SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2762-21

CRIS TUCCI,

Plaintiff-Appellant,

v.

BOROUGH OF ROSELLE PARK, KEN BLUM, CARL HOKANSON, JAYME LYNN NEGRON, JOSEPH PETROSKY, WILLIAM FAHOURY, and MICHAEL CONNELLY,

Defendants-Respondents.

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Argued May 3, 2023 – Decided June 26, 2023

Before Judges Haas and Gooden Brown.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-2139-19.

Matthew T. Rinaldo argued the cause for appellant (Rinaldo & Rinaldo, attorneys; Matthew T. Rinaldo, on the brief).

Daniel Antonelli argued the cause for respondents (Antonelli Kantor, PC, attorneys; Daniel Antonelli, of counsel and on the brief; Kourtney L. Cooke, on the brief).

PER CURIAM

Plaintiff Cris Tucci, a now-retired Roselle Park borough police captain, appeals from the March 31, 2022 Law Division order granting summary judgment to defendants Borough of Roselle Park (Borough) and various Borough officials, and dismissing Tucci's complaint with prejudice. The complaint stemmed from the termination of Tucci's Borough-paid retirement health benefits when Tucci reached the age of sixty-five. We affirm.

We glean these facts from the motion record viewed in the light most favorable to plaintiff. Angland v. Mountain Creek Resort, Inc., 213 N.J. 573, 577 (2013) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995)).

Tucci began his employment as a patrol officer in Roselle Park's police department in September 1983 and was promoted to the rank of Captain in 2003. Tucci retired at the rank of Police Captain on April 1, 2009, having completed over twenty-five years of service. The Police Captain position was not governed by any contract with the Borough and was not part of any collective bargaining agreement.

Prior to Tucci's retirement, Borough Ordinance No. 2150, adopted on April 21, 2005, described the health insurance benefits of non-contractual employees, like Tucci, as follows:

> F. Subject to the limitation described in the following paragraph G, all non-contractual employees (supervisory and non-supervisory) will be entitled to the most generous health insurance coverage and benefit coverage provided in the collective bargaining agreements in effect between the Borough and its bargaining employee group, of the Department in which he or she is employed. [Notwithstanding] the above, all benefits granted to designated Department Heads per Department Head Agreement dated April 2, 1998, shall remain in effect.
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> G. [Notwithstanding] the above paragraph F, all non-contractual employees (supervisory and non-supervisory), hired on or after January 1, 1999 will be required to contribute ten . . . percent towards the cost of medical insurance coverage.

In accordance with Ordinance No. 2150, the applicable collective bargaining agreement in effect when Tucci retired defined the retirement coverage as follows:

> Section 2 – Retirement Coverage
>
> The Borough of Roselle Park shall pay the full cost of such hospitalization and drug prescription program insurance for a member of the Roselle Park Police Supervisors' Group upon retirement after twenty-five . . . years of pensionable service that includes twenty . . . years of service with the

> Borough . . . . This coverage shall include the member's spouse and children until they attain the age of eighteen . . . and will remain in effect until the member reaches the age of sixty-five . . . years. . . .
>
> Upon attaining the age of sixty five . . . , the member may continue in the Borough's hospitalization and drug prescription program providing he/she agrees to make payments to the Borough Treasurer on a quarterly basis, in advance.
>
> This option shall remain open to a retiree at age sixty-five . . . until the last day of the calendar month in which his/her sixty-fifth . . . birthday occurs. Failure to exercise this option will result in the forfeiture of continuance in the Borough's insurance program[.]

Following his retirement, Tucci received Borough-paid health insurance coverage until November 1, 2018, when Tucci reached the age of sixty-five and his benefits were terminated. On June 12, 2019, after his benefits were terminated, Tucci filed a seven-count complaint against defendants asserting various contract-based claims and seeking compensatory and punitive damages related to the costs of having to obtain private health insurance coverage.

In the complaint, Tucci recounted an August 2007 conversation with Mary Leonard, the Borough's Assistant Treasurer, during which Leonard allegedly responded to Tucci's prior inquiry about his retirement benefits by providing Tucci with a copy of Ordinance No. 1985. Ordinance No. 1985, adopted on December 16, 1999, provided, in relevant part:

> SECTION VI – RETIREMENT BENEFITS FOR POLICE CAPTAINS
>
> 51-20 Article One – Hospitalization and Medical Insurance
>
> When the Police Captain(s) of the Police Department of the Borough of Roselle Park shall have accumulated twenty-five . . . years of service, they shall, upon retirement, receive paid hospitalization and major medical insurance for themselves and their spouses.

With only cosmetic changes, Ordinance No. 1985 mirrored the language contained in its predecessor, Ordinance No. 1631, adopted on November 26, 1991.

The complaint further alleged that Tucci's decision to retire had been based on Leonard providing him with Ordinance No. 1985, which he interpreted as conferring lifetime Borough-paid health benefits. Tucci asserted he was unaware of Ordinance No. 2150 until defendant Ken Blum provided a copy to him in August or September 2018. Tucci alleged that the Borough's sole basis for terminating his benefits was an opinion letter from the Borough's counsel, dated May 24, 2009, after Tucci had already retired, which indicated that Ordinance No. 2150 would operate to terminate Tucci's benefits when he turned sixty-five. However, according to Tucci, Ordinance No. 2150 did not apply to

him because he was "not a non-contractual employee, nor was he hired after 1999."

Based on these facts, Tucci alleged in the complaint that defendants breached "a contractual agreement" with him by "negligently," "recklessly," "intentionally," or "maliciously" misrepresenting his retirement benefits to him, and that he had relied to his detriment on that misrepresentation when he decided to retire in 2009 (counts one, two, four, and six).[1] He also alleged that in misrepresenting his retirement benefits, defendants "breached an implied covenant of good faith and fair dealing" (count three). Tucci further asserted that defendants "fail[ed] to act in good faith and rectify their wrongful execution and enforcement of Ordinance No. 2150" (count five). Finally, Tucci alleged he was entitled to "punitive damages" as a result of defendants' malicious conduct (count seven).

Following discovery, defendants moved for summary judgment on the ground that Tucci's benefits were properly terminated under Ordinance No. 2150. Tucci opposed the motion, arguing that Ordinance No. 2150 had not repealed Ordinance No. 1985, which specifically provided police captains with

[1] Count six named fictitious defendants and was presumably pled under the fictitious party rule. See R. 4:26-4.

lifetime Borough-paid medical coverage. Oral argument was conducted on February 18, 2022, with additional arguments heard on March 25, 2022, to clarify the alleged causes of action. On March 31, 2022, the judge entered an order granting defendants' motion.

In an accompanying written statement of reasons, the judge applied the principles of statutory construction and concluded that contrary to Tucci's contention, the "plain and unambiguous language of Ordinance No. 2150 . . . repealed all prior ordinances regarding the same subject matter." In support, the judge acknowledged that although the text of Ordinance No. 2150 "did not expressly repeal Ordinance No. 1985 by name," it expressly provided that "[a]ll ordinances and parts of ordinances inconsistent with the terms hereof are hereby repealed to the extent of such inconsistency." The judge reasoned that to the extent Ordinance No. 1985 provided a different standard for determining retirement Borough-paid benefits for non-contractual employees, such as police captains, it was inconsistent with Ordinance No. 2150 and therefore repealed.

Although the judge concluded that "the plain language" of Ordinance No. 2150 was clear and dispositive, the judge nevertheless considered the evidence of legislative intent contained in the record. In so doing, the judge confirmed his finding that "the intent of the Borough" in enacting Ordinance No.

2150 "was to reduce benefits, and to the extent any prior ordinance concerning those same benefits state[d] otherwise, it [was] repealed." In that regard, the judge relied on comments made by the Borough's attorney and then-mayor during a session considering Ordinance No. 2150, which comments specifically compared Ordinance No. 2150 to its predecessors. Based on that evidence, the judge "concluded that [Tucci's] reliance on Ordinance [No.] 1985 or any other ordinance adopted prior to Ordinance [No.] 2150 [was] without merit because those ordinances have been repealed and cannot support [Tucci's] claim to lifetime paid health benefits."

In rejecting Tucci's argument that "he was somehow 'grandfathered in'" and entitled to receive lifetime Borough-paid health benefits, the judge distinguished Gauer v. Essex County Division of Welfare, 108 N.J. 140 (1987). In Gauer, the plaintiff was a retired county employee who successfully challenged the post-retirement modification of a benefits policy in which he was already participating. Id. at 143-44. The modification was based on the county's erroneous application of a statute. Id. at 146-47. Gauer recognized that employees who "were hired and/or served out their employment and retired under a particular compensation scheme . . . stand on a distinctively different footing from any employees who were thereafter hired or continued to be

employed up to the point of retirement under a different compensation/benefit scheme." Id. at 148. Here, the judge concluded that Tucci's reliance on Gauer was misplaced because the plaintiff in Gauer retired before the relevant changes in the compensation scheme took effect, whereas "it [was] undisputed" that Tucci retired four years after the adoption of Ordinance No. 2150.

Turning to Tucci's specific causes of action, the judge found that because Tucci "did not have a contract with the Borough at the time of his retirement," his "claims for breach of contract and breach of [an] implied covenant of good faith and fair dealing" contained in counts one, two, and three "fail[ed] as a matter of law." Indeed, during oral argument, Tucci conceded he had no express contract with the Borough. In a similar vein, the judge found that count five, seeking damages for the "wrongful execution and enforcement of Ordinance No. 2150," had no supporting "factual or legal basis" given the finding that "[d]efendants lawfully and correctly applied Ordinance No. 2150 to [Tucci] at the time of his retirement."

As to Tucci's promissory estoppel claim in count four, the judge stated that Tucci needed to show that the Borough had made "a clear and definite promise" regarding his retirement benefits "with the expectation that [Tucci] would rely on it," and that Tucci reasonably relied on that promise to his

"definite and substantial detriment." However, the judge "concluded that [Tucci] . . . failed to show by record evidence that he ha[d] satisfied all [the] elements." See Goldfarb v. Solimine, 245 N.J. 326, 339-40 (2021) (delineating the requisite elements of promissory estoppel).

First, the judge found "as a matter of law" that there was "no record evidence of a clear and definite promise made to [Tucci], by the Borough, concerning [Tucci's] entitlement to lifetime employer-paid health benefits" because "there was no additional or separate [o]rdinance enacted by the Borough" granting Tucci "any additional benefits, other than those defined in Ordinance No. 2150." According to the judge, even if Leonard had mistakenly given Tucci a copy of Ordinance No. 1985 in response to his inquiry, "[h]anding over an ordinance, without more, cannot be said to amount to an express promise."

Moreover, even if Leonard's conduct amounted to a promise, "Leonard did not have the authority to bind the Borough to any claimed promise" because only the Borough Council had the authority to determine Tucci's compensation and benefits, a fact acknowledged by Tucci in his deposition, and only the Council's conduct could bind the Borough for estoppel purposes. See Maltese v. Township of North Brunswick, 353 N.J. Super. 226, 238 (App. Div. 2002)

("[W]hen considering the application of equitable principles, the focus must be directed on any actions taken by the council with respect to the benefits promised.").

Furthermore, the judge found that to the extent Tucci relied on Leonard providing him with Ordinance No. 1985, his reliance was unreasonable. Citing Tucci's deposition testimony, the judge found that Tucci "was aware that his benefits were determined by the Council and that any additional benefits would be negotiated and placed in a separate agreement." As such, the judge concluded that Tucci's "reliance on anything other than the actions of the Council was unreasonable." Additionally, the judge pointed out that during his deposition testimony, Tucci acknowledged that there was nothing in Ordinance No. 1985 that specified that he would be provided with "lifetime" employer-paid health benefits. Thus, Tucci's claim that he relied on Ordinance No. 1985 to confer lifetime benefits was equally unreasonable.

Likewise, the judge found Tucci's claim that "[d]efendants induced [him] to retire to his detriment" by misrepresenting his benefits "fail[ed] as a matter of law." The judge reasoned it was "undisputed" that Tucci would have had to retire at the mandatory retirement age of sixty-five "regardless of any promise[s] made," and "the record evidence prove[d] that [Tucci's] employer-paid benefits

would terminate at age sixty-five . . . regardless of his actual retirement age." Finally, the judge concluded there was no basis to award Tucci punitive damages as sought in count seven because "[p]unitive damages are a remedy incidental to [a] cause of action, not a substantive cause of action in and of themselves." Hassoun v. Cimmino, 126 F. Supp. 2d 353, 372 (D.N.J. 2000). This appeal followed.

On appeal, Tucci argues the judge erred by: (1) misinterpreting the relevant ordinances; (2) disregarding evidence of legislative intent in interpreting the ordinances; (3) misapplying case law, such as Gauer, that supports Tucci's claim that he had vested rights in his retirement benefits; (4) failing to address Tucci's arguments regarding the existence of an implied contract between Tucci and the Borough to support his contract-based claims; and (5) granting summary judgment when genuine issues of fact relating to these issues remained unresolved.

"[W]e review the trial court's grant of summary judgment de novo under the same standard as the trial court." Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). That standard is well-settled.

> [I]f the evidence of record—the pleadings, depositions, answers to interrogatories, and affidavits—"together

> with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact," then the trial court must deny the motion. On the other hand, when no genuine issue of material fact is at issue and the moving party is entitled to a judgment as a matter of law, summary judgment must be granted.
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> [Steinberg v. Sahara Sam's Oasis, LLC, 226 N.J. 344, 366 (2016) (citations omitted) (quoting R. 4:46-2(c)).]

Whether a genuine issue of material fact exists depends on "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill, 142 N.J. at 523. "If there is no genuine issue of material fact, we must then 'decide whether the trial court correctly interpreted the law.'" DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007)). "We review issues of law de novo and accord no deference to the trial judge's [legal] conclusions . . . ." MTK Food Servs., Inc. v. Sirius Am. Ins. Co., 455 N.J. Super. 307, 312 (App. Div. 2018).

Guided by these principles, we affirm substantially for the sound reasons expressed by the motion judge in his comprehensive statement of reasons.

Summary judgment is appropriate when the submitted evidence "'is so one-sided that one party must prevail as a matter of law.'" Brill, 142 N.J. at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). Such is the case here. We add only the following comments.

The crux of this appeal is one of statutory interpretation, which we review de novo. See State v. S.B., 230 N.J. 62, 67 (2017) ("Questions related to statutory interpretation are legal ones."). "The established rules of statutory construction govern the interpretation of a municipal ordinance." State v. Williams, 467 N.J. Super. 1, 4 (App. Div. 2021) (quoting State, Township of Pennsauken v. Schad, 160 N.J. 156, 170 (1999)). "The first step of statutory construction requires an examination of the language of the ordinance. The meaning derived from that language controls if it is clear and unambiguous," as here. Schad, 160 N.J. at 170 (citations omitted). As the judge found, by referring to the applicable collective bargaining agreement, the plain and unambiguous language of Ordinance No. 2150 clearly states that Borough-paid health benefits terminate at age sixty-five for all non-contractual employees like Tucci.

Tucci argues that the judge erred in concluding that Ordinance No. 1985 and its predecessor were repealed by Ordinance No. 2150 because the judge

"failed to consider whether the ordinances were in 'substantial conflict' with one another" and failed to consider legislative intent. In determining that Ordinance No. 2150 repealed Ordinance No. 1985 and, by extension, Ordinance No. 1631, the judge relied on the general repealer provision of Ordinance No. 2150.

"A general repealer, as opposed to a statute that expressly names a statute that is being repealed, 'predicate[s] repeal upon the condition of a substantial conflict between the act and prior statutes.'" State ex rel. Comm'r of Transp. v. St. Mary's Church Gloucester, 464 N.J. Super. 579, 587 (App. Div. 2020) (alteration in original) (quoting Cent. Constr. Co. v. Horn, 179 N.J. Super. 95, 100 (App. Div. 1981)). To determine whether such a conflict exists, courts may consider factors such as whether "'there is a clear repugnancy between the two acts, or a manifest intention to cover the same subject matter by way of revision; or . . . , considering the specific provision in relation to the general object of a statute, the purpose to repeal prior legislation is revealed.'" Ibid. (quoting Mahr v. State, 12 N.J. Super. 253, 261 (Ch. Div. 1951)). Ultimately, whether a general repealer is meant to repeal a statute or part of a statute is a question of legislative intent. Ibid.

Applying these principles, we are satisfied that the ordinances are clearly in conflict—the earlier ordinance provided police captains with unspecified

Borough-paid health coverage upon retirement with twenty-five years of service, while the later ordinance provided all non-contractual employees, including police captains, "the most generous health insurance coverage and benefit coverage . . . in the collective bargaining agreement[] in effect." As the judge found, Ordinance No. 2150 "repealed all prior ordinances regarding the same subject matter," as evidenced by the "'manifest intention to cover the same subject matter by way of revision.'" Ibid. (quoting Mahr, 12 N.J. Super. at 261); see also Dep't of Lab. & Indus. v. Cruz, 45 N.J. 372, 380 (1965) ("[W]hen a later expression of the legislative will is so clearly in conflict with an earlier statute relating to the same subject that the two cannot stand together reasonably, the courts have no hesitancy in finding a legislative intention to supersede the earlier law."). Moreover, inasmuch as the legislative intent behind adopting Ordinance No. 2150 was to reduce the Borough's fiscal burden, which the judge aptly considered, exempting police captains would contravene that intent. See Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 574 (2012) ("[Statutory] language should not be read to achieve a result that the Legislature evidently did not intend.").

To support his contract-based claims, Tucci asserts that Ordinance No. 1985 created an implied contract with the Borough entitling him to certain

benefits, which "benefits vested upon his retirement." However, "[t]o construe a statute as creating a contractual right, the Legislature's intent . . . must be clearly and unequivocally expressed concerning both the creation of a contract as well as the terms of the contractual obligation." Berg v. Christie, 225 N.J. 245, 253 (2016). Absent such an expression, courts are "not to presume that a statute creates private contract rights unless 'some clear indication' establishes the intent to do so." Id. at 262 (quoting Burgos v. State, 222 N.J. 175, 195 (2015)). No such intent is present here. Thus, the judge's finding that Tucci did not have a contract with the Borough at the time of his retirement is supported by the record and the law. See N.J. Educ. Ass'n v. State, 412 N.J. Super. 192, 206 (App. Div. 2010) (explaining that whether a contractual relationship created by statute exists is a question of law).

To the extent any argument raised by Tucci has not been explicitly addressed, it is because the argument lacks sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.