SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2054-19

LENORA CODY,

Plaintiff-Appellant,

v.

FEDERAL EXPRESS CORPORATION, trading as FEDEX EXPRESS, SCOTT MCSORLEY, BOLIVAR VALERA, EILEEN KELLY, KEVIN JONES, DAVE SAVIN, VINCE THOMPSON, and HECTOR NEGRON,

Defendants-Respondents.

Submitted October 31, 2022 – Decided June 5, 2023

Before Judges Whipple, Smith, and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Essex County, Docket No. L-6829-17.

Eldridge Hawkins LLC, attorney for appellant (Eldridge Hawkins, on the brief).

Federal Express Corporation, attorneys for respondents
(Joseph B. Reafsnyder, on the brief).

PER CURIAM

Plaintiff Leanora Cody appeals from the trial court's December 6, 2019[1] order denying plaintiff's motion for reconsideration. Plaintiff further appeals various other orders entered during the litigation. Following our review of the record and applicable legal principles, we affirm.

I.

We derive the following facts from the record. Plaintiff was hired by defendant Federal Express Corporation t/a FedEx Express (FedEx) in April 2007 as a part-time ramp material handler. Plaintiff executed an employment agreement indicating her employment was for an indefinite duration and that it could be "terminated with or without cause" at any time at the option of either party. In November 2015, plaintiff became a full-time material handler at defendant's Newark Regional Hub. She remained in that position until she was fired in April 2017.

[1] Plaintiff and defendant refer to the December 6, 2019 order as being filed December 10, 2019. However, the order was actually filed on December 6, 2019. Similarly, both parties mistakenly refer to the November 8, 2019 summary judgment orders as being filed on November 12, 2019.

Between the months of October and January, FedEx experiences its highest package volume—"peak season"—which often requires operational employees to work overtime to handle the increased workload. After peak season, the operational employees, such as plaintiff, return to their regular shifts. During the 2015 peak season, plaintiff contends she complained about an alleged Federal Aviation Administration (FAA) violation to senior manager Scott McSorley. Specifically, she alleged a heavyweight pallet was loaded onto an aircraft without a close-out slip. McSorley, however, denied this. Instead, he testified that on December 31, 2015, he observed plaintiff engaging in a verbal disagreement with another employee, wherein plaintiff complained he had loaded the wrong freight onto an aircraft. McSorley intervened in the dispute to calm plaintiff down and instructed her to speak to co-workers in a professional manner. No formal disciplinary action was taken for the incident.

Plaintiff's direct manager in 2015 and early 2016 was Bolivar Valera. He was responsible for scheduling and adjusting the work hours of the employees reporting to him. Following the 2015 peak season, plaintiff was required to again increase her hours because an additional flight was added to Valera's operation, requiring staffing adjustments. In short, plaintiff's hours were increased after the alleged complaint about the FAA violation in December

2015. Plaintiff consistently worked in excess of thirty-five hours a week between November 2015 and her termination in April 2017. In August 2016, plaintiff submitted an anonymous "work petition" complaining of poor working conditions, pay issues, and reduced hours at the Newark hub. Importantly, neither Valera nor McSorley were aware plaintiff submitted the petition until the filing of the lawsuit.

In April 2016, plaintiff began reporting to manager Shanne Harry, who remained her manager and direct supervisor for the remainder of her employment. On February 1, 2017, Harry issued plaintiff a warning letter following an investigation that revealed she operated her tug (a piece of ground equipment used to maneuver freight) above the five-mile-per-hour speed limit near an aircraft and left the tug's engine running, violating the company's safety policies. On April 5, 2017, plaintiff received a second warning letter when she was found sleeping in a tug with the engine running while she was off duty. On April 19, 2017, plaintiff received another warning letter for insubordination. Plaintiff was subsequently terminated as a result of receiving three warning letters in a twelve-month period.

Plaintiff filed a complaint on September 22, 2017, against FedEx and individual defendants McSorley, Valera, Eileen Kelly, Kevin Jones, Dave Savin,

Vince Thompson, and Hector Negron (individual defendants).[2] On February 10, 2018, the court issued a notice advising plaintiff the case would be dismissed against the individual defendants within sixty days pursuant to Rule 1:13-7 because plaintiff had failed to properly serve them. Plaintiff filed a motion to reinstate the claim against the individual defendants in September 2018, but the trial court denied same, noting plaintiff provided "no evidence of service on the individual defendants." On May 22, 2019, plaintiff filed a motion to recuse the trial judge from presiding in this case or any other case brought by plaintiff's counsel. The court denied the motion.

On September 13, 2019, the trial court entered orders granting defendant's request to compel discovery and denying plaintiff's request to compel discovery.[3] On November 8, 2019, the court granted defendant's motion for summary judgment and denied plaintiff's cross-motion for summary judgment.

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[2] Plaintiff asserted various claims including breach of implied covenant of good faith and fair dealing; intentional interference with economic advantage; civil conspiracy; false light; and civil rights claims alleging deprivation of free speech and property.

[3] Although plaintiff's counsel contends he produced the documents the day before the court ruled, the court nevertheless entered an order. However, plaintiff does not indicate how she was prejudiced by the order.

Plaintiff subsequently filed a motion for reconsideration on November 19, 2019, which the court denied on December 6, 2019. This appeal followed.

II.

Plaintiff raises the following points for our consideration:

> POINT I
>
> [THE JUDGE] AND PLAINTIFF'S COUNSEL HAVE BEEN AT WAR HISTORICALLY AND [THE JUDGE] DEMONSTRATED ACTIONS IN THIS MATTER [THAT] REQUIRE ALL OF HIS ORDERS FROM WHICH THIS APPEAL IS TAKEN TO BE VACATED AND REVERSED IN THE INTEREST OF JUSTICE.
>
> POINT II
>
> [THE JUDGE'S] BIASED RULING[S] ON DISCOVERY MOTIONS WERE WRONGFULLY ENTERED AND MUST BE VACATED AND REVERSED TO AVOID A MANIFEST DENIAL OF JUSTICE TO PLAINTIFF.
>
> POINT III
>
> [THE JUDGE'S] BIASED AND INTENTIONAL OVERLOOKING OF PLAINTIFF'S FILED REQUEST FOR DEFAULT AGAINST INDIVIDUAL DEFENDANTS AND THEREAFTER DISMISSAL OF THE INDIVIDUAL DEFENDANTS FOR LACK OF PROSECUTION IS A MANIFEST/DENIAL OF JUSTICE REQUIRING THIS COURT'S INTERVENTIONS AND CORRECTIONS.
>
> POINT IV

[THE JUDGE'S] ORDERS GRANTING DEFENDANT SUMMARY JUDGMENT, DENYING PLAINTIFF HER ENTITLEMENTS[,] AND DENYING RECONSIDERATION WERE AN INTENTIONAL DISREGARD OF [RULE] 1:7-4; [RULE] 4:46-1, 2[,] AND MUST BE VACATED AND REVERSED IN THE INTEREST OF JUSTICE TO AVOID A MANIFEST DENIAL OF JUSTICE.

POINT V

THE APPELLATE DIVISION'S, THE NEW JERSEY SUPREME COURT'S[,] AND THE CHIEF JUSTICE'S DUTY TO PROPERLY SUPERVISE AND PROTECT NEW JERSEY CITIZENS AND COUNSEL FROM A JUDGE'S INAPPROPRIATE AND DISPARATE BEHAVIOR REQUIRES THE SUPREME COURT'S DIRECT INTERVENTION FOR THESE VERY ABERRANT CIRCUMSTANCES.

POINT VI

THE JUDGE'S DENIAL OF APPELLANT'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDERS ENTERED AGAINST APPELLANT[] MUST BE REVERSED TO AVOID A MANIFEST INJUSTICE.

POINT VII

APPELLANT'S COUNSEL INDEED RAISED THE ISSUES DEFENDANT'S COUNSEL DENIED HAVING BEEN RAISED.

Plaintiff's brief is not a model of clarity and often focuses on counsel's prior disputes and litigation with our Supreme Court and "historical" battles with

the judiciary in Essex County, as opposed to the facts and relevant legal arguments in the instant matter. When counsel does address the trial court's decision, it is often without specific reference to the record. In short, the arguments at times are difficult to comprehend, frequently unrelated to the substantive issues on appeal, and often reference judges who were not involved in this case or are retired.[4]

Defendant counters we should dismiss plaintiff's appeal regarding the summary judgment orders, recusal order, and various discovery orders, contending the appeal was untimely.[5] Defendant does not challenge the timeliness of plaintiff's appeal of the order denying reconsideration. Defendant

[4] Plaintiff's brief is punctuated by hyperbole: Plaintiff's counsel complained of the "dastardly deeds" of the court; his ongoing "war" with the trial judge and how our Supreme Court has allowed certain Essex County judges to "terrorize" him; he referenced how he "went off" on a "diatribe" after receiving the worst the trial court had to offer; counsel noted how he was "brutally castrated" by the trial judge and other Essex judges in an "unabated blood, storm, carnage, slaughter, cyclone . . ."; counsel recounted his "battles" with the New Jersey justice system; and he stated the "very biased [j]udge . . . should be ashamed of himself and hopefully repents and sins no more." Based on our review of the current record and as discussed in this opinion, we discern no basis for counsel's statements. Although counsel is free to zealously advocate on behalf of his client, we do not countenance the vitriol in his papers.

[5] Defendant seeks reconsideration of our order dated June 18, 2020, where we previously denied defendant's motion to dismiss portions of plaintiff's appeal.

argues in the alternative there is no merit to plaintiff's substantive arguments on any of the issues.

III.

A.

We initially address the timing of plaintiff's appeal. On January 23, 2020, plaintiff filed a notice of appeal. Plaintiff challenges the orders entered on the following dates: February 10, 2018[6] (dismissal warning); February 22, 2018 (plaintiff's request to enter default); March 2, 2018 (deficiency notice pertaining to default requests); April 14, 2018 (lack of prosecution dismissal notice); October 12, 2018 (order denying plaintiff's motion to reinstate the individually-named defendants); May 20, 2019[7] (order denying defendant's motion for judgment on the pleadings); July 26, 2019 (order denying plaintiff's motion to recuse the trial judge); August 16, 2019 (order to extend discovery); September

[6] This is not an order, but a court-generated dismissal notice advising plaintiff the court will dismiss the individually named defendants for lack of prosecution if further action is not taken. Accordingly, we need not further address this notice.

[7] This order stems from a denial of defendant's motion to dismiss pursuant to Rule 4:6-2. This order was entered in plaintiff's favor, and it is not clear why it was listed on the notice of appeal. In any event, we also need not address this order.

13, 2019 (orders granting defendant's request to compel documents and denying plaintiff's motion to compel); November 8, 2019 (orders granting defendant's summary judgment and denying plaintiff's cross-motion for summary judgment); and December 6, 2019 (order denying plaintiff's motion for reconsideration).

We first consider whether plaintiff has filed a timely notice of appeal as to these orders. "[T]he timely filing of a notice of appeal is mandatory and jurisdictional . . . ." State v. Molina, 187 N.J. 531, 540-41 (2006). "[A]ppeals from final judgments of courts . . . shall be filed within [forty-five] days of their entry." R. 2:4-1(a). Here, although the time to file the appeal of the summary judgment orders was tolled for a period from plaintiff's filing of the motion for reconsideration until the court entered an order denying same,[8] plaintiff's appeal

[8] Certain days may not count toward the calculations of the appeal period if an order was the subject of a timely motion for reconsideration. The relevant portion of Rule 2:4-3 provides:

> The running of the time for taking an appeal . . . shall be tolled:
>
> . . . .
>
> (e) In civil actions on an appeal to the Appellate Division by the timely filing and service of a motion to the trial court . . . for rehearing or reconsideration

as to those orders was still untimely.[9] The appeal of the recusal, discovery, and reinstatement orders was also out of time. Lastly, the forty-five-day period to appeal the reconsideration order was January 21, 2020. Accordingly, plaintiff's appeal as to this order was also untimely.

However, we have the discretion to extend the time to file a notice of appeal.[10] Despite plaintiff's untimeliness, we previously exercised our

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> seeking to alter or amend the judgment or order pursuant to [Rule] 4:49-2. The remaining time shall again begin to run from the date of the entry of an order disposing of such a motion.

[9] The summary judgment orders were entered on November 8, 2019, and eleven days expired before the motion for reconsideration was filed on November 19, 2019. The appeal period was then tolled until December 6, 2019, when the motion was denied. At that point, the appeal clock started again, and plaintiff had thirty-four days to file an appeal. Plaintiff had until January 9, 2020 to file the appeal for the summary judgment. Plaintiff did not, however, file an appeal within the time remaining.

[10] Enlargement of time for appeal and review is governed by Rule 2:4-4. Rule 2:4-4 states in pertinent part:

> The time within which an appeal may be taken may not be extended except upon motion and in accordance with the following:
>
> (a) The appellate court, on a showing of good cause and the absence of prejudice, may extend the time fixed by [Rule] 2:4-1(a) . . . for a period not exceeding

discretion—in addressing defendant's motion to dismiss—to grant leave to appeal within time as to the interlocutory orders. We now do the same regarding the appeal from the dispositive reconsideration and summary judgment orders. We therefore address the merits of plaintiff's arguments on appeal.[11]

B.

We turn to the non-dispositive orders challenged by plaintiff. Plaintiff contends the trial judge improperly denied the recusal motion. Generally, recusal motions are "entrusted to the sound discretion of the judge and are subject to review for abuse of discretion." State v. McCabe, 201 N.J. 34, 45 (2010) (citing Panitch v. Panitch, 339 N.J. Super. 63, 66 (App. Div. 2001)). We review de novo whether the judge applied the proper legal standard. Ibid.

> [thirty] days, but only if the notice of appeal . . . was in fact served and filed within the time as extended.

[11] We consider plaintiff's notice of appeal as a motion for leave to file a notice of appeal out of time and grant that motion sua sponte under Rule 2:4-4(a). See Potomac Aviation, LLC v. Port Auth. of N.Y. & N.J., 413 N.J. Super. 212, 221-22 (App. Div. 2010) (extending the time for filing an appeal from a summary judgment order six days sua sponte under Rule 2:4-4(a) where the appeal from the denial of a reconsideration motion was timely, and the substantive issues presented and the judge's rulings and reasoning on both motions were the same); Seltzer v. Isaacson, 147 N.J. Super. 308, 311-12 (App. Div. 1977) (extending the notice of appeal deadline pursuant to Rule 2:4-4(a) sua sponte where the appeal was filed nine days late because appellant "could have" obtained such relief by a timely application and because "the issues have been fully briefed").

Judges must act in a way "that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Code of Jud. Conduct, r. 2.1; see also In re Reddin, 221 N.J. 221, 227 (2015).

To determine if an appearance of impropriety exists, we ask "[w]ould a reasonable, fully informed person have doubts about the judge's impartiality?" DeNike v. Cupo, 196 N.J. 502, 517 (2008); see also Code of Jud. Conduct, r. 2.1 cmt. 3. Judges must recuse themselves from "proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned," Code of Jud. Conduct, r. 3.17(B), or if "there is any other reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." R. 1:12-1(g).[12]

[12] Withdrawing from a case "upon a mere suggestion" of disqualification is improper. Panitch, 339 N.J. Super. at 66-67. A judge should not step aside from a case "unless the alleged cause of recusal is known by [them] to exist or is shown to be true in fact." Hundred E. Credit Corp. v. Eric Schuster Corp., 212 N.J. Super. 350, 358 (App. Div. 1986); see also Laird v. Tatum, 409 U.S. 824, 837 (1972) (holding a judge's "duty to sit where not disqualified ... is equally as strong as the duty to not sit where disqualified"); State v. Marshall, 148 N.J. 89, 276 (1997) ("[J]udges are not free to err on the side of caution; it is improper for a court to recuse itself unless the factual bases for its disqualification are shown by the movant to be true or are already known by the court."). To hold otherwise would create an incentive for disgruntled litigants to claim bias in order to remove a judge from a case who has ruled against them.

We agree the trial court properly denied plaintiff's motion for recusal. The theme of plaintiff's argument is that the trial judge has always ruled against plaintiff's counsel and his clients. First, plaintiff ignores that in this very case, the court denied defendant's motion to dismiss plaintiff's complaint on the pleadings and granted plaintiff's informal request to extend discovery. Moreover, even if the court had ruled against plaintiff in the past, that alone does not provide a basis for the court to recuse itself without something more. That a judge rendered decisions in a case that did not favor the party seeking recusal—even a decision we reversed on appeal—is insufficient grounds for recusal. Marshall, 148 N.J. at 276 (1997); Hundred E. Credit Corp., 212 N.J. Super. at 358; see Strahan v. Strahan, 402 N.J. Super. 298, 318 (App. Div. 2008) ("Bias cannot be inferred from adverse rulings against a party."). In short, we are unpersuaded by plaintiff's contentions the trial judge improperly denied the recusal motion.

With respect to plaintiff's contention the trial court improperly denied her motion to reinstate the claims against the individual defendants, plaintiff's counsel acknowledged he had not properly served the individual defendants shortly after his unsuccessful attempt to enter default against these defendants. We review the denial of a motion to reinstate a complaint dismissed for lack of

prosecution for abuse of discretion. Baskett v. Kwokleung Cheung, 422 N.J. Super. 377, 382 (App. Div. 2011). An abuse of discretion "arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. I.N.S., 779 F.2d 1260, 1265 (7th Cir. 1985)). Guided by that scope of review here, we are unpersuaded the motion judge abused his discretion in denying the motion for reinstatement as plaintiff never demonstrated she obtained proper service.

Plaintiff failed to provide any substantive argument related to the trial court's granting defendant's motion to extend discovery, nor did plaintiff indicate how it impacted the outcome of this litigation. Similarly, plaintiff has not articulated how the court erred in entering its September 13, 2019 orders granting defendant's motion to compel discovery and denying defendant's motion to compel discovery.

C.

We now direct our attention to plaintiff's challenge to the trial court's orders denying her motion for reconsideration, granting defendant's motion for summary judgment, and denying plaintiff's motion for summary judgment. "Motions for reconsideration are governed by Rule 4:49-2, which provides . . . the decision to grant or deny a motion for reconsideration rests within the sound discretion of the trial court." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015). "Reconsideration should be used only where '1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious . . . the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence.'" Ibid. (quoting Capital Fin. Co. of Delaware Valley v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008)). Therefore, an appellate court will not disturb a trial court's decision on a motion for reconsideration unless there is a clear abuse of discretion. Ibid.

In reviewing a summary judgment decision, we measure the motion court's findings and conclusions against the standards laid out in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). Great Atl. & Pac. Tea Co. v. Checchio, 335 N.J. Super. 495, 498 (App. Div. 2000). Those

standards are well-established: Summary judgment should be granted 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." Brill, 142 N.J. at 528-29 (quoting R. 4:46-2(c)). Issues of law are subject to the de novo standard of review, and the trial court's determination of such issues is accorded no deference. Kaye v. Rosefielde, 223 N.J. 218, 229 (2015).[13]

The trial court dismissed plaintiff's claim for a breach of an implied covenant of good faith and fair dealing, noting, "[i]n the absence of a contract, there can be no breach of an implied covenant of good faith and fair dealing."

[13] Notwithstanding our de novo standard of review, "our function as an appellate court is to review the decision of the trial court, not to decide the motion tabula rasa." Est. of Doerfler v. Fed. Ins. Co., 454 N.J. Super. 298, 302 (App. Div. 2018) (internal citation omitted). We have recognized "[t]he duty to find facts and state conclusions of law is explicit in [Rule] 1:7-4, iterated in connection with motions for summary judgment in [Rule] 4:46-2, and mandated where there is an appeal by [Rule] 2:5-1(b)." In re Will of Marinus, 201 N.J. Super. 329, 339 (App. Div. 1985); see also Pardo v. Dominguez, 382 N.J. Super. 489, 491-92 (App. Div. 2006) (reversing summary judgment, in part, due to the trial court's failure to provide reasons); Raspantini v. Arocho, 364 N.J. Super. 528, 534 (App. Div. 2003) (reversing orders granting summary judgment and denying reconsideration "to ensure that the parties and, in the event of a further appeal, the court may have the benefit of findings of fact and conclusions of law consistent with our analysis of the applicable rules.").

Noye v. Hoffmann-La Roche, Inc., 238 N.J. Super. 430, 434 (App. Div. 1990). We agree. Employment is presumed to be at-will, unless specifically stated in explicit, contractual terms. Witkowski v. Thomas J. Lipton, Inc., 136 N.J. 385, 397 (1994).

However, it is true that in certain situations, employee handbooks or manuals can form implied contracts. Id. at 392. In Woolley v. Hoffmann-La Roche, Inc., 99 N.J. 284, 285-86 (1985), which governs an implied contract issue, our Supreme Court held that an implied promise contained in an employment manual is enforceable against an employer absent a clear and prominent disclaimer. The Court directed that "when an employer . . . circulates a manual that, when fairly read, provides that certain benefits are an incident of the employment (including, especially, job security provisions), the judiciary . . . should construe them in accordance with the reasonable expectations of the employees." Id. at 297-98.

Here, we are satisfied this is not a case implicating Woolley. The employment agreement executed by plaintiff specified an indefinite term of employment which could be terminated at any time, with or without cause. The trial court found plaintiff was an at-will employee and could not maintain a

claim for breach of an implied covenant of good faith and fair dealing. The record supports this conclusion.

Turning to plaintiff's intentional interference with economic advantage claim, we note "[t]he elements of the cause of action are (1) a protected interest, not necessarily amounting to an enforceable contract; (2) defendant's intentional interference without justification; (3) a reasonable likelihood that the benefit plaintiff anticipated from the protected interest would have continued but for the interference; and (4) resulting damage." Jenkins v. Region Nine Hous. Corp., 306 N.J. Super. 258, 265 (App. Div. 1997). The court noted FedEx "had justification in terminating [p]laintiff, upending the claim. Not only is there evidence of [p]laintiff's issues at work [i.e. the disciplinary notices], but also, she was an at-will employee."

Plaintiff asserts the court should have considered whether the individually named defendants were liable under a theory of interference. We agree with plaintiff insofar as the tort of intentional interference with economic advantage does not apply to FedEx as the employer, because "a corporation is an artificial entity that lacks the ability to function except through the actions of its officers, directors, agents, and servants" and as such is an "entity distinct" from those individuals. Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 761

(1989). Therefore, corporate officers and employees may be charged individually under a participation theory with a tort committed by the corporate employer, but not for breach of contract by the corporation. Saltiel v. GSI Consultants, Inc., 170 N.J. 297, 303-05 (2002). Similarly, a corporation cannot be charged with tortious interference with its own contract. Printing Mart, 116 N.J. at 752; see also Cappiello v. Ragen Precision Indus., Inc., 192 N.J. Super. 523, 529 (App. Div. 1984) ("[I]nterference with one's own contract is merely a breach of that contract."). Accordingly, although we agree with the trial court that the claim should have been dismissed, we do so for a different reason:[14] Because the individual defendants were dismissed from the case, the court was not required to analyze the issue as to the claims initially asserted against them. In short, we perceive no basis for finding the trial court erred.

Next, plaintiff asserts civil rights claims alleging deprivation of her rights of free speech and property, and her right to assemble and collectively bargain. The trial court noted because plaintiff's employment was at-will, she had no deprivation of property claim. Biliski v. Red Clay Consol. Sch. Dist. Bd. of

[14] An order will be affirmed on appeal if it is correct, even if we do not adopt the specific reasoning of the trial judge. State v. McLaughlin, 205 N.J. 185, 195 (2011) (citing Isko v. Planning Bd. of the Twp. of Livingston, 51 N.J. 162, 175 (1968)).

Educ., 574 F.3d 214, 219 (3d. Cir. 2009) (holding an at-will employee had no property interest to trigger a due process claim). The court further determined the record is "devoid" of any evidence plaintiff's free speech or collective bargaining rights were deprived. Regarding plaintiff's contention she signed her name on a work petition, and made complaints regarding an FAA violation, the court noted there was no evidence indicating plaintiff's supervisors were aware of either issue. Moreover, the court stated the "record is void of a causal connection between the [FAA] complaint in 2015 and . . . [p]laintiff's termination in 2017." We are satisfied from our review of the record there is no basis to disturb these findings.

Additionally, plaintiff's civil rights claims fail because under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2, a private cause of action may only be pursued against persons acting under color of law. Plaintiff did not demonstrate FedEx or its employees acted under color of law at the time of the events forming the basis of plaintiff's complaint.

The court also dismissed plaintiff's false light claims, finding the statements FedEx made to the New Jersey Unemployment office were protected by a qualified privilege under Rogozinski v. Airstream By Angell, 152 N.J. Super. 133, 154 (Law Div. 1977), modified, 164 N.J. Super. 465 (App. Div.

1979). "Unlike [an] absolute privilege, which affords complete protection, [a] qualified privilege affords immunity only if there is no ill motive or malice in fact, and can be lost by abuse on the part of the defendant." Rogozinski, 152 N.J. Super. at 154 (citing Sokolay v. Edlin, 65 N.J. Super. 112, 124-25 (App. Div. 1961)). Once a qualified privilege is established, "the burden is on the plaintiff to prove . . . abuse by . . . improper purpose, or by lack of belief or grounds of belief in the truth of what is said." Ibid. (quoting Sokolay, 65 N.J. Super. at 124-25). Plaintiff does not assert an improper purpose or that FedEx lacked a belief its statements were truthful. Accordingly, we concur with the trial court's finding on this issue.

Lastly, the trial court properly dismissed the civil conspiracy claim. A civil conspiracy is "a combination of two or more persons acting in concert to commit an unlawful act . . . , the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another, and an overt act that results in damage." Banco Popular N. Am. v. Gandi, 184 N.J. 161, 177 (2005) (quoting Morgan v. Union Cnty. Bd. of Chosen Freeholders, 268 N.J. Super. 337, 364 (App. Div. 1993)). Civil conspiracy is not an independent cause of action, but rather a "liability expanding mechanism" which exists only if a plaintiff can prove the underlying "independent wrong." Farris v. Cnty. of

Camden, 61 F. Supp. 2d 307, 326 (D.N.J. 1999). "The gist of an action in civil conspiracy is not the conspiracy itself but the underlying wrong which, absent the conspiracy, would give a right of action." Malaker Corp. Stockholders Protective Comm. v. First Jersey Nat'l Bank, 163 N.J. Super. 463, 491 (App. Div. 1978) (citing Asbury Park Bd. of Educ. v. Hoek, 38 N.J. 213, 238 (1962)). For there to be a conspiracy there must be a "plurality of actors . . . and [a] concerted action." Exxon Corp. v. Wagner, 154 N.J. Super. 538, 545 (App. Div. 1977). Here, FedEx was the only actor and, therefore, there can be no civil conspiracy, and the court properly dismissed this claim.

We conclude the trial court did not abuse its discretion in denying plaintiff's motion for reconsideration and did not err in granting defendant's motion for summary judgment and in denying plaintiff's motion for summary judgment. To the extent we have not specifically addressed any remaining arguments raised by plaintiff, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.