SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1136-21

QUIRINO M. HERRERA,

Plaintiff-Appellant,

v.

SHOPRITE OF NORTHVALE, INSERRA SUPERMARKETS, INC.,

Defendant-Respondent.

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Submitted November 2, 2022 – Decided November 9, 2022

Before Judges Haas and Gooden Brown.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-4768-20.

Asatrian Law Group, LLC, attorneys for appellant (Martin V. Asatrian, of counsel and on the brief; Jeffrey Zajac, on the brief).

Michael N. Morea, attorney for respondent.

PER CURIAM

Plaintiff Quirino M. Herrera appeals from the Law Division's November 3, 2021 order granting summary judgment and dismissing his retaliation, hostile work environment, age discrimination, and infliction of emotional distress claims against defendant Shoprite of Northvale, Inserra Supermarkets, Inc. We affirm.

In his complaint, plaintiff stated he worked for defendant "for many years." Plaintiff alleged he suffered an injury while "performing manual tasks" at work. Plaintiff claimed he notified a supervisor about the injury and the supervisor told him not to file a workers' compensation claim and that he would be discharged if he did not comply. A few years later, defendant fired plaintiff.

Based upon these barebones factual allegations, plaintiff alleged that defendant: (1) wrongfully terminated him (Count One); (2) subjected him to a hostile work environment in violation of the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -59 (Count Two); (3) discriminated against him on the basis of his age in violation of the LAD; and (4) caused him emotional distress.

During discovery, plaintiff provided a few additional facts. He alleged the supervisor who threatened to fire him was named Daniel Ortiz. He stated

that unnamed co-workers "teased" him about his age[1] and "made [him] do difficult tasks to prove that [he] was not old." He also alleged defendant made him work even though he was injured.

Once discovery was completed, defendant filed a motion for summary judgment supported by multiple certifications prepared by plaintiff's supervisors and co-workers. Defendant also provided documentation concerning the actions it took concerning plaintiff's workers' compensation claim. Defendant summarized these materials in a thirty-seven paragraph statement of material undisputed facts pursuant to Rule 4:46-2(a).

Defendant alleged that it hired plaintiff as a non-union worker in June 1997. In 2016, plaintiff began working in the Northvale store as a clerk. This was a union position.

After the Thanksgiving weekend in 2016, plaintiff called out sick for several days. He then came to the store and told his manager, Gregg Soriano, that he had injured his shoulder at work before the holiday. Plaintiff did not previously report this injury.

In January 2017, an assistant store manager filed an accident report with defendant's workers' compensation carrier, New Jersey Manufacturers (NJM).

[1] Plaintiff was fifty-five years old.

That same month, plaintiff submitted a claim for temporary disability benefits with the State of New Jersey. Defendant completed the employer section of that application form and stated that plaintiff's injury occurred at work as he claimed.

Plaintiff's treating physician later certified that plaintiff's injury was not work-related. In April 2017, NJM denied coverage of plaintiff's workers' compensation claim based at least in part on the physician's certification. However, the State granted plaintiff's application for temporary disability benefits.

Plaintiff was out of work between November 2016 and May 7, 2017. When plaintiff returned to work, defendant transferred him to the produce department, which was less physically demanding than plaintiff's previous job in the grocery department.

Two years later, plaintiff told Soriano he was planning to retire at the end of May 2019. Plaintiff also provided this information to the assistant manager and his co-workers. He told his direct supervisor in the produce department that his last day would be May 31, 2019. On that date, department employees held a retirement celebration for plaintiff.

Defendant certified that store managers and assistant store managers are not permitted to terminate union employees like plaintiff without prior notice to

the union. These decisions would be made by defendant's corporate office. The union had the right to request a meeting to question the proposed action and, if the matter was not resolved, the right to file a grievance. Defendant did not notify plaintiff's union of any proposed employment actions concerning plaintiff. In addition, plaintiff did not seek unemployment compensation benefits after he retired.

Defendant never had an employee named Daniel Ortiz at the Northvale store. An assistant manager with the surname of Ortiz did work at the store from October 5, 2015 to July 28, 2017.

Defendant had a non-harassment policy in place which instructed employees to report any claims of harassment or discrimination to the store manager or the Human Resources Department. Plaintiff never filed such a report. None of plaintiff's co-workers ever witnessed any act of harassment or discrimination against plaintiff. In addition, plaintiff never sought treatment for any alleged emotional distress.

In his response to defendant's summary judgment motion, plaintiff only disputed one of defendant's undisputed facts as summarized above. Without producing any evidence to support his claim, plaintiff again alleged defendant employed a supervisor named Daniel Ortiz. Plaintiff also submitted a

certification which stated he was forced to leave his job due to verbal abuse and harassment he suffered from the supervisor and his co-workers after Ortiz told him not to file a workers' compensation claim. Plaintiff did not provide the names of any of these employees or divulge what they allegedly said to him.

After conducting oral argument, Judge Rachelle L. Harz rendered a comprehensive oral decision granting defendant's motion for summary judgment and dismissing all four counts of plaintiff's complaint. Beginning with Count One, the judge found that plaintiff was not terminated from his position by a supervisor named Daniel Ortiz or by any other supervisor for seeking to file a workers' compensation claim. Instead, defendant filed the workers' compensation claim on plaintiff's behalf, and also assisted him in filing an application for temporary disability benefits. Defendant granted extended leave time to plaintiff and, when his doctor cleared him to return to work, gave him a less strenuous assignment. The evidence further showed that plaintiff voluntarily retired from his job over two years later. Under these circumstances, Judge Harz concluded there was "no evidence supporting a claim that [defendant] had a retaliatory motive to fire the plaintiff two and a half years after his alleged injury due to a workers['] compensation claim that [defendant] initiated."

Turning to Count Two, Judge Harz found that plaintiff never "identif[ied] any harassing statements by dates or other facts that would permit a rational fact finder to find that plaintiff was subject to an unlawful hostile work environment on the basis of age, national origin, or disability." Instead, the judge stated that "[p]laintiff's unlawful harassment claim rest[ed] entirely upon his unspecified and actually self-serving allegations. And self-serving conclusory allegations are insufficient to defeat a motion for summary judgment."

Judge Harz also dismissed Count Three of the complaint because plaintiff failed to provide any competent evidence that he was the victim of age discrimination. Defendant took no adverse employment actions against plaintiff during his tenure at the Northvale store. Defendant transferred plaintiff to a union position, assisted him with his workers' compensation and temporary disability benefit claims when he was injured, gave him time off to recover from his shoulder injury, transferred him to a less strenuous position upon his return, and arranged a celebration for him when he voluntarily retired over two years later.

Finally, Judge Harz granted summary judgment to defendant on Count Four of the complaint. As was the case with the other three counts, the judge

found plaintiff presented no evidence that defendant subjected him to any emotional distress.[2] This appeal followed.

On appeal, plaintiff argues that "because material facts were in dispute, the Law Division committed reversible error in entering summary judgment in favor of the defendant." We disagree.

Our review of a trial court's grant of summary judgment is de novo, applying the same legal standard as the trial court. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018) (citing Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)). Under that standard, summary judgment will be granted when "the competent evidential materials submitted by the parties," viewed in the light most favorable to the non-moving party, show that there are no "genuine issues of material fact" and that "the moving party is entitled to summary judgment as

[2] Plaintiff submitted a new certification in opposition to defendant's summary judgment motion in which he appeared to concede that he retired from his position. At the same time, plaintiff asserted he was forced to leave his job due to the retaliation he suffered because of his shoulder injury. Judge Harz gave no weight to plaintiff's newly-minted allegation under the "sham affidavit" doctrine. See Metro Mktg., LLC v. Nationwide Vehicle Assur., Inc., 472 N.J. Super. 132, 148 (App. Div. 2022) (Under the sham affidavit doctrine, "judges who rule on summary judgment motions are not bound to consider 'a purely self-serving certification' by a party 'that directly contradicts his [or her] prior representations in an effort to create an issue of fact.'") (quoting Winstock v. Galasso, 430 N.J. Super. 391, 396 (App. Div. 2013) (alteration in original)).

a matter of law." Grande v. Saint Clare's Health Sys., 230 N.J. 1, 24 (2017) (quoting Bhagat, 217 N.J. at 38); see also R. 4:46-2(c).

"An issue of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Grande, 230 N.J. at 24 (quoting Bhagat, 217 N.J. at 38). We owe no special deference to the motion judge's legal analysis. RSI Bank, 234 N.J. at 472 (quoting Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016)).

We have considered plaintiff's contentions in light of the record and applicable legal principles and conclude they are without sufficient merit to warrant discussion in a written opinion. See R. 2:11-3(e)(1)(E). We are satisfied Judge Harz properly granted summary judgment to defendant, and affirm substantially for the reasons expressed in her thorough oral opinion. However, we make the following brief comments.

Contrary to plaintiff's unsupported allegations, the material facts of this matter are not in dispute. Defendant did not object to plaintiff filing a workers' compensation claim; it filed the claim for him. NJM denied the claim because plaintiff's own doctor certified he was not injured at work. Nevertheless,

defendant helped plaintiff with his successful application for temporary disability benefits, gave him extended leave time, and moved him to a less physically-demanding position upon his return to work. There was no employee at the store named Daniel Ortiz. The only other employee with the surname of Ortiz left his job two years before plaintiff voluntarily retired. Plaintiff was unable to identify any of the employees he alleged harassed him and provided no details concerning their actions. After our de novo review, we discern no basis for disturbing Judge Harz's well-reasoned findings of fact and conclusions of law.

Affirmed.