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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2514-15T1

CAROLYN GILLIAM,

Plaintiff-Appellant,

v.

ATRIUM AT PRINCETON, LLC,
t/a ATRIUM HEALTH,

Defendant-Respondent.

Submitted May 24, 2017 – Decided August 10, 2017

Before Judges Fuentes, Gooden Brown and
Farrington.

On appeal from the Superior Court of New
Jersey, Law Division, Mercer County, Docket
No. L-2264-13.

Carolyn Gilliam, appellant pro se.

Drinker Biddle & Reath, LLP, attorneys for
respondent (Maria L.H. Lewis, of counsel and
on the brief).

PER CURIAM

This is a wrongful discharge case. Carolyn Gilliam worked
as an at-will employee in the housekeeping department at the Atrium
at Princeton, LLC (Atrium) until she was fired for cause on

February 29, 2012. Following her termination, plaintiff filed a two-count complaint alleging common law wrongful discharge and wrongful termination in violation of the law against discrimination (LAD) against her former employer. She voluntarily dismissed the LAD claim. She appeals from the order of the Law Division granting Atrium's summary judgment motion.

Over the course of her employment at Atrium which commenced in 1998, plaintiff was disciplined on eighteen separate occasions, including three times in February 2012. She was terminated because she received written warnings for failing to clean out the dryer vents in the laundry room and using vulgar language and ethnic slurs against her coworkers. Around the same time, Gilliam claimed in writing that based upon statements alleged to have been made by another coworker, she believed that a different coworker was working in the United States illegally. Following an investigation, Atrium determined the allegation was unfounded. Gilliam alleges she was terminated for reporting the alleged illegal work status of a coworker.

In opposing the motion for summary judgment, Gilliam asserted there was no disciplinary action issued or planned contemporaneous with the incident and that the investigation was launched only after her supervisor learned of Gilliam's allegation concerning the coworker's immigration status. Gilliam relied on allegedly

incriminating statements made by her supervisors purportedly establishing the true motive for her termination. The court rejected Gilliam's assertions and determined that she failed to put forth any credible evidence that her termination was retaliatory to support her claim of discrimination and establish a claim for wrongful discharge. Rather, the court determined Atrium showed legitimate reasons for terminating her, specifically, her substantial history of disciplinary infractions, including the most recent ones in February 2012.

On appeal, Gilliam argues that sufficient material factual disputes existed to withstand summary judgment, the court made impermissible credibility determinations in granting the motion, and the court erred in determining that she failed to establish a prima facie case. We affirm.

Since the matter involves a motion for summary judgment, we glean the facts from the pleadings, affidavits, and depositions before the court on motion giving the plaintiff the benefit of all reasonable inferences that may be drawn in her favor. Rule 4:46-2.

Atrium hired plaintiff in the housekeeping department in, or about July 1998. Around 2008, Michael Williams became plaintiff's supervisor. Plaintiff claims Williams harassed her by issuing disciplines for infractions she did not commit. Plaintiff never

reported the alleged harassment to Williams' supervisor, Mark Sorrento. In February 2012, Williams issued plaintiff three disciplinary notices for workplace violations. On February 24, plaintiff received a written warning for failure to clean out dryer vents in the laundry room. On February 29, Williams issued plaintiff a disciplinary notice for workplace violations, including using vulgar language against coworkers. Between the February 24 and 29 notices, plaintiff wrote a written response to the notices of disciplinary action alleging a coworker named "Jane"¹ did not have the proper work papers for employment in the United States. While defendant was determining the discipline to be imposed on plaintiff, plaintiff went to Sorrento on March 5, 2012 and advised him of Jane's alleged illegal status. Sorrento investigated the allegation and determined it to be unfounded. Thereafter, Sorrento made the determination to fire plaintiff for the vulgar language used with coworkers.

Essentially, plaintiff claims the termination was not related to the Sorrento investigation of the February 25, 2012 incident, but was fabricated sometime after her meeting with Sorrento on March 5. Plaintiff presents, in support of her allegation that the reasons for her termination were fabricated, that she did not

¹ A pseudonym was used to protect the privacy rights of this individual.

receive any notice of discipline on February 25. The notice of discipline she did receive was dated February 29. The notice dated February 29, 2012 was not received until March 7. Plaintiff cites as corroboration the fact that Williams told her to report to work on February 27.

Plaintiff questions the nature of the investigation conducted, and questions why, if Williams obtained the statements of three coworkers regarding plaintiff's vulgar language and witnessed plaintiff in the laundry room on February 27, 2012, contrary to his order, she was told to return to work on February 27 and not fired until February 29, 2012.

Plaintiff further questions why, when she returned to work on February 27 (and was told to go home by Williams who certified he forgot that Monday was plaintiff's regular day off and that she had taken a personal day for Tuesday), she was not fired when Williams had the opportunity to do so if the firing was related to the incident of February 25. Stating that the failure to fire before February 29 is "illogical", plaintiff urges the court to find the delay could be the basis for a reasonable inference that the reason given for her termination was pre-textual.

The sole basis for her argument occurred during her meeting with Sorrento and Williams, when Sorrento pointed to the disciplinary action issued on February 25, 2012, and said, "I got

a problem with this, this is when Corporate is going to have a problem." According to plaintiff, shortly thereafter, Williams stated, "I didn't hire Jane, she was here when I got here." Following that exchange, the meeting ended. Plaintiff's theory is that Sorrento's fear of corporate's reaction to plaintiff's complaint, and how it would reflect on him, was Sorrento's motive to terminate her. Plaintiff does not explain how, after her allegation was proven unfounded, corporate would have a problem which would have reflected poorly on either Williams or Sorrento.

Plaintiff also claims defendant abandoned a long-standing system of progressive discipline to fire her. She argues a reasonable inference can be made that "something out of the ordinary" occurred which "compelled management to forgo their progressive disciplinary system and terminate Ms. Gilliam on her first offense [for vulgar language] since it was never done before."

Plaintiff argues the trial court "ignored evidence that there was most likely no investigation conducted on the day of the incident and ignored witness testimony proffered by plaintiff." The testimony to which plaintiff refers, is that Williams never stated that plaintiff was being sent home on February 25, 2012 as part of any investigation. Instead, Williams testified that plaintiff was sent home due to her behavior. Further, plaintiff

asserts that the statements made by Sorrento and Williams on February 27 and 28 both allude to facts which show plaintiff's termination was based upon her complaint against Jane. According to plaintiff, these statements go to Sorrento's and Williams' credibility regarding material facts which should have been determined by a jury.

We review a trial court's grant of summary judgment de novo. Cypress Point Condo. Ass'n v. Adria Towers, L.L.C., 226 N.J. 403, 414 (2016). "[The] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm., 140 N.J. 366, 378 (1995). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 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 in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

Under the common law, in the absence of an employment contract, employers or employees have been free to terminate the

employment relationship with, or without cause. Pierce v. Ortho Pharmaceutical Corp., 84 N.J. 58, 65-66 (1980). In Pierce, our Supreme Court recognized a cause of action to provide a remedy for employees who are wrongfully discharged, while balancing the interests of the employee, the employer and the public. Id. at 71. The Court found an employee who is wrongfully discharged may maintain an action in tort "based upon the duty of an employer not to discharge an employee who refused to perform an act that is a violation of a clear mandate of public policy." Id. at 72. In Tartaglia v. UBS PaineWebber, Inc., 197 N.J. 81 (2008), the Court addressed Pierce in light of the passage, subsequent to Pierce, of CEPA. The Court noted that the legislation contained an election of remedy provision, and that the common law remedy recognized in Pierce continued to exist side-by-side with the statutory one.

Tartaglia established a plaintiff is not required to make a complaint to an outside authority, although doing so would "ordinarily be a sufficient means of expression" while a passing remark to coworkers, or a complaint to an intermediate supervisor would not. Tartaglia, supra, 197 N.J. at 109. We assume for purposes of this appeal that plaintiff's complaint to Sorrento suffices to meet the expression threshold. However, Tartaglia holds that "an employer remains free to terminate an at-will

employee who engages in grousing or complaining about matters falling short of a clear mandate of public policy, or who otherwise interferes with the ordinary operation of the workplace by expressions of personal views on matters of no real substance."

Ibid.

Other jurisdictions have held an employee who is terminated for reporting his employer was hiring unauthorized aliens contrary to 8 U.S.C.S. § 1324a has a wrongful discharge claim. See California Court of Appeals case, Jie v. Liang Tai Knitwear Co., 89 Cal. App. 4th 654 (2001) (court upheld plaintiffs' claims for wrongful termination based on retaliation after being terminated for reporting defendants to Immigration and Naturalization Services (INS), who raided defendants' business and arrested approximately forty percent of defendants' labor force as undocumented). Here, Judge Anthony M. Massi found plaintiff failed to show "there was an objectively reasonable basis to believe Jane's employment status was illegal, as it was based on information plaintiff received from another coworker."

The court in Tartaqlia made clear that "[b]aseless complaints or expressions of purely personal views about the meaning of public policies will not meet the test for a "clear mandate", regardless of the manner or mode in which they are voiced. Tartaqlia, supra, 197 N.J. at 109.

We affirm substantially for the reasons embodied in Judge Massi's January 8, 2016 opinion and March 4, 2016 amplifying statement pursuant to R. 2:5-1(b).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION