SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3606-15T4

SABRINA LOSADA and
HENRY LOSADA,

Plaintiffs-Appellants,

v.

PRINCETON UNIVERSITY,

Defendant-Respondent,

and

PRINCETON TIGERS AQUATIC
CLUB,

Defendant.

Submitted June 6, 2017 – Decided August 24, 2017

Before Judges Reisner and Rothstadt.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-0057-14.

Gluck & Allen, LLC, attorneys for appellants (Robert W. Allen and Daniel G. Leone, on the briefs).

Eckert Seamans Cherin & Mellott, LLC, attorneys for respondent (Michael A. Spero and Jill R. Cohen, on the brief).

PER CURIAM

Plaintiffs Sabrina Losada and her husband Henry Losada appeal from the Law Division's dismissal of their complaint on summary judgment entered in favor of defendant, Princeton University (Princeton). Plaintiffs filed suit against Princeton and defendant Princeton Tigers Aquatic Club (PTAC) for damages arising from personal injuries Sabrina[1] sustained from a fall that occurred on Princeton's property as she left a PTAC swim meet in which her child participated. PTAC is unaffiliated with Princeton other than renting a facility from it to hold the swim meet. After plaintiffs settled with PTAC, Princeton filed a motion for summary judgment, arguing it was immune from liability pursuant to the Charitable Immunity Act (CIA), N.J.S.A. 2A:53A-7 to -11. The motion judge agreed and dismissed plaintiffs' complaint.

On appeal, plaintiffs contend that the judge erred by not recognizing that Princeton's renting its facility to PTAC was not part of its pursuit "of educational objectives it was organized to advance" and therefore was not entitled to charitable immunity. We disagree and affirm.

The facts considered in the light most favorable to plaintiff, see Angland v. Mountain Creek Resort, Inc., 213 N.J. 573, 577 (2013) (citing Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523

[1] We refer to plaintiffs by their first names to avoid confusion.

(1995)), are summarized as follows. On January 14, 2012, plaintiffs attended their fourteen-year-old daughter's swim meet, held at Princeton's DeNunzio pool and hosted by PTAC, a youth swim team that is not affiliated with Princeton. Upon exiting the building, Sabrina stepped into a depression located directly next to a walkway, fell, and sustained injuries.

Princeton is an educational institution offering undergraduate and graduate degrees and is exempt from taxation under § 501(c)(3) of the Internal Revenue Code (IRC). Additionally, Princeton qualifies as a public charity under IRC § 170(c). Princeton's charter states its "purposes . . . are the conduct of a university not for profit, including colleges and schools affiliated therewith, in various branches within or without [New Jersey]."

PTAC is a private swim team that also provides swimming lessons to children between the ages of six and eighteen. PTAC rented the DeNunzio pool from Princeton for swim meets and practices.

The motion judge determined that summary judgment should be awarded to Princeton, as he found that Sabrina was a beneficiary of Princeton's educational goals within the meaning of the CIA because "Princeton was engaged in the performance of the charitable objective it was organized to advance" and plaintiffs were "a

direct recipient of those good works." The judge added: "[Sabrina] is a [beneficiary;] she was a spectator at a swim meet for her daughter hosted by PTAC at the university's building[,] and she clearly was a [beneficiary] of Princeton."

On appeal, plaintiffs argue that Princeton, an educational institution typically afforded immunity under the CIA, "was not engaged in the performance of the educational objectives it was organized to advance" on the day that Sabrina was injured. They contend Princeton's stated purpose is the education of undergraduates and graduates, not the minor children who participated in PTAC's activities. Plaintiffs conclude, "youth sports offered by an outside organization . . . was clearly not an educational objective [that] Princeton . . . was organized to advance." Moreover, they argue that because PTAC was not a charitable organization, Princeton was not entitled to immunity.

We review the motion judge's grant of summary judgment de novo and apply the same standard as the trial court. Cypress Point Condo. Ass'n, Inc. v. Adria Towers, L.L.C., 226 N.J. 403, 414 (2016). Summary judgment must be granted if there is no genuine issue of material fact challenged and the moving party is entitled to judgment as a matter of law. R. 4:46-2. No special deference is afforded to the legal determinations of the trial court when no issue of fact exists. Templo Fuente De Vida Corp.

v. Nat'l Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016) (citing Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)). Whether an entity is entitled to immunity under the CIA is a legal question subject to our de novo review. Roberts v. Timber Birch-Broadmoore Athletic Ass'n, 371 N.J. Super. 189, 197 (App. Div. 2004).

We conclude from our de novo review of the record that the motion judge correctly awarded summary judgment in favor of Princeton because it was entitled to the immunity from liability provided for by the CIA. The CIA is deemed remedial and is to be "'liberally construed' in favor of the protected entities." P.V. ex rel T.V. v. Camp Jaycee, 197 N.J. 132, 167 (2008) (quoting N.J.S.A. 2A:53A-10). The CIA provides immunity to any "nonprofit corporation . . . organized exclusively for religious, charitable or educational purposes" where the injured person

> is a beneficiary, to whatever degree, of the works of such nonprofit corporation . . . ; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation . . . or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association.
>
> [N.J.S.A. 2A:53A-7(a)]

The scope of the CIA's immunity extends to the buildings and other facilities used by the charitable organization to fulfill its qualifying purpose. N.J.S.A. 2A:53A-9.

"[A]n entity qualifies for charitable immunity when it '(1) was formed for nonprofit purposes; (2) is organized exclusively for religious, charitable or educational purposes; and (3) was promoting such objectives and purposes at the time of the injury to plaintiff who was then a beneficiary of the charitable works'" O'Connell v. State, 171 N.J. 484, 489 (2002) (quoting Hamel v. State, 321 N.J. Super. 67, 72 (App. Div. 1999)). "Entities that can prove they are organized exclusively for educational or religious purposes automatically satisfy the second prong of the charitable immunity standard"; that is, "no further financial analysis is required to satisfy the second prong of the [CIA]." Ryan v. Holy Trinity Evangelical Lutheran Church, 175 N.J. 333, 346 (2003).

"The established test for determining whether a party is a beneficiary of the works of a charity has two prongs." Id. at 350. "The first is that the institution pleading the immunity, at the time in question, 'was engaged in the performance of the charitable objectives it was organized to advance.'" Ibid. (quoting Anasiewicz v. Sacred Heart Church, 74 N.J. Super. 532, 536 (App. Div.), cerif. denied, 38 N.J. 305 (1962)). "The second

is that the injured party must have been a direct recipient of those good works." Ibid. (citing DeVries v. Habitat for Humanity, 290 N.J. Super. 479, 487-88 (App. Div. 1996), aff'd o.b., 147 N.J. 619 (1997)).

In determining whether the institution was engaged in the performance of the charitable objectives it was organized to advance, a non-profit organization exclusively dedicated to religious or educational purposes is afforded "substantial latitude in determining the appropriate avenues for achieving their objectives." Bloom v. Seton Hall Univ., 307 N.J. Super. 487, 491 (App. Div.), certif. denied, 153 N.J. 405 (1998). The term "education," is defined broadly in the CIA "and [is] not limited to purely scholastic activities." Estate of Komninos v. Bancroft Neurohealth, Inc., 417 N.J. Super. 309, 320 (App. Div. 2010) (alteration in original) (quoting Orzech v. Fairleigh Dickinson Univ., 411 N.J. Super. 198, 205 (App. Div. 2009)); see, e.g., Roberts, supra, 371 N.J. Super. at 194 ("[The defendant]'s purpose of teaching and promoting good citizenship and sportsmanship and assembling teams and groups for participation in sports qualifies it as a non-profit organization within the scope of the [CIA]."); Morales v. N.J. Acad. of Aquatic Scis., 302 N.J. Super. 50, 54 (App. Div. 1997) (citation omitted) ("[A] non-profit corporation may be organized for 'exclusively educational

purposes' even though it provides an educational experience which is 'recreational' in nature.").

The CIA may afford immunity to "a non-profit entity's rentals to members of the general public for social and recreational activities." Lax v. Princeton Univ., 343 N.J. Super. 568, 573 (App. Div. 2001) (citing Bieker v. Cmty. House of Moorestown, 169 N.J. 167, 177 (App. Div. 2001)). In Lax, we extended immunity under the CIA to a claim for damages caused by injuries sustained by a retiree who fell on Princeton's property while attending an unaffiliated chamber symphony's performance in an auditorium it rented from Princeton. We held that immunity applied when use of a nonprofit organization's facility is not dominated by rentals to for-profit entities and found that the use of Princeton's facilities by members of the general public serves important social and recreational needs of the community. Id. at 573 (citing Bieker, supra, 169 N.J. at 177).

We discern no difference between the injured retiree's claim in Lax and that of Sabrina in this case. We therefore similarly hold that Princeton "is entitled to immunity from [plaintiff's] claim [here that] aris[es] out of the rental of an [indoor swimming pool] to another . . . entity that uses the facility for similar educational purposes." Ibid. We conclude that, like the plaintiff in Lax, Sabrina was a beneficiary of Princeton's educational

purposes as contemplated by the CIA's "use of the words 'to whatever degree' modifying the word 'beneficiary' in the statute." Ryan, supra, 175 N.J. at 353 (quoting Gray v. St. Cecilia's School, 217 N.J. Super. 492, 495 (App. Div. 1987)). "Those who are not beneficiaries must be [shown to be] 'unconcerned in and unrelated to' the benefactions of such an organization." Ibid. (quoting Gray, supra, 217 N.J. Super. at 495). Spectators at sporting events are "[c]learly" beneficiaries for purposes of the CIA. Pomeroy v. Little League Baseball, 142 N.J. Super. 471, 475 (App. Div. 1976); see also Bieker, supra, 169 N.J. at 171. As a spectator and mother of a participant in an educational endeavor taking place on Princeton's premises, Sabrina was a beneficiary because she clearly benefited to some degree by attending the swim meet in which her child participated, regardless of whether PTAC operated as a for profit or nonprofit entity.

Affirmed.