SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2277-15T2

JASMINE ROACH, as Administratrix ad Prosequendum of the Estate of Veronica Roach, and Jasmine Roach, individually,

Plaintiffs-Appellants,

v.

NEW JERSEY STATE PAROLE BOARD, STATE OF NEW JERSEY, NEW JERSEY DEPARTMENT OF CORRECTIONS, DIVISION OF PAROLE, and SENIOR PAROLE OFFICER ANGEL RODRIGUEZ,

Defendants-Respondents.

Argued February 14, 2017 – Decided March 9, 2018

Before Judges Ostrer, Leone, and Vernoia.

On appeal from Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-2553-15.

Michael B. Zerres argued the cause for appellant (Blume, Forte, Fried, Zerres & Molinari, PC, attorneys; Michael B. Zerres, of counsel and on the brief; Matthew E. Blackman, on the briefs).

Christopher J. Riggs, Deputy Attorney General, argued the cause for respondents (Christopher S. Porrino, Attorney General, attorney; Lisa

A. Puglisi, Assistant Attorney General, of counsel; Christopher J. Riggs, on the brief).

The opinion of the court was delivered by

LEONE, J.A.D.

Plaintiff Jasmine Roach appeals from the January 8, 2016 order dismissing her complaint because defendants are immune under the Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 59:12-3. We affirm.

I.

Plaintiff's complaint alleged as follows. She brought this action both individually and as the administratrix of the estate of her daughter Veronica Roach. At the time of her death, Veronica was nine years old and in the custody of another woman. On July 31, 2014, Veronica was violently and sexually assaulted and murdered by Brian Farmer, a paroled violent sex offender.

Plaintiff filed a three-count complaint against defendants the New Jersey State Parole Board (Parole Board), the New Jersey State Department of Corrections (DOC), and Senior Parole Officer Angel Rodriguez. Plaintiff's first count alleged defendants

> were responsible for the ministerial duties of monitoring and supervising Brian Farmer, were responsible for ensuring that Brian Farmer was properly registered as a sex offender and/or obtaining accurate and current information relative to Brian Farmer's registration as a sex offender, were responsible for ensuring that said Brian Farmer was not residing at a prohibited address or location, were responsible for

> ensuring that Brian Farmer complied with all conditions of parole and that any violations thereof be properly reported and/or addressed in a timely manner, and were responsible for complying with all rules, policies, procedures, regulations and directives related to supervising and monitoring a paroled sex offender, such as Brian Farmer.

Plaintiff's second count alleged defendants "had the ministerial responsibility of hiring, training, screening, supervising and retaining its parole officer and/or staff employees relative to the supervision and monitoring of violent sex offenders and execution of the rules, policies, procedures, regulations and directives related thereto." Plaintiff's third count alleged defendants "had the ministerial responsibility of warning and notifying the public of the accurate and current address and location of Brian Farmer." Plaintiff alleged defendants were reckless, careless, and negligent in carrying out the duties listed in each count.

Before discovery occurred, defendants filed a motion to dismiss plaintiff's complaint for failure to state a cause of action under Rule 4:6-2(e), contending defendants were immune under N.J.S.A. 59:5-2(a). After oral argument, the trial court

dismissed plaintiff's complaint "for failure to state a cause of action."[1] Plaintiff filed a notice of appeal.[2]

II.

We must hew to our standard of review. "We review a grant of a motion to dismiss a complaint for failure to state a cause of action de novo, applying the same standard under Rule 4:6-2(e) that governed the motion court." Wreden v. Twp. of Lafayette, 436 N.J. Super. 117, 124 (App. Div. 2014). Thus, we apply

> the test for determining the adequacy of a pleading: whether a cause of action is "suggested" by the facts. In reviewing a complaint dismissed under Rule 4:6-2(e) our inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. However, a reviewing court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. The examination of a

[1] The order mistakenly stated "Summary Judgment is hereby granted."

[2] In its oral decision, the trial court denied plaintiff leave to amend the complaint to allege willful misconduct, finding that would be essentially filing a new complaint. For this reason, the court's order was final and appealable. Plaintiff has informed us that she subsequently filed a separate complaint alleging wanton and willful conduct, and that the new action has been stayed pending this appeal. The filing of this separate action does not affect the finality of the order appealed in this action.

> complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.
>
> [Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (citations omitted); accord Green v. Morgan Props., 215 N.J. 431, 451-52 (2013).]

III.

The trial court dismissed plaintiff's complaint because defendants were immune under N.J.S.A. 59:5-2(a). We agree.

A.

Since 1972, N.J.S.A. 59:5-2 has stated in pertinent part:

> Neither a public entity nor a public employee is liable for:
>
> a. An injury resulting from the parole or release of a prisoner or from the terms and conditions of his parole or release or from the revocation of his parole or release; [or]
>
> b. any injury caused by:
> (1) an escaping or escaped prisoner;
> (2) an escaping or escaped person;
> (3) a person resisting arrest . . . ;
> (4) a prisoner to any other prisoner[.]

We refer to subsections (a) and (b) as 5-2(a) and 5-2(b).

Plaintiff argues 5-2(a) does not immunize for failure to perform ministerial acts. We must evaluate plaintiff's claim "by first considering the plain language of the statute in question. The fundamental objective of statutory interpretation is to identify and promote the Legislature's intent. 'In most instances,

the best indicator of that intent is the plain language chosen by the Legislature.'" Parsons ex rel. Parsons v. Mullica Twp. Bd. of Educ. ("Parsons II"), 226 N.J. 297, 307 (2016) (citations omitted). "When the statutory language is clear on its face, this Court's interpretive process ceases, and our sole function is to enforce the statute in accordance with its terms." Ibid.

Moreover, we must be "guided by the principle that 'immunity for public entities [under the TCA] is the general rule and liability is the exception.'" Id. at 308 (alteration in original) (citation omitted). The TCA's "immunities are absolute and any ambiguities in their application must be resolved in favor of immunity, not liability." Ibid.

Nothing in the language of N.J.S.A. 59:5-2 draws any distinction between ministerial and discretionary acts. In particular, 5-2(a) immunizes public entities and public employees from liability for injuries "resulting from the parole or release of a prisoner or from the terms and conditions of his parole or release or from the revocation of his parole or release." N.J.S.A. 59:5-2(a). Thus, the plain language of 5-2(a) is clear on its face, and must be construed in favor of immunity.

B.

In addition, for forty years this court and our Supreme Court have interpreted N.J.S.A. 59:5-2 to provide absolute immunity,

including immunity for ministerial acts. In Burg v. State, 147 N.J. Super. 316 (App. Div. 1977), the plaintiff was assaulted by a prisoner on work release, and sued the State and its officials, claiming they had committed either improper discretionary acts or "negligent ministerial acts." Id. at 318-19, 322. The trial court dismissed the complaint, concluding "that all acts of public entities or public employees within the ambit of release procedures, whether of a discretionary or a ministerial nature, were immunized from tort liability." Id. at 319. We affirmed. Id. at 325.

In Burg, we "look[ed] for guidance" to California cases "[s]ince our Tort Claims Act is modeled after the comparable California statute, Cal. Gov't Code § 810 et seq." Id. at 322. We relied on case law refusing "'to create sharp (but essentially artificial) distinctions between ministerial and discretionary acts,'" and holding "all acts within the ambit of release procedures were immunized from tort liability under the [parole immunity] statute." Id. at 323 (quoting State v. Superior Court, 112 Cal. Rptr. 706, 709 (Ct. App. 1974)). We agreed that "[m]inisterial implementation of correctional programs . . . can hardly, in any consideration of the imposition of tort liability, be isolated from discretionary judgments made in adopting such programs," and that immunizing both ministerial and discretionary

acts "seems entirely justified when one reflects that [otherwise] prison [ad]ministrators would of necessity be inhibited in maintaining rehabilitative programs." Id. at 324 (quoting Cty. of Sacramento v. Superior Court, 503 P.2d 1382, 1387 (1972)). We agreed that the immunity was "an absolute one, thus encompassing both discretionary acts or omissions and ministerial acts or omissions." Ibid. (quoting Cty. of Sacramento, 503 P.2d at 1387).

We concluded in Burg that, even if the prisoner's release "was a low-level discretionary or ministerial act," as the plaintiffs contended, "liability should not attach for any injury resulting from his release. It is clear that N.J.S.A. 59:5-2(a) expressly excludes such a claim as the basis of a cause of action." Id. at 322, 325. We also found immunity under 5-2(b)(1), addressing escaped prisoners. Id. at 325.

We explained the public policy underlying Burg in Flodmand v. State, 175 N.J. Super. 503, 511 (App. Div. 1980). Under 5-2(a), "[t]he public policy dictating application of the immunity while the inmate is on work-release is obvious and is the same as that motivating immunity when an inmate is on parole or other form of conditional release." Ibid. Immunity is necessary for two reasons. First, "officials [must] be free to exercise their discretion as to which inmates may safely be returned to the community and under what conditions." Ibid. Second, "[s]ince the

conduct of [parolees and] inmates while on release cannot be subject to constant supervision or surveillance, imposition of liability on the State for tortious acts committed by inmates on release would prejudice the entire parole and release system." Ibid.

We extended Burg in White v. Lewis, 156 N.J. Super. 198 (App. Div. 1978). We held that N.J.S.A. 59:5-2(b)(4) provided the State and its employees immunity for assaults between prisoners "even if the employee is negligent or grossly negligent in carrying out what may be considered ministerial duties. The ministerial-discretionary duty dichotomy is of no significance under this provision." Id. at 202 (citing Burg, 147 N.J. Super. 316). We stressed that statutory provision "makes no distinction between discretionary and ministerial functions or duties of public employees with respect to the kind of prisoner tort here involved." Id. at 203.

We applied Burg to a parolee in Coppola v. State, 177 N.J. Super. 37 (App. Div. 1981). A parolee abducted the plaintiff and her child and sexually assaulted the plaintiff, and she contended the Parole Board and the DOC had failed to follow statutory requirements. Id. at 38. We found immunity under 5-2(a). Id. at 39-40. We ruled the TCA "re-establishes an all-inclusive immunity from tort liability for" the State and its Parole Board

and Department of Corrections. Id. at 39 (citing Burg, 147 N.J. Super. at 320). Like Burg, we agreed with California cases "that there is a strong public policy in favor of allowing correctional personnel to make determinations of parole unfettered by any fear of tort liability" and "the process of parole" required "absolute immunity." Id. at 40 (citing Burg, 147 N.J. Super. at 322). We had "no hesitancy in concluding that the immunity granted by the clear and explicit language of N.J.S.A. 59:5-2(a) applies and insulates these defendants from any and all liability for the injuries plaintiff sustained." Ibid. "[W]e hold to the view that the immunity conferred by N.J.S.A. 59:5-2(a) is total and absolute." Id. at 41.

We again followed Burg and ruled that 5-2(a) immunized against liability for negligence in performing ministerial duties in Ornes v. Daniels, 278 N.J. Super. 536, 541 (App. Div. 1995). The plaintiff was raped by a prisoner on work release, and claimed the DOC "failed to properly perform ministerial acts and duties." Id. at 538-40. We concluded "the State clearly enjoys immunity from suit in this case pursuant to N.J.S.A. 59:5-2(a)." Id. at 541. We reiterated: "Pursuant to N.J.S.A. 59:5-2(a) the State enjoys absolute immunity against suits for injuries resulting from an assault committed by an inmate participating in a community work-release program." Ibid. (citing Burg, 147 N.J. Super. at 325).

We found the plaintiff's "contention that the State's tort immunity applies to the results of its decision to implement a work-release program, but not to consequences of its administration of such a program, is without merit. N.J.S.A. 59:5-2 makes no such distinction." Ibid. (citing Burg, 147 N.J. Super. at 322).

Our Supreme Court adopted the same view in Tice v. Cramer, 133 N.J. 347 (1993). To determine whether N.J.S.A. 59:5-2(b)(2) immunized pursuit of an escaping suspect, the Court analogized to Burg and its interpretation of 5-2(a). The Court ruled:

> The view we take of the effect of section 5-2b immunity, when applicable, corresponds more with that taken by the court in Burg . . . There the Appellate Division held that the immunities provided by sections 5-2a and 5-2b(1) absolutely immunized both the public entity and the public employee from negligence, whether discretionary or ministerial, whether acts of omission or commission. . . . The decision indicates not only that those acts of negligence, both discretionary and ministerial . . . were immunized, but also that those decisions of the public entity . . . would also be immunized under the specific provisions of sections 5-2a and 5-2b(1).
>
> [Id. at 364-65 (emphasis added) (citing Burg, 147 N.J. Super. at 324-25).]

Our Supreme Court in Tice held the "absolute immunity" in Burg and White applied also to 5-2(b)(2). Id. at 364 (citing Burg, 147 N.J. Super. at 324, and White, 156 N.J. Super. at 201). "Just as the Appellate Division in Burg construed section 5-2a to

confer immunity for all acts within the ambit of release procedures, so its language indicated it would immunize all acts of a public entity or a public employee in connection with section 5-2b[.]" Id. at 365 (citing Burg, 147 N.J. Super. at 325). As Chief Justice Wilentz explained for the Court:

> Our sense of the intent of the section is that it immunizes absolutely all negligence of the public entity or the public employee . . . It makes no difference whether the negligence is discretionary or ministerial, whether an act or omission, whether it precedes the escape or follows it, whether it triggers the escape or affects it, it is immune. In that respect we read section 5-2b as no different from section 5-2a, despite the difference in language . . . . It therefore is clear, just as it is in the case of parole or release under section 5-2a, that all of the actions of government and its employees related to that escape or escaping are immune[.]
>
> [Id. at 367 (emphasis added).]

Based on Burg's reading of 5-2(a), the Court concluded that 5-2(b) similarly provides "absolute immunity, absent willful misconduct." Id. at 351; see id. at 356, 367, 370, 380.[3]

Since Tice, our Supreme Court has repeatedly reaffirmed that "section 5-2b provides absolute immunity, absent willful

[3] N.J.S.A. 59:3-14 provides that "[n]othing in this act shall exonerate a public employee from liability if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct."

misconduct." Fielder v. Stonack, 141 N.J. 101, 123 (1995); accord Alston v. City of Camden, 168 N.J. 170, 177 (2001); Canico v. Hurtado, 144 N.J. 361, 363-64 (1996). The Court has emphasized that policy concerns "support an interpretation of pursuit immunity that 'immuniz[es] both the employee and the entity for all acts of negligence related to the injuries caused by the escape.'" Alston, 168 N.J. at 178 (quoting Tice, 133 N.J. at 365).

We have similarly reaffirmed that "N.J.S.A. 59:5-2b immunizes both the employee and the entity 'for all acts of negligence' relating to the injuries caused by an escaping person, whether discretionary or ministerial, whether an act or an omission." Blunt v. Klapproth, 309 N.J. Super. 493, 510 (App. Div. 1998) (quoting Tice, 133 N.J. at 365). We have repeatedly reiterated that subsection provides "absolute immunity." Id. at 503 (quoting Margolis & Novack, Claims Against Public Entities, comment to N.J.S.A. 59:5-2 (Gann 1997)); Clarke v. Twp. of Mount Laurel, 357 N.J. Super. 362, 369 (App. Div. 2003); Torres v. City of Perth Amboy, 329 N.J. Super. 404, 406 (App. Div. 2000); accord Fagan v. City of Vineland, 22 F.3d 1283, 1294 (3d Cir. 1994).

Moreover, "[i]n 1997, the Legislature essentially codified Tice and Fielder by amending N.J.S.A. 59:5-2 to provide that, in addition to the immunity under subsection b(2), public employees

are immune from liability for 'any injury resulting from or caused by a law enforcement officer's pursuit of a person.'" Alston, 168 N.J. at 178-79 (quoting L. 1997, c. 423, § 2 (codified at N.J.S.A. 59:5-2(c) ["5-2(c)"])).[4]

The leading commentators on the TCA agree that N.J.S.A. 59:5-2 provides "absolute immunity." Margolis & Novack, Claims Against Public Entities, comment to N.J.S.A. 59:5-2 (2017). They confirm that "[t]he absolute immunity afforded under this section does not depend on the ministerial-discretionary dichotomy, but covers negligent ministerial conduct as well as decision-making." Ibid. That has been the commentators' conclusion for well over thirty years. See, e.g., Margolis & Novack, Claims Against Public Entities, comment to N.J.S.A. 59:5-2 (1984).

C.

Thus, from Burg in 1977 to Tice in 1993 to the present day, courts and commentators have agreed 5-2(a) and 5-2(b) provide absolute immunity from liability for negligent ministerial acts, and the Legislature endorsed that position by amending the statute to codify Tice in 5-2(c). Nonetheless, plaintiff contends 5-2(a) did not immunize defendants for negligent ministerial acts.

[4] The Legislature also broadened 5-2(b)(3) by immunizing the state and its employees for any injury caused by a person "evading arrest."

For plaintiff to persuade us to change that long-standing interpretation of N.J.S.A. 59:5-2, she must carry a very heavy burden. "The doctrine of stare decisis—the principle that a court is bound to adhere to settled precedent—serves a number of important ends." Luchejko v. City of Hoboken, 207 N.J. 191, 208 (2011). "The doctrine 'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" Ibid. (quoting Payne v. Tennessee, 501 U.S. 808, 827 (1991)). "Stare decisis 'carries such persuasive force that [courts] have always required a departure from precedent to be supported by some special justification.'" Ibid. (citations omitted).

Special justification is particularly difficult to establish where the issue is statutory construction. State v. Singleton, 211 N.J. 157, 180 (2012). "Statutory-based decisions are less likely to be subject to reconsideration because the legislative branch can correct a mistaken judicial interpretation of a legislative enactment." Ibid. Moreover, where "the statute is thereafter amended without any change in the interpreted language, the judicial construction 'is regarded as presumptively the correct interpretation of the law.'" Coyle v. Bd. of Chosen Freeholders, 170 N.J. 260, 267 (2002) (citation omitted). Further,

years of "legislative acquiescence to an interpretation of a statute renders the judicial decision an unlikely candidate for abandoning stare decisis." Singleton, 211 N.J. at 181.

D.

Plaintiff's arguments do not persuade us to abandon the forty-year interpretation of 5-2. First, plaintiff notes that the TCA's general sections provide that public entities and public employees are immune for "the exercise of judgment or discretion," but that "[n]othing in this section shall exonerate a public entity [or public employee] for negligence arising out of acts or omissions . . . in carrying out their ministerial functions." N.J.S.A. 59:2-3(d); see N.J.S.A. 59:3-2. However, those sections "each provide only that '[n]othing in this section' shall immunize ministerial functions," so "those sections in no way prevent immunity from being granted by other sections of the TCA." Parsons v. Mullica Twp. Bd. of Educ. ("Parsons I"), 440 N.J. Super. 79, 93 (App. Div. 2015) (quoting N.J.S.A. 59:2-3(d) and N.J.S.A. 59:3-2), aff'd, 226 N.J. 297 (2016).

"Therefore, '[a]lthough a public entity is generally liable for the ordinary negligence of its employees in performance of ministerial duties, that liability yields to a grant of immunity'" elsewhere in the TCA. Ibid. (quoting Pico v. State, 116 N.J. 55, 62 (1989)). As Tice itself made clear, "acts of negligence, both

discretionary and ministerial, . . . even if not immunized by the general sections conferring entity immunity (sections 2-2 and 2-3), would also be immunized under the specific provisions of section 5-2a and 5-2b(1)." Tice, 133 N.J. at 364-65; see Parsons I, 440 N.J. Super. at 93. "An application of [sections 2-2's and 2-3's] general guidelines here would be contrary to the legislative intent underlying N.J.S.A. 59:5-2, and to the established rule that a specific statutory provision dealing with a particular subject will prevail over a general provision." Burg, 147 N.J. Super. at 324-25.[5]

Next, plaintiff cites the comment to N.J.S.A. 5-2(a), which states: "Subsection (a) involves a particular type of discretionary activity which should not be subject to threat of tort liability." That comment was in the Report of the Attorney General's Task Force on Sovereign Immunity 225 (1972), submitted with the draft TCA, and is part of its legislative history. Rochinsky v. State, Dep't of Transp., 110 N.J. 399, 407 n.4 (1988). Based on such comments, "certain provisions in the TCA have been

[5] Plaintiff cites the part of Flodmand discussing why sections 2-2 and 3-2 did not provide immunity for negligence in operation. 175 N.J. Super. at 510. Flodmand extended that interpretation to 5-2(b). Id. at 512. Our Supreme Court in Tice disapproved of Flodmand's interpretation of 5-2(b), choosing to follow Burg instead. 133 N.J. at 363-65; see Margolis & Novack, Claims Against Public Entities, comment on N.J.S.A. 59:5-2 (2018).

held not to grant immunity to ministerial acts." Parsons I, 440 N.J. Super. at 95.

However, we are not writing on a blank slate. In Burq, we acknowledged that "[t]he legislative intent underlying subsection (a) is that it involves 'a particular type of discretionary activity which should not be subject to threat of tort liability.'" 147 N.J. Super. at 322 (quoting comment to N.J.S.A. 59:5-2(a)). Nonetheless, as set forth above, we held that 5-2(a) provided immunity for both "'ministerial and discretionary acts.'" Id. at 323-24 (citation omitted). As explained above, since 1977 we have repeatedly reaffirmed Burq's holding as to 5-2(a), we have extended Burq's holding to 5-2(b), the Supreme Court has done likewise in Tice and other cases, and the Legislature has enacted Tice's holding by adopting 5-2(c). We will not overturn that well-established interpretation based on a comment we already addressed.

Plaintiff also cites cases decided under "the related California provision," Cal. Gov't Code § 845.8(a), to suggest that N.J.S.A. 59:5-2(a) does not extend to ministerial acts. Tice, 133 N.J. at 362. However, in drafting 5-2(a), our Legislature omitted the highlighted language in § 845.8(a) suggesting immunity was limited to "determining" discretionary issues:

> Neither a public entity nor a public employee is liable for:
>
> (a) Any injury resulting from determining whether to parole or release a prisoner or from determining the terms and conditions of his parole or release or from determining whether to revoke his parole or release.

"The deletion of ['determining whether'] from the Act as adopted by our Legislature reinforces the conclusion . . . that the Legislature's intention was to give the immunity provided for in the section a broad sweep." See Tice, 133 N.J. at 362 (addressing a deletion from § 845.8(b)).

Plaintiff's California cases do suggest that at least some ministerial duties are not immune under § 845.8(a). Johnson v. State, 447 P.2d 352, 364 (1968), stated:

> Once the proper authorities have made the basic policy decision — to place a youth with foster parents, for example — the role of section 845.8 immunity ends; subsequent negligent actions, such as the failure to give reasonable warnings to the foster parents actually selected, are subject to legal redress.

In 2007, another California case relied on that language to hold that "Johnson applied the distinction it had drawn [regarding Cal. Gov't Code § 820.2] between basic or discretionary decisions on the one hand and ministerial decisions implementing the basic decision on the other hand." Perez-Torres v. State, 164 P.3d 583,

588 (2007) (relying on Johnson to find no immunity for knowingly keeping the wrong man in jail on a parole violation).

However, Johnson relied on § 845.8(a)'s different language and different comment. 447 P.2d at 361 n.9, 364. Johnson also relied on California's exception to immunity where the defendants have a "special relationship" to the victims. Id. at 355, 362 n.10 (finding no immunity where the child-placement agency failed to warn foster parents about the dangerous youth it placed with them). However, "we have held that no such ['special relationship'] exception exists" in New Jersey. S.P. v. Newark Police Dep't, 428 N.J. Super. 210, 233-34 (App. Div. 2012); see Macaluso v. Knowles, 341 N.J. Super. 112, 116 (App. Div. 2001); Blunt, 309 N.J. Super. at 504-08. Moreover, plaintiff's complaint did not allege she or Veronica had a special relationship with defendants.

Further, unlike the unusual claims raised in Johnson and the Perez-Torres, claims of the sort plaintiff raises here — failure to supervise, failure to initiate revocation, and failure to warn the general public — have been rejected under California law. California courts have held § 845.8(a) "bars any state liability for negligent supervision of a released prisoner." E.g., Brenneman v. State, 256 Cal. Rptr. 363, 368 (Ct. App. 1989); Martinez v. State, 149 Cal. Rptr. 519, 523 (Ct. App. 1978); Superior Court,

112 Cal. Rptr. at 708-09 (distinguishing Johnson). California courts have held § 845.8(a) also bars claims for administrative errors in the revocation process. E.g., Perez-Torres, 164 P.3d at 587; Whitcombe v. Cty. of Yolo, 141 Cal. Rptr. 189, 195-98 (Ct. App. 1977). Moreover, California courts have found no duty for parole officials to warn parents or other members of the general public about dangerous prisoners paroled or released. E.g., Thompson v. Cty. of Alameda, 614 P.2d 728, 733-37 (Cal. 1980) (distinguishing Johnson); Brenneman, 256 Cal. Rptr. at 367-68 (same).

In any event, Burq and Tice were "guided by the California decisions making '"the immunity with respect to injury caused by an escaped prisoner an absolute one."'" Tice, 133 N.J. at 364 (quoting Burq, 147 N.J. Super. at 324 (quoting County of Sacramento, 503 P.2d at 1387)). Regardless of other California cases, Burq, Tice, and the New Jersey cases following them have already established New Jersey's interpretation of 5-2(a).

Plaintiff next quotes part of Fielder's discussion about whether "the Legislature intended the immunity of 5-2b to be narrower than 5-2a." 141 N.J. at 120. That dispute involved an entirely different issue, namely whether N.J.S.A. 59:5-2(b)'s language granting immunity for injuries "caused by . . . an escaping or escaped person" restricted immunity to injuries caused

by the escapee's vehicle as in Tice, and not by the pursuing officer's vehicle as in Fielder. See Tice, 133 N.J. at 388 (Clifford, J., concurring) (asserting that 5-2(b)'s language was narrower than 5-2(a)'s immunity for injuries "resulting from" parole); Fielder, 141 N.J. at 135 (Stein, J., concurring). Nonetheless, plaintiff emphasizes language in Fielder stating:

> The Legislature did not use the language of 5-2b in drafting 5-2a—which would have resulted in defining the immunity in terms of "any injury caused by a paroled or released prisoner"—because its concern was not with prisoners as such but with a very specific class of lawsuits: those based on alleged negligence in deciding to parole or release prisoners, or in setting terms and conditions of parole or release that were not sufficiently restrictive, or in deciding not to revoke parole. (We suspect that this is the intended legislative meaning despite the subsection's language.) The Legislature apparently wished to relieve public employees making discretionary decisions of concerns that otherwise sound determinations might lead to civil liability. More specifically, if the authorities in their best judgment thought that parole or release was warranted, the Legislature did not want it denied just to avoid a lawsuit; and the same reasoning applies where sound judgment of the authorities called for terms and conditions not as restrictive as those that might better protect against civil liability, or where sound judgment called for a decision not to revoke parole, but the possibility of a lawsuit might argue for revocation.
>
> [141 N.J. at 120-21 (emphasis by plaintiff).]

However, plaintiff's argument fails because our Supreme Court in Fielder refused to differentiate 5-2(a) and 5-2(b), even as it acknowledged "that the language difference of 5-2b and 5-2a suggests some difference in the nature of the immunities granted." Id. at 121-22. First, the Court found public policy required immunity not only for policy makers but also for ministerial "public employees whose direct contact with someone causes injuries—that apparently being the thrust of the argument describing the 5-2a immunity as 'broader' than 5-2b (where such direct contact is supposedly not immunized)." Id. at 121. The Court "f[ou]nd it unlikely that the Legislature would have intended a broader grant of immunity in order to encourage public entities and employees to parole or release prisoners than that grant of immunity designed to encourage them to capture and arrest escaping prisoners." Ibid. Just as public policy supported immunity for the police officer's negligent driving in Fielder, id. at 129, public policy supports immunity for parole officers performing ministerial duties who do not "revoke parole, [where] the possibility of a lawsuit might argue for revocation," id. at 121.

The Fielder Court's second reason for rejecting the attempt to differentiate the subsections was based on the Court's "conclusion in Tice." Fielder, 141 N.J. at 122. The Court reaffirmed Tice's holding "that as the negligent actions of a

public employee or entity in connection with parole are immune [under 5-2(a)], so are the negligent actions of a public employee or entity in connection with the pursuit of an escaping person" under 5-2(b). Id. at 118-19 (citing Tice, 133 N.J. at 367, 380). The Court found "no meaningful distinction between Tice and this case." Id. at 119.

As detailed above, Tice followed Burg and found 5-2(a) and 5-2(b) each immunized both discretionary and ministerial acts. Our Supreme Court reaffirmed that absolute immunity in Fielder and in cases after Fielder. After Fielder, we repeatedly reaffirmed that absolute immunity and that it covered both discretionary and ministerial activities. Accordingly, we are not persuaded to discard all prior and later cases based on an argument discussed and rejected in Fielder.

Plaintiff asserts that Burg, Coppola, and Ornes involved claims arising from discretionary decisions, not from the negligent performance of ministerial duties. However, as described above, the plaintiffs in Burg and Ornes claimed the defendants negligently performed ministerial duties, and we held immunity under 5-2(a) applied to ministerial duties. The plaintiff in Coppola claimed the defendants violated statutory duties, and we found immunity under 5-2(a), even though "'obedience to the mandate of legal authority'" in a statute or regulation is a

ministerial duty. Parsons I, 440 N.J. Super. at 91 (citation omitted). Moreover, although Burq and Coppola focused on the decision to release the perpetrator on work release and parole respectively, in Ornes we ruled that immunity under 5-2(a) applied not only to the State's "decision to implement a work-release program" but also to "its administration of such a program," which involved ministerial duties. 278 N.J. Super. at 541; see id. at 540 (noting that DOC guidelines required that work-release locations be "regularly monitored").

Plaintiff contends her complaint does not challenge Farmer's release on parole, or the terms and conditions of his release, but only the administration of his parole, including supervision, monitoring, and revocation, which she contends are ministerial duties. Even if ministerial, such duties are immunized by 5-2(a), as set forth above. We reject plaintiff's contention Ornes is mistakenly decided, and we refuse to discard the forty years of precedent from Burq to Tice and beyond. Although plaintiff's allegations "involve a profound tragedy" and "evoke sympathy," we must follow the cases that "have made clear the meaning of the law enacted by the Legislature." Parsons I, 440 N.J. Super. at 589 (quoting Wilson ex rel. Manzano v. City of Jersey City, 209 N.J. 558, 572, 589 (2012)). If that long-standing interpretation is to be changed, it is "for the Legislature to speak to the issue."

Alston, 168 N.J. at 183; see Tice v. Cramer, 254 N.J. Super. 641, 652 (App. Div. 1992) ("Any reconsideration of this policy is for the Legislature, not for the courts."), aff'd, 133 N.J. 347, 351 (1993).

Affirmed.