

RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." 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-2727-15T2

J.O.,

Plaintiff-Appellant,

v.

NANCI ARRAIAL, individually and in her official capacity; CRAIG F. MEYER, individually and in his official capacity; RICHARD J. GUSS, individually and in his official capacity; DARYL A. WILLIAMS, individually and in his official capacity; HECTOR I. RODRIGUEZ, individually and in his official capacity; E. RONALD WRIGHT, J.M.C., individually and in his official capacity; THE TOWNSHIP OF BEDMINSTER; THE TOWNSHIP OF FRANKLIN (Somerset Co.); THE COUNTY OF SOMERSET; THE STATE OF NEW JERSEY; and AMY H. WOLLOCK, individually,

Defendants-Respondents.

Argued February 27, 2018 – Decided March 14, 2018

Before Judges Fisher, Fasciale and Moynihan.

On appeal from Superior Court of New Jersey,
Law Division, Somerset County, Docket No.
L-1494-14.

Joseph Oettinger, Jr., argued the cause for appellant.

Richard A. Grodeck argued the cause for respondents Nanci Arraiial, Craig F. Meyer, Richard J. Guss, and Township of Bedminster (Piro, Zinna, Cifelli, Paris & Genitempo, LLC, attorneys; Richard A. Grodeck, of counsel and on the brief).

Ashley L. Costello, Deputy Attorney General, argued the cause for respondents Daryl A. Williams and the State of New Jersey (Gurbir S. Grewal, Attorney General, attorney; Lisa A. Puglisi, Assistant Attorney General, of counsel; Ashley L. Costello, on the brief).

Louis N. Rainone argued the cause for respondents Hector I. Rodriguez, E. Ronald Wright, J.M.C., and Township of Franklin (Rainone Coughlin Minchello, attorneys; John A. Stone, on the brief).

Jennifer A. Cottell, Deputy County Counsel, argued the cause for respondent County of Somerset (William T. Cooper, III, County Counsel, attorney; Jennifer A. Cottell, on the brief).

Jordan B. Kaplan argued the cause for respondent Amy H. Wollock (Fox Rothschild, LLP, attorneys; Matthew S. Adams and Jordan B. Kaplan, on the brief).

PER CURIAM

Plaintiff appeals from orders dismissing the complaint as to some defendants for failure to state a claim pursuant to Rule 4:6-2(e) and granting summary judgment as to other defendants. We affirm.

Plaintiff filed this lawsuit against defendants and raised

multiple causes of action. The procedural history preceding the filing of this appeal is protracted. For our purposes, the parties filed dispositive motions, which more than one judge adjudicated. Those judges then issued the orders under review. In dismissing the complaint for failure to state a claim as to some defendants and granting summary judgment as to other defendants, the judges made legal conclusions after rendering comprehensive oral and written opinions.

On appeal, plaintiff argues:

POINT I

[THE JUDGE] ERRED IN FAILING TO GIVE PLAINTIFF THE BENEFIT OF EVERY FAVORABLE INFERENCE THAT CAN BE DRAWN FROM THE ALLEGATIONS OF THE COMPLAINT CONCERNING DEFENDANTS' [Rule] 4:6-2(e) MOTIONS TO DISMISS.

POINT II

[THE JUDGE] ERRED IN FINDING THAT PLAINTIFF'S CLAIMS ARE BARRED BY THE ENTIRE CONTROVERSY DOCTRINE.

POINT III

[THE JUDGE] ERRED IN DENYING PLAINTIFF'S CROSS-MOTIONS TO STRIKE THE BEDMINSTER DEFENDANTS' AND DEFENDANT WOLLOCK'S MOTIONS TO DISMISS.

A. [The Judge] erred in denying plaintiff's cross-motion to strike the Bedminster Defendants' [Rule] 4:6-2(e) motion to dismiss.

B. [The Judge] erred in denying plaintiff's cross-motion to strike defendant Wollock's [Rule] 4:6-2(e) motion to dismiss.

POINT IV

[THE JUDGE] ERRED IN HOLDING THAT PLAINTIFF FAILED TO STATE [NEW JERSEY TORT CLAIMS ACT (NJTCA)] NEGLIGENCE MONETARY DAMAGE AND EQUITABLE RELIEF CLAIMS UPON WHICH RELIEF CAN BE GRANTED IN THE FIRST, SECOND AND THIRD COUNTS AGAINST DEFENDANTS ARRAIAL, MEYER, WILLIAMS AND GUSS.

A. Plaintiff has stated NJTCA negligence monetary damage claims on which relief can be granted.

1. Defendants Arraial, Meyer, Williams and Guss do not enjoy immunity under N.J.S.[A.] 59:3-3.

2. Defendants Arraial, Meyer, Williams and Guss do not enjoy immunity under N.J.S.[A.] 59:3-5.

3. Defendants Arraial, Meyer, Williams and Guss do not enjoy immunity under N.J.S.[A.] 59:3-2.

B. Plaintiff has stated negligence equitable relief claims on which relief can be granted.

POINT V

[THE JUDGE] ERRED IN HOLDING THAT PLAINTIFF FAILED TO STATE NJTCA RESPONDEAT SUPERIOR MONETARY DAMAGE AND EQUITABLE RELIEF CLAIMS UPON WHICH RELIEF CAN BE GRANTED IN THE FIFTH, SEVENTH AND EIGHTH COUNTS AGAINST THE TOWNSHIP OF BEDMINSTER, COUNTY OF SOMERSET AND STATE OF NEW JERSEY.

POINT VI

[THE JUDGE] ERRED IN HOLDING THAT PLAINTIFF FAILED TO STATE NJTCA INTENTIONAL/RECKLESS/OUTRAGEOUS/WILLFUL/MALICIOUS MONETARY DAMAGE AND EQUITABLE RELIEF CLAIMS UPON WHICH RELIEF CAN BE GRANTED IN THE NINTH, TENTH AND ELEVENTH COUNTS AGAINST DEFENDANTS ARRAIAL, MEYER, WILLIAMS AND GUSS.

POINT VII

[THE JUDGE] ERRED IN HOLDING THAT PLAINTIFF FAILED TO STATE [NEW JERSEY CIVIL RIGHTS ACT (NJCR)] MONETARY DAMAGE CLAIMS UPON WHICH RELIEF CAN BE GRANTED IN THE FIFTEENTH COUNT AGAINST DEFENDANT WILLIAMS.

A. Plaintiff stated NJCRA monetary damage claims upon which relief can be granted against defendant Williams as an employee of the County of Somerset.

B. In the alternative, plaintiff stated NJCRA monetary damage claims upon which relief can be granted against defendant Williams should Williams be deemed an employee of the State of New Jersey.

C. Defendant Williams does not enjoy absolute immunity from plaintiff's NJCRA monetary damage claims, based on the timing of his role as advocate.

D. Defendant Williams does not enjoy absolute immunity from plaintiff's NJCRA monetary damage claims, based on the nature of the function performed.

E. Defendant Williams does not enjoy qualified immunity from plaintiff's NJCRA monetary damage claims concerning delay in returning seized property and derivatives.

POINT VIII

[THE JUDGE] ERRED IN HOLDING THAT PLAINTIFF FAILED TO STATE NJCRA INJUNCTIVE RELIEF AND/OR MONETARY DAMAGE CLAIMS UPON WHICH RELIEF CAN BE GRANTED IN THE THIRTEENTH AND FOURTEENTH COUNTS AGAINST DEFENDANTS ARRAIAL, MEYER AND GUSS.

A. Defendants Arraial, Meyer and Guss do not enjoy immunity from plaintiff's NJCRA injunctive relief claims.

B. Defendant Guss does not enjoy absolute immunity from plaintiff's NJCRA monetary damage claims, based on the timing of his role as advocate.

C. Defendant Guss does not enjoy absolute immunity from plaintiff's NJCRA monetary damage claims, based on the nature of the function performed.

D. Defendant Guss does not enjoy qualified immunity from plaintiff's NJCRA monetary damage claims concerning delay in returning seized property and derivatives.

E. Defendants Arraial and Meyer do not enjoy qualified immunity from plaintiff's NJCRA monetary damage claims concerning delay in returning seized property and derivatives, and damaging, tampering with, and converting, seized property while in custody.

POINT IX

[THE JUDGE] ERRED IN HOLDING THAT THE PURPORTED MARCH 27, 2012 SOMERSET COUNTY PROSECUTOR'S NOTICE TO PRESERVE DOCUMENTS AND ELECTRONIC DATA EXCUSED THE OBSTRUCTION BY DEFENDANT GUSS OF [A DIFFERENT JUDGE'S] ORDERS TO RETURN PLAINTIFF'S PROPERTY AND DERIVATIVES.

POINT X

[THE JUDGE] ERRED IN HOLDING THAT PLAINTIFF FAILED TO STATE INJUNCTIVE RELIEF AND MONETARY DAMAGE BREACH OF CONTRACT CLAIMS UPON WHICH RELIEF CAN BE GRANTED IN THE EIGHTEENTH COUNT AGAINST DEFENDANT ARRAIAL.

POINT XI

[THE JUDGE] ERRED IN HOLDING THAT PLAINTIFF FAILED TO STATE A RESPONDEAT SUPERIOR MONETARY DAMAGE BREACH OF CONTRACT CLAIM UPON WHICH RELIEF CAN BE GRANTED IN THE NINETEENTH COUNT AGAINST DEFENDANT TOWNSHIP OF BEDMINSTER.

POINT XII

[THE JUDGE] ERRED IN HOLDING THAT PLAINTIFF FAILED TO STATE INJUNCTIVE RELIEF AND MONETARY DAMAGE BREACH OF CONTRACT CLAIMS UPON WHICH RELIEF CAN BE GRANTED IN THE TWENTIETH COUNT AGAINST DEFENDANT WOLLOCK.

POINT XIII

[THE JUDGE] ERRED IN HOLDING THAT PLAINTIFF FAILED TO STATE A MONETARY DAMAGE FRAUD TORT CLAIM UPON WHICH RELIEF CAN BE GRANTED IN THE NINETEENTH COUNT AGAINST DEFENDANT WOLLOCK.

POINT XIV

[A DIFFERENT JUDGE] ERRED IN HOLDING THAT PLAINTIFF FAILED TO STATE NJTCA RESPONDEAT SUPERIOR MONETARY DAMAGE CLAIMS UPON WHICH RELIEF CAN BE GRANTED IN THE SEVENTH COUNT AGAINST THE COUNTY OF SOMERSET.

POINT XV

[A DIFFERENT JUDGE] ERRED IN DISMISSING THE FRANKLIN DEFENDANTS BASED ON PLAINTIFF'S FAILURE TO FILE AN ACTION IN LIEU OF PREROGATIVE WRITS.

After considering the record, oral argument, and the briefs, we conclude that plaintiff's arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). We affirm substantially for the thoughtful reasons expressed by the motion judges.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION