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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2063-15T3

JOSEFA BARAZZA,

Plaintiff-Appellant,

v.

COUNTY OF HUDSON,

Defendant-Respondent.

Argued October 24, 2017 — Decided November 15, 2017

Before Judges Carroll and Mawla.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Docket No.
L-3054-13.

Brian F. Curley argued the cause for
appellant.

Raymond J. Seigler argued the cause for
respondent (Chasan Lamparello Mallon &
Cappuzzo, PC, attorneys; Cindy Nan Vogelmann,
of counsel and on the brief; Qing H. Guo, on
the brief).

PER CURIAM

This appeal stems from the parties' conflicting
interpretations of their earlier settlement agreement. Plaintiff

Josefa Barraza¹ appeals from a December 8, 2015 order rejecting her interpretation of the settlement agreement. Consequently, the court dismissed plaintiff's action against defendant County of Hudson, which asserted claims for breach of the settlement agreement and retaliation under the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49.² We affirm, substantially for the reasons set forth by Judge Lisa Rose in her cogent oral opinion.

I.

Plaintiff has been employed since 2000 in Hudson County's Social Services Department. In December 2006, plaintiff was promoted from a permanent Civil Service position as a Human Services Specialist 1 (HSS1) Bilingual to a provisional position as a Social Worker (SW) Bilingual. To obtain permanent appointment as a SW Bilingual, plaintiff was required to pass a State Civil Service examination and rank sufficiently high on the Certification of Eligibles List (list). Plaintiff subsequently failed the exam. As a result, she was excluded from the May 10, 2010 list generated by the Civil Service Commission (CSC), and on

¹ We note plaintiff's last name appears as Barraza in her complaint but is alternately spelled Barazza in her notice of appeal.

² The order dismissing plaintiff's complaint was entered on March 21, 2016. Plaintiff's notice of appeal does not reference the March 21, 2016 dismissal order.

August 2, 2010, she was returned to her former HSS1 Bilingual position.

Following her demotion, in March 2011, plaintiff filed a Notice of Charge of Discrimination with the United States Equal Employment Opportunity Commission (EEOC) alleging age discrimination. In April 2011, plaintiff filed a Charge of Discrimination with the New Jersey Division on Civil Rights alleging discrimination based on age and national origin.

On May 12, 2011, the parties entered into a Settlement Agreement (the settlement agreement). Plaintiff agreed to withdraw her discrimination claims and defendant agreed to re-appoint her provisionally to SW Bilingual pending examination. Specifically, the settlement agreement in pertinent part provided:

NOW, THEREFORE, in consideration of the premises and conditions set forth herein, the County and Josefa Barraza agree as follows:

1. The County agrees to [p]romote the employee to the provisional title of Social Worker, Bilingual English/Spanish, which shall be subject to Civil Service Examination and eligibility as per Title 4A.

Josefa Barraza agrees to withdraw [her] complaint of discrimination based on national origin and age in violation of Title VII of the Civil Rights Act and the Age Discrimination in Equal Employment Act, as amended, which was filed on April 29, 2011 with the New Jersey Division on Civil Rights and to notify the Division on Civil Rights of the withdrawal.

Plaintiff also agreed to waive any future claims based on acts that occurred prior to the date of the settlement agreement.

Effective May 23, 2011, defendant promoted plaintiff provisionally to SW Bilingual pending examination. On March 22, 2012, plaintiff took the Civil Service examination for permanent placement to SW Bilingual. Plaintiff passed the exam, but her score ranked her eighteenth out of twenty eligible candidates on a list generated by the CSC the following month. Since there were not eighteen SW Bilingual positions available for permanent appointment, plaintiff was not promoted.³ On June 18, 2012, plaintiff was again demoted to HSS1 Bilingual.

On June 27, 2013, plaintiff filed a complaint in the Law Division alleging breach of the settlement agreement and a LAD retaliation claim. In essence, plaintiff claimed that, since she passed the Civil Service examination for the SW Bilingual position, defendant was obligated under the settlement agreement to maintain her in that position on a provisional basis pending her permanent appointment from the certified eligibility list.

³ The "Rule of Three" governs the discretion of the appointing authority by generally requiring selection from the three highest scoring candidates. See N.J.S.A. 11A:4-8. See also N.J.A.C. 4A:4-4.8(a)(3) ("Upon receipt of a certification, an appointing authority shall . . . [a]ppoint one of the top three interested eligibles (rule of three) from an open competitive or promotional list [.]").

While the litigation was pending, plaintiff was reached on the list and defendant permanently appointed her to the SW Bilingual position effective May 11, 2015. Accordingly, plaintiff's claims for the differential in pay and benefits between the two positions narrowed to the period between her June 18, 2013 demotion and her May 11, 2015 promotion.

The initial August 17, 2015 trial date was postponed to September 9, 2015. The trial was then rescheduled for September 16, 2015, when plaintiff submitted a motion in limine that sought the court's interpretation of the settlement agreement as a matter of law. Specifically, the in limine motion requested the court to interpret the settlement agreement to provide that plaintiff was entitled to maintain her provisional SW Bilingual position from May 23, 2011, until she was permanently assigned that title consistent with Civil Service rules and regulations. The motion was supported by deposition transcripts of plaintiff and defendant's designated representative, Roger Quintana.⁴

The case was not reached for trial on September 16 and it was again relisted for December 7, 2015. On December 4, 2015, defendant submitted its trial brief seeking dismissal of plaintiff's complaint.

⁴ See R. 4:14-2(c) (authorizing a governmental agency to designate a person to testify on its behalf).

The trial was assigned to Judge Rose, who conducted oral argument on plaintiff's motion on December 7, 2015. During argument, the parties agreed to waive a jury trial and allow the in limine motion to be treated as a timely-filed dispositive motion for summary judgment. Plaintiff's counsel argued that the interpretation of the settlement agreement was the central issue in the case. Counsel elaborated:

So it's a question of law, what does the contract say, and it's a question of law, what do the Civil Service Regulations say and do those control the contract, or is the contract controlling as a matter of law. So you have an interpretation and then application, both of which are legal issues for the Court.

On December 8, 2015, Judge Rose rejected plaintiff's interpretation of the settlement agreement, setting forth her reasons in a thorough and well-reasoned oral opinion. The judge then granted the parties a recess to assess the procedural posture of the case in light of her ruling. When the case resumed, plaintiff's counsel advised the court:

[I]n terms of what I would present factually to support a [LAD] retaliation claim essentially would be the actions that breached the settlement agreement. And so it really is the demotion in June [] 2012 pending the permanent appointment in June [] 2015.

So if the County is to take the position . . . that they abided [by the settlement agreement] and acted properly[,] based on your Honor's ruling, I'm not sure what is left that I could

prove differently in terms of a presentation and in stating a claim in that context in light of the legal ruling.

And, you know, candidly, for the record as well, that[] I've always said that this was the pivotal issue.

. . . .

It either went one way or the other, and all the rest of the chips fall in place.

Following this concession, Judge Rose granted defendant's oral motion to dismiss. The judge entered a memorializing order on December 8, 2015, denying plaintiff's motion in limine. On March 21, 2016, the court issued an order dismissing the case.

II.

In this appeal, plaintiff contends the trial court should have interpreted the parties' settlement agreement to require defendant to continue plaintiff in her provisional SW Bilingual title from May 23, 2011, until her permanent appointment to that position on May 11, 2015. Plaintiff also argues the trial court erred in dismissing the complaint in the absence of a summary judgment motion by defendant, and by deviating from controlling summary judgment standards.

"'Settlement of litigation ranks high in our public policy.'" Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) (quoting Jannarone v. W.T. Co., 65 N.J. Super. 472, 476 (App. Div.), certif. denied, 35

N.J. 61 (1961)). Settlement agreements should be honored in the absence of evidence of fraud or some other compelling circumstances. Ibid. (citing Pascarella v. Bruck, 190 N.J. Super. 118, 125 (App. Div.), certif. denied, 94 N.J. 600 (1983)). Among its other benefits, "[s]ettlement spares the parties the risk of an adverse outcome and the time and expense - - both monetary and emotional - - of protracted litigation." Willingboro Mall, Ltd. v. 240/242 Franklin Ave., LLC, 215 N.J. 242, 253-54 (2013) (citing State v. Williams, 184 N.J. 432, 441 (2005)).

Review of a trial court's interpretation of an agreement is de novo. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Cantone Research, Inc., 427 N.J. Super. 45, 57 (App. Div.), certif. denied, 212 N.J. 460 (2012). The reviewing court must evaluate the common intention of the parties and the purpose they tried to achieve. See Tessmar v. Grosner, 23 N.J. 193, 201 (1957). The court's initial task is to determine the parties' intent, which in an appropriate setting, is "a purely legal question that is particularly suitable for decision on a motion for summary judgment." Pressler & Verniero, Current N.J. Court Rules, comment 5 on R. 4:46-2 (2017); see also Khandelwal v. Zurich Ins. Co., 427 N.J. Super. 577, 585 (App. Div.) (noting interpretation of a contract "is generally appropriate to resolve . . . on summary judgment"), certif. denied, 212 N.J. 430 (2012).

The "court's role is to consider what is 'written in the context of the circumstances' at the time of drafting and to apply 'a rational meaning in keeping with the expressed general purpose.'" Sachau v. Sachau, 206 N.J. 1, 5-6 (2011) (quoting Atl. N. Airlines, Inc. v. Schwimmer, 12 N.J. 293, 302 (1953)). "To the extent that there is any ambiguity in the expression of the terms of a settlement agreement, a hearing may be necessary to discern the intent of the parties at the time the agreement was entered and to implement that intent." Quinn v. Quinn, 225 N.J. 34, 45 (2016) (citing Pacifico v. Pacifico, 190 N.J. 258, 267 (2007)).

In her oral opinion, Judge Rose squarely addressed the issues raised by plaintiff in light of the applicable legal principles. First, the judge found "that the terms of the settlement agreement at issue are clear; that is[,] the consideration intended by the County was to reinstate plaintiff to her social worker/bilingual [position] subject to the Civil Service examination and eligibility as per Title 4A."

Judge Rose also considered the parties' written agreement in the context of the governing Civil Service laws and regulations. The judge noted:

As set forth previously, had plaintiff been allowed to remain in the position as a provisional employee, she would have displaced someone entitled to the appointment

permanently from the certified list generated by the [CSC]. N.J.A.C. 4A:4-1.5.

[Plaintiff] was given the opportunity. She took the test. It's where she placed on the test [that] was out of the control of the County and within her control.

The County could not pass over departmental employees ranked ahead of her because she did not have preference as a provisional employee.^[5] There simply were not enough vacancies to reach where she placed on the list and, as such, she was returned to her previous . . . permanent vacancy.

[Plaintiff] remained on the list and remained eligible for future vacancy when the County could reach her rank.

Judge Rose rejected plaintiff's contention that the settlement agreement lacked consideration. Plaintiff based this argument on Quintana's deposition testimony that plaintiff would have received the provisional promotion to SW Bilingual regardless of whether she signed the settlement agreement. The judge noted Quintana's further testimony that the provisional appointment provided plaintiff a remedy for her discrimination complaint. Moreover, plaintiff "was given the benefit of a provisional

⁵ See N.J.A.C. 4A:4-1.5(a)(1) (stating that a provisional appointment may be made only when "[t]here is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment." Moreover, "'the best that can be said' of a candidate on an eligible list is that he has 'a right to be considered for appointment.'" In re Foglio, 207 N.J. 38, 44-45 (2011) (quoting Nunan v. N.J. Dep't of Pers., 244 N.J. Super. 494, 497 (App. Div. 1990), certif. denied, 126 N.J. 335 (1991)).

position subject to Civil Service examination and eligibility requirements," and thus received the added salary and benefits associated with the SW Bilingual position from May 22, 2011 to June 18, 2012. The judge also found that "in withdrawing her discrimination complaint, plaintiff received the benefit of avoiding protracted litigation" and achieved certainty of result.

Based on these rulings, the judge concluded "the breach of contract claim is not viable and the LAD claim premised on breach of settlement agreement is not viable." Absent any viable claims, dismissal of the complaint was warranted.

Having reviewed the record, briefs, and arguments of counsel, we find no basis to disturb Judge Rose's thoughtful analysis of the issues presented and affirm, substantially for the reasons set forth in her opinion. We add only that plaintiff's arguments regarding dismissal of the complaint fail on the following procedural and substantive grounds.

First, it is axiomatic that we review final orders and judgments, not the opinions that support them. Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001). There is no doubt that the trial court's opinion interpreting the settlement agreement in defendant's favor left plaintiff with no viable claim and thus resulted in dismissal of the complaint. However, plaintiff's notice of appeal only identifies the court's December 8, 2015

order denying the in limine motion, and not the subsequent March 21, 2016 order that dismissed the case. It is equally well-settled that we review "only the judgment or orders designated in the notice of appeal[.]" 1266 Apartment Corp. v. New Horizon Deli, Inc., 368 N.J. Super. 456, 459 (App. Div. 2004) (citing Sikes v. Twp. of Rockaway, 269 N.J. Super. 463, 465-66 (App. Div.), aff'd o.b., 138 N.J. 41 (1994)); see also R. 2:5-1(f)(3)(A). Stated differently, any arguments raised by plaintiff that fall outside the four corners of the Notice of Appeal fall outside the scope of our appellate jurisdiction in this case, and are therefore not reviewable as a matter of law.

Second, in her brief, plaintiff concedes she filed the in limine motion "since a summary judgment motion could not comply with the requirement [of Rule 4:46-1] that the motion be made returnable not later than [thirty days] before the scheduled trial date." However, as we recently emphasized:

We have repeatedly condemned the filing or consideration of in limine motions that seek an action's termination. See Cho v. Trinitas Reg'l Med. Ctr., 443 N.J. Super. 461, 464, 470 (App. Div. 2015), certif. denied, 224 N.J. 529 (2016); Klier v. Sordoni Skanska Constr. Co., 337 N.J. Super. 76, 83-85 (App. Div. 2001). Our court rules simply do not countenance the practice of filing dispositive motions on the eve of or at the time of trial. An in limine motion, filed at such late date, is permissible only when it addresses preliminary or evidentiary issues. Even then, such

motions are "disfavor[ed]," Cho, supra, 443 N.J. Super. at 470; State v. Cordero, 438 N.J. Super. 472, 484-85 (App. Div. 2014), certif. denied, 221 N.J. 287 (2015), and should be heard "only sparingly," Bellardini v. Krikorian, 222 N.J. Super. 457, 464 (App. Div. 1988).

[L.C. v. M.A.J., ____ N.J. Super. ____, ____ (App. Div. 2017) (slip op. at 3).]

In any event, after the imminent trial date was adjourned and the case rescheduled, Judge Rose aptly recognized this was "a dispositive motion . . . for summary judgment disguised as a motion in limine." The following colloquy ensued at oral argument:

THE COURT: Again, it sounds like a summary judgment motion. If there's no factual issue, it's a summary judgment motion, is it not?

PLAINTIFF'S COUNSEL: In effect. In effect. And my thought was, given the procedural hang-ups that we've discussed already, let's just bring it in, waive the jury, present it to the [c]ourt and get it done, and if the [c]ourt decides testimony is needed, then we do it. If we don't, then the [c]ourt decides it summarily.

The judge was cautious in confirming that defense counsel consented to treat the motion as a summary judgment motion and had adequate opportunity to respond to it. Only then did the judge determine that plaintiff was not entitled to summary judgment because interpretation of the settlement agreement was a matter of law and the terms of the agreement were clear on its face and

contextually did not support the meaning that plaintiff ascribed to them.

Finally, following her ruling on the interpretation issue, the judge granted a recess to allow counsel to assess the procedural posture of the case. Plaintiff's counsel then candidly conceded that interpretation of the settlement agreement was the "pivotal issue" and plaintiff was effectively left with no viable claims after the judge ruled on the motion. "We are satisfied that the concession by [plaintiff's] counsel on the motion for summary judgment forecloses [plaintiff's] contrary argument on appeal." Ji v. Palmer, 333 N.J. Super. 451, 459 (App. Div. 2000) (citing Misani v. Ortho. Pharm. Corp., 44 N.J. 552, 555-56, appeal dismissed, 382 U.S. 203, 86 S. Ct. 398, 15 L. Ed. 2d 270 (1965); First Am. Title Ins. Co. v. Vision Mortgage Corp., 298 N.J. Super. 138, 143 (App. Div. 1997)).

Affirmed.

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


CLERK OF THE APPELLATE DIVISION