SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1445-21

MORTEZA AABDOLLAH,

Plaintiff-Appellant,

v.

NEW JERSEY CITY UNIVERSITY,

Defendant-Respondent.

Argued May 31, 2023 – Decided August 31, 2023

Before Judges Gilson, Rose and Messano.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-3276-19.

Morteza Aabdollah, appellant, argued the cause pro se.

Daniel S. Shehata, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Donna Arons, Assistant Attorney General, of counsel; Daniel S. Shehata and Christopher E. Martin, Deputy Attorneys General, on the brief).

PER CURIAM

Plaintiff Morteza Aabdollah began working part-time for New Jersey City University (NJCU) in 1982 as an associate professor in the computer science department and was promoted to a full-time professor position in 2004. From 2013 through 2017, plaintiff applied for salary range adjustments, implemented in accordance with the "Range Adjustment Program" between the State of New Jersey and local unions. To qualify for a salary range adjustment at NJCU, a professor must demonstrate that he or she has performed exceptional work, which NJCU defines as "excellence in teaching, quality scholarship and/or creative/professional work, and significant service to [NJCU's] community." NJCU denied all of plaintiff's applications for a salary range adjustment.

In March 2019, plaintiff filed a complaint with the Equal Employment Opportunity Commission (EEOC), generally alleging that NJCU discriminated against him based on his age and religion in denying his requests. Among other things, plaintiff claimed that the chair of the computer sciences department made comments to others that "[plaintiff] is retiring," and told plaintiff to "go enjoy your life." However, plaintiff refused to give the EEOC names of alleged witnesses, provide context for his comments, or present any details concerning alleged religious discrimination. Consequently, in June 2019, the EEOC

determined that, based upon its investigation of plaintiff's claims, it was unable to conclude that NJCU violated federal anti-discrimination law.

In August 2019, plaintiff filed a pro se complaint in the Law Division against NJCU, alleging the University discriminated against him based on his age and religion, subjected him to harassment and retaliation, and violated the Equal Pay Act, 29 U.S.C.A. § 206. In lieu of an answer, NJCU moved to dismiss the complaint, and, on July 16, 2020, the judge granted NJCU's motion in part and dismissed the religious discrimination, workplace harassment, retaliation, and equal pay claims.[1]

Plaintiff filed an amended complaint alleging he was denied salary range adjustments due to age discrimination in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. After discovery ensued, NJCU moved for summary judgment, arguing plaintiff failed to establish a prima facie case of discrimination under the LAD. Plaintiff never responded to the statement of undisputed material facts NJCU filed in support of its motion but

[1] Plaintiff's notice of appeal does not include the July 16, 2020 order, so we do not consider the claims plaintiff made in that complaint that were dismissed by the Law Division. "[O]nly the judgment or orders designated in the notice of appeal . . . are subject to the appeal process and review." 1266 Apartment Corp. v. New Horizon Deli, Inc., 368 N.J. Super. 456, 459 (App. Div. 2004) (citing Sikes v. Twp. of Rockaway, 269 N.J. Super. 463, 465–66 (App. Div.), aff'd o.b., 138 N.J. 41(1994)).

claimed, among other things, that NJCU had been unresponsive to his discovery requests.

A different Law Division judge considered oral argument on the motion. Based on the undisputed material facts in the record, the judge was "convinced that the denial of [p]laintiff's range adjustment was not motivated by age discrimination, but by . . . [p]laintiff's failure to submit correct documentation that was required by the institution." The judge reasoned plaintiff provided bare assertions, representations, or allegations without affidavits or other evidentiary support, never moved to compel more specific answers to interrogatories or other discovery that he believed was outstanding, and never disputed NJCU's statement of material facts. The judge's December 21, 2021 order granted NJCU summary judgment and dismissed plaintiff's complaint. This appeal followed.

Plaintiff contends, as he did before the Law Division judge, that he is entitled to "a trial by jury" because NJCU discriminated and retaliated against him by denying him salary range adjustments because of his age.[2] Plaintiff, who claims he has "thousands" of pages of evidence demonstrating a violation of the LAD, cites his educational degrees, vast experience in the computer

[2] According to the EEOC Intake Questionnaire that is in the appellate record, plaintiff was born on January 23, 1944.

science industry, and various research projects to demonstrate he performed exceptional work at NJCU and deserved a salary range adjustment.

In opposition, NJCU argues plaintiff failed to establish a prima face case of discrimination under the LAD. And, even if plaintiff could satisfy that burden, NJCU contends it articulated nondiscriminatory reasons for its actions, and plaintiff failed to present competent evidence demonstrating that NJCU's actions were pretextual.

Having considered these arguments, we affirm. Plaintiff failed to comply with procedural rules regarding summary judgment motion practice, and his failure to comply with those procedures had significant consequences, which the motion judge noted. On the record provided, therefore, NJCU was entitled to summary judgment.

We review de novo the denial or grant of summary judgment applying the same standard as the motion judge. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (citing Barila v. Bd. of Educ. of Cliffside Park, 241 N.J. 595, 611 (2020), and Townsend v. Pierre, 221 N.J. 36, 59 (2015)). We must "determine whether '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.'" Ibid. (quoting R. 4:46-2(c)).

"To decide whether a genuine issue of material fact exists, the trial court must 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (2016)). "The 'trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.'" Town of Kearny v. Brandt, 214 N.J. 76, 92 (2013) (quoting Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Rule 4:46-2(b) requires a party opposing a summary judgment motion to "file a responding statement either admitting or disputing each of the facts in the movant's statement." As noted, plaintiff failed to respond to NJCU's statement of material undisputed facts in support of summary judgment. The consequence of that failure was that "all material facts in [NJCU]'s statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation . . . demonstrating the existence of a genuine issue as to the fact." Ibid. "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon

the mere allegations or denials of the pleading, but must respond by affidavits . . . setting forth specific facts showing that there is a genuine issue for trial." R. 4:46-5(a).

As the Court has said, "[c]onclusory and self-serving assertions . . . are insufficient to overcome the motion." Puder v. Buechel, 183 N.J. 428, 440–41 (2005) (citing Martin v. Rutgers Cas. Ins. Co., 346 N.J. Super. 320, 323 (App. Div. 2002)). Instead, "[c]ompetent opposition requires 'competent evidential material' beyond mere 'speculation' and 'fanciful arguments.'" Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014) (quoting Hoffman v. Asseenontv.com, Inc., 404 N.J. Super. 415 (App. Div. 2009)); see also Oakley v. Wianecki, 345 N.J. Super. 194, 201 (App. Div. 2001) (acknowledging "unsubstantiated inferences and feelings" are insufficient to defeat a motion for summary judgment).

A party's "status as a pro se litigant in no way relieves h[im] of h[is] obligation to comply with . . . court rules." Venner v. Allstate, 306 N.J. Super. 106, 110 (App. Div. 1997). Plaintiff's opposition to NJCU's summary judgment motion did not meet the standards required by our court rules. Simply put, it is insufficient for a party opposing summary judgment to insist on his or her right to a trial, at which evidence will be produced to substantiate that party's claims.

As a consequence, "we limit our consideration . . . to the motion record that existed when the order[] w[as] entered," Innes v. Marzano-Lesnevich, 435 N.J. Super. 198, 208 (App. Div. 2014), aff'd in part, mod. in part, 224 N.J. 584 (2016) (citing Ji v. Palmer, 333 N.J. Super. 451, 463–64 (App. Div. 2000)), and decide if NJCU was entitled to judgment as a matter of law, Rule 4:46-2(c). "Summary judgment should be granted . . . 'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Friedman, 242 N.J. at 472 (emphasis added) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)); see also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995) (summary judgment is appropriate "when the evidence 'is so one-sided that one party must prevail as a matter of law'" (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986))).

The LAD prohibits employers from discriminating based on an employee's age. N.J.S.A. 10:5-12(a). "All LAD claims are evaluated in accordance with the United States Supreme Court's burden-shifting mechanism." Battaglia v. United Parcel Serv., Inc., 214 N.J. 518, 546 (2013) (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)). In the context of an age discrimination claim brought in an educational setting, we have said:

> To establish a prima facie case under LAD, a plaintiff must show:
>
> > (1) that [he] is a member of a class protected by the anti-discrimination law; (2) that [he] was qualified for the position or rank sought; (3) that [he] was denied promotion, reappointment, or tenure; and (4) that others . . . with similar or lesser qualifications achieved the rank or position.
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> [Greenberg v. Camden Cnty. Vocational & Tech. Schs., 310 N.J. Super. 189, 198–99 (App. Div. 1998) (quoting Dixon v. Rutgers, 110 N.J. 432, 443 (1988)).]

A plaintiff "must 'show that the prohibited consideration[, age,] played a role in the decision[-]making process and that it had a determinative influence on the outcome of that process.'" Garnes v. Passaic Cnty., 437 N.J. Super. 520, 530 (App. Div. 2014) (alteration in original) (quoting Bergen Com. Bank v. Sisler, 157 N.J. 188, 207 (1999)). "Establishment of a prima facie case gives rise to a presumption that the employer unlawfully discriminated against the employee." Sisler, 157 N.J. at 210.

To rebut the presumption, the employer "must come forward with admissible evidence of a legitimate, non-discriminatory reason" for its action. Id. at 210–11 (citing Tex. Dep't of Cmty. Affs. v. Burdine, 450 U.S. 248, 254 (1981)). "Where the employer produces such evidence, the presumption of

discrimination disappears," id. at 211 (citing St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 507–08 (1993)), and the burden of production shifts back to the employee "to prove by a preponderance of the evidence that the legitimate nondiscriminatory reason articulated by the [employer] was not the true reason for the employment decision but was merely a pretext for discrimination," ibid. (citing Andersen v. Exxon Co., 89 N.J. 483, 493 (1982)).

"An employee may meet this burden either by persuading the court 'directly "that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence."'" Ibid. (quoting Murray v. Newark Hous. Auth., 311 N.J. Super 163, 173 (Law Div. 1998)); see also Schiavo v. Marina Dist. Dev. Co., 442 N.J. Super. 346, 368–69 (App. Div. 2015) (stating, "In the context of summary judgment, to sufficiently discredit the employer's reason, and thus to survive summary judgment, the plaintiff 'must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in' the proffered reason that a factfinder could reasonably find it incredible" (quoting Fuentes v. Perskie, 32 F.3d 759, 765 (3d Cir. 1994))). Although the burden of production shifts throughout the process, a "[p]laintiff b[ears] the ultimate burden of demonstrating that age played a role in the decision[-]making process

and that it had a determinative influence on the outcome of that process." Beatty v. Farmer, 366 N.J. Super. 69, 77 (App. Div. 2004) (citing Sisler, 157 N.J. at 207).

Here, the undisputed motion record demonstrates that plaintiff failed to establish a prima facie case of age discrimination. Plaintiff raised no inference through direct or circumstantial proof, that age "played a role in the decision[-]making process and that it had a determinative influence on the outcome of that process." Garnes, 437 N.J. Super. at 530 (quoting Sisler, 157 N.J. at 207). Plaintiff additionally fails to point to "others . . . with similar or lesser qualifications" who received salary range adjustments. See Sisler, 157 N.J. at 213 (noting "courts have modified the fourth element to require a showing that the plaintiff was replaced with 'a candidate sufficiently younger to permit an inference of age discrimination'" (quoting Kelly v. Bally's Grand, Inc., 285 N.J. Super. 422, 429 (App. Div. 1995))).

Even if we were to assume plaintiff established a prima facie case of discrimination under the LAD, the judge properly concluded that NJCU provided legitimate, non-discriminatory reasons for its denial of plaintiff's applications for salary range adjustments, and plaintiff failed to rebut those reasons. The decision-making committee noted, for example, that plaintiff

submitted materials "that [we]re inclusive and summative of his entire NJCU academic experience" and which "d[id] not specifically describe his scholarship, teaching, and service since the date of his last personnel change in 2004." Among other things, various deans certified that plaintiff did "the bare minimum as a professor," and plaintiff did not receive any salary range adjustments "due to his poor performance as a professor."

Plaintiff did not produce sufficient evidence to rebut NJCU's asserted non-discriminatory reasons for denying him salary range adjustments. No rational factfinder could either reasonably disbelieve NJCU's articulated legitimate reasons or believe that invidious age discrimination was more likely than not a motivating cause of NJCU's decision. Zive v. Stanley Roberts, Inc., 182 N.J. 436, 455–56 (2005) (citing Fuentes, 32 F.3d at 764).

To the extent we have not otherwise addressed plaintiff's arguments, they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.