SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3383-15T1

C.H.,

Petitioner-Appellant,

v.

STATE-OPERATED SCHOOL DISTRICT
OF THE CITY OF CAMDEN, CAMDEN COUNTY,

Respondent-Respondent.

Submitted August 1, 2017 – Decided August 23, 2017

Before Judges Hoffman and Currier.

On appeal from the Commissioner of Education, Docket No. 122-6/15.

Michael A. Armstrong & Associates, LLC, attorneys for appellant (Morrison Kent Fairbairn, on the briefs).

Brown & Connery, LLP, attorneys for respondent State-Operated School District of the City of Camden (Louis R. Lessig and Benjamin S. Teris, on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent New Jersey Commissioner of Education (James M. Esposito, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Petitioner C.H. appeals from the February 19, 2016 final decision of the Commissioner of Education (Commissioner), declining to reinstate her teaching position with respondent, State-Operated School District of the City of Camden. For the reasons that follow, we affirm.

Petitioner is a tenured teacher, certified to work with handicapped students. She has worked for respondent as a teacher for approximately twelve years. During the course of her employment, petitioner had assignments teaching high school, middle school, and elementary school students with special needs.

On March 16, 2012, petitioner requested an "immediate transfer" from her position teaching an autistic class at the Bonsall Family School, "for [her] own mental wellbeing and physical safety," and "due to circumstances beyond [her] control." Respondent placed petitioner at the Forest Hill Elementary School to teach a class with behavioral disabilities. One year later, petitioner requested a leave of absence from February 19, 2013 to March 31, 2013, claiming she suffered from panic attacks, anxiety, and insomnia, which caused her difficulty focusing and affected her job performance.

Upon returning from leave, respondent assigned petitioner to teach a class with behavioral disabilities at the Molina

Elementary School. On April 23, 2013, petitioner was involved in an incident where she physically restrained one of her students. Following an investigation, the Institutional Abuse Investigation Unit determined that abuse was not established, pursuant to N.J.S.A. 9:6-8.21. However, because of this incident, respondent assigned petitioner to the Sumner Elementary School for the 2013-2014 school year, again to teach an elementary level class for students with behavioral disabilities.

On November 15, 2013, petitioner attended a training session for teachers of students with behavioral disabilities. Petitioner left the session early, prompting respondent to send her an official reprimand. According to petitioner, she left the session after being chastised by a supervisor, and thereafter suffered an anxiety attack.

Petitioner further claimed she received the reprimand on December 11, 2013, which caused her to have a panic attack on that date. According to the school principal's account of this incident, on the morning of December 11, she found petitioner agitated and crying in her classroom. The school nurse called 9-1-1 due to petitioner's "agitated state, rambling and cursing," and emergency services transferred her to the hospital.

Because of this incident and her "alleged concerning pattern of behavior this year," respondent placed petitioner on administrative leave, pending the result of a mental fitness examination scheduled for January 9, 2014. However, petitioner declined to undergo the evaluation, after learning respondent's chosen psychologist would review her personnel records. The parties eventually reached an agreement, selecting Jonathan H. Mack, Psy.D., to conduct the evaluation.

Dr. Mack interviewed petitioner and conducted psychological tests on May 28 and 29, 2014. On August 11, 2014, he issued a forty-five page "Confidential Report," outlining petitioner's personnel file and medical records. He diagnosed petitioner with an "Other Specified Personality Disorder," a "Sleep Disorder," and a "History of Panic Disorder." Concluding his review, Dr. Mack opined:

> The totality of the information available to me at this time indicates, within a reasonable degree of psychological and neuropsychological scientific certainty, that [petitioner] is at a high risk for continued problems in terms of disciplining her behaviorally disordered students with problematic behavior due to her chronic pain, her borderline personality features, and her overall heightened reactivity to the administration of the Camden Board of Education. It is my opinion, with all factors taken into account by me at this time that [petitioner] is at unacceptable risk for inappropriate behavior with her students when under stress. It is further

> likely that conflicts will continue with Administration, given her personality style and given her particular history with this school district.
>
> [Petitioner] appeared to have done much better when dealing with the high school autistic population, and this may be a better placement for her. However, based on the information available to me at this time, it is my opinion that [petitioner] is at unacceptable risk for future problems with the elementary school behaviorally disordered population through the Camden Board of Education at this time.
>
> If another less stressful population is found for [petitioner] to work with, it is my opinion that she should be mandated to have weekly psychological counseling with a licensed psychologist and to be evaluated for mood stabilizing medications, and that she take these medications as prescribed if medically so ordered.

Following this report, on August 29, 2014, petitioner sent respondent a letter, requesting a transfer to a position teaching students without behavioral disabilities, in accordance with Dr. Mack's report and her previous accommodation requests. According to petitioner, respondent did not respond to this request. However, she received a document in December 2014, in connection with a records update, which suggested respondent had transferred her to a position at Woodrow Wilson High School, effective September 2014.

Nonetheless, on March 3, 2015, respondent advised petitioner she was ineligible for further service, pursuant to

N.J.S.A. 18A:16-4, due to Dr. Mack's report indicating she suffered from a mental abnormality. The letter stated respondent would terminate her from payroll in sixty days, and she would "remain ineligible for service absent the submission of proof of recovery, satisfactory to the District"; further, her failure to submit such proof within two years would render her "permanently ineligible for service with the District."

Thereafter, petitioner submitted two one-page letters to respondent as proof of her recovery. In the first letter, petitioner's treating psychiatrist, Safeer Ansari, D.O., stated, "I currently find [petitioner] to be stable and mentally healthy to return to work." However, Dr. Ansari agreed with Dr. Mack's recommendation that petitioner

> is not to be placed in a B.D. or Behaviorally Disordered Classroom with students who are emotionally disabled and can become physically violent particularly at the elementary level. As stated by Dr. Mack, it appears that [petitioner] had the most success working with students at the High School level who suffer from Multiple/Learning Disabilities, Other Health Impairments, and/or the Autistic population.

In the second letter, petitioner's primary care physician, Chris F. Colopinto, D.O., stated he reviewed Dr. Mack's report, but based on his own independent findings, he believed petitioner was "mentally healthy enough to return to work

granted that she is provided with the accommodations that have been recommended as appropriate."

According to petitioner, respondent terminated her from payroll on May 3, 2015. On June 1, 2015, petitioner filed a petition with the Commissioner, requesting an order reinstating her position and claiming respondent failed to respond to her proofs of recovery.

Shortly thereafter, on June 16, 2015, respondent informed petitioner it reviewed her recovery letters, which "confirm that she continues to be ineligible for service since neither letter provides proof of [petitioner's] recovery satisfactory to the District so that she can return to work." Respondent noted Dr. Mack diagnosed petitioner with "at least three mental abnormalities," and his report did not contain "any definitive conclusion" that her "mental abnormalities would allow her to safely work with any population in the District." Respondent found petitioner's doctors both agreed with Dr. Mack's recommendation not to place her in a behaviorally disordered classroom.

After the matter was transferred to the Office of Administrative Law, petitioner moved for summary decision, and respondent cross-moved for summary decision. On January 4, 2016, an Administrative Law Judge (ALJ) issued an Initial

Decision, granting summary decision in favor of respondent. The ALJ concluded respondent acted reasonably by rejecting petitioner's proofs of recovery, noting that "[w]hen balancing a teacher's ability to teach against the safety of the student population, a reasonable person would err on the side of the safety of the student population."

The Commissioner adopted these findings in its decision, dated February 19, 2016, expressing concern that petitioner's letters failed to "reference[] the multiple diagnoses made by Dr. Mack" or "describe petitioner's recovery efforts and/or any treatment regimen in place to address Dr. Mack's concerns." The Commissioner further criticized the letters for "merely provid[ing] conditional recommendations that petitioner be permitted to return to work – with certain parameters in place," finding instead that "student safety must be the District's paramount concern."

This appeal followed. Petitioner now raises two issues for our consideration: (1) the ALJ and Commissioner should have granted her motion for summary decision because respondent's actions were arbitrary and capricious; and (2) the ALJ and Commissioner improperly granted respondent's cross-motion for summary decision based upon disputed facts.

Our scope of review of an agency's final decision is limited and deferential. In re Carter, 191 N.J. 474, 482 (2007). A "strong presumption of reasonableness attaches to the actions of the administrative agencies." In re Carroll, 339 N.J. Super. 429, 437 (App. Div.) (quoting In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993), aff'd, 135 N.J. 306 (1994)), certif. denied, 170 N.J. 85 (2001). We will refrain from "disturb[ing] an administrative agency's determinations or findings unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Application of Virtua-W. Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J 413, 422 (2008). We are bound by this standard even if we would have reached a different conclusion. Circus Liquors, Inc. v. Governing Body of Middletown Twp., 199 N.J. 1, 10 (2009). Conversely, we review the agency's legal conclusions de novo. Utley v. Bd. of Review, 194 N.J. 534, 551 (2008).

Similar to summary judgment, an ALJ must grant summary decision upon a showing "that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b); see also E.S. Div. of Med. Assistance & Health Servs., 412 N.J.

Super. 340, 350 (App. Div. 2010). If the moving party properly supports its motion for summary decision, the "adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." N.J.A.C. 1:1-12.5(b). In deciding a summary judgment motion, the evidence must be viewed "in the light most favorable to the non-moving party." Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 329 (2010) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

At issue in this case are several statutory provisions governing psychological evaluations of teachers. First, under N.J.S.A. 18A:16-2(a), school boards "may require individual psychiatric or physical examinations of any employee, whenever, in the judgment of the board, an employee shows evidence of deviation from normal, physical or mental health." "If the result of any such examination indicates mental abnormality or communicable disease, the employee shall be ineligible for further service until proof of recovery, satisfactory to the board, is furnished . . . ." N.J.S.A. 18A:16-4.

As these provisions demonstrate, our legislature has granted school boards the duty to determine teacher fitness, in order to protect students from harm. Gish v. Bd. of Educ. of

Paramus, 145 N.J. Super. 96, 104-05 (App. Div. 1976), certif. denied, 74 N.J. 251, cert. denied, 434 U.S. 879, 98 S. Ct. 233, 54 L. Ed. 2d 160 (1977). The "reasonable possibility" of harm warrants action by a board. Id. at 105. Moreover, teacher fitness "may not be measured 'solely by his or her ability to perform the teaching function and ignore the fact that the teacher's presence in the classroom might, nevertheless, pose a danger of harm to the students for a reason not related to academic proficiency.'" Ibid. (quoting In re Tenure Hearing of Grossman, 127 N.J. Super. 13, 32 (App. Div. 1974), certif. denied, 65 N.J. 292 (1974)).

Importantly, "[a]n 'action of the local board which lies within the area of its discretionary powers may not be upset unless patently arbitrary, without rational basis or induced by improper motives.'" Parsippany-Troy Hills Educ. Ass'n v. Bd. of Educ. of Parsippany-Troy Hills, 188 N.J. Super. 161, 167 (App. Div.) (quoting Kopera v. Bd. of Educ. of West Orange, 60 N.J. Super. 288, 294 (App. Div. 1960)), certif. denied, 94 N.J. 527 (1983); see also Gish, supra, 145 N.J. Super. at 105 (finding a school board's decision was "fair and reasonable"). Similarly, an agency's review of a school board decision is entitled to "a presumption of correctness" and will not be disturbed unless arbitrary and unreasonable. Thomas v. Bd. of Educ. of Morris,

89 N.J. Super. 327, 332 (App. Div. 1965), aff'd, 46 N.J. 581 (1966).

With these standards in mind, we turn to petitioner's argument that the ALJ and Commissioner erred by denying her motion for summary decision because respondent's actions were arbitrary and unreasonable. In support of her argument, petitioner cites statutes and case law that are not applicable to this matter, such as the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49, which we decline to address at length.[1] Nonetheless, we interpret petitioner's argument as asserting respondent misread Dr. Mack's report and her proof of recovery letters, unreasonably deeming her ineligible for service in all teaching positions without considering alternative placement. Petitioner adds that respondent "failed to reasonably exercise its discretion in evaluating whether [she] was fit to return to work with or without reasonable accommodations."

However, having reviewed the record and applicable law, we discern no basis to disturb respondent's decision. Dr. Mack's extensive report diagnosed petitioner with several mental conditions, which placed her at risk for inappropriate behavior

[1] In her brief supporting summary decision, petitioner stated she had filed a discrimination claim with the EEOC, and thus she was not asserting a discrimination claim here.

with students. The report left no question that petitioner's mental health issues affected her teaching and disciplinary abilities. See Kochman v. Keansburg Bd. of Educ., 124 N.J. Super. 203, 211-12 (Ch. Div. 1973). Moreover, Dr. Mack only noted a different position "may" be better for petitioner, and only upon certain specified conditions. Although the report raised the possibility that petitioner could return to a "less stressful population," given the totality of Dr. Mack's findings, respondent acted reasonably by deeming her ineligible for service absent proof of recovery.

We further agree with the Commissioner that respondent acted reasonably by rejecting petitioner's proof of recovery letters. Both letters stated petitioner was able to "return to work," while agreeing with Dr. Mack's suggested conditions and accommodations. As a "reasonable possibility" of harm will justify a board decision, the Commissioner appropriately noted that given the interest of student safety, petitioner's letters were insufficient proof of recovery. Gish, supra, 145 N.J. super. at 105. Therefore, under our deferential scope of review, we find the Commissioner's decision to uphold respondent's actions was not arbitrary, capricious, or unreasonable. Carter, supra, 191 N.J. at 482.

Petitioner further argues the Commissioner and ALJ erred because they granted summary decision for respondent based on disputed facts. According to petitioner, these disputed issues included whether she actually threatened student safety; whether she failed to comply with Dr. Mack's recommendations; the basis for Dr. Mack's conclusions; and the sufficiency of her doctors' conclusions. We decline to discuss this argument at length, as the ultimate resolution of these issues has no bearing on whether respondent's exercise of its statutory authority was reasonable. See Parsippany-Troy Hills, supra, 188 N.J. Super. at 167. In other words, this case turned on whether respondent reasonably deemed petitioner ineligible for service based on Dr. Mack's report and reasonably rejected petitioner's proof of recovery letters. See N.J.S.A. 18A:16-4. Here, because a "reasonable possibility" of harm warrants board action, we find the Commissioner's grant of summary decision was appropriate in this matter. Gish, supra, 145 N.J. super. at 105.

Any remaining arguments not specifically addressed lack sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

Affirmed.