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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2155-21**

AZUOWOH ROTIMI, also written
as ROTIMI AZU OWOH,

Plaintiff-Appellant,

v.

BROCK RUSSELL, in his individual
capacity and as the City's Solicitor,
BROCK D. RUSSELL, LLC,
CITY OF MILLVILLE,
JEANNE HITCHNER, Custodian of
Records, CITY OF MILLVILLE
POLICE DEPARTMENT,
JODY FARABELLA, Police Chief,
MICHAEL SANTIAGO,
Commissioner/Mayor, ASHLEIGH
UDALVOS, Commissioner,
JOSEPH PEPITONE, Commissioner,
BRUCE COOPER, Commissioner,
JAMES PARENT, Commissioner,
and REGINA BURKE,
City Administrator,

Defendants-Respondents.

Submitted September 20, 2023 – Decided October 13, 2013

Before Judges Vernoia and Walcott-Henderson.

On appeal from the Superior Court of New Jersey, Law
Division, Cumberland County, Docket No. L-0646-20.

Rotimi A. Owoh, appellant pro se.

Barker, Gelfand, James & Sarvas, attorneys for
respondents (Adam E. Barker, on the brief).

PER CURIAM

Plaintiff Azuowoh Rotimi¹ appeals from an order dismissing without prejudice his fourth-amended complaint against defendants Brock Russell, Brock D. Russell, LLC., the City of Millville, Jeanne Hitchner, the City of Millville Police Department, City of Millville Police Chief Jody Farabella, City of Millville Administrator Regina Burke, City of Millville Commissioner and Mayor Michael Santiago, and City of Millville Commissioners Ashleigh Udalovas, Joseph Pepitone, Bruce Cooper, and James Parent. Plaintiff also appeals from an order denying his motion for clarification of the dismissal order. We vacate the court's order dismissing the complaint and remand for further proceedings.

¹ On appeal, plaintiff appears as a self-represented litigant but under a different name, Rotimi A. Owoh. The record does not reveal the reason plaintiff, who is an attorney licensed to practice law in New Jersey under the name Rotimi A. Owoh, employed a different name as a party to this action and appeal.

I.

Plaintiff filed a complaint in the Law Division that included causes of action arising under federal law. Defendants removed the case to the United States District Court for the District of New Jersey. Following a series of motions and amendments to the complaint, plaintiff moved to amend the complaint to delete the federal claims and remand the matter to the Law Division. The District Court granted the motion and remanded the then-pending two-count amended complaint, which no longer included any federal claims, to the Law Division.

The remanded complaint asserted putative causes of action under the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -50, and "New Jersey Laws Against Retaliation."² Defendants filed an answer to the complaint that included a series of affirmative defenses, including that the complaint "did

² The remanded complaint further affirmatively represented plaintiff did not assert a cause of action under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2, and his claim is "made based ONLY on the New Jersey Law Against Discrimination." The latter assertion is confusing because, as noted, the complaint also generally alleges causes of action under New Jersey Laws Against Retaliation, and the New Jersey Civil Rights Act "provid[es] the citizens of New Jersey with a State remedy for deprivation of or interference with the civil rights of an individual," Harris v. City of Newark, 250 N.J. 294, 305 (2022) (quoting Perez v. Zagami, LLC, 218 N.J. 202, 212 (2014)), including "the substantive rights guaranteed by New Jersey's Constitution and laws," Gormley v. Wood-El, 218 N.J. 72, 97 (2014), under color of law.

not set forth a legally cognizable cause of action." Plaintiff later filed what he characterized as a fourth motion to amend the complaint that the court granted with the provision it "will be the last amendment granted absent extraordinary circumstances."

Plaintiff then filed an amended complaint asserting putative causes of action alleging defendants violated the NJLAD (count one), New Jersey Laws Against Retaliation (count two), and the New Jersey Constitution (count three). The amended complaint further alleged the "City of Millville, the Administrator, the Supervisors and the Commissioners" are liable for defendants' alleged wrongful actions under respondeat superior, agency, and vicarious and supervisory liability principles.

In its eighty-four paragraphs and numerous attachments, the amended complaint generally alleges the City of Millville and its police department, acting by, through, and with the approval of the individual defendants, at various times have engaged in racially discriminatory conduct and unlawful conduct against numerous individuals other than plaintiff. Plaintiff further alleges he sought to obtain information concerning the alleged unlawful conduct from the City of Millville and its police department through requests made pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and litigation

seeking enforcement of his rights under OPRA, for the purpose of creating a statewide database that may be used "to oppose the problem of disparate treatment of Blacks within the criminal justice system."

As explained in his brief on appeal, plaintiff's complaint alleges he has used OPRA and the common law right of access to investigate the City of Millville Police Department for what plaintiff claims is a history of ticket fixing, police brutality, racial discrimination, corruption, sexual orientation discrimination and harassment, and retaliation against whistleblowers. Plaintiff further asserts he has been engaged in an investigation of what he contends is the police department's endangering the welfare of "poor" kids by allowing them to be coached by a "child molester." Plaintiff's complaint alleges the police department also unlawfully terminated an employee who had raised concerns about the individual plaintiff claimed is a child molester coaching children in the town.

With one exception, plaintiff's complaint does not allege he has been the victim of any of the incidents of unlawful, discriminatory, or retaliatory conduct he claims he has investigated or continues to investigate. Indeed, the descriptions of the alleged unlawful, discriminatory, or retaliatory conduct detailed in the complaint make clear the conduct has been directed to individuals

other than plaintiff. Those alleged instances of conduct are referenced and detailed in the complaint as illustrations of the types of incidents plaintiff has attempted to investigate for his stated purpose of gathering information to establish a statewide database he claims will support opposition to alleged unlawful and racially discriminatory police conduct and practices.

The singular claim alleging plaintiff suffered from unlawful actions of defendants is limited to the assertion that in response to his efforts to obtain the information for his putative database through his OPRA requests and related OPRA litigation, defendants invaded his privacy and otherwise retaliated against him by investigating him and threatening him. More particularly, the amended complaint alleges defendants "have attempted by threats, intimidation and coercion to interfere with plaintiff's exercise and enjoyment of his rights to freely oppose and to freely expose disparate treatment of Blacks by the Millville Police Department" and have "attempted by threats, intimidation and coercion to interfere with plaintiff's exercise and enjoyment of his rights to freely practice law in New Jersey without threat of intimidation, malicious use of police powers to investigate plaintiff's background . . . for [his] trying to expose corruption,

racism, and disparate treatment of Black folks by the Millville Police Department."³

Defendants moved to dismiss the amended complaint under Rule 4:6-2(e). Defendants argued the complaint fails to state a claim upon which relief may be granted because plaintiff lacks standing. Defendants claimed plaintiff lacks standing because he did not allege that he suffered any harm as a result of defendants' alleged unlawful actions and the alleged unlawful actions otherwise cited in the complaint were directed against others. Plaintiff waived oral argument, and the court issued a bench decision granting defendants' motion.

In its decision, the court summarized plaintiff's factual claims, noting "the bulk and majority of the claims" concern "things that have happened in the past, not to plaintiff, but to other people concerning the Millville Police Department." The court determined plaintiff lacked standing to assert claims concerning actions the City of Millville took in other cases or "actions that have nothing to

³ The complaint also alleges that in response to his deceased mother's efforts to obtain information concerning alleged racially discriminatory and retaliatory actions similar to that which plaintiff has requested, defendants also intimidated and investigated her. Plaintiff's mother's estate is not a plaintiff in this matter and therefore no causes of action are asserted on her or her estate's behalf in the complaint. For those reasons, to the extent plaintiff argues the court erred by dismissing claims asserted on behalf the estate of his mother's, we reject such contentions as without sufficient merit to warrant any further discussion. R. 2:11-3(e)(1)(E).

do with him." The court also observed plaintiff's "goal to wipe out discrimination and racism within the City of Millville is . . . laudable," but the court determined plaintiff's goal does not provide him with standing to assert claims and seek discovery concerning alleged actions that did not involve or affect him.

The court, however, recognized that "[b]uried" in the complaint, is a claim plaintiff "was impeded or threatened" by defendants for investigating the City of Millville Police Department. The court further found it "suppose[ed] maybe there is some at least arguable cause of action there" but concluded the arguable claim "is so intertwined with [the] other non-actionable conduct . . . that it's really unclear and unfair to . . . defendants to have to answer a complaint that contains all of these other things." The court reasoned that "ninety percent of what plaintiff complains about has nothing to do with plaintiff himself, and it would be utterly unfair for" defendants "to have to answer a complaint regarding these allegations." The court concluded it would be "patently unfair" to defendants "[t]o permit the complaint to go forward when there is a small fraction maybe of a cognizable claim versus ninety-five percent of other things that are simply non-actionable."

The court dismissed the complaint without prejudice. The court explained that if plaintiff "wants to focus on things that have been done to him and refile a complaint based upon things that he feels have been wronged to him," he is "entitled to do so."

Plaintiff moved for clarification of the court's order. Plaintiff requested that the court identify the allegations in the amended complaint it had found asserted an arguable, cognizable cause of action. The court denied the motion, finding its decision on the dismissal motion included a detailed explanation of the court's reasoning that did not require clarification. The court also reiterated that it had dismissed the complaint without prejudice and plaintiff had the right to "amend and file a new complaint." This appeal followed.

II.

We review motions to dismiss de novo, applying the same standard as the trial court. Wreden v. Twp. of Lafayette, 436 N.J. Super. 117, 124 (App. Div. 2014) (citation omitted). "[T]he facts as pleaded must be taken to be true for the purposes of the motion, and the court's inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint." Darakjian v. Hanna, 366 N.J. Super. 238, 248 (App. Div. 2004) (quoting Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989)). In ruling on

a motion to dismiss pursuant to Rule 4:6-2(e), "the [c]ourt is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint[,] and "plaintiffs are entitled to every reasonable inference of fact." Printing Mart, 116 N.J. at 746 (citations omitted).

We must determine if "a cause of action is 'suggested' by the facts." Printing Mart, 116 N.J. at 746 (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). When doing so, a court must search "the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. (emphasis added) (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)).

Dismissal for failure to state a claim "should be granted in only the rarest of instances." Id. at 772. "The examination of a complaint's allegations of fact required by the [previously stated] principles should be one that is at once painstaking and undertaken with a generous and hospitable approach." Id. at 746.

Plaintiff contends the court erred by finding the amended complaint should be dismissed because he lacked standing. "The concept of standing in a legal proceeding refers to a litigant's 'ability to entertain or maintain an action

before the court.'" N.J. Dep't of Env't. Prot. v. Exxon Mobil Corp., 453 N.J. Super. 272, 291 (App. Div. 2018) (quoting People for Open Gov't v. Roberts, 397 N.J. Super. 502, 508-09 (App. Div. 2008)). A party has standing "only if the [party] demonstrates 'a sufficient stake and real adverseness with respect to the subject matter of the litigation [and a] substantial likelihood of some harm . . . in the event of an unfavorable decision.'" Edison Bd. of Educ. v. Zoning Bd. of Adjustment of Edison, 464 N.J. Super. 298, 305-06 (App. Div. 2020) (alteration and omission in original) (quoting Jen Elec., Inc. v. Cty. of Essex, 197 N.J. 627, 645 (2009)). A court's decision as to a party's standing is an issue of law that we review de novo. Cherokee LCP Land, LLC v. City of Linden Plan. Bd., 234 N.J. 403, 414 (2018).

We agree with the court's determination plaintiff lacks standing to assert putative claims founded on the many alleged unlawful actions cited in the complaint that were directed against and allegedly affected individuals other than plaintiff. Aside from plaintiff's interest in creating a database, he does not allege any stake in those alleged past unlawful actions or that he has, or will, suffer any harm as a result of those actions. Moreover, in the incidents cited in the complaint that affected others, plaintiff fails to allege any of the personal adverseness required for standing to challenge defendants' alleged unlawful

conduct. Therefore, to the extent the amended complaint asserts causes of action based on the defendants alleged unlawful actions that plaintiff asserts affected others, the court correctly dismissed those causes of action because plaintiff simply has no standing to assert them. See Exxon Mobil Corp., 453 N.J. Super. at 291.

That is not to say plaintiff's reference to the alleged unlawful conduct of defendants allegedly directed toward or affecting others should be stricken from the complaint are of no import in determining whether the complaint otherwise suggests a fundament of a cause of action for purposes of analyzing whether the complaint should be dismissed under Rule 4:6-2. See Printing Mart, 116 N.J. at 746. Fairly read, plaintiff's complaint includes the references to the alleged unlawful conduct of defendants directed to others not only to support putative claims for which plaintiff lacks standing, but also to provide context for the fundament of a claim the motion court recognized exists in plaintiff's favor and for which he clearly has standing.

As the motion court explained, the complaint alleges defendants took unlawful actions to intimidate and threaten plaintiff, invade his privacy, and retaliate against him and his law practice in response to his requests for government records under OPRA and the common law, the redress he sought in

the court for what he claims are defendants' violations of OPRA, and his efforts expose and oppose what he contends are the unlawful, discriminatory, and retaliatory actions of defendants. In other words, the complaint alleged facts establishing plaintiff has a sufficient personal stake in the disposition of his claims that defendants acted to investigate, intimidate, threaten, and retaliate against him. As the motion court recognized, those facts may have comprised only five to ten percent of those set forth in the lengthy amended complaint, but they nonetheless suggest a fundament of legally cognizable causes of action such that plaintiff had and has standing to assert them.⁴

⁴ For example, and not by way of limitation, the complaint suggests a fundament of claims for invasion of privacy, see generally Johnson v. City of Hoboken, 476 N.J. Super. 361, 373-74 (App. Div. 2023) (explaining tort of invasion of privacy), violation of the NJLAD, see, e.g., N.J.S.A. 10:5-12(d) (providing it is a violation of the NJLAD "[f]or any person to take reprisals against any person because that person has opposed any practices forbidden under" the act), and violations of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c) (in pertinent part, authoring a civil action to any person deprived of "any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or law of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation, or coercion by a person acting under color of law"). We note, however, that we do not find any such claims are adequately pleaded in the complaint the court dismissed without prejudice that is the subject of this appeal, and, in the case of any claim under the New Jersey Civil Rights Act, plaintiff has previously indicated he does not intend to pursue such a claim in this matter. We also do not decide or suggest plaintiff will be able to adequately plead such causes of action or any others in

The court did not dismiss the complaint because it failed to state a claim upon which relief could be granted based on an analysis of the elements of the causes of action asserted. Instead, after recognizing the complaint suggested a cognizable claim based on plaintiff's assertion he was personally affected by defendants' actions, the court dismissed the complaint without prejudice finding it would be unfair to require defendants respond to the allegations it determined plaintiff had no standing to assert. In our view, in these circumstances, and given the court's recognition the complaint suggests a cognizable claim or claims plaintiff has standing to assert, it was more appropriate that the court grant plaintiff leave to file another amended complaint. See Printing Mart, 116 N.J. at 746.

We therefore vacate the court's order dismissing the complaint and remand for entry of an order granting plaintiff a reasonable time to file an amended complaint that shall be limited to plaintiff's claims defendants engaged in

the amended complaint on remand. We observe only that such causes of action are suggested by the otherwise vague and confusing pleading presented to the motion court such that plaintiff is entitled, as the motion court otherwise recognized and allowed, to file an amended complaint to properly assert legally cognizable claims, if any, that may be supported by the facts. Additionally, plaintiff is not limited to the claims we have explained are suggested by the complaint before the motion court. Plaintiff may assert any causes of action that are supported by the facts alleged in the amended complaint that he shall be permitted to file on remand.

unlawful conduct, including intimidation, threats, invasion of privacy, and retaliatory actions that directly affected him in either his personal or professional capacity. Stated differently, plaintiff may assert any claims based on the alleged conduct of defendants for which he has standing. Defendants shall be permitted to respond to the amended complaint on remand in any manner permitted by the Rules of Court.

We do not offer any opinion on the putative causes of action that were asserted in the complaint the motion court dismissed or that may be asserted in an amended complaint on remand. Given the number of prior complaints filed by plaintiff in this matter, however, we expect the amended complaint will sufficiently identify the legal causes of action asserted, including specific citations to any alleged statutory provisions he contends were violated, such that defendants and the court shall have no difficulty determining on the face of the pleading the claims asserted. The amended complaint which is the subject of the dismissal order on appeal is, as the motion court found, "confusing" and, at this point in these extended proceedings, it is reasonable to require and expect

that any asserted causes of action—in what will be the fifth amended complaint in these proceedings—will be precisely defined.⁵

Because we reverse the court's order dismissing the complaint without prejudice and remand to allow plaintiff to file an amended complaint, it is unnecessary to address plaintiff's argument the court erred by denying his motion for clarification and the remaining arguments submitted in support of the appeal.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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



CLERK OF THE APPELLATE DIVISION

⁵ For example, the amended complaint, which is the subject of the dismissal order, includes a putative cause of action for violation of "New Jersey Laws Prohibiting Retaliation" but does not include a citation to any statute or source of law for the asserted claim. As we have explained, any causes of action asserted in the amended complaint on remand shall precisely identify and cite the statutes, if any, plaintiff claims defendants violated and, where appropriate, the legal theory supporting the claims asserted, and shall include the factual assertions supporting the claims.