FILED, Clerk of the Appellate Division, October 17, 2023, **A-002155-22**, **AMENDED**

Superior Court of New Jersey

DEBRA RUNOWICZ, Plaintiff-Appellant, v. STATE OF NEW JERSEY, DIVISION OF STATE POLICE, CAPTAIN WILLIAM HARKNESS (#5355), LIEUTENANT ANTHONY GUIDI, (#5161), LIEUTENANT COLONEL SCOTT EBNER (#5346), MAJOR JOHN BALDOSARO (#5027), CAPTAIN BRENDAN MCINTYRE (#5079), CAPTAIN JEANNE HENGEMUHLE (#5600), SERGEANT FIRST CLASS CHRISTOPHER POMMERENCKE (#5391), LIEUTENANT RAYMOND PALOVCAK (#5387) AND JOHN DOES 1-5, Defendants-Respondents.	*	APPELLATE DIVISION DOCKET NO. A-2155-22 Docket No. Below: MER-L-2509-17 ON APPEAL FROM: Superior Court of New Jersey Law Division, Mercer County SAT BELOW: Hon. Douglas H. Hurd, JSC *CIVIL ACTION*

PLAINTIFF-APPELLANT'S **AMENDED** APPEAL BRIEF

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PROCEDURAL HISTORY

On November 21, 2017, the Plaintiff filed a Complaint in the Superior Court of New Jersey, Law Division, Mercer County (Pa-1). The case proceeded through discovery, and the Plaintiff's deposition took place on February 4, 2020 (1T).[1] On May 1, 2020, the State Defendants, filed a Motion for Summary Judgment (Pa-10) which was granted as to the Plaintiff's LAD claims, but not her CEPA claims, on August 7, 2020 (Pa-117).

Defendant filed a second Motion for Summary Judgment (Pa-123) which oral argument was heard on August 8, 2022 (2T).[2] An Order was entered granting Summary Judgment on that same date (Pa-171) . Plaintiff filed for reconsideration which was heard on February 21, 2023 (3T)[3] and denied on that same date (Pa-173).

The Motion filed in Mercer County and heard by Judge Anklowitz was, as indicated above, granted as to Plaintiff's LAD claims, but not her CEPA claims. In 2022, the same Defendants filed a second Motion for Summary Judgment which was the same as the first Motion for Summary Judgment.

After discovery, the State Defendants filed a Motion for Summary Judgment which was heard by the Hon. William Anklowitz, J.S.C. After oral argument, the Motion filed before Judge Anklowitz was the same Motion for Summary Judgment

[1] 1T; Transcript of Plaintiff's Deposition on February 4, 2020;
[2] 2T; Transcript of Hearing on Motion for Summary Judgment on August 8, 2022; and
[3] 3T; Transcript of Hearing on Motion for Reconsideration on February 21, 2023.

filed in 2022 by the same Defendants. Plaintiff filed opposition to the second Motion arguing that Judge Anklowitz's decision on the first Motion was the law of the case.

The first Motion for Summary Judgment was the law of the case. The Plaintiff argued that the law of the case is a doctrine to be applied to the question of whether or not a decision made by a trial Court during one stage of the litigation is binding throughout the course of the action. The use of that doctrine, in this situation, avoided repetitious litigation of the same issue during the course of a single trial.

When the matter came on for hearing on the second Motion for Summary Judgment, there was a new Judge, Hon. R. Brian McLaughlin, J.S.C., who granted the second Motion, rejected the law of the case doctrine and dismissed the case without ever citing a case or authority (Pa-171).

Plaintiff made a Motion for Reconsideration and modified its request to answer the Summary Judgment Motion since the Court had rejected the law of the case i.e. Summary Judgment had already been denied. Plaintiff sought that, since the Court had rejected the "law of the case," and the Court indicated that it "had looked at Judge Anklowitz's decision," Plaintiff should be given the opportunity as she would have in an R. 4:6-2 Motion, to address the arguments for the second Motion for Summary Judgment which had been addressed by Judge Anklowitz. In other words, Judge McLaughlin's statement, "I checked Judge Anklowitz's decision, and this is different," is incorrect. Judge McLaughlin denied Plaintiff's Motion to answer

the second Motion for Summary Judgment after the “law of the case” had been rejected. Judge McLaughlin denied that application. This appeal followed (Pa-).

STATEMENT OF FACTS

These Statement of Facts are as they appeared before Judge Anklowitz in 2020.

On May 17, 2018, Plaintiff became a Lieutenant in the Management Review Unit (1T; 7:13). In reference to the Complaint filed in this case, she stated that it was an accurate version of her belief about what happened (1T; 15:14). In 2015, after returning from vacation, Plaintiff was told by civilian employees of the New Jersey State Police that they were being harassed and abused by certain members of the OPS Unit. The Complaint was made by a group of civilians, two of which were Kelly Filipponi and Michelle Townsend (1T; 16:9). At the time, she was the Administrative Officer and was in a supervisory position (1T; 16:19).

While Plaintiff was the Admin Officer, she was a Sergeant First Class because the Lieutenant's position had been removed from OPS to another area for a promotion (1T; 17:1). Plaintiff was told by several Lieutenants that she was working out of title (1T; 17:21). Plaintiff challenged that (1T; 18:3). As the Admin Officer, it was her job to work with everybody and she worked on a daily basis with the civilian employees (1T; 19:23).

One of the complaints involved Bonnie McDaniel and Ismael Vargas and Thomas Blevins that if she stopped eating, she would lose weight and further, if she exercised, she would also lose weight (1T; 21:20). Further, the civilians were told that they couldn't eat in the kitchen area when the Intake Unit was in there (1T; 22:12). Actually, the area where they were prohibited from was an area available to all members, uniformed and civilian (1T; 22:14).

Plaintiff reported the incident to Lieutenant Will Harkness (1T; 27:17). The same that the day Plaintiff spoke to the civilians, she reported it (1T; 28:7). In between the relevant timeframe, there was an incident that occurred between Lieutenant Guidi and Plaintiff in reference to a couple of emails that went back and forth with Trooper Sysol (1T; 28:23).

As part of her job as the Admin Officer, she forwarded an email to Lieutenant Guidi and asked him if he could get back to Sysol (1T; 29:15). The emails got a little heated between Guidi and Plaintiff (1T; 29:1). As a result of those emails, Guidi went into the office of Captain Harkness (1T; 29:33). Guidi opened the door and screamed at Plaintiff to come into the office saying, “Runowicz, get in here” (1T; 30:1). Guidi continued to scream, and she told him, “If you continue, I'm going to EEO” (1T; 30:4).

At the same meeting with Harkness, the Plaintiff told him about the treatment by Guidi and also, the complaints by the civilian women (1T; 30:12). The email

chain was between Plaintiff, Sysol and Guidi (1T; 31:18). The treatment by Guidi was violative of the principles of the State Police because it's supposed to be very cordial and respectful (1T; 32:10). Also, the Plaintiff was the Admin Officer, and it was her job to deal with Sysol (1T; 32:1 to 32:24). The accusation by Guidi was false (1T; 33:11). Plaintiff considered the email to be abusive (1T; 34:12 to 35:10).

There were further problems with Guidi where he became involved with communications between the Plaintiff and Ismael Vargas (1T; 36). Guidi claimed that she was not in the chain of command with Vargas and as the Admin Officer, she was (1T; 36:19). Plaintiff wanted Vargas to attend a function and Guidi became involved when he shouldn't have since she was the Admin Officer (1T; 37:12).

Plaintiff's direct supervisor was Mark Wondrack, the Major (1T; 37:22). Admin Officers prior to the Plaintiff, and Admin Officers after her, did exactly what she did but Guidi singled her out (1T; 37:22). It was the Plaintiff's job to do what she did even though Vargas was not in her chain of command (1T; 38:11). Guidi's objection to her assigning Vargas was wrong (1T; 39:22). Plaintiff spoke to Wondrack, and he spoke to all the units telling them that she was the person who made the assignments for events (1T; 40:3). The Admin Officer worked for the Major and whatever the Major said, goes (1T; 40:17). Also, she was the Admin Officer for four years (1T; 40:25).

Plaintiff believed that Guidi's response had to do with her sex (1T; 41:18). They treated Plaintiff like another secretary (1T; 41:20). The complaint by the civilian women was brought to Harkness who conducted his own investigation (1T; 44:11). Since the unit was Lieutenant Guidi's unit, he certainly knew about what was happening (1T; 44:9). Guidi went to Harkness's office, they were screaming in the office; and then, the door opened and Guidi shouted out, "Runowicz, get in here," at which time, the Plaintiff got up, walked in and Guidi started screaming at her (1T; 45:17). Plaintiff objected to the way he was talking to her (1T; 46:1). It was Guidi screaming at her (1T; 47:8).

The emails were done with her recognition of her job as per the Major but Guidi, not understanding, harped on the chain of command (1T; 48:1). The Plaintiff explained that she was directly ordered by the Major to whom she reported and Guidi's problem with the chain of command did not comprehend that the Major had directed the Plaintiff in connection with assignments (1T; 48:1 to 48:11). The directions given to the Plaintiff by the Major, she classified as, "My job responsibilities" (1T; 48:19).

When the email problem arose, Wondrack was still the Major (1T; 49:1). Plaintiff testified that Guidi's response would have been different if she was a male (1T; 49:10). She based that upon her observations of Guidi as he dealt differently with men than women (1T; 49:14). He was condescending; it was every other male

in OPS that she worked with including his Unit (1T; 49:18). His attitude towards the Plaintiff was condescending, which he exhibited often when she tried to do her job (1T; 50:1). Actually, Guidi's subordinates treated the Plaintiff the same way he did (1T; 49:18) and Harkness conducted an illegal investigation (1T; 50:7).

When a carpet project had been finished and when trash from the Intake Unit such as old desks and old computers, had to be moved, she asked Vargas to help and he went directly into the Captain's office where Guidi was; Vargas just walked in and sat down (1T; 50:18 to 51:8). After that event, she was brought into the captain's office will Lieutenant Guidi there and she was told "not to have any contact with the Intake Unit," which was Guidi's Unit (1T; 51:15).

Plaintiff was the Admin Officer, and they were interfering with her work, and she was not permitted to go into their office or correspond with them which were functions of her job (1T; 51:18). Plaintiff was told by Captain Nunziato not to correspond with the Unit (1T; 52:12). Plaintiff was told to reroute her emails to the Intake Unit by the Captain (1T; 52:19).

Females were treated "not with respect" (1T; 53:7). When Plaintiff entered the kitchen, all conversations stopped (1T; 53:20). Plaintiff created a timeline which was somewhat contemporaneous (1T; 55:18). On the first page, Plaintiff recounted her conversation with Harkness about the complaints of the secretaries (1T; 56:10). In violation of the Rules of the State Police, Harkness conducted an investigation on

his own (1T; 56:12). Plaintiff witnessed this and spoke to the civilians (1T; 56:23). The interview was about the remarks to the civilian employee and should have been investigated by EEO, not Harkness (1T; 56:12). On September 20, 2016, Plaintiff filed an EEO complaint which focused on the treatment she was receiving from members of OPS (1T; 57:21).

The civilians told the Plaintiff that they were being interviewed by Harkness (1T; 58:13). Further, they seemed upset (1T; 58:19). The prohibition against the Plaintiff emailing was a result of Harkness' interview (1T; 59:3). Plaintiff was told by Nunziato (1T; 59:9). The civilians told her that they were not permitted into that office either (1T; 59:15). All correspondence would go through the Captain and the Assistant (1T; 60:3).

Each Admin Officer had the responsibilities that she was following when Guidi became upset in the emails; she was just doing her job (1T; 61:4). She summarized Guidi's problem as him believing he should be spoken to before she did her job (1T; 61:21). And when Plaintiff spoke to the Major about that incident, she was told that she was in charge of setting up everything going forward and it's not about chain of command (1T; 62:8). Actually, the Major told Guidi and the Captains how things were going to happen going forward and she was told by the Majors (1T; 62:15). Wondrack told Plaintiff that it was her job and if she had any issues with somebody, to tell him (1T; 62:22).

The trash that was left in the room after the carpet job was completed was Intake Unit trash and she needed somebody from that Unit to help (1T; 60:21). Plaintiff had to go through Captain Nunziato to make arrangements for attendance at funerals and the like (1T; 69:19).

What was going on was a "stressful work environment" (1T; 71:3). Plaintiff was not permitted to do the job she was commanded to do by the Major and the part of the job involving the Intake Unit, she was prohibited from contacting them (1T; 71:4 to 71:16). Her "character" as an Admin Officer was being questioned; her ability to do those functions was curtailed yet Admin Officers in the past and in the future, all did what she was restricted in doing (1T; 71:22).

The Admin Officer that came in after her, Buray, got promoted to Lieutenant in that job (1T; 72:11). Around November 2016, a new Captain in OPS asked her if she was interested in going to the Academy; she told him she was there six and a half years and that she earned the position of Lieutenant. He told her he would investigate and get back to her (1T; 74:9). That was Captain Brendan McIntyre (1T; 75:1). The Plaintiff explained the promotion and the use of points (1T; 76:4).

On November 3, 2016, Plaintiff was notified that she was going to the Academy, and she spoke to the Captain at the Academy who knew nothing about her coming there (1T; 77:16). Plaintiff asked to have a meeting with Major Scott Ebner in reference to her career and the transfer and she was denied (1T; 77:24).

Plaintiff was transferred to the Academy because of her gender (1T; 78:4). Being transferred and not being allowed to speak to the Major was "retaliation to my OPS case" (1T; 78:21). Based upon her experience in OPS with almost seven years, she was qualified to say, "Nothing is confidential in the State Police" (1T; 79:19).

A number of factors changed after she filed the EEO complaint (1T; 80:1). Plaintiff was told that they needed the females at the Academy, that the captain was a female and that she would be more comfortable working with a female (1T; 81:13). She was thrown out of meetings, and she should not have been because "there's nothing confidential being an Assistant Admin Officer when you're working for the Major; that's what you do" (1T; 83:1). Plaintiff was excluded from meetings but "as the Assistant Admin Officer, you are part of every meeting that occurs because you answer for the Major at any point" (1T; 83:15). However, she was asked to leave a meeting and that was the first time she had ever been asked to leave (1T; 84:1).

What had taken place is that it had never happened in the past and since she filed her EEO complaint, it happened (1T; 84:4). Mike Buray was transferred into OPS as her replacement (1T; 85:17). He was an SFC who became a Lieutenant in OPS (1T; 85:17). Plaintiff became a Lieutenant after she was transferred from the Academy (1T; 85:24). When transferred to the Academy as the "Admin Officer," she was excluded from any meeting between the Captain and the Assistant (1T; 86:19). Plaintiff never did any Admin Officer responsibilities (1T; 86:23). Plaintiff

had no responsibilities as the Admin Officer which was "unheard of" (1T; 87:1). Plaintiff was the Admin Officer at the Academy from December 2016 until March 4, 2017 (1T; 87:5). Plaintiff was relegated to "making copies" and had no responsibilities (1T; 87:13).

The Captain, Jeanne Hengemuhle, was secretly texting admin work to Nick Onnembo and he was doing the admin work while the Plaintiff did nothing (1T; 87:20). Plaintiff saw reports that had his name on them which were reports that she should have been doing (1T; 87:25). Nick was the head of the Training Support Unit, and he would be called into Hengemuhle's office for closed-door meetings to the exclusion of the Plaintiff (1T; 88:7).

During the beginning of her transfer to the Academy, Plaintiff had a year to hold on to six of her eight points which she had gained at OPS, and nothing was posted in OPS the first year she was out, and she went to zero points (1T; 88:12). The time that she was at the Academy, she lost all of her points (1T; 88:15). At the Academy, Plaintiff was "getting bounced around and not really having any stability anywhere to gain points" (1T; 88:18). Plaintiff went with seven and a half years in OPS being transferred out to zero points (1T; 89:1).

The environment that was created at the Academy included having no work, not being assigned anything, not being able to approach the office for any work, not being a part of any meeting, dealing with a secretary that didn't talk, being excluded

from meetings with the Captain, being excluded from scheduling and knowing that "Nick is doing the admin work that I should be doing" (1T; 89:24 to 90:13). Whatever the Major or the Captain needed, those assignments were given to Nick (1T; 90:15). When Plaintiff came into the Training Support Unit, she was told that her work as the Admin Officer was being done by "Nick" (1T; 92:21). During the time that the Plaintiff was the Admin Officer, she was not given any work to do because Nick was doing it all (1T; 95:6).

Prior to her transfer to the Academy, the Plaintiff was told that she would work better with a female, and she was told that by Brenden McIntyre (1T; 95:14). Actually, they gave her a case from OPS which was unusual (1T; 93:13). Plaintiff questioned Captain Hengemuhle and was told that everything was in place and that she was not "too sure what to give you" (1T; 96:17). Actually, in the transfer to the Academy, the Captain wasn't looking for a person, she was looking for a "position number to promote" (1T; 97:1).

Plaintiff brought with her from OPS a "position number" (1T; 97:10). On March 4th, she was told by Lieutenant Bonham that "this is not working out; we are transferring you to the Training Support Unit" and "Nick is going to be transferred as the Admin Officer" (1T; 97:14). So on March 14th, she was transferred to the Training Support Unit (1T; 97:13).

When she was transferred, the unit head was never there so her training on what to do was none (1T; 98:12). In the transfer, Nick was furious (1T; 98:14). Plaintiff was in the Training Support Unit from March until the beginning of July 2017 (1T; 99:7). When she was transferred, the unit head never spent any time with her to indicate what her responsibilities were so she "pretty much decided to learn the job myself which I did" (1T; 100:15).

At the end of her career at OPS, and in going to the Academy, she was "not being a part of anything that had to do with my responsibilities as an Admin Officer" (1T; 104:10). Hengemuhle knew about her EEO complaint because "she told me she knew about it" (1T; 104:17). That was at a conversation on November 4, 2016 (1T; 104:21). Hengemuhle's knowledge of her EEO complaint led the Plaintiff to state, "Because I knew going forward that that was going to be a problem in my career at the Academy" (1T; 106:5).

Plaintiff filed a 525 which is a reportable incident form – a complaint (1T; 107:15). Plaintiff alleged misconduct which was, "they lied on my evaluation and appraisal" (1T; 107:20). The reportable incident form took place on September 11, 2017 (1T; 108:23). Plaintiff accused Hengemuhle and Lieutenant Ray Palovcak of lying on her evaluation (1T; 109:9). On her evaluation from April 1st to June 30th 2017, there was a "Needs Improvement" and Ray Palovcak wrote, "When SFC Runowicz was assigned a background investigation from the Bureau and directed to

attend the mandatory training, she stated she would only attend if she was ordered to do so" (1T; 110:19). Plaintiff called that a lie since she "never made that statement" (1T; 111:2). Also, Palovcak indicated that she needed improvement in two categories, but he should never have done that because he was never in the unit to supervise her, and he had no idea what she did and what she didn't do in the unit (1T; 114:9). Furthermore, there is an SOP on MAPPS and it stated, "Supervisor shall ensure their subordinates are made aware of all new MAPPS entries, performance notices, interventions, journal entries" (1T; 114:14). Plaintiff was never notified of any of those (1T; 114:19). The result was that he had lied on her evaluation and never told her about the MAPPS entry (1T; 115:12). The whole process of what he did was incorrect (1T; 115:21). Plaintiff said he lied and that in her entire career, she had never received a bad evaluation (1T; 115:25). He lied about her saying that she would not go to training unless she was directed or ordered (1T; 116:4). Palovcak lied and Hengemuhle swore to it (1T; 117:11). Hengemuhle approved an evaluation that was false (1T; 117:13).

Plaintiff received a phone call from Major James Parker to find out if she was interested in a transfer from the Training Support Unit to Division Headquarters into the Management Review Unit (1T; 118:8). During that conversation, she told him she would be (1T; 118:15). During June and July, on several occasions, Major Parker brought her into his office and advised her that the transfer is being held up by

Hengemuhle based on statements that Hengemuhle made (1T; 118:18). Hengemuhle felt that the Plaintiff didn't deserve to be transferred into a position of possibly being a Lieutenant (1T; 118:21). The transfer would have given her eight points (1T; 119:7). Hengemuhle was doing everything in her power to stop her transfer and delay it (1T; 119:8). Parker wanted the Plaintiff to come over and her name was appearing in "MAX" meetings and Hengemuhle was making comments about her character and so on (1T; 119:15).

Plaintiff stated that Parker told her that Jeanne Hengemuhle was saying that she's a "problem child over there" (1T; 122:15). Major James Parker revealed the true motivation of Captain Hengemuhle in that she wanted to keep the Plaintiff at the Academy so that her points would expire (1T; 132:13). Hengemuhle's comments were relayed to the Plaintiff by Major Parker (1T; 123:11).

When asked if she was happy in her new assignment, she stated that she was because she was out of the Academy and away from the group of people that she was dealing with on a day-to-day basis (1T; 124:20). Plaintiff became a Lieutenant on March 12, 2018, while she was stationed at the Management Review Unit (1T; 125:12). She believed that Buray was promoted in 2017 (1T; 125:25).

Plaintiff said that Defendants were trying to sabotage her career in getting a promotion and she formed that conclusion based upon discussions with Major James Parker and also the fact that the evaluations were deliberately false (1T; 126:11).

Plaintiff also indicated that at the Academy, she had a unit head who never came into the unit and therefore, she was not given any training (1T; 126:17). What the Defendants were doing to falsely evaluate to refuse to train the Plaintiff and to lie on her evaluation just prior to her going to another unit where she could become the Lieutenant in that unit (1T; 127:1 to 128:2).

Plaintiff described a conspiracy as two people talking together and coming up with a plan to hurt someone (1T; 128:6). Plaintiff referred to the false evaluations (1T; 128:14). Hengemuhle told the Plaintiff that she knew she had an EEO complaint and further, that she didn't have an Admin Officer's position and basically, she didn't know why she was being transferred to the Academy (1T; 129:17 to 129:24). Plaintiff testified that Hengemuhle never said that she was holding the EEO complaint against the Plaintiff; "just in what I've experienced" (1T; 130:7).

Plaintiff went to the Management Review Section in July of 2017 (1T; 134:22). How the lying evaluation affected her career is set forth (1T; 136:15). Plaintiff had put in for seven Lieutenant's positions and because of the lying evaluation that she got, it affected each promotional position because points were taken off for that (1T; 136:15 to 136:20). The evaluation, which was false, deprived Plaintiff of being in the top tier (1T; 117:18). The lies on the evaluation cost her points and a .5 is huge when trying for a Lieutenant's position (1T; 138:5). Plaintiff

stated that she was "as qualified as any of the people that got the promotions" (1T; 139:8).

As part of the procedure, the Plaintiff asked for a meeting with Lieutenant Raymond Palovcak (1T; 141:17). The meeting took place in the parking lot of Division Headquarters (1T; 141:21). The Plaintiff confronted Palovcak, and his response was, "I thought you said that" (1T; 142:17). Plaintiff said she didn't and then, he said, "I don't know what's going on between you and the captain but I'm trying to stay out of the middle of it" (1T; 142:3 to 143:3). Again, she stated that he said, "I really don't know what's going on between the captain and you but I'm tired of being in the middle" (1T; 143:10). At the meeting, he stated, "I should have been there more to train you" (1T; 144:8). She also stated that the evaluations were a lie (1T; 143:22). She told him that she felt she was "set up for failure" (1T; 144:12). He stated further that he didn't train her because "he didn't want to be in the middle" so he decided to basically not be there to train her and apologized for not training her (1T; 144:15).

The points that the evaluation cost her were discussed at the meeting (1T; 145:2). Plaintiff made a formal request to meet with Major Scott Ebner, which was filed on November 3, 2016, to discuss career development; it was denied. Ebner filed a Certification about not knowing about the Plaintiff's EEO complaint (Pa-) and the

reasons why the Plaintiff was selected to go to the Academy but yet he refused to meet with the Plaintiff when she made a request to discuss the transfer.

The Plaintiff called the way that Guidi treated women as opposed to the way he treated men (1T; 49:12). As part of the dispute with Guidi, the Plaintiff was told not to correspond at all with the Intake Unit by Captain Nunziato. This was totally against her job description (1T; 52:8). Plaintiff was told by the captain that any emails to the Intake Unit were to go through his office which was contrary to what her job was (1T; 52:23).

The atmosphere in the office was the "frat boys" and the females were not treated with respect (1T; 53:6). In the cafeteria, she was ostracized (1T; 53:18). When the Intake Unit closed the door, the only one allowed in were “the other male counterparts” (1T; 54:8).

The defense recognized that there was a separation between discrimination and a CEPA violation (1T; 53:5). The treatment was “ongoing” (1T; 50:16). On September 20, 2016, the Plaintiff submitted an EEO complaint (1T; 57:25). On November 15th, the Major told her that she was being transferred to the Academy (1T; 76:10).

The Plaintiff did a timeline which described the events and times that are set forth in Runowicz-5 (Pa-), an exhibit attached to the Plaintiff's deposition and referred to (1T; 54:17). The entries were pretty much contemporaneous and the

incident involving Harkness and the secretary's complaint was set forth (1T; 56:6 and 56:10). Plaintiff was advised by the women that they "advised Lieutenant Harkness that it did occur" (1T; 57:16). Plaintiff's EEO complaint (Pa-) was submitted on September 20, 2016.

In violation of the rules of the State Police, Harkness conducted his own investigation (1T; 58:3). The Plaintiff witnessed the women going in and out of Harkness's office and they seemed upset (1T; 58:13). Plaintiff was told that any correspondence that needed to be sent directly through Nunziato or Harkness (1T; 59:9). She was actually told that she was not allowed to correspond with the Intake Unit and any correspondence would go through the Captain and the Assistant (1T; 60:1).

Plaintiff had a dispute with Guidi about the chain of command which was her job to do what she was doing (1T; 60:10). As the Admin Officer, she was responsible to the Major and carried out his directions (1T; 61:4). Once the incident with Guidi happened, she discussed the matter in particular with the Major and they were told that she was in charge of setting up everything (1T; 62:2). She was told by Major Wondrack that, going forward, that was her job and if there were any issues, for her to report them to him (1T; 62:21).

Plaintiff's EEO complaint was marked as Runowicz-6 at her deposition (1T; 63:5). Plaintiff contends that the treatment by Guidi, Blevins and Vargas are a result

of her gender (1T; 65:4). Whenever an incident arose, she discussed the matter with Major Wondrack (1T; 67:16).

Plaintiff's job description was changed because she was supposed to go directly to the Intake Unit but that was changed to accommodate Guidi and so she had to go instead to the Captain's Office (1T; 69:18). For the Plaintiff, by changing the procedure that applied to her job, it was stressful and created a hostile work environment (1T; 71:4). The requirement to go through the captains when in fact she was told by Major Wondrack to carry out her responsibilities directly created a hostile work environment (1T; 71:2). Actually, the Plaintiff's job itself was "in question" as to the reasons why she was doing what she was supposed to be doing as the Admin Officer and not being able to address the Intake Unit or any other unit (1T; 71:7).

Going through the captains was one of the problems (1T; 71:26). She was doing what prior Admin Officers and subsequent Admin Officers were required to do but she was being treated differently (1T; 71:22).

When she was transferred, her replacement, Michael Buray, got promoted to Lieutenant in that position (1T; 72:11). Guidi, at the time Plaintiff's deposition was taken, was retired but he was still active when she was transferred to the Academy (1T; 72:22). A new major and new captain came in in August of 2016; in October of the same year, the captain called her into his office and asked if she wanted to go to

the Academy. She told him that she was in OPS for six and a half years and that she earned the position of Lieutenant there (1T; 74:9). However, that number was not at OPS, so she inquired "if it was ever going to be brought back" (1T; 74:21). It was brought back and given to Buray after her transfer (1T; 72:11).

The promotional system functioned by means of points (1T; 75:20) and those points would apply to the OPS while she was there (1T; 76:4). So she had eight points in OPS, and they didn't apply to any other promotion (1T; 76:8). She was notified on November 15, 2016, that she was going to the Academy (1T; 76:10).

In investigating whether she wanted to go there, she found out that she "probably wouldn't be looking at a Lieutenant's position for a long time" (1T; 77:10). She asked for permission and typed up a special request to talk to Major Scott Ebner in reference to her career and the transfer and she was "denied" (1T; 77:21).

Plaintiff believed that she was transferred because they wanted women at the Academy and also that her EEO complaint just began to be investigated in October (1T; 78:9). She believed that the transfer was evidence of retaliation because of her OPS case (1T; 78:21). Based upon her experience in OPS, she knew that "nothing is confidential" and that's how she knew (1T; 79:18). Major Ebner pulled the trigger on her transfer (1T; 81:20). At one point, she was asked to leave a meeting and it had never happened to her in the past since she was the right-hand person of the

Major and should share in all of the information; it happened once, and it never happened again (1T; 84:4).

Michael Buray, her replacement at OPS, became a Lieutenant before she did (1T; 86:6). When she was sent to the Academy, she was supposed to be the Admin Officer, but she wasn't allowed to function in that capacity, and she had "no responsibilities whatsoever" given to her as the Admin Officer which is unheard of (1T; 87:1). She was at the Academy from the beginning of December 2016 to March 4, 2017 (1T; 86:4). When asked what she did from day to day, her answer was "I did nothing" (1T; 87:10). A person by the name of Nick Onnembo was doing the work that she was supposed to do (1T; 87:19). In other words, she was transferred from OPS to be the Admin Officer at the Academy and they had no work for her (1T; 87:15).

Eventually, the Plaintiff was transferred to the Training Support Unit and Onnembo was transferred and took her job as the Admin Officer (1T; 88:12). She was in danger of losing her promotion points (1T; 88:15). Plaintiff kept getting bounced around and not really having any stability anywhere to gain points (1T; 89:2). She had seven and a half years in OPS being transferred out to zero points (1T; 89:6). The person who was doing the actual admin work was working for Ray Palovcak, the person who eventually filed a false evaluation (1T; 91:1).

The State Police personnel at the Academy told the Plaintiff that Captain Hengemuhle was texting admin work to Nick which was supposed to be Plaintiff's work (1T; 93:21). Actually, Nick was supposed to be doing work for the Unit but instead was doing the admin work for the captain (1T; 94:4). Plaintiff stated, "Being in that position, not given any work to do as an Admin Officer is unheard of" (1T; 95:16).

After she was transferred within the Academy to the Training Support Unit, the unit head had one meeting with her and Nick (1T; 98:4). She never saw the unit head again (1T; 98:8), but maybe for a couple of short sightings (1T; 98:10). When she met with the unit head and Nick, they were "very annoyed and pissed off that Nick was leaving the unit" (1T; 98:5). The Lieutenant was "really pissed off at me" for coming into that position (1T; 98:17). Plaintiff was in that job from March until the beginning of July 2017 (1T; 99:7).

Plaintiff's description of Palovcak being in the unit was "never" (1T; 100:12). He never taught her anything, so she learned by herself (1T; 100:15). Plaintiff was asked to do a "train the trainer" and asked Nick, since he was now the Admin Officer, to do that (1T; 102:3). Plaintiff felt that she was being retaliated against because she had been transferred to the Academy as the Admin Officer (1T; 103:24).

Plaintiff believed that Hengemuhle knew about her retaliation and EEO complaints and that was the reason that when she went to the Academy, she was "not

getting any work or responsibility or attending any of the private meetings or anything like that" (1T; 104:6). Hengemuhle told the Plaintiff that she knew about the EEO complaint in the beginning when the Plaintiff was getting transferred over there and the conversation took place around November 4, 2016 (1T; 104:17 to 104:20).

Ebner, the person in charge of EEO, says he didn't know about the EEO complaint, yet Hengemuhle knew all about it. Hengemuhle specifically knew that the complaint was an EEO complaint (1T; 105:15). Plaintiff knew that the captain, knowing about the complaint, was "going forward that that was going to be a problem in my career at the Academy" (1T; 106:4).

When the Plaintiff was moved in the Academy as an Admin Officer, they didn't have an Admin Officer position (1T; 106:7). Plaintiff filed a 525 which is a reportable incident form against Palovcak and Hengemuhle concerning the fact that they lied on her evaluation and appraisal (1T; 107:25). The 525 was written on September 11, 2017 (1T; 108:23). The Plaintiff pointed out that Lieutenant Palovcak's statement in her evaluation was not true (1T; 111:4). Palovcak also filed MAPPS entries around August 24, 2017, which was marked as Exhibit 10 at Plaintiff's deposition (1T; 113:6). Plaintiff complained about her evaluation because Palovcak was never in the unit to supervise her (1T; 114:9). Palovcak also violated the rule that "Supervisors shall ensure their subordinates are made aware of all new

MAPPS entries;" Plaintiff was never notified (1T; 114:18). Also, the MAPPS entry was made after the evaluation was already in the system and it should have been the other way around (1T; 115:10). The MAPPS entry was after the fact (1T; 115:18), and Palovcak was being dishonest about it (1T; 115:23).

Plaintiff pointed out that she never had a bad evaluation in her whole career (1T; 115:25). Plaintiff testified that it was a lie (1T; 116:4). As to Hengemuhle, she approved an evaluation that was false (1T; 117:13). Hengemuhle was responsible for making a MAPPS entry that she didn't do (1T; 117:18). During June and July until the Plaintiff was finally transferred, on several occasions, Major Parker advised the Plaintiff that the transfer was being held up by Hengemuhle based upon statements that Hengemuhle made (1T; 118:18).

Hengemuhle and Parker went back and forth because Jeanne felt that the Plaintiff didn't deserve to be transferred into a position of possibly being a Lieutenant (1T; 118:18). By being transferred to Parker's Unit, the Plaintiff would get her eight points but if Hengemuhle stopped her transfer, she would not (1T; 119:2). Parker wanted the Plaintiff to come over because her name was being brought up in MAPPS meetings and Hengemuhle was making comments about the Plaintiff's character (1T; 119:18). Actually, Hengemuhle was referring to the Plaintiff as "a problem child" (1T; 122:4). MAX Meeting and Plaintiff was told by Major Parker that this was happening (1T; 122:13). The Plaintiff indicated that

Hengemuhle was stating that she, the Plaintiff, was not a team player, a problem child and that she doesn't do anything at work (1T; 123:11). Plaintiff was eventually transferred to Parker's command in July of 2017 (1T; 123:22). The transfer to Major Parker's command was away from the stress of the Academy (1T; 124:17). Because the evaluation by Palovcak was false, in conjunction with Hengemuhle's comments about her, they were trying to sabotage her career in getting a promotion (1T; 126:11).

Palovcak was "pissed off" in the very beginning, that she got transferred into his unit (1T; 126:21). There was only one meeting (1T; 127:25). He referred to the evaluations and the MAPPS entries done after the fact (1T; 127:18). He never told her that she was doing anything wrong (1T; 127:9).

The Plaintiff pointed out that her first evaluation for the first three months at the Academy was "fine" but the next evaluation for the three months before she moved to the next position was a bad evaluation and that was stated just before she went to another unit (1T; 127:22). She believed that it was aimed at the fact that she could possibly be a Lieutenant (1T; 128:1). She described what was going on as a conspiracy; "When two people talk together and come up with a plan or devise a plan to hurt someone" (1T; 128:6).

When asked if she had evidence, she stated, "Not specifically, but what I see in writing as far as the evaluation and the lies on the evaluation, absolutely" (1T;

128:12). She emphasized the fact that the evaluation was false (1T; 128:17). When the Plaintiff arrived at the Academy, she was told by Hengemuhle, “I know that you have an EEO complaint” (1T; 129:17). In addition, Hengemuhle told her, “She doesn’t have an Admin Officer’s position and, basically, she doesn’t know why this is occurring [her transfer]” (1T; 129:22).

While Plaintiff indicated that Hengemuhle never said she was going to “hold the EEO complaint against you” in those words but “just in action, just in what I've experienced” (1T; 130:7). Onnembo was, in effect, the Admin Officer (1T; 130:21).

The Plaintiff distinguished the two evaluations at the Academy (1T; 132:16). The first one, the one without deficiencies, was done by Hengemuhle, while the second one, just before her transfer, was done by Palovcak (1T; 132:16). Plaintiff summarized the situation and indicated that another person looking for a Lieutenant’s position was transferred to the Academy under “Jeanne” (1T; 135:11). Plaintiff had put in for seven Lieutenants’ positions during that timeframe and because of the evaluation that she got from Palovcak; the promotion was affected because points were taken off for that evaluation (1T; 136:15).

Plaintiff explained that promotions are selected from the top tier, but she couldn't get into the top tier because of “my evaluation,” she never got into the top tier while at the Academy (1T; 137:13). She stated that because of the evaluation being a lie, she was subjected to points deducted and that is significant because a 0.5

is “huge when you’re vying for a Lieutenant or Captain’s position (1T; 138:2). Plaintiff applied for a number of positions and the deduction in points for the false evaluation kept her out of some of them (1T; 138:20). According to Plaintiff, she was as qualified as any of the people that got the promotions (1T; 139:8).

As to Palovcak, she had a meeting with him in the parking lot at Division Headquarters about her evaluation; sent him an email requesting a meeting and they met (1T; 141:14). She had filed within the system a request for a meeting with him and he said he never got (1T; 142:9). She confronted him to indicate that she never said what he said she said (1T; 142:16). And he said, “I thought you said that” (1T; 142:17). Then, he said, “I don't know what’s going on between you and the captain but I’m trying to stay out of the middle of it” (1T; 142:21). He apologized for not training her (1T; 143:1). He actually said, “I'm tired of being in the middle” (1T; 143:10).

What he put into the evaluation was “a lie” (1T; 143:22). He admitted, “I should have been there more to train you” (1T; 144:8). He told her that he “didn't want to be in the middle so he decided that basically not be there to train me and he apologized” for not training her (1T; 144:17). Plaintiff confronted him about the MAPPS entry, and he never discussed it with her, and the MAPPS entry was done way after the fact (1T; 145:6).

LEGAL ARGUMENT

POINT I
The Trial Court Rejected the 'Law of the Case' and Refused to Permit Plaintiff to Respond to the Motion (Pa-171).

This appeal involves the trial Court's rejection of "law of the case," and refusal to permit the Plaintiff to answer the Motion after the "law of the case" was rejected.

What the Court below did was to reject State v. Hale, 127 N.J. Super. 407, which stated:

> It has been generally stated that the 'law of the case' doctrine applies to the principle that where there is an unreversed decision of a question of law or fact, made during the course of litigation, each decision settles that question for all subsequent stages of the suit; *Id.* at 410.

Relying on that statement, the Plaintiff argued the law of the case. That was rejected by Judge McLaughlin; and so was Hale, *Id*.

At this juncture, we are dealing with the doctrine of "law of the case." Such a doctrine is applied to the question of whether or not a decision made by a trial Court during one stage of the litigation is binding throughout the course of the action. The use of the doctrine, in this situation, avoids repetitious litigation of the same issue during the course of a single trial. With respect to this aspect of "law of the case," it has been generally stated that:

> The law of the case concepts is a non-binding decisional guide addressed to the good sense of the Court in the form

> of a cautionary admonition against re-litigation when the occasion demands it; Ross Products, Inc. v. N.Y. Merchandise Co., 242 F. Supp. 878, 879 (S.D.N.Y. 1965).

The distinction between the doctrine of the law of the case and *res judicata* is readily apparent. One directs discretion. The other supersedes it and compels judgment. In other words, in one, it is a question of power and the other of submission; Southern R.Y. Co. v. Clift, 260 U.S. 316, 319.

Law of the case operates as a discretionary rule of practice and not one of law. The application of the "law of the case" doctrine in New Jersey was thoroughly explained in Hale, *supra*.

As set forth in the Order entered by Judge Anklowitz (Pa-), the Court already decided a Motion for Summary Judgment. Part of the Court's decision was to dismiss the LAD claims and the Movant recognizes that Order but in no way indicates that a Summary Judgment Motion was already made and heard and partially denied. A distinction was made by Judge Anklowitz between the concepts of CEPA and the LAD. The Defendants contended before the Court a discussion of discrimination when in fact they should have been talking about retaliation. The Motion below filed by the Defendants was a misunderstanding of the nature of the Summary Judgment Motion which the Court denied as to CEPA.

As to the Motion for Summary Judgment before Judge Anklowitz, the Court determined that the Plaintiff's claims constituted, from a jury perspective, a hostile

work environment which supported a CEPA action. The Plaintiff complained about the treatment of female civilians (Pa-1).

POINT II
When the Trial Court Rejected "Law of the Case," the Plaintiff Should Have Been Permitted to File a Response to the Original Motion; (Pa-171).

When the trial Court rejected "law of the case," the Plaintiff should have been permitted to file a response to the original Motion. First, after the Court granted the Motion for Summary Judgment, it rejected the law of the case and granted the Motion for Summary Judgment, the Plaintiff filed a Motion for Reconsideration.

On the Motion for Reconsideration, the Plaintiff argued that once the law of the case was rejected, the Plaintiff should have been given the opportunity to respond to the Motion. What the Court did was to reject the law of the case, then, proceeded to decide the Motion. Actually, on November 7, 2022, the Plaintiff applied to the Court and requested to reopen the Motion.

Plaintiff relied upon R. 1:1-2:

> Unless otherwise stated, any rule may be relaxed or dispensed with by the Court to which the action is pending, if adherence to it would result in an injustice.

Plaintiff pointed out to Judge McLaughlin that Judge Anklowitz had denied the Motion for Summary Judgment on the CEPA claim and determined a hostile work environment. That hostile work environment involved the conduct of the various Defendants. Plaintiff pointed out to the Court that if the Court reopened the

Motion, the Plaintiff would present what Judge Anklowitz heard and decided as well as "a complete response to the new Motion for Summary Judgment." Plaintiff pointed out to the Court that the Material Facts, which were before Judge Anklowitz, were filed in opposition to this Motion for Summary Judgment. Plaintiff further stated that the Material Facts presented on the second Motion for Summary Judgment contradicted the Certifications filed by the Defendants in support of the Motion for Summary Judgment. Plaintiff's position was that from her perspective, because a Motion for Summary Judgment had already been denied, and the Court rejected the law of the case, the Court should reopen the Summary Judgment Motion and allow the Plaintiff to show the Court that the second Motion was the same as the first Motion. What the Court, on the second Motion for Summary Judgment, failed to realize is that the Plaintiff had established a CEPA violation and now, the second Court stated that the Plaintiff had not.

Defendants failed to point out to the Court, which the Plaintiff pointed out to the Court the first time around, and that is, that after seven and a half years in OPS, she was not promoted. By transferring her, she lost the points and if it wasn't for Captain Parker, they would have succeeded in delaying and denying her promotion. On p. 5, the Defendants classify the Plaintiff's allegations as "vague and conclusory." This Court, in 2020, did not find that to be true. The Court below found what the Defendants alleged on p. 4 and p. 5 to be a jury question about hostile work

environment. In the Plaintiff's deposition and Material Facts, she sets forth how each one of the Defendants furthered the hostile work environment with a goal to deny the Plaintiff's promotion. She wasn't promoted in OPS; she wasn't promoted at the Academy, and she was rescued by Captain Parker, who asked for her to be transferred and was responsible for her promotion.

POINT III
Statute of Limitations (Pa-1).

Defendants seem to not understand the nature of a hostile work environment in relationship to a CEPA claim. The trial Court found a hostile work environment in its Order of 2020. First of all, this Court has already determined that these Defendants created a hostile work environment. That is the law of the case. Even though the Defendants cite Green v. Jersey City Board of Education, 177 N.J. 434, they seem not to understand it. They allege that anything that happened prior to a year before the Complaint was filed, is barred by the statute of limitations. That is a serious misunderstanding. Within Green, *supra*, which is a New Jersey Supreme Court case, there is an extended reference to National Railroad Passenger Corporation v. Morgan, 536 U.S. 101 (2002). The Green Court stated:

> That Court explained the distinction between a hostile work environment claim (that would fall within the continuous tort doctrine) and a claim based on a discreet act that would not.

The New Jersey Supreme Court stated:

> This Court adopted Morgan's schema for determining when a cause of action arising out of the LAD would be considered a continuing violation.

The Court further pointed out:

> The policy concerns underpinning the determination in Shepard, in respect of LAD claims, required the application of the Morgan/Shepard framework in CEPA actions. Further, retaliation, as defined by CEPA, need not be a single discreet action.

And then, the Court seemed to be addressing these Defendants when it stated:

> Indeed, adverse employment action taken against an employee in the terms and conditions of employment can include, as it did in this case, many separate but relatively minor instances of behavior directed against an employee that may not be actionable individually, but that combined to make up a pattern of retaliatory conduct.

Not only did the Supreme Court state that, but the Court below found, in this case, exactly what the Supreme Court said. Teacher Green was not barred by "CEPA's one-year statute of limitations."

The Motion for Summary Judgment should not have been granted (1T; ___).

The Court below asked the right question (1T; 24:8):

> The threshold argument, what the Court -- in the Plaintiff's opposition, is whether or not the law of the case, namely Judge Anklowitz's prior decision in this matter is -- is binding upon the Court and thus, justifying a denial of the Motion for Summary Judgment.

Unfortunately, the Court gave the wrong answer to its own question because it also states:

> The Court finds here that the law of the case does not preclude the Court from hearing this matter. (12:23), but the Court does not find detailed analysis as to the nuts and bolts of CEPA liabilities such that the Court would find law of the case applies here. There's no indication that the CEPA statute of limitations was raised or considered by Judge Anklowitz.

There, the Court refused to accept Hale, *supra* which mandates "each decision settles that question for all subsequent stages of the suit." Judge Anklowitz found a hostile work environment and refused to dismiss the CEPA claim.

The Court points out items that it contends were not addressed by Judge Anklowitz, such as the "statute of limitations." The Court talks about the statute of limitations. In any event, Judge McLaughlin refused to abide by the law of the case. He failed to recognize that Hale, supra, controlled the situation. He points out that Judge Anklowitz did not consider the "statute of limitations."

However, a Motion for Summary Judgment was made in 2020 by the Office of the Attorney General. They did not raise the issue of the statute of limitations because there was no issue, it was waived because it did not apply. It was raised for the first time in the second Motion for Summary Judgment. However, the Court below doesn't cite one case. The Court below had before it a Statement of Material Facts which were presented to the Court in 2020 and had no less viability in 2022. The Plaintiff relied on the law of the case which should have precluded the Defendants from proceeding with a whole new application. Instead, Judge

McLaughlin threw out the law of the case, and found that the statute of limitations prevailed. All this without one cited case.

Also, the Defendants argued without citing one case, but in fairness to the Defendants, in the Notice of Motion for Summary Judgment, they do cite the case of Green, *supra*. There, the Supreme Court decided that "the one-year statute of limitations began to run from the final act of retaliation." Judge McLaughlin never considered that concept and counsel for the Defendants never argued that concept. In other words, Green, *supra*, stands for the fact that as retaliation continues, the statute of limitations does not run. What was found in this case by Judge Anklowitz was a hostile work environment which argues against discrete acts.

The Judge below never even addressed that. The Judge below was more concerned with getting rid of a case than dealing with the legal concepts involved. He concluded that after one year, everything is out, when in fact, if he had read Green, he would have found that that was not the case. So the Motion for Summary Judgment ended. The trial Court threw out "law of the case," ignored Green and found violations of the statute of limitations. All of this without citing one case.

The Plaintiff responded, first, with a Motion for Reconsideration and then, a request that since the Court had refused to recognize the law of the case, the Plaintiff should be given an opportunity to address the issues that the Court addressed, like "continuing hostile work environment," and "statute of limitations."

Because the trial Cour below erroneously rejected the law of the case, which the Plaintiff justifiably relied upon, the Plaintiff contended that the same Court should reopen the Motion so that the Plaintiff could address the issues which Judge Anklowitz had addressed in the first Motion for Summary Judgment. The Plaintiff asserted the proper defense: "law of the case." The Court rejected that and the Plaintiff sought permission for the Court to reopen the Motion for Summary Judgment since the "law of the case," was no longer available because the Court below did not understand State v. Hale, *supra*.

POINT IV
The Court Below Cited No Authority (Pa-171).

Pointed out above is the fact that the Court below never relied on one case: a grant of summary judgment should not be accomplished by "an opinion devoid of analysis or citation to even a single case;" Estate of Doerfler v. Fed Ins. Co., 454 N.J. Super. 298, 301-302 (App. Div. 2012) holding that Judges, in final Order, in favor of Defendants did not meet the requirements of R. 1:7-4(a) because it made only a "nebulous illusion" to the reasons set forth in Defendants' Motion papers.

Also, in Raspantini v. Arocho, 364 N.J. Super. 528, 533 (App. Div. 2003), as mentioned above, R. 1:7-4 mandates, "specific findings of fact and conclusions of law in all appealable orders, neither the summary judgment rule, nor R. 1:7-4 were implemented in this case.

This Plaintiff was treated unjustly. She defeated a Motion for Summary Judgment in 2020 (Pa-117). The Motion in 2020 was analyzed by Judge Anklowitz. In the second Motion, which is the subject of this appeal, the Court rejected the law of the case, implemented the statute of limitations, granted the Motion for Summary Judgment and dismissed the case, all without citing one case (Pa-171).

On September 26, 2023, this Court decided the matter of Kravits v. Princeton Blue, Inc., (Docket No. A-1481-21) an unreported case where it stated:

> According to R. 1:7-4(a), a Court shall 'find the facts and state its conclusions of law'…on every Motion decided by a written Order that is appealable as a right…[A]n articulation of reasons is essential to the fair resolution of a case; Schwarz v. Schwarz, 328 N.J. Super. 275, 282 (App. Div. 2000).
>
> Effective Appellate Review of a trial Court's decision requires examination of the findings of fact and conclusions of law on which the trial Court relied; Raspantini v. Arocho, 364 N.J. Super. 528, 534 (App. Div. 2003). Because we do not know the basis for the trial Court's dismissal of the Complaint, we cannot effectively review the substantive basis for December 1, 2021.

The same conclusion applies to this matter.

CONCLUSION

Based upon the record in this case, respectfully, the Court should reverse the decision of the Court below and implement the "law of the case." If not, this Court should remand the matter for the purpose of allowing the Plaintiff, who relied heavily on the "law of the case," which was erroneously removed by the Court below, to reopen the Motion since the Court below unjustly refused to answer the second Motion for Summary Judgment in its entirety.

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Dated **Amended**: 10/17/23

Submitted: December 18, 2023

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<td>DEBRA RUNOWICZ
Plaintiff,
vs.
STATE OF NEW JERSEY, DIVISION OF STATE POLICE, CAPTAIN WILLIAM HARKNESS(#5355), LIEUTENANT ANTHONY GUIDI, LIEUTENANT COLONEL SCOTT EBNER (#5346), MAJOR JOHN BALDOSARO (#5027), CAPTAIN BRENDAN MCINTYRE (#5079), CAPTAIN JEANNE HENGEMUHLE (#5600), SERGEANT FIRST CHRISTOPHER POMMERENCKE (#5391), LIEUTENANT RAYMOND PALOVCAK (#5387), and JOHN DOES 1-5
Defendants.</td>
<td>In the Superior Court of New Jersey Appellate Division
Docket A-2155-22

On Appeal From:
SUPERIOR COURT OF NEW JERSEY, LAW DIVISION: MERCER COUNTY
DOCKET NO.:
MER-L-2509-17

<u>SAT BELOW:</u>
Hon. R. Brian McLaughlin, J.S.C.
Hon. William Anklowitz, J.S.C.</td>
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Brief of State Of New Jersey, Division Of State Police, Captain William Harkness(#5355), Lieutenant Anthony Guidi, Lieutenant Colonel Scott Ebner (#5346), Major John Baldosaro (#5027), Captain Brendan Mcintyre (#5079), Captain Jeanne Hengemuhle (#5600), Sergeant First Christopher Pommerencke (#5391), and Lieutenant Raymond Palovcak (#5387)

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Rules

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Preliminary Statement

Plaintiff, Debra Runowicz, is a retired Lieutenant with the New Jersey State Police. Prior to her retirement, Plaintiff filed this lawsuit under the New Jersey Law Against Discrimination ("NJLAD") and the Conscientious Employee Protection Act ("CEPA"), alleging a hostile work environment and that she was subjected to retaliation for reporting what she believed to be improper conduct by members of the State Police in 2016. Her allegations were eventually found to be unsubstantiated.

On August 7, 2020, the NJLAD claim was dismissed by the Court under the exclusive-remedy provision of CEPA. Plaintiff has not appealed that determination.

The then-remaining CEPA claim was subject to a one-year statute of limitations. This lawsuit was filed on November 21, 2017. Therefore, any claims which pre-date November 21, 2016 are barred by the statute of limitations. The Complaint asserted an assemblage of often disparate allegations against no less than eight current or former members of the New Jersey State Police.

However, much of the alleged improper conduct which Plaintiff alleged pre-dated November 21, 2016 and was barred by the statute of limitations. Further, Plaintiff failed to establish *any* factual nexus between her complaint and any alleged retaliatory conduct. While Plaintiff alleges that her transfer from

Office of Professional Standards ("OPS") to the State Police Academy in November of 2016 was "retaliatory" and cost her promotional opportunity, the undisputed material facts reveal that Plaintiff's transfer out of OPS actually *accelerated* her promotion.

For these reasons, Judge R. Brian McLaughlin granted Defendants' motion for Summary Judgment and dismissed Plaintiff's remaining CEPA claims. This Court is asked to affirm that decision.

Statement of Procedural History

On November 21, 2017, Plaintiff filed a three-count complaint asserting claims under NJLAD and CEPA. (Pa1-116).

On May 1, 2020, Defendants filed a motion for summary judgment, which was heard before the Hon. William Anklowicz on August 8, 2020. Judge Anklowicz granted the motion in part and denied it in part, dismissing the NJLAD claims pursuant to the CEPA exclusivity provision, N.J.S.A. 34:19-8. The case proceeded to discovery.

On April 14, 2022, Defendants filed their second summary judgment motion, arguing that the remaining CEPA claims were barred by the one-year statute of limitations. After full briefing and a hearing on the motion, on August 7, 2022 Judge McLaughlin granted the motion and dismissed the Complaint, detailing his reasoning on the record.

Plaintiff filed a motion for reconsideration on August 19, 2022. Yet another motion, this one captioned as a "Motion to Vacate" was filed on November 7, 2022. Both motions were denied by Judge McLaughlin on February 21, 2023. This appeal followed.

Statement of Facts

Plaintiff's NJLAD claims, again, were dismissed via Order of Judge William Anklowicz on August 7, 2020. (Pa117-132). (Plaintiff has not asserted in this appeal that that order was erroneous nor set out any argument that it should be reversed.) As such, all that remained was the CEPA claim. Plaintiff claims she engaged in "whistle blowing" by filing Complaint with the Equal Employment Opportunity unit ("EEO") on or about July 26, 2016. (Pa133-136). The EEO Complaint was investigated and closed on or about December 18, 2017. The allegations were found to be unsubstantiated. (Pa137-140).

This lawsuit was, in fact, filed before the EEO completed its investigation (Cf. Pa1-116 and 137-140).

During the time period when Plaintiff filed her EEO Complaint, she was assigned to the OPS (Pa1), having been promoted to Sergeant First Class ("SFC") in March of 2014. (Pa2).

In November of 2016, Plaintiff was transferred from OPS to the State Police Training Bureau. (Pa163-164). Plaintiff alleged this transfer was in

"retaliation" for her filing the EEO Complaint. Defendants each denied the same as set forth in the certifications provided in support of this motion. (Pa155-170). There was no dispute, and the record below clear, the transfer was made at the request of Lt. Col. Ebner for completely non retaliatory reasons. (Pa164).

Specifically, he affirmed that the promotion had its genesis in the request of Lt. Col. Steve Shallop to Lt. Col. Ebner for the names of three people under his command who could be transferred to the Training Bureau, and Lt. Col. Ebner concluded that he could afford to transfer one each from the three largest units under his command. (Pa163-164). Lt. Col. Shallop specifically requested individuals from the first two units, EEO and Executive Protection, which meant that Lt. Col. Ebner had to chose someone from OPS, and he believed Plaintiff was the "obvious choice." (Id.).

He stated the reasons for choosing Plaintiff, specifically:

> 7. Plaintiff was the obvious choice to be transferred from OPS because she was a holdover from Major Wondrack's administration as the de facto Administrative Officer (AO). It was traditional in the State Police that when a Major took over a Bureau, he (or she) could choose their own Administrative Officer. Major Baldosaro had replaced Major Wondrack in or about August of 2016.
>
> 8. When Major Baldosaro replaced Major Wondrack, Plaintiff continued in the AO position. By transferring her to the Academy, I was able to open up the AO position so that Major Baldosaro could exercise a major's normal prerogative of choosing his own AO.

[(Pa164.)]

On or about May 2, 2018, Plaintiff was promoted to Lieutenant. (Pa 141).

While Plaintiff claims, without support, that had she remained in OPS and not been transferred her promotion to Lieutenant would have come earlier, that allegation is belied by the objective record. The Lieutenant position in OPS to which she claims she would have been promoted was not filled until July 17, 2018, two months *after* she was promoted having been transferred to the State Police Training Bureau. (Pa142).

Eight current or former members of the New Jersey State Police were named as Defendants and each denied retaliating against Plaintiff. (Pa155-170). Lt. Col. Scott Ebner acknowledges he initiated the transfer. This was his prerogative and in no way retaliatory. (Pa163-164). The other individual Defendants played no role in the transfer. (Pa155-170).

Legal Argument

ISSUE I) JUDGE MCLAUGHLIN DID NOT ERR IN DECLINING TO FOLLOW THE LAW-OF-THE-CASE DOCTRINE, AS THE POINT WHICH PLAINTIFF SOUGHT TO HAVE JUDGE MCLAUGHLIN ADOPT WAS NOT FOUND AS A MATTER OF LAW BY JUDGE ANKLOWITZ

Plaintiff first argues that Judge McLaughlin erred by declining to invoke the law-of-the-case doctrine with regard to the previous decision by Judge

Anklowitz. There is no merit to this argument because the law of the case doctrine does not .

The law-of-the-case doctrine provides "that a legal decision made in a particular matter 'should be respected by all other lower or equal courts during the pendency of that case." Tully v. Wu, 457 N.J. Super. 114, 128 (App. Div. 2018) (quoting Lombardi v. Massa, 207 N.J. 517, 548 (2011)). "A hallmark" of this doctrine "is its discretionary nature." Ibid. (quoting Lombardi, 207 N.J. at 548). That is, it is "non-binding" and only "intended to 'prevent re-litigation of a previously resolved issue.'" Ibid. (quoting Lombardi, 207 N.J. at 548). It is "only triggered when one court is faced with a ruling *on the merits* by a different and co-equal court on an *identical* issue." Ibid. (emphases added) (quoting Lombardi, 207 N.J. at 548). Notably, the court's prior denial of a defendant's dispositive motion is *not* "a ruling on the merits" of the plaintiff's claims—it follows, then, that the law-of-the-case doctrine does *not* preclude a court from later granting defendant's dispositive motion. Ibid. at 128-29. This is especially so when the court is later presented with new or different evidence than was presented to it in the original motion. Ibid.

That is precisely what happened here. Contrary to Plaintiff's arguments, Judge Anklowitz merely denied Defendants' prior dispositive motion; in doing so, he would not have, and *did* not, hold that a hostile work environment existed

and thus Plaintiff proved that as a matter of law. Rather, he found that at that point in time, based on the record before him that that time, "it appears that there are genuine issues of material facts as to whether Plaintiff endured a hostile work environment." (Pa120.)

Defendants asserted that the CEPA claim was time-barred, that the allegations against the individual Defendants did not come within CEPA's protections, and that the failure-to-promote claim was untenable. Because those issues, and the factual record, were different than what was presented to Judge Anklowitz, the law-of-the-case doctrine did not preclude Judge McLaughlin's consideration of the second motion.

The statute of limitations for a CEPA is one year. N.J.S.A 34:19-5. Pursuant to N.J.S.A. 34:19-5(a), an aggrieved employee has one year to file suit. The CEPA statute states that "[u]pon a violation of any of the provisions of this act, an aggrieved employee or former employee may, *within one year*, institute a civil action in a court of competent jurisdiction." Green v. Jersey City Bd. of Educ., 177 N.J. 434, 446 (2003) (emphasis added) (quoting N.J.S.A. 34:19-5)).

This Complaint was not filed until November 21, 2017. [See Ex. A] Therefore, to the extent Plaintiff alleges to have been subject to CEPA retaliation prior to November 21, 2016, those claims were time-barred. This included any

claims which arose prior to Plaintiff's transfer from OPS to the State Police Academy.

As such, there is no merit to Plaintiff's first argument and this Court should affirm Judge McLaughlin's decision.

ISSUE II) THERE IS NO BASIS TO PERMIT PLAINTIFF TO FILE A RESPONSE TO THE ORIGINAL MOTION, AS SHE HAD EVERY OPPORTUNITY TO DO SO.

Plaintiff next argues that once Judge McLaughlin declined to invoke the law-of-the-case doctrine, Plaintiff should have been permitted to file a response to "the original Motion."[1] (Pb31). There is no merit to this argument.

As an initial matter, Plaintiff indicates that this issue was preserved on Page Pa-171. (Pb31) However, that page is simply Judge McLaughlin's order. There does not appear to be any indication in the record preserving this issue prior to Plaintiff's motion to reopen the summary judgment, filed on November 7, 2022, which was well beyond the August 8, 2022 order dismissing the complaint in its entirety.

Consequently, as this argument was not raised before Judge McLaughlin in a timely manner, the "plain error standard" applies. When a defendant does

[1] "Original motion" presumably refers to the Summary Judgment motion decided by Judge McLaughlin, which was the *second* dispositive motion filed by Defendants, the first being decided by Judge Ankolowicz.

not object to an alleged error at trial, such error is reviewed under the plain error standard. See R. 2:10-2; see also State v. Camacho, 218 N.J. 533, 554 (2014). Under that standard, an error constitutes plain error *only* if it was "clearly capable of producing an unjust result." R. 2:10-2. "Plain error is a high bar and constitutes 'error not properly preserved for appeal but of a magnitude dictating appellate consideration.'" State v. Santamaria, 236 N.J. 390, 404 (2019).

In this case, it appears that by referencing "the original Motion," that Plaintiff means he should have been given a chance to argue before Judge McLaughlin the issues he believed to have been addressed by Judge Anklowitz. (See Pb2 (" Plaintiff should be given the opportunity as she would have in an R. 4:6-2 Motion, to address the arguments for the second Motion for Summary Judgment which had been addressed by Judge Anklowitz.")).

However, there is no error here, let alone plain error. When Defendants filed their second motion for summary judgment and argued in a way which conflicted with Plaintiff's belief that Judge Anklowitz had already decided the matter, Plaintiff had every opportunity to argue in the alternative and to address any issue she wished to raise, and the substantive legal arguments raised, at that time, rather than waiting for the summary judgment motion to be decided and then trying to reargue the case. Any failure to address the substance of the case promptly was nothing more than Plaintiff's strategic decision in answering the

motion. It does not amount to plain error and is not clearly capable of producing an unjust result.

That is especially so in light of the fact that there were no fact issues in light of the certifications produced by the Defendants and the Plaintiff's decision not to take Defendants' depositions.

Furthermore, Defendants suggest that, in fact, Plaintiff did raise arguments in the alternative when answering the motion for summary judgment filed by Defendants. Plaintiff filed a thirteen-page, three-issue opposition which argued that the "law of the case" should apply, and a number of arguments in the alternative. However, she did not argue against the application of the statute of limitations, and could not do so, as there is no factual issue on that point.

Therefore, there was nothing which precluded Plaintiff from re-raising before Judge McLaughlin any argument she initially raised before Judge Anklowitz nor incorporating it by reference. Having failed to have done so, it was not plain error for Judge McLaughlin to have decided the matter based on the arguments which were actually presented to him by the parties.

Furthermore, there was no error in Judge McLaughlin's determination. "[T]o establish a prima facie CEPA cause of action, a plaintiff must demonstrate that: (1) he or she reasonably believed that his or her employer's conduct was violating either a law, rule, or regulation promulgated pursuant to law, or a clear

mandate of public policy; (2) he or she performed a 'whistle-blowing' activity described in N.J.S.A. 34:19-3(c); an adverse employment action was taken against him or her; and (4) a causal connection exists between the whistle-blowing activity and the adverse employment action." Lippman v. Ethicon, Inc., 222 N.J. 362, 380 (2015) (quoting Dzwonar v. McDevvit, 177 N.J. 451, 462 (2003)). "CEPA defines actionable retaliation as 'the discharge, suspension or demotion of an employee, or other adverse employment action taken against an employee in the terms and conditions of employment." Green, 177 N.J. at 446.

"*Vague and conclusory complaints, complaints about trivial or minor matters, or generalized workplace unhappiness* are not the sort of things that the Legislature intended to be protected by CEPA." Allen v. Cape May County, 246 N.J. 275, 290-91 (2021) (emphasis added) (quoting Battaglia v. United Parcel Serv., Inc., 214 N.J. 518, 559 (2013)). Notably, to establish a *prima facie* case of causation, a Plaintiff must "show . . . that the decision maker had knowledge of the protected activity." Moore v. City of Philadelphia, 461 F.3d 331, 351 (3rd Cir. 2006).

The statute of limitations for a CEPA claim is one year. N.J.S.A. 34:19-5. Pursuant to N.J.S.A. 34:19-5(a), an aggrieved employee has one year to file suit seeking relief the statute, and states: "[u]pon a violation of any of the provisions of this act, an aggrieved employee or former employee may, within one year,

institute a civil action in a court of competent jurisdiction." Green, 177 N.J. at 446 (2003) (quoting N.J.S.A. 34:19-5)).

This Complaint was not filed until November 21, 2017. [See **Ex. A**] Therefore to the extent Plaintiff alleges to have been subject to retaliation prior to November 21, 2016, those claims are time-barred. This would include any claims during the time period prior to her transfer from OPS to the State Police Academy, which occurred on November 26, 2016. (Pa3).

None of the allegations in Plaintiff's complaint establish a *prima facie* CEPA violation, as Judge McLaughlin properly found. Plaintiff presented no evidence that any adverse employment action was taken against her. Plaintiff elected not to depose any of the individual Defendants, and nothing else was elicited in discovery to support her claims.

Further, the individual Defendants fall into two groups. The first group worked with Plaintiff while she was employed at OPS prior to November of 2016. These are Defendants Harkness, Guidi, McIntyre and Baldosaro. The second group includes Scott Ebner, Christopher Pommerencke, Jeanne Hengemuhle and Raymond Palovcak worked with Plaintiff after November 2016.

A) William Harkness, Anthony Guidi, Brendan McIntyre and John Baldosaro

As to Captain **William Harkness**, Plaintiff does not spell out what she claims the retaliation to be. She was apparently dissatisfied with the manner in which he investigated a civilian complaint. It was her prerogative to disagree and his to investigate as he saw fit. Again, this claim seems to relate to the NJLAD hostile work environment claim which was already dismissed. Plaintiff does not set forth *how* Captain Harkness retaliated against her or what the retaliation was. To the extent she claims it was her transfer from OPS to the State Police Academy, he had no input in the decision and was not involved in any way. (Pa155-156). To the extent she complains of retaliation[2] *prior* to her transfer, it is time-barred. Villalobos v. Fava, 342 N.J. Super. 38, 45 (App. Div. 2001).

As to Lieutenant **Anthony Guidi**, again the interrogatories do not allege he retaliated in any way. The allegations are limited to hostile work environment claims, which have already been dismissed and would be time-barred if not dismissed. Lt. Guidi denies any retaliation or playing any role in Plaintiff's transfer from OPS. (Pa157-158).

[2] Plaintiff has not set forth what she claims the "retaliation" to be other than her transfer, but any "retaliation" prior to the same is time-barred as it would have taken place more than one year prior to this lawsuit being filed.

Plaintiff claims Captain **Brendan McIntyre** was "instrumental" in having Plaintiff transferred from OPS to the Police Academy but provides no support for the belief (or that he had the authority to transfer Plaintiff). The entire claim is apparently based on a comment that Plaintiff might enjoy working with Jeanne Hengemuhle, who was a friend. McIntrye denies having any role in Plaintiff's transfer. (Pa159-160).

Finally, as to Major **John Baldosaro**, Plaintiff claims he allowed his subordinates transfer her to the Academy. Again, "allowing" a transfer to take place does not amount to retaliation under CEPA. Major Baldosaro was transferred to OPS shortly prior to Plaintiff's transfer to the Academy. As is set forth in his certification, as a Major he was given the courtesy of selecting his own Assistant Administrative Officer ("AAO"). He elected to do so and Michael Buray filled this position. Plaintiff had no absolute right to remain the AAO when a new Major was assigned to OPS. (Pa161-162).

B) Scott Ebner

Lt. Col. **Scott Ebner** never actually worked at OPS or with Plaintiff. However, he acknowledges that he is the person who transferred Plaintiff and had the right and obligation to make personnel decisions as he felt appropriate. Plaintiff alleges he refused to meet with her to discuss the transfer. Whether or not this is true, it does not support a CEPA claim. Lt. Col. Ebner's reason for

making the transfer are clearly non retaliatory and set forth in detail. (Pa163-164). Plaintiff does not, and cannot rebut, any of the reasons set forth in Mr. Ebner's certification as to the decision to transfer her. She may have "preferred" to stay at OPS but that does not create a "retaliation" because she was transferred anyway.

C) Christopher Pommerencke, Jeanne Hengemuhle and Raymond Palovcak

Finally, Sergeant First Class Pommerencke, Lieutenant Palovcak and Captain. Hengemuhle all come into the picture *after* Plaintiff was transferred from OPS. Again, the allegations are vague but these claims seem to allege hostile work environment as opposed to retaliation. (Pa165-170).

As such, Plaintiff has failed to demonstrate plain error in Judge McLaughlin granting Defendant's motion without providing Plaintiff with the opportunity to respond which she now seeks. This Court is asked to affirm the summary judgment order, as Plaintiff failed to cannot set forth a cause of action under CEPA against any of the individual Defendants and Summary Judgment is appropriate.

ISSUE III) JUDGE MCLAUGHLIN DID NOT ERR BY DETERMINING THAT THE PLAINTIFF'S CEPA

CLAIMS WERE BARRED BY THE STATUTE OF LIMITATIONS.

Plaintiff next argues that Judge McLaughlin erred by granting summary judgment on statute of limitations grounds. Plaintiff first asserts that the law-of-the-case doctrine applies and that Judge McLaughlin should have determined that, in the previous summary judgment motion, Judge Anklowitz "had already determined that these Defendants created a hostile work environment." (Pb33). Plaintiff then argues that the law under Green v. Jersey City Board of Education, 177 N.J. 434 (2003), holds that a hostile work environment constitutes a continuing tort and that the application of the statute of limitations in such a case is different than it would be with regard to a claim based on a discrete act. Ibid. at 446-47.

The first error in Plaintiff's argument is that Judge Anklowitz, by denying the summary judgment motion as it concerned the CEPA claim, *did not*, in fact, find that a hostile work environment was created, let alone was created by these Defendants. Rather, as Judge McLaughlin correctly indicated, Judge Anklowitz merely found that "there are genuine issues of material fact as to whether Plaintiff endured a hostile work environment." (Pa122). Accordingly, Judge Anklowitz *did not* hold that a hostile work environment existed as a matter of law, as Plaintiff suggests.

Furthermore, Plaintiff is wrong to argue that the law-of-the-case doctrine would apply to the second summary judgment motion. As detailed in the first section of this brief, the law-of-the-case doctrine did not bar judge McLaughlin's consideration of Defendants' motion. (See Issue I, supra.)

Furthermore, Plaintiff also intimates that the statute of limitation issue was waived because it was not raised as part of the original motion for summary judgment. (Pb25) ("They did not raise the issue of the statute of limitations because there was no issue, it was waived because it did not apply."). This is false. The New Jersey Rules of Court do not place any limitations on summary judgment motions pertinent here,[3] and do not impose waiver if it is not filed by a specific date. Baez v. Paulo, 453 N.J. Super. 422, 446-47 (App. Div. 2018) ("The Rules of Court impose no deadline on the filing of a dismissal motion based on the statute of limitations. Although the Supreme Court has observed that such a dismissal motion ought to be filed before trial, Knorr v. Smeal, 178 N.J. 169, 176, 836 A.2d 794 (2003), there is no case law or Court Rule that sets forth a filing deadline.").

Finally, Plaintiff's argument that Green applies here is misguided. In Green, the court held that the one-year statute of limitations for a CEPA claim

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[3] The only requirement is that summary-judgment motions must be filed with a return date more than 30 days prior to a case's trial date. R. 4:46-1.

ran from the occurrence of a discrete act of retaliation or, in the case of a hostile work environment claim, from the last act constituting a component act of the hostile work environment. Green, 177 N.J. at 447-48.

In this case, as discussed in greater detail, *supra*, the allegations against the Defendants were a series of discrete acts, all of which but the transfer occurred more than one year prior to the filing of the CEPA claim and are time-barred. The transfer, itself, was the act of Lt. Col. Scott Ebner, who set out his reasons for doing, which were clearly non-retaliatory and for which Plaintiff failed to demonstrate were in any way pretexual.

Consequently, this argument provides no basis to find that summary judgment was improper and this Court is asked to affirm Judge McLaughlin's order.

ISSUE IV) JUDGE MCLAUGHLIN DID NOT ERR IN THE MANNER IN WHICH HE DECIDED THIS CASE.

Finally, Plaintiff argues that Judge McLaughlin erred by deciding this case without citing any authority. Citing to Estate of Doerfler v. Federal Insurance Co., 454 N.J. Super. 298 (App. Div. 2018), Plaintiffs argued that Judge McLaughlin failed to reach specific findings of fact and conclusions of law. There is no merit to this argument.

In Estate of Doerfler, an insurance coverage case, the judge granted summary judgment for defendant, in a case in which the parties cross moved for

summary judgment, with each arguing that there were no genuine issues of material fact. After an oral argument—described as "an active and probing discussion between counsel and the motion judge" on the meaning of an exclusionary provision in the policies at issue—the judge issued orders granting judgment in favor of the Defendants, supported by a single sentence indicating that the judgment was "*for the reasons set forth in defendant[s]' motion papers*" Ibid. at 301. No further analysis was provided.

In this case, by contrast, Judge McLaughlin provided his legal analysis in the transcript of the August 8, 2022 hearing. The analysis reached the conclusions of law and applicable findings of fact and expressed his reasoning over the course of six transcript pages. (1T24:3-30:22).

It should also be recognized that Judge McLaughlin was not writing on a blank canvas. Immediately before he placed his decision on the record, Judge McLaughlin presided over a hearing, during which the parties presented their arguments about whether the law of the case doctrine applied. There was no dispute between the parties as to what that doctrine entailed, but merely whether it applied in this case. Thus, the fact that Judge McLaughlin did not specifically cite to a case defining the doctrine is not error, nor certainly more than harmless error, because the question at issue was not the definition of the doctrine but

whether it applied here, and he clearly detailed why he did not believe it did apply.

Similarly, as it concerned the statute of limitation issues, there was no dispute between the parties as to what the statute of limitations was or how long of a statute of limitations applied to a CEPA claim. Consequently, the only issue for Judge McLaughlin was whether the statute had run and whether any of the allegations—sufficient to support a discrete cause of action—fell within the statutory time period. Judge McLaughlin provided a full and complete analysis of that question and fully supported his decision on the record.

As such, because Judge McLaughlin placed on the record a complete analysis of his decision, there is no basis to find that the requirements set out in Estate of Doerfler was violated. As such, this court should reject Plaintiff's argument.

Conclusion

For all the foregoing reasons, this Court is asked to affirm Judge McLaughlin's order granting summary judgment to the Defendants.

Respectfully Submitted,
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Dated: December 18, 2023

FILED, Clerk of the Appellate Division, January 25, 2024, **A-002155-22**, **AMENDED**

Superior Court of New Jersey

DEBRA RUNOWICZ, Plaintiff-Appellant, v. STATE OF NEW JERSEY, DIVISION OF STATE POLICE, CAPTAIN WILLIAM HARKNESS (#5355), LIEUTENANT ANTHONY GUIDI, (#5161), LIEUTENANT COLONEL SCOTT EBNER (#5346), MAJOR JOHN BALDOSARO (#5027), CAPTAIN BRENDAN MCINTYRE (#5079), CAPTAIN JEANNE HENGEMUHLE (#5600), SERGEANT FIRST CLASS CHRISTOPHER POMMERENCKE (#5391), LIEUTENANT RAYMOND PALOVCAK (#5387) AND JOHN DOES 1-5, Defendants-Respondents.	*	APPELLATE DIVISION DOCKET NO. A-2155-22 Docket No. Below: MER-L-2509-17 ON APPEAL FROM: Superior Court of New Jersey Law Division, Mercer County SAT BELOW: Hon. R Brian McLaughlin, JSC *CIVIL ACTION*

PLAINTIFF-APPELLANT'S **AMENDED** REPLY BRIEF

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Reply Brief

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TABLE OF JUDGMENTS, ORDERS & RULINGS

Order on Second Motion for Summary Judgment filed 8/8/22	Pa-171
Order Denying Reconsideration filed 2/21/23	Pa-173

TABLE OF AUTHORITIES CITED:

CASES	Pages
Green v. Jersey City Board of Education, 177 N.J. 434	1-3
State v. Hale, 127 N.J. Super. 407	4

PROCEDURAL HISTORY

Plaintiff-Appellant relies on the Procedural History previously submitted.

STATEMENT OF FACTS

Plaintiff-Appellant relies on the Statement of Facts previously submitted.

LEGAL ARGUMENT

POINT I
Plaintiff's Reply to Defendants' Brief

The Court invoked the statute of limitations when in fact that was rejected implicitly by Judge Anklowitz's denial of the original Motion for Summary Judgment; Green v. Jersey City Board of Education, 177 N.J. 434 (2003).

To this point, we have a Summary Judgment Motion denied by Judge Anklowitz as to Plaintiff's CEPA claims, but not as to her LAD claims. Two years later, on August 8, 2022, the Defendants filed a second Motion for Summary Judgment which should not have been granted by the Court below but, mistakenly, was.

The reasons why Plaintiff's appeal should be granted is (a) the law of the case applied; (b) the submission of Certifications or Affidavits by the Defendants well after the discovery end date amounted to new discovery without exceptional circumstances; (c) the Court below cited no case, referenced the denied 2020 Motion

for Summary Judgment, but never officially cited it in terms of where the Court's reference was to be found.

In the Defendants' Appeal Brief, they are quick to recognize the August 7, 2020 Order which dismissed the LAD claim because of the exclusive remedy provision of CEPA. Appellant does not appeal that determination because it was correct as was the decision by Judge Anklowitz to deny the Defendants' Motion for Summary Judgment.

At the time the second Motion for Summary Judgment was made, it was supported by Affidavits, Certifications, which were actually discovery. The discovery end date had ended prior to the 2020 Motion for Summary Judgment which Judge Anklowitz denied. A number of statements by various Defendants found their way into the record when in fact the discovery end date had long expired.

What we have, therefore, is a Motion denied by Judge Anklowitz which was reopened by the various Defendants by way of all new facts, to not only support the second Motion for Summary Judgment, but to undo the first Motion for Summary Judgment.

In rejecting the law of the case, the Court below also rejected Green v. Jersey City Board of Education, 177 N.J. 434 (2003). Judge Anklowitz had found a hostile work environment. Judge McLaughlin overlooked that and concluded that the statute of limitations applied.

POINT II
Plaintiff's Appeal Should be Granted Because of the Numerous Errors Below.

1. The entire Summary Judgment Motion granted by the Court below was devoid of any citations or references to a prior Summary Judgment Motion. Nowhere in its decision below does the Court in any way indicate where Judge Anklowitz improperly denied the Motion. In other words, the Court never referenced, other than with general statements. Also, the Court below failed to recognize that Judge Anklowitz had rejected Plaintiff's LAD claim because he upheld the CEPA claim.

2. The law of the case was improperly rejected. Two years after the first Summary Judgment Motion and long after the discovery period had ended, the Defendants submitted a number of statements by Defendants. There was no Motion to reopen discovery and the filings constituted all new facts. The Motion was not based upon exhibits that were provided prior to the discovery end date, it was based upon all new statements by the various Defendants all dated well after the discovery period ended.

3. The Court below failed to understand Green, *supra* where the Court pointed out a number of events that did not implicate the statute of limitations. The same thing was present in this case. And so, Judge Anklowitz never determined that the statute was implicated because Green applied.

CONCLUSION

Everything that could have been prejudicial to a Plaintiff was implicated in this case, i.e. the Court rejected State v. Hale, 127 N.J. Super. 407, by rejecting "law of the case."

Once the Court below rejected the law of the case doctrine, the Plaintiff then sought to reopen the Motion which was denied below.

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