SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4195-15T3

ROBERT PICCONI and
STACIE PICCONI,

Plaintiffs-Appellants,

v.

ATLANTIC HEALTH SYSTEM, INC., AHS HOSPITAL CORP./MORRISTOWN MEDICAL CENTER,[1] SALVATORE RUGGIERO, and KATHRYN SORTINO,

Defendants-Respondents.

Argued October 24, 2017 - Decided November 15, 2017

Before Judges Reisner and Mayer.

On appeal from Superior Court of New Jersey, Law Division, Morris County, Docket No. L-1019-14.

Anthony J. Macri argued the cause for appellants.

Brett M. Anders argued the cause for respondents (Jackson Lewis PC, attorneys; Mr. Anders, of counsel and on the brief; Michael D. Ridenour, on the brief).

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[1] Incorrectly designated as "MORRISTOWN MEDICAL CENTER a/k/a ATLANTIC HEALTH SYSTEM."

PER CURIAM

Plaintiffs Robert and Stacie Picconi[2] appeal from a May 3, 2016 order granting summary judgment in favor of defendants Atlantic Health System, Inc., AHS Hospital Corp./Morristown Medical Center (AHS), Salvatore Ruggiero, and Kathryn Sortino. Plaintiff contends the motion judge erroneously dismissed his claims against defendants. We disagree and affirm.

Plaintiff's claims arose from an incident in AHS's employee locker room. A fellow employee reported seeing a bag containing a white powdery substance on the floor near a locker. Security for AHS investigated and questioned plaintiff, as they mistakenly believed the locker belonged to him.[3] Plaintiff voluntarily responded to security's questions, and never asked to terminate the questioning or leave the locker room. At some point during the brief questioning conducted by AHS's security, plaintiff left the locker room to obtain the combination to his new locker in order to prove that the substance was not near his locker.

[2] We hereafter refer to Robert Picconi as plaintiff in the singular, as Stacie Picconi's claims are derivative of her husband's claims.

[3] Upon further investigation, AHS confirmed that the substance was a harmless vitamin supplement. AHS also concluded that the substance was found near plaintiff's former locker, not his newly assigned locker.

Security then opened plaintiff's locker and found nothing suspicious. The matter was closed, and no allegations were levied against plaintiff as a result of the incident.

Shortly after the incident, plaintiff heard rumors within AHS that he was accused of having drugs in the workplace. No one from AHS management accused plaintiff of possessing drugs in the workplace. Plaintiff, upset by rumors of his drug possession, requested that AHS's Human Resources Department investigate the rumors and refused to return to work until the matter was resolved. Significantly, plaintiff never suggested what he wanted from AHS in order to return to work. Several days later, plaintiff requested assignment of a new supervisor as he claimed continuing to work with his current supervisor was creating a hostile work environment.

Plaintiff returned to work at AHS one week after the locker room incident. Upon his return to work, plaintiff claims he continued to hear rumors regarding his alleged drug possession. Plaintiff again told AHS's Human Resources Department that he would not return to work until the matter was resolved to his satisfaction. Plaintiff never articulated what he wanted AHS to do in order to resolve the matter. AHS's Human Resources Department telephoned plaintiff on March 3, 2014 to advise that the investigation was complete. According to AHS's Human Resources

Department personnel, plaintiff was rude and combative during this telephone conversation. Two days later, plaintiff sent an e-mail to AHS's Human Resources Department advising he was still awaiting a resolution of the situation and complaining that the telephone call from its staff member was harassing.

On March 7, 2014, plaintiff attended a meeting with representatives from AHS's Human Resources and Security Departments. AHS intended to have a productive meeting to address concerns related to the locker room incident. However, plaintiff repeatedly interrupted those who spoke during the meeting, and became increasingly loud, agitated, and volatile according to individuals who attended the meeting. Plaintiff left the meeting abruptly rather than discussing the matter with AHS's representatives. As a result of his disruptive and disrespectful behavior during the March 7 meeting and during the March 3 telephone conversation, AHS terminated plaintiff's employment.[4]

Plaintiffs filed suit alleging violations of the New Jersey Law Against Discrimination, false imprisonment, slander, and intentional infliction of emotional distress. After discovery was completed, defendants filed a motion for summary judgment arguing

[4] Plaintiff was an at-will employee of AHS and could be terminated at any time without cause or notice. Plaintiff acknowledged his at-will employment status by signing AHS's employment application and receiving AHS's employee handbook.

that plaintiffs were unable to prevail on any of their claims as a matter of law. Plaintiffs, in opposition to the motion, argued that material disputed facts precluded dismissal of their claims.

Judge W. Hunt Dumont issued a comprehensive and thorough written statement of reasons in support of his order granting summary judgment and dismissing plaintiffs' complaint for failure to cite any competent evidence in support of their asserted claims. We affirm for the reasons set forth in Judge Dumont's statement of reasons and add only the following comment.

Our review of an order granting summary judgment is de novo, and we apply the same standard employed by the trial court. Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405 (2014). Accordingly, we determine whether the moving party has demonstrated that there are no genuine disputes as to any material facts and, if not, whether the moving party is entitled to judgment as a matter of law. Id. at 405-06 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)); R. 4:46.

In opposition to defendants' summary judgment motion, plaintiff submitted a certification in an effort to raise genuinely disputed material facts. However, plaintiff's certification directly contradicted his sworn testimony and was properly rejected by the motion judge. See Hinton v. Meyers, 416 N.J. Super. 141, 149-50 (App. Div. 2010) (affirming the trial court's

decision to disregard a plaintiff's certification that "differed significantly from the testimony plaintiff provided at his deposition[, and] . . . [p]laintiff offered no explanation for the two different versions."). A "[p]laintiff cannot create an issue of fact simply by raising arguments contradicting his own prior statements and representations." Mosior v. Ins. Co. of N. Am., 193 N.J. Super. 190, 195 (App. Div. 1984). When an offsetting affidavit or certification is submitted in opposition to a motion for summary judgment, a trial court may reject that document "as a sham when it 'contradict[s] patently and sharply' earlier deposition testimony, there is no reasonable explanation offered for the contradiction, and at the time the deposition testimony was elicited, there was no confusion or lack of clarity evident from the record." Hinton, supra, 416 N.J. Super. at 150 (quoting Shelcusky v. Garjulio, 172 N.J. 185, 201 (2002)). The motion judge expressly found that plaintiff's "self-serving affidavit" was "contradicted by his testimony" and failed to create a genuine question of material fact precluding the entry of summary judgment.

Because plaintiff failed to present competent evidence in support of his claims, other than a "self-serving affidavit," which contradicted plaintiff's sworn deposition testimony, the judge correctly granted defendants' motion for summary judgment.

We affirm for the reasons set forth in the judge's written statement of reasons dated May 3, 2016.

Affirmed.