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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2123-09T3

GEORGE E. PIPER, D.O.,

Plaintiff-Appellant,

v.

THE UNIVERSITY OF MEDICINE  
AND DENTISTRY OF NEW JERSEY,  
SCHOOL OF OSTEOPATHIC MEDICINE,  
and DEAN R. MICHAEL GALLAGHER,

Defendants-Respondents.

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Argued January 5, 2011 – Decided June 8, 2011

Before Judges Fuentes, Gilroy and Ashrafi.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-2629-06.

Ronald J. Uzdavinis argued the cause for appellant (Holston, MacDonald, Uzdavinis, Ziegler & Lodge, P.A., attorneys (Mr. Uzdavinis and Samuel J. Myles, on the brief)).

Craig J. Smith argued the cause for respondent University of Medicine and Dentistry of New Jersey, School of Osteopathic Medicine (McElroy, Deutsch, Mulvaney & Carpenter, LLP, attorneys; Mr. Smith, on the brief).

Jeremy D. Frey argued the cause for respondent R. Michael Gallagher (Pepper Hamilton LLP, attorneys, join in the brief of respondent University of Medicine and

Dentistry of New Jersey, School of  
Osteopathic Medicine).

PER CURIAM

Plaintiff, Dr. George Piper, appeals from two November 6, 2009 orders that granted summary judgment to defendants, University of Medicine and Dentistry of New Jersey, School of Osteopathic Medicine (UMDNJ-SOM) and R. Michael Gallagher, a former Dean of UMDNJ-SOM. We affirm.

I.

Plaintiff resigned from his employment at UMDNJ-SOM in the fall of 2005. On March 21, 2006, plaintiff filed a complaint in the Law Division alleging: retaliation and constructive discharge in violation of the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to -8 (count one); a wrongful discharge (count two); tortious interference with his economic advantage (count three); breach of contract (count four); breach of the covenant of good faith and fair dealing (count five); defamation (count six); and intentional infliction of emotional distress (count seven). In August and October 2009, UMDNJ-SOM and Gallagher filed motions for summary judgment. At the commencement of oral argument on November 6, 2009, plaintiff abandoned all causes of action except the CEPA claims. On that date, the court entered the two orders appealed from supported by an oral decision.

## II.

Viewed most favorably to plaintiff, see R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), the motion record discloses the following. Plaintiff, a physician, was employed by UMDNJ-SOM as Associate Dean for the Graduate Medical Education (GME) Department since 1994. At several meetings of the Executive Council Meeting between April and June 2004, plaintiff was asked to change certain statistics UMDNJ-SOM reported to U.S. News and World Report magazine to reflect a higher percentage of the UMDNJ-SOM graduates going into primary care medicine. Plaintiff was asked to count traditional rotating interns as entering primary care medicine although, according to plaintiff, those students generally entered specialty residencies. Plaintiff objected and indicated that he believed changing the statistics would be fraudulent.

On August 11, 2004, Gallagher announced that he was establishing a task force to determine the future direction of the GME Department. The task force began its investigation on September 9, 2004. On November 16, 2004, the task force interviewed GME staff, including Louise Tulina, n/k/a Louise Tulina-Dunn, who complained about the demeanor of the office manager. Task force members asked Tulina-Dunn whether plaintiff and the office manager ate lunch together and whether they

worked together behind closed doors. Tulina-Dunn answered both questions in the affirmative. On November 23, 2004, plaintiff prepared Tulina-Dunn's performance evaluation, giving her a "1", as compared to her previous rating of "4," out of a possible total of "5."

In December 2004, following the task force review, Gallagher requested the University Office of Business Conduct (OBC) and the Office of Affirmative Action (OAA) to investigate whether plaintiff had showed favoritism to GME's office manager and/or created a hostile work environment by virtue of the poor performance evaluation plaintiff had given to Tulina-Dunn. Plaintiff was not permitted to participate in the investigation. The investigation resulted in a finding of an "appearance of" retaliation by plaintiff against Tulina-Dunn.

On January 19, 2005, Gallagher informed plaintiff that he was removing plaintiff from the Associate Dean position and returning him to regular faculty status as an Associate Professor in the Department of Psychiatry where he would be required to participate in clinical detox units. On January 21, 2005, Gallagher confirmed in a letter to plaintiff that "effective January 20, 2005, [plaintiff's] administrative appointment as Associate Dean for [GME] is deleted." The letter further advised plaintiff that "[w]ith [the] return to regular

faculty status[,] your current academic base salary will decrease from \$186,533.00 to \$171,610.00, a decrease of 8% equaling a reduction of \$14,923. Your new academic base is above the applicable maximum for your bargaining title of Associate Professor. . . . The change described in this letter will be reported to the University's Board of Trustees."

On February 4, 2005, plaintiff's then-attorney wrote to the UMDNJ's Vice President of Legal Management objecting to the actions taken against plaintiff, including plaintiff being required to perform clinical work in detox units, which he had not done for over fifteen years. On February 22, 2005, plaintiff's attorney sent a second objection letter concerning plaintiff having to relocate his outpatient practice from Stratford to Cherry Hill and the requirement that plaintiff's Department Chair report to Gallagher regarding plaintiff's work.

By letter dated March 22, 2005, Gallagher notified plaintiff that the OBC and OAA had found that an "appearance of both retaliation and hostile work environment" existed within the GME Department. The OBC and OAA recommended: "[d]issolving the reporting structure between [plaintiff] and the Department's Administrative Coordinator I"; deleting plaintiff's Associate Dean title; reassigning plaintiff to another position within UMDNJ-SOM; and "[p]roviding [plaintiff] with in-service training

pertaining to responsibilities of managers and pertaining to the prevention of hostile work environments."

On March 23, 2005, Gallagher sent plaintiff another letter advising plaintiff that the UMDNJ Board of Trustees had approved the deletion of his administrative title of Associate Dean of the GME department and his return to regular faculty status, effective January 20, 2005. The letter also confirmed that "[w]ith your return to regular faculty status, your base salary will decrease from \$186,533 to \$171,610. Your faculty practice supplement will remain [at] \$26,301[,] for a total salary of \$197,911."

On August 30, 2005, the GME Task Force Report was distributed to various individuals at UMDNJ-SOM. The report made no reference to the OBC and OAA investigations of plaintiff, or of plaintiff's demotion or reassignment to the Department of Psychiatry. On September 14, 2005, plaintiff tendered a resignation of his employment after being advised that disciplinary action was being considered against him for deficient clinical paperwork. Plaintiff's last date of employment was October 28, 2005.

In dismissing plaintiff's complaint, the trial court determined that: 1) plaintiff had established a prima facie CEPA claim based on his removal from the position of Associate

Dean and his reduction in salary because he had refused to participate in adjusting certain statistics for the U.S. News & World Report magazine; 2) plaintiff's retaliatory CEPA claim based on loss of title and reduction in salary was time barred by the one-year statute of limitations which began to run on January 21, 2005, plaintiff having filed his complaint on March 21, 2006; and 3) plaintiff failed to establish a prima facie CEPA constructive discharge claim.

On appeal, plaintiff argues that the trial court erroneously determined that his CEPA claim based on loss of title and reduction in salary was time barred. Alternatively, plaintiff asserts that because defendants had continued to subject him to other discriminatory acts as recent as August 2005, the complaint was timely filed under the continuing violation exception to the statute of limitations. Lastly, plaintiff argues the trial court erred in determining that he had failed to establish a prima facie CEPA constructive discharge claim.

### III.

A trial court will grant summary judgment to the moving party "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact

challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); see also Brill, supra, 142 N.J. at 540. "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R. 4:46-2(c).

On appeal, "the propriety of the trial court's order is a legal, not a factual, question." Pressler & Verniero, Current N.J. Court Rules, comment 3.2.1 on R. 2:10-2 (2011). We employ the same standard that governs trial courts in reviewing summary judgment orders. Block 268, LLC v. City of Hoboken Rent Leveling & Stabilization Bd., 401 N.J. Super. 563, 567 (App. Div. 2008).

Plaintiff first argues that the trial court erroneously dismissed his retaliatory CEPA claim based on loss of title and reduction in salary as barred by the statute of limitations. Plaintiff contends that the statute of limitations did not commence to run until either March 22, 2005, when he had been provided reasons for his demotion, or March 23, 2005, when he had been informed that his demotion was approved by the Board of Trustees. We disagree.



CEPA is remedial legislation "designed to protect employees who 'blow the whistle' on illegal or unethical activity committed by their employers or co-employees." Beasley v. Passaic County, 377 N.J. Super. 585, 605 (App. Div. 2005) (quoting Estate of Roach v. TRW, Inc., 164 N.J. 598, 609-10 (2000)). A CEPA retaliatory action is defined 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." Maimone v. City of Atl. City, 188 N.J. 221, 235 (2006) (quoting N.J.S.A. 34:19-2(e) (emphasis removed)). Accordingly, an adverse employment action is not limited to a demotion, suspension, or discharge and need not result in a loss of pay. Id. at 236. "[M]any separate but relatively minor instances of behavior directed against an employee . . . may . . . combine to make up a pattern of retaliatory conduct." Green v. Jersey City Bd. of Ed., 177 N.J. 434, 448 (2003). Nevertheless, "[a]dverse employment actions do not qualify as retaliation under CEPA 'merely because they result in a bruised ego or injured pride on the part of the employee.'" Beasley, supra, 377 N.J. Super. at 607 (quoting Klein v. Univ. of Med. & Dentistry, 377 N.J. Super. 28, 46 (App. Div. 2005)).

The statute of limitations for filing a CEPA action is one year. N.J.S.A. 34:19-5. The accrued dates for discrete acts are dates upon which the events occurred. Roa v. Roa, 200 N.J. 555, 567 (2010). Thus, "[a]n employee's CEPA claim accrues on the date of his actual demotion, suspension or termination of employment." Villalobos v. Fava, 342 N.J. Super. 38, 50 (App. Div.), certif. denied, 170 N.J. 210 (2001). "A plaintiff need not know with certainty that there is a factual basis for a claim under CEPA for the one year limitation period to be triggered; it is sufficient that he should have discovered that he may have a basis for a claim." Id. at 49 (emphasis removed).

In Villalobos, the plaintiff was twice transferred "for the good of the . . . office" and resigned. Id. at 42-43. The plaintiff later received information that the transfers were an attempt to force his resignation and sued for constructive discharge. Id. at 43-44. On appeal, we held that the plaintiff's claim was barred by the statute of limitations which began to run on the date of his resignation and that he should have discovered his CEPA claim before he received the additional information regarding his transfers. Id. at 49-50. We now apply these principles to the facts of this case.

Gallagher's January 21, 2005 letter to plaintiff stated: "Please be advised that, effective January 20, 2005, your

administrative appointment as Associate Dean . . . is deleted. . . . [Y]our current academic base salary will decrease . . . [by] \$14,923." Accordingly, plaintiff should have discovered he had a basis for potential CEPA claim no later than January 21, 2005, because the retaliatory action had already occurred as of that date.

Plaintiff argues that the March 22, 2005 letter triggered the statute of limitations. Plaintiff contends that that letter informed him that he was being demoted because of appearances of retaliation and a hostile work environment in the GME department, allegations which he claims defendants fabricated as a pretext for his demotion. Plaintiff asserts that he could not have discovered that he had a potential retaliatory CEPA claim without this information. We disagree.

The statute of limitations is triggered on the actual date of the retaliatory action. Id. at 50. As in Villalobos, plaintiff should have known about his potential claim when the actual retaliatory action took place, in this case, when he was demoted and reduced in salary.

Alternatively, plaintiff asserts that Gallagher's March 23, 2005 letter stating the Board of Trustees (the Board) had approved his loss of title permits an inference that his demotion was not final until it was approved by the Board.

However, the January 21, 2005 letter plainly states that plaintiff was demoted effective January 20, 2005. While it also stated that the change would be reported to the Board, there is nothing in the record to indicate that the demotion was contingent on Board approval. This is not a case in which an employee is notified that adverse employment action will be taken at some future date. See Keelan v. Bell Commc'ns. Research, 289 N.J. Super. 531, 535-36 (App. Div. 1996) (holding that the statute of limitations commenced when the plaintiff was terminated, not when he received a letter notifying him that he would be terminated on a future date). Furthermore, it is unclear how subsequent correspondence could change the fact that plaintiff should have discovered his potential claim when he received the earlier letter of January 21, 2005.

What is more, the February 4, 2005 letter from plaintiff's then-counsel demonstrates that plaintiff was aware of his claim as early as February. That letter stated, in relevant part, "the facts here . . . from our perspective, strongly suggest that Dr. Piper has been the target of retaliation."

We conclude that the trial court correctly determined the retaliatory CEPA claim based on plaintiff's loss of title and reduction in salary accrued no later than January 21, 2005.

Therefore, that CEPA claim is barred by the statute of limitations.

Alternatively, plaintiff argues that his retaliatory CEPA claim based on loss of title and reduction in salary was timely filed under the continuing violation exception to the statute of limitations. Not so.

As stated supra, CEPA claims are governed by a one-year statute of limitations. N.J.S.A. 34:19-5. "Determining when the limitations period begins to run depends on when the cause of action accrued, which in turn is affected by the type of conduct a plaintiff alleges to have violated the [CEPA]." Alexander v. Seton Hall Univ., 204 N.J. 219, 228 (2010) (noting the accrual date of a violation under the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49). Under the continuing violation doctrine, "[w]hen an individual is subject to a continual, cumulative pattern of tortious conduct, the statute of limitations does not begin to run until the wrongful action ceases." Shepherd v. Hunterdon Developmental Ctr., 174 N.J. 1, 18 (2002) (quoting Wilson v. Wal-Mart Stores, 158 N.J. 263, 272 (1999)). Simply stated, "when the complained-of conduct constitutes 'a series of separate acts that collectively constitute one unlawful employment practice[,]'" the entire claim may be timely if filed within two years of the 'date of which

the last component act occurred.'" Alexander, supra, 204 N.J. at 229 (quoting Roa, supra, 200 N.J. at 567).

However, the continuing violation doctrine "does not permit . . . the aggregation of discrete discriminatory acts for the purpose of reviving an untimely act of discrimination that the victim knew or should have known was actionable." Roa, supra, 200 N.J. at 569. Accordingly, whether the doctrine is applicable to a particular case depends on whether the plaintiff alleged a "discrete" discriminatory act by defendant or "series of separate acts that collectively constitute one 'unlawful employment practice.'" Shepherd, supra, 174 N.J. at 19-20 (quoting National R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 117, 122 S. Ct. 2061, 2074, 153 L. Ed. 2d 106, 124 (2002)). The continuing violation doctrine is applicable in CEPA cases. Green, supra, 177 N.J. at 448.

Here, Gallagher notified plaintiff in writing on January 21, 2005, that he was "delet[ing]" plaintiff's Associate Dean title and reducing plaintiff in salary by almost \$15,000, effective January 20, 2005. Those actions constituted discrete acts triggering the statute of limitations. Accordingly, the continuing violation doctrine is not applicable to plaintiff's retaliatory CEPA claim based on loss of title and reduction in salary.

#### IV.

Plaintiff argues next that the trial court erroneously determined he had failed to establish a prima facie CEPA constructive discharge claim. We disagree.

The statute of limitations on a constructive discharge claim "begins to run on the date that the resignation is tendered." Daniels v. Mut. Life Ins. Co., 340 N.J. Super. 11, 13 (App. Div.), certif. denied, 170 N.J. 86 (2001). "A constructive discharge occurs when the employer has imposed upon an employee working conditions 'so intolerable that a reasonable person subject to them would resign.'" Id. at 17 (quoting Muench v. Twp. of Haddon, 255 N.J. Super. 288, 302 (App. Div. 1992)). "The phrase 'intolerable conditions' conveys a sense of outrageous, coercive and unconscionable requirements." Jones v. Aluminum Shapes, Inc., 339 N.J. Super. 412, 428 (App. Div. 2001). In determining whether a claimant has been constructively discharged, the court will consider all circumstances, including the nature of the employer's conduct. Shepherd, supra, 174 N.J. at 28.

The standard governing constructive discharges is more stringent than the standard for establishing an LAD hostile work environment claim. Ibid. Indeed, "not every employment action that makes an employee unhappy constitutes an actionable adverse

action." Nardello v. Twp. of Voorhees, 377 N.J. Super. 428, 434 (App. Div. 2005) (internal quotation omitted). Moreover, "an employee is expected to take all reasonable steps necessary to remain employed." Zubrycky v. ASA Apple, Inc., 381 N.J. Super. 162, 166 (App. Div. 2005).

Plaintiff asserts that he was forced to resign because of the following series of incidents: 1) "[u]nspecified charges of, and eventual findings of an 'appearance of' retaliation and creating a hostile work environment--not even alleged by the supposed victim--were falsely asserted against him"; 2) the OBC "reversed an earlier independent filing of no retaliation and joined in a 'collaborative' OAA/OBC report 'finding' that said charges had 'the appearance' of merit-- despite the charges being absolutely false"; 3) he was removed from the position of Associate Dean and reduced in salary; 4) he was required to geographically relocate his out-patient clinical practice; 5) he was required to work in detox units; 6) the Chair of his department was required to review plaintiff's work and to report his observations directly to Gallagher; 7) he was required to take in-service training in management and in the prevention of hostile work environment claims; 8) Gallagher had formed a task force to investigate the GME Department to determine its future direction; 9) defendants circulated the GME task force report,



critical of plaintiff; and 10) he was threatened with disciplinary action for purportedly submitting deficient documentation. We determine that none of these assertions support plaintiff's claim for constructive discharge.

Incident Nos. 1, 2, 3, 4, 5 and 8 are time barred. They all relate to events that had occurred prior to, or simultaneously with, the discrete acts of removing plaintiff from the Associate Dean position and returning him to regular faculty status as an Associate Professor in the Department of Psychiatry. We conclude that none of the incidents falling within the statute of limitations were so intolerable as to cause a reasonable person to resign his or her employment.

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION