The Law of the Case Doctrine: A Discretionary Guardrail, Not a Straitjacket

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Litigators appearing before the family part, or in any civil matter that unfolds across multiple motions and multiple judges, inevitably encounter a familiar refrain: “Judge So-and-So [retired] already ruled on that.” The response—and the doctrine underlying it—is often invoked with more confidence than precision. The law of the case doctrine is one of the most misunderstood principles in New Jersey practice, frequently cited as though it were an ironclad bar to reconsideration when, in fact, our courts have long treated it as a flexible, discretionary guideline rather than a rule of law. Understanding the difference matters, particularly in family law practice, where cases routinely proceed for years, cycle through interim applications, and sometimes land before more than one judge before final resolution.

What the Doctrine Actually Requires
The law of the case doctrine establishes that “an unreversed decision of a question of law or fact made during the course of litigation” settles that question “for all subsequent stages of the suit.” State v. Hale, 127 N.J. Super. 407, 410 (App. Div. 1974) (citation omitted). In practical terms, the doctrine most often operates to “bar a second judge on the same level” from differing with an earlier ruling made by a coordinate judge in the same case. Hart v. City of Jersey City, 308 N.J. Super. 487, 497 (App. Div. 1998). The policy rationale is straightforward: once an issue has been litigated and decided, relitigating it should be avoided where possible, both to conserve judicial resources and to prevent the kind of judge-shopping that would result if every interlocutory ruling were fair game for a second bite before a different jurist. Sisler v. Gannett, 222 N.J. Super. 153 (App. Div. 1987).

Critically, however, the New Jersey Supreme Court has repeatedly emphasized that the doctrine is “non-binding” and intended only to “prevent relitigation of a previously resolved issue”—it is not a jurisdictional bar, and it does not freeze the case in amber. Lombardi v. Masso, 207 N.J. 517, 538 (2011) (quoting In re Estate of Stockdale, 196 N.J. 275, 311 (2008)). As the Court put it in Lombardi, “[a] hallmark of the law of the case doctrine is its discretionary nature, calling upon the deciding judge to balance the value of judicial deference for the rulings of a coordinate judge against those factors that bear on the pursuit of justice and, particularly, the search for truth.” 207 N.J. at 538 (quoting Hart, 308 N.J. Super. at 498).

That balancing test is where the doctrine’s teeth—and its limits—become apparent. New Jersey courts have consistently held that prior rulings on legal issues should be followed “unless there is substantially different evidence at a subsequent trial, new controlling authority, or the prior decision was clearly erroneous.” Toto v. Princeton Twp., 404 N.J. Super. 604 (App. Div. 2009) (internal citation omitted). Put differently, the doctrine is not meant to prevent a judge from revisiting a prior decision in the same matter where there is a newly developed basis in fact, law, or context. And where the earlier ruling was interlocutory—as most pretrial and motion rulings are—Rule 4:42-2 independently reinforces that such orders remain “subject to revision at any time before the entry of final judgment in the sound discretion of a court in the interest of justice.” Gonzalez v. Ideal Tile Importing, 371 N.J. Super. 349, 356 (App. Div. 2004), aff’d, 184 N.J. 415 (2005). As the Appellate Division bluntly stated in Gonzalez, the doctrine “does not obligate a judge to slavishly follow an erroneous or uncertain interlocutory ruling.”

It is worth pausing on what the doctrine is not. It is not res judicata, which requires a final judgment and operates across separate suits to bar legal claims. Hale, 127 N.J. Super. at 410-11. It is also not collateral estoppel, or “issue preclusion,” which prevents litigants from “relitigating matters or facts which the party actually litigated and which were determined in a prior action, involving a different claim or cause of action, and which were directly in issue between the parties.” Olivieri v. Y.M.F. Carpet, 186 N.J. 511, 522 (2006). Lastly, it is not a substitute for stare decisis; it operates only within the four corners of a single, ongoing case. Lombardi, 207 N.J. at 538. That is, once a case concludes, the doctrine has nothing left to say.

Where the Doctrine Is Properly Applied

Consider a common family part scenario. A judge presiding over a contested custody dispute conducts a plenary hearing on a pendente lite parenting-time schedule and, after hearing testimony from both parties and a court-appointed evaluator, enters an order establishing a temporary parenting-time arrangement based on detailed findings under the best-interests factors of N.J.S.A. 9:2-4. Several months later, before trial, the matter is reassigned to a second judge due to a judicial rotation. The non-custodial parent, dissatisfied with the schedule, files a motion asking the new judge to reconsider and reverse the prior parenting-time order—not because circumstances have changed, but simply because the parent believes the first judge weighed the evidence incorrectly and hopes for a more favorable result from a different jurist.

This is precisely the situation the law of the case doctrine is designed to address. There is no new evidence, no newly enacted statute, no intervening Appellate Division or Supreme Court decision, and no assertion that the first judge’s findings were the product of an incomplete or erroneous record—only a disagreement with how the first judge weighed the same facts. Under Hart, the second judge would be well within the doctrine’s intended purpose in declining to revisit the ruling absent additional developments or proofs. Hart, 308 N.J. Super. at 497. Allowing successive judges to reweigh identical evidence merely because a litigant is unhappy with the outcome would invite exactly the kind of relitigation, forum-shopping, and inefficiency that Sisler and Hale sought to foreclose. Deference to the first judge’s considered, evidentiary-based findings—while still interlocutory and technically revisable—serves the doctrine’s core policy: finality of previously litigated issues in the same matter absent a legitimate basis for reconsideration.

Where the Doctrine Is Not Properly Applied

Now change the facts slightly. Suppose the same first judge’s pendente lite custody order was based on a legal standard that the Appellate Division, in an unrelated published opinion issued after the order but before trial, subsequently clarified or altered—for instance, a new appellate decision refining how a particular best-interests factor should be weighed when a child has a documented, escalating fear of one parent. Alternatively, suppose that after the first order was entered, a psychological evaluation surfaces newly discovered evidence of a material change in one parent's home environment. In either scenario, if the second judge (or even the same judge) refused to consider the new authority or new proofs solely because "the prior judge already ruled on parenting time," that refusal would be an incorrect application of the doctrine.

The doctrine expressly does not require adherence to a prior ruling where there is new controlling authority or "substantially different evidence." Toto, 404 N.J. Super. at 617. As the Supreme Court itself has cautioned in the criminal context, even a prior ruling suppressing evidence at one trial does not bind a court considering the same issue at a retrial where the doctrine's discretionary nature and the search for truth counsel otherwise. State v. Reldan, 100 N.J. 187, 203-05 (1985).

Practical Takeaways

For practitioners, the lesson is twofold. First, do not assume that an unfavorable interlocutory ruling is locked in for the duration of the case; if there is genuinely new evidence, a change in controlling law, or a demonstrable legal error in the prior ruling, the doctrine does not stand in the way of a properly framed motion for reconsideration. Second, do not overstate the doctrine's force when opposing such a motion; courts applying Lombardi, Hart, and Sisler will look past a bare assertion of "law of the case" to determine whether the moving party has identified a legitimate basis—new facts, new law, or clear error—for revisiting the ruling, or is simply relitigating a settled disagreement. Framing the argument correctly, on either side of the motion, is often the difference between a court that engages with the merits and one that summarily denies relief.

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