SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3536-20

CHIDI ONUKOGU,

Plaintiff-Appellant,

v.

NEW JERSEY STATE JUDICIARY ESSEX VICINAGE, CAROL LYEW-GILES, ERROL CAMPBELL, ORETHA ONIYAMA, and AMY DEPAUL,

Defendants-Respondents.

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Argued October 26, 2022 – Decided May 1, 2023

Before Judges Accurso, Vernoia and Firko.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-0413-18.

Theodore Campbell argued the cause for appellant (Law Offices of Theodore Campbell, attorneys; Theodore Campbell, of counsel and on the brief).

James M. Duttera, Deputy Attorney General, argued the cause for respondents (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney

General, of counsel; Eric Intriago, Deputy Attorney General, on the brief).

PER CURIAM

In this employment disability discrimination and retaliation case, plaintiff Chidi Onukogu appeals from an October 28, 2020 order granting partial summary judgment to defendants New Jersey State Judiciary, Essex Vicinage, Carol Lyew-Giles, Errol Campbell, Oretha Oniyama, and Amy DePaul. Plaintiff also appeals from a July 2, 2021 order granting defendants' motion for reconsideration of that portion of the October 28, 2020 order denying their motion for summary judgment on the remaining claims in the complaint and granting defendants summary judgment on those claims. Based on our de novo review of the record, the parties' arguments, and the applicable legal principles, we affirm the orders, albeit for reasons different than those of the motion court.

I.

The Summary Judgment Record

Prior to addressing the facts relied on by the parties in support of their arguments on appeal, we note that "[w]e review de novo the trial court's grant of summary judgment, applying the same standard as the trial court." Abboud v. Nat'l Union Fire Ins. Co., 450 N.J. Super. 400, 406 (App. Div. 2017). This standard mandates the grant of summary judgment "if 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).

In our review of a summary judgment record, we limit our determination of the undisputed facts to those properly presented in accordance with Rule 4:46-2. Under the Rule:

> [A] party moving for summary judgment is required to submit a "statement of material facts . . . set[ting] forth in separately numbered paragraphs a concise statement of each material fact as to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted."
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> [Claypotch v. Heller, Inc., 360 N.J. Super. 472, 488 (App. Div. 2003) (quoting R. 4:46-2(a)).]

"[A] party opposing a motion for summary judgment [must] 'file a responding statement either admitting or disputing each of the facts in the movant's statement.'" Ibid. (quoting R. 4:46-2(b)). "[A]ll material facts in the movant's statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation conforming to the requirements of paragraph (a) demonstrating the existence of a genuine issue as to the fact." R. 4:46-2(b).

Rule 4:46-2's requirements are "critical" and "entail[] a relatively undemanding burden . . . ." Housel v. Theodoridis, 314 N.J. Super. 597, 604 (App. Div. 1998). They were "designed to 'focus [a court's] . . . attention on the areas of actual dispute' and [to] 'facilitate the court's review' of the motion." Claypotch, 360 N.J. Super. at 488 (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 1.1 on R. 4:46-2 (2003)). As such, a court must decide a motion for summary judgment based only upon the "factual assertions . . . that were . . . properly included in the motion[s] [for] and [in opposition to] . . . summary judgment" pursuant to Rule 4:46-2. Kenney v. Meadowview Nursing & Convalescent Ctr., 308 N.J. Super. 565, 573 (App. Div. 1998); see also Lombardi v. Masso, 207 N.J. 517, 549 (2011) (Rivera-Soto, J., dissenting) (stating a trial court must decide a summary judgment motion "[b]ased on the [Rule]-defined, specifically tailored summary judgment record before it"). Thus, we will consider only "those [properly included] factual assertions" on appeal and rely solely on the undisputed facts established by the parties' Rule 4:46-2 statements. See Kenney, 308 N.J. Super. at 573.

We have considered the Rule 4:46-2 statements of the parties and find the following facts are undisputed.[1] Because this appeal requires our review of a summary judgment award, we consider the facts in the light most favorable to plaintiff, the party opposing the summary judgment motion. Richter v. Oakland Bd. of Educ., 246 N.J. 507, 515 (2021).

Plaintiff's Employment and Disciplinary History Prior to 2015

In 2000, plaintiff began his employment with the Judiciary in the Essex Vicinage. The Judiciary terminated plaintiff's employment effective January 27, 2017. During the entire tenure of his employment, plaintiff worked as a Financial Specialist 1 for the Essex Vicinage. In 2003, plaintiff signed an annual performance advisory received from his then-supervisor, defendant Errol Campbell. In his comments to the advisory, plaintiff in part thanked Campbell "for helping [him] in the areas [he] needed improvement."

In 2005, plaintiff's subsequent direct supervisor, Michelle Okuzu, provided plaintiff with a performance assessment advisory that in part noted that

[1] In accordance with Rule 4:46-2(b), we deem admitted any of defendants' statements of material fact where plaintiff's asserted denials are unsupported by citation to competent evidence. Similarly, we do not deem as undisputed facts those facts included in defendants' Rule 4:46-2(a) statement that are not supported by citation to competent evidence unless the stated fact is otherwise admitted by plaintiff. R. 4:46-2(a).

plaintiff lacked an understanding of the Essex Vicinage's and Administrative Office of the Court's policies and procedures. Plaintiff responded in part by claiming he was subject to unspecified harassment, harsh supervision, and mistreatment under Okuzu. The performance assessment advisory also stated, "it was discussed and agreed that this would be [plaintiff's] last chance since if this assignment did not work out, [plaintiff] would be removed from the Finance Division" and that plaintiff "understood the ramifications of not working to his capacity under his current title[.]"

In January 2014, plaintiff received a Preliminary Notice of Major Disciplinary Action (PNDA) charging he violated judicial policies and directives by failing to report to his supervisor that he received a notice to appear in court in connection with his then-pending divorce case. Plaintiff explained his failure to report the scheduled court appearance to his supervisor, stating "[i]t's not that I failed. I forgot. I think I forgot" and claiming his failure to report the court appearance was "obviously due to the divorce . . . ."

Represented by his collective negotiations unit's shop steward, plaintiff resolved the charge in the PNDA. In February 2014, plaintiff entered into a settlement agreement and release with the Judiciary, accepting a one-day

suspension and agreeing the "suspension may be used in the future by the Vicinage for purposes of progressive discipline."

The 2015 Settlement of Disciplinary Charges Against Plaintiff

In April 2015, plaintiff scheduled a vacation to Nigeria, with a designated date of May 6, 2015 for his return to work. Plaintiff later testified at his deposition that, on May 5, 2015, while on his way to the airport in Nigeria for his return flight home, he was hit by a bus and rendered unconscious. Plaintiff claimed he was rushed to a hospital where he regained consciousness on May 12 or 13, called his then-supervisor, Jack Dunne, and told Dunne "I'm down" but could not otherwise speak because he "lost [his] voice . . . ." Plaintiff further testified that, after the call with Dunne, he lost consciousness again and did not "regain [his] full strength . . . until about seven weeks later[,]" in the last week of June or first week in July. That is when plaintiff first contacted the Essex Vicinage's human resources representatives to advise them of what had occurred.

Defendant Oniyama was plaintiff's human resources manager at the Essex Vicinage.[2] In July 2015, Oniyama's office issued a PNDA charging plaintiff

[2] In the motion papers provided in the record on appeal, Oniyama is sometimes referred to as "Oretha Phelps."

with job abandonment because he did not return to work as scheduled from his approved vacation, he remained absent from work, and he had not been in contact with the Judiciary either directly or through his emergency contact since failing to return to work when scheduled.

Following the issuance of the July 2015 PNDA, plaintiff's collective negotiations unit's representative contacted plaintiff about the disciplinary charge, but plaintiff testified he again lapsed into a coma for several weeks. Later, while still in Nigeria, plaintiff submitted to the Essex Vicinage a medical note dated August 19, 2015, written by his doctor in Nigeria, and a temporary disability form, as proof of his medical condition. The Judiciary then granted plaintiff medical leave retroactive from May 5, 2015, until October 30, 2015.

On October 28, 2015, plaintiff produced a second note from his doctor in Nigeria requesting extended medical leave. The note stated: "The above named (Mr. Chidi Onukogu) is still not fully fit to start work due to increased frequency of attack (seizure). His condition has improved but still needs full recovery. He will be due for duty on 25th, January 2016. Please give him every necessary assistance." In a letter, the Essex Vicinage's human resources representatives denied plaintiff's request for extended medical leave, explaining he had been out of work since May 5, 2015, he was ineligible for leave under the Family Medical

Leave Act (FMLA), 29 U.S.C. §§ 2601-2654, and the Essex Vicinage could not approve additional discretionary leave "due to operational hardship[.]"

With its denial of plaintiff's request for extended medical leave, the Essex Vicinage instructed plaintiff to report to work on November 13, 2015, with a note from his doctor stating he was fit for duty. Claiming he was following his doctor's advice and concern about his condition during air travel, plaintiff did not return to work on November 13, 2015, as directed by the Essex Vicinage. Instead, he returned on November 23, 2015.

Plaintiff was aware he may face removal charges from the Judiciary. He consulted an attorney concerning the major disciplinary charges[3] that might result in the termination of his employment. When plaintiff returned to work, he did not request an accommodation from the Essex Vicinage human resources department, although he claims the October 28, 2015 letter from his doctor

[3] "Under the Administrative Code, 'major discipline' and 'minor discipline' have defined meanings based on the quantum of punishment imposed. The terms do not categorize the seriousness or type of underlying incident, as opposed to the punishment imposed." In re Attorney General Law Enforcement Directive Nos. 2020-5 and 2020-6, 465 N.J. Super. 111, 137 n.1 (App. Div. 2020) (quoting In re Stallworth, 208 N.J. 182, 198 (2011)), aff'd as modified, 246 N.J. 462 (2021). "'Major discipline' is defined as including removal, disciplinary demotion, and suspension or fine for more than five working days at any one time. N.J.S.A. 34:13A-5.3; N.J.A.C. 4A:2-2.2(a). By contrast, 'minor discipline' is defined as a formal written reprimand or a suspension or fine of five working days or less. N.J.S.A. 34:13A-5.3; N.J.A.C. 4A:2-3.1(a)." Ibid.

constituted a request for an accommodation — medical leave until January 25, 2016.

On November 16, 2015, plaintiff received a PNDA asserting he should be removed for incompetency, inefficiency, or failure to perform official duties; inability to perform official duties; neglect of duty; and other sufficient causes, specifically violation of judicial policies and directives, including the Code of Conduct, Canon 1(B) ("Every court employee shall endeavor at all times to perform official duties properly, courteously, and with diligence."); and other policies and directives, including the Judiciary Leave Policy; and job abandonment.

At a December 21, 2015 proceeding during which plaintiff was represented by his collective negotiations unit representative, plaintiff resolved the charges with the Judiciary. The Essex Vicinage human resources representative presented plaintiff with a settlement agreement and release. Plaintiff's collective negotiations unit representative recommended plaintiff sign the agreement, and, in fact, plaintiff accepted the agreement and signed it.

The agreement provides plaintiff "accepts the charges set forth in the [PNDA] dated November 16, 2015" and agrees to accept "a sixty (60) day suspension without pay for the charges." Plaintiff further agreed his

"disciplinary record will reflect" the sixty-day suspension and the "suspension may be used in the future by the Vicinage for purposes of progressive discipline."

The agreement also includes a "last chance" provision stating plaintiff "acknowledge[d] any future incident that involves similar behavior as outlined in the [PNDA] and/or other behavior that results in a major disciplinary action shall result in the Judiciary seeking [plaintiff's] dismissal from employment without the need for further progressive discipline." Additionally, the agreement provides plaintiff "agree[d] to release and forever discharge all potential and existing claims arising out of [the] matter," including any claims arising under the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -42, all tort and contract claims, and all claims under any other statutes, laws, or the common law.

By executing the agreement, plaintiff expressly acknowledged he "carefully read and fully unders[tood] all of" its provisions and "was afforded the opportunity to review and discuss each provision . . . with an attorney and/or union representative." Plaintiff also acknowledged he was "satisfied with the advice and services provided by said individual(s)" and "voluntarily execut[ed]" the agreement "of his own free will."

Following execution of the December 21, 2015 settlement agreement and release, plaintiff retained an attorney who wrote to defendant Amy DePaul, the then Essex Vicinage Trial Court Administrator (TCA), complaining about the circumstances under which plaintiff signed the agreement. However, plaintiff testified he is unaware if his attorney filed a lawsuit challenging the settlement agreement and release at that time, and the summary judgment record does not include any evidence plaintiff or his counsel initiated any action to set aside the settlement agreement and release. Following the filing of his lawsuit in this matter, plaintiff alleged he signed the agreement "under duress" on the recommendation of his union collective negotiations unit representative without consulting an attorney.

The August 31, 2016 Disciplinary Charges and the Termination of Plaintiff's Employment

On August 10, 2016, Silvia Gonzalez, the Hudson Vicinage TCA, sent an email to DePaul informing her that plaintiff "sent a letter to the Appellate [Division] regarding his [divorce] case" which "contained FACTS print-outs

[sic]" that, "to [Gonzalez's] knowledge," were not accessible to members of the public.[4]

In his employment position with the Judiciary, plaintiff did not have access to the FACTS system. Plaintiff admitted he sent the FACTS printouts to the Appellate Division and that the printouts included multiple references to caseworker comments that were not otherwise available to the public and did not constitute public records.

On August 10, 2016, plaintiff received an email from the Essex Vicinage Finance Division Manager, defendant Lyew-Giles, advising him there was an investigation underway concerning his service of FACTS printouts to the Appellate Division in his personal matrimonial matter, and that disciplinary action would be taken if it was determined he violated the Code of Conduct, Plaintiff testified Lyew-Giles asked him to identify the Essex Vicinage employee from whom plaintiff obtained the FACTS printouts. Plaintiff testified his union representative told him he did not have to divulge any information that could be used against him by the Judiciary, and, on that advice, he did not

[4] FACTS is the acronym for a Judiciary computer data program entitled the Family Automated Case Tracking System. The program is utilized in the Family Part of the Chancery Division of the Superior Court and only authorized Judiciary employees have access to it.

disclose the Essex Vicinage employee's name to Lyew-Giles in response to her initial requests.

On August 31, 2016, the Judiciary served plaintiff with a PNDA for major disciplinary action charging him with failing to divulge the name of the person who provided the printouts, as well as using his position in the Judiciary to obtain possession of non-public documents — seven pages of FACTS printouts — that he used in his personal matrimonial matter. The PNDA stated that during the Judiciary's investigation of the incident, plaintiff "admitted to requesting and receiving the document from an Essex Family Division employee, but [he] would not reveal the person's name." The PNDA advised that the Judiciary sought plaintiff's removal and noted the December 21, 2015 settlement agreement and release in which plaintiff "acknowledge[d] that any future incident that results in major disciplinary action shall result in [plaintiff's] dismissal from employment without the need for further progressive discipline."

The Judiciary granted plaintiff's request for a hearing on the charges in the August 31, 2016 PNDA, at which plaintiff was represented by counsel. Following the hearing, the hearing officer issued a detailed written opinion summarizing the testimony and evidence presented, making credibility

determinations and findings of fact, and upholding the Judiciary's decision to terminate plaintiff's employment.

Following the hearing, defendant Oniyama served plaintiff with a Final Notice for Disciplinary Action (FNDA) providing for his removal from employment effective January 27, 2017. The FNDA cited plaintiff's submission of the FACTS printouts to the Appellate Division and refusal to disclose the identity of the person from whom he obtained the printouts in response to Lyew-Giles's initial requests as the basis for the discipline. The FNDA also noted plaintiff's prior disciplinary history, including the 2015 settlement agreement, release, and last-chance provision, as grounds for the termination of plaintiff's employment.

In accordance with the applicable collective negotiations agreement, plaintiff appealed the hearing officer's decision to advisory arbitration. The arbitrator determined the FACTS printouts plaintiff obtained from the Essex Vicinage and submitted to the Appellate Division in connection with his divorce matter were documents generally available to the public, and, as such, plaintiff did not violate any Judiciary rules or policies by obtaining them. Thus, in the arbitrator's view, the Judiciary could not properly discipline plaintiff for

obtaining the printouts and using them in his personal matter in the Appellate Division.

The arbitrator also determined plaintiff violated Judiciary policy by refusing to identify the individual who provided the printouts in response to Lyew-Giles's direct requests for that information. The arbitrator concluded the violation warranted minor discipline and recommended a three-day suspension instead of termination of plaintiff's employment. The arbitrator also opined that, because the Judiciary issued only a written warning to the employee who provided the printouts to plaintiff, the Judiciary's decision to terminate plaintiff's employment "smack[ed] of disparate treatment . . . ."[5]

Subsequently, the Administrative Director of the Courts, the Honorable Glenn A. Grant, J.A.D., reviewed the arbitrator's advisory opinion. Judge Grant

[5] In offering the "disparate treatment" comment, the arbitrator did not consider that the circumstances supporting the discipline of plaintiff might be different than those extant for the other employee. For example, the arbitrator did not consider the other employee's prior disciplinary history, if any, or the fact that the Judiciary's decision to terminate plaintiff's employment was for conduct beyond merely obtaining the printouts the employee provided, but was based also on plaintiff's distribution of the printouts to the Appellate Division and plaintiff's refusal to identify the employee when requested to do so by the Essex Vicinage's human resources representative. The record lacks any evidence the other employee engaged in any similar conduct and, unlike plaintiff, the other employee had no prior disciplinary history.

rejected the arbitrator's opinion and determined plaintiff's employment should be terminated. Judge Grant explained:

> While ultimately, it was determined that the FACTS printout provided to [plaintiff] was alternatively accessible to the public, that fact does not somehow excuse his blatant disregard of management's direct request of him to provide the identity of the employee, who gave him the document. For the purposes of discipline, it is simply inappropriate to ignore or discredit this conduct because the ultimate outcome was not as unfavorable as initially anticipated. As a Judiciary employee, directed to provide critical information necessary to the preservation of the public trust and directly impacting the Judiciary's mission, [plaintiff's] "insubordination" was more than minor. Consequently, I find that [plaintiff's] actions constituted Conduct Unbecoming a State Employee and that this violation, alone, warrants a suspension in excess of five days.

Judge Grant found plaintiff "violated Canon 3 of the Code of Conduct, [and] is guilty of Conduct Unbecoming of a State Employee, and Insubordination." Judge Grant determined plaintiff's "conduct warrants major discipline" and, "[i]n accordance with the . . . last chance provision contained in the parties' December 21, 2015 Settlement Agreement and Release," plaintiff's employment "shall be terminated as of January 27, 2017." Plaintiff acknowledged during his deposition testimony in this matter that Judge Grant was the final decision maker as to the termination of his employment. When asked if he had any information Judge Grant

harbored any racial bias against him or otherwise harbored a desire to retaliate against him, plaintiff testified only that, in his view, Judge Grant's decision was filled with emotion and not facts.

Plaintiff's Complaint

Following the termination of his employment, plaintiff commenced this action, filing a complaint asserting causes of action for: unlawful discrimination based on disability and retaliation in violation of the LAD; aiding and abetting unlawful disability discrimination and retaliation in violation of the LAD; national origin discrimination in violation of the LAD; interference with prospective economic advantage; intentional infliction of emotional distress; and breach of contract.[6] Defendants moved for dismissal of the complaint, and, on May 11, 2018, the court dismissed the disability discrimination and retaliation claims with prejudice against Lyew-Giles, Campbell, Oniyama, and DePaul, and dismissed the complaint without prejudice against "the State [d]efendants."

Plaintiff later filed an amended complaint (the complaint) alleging the Judiciary engaged in unlawful disability discrimination and retaliation in

[6] The complaint also asserted claims against defendants Communication Workers of America, Local 1036, and John Seiler. Those claims were later dismissed and are not pertinent to this appeal.

violation of the LAD (first count); defendants aided and abetted unlawful disability discrimination and retaliation in violation of the LAD (second count); the Judiciary engaged in unlawful national origin discrimination in violation of the LAD (third count); defendants Lyew-Giles and Campbell unlawfully interfered with plaintiff's prospective economic advantage with his employer, the Judiciary (fourth count); defendants' actions constituted intentional infliction of emotional distress (fifth count); and the Judiciary breached an alleged contract set forth in "its employer/employee distributed manual" (sixth count).

Defendants' Summary Judgment and Reconsideration Motions

Defendants moved for summary judgment. The court heard argument and issued a written decision granting in part and denying in part defendants' motion. More particularly, the court granted defendants summary judgment on plaintiff's claims the Judiciary violated the LAD by discriminating against him based on his temporary disability, and then retaliating against him for claiming disability, by issuing the November 2015 PNDA and imposing the sixty-day suspension set forth in the December 21, 2015 settlement agreement and release. The court determined the claims accrued no later than on December 21, 2015, the date plaintiff signed the settlement agreement and release, and were therefore barred

under the LAD's two-year statute of limitations. See Montells v. Haynes, 133 N.J. 282, 291-93 (1993) (holding LAD claims are subject to the two-year statute of limitations for injury to the person in N.J.S.A. 2A:14-2). The court also granted defendants summary judgment on plaintiff's causes of action for interference with prospective economic advantage (fourth count), intentional infliction of emotional distress (fifth count), and breach of contract (sixth count).

The court denied defendants' motion for summary judgment on plaintiff's claims that: his 2016 performance evaluation was discriminatory or resulted in a hostile work environment in violation of the LAD (first count); the 2017 termination of his employment was the result of unlawful disability discrimination and unlawful retaliation in violation of the LAD (first count); the individual defendants aided or abetted the Judiciary's violations of the LAD (second count); and he was the victim of national origin discrimination in violation of the LAD (third count). The court's denial of defendants' motion for summary judgment on the asserted LAD claims was based on its determination the arbitrator's comment — that the termination of plaintiff's employment "smack[ed] of disparate treatment" when compared to the discipline imposed on the employee who provided plaintiff with the FACTS printouts — created a genuine issue of material fact precluding summary judgment.

The court entered a memorializing order, and defendants later moved for reconsideration. Defendants argued the court erred by concluding the arbitrator's disparate-treatment comment constituted evidence establishing a genuine issue of material fact precluding summary judgment on plaintiff's remaining LAD claims. The court heard argument on the reconsideration motion and concluded it erred by relying on the arbitrator's comment. The court then concluded defendants were otherwise entitled to summary judgment on each of the remaining LAD-based claims.[7] The court entered an order granting defendants summary judgment on the remaining claims, and this appeal followed.

II.

Prior to addressing the merits of plaintiff's arguments on appeal, it is appropriate to note those portions of the court's orders plaintiff does not

[7] We observe the court did not make findings of fact and conclusions of law supporting its summary judgment award on the remaining LAD claims. See R. 1:7-4; see also Estate of Doerfler v. Fed. Ins. Co., 454 N.J. Super. 298, 302-03 (App. Div. 2018) (explaining that although an appellate court conducts a de novo review of a summary judgment order, its "function . . . is to review the decision of the trial court, not to decide the motion tabula rasa"). Nonetheless, we have determined it appropriate to conduct our required de novo review of the summary judgment record, Abboud, 450 N.J. Super. at 406, and determine the issues presented in the absence of the otherwise required findings of the motion court.

challenge. More particularly, although the two orders from which plaintiff appeals award defendants summary judgment on the six causes of action asserted in the complaint, plaintiff's arguments on appeal are limited to challenges to the summary judgment granted on his claims the Judiciary violated the LAD by discriminating and retaliating against him based on what he describes as his temporary disability and temporary disability leave, and defendants aided and abetted the unlawful discrimination and retaliation against him. Those claims are alleged in the first and second counts of the complaint.

Plaintiff does not offer any argument challenging the court's summary judgment award on the causes of action for: national origin discrimination (third count); interference with prospective economic advantage (fourth count); intentional infliction of emotional distress (fifth count); and breach of contract (sixth count). We deem abandoned any argument the motion court erred by granting defendants summary judgment on the third, fourth, fifth, and sixth counts of the complaint, and we affirm the court's orders granting defendants summary judgment on those claims. See Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, 421 N.J. Super. 489, 496 n.5 (App. Div. 2011) (explaining an issue not addressed in a party's initial merits brief is deemed abandoned). We therefore limit our discussion to plaintiff's challenges to the

court's summary judgment orders on his disability discrimination and retaliation claims asserted in the first count, and the aiding and abetting claim asserted in the second count, of the complaint. All the claims are asserted under the LAD.

III.

In reviewing a grant of summary judgment, we apply the same standard under Rule 4:46-2(c) that governs the trial court. Steinberg v. Sahara Sam's Oasis, LLC, 226 N.J. 344, 349 (2016). We consider the factual record, and reasonable inferences that can be drawn from those facts, "in the light most favorable to the non-moving party" to decide whether the moving party was entitled to judgment as a matter of law. IE Test, LLC v. Carroll, 226 N.J. 166, 184 (2016) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

A motion for summary judgment will not be defeated by bare conclusions lacking factual support, Petersen v. Twp. of Raritan, 418 N.J. Super. 125, 132 (App. Div. 2011), self-serving statements, Heyert v. Taddese, 431 N.J. Super. 388, 413-14 (App. Div. 2013), or disputed facts "of an insubstantial nature[,]" Pressler & Verniero, Current N.J. Court Rules, cmt. 2.1 on R. 4:46-2 (2023). "Competent opposition requires competent evidential material beyond mere speculation and fanciful arguments." Hoffman v. Asseenontv.Com, Inc., 404

N.J. Super. 415, 426 (App. Div. 2009) (internal quotation marks and citations omitted). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Brill, 142 N.J. at 532 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). We owe no special deference to the motion judge's legal analysis. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018).

We also observe that "appeals are taken from orders and judgments, and not from opinions, oral decisions, informal written decisions, or reasons given for the ultimate conclusion." Hayes v. Delamotte, 231 N.J. 373, 387 (2018) (quoting Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001)). Thus, on our de novo review of the summary judgment record, we are not bound by the court's reasoning and may employ reasoning different from the motion court as the basis for an affirmance of the court's orders. See ibid. (explaining "[a] trial court judgment that reaches the proper conclusion must be affirmed even if it is based on the wrong reasoning.").

A.

In Point I of his merits brief, plaintiff argues the court erred by granting defendants summary judgment on his claim, asserted in the first count of the

complaint, that the Judiciary violated the LAD by discriminating against him based on his 2015 temporary disability. Plaintiff contends he presented sufficient competent evidence the Judiciary violated the LAD by failing to provide a reasonable accommodation for his temporary disability in 2015, and he was otherwise subject to a hostile environment based on his temporary disability in 2015. Read broadly, plaintiff's brief also suggests the complaint alleged he was subject to a hostile environment in retaliation for seeking temporary disability leave from the Judiciary in 2015.

The LAD does not expressly address failure-to-accommodate claims, but "our courts have uniformly held that the [LAD] nevertheless requires an employer to reasonably accommodate an employee's handicap." Royster v. N.J. State Police, 227 N.J. 482, 499 (2017) (alteration in original) (quoting Potente v. Cnty. of Hudson, 187 N.J. 103, 110 (2006)). To sustain a cause of action for a failure to accommodate an employee's disability under the LAD, a plaintiff must prove

> he or she (1) "qualifies as an individual with a disability, or . . . is perceived as having a disability, as that has been defined by statute"; (2) "is qualified to perform the essential functions of the job, or was performing those essential functions, either with or without reasonable accommodations"; and (3) that defendant "failed to reasonably accommodate [his or her] disabilities."

[Id. at 500 (quoting Victor v. State, 203 N.J. 383, 410 (2010)).]

A plaintiff is not required to prove an adverse employment action as an essential element of a failure-to-accommodate claim. Richter, 246 N.J. at 529-30.

Here, plaintiff contends the Judiciary failed to accommodate the temporary disability he suffered in Nigeria when, in 2015, it refused to extend his medical leave beyond November 13, 2015, in response to the October 28, 2015 letter from his doctor stating his disability rendered him unable to return to work until January 25, 2016. He also argues the Judiciary failed to reasonably accommodate his disability by issuing the November 16, 2015 PNDA disciplining him for failing to return to work as directed on November 13, 2015.

Plaintiff's claims alleging the Judiciary violated the LAD by denying his request for an extension of his medical leave from November 13, 2015 to January 7, 2016, and by issuing the November 16, 2015 PNDA, fail because they are barred by the December 21, 2015 settlement agreement and general release. Plaintiff executed the settlement agreement and release as a means of resolving the charges in the PNDA, and he was fully aware of the denial of his request for the reasonable accommodation — the extension of his medical leave from November 13, 2015 to January 7, 2016 — when he executed the agreement on December 21, 2015.

The agreement includes an express waiver and release of all claims arising under the LAD related to plaintiff's alleged temporary disability, the charges in the PNDA, and the denial of the requested extension of the medical leave. Yet, plaintiff argues the court erred by giving effect to the settlement agreement and release and granting defendants summary judgment on the precise claims he waived and released. We are not persuaded.

"Settlement of litigation ranks high in our public policy." Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) (quoting Jannarone v. W.T. Co., 65 N.J. Super. 472, 476 (App. Div. 1961)). The strong public policy favoring settlements "is based upon 'the notion that the parties to a dispute are in the best position to determine how to resolve a contested matter in a way which is least disadvantageous to everyone.'" Brundage v. Est. of Carambio, 195 N.J. 575, 601 (2008) (quoting Peskin v. Peskin, 271 N.J. Super. 261, 275 (App. Div. 1994)). "In furtherance of this policy, our courts 'strain to give effect to the terms of a settlement wherever possible.'" Ibid. (quoting Dep't of the Pub. Advoc. v. N.J. Bd. of Pub. Utils., 206 N.J. Super. 523, 528 (App. Div. 1985)).

"Generally, a settlement agreement is governed by principles of contract law." Id. at 600-01 (quoting Thompson v. City of Atl. City, 190 N.J. 359, 379 (2007)). "An agreement to settle a lawsuit is a contract which, like all contracts,

may be freely entered into and which a court, absent a demonstration of 'fraud or other compelling circumstances,' should honor and enforce as it does other contracts." Ibid. (quoting Pascarella v. Bruck, 190 N.J. Super. 118, 124-25 (App. Div. 1983)). "It is not the function of the court to rewrite or revise an agreement when the intent of the parties is clear." Quinn v. Quinn, 225 N.J. 34, 45 (2016) (citing J.B. v. W.B., 215 N.J. 305, 326 (2013)). Thus, "when the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the agreement . . . ." Ibid.

Plaintiff seeks refuge from his waiver and release of his failure-to-accommodate and disability discrimination claims, and all other claims, arising prior to his execution of the December 21, 2015 agreement by arguing it should not be given effect because he executed it under duress. Plaintiff's arguments constitute conclusory assertions of law that are untethered to competent evidence.

As we have explained, "[a] settlement agreement between parties . . . is a contract like any other contract, which 'may be freely entered into and which a court, absent a demonstration of "fraud or other compelling circumstances," should honor and enforce as it does other contracts.'" Jennings v. Reed, 381 N.J. Super. 217, 227 (App. Div. 2005) (citations omitted). Still, a settlement

agreement must be set aside where it is "achieved through coercion, deception, fraud, undue pressure, or unseemly conduct, or if one party was not competent to voluntarily consent thereto[.]" Ibid. (quoting Peskin, 271 N.J. Super. at 275). "A party seeking to be relieved of [its] obligation under a settlement agreement must provide 'clear and convincing proof' of 'fraud or other compelling circumstances.'" Nolan, 120 N.J. at 472 (citation omitted).

A court addressing a claim of duress must consider all the attendant circumstances. Shanley & Fisher, PC v. Sisselman, 215 N.J. Super. 200, 212 (App. Div. 1987). In addition to considering the subjective mindset of the individual claiming duress, a court must assess whether the purported pressure allegedly resulting in the duress was wrongful. Id. at 213. That is, "[t]he act or conduct complained of . . . [must be] 'so oppressive under given circumstances as to constrain one to do what his free will would refuse.'" Rubenstein v. Rubenstein, 20 N.J. 359, 367 (1956) (quoting First State Bank v. Fed. Reserve Bank, 219 N.W. 908, 909 (Minn. 1928)); see also Shanley & Fisher, PC, 215 N.J. Super. at 213. "[T]he 'decisive factor'" in the assessment of a claim of duress "is the wrongfulness of the pressure exerted." Ibid.

Here, the record is devoid of any competent evidence plaintiff's execution of the settlement agreement and release was the product of any pressure

wrongfully exerted by the Judiciary that caused plaintiff to accept the settlement terms based on something other than the exercise of his own free will. The undisputed facts establish plaintiff was represented by his collective negotiations unit representative during the proceeding that resulted in the parties' entry into the agreement; plaintiff admitted he executed the agreement based on the recommendation of his collective negotiations unit representative; by executing the agreement, plaintiff acknowledged he had the opportunity to confer with counsel, and he entered into the agreement of his own free will; and plaintiff never took any action to set aside the settlement agreement following its execution but instead reaped its benefits by obtaining a dismissal of the PNDA charges seeking termination of his employment and returning to work subject to his completion of the agreed upon sixty-day suspension.

Plaintiff's conclusory assertions he entered into the settlement agreement and release under duress, or was in some manner deprived of the opportunity to confer with counsel prior to executing the agreement, do not constitute evidence, never mind the requisite clear and convincing evidence, Nolan, 120 N.J. at 472,

establishing the agreement should be vitiated based on wrongful conduct by the Judiciary constituting duress.[8]

We are also not convinced any claimed insistence by the Judiciary that the settlement be on the terms set forth in the agreement, or a Judiciary requirement that plaintiff accept the proffered settlement terms or proceed to the hearing on the charges in the PNDA, constitutes wrongful conduct that resulted in duress that might support setting aside the agreement. See, e.g., Jennings, 381 N.J. Super. at 228 (explaining the absence of evidence the alleged coercion emanated from the opposing party, or "anyone who claims the benefit of the contract," or the alleged coercive threat subverted the complaining party's free will, required a finding the complaining party failed to demonstrate his election to enter into the agreement "was the product of anything other than his own free will."). A party's insistence on the inclusion of terms in the contract the other party later

[8] Plaintiff does not present any competent evidence the alleged denial of an opportunity to confer with counsel was the result of any conduct on the Judiciary's part. Plaintiff's Rule 4:46-2(b) statement in response to defendants' statement of material facts does not identify any action taken or statement made by the Judiciary or any of the individual defendants denying him an opportunity to confer with counsel. And the deposition testimony upon which plaintiff relies in his Rule 4:46-2(b) statement in response to defendants' statement of material facts to support his conclusory assertion he was denied the opportunity to confer with counsel does not include any assertions of fact attributing the alleged denial of an opportunity to speak with counsel to any action or statement of any Judiciary representative.

deems unacceptable is not wrongful conduct supporting a claim of duress. See generally ibid.; see also Dep't of Pub. Advoc., 206 N.J. Super. at 530 (explaining where parties have agreed to the terms of a settlement, "second thoughts are entitled to absolutely no weight as against our policy in favor of settlement."). In sum, plaintiff offers no competent evidence the Judiciary engaged in any wrongful action supporting his duress claim.[9]

In the absence of any competent evidence permitting a reasonable jury to conclude plaintiff's entry into the settlement agreement was the product of duress, the Judiciary was entitled to summary judgment on plaintiff's claims, alleged in the first count of the complaint, that the Judiciary unlawfully discriminated against him prior to December 21, 2015 by failing to reasonably accommodate his temporary disability, by issuing the November 16, 2015

[9] We are also unpersuaded by plaintiff's claim that alleged errors in the settlement agreement and release, including that the document was signed on December 21, 2015, but refers to a December 22, 2015 hearing, in some manner demonstrates actionable hostile environment, discrimination, or retaliation. We discern no logical support for plaintiff's claim such errors in the agreement and release he reviewed and signed with the input and support of his collective negotiations unit representative constitutes evidence of alleged violations of the LAD. Plaintiff does not present any evidence or argument the alleged errors played a part in inducing him to execute the agreement, and the alleged errors are unrelated to the agreement's essential terms, including the settlement of the charges against him, the discipline plaintiff agreed to accept, and the release and waiver of all claims against defendants.

PNDA, and by prosecuting the charges against him.[10] Plaintiff waived those claims, and released the Judiciary and its employees from those claims, under the plain terms of the settlement agreement and release to which we are bound to give effect. See Brundage, 195 N.J. at 601.

B.

Plaintiff also argues the motion court erred by dismissing his claims that following the execution of the December 21, 2015 settlement agreement and general release, defendants violated the LAD by creating a hostile work environment, and by retaliating against him, based on his temporary disability and for claiming the temporary disability in 2015. He argues the conduct resulting in a hostile environment consisted of: his 2016 three-month assignment to a different supervisor, Okuzu, who plaintiff had accused of harassment eleven years earlier in 2005; Campbell's statements he intended to retract the favorable 2016 mid-year performance evaluation he gave plaintiff and provide a revised unfavorable evaluation; Campbell's unfavorable 2016

[10] Because we find the claims are barred under the settlement agreement and release, it is unnecessary to address the motion court's determination the claims are barred because they were filed beyond the two-year limitation period applicable to LAD claims, as well as plaintiff's claim the motion court erred by granting summary judgment on that basis. See New Brunswick Hous. Auth. v. Suydam Invs., 177 N.J. 2, 28 (2003) (an appellate court's determination of one or more issues on appeal may moot remaining issues).

year-end evaluation of plaintiff's performance; and the Judiciary's issuance of the 2017 PNDA charging various disciplinary offenses related to plaintiff's obtaining and distributing the FACTS printouts and plaintiff's refusal to respond to Lyew-Giles's requests for the identity of the Judiciary employee who supplied plaintiff with the printouts.

Plaintiff argues those alleged actions are sufficient to support his claims of hostile environment discrimination based on his disability in violation of the LAD and unlawful retaliation for claiming a temporary disability in 2015. We consider in turn plaintiff's contentions the court erred by granting summary judgment on those claims.

To establish a claim of hostile environment discrimination under the LAD, a plaintiff "must show that the complained-of conduct (1) would not have occurred but for the employee's protected status, and was (2) severe or pervasive enough to make a (3) reasonable person believe that (4) the conditions of employment have been altered and that the working environment is hostile or abusive." Shepherd v. Hunterdon Developmental Ctr., 174 N.J. 1, 24 (2002) (quoting Lehmann v. Toys R Us, Inc., 132 N.J. 587, 603-04 (1993)). Appellate review of a hostile work environment claim requires consideration of "the

totality of the circumstances." El-Sioufi v. St. Peter's Univ. Hosp., 382 N.J. Super. 145, 178 (App. Div. 2005).

Under the first prong of a hostile work environment claim, a plaintiff "must show by a preponderance of the evidence that the impermissible conduct would not have occurred but for plaintiff's protected status." Shepherd, 174 N.J. at 24. Under the second prong, "[i]t is the harasser's conduct, not . . . plaintiff's injury, that must be severe or pervasive." Lehmann, 132 N.J. at 610. The Court in Shepherd stated "[n]either rudeness nor lack of sensitivity alone constitutes harassment, and simple teasing, offhand comments, and isolated incidents do not constitute discriminatory changes in the terms and conditions of one's employment . . . ." 174 N.J. at 25-26.

The Supreme Court has observed "one incident of harassing conduct can create a hostile work environment." Taylor v. Metzger, 152 N.J. 490, 499 (1998). However, the Court has further explained that, although it "'is certainly possible' a single incident, if severe enough, can establish a prima facie case of a hostile work environment, 'it will be a rare and extreme case in which a single incident will be so severe that it would, from the perspective of a reasonable [person situated as the claimant], make the working environment hostile.'" Id. at 500 (quoting Lehmann, 132 N.J. at 606-07).

Under the third and fourth prongs of the standard for establishing an actionable hostile environment under the LAD, the Court has employed "an objective standard to exclude an 'idiosyncratic response of a hypersensitive plaintiff[.]'" Shepherd, 174 N.J. at 26 (quoting Lehmann, 132 N.J. at 614). "Settled case law relies on an objective standard to evaluate a hostile environment claim." Rios v. Meda Pharm., Inc., 247 N.J. 1, 12 (2021). In assessing a hostile environment claim, the focus "is on the harassing conduct itself and 'not its effect on the plaintiff or on the work environment.'" Ibid. (quoting Cutler v. Dorn, 196 N.J. 419, 431 (2008)).

As noted, count one of the complaint also alleges defendants violated the LAD by creating a hostile environment in retaliation for plaintiff having sought temporary disability leave in 2015. To establish a retaliation claim under the LAD, a plaintiff must "demonstrate that: (1) they engaged in a protected activity known by the employer; (2) thereafter the employer unlawfully retaliated against them; and (3) their participation in the protected activity caused the retaliation." Craig v. Suburban Cablevision, 140 N.J. 623, 629-30 (1995).

Here, plaintiff appears to claim he engaged in protected activity under the LAD by requesting an accommodation in 2015 for his temporary disability and opposing the Judiciary's denial of his request for an extension of his temporary

disability leave, see N.J.S.A. 10:5-12(d) (defining protected activity under the LAD to include "oppos[ing] any practices or acts forbidden under [the] act"), and that he was thereafter subject to retaliation — by way of a hostile work environment — for having done so.

Measured against the standards for the asserted claims and the summary judgment record, plaintiff failed to present sufficient evidence establishing a viable hostile work environment claim following his execution of the December 21, 2015 settlement agreement and release based on his 2015 temporary disability or in retaliation for his 2015 request for temporary disability leave. In the first instance, the record lacks any competent evidence the incidents plaintiff claims created the hostile environment — the change in his supervisors, Campbell's statements about the 2016 mid-year evaluation, the year-end evaluation, or the filing of charges that resulted in the 2017 termination of his employment — "would not have occurred but for" his temporary disability or his 2015 claims based on the disability, Shepherd, 174 N.J. at 24, or were "caused" by plaintiff's participation in activity protected under the LAD, Craig, 140 N.J. at 629-30.[11]

[11] In reaching our determination, we do not make any finding plaintiff actually engaged in protected activity under the LAD that is prerequisite to the retaliation claim. See Craig, 140 N.J. at 629-30.

Plaintiff does not point to any evidence the 2016 temporary — three-month — change in plaintiff's supervisors was either in response to plaintiff's 2015 temporary disability or was caused by plaintiff's 2015 request for an extension of his medical leave based on the disability. The record is bereft of evidence the temporary change in supervisors was in any manner related to plaintiff's temporary disability or his 2015 claims related to the disability. Similarly, plaintiff does not cite to any evidence Campbell's comment about changing the 2016 positive performance review he provided plaintiff, which Campbell never changed, or the unfavorable year-end review would not have occurred but for plaintiff's 2015 temporary disability or temporary disability claim, or occurred as the result of plaintiff's 2015 claim for temporary disability leave. Indeed, there is no evidence the allegedly unfavorable year-end review was not accurate or deserved. See ibid.

Plaintiff also failed to sustain his burden with regard to his claim the 2017 PNDA and subsequent termination of his employment would not have occurred but for his 2015 temporary disability claims. In the first instance, the genesis of the August 31, 2016 PNDA was a report made by the TCA from a different vicinage, the Hudson County vicinage, and there is no evidence that TCA had any knowledge concerning plaintiff's 2015 temporary disability or request for

temporary disability leave. During the investigation of the report from the Hudson TCA, plaintiff admitted refusing to respond to Lyew-Giles's requests that he identify the Judiciary employee who provided the FACTS printouts, and plaintiff was disciplined and terminated by Judge Grant based solely on that admitted conduct and his prior disciplinary history, which included the last chance agreement. As we have explained, "[i]t should require no citation to state that an employee's poor performance in discharging his duties" constitutes a legitimate and non-discriminatory reason to terminate an employee's employment. El-Sioufi, 382 N.J. Super. at 174 (quoting Casseus v. Elizabeth Gen. Med. Ctr., 287 N.J. Super. 396, 405 (App. Div. 1996)).

In sum, plaintiff failed to sustain his burden of presenting evidence it is more likely than not that the alleged conduct resulting in the purported hostile environment would not have occurred but for his 2015 temporary disability or in retaliation for plaintiff's request for temporary disability leave. Lehmann, 132 N.J. at 603-04; Craig, 140 N.J. at 629-30. Based on that failure alone, defendants are entitled to summary judgment on plaintiff's claim they violated the LAD by subjecting him to an alleged hostile environment following the parties' entry into the December 21, 2015 settlement agreement and release.

Plaintiff's hostile environment claims separately fail because the motion record lacks competent evidence satisfying the second element of a hostile environment cause of action under the LAD — that the alleged conduct was "severe or pervasive enough to make a reasonable [employee] believe the conditions of employment are altered and [the] working environment is hostile." Rios, 247 N.J. at 10 (quoting Lehmann, 132 N.J. at 604). To determine if conduct is sufficiently severe and pervasive to support a hostile environment claim, the court must consider "all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Cutler, 196 N.J. at 432.

Plaintiff did not present sufficient evidence allowing a reasonable jury to conclude he was subjected to severe and pervasive conduct resulting in a hostile environment. Plaintiff asserts the hostile environment was created in part by changing his supervisors in 2016, but, beyond that conclusory assertion, he offers no evidence the change in his supervisors constituted severe conduct establishing a hostile environment. See Lehmann, 132 N.J. at 603-04; see also El-Sioufi, 382 N.J. Super. at 176 (explaining conclusory assertions are

insufficient to establish severe and pervasive conduct constituting a hostile environment under the LAD).

Plaintiff's claims concerning Campbell's comments about possibly changing the positive mid-year performance review, and Campbell's issuance of an unfavorable year-end performance review, are similarly untethered to any evidence the comments or review were sufficiently severe to adversely affect plaintiff's working conditions or otherwise constituted the rare and extreme case where an isolated statement may create a hostile work environment. Rios, 247 N.J. at 11 (citing Taylor, 152 N.J. at 502-03). Campbell's alleged comments concerning a possible change in an otherwise positive performance evaluation are not similar in nature or degree to the "egregious epithet — 'an unambiguously demeaning racial message' or an 'ugly, stark and raw' racist slur" — that the Court in Taylor found defined the rare and extreme case where a singular and isolated comment supports a hostile environment claim. Ibid. (quoting Taylor, 152 N.J. at 502-03).

Plaintiff also makes no showing that what he characterizes as the unfavorable year-end review constitutes severe conduct altering his working conditions. The evaluation noted certain areas of plaintiff's performance that required improvement, but the summary judgment record lacks competent

evidence the supervisor's comments were false, inaccurate, or did not constitute an honest appraisal of plaintiff's performance. Moreover, the evaluation noted improvements made in plaintiff's performance during 2016 complimented plaintiff's "very strong will to do all the job functions assigned to him," and included plaintiff's supervisor's commitment "to work closely with [plaintiff] and retrain him where necessary, so that he can achieve his goals and meet expectations." Plaintiff likely would have preferred a different and more consistently favorable year-end evaluation, but giving plaintiff the benefit of all favorable inferences, he failed to demonstrate the year-end evaluation he received constituted the type of severe conduct necessary to establish a hostile environment claim. See Lehmann, 132 N.J. at 604 (explaining, to support a hostile environment claim, a plaintiff must present evidence severe or pervasive enough to make a reasonable employee believe "the conditions of employment are altered or [the] working environment is hostile"); see also El-Sioufi, 382 N.J. Super. at 176 (rejecting a claim a negative evaluation was given in retaliation for protected activity under the LAD because there was "no evidence that plaintiff's [protected activity] was in any way related to her unfavorable evaluation").

In addition, and for the reasons already stated, the investigation of plaintiff's distribution of the FACTS printouts, and his resulting termination, could not constitute severe conduct supporting a hostile environment claim. Again, the investigation was undertaken in response to a report from an individual in another vicinage who had no apparent knowledge of plaintiff's 2015 temporary medical leave claims and issues. Moreover, Judge Grant made the decision to terminate plaintiff's employment based solely on plaintiff's admitted, and undisputed, refusal to respond to Lyew-Giles's requests for the identity of the Judiciary employee who supplied the FACTS printouts, and plaintiff's refusal followed service of a sixty-day disciplinary suspension the previous year and his entry into a last chance agreement that provided he would be subject to termination for any major disciplinary infraction. We find nothing in the Judiciary's necessary and appropriate investigation into a report of misconduct, or the discipline imposed as a result of plaintiff's admitted refusal to provide information during the investigation, constituting severe or pervasive conduct supporting a hostile environment claim under the LAD.

In sum, plaintiff failed to present sufficient evidence permitting a reasonable jury to conclude that the actions he claims resulted in the hostile environment would not have happened but for his temporary disability or were

in retaliation for his 2015 request for temporary disability leave. Plaintiff also failed to establish that any of the cited actions were sufficiently severe or pervasive, individually or collectively, to support a hostile environment claim under the LAD. For those reasons, and even after giving plaintiff the benefit of all reasonable inferences based on the undisputed facts in the summary judgment record, we affirm the court's order granting summary judgment on plaintiff's claim, asserted in count one of the complaint, that defendants violated the LAD by creating a hostile workplace based on either plaintiff's temporary disability or in retaliation for his assertion of an entitlement to temporary disability leave.

We also observe plaintiff does not directly argue the court erred by granting summary judgment to defendants on his claim they discriminated against him based on his disability and retaliated against him in response to his claimed entitlement to a temporary disability leave, by terminating his employment in 2017. Those claims are properly analyzed under the burden shifting paradigm established in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Victor, 203 N.J. at 408.

Under the McDonnell Douglas framework, a plaintiff must first "demonstrate that he or she can meet each of the elements of a prima facie case." Ibid. The elements of a prima facie case are dependent on the nature of the claim

asserted. As noted, plaintiff alleges in part the termination of his employment constituted unlawful discrimination based on his disability and in retaliation for protected activity under the LAD.

Where a plaintiff alleges a discriminatory discharge, a prima facie case requires proof: "(1) that plaintiff is in a protected class; (2) that plaintiff was otherwise qualified and performing the essential functions of the job; (3) that plaintiff was terminated; and (4) that the employer thereafter sought similarly qualified individuals for that job." Ibid. In contrast, to establish a prima facie claim of retaliation under the LAD, a plaintiff must prove: (1) plaintiff was in a protected class; (2) plaintiff engaged in protected activity known to the employer; (3) plaintiff was thereafter subjected to an adverse employment consequence; and (4) that there is a causal link between the protected activity and the adverse employment consequence. Id. at 409.

Under McDonnell Douglas, where a plaintiff presents sufficient evidence demonstrating the elements of a prima facie case, "the burden shifts to the employer to produce evidence of 'legitimate, non-discriminatory reasons' that support its employment actions." El-Sioufi, 382 N.J. Super. at 166. When the employer satisfies its burden, a plaintiff must then "prove that the stated reasons were a pretext for discrimination." Ibid.

"To prove pretext, . . . plaintiff[s] must do more than simply show that the employer's [proffered legitimate, non-discriminatory reason] was false; [they] must also demonstrate that the employer was motivated by discriminatory intent." Viscik v. Fowler Equip. Co., 173 N.J. 1, 14 (2002). "The 'plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them "unworthy of credence," . . . and hence infer "that the employer did not act for [the asserted] non-discriminatory reasons."'" Crisitello v. St. Theresa Sch., 465 N.J. Super. 223, 239-40 (App. Div. 2020) (quoting DeWees v. RCN Corp., 380 N.J. Super. 511, 528 (App. Div. 2005)).

Applying the McDonnell Douglas framework to the evidence presented to the motion court, and assuming plaintiff satisfied his burden of demonstrating a prima facie case on both the disability and retaliation claims, we are satisfied the State met its burden of articulating legitimate non-discriminatory reasons for terminating plaintiff's employment in 2017. Those reasons are set forth in Judge Grant's detailed decision terminating plaintiff's employment. They included plaintiff's refusal to respond to Lyew-Giles's request that he disclose the Judiciary employee who provided the FACTS printouts. Judge Grant explained

plaintiff's refusals constituted insubordination and a lack of candor that are inconsistent with the high standards expected of Judiciary employees, and plaintiff violated the Code of Conduct by attempting to use his official position for personal advantage. Judge Grant also cited plaintiff's prior disciplinary history and noted that plaintiff engaged in the wrongful conduct while subject to the last chance provision of his 2015 settlement agreement.

Plaintiff makes no showing, fails to point to any evidence, and asserts no argument in support of his appeal that the legitimate non-discriminatory reasons set forth in Judge Grant's decision are a pretext for either discrimination or retaliation resulting in the termination of plaintiff's employment. See Crisitello, 465 N.J. Super. at 139-40. In other words, plaintiff failed to satisfy his burden under the McDonnell Douglas paradigm, and, for that reason, defendants are entitled to summary judgment on plaintiff's claim defendants unlawfully discriminated against him based on his disability, or in retaliation for asserting a claim for temporary disability leave, in violation of the LAD. See Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 331-32 (2010) (explaining "if the plaintiff cannot meet [their] obligation under the McDonnell Douglas methodology" to "prove by a preponderance of the evidence that the reason articulated by the employer was merely a pretext for discrimination[,]" then "the

employer will prevail on summary judgment."). The court therefore correctly granted defendants summary judgment on the claim.

We also affirm the court's summary judgment award on plaintiff's cause of action against defendants for aiding and abetting the Judiciary's alleged violations of the LAD. To prove an aiding and abetting claim under the LAD, "a plaintiff must show that '"(1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; [and] (3) the defendant must knowingly and substantially assist the principal violation."'" Tarr v. Ciasulli, 181 N.J. 70, 84 (2004) (quoting Hurley v. Atl. Cty. Police Dep't, 174 F.3d 95, 127 (3d Cir. 1999)).

Defendants are entitled to summary judgment on the aiding and abetting claims for the simple but dispositive reason that, as we have explained, plaintiff failed to present evidence establishing any "principal violation" of the LAD by the Judiciary. Ibid. Simple logic dictates plaintiff cannot prevail on his claim defendants aided and abetted a violation of the LAD in the absence of any competent evidence establishing a violation of the LAD in the first instance. See ibid. (requiring predicate "principal violation" to "hold an employee liable

as an aider or abettor"). Thus, the court correctly granted defendants summary judgment on the aiding and abetting claim in the second count of the complaint.

To the extent we have not directly addressed any of plaintiff's remaining arguments, they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.