

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1479-16T3

JAMES COLLINS,

Plaintiff-Appellant,

v.

STEVENS INSTITUTE OF TECHNOLOGY
and TIMOTHY GRIFFIN,

Defendants-Respondents.

Submitted November 29, 2017 — Decided January 3, 2018

Before Judges Nugent and Geiger.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Docket No. L-
2153-15.

Henry F. Wolff, III, attorney for appellant.

Saiber, LLC, attorneys for respondents (Sean
R. Kelly and Vincent C. Cirilli, on the
brief).

PER CURIAM

Plaintiff, a campus police officer who is not a United States
citizen, appeals from the order that dismissed for failure to
state a cause of action his amended complaint alleging defendants

breached his employment contract, violated public policy, and violated several anti-discrimination statutes when they terminated his employment. He contends defendants' purported reason for terminating him — he is not a United States citizen — is a pretext for their discriminatory motives, because citizenship is not a prerequisite for a campus police officer employed by a private educational institution, as evidenced by relevant authorities' knowledge of his citizenship status when he applied for the job and throughout his career. We agree the trial court should not have dismissed plaintiff's complaint in its entirety on the limited record before it. We affirm the trial court's dismissal of the complaint's count alleging a violation of public policy. We vacate the order of dismissal as to the remaining counts and remand for further proceedings.

Plaintiff's amended complaint alleged these facts. Plaintiff immigrated to the United States in January 1992, having married a United States citizen the previous October. Shortly after arriving in the United States, plaintiff began employment as a security officer with Stevens Institute of Technology (Stevens), a private university located in the City of Hoboken.

When plaintiff began his employment with Stevens, he was a citizen of Ireland, had resided in London, and had served in the

British Army during the Falklands War. He also had prior experience in law enforcement.

In 1993, the year after plaintiff began working for Stevens, a position for campus police officer became available. Stevens' Police Chief encouraged plaintiff to apply for the position. Plaintiff applied, Stevens offered him a job as a patrolman, and plaintiff accepted. After accepting the position, plaintiff fulfilled a job requirement by successfully completing training at the Essex County Police Academy in June 1993.

According to the amended complaint:

At all pertinent times plaintiff was a resident alien of the United States and held a 'Green Card' as well as all other required working papers. The facts of plaintiff's immigration status were fully set forth on all applications, and employment papers filed with Stevens and was in any event well known to personnel within the Campus Police Department, including but not limited to [the] Chief . . . as well as the City of Hoboken Police Department.

In 1996, Stevens discharged plaintiff, purportedly for reasons related to his job performance. Plaintiff filed a lawsuit contending his discharge violated the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Two years later, the parties settled the lawsuit and plaintiff later returned to employment as a Patrolman with the Campus Police Department. Plaintiff alleges that when he was reinstated, he "[i]mplicitly

and explicit . . . was no longer an at[-]will employee and, therefore, could only be discharged for cause." Plaintiff further alleges that as part of his re-employment process he again completed application forms in which he disclosed his immigration status, which was well known to the Police Chief who held that office at the time.

Defendant Griffin, a former Investigator with the Hudson County Prosecutor's Office, became Chief of Campus Police in May 2007. Plaintiff alleges Griffin encouraged him to apply for the position as Deputy Chief. Plaintiff became the Deputy Chief of Police in 2007. While employed in that position, he twice received a president's citation for excellence. He also received a good conduct award, honorable service award, service commendation, and an excellent service award.

Plaintiff further alleges that in 2008, Griffin began the practice of hiring retired municipal police officers to fill openings for Campus Police Department positions. These officers, like Griffin, had twenty-five years in a State Retirement System. According to plaintiff, in all such cases, the persons hired were receiving pension benefits and therefore could not work in the public sector and still receive these benefits.

The complaint identified former police officers who were hired at Stevens. Plaintiff alleged employment at Stevens enabled

the retirees to continue to receive pension benefits while earning new retirement benefits from Stevens. Younger officers allegedly referred to Stevens as "a retirement home for ex[-]cops."

Plaintiff claims defendant Griffin's hiring practice and favoritism resulted in his termination. In 2013, defendant Griffin wanted to hire his best friend, or one of his best friends, from the Hudson County Prosecutor's Office. There was no opening available in the Stevens Campus Police Department, so Griffin allegedly began looking for a way to terminate plaintiff. First, Griffin began to undermine plaintiff's position. The complaint enumerates eight practices Griffin allegedly engaged in to accomplish that purpose. In addition to these practices, plaintiff claims Griffin created a hostile work environment by commencing an internal affairs investigation of plaintiff for the sole reason of terminating him to create a position for Griffin's friend. Plaintiff also claims the internal affairs report was publicly disseminated within the department and disclosed plaintiff "was a resident alien, a fact well known to defendant, Griffin."

On April 3, 2014, Stevens suspended plaintiff from his position as Deputy Chief on the grounds that he was not a United States citizen. Stevens cited N.J.S.A. 40A:14-122, a statute that contains requirements for municipal police departments. Plaintiff

alleges this reason was "demonstratively false as the statute applies only to police working in the public sector."

Stevens allegedly told plaintiff the question of his citizenship was being reviewed by the Attorney General's Office. Plaintiff asserts this was false "as it had been predetermined that plaintiff would be terminated." On May 24, 2014, plaintiff attended a meeting with the head of the Stevens Human Resources Department. Plaintiff advised those present of the hiring policies of Stevens with respect to retired police officers. He also alleged the Campus Police Department was being run for the benefit of such officers. Plaintiff was terminated the same day. He claims he was offered a \$32,000 severance package or a six-month job in the maintenance department conditioned on his executing a release from any cause of action arising out of his discharge. He rejected the offer.

In May 2015, plaintiff filed a complaint in the Law Division and alleged, among other causes, claims under both federal and state employment discrimination laws. After defendants removed the action to federal court based on federal question jurisdiction, plaintiff amended the complaint, removed all federal causes of action, and successfully moved to remand the matter to the Law Division. Following remand, defendants filed a motion to dismiss

under Rule 4:6-2(e) for failure to state a claim upon which relief can be granted. The trial court granted the motion.

The amended complaint alleged defendants violated public policy, the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 to -14, and the LAD. The amended complaint also alleged Stevens breached its contract with plaintiff and defendants harassed him and inflicted upon him severe emotional distress.

In support of his "public policy" claim, plaintiff alleged the attrition of youthful police officers at Stevens and their replacement with retired municipal officers created an aging police force overly-populated with officers past their retirement age and not capable of handling the rigors of police work. Plaintiff further alleged his discharge and the hiring of another retiree "worsened the imbalance," and continued a practice "detrimental to the law enforcement and safety at Stevens." Lastly, plaintiff alleged the hiring of retired officers "for the purpose of their continuing receipt of [public pension] benefits is in violation of the [p]ublic [p]olicy of this State since it creates an atmosphere of 'cronyism.'"

The trial court first determined plaintiff's complaint failed to state a cause of action for violation of public policy. The court commented it was "a great benefit to our state colleges, our universities that we have the retired officers available." The

court found, based on its own experience, that retired officers were "more fit to police college students, then perhaps younger gentlemen and ladies coming right out of the academy." Noting "[t]here's no replacement for wisdom and experience in that regard," the court dismissed the amended complaint's public policy count.

Concerning the complaint's remaining counts, the trial court stated, without any analysis, that N.J.S.A. 40A:14-122 – the statute containing requirements for municipal police officers – imposes a citizenship requirement. From that premise, the trial court reasoned plaintiff was required to show he met the requirements of the position. The trial court concluded that because plaintiff was not a citizen, "he [could not] meet the requirement of the position." The court granted defendants' dismissal motion. Plaintiff appealed from the court's implementing order.

Our review of a trial court's order dismissing a complaint under Rule 4:6-2(e) is plenary. Gonzalez v. State Apportionment Comm'n, 428 N.J. Super. 333, 349 (App. Div. 2012). We apply the same standard as the trial judge. Malik v. Ruttenberg, 398 N.J. Super. 489, 494 (App. Div. 2008).

A motion to dismiss a complaint under Rule 4:6-2(e) "must be based on the pleadings themselves." Roa v. Roa, 200 N.J. 555, 562

(2010). For purposes of the motion, the "complaint" includes the "exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005) (quoting Lum v. Bank of Am., 361 F.3d 217, 221 n.3 (3d Cir. 2004)). If "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment." R. 4:6-2.

A motion to dismiss "should be granted only in rare instances and ordinarily without prejudice." Smith v. SBC Commc'ns, Inc., 178 N.J. 265, 282 (2004). This standard "is a generous one." Green v. Morgan Props., 215 N.J. 431, 451 (2013).

[A] reviewing court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957). At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. Somers Constr. Co. v. Bd. of Educ., 198 F. Supp. 732, 734 (D.N.J. 1961). For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. Independent Dairy Workers Union v. Milk Drivers Local 680, 23 N.J. 85, 89 (1956). The examination of a complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.

[Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989).]

Nonetheless, a court must dismiss a complaint if it fails "to articulate a legal basis entitling plaintiff to relief." Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005). "A pleading should be dismissed if it states no basis for relief and discovery would not provide one." Rezem Family Assocs. v. Borough of Millstone, 423 N.J. Super. 103, 113 (App. Div. 2011); see, e.g., J.D. ex rel. Scipio-Derrick v. Davy, 415 N.J. Super. 375, 398 (App. Div. 2010) (dismissing with prejudice a complaint challenging statutes governing funding of charter schools); Cty. of Warren v. State, 409 N.J. Super. 495, 503, 515 (App. Div. 2009) (dismissing complaint challenging constitutionality of Highlands Act).

On appeal, plaintiff does not address the trial court's reliance on its experience or the reasons – other than citizenship – the court dismissed the complaint's public policy count. Because plaintiff has not briefed these issues, we conclude he has abandoned his appeal on his claim that his termination violated public policy. See Zabonick v. Leven, 340 N.J. Super. 94, 103 (App. Div. 2001) (citing Carter v. Carter, 318 N.J. Super. 34, 42 n. 8 (App. Div. 1999) (noting a litigant who presents no argument

relating to an issue must be considered to have abandoned the issue on appeal)).

We turn to the complaint's remaining counts. As noted, the trial court dismissed the remaining claims after finding N.J.S.A. 40A:14-122, which applies to municipal police departments, was controlling. On appeal, plaintiff contends the trial court erred by applying a Title 40A requirement to a person appointed to a private educational institution's police force under the authority of Title 18A, which contains no such citizenship requirement. Plaintiff asserts there is no precedent that "even suggests that Title 40A and Title 18A should be read in pari materia." Plaintiff further suggests defendant's argument would require the incorporation into Title 18A of other provisions of Title 40A concerning municipal police departments, including such things as minimum salary requirements.

Defendants argue "Title 18A repeatedly and consistently reflects the legislature's intention to hold campus police officers to the same high standards of eligibility and qualification as municipal officers." The qualifications are found in N.J.S.A. 18A:6-4.3, which states:

All applications shall, in the first instance, be made to the chief of police of the municipality in which the institution is located, except that where the municipality does not have an organized full time police

department or where the institution is located within more than one municipality, application shall be made to the Superintendent of State Police. The chief of police or the superintendent, as the case may be, shall investigate and determine the character, competency, integrity and fitness of the person or persons designated in the application. If the application is approved by the chief of police or the superintendent, the approved application shall be returned to the institution which shall issue a commission to the person appointed, a copy of which shall be filed in the office of the superintendent and with the chief of police of the municipality or municipalities in which such institution is located.

Defendants also cite N.J.S.A. 18A:6-4.4, which requires persons appointed as police officers for educational institutions, "within 1 year of the date of . . . commission, [to] successfully complete a police training course at a school approved and authorized by the Police Training Commission."

Lastly, defendants cite N.J.S.A. 52:17B-69.1, which provides:

A person who does not hold a probationary or temporary appointment as a police officer, but who is seeking such an appointment may enroll in a police training course provided that person:

(1) meets the general qualifications for a police officer set forth in N.J.S. 40A:14-122 and such other qualifications as the commission may deem appropriate
. . . .

[N.J.S.A. 52:17B-69.1(a).]

As previously noted, one such requirement for the position of a municipal police officer is citizenship.

Defendants' arguments are not immediately persuasive. The provisions of Title 18A authorizing educational institutions to appoint police contain no citizenship requirement. Defendants attempt to selectively incorporate into Title 18A several provisions of Title 40A. Their attempt to do so is a somewhat strained and circuitous route to a result the Legislature could have achieved by simply stating the citizenship requirement in Title 18A, as it did in Title 40A. Moreover, defendants' contentions are arguably not supported by either the context of the Title 40A provisions pertaining to municipal police officers or the related definitional sections.

The training statute cited by defendants – N.J.S.A. 52:17B-69.1(a) – is preceded by a definitional section that defines police officer to mean "any employee of a law enforcement unit." N.J.S.A. 52:17B-67. This definition includes enumerated classes of officers, such as sheriff's officers and county investigators, but does not include officers employed by educational institutions appointed under the authority of Title 18A. Ibid. The term "law enforcement unit" is specifically defined to mean "any police force or organization in a municipality or county which has by statute or ordinance the responsibility of detecting crime and

enforcing the general criminal laws of this State." Ibid. Thus, plaintiff's arguments – that the Title 40A provisions concerning municipal police departments, and the training requirements related to those requirements, do not apply to officers appointed by private educational institutions – may have merit.

We nonetheless decline to decide the issue on this scant record. According to plaintiff's complaint, he "fully set forth" his citizenship status "on all applications, and employment papers filed with Stevens," and his citizenship status "was in any event well known to personnel with the Campus Police Department, including but not limited to [the Chief] as well as the City of Hoboken Police Department." Giving the complaint the liberal reading required under our standard of review, these allegations suggest the chief of police of the municipality in which Stevens was located investigated plaintiff's application and determined he was fit for the position, as required by N.J.S.A. 18A:6-4.3. The allegations also suggest the authorities were aware of his citizenship status when he underwent required training.

In addition, after his appointment, plaintiff filed an action alleging Stevens violated the LAD by terminating his employment. As a result of that action, plaintiff was reinstated. Nothing before us reveals why plaintiff was reinstated to his position if citizenship was a disqualifying factor.

The allegations in the pleadings raise numerous issues, including: whether the State Police and local police departments, and specifically the officer who acted on plaintiff's employment application, interpreted the qualifications for an educational institution's police force to be identical to those qualifications for a municipal police force; if not, why not; if so, and if plaintiff disclosed his citizenship status, why his application was nonetheless approved; why, if his citizenship status was both known and disqualifying, he was approved for police training in view of his non-citizenship; why he was reinstated to his position after his LAD action; and why, after sixteen years of inaction, defendants suddenly decided to attempt to terminate him based on a citizenship requirement derived from a debatable legal argument. Discovery concerning these issues may implicate issues of waiver or estoppel. Discovery may also shed light on the interpretation given to the relevant statutes and regulations by the various agencies involved.


We note defendants' assertion they conferred with the New Jersey Attorney General's Office before concluding plaintiff was ineligible to serve as a campus officer. That assertion is of little value on this record, which does not include any analysis or opinion from the Attorney General's Office.

Defendants also make numerous arguments concerning the amended complaint's failure to state a cause of action on those counts other than that alleging a violation of public policy. These matters were not addressed by the trial court and therefore we decline to address them on this record.

For the foregoing reasons, we affirm the dismissal of the complaint's count alleging a violation of public policy. We vacate the dismissal order as to the remaining counts and remand the matter for discovery and further proceedings. Plaintiff shall be entitled to discovery before defendants file any additional dispositive motions.

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

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


CLERK OF THE APPELLATE DIVISION