

Gerald H. Clark, Esq. -#048281997
Lazaro Berenguer, Esq. -#042352013
CLARK LAW FIRM, PC
811 Sixteenth Avenue
Belmar, New Jersey 07719
(732) 443-0333
(732) 894-9647 (facsimile)
Attorneys for Petitioner Linda Brehme

LINDA B. BREHME;

Plaintiff/Appellant/Petitioner,

v.

**THOMAS IRWIN; NEW
JERSEY MANUFACTURERS
INSURANCE COMPANY;
JOHN DOES 1-5; ABC
CORPORATIONS 1-5;**

Defendant/Respondent

**SUPREME COURT OF NEW
JERSEY**

Docket No:

**PETITION FOR
CERTIFICATION AND
APPENDIX**

ON APPEAL FROM:

**SUPERIOR COURT OF NEW
JERSEY APPELLATE DIVISION**

Docket No: A-3760-21

SAT BELOW:

Hon. Mary Whipple, P.J.A.D.

Hon. Jessica Mayer, J.A.D.

Hon. Catherine Enright, J.A.D.

PETITION OF PLAINTIFF/PETITIONER LINDA BREHME

Gerald H. Clark, Esq.- #048281997
gclark@clarklawnj.com

Of Counsel and on the Petition
Lazaro Berenguer, Esq.- 042352013

Clark Law Firm, PC
811 Sixteenth Avenue
Belmar, New Jersey 07719
(732) 443-0333

January 16, 2024

TABLE OF CONTENTS

I. Statement of the Matters Involved.....1

II. Question Presented..... 4

III. Errors Complained of.....5

IV. Reasons Why Certification Should be Allowed.....6

V. Conclusion.....12

INDEX TO APPENDIX

SCA 1-2 Notice of Petition for Certification

SCA 3-8 Appellate Division Opinion Dated December 27, 2023

TABLE OF CITATIONS

Cases

Adolph Gottscho, Inc., v. American Marking Corp., 26 N.J. 229 (1958)... 2, 3, 5, 6, 7, 8, 9, 11

Brundage v. Estate of Carambio, 195 N.J. 575 (2008)..... 3

Guarantee Ins. Co. v. Saltman, 217 N.J. Super. 604 (App. Div. 1987).... 2, 5, 6, 7, 8

Haines v. Taft, 237 N.J. 271 (2019) 1, 5

In re Route 280 Contract, 89 N.J. 1 (1992)..... 7

Luchejko v. City of Hoboken, 207 N.J. 191 (2011)..... 7

Sturdivant v. General Brass & Machine Corp., 115 N.J. Super. 224 (1971) .2, 7, 8, 9

Tassie v. Tassie, 140 N.J. Super. 51 7(App. Div. 1976) 7, 8, 9, 10

Other Authorities

Model Jury Charge 811 1

N.J.S.A. 39:6A-12..... 1

Rules

Rule 2:12-4 7

Rule 2:4-1 2, 3, 4, 5, 6, 11

Rule 2:4-1(a)..... 11

Rule 4:48..... 2, 4, 5, 12

STATEMENT OF THE MATTER INVOLVED

This Court decided in *Haines v. Taft*, 237 N.J. 271 (2019) that *N.J.S.A.* 39:6A-12 bars an auto crash plaintiff from seeking future medical expenses at trial, even if those medical expenses exceed any available PIP auto insurance. This Court recognized the inherent unfairness of not allowing a crash victim to seek this uncompensated loss at trial and thus invited the Legislature to amend the statute. *Haines*, 237 N.J. at 294 (“Should the Legislature disagree with our restrained interpretation of its statutory scheme, we invite the Legislature to [amend it].”) Later that same year the Legislature accepted this invitation and amended *N.J.S.A.* 39:6A-12 to unambiguously state that any medical bills beyond available PIP benefits are collectible at trial.

But in June 2022, before hearing any evidence, the trial court here disregarded the statute as amended and instead applied the superseded version to bar plaintiff Linda Brehme’s claim for \$236,000 in future medical expenses. In doing so the trial judge expressed a general disagreement with ever allowing a plaintiff to seek future medical expenses at trial, despite it being allowed under Model Jury Charge 811(I) and case law. The jury thereafter awarded \$275,000 in disability and lost income damages.

The Appellate Division chose not to correct this obvious mistake, nor even address the fact that the trial court disregarded the law. Instead, it took the drastic

measure of dismissing the appeal because the defense filed a Warrant to Satisfy Judgment under *Rule* 4:48 before plaintiff filed its Notice of Appeal on the limited issue of future medical bills. In other words, the Appellate Division ruled a party cannot appeal a discreet issue unless it first announces its intention to do so, regardless of the 45-day notice of appeal period under *Rule* 2:4-1, thereby encouraging all other parties to file appeals rather than accept jury decisions. This rather alarming decision discourages resolution.

In deciding that a party must first decide and announce its decision to appeal a clearly mistaken decision in advance of the time requirements of *Rule* 2:4-1 and before a warrant to satisfy is filed, the Appellate Division mis-distinguished long standing Supreme Court precedent on the issue. *Adolph Gottscho, Inc., v. American Marking Corp.*, 26 N.J. 229, 242 (1958). (“A party may accept the sum to which he is in any event entitled and still pursue a request for a determination on appeal which would increase that sum.”). Instead, the Court relied on a conflicting Appellate Division case- *Sturdivant v. General Brass & Machine Corp.*, 115 N.J. Super. 224, 227 (1971) and mis-distinguished another Appellate Division decision that properly follows *Gottscho, Guarantee Ins. Co. v. Saltman*, 217 N.J. Super. 604, 609 (App. Div. 1987) (“[W]e reject Guarantee's contention that defendants, having executed upon and obtained satisfaction of the judgment in the amount of \$11,248.80 is estopped from pursuing this appeal...A party may accept the sum to which he is in

any event entitled and still pursue a request for a determination on appeal which would increase that sum.”, *citing Adolph Gottscho, Inc. v. American Marking Corp.*, 26 N.J. 229, 242 (1958)).

This rather startling decision to dismiss an otherwise perfected appeal counters longstanding policy favoring issue and dispute resolution. *See e.g. Brundage v. Estate of Carambio*, 195 N.J. 575, 601 (2008). The litigation and trial of the instant matter presented numerous issues. All of them were resolved except one, future medical bills. But this ruling states that before that discreet issue can be appealed, it must be decided and announced long before the 45 day notice of appeal period of *Rule 2:4-1*. This discourages acceptance of the jury verdict which resolves all other issues and encourages any other parties to appeal any issues they might have. This is counter to long standing Supreme Court policy and precedent and is particularly disconcerting in these times of unprecedented judicial vacancies.

While this decision may have abbreviated the analysis here by side stepping altogether the issue about future medical bills, it has created an unsettling precedent that if allowed to stand will undoubtedly cause more work for the courts by way of discouraging dispute resolution and the filing of more appeals. And the future medical bills issue here would not have taken much more analysis because there is a statute directly on point which says the exact opposite of what the trial judge ruled. That trial court ruling should have been summarily reversed.

QUESTION PRESENTED

1. When the Legislature amends a statute at the recommendation of the Supreme Court, should a trial court have the discretion to apply the previous version because of a disagreement with the amendment?
2. Does the filing of a warrant to satisfy judgment pursuant to *Rule* 4:48 constitute a waiver of appellate issues outside that judgment?
3. Must a party decide and give notice of intent to appeal prior to the 45-day period set forth in *Rule* 2:4-1 and before the adverse party files a warrant to satisfy judgment or waive its right to appeal other issues?

ERRORS COMPLAINED OF

The trial court was clearly wrong in disregarding the amended statute which provides that uncompensated medical bills are recoverable at trial. The controlling statute was amended at this Court's urging in the *Haines* decision. But the trial judge disregarded that because of a disagreement with the concept of awarding future medical bills, even though the Model Jury Charge and case law provides for it. This decision should have been summarily reversed by the Appellate Division.

Instead, this plain error was allowed to stand by dismissing the appeal because plaintiff did not make the decision to appeal and announce it before she would otherwise have to under *Rule* 2:4-1, and before the defense filed the Warrant to Satisfy Judgment under *Rule* 4:48. Notably neither *Rule* 2:4-1 nor *Rule* 4:48 say anything about shortening the 45-day period by announcement, nor that failure to do so constitutes a waiver of the right to appeal. This unsettling decision discourages issue resolution and contradicts both *Adolph Gottscho, Inc., v. American Marking Corp.*, 26 N.J. 229, 242 (1958) and *Guarantee Ins. Co., v. Saltman*, 217 N.J. Super. 604, 609 (App. Div. 1987). It was the defense's decision to file the Warrant to Satisfy Judgment and had there been any concern they certainly could have held it until expiration of the 45-day notice of appeal period.

As such, the Appellate Division decision that plaintiff needed to "advance [], either on the record or in writing, that she intended to pursue her claim for future

medical expenses after the judge’s in limine ruling” was an error. (*Decision at 5*). It is further impractical to impose on a litigant an expectation to tell a trial judge he or she is going to be appealed while still presiding over a trial, or any time before the 45 day window of *Rule 2:4-1* for that matter.¹ Certainly the record is devoid anything indicating that plaintiff would not appeal the judge disregarding the controlling statute on future medical bills and plaintiff had a right to rely on the controlling precedent of this Court that, “A party may accept the sum to which he is in any event entitled and still pursue a request for a determination on appeal which would increase that sum.” *Adolph Gottscho, Inc., v. American Marking Corp.*, 26 N.J. 229, 242 (1958).

REASONS WHY CERTIFICATION SHOULD BE ALLOWED

Certification should be granted because when a statute is amended at this Court’s urging, trial judges who disagree with it should not be free to apply the superseded version. Certification should also be granted because the decision below contradicts a published decision of both this Court, *Gottscho*, and one from the Appellate Division, *Guarantee Ins. Co.* The decision below also relied upon a

¹ The Court also erred in finding plaintiff accepted judgment “from defendant New Jersey Manufacturers Insurance.” NJM had long been dismissed from the case. (*LCV20191614531*). The judgment was paid by Defendant Thomas Irwin (via his insurance carrier, State Farm). (*Pa84*).

published decision of the Appellate Division, *Sturdivant*, which conflicts with both *Gottscho* and *Guarantee Ins. Co.*

Pursuant to *Rule 2:12-4*, this Court will grant certification “if the decision under review is in conflict with any other decision of the same or a higher court...” *See also In re Route 280 Contract*, 89 N.J. 1 (1992) (setting forth reasons for granting certification, including conflict of appellate decisions). This Court has recently recognized the fundamental importance attendant to the doctrine of *stare decisis*: the promotion of settled expectations on the part of litigants. *See Luchejko v. City of Hoboken*, 207 N.J. 191, 208 (2011). Thus, departure from precedent must be accompanied by some “special justification.” *Id.* (*citations omitted*).

Here the ruling of the trial judge conflicted with the controlling statute. The appellate decision relies on a published Appellate Division case which conflicts with other controlling precedent from both this Court and the Appellate Division. This leaves an unsettling and confusing situation where a plaintiff accepted a judgment in reliance on the controlling law that an appeal of a separate issue is allowed. It also discourages resolution and encourages multiple appellate issues at a time of unprecedented judicial shortages. This Petition should be granted.

The Appellate Division mis-applied and mis-distinguished *Adolph Gottscho, Inc. v. American Marking Corp.*, 26 N.J. 229 (1958). There are also contradictory Appellate Division decisions. The Appellate Division below found that *Tassie v.*

Tassie, 140 N.J. Super. 517 (App. Div. 1976) and *Sturdivant v. General Brass & Machine Corp.*, 115 N.J. Super. 224 (App. Div. 1971) stand for the proposition that the filing of a warrant to satisfy acts as a waiver to an appeal, contrary to *Gottscho*.

Over a decade later the Appellate Division found in *Guarantee* that a plaintiff can accept a partial judgment and appeal the denial of a different element of a damages claim. *Guarantee Ins. Co., v. Saltman*, 217 N.J. Super. 604, 609 (App. Div. 1987). The Appellate Division below found otherwise and erroneously misdistinguished *Guarantee*, which properly follows *Gottscho* and conflicts with *Sturdivant*. *Guarantee Insurance Co. v. Saltman*, 217 N.J. Super. 604 (App. Div. 1987) (“[W]e reject Guarantee’s contention that defendants, having executed upon and obtained satisfaction of the judgment in the amount of \$11,248.80 is estopped from pursuing this appeal. The ‘acceptance of the sum found by the trial court to be due, and [the]delivery of a warrant for satisfaction while [defendants] at all times continued to assert that an additional sum was due, was in no wise inconsistent and furnished no real basis for an estoppel.”)

Here, just like in *Gottscho*, while a Warrant of Satisfaction was filed on the pain and suffering claim, there was no “compromise or settlement or any express waiver or abandonment of...the appeal...” as to the future medical expenses, which is an entirely distinct issue. *Gottscho, Inc., v. American Marking Corp.*, 26 N.J. 229, 242 (1958). Notably, Defendant/Respondent could have held the Warrant to Satisfy

until the 45-day appeal period expired. Plaintiff has always maintained her wholly separate claim for future medical expenses. (*Pa7-73-1T52:3-53:7*) (*Pa74-224 - 4T8:19-22*). In fact, after it was denied *in limine*, plaintiff renewed the issue again with full briefing at the charge conference. (*4T:4:13-9:9*).

The Appellate Division's reliance on matrimonial cases where appellants contest the equitable distribution that was awarded by the trial court is misplaced. (*Db3*). Here Appellant never contested the jury verdict. (*Pb3*)(*Pa7-73 - 1T52:3-53:7*) (*Pa74-224 - 4T8:19-22*). Neither *Tassie v. Tassie* nor *Sturdivant v. General Brass & Machine Corp.*, in any way overrule the Supreme Court decision in *Gottscho v. Am. Marking Corp.*, which held that the acceptance of "the sum found by the trial court to be due, and its delivery of the warrant of satisfaction while it, at all times, continued to assert that an additional sum was due, was in nowise inconsistent and furnished no real basis for an estoppel." *Gottscho v. Am. Marking Corp.*, 26 N.J. 229, 242 (1958).

Moreover, *Sturdivant*- a workers compensation case- is substantively different from both this case and *Gottscho*. In *Sturdivant*, both parties recognized "the validity of the judgement and...voluntarily entered into a contract to waive or surrender their respective right to appeal." *Sturdivant v. General Brass & Machine Corp.*, 115 N.J. Super. 224, 227 (1971). That is not the case here, as

Appellant/Petitioner contested the trial court's ruling regarding future medical expenses. (*Pa7-73 - 1T52:3-53:7*) (*Pa74-224 - 4T8:19-22*).

Furthermore, the divorce action of *Tassie v. Tassie* has no effect on the instant matter. In *Tassie* the plaintiff accepted all the benefits of the judgment and complied with the financial obligations imposed upon her. *Tassie v. Tassie*, 140 N.J. Super. 517, 525 (1976). *Tassie* was distinctly unique to the divorce context:

The overwhelming weight of authority is to the effect that an appellant having recognized the validity of a judgment and decree of divorce rendered in a court of competent jurisdiction and having jurisdiction of the persons by accepting the favorable and/or beneficial provisions thereof, financial and/or marital, accruing to him thereunder, in the absence of fraud, is estopped from questioning the validity of such judgment or decree from and after the acceptance of such benefit...from and after such acceptance, an appellant is prohibited from proceeding to perfect or maintain any appeal from the same.

...

If the outcome of the appeal could have no effect on the appellant's right to the benefit accepted, its acceptance does not preclude the appeal. There is no acceptance of benefits under a judgment, and hence no waiver of rights of appeal, where a party exercises a right which existed prior to the judgment and which, though recognized or confirmed by the judgment, is not merged in it.

Tassie v. Tassie, 140 N.J. Super. 517, 527, 528 (App. Div. 1976) (underlined added).

Here, Petitioner Linda Brehme did not in any way accept the court decision barring future medical expenses; she always objected to it and filed her appeal in accordance with the Rules of Court. This is not a divorce matter where the plaintiff signed off on the divorce decree, accepted the marital property distribution, and then later

appealed it. The Appellate Division's references and citations to these divorce matters are misplaced. *Gottscho v. Am. Marking Corp.*, 26 N.J. 229, 242 (1958) controls- "the plaintiff's acceptance of the sum found by the trial court to be due, and its delivery of the warrant of satisfaction...was in nowise inconsistent...for an estoppel." Notably, in *Gottscho* - as in here - the appeal is confined to a single issue "and its outcome could serve to increase but not to reduce the amount of the judgment." *Gottscho v. Am. Marking Corp.*, 26 N.J. 229, 242 (1958).

The Appellate Division's decision compounds the existing Appellate conflict on this issue and, most importantly, conflicts with longstanding Supreme Court precedent. It also engrafts new procedural requirements where none exist in the applicable court rules and as a practical matter greatly shortens the 45-day period in *Rule 2:4-1*. The decision even suggests a good practice would be to tell the judge "on the record" at trial that he or she will be appealed. (*Decision at 5*)

The new rule bars accepting the jury decision without first making a decision about appealing other issues and announcing it, thereby inviting the other side to reject the verdict and appeal issues that would have otherwise remained resolved. This discourages resolution and neglects a party's right to have 45 days to think about whether or not they will appeal. *Rule 2:4-1(a)*. The Appellate Division took the drastic measure of dismissing the appeal because the defense filed a Warrant to

Satisfy without any support in the controlling *Rule* 4:48 (Execution and Delivery of Warrant of Satisfaction). This Petition should be granted.

CONCLUSION

We respectfully thank the Court for considering this Petition which I certify presents substantial questions and is filed in good faith.

Respectfully submitted,

Clark Law Firm, PC
Counsel for Plaintiff/Petitioner
Linda Brehme

By:



GERALD H. CLARK

DATED: JAN. 16, 2024

By:



LAZARO BERENGUER

cc: Clerk of the Appellate Division (Via Electronic Filing)
The Honorable Robert C. Wilson, J.S.C. (Via Electronic Filing)
All Counsel (Via Electronic Filing)

CLARK LAW FIRM, P.C.
Gerald H. Clark, Esq. - #0428281997
Lazaro Berenguer, Esq. - #042352013
811 Sixteenth Avenue
Belmar, New Jersey 07719
(732)443-0333
(732-894-9647 - Fax
Attorneys for Plaintiffs

LINDA B. BREHME;

Plaintiffs-Petitioners

v.

**THOMAS IRWIN; NEW JERSEY
MANUFACTURER'S INSURANCE
COMPANY; JOHN DOES 1-5; ABC
CORPORATIONS 1-5,**

Defendants-Respondents

SUPREME COURT OF NEW JERSEY

**APPELLATE DIVISION NUMBER
DOCKET NO.: A-3760-21**

Civil Action

**NOTICE OF PETITION
FOR CERTIFICATION**

To: **Clerk of the Supreme Court**
Hughes Justice Complex
P.O. Box 970
Trenton, New Jersey 08625-0970

Clerk of the Appellate Division
Hughes Justice Complex
P.O. Box 006
Trenton, New Jersey 08625-0006

Carl Mazzie, Esq.
Foster and Mazzie, LLC
10 Furler Street
Totowa, NJ 07502
Attorneys for Defendants-Respondents, Estate of Thomas Irwin

NOTICE IS HEREBY GIVEN that Petitioners/Appellants, Linda Brehme, will petition the Supreme Court of New Jersey pursuant to Rule 2:12-3(a) for certification to review the final judgment of the Appellate Division entered in this action in favor of respondent on December 27,

2023.

We enclose herewith the filing fee of \$250.00.

Clark Law Firm, PC
Attorneys for Plaintiffs

By: *Lazaro Berenguer*
LAZARO BERENGUER

Dated: January 16, 2024
Notice of Pet for Cert.wpd

**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-3760-21

LINDA B. BREHME,

Plaintiff-Appellant,

v.

THOMAS IRWIN,

Defendant-Respondent,

and

NEW JERSEY MANUFACTURERS
INSURANCE COMPANY,

Defendant.

Submitted December 12, 2023 – Decided December 27, 2023

Before Judges Whipple, Mayer and Enright.

On appeal from the Superior Court of New Jersey, Law
Division, Bergen County, Docket No. L-7134-18.

Clark Law Firm, PC, attorneys for appellant (Gerald
Hayes Clark and Lazaro Berenguer, of counsel and on
the briefs).

Foster & Mazzie, LLC, attorneys for respondent (Carl A. Mazzie, of counsel and on the brief).

PER CURIAM

Plaintiff Linda D. Brehme appeals from a June 27, 2022 in limine ruling by the trial judge barring her claim for future medical expenses. Because plaintiff filed a warrant to satisfy judgment under Rule 4:48-1, we dismiss the appeal as moot.

We limit our recitation of the facts relevant to the issue raised on appeal. Plaintiff sued defendants for personal injuries resulting from an automobile accident that occurred in December 2016.

After completion of discovery, the matter proceeded to trial. On the first day of trial, the judge entertained an in limine motion by defendant to bar plaintiff's claim for future medical expenses. Because the judge determined plaintiff's personal injury protection (PIP) coverage under her own automobile insurance policy was not exhausted, the judge barred as speculative any claim by plaintiff for future medical expenses.

The matter was tried before a jury over five days. At the conclusion of the testimony, the jury found plaintiff sustained a permanent injury as a result of the December 2016 car accident. The jury awarded plaintiff the sum of \$225,000 for pain and suffering and \$50,000 for lost wages. After calculating

interest and costs, the judge entered a July 7, 2022 judgment in favor of plaintiff in the amount of \$311,435.59. On July 18, 2022, plaintiff's counsel signed a warrant to satisfy judgment. Nothing in that document indicated plaintiff's intent to appeal the judge's in limine ruling denying her claim for future medical expenses. On August 8, 2022, the signed warrant to satisfy judgment was entered on the trial court's docket. Plaintiff filed her notice of appeal on August 12, 2022.

On appeal, plaintiff argues the judge erred in denying her claim for future medical expenses. She seeks a new trial limited to this issue. Plaintiff further asserts she is not precluded from proceeding with her appeal, notwithstanding the warrant to satisfy judgment. We disagree.

It is well settled that "a litigant who voluntarily accepts the benefits of a judgment is estopped from attacking it on appeal." Tassie v. Tassie, 140 N.J. Super. 517, 524 (App. Div. 1976). This rule "is but a corollary to the established principle that any act upon the part of a litigant by which he expressly or impliedly recognizes the validity of a judgment operates as a waiver or surrender of his right to appeal therefrom." Id. at 525.

In Tassie, the plaintiff was estopped from attacking parts of a divorce judgment, addressing child support, alimony, and equitable distribution, because

the plaintiff "knowingly and voluntarily accepted all of the benefits of the judgment without reserving her right to appeal by accepting them under protest." Id. at 523, 525. The court further explained "it is inequitable and unjust to permit [a] plaintiff to accept the benefits and attack the judgment on appeal." Id. at 526.

Here, defendant elected not to appeal the July 7, 2022 judgment and agreed to pay the full amount to plaintiff in return for a warrant of satisfaction under Rule 4:48-1. As we noted in Sturdivant v. General Brass & Machine Corp., 115 N.J. Super. 224, 227 (App. Div. 1971), where a party receives and accepts the judgment amount and the adverse party then files a warrant for satisfaction, such conduct expressly acknowledges the validity of the judgment and operates as a waiver of the right to appeal therefrom. See also Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 4:48-1 (2023).

Plaintiff's reliance on Guarantee Insurance Co. v. Saltman, 217 N.J. Super. 604 (App. Div. 1987), and Adolph Gottscho, Inc. v. American Marking Corp., 26 N.J. 229 (1958), is misplaced. The issue in Guarantee Insurance Co. involved a request for attorney's fees associated with two separate actions—a declaratory judgment action for insurance coverage and a simultaneously pending legal malpractice action. Id. at 606. The legal malpractice action settled with the

insurance company paying the settlement amount and issuing a warrant to satisfy judgment. Id. at 608. However, because the defendants maintained at all times their intent to pursue a claim for attorney's fees associated with the legal malpractice action as well as the insurance coverage action, the court held the defendants were not estopped from proceeding with an appeal related to the recovery of attorney's fees in the insurance coverage action. Id. at 609.

The facts in Aldolph Gottscho, Inc. are also distinguishable from the facts in the instant matter. In that case, the defendant filed a notice of appeal on April 9, 1957, and the plaintiff filed a notice of cross-appeal on April 19, 1957. 26 N.J. at 241. However, the defendant paid the amount due on the judgment and received the warrant of satisfaction on May 16, 1957, well after the parties filed the notices of appeal and cross-appeal. Id. at 241-42. Thus, in Aldolph Gottscho, Inc., the defendants knew of the plaintiff's intent to appeal prior to paying the judgment amount based on the plaintiff's clear assertion "at all times . . . that an additional sum was due." Id. at 242.

Here, plaintiff never advanced, either on the record or in writing, that she intended to pursue her claim for future medical expenses after the judge's in limine ruling. Plaintiff accepted and received the full judgment amount from defendant New Jersey Manufacturers Insurance Company and signed a warrant

to satisfy judgment. Under these circumstances, plaintiff's receipt and acceptance of the full amount stated in the July 7, 2022 judgment precluded her appeal challenging the trial judge's denial of future medical expenses.

Dismissed as moot.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION