

**NOT FOR PUBLICATION WITHOUT THE  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-1607-20  
A-2037-20

IN THE MATTER OF  
LYNDSAY V. RUOTOLO,  
ACTING UNION COUNTY  
PROSECUTOR.

---

Argued March 30, 2022 – Decided April 18, 2022

Before Judges Messano, Accurso, and Marczyk.

On appeal from the New Jersey Department of Law and  
Public Safety, Office of the Attorney General.

Moshood Muftau, Deputy County Counsel, argued the  
cause for appellant Lyndsay V. Ruotolo (Bruce H.  
Bergen, Union County Counsel, attorney; Steven H.  
Merman, Assistant County Counsel, and Miah Hagood,  
admitted pursuant to Rule 1:21-3(b), on the briefs).

Austin W.B. Hilton, Deputy Attorney General, argued  
the cause for respondent Office of Attorney General  
(Matthew J. Platkin, Acting Attorney General, attorney;  
Jane C. Schuster, Assistant Attorney General, of  
counsel; Austin W.B. Hilton, on the brief).

PER CURIAM

We consolidate these two appeals, argued back-to-back, for the purpose of issuing a single opinion. Both cases involve the same issue – specifically, whether the Office of the Attorney General, New Jersey Department of Law and Public Safety (OAG) is required to defend and indemnify Lyndsay Ruotolo in her capacity as the Acting Union County Prosecutor in two underlying cases alleging violations of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1, the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1, and other related employment claims. The OAG denied Ruotolo's requests for representation, determining the claims in the respective complaints concerned alleged personnel decisions by Ruotolo, which involved her administrative functions for which the State is not obligated to defend and indemnify, thus leaving the obligation to Union County. We affirm.

## I.

We review the OAG's administrative determination in accordance with a deferential standard of review. An appellate court affords a "strong presumption of reasonableness" to an administrative agency's exercise of its statutorily delegated responsibilities. City of Newark v. Nat. Res. Council, Dep't of Env'tl. Prot., 82 N.J. 530, 539 (1980). The reviewing court "should not reverse the Attorney General's determination unless it is arbitrary, capricious or

unreasonable or it is not supported by substantial credible evidence in the record as a whole." Prado v. State, 186 N.J. 413, 427 (2006). "The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the [party] challenging the administrative action." In re J.S., 431 N.J. Super. 321, 329 (App. Div. 2013) (internal quotation marks omitted).

To determine whether an agency decision "is arbitrary, capricious or unreasonable," an appellate court must determine:

(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.

[In re Stallworth, 208 N.J. 182, 194 (2011) (quoting In re Carter, 191 N.J. 474, 482-83 (2007)).]

Although an appellate court defers to an administrative agency's findings of fact, see Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995), it is not "bound by [an] agency's interpretation of a statute or its determination of a strictly legal issue." Norfolk S. Ry. Co. v. Intermodal Props., LLC, 215 N.J. 142, 165 (2013) (internal quotation marks omitted). Thus, to the

extent that the OAG's determination constitutes a legal conclusion, we review it de novo.

## II.

Lyndsay Ruotolo was appointed by the Attorney General to serve as a Special Attorney General/Acting Prosecutor of Union County, pursuant to N.J.S.A. 52:17B-106. Ruotolo argues the OAG should be required to defend and indemnify her because, as the Acting Prosecutor, she was still an employee of the OAG. Ruotolo argues the OAG erred in relying on Wright v. State, 169 N.J. 422, 435-57 (2001), and DeLisa v. Bergen County, 326 N.J. Super. 32, 39-41 (App. Div. 1999). Ruotolo further contends the OAG failed to consider that even in her capacity as Acting Prosecutor, she was an employee of the State under N.J.S.A. 59:10-1 and N.J.S.A. 59:10A-1.

The OAG counters that under Wright and its progeny, the State has no duty to defend and indemnify a county prosecutor when they are sued for carrying out administrative, as opposed to classic, law enforcement, functions. That is, while the State is obligated to defend and indemnify prosecutors for their alleged misconduct involving the investigation and enforcement of criminal laws, the County is ultimately responsible for defending prosecutors against claims involving his or her conduct with respect to personnel decisions.

### III.

Our Supreme Court in Wright determined that county prosecutors occupy a "hybrid" role, serving both the county and the State, and clarified when the State must defend and indemnify county prosecutors. 169 N.J. at 455-56. The Court noted:

[b]ecause of their hybrid status, we need not regard as determinative, whether the county prosecutors . . . have been considered "State employees" within the meaning of the defense and indemnification provisions, N.J.S.A. 59:10-1 and N.J.S.A. 59:10A-1. Instead, we focus on whether the function that the county prosecutors . . . were performing during the alleged wrongdoing is a function that traditionally has been understood to be a state function and subject to state supervision in its execution.

[Id. at 454.]

In short, the Wright Court rejected the same argument advanced by Ruotolo that defense and indemnification decisions are controlled by N.J.S.A. 59:10-1 and N.J.S.A. 59:10A-1. The Court ultimately determined that when county prosecutors are involved in an investigation and enforcement of the State's criminal laws, the State is obligated to pay for their defense and indemnification. Id. at 455.

Significantly, the Wright Court relied on Coleman v. Kaye, 87 F. 3d. 1491 (3d Cir. 1996), to distinguish between a prosecutor's law enforcement activities

and administrative functions. Distinguishing the "dual or hybrid" status of prosecutors, the Wright Court noted:

It is well established that when county prosecutors execute their sworn duties to enforce the law by making use of all the tools lawfully available to combat crime, they act as agents of the state. On the other hand, when county prosecutors are called upon to perform administrative tasks unrelated to their strictly prosecutorial functions, such as the decision whether to promote an investigator, the county prosecutor, in effect, acts on behalf of the county that is the situs of his or her office.

[Wright, 169 N.J. at 451 (quoting Coleman, 87 F. 3d at 1499).]

In DeLisa, the court addressed the same issue presently before this court. There, the county prosecutor was being sued for an alleged retaliatory discharge of an employee under CEPA. 326 N.J. Super. at 35. Significantly, the county prosecutor was also a deputy attorney general appointed to serve as the Bergen County Prosecutor, just as Ruotolo was assigned to the Union County Prosecutor's Office here. Id. at 39-40. The DeLisa court recognized the hybrid or dual status of the prosecutor and noted he was serving "two masters" in his capacity as a county prosecutor. Id. at 40. Because the county prosecutor was being sued under CEPA, he was not acting in his capacity as a law enforcement

officer for the purposes of that litigation. Rather, he was acting in his administrative role. Accordingly, we determined:

[I]n these circumstances, where a deputy attorney general was performing a dual function for the benefit of two governmental entities, the county cannot obtain reimbursement for the cost of defending a claim relating to his administrative conduct. We so hold, given the action was based upon a personnel decision of the acting county prosecutor, especially where the record reflects no endeavor by the county to have the state provide representation or consent to retention of outside counsel . . . under a "reservation of rights" approach.

[Id. at 40-41.]

Ruotolo attempts to distinguish DeLisa because she sought defense and indemnification by directly requesting representation from the OAG. Ruotolo focuses on the language in DeLisa, where we stated the OAG need not provide a defense and indemnification, "given the action was based upon a personnel decision of the acting county prosecutor, especially where the record reflects no endeavor by the county to have the state provide representation . . .." Ibid. (emphasis added). Ruotolo essentially argues this language limits our holding in DeLisa to those cases where a county fails to timely request representation directly from the State. We are not persuaded by this argument. Judge Stern's comment regarding the county's failure to request representation from the State

or permission to retain outside counsel, is dicta. We were simply providing a further reason—not the dispositive reason—why the State was not required, in that case, to defend and indemnify the prosecutor. Both our court in DeLisa and the Supreme Court in Wright clearly held that when a county prosecutor (regardless of whether he or she is a deputy attorney general) acts in an administrative capacity with regard to employment-related issues, the State is not required to defend and indemnify the county. That is, the determinative factor hinges on the administrative or law enforcement function of the prosecutor that is at issue in a particular case, not the manner in which representation is sought from the OAG.

Finally, while Wright was decided before DeLisa, our Supreme Court has recently cited favorably to DeLisa. In Gramiccioni v. Department of Law & Public Safety, the Court specifically referenced DeLisa and noted: "Thus, cases [such as DeLisa] in which courts correctly have found that the state did not need to indemnify and defend prosecutors have involved . . . internal operations of a prosecutor's office." 243 N.J. 293, 313 (2020). The Supreme Court has in no way indicated that our courts should consider the manner in which a county prosecutor seeks representation from the OAG as determining whether the OAG must defend and indemnify a county prosecutor.

Accordingly, for the reasons set forth above, the OAG is not required to defend or indemnify Ruotolo.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION