

SUPREME COURT OF NEW JERSEY
C-529 September Term 2024
089629

Magdoulén A. Sawires,

Plaintiff-Petitioner,

v.

ORDER

Elizabeth Board of
Education and New Jersey
Department of Labor
and Workforce
Development,

Defendants-Respondents.

A petition for certification of the judgment in A-000071-23
having been submitted to this Court, and the Court having considered the
same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
28th day of May, 2025.


CLERK OF THE SUPREME COURT

(C 1-1)

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0071-23

MAGDOULEN A. SAWIRES,

Plaintiff-Appellant,

v.

ELIZABETH BOARD OF
EDUCATION and NEW JERSEY
DEPARTMENT OF LABOR
AND WORKFORCE
DEVELOPMENT,

Defendants-Respondents.

Submitted April 29, 2024 – Decided June 3, 2024

Before Judges DeAlmeida and Jacobs.

On appeal from the Superior Court of New Jersey, Law
Division, Union County, Docket No. L-1760-23.

Magdoulén A. Sawires, appellant pro se.

La Corte, Bundy, Varady & Kinsella, attorneys for
respondent Elizabeth Board of Education (Brian James
Kane, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondent New Jersey Department of Labor and Workforce Development (Janet Greenberg Cohen, Assistant Attorney General, of counsel; Kathryn Blair Moynihan, Deputy Attorney General, on the brief).

PER CURIAM

Plaintiff Magdoulén Sawires appeals three orders of the Law Division: (1) an August 18, 2023 order dismissing without prejudice her complaint against defendant, Elizabeth Board of Education (EBE); (2) an August 18, 2023 order dismissing without prejudice her complaint against defendant, the New Jersey Department of Labor and Workforce Development, Division of Workers' Compensation (DOLWD); and (3) a September 25, 2023 order denying her motion to "terminate the discharge decision" of the DOLWD. Because the trial court had no jurisdiction to hear plaintiff's complaint, we affirm.

I.

We discern the following facts from the record. In January 2022, plaintiff began employment as a non-tenured eighth-grade science teacher with EBE. On May 13, 2022, EBE issued a letter informing plaintiff that her contract for the 2022-2023 school year would not be renewed. In response to a request from plaintiff to explain the decision, on May 26, 2022, EBE advised it had "determined not to renew [her] contract for the 2022-2023 school year for

performance[-]related reasons" and that her last day of employment would be June 30, 2022.

On July 5, 2022, plaintiff filed a claim for unemployment benefits with the DOLWD. The agency mailed plaintiff a Notice of Determination, stating her eligibility to receive unemployment benefits was effective July 31, 2022, based on a termination date of June 30, 2022. Plaintiff received benefits through November 5, 2022, except for one week in October when she claimed to be ill and did not attend a prospective job interview. Plaintiff filed an administrative appeal regarding her unemployment benefits with the DOLWD.

On May 24, 2023, plaintiff filed a complaint in the Law Division against EBE and the DOLWD, claiming, among other things, defendants "discharge[d] me from the work without a good cause, action plan, or even any investigation process." In addition, plaintiff challenges the legality of the one-week period in October for which the DOLWD determined she was ineligible to receive benefits. Plaintiff also disputed the June 30, 2022 discharge date as determined by the DOLWD, contending that she continued receiving "varying paychecks" through July and August 2022, in apparent contradiction to the determined discharge date.

Before filing their respective answers, both defendants moved to dismiss plaintiff's complaint. EBE grounded its motion on lack of subject matter jurisdiction pursuant to Rule 4:6-2(a), noting that as a provisional employee, plaintiff's challenge to the decision not to renew her contract must be filed with the Department of Education (DOE), pursuant to N.J.S.A. 18A:6-9 to 33. In its motion, the DOLWD argued that plaintiff failed to exhaust her administrative remedies before seeking judicial relief, which would, in any event, be in this court, not the Law Division.

On August 18, 2023, the trial court issued an oral opinion concluding it had no jurisdiction over the non-renewal of plaintiff's EBE contract or plaintiff's allegations relating to her unemployment benefits. The court entered two orders dated August 18, 2023, one dismissing the complaint against EBE without prejudice and one dismissing the complaint against the DOLWD without prejudice.

This appeal followed. Prior to the submission of plaintiff's merits brief, she moved in the trial court "to terminate the discharge decision, which was sent to me from the labor department on 6/20/2022." The precise meaning of this motion is not clear. On September 25, 2023, the trial court denied the motion,

concluding it lacked jurisdiction to entertain the motion due to the pending appeal. See R. 2:9-1.

Plaintiff subsequently filed an amended notice of appeal and case information statement challenging the September 25, 2023 order.

On appeal, Plaintiff raises the following arguments:

POINT I: NON-RENEWAL OF EMPLOYMENT CONTRACT – POOR PERFORMANCE. [SIC]

POINT II: DISCHARGE DETERMINATION – APPEAL AND REVIEW REQUEST. [SIC]

POINT III: THE TRIAL COURT DENIED THE COMPLAINT, ASKING [PLAINTIFF] TO COMPLAIN TO THE DEPARTMENT OF EDUCATION.

II.

Plaintiff maintains EBE violated "school laws" by failing to renew her contract. Specifically, plaintiff claims EBE failed to provide her with good cause for termination, an action plan, or an investigation. In support of this position, she cites N.J.S.A. 18A:6-9, a statute that vests with the Commissioner of the DOE, "jurisdiction to hear and determine . . . all controversies and disputes arising under the school laws" Plaintiff also contends the DOLWD is a proper party to this action based on the notice she received from EBE declining to renew her contract for the upcoming school year.

Whether a court has subject matter jurisdiction is subject to de novo review. AmeriCare Emergency Med. Serv., Inc. v. City of Orange Twp., 463 N.J. Super. 562, 570 (App. Div. 2020). A court cannot hear a case to which it lacks subject matter jurisdiction. Peper v. Princeton Univ. Bd. of Trustees, 77 N.J. 55, 65 (1978) (citing State v. Osborn, 32 N.J. 117, 122 (1960)). Similarly, subject matter jurisdiction cannot be waived by a party's failure to timely object. Lay Fac. Ass'n of Reg'l Secondary Schs. of Archdiocese of Newark v. Roman Cath. Archdiocese of Newark, 122 N.J. Super. 260, 269 (App. Div. 1973).

Dismissal is also required where the party seeking court review has not exhausted its administrative remedies before the relevant State agency. See R. 2:2-3(a)(2); Ortiz v. N.J. Dep't of Corr., 406 N.J. Super. 63, 69 (2009). "Exhaustion of administrative remedies before resort to the courts is a firmly embedded judicial principle This principle requires exhausting available procedures, that is, 'pursuing them to their appropriate conclusion, and correlatively . . . awaiting their final outcome before seeking judicial intervention.'" Garrow v. Elizabeth Gen. Hosp. & Dispensary, 79 N.J. 549, 558-59 (1979) (second alteration in original) (citations omitted) (quoting Aircraft & Diesel Equip. Corp. v. Hirsch, 331 U.S. 752, 767 (1947)). Even in cases that involve only a question of law, the "extraordinary course of by-passing the

administrative remedies' . . . militate[s] against a sound determination, and therefore quite possibly against the interests of justice." Essex Council No. 1, N.J. Civ. Serv. Ass'n v. Gibson, 118 N.J. Super. 583, 586 (App. Div. 1972) (quoting Roadway Express, Inc. v. Kingsley, 37 N.J. 136, 147 (1962)).

We begin with plaintiff's claims against the DOE. The DOE is "a principal department in the executive branch of the state government," N.J.S.A. 18A:4-1. The Commissioner is "[t]he chief executive and administrative officer of the department," who has "general charge and supervision of the work of the department," N.J.S.A. 18A:4-22(a). The Commissioner has "jurisdiction to hear and determine all controversies and disputes arising under the school laws" N.J.S.A. 18A:6-9. "The Commissioner has jurisdiction over certain disputes in the absence of an agreement . . . because it concerns major educational policy or because the issues are controlled by the school laws." S. Orange-Maplewood Educ. Ass'n v. Bd. of Educ. of Sch. Dist. of S. Orange and Maplewood, 146 N.J. Super. 457, 462 (App. Div. 1977); see also Bower v. Bd. of Educ. of E. Orange, 149 N.J. 416, 420 (1997). A final agency decision of the DOE Commissioner may be appealed to this court. R. 2:2-3(a)(2).

The record establishes that plaintiff has taken no steps to exhaust her administrative remedies through the DOE. Even if plaintiff had taken such steps

and obtained a final agency decision from the DOE Commissioner, the Law Division lacks jurisdiction to address her challenge to the EBE's decision not to renew her contract. Instead, plaintiff would have had to file an appeal to this court. Id.; see also In re Protest of Contract for Retail Pharmacy Design, ___ N.J. ___, ___ (2024) (slip op. at 14) (stating that "[u]nder Rule 2:2-3(a)(2), the Appellate Division's authority to review a state administrative agency's final decision or action is exclusive").

Similarly, with respect to plaintiff's claims against the DOLWD, a challenge to a decision relating to unemployment benefits must be filed with the DOLWD. After a series of administrative avenues of review, the Board of Review is authorized to issue a final agency decision with respect to an application for unemployment benefits. N.J.S.A. 43:21-6(h). That final agency decision may be appealed to this court, not the Law Division. See R. 2:2-3(a)(2).

The trial court, therefore, correctly determined that it lacked jurisdiction to address plaintiff's claims against the DOE and the DOLWD. The two August 18, 2023 orders dismissing plaintiff's complaint are, therefore, affirmed.¹

¹ We note that both of the August 18, 2023 orders dismiss portions of the complaint without prejudice. A dismissal of a complaint without prejudice is generally not a final order from which an appeal as of right can be taken to this court. See Kwiatkowski v. Gruber, 390 N.J. Super. 235, 237 (App. Div. 2007).

While plaintiff's amended notice of appeal states that she is appealing the September 25, 2023 order, her merits brief contains no arguments concerning the validity of that order. She has, therefore, waived her appeal of the September 25, 2023 order. "[A]n issue not briefed is deemed waived." Telebright Corp. v. Dir. N.J. Div. of Tax'n, 424 N.J. Super. 384, 393 (App. Div. 2012) (deeming a contention waived when the party failed to include any arguments supporting the contentions in its brief); Pressler and Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2024). Moreover, it is well-established that the Law Division was without jurisdiction to consider plaintiff's motion filed while this appeal was pending. R. 2:9-1.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION

As a general rule, a party must move for leave to appeal from an interlocutory order. R. 2:5-6(a). However, because the trial court correctly concluded that it lacked jurisdiction to adjudicate plaintiff's claims against the DOE and the DOLWD, and given that the Law Division would not have jurisdiction to adjudicate an appeal from any final agency decision, plaintiff may obtain from those agencies arising from the claims alleged in the complaint, we consider the two August 18, 2023 orders to be final orders dismissing the complaint with prejudice.

Form C**Plaintiff or Filing Attorney Information:**Name Magdoulen A. Sawires

NJ Attorney ID Number _____

Address 1010 Morning Glory Dr.Email Address Magdoulen82@gmail.comTelephone Number (609) 379-2337 ext. _____

Superior Court of New Jersey

Law Division

Union ☒ County _____Docket Number UNN-L-1760-23Magdoulen A. Sawires,

Plaintiff,

v.

Civil Action

Elizabeth BOE & Labor Department,

Defendant(s).

Order

This matter having been brought before the Court on Motion of ☒ plaintiff / ☐ defendant for an Order (describe relief requested):

For the previous reasons, I request your Honor to terminate the discharge decision, which was sent to me from the labor department on 06/30/2022. Returning to work at Elizabeth Board of Education, I am willing to submit the letter of resignation upon their request, Allowing them to pay me the past year's income amount after removing the labor department money I received.

and the Court having considered the matter and for good cause appearing,

On this 22nd day of September, 2023 it is **ORDERED** as follows:

DENIED

Ans This motion cannot be granted due to a pending appeal.

☒ Opposed☐ Unopposed

John G. Hudak
John G. Hudak, J.S.C.

J.S.C.

359-24
OAL Dkt. No. EDU 08315-24
Agency Dkt. No. 176-6/24

New Jersey Commissioner of Education

Final Decision

Magdoulén A. Sawires,

Petitioner,

v.

Board of Education of the City of Elizabeth,
Union County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4*, and respondent's reply thereto, have been reviewed and considered.

The threshold procedural issue in this case is whether the petition should be dismissed pursuant to the 90-day rule, *N.J.A.C. 6A:3-1.3(i)*. *Kaprow v. Bd. of Educ. of Berkeley Twp.*, 131 N.J. 572, 582 (1993). Petitioner challenges respondent's decision not to renew her employment contract for the 2022-2023 school year. She received a notice of nonrenewal from respondent on May 13, 2022, and last worked for respondent as a nontenured teacher in late June 2022. She filed her petition of appeal on June 4, 2024, more than two years after having received the notice of nonrenewal.

The Administrative Law Judge (ALJ) concluded that, pursuant to *N.J.A.C. 6A:3-1.3(i)* and existing case law, her petition was untimely filed because the time to appeal began to run when

petitioner received notice of the nonrenewal on May 13, 2022. The ALJ further concluded that neither the filing of a lawsuit in the Superior Court nor an appeal to the Appellate Division tolls the 90-day time period to file a petition. The ALJ also concluded that even assuming petitioner did not fully understand that she was no longer employed by respondent until September 2022 (although this new contention is contradicted by the allegations contained in her petition) and that was the date from which the filing period began, the petition she filed in June 2024 is nonetheless untimely.

In her exceptions, petitioner does not challenge the ALJ's factual findings. Rather, she reiterates the arguments she made before the ALJ and appears to assert that because she filed her petition within sixty days of having received an Appellate Division decision directing her to do so,¹ the merits of her case should be considered. However, she does not cite any legal authority to support her position.

In its reply, respondent asserts that petitioner's exceptions are procedurally defective as they do not specify what facts or legal conclusions that petitioner takes exception to. Respondent claims that petitioner's exceptions merely reiterate the arguments that were already considered by the ALJ.

Upon review, the Commissioner adopts the Initial Decision as the final decision in this matter. The Commissioner concurs with the ALJ's factual findings and conclusion that the petition was untimely filed. *N.J.A.C. 6A:3-1.3(i)* mandates that petitions shall be filed "no later

¹ While the Appellate Division's decision indicated that petitioner failed to exhaust her administrative remedies through the Department of Education, it did not direct petitioner to file a petition with the Commissioner or suggest in any way that such a petition would be timely. *Sawires v. Elizabeth Bd. of Educ.*, 2024 N.J. Super. Unpub. LEXIS 1006 (App. Div. June 3, 2024).

than the 90th day from the date of receipt of the notice of a final . . . action by the district board of education.” The 90-day limitation period “represents a fair and reasonably-necessary requirement for the proper and efficient resolution of disputes under the school laws.” *Kaprow*, 131 N.J. at 582. It “provides a measure of repose” and “gives school districts the security of knowing that administrative decisions regarding the operation of the school cannot be challenged after ninety days.” *Ibid*.

Here, the ALJ correctly concluded that the 90-day limitation period began when petitioner received the May 13, 2022, nonrenewal letter. *Salazar-Linden v. Bd. of Educ. of Twp. of Holmdel, Monmouth Cnty.*, Commissioner Decision No. 99-08 at 5-6 (March 3, 2008), *aff'd*, 2009 N.J. Super. Unpub. LEXIS 2713 * (App. Div. Oct. 28, 2009); *Jordan v. Bd. of Educ. of N. Hunterdon-Voorhees Reg'l High Sch. Dist.*, OAL Dkt. No. EDU 11825-14, Initial Decision at 8-9 (March 2, 2015), *adopted*, Commissioner Decision No. 162-15 (May 20, 2015), *aff'd*, 2017 N.J. Super. Unpub. LEXIS 1865 * (App. Div. July 21, 2017). It is undisputed that petitioner received the nonrenewal letter on May 13, 2022. Therefore, she had a meaningful opportunity to file her petition within the mandatory 90-day timeframe. The filing deadline is not subject to change based upon a petitioner’s legal strategy or a decision to pursue lawsuits in a different forum; that would defeat the measure of repose to which school districts are entitled. *See, generally, Nissman v. Bd. of Educ. of Twp. of Long Beach Island, Ocean Cnty.*, 272 N.J. Super. 373, 382 (App. Div. 1994) (affirming State Board decision to dismiss petition as time barred and explaining that while petitioner may have opted not to file a petition sooner for tactical reasons, the board “was entitled to know within 90 days of its action whether its [decision] was going to be challenged”).

"While the Commissioner has the discretion to relax the [90-day] rule . . . this extraordinary relief has been reserved only for those situations where a substantial constitutional issue is presented or where a matter of significant public interest is involved, beyond that of concern only to the parties." *Smith v. State-Operated Sch. Dist. of City of Paterson*, OAL Dkt. No. EDU 06076-14, Initial Decision at 6 (Nov. 6, 2014), *adopted*, Commissioner Decision No. 491-14 (Dec. 18, 2014). Here, petitioner's claims are specific to her personal employment relationship with respondent. Thus, the Commissioner holds that a relaxation of the ninety-day rule is unwarranted in this case.

Accordingly, respondent's motion to dismiss is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²


ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 30, 2024
Date of Mailing: October 2, 2024

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

10/19/2023



Olga Hugelmeyer
Superintendent of Schools

May 13, 2022

Magdoulén Alfý Sawires
School No. 5

RE: NON-RENEWAL OF CONTRACT

Dear Magdoulén Alfý Sawires:

Pursuant to N.J.S.A. 18A:27-10 (b), please accept this letter as official notice that you will not be offered employment in the Elizabeth Public Schools for the 2022-2023 school year. Consequently, your last day of work will be June 30, 2022.

Pursuant to N.J.S.A. 18A:27-3.2 and N.J.S.A. 18A:27-4.1, you have the right to a written statement of reasons for your non-renewal, provided you submit a request, in writing, within fifteen (15) days from receipt of this letter. If you request a statement of reasons for your non-reemployment, same shall be provided to you, in writing, within thirty (30) days after receipt of your request.

Finally, after receiving the statement of reasons for non-renewal, you may request an informal appearance before the Board of Education. This request must be submitted in writing within ten (10) calendar days of receipt of the statement of reasons.

You will receive information about COBRA benefits under a separate cover. If you have any questions, please feel free to contact the Human Resources Department.

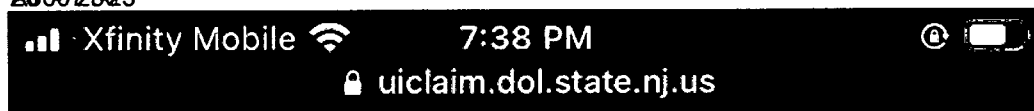
We thank you for your services to the Elizabeth Public Schools and wish you well in your future endeavors.

Sincerely,

Olga Hugelmeyer
Superintendent of Schools

Office of the Superintendent

10/19/2023



You have successfully filed your New Jersey Unemployment Insurance claim. You will receive notification of when and how to claim your benefits. Please take note of your Confirmation Number listed below. If you would like to keep a copy of this Confirmation, click the "Print Page" button below.

Confirmation Date/Time:

July 6, 2022 7:37 PM

Confirmation Number:

NJS22020753131

Date of Claim:

06-26-2022

Program Type:

UI

Claim Type:

New