		Superior Court of New Jersey
KEVIN NOAH	*	APPELLATE DIVISION
	*	DOCKET NO. A-1565-23
Plaintiff-Appellant,	*	
	*	DOCKET NO. BELOW: SSX-L-58-22
v.	*	
	*	ON APPEAL FROM:
SPARTA TOWNSHIP	*	SUPERIOR COURT OF NEW JERSEY—
BOARD OF EDUCATION	*	LAW DIVISION, SUSSEX COUNTY
AND MICHAEL GREGORY,	*	
	*	
Defendants-Respondents.	*	SAT BELOW:
	*	Hon. Vijayant Pawar, JSC

PLAINTIFF-APPELLANT'S APPEAL BRIEF

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PROCEDURAL HISTORY

Plaintiff-Appellant filed a Complaint and Jury Demand in the Superior Court of New Jersey, Law Division, Sussex County against the Defendants-Respondents on or about February 16, 2022 (Pa-1) alleging violations of New Jersey's Conscientious Employee Protection Act. While the case was pending, Plaintiff was deposed on March 10, 2023 (1T)[1].

Defendants-Respondents filed a Motion for Summary Judgment (Pa-6) on August 31, 2023, which was granted on November 3, 2023 (Pa-65). On November 15, 2023, Plaintiff filed a Motion for Reconsideration (Pa-75) which was denied on December 1, 2023 (Pa-76). Then, on December 14, 2023, Plaintiff filed a Motion to Reinstate the matter for purposes of conducting oral argument on the Reconsideration Motion (Pa-79). The Court below granted Plaintiff's application to redo the Motion for Reconsideration with oral argument. The Motion for Reconsideration was heard on January 19, 2024 (2T)[2] and denied by Order dated January 22, 2024 (Pa-85).

The filing of this Notice of Appeal followed on January 26, 2024 (Pa-88).

[1] 1T - Transcript of Plaintiff's Deposition 3/10/23;
[2] 2T - Transcript of Motion Hearing 1/19/24.

STATEMENT OF FACTS

Plaintiff worked for the Sparta Board of Education for two years (1T; 17:10). Plaintiff was a part-time security guard (1T; 17:24). The Plaintiff was a fill-in at the Sparta Township High School (1T; 18:4). Plaintiff never had a disciplinary finding against him (1T; 21:3).

The principal at the high school told the Plaintiff that they were hiring a full-time female (1T; 21:24). Believing that that was discrimination (1T; 22:7), the Plaintiff filed an EEOC complaint and told only Chris Olivo about it and that was a few days before Plaintiff had a conversation with the Defendant Gregory (1T; 27:11). Shortly after that conversation with Olivo, Olivo told the Plaintiff, "I can't talk to you, you have to talk to Gregory" (1T; 26:6). Olivo was the person who assigned work and was in charge of scheduling (1T; 25:26). Eventually, Plaintiff spoke to Gregory on the telephone. The conversation with Gregory has to be seen through the entire deposition. Part of the conversation was:

> Well, Mr. Gregory started out with, the administration feels you are a problem for us. We can't trust you to work with certain individuals and that I didn't want to stay in the school anymore. I wanted to quit. And I said, that's not true. I said Allison Workmeister, she was the go-between coordinator for, at that time, the substitutes. She was a substitute coordinator so she was in charge of me if I had problem or something. I said I feel like I asked her to please check my absent management system because…I thought there was a problem. I said, that's not true. I still want to work at -- for the Board of Education for Sparta and he said you weren't happy that we filed a female. And

> I was quite taken aback because I didn't notify Mr. Gregory of my EEOC complaint. The only person I advised of that was Chris Olivo and that was only like a few days before that (1T; 26:21 to 27:13).
> And his response was, was that we feel you can't work with certain people. And my response was, I've been in law enforcement 29 years, I work security, I can work with anybody.
>
> And I told him that I was cognizant of the fact why they hired her and I was, you know, I wasn't happy but that I was over it.

In response to a question as to who the people were, Plaintiff testified: "No, but he mentioned immediately a female."

> He did -- he did compliment me saying, Chris said I did a good job and he would hope that I would continue to stay on and do a good job. And I said, I probably -- I don't remember my response to him, but I don't remember exactly what I said. I said, okay, thank you, have a good day (1T; 91:4).

And then, we have the quote that the Court points out at p. 2 of the Motion for Reconsideration filed on December 1, 2023 as page 3 of 3:

> Q: At any point subsequent to hearing it from Glenn Danzo, did anyone tell you you weren't allowed at the school?
> A: No.
> Q: All right. So, after Glenn texted you that, what did you do?
> A: Well, at that point after my conversation with Mr. Gregory and after my conversation with Mr. Olivo, I assumed, I shouldn't use that word, I thought that Chris reached out to somebody either Mr. Gregory or Mr. Springs, told him that I threatened him or yelled at him or called him a piece -- he didn't like the conversation so he

> reached out to them, said something that must have flipped their switch and when he told Glenn Danzo that I'm not allowed on the school property, to me, I thought my days were numbered, that I'd have to resign or I was going to be fired and I didn't want that being fired on my resume.

LEGAL ARGUMENT
POINT I
The Court Below Failed to Understand the Entire Gregory Phone Call (Pa-76).

When the Court below did not recognize that oral argument had been requested in connection with the Motion for Reconsideration, the Court actually issued an order on December 1, 2023, which denied the Motion for Reconsideration. However, that document is reflective of the Court's thinking. On p. 2 of the Statement of Reasons attached to the December 1st Order, the Court isolates a section of Plaintiff's deposition. Although the Court does not indicate where the quote is from, it actually appears on p. 93 at line 19. There, we see some background as to the Gregory conversation. Plaintiff was asked:

> Q: In the conversation with Mike Gregory, did he ever mention the EEOC complaint specifically?
> A: No.
> Q: Do you know for a fact that he knew about it?
> A: I can't prove it. It is just my opinion, because he said I was upset with them hiring a female, and the only way he would have known that is from Chris, because I never posted, never called him, never wrote a letter, never made a complaint to Mr. Gregory.

On p. 94 at line 18, Plaintiff was asked:

> Q: When Mike Gregory said they weren't comfortable with you working with other people and -- actually, let me make sure I am getting that right.
> A: Yeah, they were not comfortable with me working with certain people.
> Q: Do you know for a fact that he was referring to -- who do you think they were referring to there? What certain people?
> A: Well, it would either be Chris, who I have had some run-ins with, or most likely since you mentioned a female, Laurie Dittmeier.

Counsel read p. 2:

> Q: Shortly after hanging up with Chris, I texted Glenn Danzo wishing to speak with him. At approximately 3:50 p.m., he texted me and said Mr. Spring advised him I was not allowed in the school. Did I read that correctly?
> A: Correct. You have a copy of the text message.

On p. 95 at line 20, Plaintiff was asked:

> Q: Did you hear that from anyone besides Glenn Danzo?
> A: No.

The following lines, which the Court below cites at p. 2 of 2 of the Statement of Reasons attached to the December 1st Order (Pa-76), at page 98 line 7 the section from page 96 line 6-18 has to be understood in terms of two happenings. First, the Gregory conversation (1T; 91:5). So, what Gregory pointed out was that the Plaintiff is a good worker, and he hoped that the Plaintiff would stay on. Because Gregory had mentioned the word "female" and the Plaintiff had

signed a EEOC complaint about Laurie Dittmeier, the Plaintiff realized that Olivo had told Gregory about the EEOC complaint, and the Plaintiff believed that his career at Sparta was over. What the Court below failed to realize is that Gregory's "you're a good worker, we hope you'll stay on," was a pre-curser to the fact that Plaintiff would be notified by Spring through Danzo that he was being removed from the high school. Although the Plaintiff indicates that the conversation he had with Olivo may have induced the statement by Danzo that he was prohibited from entering the high school, the Gregory conversation about the "good worker" and "hope you'll stay on" was actually a revelation by Gregory of things to come. In other words, "you're out of the high school, you're a good worker, we hope you'll stay on."

What the Court below fails to see is that Gregory's conversation about keeping his job and Plaintiff remaining with Sparta was that Gregory knew it was coming i.e. removal from the high school. Otherwise, there was no reason for Gregory to say that. Gregory knew that the Plaintiff was to be removed from the high school and recognized that it was a removal from a spot where the Plaintiff was a part-timer, but was usually at the high school. That relationship was about to be changed, and so Gregory "hopes you'll stay on." That statement is indicative of a change, and that change came from Danzo when he texted the Plaintiff and told him that he was prohibited from entering the high school. Actually, the Court

below was confused because the questioning began on p. 95 at line 6, with the statement: "So, after Glenn texted you that, what did you do?" The examiner was incorrect because Glenn did not text the Plaintiff until after the conversation with Gregory. Gregory's statement concerned an event that was about to happen i.e. removal from the high school. Plaintiff thought that his conversation with Olivo was the reason that he received the Danzo email. Actually, Gregory forewarned the Plaintiff about being removed from the high school when he stated, "you're a good worker, I hope you stay on." And then, as the Plaintiff testified, not only was he removed from the high school, but his opportunity to answer available work was compromised to the point that others were receiving assignments, and he was not.

What the Court below failed to understand is that Gregory called the Plaintiff, the Plaintiff returned the call, and Gregory announced what was about to happen. Otherwise, "we hope you stay on" has no meaning. Gregory knew that it was about to happen, and it did i.e. removal from the high school. The argument with Olivo could not be the reason that the Plaintiff was excluded from the high school. Gregory said, "We hope you'll stay on." What was not recognized below is that the argument with Olivo was after the phone call with Gregory. Gregory said, "You're a good worker; we hope you'll stay on." He was predicting that the Plaintiff would be excluded from the high school.

The Court below, on the Motion for Reconsideration cited the Plaintiff's deposition, but failed to recognize that the Gregory conversation predicted removal from the high school. After that conversation, there was the argument with Olivo, but the decision to remove the Appellant from the high school was already made and predicted by Gregory.

POINT II
The Plaintiff's Assignments Ended (Pa-76).

This is a CEPA case. Any discussion about CEPA must begin with the words "remedial legislation to be construed liberally in favor of the Plaintiff;" Cox v. Sears Roebuck and Co., 138 N.J. 2. The opinions of the Court below were contrary to the recognized CEPA philosophy of remedial and liberal. The Court below failed to apply those principles to its citation on p. 2 of the December 1, 2023 Order and Statement of Reasons (Pa-76). Actually, the citation by the Court below set forth on p. 2 of that Order cannot be read separate and apart from what Gregory told the Plaintiff on the telephone. The citation on p. 2 of the December 1st Order makes no sense, unless it is read with Gregory's statement to the Plaintiff. Could Gregory's statement to the Plaintiff have other meanings? Of course they could, but the proximity to the Gregory statements to the Danzo email certainly raises the inference that Gregory's comments were directed at the Plaintiff's removal from the high school.

What the Court below failed to recognize is that the Plaintiff, the non-moving party, is entitled to every favorable inference, and clearly what is stated above, is a favorable inference.

What must be understood here is that the Gregory phone call was a prediction of being removed from the high school. The disappearance of work assignments should be attributed to Olivo because he was called out by the Plaintiff for telling Gregory about the EEOC complaint. Gregory mentioned the word "female" and the Plaintiff knew that Gregory knew about the EEOC complaint. When the Plaintiff told Olivo that he, Olivo, ruined his career, it was the final touch to retaliation for having filed an EEOC complaint.

In his Certification, Gregory states that Plaintiff worked about 10 to 15 hours a week (1T; 29:3). In January of 2021, the Plaintiff figured that he had worked about 500 hours (1T; 29:3). On March 10th, the Plaintiff texted Olivo telling him, "I don't get alerts anymore" (1T; 65:13). Then, he stated, "So, that's how you and your cronies eliminate people" (1T; 65:18). Plaintiff was advised there were open dates that were in the system, but he had no notification and he felt he was being intentionally eliminated from the system, so that he couldn't work (1T; 66:3). Plaintiff thought that by taking him out of the system, and if there was work, he wouldn't get it (1T; 67:14). Plaintiff testified that he was out of the system and

Olivo told him he'd have to talk to Gregory (1T; 72:16). The Plaintiff, in his experience, thought that Olivo was part of the administration (1T; 73:11).

Gregory estimated that Plaintiff worked 10 to 15 hours per week. Plaintiff was now getting no assignments, even though he was told that there were openings, but he was not contacted.

Plaintiff resigned because he thought he was being terminated. Actually, with no assignments and after speaking to Gregory and being excluded from the high school, his conclusion was correct.

As a result of the EEOC complaint which Olivo revealed to Gregory and Gregroy's statement about a female, together with the absence of assignments, the Plaintiff was on a path to termination.

The above must be understood in terms of what Gregory stated on the telephone to the Plaintiff.

Well, Mr. Gregory started right out with, "The administration feels you are a problem for us. We can't trust you to work with certain individuals." He said that I didn't want to stay in this school anymore. He said that I wanted to quit and I said, That's not true, Allison Werkmeister, she was the go-between coordinator for, at that time, the substitutes. She was a substitute coordinator, so she was in charge of me if I had a problem or something. I said, I feel like I asked her to please check my absent management system because it was two days I wasn't called for work. I

said, that's not true, I still want to work at -- for the Board of Education of Sparta. He said, "You weren't happy that we hired a female," and I was quite taken back because I didn't notify Mr. Gregory of my EEOC complaint. The only person I advised of that was Chris Olivo, and that was only like a few days before that. His response was that we feel you can't work with certain people, and my response was, "I've been in law enforcement for 29 years, I work security, I can work with anybody." I told him that I was cognizant of the fact why they hired her. And I was, you know, I wasn't happy, but that I was over it.

Plaintiff was then asked:

> Q: When he said certain people, did you ever specify who those certain people were?
> A: No, but then he mentioned immediately a female.

CONCLUSION

For the reasons expressed herein, it is respectfully submitted that this Court reverse the decision of the Court below and remand the matter back to the Court below for trial.

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KEVIN NOAH,

Plaintiff,

v.

SPARTA TOWNSHIP BOARD OF EDUCATION AND MICHAEL GREGORY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No.: A-01565-23

On Appeal From:
Law Division, Sussex County
Docket No.: SSX-L-58-22

Sat Below:
Hon. Vijayant Pawar, J.S.C.

Date Submitted: May 23, 2024

RESPONDENTS/DEFENDANTS' BRIEF

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PRELIMINARY STATEMENT

On March 15, 2021, Plaintiff Kevin Noah ("Plaintiff") unilaterally resigned his position as a substitute security officer with defendant Sparta Township Board of Education ("the Board"). The common theme throughout Plaintiff's employment with the Board was an ill-defined yet pervasive sense of malcontent on his part that culminated in Plaintiff's crude and abusive tirade against a coworker, Christopher Olivo.

In February 2021, Plaintiff made a submission to the Equal Employment Opportunity Commission (EEOC) alleging that the Board improperly favored female applicants for a full-time position Plaintiff had applied for. The EEOC declined to pursue Plaintiff's submission and the Board never received formal notice of it.

When Plaintiff was not selected for the full-time position, he changed tracks and shifted his attention to an attempt to negotiate a raise on behalf of himself and the other substitute security officers.

On March 10, 2021, a coworker informed Plaintiff of two available shifts that Plaintiff allegedly had not seen notice of. Plaintiff immediately leapt to the conclusion that Mr. Olivo had somehow blocked Plaintiff's access to the software substitute officers used to schedule shifts. Despite having no evidence

to support his "feeling" that Mr. Olivo had interfered with the software, Plaintiff confronted Mr. Olivo over text in bizarre fashion and threatened to resign. Mr. Olivo denied the allegation and suggested that Plaintiff speak to their supervisor, defendant Michael Gregory.

Mr. Gregory and Plaintiff spoke by phone on March 15th. During that conversation, Plaintiff concedes that Mr. Gregory said that he hoped Plaintiff would continue to work for the District. Immediately after this call ended, Plaintiff called Mr. Olivo while "very angry" and called Mr. Olivo a "piece of shit." Immediately after this tirade, another security officer texted Plaintiff and told him that he had been barred from the high school. Plaintiff immediately resigned without confirming the status of his employment with his supervisor.

The trial court granted summary judgment and dismissed Plaintiff's CEPA and workplace discrimination claims in their entirety. The trial court found that there was no issue of fact suggesting a nexus between Plaintiff's alleged whistleblowing activity and his resignation. Specifically, the trial court found the following: (1) there was no evidence suggesting that Mr. Olivo or anyone else disconnected Plaintiff from the scheduling software; and (2) even if Plaintiff had been barred from the high school, his tirade against Mr. Olivo, and not any protected whistleblowing activity on Plaintiff's part, was the source of that instruction.

Plaintiff's challenge of those findings of fact is thoroughly unconvincing. Plaintiff's core argument on appeal is that Mr. Gregory's statement that he hoped Plaintiff would continue to work for the District actually meant that the Board wanted Plaintiff to quit. In other words, sometimes up is down and down is up. Plaintiff contends that the trial court's rejection of his illogical theory is reversible error. This argument fails on several grounds.

First, the trial court's findings of fact are subject to a deferential standard of review and should not be disturbed absent a clearly incorrect or unsupportable result. The motion record supporting Defendants' successful motion for summary judgment establishes that the Court's factual conclusions were well-supported, credible, and deserving of deference.

Second, Plaintiff's argument that his CEPA claim is entitled to a "liberal" construction and that he is entitled to all favorable inferences of fact misstates the law. Nothing in CEPA or the standard of review for summary judgment motions requires the trial court to contort the factual record or abandon common sense in order to salvage a clearly deficient claim.

The trial court's grant of summary judgment in Defendants' favor and denial of Plaintiffs' motions for reconsideration should be upheld, and Plaintiff's appeal should be denied.

PROCEDURAL HISTORY

On February 16, 2022, Plaintiff filed the instant suit alleging a claim under the Conscientious Employee Protection Act ("CEPA") and other unspecified retaliation claims. Pa1.

By way of discovery, Defendants served written discovery requests on Plaintiff and took Plaintiff's deposition. Plaintiff did not serve any written discovery demands on Defendants or notice any witness's deposition. The discovery period expired on August 30, 2023 without either party seeking an extension.

Defendants moved for summary judgment on August 31, 2023. Pa6. Plaintiff filed his opposition to summary judgment on October 10, 2023. Da1. Plaintiff's opposition relied on his CEPA claims to the exclusion of all other claims, thereby electing CEPA as his exclusive remedy. See Da1. After hearing oral argument, the Honorable Vijayant Pawar, J.S.C. granted defendant's motion for summary judgment and filed an order and written statement of reasons. Pa65.

On November 15, 2023, Plaintiff moved for reconsideration of the trial court's grant of summary judgment. Pa75. Plaintiff again relied on CEPA as his sole cause of action. See Da2. On December 1, 2023, the trial court denied Plaintiff's motion for reconsideration without entertaining oral argument. Pa76. The court's order was supported by a written statement of reasons. Pa77-Pa78.

Plaintiff made a renewed motion on December 14, 2023. Pa79. While styled as a motion to reinstate the case, the motion was in essence a request to hold oral argument on Plaintiff's motion for reconsideration. Oral argument was held on Plaintiff's motion for reconsideration on January 19, 2024. See Pa86. The trial court issued an order and written statement of reasons again denying Plaintiff's motion on January 22, 2024. Pa85. Plaintiff submitted his notice of appeal on January 29, 2024.

STATEMENT OF FACTS

In early 2019, Plaintiff Kevin Noah ("Plaintiff") was hired by the Board as a substitute armed security officer. Pa10 at ¶1; Pa56 at ¶1. As a "substitute" officer, Plaintiff was not assigned a set schedule of hours, but rather worked specific shifts (known as "details") on a per diem basis. Pa10 at ¶2; Pa56 at ¶2.

When an officer with a set working schedule was unavailable for his regular detail due to illness or vacation, substitute officers were free to sign up for the detail on the District's online "Absent Management" system on a first-come, first-served basis. Pa11 at ¶6; Pa56 at ¶6.

In late 2020, the District announced a job opening for a full-time security officer. Pa24. Plaintiff was one of four substitute officers who applied for the position. Pa11 at ¶ 10; Pa56 at ¶10.

In February 2021, Plaintiff wrote a submission to the Equal Employment Opportunity Commission (EEOC) and complained that the Board had allegedly

announced a preference to hire a female applicant for the full-time position. Pa25; Pa12 at ¶12; Pa56 at ¶12. As the EEOC ultimately declined to pursue Plaintiff's submission, the District's administration was never formally notified of Plaintiff's submission. Pa12 at ¶17; Pa57 at ¶17; Pa34 at ¶11.

Meanwhile, on or around February 15, 2021, Plaintiff texted full-time security officer Christopher Olivo and told Mr. Olivo that "I may resign next week." Pa27. Plaintiff described his working relationship with Mr. Olivo as alternatingly "pleasant" and "acrimonious". Pa18 at ¶60; Pa59 at ¶60.

On February 22nd, Plaintiff texted Olivo and told him that "I want to represent the [substitute security officers] for a union. We need a raise." Pa29. Plaintiff asked Olivo to inform Director of Operations Michael Gregory about the Plaintiff's demand for raise. Pa12 at ¶16; Pa57 at ¶16; Pa30.

On March 1st, the EEOC informed Plaintiff that it would not be prosecuting his submission. Pa12 at ¶17; Pa57 at ¶17.

On March 3rd, Olivo—acting on Plaintiff's request—emailed Gregory and informed him that some of the substitute officers wanted a raise. Pa13 at ¶19; Pa57 at ¶19; Pa37. Plaintiff received Absent Management updates on March 5th and March 8th. See Pa13 at ¶¶22-23; Pa57 at ¶¶22-23.

At about 11:00 AM or 12:00 PM on Wednesday, March 10th, Plaintiff met with other substitute officers to discuss plans to negotiate for a raise. Pa13 at

¶25; Pa57 at ¶25. At that meeting, one of Plaintiff's fellow substitutes told Plaintiff that available work details for March 10th and March 12th had been posted on Absent Management. Pa13 at ¶26; Pa57 at ¶26.

Plaintiff alleges that he did not receive electronic notice of the March 10th and March 12th details. Pa60 at ¶10. Plaintiff leapt to the conclusion that Mr. Olivo deliberately disconnected him from Absent Management as a form of retaliation. Pa60 at ¶11; Pa63 at ¶¶ 53-54. At his deposition, Plaintiff conceded that Mr. Olivo lacked administrative privileges that would be necessary to remove Plaintiff from Absent Management. Pa15 at ¶34; Pa57 at ¶34. Plaintiff was unable to identify anyone with administrative privileges who would be willing to assist Mr. Olivo. Pa15 at ¶¶35-36; Pa58 at ¶¶35-36;1T 87:20-88:5.

On the evening of March 10th, Plaintiff accused Olivo of locking him out of the Absent Management system; Olivo denied doing so. Pa39-Pa40; Pa45. A "text fight" ensued in which Plaintiff called Olivo a "chameleon" and told Olivo that Plaintiff would "turn in [his] clothes, ID and 2 access cards." Pa41. Plaintiff then equivocated on this threat by saying that "a few days of careful consideration are in order." Pa43. Olivo told Plaintiff that he should take his concerns up with Michael Gregory and that Olivo would have Gregory call him. Pa42.

Also on the evening of March 10th, Plaintiff emailed District employee Alison Werkmeister, advised her that he thought he had been disconnected from Absent Management, and asked her to look into the issue. Pa15 at ¶37; Pa58 at ¶37; Pa46. Ms. Werkmeister replied the next morning and advised that she did not see any issues with his account. Pa15 at ¶38; Pa58 at ¶38; Pa47. Plaintiff then checked his account himself and did not see any issues. Pa15 at ¶39; Pa58 at ¶39.

Plaintiff spoke with Michael Gregory on the phone on March 15th. Pa50. According to Plaintiff, Gregory allegedly said he was aware Plaintiff was unhappy that the District had hired a female employee for the full-time position, but that Gregory hoped Plaintiff would continue working for the District. Pa50; Pa16 at ¶¶45-46; Pa58 at ¶¶45-46. After ending his call with Gregory, Plaintiff called Olivo. Pa50. Plaintiff, who was "very angry," and "very upset," accused Olivo of ruining Plaintiff's career with the District and called Olivo a "piece of shit." Pa50; Pa16 at ¶¶47-48; Pa58 at ¶¶47-48.

Shortly after his call with Olivo, Plaintiff received a text from Glenn Danzo, another substitute guard. Pa52. As per Danzo, Principal Spring had told Danzo that Plaintiff was no longer allowed at the high school. Pa52; Pa16 at ¶49; Pa58 at ¶49. That same day, Plaintiff—acting on his own initiative—met with Mr. Danzo on the high school grounds and delivered a letter of resignation

to Danzo. Pa53. Plaintiff did not confirm the nature of his alleged bar from campus with any Board employee other than Danzo before resigning. Pa17 at ¶51; Pa58 at ¶51.

LEGAL ARGUMENT

I. THE COURT'S FINDINGS OF FACT IN THIS CASE WERE CORRECT AND SHOULD NOT BE DISTURBED

As his first point of error, Plaintiff contends that the trial court "failed to understand," Pb 7, the context surrounding Plaintiff's March 15, 2021 phone call with Michael Gregory. This argument is thoroughly unconvincing as Plaintiff's argument misstates the facts and the law.

It is black letter law that a trial court's findings of fact are viewed deferentially and not *de novo*. See, e.g. Horne v. Edwards, 477 N.J. Super. 302, 312-13 (App. Div. 2023), cert. denied 256 N.J. 439 (2024). A trial court's findings of fact "should not be disturbed unless 'they are so wholly insupportable as to result in a denial of justice.'" Rova Farms Resort, Inc. v. Investors Ins. Co. of America, 65 N.J. 474, 483-84 (1974)(quoting Greenfield v. Dusseault, 60 N.J. Super. 436, 444 (App. Div. 1960), aff'd. o.b. 33 N.J. 78 (1960). A trial court's factual findings are considered binding when "supported by adequate, substantial and credible evidence." Rova Farms Resort, Inc., 65

N.J. at 484 (citing New Jersey Turnpike Authority v. Sisselman, 106 N.J. Super. 358 (App. Div. 1969)); Horne, 477 N.J. Super. at 313.

Plaintiff's version of events, in which the March 15th phone call with Michael Gregory and his exclusion from the high school could only have been prompted by Plaintiff's EEOC submission, distorts the actual timeline beyond all recognition. Plaintiff alleges that he informed Olivo of his EEOC submission around March 1, 2021. See Pa62 at ¶¶ 35-37. On March 3rd, Olivo, at Plaintiff's request, informed Michael Gregory that Plaintiff and other substitute security officers wanted a raise. See Pa12 at ¶16; Pa57 at ¶16; Pa37; Pa30; Pa38. Olivo had been aware of Plaintiff's desire for a raise since February 22nd. See Pa29. On March 10th, Plaintiff was informed of available work details that he was allegedly not informed of through Absent Management. See Pa13 at ¶¶25-26; Pa57 at ¶¶25-26.

Upon learning of these shifts, Plaintiff leapt to the conclusion that Olivo had intentionally locked Plaintiff out of the Absent Management system as a form of retaliation. See Pa60 at ¶11; Pa63 at ¶¶53-54. This is despite the fact that Olivo was assisting Plaintiff in his attempt to obtain a raise. Pa12 at ¶16; Pa57 at ¶16; Pa37; Pa30; Pa38. Plaintiff had, and still has, no evidence to support his "feeling" that Olivo disconnected him from Absent Management. See Pa15 at ¶¶34-40; Pa57 at ¶34; Pa58 at ¶¶35-40; Pa46-Pa47.

Later in the day on March 10th, Plaintiff confronted Olivo over text and accused him of locking Plaintiff out of Absent Management. See Pa39-Pa41; Pa45. During this "text fight," Plaintiff threatened to resign his position. See Pa42 ("Won't contact you anymore. Just to turn in clothes, ID and 2 access cards."). Plaintiff then equivocated on this threat by saying that "a few days of careful consideration are in order." Pa43. Olivo offered to have Michael Gregory call Plaintiff to discuss Plaintiff's grievances. See Pa42.

Gregory and Plaintiff spoke on the phone on March 15th. See Pa50. During this call, Gregory told Plaintiff that he hoped Plaintiff would continue working for the Board. See Pa16 at ¶46; Pa58 at ¶46. Soon after Plaintiff's call with Gregory ended, Plaintiff called Olivo while "very angry" and "very upset" and called Olivo a "piece of shit." See Pa16 at ¶¶47-48; Pa58 at ¶¶47-48; Pa50. Later on the 15th, after Plaintiff's calls with Gregory and Olivo, a coworker informed Plaintiff that he was not allowed on the high school campus. See Pa16 at ¶49; Pa58 at ¶49; Pa52.

When placed in their full context, this series of events makes the following clear: (1) the events of March 10th and March 15th were triggered by Plaintiff's subjective and unfounded "feeling" that he had been locked out of the Absent Management system, not the March 1st conversation in which he allegedly informed Olivo of the EEOC submission; (2) Gregory's March 15th comment

that he hoped Plaintiff would continue working was prompted by Plaintiff's March 10th threat to resign; and (3) Plaintiff's bar from the high school was triggered by his March 15th phone call to Olivo, in which Plaintiff "very angr[ily]" called Olivo a "piece of shit," which occurred after Plaintiff's first and only call with Gregory.

The version of events proffered in Plaintiff's brief contradicts both the undisputed factual record and common sense. Plaintiff claims that Gregory's March 15th comment that he hoped Plaintiff would continue working can only be explained by an intent to bar Plaintiff from the high school in the future. See Pb6-7. This claim is belied by the fact that Plaintiff threatened to resign his employment five days prior, on March 10th. See Pa42; Pa43. Gregory's statement that he hoped Plaintiff would continue working (e.g., that he would not resign) is readily explainable as a response to Plaintiff's threat. Moreover, Plaintiff does not contend that Gregory told him that he was barred from the high school[1]. See Pa17 at ¶51; Pa58 at ¶51. Assuming *arguendo* that Gregory had intended to retaliate against Plaintiff and bar his employment at the high school, it would

[1] The statement "you're out of the high school, you're a good worker, we hope you'll stay on," Pb6, was never uttered by or attributed to Gregory and is not to be found anywhere in the record. The use of double quotes notwithstanding, Plaintiff appears to have created this quote as a form of creative advocacy. See Pb6 ("In other words, 'you're out of the high school . . . .'")(emphasis added).

have been utterly illogical for him to first tell Plaintiff that he hoped he would continue working. The March 15th phone call in which Plaintiff called Olivo a "piece of shit," (which again, occurred after Plaintiff's phone call with Gregory), is the far more logical explanation for Plaintiff's bar from the high school.

Finally, Plaintiff's counsel's version of events is contradicted by Plaintiff himself, who believes that his exclusion from the high school was a consequence of his March 15th tirade against Olivo:

> Q. All right. So after Glenn texted you that what did you do?
>
> A. Well, at that point after my conversation with Mr. Gregory and after my conversation with Mr. Olivo I assumed, I shouldn't use that word, I thought that Chris reached out to somebody, either Mr. Gregory or Mr. Springs, told him that I threatened him or yelled at him or called him a piece -- he didn't like the conversation. So he reached out to them, said something that must have flipped their switch and when he told Glenn Danzo that I'm not allowed on the school property. . . .

1T at 96:5-96:18; see also Pa77-78.

In light of the undisputed factual record and Plaintiff's nonsensical interpretation of events, the Court correctly and cogently rejected Plaintiff's interpretation of events in multiple statements of reasons. See Pa73-Pa74; Pa78; Pa86-87. The Court also found that there was no evidence supporting Plaintiff's claim that he had been locked out of the Absent Management System. See Pa73-74. The Court's findings of fact are "supported by adequate, substantial and

credible evidence" and should not be disturbed. Rova Farms Resort, Inc., 65 N.J. at 484.

II. THE TRIAL COURT WAS NOT REQUIRED TO CREDIT PLAINTIFF'S SELF-SERVING INTERPRETATION OF EVENTS

Plaintiff next contends that the Court's decision not to adopt Plaintiff's version of events was contrary to CEPA's status as a remedial piece of legislation and the standard for granting summary judgment. See Pb8-Pb9. This is again incorrect.

Plaintiff's reliance on the courts' "liberal construction" of CEPA is misplaced, as that requirement clearly refers to the court's interpretation of CEPA's statutory language, not the inferences of fact made on a summary judgment motion. See Lippman v. Ethicon, Inc., 222 N.J. 362, 381-82 (2015)(determining whether CEPA extends to employees engaged in compliance duties); D'Annunzio v. Prudential Ins. Co. of America, 192 N.J. 110, 120-21 (2007)(applying liberal construction principal to definition of "employee" under CEPA); Abbamount v. Piscataway Tp. Bd. of Educ., 138 N.J. 405, 430-31 (1994)(resolving apparent conflict between CEPA and New Jersey Tort Claims Act). The trial court's grant of summary judgment in this case was based on the absence of a triable issue of material fact, not an issue of statutory construction.

Similarly, the requirement that a non-movant on summary judgment receive all favorable inferences of fact is not a license for the court to distort the factual record or abandon common sense. While the evidence is to be viewed "in the light most favorable to" the non-movant, the evidence must be "sufficient to permit a rational factfinder to resolve the … issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 523 (1995)(emphasis added). When a non-movant points only to disputed issues of fact that are "of an insubstantial nature," the proper disposition of the matter is summary judgment. Brill, 142 N.J. at 529 (citing Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 75 (1954)). As the Appellate Division noted in Swarts v. Sherwin-Williams Co., 244 N.J. Super. 170, 178 (App. Div. 1990):

> Of particular import… is the word "genuine." An opponent to a summary judgment motion cannot defeat the motion by raising a misguided subjective belief, without more, to create a genuine issue of material fact.

Swarts, 244 N.J. Super. at 178.

Plaintiff has offered no evidence to forestall summary judgment other than his own subjective and self-serving interpretation of events. Plaintiff relies on his unsubstantiated "feeling" that he was locked out of the Absent Management system. See Pb9 ("he had no notification and felt he was being intentionally eliminated . . . .")(emphasis added). That "feeling" is contradicted by the evidence. Despite having informed Olivo of his EEOC submission on March 1st,

Plaintiff received Absent Management updates on March 5th and March 8th. See Pa13 at ¶¶22-23; Pa57 at ¶¶22-23. Plaintiff conceded at his deposition that Chris Olivo lacked the administrative privileges needed to remove Plaintiff from the Absent Management system. Pa15 at ¶34; Pa57 at ¶34. Plaintiff could not identify anyone who may have assisted Olivo in removing Plaintiff from Absent Management. See Pa15 at ¶¶35-36; Pa58 at ¶¶35-36;1T 87:20-88:5. Plaintiff asked Alison Werkmeister—a District employee with access to the administrative side of Absent Management—to check his account and see if there were any issues, and Ms. Werkmeister found none. See Pa15 at ¶¶37-38; Pa58 at ¶¶37-38; Pa46-Pa47. Plaintiff checked his account himself and saw that everything appeared normal. See Pa15 at ¶39; Pa58 at ¶39. Plaintiff conceded that he had nothing other than a "feeling" to corroborate his theory that he had been locked out of Absent Management. See Pa15 at ¶40; Pa58 at ¶40. The trial court found that there was "evidence that Plaintiff was not locked out of the shift assignment . . . ." See Pa73.

Plaintiff also relies on a conversation in which Plaintiff accused Olivo of ruining his career as evidence that Olivo did in fact ruin Plaintiff's career. See Pb9 ("When the Plaintiff told Olivo that he, Olivo, ruined his career, it was the final touch to retaliation . . . ."). Plaintiff's subjective belief that he had somehow been sabotaged does not make it true. Finally, Plaintiff's counsel insists that the

Court must adopt his illogical interpretation of the Gregory phone call even though Plaintiff himself does not endorse it. See Pa77-78; 1T at 96:5-96:18.

Plaintiff's self-serving, unsubstantiated, and illogical interpretation of events is insufficient to forestall summary judgment. See Brill, 142 N.J. at 523; Swarts, 244 N.J. Super. at 178.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that Plaintiff's appeal be denied and that the trial court's decisions below be affirmed.

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Attorneys for Defendants,
Sparta Township Board of Education
and Michael Gregory

By: */s/James M. McCreedy*
James M. McCreedy

Dated: May 23, 2024

		Superior Court of New Jersey
KEVIN NOAH	*	APPELLATE DIVISION
	*	DOCKET NO. A-1565-23
Plaintiff-Appellant,	*	
	*	DOCKET NO. BELOW: SSX-L-58-22
v.	*	
	*	ON APPEAL FROM:
SPARTA TOWNSHIP	*	SUPERIOR COURT OF NEW JERSEY—
BOARD OF EDUCATION	*	LAW DIVISION, SUSSEX COUNTY
AND MICHAEL GREGORY,	*	
	*	
Defendants-Respondents.	*	SAT BELOW:
	*	Hon. Vijayant Pawar, JSC

PLAINTIFF-APPELLANT'S REPLY BRIEF

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PROCEDURAL HISTORY

Plaintiff-Appellant relies upon the Procedural History set forth in his previously filed Appeal Brief.

STATEMENT OF FACTS

Plaintiff-Appellant relies upon the Statement of Facts set forth in his previously filed Appeal Brief.

REPLY TO RESPONDENT'S BRIEF

The Court's attention is called to the trial Court's decision on the Motion for Reconsideration (Pa-78). There, the Court sets forth a part of the deposition of the Plaintiff. The citing of the Plaintiff's deposition must be read in its entirety and because the Court below did not do that, the trial Court's decision granting Summary Judgment and denying the Motion for Reconsideration should be vacated.

First of all, the question is asked to the Plaintiff as to whether at any point subsequent to hearing it from Glenn Danzo, "Did anyone tell you you weren't allowed at the school?" Plaintiff's answer was, "No." Therefore, Plaintiff was talking about any time subsequent to Glenn Danzo telling Plaintiff that he was not allowed at the school.

It must be remembered that Glenn Danzo worked at the high school with Principal Spring. At this point, we are talking only about Glenn Danzo. And then,

the Plaintiff was asked, "So after Glenn texted you that, what did you do?" Immediately, the Plaintiff responds, "At that point after my conversation with Mr. Gregory, and after my conversation with Mr. Olivo, I thought that Chris reached out to somebody, either Mr. Gregory or Mr. Spring.

What has to be seen here is that there was a conversation with Gregory. After that, there was a conversation with Chris Olivo. The record reflects that there was a conversation with Gregory and there was a conversation with Olivo. The record also reflects that the Plaintiff was barred from the high school which was his usual place of assignment. We have to put with what the Court cited at Pa-78 the fact that the Plaintiff did sign an EEOC complaint that Gregory did mention the word, "female," and that Gregory also stated that he hoped that the Plaintiff would stay on. The question arises, why would Gregory say that if either the Plaintiff had already been barred from the high school, or was about to be barred from the high school and Gregory knew it. There are two factors that cannot be denied. First, is that the Plaintiff did in fact object by means of an EEOC complaint that a female was selected simply because she was a female and she was placed ahead of a number of part-timers. We know that the Plaintiff was barred from the high school. We know that Gregory mentioned the word, "female." We know that Gregory said, "I hope you'll stay on; you're a good worker." Why would Gregory say, "I hope you stay on," if there wasn't a reason for the Appellant

to resign, and that reason was being barred from the high school. Even the Plaintiff in the deposition section set forth on Pa-78, the Plaintiff "thought my days were numbered."

Again, there are a number of factors that defeat the Plaintiff's Motion for Summary Judgment. Appellant signed an EEOC complaint about a female being hired because she was a female. The Appellant's regular assignment was the high school. He was barred from the high school. Gregory's "I hope you stay on," in connection with the Plaintiff's good work, it must be in connection with being barred from the high school.

So, we have an EEOC complaint; we have the Appellant being barred from the high school; we have Gregory telling the Appellant that he is a good worker; and then, he states, "I hope you stay on." All of those facts have to be considered as the Appellant's case against the Defendants. The time sequence may be confusing, but the facts are the same: complaint and retaliatory action which is clearly the basis for a CEPA case.

Whether the Danzo information was before or after the conversation with Gregory is immaterial. Either Gregory knew that the Plaintiff was barred from the high school or he anticipated that it was going to happen. For either one, before or after, there is no denying that he was in fact removed from the high school and clearly, according to Gregory, not for his work ability; and since Gregory

mentioned, "female," a Jury would have a right to determine that the EEOC complaint is the basis for the Appellant being removed from the high school where he regularly worked.

Then, we have to realize that the Plaintiff testified that his work assignments dried up and that is probably because his usual work assignments were the high school. That ended, and he did "stay on," but the work assignments ended.

All of the above demonstrates a factual dispute which should not give rise to an Order granting summary judgment.

CONCLUSION

For the reasons expressed herein, it is respectfully submitted that this Court reverse the decision of the Court below and remand the matter back to the Court below for trial.

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Date: 6/5/24