SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1308-20

BOROUGH OF LINDENWOLD,
a municipal corporation of the
STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

MILRED JACKSON,

Defendant-Appellant,

and

CAMDEN COUNTY MUNICIPAL
UTILITIES AUTHORITY, NEW
JERSEY AMERICAN WATER
CO., and ARBORWOOD III
CONDOMINIUM
ASSOCIATION, INC.,

Defendants.

Submitted February 16, 2022 – Decided April 6, 2022

Before Judges Hoffman, Whipple, and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-4262-19.

Milred Jackson, appellant pro se.

Timothy J. Higgins, attorney for respondent.

PER CURIAM

Defendant Milred Jackson appeals from a December 8, 2020 final judgment granting condemnation of 3008 Arborwood to plaintiff the Borough of Lindenwold (the Borough). We affirm.

We discern the following facts from the record. By resolution adopted on October 29, 2007, the Borough recognized that certain areas and properties within the Borough of Lindenwold might qualify as areas in need of redevelopment as defined in N.J.S.A. 40A:12A-3. By Resolution 2017-65 adopted on January 25, 2017, the Lindenwold Borough Council (Borough Council) directed the Joint Land Use Board to conduct a preliminary investigation to determine whether an area including the Arborwood Redevelopment Area was an area in need of redevelopment in accordance with the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:20-1 to -89.

On April 6, 2017, the Borough sent a notice of hearing scheduled for April 19, 2017 to defendant by regular and certified mail. At the hearing, the Borough would consider the designation of certain properties as "[i]n [n]eed of [r]edevelopment" pursuant to N.J.S.A. 40A:12A-6. On April 11, 2017, defendant accepted the notice sent by certified mail.

Following a preliminary investigation, the Joint Land Use Board disclosed its findings at a public hearing on April 19, 2017. By resolution adopted on April 27, 2017, the Joint Land Use Board recommended to the Borough Council that the Arborwood Redevelopment Area be determined to be an area in need of redevelopment and a Condemnation Redevelopment Area.

By Resolution 2017-127 dated May 10, 2017, the Borough adopted the Joint Land Use Board's recommendation. On May 17, 2017, the Borough sent defendant a copy of the resolution by certified and regular mail. The certified mail was accepted on June 16, 2017, and the regular mail was not returned. The resolution stated, in pertinent part:

> [A]ny owner desiring to challenge the adoption of this Resolution determining that certain properties and areas within the Borough . . . are in need of redevelopment and the designation of these certain properties and areas as a "Condemnation Redevelopment Area" pursuant to N.J.S.A. 40A:12A-

> 6, must do so by filing an action in lieu of prerogative writ in the Superior Court of New Jersey, Law Division, Camden County within forty-five . . . days of the receipt of notice of the adoption of this Resolution by the Borough Council of the Borough of Lindenwold. Failure to do so shall preclude an owner to legally challenge the validity of the action of the Borough Council.

By report dated June 9, 2017, Environmental Resolutions, Inc., proposed Redevelopment Plan I, II, and III for the Borough. By ordinance adopted on August 9, 2017, the Borough adopted the Redevelopment Plan and accordingly determined to acquire 3008 Arborwood. On August 8, 2018, the Borough entered into a redevelopment agreement with AW Urban Renewal LLC, a Delaware entity.

On October 4, 2019, the Borough filed a verified complaint and an order to show cause seeking condemnation against defendant, the record holder of title to 3008 Arborwood. On October 30, 2019, the court entered an order that defendant show cause why final judgment should not be entered granting the Borough condemnation. On the same date, the court entered an order authorizing the Borough to deposit $22,000 with the Superior Court Trust Fund Unit.

On May 9, 2019, the Borough extended an offer of $22,000 to defendant for the purchase of her property, 3008 Arborwood, Block 243, Lot 7.01,

Qualifier C3008. Defendant did not accept the offer. On November 1, 2019, the Borough filed a notice of lis pendens to acquire a fee simple interest and recover possession of 3008 Arborwood.

On February 3, 2020, defendant filed a notice of motion asking that the Borough serve its complaint by personal service and that the court provide time for an answer. In defendant's certification in support of her motion, defendant requested that the Borough "clearly define" the public purpose of the condemnation. On February 4, 2020, defendant filed a notice of motion asking for recusal of the judge, and for permission to allow defendant's niece, Dr. Marcia Copeland, to represent her. On March 10, 2020, defendant filed an opposition to the order to show cause and to the judge presiding over the matter. Copeland stated that she previously sued the judge.

On April 20, 2020, the court held oral argument in which the court

> permitted . . . Copeland to be heard, despite the fact that she was not an attorney, was not authorized to practice law in the State of New Jersey or anywhere else, and that the power of attorney for her aunt did not grant the right to act in a legal capacity.

On the same date, the court ordered the Borough to address defendant's question regarding the public use of 3008 Arborwood in writing. On May 4, 2020, the Borough sent defendant a letter addressing the issue of service and

public use for the condemnation proceedings. On June 18, 2020, Copeland, on behalf of defendant, filed a motion to dismiss the Borough's complaint and to remove the lis pendens. On July 8, 2020, the Borough filed opposition to defendant's motion to dismiss. The Borough stated defendant failed to challenge the governmental action within forty-five days. On October 7, 2020, the court heard oral argument by the Borough's counsel and Copeland.

On December 8, 2020, the court entered an order granting condemnation of 3008 Arborwood to the Borough, providing a $22,000 valuation for the property, and, if any party objected to the valuation, appointing three disinterested residents of Camden County to fix just compensation. The order also denied defendant's motions to seek recusal of the court, to dismiss the complaint, and to dismiss the lis pendens. On the same date, the Borough filed a declaration of taking for 3008 Arborwood. The court prepared a written opinion granting the Borough's application and denying defendant 's requested relief. We briefly summarize the court's conclusions.

First, defendant was time-barred from challenging the condemnation of 3008 Arborwood because she did not appropriately object, pursuant to N.J.S.A. 40A:12A-6(b)(5) and Rule 4:69-6(a), within forty-five days of service

of the notice of Resolution 2017-127 on May 17, 2017. Defendant filed her motions more than three years after the date of the resolution.

Second, Copeland, as neither a litigant nor counsel, failed to allege facts that "give[] rise to an 'objectively reasonable' basis for recusal." The court explained:

> Copeland, not defendant, stated that she previously filed lawsuits against this court "in 2015 or 2016 for a Cumberland County case before Judge Fisher." While this specific allegation is inaccurate; suits were indeed filed. All of them resulted in dismissals, . . . Copeland's history of filing unsuccessful lawsuits against this court does not presumptively create a personal bias or even an objectively reasonable belief of a bias towards defendant, . . . Copeland's aunt.
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> [Copeland]'s sole assertion is that if this court ruled against her aunt, and allowed for the condemnation of the property, such a ruling would be in retaliation of . . . Copeland's previous claims. . . . Defendant fails to provide a certification or even a scintilla of evidence that supports these assertions

Third, a power of attorney did not grant Copeland the right to appear on behalf of defendant and act as her legal representative. Fourth, the Borough properly effectuated service by personal service, mail service, and service by publication. Fifth, the Borough "complied with all the procedural requirements as imposed by the New Jersey Constitution, the LRHL, and the Eminent Domain Act, and demonstrated an appropriate public use." Sixth,

"the Borough's finding that this area is an area in need of redevelopment, otherwise known as a Condemnation Redevelopment Area, establishes the public purpose that is the basis for the Borough's eminent domain action." Moreover, the Borough properly provided written notice to defendant. Seventh, "[t]he Redevelopment Agreement was valid regardless of whether [AW Urban] Renewal LLC was registered with the Secretary of State to do business in New Jersey, pursuant to N.J.S.A. 14A:13-11(2)." Finally, defendant offered no legal authority to support her motion to remove the lis pendens on the property. This appeal followed.

Defendant argues that the court erred in finding that the Borough established a public use for 3008 Arborwood. We reject this argument as procedurally barred.

Our Supreme Court:

> has long recognized that the State possesses authority to take private property, restricted "only by the pertinent clauses of [our] Constitution." Abbott v. Beth Israel Cemetery Ass'n, 13 N.J. 528, 545 (1953). The Constitution imposes three significant limitations on the State's eminent domain power. . . . First, the State must pay "just compensation" for property taken by eminent domain. N.J. Const. Art. I, ¶ 20. Second, no person may be deprived of property without due process of law. Twp. of W. Orange v. 769 Assocs., 172 N.J. 564, 572 (2002). Third, and germane to this appeal, the State may take private property only for a

"public use." N.J. Const. Art. I, ¶ 20; see Twp. of W. Orange, 172 N.J. at 572.

In respect of the "public use" requirement, Article VIII, Section 3, Paragraph 1 of the Constitution (Blighted Areas Clause) provides:

> The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time. . . . The conditions of use, ownership, management and control of such improvements shall be regulated by law.

Pursuant to that authorization, the Legislature enacted the Local Redevelopment and Housing Law (LRHL), N.J.S.A. 40A:12A-1 to -49, which empowers municipalities to designate property as "in need of redevelopment" and thus subject to the State's eminent domain power. See N.J.S.A. 40A:12A-3 (defining "redevelopment area" or "in need of redevelopment" as pursuant to constitutional authority of Blighted Areas Clause).

[Gallenthin Realty Dev., Inc. v. Borough of Paulsboro, 191 N.J. 344, 356-57 (2007) (emphasis in original).]

The LRHL sets forth the procedure in which a municipality may establish a public use and must accordingly give property owners notice. N.J.S.A. 40A:12A-6(b). It provides a forty-five-day limitation on objections to a municipality's determination of an area as a redevelopment area.

> If the governing body resolution assigning the investigation to the planning board, pursuant to subsection a. of this section, stated that the redevelopment determination shall establish a Condemnation Redevelopment Area, the notice of the determination required pursuant to subparagraph (d) of this paragraph shall indicate that:
>
> > (i) the determination operates as a finding of public purpose and authorizes the municipality to exercise the power of eminent domain to acquire property in the redevelopment area, and
> >
> > (ii) legal action to challenge the determination must be commenced within [forty-five] days of receipt of notice and that failure to do so shall preclude an owner from later raising such challenge.
>
> [N.J.S.A. 40A:12A-6(b)(5)(e).]

In addition, Rule 4:69-6(a) provides: "[n]o action in lieu of prerogative writs shall be commenced later than [forty-five] days after the accrual of the right to the review, hearing or relief claimed, except as provided by paragraph (b) of this rule."

In Harrison Redevelopment Agency v. DeRose, we further held:

> a property owner generally preserves the right to challenge the validity of a municipal designation that his or her property is in need of redevelopment, or is necessary to accomplish the redevelopment of nearby premises, through the assertion of a defense in an eminent domain action. Such a defense is preserved, beyond forty-five days after the governing body has ratified the redevelopment designation by resolution under N.J.S.A. 40A:12A-6(b)(5). The only exception to that principle applies where the municipality has chosen to go beyond the limited terms of N.J.S.A. 40A:12A-6 and has provided the property owner with contemporaneous individual written notice that fairly alerts the owner that (1) his or her property has been designated by the governing body for redevelopment, (2) the designation operates as a finding of public purpose and authorizes the municipality to take the property against the owner's will, and (3) informs the owner of a presumptive time limit within which the owner may take legal action to challenge the designation.
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> If the municipality's notice to the individual property owner contains these constitutionally-essential features, then an owner who wishes to challenge the designation presumptively must bring an action in lieu of prerogative writs within forty-five days of the governing body's adoption of the designation. The recipient of such notice generally cannot wait to raise those objections as a defense in a future condemnation action.
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> [398 N.J. Super. 361, 413 (App. Div. 2008).]

We apply a deferential standard in reviewing factual findings by a judge. Balducci v. Cige, 240 N.J. 574, 595 (2020). "A reviewing court must accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). "Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

Here, we discern no error. The trial court found ample credible evidence in the record that service conformed with statutory requirements as well as the guidelines in DeRose, 398 N.J. Super. at 413. The Borough adopted Resolution 2017-127 on May 10, 2017, and the Borough sent defendant a copy of the resolution by certified and regular mail on May 17, 2017. The certified mail was accepted on June 16, 2017, and the regular mail was not returned. In March 2020 – nearly three years after the certified mail was accepted – defendant first filed a motion objecting to the Borough's determination that the

area inclusive of 3008 Arborwood was an "area in need of redevelopment" and a "Condemnation Redevelopment Area." Therefore, because defendant first raised an objection to the Borough's action well after the forty-five days of service of the notice, defendant's claim is procedurally barred.

Defendant also argues the court erred in declining to recuse itself. Defendant alleges that the court defamed Copeland and that the court was biased as it presided over this matter. We disagree.

Rule 1:12-1 provides, in pertinent part:

> The judge of any court shall be disqualified on the court's own motion and shall not sit in any matter. . . .
>
> . . . .
>
> (g) when there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so.

The Code of Judicial Conduct Rule 3.17 similarly provides, in pertinent part:

> (B) Judges shall disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned, including but not limited to the following:
>
> > (1) Personal bias, prejudice or knowledge. Judges shall disqualify themselves if they have a personal bias or prejudice toward a party or a

> party's lawyer or have personal knowledge of disputed evidentiary facts involved in the proceeding.
>
> [Code of Judicial Conduct Rule 3.17(B)(1).]

The Code further provides:

> A judge shall not be automatically disqualified upon learning that a complaint has been filed against the judge with the Advisory Committee on Judicial Conduct, litigation naming the judge as a party, or any other complaint about the judge by a party. If, however, after consideration by the judge whether there is a reasonable basis to question the court's impartiality, the judge may recuse himself or herself
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> . . . .
>
> [Code of Judicial Conduct Rule 3.17(E).]

"Any party, on motion made to the judge before trial or argument and stating the reasons therefor, may seek that judge's disqualification." R. 1:12-2. "A movant need not show actual prejudice; 'potential bias' will suffice." Goldfarb, 460 N.J. Super. at 31. "[J]udges must avoid acting in a biased way or in a manner that may be perceived as partial." DeNike v. Cupo, 196 N.J. 502, 514 (2008) (emphasis in original). "[B]ias is not established by the fact that a litigant is disappointed in a court's ruling on an issue." State v. Marshall, 148 N.J. 89, 186 (1997). "[T]he belief that the proceedings were unfair must be objectively reasonable." Id. at 279. "[I]t is improper for a court

to recuse itself unless the factual bases for its disqualification are shown by the movant to be true or are already known by the court." Id. at 276.

Whether a judge should disqualify himself or herself is a matter within the sound discretion of the judge. State v. McCabe, 201 N.J. 34, 45 (2010). We review de novo whether the judge applied the proper legal standard. Id. at 46.

Here, we discern no error. The court properly found that defendant and Copeland failed to offer facts that would support recusal. The court explained:

> Copeland, not defendant, stated that she previously filed lawsuits against this court "in 2015 or 2016 for Cumberland County case before [another judge]." While this specific allegation is inaccurate, suits were indeed filed. All of them resulted in dismissals. . . . Copeland's history of filing unsuccessful lawsuits against this court does not presumptively create a personal bias or even an objectively reasonable belief of a bias towards defendant, . . . Copeland's aunt.

Any arguments we have not addressed lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.