

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2023-21

C.C.V. by her guardian, C.L.V.,  
and C.L.V., individually,

Plaintiffs-Appellants,

v.

NEW HORIZONS IN AUTISM,  
INC., ANGELA FORDHAM  
LEWIS, MICHELLE GOODMAN,  
DEANN MANOCHIO,  
SHENIQUA DOUGLAS,  
PAM WAYBRIGHT, and  
W.O.,

Defendants-Respondents,

and

JESSICA MULHERN, ALEX  
BRIARDI, THEO AKONNOR,  
T.O., MICHELE CLAY, and  
EMANUEWELL CLAY,

Defendants.

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Submitted June 1, 2023 – Decided August 21, 2023

Before Judges Vernoia and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-3080-19.

Russell Macnow Attorney at Law, LLC, attorney for appellants (Lauren Papaleo, on the brief).

Goldberg Segalla LLP, attorneys for respondent New Horizons in Autism, Inc. (Thaddeus J. Hubert, IV, of counsel and on the brief; John W. Meyer, on the brief).

Eckert Seamans Cherin & Mellott, LLC, attorneys for respondents Angela Fordham Lewis and Michelle Goodman (Marshall D. Bilder, of counsel and on the brief; Michael A. Alberico, on the brief).

Hall Booth Smith, PC, attorneys for respondent Deann Manochio Wiggins (Martin Sullivan, Matthew J. Lang, and Joseph F. Herbert III, on the brief).

Salmon, Ricchezza, Singer & Turchi, LLP, attorneys for respondent Sheniqua Douglas (Michele L. Weckerly, on the brief).

Lewis Brisbois Bisgaard & Smith, LLP, attorneys for respondent Pamela Waybright (Malinda A. Miller and Peter A. D'Arcangelo, of counsel and on the brief).

Chasan Lamparello Mallon & Cappuzzo, PC, attorneys for respondent W.O. (Thomas N. Zuppa, of counsel; Kirstin Bohn, on the brief).

PER CURIAM

Plaintiffs C.C.V.,<sup>1</sup> by her guardian and mother, C.L.V., and C.L.V., individually, appeal from an October 6, 2021 order granting defendants partial summary judgment.<sup>2</sup> The order dismissed plaintiffs' negligence-based complaint in which they alleged defendant T.O., while a resident at defendant New Horizons in Autism, Inc., a group home facility, sexually assaulted his fellow resident C.C.V. The court dismissed the complaint on two grounds. It first determined the motion record was devoid of the expert proofs necessary to establish the standard of care owed to C.C.V. by her caregivers while residing at New Horizons, and any resulting breach. The court also concluded, in the alternative, plaintiffs' negligence claims were barred by the Charitable Immunity Act (CIA), N.J.S.A. 2A:53A-7 to -11. We agree with the court's conclusion that plaintiffs' claims against defendants required expert testimony and affirm the

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<sup>1</sup> We use initials to identify plaintiffs, T.O., and his father W.O., to protect C.C.V.'s identity in light of the allegations in the complaint that she was the victim of sexual assault. R. 1:38-3(f)(4).

<sup>2</sup> The court's order denied T.O.'s summary judgment motion with respect to one count of the complaint, which was later dismissed with prejudice by way of stipulation. It also granted summary judgment to numerous other parties involved in C.C.V.'s care at New Horizons. Plaintiffs have not challenged the court's dismissal of the complaint as to those parties and we accordingly do not discuss them in our opinion.

court's order on that basis. We accordingly do not address the propriety of the court's decision under the CIA.

## I.

We briefly summarize the facts from the summary judgment record, viewing them in a light most favorable to plaintiff. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). New Horizons is a non-profit organization "dedicated to serving individuals with autism and their families in New Jersey by delivering community[-]based services; providing advocacy, support[,] and technical assistance; [and] increasing public awareness and education about autism . . . ." It also "provides opportunities for socialization and opportunities to foster healthy relationships with both staff and peers . . . to ensure an enriching environment that meets the unique needs of each individual who resides there."

C.C.V. is a non-verbal adult woman diagnosed with autism and an epilepsy disorder. C.L.V. was declared the legal guardian of her daughter after she was "adjudicated . . . an incapacitated person" and "unable to care for herself or manage her own affairs." As noted, both C.C.V. and T.O., who is also diagnosed with autism, are residents of New Horizons.

Individuals who reside at New Horizons receive an individual habitation plan (IHP), which is an "outcome-based planning tool that, at a minimum, identifies each individualized program, support, and/or service requested by and provided to the individual, for which the individual demonstrates a need." N.J.A.C. 10:44A-1.3. The IHP also "identifies the person and/or provider responsible for its implementation. The complexity of the service plan will vary according to the individual's interests, preferences, and needs." Ibid.

Residents also receive an individualized service plan (ISP), which is a "standardized service planning document developed based on an individual's assessed needs that identifies an individual's outcomes and describes the services needed to assist the individual in attaining the outcomes identified in the plan. An approved ISP authorizes the provision of services and supports." N.J.A.C. 10:46C-1.3.

T.O.'s current ISP, which post-dates the alleged incident, includes a section entitled "Masturbates in Public." As the ISP explains:

NJCAT<sup>3</sup> states that T.O. masturbates in public[;] this information is inaccurate. He is aware of a protocol for

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<sup>3</sup> The New Jersey Department of Human Services, Division of Developmental Disabilities

times when he is interested in masturbation. He also has a situational story that can be reviewed with him to reinforce this protocol. He will be given his tablet and he knows to go to his room for private time. This is the only time he should be out of line of sight of a caregiver.

The ISP also states T.O. exhibits "sexually predatory behavior," however, it provides the following context:

It has been stated that T.O. displays sexually predatory behaviors. This behavior can be described as the possibility that he may stare inappropriately at children. If given the chance he may also stroke their leg. This is because he is attracted to long skinny legs similar to the cartoons he watches when masturbating. For this reason, he should not be too close to children and if he starts to become fixated or stare, he should be discreetly removed from the area.

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uses a standard assessment to determine eligibility and to help Support Coordinators and providers understand what services are needed. This information is gathered using the New Jersey Comprehensive Assessment Tool (NJCAT). The NJCAT evaluates the need for support in three main areas: self-care, behavioral, and medical. The results also establish the individual's tier, which determines the annual budgets that will be available for services.

[Dep't of Human Servs., Division of Developmental Disabilities, Assessment for Services, <https://www.state.nj.us/humanservices/ddd/individuals/applyservices/assessment/#:~:text=This%20information%20is%20gathered%20using,care%2C%20behavioral%2C%20and%20medical> (last visited Aug. 14, 2023).]

On its face, the ISP does not restrict T.O. from being near adult females, nor does it prohibit his placement in a group home, whether it be co-ed or all male. The ISP further clarifies "[i]t has been stated that [T.O.] will sexually touch others without their consent. However, this information is inaccurate. He does not engage in sexual activity with others."

Defendant W.O., T.O.'s father, testified that when T.O. turned twenty-one, he and his wife decided to place T.O. in a group home because he "required [twenty-four/seven] care." W.O. further recounted that with T.O. "becoming stronger" simply because he was growing older, W.O. and his wife decided to place him in a group home because they "couldn't handle him anymore in terms of being able to watch [him] with a set of eyes" at all times. In addition, W.O. stated when T.O. began to exhibit sexual behavior at home "relative to puberty," they hired an expert to address his masturbation behavior, such as "request[ing] private time."

T.O. was initially placed at a male only group home but was relocated to New Horizon's in an emergency placement in 2015 after he was assaulted by other residents from his former facility, requiring an immediate removal. At the time of T.O.'s admittance, W.O. was on New Horizons' Board of Trustees, a

position he held from approximately 2003 through December 2019.<sup>4</sup> W.O. also stated defendants Angela Fordham Lewis, who owned the New Horizons group home where T.O. and C.C.V. resided, and Michelle Goodman were both involved in T.O.'s placement at New Horizons.

At the time of the assault, defendant Deann Manochio<sup>5</sup> was a Direct Care Professional at New Horizons. She described T.O. as having a "mindset like a fresh teenager" and "very go-to with sexual things." She also stated New Horizons documented T.O.'s conduct at the group home including the locations where he masturbated. Manochio further testified T.O. masturbated in the presence of other residents and in common areas, specifically the living room near the kitchen. She also stated on one occasion she saw T.O. viewing pornography on his iPad in the common room, although she testified she did not report this incident to any other staff members or supervisors.

Defendant Pam Waybright, the manager at New Horizons, testified she observed T.O. on approximately two occasions in the living room behaving as

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<sup>4</sup> W.O. served as Chairman of the Board of Trustees from approximately 2010 until 2019.

<sup>5</sup> Since the incident, defendant Deann Manochio has changed her name to Deann Wiggins. At the time of the incident, her surname was Manochio. We refer to her by the name she used at the time of the incident.



if he was going to masturbate. Upon observing this behavior, she directed T.O. to his room, which was consistent with staff members' obligation to make sure T.O. masturbated in his room and to document his activity. Waybright testified, however, it was never reported to her that T.O. masturbated outside his room. Specifically, she stated from 2015 to 2018, T.O. "never started to masturbate in front of [others] . . ." and he did not masturbate in "public or never did it . . . in the common areas. It was never done that way."

Further, Waybright testified there were no reported incidents of T.O. engaging in sexually predatory behavior or touching any resident in an inappropriate fashion during the approximately three-year period when he lived at New Horizons. She also stated "[t]here was no interaction" between T.O. and C.C.V. and explained "T.O. pretty much loved to be on his iPad, stay on the couch." She recounted one incident, however, in which T.O. "went to get up [from a couch] and he put his hand on [C.C.V.'s] leg to get up."

On June 8, 2018, Manochio and another staff member, defendant Sheniqua Douglas, transported all four residents of the New Horizons facility in a twelve-passenger van from an activity in Toms River to a doctor's appointment for one of the residents. From the outset, the transportation violated New Horizons' internal policies, which required a minimum resident-to-staff ratio of 3:2.

After the doctor's appointment, the staff members briefly returned to the facility and then departed to a Walmart in Toms River, still with all four residents in the van. After parking the van, Douglas went into Walmart to purchase an Ace bandage for one of the residents while Manochio supervised the four residents in the van.

According to Manochio, when Douglas left the van, T.O. was in a bench seat behind C.C.V. While setting the radio, she heard C.C.V. issue a "blood curdling" scream, the first time she heard C.C.V. verbalize in that fashion. When she turned around, Manochio saw T.O. "sitting in the next seat with her and his hand was on her . . . leg" near "the thigh area." In response, Manochio separated T.O. and C.C.V., and in the process she observed C.C.V.'s underwear was around her ankles. Manochio testified she "had no idea how [C.C.V.'s underwear] got down." She later learned, however, that C.C.V. "frequently takes her pants on and off" and "guess[ed]" this conduct included removing her underwear at times. Manochio also stated she did not believe she could handle T.O. alone in the event he had an outburst.

Following the incident, Manochio immediately called Douglas, who returned to the van, and recounted what had just occurred. According to Manochio, Douglas described to her that C.C.V. screams when T.O. "tries to

touch her," and that it "happens all the time." Manochio could not describe the nature of the touching Douglas referred to, however, or provide any more detail into whether these alleged instances of contact were considered inappropriate. According to Manochio, Douglas also told her this "has happened before" but "didn't give [Manochio] . . . details or [explain] how or what happened."

At her deposition, Douglas testified she had never witnessed T.O. touch anyone in an inappropriate fashion nor did she see T.O. touch C.C.V. "at any point in time" and did not receive reports of such conduct prior to the incident on the van. Douglas was aware of T.O.'s behavioral issues and stated she had no concerns regarding him living with female residents.

After discussing the matter, New Horizons' staff did not submit an "unusual incident report" with respect to the occurrence in the Walmart parking lot or notify C.L.V. about it. Manochio stated her supervisor, Waybright, told her not to memorialize the incident.

According to C.L.V., she received an anonymous call two days later informing her about the alleged assault. As a result of this notification, C.C.V. underwent a sexual assault examination which failed to identify any external injuries. In addition, the Department of Human Services investigated and characterized the allegation as "unsubstantiated." The Ocean County

Prosecutor's office also investigated the incident and as best we can discern from the record, it did not charge T.O. with any offense.

In August 2019, plaintiffs filed their initial complaint against defendants, which was later amended in December 2019, alleging, in part, T.O. sexually assaulted C.C.V. Plaintiffs specifically alleged T.O. "sexually assault[ed] plaintiff, C.C.V., as the result of which she has been damaged," and claimed W.O., in his role as Chairman of the Board of Trustees of New Horizons, and as T.O.'s father "knew or should have known of the uncontrolled, aggressive sexual propensities of his son and, therefore, should not have facilitated or permitted or otherwise allowed the transfer of his son to the . . . group home in which plaintiff, C.C.V., was a resident." They also claimed, "New Horizons . . . , and its management, negligently hired employees thereby allowing the sexual assault of . . . C.C.V., to occur as the result of which she has been damaged."

As against all defendants, plaintiffs further alleged "[d]efendants, and each of them, negligently supervised defendant, T.O., as a result of which he was allowed to sexually assault . . . C.C.V.," and, similarly, "[t]he negligent actions of the defendants, and each of them, have caused plaintiff, C.C.V., to suffer from emotional distress." They also asserted each of the defendants "negligently caused plaintiff, C.C.V., to suffer from extreme emotional distress

for which she has sought medical treatment and continues to do so." Finally, they claimed "[d]efendants failed to make notification until three days after the sexual assault occurred thereby violating their statutory obligation" pursuant to N.J.S.A. 30:6D-9.3.<sup>6</sup>

Following discovery, all defendants moved for summary judgment. Other than T.O., defendants primarily argued plaintiffs' claims failed as a matter of law due to their failure to produce expert testimony to support their claims defendants breached a duty of care owed to them. Alternatively, defendants contended they were immunized from liability by the CIA.

In support of their summary judgment motion, New Horizons contended the record was devoid of evidence supporting the proposition that T.O. was a sexual predator, or someone at risk of sexually touching anyone without their consent. On this point, defendants relied, in part, on T.O.'s "Aging Out Data"

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<sup>6</sup> N.J.S.A. 30:6D-9.3 provides, in part:

[a] provider or licensee of a community-based residential program or day program shall provide notification . . . of any major physical injury, moderate physical injury, or minor physical injury, as prescribed by department regulation, that is suffered by an individual with a developmental disability who is receiving services from the provider or licensee.

[N.J.S.A. 30:6D-9.3(a).]

from 2014, which noted he publicly removed his clothes within the prior six months but also stated he had no incidents of public masturbation or "sexually touch[ing] others without their consent."

Plaintiffs countered the CIA did not immunize defendants with respect to the alleged conduct and expert testimony was unnecessary because defendants' breaches would be apparent to any reasonable juror. Before the motion court, plaintiffs also stressed T.O.'s ISP stated he "displays sexually predatory behaviors" and he should only be out of a caregiver's line of sight when he is in his room masturbating.

After considering the parties' submissions and oral arguments, the court granted summary judgment to all defendants on all counts with the exception of the sexual assault claim alleged against T.O., which was later dismissed via stipulation. We detail only those portions of the court's written decision pertinent to the issues raised on appeal.

Addressing plaintiffs' claims sounding in negligence, the court concluded, even "[a]ssuming arguendo that the CIA does not provide all defendants other than T.O. with immunity as to the negligence causes of action, such causes of action are fatally flawed due to [p]laintiffs' failure to procure expert testimony establishing the standards of care applicable here and breach of such standards."

On this point, the court explained that in "circumstances, such as here, where the issue is the duties of care ascribed to a facility providing services to individuals with developmental disabilities, the concepts of duty and breach of said duty are beyond the common understanding of a juror."

The court also noted "licensed facilities for persons with developmental disabilities" are "heavily regulated," yet plaintiffs failed to cite to any regulations "governing transfer of residents, training, education, supervision, hiring, employability, background searches, . . . resident to employee ratios" or even "best practices" to "shed light on what standard of care defendants owed and whether their conduct met those standards." According to the court, absent expert testimony, a jury would be unable to discern the applicable standards of care for transferring and placing adults with developmental disabilities into a care facility, hiring and supervising individuals to work at such facilities, and the appropriate staff-to-resident ratio. Rather, the jury would be left "to speculate as to how New Horizons' polic[ies] measure[] against the appropriate standard of care."

The court also found plaintiffs' pleading deficient as to negligent transfer and placement of T.O. as they "fail[ed] to assert with any specificity what the negligence was." The court specifically noted plaintiffs failed to identify any

governing law or standard to support their contention "that T.O. should have never been assigned to the [New Horizons] group home." It similarly observed plaintiffs failed to identify which employee was negligently hired, how any employee was negligently hired, or any standards that govern hiring at such facilities. The court also determined that absent expert testimony, a jury could not conclude "T.O. was predisposed to committing sexual assault" because the asserted correlation that "a non-verbal adult's masturbation habits could indicate a potential for future, untoward sexual contact . . . is well beyond the ken of a layperson."

Alternatively, the court determined the CIA "applie[d] as a matter of law" and rejected plaintiffs' contention that defendants' conduct was "not immunized because the conduct was willful, wanton, or grossly negligent." The court acknowledged CIA immunity does not extend to "damage by a willful, wanton or grossly negligent act of commission or omission, including sexual assault, any other crime of a sexual nature, a prohibited act as defined in [N.J.S.A. 2A:30B-2], or sexual abuse as defined in [N.J.S.A. 2A:61B-1]." See N.J.S.A. 2A:53A-7(c)(1). It concluded, however, "[t]he reference to crimes of a sexual nature, exists within subsection (1) of section (c) — it is not its own, independent exception[—]" and plaintiffs failed to establish the alleged sexual assault was



"premised on willful, wanton, or grossly negligent conduct" of the defendants other than T.O. As noted, the court dismissed all claims sounding in negligence, and this appeal followed.

## II.

We review the disposition of a summary judgment motion de novo, applying the same standard used by the motion court. Townsend v. Pierre, 221 N.J. 36, 59 (2015). Like the motion court, we view "the competent evidential materials presented . . . in the light most favorable to the non-moving party, [and determine whether they] are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Town of Kearny v. Brandt, 214 N.J. 76, 91 (2013) (quoting Brill, 142 N.J. at 540); see also R. 4:46-2(c)). If "the evidence 'is so one-sided that one party must prevail as a matter of law,'" courts will "not hesitate to grant summary judgment." Brill, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)).

A plaintiff bears the burden to prove negligence, which is never presumed. Khan v. Singh, 200 N.J. 82, 91 (2009). "[T]he mere showing of an accident causing the injuries sued upon is not alone sufficient to authorize an inference of negligence." Vander Groef v. Great Atl. & Pac. Tea Co., 32 N.J. Super. 365, 370 (App. Div. 1954) (quoting Hansen v. Eagle-Picher Lead Co., 8 N.J. 133,

139-40 (1951)). In order to establish defendants' negligence, plaintiffs must establish: "(1) a duty of care, (2) breach of that duty, (3) actual and proximate causation, and (4) damages." Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 594 (2013).

Applying these standards, we conclude from our de novo review of the record, viewed as it must be in a light most favorable to plaintiffs, the court correctly dismissed plaintiffs' complaint as their negligence-based claims all required expert testimony. As a result, and as noted, we need not address the court's alternative basis for dismissal founded on the immunities provided by the CIA.

### III.

Before us, plaintiffs reprise the arguments they raised before the motion court. First, they argue "[t]he trial court incorrectly held that [p]laintiffs were required to procure expert testimony to establish the standard of care in the residential group home." On this point, they specifically contend "[a]n expert is not necessary to opine as to the standard of care applicable" when "placing an individual with sexual propensities who acts on those propensities in a group home with nonverbal women." They further assert "[t]here is clear testimony from [Manochio] that on the day of this occurrence New Horizons had a standard

ratio of resident-to-staff and that when this incident occurred, there was an impermissible ratio." Plaintiffs also maintain the court erred in concluding the CIA barred their claims against New Horizons and its employees.

New Horizons contends plaintiffs' negligent transfer claim is deficient absent expert testimony because such testimony is necessary to "(1) establish T.O. was predisposed to committing sexual assault; and (2) to explain to the jury why a person with T.O.'s alleged sexual tendencies should not have been transferred to New Horizons." On this point, it notes plaintiffs failed to produce evidence "identifying a standard for when someone should or should not be transferred to a facility like New Horizons" or whether T.O. met that standard. According to New Horizons, plaintiffs' reckless transfer claim is also deficient due to their failure to identify any standard by which a jury could determine T.O. was improperly transferred to New Horizons.

New Horizons similarly argues expert testimony is necessary to establish it deviated from accepted hiring, training, and supervision standards and plaintiffs failed to produce evidence supporting their negligent hiring and supervision claims in any event. It maintains "there is no evidence New Horizons knew or had reason to know [an] unidentified employee would commit a tort, or that this unidentified employee should not have been hired." And,

according to New Horizons, even were we to accept its staff deviated from its training, there is no evidence it knew or had reason to know any alleged failure to train or supervise an employee would create a risk of harm. Alternatively, New Horizons maintains the CIA bars plaintiffs' negligence claims.

The remaining defendants similarly argue plaintiffs' claims are deficient for their failure to produce necessary expert testimony and because they are immunized from liability by the CIA. Additionally, W.O. asserts plaintiffs' negligence claims against him necessarily fail because the record does not include evidence he had any "day-to-day oversight or supervisory authority, nor the ability to place or approve residents in the New Horizons group homes." Manochio adds that neither C.C.V. nor C.L.V. established their injuries by sufficient proofs, particularly as "there has been no adjudication of sexual assault" and, consequently, plaintiffs failed to establish any of the defendants' actions "caused them to suffer an injury." She also argues plaintiffs' failure to allege C.C.V. suffered any physical injury similarly renders her N.J.S.A. 30:6D-9.3 claim deficient. She explains "plaintiffs have only established that C.C.V. was touched on her thigh by [T.O.]. They have not presented evidence to support any physical injury suffered by C.C.V. that would require reporting under N.J.S.A. 30:6D-9.3."

For their part, Lewis and Goodman contend they cannot be held liable because they "were no longer employed by New Horizons at the time of the alleged incident" and the record does not contain evidence they were involved in any hiring or in T.O.'s transfer to New Horizons. They also contend "[t]he only 'evidence' plaintiffs point to in the record to establish a standard of care is New Horizons' internal policy requiring a [3:2] staffing ratio" and internal policies, standing alone, do not establish a standard of care.

#### IV.

In determining whether expert testimony is necessary, a court must consider "whether the matter to be dealt with is so esoteric that jurors of common judgment and experience cannot form a valid judgment as to whether the conduct of the [defendant] was reasonable." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 407 (2014) (alteration in original) (quoting Butler v. Acme Mkts., Inc., 89 N.J. 270, 283 (1982)). "In some cases, . . . the 'jury is not competent to supply the standard by which to measure the defendant's conduct,'" and thus the plaintiff must establish the defendant's standard of care and breach of that standard by presenting expert testimony. Ibid. (quoting Sanzari v. Rosenfeld, 34 N.J. 128, 134-35 (1961)).

"A jury should not be allowed to speculate without the aid of expert testimony in an area where laypersons could not be expected to have sufficient knowledge or experience." Kelly v. Berlin, 300 N.J. Super. 256, 268 (App. Div. 1997) (quoting Biunno, Current N.J. Rules of Evidence, cmt. 2 on N.J.R.E. 702 (1996-1997)). In contrast, where "a layperson's common knowledge is sufficient to permit a jury to find that the duty of care has been breached," an expert is not required. Davis, 219 N.J. at 407 (quoting Giantonnio v. Taccard, 291 N.J. Super. 31, 43 (App. Div. 1996)). That is because "some hazards are relatively commonplace and ordinary and do not require the explanation of experts in order for their danger to be understood by average persons." Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 450 (1993).

The Court has said, "[i]n ordinary negligence actions, . . . [t]he applicable standard of conduct" is left to the jury which, in such a case, "is competent to determine what precautions a reasonably prudent [person] in the position of the defendant would have taken." Fernandes v. DAR Dev. Corp., 222 N.J. 390, 404 (2015). "In some cases, however, the collective experience of the jury is not sufficient to measure the defendant's conduct." Id. at 404-05 (citing Sanzari, 34 N.J. at 134-35. In those cases where jurors' collective experience renders them incompetent to determine the applicable precautions due by a person in the

defendant's position, "the plaintiff must establish the standard of care governing the defendant's conduct and the deviation from that standard through reliable expert testimony." Id. at 405 (citing Davis, 219 N.J. at 407).

Notably, we have described the complexity of autism disorder:

As defined by the National Institute of Child Health and Human Development (NICHD), a division of the United States Department of Health and Human Services, autism is a neurobiological development disorder that usually begins at age three and lasts a lifetime. There is no known cause and no cure. The main symptoms involve communication [difficulties], both verbal and non-verbal, difficulties with social interaction, and repetitive and obsessive behaviors toward objects and routines.

. . . .

The severity of autism varies widely. Some autistic children have led functioning lives[,] . . . [b]ut others have never escaped total isolation of mind, body, and spirit. There is no definitive, separate treatment.

[Micheletti v. State Health Benefits Comm'n, 389 N.J. Super. 510, 514 (App. Div. 2007).]

Consistent with these principles, the New Jersey Legislature has declared, as a matter of public policy, that developmentally disabled adults, including those diagnosed with autism, are entitled to "appropriate safeguards" to protect against "abuse, neglect, and exploitation . . . ." N.J.S.A. 30:6D-13. Such safeguards include the approving and implementing of "services for persons

with developmental disabilities," including "specialized services or special adaptations of generic services provided by any public or private agency, organization[,] or institution . . . ." N.J.S.A. 30:6D-3(b). The Legislature has thus intended treatment programs for developmentally disabled adults, such as creating, approving, and implementing IHPs and ISPs, N.J.A.C. 10:44A-1.3; N.J.A.C. 10:46A-1.3, as necessarily encompassing specialized services tailored to accommodate persons with developmental disabilities, "the complexity of" which "will vary according to the [developmentally disabled person's] interests, preferences, and needs[,]" and which "must be approved by the [Division of Developmental Disabilities]." N.J.A.C. 10:44A-1.3.

Here, plaintiffs' claims involve understanding not only the "specialized services" and treatment programs that are individually tailored and designed for developmentally disabled adults, see N.J.S.A. 30:6D-3(b), but also deviations from the standards applicable to such services. Accordingly, we are satisfied the standards of care applicable to defendants' provision of care to C.C.V. are not "commonplace," Hopkins, 132 N.J. at 450, and given the complexity of autism itself, let alone service programs designed to treat the condition, this case is not one where "the collective experience of the jury is . . . sufficient to measure the defendant's conduct." Fernandes, 222 N.J. at 404.



Indeed, a juror could not deduce whether New Horizons and its staff violated a duty of care owed to C.C.V. on June 8, 2018, without also understanding both C.C.V.'s and T.O.'s IHPs and ISPs, both of which are highly technical, health-related treatment and service program documents approved by the State and administered by licensed providers such as a New Horizons. See N.J.A.C. 10:44A-1.3; N.J.A.C. 10:46C-1.3. Stated differently, a layperson cannot reasonably be expected to understand "the complexity" of C.C.V.'s and T.O.'s treatment and services programs, see N.J.A.C. 10:44A-1.3, absent the aid of expert testimony. Leaving the jury to opine on the standard of care due by caregivers to adults with autism with State-approved IHPs and ISPs would therefore invite the jury "to speculate without the aid of expert testimony in an area" that is highly regulated and medically technical and about which "laypersons could not be expected to have sufficient knowledge or experience." Kelly, 300 N.J. Super. at 268.

With respect to plaintiffs' specific negligence claims, we agree substantially with the court's thorough and well-reasoned analysis regarding the need for expert testimony.<sup>7</sup> First, we concur that, absent the aid of expert

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<sup>7</sup> We note plaintiffs have not briefed any arguments with respect to the court's conclusion they failed to state a cause of action for negligent infliction of

testimony, the record does not contain sufficient evidence by which a reasonable jury could deduce T.O.'s masturbation behavior rendered his placement at New Horizons negligent. Even were we to accept plaintiffs' characterization of T.O. as an "individual with sexual propensities [who] act[s] on those propensities in public areas," such characterization in no way provides a foundation by which a jury could determine whether T.O. could not have been appropriately placed at New Horizons.

We also reject plaintiffs' negligent hiring and supervision claims for those reasons expressed by the court. We reiterate plaintiffs' negligent hiring claim lacks any foundation in the record, such as identifying a negligently hired employee or any of New Horizons' hiring practices. In any event, the record does not contain evidence of any standard against which a jury could consider the group home's hiring practices.

Finally, to support their negligent supervision claim, plaintiffs rely on New Horizons' failure to abide by its internal 3:2 resident-to-staff ratio. Absent evidence of a standard against which New Horizons' internal policy can be

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emotional distress under Portee v. Jaffee, 84 N.J. 88, 101 (2001). Similarly, plaintiffs do not cite N.J.S.A. 30:6D-9.3, let alone challenge the court's conclusion they failed to state a cause of action under that statute. Accordingly, we consider any arguments with respect to the court's dismissal of these claims waived. See Sklodowsky v. Lushis, 417 N.J. Super. 648, 657 (App. Div. 2011).

judged, however, a jury could not deduce whether the deviation from that policy constituted actionable negligence. See Morris v. T.D. Bank, 454 N.J. Super. 203, 210 (App. Div. 2018) ("[A] defendant's internal policies—standing alone—cannot demonstrate [an] applicable standard of care." (second alternation in original) (quoting Cast Art Indus., LLC v. KPMG LLP, 416 N.J. Super. 76, 106 (App. Div. 2016))). And, although Manochio's testimony supports an inference Douglas had witnessed T.O. touch C.C.V. prior to the June 8, 2018 incident, Douglas' statements recounted by Manochio provide insufficient context about the scope and nature of the supposed touching for a jury to conclude Douglas could have suspected T.O. would touch C.C.V. in an inappropriate manner on the date of the incident.<sup>8</sup> Accordingly, based on the record before us, we are satisfied the jury could not find in favor of plaintiffs on their negligent supervision claim absent expert testimony.

In light of our conclusion, we need not determine whether plaintiffs' claims are alternatively precluded by the CIA. To the extent we have not specifically addressed any arguments in favor of plaintiffs' appeal, it is because

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<sup>8</sup> As noted, Douglas denies telling Manochio that she ever witnessed T.O. touch C.C.V. In light of our standard of review on a motion for summary judgment, see Brill 142 N.J. at 540, however, we view Manochio's testimony in the light most favorable to plaintiffs.

we have concluded they are without sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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



CLERK OF THE APPELLATE DIVISION