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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4193-12T2

ALONZO CAMPBELL,

Plaintiff-Appellant,

v.

SAINT JAMES AFRICAN METHODIST
EPISCOPAL CHURCH, REVEREND
WILLIAM WATLEY, REVEREND
GARVEY INCE, and BARBARA
CARTER,

Defendants-Respondents.

Submitted May 14, 2014 – Decided August 22, 2014

Before Judges Sapp-Peterson and Maven.

On appeal from the Superior Court of New
Jersey, Law Division, Essex County, Docket
No. L-8261-10.

Christopher C. Roberts attorney for
appellant.

Preston & Wilkins, PLLC, attorneys for
respondents (Gregory R. Preston and Lauren
G. Bernard, on the brief).

PER CURIAM

Plaintiff Alonzo Campbell brought this action against
defendants St. James AME Church (St. James), Rev. William
Watley, Rev. Garvey Ince, and Barbara Carter, asserting claims

of breach of contract (count one), breach of implied covenant of good faith and fair dealing (count two), common law wrongful termination under Pierce v. Ortho Pharm. Corp., 84 N.J. 58 (1980) (count three), and invasion of privacy, defamation, and slander per se (count four). Campbell appeals from the order entered April 25, 2013, granting summary judgment in favor of defendants and dismissing his complaint with prejudice. We affirm.

I.

St. James hired Campbell in 2005 to work in the maintenance department. Ince, a minister with St. James since 1997, previously managed the administration and staff, including the custodians. St. James terminated Campbell's employment on August 30, 2010.

In reciting the factual backdrop of the parties' dispute, we "view the evidence in the light most favorable" to Campbell. Nicholas v. Mynster, 213 N.J. 463, 478 (2013) (quoting Murray v. Plainfield Rescue Squad, 210 N.J. 581, 584 (2012)). Campbell worked at St. James Monday through Friday, 7:00 a.m. until 2:00 p.m. Initially, Campbell's responsibilities involved working in the parsonage on Mondays and Fridays assisting Watley and his family. On Tuesdays through Thursdays, Campbell cleaned and maintained the church. In 2007 or 2008, Campbell began working

in both the St. James Preparatory School and the church. In September 2009, Ince asked Campbell to join the maintenance staff rotation to work in the church on Sundays and one weekday until 6:00 p.m. Campbell informed Ince that he would be unable to work on Sundays because of his responsibility to care for his elderly uncle. In June 2010, Ince again asked Campbell to work two or three Sundays each month and again Campbell replied that "[he would] see what [he could] do."

On July 20, 2010, an incident occurred between Campbell and Carter, Ince's secretary, in which he touched and poked Carter on her left side. Carter reacted angrily, asking him if he would do that to Mrs. Watley at the parsonage. She then said he was lucky she "didn't slap the shit out of [him]". Campbell claimed he meant no offense and immediately apologized to Carter and Felicia, who was present and witnessed the incident. Although he did not believe he did anything inappropriate, Campbell wrote a statement to St. James regarding the incident, "in order to protect the church." In the statement, Campbell described the incident, complained of Carter's verbal response to the incident. He wrote:

At 1:30 p.m. I went to the office to ask Allison could she make me up some signs for Visions Academy parking. While I was waiting, Barbara [Carter] asked me what are the cones for, and I told her. She went on to ask me where did I get them from, and I

told her the parking lot. She was talking with Felisha (sic) at the time. As Barbara and I talked, with Felisha looking on, it seemed we both understood why I had the cones, and was getting the signs made. It seemed it was a friendly conversation, as we had just a few minutes earlier up in the fellowship hall. I walked over touched her side and I make a commenting joke, she turned in front of Felisha and said don't ever do that again. She went on to say would I do that in West Orange? In awe, I asked her why, was she talking to me like that? Then she replied I am lucky she did not knock the sh** out of me!

I asked her again, why was she going off on me? Instead of posting a debate with her, I apologized, for I knew I had done nothing offensive. Earlier in the morning when I spoke to her in her office, I gave her a Christian friendly hug with Rah Rah present, who is an employee, and she made no comment of any wrong doing of me. I have been at St. James 12 years, and worked going on 5 years, and never have I disrespected anyone. Neither her, her granddaughter which Godly kindness I have shown who has ran to embrace me, with Barbara looking and smiling. [Thirty] years I have been in the A.M.E. church, no one has never had to even attempt, that I would have did anything inappropriate. At which brings me to my next point. Since Barbara has been employed at St. James she has created nothing but havoc amongst the maintenance staff at which I am a part of.

I have tolerated it, because I have tried to look past of her ways and hope that a change will come. With these flip flop mood swings one would wonder. This is a person who on every Wednesday, and Sunday, shouts all over the church in service. Jumps up and down parading passing members, at which one would believe she is under the

Holy Spirit, but had enough venom to cuss me in front of another employee, in the same church!!! One would wonder what kind of God she serves. That the same spirit she had when she is shouting, could not hold her tongue, in the same place where she works, and to the maintenance staff repeatedly out of negative understanding. Barbara, Vesta Clark, and I were just upstairs talking about the goodness of God, and how we all should try work with one another. I said in the conversation that God would bless us more if we worked together, as a whole and stop hurting each other. [Ten] minutes later look what happens!

Note::: We are supposed to be on the same team, not trying to lay traps. Who would welcome this type of attitude in the military, where comrades were invisible enemies! Someone, who everyday looks for something to report negative about another employee! Someone who does all she can to cast down others, so that they may lift up themselves. Pastor Watley has always wanted us to have a cooperative, and can do spirit. But those who of whom in positions, who disgrace the hard work the pastor is doing, by conducting themselves, in an ungodly manner, changes the pace. Now I have to be accompanied by a witness, whenever I need to take care of church business with her. I am insulted as person by her out lash towards me in this situation, but must remain caution for the sake of the church. I have worked with her for nearly 2 years and never posted a position out of code. St. James is a place where embracing goes on, in and out of service, through our Christian walk with Christ. For the record it was better that this be recorded for the understanding of the church, as well as myself.

I have taken the courses on sexual harassment as a minister, and, as an

employee and, I am sure I have not violated any rules or regulations set.

The letter was copied to Rev. Watley and Ince, and delivered to Ince and Carter. Campbell's statement caused Ince to commence an investigation in which he spoke privately to all persons who were present, namely Campbell, Carter, and Felicia, and accepted their written statements. Carter reported the incident differently. She submitted the following statement:

On Tuesday, July 20, 2010 an incident happened between myself and Alonzo Campbell. I was having a conversation with Felicia Kennedy when I noticed that Mr. Campbell had put some cones, reserved for parking spaces in the dining room. I asked him where had they come from and he said the parking lot. I then asked him where he was going with them and he replied that the principal of Visions Academy and his staff wanted to reserve their parking spaces at the school. I then turned from him and proceeded with my conversation with Ms. Kennedy. At that moment, I felt Mr. Campbell's hands squeezing together on my side and lower back. I then turned around and asked him what he was doing, very annoyed, I might add. I asked him if thought that was appropriate and if he saw someone doing that to his mother or sister would he think that was ok? I also asked him if he would make those types of gestures to the first lady or anybody else for that matter. I used those scenarios to let him know that what he did was disrespectful. I felt that his actions were totally inappropriate. I am not an overly sensitive person, and I am not offended if someone would give me a peck on the cheek or a tap on the arm, but this was not a little tap. It was over the top and

definitely inappropriate and certainly not called for.

I have read his statement concerning this incident and find it very strange that it is all about me and not about what he did. I did not curse at him but I did insinuate that he was lucky I did not slap him. I am not going to address all those other negative and offensive remarks he has made concerning who he thinks I am because that is not the issue. The issue is - he touched me inappropriately and without my consent.

On July 21, 2010, Ince sent Campbell a letter summarizing the results of the investigation in which he concluded the incident involved an inappropriate and unwelcome touch by Campbell upon Carter, the behavior was unacceptable, and any further incidents would be investigated and could result in Campbell's dismissal. Campbell, through his attorney, wrote Ince on July 30, 2010, objecting to the written warning and requesting its removal from his employment file "on [] grounds that the letter violated the progressive discipline policy" and constituted "retaliatory conduct." The letter also stated Campbell "takes issue with the new schedule that requires employees to work from 7 a.m. to 5 p.m.".

At an August 2, 2010 meeting of the maintenance staff, Ince informed Campbell that he was no longer assigned to the school, which by then had an independent janitorial service. Campbell was told he would have to join the rotation with the other

church maintenance personnel to work on Sundays and at least one weeknight until 6:00 p.m. After Campbell again declined because of his obligations to his uncle, Ince reminded him of his work schedule and gave him three weeks to make alternative arrangements for his uncle. Campbell failed to report to work on his scheduled Sunday, August 29, 2010, and was terminated on Monday, August 30, 2010.

At his deposition, Campbell acknowledged that Ince told him approximately six times that he was needed on Sundays but each time he told Ince either, "I will see what I can do" or "I will let you know." Campbell also stated he received a copy of the St. James employee manual in 2007 and was aware that he was an at-will employee. He understood "at-will" to mean St. James could terminate him at any point in time.

Campbell believed he was terminated because he was envied and hated by the leadership of St. James, and because he refused to work on Sundays. He also believed the termination was triggered by the Carter incident. When asked if there were other reasons for his terminations, he stated "Because of the lie that Barbara has told that I had touched her unwillingly or inappropriately, that's one. They didn't like the fact that I hired an attorney to represent me, because . . . I spoke against me touching anyone out of content."

Following discovery, defendants filed a motion for summary judgment. At the motion hearing, Campbell argued St. James retaliated against him for complaining of Carter's conduct towards him and because of his attorney's complaint about the church's violation of the progressive disciplinary policy. Campbell claimed St. James wrongfully terminated him, using his refusal to work on Sundays as a pretext; that St. James breached the implied covenant of good faith and fair dealing by violating the terms of the employee manual; and that it breached an implied protection for privacy by disclosing the nature of the investigation. Defendants argued Campbell was terminated for insubordination, having repeatedly refused to work on Sundays; that Campbell had been informed eleven times since September 2009 that he was needed on Sundays; and that he had been warned that he risked termination if he did not comply.

The motion judge concluded there was no cause of action for wrongful termination. First, the judge determined the facts were undisputed that Campbell never worked on a Sunday despite being asked to work on Sundays eleven or twelve times. Further, the judge ruled as a matter of law that Campbell's discharge did not violate the covenant of good faith and fair dealing or the anti-retaliation clauses of the employee manual because the church had a duty "to keep a safe workplace, a workplace without

either sexual harassment or . . . threats of violence." As such, the judge stated St. James had the right to make a decision to discipline Campbell following its investigation. Moreover, the judge ruled sending a letter complaining about the decision did not give Campbell a basis to claim a violation of the anti-retaliation clause when the reason for the termination was Campbell's failure to appear for work on Sundays.

On the breach of privacy claim, Campbell alleged he did not tell anyone about the Carter incident, therefore, it must have been defendants who disclosed to another church member information about the incident, and that person must have told others in the church that there was a sexual harassment charge against Campbell. Campbell could not identify the person who provided the other church member the information, or the specific information that may have been disclosed. After hearing argument, the judge found there was "only speculation that maybe someone in the administration leaked [information about the incident and the investigation], and . . . you can't go to a jury on speculation." Thereafter, the judge dismissed the breach of privacy claim, granted the motion for summary judgment in favor of defendants, and dismissed Campbell's complaint with prejudice. This appeal followed.

II.

"An appellate court reviews an order granting summary judgment in accordance with the same standard as the motion judge." Bhagat v. Bhagat, 217 N.J. 22, 38 (2014) (citing W.J.A. v. D.A., 210 N.J. 229, 237-38 (2012); Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 330 (2010)). Thus, we consider, as the trial judge did, "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Liberty Surplus Ins. Corp., Inc. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995)). Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). If there is no genuine issue of material fact, we must then "decide whether the trial court correctly interpreted the law." Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007), certif. denied, 195 N.J. 419 (2008). We review issues of law de novo and accord no deference to the trial judge's conclusions. Nicholas, supra, 213 N.J. at 478.

A.

We turn first to Campbell's claim that the trial court erred in dismissing his common law wrongful discharge claim. This cause of action is recognized under Pierce if an employee is fired either in retaliation for the employee's refusal to commit an act which would violate a statute or "for assertion of a right protected by legislation." DeVries v. McNeil Consumer Prods. Co., 250 N.J. Super. 159, 171 (App. Div. 1991); see Pierce, supra, 84 N.J. at 72 (holding that the sources of such public policy include legislation, administrative rules, regulations or decisions, and judicial determinations).

The Supreme Court has held that "the trial court must identify a statute, regulation, rule, or public policy that closely relates to the complained-of conduct," but the plaintiff does not need to "allege facts that, if true, actually would violate that statute, rule, or public policy." Dzwonar v. McDevitt, 177 N.J. 451, 463 (2003). A plaintiff need only "set forth facts that would support an objectively reasonable belief that a violation has occurred." Id. at 464.

Campbell avers his termination violated the public policy espoused in the New Jersey Family Leave Act (FLA), N.J.S.A. 34:11B-3, which entitled him time to care for his uncle on Sunday. We are not persuaded by Campbell's arguments.

The FLA permits "family leave" for an employee to provide care made necessary by reason of: (1) the birth of a child of the employee; (2) the placement of a child with the employee in connection with adoption of such child by the employee; or (3) the serious health condition of a family member of the employee. N.J.S.A. 34:11B-3. Campbell's reliance on the FLA fails as a matter of law because the care of an uncle is not covered by the act, which defines "family member" as a "child, parent, spouse, or one partner in a civil union couple." Ibid.

Moreover, even if Campbell's uncle met the definition of "family" under the FLA, Pierce does not apply "where discharge resulted from disputes which were internal and implicated only private interests," as are the circumstances here. DeVries, supra, 250 N.J. Super. at 171. Here, St. James had a right to terminate Campbell, an at-will employee, with or without cause. Bernard v. IMI Sys., Inc., 131 N.J. 91, 105 (1993). St. James was entitled to independently assess Campbell's conduct and the situation involving the assignment of work among its employees. Ince informed Campbell on numerous occasions that he had to work on Sundays, and provided Campbell time to make alternative arrangements for his uncle. Based on these circumstances, we are satisfied that the decision to terminate Campbell resulted from disputes which were "internal and implicated only private

interests." DeVries, supra, 250 N.J. Super. at 171. Accordingly, we conclude Campbell's claim of wrongful termination was properly dismissed as a matter of law.

B.

We turn now to Campbell's arguments with respect to his claim that St. James improperly retaliated against him for complaining of Carter's harassing conduct towards him. He argues St. James used his inability to work on Sundays as a pretext to terminate his employment.

The New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-12(a), provides that it is an unlawful employment practice or unlawful discrimination "for an employer, because of the race, creed, color, national origin, ancestry, age, marital status, . . . or sexual orientation . . . to discriminate against such individual in compensation or in terms, conditions or privileges of employment. . . ." The LAD further declares it to be an unlawful employment practice or unlawful discrimination "to take reprisals against any person because that person has opposed any practices or acts forbidden under this act" N.J.S.A. 10:5-12(d).

"Identifying the elements of the prima facie case that are unique to the particular discrimination claim is critical to its evaluation." Victor v. State, 203 N.J. 383, 410 (2010). To

establish a prima facie case of retaliation under the LAD, a plaintiff must demonstrate: (1) that he engaged in protected activity; (2) the activity was known to the employer; (3) he suffered an adverse employment decision; and (4) there existed a causal link between the protected activity and the adverse employment action." Battaqlia v. United Parcel Serv., Inc., 214 N.J. 518, 547 (quoting Woods-Pirozzi v. Nabisco Foods, 290 N.J. Super. 252, 274 (App. Div. 1996)).

After reviewing the evidence and giving Campbell all favorable inferences, we conclude Campbell's complaints about Carter's visceral response to his offensive touch do not constitute protected activity under the LAD. Campbell has not alleged any discriminatory conduct under the LAD. Even if not accurately plead, there are no facts asserted or any evidence in the record to support any assertion that Campbell felt harassed or threatened by Carter. The Court made clear in Battaqlia that

When an employee voices a complaint about behavior or activities in the workplace that he or she thinks are discriminatory, we do not demand that he or she accurately understand the nuances of the LAD or that he or she be able to prove that there was an identifiable discriminatory impact upon someone of the requisite protected class. On the contrary, as long as the complaint is made in a good faith belief that the conduct complained of violates the LAD, it suffices for purposes of pursuing a cause of action.

Ibid. at 548-49.

Discourtesy and rudeness should not be confused with harassment. Shepherd v. Hunterdon Developmental Ctr., 174 N.J. 1, 25-26 (2002). The LAD "does not set forth a general civility code for the American workplace." Roa v. Roa, 200 N.J. 555, 575 (2010) (internal quotation marks and citations omitted). Nor does the LAD demand that "only language fit for polite society" exist in the workplace. Battaglia, supra, 214 N.J. at 549.

In this instance, Campbell acknowledged in his deposition testimony that he did not submit the incident statement to complain of harassment, but rather did so to report that Carter cursed at him. We accept that the course and profane language attributed to Carter is both inappropriate and offensive, particularly in a church setting. The language, nonetheless, does not demonstrate an act of harassment or other adverse employment action against Campbell, which the LAD is intended to protect. See Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 600 (1993)).

Further, there is no evidence that Carter's conduct was pervasive or repetitive. Aside from the allegations raised in Campbell's statement, there is no other evidence that he ever complained to church officials about the other incidents of "havoc" Carter allegedly caused among the maintenance staff. Unlike in Battaglia, supra, 214 N.J. at 548, where the Court

found a supervisor's words and conduct were routine and repeated demonstrable acts of discrimination, here Carter's angry retort appears to be an isolated outburst occasioned by Campbell's unwelcomed touch or poke in her side. As made clear from his statement, Campbell was highly offended by Carter's remark, both as a co-worker and a member of the clergy. Nevertheless, his complaint, although made in a good faith belief that the Carter's conduct violated, at best, a civility code of conduct, is not protected activity as defined under the LAD. Id. at 549.

Lastly, even if Campbell's complaints could somehow be deemed sufficient to satisfy the first LAD prong, there is no evidence that the eventual termination was causally connected to the complaint letters. Instead, the record overwhelmingly supports the conclusion that St. James had a legitimate, non-retaliatory basis to terminate Campbell based upon his repeated refusal to comply with the Sunday work assignment. Campbell's proofs, even drawing every favorable inference in his favor as required on a motion for summary judgment, simply did not establish the requisite causal link between the complaint letters, his alleged protected activity and the termination, the claimed adverse employment action. See Jamison v. Rockaway Twp. Bd. of Educ., 242 N.J. Super. 436, 445 (App. Div. 1990).

C.

Campbell also argues he established sufficient proof that he was injured as a result of the breach of the privacy clause of the employee manual, and that defendants defamed him. We disagree.

To prove defamation, a plaintiff must establish damages and that the defendant "(1) made a defamatory statement of fact (2) concerning the plaintiff (3) which was false, and (4) which was communicated to a person or persons other than the plaintiff." Feggans v. Billington, 291 N.J. Super. 382, 390-91 (App. Div. 1996). The fifth element that must be proven is fault. Id. at 391. Fault in private defamation is proven by a negligence standard. Costello v. Ocean Cnty. Observer, 136 N.J. 594, 612 (1994). "[P]laintiff must plead facts sufficient to identify the defamatory words, their utterer and the fact of their publication. A vague conclusory allegation is not enough." Darakjian v. Hanna, 366 N.J. Super. 238, 249 (App. Div. 2004).

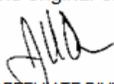
In the present case, Campbell alleges that Carter defamed him by telling "others" he sexually harassed her. As to the specific defamatory remarks, Campbell claimed that a co-worker, Gerard Williams, said Carter told him about the incident. Campbell, however, had no personal knowledge of the conversation between Williams and Carter or the specific defamatory

statement. At his deposition, Campbell was unable to specifically state the alleged defamatory remarks. Because of this deficiency, Campbell has failed to properly plead a claim for defamation. See *ibid.*

Furthermore, our reasoning with respect to Campbell's claim for slander equally applies to his slander per se claim. In New Jersey, slander per se is limited to defamatory statements accusing another person (1) of having committed a criminal offense; (2) of having a loathsome disease; (3) of engaging in conduct or having a condition that is incompatible with his or her business, trade, or office; or (4) of having engaged in serious sexual misconduct. See *Biondi v. Nassimos*, 300 N.J. Super., 148, 154 (App. Div. 1997). Here, as stated previously, because Campbell has not pled any actionable defamatory or slanderous statements, his claim for slander per se is also dismissed.

Affirmed.

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


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