rather than substantive, and should therefore be applied "flexibly . . . , subject to equitable principles." LaFage, 166 N.J. at 422. The Court defined a "procedural statute of limitations" as one "govern[ing] general causes of action, such as tort or contract actions, that were recognized under the common law." Ibid. The Court also noted that "[e]ven substantive statutes [of limitations]," applicable to "cause[s] of action that did not exist at common law, . . . need not necessarily be construed rigidly[,]" but "their application depends on statutory interpretation focusing on legislative intent and purpose." Ibid. (quoting Negron v. Llarena, 156 N.J. 296, 304 (1998)).

Nacole's reliance on Lafage is misplaced. While we acknowledge the Court's directive to apply statutes of limitations flexibly, we cannot "rewrite a plainly-written enactment of the Legislature []or presume that the Legislature intended something other than that expressed by way of the [statute's] plain language." DiProspero, 183 N.J. at 492 (quoting O'Connell v. State, 171 N.J. 484, 488 (2002)). In addition, we "cannot 'write in an additional qualification which the Legislature pointedly omitted in drafting its own enactment.'" Ibid. (quoting Craster v. Bd. of Comm'rs, 9 N.J. 225, 230 (1952)). Here, the Legislature did not include a tolling provision for minors in the workers'

compensation statute, and we do not presume the omission was a legislative oversight.

Rather, we reaffirm our prior holding in Scharwenka v. Cryogenics Management, Inc., 163 N.J. Super. 16 (App. Div. 1978). In Scharwenka, we rejected the argument Nacole now makes in favor of minority tolling because the plain language of the statute did not provide for it. Id. at 21. We found it particularly significant that the statute included a provision allowing guardians to bring claims on behalf of minors because it indicated the Legislature had considered claims by dependent minors, but still made no special provision for minority tolling. Id. at 21-22.

We concluded:

> That there is no tolling proviso in the compensation act is perfectly clear. N.J.S.A. 34:15-41 bars "all" death claims not filed within the period specified in N.J.S.A. 34:15-51, i.e., two years after the accident. No exception or qualification for infancy or incompetency is provided for, in contrast with the express provision therefor in the general statutes of limitations. N.J.S.A. 2A:14-21. That the situation of an infant is not a legislative casus omissus is indicated by N.J.S.A. 34:15-51, which not only fixes the two-year limitation period but also declared that "[p]roceedings on behalf of an infant shall be instituted and prosecuted by a guardian, guardian ad litem, or next friend . . . ." It is evident that the legislative policy for expeditious disposition of claims for industrial accidents would be thwarted if

> a claim could be suspended for [twenty] years because of the infancy of a dependent in a death case.
>
> [Scharwenka, 163 N.J. Super. at 21-22 (first alteration in original).]

Nacole claims it is erroneous to rely on our reasoning in Scharwenka to find that workers' compensation proceedings are sufficiently different from tort actions and death actions "in purpose, function[,] and effect to rationally warrant legislative differentiation in respect of limitation provisions, including the incidence of tolling." Id. at 22. She argues the court should apply minority tolling because the overriding purpose of workers' compensation claims is the same as the purpose of minority tolling statutes, namely, the protection of children. She continues minority tolling in workers' compensation proceedings would not have an adverse impact on the administrative system. We reject Nacole's argument and decline the invitation to modify the Legislature's enactment when its meaning is clear.

Likewise, we reject Nacole's argument, raised for the first time on appeal, that applying the statute of limitations to workers' compensation actions by minor dependents denies them equal protection of the law as guaranteed by the United States and New Jersey Constitutions. We also reject her contention that it is erroneous to infer that the Legislature disagreed with the

Supreme Court's decision in LaFage because it did not modify the statute of limitations in its subsequent amendments to the Workers' Compensation Act, N.J.S.A. 34:15-1 to -146. As we noted in Scharwenka, 163 N.J. Super. at 19, Nacole "pursues a number of theories to evade the categorical language of the statute, but we find none of them availing."

Affirmed.