SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1821-20

ROBERT J. NISH,

Plaintiff-Appellant,

v.

THE TOWNSHIP OF MORRIS,

Defendant-Respondent.

Argued April 6, 2022 – Decided May 3, 2022

Before Judges Whipple, Geiger and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-1640-20.

Noelle K. Nish argued the cause for appellant (Nish & Nish, LLC, attorneys; Noelle K. Nish, on the briefs).

Stefanie C. Schwartz argued the cause for respondent (Hatfield Schwartz Law Group, attorneys; Stefanie C. Schwartz, of counsel and on the brief; Shannon M. Boyne, on the brief).

PER CURIAM

Plaintiff Robert J. Nish is a former municipal court judge who appeals the trial court's February 19, 2021 dismissal of his complaint against defendant the Township of Morris (Township) and denial of his summary judgment motion. The sole issue is whether the Township's resolution appointing plaintiff pursuant to N.J.S.A. 2B:12-4 created an enforceable employment contract. Because the statute does not clearly indicate the Legislature's intent to vest contractual rights in municipal judges, we affirm.

No facts are in dispute. On January 3, 2001, the Township adopted a resolution appointing plaintiff as a municipal court judge for the township for a three-year term ending December 31, 2003. The Township re-appointed plaintiff for consecutive three-year terms through December 31, 2012. On January 2, 2013, the Township adopted Resolution 7-13 appointing plaintiff as a municipal judge through December 31, 2015.

On November 20, 2013, the Township, the Borough of Madison, the Borough of Chatham, the Township of Chatham, and the Township of Harding entered an "Agreement for the Operation of a Joint Municipal Court Pursuant to the Uniform Shared Services and Consolidation Act" (Shared Services Agreement) effective January 1, 2014 through December 31, 2017. The parties agreed to operate a joint municipal court to be known as "The Joint Municipal

Court of Madison, the Chathams, Harding, and Morris Township" (Joint Municipal Court).

On September 18, 2013, the Township Committee adopted Resolution 176-13 authorizing the Township's participation in the Joint Municipal Court. On October 25, 2013, then-Assignment Judge Thomas L. Weisenbeck approved the Shared Services Agreement. By letter dated December 3, 2013, the Township informed plaintiff "due to reasons of efficiency and economy and the resultant [S]hared [S]ervice[s] [A]greement for [m]unicipal [c]ourt services, the Township Committee has eliminated your position and you are hereby terminated effective 12:01 a.m. [on] January 1, 2014."

On December 28, 2019, plaintiff filed a complaint against the Township alleging breach of contract and sought damages for loss of salary and benefits and creditable pension benefits. The Township filed an answer seeking dismissal of plaintiff's complaint with prejudice and pleading defenses. The Township moved to dismiss plaintiff's action pursuant to Rule 4:6-2(e) and plaintiff cross-moved for summary judgment, filing a statement of material facts pursuant to Rule 4:46-1 mirroring the same facts included in his complaint. Plaintiff added that his salary for the year 2013 was $55,347.96, as shown by a

W-2 Wage and Tax Statement and that he lost $110,695.92 for being terminated after one year of the three-year term.

The Township filed a response admitting most facts that plaintiff set forth in his statement of material facts and added:

> The Township admits that it eliminated the municipal court judge position effective January 1, 2014 when it merged the Morris Township Municipal Court with the [J]oint [M]unicipal [C]ourt pursuant to the Shared Services Agreement dated November 20, 2013. The Township's letter dated December 3, 2013 speaks for itself.

After oral argument, the court entered an order and a statement of reasons dismissing plaintiff's complaint with prejudice pursuant to Rule 4:6-2(e) and denying plaintiff's cross-motion for summary judgment.

The court framed the issue as follows:

> What happens when a municipality terminates a municipal court judge in the middle of his term? The [p]laintiff says it is a breach of a statutorily defined contract. The [d]efendant says not so; that no contract exists; that this suit is an untimely prerogative writs action; and/or this matter presents a political question.

The court found "no contract upon which to state a cause of action" because the statute did not clearly or expressly indicate the Legislature's "intent to confer a contractual right of employment to a municipal court judge." The court explained:

> The language "shall serve for a term of three years" does not clearly or unambiguously evince a legislative intent to extend a non-forfeitable contractual right to a judicial tenure of three years. Nowhere in the text of N.J.S.A. 2B:12-4 is it plainly set forth that the [L]egislature intended an unambiguous grant of a contract of employment. If the Legislature had desired to provide a contractual obligation between a municipality and a municipal court judge, it would have expressed so with greater clarity and specificity. While courts have found that the "shall serve for a term of three years" language clearly implies a legislative intent of service continuity, there is no indication that such continuity stems from a contractual obligation pursuant to N.J.S.A. 2B:12-4 or that interruption of such continuity is a breach. Contrary to [p]laintiff's assertion that his employment relationship is a contract, the relationship between public employees or office holders and the employer appointing him "is not ipso facto contractual in character."
>
> [(Emphasis in original).]

Moreover, the court noted that even if the statute created a contractual relationship, "a municipality may lawfully terminate a fixed term employment contract incidental to its formation of a successor entity created to perform governmental functions in addition to those of a predecessor, particularly when there is a good faith basis to do so." This appeal followed.

"[We] review[] de novo the trial court's determination of the motion to dismiss under Rule 4:6-2(e)" for "failure to state a claim upon which relief can be granted." Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman &

Stahl, PC, 237 N.J. 91, 108 (2019). In considering a Rule 4:6-2(e) motion, we "examine[] 'the legal sufficiency of the facts alleged on the face of the complaint,' Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989), limiting [our] review to 'the pleadings themselves,' Roa v. Roa, 200 N.J. 555, 562 (2010)." Dimitrakopoulos, 237 N.J. at 108. "The test for determining the adequacy of a pleading [is] whether a cause of action is 'suggested' by the facts." Printing Mart-Morristown, 116 N.J. at 746 (quoting Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988)). "If the court considers evidence beyond the pleadings in a Rule 4:6-2(e) motion, that motion becomes a motion for summary judgment, and the court applies the standard of Rule 4:46." Dimitrakopoulos, 237 N.J. at 107.

We review the trial court's grant or denial of a motion for summary judgment de novo. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). When reviewing a grant of summary judgment, we apply the same standard as the motion judge and 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).

Plaintiff argues that the court erred in dismissing his complaint with prejudice because he "asserted a cause of action for breach of contract" by alleging the existence of an offer of employment, breach, and damages. We disagree.

N.J.S.A. 2B:12-4 provides, in pertinent part:

> a. Each judge of a municipal court shall serve for a term of three years from the date of appointment and until a successor is appointed and qualified. . . .
>
> b. In municipalities governed by a mayor-council form of government, the municipal court judge shall be appointed by the mayor with the advice and consent of the council. . . . In all other municipalities, the municipal judge shall be appointed by the governing body of the municipality. . . .

"[T]he prevailing view [is] that an appointment to public employment is governed by statutory authority rather than simple contract between employer and employee." DiPaolo v. Passaic C'ty Bd. of Chosen Freeholders, 322 N.J. Super. 487, 492 (App. Div. 1999), aff'd, 162 N.J. 572 (2000). "Under well-settled rules of construction, a statute will not be presumed to create private, vested contractual rights, unless the intent to do so is clearly stated." New Jersey Educ. Ass'n v. State (NJEA), 412 N.J. Super. 192, 206 (App. Div. 2010).

> [A]bsent some clear indication that the legislature intends to bind itself contractually, the presumption is that a law is not intended to create private contractual

> or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise. This well-established presumption is grounded in the elementary proposition that the principal function of a legislature is not to make contracts, but to make laws that establish the policy of the state. Policies, unlike contracts, are inherently subject to revision and repeal, and to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of a legislative body.
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> [Id. at 207 (quoting Nat'l R. Passenger Corp. v. Atchison, T. & S. F. R. Co., 470 U.S. 451, 465-66 (1985) (citations omitted)).]

Moreover,

> public offices are mere agencies or trusts, and not property as such. Nor are the salary and emoluments property, secured by contract, but compensation for services actually rendered. Nor does the fact that a constitution may forbid the legislature from abolishing a public office or diminishing the salary thereof during the term of the incumbent changes its character or make it property. . . . In short, generally speaking, the nature of the relation of a public officer to the public is inconsistent with either a property or a contract right.
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> [Errichetti v. Merlino, 188 N.J. Super. 309, 336 (Law Div. 1982) (quoting Taylor v. Beckham, 178 U.S. 548, 577 (1900)).]

See also DiPaolo, 322 N.J. Super. at 493 (holding "the public employment relationship derives from applicable statutory schemes and not from an independent contract between public employer and employee. Therefore, the

1997 resolution appointing DiPaolo to a five[-]year term was not an enforceable contract.").

Here, the trial court did not err in dismissing plaintiff's complaint for failure to state a claim. N.J.S.A. 2B:12-4 does not "clearly state" the Legislature's intent to "create private, vested contractual rights" for municipal court judges. NJEA, 412 N.J. Super. at 206. The provision in N.J.S.A. 2B:12-4 that municipal judges "shall serve for a term of three years" at most expresses the Legislature's policy that municipal judges should serve for three-year terms. As the trial court aptly distinguished, this language in N.J.S.A. 2B:12-4 is poles apart from the Legislature's clear and unequivocal intention in N.J.S.A. 43:3C-9.5(a), (b) (1997) to vest "a non-forfeitable right to receive benefits" in State pension members. See NJEA, 412 N.J. Super. at 200, 215. Thus, because plaintiff's appointment does not constitute an employment contract, his complaint fails to suggest a cause of action. Printing Mart-Morristown, 116 N.J. at 746.

To the extent we have not addressed plaintiff's remaining arguments, we are satisfied they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.