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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3307-06T1

SERGEANT GREGORY VOCI,

Plaintiff-Appellant,

v.

CITY OF ATLANTIC CITY and  
MICHAEL RUSSACK, jointly,  
severally, and in the alternative,

Defendants-Respondents.

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Argued December 5, 2007 - Decided December 19, 2007

Before Judges Cuff and Lisa.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Docket No. L-17028-06.

Clifford L. Van Syoc argued the cause for appellant (Van Syoc Chartered, attorneys; Mr. Van Syoc and Sebastian B. Ionno, on the brief).

Todd J. Gelfand argued the cause for respondent Michael Russack (Barker & Scott, P.C., attorneys; Mr. Gelfand, on the brief).

Kimberly A. Baldwin, Director, City of Atlantic City Department of Law, attorney for respondent City of Atlantic City (Anthony A. Swan, Deputy City Solicitor, on the letter relying on the brief filed on behalf of respondent Michael Russack).

PER CURIAM

Plaintiff, Sergeant Gregory Voci, a member of the Atlantic City Police Department, is the subject of ongoing disciplinary proceedings. He was charged with violation of departmental regulations prohibiting outside employment without authorization and being untruthful with respect to the investigation of the outside employment matter.

The charges were filed on January 6, 2004. Voci disputed the charges and requested a hearing. Atlantic City is a civil service municipality. A hearing officer was designated and the hearing process commenced. Voci was represented by counsel. Discovery was provided. Testimony was taken, and witnesses against Voci were subject to cross-examination.

At some point in the process, Voci obtained new counsel, who presently represents him. Voci then requested additional discovery materials and sought to recall for further testimony defendant, Michael Russack, a sergeant in the Atlantic City Police Department and an internal affairs officer who participated in the investigation. Russack had previously testified and was subject to extensive cross-examination. Dissatisfied with the manner in which the hearing officer, the City and Russack responded to these requests, Voci filed this action.

In his complaint, Voci alleged that the disciplinary action lacked a factual basis and should be dismissed as a matter of law. He therefore sought dismissal of the charges. Voci further argued that defendants wrongfully withheld documentary evidence to which he was entitled, and the hearing officer committed an "outrageous shirking of [his] obligation to provide the plaintiff with due process" by refusing to compel the City to turn over the documents. According to Voci, that circumstance, together with the difficulties encountered in his efforts to have Russack recalled for further testimony, demonstrated that it would be futile to seek redress at the administrative level. Therefore, if the court did not dismiss the charges, he sought an order compelling the production of various records and physical evidence.

Voci also sought compensatory and punitive damages, together with interest, costs and attorney's fees, arguing that the sum of defendants' misconduct violated his rights under the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 to -2.

Defendants moved to dismiss the complaint for failure to state a claim for which relief can be granted. See R. 4:6-2(e). After hearing oral argument, Judge Armstrong rendered an oral decision on January 12, 2007. She rejected Voci's claim that judicial intervention was warranted in "an ongoing

administrative hearing before a hearing officer where the plaintiff has received notice of the charges and has been afforded the right to a hearing in which he is represented by counsel, may cross-examine witnesses and may present evidence." After reviewing the recognized exceptions to the general requirement to exhaust administrative remedies, the judge concluded that this case did not fit any of the exceptions. Remedies were available to Voci within the administrative process. No final determination at the initial hearing level had yet been rendered. And, Voci maintained the right to appeal within the administrative process and could ultimately seek judicial review from any final adverse administrative decision.

The judge concluded that the civil rights claim was "premature at best" and that the determination of that claim could not be properly resolved until further factual development within the administrative proceedings. She further concluded that final determination of the administrative charges, which may or may not be adverse to Voci, must be achieved before the civil rights claim can be properly evaluated.

Accordingly, the judge entered an order (1) dismissing with prejudice the request for an order for additional discovery or a plenary hearing to determine whether the administrative charges

should be dismissed, and (2) dismissing without prejudice the civil rights claim.

On appeal, Voci argues:

I. THE TRIAL COURT ERRONEOUSLY DISMISSED THE PLAINTIFF'S APPLICATION TO COMPEL DISCOVERY AND A PLENARY HEARING.

II. THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS' MOTIONS TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION PURSUANT TO R. 4:6-2(e).

III. THE TRIAL COURT ERRED BY DISMISSING THE PLAINTIFF'S NJCRA CLAIM.

We reject these arguments and affirm substantially for the reasons expressed by Judge Armstrong in her thorough and well reasoned oral decision of January 12, 2007. We add the following discussion.

Voci initiated this matter as an action in lieu of prerogative writs pursuant to Rule 4:69. This rule consolidated the common law writs in order to streamline an individual's ability to challenge municipal agency decisions. Alexander's Dep't Stores of N.J., Inc. v. Borough of Paramus, 125 N.J. 100, 107 (1991); Loiqman v. Twp. Comm. of the Twp. of Middletown, 297 N.J. Super. 287, 295 (App. Div. 1997). Such actions, however, do not lie "as long as there is available a right of review before an administrative agency which has not been exhausted."

R. 4:69-5 (except when "it is manifest that the interest of justice requires otherwise").

The admonition to exhaust relevant administrative remedies before resort to the courts is "a firmly embedded judicial principle." Garrow v. Elizabeth Gen. Hosp. & Dispensary, 79 N.J. 549, 558-59 (1979). The rule requires parties to pursue available procedures to their final disposition before seeking judicial review. Id. at 559 (quoting Aircraft & Diesel Equip. Corp. v. Hirsch, 331 U.S. 752, 767, 67 S. Ct. 1493, 1500, 91 L. Ed. 1796, 1806 (1947)).

Generally, the rule requiring exhaustion of remedies represents one specific example of the State's longstanding aversion to piecemeal litigation. Id. at 559-60; see also Olds v. Donnelly, 150 N.J. 424, 431 (1997) (noting that joinder rules of entire controversy doctrine attempt "to assure that all aspects of a legal dispute occur in a single lawsuit"); R. 2:2-3(b) (expressing view that trial litigation should not be interrupted by interlocutory appeals except "in extraordinary cases").

However, the exhaustion requirement serves three more specific goals. First, it fosters the efficient resolution of claims before a body possessing greater expertise in the relevant subject area. City of Atlantic City v. Laezza, 80 N.J.

255, 265 (1979). Second, the pursuit of all administrative remedies results in a full factual record, with which a reviewing court can exercise its duty to engage in meaningful review. Ibid.; Triano v. Div. of State Lottery, 306 N.J. Super. 114, 121 (App. Div. 1997) ("[W]e are not a court of record and must depend on a record developed below."). Finally, the exhaustion rule reflects the common sense notion that the favorable resolution of an administrative action obviates the need to resort to the courts for relief. Laezza, supra, 80 N.J. at 265; Garrow, supra, 79 N.J. at 559 ("If the complaining party prevails before the administrative agency . . . judicial proceedings would have been unnecessary and the court would have intervened needlessly.").

The exhaustion rule, however, does not amount to a rigid jurisdictional command. Rather, its application is discretionary. Sanchez v. Dep't of Human Servs., 314 N.J. Super. 11, 32 (App. Div. 1998) (permitting plaintiff to bypass administrative remedies when the only issue was the constitutionality of tying cash assistance to residency); see Swede v. City of Clifton, 22 N.J. 303, 315 (1956) (exhaustion rule is "one of convenience, not an indispensable precondition"). For example, resort to the courts may be proper when the dispute presents only a question of law; the available

administrative remedies would prove futile; irreparable harm would result; the agency's jurisdiction over the dispute is doubtful; or an overwhelming public interest requires prompt judicial resolution. Abbott v. Burke, 100 N.J. 269, 298 (1985); N.J. Civil Serv. Ass'n v. State, 88 N.J. 605, 613 (1982); Garrow, supra, 79 N.J. at 561; Brunetti v. Borough of New Milford, 68 N.J. 576, 589 (1975).

Voci argues that two exceptions to the exhaustion rule apply, namely (1) the entire dispute rests on a question of law and (2) the interests of justice require a judicial conclusion that exhaustion of administrative remedies would be futile. We disagree.

Factual issues necessary to determination of the underlying administrative charges remain unresolved. Development of a full factual record is necessary for resolution of the matter, and the administrative proceeding is the appropriate forum for that purpose. Further, we reject Voci's futility argument. We find unpersuasive his reliance on Ferrari v. Melleby, 134 N.J. Super. 583 (App. Div. 1975); Aristizibal v. City of Atlantic City, 380 N.J. Super. 405 (Law Div. 2005); and Fraternal Order of Police Lodge No. 1 Camden v. City of Camden Police Department, 368 N.J. Super. 56 (Law Div. 2003). All of these cases are materially

distinguishable and fail to provide authority for Voci's request for judicial intervention.

Finally, we agree with Judge Armstrong's rationale and conclusion that Voci's civil rights claim was not ripe for consideration. See K. Hovnanian Cos. of N. Cent. Jersey, Inc. v. N.J. Dep't of Env'tl. Prot., 379 N.J. Super. 1, 10 (App. Div.), certif. denied, 185 N.J. 390 (2005).

Affirmed.

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

  
CLERK OF THE APPELLATE DIVISION