APPENDIX

COMPLAINT III, TRIAL COURT ORDER

MER-L-001328-23 02/06/2024 Pg 1 of 17 Trans ID: LCV2024324082

PREPARED BY THE COURT

Superior Court of New Jersey

Law Division—Mercer County

Docket No. L-1328-23

Civil Action

ROBERT MOSS,

Plaintiff,

v.

SHAWN M. LATOURETTE, COMMISSIONER of the NEW JERSEY DEPARTMENT of ENVIRONMENTAL PROTECTION,

Defendant.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT IN LIEU OF PREROGATIVE WRITS AND DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE

THIS MATTER having come before the Court, the Hon. Robert Lougy, A.J.S.C., presiding, on the application of Defendant Shawn M. LaTourette, Commissioner of the New Jersey Department of Environmental Protection ("DEP"), represented by Deputy Attorney General Ruth Thompson, for an order dismissing Plaintiff's complaint; and Plaintiff Robert Moss, appearing as a self-represented litigant, having filed opposition; and Defendant having filed a reply; and the Court [2] having considered the parties' pleadings and arguments; and for the reasons as stated below; and for good cause shown;

IT IS on this 6th day of February 2024 **ORDERED** that:

1. Defendant's motion to dismiss is **GRANTED**.
2. Plaintiff's Complaint is **DISMISSED with prejudice**.
3. This Order shall be deemed filed and served upon uploading to eCourts.

/s/ Robert Lougy

ROBERT
LOUGY,
A.J.S.C.

X OPPOSED
UNOPPOSED

PURSUANT TO RULE 1:6-2(f), THE COURT PROVIDES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This matter comes before the Court on Defendant's application to dismiss Plaintiff's complaint in lieu of prerogative writs. Plaintiff filed opposition and Defendant filed a reply. For the following reasons, the Court grants Defendant's motion to dismiss and dismisses Plaintiff's complaint with prejudice.

The Court provides the following procedural and factual histories. Plaintiff has been an "open space advocate" for the last twenty years. Compl. at ¶ 3. He has offered oral and written comments in opposition to lifting Green Acres encumbrances in Toms River, North Bergen, Montclair, Edison, and other locations. *Id.* at ¶ 4. He has also advocated against mea-

sures to bypass Green [3] Acres restrictions in West Orange, Rahway, Kenilworth, and other locations. *Ibid.* Plaintiff regularly hikes in New Jersey State Parks, Forests, and Wildlife Management Areas. *Id.* at ¶ 5.

Defendant is the Commissioner of DEP, a state agency with authority and responsibility to direct and coordinate the uses of all public lands under its jurisdiction. Def.'s Br. at 2. These state lands include a system of Wildlife Management Areas ("WMA") that are administered by the Division of Fish and Wildlife, Bureau of Land Management ("DFW"). *Ibid.* The Legislature has instructed DEP to conduct research and implement plans and programs to promote ecosystem-based management, one of which is a Forest Stewardship Plan (the "Plan"). *Id.* at 3. DEP, as the owner of certain public lands, also prepares and implements [the] plans, and did so for the Sparta Mountain Wildlife Management Area ("SMWMA"). *Ibid.* On March 13, 2017, DFW issued the Plan at issue in this litigation. *Id.* at 7. The Plan provides goals and objectives, including the limited, periodic, cutting and removal of trees, for the management of the SMWMA. *Ibid.*

Plaintiff initiated this action in lieu of prerogative writ by complaint filed on July 10, 2023. He challenges DEP's use of Green Acres Funds to fund forest management activities that do not meet the statutory definition of Green Acres "stewardship." Compl. at ¶ 1. The complaint alleges that, because DEP has not determined the "natural," "former," or "original" distribution of forest stages in [4] SMWMA, it cannot say that it is "restoring 'natural conditions,'" or, for that matter, any conditions at all. *Id.* at ¶ 42. Thus, Plaintiff alleges, DEP is allocating Green Acres funds to such forest management practices in violation of N.J.S.A. 13:8C-48b(1), 13:8C-48j(1), and 13:8C-45. *Ibid.*

Plaintiff demands judgment against Defendant: (1) declaring that DEP is funding forest management practices in SMWMA pursuant to the Plan, in violation of N.J.S.A. 13:8C-48b(1), 13:8C- 48j(1), and 13: 8C-45; and (2) enjoining DEP from funding such forest management practices in SMWMA, and on any other State-owned land purchased in whole or in part with Green Acres funds, and on any land to which 13:8C-48b(1), 13:8C- 48j(1), and 13:8C-45 apply, ex-

cepting funding for permanent road improvements for conservation purposes. *Ibid.*

Defendant moves to dismiss Plaintiff's complaint with prejudice. First, he argues that Plaintiff is in the wrong court, as complaints regarding DEP's final actions may only be heard in the Appellate Division. Db14. Second, he argues that Plaintiff is out of time, as appeals from final agency actions must be taken within forty-five days of the final administrative decision, with the possibility of a thirty-day extension upon a showing of good cause. *Ibid.* Defendant asserts that Plaintiff's complaint was improperly filed in the Law Division because Plaintiff is challenging the final action of a State agency. *Id.* at 16.

[5] Next, Defendant argues that dismissal, rather than transfer, is proper because Plaintiff is out of time to challenge Plan. *Id.* at 17. Defendant asserts that the Department provided notice of the Final Plan on March 13, 2017, Plaintiff had forty-five days to appeal this final State agency decision but waited 2,310 days after publication of the Final Plan to file his complaint. *See id.* at 18.

Next, Defendant argues that *res judicata* and the entire controversy doctrine bar Plaintiff's latest chal-

lenge to the Plan. *Id.* at 19. Defendant asserts that this Court has twice previously dismissed with prejudice Plaintiff's complaints challenging the Plan. *Ibid.* Furthermore, this Court has already found the Plan to be a final agency action and Plaintiff's challenge to the Plan was untimely; the Appellate Division has affirmed both findings. *Ibid.* Also, Defendant asserts, the entire controversy doctrine precludes Plaintiff from bringing claims related to the SMWMA Plan that he could have asserted in his prior challenges to the SMWMA Plan. *Id.* at 21.

Next, Defendant argues Plaintiff's complaint fails to state a claim upon which relief can be granted. *Id.* at 23. Defendant asserts that DEP acted in accordance with the law and this Court lacks the ability to compel or to reverse the appropriation of funds by the State Legislature. *Ibid.* Furthermore, the Plan aligns with the Legislature's express intentions. *Id.* at 24. Therefore, Defendant argues, any decision by the Court that enjoined, interfered with, or placed conditions upon [6] the Legislature's constitutionally mandated budget duties would be an impermissible trespass by the Judiciary into the essential functions of another branch of government. *Id.* at 25.

Plaintiff argues the following in his opposition. First, Plaintiff asserts that Defendant's response to the complaint is an improper, unprofessional, scurrilous *ad hominem* attack, supported by diversionary language and false statements. Pb1. Defendant's allegation that the present complaint is Plaintiff's fourth attempt to challenge the Plan is false. *Id.* at 2. At some length, Plaintiff explains why, in his view, dismissals of his previous complaints were wrong. *See id.* at 3–10.

Next, Plaintiff argues that the present complaint does not challenge the Plan. *Ibid.* Plaintiff asserts that the relief sought is both specific and does not seek to control the use of funds, so long as the funds are used as prescribed and limited by law. *Ibid.* Plaintiff contends that Defendant's pleadings constitute an improper request for an arbitrary and capricious ruling that the instant complaint is a challenge to the Plan. *Id.* at 11.

Next, Plaintiff argues that he is not challenging a final agency action within the meaning of Rule 2:4-1(b). *Ibid.* Plaintiff asserts that the activity targeted by this complaint is one for which the funds used are not authorized, therefore the challenged activity

"hardly matches the activities determined in our case law to be 'final agency actions.'" *Id.* at 13. Plaintiff distinguishes the cases cited by [7] Defendant as cases dealing with the adjudication of some individual's rights, but that "a challenge to the use of funds not authorized for the purpose is clearly not an adjudication of the rights of any individual person or corporation." *Id.* at 14. Furthermore, in the present action, no *verbatim* record was made of the proceedings before the agency from which an appeal to the Appellate Division would be taken. *Id.* at 15. Moreover, Plaintiff argues, at least two questions of fact are raised by the complaint and motion to dismiss; these are not questions to be resolved on appeal. *Id.* at 16. Therefore, the complaint should be heard first in the Law Division. *Id.* at 17.

Next, Plaintiff argues that the complaint alleges that DEP is spending Green Acres funds for an unauthorized purpose. *Id.* at 19. Plaintiff asserts that the Preserve New Jersey Act authorizes Green Acres funding only for repairing or restoring, not for managing with a goal to maintain 10% of the property as young forest, with no rational basis for a finding that this constituted past conditions. *Ibid.* Plaintiff argues

that he is not challenging the lack of an appropriation and consequent failure of the Executive Branch to spend the unappropriated money; rather, he challenges DEP's unauthorized use of Green Acres funding for activities that do not constitute habitat repair or restoration. *Id.* at 20–21.

Finally, Plaintiff argues, "Defendant has utterly failed to establish that (1) the Complaint is seeking relief that has previously been sought and denied, [8] therefore that it fails (2) under *res judicata*, (3) for being untimely filed, and (4) on the merits." *Id.* at 25. Plaintiff asserts that "[defendant's] inapposite, obfuscatory, false, and libelous arguments, which sound as if they were generated by 'AI', are as transparent as the lens on Galileo's telescope. . .[t]he motion to dismiss should be denied." *Id.* at 25–26.

Defendant argues the following in reply. First, Defendant reiterates that this Court lacks subject matter jurisdiction, this complaint is out of time, and *res judicata* bars Plaintiff's attempt to relitigate these determinations. Def.'s Reply 2. Plaintiff previously argued, in *Moss v. NJDEP,* MER-L-000829-18, that Rule 2:2-2(a)(2) applies only to cases where the challenged agency action involved the adjudication of

the rights of an individual or corporation. *Ibid.* That argument failed and Plaintiff should not be permitted to relitigate it. *Ibid.* Next, Defendant asserts that this Court has already found the Plan to be a final agency action, and that Plaintiff's challenge to the Plan is the type properly brought in the Appellate Division, pursuant to Rule 2:2-3(a)(2) and within the timeframes established by *Rule* 2:4-1(b) and *Rule* 2:4-4(a). *Id.* at 2–3.

Next, Defendant argues that Plaintiff's complaint must be dismissed for failure to state a claim upon which relief can be granted. *Id.* at 4. Plaintiff's complaint asks this Court to enjoin DEP from funding forest management practices outlined in the Plan and that the Plan's forest management practices violate the [9] statutes funding the Plan's implementation, but in this instance, DEP DFW is spending the appropriated funds implementing the Plan in compliance with N.J.S.A. 13:8C-48j(1)(b)(i). *Id.* at 4–5. Furthermore, the Legislature specified how the funds shall be spent and its annual review of the reports and continued annual appropriation of funds to DEP DFW constitutes tacit approval of DEP DFW's stewardship activities in SMWMA. *Id.* at 5. Defendant

asserts that granting the relief sought in this case would violate separation of powers principles. *Id.* at 6.

The Court now turns to the relevant law. The standards governing a motion to dismiss are well-established. In determining whether a plaintiff has failed to state a claim upon which relief can be granted under *Rule* 4:6-2(e), the Court limits its examination to evaluating the legal sufficiency of the facts alleged on the face of the complaint. *Printing Mart-Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739, 746 (1989) (citing *Rieder v. Dep't of Transp.*, 221 N.J. Super. 547, 552 App. Div. 1987)). The Court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." *Ibid.* (citing *Di Cristofaro v. Laurel Grove Memorial Park,* 43 N.J. Super. 244, 252 (App. Div. 1957)). At this preliminary stage of the litigation, the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint; therefore, plaintiffs are entitled to every reasonable inference of fact. *Ibid.* (citing [10] *Indep. Dairy Workers Union v.*

Milk Drivers Local 680, 23 N.J. 85, 89 (1965)). In short, "the test for determining the adequacy of a pleading [is] whether a cause of action is 'suggested' by the facts." *Ibid.* (citing *Velantzas v. Colgate-Palmolive Co.,* 109 N.J. 189, 192 (1988)). "In evaluating motions to dismiss, courts consider 'allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim.'" *Teamsters Loc. 97 v. State,* 434 N.J. Super. 393, 412 (App. Div. 2014) (quoting *Banco Popular N. Am. v. Gandi,* 184 N.J. 161, 183 (2005)). "The examination of a complaint's allegations of fact required by the afore-stated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach." *Ibid.*

If the complaint states no basis for relief, dismissal of the complaint is appropriate: "[d]iscovery is intended to lead to facts supporting or opposing a legal theory; it is not designed to lead to formulation of a legal theory." *Camden Cty. Energy Recovery Assocs., L.P. v. DEP,* 320 N.J. Super. 59, 64 (App. Div. 1999). Thus, "if the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed." *Dimitrakopoulos v.*

Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 107–08 (2019) (citing *Rezem Family Assoc., LP v. Borough of Millstone,* 423 N.J. Super. 103, 113 (App. Div. 2011); *Camden Cty. Energy Recovery,* 320 N.J. Super. at 64–65)). The Court may dismiss some of the counts without dismissing the entirety of the [11] case. *See Jenkins v. Region Nine Housing,* 306 N.J. Super. 258 (App. Div. 1997). However, dismissals "should be granted in only the rarest of instances." *Printing Mart-Morristown,* 116 N.J. at 772.

Ordinarily, a dismissal for failure to state a claim is without prejudice, and the court has the discretion to permit a plaintiff to amend the complaint to allege additional facts to state a cause of action. *Hoffman v. Hampshire Labs, Inc.,* 405 N.J. Super. 105, 116 (App. Div. 2010). Complaints should not be dismissed if the facts suggest a potential cause of action that may be better articulated by an amendment of the complaint. *Printing Mart-Morristown,* 116 N.J. at 746. However, "our courts have not hesitated to dismiss complaints with prejudice when a. . .challenge fails to state a claim." *Teamsters Local 97 v. State,* 434 N.J. Super. 393, 413 (App. Div. 2014).

A court cannot hear a case to which it lacks subject matter jurisdiction, even if all parties agree and desire an adjudication on the merits. *Peper v. Princeton Univ. Bd. of Trustees,* 77 N.J. 55, 65 (1978) (citing *State v. Osborn,* 32 N.J. 117, 122 (1960)). Similarly, subject matter jurisdiction cannot be waived by a party's failure to timely object. *Lay Fac. Ass'n of Reg'l Secondary Schs. of Archdiocese of Newark v. Roman Cath. Archdiocese of Newark,* 122 N.J. Super. 260, 269 (App. Div. 1973).

[12] Black letter law firmly establishes that the Appellate Division, and not the Law Division, has "exclusive jurisdiction to review any action or inaction of a [S]tate administrative agency." *Beaver v. Magellan Health Servs., Inc.,* 433 N.J. Super 430, 442 (App. Div. 2013) (citing *Mutschler v. N.J. Dep't of Env't. Prot.,* 337 N.J. Super. 1,8 (App. Div. 2001)). Such jurisdiction does not depend on the theory of the party's claims, nor the nature of the relief sought. *Mutschler,* 337 N.J. Super. at 9.

"[*R*]*es judicata* prevents the judicial inefficiency inherent in multiplicitous litigation. *Watkins v. Resorts Int'l Hotel & Casino,* 124 N.J. 398, 409 (1991). "At some point litigation over a particular controver-

sy should end." *Ibid.* "*Res judicata* prevents relitigating of a controversy between the parties. *Brookshire Equities, LLC v. Montaquiza,* 346 N.J. Super. 310, 318 (App. Div. 2002). "In order for *res judicata* to apply, there must be

(1) a final judgment by a court of competent jurisdiction,

(2) identity of issues,

(3) identity of parties, and

(4) identity of the cause of action."

Ibid.

The entire controversy doctrine, codified under Rule 4:30A, states in relevant part:

> Non-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine, except as otherwise provided by R. 4:64-5 (foreclosure actions) and R. 4:67-4(a) (leave [13] required for counterclaims or cross-claims in summary actions).

[R. 4:30A.]

"When a court decides whether multiple claims must be asserted in the same action, its initial inquiry is whether they 'arise from related facts or the same transaction or series of transactions.'" *Dimitrakopoulos v. Borrus, Goldin, Foley, Hyman and Stahl, P.C.*, 237 N.J. 91, 109 (2019) (quoting *DiTrolio v. Antiles,* 142 N.J. 253, 267 (1995)). "The doctrine does not mandate that successive claims share common legal issues in order for the doctrine to bar a subsequent action." *Ibid.* (citing *Wadeer v. N.J. Mfrs. Ins. Co.,* 220 N.J. 591, 605 (2015); *DiTrolio,* 142 N.J. at 271.) "Instead, 'the determinative consideration is whether distinct claims are aspects of a single larger controversy because they arise from interrelated facts.'" *Ibid.* (quoting *DiTrolio,* 142 N.J. at 271). "[T]he boundaries of the entire controversy doctrine are not limitless. . .[i]t remains an equitable doctrine whose application is left to judicial discretion based on the factual circumstances of individual cases." *Ibid.* (citing *Highland Lakes Country Club & Cmty. Ass'n v. Nicastro,* 201 N.J. 123, 125 (2009)). "The doctrine's equitable nature 'bar[s] its application where to do so would be unfair in the totality of the circumstances and would not promote any of its objectives,

namely, the promotion of conclusive determinations, party fairness, and judicial economy and efficiency.'" *Id.* at 114–[14]15 (citing *K-Land Corp. No. 28 v. Landis Sewerage Auth.*, 173 N.J. 59, 70 (2002) (quoting Pressler, *Current N.J. Rules*, cmts. 1 & 2 on R. 4:30A (2002)). "In considering whether application of the doctrine is fair, courts should consider fairness to the court system as a whole, as well as to all parties." *Id.* at 115 (citing *Wadeer*, 220 N.J. at 605).

Here, the Court finds that Plaintiff's complaint, generously construed, does not seek to challenge the Plan and thus does not constitute a challenge to a final agency action. In Plaintiff's previous complaints, he challenged the actions of DEP, which were prescribed by the Plan and asked the Court to enjoin DEP from taking those actions. The Court held that the Plan was a final agency action, thus Plaintiff's challenges should have been filed in the Appellate Division and were out of time. Although Defendant asserts that the instant complaint is a challenge to the Plan, the Court disagrees. Here, Plaintiff is not challenging DEP's actions as prescribed by the Plan, rather he is challenging the funding of the Plan itself and asking the Court to en-

join DEP from spending the monies in a manner that he views as inconsistent with the authorizing statutory authority. Therefore, this Court does not lack subject matter jurisdiction, the complaint is not out of time, and the complaint is not barred by *res judicata.*

Furthermore, the Court does not find that the complaint fails to state [a] claim upon which relief can be granted. Although it is difficult to discern exactly what [15] cause of action that Plaintiff asserts, "[c]omplaints should not be dismissed if the facts suggest a potential cause of action that may be better articulated by an amendment of the complaint. *Printing Mart-Morristown,* 116 N.J. at 746. Plaintiff's allegation that DEP is funding activities that are contrary to its authority provided by statute is enough to survive a motion to dismiss. Dismissal at this state of litigation under Rule 4:6-2(e) [failure to state a claim] would be inappropriate. Dismissals "should be granted in only the rarest of instances." *Printing Mart-Morristown,* 116 N.J. at 772.

Notwithstanding the above findings, the entire controversy doctrine is fatal to Plaintiff's complaint. Even if Plaintiff's complaint does not challenge the

Plan, Plaintiff cannot escape the fact that the allegations in Plaintiff's instant complaint should have been raised in Plaintiff's previous complaints related to the Plan.

There is no question that Plaintiff's instant complaint "arises from related facts to the same transaction or series of transactions" as his previous complaints, specifically DEP's actions and practices related to the SMWMA Plan. In his prayer for relief, Plaintiff specifically requests that this Court (1) "[d]eclare that DEP is funding forest management practices in SMWMA pursuant to the Plan" and (2) "enjoin[] DEP from funding such forest management practices in SMWMA, and on any other State-owned land purchased in whole or in part with Green Acres funds. . . ." Compl. at ¶ 42. Although Plaintiff disagrees with [16] Defendant's understanding of several points made in the complaint, there is no ambiguity as to the "controversy" at heart of the complaint, its relationship to the SMWMA Plan, and the relief requested. In his opposition, Plaintiff reiterates that "Plaintiff has already noted that he prays the [C]ourt to declare 'that DEP is funding forest management practices in SMWMA in violation of. . . ." Pb23.

The Court recognizes that our Supreme Court has characterized claim preclusion under Rule 4:30A as "a remedy of last resort," *Olds v. Donnelly,* 150 N.J. 424, 446 (1997), but "the determinative consideration is whether distinct claims are aspects of a single larger controversy because they arise from interrelated facts" and its "application is left to judicial discretion based on the factual circumstances of individual cases." *Dimitrakopoulos,* 237 N.J. at 109. Plaintiff previously filed two complaints in lieu of prerogative writs against the DEP, seeking to enjoin forest management practices related to the Plan. The trial court dismissed both complaints with prejudice and the Appellate Division affirmed. Now Plaintiff files his third complaint in lieu of prerogative writs, this time seeking to enjoin funding related to the Plan, which would effectively yield the same result as the prior two actions; stopping forest management practices related to the Plan. But there is no reason that Plaintiff could not have asserted this cause of action in his previous two complaints; indeed, it should have been raised. Given the "totality of circumstances" and the history related to the instant case, the [17] Court finds that application of the entire contro-

versy doctrine promotes its objectives of "conclusive determinations, party fairness, and judicial economy and efficiency." *Id.* at 114–15.

Accordingly, the Court grants Defendant's motion to dismiss and dismisses Plaintiff's complaint in lieu or prerogative writ with prejudice.

COMPLAINT III, APPELLATE PANEL OPINION

NOT FOR PUBLICATION WITHOUT
THE APPROVAL OF THE APPELLATE
DIVISION
This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1891-23

ROBERT MOSS,

Plaintiff-Appellant,

v.

SHAWN M. LATOURETTE, In His Official Capacity as Commissioner, New Jersey Department of Environmental Protection,

Defendant-Respondent.

Submitted March 11, 2025 – Decided March 21, 2025

Before Judges Chase and Vanek.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-1328-23.

Robert Moss, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Donna Arons, Assistant Attorney General, of counsel; Ruth A. Thompson, Deputy Attorney General, on the brief).

[2]
PER CURIAM

Plaintiff Robert Moss appeals the trial court's dismissal of his third lawsuit against defendant New Jersey Department of Environmental Protection (DEP) Commissioner, Shawn M. Latourette, objecting to the Forest Stewardship Plan (the Plan) as applied to the Sparta Mountain Wildlife Management Area (SMWMA). We affirm, discerning no abuse of discretion in the trial court's application of the entire controversy doctrine.

I

In *Moss v. State,* (*Moss I*), No. A-5455-17 (App. Div. June 6, 2019) and *Moss v. State,* (*Moss II*), No. A-1607-19 (App. Div. Nov. 2, 2020), we affirmed the dismissal of plaintiff's two prior complaints. [1] In *Moss II,* we detailed the underlying facts and robust proce-

dural history of this matter. We recount only the salient facts necessary for context:

> [SMWMA] consists of 3,461 acres of state land in Sussex and Morris Counties and hosts a number of forest types and wildlife. . . .
>
> In 2015, the DEP prepared a draft of the [Plan] for [the SMWMA] and posted the draft for public comment. After receiving and reviewing public [3] comments from various stakeholders, the DEP's Division of Fish & Wildlife (the DFW) approved the [Plan] on March 13, 2017. The DEP issued public notice of its approval of the [Plan] on May 3, 2017.
>
> The [Plan] outlines five goals and objectives to guide its forest stewardship efforts over a ten-year period [such as maintaining the ecosystem and protecting hydrologic resources and wildlife].
>
> . . . .
>
> The [Plan] also discusses cautionary measures to be taken to ensure DEP for-

estry activities do not disturb or damage the hydrologic features within the [SMWMA], which include streams, ponds, wetlands, flooded forests, and vernal pools.

. . . .

On February 6, 2018, plaintiff. . .attempted to challenge the [Plan] by filing a complaint in lieu of prerogative writ[s] in the Superior Court, Law Division, Essex County, seeking injunctive relief to prevent the [P]lan's implementation. The case was transferred to Mercer County, where the trial court dismissed plaintiff's complaint with prejudice. We affirmed that decision, agreeing with the trial court that the [Plan] was developed by the DEP through informal agency action, making it a final agency action falling within the exclusive jurisdiction of. . .this court. *See* [*Moss I,* (slip op. at 5)]. And since plaintiff did not challenge the [P]lan within forty-five days as required by Rule 2:4-1(b), nor did he seek a thirty-day extension of that deadline as permitted under Rule 2:4-4(a), we were "satisfied

the trial court correctly determined his challenge was time-barred and appropriately declined [4] to transfer plaintiff's action to the Appellate Division for further consideration." *Id.* at 5.

On July 19, 2019, plaintiff filed a new complaint in lieu of prerogative writs against the DEP. . .

> Plaintiff [sought] to enjoin further stand treatments [pursuant to the Plan] until [the] DEP rationally determines the impact of vernal pool buffer sizes on the viability and sustainability of populations of vernal-pool dependent species, and on the management goal of restoring certain other species through the creation of more diverse habitat, and rationally resolves any conflicts between the two goals.

[*Moss II,* slip. op. at 2–8.]

We affirmed the trial court's dismissal of plaintiff's complaint "[b]ecause plaintiff presented no cause of action appropriate for the trial court and because plaintiff's challenge to the [Plan] in the Appellate Division [was] untimely. . . ." *Id.* at 17.

On July 10, 2023, plaintiff filed this third action in lieu of prerogative writs (*Complaint III*), seeking a declaration that the DEP funded forest management practices in the SMWMA contrary to the Plan. Plaintiff argued the DEP's use of the Preserve New Jersey Green Acres Fund (Green Acres Fund), N.J.S.A. 13:8C-48, for forest management activities did not meet the statutory [5] definition of "stewardship" pursuant to N.J.S.A. 13:8C-45. Plaintiff further posited the DEP improperly allocated funds under N.J.S.A. 13:8C-48(b)(1) and N.J.S.A. 13:8C-48(j)(1).

Defendant moved to dismiss *Complaint III,* arguing the pleading failed to state a claim upon which relief can be granted and that dismissal was also appropriate based on lack of subject matter jurisdiction, *res judicata,* and the entire controversy doctrine. The trial court granted defendant's motion and dismissed plaintiff's complaint with prejudice, on various

grounds, including application of the entire controversy doctrine.

The trial court explained that "[e]ven if [p]laintiff's complaint does not challenge the Plan, [p]laintiff cannot escape the fact that the allegations in [p]laintiff's instant complaint should have been raised in [his] previous complaints related to the Plan." The trial court further explained its rationale for the dismissal:

> The [previous] trial court dismissed both complaints with prejudice and the Appellate Division affirmed. Now [p]laintiff files his third complaint in lieu of prerogative writs, this time seeking to enjoin funding related to the Plan, which would effectively yield the same result as the prior two actions; stopping forest management practices related to the Plan. But there is no reason that [p]laintiff could not have asserted this cause of action in his previous two complaints; indeed, it <u>should have been raised</u>. Given the "totality of [6] circumstances" and the history related to the in-

> stant case, the court finds that application of the entire controversy doctrine promotes its objectives of "conclusive determinations, party fairness, and judicial economy and efficiency."

[(citations omitted) (emphasis added).]

Plaintiff appealed the trial court's dismissal order.

II.

A.

We apply a mixed standard of review to address plaintiff's sole argument that the trial court erroneously applied the entire controversy doctrine to bar Complaint III.

"[T]he decision to apply the [entire controversy] doctrine, as an equitable principle, 'is left to judicial discretion.'" *Francavilla v. Absolute Resols. VI, LLC,* 478 N.J. Super. 171, 178 (App. Div. 2024) (quoting *700 Highway 33 LLC v. Pollio,* 421 N.J. Super. 231, 238 (App. Div. 2011) (explaining the application of the doctrine "is fact sensitive and dependent upon

the particular circumstances of a given case")). Thus, the "abuse of discretion standard applies to our review of the decision to apply the doctrine." *Ibid.* (citing *Mystic Isle Dev. Corp. v. Perskie & Nehmad,* 142 N.J. 310, 322–23 (1995)). We only reverse the trial court's discretion in applying the doctrine if that "exercise of [7] discretion was 'manifestly unjust' under the circumstances." *Ibid.* (quoting *Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth.,* 423 N.J. Super. 140, 174 (App. Div. 2011)).

So long as we determine the decision to apply the doctrine does not constitute a mistaken exercise of discretion, "[w]e review *de novo* the law guiding the trial court's determination as to the [application of the] entire controversy doctrine" in barring the subsequent action. *Ibid.* (citing *Higgins v. Thurber,* 413 N.J. Super. 1, 5–6 (App. Div. 2010)). On *de novo* review, "a trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." *Ibid.* (alteration in original) (quoting *Rowe v. Bell & Gossett Co.,* 239 N.J. 531, 552 (2019) [*sic;* text in *Rowe v. Bell etc.* starts with "[a]"]).

B.

"The entire controversy doctrine 'generally requires parties to an action to raise all transactionally related claims in that same action.'" *Francavilla v. Absolute Resolutions VI, LLC,* 478 N.J. Super. 171, 178–79 (App. Div. 2024), citing *Largoza v. FKM Real Est. Holdings, Inc.,* 474 N.J. Super. 61, 79 (App. Div. 2022) (quoting *Carrington Mortg. Servs., LLC v. Moore,* 464 N.J. Super. 59, 67 (App. Div. 2020)). The entire controversy doctrine "encompasses not only matters actually litigated but also other aspects of a controversy that might [8] have been litigated and thereby decided in an earlier action." *Francavilla,* 478 N.J. Super. at 179 (quoting *Higgins,* 413 N.J. Super. at 12).

Rule 4:30A sets forth that "[n]on-joinder of claims required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine. . . . "The entire controversy doctrine is a form of claim preclusion or *res judicata* and "has three fundamental purposes: (1) the need for complete and final disposition through the avoidance of

piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay." *Bank Leumi USA v. Kloss,* 243 N.J. 218, 227 (2020). [Mismatched quotation marks *sic;* looking at *Bank Leumi,* it appears that "doctrine . . . . 'The entire" should read "doctrine. . . .' The entire".]

The trial court's "initial inquiry [should be] whether [the multiple claims] 'arise from related facts or the same transaction or series of transactions.'" *Dimitrakopoulos v. Borrus, Goldin, Foley, Hyman & Stahl, P.C.,* 237 N.J. 91, 109 (2019) (quoting *DiTrolio v. Antiles,* 142 N.J. 253, 267 (1995)). "[T]he determinative consideration is whether distinct claims are aspects of a single larger controversy because they arise from interrelated facts." *Ibid.* (quoting *DiTrolio,* 142 N.J. at 271).

[9] The Court explained "[t]he doctrine's equitable nature 'bar[s] its application where to do so would be unfair in the totality of the circumstances and would not promote any of its objectives, namely, the promotion of conclusive determinations, party fairness, and judicial economy and efficiency.'" *Dimitrako-*

poulos, 237 N.J. at 114 (quoting *K-Land Corp. No. 28 v. Landis Sewerage Auth.,* 173 N.J. 59, 70 (2002)). "Because a violation of the entire controversy doctrine may result in the preclusion of a claim, a court must consider whether the party against whom the doctrine is sought to be invoked has had a fair and reasonable opportunity to litigate that claim." *Hobart Bros. Co. v. Nat'l Union Fire Ins. Co.,* 354 N.J. Super. 229, 241 (App. Div. 2002). For entire controversy doctrine purposes, "[a] judgment of involuntary dismissal or a dismissal with prejudice constitutes an adjudication on the merits 'as fully and completely as if the order had been entered after trial.'" *Velasquez v. Franz,* 123 N.J. 498, 507 (1991) (quoting *Gambocz v. Yelencsics,* 468 F.2d 837 (3d Cir. 1972)).

Our *de novo* review of the "totality of the circumstances," leads us to conclude the trial court's reliance on the entire controversy doctrine to dismiss Complaint III with prejudice was not "manifestly unjust under the circumstances." *Francavilla,* 478 N.J. Super. at 178. We discern no abuse of [10] discretion in the trial court's finding that Complaint III "effectively yield[s] the same result as the prior two ac-

tions; stopping forest management practices related to the Plan."

When comparing plaintiff's trio of complaints side by side, we conclude these claims "are aspects of a single larger controversy because they arise from interrelated facts," specifically the implementation and execution of the Plan. *Dimitrakopoulos,* 237 N.J. at 109. In Complaint I, plaintiff asserted the Plan is arbitrary and capricious because its goal of restoring natural conditions is not supported by scientific research[,] and "the [P]lan violates various acts limiting the use of Green Acres funds to recreation and/or conservation purposes [pursuant to] N.J.S.A. 13:8A-2, 13:8A-20, and 13:8A-36." Plaintiff also objected to the Plan's implementation in Complaint II, this time alleging further specifics relating to its various elements. Complaint III revolved around plaintiff's objection to implementation of the Plan, asserting the DEP is allocating Green Acres funds to certain forest management practices in violation of law, including the Preserve New Jersey Act, N.J.S.A. 13:8C-43 to -60.

Application of the entire controversy doctrine in this instance furthers the trial court's objectives to

"promot[e]. . .conclusive determinations, party fairness, and judicial economy and efficiency." *Dimitrakopoulos,* 237 N.J. at [11] 114. Plaintiff has had more than a "fair and reasonable opportunity to litigate the claim." See *Hobart Bros,* 354 N.J. Super. at 241. All three complaints were dismissed with prejudice, constituting final adjudications on the merits. *Velasquez,* 123 N.J. at 507. Plaintiff could have joined all claims together in Complaint I, as each complaint is largely duplicative of its predecessor.

To the extent we have not addressed any of plaintiff's remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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1 In *Moss I* and *Moss II* plaintiff sued the DEP directly, rather than the DEP Commissioner. However, for the purposes of this appeal, we consider all three complaints as being asserted against the DEP, since the allegations in Complaint III address agency action only.

SUPREME COURT OF NEW JERSEY
C-134 September Term 2025
090562

Robert Moss,

Plaintiff-Petitioner,

v.

ORDER

Shawn M. Latourette,
in his official capacity
as Commissioner, New
Jersey Department of
Environmental Protection,

Defendant-Respondent.

A petition for certification of the judgment in A-001891-23 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Anne M. Patterson, Presiding Justice, at Trenton, this 16th day of October, 2025.

ACTING CLERK OF THE SUPREME COURT

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Shawn M. Latourette,
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Defendant-Respondent.

A petition for certification of the judgment in A-001891-23 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Anne M. Patterson, Presiding Justice, at Trenton, this 16th day of October, 2025.

ACTING CLERK OF THE SUPREME COURT