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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1564-14T3

RICHARD MUCIA, THOMAS VARGA,
CHRISTOPHER JAREMA and GIANCARLO
RUSSO,

Plaintiffs-Appellants,

v.

MIDDLESEX COUNTY, MIDDLESEX
COUNTY SHERIFF'S OFFICE,

Defendants-Respondents.

Argued November 1, 2017 – Decided February 8, 2018

Before Judges Fuentes, Manahan, and Suter.

On appeal from Superior Court of New Jersey,
Chancery Division, Monmouth County, Docket No.
C-000020-14.

Timothy R. Smith argued the cause for
appellants (Caruso, Smith, Picini, PC,
attorneys; Joshua M. Forsman, on the brief).

Lisa Barré-Quick argued the cause for
respondent (Apruzzese, McDermott, Mastro &
Murphy, PC, attorneys; Arthur R. Thibault,
Jr., of counsel; Lisa Barré-Quick, on the
brief).

PER CURIAM

Plaintiffs Richard Mucia, Thomas Varga, Christopher Jarema and Giancarlo Russo (plaintiffs) appeal from a July 31, 2014 order imposing sanctions under Rule 1:4-8 in favor of defendants Middlesex County and Middlesex County Sheriff's Office (defendants) and from a September 12, 2014 order that denied reconsideration.¹ We affirm.

I

Plaintiffs were investigators hired by the Middlesex County Sheriff's Office. In January 2014, they were suspended without pay pending termination after it was learned that they, or someone on their behalf, paid the then Middlesex County Sheriff, Joseph Spicuzzo,² to obtain their positions.

Plaintiffs served a verified complaint and order to show cause with temporary restraints, seeking to be restored to the county payroll pending the outcome of departmental charges. The

¹ This appeal concerns the sanctions assessed for frivolous litigation under Rule 1:4-8. Two other appeals concern the dismissal of a prerogative writ action where plaintiffs sought to challenge their termination from employment. See Thomas Varga v. Middlesex County (A-5238-14) and Christopher Jarema v. Middlesex County (A-5250-14).

² Spicuzzo was convicted of bribery in official and political matters, N.J.S.A. 2C:27-2.

complaint relied on the Attorney General's Internal Affairs Policy and Procedures (Guidelines)³ and N.J.S.A. 40A:14-149.1 as authority for reinstatement.

Defendants sent a letter dated January 24, 2014, demanding that plaintiffs' counsel voluntarily dismiss the verified complaint or defendants would seek dismissal and then request sanctions under Rule 1:4-8. The letter advised there was "no basis in law or fact" for the claim that plaintiffs' suspensions violated the law because, as sheriff's investigators, they were at-will employees who served at the pleasure of the sheriff, citing to N.J.S.A. 40A:9-117a. Defendants advised that N.J.S.A. 40A:14-149.1 only applied to municipal police officers. Further, the Guidelines, relied on by plaintiffs, allowed "immediate suspension" without pay where "necessary to maintain safety, health, order or effective direction of public services,"⁴ such as

³ The Guidelines were not included in the record. They can be found at State of New Jersey Division of Criminal Justice, Internal Affairs Policy & Procedures, (September 2011), https://www.eastbrunswick.org/filestorage/204/299/1622/internalaffairs2000v1_2.pdf .

⁴ State of New Jersey Division of Criminal Justice, Internal Affairs Policy & Procedures, 18 (September 2011), https://www.eastbrunswick.org/filestorage/204/299/1622/internalaffairs2000v1_2.pdf . The Guidelines were revised in July 2014 and November 2017, but the condition cited above has not been revised.

here, where plaintiffs "engaged in bribery to obtain their positions." Finally, the letter advised that the "admission [by plaintiffs] of bribery is an allegation of dishonesty and moral turpitude," citing Herzog v. Township of Fairfield, 349 N.J. Super. 602, 608 (App. Div. 2002) as authority for the suspensions.

Plaintiffs declined to withdraw the complaint, arguing that at-will employment was not relevant where termination was sought "through an internal affairs complaint." They contended Herzog only applied if they were charged with a criminal offense or an "equivalent to the most serious crimes involving moral turpitude or dishonesty." Defendants responded, again warning about sanctions.

On March 10, 2014, the trial court denied the requested restraints, finding there would be no irreparable harm by the loss of pay incident to the suspensions. Plaintiffs were unlikely to be successful on the merits because as sheriff's investigators, they were at-will employees under N.J.S.A. 40A:9-117a. The statute cited by plaintiffs, N.J.S.A. 40A:14-149.1, did not apply. Because plaintiffs were accused of having paid a bribe to obtain employment, the alleged violation equated with a crime involving moral turpitude that would justify suspension without pay under Herzog. The Guidelines allowed for a suspension without pay at

the discretion of the appointing authority. Finally, the court found that plaintiffs' interests did not outweigh the public interest in addressing public corruption.

On April 25, 2014, the trial court granted defendants' unopposed motion to dismiss the verified complaint under Rule 4:6-2(e). In May 2014, defendants filed a motion under Rule 1:4-8 for reasonable attorney's fees and costs in defending against the order to show cause and verified complaint. Defendants contended that plaintiffs did not withdraw the baseless complaint despite notice and an opportunity to do so. Defendants' counsel submitted a "certification of reasonable attorneys' fees and costs" that identified the attorneys who worked on the case, their hourly rates, the hours they worked, and the fees incurred for making the motion for sanctions and costs. The professional biographies of counsel were included to "enable the [c]ourt to review the criteria required in deciding the award of attorneys' fees and costs."

At oral argument on the sanctions motion, counsel for plaintiffs argued that plaintiffs had certain protections that arose from Herzog and the Guidelines. Counsel contended that sanctions should not be imposed in the absence of bad faith. Here, defendants had not shown plaintiffs acted in bad faith or that they were unfit for their positions as investigators. Counsel did

not address whether the attorney's fees and costs requested by defendants were reasonable.

On July 31, 2014, the court imposed sanctions under Rule 1:4-8. In its comprehensive written opinion, the court found that "[p]laintiffs and their counsel must have known, or at least should have known, that their [c]omplaint had no reasonable basis in law or equity." Plaintiffs never addressed the at-will employment statute, N.J.S.A. 40A:9-117a, and the statute they cited, N.J.S.A. 40A:14-149.1, did not apply to sheriff's investigators. By this omission, counsel "seem[ed] to have chosen to feign [N.J.S.A. 40A:9-117a's] nonexistence." Further, plaintiffs did not address Herzog which was "directly adverse." This omission was "evidence of the frivolity with which this action was brought." The court awarded attorney's fees "due to the underlying frivolity of the substantial majority of [p]laintiffs' original claims and the repeated failure of [p]laintiffs' counsel to address or acknowledge adverse legal authority." The court did not rely on plaintiffs' citation to the Guidelines.

Plaintiffs objected to the proposed form of the order. See R. 4:42-1(c) (allowing order to be signed if the court is satisfied the order accurately sets forth its disposition). Plaintiffs requested a hearing about the amount of the proposed fees.

The court entered the sanctions order on July 31, 2014 over this objection, requiring plaintiffs' counsel to pay defendants' counsel fees and costs of \$7584.52 in ten days. The court declined to hold a hearing, noting that plaintiffs' counsel "raised no objection to the accountings . . . during the pendency of the underlying motion when any such opposition would have been appropriate."

In plaintiffs' motion for reconsideration, they asserted the court failed to consider certain of their arguments. They contended, for the first time, that N.J.S.A. 40A:9-117a was not relevant because the appropriate question was whether a sheriff's investigator could be suspended without pay and not whether they could be terminated from employment as at-will employees. Counsel argued that they advanced non-frivolous claims, asserting that Herzog "cannot be considered as offering binding precedent" because it is "internally contradictory." Counsel suggested the court should have considered mitigating factors, such as the lack of a prior offense, in assessing the amount of the sanction.

In a supplemental letter brief, plaintiffs asked the court to consider the factors in Rule of Professional Conduct 1.5, questioning why the case was handled by three partners, the number of hours and the costs incurred. The trial court denied the motion

for reconsideration on September 12, 2014. The court explained that "after defendant requested the complaint be dismissed, plaintiffs failed to do so forcing defendants to file a motion to dismiss that was unopposed. Had plaintiffs withdrawn the complaint in January at the request of the defendants, it's very possible that sanctions would never have been awarded."

In this appeal, plaintiffs allege the trial court erred in finding the underlying litigation was frivolous and in assessing sanctions. Plaintiffs also argue the court should have conducted a hearing to determine what fees were reasonable.

II

We review the court's order that imposed sanctions under Rule 1:4-8 and the order that denied reconsideration under an abuse of discretion standard. United Hearts, LLC v. Zahabian, 407 N.J. Super. 379, 390 (2009). An abuse of discretion "arises when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex Cty. Prosecutor, 171 N.J. 561, 571, (2002) (quoting Achacoso-Sanchez v. Immigration & Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)).

Litigation is frivolous that is "commenced, used or continued in bad faith, solely for the purpose of harassment, delay or

malicious injury" or where the party "knew, or should have known, that the complaint, counterclaim, cross-claim or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." N.J.S.A. 2A:15-59.1(b). Sanctions can be requested under Rule 1:4-8. They will be denied where the pleading party had an objectively reasonable and good faith belief in the merit of the claim. See First Atl. Fed. Credit Union v. Perez, 391 N.J. Super. 419, 433 (App. Div. 2007). A party seeking sanctions under Rule 1:4-8 must meet certain notice requirements.⁵ Zahabian, 407 N.J. Super. at 389.

We discern no abuse of discretion here. The trial court thoroughly explained why sanctions were being imposed. Plaintiffs relied on the wrong statute, and did not mention the one that applied to sheriffs' investigators, even though that oversight was pointed out by defendants in time to have addressed it. Counsel cited no authority to support the incipient argument that the appointing authority could terminate investigators without cause, but not suspend them without pay. Plaintiffs did not distinguish Herzog, which allows suspension without pay "where conduct

⁵ There is no dispute defendants satisfied the requirements of Rule 1:4-8(b)(1).

equivalent to the most serious of crimes involving moral turpitude or dishonesty is supportably alleged." 349 N.J. Super. at 608. Herzog is precedential and directly adverse to plaintiff's position. Plaintiffs obtained their law enforcement positions through dishonesty.

Plaintiffs now rely on the Guidelines as their "main" argument. However, under those Guidelines, the appointing authority had the discretion to suspend without pay. We reject plaintiffs' assertion that the appointing authority could not suspend without pay as "necessary to maintain the order and effective direction of public services" where a public employee has obtained his or her position through an act of corruption.

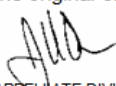
The court did not abuse its discretion in denying reconsideration, which is appropriate only where "1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). "[A] trial court's reconsideration decision will be left undisturbed unless it represents a clear abuse of discretion." Pitney Bowes Bank, Inc.

v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015).

Plaintiffs provided nothing new for the court's reconsideration, arguing simply that the court failed to fully appreciate the arguments they had made. Plaintiffs did not challenge the amount of the attorney's fees requested when they were before the trial court. They raised it for the first time when they opposed the form of the order. We perceive no abuse of discretion, in any event, because the unrefuted certification from defendants' counsel provided the information necessary to support the imposition of sanctions.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION