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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3868-22**

**BETTIE NORRIS,**

**Plaintiff-Appellant,**

**v.**

**STATE OF NEW JERSEY,  
DEPARTMENT OF  
CORRECTIONS AND MARCUS  
O. HICKS,**

**Defendants-Respondents.**

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Argued June 4, 2024 – Decided June 24, 2024

Before Judges Rose and Perez Friscia.

On appeal from the Superior Court of New Jersey,  
Law Division, Mercer County, Docket No. L-1360-20.

Heidi R. Weintraub argued the cause for appellant  
(Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins,  
attorneys; Heidi R. Weintraub and Toni L. Telles, on  
the briefs).

Jemi Goulian Lucey argued the cause for respondents  
(Greenbaum Rowe Smith & Davis, LLP, attorneys;

Jemi Goulian Lucey and Maja M. Obradovic, of  
counsel and on the brief; Joel Clymer, on the brief).

PER CURIAM

Plaintiff Bettie Norris appeals from the July 7, 2023 Law Division order, which granted defendants New Jersey Department of Corrections (DOC) and Marcus O. Hicks summary judgment dismissing her Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50, claims. We affirm.

I.

We view the following facts established in the summary judgment record in a light most favorable to Norris as the non-moving party. See Crisitello v. St. Theresa Sch., 255 N.J. 200, 218 (2023). In 1981, Norris began employment with the DOC as a principal social service aide. She advanced throughout her career, holding multiple career civil service titles.<sup>1</sup> In 1999, she was appointed to the "unclassified" non-civil service position of assistant superintendent 1. In January 2018, after Norris held various unclassified positions, former DOC Commissioner Gary Lanigan appointed her deputy

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<sup>1</sup> "All job titles shall be allocated to the career service, except for those job titles allocated by the Civil Service Commission to the unclassified service as provided in N.J.A.C. 4A:3-1.3." N.J.A.C. 4A:3-1.1(a).

commissioner. Norris's deputy commissioner responsibilities included oversight of operational facilities and departmental decision making.

After Governor Philip Murphy assumed office and Commissioner Lanigan resigned from the DOC, Norris requested consideration for the commissioner appointment. In 2018, Hicks, then thirty-nine years old, was appointed acting commissioner. Hicks had worked for the DOC since 2007, serving as chief of staff, among other positions. Hicks also had experience working in the Governor's Office on "criminal justice policy matters" and held a juris doctor degree.

Following Hicks's appointment, Norris's responsibilities initially remained the same. Hicks had conferred with the Governor's Office regarding DOC executive administration changes. He was advised by the cabinet secretary that any high-level executive staff changes should await his confirmation as the DOC commissioner. While serving as acting DOC commissioner, Hicks only filled vacant executive level positions. He appointed Michelle Ricci, then fifty-five years old, assistant commissioner of administration and filled the chief of staff position.

In the summer of 2019, Norris, then sixty-five years old, suffered hip issues, requiring her to use a cane and take a medical leave of absence to

undergo hip replacement surgery. Hicks assigned Ricci to Norris's deputy commissioner responsibilities during the leave. Norris returned to the DOC after four months, recovered with no residual medical limitations. Hicks informed Norris that Ricci would continue operational oversight of the DOC. Norris was assigned institution security audits, overtime review, and a security camera project. Norris acknowledged that Hicks, as acting commissioner, was authorized to reassign her responsibilities, but maintained it had "historically . . . never been like that before."

On January 30, 2020, Hicks was confirmed as commissioner. The following day, Hicks informed Norris she was reassigned to the New Jersey State Prison, returning to her prior executive assistant 2 civil service title. Norris filed for retirement the same day.

Hicks has acknowledged Norris sufficiently performed her duties but averred he always intended to appoint a new deputy commissioner. He relayed the importance of choosing executive staff to move the DOC in "the direction [he] wanted to take" it. He expressed concerns that, "if [Norris] as the [d]eputy [c]ommissioner of [o]perations, . . . such a critical position in the department, . . . [had] disagreements with a decision that [he] was going to

make," it would create "issues." Six months after his confirmation, Hicks appointed Ricci, then fifty-seven years old, as acting deputy commissioner.

On July 31, 2020, Norris filed a three-count LAD complaint alleging: disability discrimination; age discrimination; and aiding and abetting discrimination by Hicks. In February 2023, defendants moved for summary judgment. After argument, the motion court issued an oral opinion and accompanying order dismissing Norris's complaint with prejudice.

The court found Norris failed to demonstrate a prima facie showing of disability discrimination because she "present[ed] no evidence that [she] was disabled or perceived as disabled" at the time of reassignment. The court reasoned Norris "was admittedly fully recovered when she returned from medical leave," and defendants provided a "legitimate nondiscriminatory reason for ending [her] appointment" because "Hicks was statutorily authorized to exercise his discretion." Her age discrimination claim was also dismissed by the court because "the record contain[ed] no evidence that . . . Hicks'[s] decision to replace [Norris] had anything to do with the respective ages of" either employee. The court found even if the nine-year age difference permitted an inference of age discrimination, defendants demonstrated an

unrefuted legitimate reason for reassignment under the McDonnell Douglas<sup>2</sup> burden-shifting framework. The court reiterated Hicks "was entitled to select a deputy commissioner of his choosing," and therefore Norris "failed to demonstrate that . . . Hicks'[s] decision to replace her was pretextual." Finally, regarding the aiding and abetting claim, the court concluded "Hicks [could] not be liable for claims of discrimination, as the record fail[ed] to show" claims of disability or age discrimination.

On appeal, Norris argues the court erroneously dismissed her LAD claims of: disability discrimination because she made a prima facie showing of her disability, or perceived disability, and demonstrated defendants' proffered legitimate reassignment reasons were pretext; age discrimination because she made a prima facie showing of age discrimination, and demonstrated defendants' proffered adverse employment reasons were pretext; and aiding and abetting against Hicks because she demonstrated viable disability and age discrimination claims.

## II.

We review a trial court's summary judgment decision "de novo and apply the same legal standard" under Rule 4:46-2(c). See Crisitello, 255 N.J.

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<sup>2</sup> McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

at 218. "The court's function is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). To rule on summary judgment, courts must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." DepoLink Ct. Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Liberty Surplus Ins. Corp. v. Nowell Amoroso, P.A., 189 N.J. 436, 445-46 (2007)). Our review entails determining "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." C.V. ex rel C.V. v. Waterford Twp. Bd. of Educ., 255 N.J. 289, 305 (2023) (quoting Samolyk v. Berthe, 251 N.J. 73, 78 (2022)).

"Rule 4:46-2(c)'s 'genuine issue [of] material fact' standard mandates that the opposing party do more than 'point[] to any fact in dispute' in order to defeat summary judgment." Globe Motor Co. v. Igdaley, 225 N.J. 469, 479 (2016) (alterations in original) (first quoting R. 4:46-2(c); and then quoting

Brill, 142 N.J. at 529). "Summary judgment should be granted 'if the discovery and any affidavits "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.'"" DeSimone v. Springpoint Senior Living, Inc., 256 N.J. 172, 180-81 (2024) (quoting Perez v. Professionally Green, LLC, 215 N.J. 388, 405 (2013)). Insubstantial arguments based on assumptions or speculation are not enough to overcome summary judgment. Brill, 142 N.J. at 529; see also Dickson v. Cmty. Bus Lines, Inc., 458 N.J. Super. 522, 533 (App. Div. 2019) ("[C]onclusory and self-serving assertions by one of the parties are insufficient to overcome' a motion for summary judgment." (quoting Puder v. Buechel, 183 N.J. 428, 440-41 (2005))).

The LAD's remedial "purpose is nothing less than the eradication of the cancer of discrimination." C.V., 255 N.J. at 306-07 (internal quotation marks omitted) (quoting Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587, 600 (1993)). It prohibits unlawful employment practices and discrimination "based on race, religion, sex, or other protected status[] that creates a hostile work environment." Cutler v. Dorn, 196 N.J. 419, 430 (2008); see also N.J.S.A. 10:5-12(a). "There is no single prima facie case that applies to all discrimination claims. Instead, the elements of the prima facie claim vary



depending upon the particular cause of action." Victor v. State, 203 N.J. 383, 408 (2010).

To state a prima facie case for disability discrimination under the LAD, a plaintiff must show she or he: (1) was "disabled within the meaning of the LAD"; (2) "was performing [the] job at a level that met [the] employer's legitimate expectations"; (3) "was discharged"; and (4) has facts demonstrating that "the employer sought someone else to perform the same work after she [or he] left." Grande v. Saint Claire's Health Sys., 230 N.J. 1, 17-18 (2017) (quoting Jansen v. Food Circus Supermarkets, Inc., 110 N.J. 363, 382 (1988)). "LAD claims based upon a perceived disability still require 'a perceived characteristic that, if genuine, would qualify a person for the protections of the LAD.'" Dickson, 458 N.J. Super. at 532 (quoting Cowher v. Carson & Roberts, 425 N.J. Super. 285, 296 (2012)). "An employee perceived to have a disability is protected under the LAD to the same extent as someone who is disabled." Guzman v. M. Teixeira Int'l, Inc., 476 N.J. Super. 64, 69 (App. Div. 2023).

Further, it is unlawful under the LAD for an employer "to discharge . . . or . . . discriminate against [an] individual in compensation or in terms, conditions or privileges of employment" on the basis of age. N.J.S.A. 10:5-

12(a). To demonstrate a prima facie age discrimination claim, a plaintiff must show she or he: (1) "belongs to a protected class"; (2) "performed her [or his] job at a level that satisfied [the employer's] legitimate expectations"; (3) "was discharged"; and (4) "was replaced by 'a candidate sufficiently younger to permit an inference of age discrimination.'" Young v. Hobart W. Grp., 385 N.J. Super. 448, 458 (App. Div. 2005) (quoting Bergen Com. Bank v. Sisler, 157 N.J. 188, 213 (1999)).

New Jersey has adopted the "burden-shifting methodology" set forth in McDonnell Douglas, 411 U.S. at 802-04. See Meade v. Township of Livingston, 249 N.J. 310, 328 (2021). Under this burden-shifting analysis:

(1) the plaintiff must come forward with sufficient evidence to constitute a prima facie case of discrimination; (2) the defendant must then show a legitimate nondiscriminatory reason for its decision; and (3) the plaintiff must then be given the opportunity to show that defendant's stated reason was merely a pretext or discriminatory in its application.

[Ibid. (quoting Henry v. N.J. Dep't of Hum. Servs., 204 N.J. 320, 331 (2010)).]

"Establishment of a prima facie case gives rise to a presumption that the employer unlawfully discriminated against the employee." Meade, 249 N.J. at 329 (quoting Bergen Com. Bank, 157 N.J. at 210). "The employer may obliterate that presumption 'with admissible evidence of a legitimate,

non[discriminatory reason' for taking the employment action at issue." Garnes v. Passaic Cnty., 437 N.J. Super. 520, 537 (App. Div. 2014) (quoting Bergen Com. Bank, 157 N.J. at 210). "At that point, the employee has an opportunity to prove that the employer's asserted reason for the action is not true and is merely a pretext for discriminating among employees on an impermissible basis." Ibid. (citing Bergen Com. Bank, 157 N.J. at 211).

N.J.S.A. 10:5-12(a) prohibits unlawful discrimination only by an "employer." An individual employee or supervisor is not considered an employer under the LAD definitions. Tarr v. Ciasulli, 181 N.J. 70, 83 (2004). However, N.J.S.A. 10:5-12(e) makes "it unlawful '[f]or any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden [under the LAD],' and such conduct may result in personal liability." Tarr, 181 N.J. at 83 (alterations in original) (citation omitted) (quoting N.J.S.A. 10:5-12(e)). An employee may be liable as an aider or abettor if a plaintiff establishes that:

(1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; [and] (3) the defendant must knowingly and substantially assist the principal violation.

[Id. at 84 (alteration in original) (quoting Hurley v. Atl. City Police Dep't, 174 F.3d 95, 127 (3d Cir. 1999)).]

Aiding and abetting liability requires "active and purposeful conduct." Ibid.

### III.

The established facts and inferences from the record, when viewed in a light most favorable to Norris, demonstrate a sufficient prima facie showing of disability and age discrimination. Norris posited the necessary minimum facts to support an LAD disability claim based on her hip injury, which required a cane to ambulate and medical leave for a total hip replacement surgery. Although Norris acknowledged she recovered after medical leave and no longer used a cane, a material issue of fact existed regarding whether her medical issue was an actual or perceived disability. It is undisputed that upon returning from leave, Norris was reassigned to "critical DOC-wide projects" while Ricci retained Norris's previous deputy commissioner responsibilities. "[T]he prima facie case is to be evaluated solely on the basis of the evidence presented by the plaintiff, irrespective of defendants' efforts to dispute that evidence." Meade, 249 N.J. at 329 (quoting Zive v. Stanley Roberts, Inc., 182 N.J. 436, 448 (2005)).

Norris also demonstrated a threshold showing of age discrimination as she was sixty-five years old when removed and Ricci, who replaced her as deputy commissioner, was nine years younger. Norris undisputedly suffered an adverse employment action—her reassignment to her last civil service position resulted in a \$40,000 salary reduction. Importantly, "[t]he evidentiary burden at the prima facie stage is 'rather modest: it is to demonstrate to the court that plaintiff's factual scenario is compatible with discriminatory intent—i.e., that discrimination could be a reason for the employer's action.'" Zive, 182 N.J. at 447 (quoting Marzano v. Comput. Sci. Corp., 91 F.3d 497, 508 (3d Cir. 1996)). We conclude plaintiff sufficiently presented a prima facie showing of age and disability discrimination. See Young, 385 N.J. Super. at 458 (concluding a forty-eight-year-old plaintiff established a prima facie case of age discrimination as she was a member of a protected class and a forty-one-year-old employee overtook her job responsibilities following her termination); see also Bergen Com. Bank, 157 N.J. at 214-16 (stating "the LAD's prohibition against age discrimination is broad" and "deserv[es] a liberal construction").

However, defendants established uncontroverted facts that Hicks had a legitimate, non-discriminatory reason to appoint a new deputy commissioner to

act as the second in command of his executive staff. Hicks's statement that "it was always [his] intention" if "confirmed as [c]ommissioner" "to appoint a [d]eputy [c]ommissioner of [his] choosing . . . the same way that other department heads across the state have done for years" is unrefuted by any credible evidence in the motion record.

Relevantly, Hicks was authorized to remove Norris, under N.J.S.A. 30:1B-5, as "[t]he commissioner may appoint one deputy and such assistant commissioners as he shall deem necessary to serve at the pleasure of the commissioner." Further, it is uncontradicted that Hicks followed the cabinet secretary's advice to "avoid replacing any high-level executive staff positions until he was confirmed and sworn in as [c]ommissioner." Following that advice, Hicks, as acting commissioner, only filled vacant executive staff positions. It was not until the day after Hicks was confirmed as commissioner that Norris was reassigned.

Norris's argument that defendants' proffered reason was merely pretextual is likewise unsupported. Regarding disability discrimination, when asked if she was removed "from the position of deputy commissioner . . . based on the fact that [she] had had hip replacement surgery," Norris acknowledged she did "not know why [Hicks] made the decision" to replace

her. Further, regarding age discrimination, Norris "readily conceded that she d[id] not have 'direct evidence' of age discrimination," but argues there is sufficient circumstantial evidence. She maintains her nine-year age difference with Ricci, who was appointed deputy commissioner six months after Norris was removed, sufficiently rebuts defendants' reasons for reassignment. We are unpersuaded.

Norris's hip replacement, from which she recovered, and age are insufficient to rebut Hicks's proffered legitimate business reasons for appointing a new deputy commissioner. Notably, it is undisputed Hicks had the statutory authority to appoint a new deputy commissioner. Norris fails to demonstrate facts which contradict Hicks's contention that he always intended to remove her once confirmed, as she had interviewed for the commissioner's position, and he was concerned it "could lead to . . . potential issues" between them.

Norris also admitted she "did not know what was going to happen" or whether she would retain her position after Governor Murphy assumed office. Norris recognized she could be replaced by the commissioner and, in fact, after Governor Murphy had taken office, she "submit[ted] a letter of resignation"

with other executive staff. Thus, she recognized a newly appointed commissioner had the authority to select his or her own executive staff.

We conclude Norris failed to demonstrate a modicum of facts refuting defendants' legitimate reasons for Hicks's employment actions. Thus, no material issues of fact exist to support defendants' actions were mere pretext for underlying discrimination under the McDonnell Douglas burden-shifting framework. See 411 U.S. at 802-04. Again, Hicks had the right under N.J.S.A. 30:1B-5 to select a deputy commissioner of his choosing. We therefore concur with the court's finding that Norris failed to demonstrate a material issue of fact regarding age or disability discrimination to rebut defendants' legitimate reasons for her replacement. Accordingly, we discern no reason to disturb the court's granting of summary judgment dismissing plaintiff's LAD claims for disability and age discrimination.

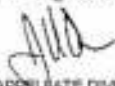
Finally, as we have concluded dismissal of the disability and age discrimination counts against defendants was warranted, we need not address Norris's LAD claim for individual liability against Hicks for aiding and abetting. See Tarr, 181 N.J. at 84.



To the extent that we have not addressed Norris's remaining contentions, it is because they lack sufficient merit to be discussed in a written opinion. R. 2:11-3(e)(1)(E).

Affirm.

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



CLERK OF THE APPELLATE DIVISION