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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0071-23**

MAGDOULEN A. SAWIRES,

Plaintiff-Appellant,

v.

**ELIZABETH BOARD OF
EDUCATION and NEW JERSEY
DEPARTMENT OF LABOR
AND WORKFORCE
DEVELOPMENT,**

Defendants-Respondents.

Submitted April 29, 2024 – Decided June 3, 2024

Before Judges DeAlmeida and Jacobs.

On appeal from the Superior Court of New Jersey, Law
Division, Union County, Docket No. L-1760-23.

Magdoulén A. Sawires, appellant pro se.

La Corte, Bundy, Varady & Kinsella, attorneys for
respondent Elizabeth Board of Education (Brian James
Kane, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Department of Labor and Workforce Development (Janet Greenberg Cohen, Assistant Attorney General, of counsel; Kathryn Blair Moynihan, Deputy Attorney General, on the brief).

PER CURIAM

Plaintiff Magdoulén Sawires appeals three orders of the Law Division: (1) an August 18, 2023 order dismissing without prejudice her complaint against defendant, Elizabeth Board of Education (EBE); (2) an August 18, 2023 order dismissing without prejudice her complaint against defendant, the New Jersey Department of Labor and Workforce Development, Division of Workers' Compensation (DOLWD); and (3) a September 25, 2023 order denying her motion to "terminate the discharge decision" of the DOLWD. Because the trial court had no jurisdiction to hear plaintiff's complaint, we affirm.

I.

We discern the following facts from the record. In January 2022, plaintiff began employment as a non-tenured eighth-grade science teacher with EBE. On May 13, 2022, EBE issued a letter informing plaintiff that her contract for the 2022-2023 school year would not be renewed. In response to a request from plaintiff to explain the decision, on May 26, 2022, EBE advised it had "determined not to renew [her] contract for the 2022-2023 school year for

performance[-]related reasons" and that her last day of employment would be June 30, 2022.

On July 5, 2022, plaintiff filed a claim for unemployment benefits with the DOLWD. The agency mailed plaintiff a Notice of Determination, stating her eligibility to receive unemployment benefits was effective July 31, 2022, based on a termination date of June 30, 2022. Plaintiff received benefits through November 5, 2022, except for one week in October when she claimed to be ill and did not attend a prospective job interview. Plaintiff filed an administrative appeal regarding her unemployment benefits with the DOLWD.

On May 24, 2023, plaintiff filed a complaint in the Law Division against EBE and the DOLWD, claiming, among other things, defendants "discharge[d] me from the work without a good cause, action plan, or even any investigation process." In addition, plaintiff challenges the legality of the one-week period in October for which the DOLWD determined she was ineligible to receive benefits. Plaintiff also disputed the June 30, 2022 discharge date as determined by the DOLWD, contending that she continued receiving "varying paychecks" through July and August 2022, in apparent contradiction to the determined discharge date.

Before filing their respective answers, both defendants moved to dismiss plaintiff's complaint. EBE grounded its motion on lack of subject matter jurisdiction pursuant to Rule 4:6-2(a), noting that as a provisional employee, plaintiff's challenge to the decision not to renew her contract must be filed with the Department of Education (DOE), pursuant to N.J.S.A. 18A:6-9 to 33. In its motion, the DOLWD argued that plaintiff failed to exhaust her administrative remedies before seeking judicial relief, which would, in any event, be in this court, not the Law Division.

On August 18, 2023, the trial court issued an oral opinion concluding it had no jurisdiction over the non-renewal of plaintiff's EBE contract or plaintiff's allegations relating to her unemployment benefits. The court entered two orders dated August 18, 2023, one dismissing the complaint against EBE without prejudice and one dismissing the complaint against the DOLWD without prejudice.

This appeal followed. Prior to the submission of plaintiff's merits brief, she moved in the trial court "to terminate the discharge decision, which was sent to me from the labor department on 6/20/2022." The precise meaning of this motion is not clear. On September 25, 2023, the trial court denied the motion,

concluding it lacked jurisdiction to entertain the motion due to the pending appeal. See R. 2:9-1.

Plaintiff subsequently filed an amended notice of appeal and case information statement challenging the September 25, 2023 order.

On appeal, Plaintiff raises the following arguments:

POINT I: NON-RENEWAL OF EMPLOYMENT CONTRACT – POOR PERFORMANCE. [SIC]

POINT II: DISCHARGE DETERMINATION – APPEAL AND REVIEW REQUEST. [SIC]

POINT III: THE TRIAL COURT DENIED THE COMPLAINT, ASKING [PLAINTIFF] TO COMPLAIN TO THE DEPARTMENT OF EDUCATION.

II.

Plaintiff maintains EBE violated "school laws" by failing to renew her contract. Specifically, plaintiff claims EBE failed to provide her with good cause for termination, an action plan, or an investigation. In support of this position, she cites N.J.S.A. 18A:6-9, a statute that vests with the Commissioner of the DOE, "jurisdiction to hear and determine . . . all controversies and disputes arising under the school laws" Plaintiff also contends the DOLWD is a proper party to this action based on the notice she received from EBE declining to renew her contract for the upcoming school year.

Whether a court has subject matter jurisdiction is subject to de novo review. AmeriCare Emergency Med. Serv., Inc. v. City of Orange Twp., 463 N.J. Super. 562, 570 (App. Div. 2020). A court cannot hear a case to which it lacks subject matter jurisdiction. Peper v. Princeton Univ. Bd. of Trustees, 77 N.J. 55, 65 (1978) (citing State v. Osborn, 32 N.J. 117, 122 (1960)). Similarly, subject matter jurisdiction cannot be waived by a party's failure to timely object. Lay Fac. Ass'n of Reg'l Secondary Schs. of Archdiocese of Newark v. Roman Cath. Archdiocese of Newark, 122 N.J. Super. 260, 269 (App. Div. 1973).

Dismissal is also required where the party seeking court review has not exhausted its administrative remedies before the relevant State agency. See R. 2:2-3(a)(2); Ortiz v. N.J. Dep't of Corr., 406 N.J. Super. 63, 69 (2009). "Exhaustion of administrative remedies before resort to the courts is a firmly embedded judicial principle This principle requires exhausting available procedures, that is, 'pursuing them to their appropriate conclusion, and correlatively . . . awaiting their final outcome before seeking judicial intervention.'" Garrow v. Elizabeth Gen. Hosp. & Dispensary, 79 N.J. 549, 558-59 (1979) (second alteration in original) (citations omitted) (quoting Aircraft & Diesel Equip. Corp. v. Hirsch, 331 U.S. 752, 767 (1947)). Even in cases that involve only a question of law, the "extraordinary course of by-passing the

administrative remedies' . . . militate[s] against a sound determination, and therefore quite possibly against the interests of justice." Essex Council No. 1, N.J. Civ. Serv. Ass'n v. Gibson, 118 N.J. Super. 583, 586 (App. Div. 1972) (quoting Roadway Express, Inc. v. Kingsley, 37 N.J. 136, 147 (1962)).

We begin with plaintiff's claims against the DOE. The DOE is "a principal department in the executive branch of the state government," N.J.S.A. 18A:4-1. The Commissioner is "[t]he chief executive and administrative officer of the department," who has "general charge and supervision of the work of the department," N.J.S.A. 18A:4-22(a). The Commissioner has "jurisdiction to hear and determine all controversies and disputes arising under the school laws" N.J.S.A. 18A:6-9. "The Commissioner has jurisdiction over certain disputes in the absence of an agreement . . . because it concerns major educational policy or because the issues are controlled by the school laws." S. Orange-Maplewood Educ. Ass'n v. Bd. of Educ. of Sch. Dist. of S. Orange and Maplewood, 146 N.J. Super. 457, 462 (App. Div. 1977); see also Bower v. Bd. of Educ. of E. Orange, 149 N.J. 416, 420 (1997). A final agency decision of the DOE Commissioner may be appealed to this court. R. 2:2-3(a)(2).

The record establishes that plaintiff has taken no steps to exhaust her administrative remedies through the DOE. Even if plaintiff had taken such steps

and obtained a final agency decision from the DOE Commissioner, the Law Division lacks jurisdiction to address her challenge to the EBE's decision not to renew her contract. Instead, plaintiff would have had to file an appeal to this court. Id.; see also In re Protest of Contract for Retail Pharmacy Design, ___ N.J. ___, ___ (2024) (slip op. at 14) (stating that "[u]nder Rule 2:2-3(a)(2), the Appellate Division's authority to review a state administrative agency's final decision or action is exclusive").

Similarly, with respect to plaintiff's claims against the DOLWD, a challenge to a decision relating to unemployment benefits must be filed with the DOLWD. After a series of administrative avenues of review, the Board of Review is authorized to issue a final agency decision with respect to an application for unemployment benefits. N.J.S.A. 43:21-6(h). That final agency decision may be appealed to this court, not the Law Division. See R. 2:2-3(a)(2).

The trial court, therefore, correctly determined that it lacked jurisdiction to address plaintiff's claims against the DOE and the DOLWD. The two August 18, 2023 orders dismissing plaintiff's complaint are, therefore, affirmed.¹

¹ We note that both of the August 18, 2023 orders dismiss portions of the complaint without prejudice. A dismissal of a complaint without prejudice is generally not a final order from which an appeal as of right can be taken to this court. See Kwiatkowski v. Gruber, 390 N.J. Super. 235, 237 (App. Div. 2007).

While plaintiff's amended notice of appeal states that she is appealing the September 25, 2023 order, her merits brief contains no arguments concerning the validity of that order. She has, therefore, waived her appeal of the September 25, 2023 order. "[A]n issue not briefed is deemed waived." Telebright Corp. v. Dir. N.J. Div. of Tax'n, 424 N.J. Super. 384, 393 (App. Div. 2012) (deeming a contention waived when the party failed to include any arguments supporting the contentions in its brief); Pressler and Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2024). Moreover, it is well-established that the Law Division was without jurisdiction to consider plaintiff's motion filed while this appeal was pending. R. 2:9-1.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

As a general rule, a party must move for leave to appeal from an interlocutory order. R. 2:5-6(a). However, because the trial court correctly concluded that it lacked jurisdiction to adjudicate plaintiff's claims against the DOE and the DOLWD, and given that the Law Division would not have jurisdiction to adjudicate an appeal from any final agency decision, plaintiff may obtain from those agencies arising from the claims alleged in the complaint, we consider the two August 18, 2023 orders to be final orders dismissing the complaint with prejudice.