SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0329-21

ROBIN SCHEFFLER,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES OF THE SUSSEX COUNTY CHARTER SCHOOL FOR TECHNOLOGY, SUSSEX COUNTY,

Respondent-Respondent.

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Argued November 29, 2022 – Decided April 11, 2023

Before Judges Sumners and Geiger.

On appeal from the New Jersey Commissioner of Education, Docket No. 200-9/20.

Gail Oxfeld Kanef argued the cause for appellant (Oxfeld Cohen, PC, attorneys; Gail Oxfeld Kanef, of counsel; R. Leigh Adelman, on the briefs).

Margaret A. Miller argued the cause for respondent Board of Trustees of the Sussex County Charter School for Technology (Weiner Law Group LLP, attorneys;

Margaret A. Miller, of counsel; Victoria W. Donath, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent Commissioner of Education (Hasibul Haque, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

On May 12, 2020, Robin Scheffler, a teacher employed by Sussex County Charter School for Technology (Charter School) for five consecutive years, received written notice that her employment contract would not be renewed for the 2020-2021 school year. Scheffler filed a petition of appeal with the Commissioner of Education on September 11, 2020, claiming that her tenure rights were violated. She contended that despite the non-renewal of her contract, she was entitled to her Charter School teaching position because, pursuant to N.J.A.C. 6A:11-6.2(a), she earned tenure by working five full, consecutive years by June 16, 2020, the conclusion of the 2019-2020 school year.

The matter was transmitted to the Office of Administrative Law as a contested case. The parties filed cross-motions for summary decision. Citing Nissman v. Bd. of Educ. of Twp. of Long Beach Island, 272 N.J. Super. 373 (App. Div. 1994), the Administrative Law Judge (ALJ) recommended summary decision be granted to the Charter School, dismissing Scheffler's petition as

untimely because it was not filed within ninety days of when she received her notice of non-renewal on May 12, 2020, as required by N.J.A.C. 6:24:1.2(c) (now N.J.A.C. 6A:3-1.3(i)).[1] The ALJ determined Scheffler failed to file her petition by August 10, 2020, the ninetieth day after receipt of her non-renewal notice in accordance with N.J.A.C. 6A:3-1.3(i).[2] The ALJ dismissed Scheffler's contention that the ninety-day period to file her petition started on June 16, 2020—the date she argued she earned tenure under N.J.A.C. 6A:11-6.2(a) by completing her fifth full consecutive year of employment. The ALJ added that Scheffler did not exercise her right to appear before the Charter School to contend she earned tenure under N.J.A.C. 6A:11-6.2(a) because she was not terminated before the school year concluded on June 16, 2020. The ALJ did not

[1] The Charter School was required to provide a written notice of non-renewal by May 15 of each year to non-tenured teaching staff. N.J.S.A. 18A:27-10.

[2] N.J.A.C. 6A:3-1.3(i) provides:

> The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling, or other action by the district board of education, individual party, or agency, that is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation, or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

rule on the merits of Scheffler's contention that she was entitled to continued employment because she earned tenure on June 16, 2020.

The Commissioner concurred with the ALJ's reasoning. Applying Nissman, which she considered controlling, the Commissioner ruled, "it is clear that [Scheffler] was required to file her petition on or before August 10, 2020, [ninety] days after she received notice of her non-renewal."

Before us, Scheffler challenges the Commissioner's determination that her petition of appeal was untimely filed. She argues that under N.J.A.C. 6A:11-6.2(a), her tenure rights did not arise until she earned tenure on June 16, 2020, when she completed her fifth full year of consecutive employment and when her claim against the Charter School became ripe. She maintained her petition of appeal filed on September 11, 2020, eighty-eight days after June 16, 2020, was timely under N.J.A.C. 6A:3-1.3(i). We disagree and affirm the Commissioner's summary decision based on our binding ruling in Nissman.

In reviewing a final administrative-agency action, we generally apply a deferential standard. In re State & Sch. Emps.' Health Benefits Comm'n's Implementation of Yucht, 233 N.J. 267, 279 (2018). We only reverse where the agency acted arbitrarily, capriciously, or unreasonably, and when the agency's

decision is based on an incorrect application of "the relevant law to the facts." Id. at 279-80.

We review de novo an agency's legal determination. In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 17(2020); Headen v. Jersey City Bd. of Educ., 212 N.J. 437, 450-51 (2012) (holding that in interpreting regulations, we look to the same rules of construction that apply to our interpretation of statutes). Thus, we will reverse an agency's determination only if it is "plainly unreasonable and violates express or implied legislative direction[,]" that is, if it "gives 'a statute any greater effect than is permitted by the statutory language[,] . . . alter[s] the terms of a legislative enactment[,] . . . frustrate[s] the policy embodied in the statute . . . [or] is plainly at odds with the statute." Patel v. N.J. Motor Vehicle Comm'n, 200 N.J. 413, 420 (2009) (quoting T.H. v. Div. of Developmental Disabilities, 189 N.J. 478, 491 (2007)).

Administrative agencies' summary decisions are reviewed "in accordance with the principles set forth . . . in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)[.]" Nat'l Transfer, Inc. v. N.J. Dep't of Envtl. Prot., 347 N.J. Super. 401, 408 (App. Div. 2002). Summary judgment is appropriate when "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." R. 4:46-2(c); Brill, 142 N.J. at 528-29.

There is nothing arbitrary, capricious, or unreasonable about the Commissioner's summary decision dismissing Scheffler's petition of appeal. Scheffler presents no persuasive legal argument that we should depart from the Commissioner's reliance on Nissman to dismiss her petition.

In Nissman, the petitioner claimed tenure in an elementary school principal position upon three consecutive years of service under N.J.S.A. 18A:28-5. 272 N.J. Super. at 375. She received written notice on or about April 27, 1990, that her elementary school principal contract would not be renewed for a fourth year. Id. at 375. Because petitioner worked until August 31, 1990—the end of her third contract year—she claimed she had earned tenure and was entitled to continued employment in her position. Id. at 377-78. When the board of education rebuffed her claim, petitioner filed a petition of appeal on September 21, 1990, some 147 days after she was notified her contract was not renewed for the following school year. Id. at 376.

We agreed with the State Board of Education's reasoning that the petition was untimely under N.J.A.C. 6:24:1.2(c), because it was filed "later than the 90th day from the date of receipt of the notice of a final order, ruling or other

action by the District Board of Education, . . . which is the subject of the requested contested case hearing." See id. at 379, 382. Petitioner had ninety days upon receipt of the notice of her contract non-renewal on or about April 27, 1990, that being July 23, 1990, to challenge the non-renewal but failed to do so. Id. at 381.

We rejected petitioner's argument that the triggering date for the ninety-day tolling period was August 31, 1990, the date board's counsel sent a telefax response to petitioner's counsel, stating she did not have tenure by working until August 31, 1990, her third consecutive year, because the board acted on April 23, 1990, to non-renew her contract. Id. at 375, 380-81. We made clear that, with respect to the ninety-day rule, notification of non-renewal is a "notice of a final order" under N.J.A.C. 6:24:1.2(c). Id. at 380-81.

We determined the test is whether the employee "knew or should have known that she was not going to be offered a new contract for the following academic year." Id. at 379. We thus reasoned:

> As pointed out by the State Board in its decision, the last date on which petitioner could have filed her claim challenging the April 23, 1990 resolution was July 23, 1990. Although petitioner had not yet completed three years of service by that time, she nonetheless could have presented the same substantive argument then as she did on September 21, 1990 when she filed the current petition. That is to say, [petitioner] could have

> argued that she was required by contract, and by the Local Board's resolution, to serve three complete years as principal. As such, she could argue that such service would entitle her to tenure by reason of N.J.S.A. 18A:28-5, and nothing the Local Board could do would interfere with the vesting of those rights.
>
> [Id. at 381.]

Moreover, we explained:

> Petitioner may have elected not to file a petition prior to August 31, 1990 for tactical reasons. However, the Local Board was entitled to know within 90 days of its action whether its interpretation of the inter-relationship of N.J.S.A. 18A:27-10, N.J.S.A. 18A:27-9 and N.J.S.A. 18A:28-5 was going to be challenged. If a challenge was timely made, the Local Board could have decided whether it was within its financial best interest to terminate petitioner one day before the completion of her third year of service and pay damages for the remaining day, as petitioner concedes could have been done, or maintain the position it took in its April 23rd resolution. Petitioner's actions in this case deprived the Local Board of making a relevant decision affecting efficient administration and sound financial planning, and deprived the Local Board of the "security" that the 90-day rule of limitations and N.J.S.A. 18A:27-10 was designed to effect.
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> [Id. at 382.]

Nissman remains controlling law, and we discern no reason to upset it as Scheffler contends. See Bisbing v. Bisbing, 230 N.J. 309, 328 (2017) (recognizing our courts "'do not lightly alter one of [its] rulings' because

consistent jurisprudence 'provides stability and certainty to the law'" (quoting Pinto v. Spectrum Chems. & Lab. Prods., 200 N.J. 580, 598 (2010))); State v. Shannon, 210 N.J. 225, 226-27 (2012) (citation omitted) (ruling stare decisis is a principle which courts adhere to for certainty and stability that should only change when re-evaluation is warranted). The petitioner's failure in Nissman to file her petition of appeal within ninety days of notification her contract was not being renewed is identical to Scheffler's situation.

Scheffler was aware her contract was not being renewed on May 12, 2020, yet she did not seek to challenge the decision within ninety days. Her claim was ripe then. See In re Firemen's Ass'n Oblig., 230 N.J. 258, 275 (2017) (citing N.J. Turnpike Auth. v. Parsons, 3 N.J. 235, 241 (1949)) (holding a claim is "ripe . . . when there is an actual controversy, meaning the facts present 'concrete contested issues conclusively affecting' the parties' adverse interests."). The alleged controversial act of non-renewal was not on June 16, 2020, the date she claimed to have earned tenure under N.J.A.C. 6A:11-6.2(a). Scheffler did not file her petition of appeal with the Commissioner until September 11, 2020, which was 122 days after she received notice on May 12, 2020 that she would not be employed for a sixth full year of consecutive employment. Because her petition was untimely filed, we do not determine whether her tenure rights were

violated because it would be an advisory opinion. See G.H. v. Twp. of Galloway, 199 N.J. 135, 136 (2009) ("We cannot answer abstract questions or give advisory opinions.").

To the extent we have not addressed any arguments raised by Scheffler, they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.