SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2281-14T4

SUZANNE VENEZIA,

Plaintiff-Appellant,

v.

UNION COUNTY PROSECUTOR'S OFFICE, THEODORE J. ROMANKOW, LISA CYBULSKI, SUZANNE DEEGAN, ANNE GIBBONS-LEJNIEKS, Individually and in their Official Capacity as Employees of the UNION COUNTY PROSECUTOR'S OFFICE, UNION COUNTY, BOARD OF CHOSEN FREEHOLDERS, CRANFORD POLICE DEPARTMENT and BRIAN WAGNER, STEVEN D'AMBOLA, THOMAS FEENEY, MATTHEW WIDDOWS, Individually and in their Official Capacity as Employees (or Former Employees) of the CRANFORD POLICE DEPARTMENT, TOWNSHIP OF CRANFORD, NANCY VENEZIA, MONMOUTH COUNTY SHERIFF'S OFFICE, MONMOUTH COUNTY BOARD OF CHOSEN FREEHOLDERS, MONMOUTH COUNTY CORRECTIONAL INSTITUTION and WILLIAM FREASER, Individually and in his Official Capacity as Warden (former) of MONMOUTH COUNTY CORRECTIONAL INSTITUTION, and Individually and in their Official Capacity as Employees of the MONMOUTH COUNTY CORRECTIONAL INSTITUTION, CARMELA VENEZIA,

Defendants,

and

BOROUGH OF BRIELLE, BRIELLE POLICE DEPARTMENT and TODD GERLACH, GARY OLSEN, Individually and in their Official Capacity as Employees of the BRIELLE POLICE DEPARTMENT,

Defendants-Respondents.

Submitted September 19, 2016 - Decided August 11, 2017

Before Judges Nugent and Currier.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-1786-12.

Suzanne Venezia, appellant pro se.

Chamlin, Rosen, Uliano & Witherington, attorneys for respondents (James J. Uliano, on the brief).

PER CURIAM

Plaintiff Suzanne Venezia appeals from a November 8, 2013 order denying her motion for reconsideration of an order for summary judgment. The summary judgment order dismissed her complaint with prejudice as to the Borough of Brielle, Brielle Police Department, and Officers Todd Gerlach and Gary Olsen.

Plaintiff also appeals from a December 15, 2014 stipulation of dismissal.[1] For the reasons that follow, we affirm.

On April 20, 2012, plaintiff filed a three-count complaint against all defendants.[2] She stated her cause of action against defendants Borough of Brielle, Brielle Police Department and Brielle Officers Todd Gerlach and Gary Olsen (the Brielle defendants) in the complaint's first count. There, she alleged the Brielle defendants violated the New Jersey Civil Rights Act (CRA) on August 30, 2009, when they "did seize, arrest and incarcerate [her] without probable cause in violation of the New Jersey Constitution." She further alleged in Count I that "the acts committed by the [Brielle defendants] in the handling of the investigation, and in the arrest and incarceration of the [p]laintiff, in depriving the [p]laintiff's liberties, were a reckless disregard and deliberate indifference to the [p]laintiff's constitutional and civil rights, freedoms, and interest." She asserted that these violations of her civil rights caused her to suffer mental and emotional anxiety, and physical

[1] The appeal from this stipulation appears to be an error. Plaintiff does not challenge the stipulation in her brief. Rather, she challenges the trial court's denial of her discovery motions.

[2] The order from which plaintiff appeals, denying reconsideration of her summary judgment motion, pertains only to defendants Borough of Brielle, Brielle Police Department, Todd Gerlach and Gary Olsen. For that reason, our discussion of this action's procedural history and legal issues is confined to these defendants.

injury. She also claimed to have suffered "in her business and reputation."

Plaintiff also alleged a cause of action in Count I against the other public entity defendants. In Count II, plaintiff alleged a cause of action for malicious prosecution against her sister. In the same count, she alleged her sister and mother filed false police reports, which included reports to the Brielle Police Department accusing plaintiff of harassment and trespassing. In Count III, plaintiff alleged another cause of action against her sister for filing false police reports.

During discovery, plaintiff filed a motion to compel the Brielle defendants to produce certain records. The trial court denied the motion, explaining:

> The [c]ourt held a Case Management Conference on 4/11/13 where the only items remaining in discovery were depositions of two Brielle police officers. Plaintiff is seeking personal financial information to which she is not entitled until she secures a judgment. Moreover, the plaintiff has not shown any basis to pierce the self-critical analysis privilege.

Plaintiff filed a motion for reconsideration. The court denied the motion on July 12, 2013.

Following completion of discovery, the Brielle defendants filed a motion for summary judgment. In support of their motion, the Brielle defendants filed a statement of material facts, which

included citations to the motion record as required by Rule 4:46-2(a). This pleading and the evidence referenced in it established the following account of relevant events.

On August 24, 2009 — six days before the Brielle defendants arrested plaintiff — Brielle Police Officer Gary Olsen responded to plaintiff's mother's summer home (the Brielle residence). Plaintiff's mother and sister had contacted the police department to report difficulties with plaintiff. According to the mother and sister, during the previous weekend plaintiff had become verbally abusive. Plaintiff threatened to break into the Brielle residence and remove valuable items because she was unemployed and receiving no steady income. The family members reported they had been giving plaintiff money, but when they stopped, plaintiff became enraged and left the residence.

According to the officer's report, plaintiff's mother forbid plaintiff from entering the Brielle residence property until she received proper medical attention to address her mental illness. Plaintiff's mother asked the officer not to contact plaintiff directly because police contact might worsen the situation.

Six days later, on August 30, plaintiff returned to the Brielle residence. According to a statement given to police by plaintiff's sister, their mother had filed a "No Trespass" order against plaintiff the previous Monday, and plaintiff was aware of

the order. The sister explained that when she reminded plaintiff of the order, plaintiff replied she was aware of it but did not care about it. Plaintiff called her sister a name and accused her of manipulating other family members.

Plaintiff's brothers were expected to arrive any minute. When plaintiff's sister implored plaintiff to wait for her brothers, plaintiff refused. Plaintiff's sister locked the doors to prevent plaintiff from driving in her agitated state. According to plaintiff's sister, plaintiff grabbed her arms, lifted her, and pushed her out of the way. Plaintiff also pushed their mother, who was trying to talk to plaintiff. Plaintiff left the house, got into her car, and drove away. Plaintiff returned shortly thereafter.

Brielle Police Officer Todd Gerlach and another officer responded to the call. Upon their arrival, plaintiff was present, as were her mother, sister and brothers. Plaintiff's sister recounted her conversation with plaintiff and how plaintiff had assaulted her and her mother.

According to the police report, when the officers interviewed plaintiff, she "stated her sister was 'telling me I wasn't supposed to be at the house and she was calling the police.'" Because plaintiff did not want to be at the house, she attempted to leave, but her mother and sister prevented her from doing so. Plaintiff

allegedly told the officers, "[y]es, I did push them out of the way. That was the only way I could get by them."

The officers arrested plaintiff for "Domestic Violence/Simple Assault[, and] Defiant Trespass." When plaintiff was unable to post bail set by a municipal court judge, she was transported to the Monmouth County Correctional Institution, where she remained overnight.[3]

In response to the Brielle defendants' statement of material facts, plaintiff did not "file a responding statement either admitting or disputing each of the facts in the movant's statement" with citation to evidence in the motion record demonstrating a genuine dispute. R. 4:46-2(b). Nonetheless, plaintiff included in her opposition a statement of material facts in which she challenged, among other evidence, the accuracy of the "facts" contained in Brielle police reports and deposition transcripts of the Brielle officers. In support of her statement of material facts, plaintiff asserted:

> The Plaintiff's facts are found here-below; these are the exact words (with excerpts from paragraphs) used by the Plaintiff in her Complaint filed on 4/20/2012 (Paragraphs 22-44); furthermore, these facts find direct reference in the Plaintiff's words of September 2009 in the Plaintiff's complaint filed against Nancy Venezia in Brielle

[3] The simple assault and defiant trespass charges were dismissed by a municipal court judge on the State's motion after the complainants declined to testify.

> Municipal Court (Exhibits A and B hereto) and in this Court in September of 2009[.]"

Plaintiff's statement of facts also set forth the following information. Plaintiff was not present at the Brielle residence on August 24, 2009, when Officer Olsen met plaintiff's mother and sister. Plaintiff claims that when she arrived at the Brielle residence on August 30, 2009, her mother greeted her and helped her put groceries into the refrigerator. Later, she was confronted by her sister, who accused her of trespassing. Plaintiff replied she was unaware of any trespassing. Nonetheless, upset by her sister's angry words, plaintiff decided to return to her own home rather than spend the night at the Brielle residence.

When plaintiff went upstairs to pack, her sister followed her, and told her she could not go home and remain at the Brielle residence to speak with her brothers. When plaintiff insisted upon leaving, her sister locked the residence doors. Plaintiff admits that "[w]ith only her handbag and backpack, she pushed her sister sideways to get out of the home through the back door by releasing the slide lock." Plaintiff claims her sister scratched her left arm. Plaintiff went to her car and as she drove away, her sister was screaming in the street.

Plaintiff decided to return to the Brielle property to settle any issues once and for all. She drove back to the house and,

shortly thereafter, her brothers arrived. Brielle police officers also arrived.

Plaintiff said she explained to the officers she had no knowledge whatsoever of any trespassing. In fact, she said she had spoken to her mother throughout the previous week, the exchanges were pleasant, and her mother never informed her that she should not return to the Brielle residence. According to plaintiff, rather than addressing her illegal confinement "with locked and guarded house doors," the officers spoke to her brothers, who in turn informed plaintiff she had only two choices: drive with them to a hospital for a psychiatric evaluation or be arrested. The officers offered her the same option. Plaintiff replied that if the officers intended to falsely arrest her, they should do it. Thereafter, the officers placed plaintiff under arrest.

After receiving all the summary judgment pleadings, the trial court scheduled oral argument, but the court received a letter from plaintiff the day before argument stating she did not wish to attend. For that reason, the court cancelled oral argument.

The trial court granted the Brielle defendants' motion. The court noted that in plaintiff's complaint, she alleged she had been caused to suffer mental and emotional anxiety, physical injury, and damage to her business and reputation as a result of

the incident. The court analyzed these claims under the New Jersey Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3. The court determined plaintiff had not satisfied the TCA requirement that she suffer "permanent loss of a bodily function, permanent disfigurement or dismemberment where the medical treatment expenses are in excess of $3,600" to recover for pain and suffering. The court further determined the Brielle Officers were immune from liability under N.J.S.A. 59:3-3, which immunizes public employees for liability if they act "in good faith in the execution or enforcement of any law." The statute does not exonerate a public employee from liability for false arrest or false imprisonment. The court determined "no reasonable jury could conclude that Officer Gerlach and Officer Olsen did not act either objectively or subjectively reasonably based on New Jersey law." Consequently, the court concluded that the officers were immune from liability under N.J.S.A. 59:3-3.

Lastly, the court determined plaintiff failed to demonstrate a genuinely disputed issue of material fact concerning liability of the Borough and the Police Department. Plaintiff had not shown the police violated her civil rights by acting contrary to law pursuant to a governmental custom, policy statement, ordinance, regulation, or decision.

On appeal, plaintiff argues the trial court granted the Brielle defendants' summary judgment motion after improperly denying her requests for discovery, thereby effectively permitting the Brielle defendants to circumvent discovery. She also argues her opposition papers created genuinely disputed issues of material fact concerning her claims against the Brielle defendants. Specifically, she argues "with regard to [the Brielle defendants'] purported 'good faith,' qualified immunity" claim, the facts she developed on the record "are certainly sufficient to find the Brielle [d]efendants acted without probable cause and with malice." Plaintiff submits a jury should have decided her claims.

Appellate courts "review[] an order granting summary judgment in accordance with the same standard as the motion judge." Bhagat v. Bhagat, 217 N.J. 22, 38 (2014) (citations omitted). We "review the competent evidential materials submitted by the parties to identify whether there are genuine issues of material fact and, if not, whether the moving party is entitled to summary judgment as a matter of law." Ibid. (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); R. 4:46-2(c)). A trial court's determination that a party is entitled to summary judgment as a matter of law is "not entitled to any special deference[,]"

and is subject to de novo review. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citations omitted).

The defense of qualified immunity "extends to suits brought under . . . the Civil Rights Act, N.J.S.A. 10:6-1 to -2." Brown v. State of New Jersey, ___ N.J. ___, ___ (2017) (alteration in original) (citation omitted). "The affirmative defense of qualified immunity protects government officials from personal liability for discretionary actions taken in the course of their public responsibilities, 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Ibid. (quoting Morillo v. Torres, 222 N.J. 104, 116 (2015)).

> In Malley v. Briggs, 475 U.S. 335, 337, 106 S. Ct. 1092, 1094, 89 L. Ed. 2d 271, 276 (1986), . . . the Supreme Court considered "the question of the degree of immunity accorded a defendant police officer in a damages action under 42 U.S.C. § 1983 when it is alleged that the officer caused the plaintiff[] to be unconstitutionally arrested . . . [without] probable cause."
>
> [Wildoner v. Borough of Ramsey, 162 N.J. 375, 386 (2000) (second, third and fourth alterations in original).]
>
> The Court, concluding that an officer applying for a warrant is entitled to assert qualified but not absolute immunity, observed that the defense of qualified immunity: provides ample protection to all but the plainly incompetent or those who knowingly violate the law . . . .

> Under the Harlow[4] standard . . . an allegation of malice is not sufficient to defeat immunity if the defendant acted in an objectively reasonable manner . . . . Defendants will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded that a warrant should issue, but if officers of reasonable competence could disagree on this issue, immunity should be recognized.
>
> [Ibid. (alterations in original) (citing Malley, supra, 475 U.S. at 341, 106 S. Ct. at 1096, 89 L. Ed. 2d at 278).]

In the case before us, we can discern from the complaint a single cause of action against the Brielle defendants: a violation of the CRA. "In 2004, the Legislature adopted the CRA for the broad purpose of assuring a state law cause of action for violations of state and federal constitutional rights and to fill any gaps in state statutory anti-discrimination protection." Owens v. Feigin, 194 N.J. 607, 611 (2008) (citation omitted). "[T]he CRA's purpose includes rectifying violations of constitutional rights, the protection of which has never depended on the satisfaction of the TCA's procedural and substantive requirements." Id. at 613. Thus, "the [TCA] is inapplicable to claims instituted pursuant to the [CRA]." Thigpen v. City of East Orange, 408 N.J. Super. 331, 342 (2009) (citing Owens, supra, 194 N.J. at 613).

---

[4] Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982).

It appears from the Brielle defendants' brief and the trial court's opinion that defendants and the court liberally construed the self-represented plaintiff's complaint to state unspecified tortious damage claims. Assuming that is so, the court did not err by dismissing such claims under the relevant TCA provisions. Nonetheless, the CRA claim against the Brielle defendants was properly dismissed, because the Doctrine of Qualified Immunity applied.

Plaintiff's allegation that the Brielle officers acted with malice "is not sufficient to defeat immunity if [the officers] acted in an objectively reasonable manner." Malley, supra, 475 U.S. at 341, 106 S. Ct. at 1095, 89 L. Ed. 2d at 278. They did. When Officer Olsen responded to the Brielle residence on August 24, 2009, plaintiff's sister said plaintiff had been told explicitly not to return to the residence. Six days later, when Officer Gerlach responded to the residence, he and his fellow officer interviewed those present and were provided with ample information to support a finding of probable cause that plaintiff committed the offenses of simple assault and trespass.

Even if we were to conclude in hindsight that the issue of probable cause was debatable, the officers nonetheless acted in an objectively reasonable manner. They interviewed the parties who were present, evaluated the information, assessed the

situation, and exercised their law enforcement function. Considering the totality of circumstances, we cannot find there are genuinely disputed facts of record from which a jury could determine "it is obvious that no reasonably competent officer would have concluded" the circumstances did not warrant plaintiff's arrest. Ibid. Accordingly, the trial court did not err in granting the Brielle defendants' summary judgment motion as to the officers.

Nor did the trial court err in determining the Borough and the Police Department were entitled to summary judgment under the principles announced in Monell v. Dep't of Soc. Servs., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). Plaintiff's arguments to the contrary are without sufficient merit to warrant further discussion. R. 2:11-3(e)(1)(E).

Because the trial court properly granted the Brielle defendants' summary judgment motion, the court did not err by denying plaintiff's motion for reconsideration.

Plaintiff's contention that the court improperly limited discovery is also without merit. "Appellate review of a trial court's discovery order is governed by the abuse of discretion standard." State in Interest of A.B., 219 N.J. 542, 554 (2014) (citations omitted). "Thus, an appellate court should generally defer to a trial court's resolution of a discovery matter, provided

its determination is not so wide of the mark or is not 'based on a mistaken understanding of the applicable law.'" Ibid. (citations omitted). Here, we discern nothing in the record that demonstrates the trial court's resolution of discovery matters constituted an abuse of discretion.

We have considered plaintiff's remaining arguments and determined they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.