SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3166-16T1

LOUIS NARVAEZ,

Plaintiff-Respondent,

v.

STATE OF NEW JERSEY JUDICIARY,
VICINAGE 4,

Defendant-Appellant.

Argued November 6, 2017 – Decided November 22, 2017

Before Judges Sabatino, Ostrer and Whipple.

On appeal from Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-1717-15.

Christie Pazdzierski, Deputy Attorney General, argued the cause for appellant (Christopher S. Porrino, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Ms. Pazdzierski, Deputy Attorney General, on the briefs).

Richard E. Yaskin argued the cause for respondent.

Andrew Dwyer argued the cause for amicus curiae National Employment Lawyers Association of New Jersey (Dwyer & Barrett,

LLC, attorneys; Mr. Dwyer, of counsel and on the brief).

PER CURIAM

By leave granted, defendant in this employment case appeals from the trial court's January 20, 2017 order compelling defendant to supply certain requested discovery to plaintiff. We affirm that order, with modifications.

Plaintiff Louis Narvaez was the chief probation officer of the Judiciary in the Camden vicinage. In February 2015, defendant terminated plaintiff citing various reasons of dissatisfaction with his work performance. Plaintiff then brought the present lawsuit alleging that he had been wrongfully discharged in violation of the Conscientious Employee Protection Act ("CEPA"), N.J.S.A. 34:19-1 to -8, and the Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 to -49. With respect to his CEPA claim, plaintiff contends that defendant retaliated against him after he objected to activities and decisions he maintains were contrary to law and public policy. With respect to his LAD claim, plaintiff contends that defendant discriminated against him because of his Hispanic origin. Defendant denies those contentions and maintains that plaintiff was terminated for legitimate reasons, including the comparatively poor statewide ranking of the vicinage's probation department under plaintiff's supervisory tenure.

During the course of discovery, plaintiff sought documents and information defendant regarded as confidential, including performance-related documents concerning other managers in the vicinage and internal performance improvement plans for the probation department. The parties entered into a confidentiality agreement in the form of a Consent Protective Order ("CPO"), which we were advised was proposed and drafted by defendant. In that CPO, the parties agreed that non-public information exchanged in discovery about employment, personnel, internal grievances, State operations, and medical records disclosed in discovery would be kept confidential, and only used for the purpose of this litigation, subject to advance notice of any public disclosure at a trial or hearing.[1]

Plaintiff's counsel served various requests for documents in discovery, some of which defendant opposed or wanted limited through a protective order. The three categories that were in dispute are: (1) Document Requests 10 and 12, which are no longer at issue in this appeal; (2) Document Requests 4 and 6, concerning the probation department's performance plan and assessments of departmental statistics under plaintiff's successor and how those

[1] During oral argument on the appeal, counsel for the parties agreed that the notice provision should be expanded to include motion practice, particularly with the advent of electronic filing in the Civil Part.

results compare with those of plaintiff; and (3) Document Requests 16, 17, 20, and 21, seeking to obtain the personnel records and other documents relating to other department heads in the vicinage. Defendant argued that these requests improperly sought disclosure of confidential materials. Plaintiff countered that he is entitled to such discovery.

After hearing oral argument concerning these disputed discovery demands, the trial court granted the plaintiff's request without conducting an in camera review of the actual documents. The court concluded that plaintiff's requests were reasonably calculated to lead to potentially relevant and admissible discovery. The court noted that the parties had entered into a confidentiality order, so that records produced would be subject to that order. In addition, the court instructed that the identities of individual probationers should also be protected.

On appeal, defendant urges that the trial court should have performed an in camera review before ordering the turnover of any of the requested documents. Defendant stresses that the personnel records of other employees traditionally have been accorded strong confidentiality protection.[2] Plaintiff has not cross-appealed any aspects of the trial court's rulings.

[2] Defendant has not appealed the trial court's disposition of issues concerning the deliberative process privilege.

Plaintiff responds that he is entitled to these materials as of right under Dixon v. Rutgers, 110 N.J. 432 (1988), and that no in camera review is required. His position is supported by amicus curiae.

Having considered these competing arguments, we affirm the trial court's order, but with modification. We agree with the trial court's preliminary assessment that plaintiff's discovery requests have been fashioned to lead to potentially relevant and admissible evidence in this wrongful discharge case. The presumptive right of access to civil discovery in our State is broad, as was recently reaffirmed by the Supreme Court in Capital Health System, Inc. v. Horizon Healthcare Services, Inc., 230 N.J. 73, 81 (2017). On the other hand, we acknowledge that the personnel records of other employees are entitled to a degree of, if not absolute, confidentiality. N. Jersey Media Grp., Inc. v. Bergen County Prosecutor's Office, 405 N.J. Super. 386, 390 (App. Div. 2009).

We do not read Dixon, supra, 110 N.J. at 435, a case in which the plaintiff assistant professor at a State college was denied promotion and tenure, as mandating the automatic disclosure of all otherwise-confidential records of a plaintiff's peers without in camera judicial review. Nor, on the other hand, do we read Dixon to signify that initial in camera review of such materials is

always required before a defendant presents any such redacted items to plaintiff's counsel. Rather than endorsing either of these extreme positions, we instead recognize that disputes over disclosure must be analyzed on a case-by-case basis, with the court balancing the competing interests at stake. See Dixon, supra, 110 N.J. at 456-57 (recognizing the contextual aspects of the redaction process and a court's in camera review); see also Loigman v. Kimmelman, 102 N.J. 98, 108-13 (1986).

That said, we conclude that the trial court did not abuse its wide discretion over discovery matters by issuing the January 20, 2017 order without first engaging in immediate in camera review. The court reasonably found that the confidentiality order already in place[3] affords a sufficient degree of protection from indiscriminate public disclosure. Moreover, the document requests do appear to be reasonably calculated to yield relevant proof relating to "comparatives," subject to offsetting confidentiality concerns.

That said, we further conclude that the trial court's order should be modified to make clear that defendant, consistent with the procedure agreed upon in the CPO, may make what it believes

[3] We reject, as did the trial court, defendant's position that the CPO is designed to cover only plaintiff's personnel records and not also the personnel and other records relating to other employees.

are appropriate redactions to the documents, and then turn over the redacted versions to plaintiff's counsel. The redactions may include the use of initials, as well as the reasonable removal of personal identifying information for other affected employees. See, e.g., L.R. v. Camden City Pub. Sch. Dist., ___ N.J. Super. ___, ___ (App. Div. 2017) (slip op. at 48) (explaining how the mere use of initials at times is insufficient to protect confidential information concerning individuals). If, on receipt and review of the redacted items, plaintiff objects, then the dispute shall be resolved by the trial court through in camera review to address the breadth and propriety of defendant's redactions. The trial court may also consider other measures, such as release of information to opposing counsel for counsel's "eyes only." Following that review, the court may modify the proposed redactions and order, if appropriate, the turnover of additional portions of the contested materials on such terms as may be just and appropriate consistent with Rule 4:10-2.

Affirmed, as modified. We do not retain jurisdiction.