SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2005-20

DANIEL DEL VALLE,

Plaintiff-Appellant,

v.

COUNTY OF PASSAIC
and PASSAIC COUNTY
SHERIFF'S DEPARTMENT,

Defendants-Respondents,

and

NEW JERSEY POLICE
TRAINING COMMISSION,

Defendants.

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Argued November 29, 2022 – Decided February 17, 2023

Before Judges Sumners and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-3822-18.

Michael P. DeRose argued the cause for appellant (Crivelli, Barbati & DeRose, LLC, attorneys; Michael P. DeRose, on the brief).

Jack M. Middough argued the cause for respondents (Hoagland, Longo, Moran, Dunst & Doukas, LLP, attorneys; Jack M. Middough, of counsel and on the brief).

PER CURIAM

Plaintiff, employed as a corrections officer with defendants Passaic County Sheriff's Department and the County of Passaic, was granted three consecutive, separate leaves of absence from August 8, 2013 through October 31, 2013. The first two leaves were to care for his wife who was recovering from a back injury, and the third leave was due to his own back injury.[1]

After the last leave of absence expired, plaintiff did not return to work. While his application was pending, defendants formally deemed that plaintiff resigned his employment effective November 1, 2013. Defendants took this action because, under the personnel policy of defendant Passaic County, "if [an] employee fails to return within five . . . business days after the expiration of the leave, the employee shall be considered to have resigned." Plaintiff acknowledged this policy in writing when he submitted his leave requests.

[1] Unlike his first two leaves of absence, plaintiff's last leave was unpaid because he had exhausted his earned sick and vacation days.

Seven days before plaintiff was scheduled to return to work following his last leave, he applied for ordinary disability retirement, claiming he was permanently disabled due to his back injury. Despite plaintiff being deemed resigned from employment, he continued to receive health insurance benefits pursuant to defendant's policy that he remain covered until his ordinary disability retirement application was granted or denied.

Over two-and-a-half years later, in June 2016, the Police and Firemen's Retirement System (PFRS) denied plaintiff's ordinary disability retirement application on the basis that he was not permanently disabled but recognized he qualified for a deferred retirement given his years of service. We affirmed that decision, Del Valle v. Bd. of Trs., Police & Firemen's Ret. Sys., A-4852-15, (App. Div. Dec. 13, 2017), and the Supreme Court denied certification, Delvalle v. Bd. of Trs., 232 N.J. 496 (2018).

On February 27, 2018, plaintiff advised the Sheriff's Department that he wanted to return to employment. That same day, defendants discontinued plaintiff's health insurance, which had erroneously remained active after this court affirmed the PFRS's denial of his ordinary disability retirement application over two months earlier.

On August 13, 2018, the New Jersey State Police Training Commission (PTC) denied defendant's request to waive the requirement that plaintiff reattend the training academy prior to his reemployment. The PTC rejected the request because plaintiff "separated from the Passaic County Sheriff's Department on November 1, 2013, placing him outside of the statutorily required [three]-year waiver eligibility."

Plaintiff asked defendants to appeal the PTC's determination. However, in a September 24, 2018 letter, defendants advised plaintiff they would not appeal because they saw "no basis" for doing so.

Defendants later refused plaintiff's October 11, 2018 request to inform the PTC that "at the very least" he was employed as a corrections officer as of March 2018. Defendants declined, writing to plaintiff on October 18, 2018, that his:

> application for a disability pension was considered a resignation from the Passaic County Sheriff's Department and that there was no leave of absence requested nor given during the period his application was pending. Therefore, the Sheriff will not confirm that [plaintiff] remained an employee of the Passaic County Sheriff's Department after the filing of his disability pension.

Plaintiff, without defendants' participation, appealed the PTC's determination denying his waiver to attend the training academy for

reemployment as a corrections officer. On October 31, 2018, the PTC advised him the appeal was denied on the basis that only defendants, the appointing agencies, could appeal the waiver denial.

Seeking relief in the Law Division, plaintiff, on November 20, 2018, filed an action in lieu of prerogative writ to compel defendants to declare he was an employee "at the very least, as of March 2018," and to appeal the PTC's determination that he was ineligible for the training waiver because he had not been an employed since November 1, 2013. The complaint was subsequently dismissed when the trial judge granted defendants' summary judgment.

Plaintiff appeals, arguing summary judgment was not appropriate because there were genuine disputes of material fact about whether defendants made arbitrary, capricious, or unreasonable decisions not to appeal the PTC's decision and to refuse to certify he was employed within the three-year window necessary to waive the requirement that he reattend the training academy to be reemployed. He also argues the trial judge erred in dismissing his action as being untimely filed. We are unpersuaded.

Based upon our de novo review of the judge's grant of summary judgment, Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021), the judge correctly applied the statute of limitations governing actions in lieu of prerogative writ.

Rule 4:69-6(a), in pertinent part, states, "[n]o action in lieu of prerogative writs shall be commenced later than 45 days after the accrual of the right to the review, hearing or relief claimed."

When plaintiff applied for his leaves of absence, he was well-aware that failing to return to work after an approved leave expired would be a de facto resignation. The clear terms of his leaves of absence contradict his assertion that "he believed that he was not formally 'retired,'" while he continued to receive health insurance benefits. Therefore, the forty-five-day period to file an action in lieu of prerogative writ commenced on November 1, 2013, when plaintiff failed to show up at work after his leave of absence expired, resulting in his resignation. By not filing a prerogative writ action within forty-five days by December 16, 2013, the action plaintiff filed on November 20, 2018 was significantly untimely. Yet, even if we consider September 24, 2018—when defendants informed plaintiff they were not appealing the PTC decision—as the tolling date, he should have sought injunctive relief forty-five days no later than November 8, 2018. Since plaintiff waited until November 20, 2018 to file his suit, he was still out-of-time.

Plaintiff's alternative contention that he was entitled to additional time to file his prerogative action is unwarranted. Under Rule 4:69-6(c), "the court may

enlarge the period of time provided in paragraph (a) . . . where it is manifest that the interest of justice so requires." Plaintiff has shown no reason that his tardy decision to seek judicial relief warrants a relaxation of the forty-five-day limitation period. Our Supreme Court has identified three categories that qualify for an enlargement of time under Rule 4:69-6(c): "(1) important and novel constitutional questions; (2) informal or ex parte determinations of legal questions by administrative officials; and (3) important public rather than private interests which require adjudication or clarification." Borough of Princeton v. Bd. of Chosen Freeholders of Mercer Cty., 169 N.J. 135, 152 (1975) (quoting Brunetti v. Borough of New Milford, 68 N.J. 576, 586 (1975)). Because plaintiff's prerogative writ action did not address any of these categories, an extension of time to file was not in the interest of justice.

Putting aside the untimely filing of plaintiff's action in lieu of prerogative writ, we would still not upset the summary judgment order. There are no factual disputes and, in viewing the facts in the light most favorable to plaintiff, the action fails for substantive reasons. See Rozenblit v. Lyles, 245 N.J. 105, 121 (2021).

The judge did not err in finding plaintiff's employment "unequivocally" ended when did not return from his leave of absence and had filed for ordinary

disability retirement benefits. The judge correctly found plaintiff's failure to return from his last leave of absence constituted his resignation in accordance with defendants' policy. Plaintiff did not contest defendants' action. The PFRS Board only reviews a retirement application "after a member has terminated service to determine whether the member's application is eligible for processing." N.J.A.C. 17:1-6.4(c). The judge stressed plaintiff's application for ordinary disability retirement did not nullify defendants' policy deeming him resigned for not returning from a leave of absence because otherwise an employee would be able to "take a three[-] or four[-]year hiatus from work and then com[e] back when their other process or their application for disability benefits proved unsuccessful . . . ." While the continuation of plaintiff's health insurance coverage until shortly after we affirmed the denial of his disability retirement application was a significant benefit to him, we see no reason why it qualifies as defendants' determination that he remained an employee, given he was already retired.

In sum, there was nothing arbitrary, capricious, or unreasonable about defendants' decisions to refuse to appeal the PTC's waiver denial and to certify plaintiff was employed after November 1, 2013, for him to qualify for a waiver to reattend the training academy to be reemployed.

To the extent we have not expressly or impliedly addressed any of arguments posed in this appeal it is because we find them to have insufficient 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