SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2585-21

JAYSON SUGDEN, infant by g/a/l MELISSA SUGDEN, and MELISSA SUGDEN and JAMES SUGDEN, parents, individually,

Plaintiffs-Appellants,

v.

ESTATE OF STEVEN LEFRAK, M.D., WILLIAM WASSEL, M.D., RIVERVIEW MEDICAL CENTER, MONMOUTH PEDIATRICS, STATE OF NEW JERSEY, DEPARTMENT OF HEALTH AND HUMAN SERVICES,[1] KENNETH CHAZEN, M.D., and BCD HEALTH PARTNERS, LLC,

Defendants-Respondents.

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Argued February 15, 2023 – Decided July 21, 2023

Before Judges Accurso and Firko.

[1] Improperly pled as State of New Jersey, Department of Health and Senior Services.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-4061-15.

James D. Martin argued the cause for appellants (Martin Kane & Kuper LLC, attorneys; James D. Martin, on the briefs).

Jae K. Shim, Deputy Attorney General, argued the cause for respondent State of New Jersey, Department of Health and Human Services (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Jae K. Shim, on the brief).

PER CURIAM

Melissa and James Sugden individually and Melissa Sugden as guardian ad litem on behalf of their son, Jayson Sugden, appeal from an order dismissing their complaint against defendant State of New Jersey, Department of Health and Human Services as barred by the immunity provided by the Tort Claims Act, N.J.S.A. 59:1-1 to 12-3. We affirm, essentially for the reasons expressed by Judge Joseph P. Quinn in his thorough and thoughtful written opinion of September 16, 2016.

The essential allegations against the State are easily summarized. State law, and particularly, N.J.S.A. 26:2-110 and -111, as they existed in June 2001 at the time of Jayson's birth, required the Department of Health to test all infants born in New Jersey for "hypothyroidism, galactosemia,

phenylketonuria, and other preventable biochemical disorders which may cause mental retardation or other permanent disabilities," L. 1988, c. 24, § 1, and "ensure that treatment services are available to all identified individuals," L. 1988, c. 24, § 2. Jayson was born on Sunday, June 10, 2001, at Riverview Medical Center. His blood was drawn for testing on Monday, June 11 and arrived at the Department's lab to be tested on Thursday, June 14. Jayson had been released from the hospital two days before.

Per a lab report dated Tuesday, June 19, Jayson tested positive for galactosemia, "a rare genetic metabolic disorder in which babies are born without the ability to convert the milk sugar, galactose, into glucose (the form of sugar used by the body for energy)."[2] Although the Department thereafter took steps to coordinate Jayson's treatment, including securing him an appointment at Children's Hospital of Philadelphia with a physician specializing in galactosemia, plaintiffs allege in their complaint that the Department was negligent in failing to report the positive test result to them in a timely manner, failing to properly advise them on the need for early analysis

[2] Galactosemia, Bos. Child.'s Hosp., https://www.childrenshospital.org/conditions/galactosemia#:~:text=Classic%20galactosemia%20occurs%20when%20an,other%20dairy%20foods)%20into%20glucose (last visited July 14, 2023).

and treatment of the disorder, and failing to have adequate policies and procedures in place to track and follow up on blood samples and test results, all of which contributed to Jayson's injuries and permanent disability.

The State moved to dismiss the complaint, asserting its immunity under the Tort Claims Act, specifically N.J.S.A. 59:6-4, which provides immunity to public entities for injuries caused by the failure to make an adequate physical or mental examination, "[e]xcept for an examination or diagnosis for the purpose of treatment."

Plaintiffs opposed the motion, contending the delay in testing or analyzing Jayson's blood sample and reporting the results was a critical issue in the case, and that plaintiffs had served discovery on the State regarding the chain of custody of the sample, which the State had not answered, making the motion premature.[3] Plaintiffs also argued the State was not immune because

[3] Although styling its motion as one to dismiss on the pleadings, the State confusingly submitted a Rule 4:46-2 statement of material facts in support of the motion and referred to the motion in the cover letter to the court as one for summary judgment. Plaintiffs accordingly responded as if to a motion for summary judgment, claiming it was premature as discovery had only just commenced. Judge Quinn rejected plaintiffs' argument. Because the State moved solely on the pleadings and didn't submit anything beyond them, the judge determined it would be inappropriate to convert its motion to one for summary judgment under Rule 4:6-2(e). We agree, particularly as it is clear the State is entitled to immunity. See Mitchell v. Forsyth, 472 U.S. 511, 526-

the blood test administered to Jayson was for purposes of diagnosis and treatment, taking it out of the immunity otherwise provided by N.J.S.A. 59:6-4 for the failure to conduct "an adequate physical or mental examination" to determine whether a "person has a disease or physical or mental condition that would constitute a hazard to the health or safety of himself or others."

After hearing argument, Judge Quinn granted the State's motion to dismiss the complaint. Relying on Parsons ex rel. Parsons v. Mullica Township Board of Education, 226 N.J. 297, 310 (2016), in which our Supreme Court held a school was immunized for failure to communicate to a child's parents the result of a visual acuity test, "a 'physical examination' administered to further the public health of students pursuant to N.J.S.A. 59:6-4," the judge held the Department possessed "absolute immunity" under the Tort Claims Act for its failure to timely report Jayson's positive blood test to his parents.

The judge reasoned the blood test administered to all newborns such as Jayson pursuant to N.J.S.A. 26:2-111 was akin to the "public tuberculosis examinations" included in the 1972 Task Force Comment to N.J.S.A. 59:6-4,

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27 (1985) (noting a party's entitlement to immunity is a question of law to be decided at the earliest opportunity lest its benefits be lost by forcing the party to participate in the litigation).

Report of the Attorney General's Task Force on Sovereign Immunity 228 (1972), as an example of the types of examinations for which the immunity would apply. Judge Quinn found the blood test was administered to screen for galactosemia and over fifty other disorders "to further the public health, not for purposes of individual treatment."

The judge rejected plaintiffs' argument that the Commissioner of Health's obligation under the statute to "ensure that treatment services are available to all identified individuals," L. 1988, c. 24, § 2, testing positive for galactosemia or the other disorders screened for, placed the case within the exception for "examination or diagnosis for the purpose of treatment." N.J.S.A. 59:6-4. Judge Quinn found the statutory language in N.J.S.A. 26:2-111 did not mean the Department had "automatically undertaken treatment for every newborn diagnosed with one of the 55 different disorders for which they are routinely screened." Instead, he found the statute plainly directed the Commissioner only to "make services available to treat those infants diagnosed with a disorder, which is precisely what plaintiffs admit happened in this case when [the Department] referred Jayson to CHOP for treatment."

The judge further noted that plaintiffs' argument that the blood test wasn't a physical or mental examination for which the State is immune

"because blood tests are, by definition, 'for diagnostic or therapeutic purposes'" was the same argument the Court rejected in Parsons. There, the Court explained that "a 'physical examination' involves the actual testing of a patient," Parsons, 226 N.J. at 311, and "the visual acuity tests administered to Parsons and her classmates were not conducted 'for the purpose of treatment such as are ordinarily made in doctors' offices and public hospitals'; they were merely preventative screenings," id. at 310, as the blood test here. Finally, Judge Quinn found any argument that the failure to timely report the results could give rise to liability was expressly barred by the holding in Parsons "that an 'adequate physical examination' under N.J.S.A. 59:6-4 includes reporting the results of the examination" and thus "falls within the purview of N.J.S.A. 59:6-4's immunity." Id. at 312.

Plaintiffs appeal, reprising the arguments they made to the trial court that the testing of newborns "for biochemical/congenital disorders is an examination or diagnosis for the purposes of treatment," making it an exception to the immunity afforded the State under N.J.S.A. 59:6-4, and adding the court's statement that the blood test administered to screen for galactosemia was "to further the public health, not for purposes of individual

treatment," improperly inserted language in the exception, that is the word "individual," resulting in the judge misapplying the law.

Our review of the record convinces us that none of these arguments is of sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). As Judge Quinn found, this case is squarely controlled by the Court's opinion in Parsons. We disagree the judge in any way changed the meaning of the statute by his comment that the blood test here, as the "public tuberculosis examinations" in the Task Force Comment and the eye exam in Parsons, was "to further the public health, not for purposes of individual treatment." Indeed, we can't readily imagine what "treatment" the exception would refer to other than individual treatment. More important, plaintiffs do not explain how the comment could have changed the outcome here. And it is certainly not obvious to us.

We affirm Judge Quinn's September 16, 2016 order granting the State's motion to dismiss plaintiffs' complaint essentially for the reasons expressed in his accompanying statement of reasons. We have nothing to add to his thorough analysis.

Affirmed.