SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1976-19
A-4540-19

IN THE MATTER OF STEVEN RAMZI, WEEHAWKEN TOWNSHIP, DEPARTMENT OF PUBLIC SAFETY.

STEVEN RAMZI,

Plaintiff-Appellant,

v.

TOWNSHIP OF WEEHAWKEN, TOWNSHIP OF WEEHAWKEN POLICE DEPARTMENT, and GIOVANNI D. AHMAD (in his official capacity only),

Defendants-Respondents.

Argued February 7, 2022 – Decided April 8, 2022

Before Judges Sabatino and Rothstadt.

On appeal from the New Jersey Civil Service Commission, Docket No. 2020-1017, and the Superior

Court of New Jersey, Law Division, Hudson County, Docket No. L-0224-20.

Lori A. Dvorak argued the cause for appellant (Dvorak & Associates, LLC, attorneys; Lori A. Dvorak, of counsel and on the briefs; Jeffrey Ziegelheim, on the briefs).

David F. Corrigan argued the cause for respondent Township of Weehawken in A-1976-19 and Christopher K. Harriott argued the cause for respondent Township of Weehawken in A-4540-19 (The Corrigan Law Firm, and Florio Kenny Raval, LLP, attorneys; David F. Corrigan and Christopher K. Harriott, of counsel and on the joint brief; Terence C. Natale, on the joint brief).

Dominic L. Giova, Deputy Attorney General, argued the cause for respondent New Jersey Civil Service Commission (Andrew J. Bruck, Acting Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; Dominic L. Giova, on the brief).

PER CURIAM

In these consolidated matters, Steven Ramzi appeals from the Civil Service Commission's (Commission's) December 5, 2019 final administrative decision, denying his motion to reconsider the Commission's earlier refusal to consider his untimely appeal from Weehawken Township's termination of his employment as police officer. He also appeals from an August 14, 2020 order entered in the Law Division, dismissing with prejudice his complaint in lieu of prerogative writs that challenged the procedure followed by Weehawken when

its township manager terminated Ramzi's employment. According to Ramzi, the procedure violated the Faulkner Act, N.J.S.A. 40:69A-1 to -210, and the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 to -21.

On appeal, Ramzi argues that the Commission erred by concluding that his appeal was not timely filed and that Weehawken's underlying decision to terminate his employment was "against the weight of the evidence." As to the Law Division's order, Ramzi contends the motion judge erred by "determining that [his] removal was [properly] reported [by the Township manager to the council] and subsequently that the removal was statutorily effective."

We have considered Ramzi's contentions in light of the record and applicable principles of law. We affirm as we conclude his arguments are without any merit because the Commission's determination was supported by the evidence and the Law Division's judgment was legally correct.

I.

Ramzi's termination

The facts derived from the record of both matters are summarized as follows. In 2017, while employed as a patrolman by Weehawken, Ramzi admitted to using and distributing anabolic steroids, a schedule III controlled

dangerous substance (CDS).[1] In response, Weehawken Township's Manager, Giovanni D. Ahmad, issued a Preliminary Notice of Disciplinary Action dated August 18, 2017. The notice identified the charges against Ramzi as conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6) and "other sufficient cause," N.J.A.C. 4A:2-2.3(a)(12). It also notified Ramzi that he was suspended pending a hearing on the charges and that Weehawken would be seeking his removal as a police officer.

Thereafter, an administrative hearing was held before a hearing officer who sustained the charges against Ramzi and recommended his removal. Based on the hearing officer's decision, on January 16, 2019, Ahmad issued to Ramzi a Final Notice of Disciplinary Action (FNDA) terminating Ramzi's employment, which Ramzi received on January 22, 2019.

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[1] Ramzi's wrongful conduct was revealed incidental to an investigation by United States postal inspectors and Captain James White of the Weehawken Police Department into a fellow Weehawken patrolman's mail-order purchase of anabolic steroids. The patrolman revealed he purchased CDS from Ramzi and both used CDS while employed as officers.

After White confirmed with the Hudson County Prosecutor's Office that he had reasonable suspicion to require Ramzi to submit to a drug test, White confronted Ramzi about the allegations against him. Ramzi submitted to a drug test and eventually admitted to using and distributing CDS, in violation of several criminal and administrative offenses, including conduct unbecoming a public employee, N.J.A.C. 4A:2-2.3(a)(6).

Ahmad issued the FDNA in his capacity as Township manager. Weehawken is a municipality within the jurisdiction of the Commission and organized as a "council-manager" form of government under the Faulkner Act, N.J.S.A. 40:69A-81 to -98. Under its form of government, Ahmad was responsible for the day-to-day operations of the Township, including appointing and removing employees.

Thereafter, according to Ahmad, he reported Ramzi's termination to Weehawken's council during a closed session at the council meeting following Ramzi's termination. He did so without the council providing advanced notice to the public of the topics to be discussed at its closed session or passing a resolution to enter a closed session. Also, there were no minutes confirming that discussion. However, it is undisputed that the council took no action regarding Ramzi or Ahmad's termination of Ramzi's employment.

Thereafter, Ramzi attempted to pursue two courses of action to challenge his termination: an appeal to the Commission and filing an action in lieu of prerogative writs with the Law Division.

Appeal to the Commission

According to Ramzi's attorney, the late Jeffrey Ziegelheim, on February 11, 2019, he was "advised" that his paralegal, Anthony Berinato, mailed a notice

of appeal to the Commission, its attorney, and the Office of Administrative Law (OAL). Berinato claimed he mailed the February 11 letter via certified mail. He also asserted he followed up in February and March, but was told it had not yet been filed. He then did not follow up again until August 12, 2019, seven months after he sent the letter, and the Commission informed him it was in receipt of his notice of appeal, but the twenty-dollar fee was not paid. Berinato also claimed he could not locate the tracking information for the letter as it was lost when his office later relocated. However, he re-sent a copy of the letter on August 20. The required fee was not paid until September 4, 2019.

None of the intended recipients received Ramzi's notice of appeal that Berinato claimed he sent in February. Six months later, in August 2019, the Commission received an envelope, postmarked August 15 that enclosed a version of a February 11 letter, which indicated it was originally sent "via regular mail"—not certified as Berinato claimed. The Commission also received a second version of the letter marked "re-sent on 8/20/19-AJB" that was postmarked August 20, 2019, which also indicated it was originally sent "via regular mail."

On September 16, 2019, the Commission rejected Ramzi's appeal after determining that it was not sent until August 15, well past the twenty days

required for filing under N.J.S.A. 11A:2-15. In response, on October 7, 2019, Ramzi filed his motion for reconsideration with the Commission, arguing his appeal was timely.

In support of the motion, Ziegelheim certified he "was advised the Notice of Appeal was forwarded to the Commission on February 11, 2019," and attached a third version of the February 11 letter, which for the first time indicated it was originally sent "via certified mail." Ziegelheim also provided additional information gleaned from documents provided in response to an Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, request that supported his position that Ramzi's removal was not properly effectuated as required by the Faulkner Act and the OPMA. Ramzi also argued his appeal was timely because Weehawken had not "appropriately and correctly terminate[d] [his] employment."

In its December 4, 2019 decision, the Commission found "Ramzi admittedly received the FNDA on January 22, 2019, and his letter of appeal [that] was received by the Commission was postmarked August 15, 2019," which was untimely. The Commission reasoned it would have accepted Berinato's explanation regarding losing the certified mail receipt from the February 11 letter despite neither it nor the OAL receiving the letter, however

because three versions of the letter surfaced, including an apparently "non-authentic" version, it concluded "the letter was never actually sent in February." Applying the controlling statute and case law, the Commission concluded again that Ramzi's appeal was untimely, which deprived the Commission of jurisdiction, and it denied his request to reconsider. Ramzi then filed this appeal from the Commission's final determination.

Action in Lieu of Prerogative Writs

In addition to filing the appeal from the Commission's decision, on January 17, 2020, Ramzi simultaneously filed a complaint with the Law Division, alleging that Weehawken failed to properly effectuate his removal because it did not provide him with a Rice[2] notice, as required under the OPMA, and because Ahmad failed to report his removal at the next council meeting, as required under the Faulkner Act.

Weehawken filed an answer, raising several affirmative defenses, including the Law Division lacked jurisdiction, the Commission had primary jurisdiction, and the matter was already before the Appellate Division.

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[2] Rice v. Union Cnty. Reg'l High Sch. Bd. of Educ., 155 N.J. Super. 64 (App. Div. 1977) (holding that, when a public entity plans on discussing personnel matters in closed section, it must provide advance notice to any employee facing adverse action from the discussion to provide the employee with an opportunity to waive confidentiality and have the discussion take place in public).

The parties filed cross-motions for summary judgment, and, on August 14, 2020, the motion judge issued a written decision and order, denying the relief sought by Ramzi and dismissing the matter. The judge concluded Weehawken complied with the Faulkner Act and the OPMA because it was not required to provide a Rice notice to Ramzi since he could no longer be adversely affected by the Township's council's actions where he was "already terminated" by the Township manager and where there was no "discussion" at the closed session. The judge further reasoned, in any event, as reflected in Ahmad's and the Township attorney's supporting certifications, the matter was reported in a closed session properly since it was "plainly a matter 'involving the . . . termination of employment,'" which the OPMA does not mandate to be reported during an open session.[3]

[3] See N.J.S.A. 10:4-12(b)(8). The statute states in relevant part the following:

> A public body may exclude the public only from that portion of a meeting at which the public body discusses any . . . matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion, or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in

Thereafter, Ramzi appealed from the Law Division's judgment, and we consolidated the appeal with his earlier appeal from the Commission's decision.

II.

A.

We first review the Commission's determination that Ramzi's appeal was untimely. At the outset, we observe that our review of a final agency decision is limited, and its decision is disturbed only upon a showing that it was "arbitrary, capricious, or unreasonable, or that it lack[ed] fair support in the record." Allstars Auto Grp., Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018) (quoting Russo v. Bd. of Trs., PFRS, 206 N.J. 14, 27 (2011)). In reviewing agency determinations, we are generally limited to determining:

> (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.
>
> [Ibid. (quoting In re Stallworth, 208 N.J. 182, 194 (2011)).]

> writing that the matter or matters be discussed at a public meeting . . . .
>
> [N.J.S.A. 10:4-12(b)(8).]

When an agency's decision meets those criteria, then we owe "substantial deference to the agency's expertise and superior knowledge of a particular field." In re Herrmann, 192 N.J. 19, 28 (2007). Also, although we are not bound by an "agency's interpretation of a statute or its determination of a strictly legal issue," if the agency's decision is supported by substantial evidence, we "may not substitute [our] own judgment for the agency's even though [we] might have reached a different result." In re Carter, 191 N.J. 474, 483 (2007) (first quoting Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973); and then quoting Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992)).

B.

On appeal, Ramzi contends that he established that he timely filed his appeal because his attorney's paralegal certified that it was mailed on February 11, 2019, which was timely. Ramzi argues the Commission held him to a higher standard than necessary by requiring him to prove the Commission received the letter, rather than prove he sent the letter. Alternatively, Ramzi claims he "raised the issue of [Weehawken's] improper procedural mechanism in effectuating [his] termination which was ignored by the [Commission]."

In response, the Commission maintains that, because Ziegelheim and Berinato provided several versions of the letter claimed to have been sent in

February and because the versions contradicted each other, there was inadequate evidence that the appeal was even sent in February 2019, especially since neither the Commission, its attorney, nor the OAL received the letter until August 2019 when it was purportedly re-sent. The Commission also contends it could not consider allegations that he was improperly terminated by Weehawken because it no longer had jurisdiction over the remaining claims after it determined there was no credible evidence that Ramzi's appeal was timely. Weehawken joins in the Commission's contentions.

We conclude from our review of the record that the Commission did not abuse its discretion in determining Ramzi's appeal was untimely because its decision was supported by the evidence and it was not clearly mistaken.

A person aggrieved by an FNDA issued by a civil service jurisdiction is entitled to appeal to the Commission. See Mesghali v. Bayside State Prison, 334 N.J. Super. 617, 620 (App. Div. 2000). That appeal must "be made in writing to the [Commission] no later than [twenty] days from receipt of the [FNDA]." Ibid. (quoting N.J.S.A. 11A:2-15). The Commission cannot accept an employee's appeal of a major disciplinary action outside of the twenty-day statutory time limit, which is mandatory and jurisdictional. Id. at 621-23 (quoting Borough of Park Ridge v. Salimone, 21 N.J. 28, 46 (1956)).

Upon receipt of a Commission decision, under N.J.A.C. 4A:2-1.6(a), a party has forty-five days to petition the Commission for reconsideration. That petition "must show" "1. [t]he new evidence or additional information not presented at the original proceeding, which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or 2. [t]hat a clear material error has occurred." N.J.A.C. 4A:2-1.6(b).

In support of his reconsideration motion, Ramzi submitted Ziegelheim's and Berinato's certifications and their attached documentation relating to the alleged timely filing of his appeal. He also attempted to attack the validity of his termination, an issue that the Commission never reached, by asserting arguments about Weehawken's failure to comply with the Faulkner Act and OPMA. In denying reconsideration, the Commission correctly did not address those contentions because without a timely filed appeal, it simply had no jurisdiction to consider the substantive issues Ramzi sought to raise, irrespective of their merit or validity.

The Commission relied upon substantial credible evidence to support its decision. Ramzi conceded he was required to file an appeal in writing to the Commission by February 11, 2019, and claimed Berinato sent a letter via certified mail on that date to the Commission, its attorney, and the OAL.

However, in light of the fact that no intended recipient received the letter until August 2019, and considering the discrepancies in the exhibits filed by Ramzi's attorney and the paralegal, there was insufficient evidence that an appeal was mailed in February with the proper fee. Based on this lack of evidence, we have no cause to disturb the Commission's decision. And, since Ramzi failed to file a timely appeal, we have no reason to address his substantive challenges to Weehawken's termination of his employment, including those he argues for the first time on appeal, as they were properly never considered by the Commission.

We are not persuaded otherwise by Ramzi's argument that the Commission required him to prove it received the letter rather than that he sent the letter. Clearly, the Commission found Berinato did not send the letter in February. It considered that neither it nor two other prospective recipients received the letter purportedly sent, along with discrepancies between the versions of the letter that were offered to the Commission throughout the subsequent proceedings, to determine the letter was not sent on February 11, 2019.

III.

A.

We turn our attention to Ramzi's appeal from the dismissal of his complaint in lieu of prerogative writs on cross-motions for summary judgment.

Before reaching the merits of his arguments about summary judgment being improperly granted, at the outset, we observe that, as Ramzi's counsel conceded at oral argument before us, the filing of the Law Division action represented an attempt to avoid the Commission's procedural bar of his administrative appeal and secure an adjudication by the court that his termination by Weehawken was unlawful, despite the Commission's exclusive jurisdiction to determine the legitimacy of a public employee's termination. That attempt improperly contravened both the Commission's exclusive jurisdiction to consider these matters and our sole responsibility in the first instance to review the Commission's decision.

"We have held that where an administrative agency of the State has primary jurisdiction to determine the underlying controversy between the parties, a trial judge should not undertake to decide the issues presented under the [OPMA] but should refer those issues to the appropriate administrative agency." Sukin v. Northfield Bd. of Educ., 171 N.J. Super. 184, 187 (App. Div.

1979) (reversing trial court's determination on OPMA issues stemming from an employment action and transferring the matter to the administrative agency with primary jurisdiction over the employment matter). "After the [administrative agency] has acted, further review may be sought by way of appeal to the Appellate Division pursuant to R[ule] 2:2-3(a)(2) and R[ule] 2:5-1(e). In that manner the authority of the [administrative agency] as well as the prerogative writs jurisdiction conferred upon the Superior Court by N.J.S.A. 10:4-15[4] may both be fully exercised." Ibid. (citing E. Brunswick Twp. Educ. Bd. v. E. Brunswick Twp. Council, 48 N.J. 94 (1966)).

B.

Having said that, in the interest of completeness, we address Ramzi's contentions about the award of summary judgment to Weehawken.

Ramzi argues the parties must be returned to their status as of January 15, 2019, before his removal was purportedly effectuated, because Weehawken did not properly terminate his employment since Ahmad failed to report the removal to the town council at the "next meeting" immediately following Ramzi's removal, thus acting outside of its statutory authority under the Faulkner Act.

[4] Pursuant to N.J.S.A. 10:4-15, a party may challenge "any action taken by a public body which does not conform to the [OPMA]" by filing "an action in lieu of prerogative writs" in the Superior Court. Id. at 186-87.

He also contends Weehawken failed to satisfy the requirements under the OPMA, including requirements to first pass a resolution during the open meeting to then discuss a matter in a closed executive session, make its executive session minutes promptly available to the public, and provide Ramzi with a Rice notice, so he may exercise his right to have his termination discussed in a public forum. Also, Ramzi claims the motion judge erred in considering Ahmad's certification that he reported Ramzi's removal in a closed executive session because it was parol evidence, which may not be introduced to alter or supplement the council meeting minutes.

We review a court's grant of summary judgment de novo, applying the same standard as the trial court. Conley v. Guerrero, 228 N.J. 339, 346 (2017). Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016) (quoting R. 4:46-2(c)).

When a party files a cross-motion for summary judgment, alleging no genuine disputes of material fact, that party's ability to argue genuine factual

issues is limited on appeal. Spring Creek Holding Co. v. Shinnihon U.S.A., 399 N.J. Super. 158, 177 (App. Div. 2008). "[S]ince both sides moved for summary judgment, one may fairly assume that the evidence was all there and the matter was ripe for adjudication." Morton Int'l Inc. v. Gen. Accident Ins. Co. of Am., 266 N.J. Super. 300, 323 (App. Div. 1991).

C.

We conclude from our de novo review that the motion judge correctly determined that Weehawken was entitled to summary judgment.

First, contrary to Ramzi's contentions, regardless of whether Ahmad reported the termination of Ramzi to the council, Ramzi's termination was effective upon service of the FNDA. It is undisputed that under Weehawken's council-manager form of government, its manager Ahmad had the sole authority to terminate Ramzi. See N.J.S.A. 40:69A-95.[5]

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[5] In pertinent part, the statute states the following:

> The municipal manager shall:
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> . . . .
>
> (c) Appoint and remove a deputy manager if one be authorized by the council, all department heads and all other officers, subordinates, and assistants, except a municipal tax assessor, for whose selection or removal

Municipal managers are in "complete charge of the everyday administration of municipal business and affairs," and, therefore, each manager "ha[s] the power to hire and fire those for whose performance he is responsible and must direct." Clifton v. Zweir, 36 N.J. 309, 324 (1962). Council's approval of the manager's hiring and firing decisions is not necessary for the act to be effective. Visone v. Reilly, 80 N.J. Super. 494, 501 (App. Div. 1963). And, the power to remove is not contingent on the duty to report. See N.J.S.A. 40:69A-95(c).

Our courts protect the appointment authority of municipal managers in accordance with a municipality's selected form of government. Visone, 80 N.J. Super. at 500. Under Weehawken's form of government, even if Ahmad violated a duty to report, the remedy lies with the council taking action against its Township manager and does not impact the action taken by the manager. See N.J.S.A. 40:69A-93; Clifton, 36 N.J. at 324; Visone, 80 N.J. Super. at 501.

> no other method is provided in this article, except that he may authorize the head of a department to appoint and remove subordinates in such department, supervise and control his appointees, and report all appointments or removals at the next meeting thereafter of the municipal council . . . .
>
> [N.J.S.A. 40:69A-95(c).]

However, Ahmad's certification filed in support of Weehawken's motion disclosed that he advised the council about Ramzi's termination in closed session. That fact was confirmed by the Township attorney's filed certification. Also, it is undisputed that the only action the Township's council took was to later authorize the defense of the Township and Ahmad in response to Ramzi's claims in the administrative action and lawsuit he pursued, thus demonstrating no objection to Ramzi's termination. See Visone, 80 N.J. Super. at 501 (noting council indicated its informal approval of manager's act, authorized by his appointment power, by not expressing formal disapproval and authorizing the municipality's attorney to appear to resist any attack upon the manager's act).

D.

Second, we also conclude that Ramzi's contentions about Weehawken's failure to comply with the OPMA are without merit. In support of his argument, Ramzi relies on McGovern v. Rutgers, 211 N.J. 94 (2012), to establish Weehawken failed to meet the requirements imposed by the OPMA. However, his reliance is inapposite.

In McGovern, the Court held the public body failed to provide adequate notice, pursuant to the OPMA, before a closed session. McGovern, 211 N.J. at 111-12. It also held the University president and Board chairman made remarks

in the closed session that were required to have been made in an open session. Id. at 113. However, the Court observed that in the closed session, the Board merely "discussed" matters and took no action. Id. at 102, 112. So, although defendant failed to meet the requirements established by the OPMA, the Court concluded that, where "no action" was taken by the public body at a closed meeting, a prerogative writs action seeking to void any action taken at a non-conforming meeting, pursuant to N.J.S.A. 10:4-15, was "inapplicable," and therefore the plaintiff was not entitled to relief. Id. at 112, 114.

Here too, even if Ahmad and Weehawken's council failed to meet the requirements imposed by the OPMA, it is undisputed that council did not take any action during the closed session or at any time other than defending against Ramzi's claims. The mere reporting of Ramzi's removal was not action leading to Ramzi's termination that, again, was already completed upon service of the FNDA. Like in McGovern, Ahmad's reporting, if required under the OPMA, was akin to remarks made at an improperly convened closed session. And, because the council did not take any employment action during the closed session or otherwise, Ramzi was not entitled to a Rice notice or any remedy under the OPMA.

IV.

To the extent that we have not specifically addressed any of Ramzi's remaining arguments, we conclude that they are either without sufficient merit to warrant discussion in a written opinion, R. 2:11-3(e)(1)(E), or based on our disposition, there is no need to address them.

Affirmed.