

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2291-11T2

230-232 FORT DIX STREET,
WRIGHTSTOWN, NEW JERSEY,

Petitioner-Appellant,

v.

BOROUGH OF WRIGHTSTOWN,

Respondent-Respondent.

ELIAS L. SCHNEIDER, EXECUTOR
OF THE ESTATE OF ANNA SCHNEIDER,

Plaintiff,

v.

ANDREW R. ROSEN and WRIGHT
CLEANERS,

Defendants-Appellants,

and

BOROUGH OF WRIGHTSTOWN,

Defendant/Intervenor-
Respondent.

Argued January 16, 2013 - Decided October 9, 2013

Before Judges Simonelli, Koblitz and
Accurso.

On appeal from the New Jersey Department of Community Affairs, Docket No. OCA-407-10 and from Superior Court of New Jersey, Law Division, Burlington County, Docket No. L-1063-07.

Louis Giansante argued the cause for appellants (Giansante & Assoc., LLC, attorneys; Mr. Giansante, of counsel and on the briefs).

Nicholas J. Costa argued the cause for respondent (Costa, Vetra, LaRose & Costa, attorneys; Mr. Costa, of counsel and on the brief).

Jeffrey S. Chiesa, Attorney General, attorney for respondent Department of Community Affairs (Debra A. Allen, Deputy Attorney General, on the statement in lieu of brief).

The opinion of the court was delivered by
ACCURSO, J.A.D.

This appeal arises out of a redevelopment plan adopted by the Borough of Wrightstown (Wrightstown or the Borough) in 1999. Defendant Andrew R. Rosen, the owner of Wright Cleaners, a business affected by the plan, appeals from final orders entered by the Law Division and the Department of Community Affairs (the Department) dismissing his claims relating to the redevelopment plan and denying him relocation benefits. We affirm.

Rosen operated Wright Cleaners from 1969 until he was ejected from the premises by order of the Law Division in 2007. The business was located just outside the main gate of Fort Dix

and catered to military personnel working on the base. Rosen did not own the building housing the business, but leased the premises from owner Anna Schneider and later her estate. At the time of the events at issue, Rosen was a holdover tenant in a month-to-month tenancy pursuant to a triple net lease that expired in 1985.

Wrightstown enacted the ordinance adopting its redevelopment plan in 1999. The plan provided that the Borough Council would serve as the redevelopment agency and that it would contract with an outside agency to provide relocation assistance to residents displaced by the redevelopment. In October 2003, the Borough wrote to Rosen to advise that it intended to acquire his leasehold, and that if his business were displaced as a result of the project, he would be eligible for relocation benefits under the Relocation Assistance Act, N.J.S.A. 20:4-1 to -22 (the Relocation Act). Enclosed within the letter was a brochure summarizing the relocation benefits available, a "Business Site Survey," which Rosen was required to complete, and the name and phone number of a representative of the Borough's Community Development Consultant, Triad Associates, (Triad) who could assist Rosen in completing the survey and answer any questions he had about relocation assistance.

Over the next three and one-half years, the Borough and Triad undertook numerous efforts to assist Rosen in finding a new location for Wright Cleaners. Triad referred him to four realtors, several landlords, and identified at least six potential relocation sites within the Borough, including one across the street from Wright Cleaners. Triad met with the Borough to explore a variance for a vacant property Rosen expressed an interest in renting and provided Rosen with demographic information on neighboring towns. Representatives of Triad and the Borough met with Rosen several times to discuss relocation assistance and once accompanied him on a site visit to view four available properties within the Borough.

Rosen never identified a new location for his business, and Wright Cleaners never relocated. Instead, in April 2007 Rosen's landlord, the Schneider Estate, finalized the sale of the premises to the Borough and served Rosen with a notice terminating his tenancy effective May 31, 2007. Two weeks prior to the scheduled end of Rosen's tenancy, however, Borough officials inspected the property and discovered the building to be in such a dilapidated condition that it was declared unsafe and Rosen directed to vacate immediately. The inspection revealed that the rafters and roof sheathing were rotting, structural support headers missing, the rear wall deteriorating,

and that exposed wiring and junction boxes were present throughout the building. The Borough's engineer concluded that the roof and interior and exterior block walls were so severely damaged that all were in danger of imminent collapse. Rosen's own engineer confirmed those findings and agreed that the rear of the structure, which housed the business's laundry operations, should be closed off and not re-entered until repairs were made.

The Borough intervened in the Schneider Estate's ejectment action against Rosen and sought to immediately bar all persons from the premises. After reviewing the parties' reports on the building's condition and hearing oral argument, the Law Division entered an order on May 31, 2007 directing that Rosen immediately cease doing business in the premises. Rosen was allowed until 4:00 p.m. the following day to remove his customers' clothing. The building was thereafter to be immediately boarded up, and eventually demolished on seventy-two hours notice to Rosen.

Rosen did not remove the clothing from the premises or make effort to remove the machines used in the laundry operations. Rosen contended that the "existing equipment could not be relocated because it was unserviceable and parts were no longer available." He provided the Borough with estimates for the

installation of new replacement equipment which ranged from \$192,941 to \$255,041.30. An appraiser retained by the Borough estimated the fair market value of all furniture, fixtures and equipment in the premises to be \$3907. The Borough estimated the costs of moving Rosen's equipment to a new location to be \$4110.

Ten months after the premises were declared uninhabitable, the Borough, in March 2008, notified Rosen's counsel that the demolition contract had been awarded and that Rosen should notify the clerk if he wished access to the building before demolition. Rosen did not seek further access and the Borough thereafter demolished the premises along with the machinery and equipment remaining there.

Following his ejection, Rosen counterclaimed against the Borough challenging the validity of the redevelopment ordinance for failure to comply with N.J.S.A. 40A:12A-7a, and asserting federal and state civil rights claims.¹ On the parties' cross-motions for summary judgment, the Law Division upheld the ordinance, determined that Rosen was entitled to relocation benefits as a displaced person and referred the matter to the Office of Administrative Law (OAL) "to determine the amount of

¹ We do not know the specific claims Rosen brought against the Borough because the parties neglected to include their pleadings in the appendices as required by R. 2:6-1(a)(1).

relocation expenses to which Mr. Rosen is entitled." Rosen's remaining claims were dismissed without prejudice pending proceedings in the OAL.

In the OAL, Rosen moved to block any attempt by the Borough to argue that he was not a displaced person entitled to relocation benefits. The Administrative Law Judge (ALJ) determined that the Borough was collaterally estopped from rearguing that issue which had been decided adversely to the Borough in the Superior Court. In a subsequent summary decision, the ALJ determined, however, that although Rosen was eligible for relocation benefits as a displaced person, no benefits were due because he had never relocated his business.

Specifically, the ALJ noted that the Relocation Act charged the Borough with assisting Rosen to find a new location for his business, it did not make the Borough solely responsible for doing so. Upon review of the uncontested facts, the ALJ determined that the Borough had fulfilled its statutory obligation under N.J.S.A. 20:4-7 to assist Rosen in finding a new location for his business. The Borough had advised Rosen in October 2003 that it would acquire the premises, and when it did that he would be required to move. Over the next three years, the Borough assisted Rosen by referring him to landlords and realtors and providing him with specific locations for the

relocation of his business. Rosen rejected some of the locations because they were unfit for habitation, were too small, had ceilings that were too low, or would need significant renovations. The ALJ concluded that Rosen's refusal to consider locations in need of repairs was unreasonable in light of his former location being "debilitated to the point that it was declared uninhabitable." The ALJ found that Rosen had presented no evidence to suggest that the Borough was in any way at fault for Rosen's failure to find a new location he deemed suitable.

The ALJ noted that the purpose of the Relocation Act and its implementing regulations, N.J.A.C. 5:11-1.1 to -9.3, is to

'insure the uniform, fair and equitable treatment of persons displaced due to state and local programs of acquisition, code enforcement and voluntary rehabilitation of buildings.' N.J.A.C. 5:11-1.1. The purpose of the statute is to leave the displaced business in reasonably the same position it was in before the displacement, not better off, in the hope that the business does not move from the area thereby causing the loss of jobs." Foreign Auto Preparation Serv. v. New Jersey Econ. Dev. Auth., 201 N.J. Super. 428, 435 (App. Div. 1985).

The Relocation Act sets forth specific expenses for which a business can be reimbursed due to forced location, which are limited to actual reasonable moving expenses, actual reasonable direct loss of tangible personal property, actual reasonable expenses incurred in searching for a replacement business, and actual reasonable expenses for professional fees incurred in the renovation and lease, use or

acquisition of the replacement site.
N.J.A.C. 5:11-3.8(a)(1).

The ALJ concluded that Rosen could not be awarded any relocation costs under the Relocation Act because he never relocated and thus never incurred any actual costs in moving his personal property to a new location.

The ALJ also concluded that Rosen was not eligible for any advanced payments because he submitted no evidence of hardship. While the Borough barred anyone from entering the building after it was declared in danger of imminent collapse, that occurred over three years after the Borough advised Rosen that it would acquire the property for the redevelopment project. Further, even were advanced payments warranted, Rosen was not entitled to the tangible personal property expenses he sought. The ALJ noted that although Rosen contended that the equipment could not be lawfully installed in another location, he never provided "any law that would be violated by installing the original equipment at a new location." The ALJ concluded that the costs Rosen was seeking would not leave him in reasonably the same position as before but instead result in providing him a windfall for moving obsolete equipment from an uninhabitable property.

Although finding that Rosen could not prove entitlement to relocation benefits because he had not relocated his business,

the ALJ noted that Rosen might yet still find a replacement location that would entitle him to relocation benefits. The regulations provide that a displaced person can apply for relocation assistance within twelve months of permanent re-settlement. N.J.A.C. 5:11-3.1(b). Accordingly, Rosen might still be able to obtain relocation assistance should he re-settle in a new location at some point in the future.

Rosen contends on appeal that the Law Division erred in declining to declare the Borough's redevelopment plan invalid and transferring the case to the OAL, and that the ALJ erred in finding that he was not entitled to relocation benefits. We reject both arguments.

Rosen's argument that the ordinance is invalid because it failed to provide for the temporary or permanent relocation of Wright Cleaners is plainly without merit.² N.J.S.A. 40A:12A-7 requires only that the redevelopment plan adopted by ordinance

² The Borough argues that Rosen's 2007 challenge to the ordinance was out of time and should not have been considered by the trial court. See Iron Mountain Info. Mgt. Inc. v. City of Newark, 405 N.J. Super. 599, 604 (App. Div. 2009). Although it is certainly true that Rosen's challenge to the statute was filed well beyond the forty-five days allowed for challenges to municipal action, R. 4:69-6(a), whether considered from the time the ordinance was enacted in 1999 or from when Rosen was advised by the Borough in 2003 that Wright Cleaners was located within the redevelopment zone, we decline to consider this argument as it does not affect the resolution of the appeal and was not raised in the trial court. See State v. Robinson, 200 N.J. 1, 20 (2009).

"include an outline" for the redevelopment of the project area "sufficient to indicate . . . adequate provision for the temporary and permanent relocation, as necessary, of residents in the project area." N.J.S.A. 40A:12A-7a(3). Wrightstown's redevelopment plan provided that the Borough Council would act as the redevelopment agency and that the Borough would contract with a public agency for the relocation of residents and businesses displaced from the redevelopment area. Wrightstown's plan thus provided the required "outline" to indicate how the Borough intended to address the temporary and permanent relocation of residents. Nothing more was required.³ See Bryant v. City of Atlantic City, 309 N.J. Super. 596, 617-20 (App. Div. 1998).

Rosen's arguments that the ALJ was without jurisdiction to hear the matter and erred in concluding that Rosen was not entitled to relocation benefits are equally lacking. The Department of Community Affairs is the agency charged with enforcement of the Relocation Act. The Department's regulations

³ Because Rosen's civil rights claims were all premised on the invalidity of the ordinance, the Law Division did not err in dismissing them with prejudice upon return of the matter from the Department. See Sprint Spectrum L.P. v. Twp. of Warren Planning Bd., 325 N.J. Super. 61, 76 (Law Div. 1999) (holding the plaintiff's failure to prove its alleged statutory violation mandated dismissal of civil rights claims premised upon the violation).

permit "any person aggrieved by a final determination by a displacing agency other than a State agency [to] appeal such determination to the Division of Codes and Standards" within the Department. N.J.A.C. 5:11-9.2. Accordingly, the Law Division was correct that the amount of any relocation benefits due Rosen should have been heard in an administrative proceeding by the agency charged by the Legislature with administering the Relocation Act, and appropriately transferred the matter pursuant to R. 1:13-4. See Jones v. Dep't of Cmty. Affairs, 395 N.J. Super. 632, 636 (App. Div. 2007).

The ALJ's findings that Rosen was not entitled to relocation benefits because he never relocated his business and that Rosen could not demonstrate hardship so as to entitle him to any advanced payments were certainly reasonably reached on the uncontested facts of record and thus are entitled to deference here. In re Taylor, 158 N.J. 644, 656 (1999); Close v. Kordulak Bros., 44 N.J. 589, 599 (1965). It is undisputed that Rosen did not relocate his business in the three years between the Borough advising him it would acquire his premises and the Law Division's ejection of Rosen because his building was in danger of imminent collapse. As the regulations expressly limit payments to displaced businesses to actual expenses incurred in connection with relocation, the ALJ was

correct in determining that Rosen was not due any relocation benefits. N.J.A.C. 5:11-3.8.

Rosen's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION