NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-6161-09T3

MARGARET GOODE,

Plaintiff-Appellant,

v.

THE CITY OF CAMDEN BOARD
OF EDUCATION,

Defendant-Respondent,

and

TYRONE RICHARDS, individually
and in his capacity as an
employee of Defendant Board
of Education; JANICE TAYLOR,
individually and in her
capacity as an employee of
Defendant Board of Education;
PATRICIA COOK, individually
and in her capacity as an
employee of Defendant Board
of Education; and CAMDEN
EDUCATION ASSOCIATION,

Defendants.

Submitted April 13, 2011 - Decided May 6, 2011

Before Judges Lihotz and J. N. Harris.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-1788-08.

Taylor and Mitchell, LLC, attorneys for appellant (Kevin John Mitchell, on the brief).

Marshall, Dennehey, Warner, Coleman & Goggin, attorneys for respondent (Richard L. Goldstein, Walter F. Kawalec, III and Ashley Toth, on the brief).

PER CURIAM

Plaintiff Margaret Goode appeals from the summary judgment dismissal of her complaint against defendant the City of Camden Board of Education[1] alleging violations of the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -8, because it was filed more than one year beyond the actionable event as required by N.J.S.A. 34:19-5. We affirm.

Plaintiff was hired by defendant as a science teacher for the 1990-1991 school year. She achieved tenure during the 1993-1994 school year. Plaintiff continues her employment with defendant.

The CEPA action stems from a transfer and change of job assignment. In September 2006, plaintiff voluntarily accepted a transfer she initiated to a district middle school and was initially told she would be teaching sixth grade science. Shortly after the start of the school year, plaintiff was advised the teaching position was assigned to a different

[1] The individually named defendants were voluntarily dismissed on May 28, 2010.

teacher and she would be employed as a "science support" teacher. Plaintiff objected to this reassignment, but "was forced to accept the new position."

Plaintiff requested assistance from the Camden Education Association. A meeting with her principal Tyrone Richards was arranged. In this meeting, plaintiff learned her role was not instructional and that if she stayed at the school there were no available teaching positions. Dissatisfied, plaintiff contacted the district science supervisor Paul Mulle, who agreed to investigate and get back to her.

In October 2006, plaintiff's role again changed. In addition to assigning her as a science support teacher, Richards began utilizing her as an in-house substitute; plaintiff was required to report and provide coverage to any classroom if an assigned teacher was not available, despite her unfamiliarity with the classroom subject matter.

On February 16, 2007, Richards advised plaintiff she was being transferred to Coopers Poynt Elementary School. Plaintiff objected to the involuntary transfer but was ordered to report to her new assignment on February 20, 2007. Upon arrival at Coopers Poynt Elementary School, the principal Sandra Sims-Foster informed plaintiff there were no science positions available in the school. Sims-Foster stated she was not

informed as to why plaintiff was transferred as she did not request or need additional teaching staff. She suggested that plaintiff report to the District Human Resource Office.

Plaintiff did as instructed. During the meeting, the director, Garnell Bailey, misstated plaintiff's qualifications and eligibility to teach middle school science and that her transfer to Coopers Poynt Elementary School was voluntary. The following day, Bailey advised plaintiff would be transferred to Powell Elementary School. After one day of performing non-teaching assignments, plaintiff was told by Powell's principal she had no open teaching positions, but asked whether plaintiff would teach the individual students science to free up the classroom teachers for alternative tasks. Plaintiff objected to this role but nevertheless assumed it for a short period. She then was asked to act as an in-house substitute in a special education classroom, which she performed until January 16, 2008.

Plaintiff wrote to Mulle, challenging her "illegal transfer to Coopers Po[y]nt [Elementary] School." Plaintiff was transferred to another district middle school in 2008, working as an in-house substitute for the remainder of the 2007-2008 school year. Starting in September 2008, plaintiff was ultimately assigned as a science teacher at Cream School, where she remains.

Through this turbulent period, plaintiff never suffered a loss of pay or benefits. With each transfer her salary, benefits and tenure remained unchanged.

Plaintiff's CEPA complaint was filed on April 14, 2008, alleging an adverse employment action by being transferred to Coopers Poynt Elementary School on February 16, 2007 and the subsequent transfer to Powell Elementary School.[2]

It is well-established that we review the motion court's conclusions de novo, Estate of Hanges, 202 N.J. 369, 382 (2010), without giving deference to the legal conclusions reached. City of Atl. City v. Trupos, 201 N.J. 447, 463 (2010). In our review, we use the same standard as the trial court. Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.) (citing Antheunisse v. Tiffany & Co., 229 N.J. Super. 399, 402 (App. Div. 1988), certif. denied, 115 N.J. 59 (1989)), certif. denied, 154 N.J. 608 (1998). The "essence of the inquiry" is "'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.'" Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52,

[2] Plaintiff alleged an additional cause of action for civil conspiracy, which she voluntarily dismissed.

106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)). Accordingly, after viewing the facts in the light most favorable to the non-moving party, Hodges v. Sasil, 189 N.J. 210, 215 (2007), 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); Brill, supra, 142 N.J. at 528-29.

"[T]he purpose of CEPA is '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.'" Mehlman v. Mobil Oil Corp., 153 N.J. 163, 179 (1998) (quoting Abbamont v. Piscataway Bd. of Educ., 138 N.J. 405, 431 (1994)); Donelson v. Dupont Chambers Works, 412 N.J. Super. 17, 29 (App. Div.), cert. granted, 203 N.J. 95 (2010). As remedial legislation, CEPA must be liberally construed to effectuate its goal. Abbamont, supra, 138 N.J. at 431.

CEPA prohibits an employer from taking any retaliatory action against an employee who "[o]bjects 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[.]" N.J.S.A. 34:19-3(c).

Judge Kassel, without reaching the merits of plaintiff's claims, dismissed plaintiff's complaint for failure to comply with the one-year statute of limitations set forth in CEPA. N.J.S.A. 34:19-5(a) provides that "[u]pon a violation of any of the provisions of this act, an aggrieved employee or former employee may, within one year, institute a civil action in a court of competent jurisdiction." The limitations period commences upon the happening of a discrete act. See Roa v. Roa, 200 N.J. 555, 561 (2010) (holding that "the limitations clock begins to run on a discrete retaliatory act, such as discharge, on the date on which the act takes place").

Plaintiff's complaint described that she was illegally transferred to Coopers Poynt Elementary School on February 16, 2007. An action regarding this alleged retaliatory conduct must have been filed by February 16, 2008, to be considered timely. Plaintiff did not file her complaint until almost two months later, a fatal flaw to its pursuit.

Plaintiff's assertion that her claims are saved because she experienced a hostile work environment comprised of additional transfers, humiliating assignments and "unwarranted abuse and

exploitation" is without sufficient merit to warrant discussion in a published opinion. R. 2:11-3(e)(1)(E).

Although plaintiff was dissatisfied with her assignments, which did not offer the type of teaching challenge she desired, she was neither denied the tools necessary to perform these alternative functions nor deprived of salary, tenure or benefits until a middle school science teaching position became available. Unlike the plaintiff in Green v. Jersey City Bd. of Educ., 177 N.J. 434, 437-40 (2003), plaintiff did not suffer daily abuse or exploitation. In Green, supra, after the plaintiff teacher declined to participate in a scheme to pay an unqualified employee who was acting as a teacher, she received a reprimand from her principal along with the warning that "she was on [the principal's] 'shit list.'" Id. at 439. This was followed by revocation of the plaintiff's participation in the student mediation program; denial of her requests for additional programs or training; annual substandard evaluations despite past consistently satisfactory evaluations; moving her "to a dilapidated classroom with inadequate furniture"; daily deprivation of necessary supplies and a key to the science lab; rejection of her requests for photocopying services; and the denial of her students' participation in opening exercises, an honor roll ceremony, and field trips. Ibid. The court

concluded a hostile work environment occurred over the two years the plaintiff experienced these repeated harassing events. Id. at 448. The facts at hand are not similar.

On these facts, we reject plaintiff's suggestion that what she experienced was daily retaliatory conduct. If retaliatory conduct is found to be demonstrated at all, it occurred when Richards initiated plaintiff's involuntary transfer. Thereafter, the other school principals to which plaintiff was assigned attempted to best use her skills at a time when their schools had no specific need for a classroom science teacher. Plaintiff was given assignments in each school that accommodated the needs of that school. The fact that she found these assignments unsatisfactory is not actionable.

We concur with Judge Kassel's conclusions that plaintiff's action accrued on February 16, 2007, making her complaint filed fourteen months later untimely.

Affirmed.