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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0188-21
A-1590-21

IN THE MATTER OF
E.A. POLICE OFFICER
(REGULAR EMPLOYMENT
LIST) LACEY TOWNSHIP.

E.A.,

Plaintiff-Appellant,

v.

OFFICE OF THE OCEAN
COUNTY PROSECUTOR,
TOWNSHIP OF LACEY,
and LACEY TOWNSHIP
POLICE DEPARTMENT,

Defendants-Respondents.

Submitted on February 1, 2023 – Decided June 1, 2023

Before Judges Currier and Bishop-Thompson.

On appeal from the New Jersey Civil Service
Commission, Docket No. 2021-1429, and the Superior

Court of New Jersey, Law Division, Ocean County,
Docket No. L-2429-21.

Law Offices of Robert A. Ebberup, LLC, attorneys for
appellant E.A. in A-0188-21 (Robert A. Ebberup, on
the brief).

Galantucci & Patuto, attorneys for appellant E.A. in A-
1590-21 (David J. Altieri, on the brief).

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Township of Lacey in A-0188-21 (Armando V. Riccio,
on the brief).

Armando V. Riccio, LLC, attorneys for respondents
Township of Lacey and the Lacey Township Police
Department in A-1590-21 (Armando V. Riccio, on the
brief).

Matthew J. Platkin, Attorney General, attorney for
respondent New Jersey Civil Service Commission in A-
0188-21 (Pamela N. Ullman, Deputy Attorney General,
on the statement in lieu of a brief).

Matthew J. Platkin, Attorney General, attorney for
respondent Ocean County Prosecutor's Office in A-
1590-21 (Melissa H. Raksa, Assistant Attorney
General, of counsel; Justine M. Longa, Deputy
Attorney General, on the brief).

PER CURIAM

We have calendared back-to-back and consolidated these related appeals for the purpose of issuing a single opinion. Plaintiff E. A.,¹ a former seventeen-year Lacey Township (Township) police officer, appeals from an August 6, 2021 final agency decision of the Civil Service Commission (CSC), upholding the Township's removal of his name from its 2020 regular reemployment police officer eligibility list based on an unsatisfactory background report that contained a Final Restraining Order (FRO). E.A. also appeals from a November 8, 2021 Law Division order granting defendants' Township and the Ocean County Prosecutor's Office (Prosecutor's Office) motion to dismiss E.A.'s complaint based on the lack of subject matter jurisdiction. We affirm.

I.

A. Civil Service Commission Action

On October 13, 2017, police were called to E.A.'s home regarding a domestic violence incident with his then-wife. After the incident, E.A. and his wife obtained mutual temporary restraining orders (TROs). Following a hearing on November 14, 2017, the trial judge found E.A.'s wife more credible.

¹ We use initials to protect the parties' privacy. R. 1:38–3(d)(9) to (10).

The judge found that E.A.'s displeasure with an impending divorce "escalated to the point [where he] made physical contact with [his wife]." The judge stated "[t]he way you treated her was intended to create a reaction on her part, you just can't do that." The judge discredited E.A.'s recollection of the incident and found his testimony was "inconsistent" with "parts of [his] story just [not making] sense." The trial judge concluded E.A. committed the "predicate act[s] of harassment and assault." The judge granted E.A.'s wife a FRO which barred E.A. from possessing all firearms, weapons, or ammunition. The judge also dismissed E.A.'s TRO against his wife.

As a result of the FRO, the Lacey Township Police Department (Department) conducted an internal affairs investigation. E.A. was served with a preliminary notice of disciplinary action (PNDA) that charged him with N.J.A.C. 4A:2-2.3(3), inability to perform duties, due to the FRO.

A disciplinary hearing was held, which resulted in E.A.'s termination. E.A. was served with a Final Notice Disciplinary Action (FNDA) based on the sustained charge. E.A.'s appeal of the disciplinary action to the CSC was transferred to the Office of Administrative Law (OAL) as a contested dispute.

On February 25, 2019, E.A. and the Township resolved their dispute which was memorialized in a settlement agreement (Agreement). The Agreement provided in relevant part:

[E.A.] shall resign his position as [p]olice [o]fficer with the Township ... immediately upon entry of this [s]tipulation. Said resignation shall be in good standing and shall be reported as such to the [CSC] by the Township. . . . Upon said resignation the Township shall withdraw any and all pending disciplinary matters and file the appropriate notices with the [CSC]. If within one . . . year of the entry of this settlement, the FRO presently entered against . . . [E.A.] is dismissed or vacated[,] then the Township shall place . . . [E.A.] on special re[em]ployment list for rehire as a police officer for the first available position.²

On March 29, 2019, the ALJ approved the settlement and concluded the administrative proceedings. The CSC subsequently acknowledged the settlement and issued a final administrative determination which reserved any further review of the Agreement to be pursued in a judicial forum.

On February 20, 2020, the FRO was dismissed. E.A. notified the Township of the dismissal and his "interest in the police officer position."

² Although the Agreement used the term special reemployment list, the appropriate term is regular reemployment list.

In accordance with the Agreement, E.A.'s name appeared on the November 17, 2020 reemployment list for the position of police officer. Several months later, the Prosecutor's Office notified the Township that it "did not consider it appropriate to rehire E.A. pursuant to the Brady-Giglio policy."³ The Prosecutor's office advised E.A. should not be rehired as a police officer under the Brady-Giglio guidelines because the "circumstances of [the FRO] and its disposition would have to be shared with the [c]ourt and [d]efense counsel in any matter [in which E.A.] would be required to testify." The Prosecutor's Office believed E.A. would likely "compromise the prosecution of any case in which he was involved."

Following an updated background investigation on E.A.'s potential reappointment as a police officer, the Township requested his removal from the regular reemployment eligibility list. E.A. sought an explanation from the Township regarding his removal. In response, the Township's chief of police

³ The Brady-Giglio policy is based on Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United States, 405 U.S. 150 (1972). The Brady-Giglio guidelines were issued as county policies pursuant to the Attorney General's Law Enforcement Directive No. 2019-6, which requires prosecutors to provide criminal defendants with exculpatory evidence as well as material evidence that would bear upon the credibility of prosecution witnesses. This policy does not specifically apply to civil service rules and regulations.

cited to the FRO and the Prosecutor's Office concern regarding Brady-Giglio issues as the reason for the non-recommendation.

E.A. appealed the Township's decision to the CSC, asserting the Township failed to comply with the terms of the Agreement which provided for the placement of his name on the reemployment list. He further argued the Township's reference to the background investigation as a basis for his removal from the reemployment list was not a condition listed in the Agreement.

In a comprehensive final administrative decision issued on August 6, 2021, the CSC upheld the Township's determination. The CSC found E.A. failed to prove by a preponderance of the evidence the Township erred in removing E.A. from the list. Citing N.J.A.C. 4A:4-4.7(a)(11) and N.J.A.C. 4A:4-6.1(a), the CSC noted the Township, as the appointing authority, was "authorized to conduct background investigations in order to assist [it] during the hiring process to determine [E.A.'s] suitability for employment." The CSC explained that the FRO and the requirements of the Brady-Giglio guidelines affected "[E.A.'s] ability to fully discharge his duties as a [p]olice [o]fficer should he be rehired." The CSC further explained:

As such, this impediment is certainly a sufficient reason for removal from an employment list. Moreover, the [Township], absent an explicit statement in the settlement to the contrary, was not foreclosed from

using valid reasons uncovered during an updated background check to not appoint [E.A.] from the regular reemployment list, as appointment from that list is wholly at the discretion of the [Township] and would not otherwise be subject to review by the C[SC].

Although the CSC considered the Brady-Giglio guidelines in removing E.A. from the list, the CSC removed E.A.'s name in accordance with the civil service rules and regulations. The CSC determined the Agreement did not mandate reemployment; rather, it contained contingencies which had to be satisfied prior to rehiring and terms that required compliance under the civil service rules. Accordingly, the CSC concluded there was sufficient basis to remove E.A. from the reemployment eligibility list.

B. Law Division Action

On September 20, 2021, E.A. filed a verified complaint to compel: the Prosecutor's Office to remove E.A. from the Brady-Giglio list and rescind the letter to the Township; and specific performance on the Agreement to place him on the reemployment eligibility list. E.A. also moved to convert the matter to a summary action pursuant to Rule 4:67-1. The Township, joined by the Prosecutor's Office, opposed the motion.

Following oral argument on November 8, 2021, based on the parties' submissions, the trial court denied E.A.'s motion for lack of jurisdiction. The

judge further found "there [was] no separate independent action to analyze the Prosecutor's determin[ation] well after the [forty-five]-day time [had] expired." Accordingly, the judge dismissed E.A.'s complaint for lack of jurisdiction.

II.

On appeal, E.A. presents the following points for our consideration: removal from the reemployment eligibility list was arbitrary, capricious, and unreasonable; and the removal violated the terms of the Agreement.

E.A. also contends the trial court erred in dismissing his complaint because the matter did not constitute an appeal from a final agency decision. He further contends his action against the Prosecutor's Office was not subject to the forty-five-day statute of limitations and, because it was an action in lieu of a prerogative writ under Rule 4:69-1, the verified complaint was timely filed and properly venued. We reject E.A.'s contentions.

"Judicial review of agency determinations is limited." Allstars Auto Grp, Inc. v. N.J. Motor Vehicle Comm'n, 234 N.J. 150, 157 (2018). An agency decision will be upheld "unless there is a clear showing that (1) the agency did not follow the law; (2) the decision was arbitrary, capricious, or unreasonable; or (3) the decision was not supported by substantial evidence." In re Virtua-

West Jersey Hosp. Voorhees for a Certificate of Need, 194 N.J. 413, 422 (2008); see also In re Stallworth, 208 N.J. 182, 194 (2011).

A reviewing court "affords a 'strong presumption of reasonableness' to an administrative agency's exercise of its statutorily delegated responsibilities." Lavezzi v. State, 219 N.J. 163, 171 (2014) (quoting City of Newark v. Nat. Res. Council, Dep't of Env't Prot., 82 N.J. 530, 539 (1980)). That presumption is particularly strong when an agency is dealing with specialized matters within its area of expertise. City of Newark, 82 N.J. at 540. We therefore defer to "[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility." Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (alteration in original) (App. Div. 2001). We do not substitute our judgment for that of the agency and, if there is credible and competent evidence in the record sufficient to support the agency action, it must be affirmed. Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 587 (1988); see also Stallworth, 208 N.J. at 194-95.

"The burden of demonstrating that the agency's action was arbitrary, capricious or unreasonable rests upon the person challenging the administrative action." In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006). "However,

we are not bound by the agency's interpretation of a statute or resolution of a question of law." In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001).

Placement on a civil service eligibility list does not grant the applicant the right to be employed. In re Foglio, 207 N.J. 38, 44 (2011) (citing In re Crowley, 193 N.J. Super. 197, 210 (App. Div. 1984)). "[T]he best that can be said' of a candidate on an eligible list is that [the candidate] has 'a right to be considered for appointment.'" Id. at 44-45 (first alteration in original) (quoting Nunan v. N.J. Dep't of Pers., 244 N.J. Super. 494, 497 (App. Div. 1990)). Pursuant to its regulations, the CSC is authorized to remove an individual from an eligibility list for various reasons. See N.J.A.C. 4A:4-4.7(a).

Here, the CSC determined E.A. was not entitled to an appointment. The results of the updated background check revealed that he was not suitable for reemployment based on the FRO related to Brady-Giglio guidelines. As noted by the CSC, "this [FRO] impediment [was] certainly a sufficient reason for removal from an employment list."

E.A. rehashes the arguments raised before the CSC on this appeal. He claims the CSC's decision was arbitrary, capricious, unreasonable, and unsupported by the evidence. He further asserts the Township's request for removal was based on the credibility determination by the trial judge at the FRO

trial which does not fall within the Brady-Giglio guidelines since the judge did not determine E.A. was "lying" or "deceitful" in his decision.

We are not persuaded by E.A.'s arguments. Applying the applicable legal standards in view of the record and the contentions raised on appeal, we are satisfied the CSC's final decision is supported by sufficient credible evidence on the record as a whole. We determine the CSC's ultimate decision was not arbitrary, capricious, or unreasonable and we find no basis to reverse the agency's decision Stallworth, 208 N.J. at 194. E.A. has not met his burden, and the CSC's decision is supported by sufficient credible evidence in the record.

We next address E.A.'s contention the trial court erred by determining it lacked jurisdiction to decide the claims in his complaint. Because the court's decision constitutes a legal determination, we review it de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995); Landers v. Landers, 444 N.J. Super. 315, 319 (App. Div. 2016).

We are not persuaded by E.A.'s contention that his verified complaint did not constitute an appeal of the CSC final agency decision. The crux of E.A.'s complaint is the challenge to the removal of his name from the reemployment eligibility list based on the Prosecutor's recommendation. Therefore, the Law Division correctly concluded it did not have jurisdiction to consider E.A.'s

claims in his verified complaint. Any appeal from the CSC determination lay in this court, not the Law Division.

To the extent we have not addressed a particular contention, it is because either our disposition makes it unnecessary, or the contention was without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION