

NOT TO BE PUBLISHED WITHOUT APPROVAL
FROM THE COMMITTEE ON OPINIONS

MICHAEL INGRASSELINO and
DIANNA INGRASSELINO;

Plaintiffs,

v.

MICHAEL FOLIGNO, individually and in
his capacity as Chief of Police of the
Borough of Elmwood Park, BOROUGH
OF ELMWOOD PARK, and ROBERT
VERRY individually;

Defendants.

**SUPERIOR COURT OF NEW
JERSEY**
LAW DIVISION – BERGEN
COUNTY

DOCKET NO. **BER-L-1051-19**

Civil Action

OPINION

Argued: July 22, 2022

Decided: July 28, 2022

HONORABLE ROBERT C. WILSON, J.S.C.

Kieran M. Dowling, Esq. appearing on behalf of Plaintiffs Michael Ingrasselino and Dianna Ingrasselino (from Schiller, Pittenger & Galvin, P.C.)

Mary C. McDonnell, Esq. and Kyle Trent, Esq. appearing on behalf of Defendants Michael Foligno and Borough of Elmwood Park (from Pfund McDonnell, P.C. and Apruzzese, McDermott, Mastro & Murphy, P.C., respectively)

FACTUAL BACKGROUND

THIS MATTER arises out of Plaintiff Michael Ingrasselino’s employment and subsequent termination from the Elmwood Park Police Department (“Police Department”). Michael Ingrasselino was employed as a patrol officer by the Police Department from 2006, through September 20, 2018, when he was terminated. He was employed as a police officer for nineteen years and eleven months. Plaintiff Dianna Ingrasselino (together with Michael Ingrasselino to be referred to as “Plaintiffs”) was at the time of the filing of this complaint and is currently, Michael Ingrasselino’s wife. Defendant Michael Foligno (“Defendant Foligno”) is Chief of Police for the Borough of Elmwood Park Police Department. Defendant Borough of

Elmwood Park (“Defendant Borough”, and together with Defendant Foligno to be referred to as “Defendants”) is a municipal corporation organized under the laws of the State of New Jersey. Defendant Robert Verry, a retired Police Chief, was voluntarily dismissed from this action. On February 7, 2019, Plaintiffs filed their four-count complaint alleging violations of the New Jersey Civil Rights Act (“NJ CRA”), the New Jersey Conscientious Employee Act (“CEPA”), and the Intentional Infliction of Emotional Distress. Michael Ingrasselino’s termination for cause was affirmed by the OAL, the New Jersey Civil Service Commission, and the Appellate Division.

Defendant Michael’s father, Donald Ingrasselino, served as the Chief of Police in Elmwood Park from 2001 to December 31, 2011, when he retired. Defendant Foligno has been an Elmwood Park Police Officer since December 1989 and was promoted through the ranks and became Chief of Police in 2014. Michael Ingrasselino was hired by the Police Department in 2006. In 2007, then Chief Donald Ingrasselino disciplined Defendant Foligno which resulted in a demotion and suspension. Michael Ingrasselino was assigned to the Detective Bureau by then Chief Ingrasselino, after having been employed as a police officer for less than one year. Michael Ingrasselino had been assigned to field training for one to two months before being assigned to the Detective Bureau. Elmwood Park Ordinance #2-27.3 states that officers placed in the Detective Bureau require a minimum of three years and to have completed courses in criminal investigations. Chief Donald Ingrasselino retired December 31, 2011.

Michael Ingrasselino alleges that while serving at the Detective Bureau, Defendant Foligno, the supervisor at that time, would ride along with him. Michael Ingrasselino alleges that during these “ride-alongs” Defendant Foligno told him that Michael Ingrasselino and his partner were making so many arrests and must have been violating people’s civil rights. However, Michael Ingrasselino was never the subject of an internal affairs (“IA”) investigation for

conducting too many arrests, and Defendant Foligno never provided instruction or guidance during the ride-along. Michael Ingrasselino made several complaints to supervisors about Defendant Foligno's alleged harassment and told the Chief of Police at the time that he was scared for his job. In response to the claims, Michael Ingrasselino was told that he should have known he would become a target from department members once his father had retired.

In 2014, Defendant Foligno became Chief of the Police Department. In December of that year the Narcotics Enforcement Unit was reinstated as part of the Detective Bureau. The Detective Bureau is purportedly considered a promotion among officers. Defendant Foligno rejected Michael Ingrasselino's request to be transferred back to the Narcotics Unit because he wanted someone younger and more aggressive in the unit. Defendant Foligno then assigned Michael Ingrasselino's old narcotics partner to be a new recruit's partner in the Narcotics Unit, although he had less experience and seniority. Michael Ingrasselino was also denied 911 training and claims he was being set up to fail.

Complaints were made about Michael Ingrasselino by several officers. On June 4, 2018, the Police Department suspended Michael Ingrasselino without pay and cut off his benefits. Michael Ingrasselino was subsequently terminated on September 20, 2018, for alleged falsification of police reports, not the complaints made against him. Progressive discipline was not applied in his case, and there is no evidence that the Police Department applied progressive discipline to the IA matter that led to his termination.

Michael Ingrasselino filed an appeal of the Final Notice of Disciplinary Action ("FNDA") with the Civil Service Commission, which then transmitted the case to the Office of Administrative Law ("OAL"). Michael Ingrasselino testified about Defendant Foligno's animosity toward him. Defendant Borough presented testimony to rebut the allegations of bias, harassment, and

retaliation. On March 16, 2020, the Honorable Ernest M. Bongiovanni, A.L.J. issued a decision in a written opinion, sustaining all charges against Michael Ingrasselino and affirming his termination for cause. On May 1, 2020, the New Jersey Civil Service Commission affirmed the decision, and on March 29, 2022, the Appellate Division affirmed the OAL's decision terminating Michael Ingrasselino, as a police officer, for cause finding no retaliation.

Dianna Ingrasselino alleges that Defendants' actions separately violated her protected rights as set forth in the New Jersey Constitution, particularly the First Amendment, securing her rights of intimate association. She further alleges that Defendants' actions were based solely on the fact that she is the wife of Michael Ingrasselino. She alleges that the IA investigation violated her rights by failure to keep from harm. Dianna Ingrasselino was pregnant when the IA interview was conducted, and she claimed it was intimidating and badgering.

Plaintiffs alleged four counts in their Complaint: Count I of Violations of Michael Ingrasselino's First Amendment rights protected by the NJCRA; Count II of Violations of Dianna Ingrasselino's First Amendment rights protected by NJCRA; Count III of Violations of the New Jersey Conscientious Employee Protection Act; and Count IV of Intention Infliction of Emotional Distress. Plaintiffs voluntarily dismissed Counts III and IV, leaving Counts I and II as the remaining causes of action and the subject of this motion.

For the reasons below, Defendants' Motion for Summary Judgment is **GRANTED**.

SUMMARY JUDGMENT STANDARD

The New Jersey procedural rules state that a court shall grant summary judgment "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." R. 4:46-2(c). In Brill v.

Guardian Life Insurance Co., 142 N.J. 520 (1995), the Supreme Court set forth a standard for courts to apply when determining whether a genuine issue of material fact exists that requires a case to proceed to trial. Justice Coleman, writing for the Court, explained that a motion for summary judgment under R. 4:46-2 requires essentially the same analysis as in the case of a directed verdict based on R. 4:37-2(b) or R. 4:40-1, or a judgment notwithstanding the verdict under R. 4:40-2. Id. at 535-536. If, after analyzing the evidence in the light most favorable to the non-moving party, the motion court determines that “there exists a single unavoidable resolution of the alleged dispute of fact, that issue should be considered insufficient to constitute a ‘genuine’ issue of material fact for purposes of R. 4:46-2.” Id. at 540.

RULE OF LAW AND DECISION

Plaintiffs asserts two causes of action, one for each Plaintiff, involving their civil rights. The NJCRA, N.J.S.A. 10:6-2, is modeled after the federal counterpart, 42 U.S.C. §1983, and creates a private cause of action for violations of civil rights secured by the federal and New Jersey Constitutions. Rezem Family Associates, LP v. Borough of Millstone, 423 N.J. Super. 103, 115 (App. Div. 2011). A plaintiff who alleges retaliation for exercising a constitutional right must prove “(1) A constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory conduct.” Mirabella v. Villard, 853 F.3d 641, 649 (3d. Cir. 2017). Specific to a First Amendment intimate association violation, a plaintiff must prove (1) that the conduct at issue was constitutionally protected, and (2) that it was a substantial or motivating factor for the alleged retaliatory conduct. Baldassare v. State of N.J., 250 F.3d 188, 194-95 (3d. Cir. 2001); see also Starnes v. butler Cty. Court of Common Pleas, 50th Judicial Dist., 971 F.3d 416, 431 (3d. Cir. 2020) (“To state a claim for violation of the First Amendment right to

intimate association, a plaintiff must allege conduct that interferes directly and substantially with her right to form or maintain a protected intimate relationship.”).

Plaintiffs have already asserted these claims and do not present any new issue that was not fully argued and rejected as part of the Civil Service appeal of Michael Ingrasselino’s termination. During that proceeding, Michael Ingrasselino contended as a defense that his termination and the alleged disciplinary proceeding were a product of “special bias” against him because of his father’s history as the Chief of Police and his relationship with Defendant Foligno. The ALJ, Civil Service Commission, and Appellate Division rejected such assertions in their entirety and concluded that there was no “special bias” against Michael Ingrasselino and Defendant Borough had bona fide legal basis to terminate Michael Ingrasselino based on egregious misconduct. Plaintiffs’ assertion that a dispute exists purportedly by asserting more “facts” about the alleged bias and retaliation is essentially an attempt to get a second bite at the proverbial apple.

The doctrine of collateral estoppel forecloses the re-litigation of an issue where: (1) the issue to be precluded is identical to the issue in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against who the doctrine is asserted was a party to or in privity with a party to the earlier proceeding. Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006). New Jersey courts specifically “recognize[] that concerns about finality and consistency as between tribunal findings, rooted in principles of equity and economy, are applicable to the intersection of judicial and administrative proceedings.” Winters v. North Hudson Reg’l Fire and Rescue, 212 N.J. 67, 87 (2012).

Defendants satisfy all the elements for application of collateral estoppel in this matter based on Michael Ingrasselino's unsuccessful appeal to the Appellate Division. The Winters Court specifically "put users of the public employment system of employee discipline on notice that integration of employer-retaliation claims should be anticipated and addressed where raised as part of the discipline review process" and that "[f]indings made as part of the discipline process will have preclusive impact in later employment discrimination litigation raising allegations of employer retaliation based on the same transactional set of facts." Id. at 71.

Michael Ingrasselino pursued the same assertions that he was targeted and harassed because of his relationship to his father, through the OAL proceeding. These assertions were essential to both claims. The ALJ considered and rejected Plaintiffs extensive efforts to establish that he was subjected to improper bias, harassment, and retaliation at length in that decision. The ALJ found that the allegations were not credible, and that Michael Ingrasselino was not subject to special bias against him. The Civil Service Commission adopted, and the Appellate Division affirmed the same findings and determinations.

Michael Ingrasselino chose to pursue his Civil Service Appeal and to present the claim that he was the target of improper harassment and bias because of his relationship with his father as a defense. He and his attorney did so with clear notice that Winters made findings on such claims preclusive to further litigation. Michael Ingrasselino's claims were soundly and thoroughly rejected. Plaintiffs cannot relitigate those identical claims under the NJCRA and seek a second bite at the apple as all the elements of collateral estoppel are present.

Plaintiffs claim that collateral estoppel does not apply to Dianna Ingrasselino because she was not a party to the Civil Service proceedings. However, collateral estoppel also applies to a person "in privity with a party to the earlier proceeding." Olivieri, 186 N.J. at 521. "The concept

of privity, as well as its parameters, are necessarily imprecise[.]” Zirger v. Gen. Acc. Ins. Co., 144 N.J. 327, 338 (1996). “Privity states no reason for including or excluding one from the estoppel of a judgment” and “[i]t is merely a word used to say that the relationship between the one who is a party on the record and another is close enough to include that other within the res judicata.” Id. 144 N.J. at 338. New Jersey courts have found that a spousal relationship is close enough to be in privity with each other for purposes of applying collateral estoppel. See, e.g., Shernoff v. Day Pitney, LLC, 2009 WL 4251116 (N.J. Super. Ct. App. Div. Nov. 20, 2009) (explaining that “plaintiff was clearly in privity with a party to the earlier proceeding” because her husband was a party to that proceeding).

Here, Plaintiffs are spouses and are represented by the same counsel. The nature of both their claims arise entirely from Michael Ingrasselino’s prior employment relationship with Defendant Borough. Plaintiffs’ allegation of bias and harassment arising from that employment relationship were fully litigated through the Civil Service appeal process and ultimately affirmed by the Appellate Division. As such, Plaintiffs are entwined so closely as to be in privity and therefore collateral estopped by the Civil Service proceeding. Dianna Ingrasselino’s claim concerns only the IA investigation of her husband that led to Michael Ingrasselino’s termination and not conduct that violated her individual civil rights.

Plaintiffs assert that collateral estoppel should not apply because they seek to challenge the quality and extensiveness of the OAL hearing. However, the Court in Winters emphasized that there is “no significant difference[] I the quality or extensiveness of the proceedings’ between [the] Merit System Board and Superior Court.” Winters, 212 N.J. at 88 (quoting Ensslin v. Twp. Of N. Bergen, 275 N.J. Super. 352, 371 (App. Div. 1994)).

Like the plaintiff in Winters, “[n]othing prevented plaintiff from presenting his defense more fully than he did” during the Civil Service appeal and “[d]iscovery was available to him as an OAL litigant.” Winters, 212 N.J. at 73. “[I]t is not unfair to require him to present the defense that he raised in the administrative forum and to accept the consequences of his strategy.” Id. Plaintiffs must accept the consequences of their strategy of pursuing the harassment, bias, and related defenses raised during the Civil Service appeal process. Any disagreement with the quality or extensiveness of the OAL hearing or Civil Service discipline process in general is beyond the scope of the present Complaint and could only be addressed by the Appellate Division on appeal from the Civil Service decision. The Appellate Division rejected all of Michael Ingrasselino’s arguments on appeal, and Dianna Ingrasselino is collaterally estopped from relitigating any disagreement with that outcome or the process in this matter. Therefore, Plaintiffs’ claims are hereby DISMISSED.

CONCLUSION

As such, and for the reasons set forth in this decision, Defendants’ Motion for Summary Judgment is **GRANTED**.