SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0875-15T4

WAYNE MCCAW,

Plaintiff-Appellant,

v.

VERNON TOWNSHIP BOARD OF EDUCATION, VERNON TOWNSHIP SCHOOL DISTRICT, BARBARA LINKENHEIMER, Individually, and as Superintendent of Schools for the Vernon Township School District, PAULINE ANDERSON, Individually and as Principal in the Vernon Township School District,

Defendants-Respondents.

Argued February 14, 2017 – Decided July 25, 2017

Before Judges Ostrer, Leone and Vernoia.

On appeal from the Superior Court of New Jersey, Law Division, Sussex County, Docket No. L-0113-13.

Christine Carey Lilore argued the cause for appellant.

Eric L. Harrison argued the cause for respondents (Methfessel & Werbel, attorneys; Mr. Harrison and Raina Marie Pitts, on the brief).

PER CURIAM

Plaintiff, a former custodian employed by defendant Vernon Township Board of Education (Board), appeals from the trial court's order granting summary judgment to defendants and dismissing his complaint alleging violations of the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:6A-255 to -50, his civil rights, and the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -42. Based on our review of the record under the applicable law, we affirm in part, vacate in part, and remand for further proceedings.

I.

In our review of the record before the trial court, we view the facts and all reasonable inferences therefrom in the light most favorable to plaintiff because he is the party against whom summary judgment was entered. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Applying that standard, the record before the trial court established the following facts.

A. Plaintiff's Employment at Walnut Ridge Primary School

Plaintiff commenced his employment as a custodian with the Board in 2002, and was assigned to the Walnut Ridge Primary School (Walnut Ridge). For the 2002 through 2005 school years, plaintiff received favorable annual performance reviews from the school's former principal, A. Aramando.

Defendant Pauline Anderson became the school's principal for the 2005-2006 school year. She selected plaintiff as the evening shift custodial foreman for which he received an additional stipend. Anderson gave plaintiff a favorable annual performance evaluation, and recommended that he be reappointed and receive a salary increase. A year later, near the conclusion of the 2006-2007 school year, Anderson gave plaintiff another favorable performance evaluation, again recommended his reappointment and a salary increase, but noted that "[a]ccepting suggestions and/or criticism from the administration is difficult for [plaintiff]; this causes problems with keeping the 'lines of communication' open."

In July 2007, plaintiff observed school contractors dry cutting concrete for a construction project, causing a cloud of silica dust in the school. Plaintiff asked the head custodian, Laura Stigler, and Anderson to direct that the contractor stop the dry cutting. When they failed to do so, plaintiff filed a complaint with the New Jersey Department of Labor (DOL) alleging a violation of the Public Employees Occupational Safety and Health Act (PEOSHA), N.J.S.A. 34:6A-25 to -50. Plaintiff and fellow custodians Terri McDonald and Dawn Maffetone jointly filed a grievance under a collective negotiations agreement between the Board and the custodians' collective negotiations

representative, the Vernon Township Education Association (VTEA). The grievance alleged the silica dust created a hazardous work environment.

The DOL investigated plaintiff's complaint and in August 2007, imposed a fine on the contractor for violating N.J.A.C. 12:100-13.5(a), by failing to use "protective devices" to prevent "diffusion of dust, stone, and other small particles." The DOL did not fine or sanction the Board.

Assistant Superintendent Fred Podorf denied the custodians' grievance, finding there was no violation of the collective negotiations agreement because the Board's environmental health and safety consultant conducted air quality tests and determined the school was safe. A copy of Podorf's denial of the grievance was sent to defendant Barbara Linkenheimer who, at that time, was employed by the Board as the Director of Special Services.

Plaintiff alleges that immediately following the resolution of the 2007 PEOSHA complaint and related grievance, Anderson's attitude toward him changed. On August 30, 2007, Anderson sent plaintiff a memorandum reminding him that "any and all concerns dealing with Walnut Ridge need[ed] to be brought to [Anderson's] attention first and foremost." On the same day, Anderson sent a separate memorandum directing that plaintiff work "in tandem"

with a disabled custodian, Rich Duffy, to ensure that classrooms were thoroughly cleaned on a daily basis.

In a September 13, 2007 memorandum, Anderson documented a verbal warning issued to plaintiff for failing to work in tandem with Duffy, and for insubordination because he raised his voice to Anderson when she advised him of his failure. The memorandum directed plaintiff "for the third time" to work with Duffy.

In his opposition to defendants' summary judgment motion, plaintiff denied refusing to work with Duffy and raising his voice to Anderson. Instead, plaintiff asserted that Anderson assigned him to work with Duffy in retaliation for his filing of the PEOSHA complaint and related grievance.[1]

Seven months later, in March 2008, Anderson gave plaintiff another favorable performance evaluation, and recommended plaintiff's reappointment and a salary increase.

In May 2008, during plaintiff's work shift, he attended a meeting in the school with McDonald, Maffetone, and a representative from the VTEA. The meeting was scheduled without Anderson's knowledge or approval. Linkenheimer, who succeeded

[1] Plaintiff also relied on Maffetone's deposition testimony stating that Anderson retaliated against her for her joint filing of the grievance by assigning her to perform outside duties knowing she suffered from asthma, and against McDonald for filing the grievance by changing her work hours.

Podorf as Assistant Superintendent during the 2007-2008 school year,[2] met with plaintiff the next day and advised him to not conduct union meetings during work hours. Linkenheimer's instructions were memorialized in a May 13, 2008 memorandum, along with a directive to take breaks at designated times.

In his affidavit in opposition to defendants' summary judgment motion, plaintiff states the meeting occurred during one of his permitted breaks. He also states that prior to his receipt of the memorandum, there was no requirement that custodians' breaks be taken at scheduled times. Board Superintendent John Alfieri also testified there was no policy requiring that custodians take their breaks at scheduled times.

Upon receipt of Linkenheimer's memorandum, plaintiff felt ill and was taken from the school in an ambulance. He was out of work from May until October 2008. Plaintiff filed a workers' compensation claim, which was handled by the Board's insurance adjuster. The claim was denied.

In December 2008, a building aide reported that plaintiff used foul language in front of her and students. The allegations were discussed at a meeting between plaintiff, Anderson,

[2] The record does not reflect the date Linkenheimer became the Assistant Superintendent.

Linkenheimer, and a VTEA representative. No action was taken against plaintiff based on the report.[3]

In March 2009, Anderson provided her fourth favorable performance evaluation of plaintiff, "commended [him] for working to develop more open and effective communication with the administration," and recommended his reappointment and a salary increase.

A year later, Anderson completed her fifth and final favorable performance evaluation of plaintiff. She again recommended plaintiff for reappointment and a salary increase.

On March 17, 2010, Anderson sent plaintiff a memorandum stating it had been brought to her attention that two windows were left open and an exterior door was left unlocked at the conclusion of plaintiff's work shift the previous night. Anderson noted that Duffy, who was absent during the shift, usually did the security detail, but that it was imperative for plaintiff, as night foreman, to ensure the building was locked

[3] Plaintiff asserts in his brief that Anderson tried to discipline him based on the employee's report. The undisputed facts show only that the employee made the report and Anderson and Linkenheimer responded to it. In support of his argument, plaintiff relies on unsworn allegations contained in a complaint in a civil action filed by another former Board employee, Cecil Diaz.

and secure. Anderson advised plaintiff that she expected the situation would not be repeated.

In a March 25, 2010 memorandum to Anderson, plaintiff denied it was his responsibility to ensure the windows and doors were secure at the end of his work shift, and faulted a substitute custodian. Plaintiff noted the "nice" review he received from Anderson a few weeks earlier, and stated that he "thought" he and Anderson "were in good standing[]."

Prior to receiving plaintiff's memorandum, Anderson took plaintiff on a walk-through inspection of the building. She showed plaintiff areas that required dusting, cleaning, and the replacement of light bulbs. Following the inspection, plaintiff reported to the VTEA representative that he felt ill, and left the school. On the next workday, plaintiff's wife advised the school that plaintiff was ill and would not report to work. Anderson prepared a March 26, 2010 memorandum to plaintiff confirming the inspection results, detailing her observations, and noting that she expected plaintiff's work performance in cleaning and maintaining the areas to "improve immediately."

On March 31, 2010, Anderson prepared another memorandum to plaintiff confirming her receipt of plaintiff's March 25, 2010, memorandum in which he disputed he was responsible for the open windows and unlocked door. Anderson also referenced the March

26, 2010 inspection results, issued a "written warning" to plaintiff to improve the quality of his work, and directed that he secure the building at the end of his shift.

Plaintiff responded to Anderson's memorandum in an April 21, 2010 letter. Plaintiff stated a willingness to address the issues raised in Anderson's memorandum and did not dispute the existence of the cleaning deficiencies. Plaintiff explained the deficiencies were the result of his being assigned tasks outside of his job description, and that he thereafter would perform only the custodial duties listed in his job description. He also asserted that Anderson's approach to him had changed since he filed the PEOSHA complaint, and that he was aware of his rights under CEPA.

B. Plaintiff's Employment at Lounsberry Hollow School

Effective March 29, 2010, the Board's newly hired director of facilities, Matt DeLaRosa, became responsible for the direct supervision of custodians. Plaintiff was transferred from Walnut Ridge to the Lounsberry Hollow School (Lounsberry),[4] where he worked during the 2010-2011 school year and until his employment was terminated in March 2012. While at Lounsberry, plaintiff was supervised by DeLaRosa, school principal Stewart Stumper, and

[4] The precise date of the transfer is not clear from the record.

coordinating custodian Thomas Palmisano. DeLaRosa prepared a favorable performance evaluation of plaintiff in February 2011, and recommended plaintiff for reappointment and a salary increase for the 2011-2012 school year.

In a November 2, 2011 memorandum, DeLaRosa advised plaintiff he would be transferred to the high school and assigned the overnight shift. Upon his receipt of the memorandum, plaintiff reported suffering from an anxiety attack, and left work to seek medical care.

The next day, plaintiff advised he would not be at work due to a planned doctor's appointment, but did so later than required under the Board's attendance policy. DeLaRosa issued a November 9, 2010 memorandum suspending plaintiff for ten workdays due to plaintiff's failure to report his absence in accordance with the policy. The VTEA filed a grievance challenging the suspension. An arbitrator sustained plaintiff's violation of the attendance policy but reduced the suspension from ten to two days. A court confirmed the arbitrator's award.

Plaintiff's doctor wrote a letter to DeLaRosa advising that the planned transfer to the high school and change of hours would adversely affect plaintiff's health. Another doctor examined plaintiff at the Board's request and concurred.

Plaintiff was not transferred to the high school and continued working at Lounsberry during the same shift.

In February 2012, DeLaRosa conducted an annual performance evaluation of plaintiff, and graded plaintiff's performance as "very good" or "good" in all areas. DeLaRosa recommended plaintiff's reappointment and a salary increase for the following school year.

In his affidavit in opposition to defendants' motion for summary judgment, plaintiff stated that on February 28, 2012, he wrote a note in the custodians' logbook stating: "why are we signing the logbook by the people who are training. Please explain . . . in writing." Plaintiff explained in his affidavit that he wrote the note to question why DeLaRosa "wanted [him] to sign off on the training having been done by employees for their boiler license when [plaintiff] did not give them that training." Plaintiff stated he made the inquiry after being directed by a co-worker[5] to sign the book, and because he believed it was illegal to sign the logbook falsely attesting that other custodians attended training. Palmisano responded

[5] The plaintiff identified the co-worker as "George Leone." We note that the George Leone to whom plaintiff makes reference is no relation to Judge George Leone, J.A.D., who has participated in the decision in this matter.

that plaintiff did "not have to sign anything in the logbook nor does anyone else. Just keep doing what you have been doing."

Six days later, Palmisano wrote plaintiff a note in the logbook stating that plaintiff "did not lock the front main entrance door last night." Palmisano reminded plaintiff "to check [the front door] each night." Plaintiff responded in a note to Palmisano: "Where does it say it is my front door[?]" Plaintiff further wrote: "I believe it is everybod[y's] to check! Please show me something in writing. Thank you."

In plaintiff's affidavit in opposition to the summary judgment motion, he asserted that all of the custodians were responsible for securing the doors. Plaintiff stated that he worked in the area of the front doors with another custodian, Brian DiNapoli, and that DiNapoli was not advised that he failed to ensure the doors were locked.

In a March 8, 2012 memorandum, Linkenheimer advised plaintiff that his note to Palmisano was inappropriate and bordered on insubordination. Linkenheimer provided a copy of the custodians' job description, which included the duty to secure the school's doors and windows. Linkenheimer also attached a color-coded map that she explained depicted the areas and doors for which plaintiff was responsible. The memorandum also states that plaintiff is to respond appropriately to requests made by

his supervisors, and that his attitude had to improve immediately or disciplinary action might be taken.

Plaintiff's affidavit explained that prior to the Linkenheimer memorandum there had never been a color-coded map delineating the areas and doors for which he was responsible. He also states the map shows that he and DiNapoli were responsible for the front doors, but DiNapoli was never advised he failed to lock the doors or disciplined for the alleged unlocked doors.

Four days later, Palmisano reported the front doors of Lounsberry had again been left unlocked, and also that the flag had been left outside. Plaintiff met with Stumper and other school administrators, and signed a written statement explaining that he did not know what happened with the doors but acknowledged leaving the flag outside. In his affidavit in opposition to defendants' summary judgment motion, plaintiff stated that he followed a checklist each evening to ensure the doors were locked and checked the doors from the outside to make sure they did not open. He also attributed the issues concerning unlocked doors to mechanical problems with the door locks.

C. Plaintiff's Termination

Following a Board meeting concerning plaintiff's employment status, Linkenheimer sent plaintiff correspondence dated March 16, 2012, terminating his employment and stating:

> On March 12, 2012, you once again did not lock the front doors of [Lounsberry] as you were directed to do in my memo of March 8. In addition on March 12, you did not lower the flag and bring it indoors.
>
> As a result of your repeated failure to follow administrative directives and your repeated failures to perform the requirements of your job, you are being terminated from your position as a full-time custodian effective March 16, 2012[,] in accordance with Step 5 of the disciplinary action of the VTEA contract.

On March 12 and 16, 2012, plaintiff's counsel sent letters to the Board requesting that it retain school video recordings from the evenings of March 5 and 12, when it was alleged plaintiff failed to lock the school's front doors.

By letter dated April 25, 2012, Linkenheimer sent plaintiff's counsel video recordings of portions of the evenings of March 5, 8, 12 and 15. Linkenheimer explained the Board could not provide the balance of the requested recordings because recordings were generally retained for only thirty days and counsel's requests had not been received within that timeframe. In plaintiff's affidavit opposing defendants' summary judgment motion, he states that Linkenheimer admitted during her deposition that she received plaintiff's counsel's requests to preserve the video recordings before the expiration of the Board's thirty-day retention period.

Plaintiff sought unemployment benefits before the DOL, which the Board opposed. The DOL determined the Board failed to establish plaintiff's termination was the result of severe misconduct and awarded plaintiff benefits. It also determined plaintiff was disqualified from receiving benefits for a short period following his termination because he failed to actively search for new employment as required by N.J.S.A. 43:21-4(c).

D. The Litigation

Plaintiff filed a four-count complaint against defendants. In the first count, plaintiff alleged that following his 2007 PEOSHA complaint, defendants violated CEPA by subjecting him to numerous adverse retaliatory employment actions, an ongoing hostile work environment, and the termination of his employment. Plaintiff also alleged the termination of his employment violated CEPA because it was in retaliation for his refusal to sign the custodians' logbook attesting to training that other custodians had not received.

In the second count, plaintiff alleged a separate violation of CEPA, claiming defendants retaliated against him because he asserted his rights as a whistleblower under CEPA. Plaintiff claimed defendants retaliated by making false allegations about his work performance in order to deny him unemployment benefits to which he was otherwise entitled, and otherwise maliciously

interfered with his grievance rights under the VTEA collective negotiations agreement.

Count three alleged defendants' actions violated plaintiff's due process and equal protection rights under the New Jersey Constitution. In count four, plaintiff alleged defendants violated the NJLAD by purposely engaging in a course of conduct to aggravate plaintiff's medical conditions and contesting plaintiff's entitlement to workers' compensation benefits.

Following the close of discovery, defendants moved for summary judgment. The court heard oral argument and granted defendants' motion. The court later issued a written decision detailing its reasoning.

The trial court found the undisputed facts showed plaintiff filed the PEOSHA complaint in 2007 while working at Walnut Ridge. The court also found that during plaintiff's tenure at Walnut Ridge, he received "only two" disciplinary memoranda and in the three years following plaintiff's 2007 PEOSHA complaint, he received "overall satisfactory evaluations" and was reappointed each year. The court found that in 2010, plaintiff was transferred from Walnut Ridge to Lounsberry, and ultimately terminated in 2012 "due to his failure to adhere to an

administrative directive and secure the front main entrance doors at Lounsberry."

The court dismissed plaintiff's CEPA claim, concluding it was based upon "speculation that there is a substantial nexus between [plaintiff's PEOSHA] complaint in July 2007 and his eventual termination approximately five years later." The court noted plaintiff was terminated while working in a different school "with a different principal under a completely different set of supervisors," all of whom were not involved with plaintiff's July 2007 PEOSHA complaint. The court did not address any of plaintiff's remaining claims but issued an order granting defendants' motion and dismissing the complaint. This appeal followed.

II.

We begin by observing that plaintiff's CEPA claims were premised on multiple theories, only one of which was addressed by the trial court. The trial court considered only plaintiff's count one claim that defendants violated CEPA by terminating his employment in retaliation for his filing of the 2007 PEOSHA complaint. We first consider the trial court's decision dismissing that claim and then address plaintiff's remaining claims.

A. Dismissal Of Plaintiff's Claim He Was Terminated For Filing The PEOSHA Complaint

"[W]e review the trial court's grant of summary judgment de novo under the same standard as the trial court." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016). "The trial court's conclusions of law and application of the law to the facts warrant no deference from a reviewing court." W.J.A. v. D.A., 210 N.J. 229, 238 (2012). 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 of 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).

We must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill, supra, 142 N.J. at 540. We "must accept as true all evidence which supports the position of the party defending against the motion and must accord [that party] the benefit of all legitimate inferences which can be deduced therefrom." Id. at 535 (quoting Pressler, Current N.J. Court Rules, comment on R. 4:40-2 (1991)).

"CEPA prohibits an employer from taking adverse employment action against any 'employee' who exposes an employer's criminal, fraudulent, or corrupt activities." D'Annunzio v. Prudential Ins. Co. of Am., 192 N.J. 110, 120 (2007) (citing N.J.S.A. 34:19-3). To establish a prima facie case of a CEPA violation, a plaintiff must demonstrate:

> (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. 34:19-3(c);
>
> (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.
>
> [Lippman v. Ethicon, Inc., 222 N.J. 362, 380 (2015) (quoting Dzwonar v. McDevitt, 177 N.J. 451, 462 (2003)).]

Here, it is undisputed plaintiff made a prima facie showing of the first three elements of his CEPA claim that he was terminated in retaliation for filing the PEOSHA complaint. It is undisputed plaintiff reasonably believed the dry cutting at the school violated the law, and that he performed a whistle-blowing activity under N.J.S.A. 34:19-3(c) by filing his 2007 PEOSHA

complaint. Plaintiff also suffered an adverse employment action, the termination of his employment.

The court therefore focused on whether defendant made a prima facie showing of a causal connection between his whistle-blowing activity in 2007 and his termination in 2012, sufficient to survive defendants' motion for summary judgment. See Hitesman v. Bridgeway, Inc., 218 N.J. 8, 29 (2014) (noting a CEPA "plaintiff [has] the burden to demonstrate a causal connection between [the] whistle-blowing activity and [the] termination"). Thus, "[a]s in most CEPA cases . . . th[is] appeal turn[s] on the fourth element: evidence of a causal connection." Donofry v Autotore Systems, Inc., 350 N.J. Super. 276, 291 (App. Div. 2001). Causation may be proven by direct or circumstantial evidence that permits an inference of retaliation based on all of the circumstances. Battaglia v. United Parcel Service, Inc., 214 N.J. 518, 558-59 (2013); Romano v. Brown & Williamson Tobacco Corp., 284 N.J. Super. 543, 550 (App. Div. 1995). "[T]he plaintiff must show that the 'retaliatory discrimination was more likely than not a determinative factor in the decision.'" Donofry, supra, 350 N.J. Super. at 293.

In determining whether plaintiff has produced prima facie evidence of causation, courts typically focus on the "circumstances surrounding the employment action," including

temporal proximity between the protected conduct and the adverse employment action. Maimone v. City of Atl. City, 188 N.J. 221, 237 (2006). However, temporal proximity is not dispositive. Hancock v. Borough of Oaklyn, 347 N.J. Super. 350, 361 (App. Div. 2002), app. dismissed, 177 N.J. 217 (2003). "Where the timing alone is not 'unusually suggestive,' the plaintiff must set forth other evidence to establish the causal link." Young v. Hobart West Grp., 385 N.J. Super. 448, 467 (App. Div. 2005).

Here, the trial court determined plaintiff failed to demonstrate a causal connection between the filing of the 2007 PEOSHA complaint and the termination of his employment five years later because the termination decision was made by a "completely different set of supervisors" at Lounsberry than those who supervised plaintiff at Walnut Ridge. The court also determined there was no causal connection because plaintiff left the doors to Lounsberry open on two occasions and was terminated for that reason.

Based on our review of the record, we are convinced the court correctly determined plaintiff failed to present sufficient evidence upon which a jury could reasonably conclude defendants terminated plaintiff's employment in retaliation for plaintiff's filing of the 2007 PEOSHA complaint. Hitesman,

supra, 218 N.J. at 29. However, our conclusion is based on reasons different than those of the trial court.

Although the record supports the court's finding plaintiff worked under different direct supervisors when he made the PEOSHA complaint in 2007 and at the time of his 2012 termination, there was no evidence showing plaintiff's 2012 supervisors at Lounsberry made the decision to terminate his employment. Rather, the termination decision was made by the Board, and was "driven" - according to Superintendent Alfieri - by the Assistant Superintendent Linkenheimer. Linkenheimer authored the letter terminating plaintiff's employment, and the evidence shows Linkenheimer was aware plaintiff made the 2007 PEOSHA complaint.[6] Linkenheimer was also aware of all of Anderson's actions affecting plaintiff following his filing of the 2007 PEOSHA complaint and through his transfer from Walnut Ridge to Lounsberry.[7] Thus, the fact that plaintiff had different

[6] Linkenheimer testified at her deposition that she became aware plaintiff filed the PEOSHA complaint at some point but could not remember when. Linkenheimer was copied on Podorf's July 2007 written denial of plaintiff's grievance, which asserted the dry cutting created a hazardous condition in Walnut Ridge.

[7] Linkenheimer was copied on every memorandum sent by Anderson to plaintiff following plaintiff's filing of the PEOSHA complaint. The first memorandum was sent on August 30, 2007, and required that plaintiff bring any and all concerns dealing with Walnut Ridge to Anderson "first and foremost." Given that the (continued)

direct supervisors in 2012 than he did when he made his 2007 PEOSHA complaint did not, as suggested by the trial court, require a finding there was no causal connection between the complaint and his termination.

The motion judge also erred by determining there was no causal connection because plaintiff left the school doors unlocked on the two occasions in May 2012. In his affidavit in opposition to the summary judgment motion, plaintiff disputed he was solely responsible for locking the doors and asserted that as a matter of fact the doors were locked. The court therefore erred by relying on material facts that were disputed.

Nevertheless, we are satisfied that defendants' motion for summary judgment was properly granted because the record is devoid of any evidence demonstrating that, to the extent Linkenheimer was involved in the termination of plaintiff's employment, the decision was in any way causally connected to plaintiff's filing of the 2007 PEOSHA complaint. See Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014) (explaining

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(continued)
memorandum was sent immediately after the resolution of plaintiff's PEOSHA complaint, it can be reasonably inferred Anderson directed that plaintiff forego any future reports to outside agencies in favor of reporting issues directly to Anderson. In his affidavit in opposition to defendants' summary judgment, plaintiff stated that he first reported the dry cutting issue to Anderson but that she did nothing.

that although on a motion for summary judgment, a court must view the evidence in the light most favorable to the non-movant, "it is evidence that must be relied upon to establish a genuine issue of fact"), certif. denied, 220 N.J. 269 (2015). There is no direct evidence Linkenheimer or the Board considered plaintiff's five-year old PEOSHA complaint in making the decision to terminate his employment. Nor could any causal link between the PEOSHA complaint and plaintiff's termination be reasonably inferred. During the five years following the PEOSHA complaint, plaintiff received annual salary increases, was reappointed annually, and suffered from only occasional criticisms of his job performance and conduct. Based on the evidence presented, we discern no reasoned basis supporting a conclusion that plaintiff's termination was causally connected to his filing of the PEOSHA complaint five years earlier.

Instead, the evidence shows the termination was based on Palmisano's reports to Linkenheimer that plaintiff failed to secure Lounsberry's front doors on two occasions. Although plaintiff disputes he was responsible for securing the doors and that the doors were left unlocked, the evidence shows Palmisano reported to Linkenheimer that plaintiff failed to secure the doors on two occasions, and that the failures were the reason for plaintiff's termination. There is no evidence Palmisano was

aware plaintiff filed the 2007 PEOSHA complaint, and thus, there is no evidence Palmisano reported plaintiff's failure to secure the building in retaliation for plaintiff's PEOSHA complaint.

We therefore affirm the court's order granting defendants summary judgment on plaintiff's count one CEPA claim alleging he was terminated in retaliation for filing the 2007 PEOSHA complaint.[8]

B. Plaintiff's Remaining Claims

We find, however, the court erred by narrowly construing the complaint to assert only the count one claim that defendants violated CEPA by terminating plaintiff in retaliation for the PEOSHA complaint. The complaint also included a count one claim that defendants violated CEPA by terminating plaintiff in retaliation for reporting water contamination, engaging in union activity, and objecting to a request that he falsely attest to other custodians' training; a count one hostile work

[8] Because we conclude plaintiff failed to establish a prima facie violation of CEPA based on his claim he was terminated in retaliation for filing the 2007 PEOSHA complaint, we need not proceed to the McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), burden-shifting framework. See Victor v. State, 203 N.J. 383, 408 (2010) (explaining that "[a]lthough most employment discrimination claims proceed in accordance with the McDonnell Douglas burden-shifting paradigm," the plaintiff bears the initial burden of demonstrating a prima facie case).

environment claim; and the causes of action in counts two, three, and four. The court's order granted defendants summary judgment on the claims, but the court's opinion did not address or consider them.

We are mindful that we conduct a de novo review of summary judgment orders, Templo Fuente De Vida Corp., supra, 224 N.J. at 199, and determine the validity of a trial court's order and not its reasoning, Janiec v. McCorkle, 52 N.J. Super. 1, 21 (App. Div. 1958). But Rule 4:46-2(c) requires that when deciding a motion for summary judgment, "[t]he court shall find the facts and state its conclusions in accordance with R. 1:7-4." "Failure to make explicit findings and clear statements of reasoning [impedes meaningful appellate review and] 'constitutes a disservice to the litigants, the attorneys and the appellate court.'" Gnall v. Gnall, 222 N.J. 414, 428 (2015) (quoting Curtis v. Finneran, 83 N.J. 563, 569-70 (1980)).

Our de novo standard of review of summary judgment orders does not render the rationale underlying the requirements of Rule 1:7-4 a nullity, and does not require that this court consider and decide motions which were unaddressed by the trial court. To conclude otherwise would require this court to decide in the first instance motions that were presented to the trial court but, for whatever reason, were overlooked.

We are therefore constrained to vacate that portion of the court's order granting defendants summary judgment on plaintiff's count one claim he was terminated in retaliation for complaining about water contamination, participating in union activity, and refusing to falsely attest to other custodians' training; the count one hostile work environment claim; and the causes of action in counts two, three, and four of the complaint. See Rutgers Univ. Student Assembly v. Middlesex Cty. Bd. of Elections, 438 N.J. Super. 93, 107 (App. Div. 2014) (finding a court's failure to make findings of fact and conclusions of law on motion cross-motions for summary judgment as required by Rule 1:7-4(a) required remand to motion court). Defendants' motion for summary judgment on those claims was not considered or decided by the court, and we are convinced it is inappropriate that we decide the motion on those claims for the first time on appeal.

We do not express any opinion on the merits of the claims, defendants' summary judgment motion as to the claims, or plaintiff's opposition. We remand for consideration of defendants' motion for summary judgment and plaintiff's

opposition as to those claims,[9] and the issuance of a decision with the requisite findings of fact and conclusions of law. R. 4:46-2(c); R. 1:7-4.

Affirmed in part, vacated and remanded in part. We do not retain jurisdiction.

[9] We do not limit the remand court's discretion to request or permit supplemental briefs or pleadings by the parties in support of defendants' summary judgment motion and plaintiff's opposition.