RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2970-20

C.M.D.1, an
infant by his Guardians ad Litem,
R.P.D. and C.M.D., and R.P.D.,
individually, and C.M.D.,[1]
individually,

Plaintiffs-Appellants,

v.

BRIDGEWAY REHABILITATION SERVICES, INC., PROGRAM FOR ASSERTIVE COMMUNITY TREATMENT (PACT), PAULA TOWLE, JENNIFER COLLINS, STATE OF NEW JERSEY DEPARTMENT OF HUMAN SERVICES, COMMISSIONER JENNIFER VELEZ, DEPARTMENT OF CHILDREN AND FAMILIES, DIVISION OF YOUTH AND FAMILY SERVICES (DYFS), NORTH HUDSON DIVISION OF CHILD PROTECTION AND PERMANENCY, GREYSTONE PSYCHIATRIC HOSPITAL, and

[1] We use initials to protect the parties' privacy and preserve the confidentiality of these proceedings. R. 1:38-3(d)(17).

DIRECTOR JANET MONROE,

Defendants/Third-Party
Plaintiffs-Respondents,

v.

C.Z., and B.D.,

Third-Party Defendants-
Respondents.

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Submitted March 6, 2023 – Decided August 11, 2023

Before Judges Whipple, Smith, and Marczyk.

On appeal from the Superior Court of New Jersey, Law Division, Morris County, Docket No. L-1526-19.

Advokat & Rosenberg, attorneys for appellants (Jeffrey M. Advokat, on the briefs).

Law Office of Daniel J. McCarey, LLC, attorneys for respondents Bridgeway Rehabilitation Services, Inc., Program for Assertive Community Treatment (PACT), Paula Towle, and Jennifer Collins (Daniel J. McCarey, on the brief).

Matthew J. Platkin, Attorney General, attorney for respondents State of New Jersey Department of Human Services, Department of Children and Families, Division of Child Protection and Permanency, North Hudson Division of Child Protection and Permanency, Greystone Psychiatric Hospital, Jennifer Velez, and Janet Monroe (Melissa H. Raksa, Assistant Attorney General, of counsel; Austin W.B. Hilton, Deputy Attorney General, on the brief).

PER CURIAM

Plaintiffs R.P.D. and C.M.D. appeal from the trial court's summary judgment orders dismissing personal injury claims they brought on behalf of their infant grandson. Plaintiffs sought damages for injuries suffered by C.M.D.1 ("Child") at the hands of his parents, B.D. and C.Z. B.D. and C.Z. were two mentally ill adults that resided at Greystone Psychiatric Hospital (Greystone), a state-operated facility where they conceived C.M.D.1. Plaintiffs alleged defendants were liable because they did not adequately treat or supervise B.D. and C.Z. or protect C.M.D.1 from his parents. The trial court dismissed plaintiffs' claims and granted summary judgment as to all defendants, concluding the Charitable Immunities Act (CIA) and the Tort Claims Act (TCA) precluded the cause of action. For the reasons that follow, we affirm.

I.

A.

Plaintiffs are the maternal grandparents, adoptive parents, and guardians ad litem of C.M.D.1. R.P.D. and C.M.D.'s adopted daughter, third-party defendant B.D., is C.M.D.1's mother. Third-party defendant C.Z.is C.M.D.1's father. B.D. became pregnant with C.M.D.1 in 2010, while she and C.Z. were patients at Greystone. When Greystone discharged them in the fall of 2010, they

moved into an apartment together where they received supportive services from Bridgeway Rehabilitation Services, Inc. (Bridgeway). The Bridgeway services were provided through their Program for Assertive Community Treatment (PACT), with co-defendant Bridgeway employees Paula Towle and Jennifer Collins among the staff assigned to their treatment teams (collectively, the Bridgeway defendants).

The Division of Child Protection and Permanency (DCPP) removed B.D. from her biological parents when she was five years old. Plaintiffs adopted B.D. and her sister when B.D. was seven. In early January 2010, at age nineteen, B.D. was hospitalized at St. Clare's as a result of what was described as auditory command hallucinations to hurt herself. Greystone admitted her on January 26, 2010. During her Greystone psychological evaluation, B.D. reported a history of sexual abuse, alcohol abuse, and ten psychiatric hospitalizations commencing at age sixteen. She also reported a history of conflict with plaintiffs. Plaintiffs in turn described B.D. as argumentative, deceitful, and promiscuous, and stated she had threatened her father, R.P.D., with a knife the year prior. B.D. was diagnosed with bipolar disorder with psychotic features. C.Z. also was hospitalized at Greystone. He had a criminal history, diagnosis of bipolar disorder, and a history of substance abuse.

At Greystone, B.D. became pregnant as a result of a sexual relationship with C.Z. Once B.D.'s pregnancy was discovered, the hospital discontinued her psychiatric medications. However, Greystone continued to care for B.D.'s mental and physical health, including providing prenatal care and planning for her care post-discharge. Plaintiffs visited B.D. on a weekly basis once she was hospitalized at Greystone.

On June 16, 2010, R.P.D. visited B.D. in the hospital and discussed the pregnancy with her. He expressed his concern that her baby would suffer abuse. According to R.P.D., B.D. responded by stating: "If I hurt the baby, I hurt the baby. It happens. I go to jail." C.Z. laughed when B.D. made this statement, which made R.P.D. even more concerned. R.P.D. attempted to tell a Greystone staff member about his concerns, including B.D.'s statement, but the staff member told him that she could not discuss anything with him "because of HIPAA." Greystone's records do not include any reference to B.D.'s statement to R.P.D.

On July 12, 2010, while B.D. remained hospitalized at Greystone, R.P.D. wrote a letter to then-Governor Chris Christie, informing the governor that while visiting B.D. at the hospital he had witnessed Greystone patients engaging in sexual activities in hallways, lounges, and the courtyard. He stated in his letter

to the Governor that he was concerned because such behavior occurred in full view of staff and security cameras. Moreover, he expressed concern that B.D. had become pregnant by another patient at Greystone, stating:

> What prompts this letter is that we were recently advised that our [nineteen] year old daughter is now pregnant. It appears that the father of the child is a patient at the same facility. The genetic possibilities of this union are horrifying. The thing that amazes me is that at the time of her commitment hearing, which I attended in February of this year, she was diagnosed with bi-polar disorder with psychotic episodes, having a personality disorder, and being extremely sexually promiscuous. Within two weeks of being at Greystone she was caught in a sexual act with another patient and was subsequently moved to another unit. On top of this, she has been expressing her interest in becoming pregnant to everyone. In spite of this, she was given the opportunity to fulfill this wish. We are dealing with a young lady that has been suffering from psychiatric issues her entire life . . . . Now we have a situation where both parents of this child are most likely not capable of raising him or her. In essence, we have two mentally ill people that are dependent on the State for support, creating another human being that will most likely have issues as he or she matures. It is also my understanding that there are two other women in the facility that are in the same situation as our daughter.

The Governor's office referred the matter to then-Department of Human Services (DHS) Commissioner Jennifer Velez. After reading the letter, Velez called R.P.D., as well as Janet Monroe, then-CEO of Greystone, and Allison Blake, then-Commissioner of the Department of Children and Families (DCF).

R.P.D. recalled speaking with Commissioner Velez in early October 2010. He informed Velez about B.D.'s statement during his visit with her in June. Velez testified she understood R.P.D.'s concerns about the expected baby from the statements he made in his letter, and she told him she would communicate with DCPP "to find out what, if any[], . . . jurisdiction [they had] . . . with respect to [the] unborn child."

According to Commissioner Velez, Commissioner Blake informed her DCPP had no jurisdiction because the child was unborn, and after the baby was born, DCPP would only investigate if there had been an allegation of abuse or neglect. Velez discussed with Greystone CEO Monroe the hospital's lack of authorization to discuss B.D.'s care with her parents because B.D. was an adult. The two also discussed Greystone's policy regarding sexual activity on the campus, and whether the security cameras were operational. Monroe recalled she directed staff at Greystone to investigate the allegations, as she would with any complaint, and she provided responsive information to whoever at DHS was communicating with R.P.D.

Greystone's policy on sexual relations between patients provided that "[s]exual relations between patients" were neither "condoned [n]or encouraged during a patient's hospitalization." The policy stated that "every community

must have norms and rules concerning the expression of sexual behavior," and that Greystone did not permit "sexual acts in public." The policy also provided: "Individuals observed in, or reported to have sexual contact must be immediately reported to the treatment team(s) for review, counseling, and appropriate clinical interventions to ensure the health, safety, and social appropriateness of the individuals." According to Ingrid Mikolay, a social worker from Greystone who worked with B.D., sex between patients at the hospital was discouraged, and it was prohibited in public spaces, but it could not be entirely prohibited between consenting adults.

C.Z. was discharged from Greystone on September 29, 2010, and B.D. was discharged on October 5, 2010. B.D.'s discharge report from Greystone stated she became pregnant in May 2010, after which all of her psychotropic medications were discontinued. The discharge report also included a notation that in September 2010 B.D. "verbalized that she does not have any intentions of hurting her baby." Moreover, Mikolay recalled B.D. being very excited about the pregnancy and looking forward to having a baby. Mikolay did not recall B.D. making any threats to harm the child.

The discharge report also noted B.D. was "stabilized psychiatrically." Mikolay noted that B.D.'s prognosis was considered "good," and the treatment

team supported B.D. being discharged and living independently, with support from PACT. Greystone's discharge report also recommended that B.D.'s PACT psychiatrist "regularly follow-up" with her "for any signs and symptoms of decompensation," and that she restart her medication after she delivered the baby. The discharge report noted B.D. understood her need to take certain medication in order to care for her baby. Mikolay testified that she conferred with Bridgeway/PACT about the continuity of care for B.D. upon her discharge.

Post-discharge, B.D. and C.Z. resided together in an apartment, and they received services referred from Greystone through Bridgeway's PACT program. Bridgeway was a not-for-profit, tax-exempt New Jersey corporation which had a contractual relationship with Greystone to provide these services. Bridgeway's certificate of incorporation stated that its purpose was "[t]o provide community aftercare services for individuals who have had emotional problems," and "[t]o improve psychiatric functioning through social, recreational, and vocational rehabilitation activities and through the promotion and development of residential services." Through its PACT program, Bridgeway provided intensive outpatient/community-based after-care services for adult individuals dealing with chronic mental illness.

Greystone provided Bridgeway with B.D. and C.Z.'s referral packets, which included some limited hospital records. However, there is no evidence that anyone from Bridgeway reviewed the entire files of B.D. or C.Z.

Bridgeway's general practice on admitting new clients was to review the records provided by Greystone. As to B.D. and C.Z.'s records, Bridgeway stated: "[n]one of the records received from Greystone by Bridgeway mention [B.D.'s] alleged threat to harm her child." Furthermore, while B.D.'s records reflected her history of mental illness and alcohol abuse, as well as concerns about motherhood, Bridgeway found no indication that she or C.Z. posed any physical danger to their child in the records.

PACT assigned a psychiatrist, a registered nurse, a wellness specialist, and mental health and substance abuse counselors to work with B.D. and C.Z. while they lived in the community. The team met daily and conducted regular visits, checking on B.D. and C.Z.'s mental and physical health, looking for signs of substance abuse, and providing other services as needed. No one from PACT reported any signs of substance abuse or concerns about the couple's mental health. R.P.D. and C.M.D. never communicated with anyone at Bridgeway. No one at Bridgeway learned of R.P.D.'s letter to the Governor, nor of B.D.'s statement to R.P.D. during his visit with her in June 2010.

C.M.D.1 was born on February 5, 2011. R.P.D. visited B.D. at the hospital the next day. He perceived her as unstable, however, he did not speak to any of the doctors regarding her condition. The hospital psychiatrist also had concerns regarding B.D.'s extensive psychiatric history. However, the hospital released C.M.D.1 to his parents' care, with the understanding B.D. would be resuming her psychiatric medications and Bridgeway would be involved with both parents.

Post-discharge, no one observed anything amiss. R.P.D. visited the couple's apartment on one occasion prior to March 4, 2011, and during his visit he did not suspect that either B.D. or C.Z. were using illegal drugs, although it was later discovered they were. As for Bridgeway, its caseworkers made no observations or reports of the parents' need for social services to care for their child, or any signs of abuse or neglect. Bridgeway's home visit notes after C.M.D.1's birth indicate family members were visiting and assisting the new parents. The Bridgewater notes reflected no concerns regarding the parents' ability to care for C.M.D.1, or his immediate welfare.

On March 2, 2011, two days before the discovery of C.M.D.1's injuries, Bridgeway wellness specialist Mirba Vega-Simcic visited B.D. and C.Z.'s apartment. She observed C.M.D.1 crying while he was lying on his back on the

couch. She next observed B.D. pick C.M.D.1 up and she noted the baby calmed down after B.D. took him to another room. Vega-Simcic also noted B.D. reported she was not happy with her medications. She noted B.D. would need time to adjust to various medications and dosages. Vega-Simcic observed no signs that C.M.D.1 was injured or required medical attention during her visit.

On March 3, 2011, the day before C.M.D.1's injuries were discovered, C.M.D. spoke with B.D., who reported that the baby would not stop crying. Plaintiffs were not concerned at that time because, as R.P.D. testified, "[b]abies cry because they have gas. For a lot of reasons." C.M.D. told B.D. to take the baby to the doctor, which she did the next day.

On March 4, 2011, B.D. and C.Z. took C.M.D.1 to the pediatrician because he had a fever. They were advised to take him to the emergency room where C.M.D.1 was diagnosed with a broken right leg, fractured ribs, a subdural hemorrhage of the left eye, and multiple bruises and scratches.

The hospital made a referral to DCPP. Both B.D. and C.Z. tested positive for cocaine, and they were charged with aggravated assault and endangering the welfare of a child. DCPP took custody of C.M.D.1 and placed him in the care of plaintiffs, who later adopted him.

In July 2019, plaintiffs filed a complaint asserting claims of negligence and violations of C.M.D.1's constitutional rights. The State and Bridgeway defendants each filed separate answers denying liability, asserting defenses, crossclaims, and also filing third-party complaints against B.D. and C.Z. In February 2021, the Bridgeway defendants moved for summary judgment, which plaintiffs opposed. In April 2021, the trial court granted summary judgment and found the Bridgeway defendants immune from liability under the CIA.[2]

In May 2021, the State defendants moved for summary judgment, which plaintiffs opposed. In June 2021, the trial court issued an order granting the motion, finding the State defendants immune from liability under the TCA.[3]

Plaintiffs appeal both orders. They argue that the trial court erred by granting summary judgment to the Bridgeway defendants under the CIA; and that even if the CIA applied, the court erred by finding the Bridgeway defendants' actions did not rise to gross negligence. Plaintiffs also argue that the trial court erred by granting summary judgment to the State defendants under various provisions of the TCA.

II.

[2] Charitable Immunities Act, N.J.S.A. 2A:53A-7, -11.

[3] Tort Claims Act, N.J.S.A. 59:1-1 to 12-3.

We review the court's grant of summary judgment de novo, applying the same legal standard as the trial court. Green v. Monmouth Univ., 237 N.J. 516, 529 (2019); Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016). Summary judgment is appropriately granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c); Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 528-29 (1995).

"[A] determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires [us] to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill, 142 N.J. at 540. In reviewing the record, we should not resolve factual disputes or make credibility determinations. Ibid. At the same time, "[i]f there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of Rule 4:46-2." Ibid.

III.

A.

Plaintiffs contend the court erred in granting summary judgment to the Bridgeway defendants on the ground that they were immunized from liability under the CIA. Plaintiffs contend there are material facts in dispute as to whether the Bridgeway defendants qualify for charitable immunity because it is unclear that Bridgeway is a nonprofit, charitable organization, or that C.M.D.1 was a beneficiary of Bridgeway's services. Alternatively, they argue that even if the Bridgeway defendants could qualify for charitable immunity, no such immunity applies because the facts support a finding that they were grossly negligent. We disagree.

In granting the Bridgeway defendants' motion for summary judgment, the trial court concluded the claims were barred by N.J.S.A. 2A:53A-7(a) of the CIA. The court made findings, including that: Bridgeway "was formed for nonprofit purposes and was organized exclusively for, charitable purposes . . ."; there was no factual dispute that the Bridgeway defendants were "engaged in providing social services" to B.D. and C.Z.at the time of C.M.D.1's injuries; and finally, there was no factual dispute that plaintiffs and C.M.D.1 were beneficiaries of the services Bridgeway defendants provided to B.D. and C.Z. The trial court stated: "[t]hose services were intended to enable the [p]arents to

reintegrate into society, become productive citizens, live independently and improve familial relationships-all of which would benefit [plaintiffs and C.M.D.1] to some 'degree.'"

Having concluded the Bridgeway defendants were statutorily immune under N.J.S.A. 2A:53A-7(a), the court next considered plaintiffs' argument that the Bridgeway defendants were not immune because they were grossly negligent, N.J.S.A. 2A:53A-7(c). Examining the record, the court found no evidence the Bridgeway defendants knew of any threat by the parents to harm the child, and no evidence the Bridgeway defendants missed any signs of illness or injury to C.M.D.1 prior to March 4, 2011, such that they violated any legal obligation to report suspected abuse or neglect under N.J.S.A. 9:6-8.10.

Charitable immunity is an affirmative defense; thus, defendants bear the burden of proof. Kain v. Gloucester City, 436 N.J. Super. 466, 479 (App. Div. 2014); Abdallah v. Occupational Ctr. of Hudson Cnty., 351 N.J. Super. 280, 288 (App. Div. 2002). "[A] trial court's determination of the applicability of charitable immunity is reviewed de novo because an organization's right to immunity raises questions of law." Green, 237 N.J. at 529.

The CIA provides immunity to nonprofit entities, as follows:

> No nonprofit corporation, society or association organized exclusively for religious, charitable or

> educational purposes or its trustees, directors, officers, employees, agents, servants or volunteers shall, except as is hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association.
>
> Nothing in this subsection shall be deemed to grant immunity to any health care provider, in the practice of his profession, who is a compensated employee, agent or servant of any nonprofit corporation, society or association organized exclusively for religious, charitable or educational purposes.
>
> [N.J.S.A. 2A:53A-7(a).]

The statute further provides that it "shall be deemed to be remedial," and therefore it "shall be liberally construed so as to afford immunity to the said corporations, societies and associations from liability as provided herein in furtherance of the public policy for the protection of nonprofit corporations, societies and associations organized for religious, charitable, educational or hospital purposes." N.J.S.A. 2A:53A-10.

Applying the language of N.J.S.A. 2A:53A-7(a), the Supreme Court

> has determined that 'an entity qualifies for charitable immunity when it (1) was formed for nonprofit purposes; (2) is organized exclusively for religious, charitable or educational purposes; and (3) was promoting such objectives and purposes at the time of the injury to plaintiff who was then a beneficiary of the charitable works.'
>
> [Green, 237 N.J. at 530-31 (quoting Ryan v. Holy Trinity Evangelical Lutheran Church, 175 N.J. 333, 342 (2003)).]

The first prong of the statutory test is not in dispute as Bridgeway is incorporated under New Jersey law as a nonprofit corporation.

The second prong of the analysis requires us to determine whether the corporate purpose is educational, religious, or charitable. "Entities that can prove they are organized exclusively for educational or religious purposes automatically satisfy the second prong of the charitable immunity standard." Ryan, 175 N.J. at 346. Moreover, the phrase "educational purposes" is construed broadly. Id. at 347; Auerbach v. Jersey Wahoos Swim Club, 368 N.J. Super. 403, 411-13 (App. Div. 2004).

However, "an organization claiming [charitable] immunity under the Act must demonstrate some level of support from charitable donations and/or trust funds as it is those sources of income the Act seeks to protect." Bieker v. Cmty. House of Moorestown, 169 N.J. 167, 178 (2001). "That does not mean,

however, that income from some limited noncharitable activity would prevent a corporation not otherwise ineligible from obtaining immunity under the Act." Id. at 178-79. Furthermore, "[t]he fact that a charitable entity receives public funds does not alter its status under the CIA." O'Connell v. State, 171 N.J. 484, 495 (2002) (citing Morales v. N.J. Acad. of Aquatic Scis., 302 N.J. Super. 50, 55 (App. Div. 1997)).

Applying the facts to the second prong of the test, we conclude the record shows Bridgeway was organized for educational purposes. Bridgeway's expressed purpose is to provide services to adults with psychiatric illnesses so that they may live independently in the community. These services include the provision of medication support and education, life skills training, and career counseling. Bridgeway is similar to the defendant in Est. of Komninos v. Bancroft Neurohealth, Inc., where the court found an educational purpose in the context of a group home whose "institutional mission [was] largely based upon educational objectives, in the particularized context of serving minors and adults who have developmental disabilities," including the provision of instruction on occupational, vocational, and life skills. 417 N.J. Super. 309, 320-24 (App. Div. 2010).

We note the trial court found evidence in the record which supported its conclusion that Bridgeway had a charitable purpose. We see no need to comment further on the trial court's findings, since our de novo review leads us to a conclusion that Bridgewater's immunity is based on its educational purpose.

The third prong of the test calls for successive inquiries: whether, at the time in question, Bridgewater was promoting the objectives it was organized to advance; and whether C.M.D.1 was a recipient of the organization's charitable works. Green, 237 N.J. at 531. The second inquiry "is to be interpreted broadly, as evidenced by the use of the words 'to whatever degree' modifying the word 'beneficiary' in the statute." Ryan, 175 N.J. at 353. That is, "[t]o be deemed a beneficiary, plaintiff need not have personally received a benefit." Auerbach, 368 N.J. Super. at 414 (citing Loder v. St. Thomas Greek Orthodox Church, 295 N.J. Super. 297, 303 (App. Div. 1996)). "Those who are not beneficiaries must be 'unconcerned in and unrelated to' the benefactions of such an organization." Ryan, 175 N.J. at 353 (quoting Gray v. St. Cecilia's Sch., 217 N.J. Super. 492, 495 (App. Div. 1987)). Thus, courts will find the third prong met if the plaintiff's "'presence was clearly incident to accomplishment' of defendant's charitable purposes." Bieker, 169 N.J. at 180 (quoting Gray, 217 N.J. Super. at 495).

Examining the record in light of this standard, we find it undisputed that at the time of his injuries, Bridgeway was providing educational services to C.M.D.1's parents so they could live independently in the community. Applying the facts to the successive inquiry, we find C.M.D.1 was a direct beneficiary of the educational services the Bridgeway defendants provided to his parents. See Franco v. Fairleigh Dickinson Univ., 467 N.J. Super. 8, 35-36 (App. Div. 2021).

Finally, the record does not support the conclusion that the Bridgeway defendants were grossly negligent, such that immunity would not apply pursuant to N.J.S.A. 2A:53A-7(c), which states in pertinent part:

> Nothing in this section shall be deemed to grant immunity to: (1) any nonprofit corporation, society or association organized exclusively for religious, charitable, educational or hospital purposes, or its trustee, director, officer, employee, agent, servant or volunteer, causing damage by a willful, wanton or grossly negligent act of commission or omission. . . .

"[G]ross negligence is an indifference to another by failing to exercise even scant care or by thoughtless disregard of the consequences that may follow from an act or omission." Steinberg v. Sahara Sam's Oasis, LLC, 226 N.J. 344, 364-65 (2016).

We discern no facts in the record to support a finding of gross negligence by the Bridgeway defendants. Plaintiffs maintain these defendants were

negligent by failing to recognize the danger the parents posed to C.M.D.1 due to their psychiatric conditions and their troubled histories, which included violence and substance abuse. However, as the trial court noted, the Bridgeway defendants' knowledge of plaintiffs' personal histories, standing alone, would not have warranted their making a report of suspected abuse or neglect under N.J.S.A. 9:6-8.10. While we are mindful of the tragic events which unfolded here, it was not inevitable that B.D. or C.Z. would abuse or neglect their child. Indeed, the record shows that the education, monitoring, and support services Bridgewater provided to B.D. and C.Z. were intended to prevent such a tragic outcome. We discern no evidence which would lead a finder of fact to conclude the Bridgeway defendants ignored or were indifferent to evidence of abuse or neglect.

Our review of the record leads us to conclude that: the Bridgeway defendants qualified for immunity under N.J.S.A. 2A:53A-7(a); there was no evidence of gross negligence; and summary judgment was appropriate.

B.

Plaintiffs next contend the court erred in granting summary judgment to the State defendants because they were immune from liability under the TCA. Plaintiffs allege the State defendants were negligent in failing to protect

C.M.D.1 from his parents, including by: allowing B.D. to live with C.Z. upon her discharge from Greystone, rather than a group living facility; failing to provide Bridgeway with sufficient information to protect C.M.D.1 from his parents, including by failing to provide a complete record of the parents' hospitalization at Greystone; failing to notify DYFS of C.M.D.1's impending birth; failing to investigate abuse or neglect of C.M.D.1 by his parents; and failing to remove C.M.D.1 from his parents' home. We are not persuaded.

In granting the State's summary judgment motion, the trial court concluded the State defendants were protected by immunities under the TCA, particularly: absolute immunity for failing to enforce the law (including, specifically, the child protective services laws), under N.J.S.A. 59:2-4 and N.J.S.A. 59:3-5; absolute immunity relating to the treatment of the mentally ill, under N.J.S.A. 59:6-2 and N.J.S.A. 59:6-6(a)(3); and qualified immunity afforded to public employees under N.J.S.A. 59:3-3.

The TCA re-established sovereign immunity after common law immunity had been abrogated by the Supreme Court in Willis v. Dep't of Conservation & Econ. Dev., 55 N.J. 534, 536-41 (1970). See Est. of Gonzalez, 247 N.J. 551, 570 (2021); Nieves v. Adolf, 241 N.J. 567, 570 (2020); Velez v. City of Jersey City, 180 N.J. 284, 289 (2004). It is dispositive with respect to the nature,

extent, and scope of state and local tort liability for causes of action accruing on and after the Act's effective date. N.J.S.A. 59:1-2; Velez, 180 N.J. at 289-90.

Public entity immunity is the general rule under the TCA, and liability is the exception. N.J.S.A. 59:1-2; N.J.S.A. 59:2-1; Est. of Gonzalez, 247 N.J. at 570; Nieves, 241 N.J. at 574-75. The TCA states:

> a. Except as otherwise provided by this act, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.
>
> b. Any liability of a public entity established by this act is subject to any immunity of the public entity and is subject to any defenses that would be available to the public entity if it were a private person.
>
> [N.J.S.A. 59:2-1.]

Thus, "a public entity is immune from liability for injury unless there is a specific exception included in the [TCA] itself which provides for liability." Fielder v. Stonack, 141 N.J. 101, 117 (1995). And, even "[w]hen liability is established under the [TCA], [the public entity] is still subject to immunity specified in the [TCA] as well as any common-law immunity which predated the Act." Ibid. Thus, "[w]hen both liability and immunity appear to exist, the latter trumps the former." Tice v. Cramer, 133 N.J. 347, 356 (1993).

"Unlike the immunity of public entities, the immunity of public employees under the Act is the exception rather than the rule." Fielder, 141 N.J. at 118. The TCA states: "Except as otherwise provided by this act, a public employee is liable for injury caused by this act or omission to the same extent as a private person." N.J.S.A. 59:3-1(a). However, public employees may assert immunities found in the TCA, or under some other statute or the common law. Fielder, 141 N.J. at 118; N.J.S.A. 59:3-1(b). "A public employee is not liable for an injury where a public entity is immune from liability for that injury." N.J.S.A. 59:3-1(c).

Here, statutory immunities apply to shield the State defendants from liability, including both public entities and public employees. First, with respect to public entities, N.J.S.A. 59:2-4 provides: "A public entity is not liable for any injury caused by adopting or failing to adopt a law or by failing to enforce any law." Similarly, with respect to public employees, N.J.S.A. 59:3-5 provides: "A public employee is not liable for an injury caused by his adoption of or failure to adopt any law or by his failure to enforce any law."

It follows that the State defendants cannot be held liable for any injury caused by failing to enforce the law, including the child protective services laws under Title 9 or Title 30. See Lee v. Brown, 232 N.J. 114, 129 (2018). In this

regard, plaintiffs do not assert any allegation that the State defendants violated any mandatory legal directive to investigate or remove C.M.D.1 from his parents' custody. At most, R.P.D.'s letter to the Governor and his phone call with Velez alleged a risk that B.D. and C.Z. would abuse their child after the child was born. Based upon these facts, plaintiffs assert negligence in the State's failure to preemptively act to protect C.M.D.1 from his parents. However, the State had no ability to intervene while C.M.D.1 was in utero, nor any basis in fact to do so, because there was no allegation of harm at that point in time. In re Guardianship of K.H.O., 161 N.J. 337, 349-51 (1999); N.J. Div. of Youth & Fam. Servs. v. L.V., 382 N.J. Super. 582, 589-90 (App. Div. 2005).

It was not until March 4, 2011, the day of C.M.D.1's visit to the hospital, that any report of abuse was made. At that juncture the State investigated and removed C.M.D.1 from his parents' custody, consistent with its statutory obligation to investigate child abuse or neglect.[4]

As for the discharge of the parents from Greystone, N.J.S.A. 59:6-2 provides: "Neither a public entity nor a public employee is liable for failure to provide a medical facility or mental institution, or if such facility or institution

[4] N.J.S.A. 9:6-8.11.

is provided, for the failure to provide sufficient equipment, personnel or facilities in a mental institution or medical facility." N.J.S.A. 59:6-6 provides:

> Neither a public entity nor a public employee is liable for any injury resulting from determining in accordance with any applicable enactment:
>
> (1) whether to confine a person for mental illness or drug dependence;
>
> (2) the terms and conditions of confinement for mental illness or drug dependence;
>
> (3) whether to parole, grant a leave of absence to, or release a person from confinement for mental illness or drug dependence.
>
> [N.J.S.A. 59:6-6.]

A plain reading of these provisions leads us to conclude the State defendants are immune from liability in connection with their discharge of B.D. and C.Z. from Greystone. There can be no liability based upon plaintiffs' allegation that the State defendants were negligent in discharging B.D. to supportive community housing to live with C.Z., rather than recommending that she reside in a supervised setting. See Ludlow v. City of Clifton, 305 N.J. Super. 308, 312-13 (App. Div. 1997).

Plaintiffs' remaining allegations of negligence—the alleged failure to transmit the entire Greystone file to Bridgeway, and the alleged failure to

transmit to Bridgeway the statement B.D. made to her father in June 2010—are not actionable on their own. Rather, they are actionable only to the extent they allegedly contributed to the subsequent failures to discharge B.D. to a more restrictive housing placement, and to remove C.M.D.1 from his parents' custody. They also fail.

To the extent we have not addressed plaintiffs' other arguments, we find they lack sufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.