SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0985-22

ELIZABETH GAYDEN,

Plaintiff-Appellant,

v.

KEAN UNIVERSITY, LAUREN MASTROBUNO, PAULA ABIOLI, and JONATHAN MERCHANTINI,

Defendants-Respondents.

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Submitted May 28, 2024 – Decided June 20, 2024

Before Judges Mayer and Paganelli.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-2925-19.

Sterling Law Firm, attorneys for appellant (Yvette C. Sterling, on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondents (Sookie Bae-Park, Assistant Attorney General, of counsel; Eric Macias Intriago, Deputy Attorney General, on the brief).

PER CURIAM

Plaintiff Elizabeth Gayden appeals from an August 29, 2022 order granting summary judgment to defendants Kean University (the University), Lauren Mastrobuno, Paula Abioli, and Jonathan Merchantini[1] and dismissing her complaint with prejudice. For the reasons that follow, we affirm.

We recite the facts and procedural history from the motion record. Plaintiff was an adjunct professor in the University's Department of Psychology from 2001 through 2017. In accord with the University's Office of Human Resources Adjunct Faculty Handbook (Handbook), and as relevant to this appeal, "[e]mployment commitments [we]re made by contract between the University and the adjunct faculty member on a semester-to-semester basis." In addition, the Handbook stated adjunct professors should not expect "continued employment" "beyond the current semester."

Mastrobuno, the Adjunct Professor Coordinator, testified that in February 2017, she sent a form to the adjunct professors, including plaintiff, asking if they were interested in teaching in the Fall of 2017. Mastrobuno explained the adjunct professors were requested to provide the courses they wanted to teach; the days and times of their availability; and their campus of choice.

[1] Because there are multiple spellings of defendants' names in the record, we use the spellings from plaintiff's complaint. No disrespect is intended.

Plaintiff returned her form in May 2017. Dr. Verneda Hamm-Baugh,[2] the Executive Director for the School of Psychology, decided not to give plaintiff a teaching assignment. Dr. Hamm-Baugh testified there were a "series of complaints" made by students throughout the Spring 2017 Semester relating to plaintiff's late arrival for class. Moreover, after being advised of the complaints, and that there was no "grace period," plaintiff continued to arrive late to class.

On June 20, 2017, Mastrobuno informed plaintiff the University would not be offering her courses for the Fall 2017 Semester. Mastrobuno testified she did not provide plaintiff with a teaching assignment for Fall 2017 because "the courses were already assigned."

Plaintiff testified she met with Dr. Hamm-Baugh in the Summer—"it might have been in August"—of 2017. Plaintiff testified she initiated the meeting and

> was not interested in doing a suit against [the University], whether it be through the school or outside legal means and [Dr. Hamm-Baugh] could have . . . been an intercessor to get the matter all straightened out and [she] wanted to take every avenue that was possible to get the matter straightened out.

[2] Because there are multiple spellings of Dr. Hamm-Baugh's name in the record, we use the spelling provided in the trial court order. No disrespect is intended.

Dr. Hamm-Baugh testified that during the meeting, plaintiff expressed the "thought [that] . . . Mastrobuno did[no]t treat her fairly."

In October 2017, plaintiff filed a complaint with the University's Office of Affirmative Action (OAA) alleging race discrimination against the University for its decision not to offer her courses for the Fall 2017 Semester. The OAA investigated plaintiff's claim and determined plaintiff "did not have a case," but advised her to pursue her claim with Equal Employment Opportunity Commission (EEOC).

Also in October 2017, plaintiff's union representative requested the University provide plaintiff with a teaching request form for the Spring 2018 Semester. The University denied the request because plaintiff would "not be considered for employment in the Spring of 2018."

In February 2018, plaintiff filed an EEOC complaint alleging race discrimination and retaliation against the University when it "refused [her] a teaching assignment" for the Fall 2017 Semester. The EEOC investigated plaintiff's claim and determined there was no "probable cause" to substantiate her allegation of racial discrimination, and advised plaintiff to file a civil rights action.

On August 20, 2019, plaintiff filed a five-count complaint against defendants alleging "past and continuing violation of [her] civil rights based upon her age and race." Plaintiff alleged Mastrobuno "acted against [her] beginning in 2014-2015." In addition, plaintiff claimed Mastrobuno gave "[p]laintiff's higher-level teaching courses to younger inexperienced white professors" and gave "plaintiff . . . introductory courses." Also, plaintiff asserted Mastrobuno "acted against [p]laintiff again in October 2017 and 2018 by not renewing [p]lainiff's contract."

Plaintiff alleged she informed Abioli, the former Chairman of the Psychology Department, "that she believed [Mastrobuno]'s behavior was due to [plaintiff's] race." In addition, she contended Merchantini, Dean of Academic Affairs, "was informed of [p]laintiff's complaint against" Mastrobuno. She also alleged Merchantini "knew that [p]laintiff was not provided with the adjunct professor's job in 2018 and 2017" and "had the power to reinstate" her. Further, she claimed Merchantini "was aware that [p]laintiff had made several complaints about the racist behavior of [Mastrobuno] against [p]laintiff."

In count one of her complaint, plaintiff alleged a "deprivation of [her] constitutional rights under" the New Jersey Constitution. She claimed defendants deprived her of: (1) "rights, privileges, and immunities secured by

the Constitution and laws of" New Jersey; and (2) "her property without due process of law, without just cause, and without providing any right to a fair and prompt hearing."

In the second count of her complaint, plaintiff alleged that she was wrongfully terminated based upon her race and age in violation of New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -42. In the third count, she asserted "[d]efendants' actions were based upon [plaintiff's] age" and she "would not have been terminated . . . but for her age." In addition, plaintiff claimed defendants' actions were a "pretext for acting against her based upon her race." Plaintiff alleged defendants violated New Jersey Constitution Article I, Paragraphs 1 and 5 and the NJLAD.

In the fourth count, plaintiff alleged race harassment and discrimination under NJLAD. She stated she was "an African American," "over [fifty] years old," and "female," and "believe[d d]efendants' actions were based on her race and . . . [she] would not have [been] terminated . . . but for her race." Plaintiff alleged defendants violated New Jersey Constitution Article I, Paragraphs 1 and 5 and the NJLAD.

In the fifth count, plaintiff alleged "retaliation under NJ[]LAD." Plaintiff claimed defendants' actions were "in retaliation for her speaking out." She

asserted she "would not have been terminated . . . but for her complaint about" Mastrobuno. Plaintiff alleged defendants violated New Jersey Constitution Article I, Paragraphs 1 and 5 and the NJLAD.

After the completion of discovery, defendants filed a motion for summary judgment. The motion judge concluded the NJLAD discrimination claims were barred by the two-year statute of limitations (SOL). The judge found plaintiff's NJLAD claims accrued on June 20, 2017, when a discrete act—plaintiff's termination—occurred. The judge determined "[p]laintiff's cause of action related to her employment and eventual 'termination' thus first accrued on June 20, 2017, and all claims that [we]re based on acts that occurred at or before that date [we]re time-barred" when plaintiff filed her complaint on August 20, 2019.

Further, the judge rejected plaintiff's "continuing violation theory" wherein plaintiff alleged "the 'discharge' prior to the Fall 2017 Semester was part of a series of retaliatory acts that culminated in [d]efendants' . . . decision not to offer [p]laintiff classes for the Spring 2018 [S]emester."

However, the judge found "[d]efendants' decision not to offer [p]laintiff courses for the Spring 2018 Semester," "constitute[d] its own cognizable discrete act." The judge determined a request for a teaching request form, for the Spring 2018 Semester, was submitted on plaintiff's behalf on October 28,

2017. On the same day, the University denied the request. The judge found "[d]efendants' denial occurred on October 28, 2017, within the [SOL] window, [therefore p]laintiff's causes of action that [we]re based on [d]efendants' refusal to supply her with a teaching request form for the Spring 2018 Semester [we]re not barred."

Plaintiff asserted "the retaliation [occurred] . . . after she reported the incident to [Dr.] Hamm[-Baugh]." The judge determined that "[e]ven if [p]laintiff's retaliation claim [wa]s not barred under the [SOL], [she] fail[ed] to establish the requisite causation." The judge found "[p]laintiff [wa]s unable to point to any facts to support the retaliation claim except that [after] she made . . . complaints[, she] was not given the Spring 2018 request form."

The judge "viewed [the record] in the light most favorable to . . . [p]laintiff," but concluded "[t]he temporal proximity of [plaintiff] being terminated at least two months after [her] complaint to [Dr. Hamm-Baugh wa]s not 'unusually suggestive,' and [p]laintiff had not adequately set forth any other evidence sufficient 'to establish a causal link between her termination and her alleged complaints.'" Thus, the judge dismissed "[p]laintiff's remaining retaliation claims . . . as a matter of law."

Lastly, the judge considered plaintiff's alleged due process violation in "relation to [d]efendants' decision not to offer [her a] teaching request form[]." The judge noted "[a] plaintiff may pursue the same claims under [NJ]LAD and the State Constitution." The judge construed plaintiff's claim "under the Due Process Clause of the Fourteenth Amendment to the United States Constitution." However, the judge concluded the "record d[id] not show that [p]laintiff had a tenured position, nor d[id the record] include any reference to specific [University] policies or procedures that would lead one to infer that [p]laintiff possessed a legitimate entitlement to reappointment." In the absence of a "property right[] in reappointment," plaintiff's Due Process claims failed. Therefore, the judge concluded "[p]laintiff's constitutional claims fail[ed] as a matter of law." Based on these findings, the judge dismissed all counts of plaintiff's complaint with prejudice.

On appeal, plaintiff argues the judge erred by: (1) improperly applying the SOL to her NJLAD discrimination claims; (2) failing to find a sufficient nexus in her retaliation claim under the NJLAD; (3) denying her New Jersey Constitutional Due Process claim; and (4) rendering biased rulings. We disagree.

We begin our discussion with a review of the principles governing our analysis. We review the grant of summary judgment de novo, applying the same legal standards as the trial court. Green v. Monmouth Univ., 237 N.J. 516, 529 (2019).

> The judgment or order sought shall be rendered forthwith if 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. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.
>
> [R. 4:46-2(c).]

Thus, we consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); see R. 4:46-2. "The factual findings of a trial court are reviewed with substantial deference on appeal, and are not overturned if they are supported by 'adequate, substantial and credible evidence.'" Manahawkin Convalescent v.

O'Neill, 217 N.J. 99, 115 (2014) (quoting Pheasant Bridge Corp. v. Twp. of Warren, 169 N.J. 282, 293 (2001)).

If there is no genuine issue of material fact, we must then "decide whether the trial court correctly interpreted the law." DepoLink Court Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007)). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citing State v. Brown, 118 N.J. 595, 604 (1990); Dolson v. Anastasia, 55 N.J. 2, 7 (1969); Pearl Assurance Co. v. Watts, 69 N.J. Super. 198, 205 (App. Div. 1961)).

A.

We first address whether plaintiff's NJLAD claims were barred under the SOL. "Whether a cause of action is barred by a [SOL] is a question of law, . . . reviewed de novo." Catena v. Raytheon Co., 447 N.J. Super. 43, 52 (App. Div. 2016) (citing Est. of Hainthaler v. Zurich Com., Ins., 387 N.J. Super. 318, 325 (App. Div. 2006)). The SOL for claims arising under the NJLAD is two years. See Vitale v. Schering-Plough Corp., 231 N.J. 234, 249 (2017) (citing Montells v. Haynes, 133 N.J. 282, 291-92 (1993)). "Determining when the limitation

period begins to run depends on when the cause of action accrued, which in turn is affected by the type of conduct a plaintiff alleges to have violated the [NJ]LAD." Alexander v. Seton Hall Univ., 204 N.J. 219, 228 (2010).

"Discriminatory termination and other similar abrupt, singular adverse employment actions that are attributable to invidious discrimination, prohibited by the [NJ]LAD, generally are immediately known injuries, whose two-year [SOL] period commences on the day they occur." Ibid. (citing Roa v. Roa, 200 N.J. 555, 569 (2010)). However, "[w]hen an individual is subject to a continual, cumulative pattern of tortious conduct, the [SOL] does not begin to run until the wrongful action ceases." Wilson v. Wal-Mart Stores, 158 N.J. 263, 272 (1999).

As relevant here, the NJLAD makes it an

> unlawful employment practice, or, as the case may be, an unlawful discrimination: [f]or an employer, because of the race, . . . color, national origin, ancestry, age, . . . to refuse to hire or employ or to bar or to discharge or require to retire . . . from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.
>
> [N.J.S.A. 10:5-12(a).]

On June 20, 2017, plaintiff was advised she would not receive a teaching position for the Fall 2017 Semester. She alleged defendants "refuse[d] to hire or employ" her for impermissible reasons under the NJLAD. Thus, plaintiff's

claim accrued on June 20, 2017, when she was advised of the purported discriminatory decision.

Plaintiff acknowledged her claim accrued when she met with Dr. Hamm-Baugh. Plaintiff testified she met with Dr. Hamm-Baugh in August 2017 because she was not interested in filing suit against the University. The only reason plaintiff would have contemplated filing a suit would be if she understood she had an actionable claim at the time. In addition, plaintiff's filings with EEOC and OAA indicated plaintiff understood she had a claim against defendants.

Relying on the continuing violation theory, plaintiff argues the SOL did not begin to run until October 2017, when she was advised she would not receive a teaching position in the Spring 2018 Semester. She contends defendants' "conduct constitute[d] a series of separate acts that collectively constitute[d] one act," relying on Alexander, 204 N.J. at 229.

However, as the New Jersey Supreme Court explained

> the continuing violation theory was developed to allow for the aggregation of acts, each of which, in itself, might not have alerted the employee of the existence of a claim, but which together show a pattern of discrimination. In those circumstances, the last act is said to sweep in otherwise untimely prior non-discrete acts.

> What the doctrine does not permit is the aggregation of discrete discriminatory acts for the purpose of reviving an untimely act of discrimination that the victim knew or should have known was actionable. . . .
>
> [Roa, 200 N.J. at 569.]

Therefore, in her complaint filing of August 2019, plaintiff cannot use the October 2017 denial of her request for a teaching position—timely alleged within the two-year SOL—to incorporate the June 2017 discrete act, which occurred more than two years before she filed her complaint. Thus, the judge properly dismissed plaintiff's NJLAD discrimination claims as barred by the SOL.

B.

The NJLAD declares that "it is an unlawful employment practice 'to take reprisals against any person because that person has opposed any practices or acts forbidden under th[e] Act.'" Tartaglia v. UBS PaineWebber, Inc., 197 N.J. 81, 125 (2008) (quoting N.J.S.A. 10:5-12(d)).

When considering a party's appeal from the grant or denial of summary judgment in a NJLAD action, we typically analyze the case under the construct developed by the Supreme Court in McDonnell Douglas Corporation v. Green, 411 U.S. 792, 802 (1973). See Crisitello v. St. Theresa Sch., 255 N.J. 200, 212

n.2 (2023) (citing Meade v. Twp. of Livingston, 249 N.J. 310, 328 (2021)). The McDonnell Douglas,

> framework requires the plaintiff to demonstrate a prima facie case of discrimination, following which the burden shifts to the defendant to demonstrate a legitimate business reason for the employment decision. If the employer does so, the burden shifts again and the plaintiff is required to demonstrate that the reason proffered is a mere pretext for discrimination.
>
> [Victor v. State, 203 N.J. 383, 408 n.9 (2010).]

To establish a prima facie retaliation claim under the NJLAD a plaintiff must establish that: "(1) plaintiff was in a protected class; (2) plaintiff engaged in protected activity known to the employer; (3) plaintiff was thereafter subjected to an adverse employment consequence; and (4) that there is a causal link between the protected activity and the adverse employment consequence." Victor, 203 N.J. at 409 (citing Woods-Pirozzi v. Nabisco Foods, 290 N.J. Super. 252, 274 (App. Div. 1996)); see N.J.S.A. 10:5-12(d).

Here, plaintiff argues defendants' "rational[e] for not renewing her teaching credentials for Fall 2017 [wa]s changed." "Therefore, the judge . . . denied the retaliation illegally, because the facts [we]re not supportive." In addition, plaintiff contends

> the causal link between the protected activity and the materially adverse action is broad, and may consist of temporal proximity, "intervening antagonism or retaliatory animus, inconsistencies in the employer's articulated reasons for terminating the employee, or any other evidence in the record sufficient to support the inference of retaliatory animus." LeBoon v. Lancaster Jewish Cmty. Ctr. Ass'n, 503 F.3d 217, 232-[]33 (3d. Cir. 2007).

We are convinced there is no merit in plaintiff's arguments. First, plaintiff's focus on the purported changes in defendants' rationale for denying her a Fall 2017 Semester adjunct teaching position misses the mark. Under McDonnell Douglas, we do not consider defendants' reasoning unless plaintiff established a prima facie case of retaliation. Here, plaintiff failed to establish a prima facie claim.

Moreover, plaintiff's purported retaliation claim arose in October 2017. Therefore, the rationale leading to the teaching position denial in June 2017 is not relevant to her retaliation claim.

Second,

> the mere fact that [an] adverse employment action occurs after [the protected activity] will ordinarily be insufficient to satisfy the plaintiff's burden of demonstrating a causal link between the two. Only where the facts of the particular case are so unusually suggestive of retaliatory motive may temporal proximity, on its own, support an inference of causation. Where the timing alone is not unusually

> suggestive, the plaintiff must set forth other evidence to establish the causal link.
>
> [Young v. Hobart W. Grp., 385 N.J. Super. 448, 467 (App. Div. 2005) (internal quotation marks and citations omitted) (alterations in original).]

In Young, we concluded "[t]he temporal proximity of [the plaintiff] being terminated four months after her complaint . . . [wa]s not 'unusually suggestive.'" Ibid.; but see Jalil v. Avdel Corp., 873 F.2d 701, 708 (3d Cir. 1989) (finding a causal link established where "discharge followed rapidly, only two days later, upon [the defendant]'s receipt of notice of [the plaintiff]'s EEOC claim"). While there is no bright line temporal test, there is nothing in these facts to suggest the time period was "unusually suggestive."

In the absence of "unusually suggestive" temporal proximity, plaintiff was required to "set forth other evidence to establish the causal link." Young, 385 N.J. Super. at 467. However, plaintiff failed to offer any evidence to establish a causal link between her complaint raised in the August 2017 meeting, and defendants' October 2017 decision to deny her a teaching request form for the Spring 2018 Semester. Plaintiff's reliance on the legal principles in LeBoon is misplaced absent any evidence to establishing a causal link.

Thus, we are convinced plaintiff failed to demonstrate a prima facie claim for retaliation, and summary judgment was properly granted to defendants on plaintiff's NJLAD retaliation claim.

C.

Plaintiff asserted claims under the New Jersey Constitution, Article I, Paragraphs 1 and 5. These paragraphs provide:

> All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.
>
> [N.J. Const. art. I, ¶ 1.]
>
> No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.
>
> [N.J. Const. art. I, ¶ 5.]

The Court "has the power to enforce rights recognized by the New Jersey Constitution, even in the absence of implementing legislation." Peper v. Princeton Univ. Bd. of Trs., 77 N.J. 55, 77 (1978). As such, the Court recognizes a cause of action under New Jersey Constitution Article I, Paragraph 1. See id.

at 80. The same rationale would provide a cause of action under New Jersey Constitution Article I, Paragraph 5. See Lloyd v. Stone Harbor, 179 N.J. Super. 496, 507 (Ch. Div. 1981).

Plaintiff argues the judge erred by "sua sponte" applying the U.S. Constitution's "property rights" analysis under the Fourteenth Amendment. Instead, she contends defendants violated her New Jersey constitutional rights because "she was not given a hearing with her union rep[resentative] per the contract[]."

We agree the judge's analysis misconstrued plaintiff's constitutional argument. Nonetheless, as a matter of law, we are satisfied summary judgment was appropriate as to plaintiff's New Jersey constitutional claims because there is no constitutional right to have a union representative present at a meeting. Indeed, aside from invoking the constitutional article, plaintiff's argument fails to provide a constitutional basis for such a right. Because we review orders on appeal, rather than a trial judge's legal reasons, we affirm the order granting summary judgment as to the New Jersey constitutional claims but for reasons other than those expressed by the trial judge. See Isko v. Planning Bd. of Livingston, 51 N.J. 162, 175 (1968), abrogated on other grounds by Com. Realty

Res. Corp. v. First Atl. Props. Co., 122 N.J. 546, 565 (1991); see also Hayes v. Delamotte, 231 N.J. 373, 387 (2018).

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

Affirmed.