WALTER KEITH HAHN and ELIZABETH ANN HAHN, Plaintiffs-Appellants,

v.

MAYOR JUN CHOI, EDISON TOWNSHIP DEPARTMENT OF PUBLIC SAFETY (DIVISION OF POLICE), BRIAN COLLIER, THOMAS BRYAN, and MARK ANDERKO, Defendants-Respondents.

No. A-1367-11T2.

Superior Court of New Jersey, Appellate Division.

Argued: May 31, 2012.
Decided: June 12, 2012.

Theodore Campbell argued the cause for appellants.

Eric L. Harrison argued the cause for respondents (**Methfessel** & **Werbel**, attorneys; Mr. Harrison, of counsel; Leslie Koch, on the brief).

Before Judges Cuff, Waugh and St. John.

NOT FOR PUBLICATION

PER CURIAM.

Plaintiff Walter Keith Hahn[1] appeals from an order granting summary judgment to defendants Mayor Jun Choi, Edison Township, Department of Public Safety, Brian Collier, Thomas Bryan, and Mark Anderko dismissing his complaint asserting violations of the Conscientious Employee Protection Act (CEPA), N.J.S.A. 34:19-1 to-14. Because the motion judge did not make findings of fact and render conclusions of law as required by Rules 1:7-4 and 4:46-2(c), we remand for further proceedings.

Plaintiff is a police officer for defendant Edison Township. In addition to his police duties, he was also the union representative between the patrol officers and managers. Plaintiff filed a four count complaint seeking compensatory damages for violations of CEPA; the Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to-49; intentional infliction of emotional distress; and loss of consortium. He alleged that senior managers in the police department took several actions against him, including returning him to patrol duty despite his detective rank, in response to and retaliation for his complaints about certain actions taken by senior managers. Following discovery, defendants filed a motion for summary judgment.

Following oral argument, the motion judge rendered an oral opinion. The judge stated he would assume plaintiff engaged in "whistle-blowing" activities, but held that none of the actions taken by his superiors could be considered an adverse employment action. The judge stated that "[e]verything cited as far as I'm concerned is within the prerogative of the chief of police to run his dep[a]rtment.... [A]s a matter of law, that cannot rise to an adverse employment action...." The judge also stated that plaintiff submitted no evidence to permit a jury to find that the reasons advanced for the actions taken by senior managers in the police department were pretextual.[2]

In order to meaningfully perform our appellate review of the actions or decision of a motion judge, the judge must make sufficient findings and conclusions so that we may get a sense of what was decided and why. Curtis v. Finneran, 83 N.J. 563, 570 (1980). Most significantly, Rules 1:7-4 and 4:46-2(c) require a trial judge to accompany all opinions with findings of fact and conclusions of law. See Pressler & Verniero, Current N.J. Court Rules, comment 7 on R. 1:6-2 (2012) (referring to R. 1:7-4). "Rule 1:7-4 requires a judge to provide findings of fact and conclusions of law on every motion decided by a written order that is appealable by right." Fodero v. Fodero, 355 N.J. Super. 168, 170 (App. Div. 2002). Rule 4:46-2(c) requires a judge to make the requisite findings of fact and conclusions of law. Also, Rule 2:5-1(b) specifically mandates that findings and conclusions by a trial judge must be made, particularly when there is an appeal filed.

Justice Pollock cogently stated in Curtis, supra, 83 N.J. at 570, "[n]aked conclusions do not satisfy the purpose of R. 1:7-4.

Rather, the trial court must state clearly its factual findings and correlate them with the relevant legal conclusions." We are constrained to remind the motion judge of his obligation in this regard.

A valid CEPA claim has four requirements: (1) the employee "reasonably believed that his or her employer's conduct was violating a law, rule, or regulation..."; (2) the employee "performed a `whistle-blowing' activity described in N.J.S.A. 34:19-3c"; (3) the employer took an adverse employment action against the employee; and (4) "a causal connection exists between the whistle-blowing activity and the adverse employment action." Dzwonar v. McDevitt, 177 N.J. 451, 462 (2003) (citation omitted). In this case, the motion judge made no findings of fact. He assumed that plaintiff performed a whistle-blowing activity then concluded that any and all assignments fell within the managerial prerogative of defendants. A reassignment under certain circumstances, however, may be an adverse employment action. Maimone v. City of Atlantic City, 188 N.J. 221, 236 (2006). Such a conclusory approach does not fulfill the obligations imposed on the motion judge in a dispositive motion.

To be sure, we apply the same standard as the motion judge when we review an order granting summary judgment. Spring Creek Holding Co. v. Shinnihon U.S.A. Co., 399 N.J. Super. 158, 180 (App. Div.), certif. denied, 196 N.J. 85 (2008). Our review of a summary judgment order without the requisite findings of fact and conclusions of law distorts our appellate role to something resembling original jurisdiction. Such a distortion is inconsistent with the purpose of the rules requiring findings of fact and conclusions of law by the initial decision-maker.

This matter is, therefore, remanded for further proceedings consistent with the terms of this opinion. The remand shall be completed within sixty days from the date of this opinion. If the motion judge cannot complete the remand within the prescribed time, the motion shall be reassigned to another judge.

Remanded. We retain jurisdiction.

[1] His wife, Elizabeth Ann Hahn, is also a plaintiff. She asserted a loss of consortium claim.

[2] The judge also dismissed the LAD, intentional infliction of emotional distress and loss of consortium claims, but plaintiff has not sought appellate review of the dismissal of these claims.