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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3659-09T3
A-0023-10T3
A-0134-10T3

TARANCE BRYANT,

Plaintiff-Appellant,

v.

LIBERTY HEALTH CARE SYSTEM, INC. and JERSEY CITY MEDICAL CENTER, INC.,

Defendants-Respondents.

TARANCE BRYANT,

Plaintiff-Appellant,

v.

LIBERTY HEALTH CARE SYSTEM, INC. AND JERSEY CITY MEDICAL CENTER, INC.,

Defendants-Respondents.

JULISSA GUZMAN,

Plaintiff-Appellant,

v.

LIBERTY HEALTH CARE SYSTEM, INC. AND JERSEY CITY MEDICAL CENTER, INC.,

Defendants-Respondent.

Argued November 29, 2011 - Decided December 20, 2011

Before Judges Payne, Reisner and Simonelli.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket Nos. L-5901-09, L-1862-10 and L-1852-10.

Alan L. Krumholz argued the cause for appellants (Krumholz Dillon, P.A., attorneys; Mr. Krumholz, on the brief).

Heather R. Boshak argued the cause for respondents (Fox Rothschild, L.L.P., attorneys; Ms. Boshak, of counsel and on the brief; Suzanne J. Ruderman, on the brief).

PER CURIAM

In these three appeals, which we have consolidated for purposes of this opinion, plaintiffs Tarance Bryant and Julissa Guzman appeal from the dismissal of complaints they filed against defendants Liberty Health Care Systems, Inc. and Jersey City Medical Center, Inc. after plaintiffs were both terminated from employment. Bryant appeals from a February 5, 2010 order, dismissing his Conscientious Employee Protection Act (CEPA) complaint without prejudice; from a March 23, 2010, denying his motion for reconsideration and for leave to file an amended complaint; and from an August 6, 2010 order dismissing with prejudice his separate complaint asserting rights under Pierce v. Ortho Pharmaceuticals Corp., 84 N.J. 58 (1980). Guzman appeals from a separate order dated August 6, 2010 dismissing with prejudice her complaint alleging violations of Pierce and

the duty of good faith and fair dealing.[1] We affirm all of the orders on appeal.

I

Because the complaints were dismissed for failure to state a claim on which relief can be granted, R. 4:6-2(e), we consider the facts set forth in the complaints. We also consider the facts set forth in certifications that the plaintiffs filed in opposition to defendants' dismissal motions, presumably in an attempt to demonstrate what additional facts they could plead if permitted to re-plead. See Johnson v. Glassman, 401 N.J. Super. 222, 246 (App. Div. 2008) (finding dismissal with prejudice appropriate where "plaintiffs have not offered either a certification or a proposed amended pleading that would suggest their ability to cure the defects" in their complaint).[2]

This is plaintiffs' version of the pertinent events. Bryant was an emergency medical technician (EMT) supervisor at the Jersey City Medical Center (JCMC). He also held a second job as a Jersey City police officer. On the evening of June 12, 2009, while Bryant was working in the dispatch center at JCMC,

[1] Plaintiffs do not argue that the August 6 orders should have dismissed their complaints without prejudice, as opposed to with prejudice.

[2] In their briefs, plaintiffs urge us to consider these materials.

Guzman, an EMT who was one of his subordinates, told him that an EMT from another hospital was on his way to the JCMC to deliver a patient to the emergency room (ER) where Guzman was working. She also told Bryant that this EMT was her former boyfriend, against whom she had obtained an as-yet-unserved domestic violence restraining order, and she was afraid of him. She gave Bryant a copy of the restraining order.

For reasons not addressed in their complaints, neither Bryant nor Guzman alerted hospital security. Instead, Bryant left his assigned post at the dispatch center in order to protect Guzman when the ex-boyfriend brought his patient into the ER. When the ex-boyfriend arrived, Bryant interceded to keep him away from Guzman, and tried unsuccessfully to hand him a copy of the restraining order. After the ex-boyfriend deposited his patient at the ER and departed in his work vehicle, Bryant commandeered one of JCMC's ambulances and followed the ex-boyfriend on a high-speed chase through the streets of Jersey City, in a further attempt to serve him with the restraining order.

As a result of this incident, Bryant was fired for professional misconduct, and Guzman was discharged for "interfering with an investigation by providing false information, misleading information and/or omitting

information." According to Guzman's complaint, the hospital also accused her of having "a relationship" with Bryant, an allegation she denied.

Bryant initially filed a complaint alleging that his termination violated CEPA, N.J.S.A. 34:19-1 to -19.8. In a February 5, 2010 opinion, Judge Alvaro L. Iglesias explained his reasons for dismissing Bryant's CEPA complaint. Relying on Dzwonar v. McDevitt, 177 N.J. 451, 462 (2003), the judge reasoned that the complaint did not allege that Bryant "reasonably believed" that his employer's conduct (as opposed to the ex-boyfriend's conduct) was violating any law or public policy and Bryant did not allege that he performed any whistle-blowing activity. Therefore, the complaint failed to allege facts necessary to satisfy two of the four elements of a CEPA claim, pursuant to N.J.S.A. 34:19-3(c). Judge Iglesias issued an order dismissing the complaint without prejudice.

Bryant filed a motion for reconsideration or for leave to file an amended complaint. The proposed amended complaint recited essentially the same facts, but alleged that Bryant was attempting to protect Guzman from domestic violence prohibited by the Prevention of Domestic Violence Act, "N.J.S.A. 2C:25-17, et seq." and that his actions "constituted an objection to any policy of the Jersey City Medical Center which would have

prevented his intercession in behalf of his co-employees, which policy would have been incompatible with a clear mandate of public policy concerning the public health, safety or welfare." He also alleged that his termination represented an "endorsement of a policy of not protecting a co-employee" and violated both CEPA and Pierce, supra. On March 23, 2010, Judge Iglesias issued an order denying the motion, but noted that his order applied only to Bryant's CEPA claim.

On March 31, 2010, Bryant filed a new complaint, asserting essentially the same facts set forth in his proposed amended complaint, and alleging that discharging him for attempting to protect Guzman from domestic violence was contrary to public policy, under Pierce, and violated the implied covenant of good faith and fair dealing.[3] Guzman also filed a complaint asserting that in asking Bryant to protect her, she was engaging in conduct "designed to prevent violence against herself and against any others who might have interceded in her behalf"; that her conduct was protected "as a clear mandate of public policy by the criminal and civil laws of the State"; and that her discharge violated pubic policy, under Pierce. She also alleged that terminating her employment as a result of her

[3] In this appeal, Bryant has not briefed, and has therefore waived, his "good faith and fair dealing" claim. See Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011).

seeking Bryant's assistance violated the covenant of good faith and fair dealing.

Defendants moved to dismiss both complaints with prejudice for failure to state a claim, and moved to dismiss Bryant's complaint under the entire controversy doctrine. In opposition to the motion, plaintiffs filed certifications further explaining the incidents that occurred at the JCMC, and attaching copies of their notices of discharge and Bryant's incident report. In his report, Bryant admitted commandeering a JCMC ambulance and following the ex-boyfriend's ambulance through the streets at high speed, almost to the bridge leading to Newark. He also admitted that he was fired for professional misconduct. Guzman's discharge notice indicated that the employer fired her for providing inaccurate or inadequate information during the investigation.

In an oral opinion issued August 6, 2010, Judge Mary K. Costello first addressed Bryant's complaint. She declined to dismiss the complaint under the entire controversy doctrine. However, relying on Mehlman v. Mobil Oil Corporation, 153 N.J. 163 (1998), she found that the complaint did not state a Pierce claim because it did not allege any action by the employer that violated a clear mandate of public policy or that posed a "threat of public harm," and did not allege that the employer

had directed Bryant to take any action in violation of any public policy. She also reasoned that if Bryant could not allege facts that would satisfy the more expansive standards set forth in CEPA, he also could not prove a Pierce claim. Because Bryant had no employment contract, she found that he did not state a claim for violation of the covenant of good faith and fair dealing. As she noted on the order in Guzman's case, the judge dismissed Guzman's complaint for the same reasons.

II

On an appeal from the grant or denial of a motion to dismiss a complaint under Rule 4:6-2(e), we review the judges' decisions de novo. Smerling v. Harrah's Entm't, 389 N.J. Super. 181, 186 (App. Div. 2006). We apply the same standard as the trial judges: "a motion to dismiss pursuant to Rule 4:6-2(e) may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief." Ibid. Having independently reviewed the record, we find no basis to disturb the decisions of Judges Iglesias and Costello, and we find that plaintiffs' appellate contentions are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We add the following comments.

Bryant contends that his termination violated CEPA, a civil rights statute intended to "protect and encourage employees to report illegal or unethical workplace activities and to discourage public and private sector employers from engaging in such conduct." Abbamont v. Piscataway Twp. Bd. of Educ., 138 N.J. 405, 431 (1994). In pertinent part, the statute provides:

> An employer shall not take any retaliatory action against an employee because the employee does any of the following:
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> a. Discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or another employer, with whom there is a business relationship, that the employee reasonably believes:
>
> (1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, in the case of an employee who is a licensed or certified health care professional, reasonably believes constitutes improper quality of patient care; or
>
> . . . .
>
> c. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes:
>
> (1) is in violation of a law, or a rule or regulation promulgated pursuant to law, including any violation involving deception

> of, or misrepresentation to, any shareholder, investor, client, patient, customer, employee, former employee, retiree or pensioner of the employer or any governmental entity, or, if the employee is a licensed or certified health care professional, constitutes improper quality of patient care;
>
> . . . .
>
> (3) is incompatible with a clear mandate of public policy concerning the public health, safety or welfare or protection of the environment.
>
> [N.J.S.A. 34:19-3(a), (c).]

To establish a CEPA violation under section 3(c), a plaintiff must demonstrate that:

> (1) he or she reasonably believed that his or her employer's conduct was violating either a law, rule, or regulation promulgated pursuant to law, or a clear mandate of public policy; (2) he or she performed a "whistle-blowing" activity described in N.J.S.A. 34:19-3c; (3) an adverse employment action was taken against him or her; and (4) a causal connection exists between the whistle-blowing activity and the adverse employment action.
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> [Dzwonar, supra, 177 N.J. at 462.]

Bryant contends that acting "to prevent the potential commission of an act of domestic violence against a co-employee" is protected by public policy, as embodied in the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, the Worker Health and Safety Act, N.J.S.A. 34:6A-1 to -50, and other

workplace safety laws. See Cerrachio v. Leeds, 223 N.J. Super. 435 (App. Div. 1988). He argues that firing him for opposing, or acting to prevent, domestic violence at his workplace violated Pierce and CEPA. On different facts, his claims might merit further consideration. However, his own pleadings, as supplemented by his certification, established that he was fired for commandeering the employer's ambulance and chasing Guzman's ex-boyfriend through the streets of Jersey City.[4] No public policy protected him from termination as a result of that admitted misconduct.

Moreover, his CEPA complaint failed to identify any illegal activity or policy of his employer, and failed to state facts that, if true, would establish that he "blew the whistle" by opposing or complaining about any such activity or policy. The theory espoused in Bryant's proposed amended CEPA complaint - that if his employer had a policy of allowing violence in the workplace, he was acting to oppose it by protecting Guzman - can charitably be described as insufficient to state a CEPA claim. Finally, his complaint stated no facts that would, if true, establish that his employer's stated reasons for terminating him were a pretext to retaliate against him for protected whistle-

[4] Both at oral argument before Judge Costello and before this panel, Bryant's attorney candidly admitted that Bryant engaged in that conduct.

blowing activity. See Maimone v. City of Atl. City, 188 N.J. 221, 238 (2006) (discussing proof of pretext).

As Judge Costello correctly noted, Bryant's Pierce claim suffered from essentially the same deficiency as his CEPA claim. In Pierce, the Court recognized that "an employee has a cause of action for wrongful discharge when the discharge is contrary to a clear mandate of public policy." Pierce, supra, 84 N.J. at 72. However, "employees can bring wrongful discharge claims only if they can identify an expression that equates with a clear mandate of public policy and if they can show that they were discharged in violation of that public policy." MacDougall v. Weichert, 144 N.J. 380, 391 (1996). Further, in addition to requiring employers' to respect important public policies, our Court has recognized the public interest in "discouraging frivolous lawsuits by dissatisfied employees." Pierce, supra, 84 N.J. at 71, 73.

Bryant failed to identify any facts to support a claim that he was wrongfully terminated in violation of a clear mandate of public policy. MacDougall, supra, 144 N.J. at 391. He identified no public policy that would preclude the hospital from firing him for commandeering an ambulance and chasing Guzman's ex-boyfriend through the streets.

Guzman's Pierce claim suffers from similar deficiencies. Her own submissions to the motion judge demonstrated that the employer fired her for failing to cooperate with the investigation of Bryant's improper activity. She stated no facts to support a claim that she was fired for any other reason. Nor did she allege that the employer had a policy, or an interest in, permitting violence in the workplace or discouraging employees from reporting impending workplace violence. Therefore, her reliance on Ballinger v. Delaware River Port Authority, 172 N.J. 586, 590-91 (2002) (employee, who suspected workplace corruption, fired for reporting a theft to the State Police rather than through his employer's chain of command), and MacDougall, supra, 144 N.J. at 385 (councilman fired for voting on an ordinance that was contrary to his employer's interests), is misplaced. Finally, it is questionable whether making a report to an "immediate supervisor" would satisfy Pierce. See Tartaglia v. UBS PaineWebber, Inc., 197 N.J. 81, 109 (2008).

Turning to Guzman's additional claim, absent a contract, "there is no implied covenant of good faith and fair dealing." Nolan v. Control Data Corp., 243 N.J. Super. 420, 429 (App. Div. 1990). Guzman failed to assert any facts which, if true, would establish that she had an express or implied employment contract

or that the employer violated any express or implied provisions of such a contract. See Wade v. Kessler Inst., 172 N.J. 327, 345 (2002).

Absent proof of such a contract, implied through terms in an employee handbook or otherwise, Guzman's employment was terminable at will, so long as the employer did not violate any laws or clear mandates of public policy. See Witkowski v. Thomas J. Lipton, Inc., 136 N.J. 385, 398 (1994). Her complaint does not even identify an alleged contract or specify a provision that defendant allegedly breached. The mere mention of the word "manual" in her certification would not state a claim for an employment contract created by an employee handbook. "Pleadings reciting mere conclusions without facts and reliance on subsequent discovery do not justify a lawsuit." Glass v. Suburban Restoration Co., Inc., 317 N.J. Super. 574, 582 (App. Div. 1998). Guzman's additional arguments on this point are without sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

To summarize, plaintiffs attempted to transform general claims of unfair discipline into causes of action that were not supported by the factual allegations they presented. Their complaints were properly dismissed.

Affirmed.