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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-1724-16T2

MARC PIERRE,

Plaintiff-Appellant,

v.

IRVINGTON BOARD OF EDUCATION,
and ROMAN SECURITY AGENCY, LLC,
A New Jersey Limited Liability
Company,

Defendants,

and

IRVINGTON LIBRARY BOARD a/k/a
IRVINGTON PUBLIC LIBRARY,

Defendant-Respondent.

Argued March 20, 2018 – Decided April 6, 2018

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Docket No. L-6800-
13.

Phillip C. Wiskow argued the cause for
appellant (Gelman Gelman Wiskow & McCarthy,
LLC, attorneys; Phillip C. Wiskow, on the
brief).

Michael A. D'Aquanni argued the cause for respondent (Roth D'Aquanni, LLC, attorneys; Michael A. D'Aquanni, of counsel and on the brief; Marissa L. Quigley, on the brief).

PER CURIAM

Plaintiff appeals from a November 18, 2016 order granting summary judgment to defendant Irvington Library Board (Library Board). The judge entered the order when he heard defendant's motion to reconsider the judge's October 7, 2016 order, which had partially denied summary judgment to the Library Board. We affirm.

In February 2013, plaintiff was inside the Irvington Public Library (library) when he observed high school students outside of the library throwing snowballs at pedestrians. Plaintiff exited the library to approach the students to tell them to stop. The students assaulted plaintiff, and as a result, plaintiff tore tendons in both knees and underwent numerous knee surgeries.

In October 2016, the judge granted in part and denied in part the Library Board's motion for summary judgment.¹ The judge granted the Library Board's motion "as to immunity under the [Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3] only," and denied dismissal as to all other claims. The judge later granted the Library Board's motion for reconsideration, concluding the TCA

¹ Defendants Irvington Board of Education and Roman Security Agency, LLC, each independently settled with plaintiff.

barred plaintiff's recovery as to all claims and dismissed the remaining claim against the Library Board for negligence.

When reviewing an order granting summary judgment, we apply "the same standard governing the trial court." Oyola v. Liu, 431 N.J. Super. 493, 497 (App. Div. 2013). We owe no deference to the motion judge's conclusions on issues of law. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). We therefore look at the facts in the light most favorable to plaintiff. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995).

Plaintiff contends the Library Board is not entitled to complete protection under the TCA, specifically N.J.S.A. 59:5-4, because its existing security guard did not perform his designated, ministerial tasks. N.J.S.A. 59:5-4 provides: "Neither a public entity nor a public employee is liable for failure to provide police protection service or, if police protection service is provided, for failure to provide sufficient police protection service." We attributed the legislative aim of another section of the TCA to this section in Suarez v. Dosky, 171 N.J. Super. 1, 9 (App. Div. 1979):

[W]hat the Legislature is seeking to protect in N.J.S.A. 59:5-1 is the Government's essential right and power to allocate its resources in accordance with its conception of how the public interest will be best

served, an exercise of political power which should be insulated from interference by judge or jury in a tort action. We regard the same governmental imperatives as supporting the adoption of N.J.S.A. 59:5-4

We held N.J.S.A. 59:5-4 "precludes suits against municipalities and their responsible officers based upon contentions that damage occurred from the absence of a police force or from the presence of an inadequate one." Ibid.

Plaintiff argues that he was an invitee of the library, requiring the Library Board to exercise ordinary care to render the premises reasonably safe, and it did not. At oral argument on the motion for reconsideration, plaintiff's counsel conceded that the TCA barred plaintiff's claim regarding the library's level of security, yet argued that the Library Board acted negligently by breaching its responsibility when the on-duty security guard did not fulfill his enumerated duties. On appeal, plaintiff makes the same assertion that these arguments are distinct.

Plaintiff attempts to carve out an exception for the Library Board breaching a responsibility, yet this argument is nearly identical to the immunities under the TCA. Specifically, plaintiff claims the security guard failed to perform ministerial tasks, which resulted in students loitering, vandalizing property and assaulting patrons. The judge explained, "plaintiff's claims


amount to an allegation that the Library Board failed to provide proper security, which was the proximate cause of the plaintiff's injury." These assertions are barred by the TCA.

The security guard's actions in response to the congregating students and assault of plaintiff concern the adequacy of the library's security, which falls within the scope of the TCA immunity protection. The judge properly concluded:

When as here the plaintiff is alleging a failure in security by a governmental entity, the [t]rier of fact must be sure that the plaintiff's claim for failure to provide reasonable and safe premises is not disguised, again, as a claim for failure to provide police protection. And based on everything that's been said, . . . the allegations amount to that in this court's opinion. I find that the [TCA] provides sufficient immunity to the Library Board such that summary judgment is appropriate.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION