SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0011-22

CHRISTA PETTINATO,

Plaintiff-Respondent,

v.

DAVID A. PIPITONE,
D.M.D., INC., d/b/a POINT
PLEASANT DENTAL SPA,
and DAVID A. PIPITONE,
individually,

Defendants-Appellants.

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Argued May 3, 2023 – Decided July 13, 2023

Before Judges Gooden Brown and Mitterhoff.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-3109-18.

Lisa M. Fittipaldi argued the cause for the appellants (Difrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, PC, attorneys; Lisa M. Fittipaldi and Conor R. Wiggins, on the brief).

Justin D. Burns argued the cause for the respondent (McMoran, O'Connor, Bramley & Burns, PC, attorneys; Justin D. Burns, on the brief).

PER CURIAM

By leave granted, defendants David A. Pipitone, D.M.D., Inc., d/b/a Point Dental Spa, and David A. Pipitone[1] appeal from the Law Division's July 22, 2022 order, which granted plaintiff Christa Pettinato's motion to compel punitive damages discovery pursuant to Rule 4:23-5(c). We affirm in part, reverse in part, and remand for a statement of reasons consistent with this opinion. R. 1:7-4.

We discern the following facts from the record. Defendants hired plaintiff as a registered dental assistant ("RDA") in July 2015. In that role, plaintiff's responsibilities included preparing and sterilizing the operating room and equipment; developing temporary crowns; making dentures and stents; performing whitening and bleaching treatments; and providing chairside assistance to Dr. Pipitone.

In 2017, defendants were sued by Henry Schein, Inc. ("Schein"), a dental supply company, alleging nonpayment of certain dental supplies. Defendants asked plaintiff to investigate the validity of Schein's claim. Pursuant to her

[1] Dr. Pipitone is Point Dental Spa's owner and only dentist.

investigation, plaintiff discovered that the subject supplies had been delivered and signed for by defendants' former office manager, Shirley Williams. This information was conveyed to Dr. Pipitone.

Despite his knowledge to the contrary, Dr. Pipitone requested that plaintiff and all other employees sign a certification, which falsely stated that they never accepted or signed for any packages sent by Schein. Plaintiff refused, citing the fact that her investigation revealed receipt of the dental supplies in question. However, Dr. Pipitone continued to encourage plaintiff to sign the certification anyway, assuring her that "they [were] not going to find out" she was lying. After plaintiff again refused, Dr. Pipitone allegedly ripped up the certification before storming out of the room.

On July 17, 2017, plaintiff filed for, and was granted, disability leave for complications related to her Crohn's disease.[2] While on leave, plaintiff was contacted by Williams, who asked plaintiff to sign a second certification. The second certification falsely stated that plaintiff could not sign the original

[2] In 2014, prior to her employment with defendants, plaintiff was diagnosed with Crohn's disease and severe intestinal problems necessitating surgical intervention. Defendants were aware of plaintiff's illness before employing plaintiff.

certification "due to a coma and/or other serious medical condition." Plaintiff refused and advised Williams not to sign any false certifications herself.[3]

Dr. Pipitone eventually convinced all the other employees involved in the matter to sign modified certifications and prepared his own certification, which identified the relevant employees; asserted non-receipt of the dental supplies referenced in the lawsuit; and stated that he, personally, had not signed for the supplies. Before plaintiff's return from medical leave, defendants settled their dispute with Schein.

Plaintiff returned from disability leave on January 2, 2018. Upon her return, plaintiff began objecting to two of defendants' practices: separately charging patients for expensive dental products already included in the cost of their related procedure; and recommending expensive crowns when patients only needed small fillings. In response to plaintiff's objections, Dr. Pipitone told plaintiff that she was "too soft" and asked her, "how are we supposed to make money?"

However, the contentious relationship was not one-sided. Defendants took issue with plaintiff's behavior and her professional performance: Dr.

[3] At her deposition, Williams testified that she was aware that the certification was false, but that Dr. Pipitone convinced her to sign it anyways.

Pipitone alleged issues with plaintiff's attendance, tardiness, attitude, efficiency, general performance, and unwillingness to adhere to rules implemented while plaintiff was on medical leave. Specifically, defendants alleged that plaintiff had a poor record of preparing temporary crowns, took too long to perform certain procedures, came in late, and stormed out of morning huddles.

Defendants further alleged that plaintiff's behavior was troublesome before her medical leave and that plaintiff's coworkers could testify to such. As proof, defendants pointed to the following documents: reprimand reports dated October 17, 2016 and April 24, 2017 complaining of plaintiff's crown-making and whitening procedure speed; a January 29, 2018 reprimand report identifying the same issues with plaintiff's work; and a January 29, 2018 bonus evaluation, which also reported plaintiff's poor bleaching and crown-setting speed and skill. Defendants ultimately terminated plaintiff's employment for cause on February 22, 2018, citing to the aforementioned negative reports.

Plaintiff's testimony, however, contended that defendants fabricated and backdated the reprimand and evaluation reports. Specifically, plaintiff asserted that the October 17, 2016 and April 24, 2017 reprimand reports were backdated; that the January 29, 2018 reprimand report was false; and that she was improperly dismissed in retaliation for her numerous disagreements with Dr.

Pipitone. In support, plaintiff testified that she had never seen the subject reports; that such forms did not exist prior to 2018; that Williams—in her capacity as office manager—had never seen or filed any of the subject reports;[4] and that plaintiff had not performed a bleaching procedure—the procedure complained of in the January 29, 2018 reprimand report—in 2018.[5]

On December 28, 2018, plaintiff filed the instant complaint, which alleged five violations of the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 to -50: (1) disability-based discriminatory discharge, in violation of N.J.S.A 10:5-12(a); (2) perceived disability-based discrimination, in violation of N.J.S.A 10:5-12(a); (3) disability-based discrimination for failure to accommodate, in violation of N.J.A.C. 13:13-2.5(b); (4) unlawful retaliation, in violation of N.J.S.A. 10:5-12(d); and (5) aiding and abetting unlawful disability-based discrimination, in violation of N.J.S.A. 12:5-123. In addition, plaintiff asserted a sixth count, which alleged unlawful retaliation, in violation of the New Jersey Conscientious Employee Protection Act ("CEPA"), N.J.S.A. 34:19-1 to -14.

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[4] Williams' testimony contradicted Dr. Pipitone's testimony that he had given her the subject documents for filing.

[5] Dr. Pipitone confirmed that there was no record of plaintiff performing a bleaching procedure in January or February of 2018.

Thereafter, defendants filed a motion for summary judgment, which was heard on April 1, 2022. On April 4, 2022, the judge ultimately rejected defendants' motion, reasoning that "there's [] so much there that [plaintiff] can bring to a jury."

On June 30, 2022, plaintiff filed a notice of motion to compel punitive damages discovery of sensitive financial information, pursuant to Rule 4:23-5(c), asserting that both CEPA and LAD provide for recovery of such damages. See N.J.S.A. 34:19-5; N.J.S.A. 10:5-13. On July 22, 2022, the judge heard oral argument on the issue and ultimately decided to grant the requested discovery.

In an oral opinion, unaccompanied by a statement of reasons, the judge addressed two discrete issues. First, he asserted that, because plaintiff established a prima facie case of liability for her asserted claims, which compelled the judge's denial of defendants' motion for summary judgement, plaintiff was therefore entitled to the requested punitive damages discovery. However, the judge did not address whether plaintiff had also established a prima facie case of the right to recover punitive damages.

Second, the judge addressed the timing of his grant of discovery in this matter, explaining that the proximity between a potential jury decision in

plaintiff's favor and plaintiff's subsequent claim for punitive damages necessitated the requested discovery prior to trial:

> [I]f the jury potentially finds against [] defendant[s] on one of these claims that could lead to punitive damages, then [plaintiff] [is] entitled to see it before the punitive damage trial, which in a sense would happen the next day.
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> [I]f we could do it in front of a different jury, I could wait to see what this jury does, and if [defendants] lose[], okay, that obviates the necessity of giving the financial information[.] [B]ut because it's the same jury, [plaintiff is] entitled to prepare for that eventuality, which means I have to give [plaintiff] that discovery[.]

Pursuant to that decision, on July 22, 2022, the judge compelled the requested discovery items, which consisted of:

> (1) all business tax returns from 2018 to the present; (2) all audited and unaudited Annual Financial Statements from 2018 through the present; and (3) any and all business valuations or appraisals from 2018 to the present.
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> . . . ([4]) full and complete responses to Plaintiff's First Requests for Production to David Pipitone []; ([5]) full and complete responses to Plaintiff's First Set of Interrogatories to David Pipitone []; and ([6]) [Dr. Pipitone's] personal tax returns from 2018 to present.

On August 11, 2022, defendants filed a motion for an interlocutory appeal of the judge's July 22, 2022 order. On September 1, 2022, we granted

defendants' motion for leave to appeal and, on September 15, 2022, we granted defendants' motion for stay pending that appeal.

On appeal, defendants raise the following issues:[6]

> POINT I
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> THE DEFENDANTS'/APPELLANTS' MOTION FOR INTERLOCUTORY APPEAL SHOULD BE GRANTED IN THE INTEREST OF JUSTICE AS THE TRIAL COURT ERRED IN GRANTING THE PLAINTIFF'S MOTION TO COMPEL PUNITIVE DAMAGES DISCOVERY.
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> POINT II
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> PUNITIVE DAMAGES DISCOVERY IS PREMATURE.
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> A. PLAINTIFF'S MOTION SHOULD BE DISMISSED BECAUSE SHE HAS NOT MADE A PRIMA FACIE CASE FOR PUNITIVE DAMAGES.
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> B. PLAINTIFF'S MOTION SHOULD BE DISMISSED BECAUSE DISCOVERY OF DEFENDANTS[]' FINANCIAL CONDITION IS INVASIVE.

Generally, appellate courts "accord substantial deference to a trial court's disposition of a discovery dispute." Brugaletta v. Garcia, 234 N.J. 225, 240 (2018). Thus, we "will not ordinarily reverse a trial court's disposition of a

[6] The parties rely upon their motion briefs for purposes of this appeal.

discovery dispute 'absent an abuse of discretion or a judge's misunderstanding or misapplication of the law.'" Ibid. (quoting Cap. Health Sys., Inc. v. Horizon Healthcare Servs., Inc., 230 N.J. 73, 79-80 (2017)).

Although we "start from the premise that [our] discovery rules 'are to be construed liberally in favor of broad pretrial discovery,'" Cap. Health Sys., Inc., 230 N.J. at 80 (quoting Payton v. N.J. Tpk. Auth., 148 N.J. 524, 535 (1997)), "requests for discovery of a defendant's financial condition" must appreciate "that a defendant's finances are private matters which are normally jealously guarded," Herman v. Sunshine Chem. Specialties, 133 N.J. 329, 344 (1993) (internal citations and quotations omitted). Our Supreme Court has explained that "[t]empering the normal rule favoring wide discovery of relevant issues is a regard for the defendant's interest in maintaining the confidentiality of information about its financial status." Id. at 343. Therefore, a trial court should not compel disclosure of sensitive financial information merely because a party has asserted a punitive damages claim; instead, the party asserting a punitive damage claim must establish "proof of a prima facie case [of the right to recover punitive damages] as a condition precedent to discovery of a defendant's financial condition[.]" Id. at 346.

We begin by recognizing that both CEPA and LAD provide for recovery of punitive damages. See N.J.S.A. 34:19-5; N.J.S.A. 10:5-13. To establish a prima facie case of the right to recover punitive damages in employment discrimination cases, our Supreme Court has "identified two essential prerequisites." Quinlan v. Curtiss-Wright Corp., 204 N.J. 239, 274 (2010). "Those requirements are that there be [(1)] proof that there was 'actual participation by upper management or willful indifference,' and [(2)] proof that the conduct was 'especially egregious.'" Ibid. (quoting Rendine v. Pantzer, 141 N.J. 292, 313-14 (1995)).

The test for egregiousness is whether there was "an intentional wrongdoing in the sense of an 'evil-minded act' or an act accompanied by a wanton and willful disregard for the rights of [plaintiff]." Ibid. (alteration in original) (quoting Rendine, 141 N.J. at 314). "In the alternative, we have found that the evidence will suffice if it demonstrates that defendant acted with 'actual malice.'" Ibid. (quoting Herman, 133 N.J. at 329).

Given the facts and that the recovery of punitive damages was the only issue before the judge, it is possible that he may have had the correct standard in mind when granting plaintiff's motion. That said, our review is hampered by the judge's failure to set forth his factual and legal findings on the record.

Because a specific finding as to whether the prima facie elements were satisfied is necessary to support an order for punitive damages discovery, we are constrained to remand the matter for a statement of reasons pursuant to Rule 1:7-4.

Assuming plaintiff successfully establishes the prima facie elements of the right to recover punitive damages, we find that the judge correctly ordered pretrial discovery of the requested financial information without further delay. Our decision on the issue of timing is, in part, guided by the application of the prima facie standard at the summary judgment stage, which is simply defined as "evidence that, if unrebutted, would sustain a judgment in the proponent's favor." Baures v. Lewis, 167 N.J. 91, 118 (2001). Thus, for purposes of discovery, such a pretrial finding obviates the need for the wait-and-see approach proposed by defendants in this matter.

In addition, we are guided by practical and equitable considerations in reaching this decision. As the judge correctly noted, "if the jury potentially finds against [] defendant[s] on one of these claims that could lead to punitive damages, then [plaintiff is] entitled to [the subject discovery] before the punitive damage trial, which . . . would happen the next day." "[B]ecause [the punitive damage trial would be heard by] the same jury, [plaintiff is] entitled to prepare

for that eventuality[.]" Any other decision would lead to an insufficient discovery timeline and unnecessarily prejudice plaintiff's claim for punitive damages.

Affirmed in part, reversed in part, and remanded for a statement of reasons consistent with this opinion. R. 1:7-4. We do not retain jurisdiction.