ARTLUDE POINT DU JOUR **PLAINTIFF** **V** **TOWNSHIP OF UNION, TRINITAS REGIONAL MEDICAL CENTER HOSPITAL, DETECTIVE DONALD COOK, LIMAGE WILSON, OFFICER DELVALLE, BADGE #3259, SYLVIA ESCOBAR, & JOHN DOES, 1-10 (FICTITIOUS NAMES, PRESENTLY J UNKNOWN), STATE OF NEW JERSEY, HARRY ROES, 1-10 (FICTITIOUS NAMES, PRESENTLY UNKNOWN)** **DEFENDANTS**	**SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION-A-000697-23** **SAT BELOW:** **HON. DANIEL R. LINDEMANN, JSC** **SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION:UNION COUNTY** **Docket No: UNN-L-45-21** **Submitted: July 29, 2024**

APPELLATE BRIEF OF ARTLUDE POINT DU JOUR

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[1] There was no statement of Material facts filed by defense Counsel, so plaintiff responded to the defense Counsel's Certification

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[3] Response to Statement of Material Facts was in narrative form

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[1] Exhibit Cover Pages Numberings are not consistent, exact page number used as opposed to letter or number exhibits.

Carl v Carl

Medical Note from Trinitas dated 2/13/202 with Narrative documentation that plaintiff was transported by Union police and EMSS. Escobar states Plaintiff *paranoid behavior that Neighbors were stealing from her home and using magic. Plaintiff was not agitated — CPa021

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PRELIMINARY STATEMENT

Artulde Point Du Jour (Plaintiff) is a brown skinned African American woman of Haitian national origin. Plaintiff works as a Registered Nurse in New York and lives in Union Township, New Jersey. On 2/12/2022, the plaintiff who was not a threat to herself or others, and not suicidal or homicidal, was forcefully removed from her home at night by the Union Township police against her will, over her protestations, and involuntarily committed to Trinitas Hospital for psychiatric evaluation for over 24 hours. Plaintiff made multiple complaints against her neighbor for breaking into her home, damaging property and stealing. The police failed to take fingerprints and investigated plaintiff for filing too many complaints.

Plaintiff's causes of action for Civil Rights violations that did not include Medical malpractice, were improperly dismissed by the Court first against defendants Trinitas Hospital, and Sylvia Escobar who is not a "licensed person" as defined by N.J.S.A. § 2A:53A-26, on the basis that an Affidavit of Merit (AOM) was required. The Appellate Division has held that an AOM is not required to vindicate constitutional wrongs. The Court also improperly dismissed plaintiff's causes of actions against The Township of Union and its police officers. Escobar testified at her deposition that prior to plaintiff being removed from her home she was not a threat to herself or other and was not homicidal or suicidal which are the only criteria for involuntary removal. The court reasoned that the defendants acted in good faith

and took reasonable steps to assess, take custody of, detain, and transport plaintiff because she had odd beliefs that were *out of the ordinary,* in that she had notes around her house to ward off magic [as opposed to rosary beads that some wear around their necks that talk to them and tell them what prayers to say, and praying to Mary the dead mother of Jesus that are also *out of the ordinary* to others]. The Court highlighted that plaintiff had what appeared to be lemon juice poured on her steps that was *out of the ordinary,* [as opposed to holy water that some sprinkle and pour around their homes that is also *out of the ordinary].*

The Court failed to understand that plaintiff was ANALOGIZING the burglars who entered her home to cats and dogs who could easily sneak into her house then disappear like birds that could simply fly after engaging in their criminal acts. The Court failed to understand that Plaintiff, a Registered Nurse has a profound understanding of Human Anatomy and Physiology, and certainly did not mean that the burglars who entered her home were literally invisible (as in transparent). The court was focused on the salacious story in the police report regarding Voodoo.

The Court accepted the defendants' flawed reasoning that plaintiff had false beliefs because her surveillance cameras and motion detectors would have captured the burglars if they existed. The Court seemingly agreed that plaintiff's beliefs that her enemies were placing feces on her property and were trying to poison her *were odd.* The Court without any appreciation for Cultural Relativism, granted summary

judgment against plaintiff, thusly sanctioning kidnap, false imprisonment and involuntary commitment of a citizen who was **held down by hospital staff, and injected with psychiatric medication against her will** on the contention that *her beliefs* are out of the ordinary.

STATEMENT OF FACTS

On February 13, 2020, Plaintiff was in the peace and security of her home in Union, New Jersey, when about 10:30 pm Plaintiff's doorbell rang and upon the door opening, several Union Township Police Officers entered Plaintiff's residence with Defendant Sylvia Escobar a Social Worker from Trinitas Hospital. **(Pa740, Pa235).** The Police and Escobar trespassed and entered yelling. **(Pa237).** Defendant Escobar told Plaintiff that Detective Cook told her that the Plaintiff had filed too many police reports against her neighbors **(Pa234-Pa237, CPa29, Pa753).** Plaintiff and her neighbor had a contentious relationship wherein they had previously engaged in litigation. **(Pa360).** Because the neighbor (Rocco)was still harassing the plaintiff she filed another report with the police as she could not find a lawyer to go against Rocco. **(Pa360).** Upon entering plaintiff's home, Defendants Limage Wilson and Officer Delvalle followed Plaintiff around her house, blocking her and pushing her to exit her house and pushed her into the ambulance under threat to carry her if she did not walk while plaintiff protested. **(Pa237-239; Pa845-46; Pa661-Pa667).** When EMS arrived the EMS personnel carried Plaintiff via a stretcher. **(Pa239).**

Escobar allowed plaintiff to be removed from her home at Cook's directive, despite testifying that plaintiff was not a threat to herself or others and was not homicidal or suicidal. **(Pa236-239; Pa740-743, Pa712, Pa753 Pa828, Pa835, CPa002).** Escobar did not ask plaintiff about any current or past medical or psychiatric diagnosis, **(Pa237-Pa239).** Defendant Escobar allowed plaintiff to be admitted because she had filed too many complained about her White neighbor Rocco and her African neighbors using voodoo. **(Pa243, CPa021, Pa243; Pa236, Pa251-57).** Plaintiff's white neighbor Rocco in fact filed 20 police reports against her while plaintiff filed only 4 reports against him. **(Pa236, Pa848, Pa849).** On 8/20/2019, plaintiff fearing for her life, called the police after returning home and noting a strong odor from her AC. **(Pa252).** On 8/16/2019 she called the police after she went home and found all the screws on her Verizon box removed and outside the box that was previously intact. **(Pa254).** Plaintiff filed another report after returning home to find a broken screen door, keys in drawer gone, sheets missing, clothes and pictures taken and her garage key missing. **(Pa257).** Plaintiff reported a damaged computer, a stolen car key after which her car broke down from something placed in her car engine. **(Pa709).**

On 1/29/20, Cook responded to Plaintiff's residence seeking to speak with Plaintiff. **(Pa863).** Upon arrival, Cook noticed there were paper notes taped all over the exterior of the house, on the steps, railings, etc. **(Pa863, Pa0711-13).** The notes

accused unnamed people of entering her home, taking her son's socks, her papers, and damaging her car in the garage, etc. **(Pa863, Pa711-13).** Cook also observed squeezed citrus on the steps and some type of vegetation and found this odd and out of the ordinary and took pictures. **(Id, Pa753).** Cook conducted a search on Plaintiff's in the UPD and found numerous complaints of 'Suspicious Acts' reports on file. **(Pa711-13).** In the morning of 2/11/2020, Plaintiff had sent Detective Cook an email pertaining to Plaintiff's belief that her neighbors were breaking into her home. **(Id, Pa865).** On February 11, 2020, Cook claimed that he responded to Lafayette Ave at approximately 5:45am, in order to investigate Plaintiff's claims of others unlawfully trespassing on her property. **Id.** Cook observed Plaintiff leave her residence at 6:21 am (**talking to herself**) and followed her towards Elmwood Ave. **(Pa637, Pa711-13).** Cook claimed that he remained outside plaintiff's residence from 5:45AM to 6:45 AM to observe for trespassers, when any reasonable burglar who intended to break into plaintiff's home would have waited until after plaintiff had long gone for the day to New York City before entering her home. **(Id)**

Plaintiff initially tried to show the doctor at Trinitas the pictures in her cell phone of occurrences in her home, but he had no interest and ignored her. **(Pa242).** Plaintiff told the staff that she did not want any meds. **(Pa241).** The staff called 6 strong men to hold the plaintiff down and injected her with Versed medication that she refused while she screamed. **(Pa241).** The next night after a Nurse saw the

pictures, she took them to the psychiatrist. **(Pa241-43).** Plaintiff had pictures of broken door, blood stains with blood dripping down on her floor. **(Pa243**). After the psychiatrist and staff reviewed the picture, they agreed to discharge the plaintiff after 34 hours, finding that Plaintiff didn't meet the criteria for involuntary commitment. **(Pa243; CPa090; CPa19[1]).** Staff at Trinitas told plaintiff to move out of her home to avoid problems with the police **(Pa243).**

The trial Court concluded that Cook exercised good faith and diligence in investigating and observing the notes to ward off magic and other dangers and in witnessing plaintiff as she talked about poisoning and theft. That there was good faith in investigating the story of the stolen ATM card, the broken printer, the 10% less rice in her pantry and cats and dogs VOODO and MAGIC. **(Pa871-Pa872).** Per the Court, the foregoing irrefutably demonstrates the good faith actions of Cook giving rise to a good faith belief that Plaintiff was (or was going to be) a threat to herself, others, and/or the property of others, despite Escobar's finding that plaintiff *did not meet the criteria* for *involuntary transfer.* **(Pa871-872, Pa719, Pa835).**

PROCEDURAL HISTORY

Plaintiff relies on the case jacket attached at **Pa977** as her procedural history as if set forth at length herein but outlines that on 10/04/2021, Plaintiff filed an amended complaint alleging injuries to her civil rights as opposed to physical

[1] CPa-Means Confidential Appendix

would warrant an AOM. **(1T11-10 to 21[2], Pa095).** On 2/9/22 Township of Union filed an answer. (Pa161). On 2/22/22 Trinitas filed an Answer. **(Pa181).** On 5/13/22 the Court dismissed plaintiff's case against Trinitas for not providing an affidavit of Merit (AOM.) **(Pa266)**. On 5/27/22 plaintiff filed for reconsideration. **(Pa288).** On 6/28/22, the Court denied Reconsideration. **(Pa306).** On 9/8/23 Township of Union moved for Summary Judgment (SJ). **(Pa630).** On 9/26/23 the plaintiff responded. **(Pa798).** Defense counsel authenticated the screening document that was used to legitimize the plaintiff's kidnap. **(2T34-20 to 2T35-6[3]).** On 9/26/23 the plaintiff opposed SJ. **(Pa798).** SJ was granted to defendants on 10/23/23. **(Pa860).**

POINT ONE

THE TOWNSHIP DEFENDANTS DID NOT ACT IN GOOD FAITH AND THUS WERE NOT ENTITLED TO ABSOLUTE IMMUNITY RELATIVE TO PLAINTIFF'S INVOLUNTARY COMMITMENT AND THUS SUMMARY JUDGMENT SHOULD HAVE BEEN DENIED (Pa871-Pa873, Pa860-861, Pa835, Pa266-273, Pa233-247, Pa095, Pa798-815, Pa215-Pa226, Pa353-Pa360, Pa820, Pa840, CPa090, Pa828, Pa251-Pa255, Pa709-713, Pa660-Pa667, Pa871, CPa21, Pa102, CPa002; Pa740-Pa741, Pa847 Pa736, Pa720, Pa634-Pa636, Pa863, Pa800, Pa798-799, Pa847, CPa90, Pa913-915, Pa750-752, Pa761, Pa770)

NJSA 59:3-14 as amended in 2016 states as follows:

> Nothing in this act shall exonerate a public employee from liability. . . or full recovery. . . if it is established that his conduct was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct.

Whether an official is shielded from liability by qualified immunity for

[2] 1T-Transcript of Motion Hearing 5/13/2022
[3] 2T-Transcript of Motion Hearing 10/20/2023

alleged unlawful official action turns on the "objective legal reasonableness" of the action assessed in light of the "clearly established" law at the time the action was taken. Anderson v. Creighton, 483 U.S. 635, 639 (1987); Plumhoff v. Rickard, 572 U.S. 765, 776 (2014). Qualified immunity shields government officials from civil liability unless a plaintiff shows "(1) that the official violated a statutory or constitutional right, and (2) that the right was 'clearly established' at the time of the challenged conduct." Radiation Data, Inc. v. NJ Dept. of Environmental Prot., 456 N.J. Super. 550, 558 (App. Div. 2018) (quoting Ashcroft v. al Kidd, 563 U.S. 731, 735 (2011)). That is, it protects public officials "from personal liability for discretionary actions taken in the course of their public responsibilities, 'insofar as their conduct does not violate clearly established or constitutional rights of which a reasonable person would have known.'" Brown v. State, 230 N.J. 84, 97-98 (2017) (quoting Morillo v. Torres, 222 N.J. 104, 116 (2015). Qualified immunity may only shield an officer from liability if the officer "reasonably believes that his or her conduct complies with the law." Pearson v. Callahan, 555 U.S. 223, 244 (2009).

Moreover, there is no presumption of qualified immunity. Immunity is considered "an affirmative defense that the defendant must establish." Schneider v. Simonini, 163 N.J. 336, 354 (2000). A cause of action is provided under 42 U.S.C. § 1983 in state or federal courts, to redress federal constitutional and statutory violations by state officials." GMC v. City of Linden, 143 N.J. 336, 341 (1996).

Pursuant to N.J.S.A. 59:2-2:

> (a) A public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances. (b) A public entity is not liable for an injury resulting from an act or omission of a public employee where the public employee is not liable. N.J.S.A. 59:2-2 (emphasis added).

Pursuant to N.J.S.A. 59:2-3(d).

> A public entity is not exonerated from liability for negligence arising out of acts or omissions of its employees in carrying out their ministerial, rather than discretionary, functions.

The burden is upon the public entity to prove that a specific action was discretionary rather than ministerial (or mandatory) for purposes of the TCA. See Kolitch v. Lindedahl, 100 N.J. 485, 497 (1985). As opposed to a discretionary act, "[a] ministerial act is one which public officials are required to perform upon a given state of facts in a prescribed manner, in obedience to the mandate of legal authority and without regard to their own judgment or opinion concerning the propriety or impropriety of the act to be performed." Ritter v. Castellini, 173 N.J. Super. 509, 514-15 (Law Div. 1980). N.J.S.A. 59:3-3 does not immunize law enforcement officers who act in bad faith as bad faith is synonymous to malice. Lustrelon v. Prutscher, 178 N.J. Super. 128, 144 (App. Div. 1981)

Contrary to the defendants, good faith is defined in part as honesty in fact. Pisano v. City of Union City, 198 N.J. Super. 588, 590 (Law Div.1984). in conduct. Sons of Thunder v Borden, 148 N.J. 396, 420 (1997). The defendants certainly

did not act with honesty when the falsely imprisoned the plaintiff. Attached to plaintiff's summary judgment SOMF were plaintiff's Affidavit, her responses to interrogatories and deposition transcripts of plaintiff and Escober that disputed all the defendants' contentions. **(Pa233, Pa234 Pa095, Pa798-815, Pa226, Pa215, Pa219, Pa353, Pa652, Pa820, Pa840).** Defendants had no discretion regarding compliance with NJSA 30:4-27.2m. Plaintiff was knowingly kidnapped and falsely imprisoned without meeting the statutory requirement for involuntary commitment. See NJSA 30:4-27.2m. **(Pa835).** Defendant Escobar testified at her deposition that prior to removing plaintiff from her home, plaintiff was not a threat to herself or others and was not homicidal or suicidal. **(Pa835, See Pa090).** Escober testified that plaintiff was clean and properly groomed when removed from her home [against her will]. **(Pa828).** Thus, no lawful justification existed for physically removing plaintiff from her home against her will. The police report attached states that police dropped her off at the hospital and left her with non law enforcement staff. **(Pa741).**

Most significant is the fact that Escobar testified at her deposition that someone suffering from a delusional disorder is not "automatically a threat to self, to other people, and or property." **(Pa835).** The statute, as written and reasonably interpreted, requires that [foreseeable] danger to self, person or property exist before a plaintiff is transported against her will. See NJSA 30:4-27.2m. Here, there was no such showing. Thus, there was no justification for plaintiff's involuntary transfer

and commitment based to **NJSA 30:4-27.1(a) (b).** The defendants did not explain how plaintiff's reports of stolen items, being burglarized, her feelings of being victimized or her beliefs in voodoo and magic made ***her*** "dangerous to self or others." **(Pa251, Pa252, Pa254, Pa255, Pa709, Pa663).** The Court in defense of the police in this case, nonetheless cites to N.J.S.A. 30:4-27.7(a) which states:

> A law enforcement officer, screening service or short-term care facility designated staff person or their respective employers, acting in good faith pursuant to this act (N.J.S.A. 30:4-27.1 to -27.11] who takes **reasonable** steps to assess, take custody of, detain or transport an individual for the purposes of mental health assessment or treatment is immune from civil and criminal liability. **(Pa871)**

Pursuant to New Jersey laws, a person may not be involuntarily committed to a psychiatric facility without proof by clear and convincing evidence that the individual has a mental illness, and the mental illness causes the patient to be **dangerous to self, to others, or to property. . . by reason of mental illness within the reasonably foreseeable future.** In re Commitment of S.L., 94 N.J. 128, 138 (1983) (citing State v. Krol, 68 N.J. 236, 257, 260 (1975). A mental illness must be such that the person cannot provide basic care. NJSA **30:4-27.1;** N.J.S.A. 30:4-27.9(b); N.J.S.A. 30:4-27.15(a); R. 4:74-7(f). Matter of Commitment of Raymond S., 263 N.J. Super. 428, 431(App. Div. 1993). Defendants failed to provide clear and convincing evidence that the plaintiff was dangerous to self and others and could not provide for her basic care when she was involuntarily removed from her home:

> "Dangerous to self" means that by reason of mental illness the person has threatened or attempted suicide or serious bodily harm, or has

> behaved in such a manner as to indicate that the person is unable to satisfy his need or nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical harm or death will result within the reasonably foreseeable future. . . .

N.J.S.A. 30:4-27.2h.

> "Dangerous to others or property" means that by reason of mental illness there is a substantial likelihood that the person will inflict serious bodily harm upon another person or cause serious property damage within the reasonably foreseeable future. This determination shall take into account a person's history, recent behavior, and any recent act, threat, or serious psychiatric deterioration.

N.J.S.A. 30:4-27.2i.

The police did not act reasonably because they kidnapped plaintiff whom Escobar testified did not meet the criteria and transported her over her protestations to a mental facility. **(Pa234-Pa247, CPa21, CPa002; Pa661-667, Pa835**). NJSA 2C:13-1 states:

> A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period, with any of the following purposes: to terrorize the victim or another. Id.

The defendants are guilty of kidnapping plaintiff because they entered the Plaintiff's home without her consent, trespassed upon her property and seized her body without a Court Order, warrant or other legal proceeding. **(Pa234-Pa247, Pa661-Pa662)**. The defendants then falsely imprisoned the plaintiff by substantially restraining her over her protestations and transported her to Trinitas Hospital against her will. **(Pa234-Pa247, Pa661-667)**. The defendants interfered with plaintiff's

liberty rights due to her beliefs and her numerous complaints against her neighbor. **(Pa234-Pa247; Pa660; Pa664; Pa665**). The defendants at Trinitas Hospital are liable for false imprisonment and restraining of her freedom under NJSA 2C:13-3 because they held her down after she refused the psychiatric medications and injected her against her will while she screamed therefore unlawfully interfering substantially with her liberty**. (Pa240-Pa241; Pa740-Pa741).** As stated in plaintiff's complaint, Defendants breached the criminal law by entering her home and kidnapping Plaintiff under Color of Law and misapplication of Law which denied plaintiff of her right to her to freedom**. (Pa740-Pa741, CPa21).** Thus, Defendants violated N.J.S.A. 2C:13-1; 2C:13-2; 2C:13-3; 2C:13-5; 2C:30-5; 2C:30-6; 2C:30-7; 2C:16-1; 2C:18-3 as stated in the Amended Complaint. **(Pa102).**

A. COOK ACTED WITH MALICE AND BAD FAITH BY KIDNAPPING PLAINTIFF FROM HER HOME AND HAS NO IMMUNITY

Malice in the legal sense is the intentional doing of a wrongful act without [legal]justification or excuse." Louis Schlesinger Co. v. Rice, 4 N.J. 169, 181 (1950). Good faith required complying with a duty or obligation to accept the screener's conclusion that plaintiff did not fit the criteria for involuntary commitment and not imposing his will upon her. Kelly v Kelly, 262 N.J. Super. 303, 308 (1992). **(Pa835)** The night of the kidnap Escobar went outside many times to tell Cook that plaintiff was not a candidate for involuntary transfer. **(Pa847, Pa359-60, Pa237, Pa266-273).** Cook also had a duty to properly investigate plaintiff's

complaint and to comply with N.J.S.A. 30:4-27.2 h, i, NJSA 30:4-27.7(a), NJSA 30:4-27.2h, but chose instead to violate NJSA 2C:13-1. Cook acted in bad faith in investigating the plaintiff's complaint by first interviewing Rocco who is white without first interviewing her and had no questions of Rocco regarding plaintiff's allegations against him. **(Pa634-Pa635, Pa798).** The court should note carefully that Exhibit D attached to defense Counsel's SOMF is a 1/08/20 complaint by plaintiff against Rocco and that his Exhibit E is a May 24, 2016 complaint by Rocco against Plaintiff. **(Pa710, Pa736).** Here, Cook was assigned to investigate plaintiff's 1/8/2020 report (*Report 20-568)* against Rocco but felt compelled to reinvestigate the White neighbor's 2016 defenses against plaintiff related to a 2016 matter instead of the plaintiff's current complaint to which he was assigned. **(Pa710, Pa360). The 2016 case "State v Dean Rocco" was closed whereby the municipal judge had sent the parties for mediation and told Dean Rocco to stay away from the Plaintiff, her house and her family. (Pa360).**

During the Rocco interview by Cook regarding plaintiff's January 8, 2020, complaint of continued harassment by Rocco, Cook *solely collected evidence against plaintiff which explained why she felt compelled to sell her house and leave Union County because she had no police protection against her white neighbor.* **(Pa711-13, Pa720, Pa798, Pa634-635). The Court cited Cook's report as follows:**

> On or about January 25, 2020, Plaintiff filed Citizen's Report #20-568 ("Report 20568") with the Union Township Police Department

> ("UPD"). This was one of several UPD reports which refer or relate to Plaintiff, her home, and/or Plaintiffs neighbor. In Report 20-568, Plaintiff complained her neighbor, Dean Rocco ("Rocco"), had damaged a computer delivered to Plaintiffs house and placed something in Plaintiffs car engine causing it to break down. On or about January 28, 2020, Defendant Det. Donald Cook ("Cook") was assigned to investigate in regard to Report 20-568. On January 29, 2020, Cook responded to Plaintiffs residence seeking to speak with Plaintiff. Upon arrival, Cook noticed there were paper notes taped all over the exterior of the house, on the steps, railings, etc. The notes accused unnamed people of entering her home and taking her son's socks, her papers, and damaging her car (which is in the garage), etc. Cook also observed someone had ***squeezed citrus on the steps and some type of vegetation. Cook felt this was extremely out of the ordinary and took photographs to document same***. Cook conducted a search on Plaintiffs address in the UPD system and found Plaintiff had numerous Suspicious Acts reports on file.

(Emphasis added) **(Pa863, Pa711-13)**

At Cook's deposition this exchange took place:

> **Q.** So between the E-mails and your **observation of [the notes and the lemon juice] she had all around her house,** it wasn't so difficult to determine that she was mentally handicapped or disabled in some kind of mental way. Is that correct?
> **A.** Yes

(Pa636)

Here, defendant Cook clearly supported Rocco the white neighbor and who perceived plaintiff to be disabled due to her beliefs and sought Escobar's help in kidnapping her. Cook and Escober (who went along) acted with malice because they knew that there was no legal justification for plaintiff's involuntary commitment which prevented immunity to Cook **(Pa835, Pa800, Pa798, Pa799, Pa847). As stated by plaintiff "*Donald Cook is too racist to serve the Union Community.*"**

(Pa237) The above warranted all inferences in plaintiff's favor that Cook knowingly and willfully violated her civil rights requiring a jury trial. **(Pa871-73, Pa860-61)**

B. LIMAGE AND DEVALLE ACTED IN BAD FAITH IN KIDNAPPING THE PLAINTIFF FROM HER HOME AND INVOLUNTARILY COMMITTING HER

Limage and Devalle knew that their conduct was unlawful when they blocked pushed and forced the plaintiff out of her home against her will after 10 Pm at night. **(Pa235-Pa237, Pa662-63, Pa266-73).** The transcripts speak for themselves regarding the willfulness and outrageous acts of the defendant Devalle and Limage in threatening and cornering the plaintiff forcing her out of her house against her will in violation of her Civil Rights. This exchange took place at plaintiff's deposition:

> **Q.** Okay. So they did not physically --
> **A.** They were blocking me. One blocking me, the other one like – and then **Limage** was about to put his – and the other one and – and I said, "**Do not touch me**." And so like the -- and then they – then ***they said they were going to carry me if I don't want to walk out.*** I said, then the -- "Here, take her out. Get out" – or they carry me. And the other was blocking me

(Pa662)(Emphasis added)

This exchange also took place at plaintiff's deposition:

> **Q:** Okay. And Again, they did not physically touch you or hand cuff you.
> **A:** Well, **they got so close to me that Devalle,** and the other one, they just, have me in the middle-in this what you call it. The lady was standing very close and all two of them and they were very very very close. Its not-they don't touch me with their hands but then when they-***they were blocking me,*** they were very close to touching like this to---

(Pa662-Pa663)

As per the plaintiff "officer Delvalle did not even want me to close my door."

(Pa240). Devalle did this knowing that plaintiff had concerns about her home being burglarized. Per plaintiff "Sylvia and the two cops did not even let me put my chicken. on the fridge" because they had no time. Plaintiff's chicken rotted on the stove **(Pa239)** Defendants Devalle and Limage trampled on the New Jersey Constitution when they invaded plaintiff's home on February 12, 2020 at 10:00 PM at night and kidnapped her out of her home AGAINST HER WILL after she told them that she was not "going anywhere with them." **(Pa237).** The doctor at Trinitas Hospital discharged her back to her home after documenting [patient] "does not meet admission criteria." **(CPa90; Pa871-Pa873, Pa860-861).** There can be no immunity under the tort claim act for Limage and Delvalle. Thus, summary judgment should have been denied.

C. THE TOWNSHIP IS NOT IMMUNE AS A MATTER OF LAW

The Township of Union is not immune for its actions against the plaintiff because the individual defendants within its employ were liable. While the Township may not be liable for the willful malicious acts of the police officers, it is liable for any act or omission that was reckless and negligent. Pursuant to Ptaszynski v. Uwaneme the Township of Union, its building and individual police officers are places of public accommodation. 71 N.J. Super. 333, 853 (App. Div. 2004).

The Appellate Division has held that a City's failure to have a policy that prevents discrimination is a ***fatal flaw***. Upchurch v City of Orange. **(Pa913).** Defendant Cook stated that he had not seen any policies regarding public

accommodation at the police precinct stating that all people are to be treated fairly. **(Pa750-52, Pa761).** Defendant Cook testified that he was not trained on any polices regarding interacting with the mentally ill and them being taken from their home. **(Pa751-Pa752).** Cook also stated that ***he was not aware that someone even if mentally ill could disallow the police from entering their home.*** **(Pa770).**

Union County has no meaningful policy to prevent hostile issuance of services by the police to those who are perceived to be mentally ill or have nonmainstream cultural views. **(Pa751-52, Pa770, Pa266-73).** See Holmes v. Jersey City Police Department, 449 N.J. Super. 600, 601, 606 (App. Div. 2017). Because Union County had no policy that was distributed, its police officers did not know that the mentally ill like the physically ill, have a right to choose when and where to seek treatment without being kidnapped by the police and taken for treatment. **(Pa751-52, Pa770; Pa871-Pa873, Pa860-861).** The defendants did not agree that the Haitian plaintiff who believed in voodoo should be able to worship any Voodoo God without being placed under surveillance and kidnapped and taken for treatment to change her mindset and normalize her.

In Upchurch, the Appellate Division reversed Summary Judgment to the defendants based on the City of Orange's failure to have a policy on sexual harassment. **(Pa915)**. Reversal is also similarly required in this case.

POINT TWO

THE TOWNSHIP DEFENDANTS ESCOBAR AND TRINITAS VIOLATED PLAINTIFF'S CIVIL RIGHTS AND THUS WERE NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW. (Pa861, Pa873, Pa266-Pa273, Pa636-37; Pa740, Pa754, Pa835)

Defendants alleged in their summary judgment brief that plaintiff's cause of action under 2C:30-6 should be dismissed because the statute was repealed. This is not so. NJSA 2C:30-6 ***has not been repealed*** and states as follows:

> A public servant acting or purporting to act in an official capacity commits the crime of official deprivation of civil rights if, knowing that his conduct is unlawful, and acting with the purpose to intimidate or discriminate against an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity, the public servant: (1) subjects another to unlawful arrest or detention, including, but not limited to, motor vehicle investigative stops, search, seizure, dispossession, assessment, lien or other infringement of personal or property rights; or (2) denies or impedes another in the lawful exercise or enjoyment of any right, privilege, power or immunity.

Plaintiff was deprived of her Civil rights and Art 1 privileges under color of law due to her race, national origin, perceived disability and beliefs. Cook, Limage and Devalle while acting in their official capacities knew that their conduct was unlawful, and acted with the purpose to intimidate or discriminate against plaintiff because they kidnapped her when Escobar (the screener) said that plaintiff did not meet the criteria for involuntary transfer. **(Pa835, Pa266-73).** Cook perceived that plaintiff was mentally challenged or disabled. **(Pa636-37; Pa740, Pa754). Despite his perception** he and his fellow officers denied plaintiff the equal liberty right to call a doctor of her choosing, **violating her civil rights. (Pa861, Pa873).**

This makes them liable under NJSA 2C:30-6.

POINT THREE

THE DEFENDANTS VIOLATED THE PLAINTIFF'S CIVIL RIGHTS AND WERE NOT ENTITLED TO SUMMARY JUDGMENT OR DISMISSAL(Pa860-873, Pa266-273, Pa306,Pa001-002, Pa233-Pa247, Pa264, Pa353-365, Pa214-21, Pa660-667, Pa709-718, Pa849, CPa62, Pa835, Pa634-35,Pa798, Pa830, Pa719-20, Pa716, Pa720-34, Pa95, Pa101, Pa808, Pa817, Pa849, Pa841-846, CPa19-37, Pa740-43, CPa90, Pa751-756, Pa823-827, Pa798, Pa817, Pa641)

The defendants state in their Summary Judgment Brief at page 37 that defendants did not discriminate against plaintiff. Plaintiff stated in her Amended Complaint, her interrogatories, deposition transcripts and Affidavit all attached as part of the Summary Judgment record that her civil rights were violated. **(Pa233, Pa227, Pa353, Pa215, Pa219, Pa662-Pa663)**

A. PLAINTIFF'S ARTICLE 1 PARA 1 AND EQUAL PROTECTION CLAIMS ARE NOT FLAWED

The New Jersey Civil Rights Act allows any citizen who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States or any state under color of law, to file a civil action for damages. See N.J.S.A. 10:6-2(c). The NJCRA is interpreted as analogous to 42 USC§ 1983. 42 USC § 1983 allows tort liability for the deprivation of any rights, privileges, or immunities secured by the Constitution." Manuel v. City of Joliet, 580 U.S. 357 (2017).T

To establish a prima facie equal protection claim, plaintiffs traditionally must show that the defendants' actions(1) had a discriminatory effect on them, and (2)

purpose. Hassan v. United States, 299 F.3d 197, 205 (3d Cir.2002). While many equal protection plaintiffs "usually demonstrate purposeful discrimination" based on membership in a protected class, such as race, Griggs v. Duke Power Co., holds differently. In Griggs, the Court held that a discriminatory purpose is not required as long as there is a **discriminatory effect**. 401 U.S. 424 (1971). A disparate impact claim challenges a facially neutral employment practice that has a significant adverse effect on a protected group and cannot be justified by business necessity. See Id at 431. Discriminatory practices may seem fair in form but discriminatory in operation. See Id. In the Third Circuit, a plaintiff must allege, at a minimum, that "he was intentionally treated differently from others similarly situated by the defendant and that there was no rational basis for such treatment." Phillips v. Cty. of Allegheny, 515 F.3d 224, 243 (3d Cir. 2008) (emphasis added). "Ordinarily, an equal protection plaintiff must be singled out because of membership in a class." Rivkin v. Dover Twp. Rent Leveling Bd., 143 N.J. 352, 381 (1996).

Article 1 para 7 of the New Jersey State Constitution provides for the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and that no warrant shall issue except upon probable cause. Individuals may be sued under 42 USC § 1983 and the NJCRA in their personal or individual capacity as long as plaintiff show that the individual violated a clearly established law and that an individual exhibited

a callous indifference for plaintiff's rights. Davis v. Scherer, 468 U.S. 183 (1984). While a discriminatory purpose is not required, one was still shown whereby the police showed that they wanted to *contain plaintiff* because she was black Haitian woman filing too many complaints against her white neighbor Rocco. **(Pa660; Pa354, Pa0711, Pa849, CPa62)**. A discriminatory effect was shown because plaintiff was unlawfully removed from her home and imprisoned in a disparate fashion without being a danger herself or others which is not in accordance NJSA 30:4-27.2m that specifically sets a uniform standard for involuntary commitment which requires that citizens pose a danger to self or to others and be homicidal or suicidal to qualify. **(Pa835, CPa090, Pa243)**

Article 1, paragraph 1 of the NJ Constitution like the 14th Amendment, seeks to protect against injustice and against the unequal treatment of those who should be treated alike. Greenberg v. Kimmelman, 99 N.J. 552, 568 (1985). Article 1 safeguards values like those encompassed by the principles of due process and equal protection. Id. The equal protection of the laws means that no person or class of persons, shall be denied the protection of the laws enjoyed by other persons or classes of persons in their lives, liberty and property, and in the pursuit of happiness, as it relates to privileges conferred and burdens imposed.

In Peper v. Princeton, 77 NJ 55, 79 (1978) the Supreme Court found that "if Peper was not promoted because she was a woman, she was denied the same

right to acquire property that is guaranteed under Article 1 para 1. Id. Peper held that "the right to acquire property would be a hollow one indeed if it did not protect individuals from being invidiously denied the opportunity to acquire property" Id at 79-80. The same logic that informed the decision in Peper as to claims under Article 1 para 1, applies to the claims here. Here, the plaintiff due to her perceived disability, beliefs race and National Origin, was denied of her equal right to be secure in her home and to obtain public accommodation from the Twp of Union and the Police and was falsely imprisoned. Defendants incorrectly state that there was no record evidence when plaintiff attached her affidavit at Summary judgment showing that the defendants acts were racially motivated which states as follows:

> *Again, my white neighbor Dean Rocco leaving next door to me conspired with the detective Donald Cook to send me to jail and when they could not find anything in their record, they come up with the involuntary psychiatry hospital. . All these things happened to me because I am a black female. The Union police discriminated against me, violated my civil rights, cause defamation of character for throwing in psychiatry, bias of my race, humiliated and shamed me, traumatized me psychologically and emotionally. . . .*

(Pa243-Pa244)

This was added to the Rocco interview where Cook gathered one side evidence against plaintiff to protect the white Rocco. **(Pa634-635, Pa710, Pa798)**

Deposition transcripts attached at Summary Judgment also revealed this exchange:

> Q: Okay. So you did leave the house on your own accord?
> A: Yeah. **Against my will.**
> Q: okay. The police did not handcuff you are restrain you
> A: No. no. They are trying to do this - to carry me to do this. To do all kinds of this but.

> Q: And what were their threats?
> A: Well, **they threatened to carry me**. They threatened the other one- I just cannot-of him because -whet ever they have to do. Take me out of inside of my house.
> Q: And did the police draw their weapons at any time during this incident
> A:No
> Q: Okay. And Again, they did not physically touch you or hand cuff you.
> A: Well, they got so close to me that Devalle, and the other one, they just, have me in the middle-in this what you call it. The lady was standing very close and all two of them and they were very very very close. Its not-they don't touch me with their hands but then when they- **they were blocking me,** they were very close to touching like this to--
> Q: But they did not touch you.
> A: Well, **when they were about to grab me I said "Don't touch me** But then **they were blocking me**, like I said I was right in the center of both of them, to block me, to push me out the door. **They were blocking me to push me out the door to "go this way, go this way, they were yelling screaming at me."**

(Pa662-Pa663)(Emphasis added)

Here, Plaintiff exercised her right under Article 1 para 18 and grieved to the police about being harassed by her white neighbor. **(Pa250-Pa260).** Harassment is defined as a course of alarming conduct repeatedly committed with purpose to alarm or seriously annoy another person. H.E.S. v. J.C.S., 349 N.J. Super. 332, 336 (2002). In response to plaintiff's many complaints about a course of alarming conduct by her neighbor, the police punished plaintiff by investigating her, discriminated against her for her beliefs, seizing her from her home against her will, denied her of public accommodation. Plaintiff grieved by filing 4 complaints against her white neighbor while her white neighbor Rocco also filed 20 complaints against her, yet the police

accused the black Haitian plaintiff who believes in Voodoo alone of filing too many complaints. **(Pa660, Pa0711, Pa849, Pa841-42, CPa62).** Thus, plaintiff was intentionally singled out and treated differently due to her membership of her perceived disabled class, religious belief class and National Origin class in violation of Rivkin and Phillips, and Art 1para 1,5,7. Consequently, (1) the defendants' actions had a discriminatory effect on Plaintiff because unlike other cultures that are also perceived to have *odd beliefs,* plaintiff was falsely imprisoned due to her beliefs in a disparate fashion (2); the acts were motivated by a discriminatory purpose due to plaintiff's beliefs, her perceived disability and her national origin. **(Pa234-Pa247; Pa871-Pa873; Pa719-Pa720)**

Our Courts have held that "[A]mong the most [important] of personal rights, without which man could not live in a state of society, is the right of personal security." Right to Choose v Bryne, 91 N.J. 287, 304 (1982). Here, the defendants, by kidnapping plaintiff from the sanctity of her home, due to her beliefs, and perceived disability, race and national origin, infringed upon the plaintiff's person security and denied her of equal protection of laws under Article 1 para 1 of the NJ Constitution and Peper. An abuse of discretion occurs when a decision is "made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis. Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002). The

Judge abused his discretion in granting summary judgment to the defendants who denied plaintiff of equal protection. The Court's opinions rested on an impermissible basis because they were based on stereotypical definitions of 'so called' *normal behaviors*. As per the Court, the officers acted in **good faith** and their actions were justified based on actions and statements made by the plaintiff. **(Pa872).**

The trail Judge who is not a mental health screener abused his discretion and unreasonably agreed with the police defendants that there was a problem with plaintiff's state of mind because plaintiff made statements about poisoning thefts, voodoo, magic and about cats, dogs and birds. **(Pa871-873).** Plaintiff certainly did not mean that Rocco and any other thief breaking into her house, stealing her mail, tampering with her car, breaking her printer, stealing her ATM Card and food items (such as rice) from her kitchen and trying to poison her literally transformed themselves into dogs, cats and birds! Plaintiff, a Registered Nurse has a profound understanding of Human Anatomy and Physiology, and certainly did not mean that the burglars were literally invisible (as in transparent). **(Pa243-Pa257; Pa719-Pa720).** Plaintiff was simply using analogies in expressing that the burglars had skills and expertise that allowed them to commit crimes without being detected.

Simply put, forbidden discrimination and bias disallowed the defendants from **equally protecting the black plaintiff as they did her white neighbor Rocco.** Making the plaintiff look like a total idiot was based on discrimination. A reasonable

police officer would not have concluded that because nothing was taken on one occasion means that a break in did not occur. **(Pa711).** The police failed to know the elements of harassment which includes Rocco acting with purpose and intent to seriously annoy plaintiff within the meaning of N.J.S.A. 2C:33-4 **that a discriminatory effect. (Pa862-Pa873; Pa719-720;Pa234-247; Pa250-Pa258)**

It is noteworthy that the Court's Statement of reasons clearly accorded the police in criticizing plaintiff's belief in Voodoo and Magic by this Haitian American Plaintiff. Even worse is the criticism against plaintiff's spread of **notes *around her house*** to ward off magic and dangers and her alleged engagement in behaviors that ***were out of the ordinary***. **(Pa711-13; Pa727-Pa734; Pa872).** The Court seemingly agreed with the defendants that there is only one definition of *normal*. The defendants also pointed out in their brief that defendant Cook also observed that someone had squeezed citrus juice on the steps and some type of vegetation. As per the defense, Cook felt that this was ***extremely out of the ordinary*** and took photographs to document same. Whose ordinary?

The Court, on page six of his statement of reasons, seemingly debunks plaintiff's contention that feces were being placed in her car on the premise that the car was locked in a garage**!** **(Pa867).** This is clearly an abuse of discretion. The Court seemingly accepted defendants' logic that **a locked garage** cannot be entered by neighbors. The Judge also highlights plaintiff' allegedly expressed irrational

belief that others are entering her residence stealing and damaging property, **yet these acts are undetected by her security camera** and motion sensors in each window? Plaintiff expressly stated that someone broke in and deleted her camera footage which by itself created a dispute**. (Pa830**). The Union County Police did not care about the plaintiff's concerns and did not care to learn the identity of the burglars because they failed to take any fingerprints of plaintiff's car, printer and garage. Defendant Cook falsely documented that FedEx delivered the computer in a damaged condition without any corroboration from FedEx. **(Pa716).**

The Court does not focus on the logical information provided by plaintiff that the burglars were able to access her home because they had previously **stolen keys which were used to enter** her house, her garage and her car. **(Pa257; Pa709, Pa716**). The Court instead focused on the more salacious and irrational explanation i.e., that plaintiff believes that her neighbors are invisible and can transform themselves into dogs or cats in order to enter her garage then fly away like birds. **(Pa871-Pa873, Pa860-873, Pa266-273, Pa306).** Contrary to the defendants, mental health workers have no duty to perform jobs inside peoples' homes without invitations. The legislature in enacting NJSA 30:4-27.1, did not intend for it to apply to home invasions by the government. Plaintiff adequately proved her denial of equal protection. (**Pa95, Pa101, Pa244-46, Pa217-21, Pa264, Pa354-364, Pa808-817)**

B. Plaintiff's Claim under Article I, § 22, Does Not Fail

The defendants incorrectly allege on page 36 of their brief that Article 1 para 22 applies only to car accidents and Homicides. This is not so.

Article I para 22 of the New Jersey Constitution provides:

> A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system. . . A victim of a crime shall be entitled to those rights and remedies as may be provided by the legislature. . . . "victim of a crime" means: a) a person who has suffered physical or psychological injury or has incurred loss of or damage to personal or real property as a result of a crime. . . . Art. I, para 22].

Plaintiff is a victim of crime. The plaintiff clearly suffered psychological injuries at the hands of the police and Escobar. Plaintiff became a victim of crime when Escobar and the police kidnaped her from her home against her will with full knowledge that she was not homicidal or suicidal or a threat to anyone. **(Pa835, Pa740; Pa661-667).** Plaintiff sustained physical injuries when she was blocked and cornered while in her home and pushed out to an ambulance then held down at Trinitas Hospital by six men and stabbed with the injection needle after she said "no I don't want it." **(Pa241-Pa242).** The crimes against the plaintiff were committed by her neighbor who burglarized her home and damaged her property. Upon reporting the criminal acts of her neighbor burglarizing her home, the police subjected plaintiff to further crimes by her kidnap and false imprisonment. **(CPa19-CPa21; Pa740, CPa090).**

The police made a mockery out of the plaintiff and failed to treat her with fairness, compassion and respect that should be afforded by the criminal justice

system. Plaintiff was not provided with a professional who actually assessed whether plaintiff needed *involuntary commitment for TREATMENT.* **(CPa002, Pa743, Pa234-Pa247).** Plaintiff was a victim of a crime, who was *involuntarily transferred in order for someone else to assess her need to be involuntary commitment for TREATMENT.* **(CPa19-CPa21, Pa743).** Based on this, Plaintiff denied of the protections of Article 1 para 22 and denied the rights and remedies provided by the legislature by being locked away in a psych treatment facility for two days without her consent. **(Pa798-817, CPa19-CPa37; CPa090; Pa0843; Pa354-Pa365).**

C. Plaintiff "False Light" Claim Was Proper against the Township Defendants

Defendants indicated on page 36 of their brief that there was no false light because no public statement was made. The tort of false light has two elements: (1) the false light in which the other was placed would be highly offensive to a reasonable person; and (2) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter of the false light in which the other would be placed. Leang v. Jersey City Bs. Of Educ., 198 N.J. 557, 588-89 (2009) (citing, Romaine v. Kallinger, 109 N.J. 282, 294 (1988)). The tort of false light is rooted in a Plaintiff's interest "in not being made to appear before the public in an objectionable false light or false position, or in other words, otherwise than he is." Romaine, supra 109 N.J. at 294

A fundamental requirement of a false light tort is that the disputed publicly

is false, and thus a requirement is that the offending party must make "'a major misrepresentation of plaintiff's character history, activities, or beliefs.'" G.D. v. Kenny. 205 NJ. 275, 307-08 (2011). The screening outreach form that states that "plaintiff is in need of involuntary commitment" was an act of libel and false light. Because Escober who drafted the form testified that plaintiff did not meet the criteria. **(CPa001-002, Pa835).** Moreover, gestures or a combination of both may constitute a defamatory communication. Bennett v. Norban, 396 Pa. 94 (1959). In Bennett, the court found that the acts of a store manager in accosting the plaintiff as she left the store, ordering her to remove her coat, then checking her pockets and her purse while passersby stopped to watch, amounted to a "*dramatic pantomime suggesting to the assembled crowd that [the plaintiff] was a thief.*" Id at 98.

Similarly, the police blocking and pushing plaintiff out of her home after hours and yelling and threatening to carry her if she refused to walk suggested to all that plaintiff was in need of involuntary commitment, which was an objectionable false light or false position. **(Pa662-Pa663).** Trinitas Hospital calling six men from security to hold plaintiff down and injecting her against her will with a psychiatric medication while she screamed "I don't want it" was a "*dramatic pantomime*" falsely suggesting to all who were present that plaintiff was dangerous to self and others and in need of involuntary psychiatric care. The disputed publicity was false because the doctor at Trinitas Hospital said that plaintiff **did not meet the criteria**

for involuntary transfer. (CPa90) Escobar testified that plaintiff was not a threat to self or others and was not homicidal or suicidal ***before*** she was removed from her house **(CPa090, Pa835, Pa843-845, Pa641-para 58;CPa19, Pa240-241, CPa002).** An RN, falsely labelled as Homicidal and dangerous to others and in need of involuntary commitment is the worse light in which a professional Nurse can be placed and constitutes false light per se. **(Pa246, Pa846; Pa363-Pa365).** Anyone falsely labelled as being dangerous to self and others and in need of involuntary commitment would find the label objectionable. **(Pa246; Pa235-237).**

The defendants Cook, Limage, and also Devalle cast plaintiff in false light by publicizing their opinion that plaintiff was describing humans being able to literally transform themselves into cats, dogs and birds to Social Worker Sylvia Escobedo who further publicized the false statements to the Psychiatrist and other third persons at Trinitas Hospital. **(Pa710-Pa718, Pa751-Pa756, Pa823-Pa827; CPa19)**

POINT FOUR

THE DEFENDANTS DISCRIMINATED AGAINST THE PLAINTIFF BY UNEQUALLY DEPRIVING HER OF HER CIVIL RIGHTS (Pa860-73, Pa266-273, Pa636, Pa306, Pa356, Pa834-35, Pa842, Pa8343, Pa871, Pa872)

Under New Jersey's Law Against Discrimination ("NJLAD")

> "All persons shall have the opportunity to obtain . . . all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability,. . . subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right." N.J. Stat. Ann § 10:5-4 (emphasis supplied).

A person may make a prima facie case of discrimination under the NJLAD by showing that she (1) has a disability, (2) is a qualified individual, and (3) has suffered an adverse action because of that disability. See Victor v. State, 203 NJ. 383, 410, (2010). A person who is perceived to have a disability is protected just as someone who actually has a disability. Victor v. State, 203 NJ. 383, 410, (2010).

The NJLAD is intended to insure that handicapped persons will have `full and equal access to society, limited only by physical limitations they cannot surmount.'" Franek v. Tomahawk Lake Resort, 333 N.J. Super. 206, 217 (App. Div. 2000). It is undisputable that Defendant Cook and even Escobar who found plaintiff "altered" (*not dangerous*) perceived that plaintiff had a psychological disability. **(Pa636, Pa834-35)** The black Plaintiff who is also of Haitian national Origin who believes in making her a member of several protected classes. Plaintiff established a *prima facie* case of discrimination and retaliation under LAD by showing that she (1) engaged in protected activity known to the defendant by grieving to the police about her neighbor's harassment (2) was thereafter subjected to an adverse actions whereby she was involuntarily committed to a mental facility for filing too many complaint against her neighbor due to her race, national origin and beliefs and perceived disability. Erickson v. Marsh & McLennan, 117 N.J. 539, 560 (1990).

McDonnell Douglas enables a plaintiff to make his or her case through

circumstantial evidence. Zive v Stanlev Roberts, 867 A.2d 1133,1139 (2005). In Zive the Court made clear that the Court does not require direct proof of evidence of discrimination as this is seldom available. Pursuant to Zive, intent is not always shown through direct evidence as there will seldom be eyewitness' testimony to a person's mental processes. Id at 1133. Pursuant to Zive our legal scheme against discrimination would be little more than a toothless tiger if the courts were to require such direct evidence of discrimination. Id. Plaintiff's initial burden was modest and she only has to plead that discrimination could be a reason for the defendant's action.

After plaintiff met her prima facie Defendants were allowed to provide their proofs to show a nondiscriminatory reason for their action pursuant to the McDonnell Douglas v Green, burden shifting analysis. 411 U.S. 792,802 (1973). Once the defendants set forth a legitimate, nondiscriminatory reason for its adverse action, the burden again shifts to the plaintiff to show that the defendants' articulated reason "was merely a pretext to mask the discrimination" or was not the true motivating reason for its actions. See Kelly v. Bally's Grand, Inc., 285 N.J. Super. 422, 430 (App. Div. 1995). Plaintiff may meet this burden by showing that a discriminatory reason more likely motivated the defendants or indirectly by showing that their proffered explanation is unworthy of credence." Texas Dep't of Comm Affairs v. Burdine, 450 U.S. 248, 256 (1981).

To defeat a motion for summary judgment at this stage, when the defendant

answers the plaintiff's prima facie case with legitimate, nondiscriminatory reasons for its action, plaintiff may show such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the defendant's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them "unworthy of credence," and hence infer "that the defendant did not act for [the asserted] non-discriminatory reasons. See Fuentes v. Perskie, 32 F.3d 759, 764-765 (3d Cir.1994)

Thus at Summary Judgment "plaintiff need not provide direct evidence that the defendants acted for discriminatory reasons rather, she "need only point to sufficient evidence to support an ***inference*** that the defendants did not act for its proffered non-discriminatory reasons. See Kelly v. Bally's Grand, Inc., 285 NJ Super. 422, 431-32 (APP. Div. 1995). Here, plaintiff used circumstantial evidence to show that "*I the brown skin Haitian lady did not get the same treatment as a white woman or the white male neighbor*" **(Pa356)** thus discrimination could be the only reason for defendants' removing her from her home against her will and not allowing her the liberty right to follow up with her own doctor when she did not meet the statutory requirement of involuntary commission to a mental facility. **(Pa835).**

Discrimination could be the only reason why the black plaintiff of Haitian origin who was perceived to be disabled who filed four (4) complaints against her white neighbor, who filed 20 complaints against her was the one who was accused of filing *too many complaints*. **(Pa842).** The police officers state in their SOMF

that they complied despite Escobar's (screener) testimony at her deposition:

> **Q**. So did you discuss with him why he made the determination as to having her brought in?
> **A**. You asked me a question before of what meets the criteria for a face-to-face evaluation. I explained that to you.
> **Q**. Did he ask you your opinion as to whether or not she should be brought in for --
> **A**. I don't recall.
> **Q**. *And you made no recommendation; am I correct?*
> **MR. WATTS: Objection to form.**
> **THE WITNESS**: *I believe I did.*
> **BY MR. HAWKINS**:
> **Q.** Oh, okay. What did you say that you believe you said to him?
> **MR. WATTS**: I mean, how many times do you want her to explain --
> **MR. HAWKINS**: At this point, I haven't gotten an answer to this point. I just found out she believes she did. I'm trying to find out what she believes she did.
> **MR. WATTS:** Objection to form. Go through it again. It will be the last time, though.
> **THE WITNESS:** Referring back to the question that you asked me about which meets the criteria for an involuntary transport order which I went through danger to self or to others suicidal/homicidal potential danger to self due to an either illogical, disorganized thought process, perception issues, hallucinations, whether auditory or visual, destruction of property. ***She was not suicidal. She was not homicidal. She was not an imminent threat to herself or to others.***

(Pa835)

It was clear that the statute that allowed involuntary removal was not given compliance based on this exchange whereby Escobar said that plaintiff did not meet the criteria but COOK decided otherwise. **(Pa266-Pa273, Pa306)**. Thus, Defendants' **ALLEGED*" "irrefutably" "conscientious," "diligent," "good faith" reasons [unrelated to discrimination]*** for removing plaintiff against her will from her home in violation of NJSA 30:4-27.2h,i are filed with weaknesses,

implausibilities, inconsistencies, incoherencies, contradictions and ***not worthy of credence,*** warranting reversal of summary judgment. **(Pa237, Pa860-73)**

POINT FIVE

PLAINTIFF PROVIDED RECORD EVIDENCE AT SUMMARY JUDGMENT THAT SHE SUSTANIED SEVERE EMOTIONAL DISTRESS (Pa266-73, Pa306, Pa860-73, Pa661-67, Pa241-244, Pa361-65, Pa223-224, Pa740-43, Pa834-35, CPa19-37, Pa641 para 58, Pa740, Pa243-44, Pa673, Pa850-53, Pa361-65, Pa235)

A plaintiff may state a claim for intentional infliction of severe emotional distress under New Jersey law, by showing that the defendant (1) acted intentionally or recklessly and (2) outrageously, and (3) proximately caused (4) severe distress. Buckley v. Trenton Saving Fund Soc., 111 N.J. 355, 366 (1988). Regarding the first element, the defendant "must intend both to do the act and to produce emotional distress." Id. Next, the conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Id. If the Court determines that the defendant's' actions proximately caused the plaintiff's emotional distress, the plaintiff must then show the distress suffered was "so severe that no reasonable man could be expected to endure it." Buckley, 111 N.J. at 366-67.

Here the defendants acted intentionally, recklessly coming INSIDE plaintiff's HOME after hours and yelling and pushing and REMOVING her AGAINST HER WILL while she protested because of *her beliefs, perceived disability race and her national Origin* and transporting her without her consent to a psychiatric facility.

(Pa662-Pa663). The defendants acted intentionally and recklessly by holding plaintiff (who did not meet the statutory criteria) down and injecting her with a psych med against her will. **(Pa241).** These acts were *outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community* that the reasonable plaintiff could not endure it and became severely distressed! See Buckley v. Trenton Sav. Fund Soc'y, 111 N.J. 355, 365-67(1988). **(Pa361; Pa223-Pa224; Pa740-743, Pa843, CPa19-CPa37; Pa641-para 58; Pa661-Pa667).** Defendant Escobar, intentionally, recklessly, wantonly, purposely, violated her own oath as a Licensed Social Worker in New Jersey and Plaintiff's rights to be free, when she "went along" with the police by her presence, despite knowing that all were violating the involuntary commitment statute. **(Pa740, Pa867-868, Pa835)**

Plaintiff satisfied the required proximate causation because the acts of defendants caused her to be so humiliated and traumatized, suffering severe emotional distress, and she was otherwise harmed to the extent that she felt compelled to move out of her home in order to feel better. **(Pa720).** Contrary to the defendants, plaintiff provided sufficient proofs via her affidavit, her interrogatories and deposition testimony that she sustained severe emotional distress. Logic dictates that any adult kidnapped from their home at night by the police via threats and taken to a mental facility against their will where they are held down by six strong men

and forcibly injected with psychiatric medications against their will would sustain severe *emotional distress*. **(Pa241, Pa243-Pa247, Pa641-para 58).**

The Courts have held that invasion of privacy may cause mental suffering, shame or humiliation even to a person of ordinary sensibilities. Hennessey v. Coastal Eagle Paint Oil Co., 129 NJ 81, 94 (1962). Plaintiff whose privacy was invaded based on the kidnap, expressly stated "*the Union police discriminated against me, violated my civil rights, caused defamation of character by throwing [me] in psychiatry, [there was] bias because of my race, humiliated me and shame me, traumatized me emotionally and psychologically.*" **(Pa243-Pa244; Pa235; Pa673). Plaintiff sufficiently described her severe emotional distress, flash backs, inability to sleep, shakiness, nervousness, lack of energy, headaches, shock, appetite loss, not being herself anymore** related to the incident in her interrogatories. **(Pa853; Pa850, Pa361, Pa365).** No MRI or Xray or other scans can dispute how plaintiff said that she felt inside. The Trial Court failed to draw all reasonable inferences in plaintiff's favor warranting reversal of his orders. **(Pa266-73, Pa306, Pa860-73)**

POINT SIX

SUMMARY JUDGMENT WAS IMPROPERLY GRANTED BECAUSE THE PLAINTIFF WAS SUBJECTED TO STATE CREATED DANGERS (Pa860-873, Pa266-Pa273, Pa306, Pa740-741; Pa355, Pa239-244; CPa001-080, Pa662-Pa663, Pa356-357;Pa637; Pa835, CPa19-82, CPa90; Pa250-Pa260)

Courts have held that a State Created Danger (SCD) may be plead when defendants exhibit deliberate indifference to the plaintiff's wellbeing. See Davis

v. Brady, 143 F.3d 1021 (6th Cir. 1998). See Kneipp v. Tedder, 95 F.3d 1199, 1205 (3d Cir.1996). The state-created-danger ("SCD") doctrine is also a type of claim under 42 U.S.C. § 1983, through which a plaintiff may allege a constitutional violation by the state under the Due Process Clause of the Fourteenth Amendment. Id. The Due Process Clause of the 14th and Article 1 para 1 of the NJ Constitution prohibits state and local governments from depriving persons of life, liberty, or property without a fair procedure. Ibid

Under the SCD courts attach liability when state actors either CREATE danger that deprives the plaintiff of his or her right to substantive due process. See Brady 143 F.3d at 1027. In Gormley v. Wood-El, 218 N.J. 72, 86 (2014) the Court set forth elements that would constitute SCD (1) the ultimate harm must be foreseeable and direct; (2) the conduct of the state actor must shock the conscience; (3) the plaintiff must be a specifically foreseeable victim or part of a discrete class of foreseeable victims; and (4) the state actor must affirmatively use his authority either to create a danger or render a person substantially more vulnerable to injury.

Here, Plaintiff clearly satisfied the elements as established in Gormley. The defendants denied plaintiff of substantive due process by kidnapping from her home thusly exposing her to the dangers of assault, battery, false imprisonment and violation of her privacy. **(Pa740-741;Pa355, Pa239-244; CPa001-080, Pa662-Pa663).**The ultimate harm of false imprisonment, assault, battery and privacy

violation was foreseeable and fairly direct; The Police by kidnapping plaintiff from her home acted with a degree of culpability that shocks the conscience; Plaintiff is a black Haitian American who was perceived as mentally ill, thus is a member of three discrete classed of persons subjected to the potential harm brought about by the State's actions **(Pa356-357;Pa637).** The police affirmatively used its authority to remove the plaintiff from her home that rendered her more vulnerable to false imprisonment, assault, battery and privacy violation than had the state not acted at all. Id. In addition to the physical acts upon the plaintiff, the defendants trespassed upon her rights and touched upon her freedom.

Numerous other courts have upheld the right of a competent patient to refuse medical treatment. See In re Quinlan, 70 N.J. 10, (1976). In In re Guardianship of Farrell, 108 N.J. 335, 349 (1987) the Court opined that "the value of life is desecrated not by a decision to refuse medical treatment, but by the failure to allow a competent human being, the right of choice" because every human being of adult years and sound mind has a right to determine what shall be done with his [or her] own body. Id; Fox v. Smith, 594 So.2d 596, 604 (Miss.1992).

Under battery theory, proof of an unauthorized invasion of the plaintiff's person, even if harmless, entitles [her] to nominal damages. See Perna v. Pirozzi, 92 N.J. 446 (1983). In an action predicated upon a battery, a patient need not prove that the physician has deviated from a professional standard of care. Perna v. Pirozzi,

N.J. 446, 460-61 (1983). Because battery connotes a lack of informed consent and an intentional invasion of another's rights, punitive damages may be assessed in an appropriate case. Tiberi v. Petrella, 60 N.J. Super. 513, 518 (App. Div. 1960). The defendants also placed the plaintiff in danger of being diagnosed and labelled with any mental condition by strangers whom she did not trust. The unsolicited diagnosis of Delusion was given to plaintiff by defendants without her consent even after which Trinitas stated that she did not fit the criteria for involuntary transfer**. (CPa19-82, CPa90; Pa835)** Plaintiff works as a RN in New York and had legitimate concerns about burglaries at her home**. (Pa250-260).** Plaintiff proved denial of public accommodation to which she was entitled but placed in danger and was entitled to Summary Judgment. **(Pa250-260, Pa306,Pa860-873, Pa266-Pa273).**

POINT SEVEN

THERE WERE GENUINE ISSUES OF FACTS THAT WARRANTED SUMMARY JUDGMENT AGAINST THE TOWNSHIP DEFENDANTS AND JUDGMENT IN PLAINTIFF'S FAVOR((Pa860-873, Pa266-Pa273, Pa306, Pa243, Pa737 Pa719, Pa740, Pa863-Pa868, Pa835, Pa354)

Pursuant to R. 4:46-2, a party is entitled to summary judgment where "there is no genuine issue as to any material fact ... and ... the moving party is entitled to a judgment or order as a matter of law." The movant bears the "burden to exclude any reasonable doubt as to the existence of any genuine issue of material fact" regarding the claims asserted. Judson v. Peoples Bank and Trust, 17 N.J. 67, 74 (1954). Pursuant to the Supreme court a court should deny a summary judgment motion

where the party opposing the motion has come forward with evidence that creates a 'genuine issue as to any material fact challenged.'" Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (quoting R. 4:46-2(c)). When the evidence is so one -sided that one party must prevail as a matter of law the trial court should not hesitate to grant summary judgment." Id. at 540.

All inferences of doubt are drawn against the movant in favor of the opponent of the motion. Judson supra, 17 N.J. at 75. The papers supporting the motion are closely scrutinized and the opposing papers indulgently treated, Templeton v. Borough of Glen Rock, 11 N.J. Super. 1, 4 (App. Div. 1950). It is not to be concluded that palpably no genuine issue as to any material fact exists solely because the evidence opposing the claimed fact strikes the judge as being incredible. Judson 17 N.J at 75. All credibility determinations will continue to be made by a jury and not the judge. Brill 142 N.J. at 540. The Supreme Court also held that if 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. Anderson v Liberty Lobby, 477 U.S. 242, 250 (1986).

Here, there were material facts in dispute as well as contested and credibility issues. For example, Plaintiff claims she was kidnapped while the Township defendants contend that they acted in good faith by transferring plaintiff to the hospital. **(Pa354).** Escobar upon whom the Township relied in transferring

plaintiff stated that plaintiff did not meet the criteria for involuntary transfer. **(Pa835 Pa306).** This precluded **the** grant of summary judgment to the defendants. **(Pa243, Pa737 Pa719, Pa740, Pa863-Pa868; Pa860-873, Pa266-Pa273)**

POINT EIGHT

THE COURT ERRED BECAUSE IT AWARDED SUMMARY JUDGMENT TO THE TOWNSHIP DEFENDANTS WHO DID NOT DEFEND AGAINST PLAINTIFF'S ALLEGATION THAT THEY VIOLATED HER RIGHTS TO PRIVACY (Pa860-873, Pa266-Pa273, Pa306, Pa834-835, CPa19-83, Pa243-Pa244, CPa19, Pa845-Pa846, Pa356, Pa234-Pa247, Pa743)

Plaintiff made a cognizable claim for invasion of privacy that was not addressed by the Lower Court. The defendants did not defend against plaintiff's allegation that her privacy was violated in their brief. Thus, the privacy issue should have proceeded to trial. Plaintiff's affidavit, interrogatories, and deposition transcripts were attached at summary Judgment wherein plaintiff went into detail regarding the violations of her privacy rights. Our Supreme Court has acknowledged that the right to privacy is "grounded" in the Fourteenth Amendment of the United States Constitution's concept of "personal liberty." Soliman v Kushner Companies Inc., 433 NJ Super 153, 168 (App Div. 2013); Matter of Conroy, 98 NJ 321 (1985).

Under the 14th Amendment of the US Constitution and Article 1 para 1 of the New Jersey Constitution, the right to privacy is implied by the guarantee of due process for all individuals, meaning that the state cannot exert undue control over citizens' private lives. Ibid. The ultimate goal of the Fourth Amendment of the United States Constitution protects to protect privacy rights "the right of the people to be

secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Id. Invasion of privacy is also a tort based in common law allowing an aggrieved party to bring a lawsuit against an **individual** who unlawfully intrudes into his/her private affairs, discloses his/her private information, publicizes him/her in a false light. Hennessey v. Coastal Eagle Point Oil Co., 129 N.J. 81 (1992). The State Constitutional guarantee of the right to pursue and obtain privacy creates a right of action against private as well as government entities. Id at 94. The court has defined the right of privacy as "the right of an individual to be protected from any wrongful intrusion into his private life which would outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities." Id.

The defendants invaded plaintiff's privacy by intruding into her home and inquiring into her personal health and seizing her body without her consent. **(Pa234-Pa247, Pa743).** They walked freely into her bedroom and around her house. **(Pa845; Pa356).** The defendants humiliated the plaintiff by placing her against her will, in a psychiatric facility where plaintiff was formerly employed as a Nurse and subjected her to nonconsensual touching and forced examination of her mind and thought process. **(Pa243-Pa244; CPa19; Pa845-Pa846).** Plaintiff's privacy was also violated by being held down and diagnosed with "Delusion" ***against her will.*** **(CPa19-83).** Our Courts has held that the right to privacy "is broad enough to encompass a patient's decision to decline medical treatment under certain

circumstances." Accord In re Quinlan, 70 N.J. 10 (1976); Superintendent v. Saikewicz, 373 Mass. 728, 370 N.E.2d 417, 424 (1977). According to the NJ Supreme Court, even if the governmental purpose is legitimate and substantial ... the invasion of the fundamental right of privacy must be minimized by utilizing the narrowest means which can be designed to achieve the public purpose. In re Martin, 90 N.J. 295, 318 (1982). Here, there was arguably no public purpose to be served from intruding into plaintiff's privacy as she was not a threat to herself or others. **(Pa834-835).** If there was a concern that plaintiff was otherwise ill, Escobar could have simply suggested that plaintiff call her own doctor and ask for an evaluation. The defendants violated plaintiff's liberty and privacy rights under the 4th and 14th amendment of the US Constitution and Art 1 para 1,7 of the NJ Constitution which warranted denial of summary judgment. **(Pa860-873, Pa266-Pa273,Pa306)**

POINT NINE

PLAINTIFF WAS NOT REQUIRED TO PRODUCE AN AFFIDAVIT OF MERIT TO THE DEFENDANTS BECAUSE SHE DID NOT FILE A MEDICAL MALPRACTICE CLAIM (Pa0240-Pa241, Pa235- Pa239; Pa213, Pa266, Pa268-73; Pa271-Pa273; Pa835, CPa21, CPa26, Pa743, CPa002, Pa100, Pa101, Pa102, Pa105, Pa828, Pa95, Pa196, Pa306-09; Pa288-97).

An affidavit of merit is not required to establish a cause of action to vindicate a [ ] constitutional right, even if that right arises out of medical treatment furnished [ ] by licensed medical providers. See Seeward v. Integrity, Inc., 815 A.2d 1005, 1011 (N.J. App. Div. 2003). In Seeward the Appellate Division

reversed summary judgment dismissing plaintiff's constitutional claims against the CMS defendants based on the fact that plaintiff was not required to provide an AOM for vindication of constitutional wrongs. Id. As in Seeward, Plaintiff filed a lawsuit alleging ***injuries to her rights under the NJ Constitution and the NJLAD***. **(Pa095).**

Here, Plaintiff did not file any lawsuit alleging any action for damages for personal injuries, resulting from an alleged act of malpractice or professional negligence by a licensed Medical Provider within the meaning of NJSA 2A:53A-27. Thus, plaintiff was not required to provide an affidavit of Merit. Plaintiff is not required to prove that Trinitas Regional Medical Center and Sylvia Escobedo deviated from the standard of care in order to prove ***battery or injuries to her rights.*** Contrary to the Judge, plaintiff did not state in para 8 of Count one of the complaint that the "TRMC defendants acted in reckless wanton disregard. . ." Plaintiff stated that defendants [all defendants generally] acted in reckless wanton regard**. (Pa102).**

Moreover, pursuant to NJSA 2A:53A-26-1, only those licensed professionals specifically delineated under the AOM Act are entitled to an affidavit of Merit. Id. See Saunders v. Capital Health System at Mercer, 398 N.J. Super. 500 (App. Div 2008). Social workers are not listed among licensed persons defined under NJSA 2A:53A-26 -1. Escobar also testified that she is not a medical professional. **(Pa828)** Significantly, Plaintiff accused *only* Escobar, who is not a medical professional (*Not Trinitas Medical Center*) of not complying with N.J.S.A. 30:4- 27.5 (b) (c) (d) (e),

as she made "no determination . . . *that involuntary commitment to treatment seems necessary* and no proper screening certification was made by a physician, and by forcing her to the hospital against her will." **(See Pa743, CPa002, Pa100, Pa101, Pa102, Pa105).**

Here, the kidnap complained of, occurred BEFORE plaintiff was sent to Trinitas Hospital. Escobar was the 'screener' who sent the plaintiff to Trinitas Hospital after *finding that the criteria for involuntary transfer was not met.* **(CPa21, CPa26, Pa835).** The hospital itself would be liable under the doctrine of vicarious liability ONLY if Escobar was a health care professional as defined by NJSA 2A:53A-26 -1, because the Appellate Division has held that the standard of care at issue in a claim for vicarious liability is the standard of care of the employee, not that of the employer. See Haviland v. Lourdes Med. Ctr. of Burlington Cnty., Inc., 250 N.J. 368, 382 (2022) (plaintiff need not submit an AOM in support of a vicarious liability claim against a hospital based on the alleged negligent conduct of a hospital employee who is not a "licensed person").

Thus, the court erred by accepting Defense Counsel's certification whereby he identified Escobar as a health care professional and lumped under the term" TRMC defendants." **(Pa266-273, Pa196, Pa306-09).** Moreover, even if Escober was a medical professional, Plaintiff an RN, stated that Escobar did not screen her, but advised her that she came to ask about her missing items, which is an

ordinary fact not requiring an AOM. **(Pa235, Pa239; Pa213, Pa266, Pa268; Pa271; Pa273; Pa835).**Further analysis of NJSA 2A:14 will show why the trial court erred in requiring an affidavit of merit. Actions for injuries are discussed under NJSA 2A:14-1, NJSA 2A: 14-2 and NJSA 2A:14-3. NJSA 2A:14-1 states as follows in part:

> Every action at law . . . for any **tortious injury to the rights** of another **not stated** in sections 2A:14-2 and 2A:14-3 of this Title, or for recovery upon a contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within 6 years next after the cause of any such action shall have accrued.

The statute of limitations for Injuries to ***rights*** under the Constitution is not stated under NJSA 2A: 14-2 and NJSA 2A:14-3. Thus, pursuant to NJSA 2A:14-1, injuries to those rights are covered by a **six-year** statute of limitations. Injuries to personal rights are akin to injury or trespass to property warranting application of the six **years statute** of limitations. Canessa v. J.I. Kislak, Inc., 97 N J. Super 327, 353, (Law Div. 1967). NJSA 2A:14-2 (a) Provides as follows:

> Except as otherwise provided by law, every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be commenced within two years next after the cause of any such action shall have accrued.

Medical malpractice is considered injuries to a person, and has a two (2) years under NJSA 2A:14-2 (a). Based on this, the Legislature could not have intended that Affidavits of Merit be provided for injuries to rights within 60 days of an answer to

a complaint with a 2yrs SOL because injuries to rights are governed under NJSA 2A:14-1 which allows for a 6-yrs SOL, while Medical Malpractice is governed under NJSA 2A:14-2 (a) that requires a 2yrs SOL that was not alleged. By using Black's Law dictionary's definition of personal injury, the Court has made every tort, constitutional violation, NJLAD claim and criminal act into personal injury claims. (**See Pa272**). AOMs are not required for personal injury claims. (**Pa288-97)**

Additionally, plaintiff stated in her affidavit that she refused the psych med at Trinitas and despite her refusal the staff called six strong men **to hold plaintiff down and inject her with the Versed medication which is an allegation of assault and battery. (Pa0240-Pa241).** Assault and battery claims do not require AOMs. See Darwin v. Gooberman, 339 N.J. Super. 467 (App. Div 2001) certif. denied 169 N.J. 609 (2000).

CONCLUSION

Based on all the foregoing, the trail Court Orders should be vacated.

/s/ Cecile D. Portilla
CECILE D. PORTILLA, ESQUIRE

Dated: July 29, 2024

Superior Court of New Jersey

Appellate Division

Docket No. A-000697-23

ARTLUDE POINT DU JOUR, *Plaintiff,* vs. TOWNSHIP OF UNION, TRINITAS REGIONAL MEDICAL CENTER HOSPITAL, DETECTIVE DONALD COOK, LIMAGE WILSON, OFFICER DELVALLE, BADGE #3259, SYLVIA ESCOBAR, & JOHN DOES, 1-10 (fictitious names, presently unknown), STATE OF NEW JERSEY, HARRY ROES, 1-10 (fictitious names, presently unknown), *Defendants.*	:	CIVIL ACTION ON APPEAL FROM AN ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, UNION COUNTY DOCKET NO.: UNN-L-45-21 Sat Below: HON. DANIEL R. LINDEMANN, J.S.C.

BRIEF FOR DEFENDANTS-RESPONDENTS TRINITAS REGIONAL MEDICAL CENTER HOSPITAL AND SYLVIA ESCOBEDO (IMPROPERLY PLED AS SYLVIA ESCOBAR)

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PRELIMINARY STATEMENT

Appellant argues that no Affidavit of Merit (AOM) is needed to pursue claims against the TRMC Respondents (TRMC, Mental Health Screener Sylvia Escobedo). This issue was squarely addressed by the Trial Court on three occasions: the May 13, 2022 Order initially dismissing Appellant's Amended Complaint with prejudice; denial of Appellant's motion for reconsideration on June 29, 2022, and denial of a second motion for reconsideration on September 25, 2023. Appellant still is taking the erroneous position that her claims asserted against the TRMC Respondents do not require an AOM to pursue.

The issue as to the TRMC respondents is a very limited one given the scope of arguments raised with the Trial Court. In response to the underlying Motion to Dismiss filed on behalf of the TRMC Respondents which resulted in the May 13, 2022 Order of dismissal, plaintiff filed three separate submissions to the Trial Court. As will be addressed in more detail below, these responses were filed on April 26, 2022, April 27, 2022 and May 11, 2022, all of which set forth the same argument. The only argument raised by plaintiff was claiming plaintiff's causes of action were premised on "civil rights" and "taken freedoms" rather than for personal or property damage. While this position is clearly contrary to established case law and precedent, on May 31, 2022 Appellant next

sought reconsideration of the May 13, 2022 Order by rephrasing the same argument that no AOM was required.

Appellant again sought a form of "reconsideration" on August 16, 2023. This Motion raised new issues never mentioned by plaintiff, including 1) Holding defendants and witnesses in contempt of court, 2) Deeming assertions made by plaintiff "established" 3) Reversing the dismissal of the TRMC defendants (claiming no AOM was necessary), and 4) Striking defenses of the TRMC defendants. The Trial Court properly rejected these arguments.

As will be discussed below, an Appellant is limited on appeal to the issues raised with the Trial Court. However, in her brief, Appellant raises nine (9) separate arguments (Points). The first eight (8) Points are entirely inapplicable to the TRMC Respondents since the only issue raised by Appellant was the issue of the AOM. Because plaintiff did not raise the other arguments with the Trial Court, they are entirely inapplicable to the TRMC Respondents.

As will be made clear, to the extent necessary the TRMC Respondents join in the arguments raised by the Union Township Respondents as the arguments in support of their dismissal (and in response to Appellant's positions) are identical. While the issue up for Appeal as to the TRMC Respondents is whether the claims asserted by Appellant need to be supported by an AOM, as will be addressed, Respondent Township of Union officers

(Cook, Wilson, DelValle) and Respondent Escobedo are entitled to *complete civil immunity*. Specifically, when a Screening Service and Police Officers act in "good faith" and take "reasonable steps" to assess and take custody of, detain or transport an individual for the purposes of a mental health *assessment* or treatment are *immune from civil and criminal liability*. While Appellant's case should remain dismissed for her failure to secure any AOM as to the TRMC Respondents, the Screening Service at Respondent TRMC having acted reasonably and in good faith during her interactions with Appellant renders them immune to Appellant's claims[1].

Because the only issue to be addressed by the Panel as to the TRMC Respondents is the issue of the AOM, as will be established below the Trial Court correctly held the claims made by Appellant in her Complaint with the Trial Court required an AOM to substantiate.

PROCEDURAL HISTORY

The pertinent history of this case can be traced back to Appellant's filing of her January 19, 2022 Amended Complaint naming the TRMC Respondents

[1] Because the TRMC Respondents were dismissed with prejudice at the time the merits of the civil immunity defenses were raised by the Union Township defendants/respondents, this issue was not addressed by the Trial Court as to the TRMC defendants.

and Union Township defendants/respondents[2] (Pa137-150). This Amended Complaint included five Counts, all sounding in professional negligence as to the TRMC Respondents. Because of the professional negligence asserted, Appellant was required to procure an AOM prepared by an appropriately credentialed individual who would opine the TRMC Respondents' actions fell outside the accepted standards of care. See N.J.S.A. 2A:53A-27. An Answer to the Amended Complaint was filed on behalf of the TRMC Respondents on February 22, 2022 (Pa181-193) Immediately thereafter on February 23, 2022, Appellant was placed on notice that, because claims of professional negligence were asserted against the TRMC Respondents, an AOM would be required. (Pa199).

After receiving such notice, Appellant was aware an AOM was needed to be served 60 days from February 22, 2022 when the Answer was filed on behalf of the TRMC Respondents. After 60 days passed, the TRMC Respondents moved for dismissal of the Complaint, with prejudice, in accordance N.J.S.A. 2A:53A-29. This Motion for dismissal was ultimately returnable before the Trial Court on May 13, 2022. (Pa266-273) In a written opinion prepared by the Trial Court, it was determined that Appellant was required to obtain an AOM as

[2] Appellant initially had various counts of her initial complaint dismissed as to the Union Township defendants/respondent but was permitted to file the January 19, 2022 Amended Complaint to perfect various claims made.

to the TRMC Respondents. Relying on our State's Supreme Court decision in Couri, supra, the Trial Court determined the plain language of the Amended Complaint alleged violations of the professional standard of care. Id. While framed as civil rights violations and discrimination, the Amended Complaint is about a mental health / psychiatric screening of Appellant claimed to be unlawful. Given the involvment of psychiatrists of the Screening Service which took place at a hospital, Appellants claims sounded in professional negligence and an AOM was required.

Following the May 13, 2022 dismissal with prejudice, Appellant moved for reconsideration of this Order pursuant R. 4:49-1, *et seq.* and R. 4:42-1, *et seq.* In her motion for reconsideration, the Appellant argued the dismissal of the TRMC Respondents should be reversed since the Trial Court did not hold a Ferreira conference in accordance with Ferreira v. Rancocas Orthopedic Assc., 178 NJ 144 (2003), and that again the Amended Complaint did not assert breaches of the standard of care, therefore not requiring an AOM. After oral argument on this matter, the Trial Court again determined the TRMC Respondents should remain dismissed and denied Appellant's motion. (Pa306-309)

Following the June 29, 2022 Order denying Appellant's motion, the TRMC Respondents were not involved in litigation until Appellant attempted to

subpoena depositions of various witnesses of Respondent TRMC on or about May 5, 2023. (Pa484-486). While defective, as a showing of good faith the TRMC Respondents attempted to coordinate the scheduling of the requested witnesses. Ultimately this resulted in the depositions of Respondent Escobedo, nurse Nathalie Bonhomme and mental health/psychiatric screener Oscar Barrenchea[3]. Following these depositions, Appellant again moved for reconsideration of the May 13, 2022 and June 29, 2022 Orders in accordance with R. 4:42-1, *et seq.* Although determined to be an "omnibus motion" in violation of the Court Rules, nevertheless the Trial Court again weight the merits of Appellant's arguments. Yet again, for a third time, Appellant's efforts were denied. (Pa796-797)

Shortly thereafter, codefendant/Respondent Township of Union moved for summary judgment, seeking dismissal of the remaining defendants, with prejudice. This motion systematically addressed each claim in the five count Amended Complaint, explaining why each claim was not cognizable as to Respondent Township of Union. Respondents established in their motion for summary judgment that Respondent Police Officers were immune from civil and criminal liability since they acted in good faith and reasonably assessed

[3] Additional depositions were taken in the interim, including defendant/respondent Detective Donald Cook and Lieutenant Peter Simon of Respondent Union Township Police Department.

Appellant following Dr. Farag's determination for her to be evaluated at Respondent TRMC. See N.J.S.A. 30:4-27.7, N.J.S.A. 30:4-27.6[4]. On October 23, 2023, the Trial Court granted Union Township's motion for summary judgment in full, dismissing the remaining defendants with prejudice. (Pa 860-873)

On November 15, 2023, Appellant submitted notice to the Appellate Division that she intended to appeal the dismissal of all Respondents. After numerous failed attempts at submitting appellate briefs due to multiple deficiencies, Appellant's brief was accepted late on July 30, 2024.

STATEMENT OF FACTS

This matter involves an involuntary evaluation performed by the psychiatrist on call Dr. Marianne Farag in February 2020 which plaintiff claims violated her civil rights and was discriminatory in nature. While the professional involvment with respect to the involuntary evaluation took place on February 12, 2020 and February 13, 2020, events giving rise to this matter transpired weeks before. Appellant, Artulde Point Du Jour, began reporting to the Township of Union Police that she believed someone was entering her home on

[4] It should be noted that oral argument on October 20, 2023, counsel for the TRMC Respondents stated on the record that, although remaining dismissed with prejudice, the arguments set forth by Union Township with respect to civil/criminal immunities pursuant to N.J.S.A. 30:4-27.7 equally applied to the TRMC Respondents.

January 8, 2020. (Pa711-735). On January 25, 2020, Appellant again filed a police report in reference to her home and neighbor, Dean Rocco, damaging a computer delivered to Appellant's home and placing something in the engine of her car causing damage. (Pa708-709). Due to these complaints, Respondent Donald Cook (respondent Cook) was assigned to investigate. He presented to Appellant's residence on January 29, 2020 and observed paper notes all over the exterior of plaintiff's house, on the outdoor steps, and the railings. These notes accused unnamed individuals of entering her home and stealing items and/or damaging her car. (Pa711-735). He also observed citrus peels and herbs on the steps to her home, finding his observations to be unusual and taking photographs for documentation purposes. Id.

Respondent Cook proceeded to speak with Mr. Rocco about plaintiff who reported that Appellant had displayed aggressive and concerning behavior towards him and his family. Such behavior included exposing her buttocks to his children and informing Mr. Rocco she hoped he "dropped dead". (Pa737-738). Respondent Cook also communicated with Appellant about her complaints, at which time she reiterated her concerns about property damage and her home being entered. (Pa711-735). Respondent Cook then spoke to his lieutenant, Detective Correia, about Appellant's behavior and his concerns that she may be having a mental health crisis. Id. Lieutenant Correira advised

Respondent Cook to contact Trinitas Regional Medical Center (TRMC) for a Mental Health Evaluation if Respondent Cook felt this was indicated. Id.

On February 10, 2020, Appellant provided photographs she had taken of shipping boxes claimed were damaged by tools which were left in her house Id. As there was no evidence her neighbors were involved, Respondent Cook advised Appellant accordingly. Id. In response, plaintiff replied "[t[hese people have some magic to go in my house and they are not appearing in the camera" and that they could be "invisible". Id.

Respondent Cook proceeded to speak with other neighbors of Appellant, who reported they had observed her talking to herself and yelling inside her home. Id. Based on the totality of Respondent Cook's investigation into Appellant's situation, on February 11, 2020 he contacted Respondent TRMC and requested that an evaluation be conducted on Appellant to assess her well-being. Id., (Pa752). The following day on February 12, 2020, Respondent Cook went to Appellant's residence and observed her talking out loud to herself. He also observed her residence after she left and did not witness anyone attempting to enter as she had claimed. Id. Respondent Cook has testified he reasonably and in good faith believed Appellant was having crisis and needed help out of concern for her safety and wellbeing. (Pa755, 767).

In the evening of February 12, 2020, Respondent Sylvia Escobedo (Respondent Escobedo), a licensed mental health/psychiatric screener with the Screening Service of Respondent TRMC, presented to Appellant's residence to conduct a Screening Outreach Visit as defined by N.J.S.A. 30:4-27.2(p), (z), (aa) (Pa740). Respondent Escobedo was accompanied by two officers of the Township of Union Police Department, Officers Wilson and DelValle (Respondent Officers). When they approached Appellant's residence, they knocked on her door and were permitted entry, as Appellant has testified that she did not refuse entry. (Pa669). During the interaction with the Respondents, Appellant continued to report similar things observed and reported to Respondent Cook with respect to her neighbor's actions, including the use of magic and turning into various animals to enter Appellant's residence. Such statements included her neighbors putting feces in the car despite it being locked inside of her garage; appellant's house being "poisoned" by people coming and going while she was at work, and neighbors were using magic to enter her residence and steal and/or damage property.

Eventually after nearly 50 minutes, Respondent Escobedo contacted the attending psychiatrist on duty at Respondent TRMC and member of the Screening Service, Dr. Marianne Farag, to report her observations and interactions with Appellant. During this call, Respondent Escobedo was

instructed by Dr. Farag that Appellant needed to be brought to the hospital for evaluation. *Upon these directives from Dr. Farag*, Respondent Escobedo executed a screening outreach form in accordance with N.J.S.A. 30:4-27.6(b), (Pa744). This form prepared on New Jersey Department of Human Services – Division of Mental Health Services letterhead and entitled "Screening Outreach: Request for Police Transport and Supervision" pursuant to N.J.S.A. 30:4-27.6(b) gives law enforcement the ability to take custody of an individual to bring directly to a Screening Service such as the one at Respondent TRMC. Id. Appellant was again explained Dr. Farag's decision to bring her for further evaluation. Over 30 minutes passed from the time Dr. Farag directed Appellant to be brought for further evaluation, and no force was used to bring Appellant to Respondent TRMC and she admitted to leaving voluntarily. (Pa666, Pa662-663) At all times this process comported with N.J.S.A. 30:4-27.1, *et seq.*

Upon being brought to Respondent TRMC, she was first seen in triage in the Emergency Department at 12:44am on February 13, 2020. (Da162-164) Appellant was initially cleared from a medical standpoint by the attending emergency room physician, Dr. Khamis Khamis. (Da141-191)[5] After being

[5] Although Appellant has cited to various portions of medical records in her Confidential appendices filed on February 23, 2024 and March 12, 2024, the portions of records are either incomplete or not in proper format / order as served in discovery.

medically cleared, she underwent a psychiatric evaluation by Dr. Farag and members of the Screening Service including licensed mental health/psychiatric screener Oscar Barrenchea. (Da172). *It was then determined by Dr. Farag* that Appellant needed to be transferred to the New Point Campus, which is a part of Respondent TRMC where psychiatric patients are evaluated and / or admitted. (Da177). *Respondent Escobedo confirmed at deposition that Dr. Farag was responsible for Appellant being brought to TRMC for evaluation and determining she needed transfer to New Point Campus for further evaluation was indicated*. (Da118, 30:16-24; Da120-121, 37:1-42-7)

Appellant arrived at the New Point Campus at approximately 6:44am on February 13, effectuating her discharge from the Screening Service at Dr. Farag's direction based after determining Appellant needed further evaluation. (Da191-209). While at the New Point Campus, Appellant was evaluated by the psychiatric team, including Dr. Farag, until it was determined that she was cleared for discharge. Id. In total, Appellant remained "in custody" of the Screening Service from approximately 12:00am to 6:44am on February 13 and remained with the psychiatric team at New Point Campus from approximately 7:00am to 8:15am on February 14. (Da141-190, Da191-209) In total, Appellant was with the Screening Service for seven (7) hours and the psychiatric team for 26 hours. Id. This duration was well within the timeframe permitted by

N.J.S.A. 30:4-27.5(a) (permitting a Screening Service to assess a patient for up to 24 hours to determine if further evaluation is necessary); N.J.S.A. 30:4-27.9(c) (permitting a facility such as Respondent TRMC/New Point Campus to "detain" a patient "involuntarily by referral from a screening service without a temporary court order…for not more than 72 hours from the time the screening certificate is executed"[6]), and R. 4:74-4(b)(1) (corollary Court Rule allowing a hold on a patient for 72 hours without court order)

Equally important to this case is what did not happen to Appellant, as she was never *involuntarily committed* to Respondent TRMC by Dr. Farag or the psychiatry team. There is a clear statutory scheme established within the Voluntary Commitment Act which addresses the process for which a patient such as Appellant may become *involuntarily committed*. N.J.S.A. 30:4-27.9(2)(b), N.J.S.A. 30:4-27.10, N.J.S.A. 30:4-27.15, N.J.S.A. 30:4-27.15a. Appellant on the other hand was only subject to a Screening Service assessment and further evaluation ordered by Dr. Farag for less than 72 hours as permitted by Statute and Court Rules.

[6] As of August 16, 2023, the timeframe for "detention" in accordance with N.J.S.A. 30:4-27.9(c) is now 144 hours.

LEGAL ARGUMENT

POINT ONE

THE QUESTION OF WHETHER THE TRMC RESPONDENTS ACTED IN GOOD FAITH WAS NEVER BEFORE THE TRIAL COURT AND THEREFORE IMPROPERLY ASSERTED

While the heading of Point One in Appellant's brief suggests it is directed only at the Union Township Respondents, to be clear the only issue properly brought on appeal as to the TRMC Respondents is whether Appellant's claims made at the Trial Court level required an AOM to substantiate. (Da1-105)**.**

R. 2:5-4(a) precludes a party before the Appellate Division to raise new issues or information for the first time on appeal. See N.J. DYFS V. M.N., 189 NJ 261, 278 (2007) Furthermore, "our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." US Bank Nat. Ass'n v. Guillaume, supra., at 483. The question of "good faith" was not raised against the TRMC Respondents previously and therefore cannot be considered on appeal.

For the sake of argument, at the time of Oral Argument on October 20, 2023 for the Township of Union Respondents' Motion for Summary Judgment, the TRMC Respondents remained dismissed from this matter, with prejudice.

(Pa266-273, Pa306-309, Pa796-797). However, Counsel for the TRMC Respondents was present at Oral Argument and stated on the record that, although no formal position was taken with respect to the TRMC Respondents due to their dismissal, had they been active defendants at the time, similar arguments in accordance with N.J.S.A. 30:4-27.7(a) would have been asserted. (10/20/23 Oral Argument Transcript pg6-7, 10:17-11:3)

Although the issue of Summary Judgment is not before the Panel as it applies to the TRMC Respondents, for the sake of argument even if the Trial Court determined an AOM was not required for the TRMC Respondents, Screener Escobedo and Dr. Farag of the Screening Service acted reasonably and in good faith in accordance with N.J.S.A. 30:4-27.7(a).

In Ziemba v. Riverview Medical Center, 275 N.J. Super. 293, (App. Div. 1994), the Appellate Division addressed the issue of absolute immunity of N.J.S.A. 30:4-27.7(a). Although culminating in an involuntary *commitment*, the fact pattern in Ziemba, supra., was otherwise similar to the case at issue.

> The process began when plaintiff was interviewed by Colts Neck police officers, who ultimately took him to the Riverview Medical Center for evaluation. Plaintiff was medically cleared at the emergency room by Dr. Starkey before the psychiatric screening process began. Webb interviewed and evaluated plaintiff and completed the appropriate psychiatric examination form. Webb then discussed her findings and evaluation with Tambini. Webb also contacted Dr. Wong to advise

> that plaintiff was being screened for possible commitment and discussed her evaluation with Dr. Wong. Tambini interviewed and evaluated plaintiff, completing the three-page Monmouth Medical Center Screening Form. Tambini then discussed his evaluation with Webb and Dr. Wong. Finally, Dr. Wong interviewed and evaluated plaintiff. Based on these evaluations, defendants were of the opinion that plaintiff presented a danger to himself and others and that he should be involuntarily committed. Id. at 300-301

The evidence in the record on this appeal undoubtedly establishes that the TRMC respondents acted reasonably and in good faith. With respect to Respondent Escobedo, she saw Appellant at the request of Respondent Cook following his investigation into Appellant's status. (Pa711-735). Upon her arrival at Appellant's residence, she was permitted to enter Appellant's home along with Respondents Wilson and DelValle. (Pa669). She spoke with Appellant for approximately 50 minutes. During these 50 minutes, Respondent Escobedo observed the following:

- Despite Appellant's numerous calls to the Township of Union Police to report people breaking into her home and damaging property, the officers assigned to her case found no evidence corroborating any of her complaints
- Computer screens with feeds to cameras throughout her house which did not record any of actions she was reporting
- Appellant's claims of feces being spread in her home and in her car despite both being locked and there being no evidence of feces
- Appellant's claims that people were "doing magic" and making things disappear
- Appellant was sweating profusely

(Da117, 25:5-28:10; Da120, 37:19-40:14)

Respondent Escobedo communicated these findings to Dr. Farag, the on-call psychiatrist with the Screening Service at Respondent TRMC. (Da120, 37:1-40:14). Based on Respondent Escobedo's reports, Dr. Farag in her professional judgment determined Appellant needed to be further evaluated and was to be brought to Respondent TRMC. N.J.S.A. 30:4-27.5(b) (Da172, Da177). Once medically cleared by Dr. Khamis, Dr. Farag assessed plaintiff and determined further evaluation of Appellant was indicated in accordance with N.J.S.A. 30:4-27.9(c), R. 4:74-7(b)(1) (Id.). After Appellant was evaluated further, Dr. Farag determined Appellant could be discharged. (Da204).

There are simply no issues of material fact which would suggest that the TRMC Respondents did not act reasonably and in good faith based upon the record discussed above. No reasonable juror would review the body camera footage of Respondents Wilson and DelValle and conclude otherwise. Even though Appellant's Amended Complaint was properly dismissed by the Trial Court due to her failure to obtain an AOM, because the TRMC Respondents acted reasonably and in good faith, they are entitled to complete immunity. N.J.S.A. 30:4-27.7(a).

POINT TWO

THE TRMC RESPONDENTS WERE NOT DISMISSED BY WAY OF SUMMARY JUDGMENT, THEY WERE DISMISSED PURSUANT TO N.J.S.A. 2A:53A-29

Although unclear precisely what Appellant is arguing in Point Two as to the TRMC Respondents, to be clear the May 13, 2022 dismissal with prejudice was entered in accordance with N.J.S.A. 2A:53A-29. This states that "[i]f the plaintiff fails to provide an affidavit or a statement in lieu thereof [AOM], pursuant to section 2 or 3 of this act, it shall be deemed a failure to state a cause of action." As mentioned, failure to serve an AOM is why the Trial Court dismissed Appellant's Complaint as to the TRMC Respondents, with prejudice, on May 13, 2022. (Pa137-150). As is made clear in Couri, supra, so long as allegations contained in a complaint sound in professional negligence, an AOM is required. This point will be further underscored below.

POINT THREE

WHETHER THE TRMC RESPONDENTS VIOLATED APPELLANT'S "CIVIL RIGHTS" IS NOT PROPERLY ON APPEAL

Similar to that which was raised in Point Two, the only issue properly before the Panel as to the TRMC Respondents is whether the claims asserted in the Complaint required an AOM to pursue. US Bank Nat. Ass'n, supra., at 483. To the extent necessary, the TRMC Respondents join in the arguments raised by the Union Township Respondents and reiterate the Respondents collectively

acted in good faith in their interactions with Appellant. They are therefore immune from civil liability. N.J.S.A. 30:4-27.7(a). Several subparts are raised by Appellant in Point Three.

A: Equal Protection

One subpart speaks to claims of "equal protection" violations. Assuming, *in arguendo*, that the question of whether Appellant was denied equal protection applies to the TRMC Respondents, no such violation took place. First and foremost, Appellant was required to obtain an AOM as to the TRMC Respondents since the determination to bring Appellant for a "face to face" was made by Dr. Farag[7]

Nevertheless, Appellant argues she was merely "practicing religion" at the time of her interaction with both Respondent Escobedo and Respondents Wilson and DelValle. Again, there is no objective evidence from the record to suggest any exercise of religion. Instead, Appellant was demonstrating behaviors that both trained mental health/psychiatric screener and police officers found concerning. (Da117, 25:5-28:10; Da120, 37:19-40:14; Da162, Da166, Da172, Da175).

Counsel suggests that Appellant was not being "literal" when she was saying how people were using magic to enter her home and make things

[7] This issue will be further addressed in Point Nine

disappear or damage property. While not even a true representation by counsel, how were the Respondents to know this? Imagine if the Respondents followed counsel's reasoning and essentially "brushed off" Appellant's concerning behaviors, leading to a further spiral for Appellant until a catastrophe occurred? Scenarios such as this are precisely why there is complete immunity for Respondents (mental health/psychiatric screeners and police officers) so long as they act reasonably and in good faith. N.J.S.A. 30:4-27.7.

The Voluntary Commitment Statutes and immunities afforded therein are in no way unconstitutional as is suggested. The care and protection of those with mental issues is an unquestionably legitimate legislative purpose. In such a situation, "[i]nsofar as most rights are concerned, a state statute does not violate substantive due process if the statute reasonably relates to a legitimate legislative purpose and is not arbitrary or discriminatory" Greenberg v. Kimmelman, 99 N.J. 552, 563 (1985) While Appellant cites to Greenberg, supra., it is unclear why as this case supports Respondents' position. The Court in Greenberg addressed the constitutionality of state statutes prohibiting family members of full time judiciary employees from working in a casino in New Jersey. As was the case in Greenberg, here too the Voluntary Commitment Statutes serve multiple legitimate legislative purposes which are in no way arbitrary or discriminatory. Id.

As such, even if the question of equal protection violations applies to the TRMC Respondents, there was no such violation.

B. Article I, §22 Violations

Subparagraph B addresses Article I, §22 of the New Jersey Constitution, states:

> A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system. A victim of a crime shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony as a witness, the victim is properly sequestered in accordance with law or the Rules Governing the Courts of the State of New Jersey. A victim of a crime shall be entitled to those rights and remedies as may be provided by the Legislature. For the purposes of this paragraph, "victim of a crime" means: a) a person who has suffered physical or psychological injury or has incurred loss of or damage to personal or real property as a result of a crime or an incident involving another person operating a motor vehicle while under the influence of drugs or alcohol, and b) the spouse, parent, legal guardian, grandparent, child or sibling of the decedent in the case of a criminal homicide. (N.J. Const., art. I, §22)

In this case, Appellant has failed to establish this part of the New Jersey Constitution is applicable, as she was not a victim of a crime or event involving another person operating a motor vehicle under the influence of drugs or alcohol, or that she is related to an individual in a case of criminal homicide. Appellant shockingly claims this Section of the New Jersey Constitution does not apply to

motor vehicle crimes causing injuries despite the phase "victim of a crime" being expressly defined as such. Simply put, there is no evidence of such a violation in this case.

C. False Light

Appellant believes there is a claim for "false light" because Respondents Cook, Wilson and DelValle publicized their opinions that Appellant had mental problems because they told falsehoods about cats, dogs, and birds to Respondent Escobedo. While it does not appear Appellant is asserting claims of "false light" against the TRMC Respondents, assuming her claims are against all Respondents, she is unable to establish such claims.

None of the Respondents made "public" statements about Appellant. The Township of Union Respondents, particularly Respondent Cook, only communicated their observations of Appellant to Respondent Escobedo. (Pa711-735). Respondent Escobedo communicated her observations to Dr. Farag, and her statements were documented in the medical record which is by definition "private" pursuant to the Health Information Portability and Accountability Act (HIPAA).

To prove claims of "false light", a plaintiff must establish two elements. One, the false light in which the other was placed would be highly offensive to a reasonable person; and two, the actor had knowledge of or acted in reckless

disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Leang v. Jersey City Bs. Of Educ., 198 NJ 557, 588-589 (2009) (*citing* Romaine v. Kallinger, 109 NJ 282, 294 (1988). The tort is rooted in a plaintiff's interest in "not being made to appear before the public in an objectionable false light or false position, or in other words, otherwise than he (or she) is. Id. at 294. A key factor in establishing "false light" claims is that the disputed statement is false and the offending party must make "a major misrepresentation of plaintiff's character, history, activities, or beliefs. G.D. v. Kenny, 205 NJ 275, 307-308 (2011) (*quoting* Romaine, supra, at 295).

As mentioned, Appellant cannot demonstrate that a "public statement" was made by the Respondents. Any statement about Appellant remained between the Respondents and the medical records prepared at Respondent TRMC, which is a private document governed by HIPAA. Accordingly, Appellant's claims of "false light" must be rejected, in full.

POINT FOUR

THE TRMC RESPONDENTS DID NOT UNEQUALLY DEPRIVE APPELLANT OF HER CIVIL RIGHTS

In Point Four, Appellant appears to raise issues of NJ LAD violations in accordance with N.J.S.A. 10:5-4, et seq. Yet again, this issue is not properly brought as to the TRMC Respondents as these issues were never raised at the Trial Court level. US Bank Nat. Ass'n, supra. at 483. To reiterate, the TRMC

Respondents were dismissed with prejudice since Appellant's claims required an AOM to substantiate. (Pa137-150). Whether the TRMC Respondents violated Appellant's rights in violation of the NJ LAD was never addressed by the Trial Court, nor were they dismissed by way of Summary Judgment. Instead, the TRMC Respondents were dismissed in accordance with N.J.S.A. 2A:53A-29, failure to state a cause of action, for Appellant's lack of AOM.

For Completeness, the TRMC Respondents hereby join in and rely on the positions taken by the Union Township Respondents to the extent necessary as all Respondents are immune from civil liability in accordance with N.J.S.A. 30:4-27.7.

POINT FIVE

PLAINTIFF'S PROOFS RAISED AT SUMMARY JUDGMENT ARE NOT APPLICABLE TO THE TRMC RESPONDENTS

To reiterate, the Trial Court's consideration as to dismissal pursuant to Summary Judgement was to the Union Township Respondents only. (Pa860-873). The TRMC Respondents were not subject to the Motion for Summary Judgment, having already been dismissed since May 13, 2022. (Pa266-273). It is also ironic that Appellant argues that she suffered "severe emotional distress" within Point Five as this completely contradicts her position taken at the Trial Court level. (Da1-34). Specifically, Appellate argued to the Trial Court to avoid

dismissal that her claims were not about suffering "personal injury", even going as far as to capitalize the "NOT" in her submissions. (Da2-3)

Regardless, it is of no moment as to whether Appellant suffered severe emotional distress with respect to TRMC Respondents as they were already dismissed by the Trial Court as a result of Appellant's failure to state a cause of action. N.J.S.A. 2A:53A-29. Accordingly, Point V is not properly brought before the TRMC Respondents.

POINT SIX

THE QUESTION OF STATE CREATED DANGER IS NOT APPLICABLE TO THE TRMC RESPONDENTS

Appellant's arguments herein are again inapplicable to the TRMC Respondents, as it is argued summary judgment was inappropriate. As already established, the TRMC Respondents were not dismissed from this matter by way of summary judgment. (Pa266-273) Furthermore, Appellant argues the alleged assault, battery, and false imprisonment were created "by the State". As the TRMC Respondents are private actors and non-profit charitable entities organized exclusively for hospital purposes, any argument about "State action" is inapplicable. N.J.S.A. 2A:53A-7, 8.

Appellant attempts to apply the "State-created danger" doctrine which generally is where a State actor fails to defend a citizen by a private actor. While this would suggest Appellant would attempt to establish that the Township of

Union Respondents failed to protect Appellant from Respondent Escobedo's "harms", this is not what is argued in Appellant's appeal. Instead, Appellant argues the factors establishing the State-created danger doctrine are met by addressing the Township of Union Respondents' actions.

Nevertheless, the State-created danger doctrine is as follows:

> (1) the harm ultimately caused was foreseeable and fairly direct;
>
> (2) the state actor acted in willful disregard for the safety of the plaintiff;
>
> (3) there existed some relationship between the state and the plaintiff; [and]
>
> (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the third party's crime to occur.

Gormley v. Wood-El, 93 A.3d 344, 355 (2014)

While Appellant attempts to argue that in all cases patients have the right to refuse medical treatment, this is a generality with exceptions. One such exception is the evaluation section of the Voluntary Commitment Act, N.J.S.A. 30:4-27.5, which permits the involuntary evaluation of a patient and was followed by the TRMC Respondents.

Appellant further argues AOMs are not necessary in claims predicated upon allegations of battery, relying on Perna v. Pirozzi, 92 NJ 446 (1983). However, this case is not applicable, as the Supreme Court established that

where there is no informed consent with the specific doctor who performs a procedure, this amounts to a non-consensual touching by the operating doctor. Needless to say, this is not an informed consent case. Furthermore, Perna was decided prior to the Patient's First Act, N.J.S.A. 2A:53A-1, *et seq.* The contact at issue here is not a battery but rather a determination made by a licensed mental health/psychiatric screener that Dr. Farag of the Screening Service needed to be contacted about Appellant's condition on February 12, 2020 for Dr. Farag to determine whether a face to face evaluation was necessary.

While the arguments set forth by Appellant do not apply to the TRMC Respondents, even if applied, there is no basis to overturn the Trial Court's dismissal and denials of Appellant's motions for reconsideration. (Pa266-273; Pa306-309; Pa796-797).

POINT SEVEN

WHETHER GENUINE ISSUES OF MATERIAL FACT EXIST WHICH SHOULD HAVE IMPACTED SUMMARY JUDGMENT IS NOT APPLICABLE TO THE TRMC DEFENDANTS

The TRMC Respondents reiterate the arguments set forth in response to Point Five of Appellant's brief, as the Trial Court's consideration as to dismissal pursuant to Summary Judgement was to the Union Township Respondents only. (Pa860-873). Because of this, the question of whether genuine issue of material fact exist which would impact the Trial Court's decision as to Summary

Judgment is inapplicable to the TRMC Respondents and not properly brought on appeal. US Bank Nat. Ass'n, supra., at 483

POINT EIGHT

THE ISSUE OF PLAINTIFF'S ALLEGATIONS OF RIGHT TO PRIVACY VIOLATIONS IS NOT APPLICABLE TO THE TRMC RESPONDENTS

Once again, Appellant addresses issues pertaining to Summary Judgment which was filed by the Union Township Respondents only. While it does not appear Point Eight is directed to the TRMC Respondents, this issue is not properly brought before the TRMC Respondents on appeal.

To briefly address this issue for the sake of completeness, Appellant argues the Respondents invaded her privacy by intruding into her home, asking questions about her health and "seizing her body" without consent. Once again, the record establishes none of this is accurate.

To the contrary, the Respondents did not violate Appellant's privacy as she voluntarily allowed Respondents into her home. (Pa669, 64:25-66:16) Once inside, Appellant freely answered questions and at no time demanded the Respondents leave. As the Trial Court also noted, while not a dispositive factor, no force was used when Appellant agreed to leave her residence for the face to face evaluation ordered by Dr. Farag. (Pa666, 51:4-53:25; Pa662-663, 35:8-39-2)

Appellant's reliance on In re Martin, 90 N.J. 295, 303 (1982) is also unavailing.

> This case involves a classic confrontation between the power of the State to protect the public through regulation of a highly sensitive industry and the right of individuals thus regulated to be free from unreasonable governmental intrusion into their private lives. Appellants are applicants for licenses to become non-supervisory casino employees. They challenge certain provisions of the Casino Control Act, N.J.S.A. 5:12-1 to -152, as well as certain questions that applicants are required to answer in order to apply for a casino employee license. Id. at 303

Aside from the inapplicable facts, there was no "intrusion" into Appellant' private life by the Respondents. As stated, Screener Escobedo made contact with Appellant only because she was asked to do so by Respondent Cook. (Pa711-735). Appellant was brought to Respondent TRMC in accordance with the statutory scheme set forth in N.J.S.A. 30:4-27.1, *et seq.* for a legitimate public purpose, which is the welfare of the public. Accordingly, the TRMC respondents did not violate Appellant's right to privacy.

POINT NINE

THE TRIAL COURT PROPERLY DETERMINED THAT AN AFFIDAVIT OF MERIT WAS REQUIRED TO PURSUE CLAIMS AGAINST THE TRMC RESPONDENTS

Appellant finally addresses the main argument against the TRMC Respondents here, that no AOM was required. As was already properly

addressed by the Trial Court, Appellant's Amended Complaint sounds in professional negligence against the TRMC Respondents. At the time of the initial dismissal, the Trial Court correctly relied on Couri, supra., where a plaintiff brought an action against their treating psychiatrist for "non-malpractice" claims, such as breach of contract and breach of fiduciary duty. (Pa271). Our State Supreme Court focused on the plain language of N.J.S.A. 2A:53A-27, noting that three elements are needed for the statute to apply requiring an AOM. 1) the nature of injury, specifically whether the action is for damages related to personal injury, wrongful death or property damage, 2) the cause of action, whether the action is for malpractice or negligence, and 3) standard of care, whether the care and treatment rendered placed at issue fell below the accepted standards of care. Couri, supra., at 334. (Pa271).

> To determine whether claims require submission of an affidavit of merit, "courts must look to the underlying factual allegations, and not how the claim is captioned in the complaint. . . . [I]t is the nature of the proof required that controls." Syndicate 1245 at Lloyd's v. Walnut Advisory Corp., 721 F.Supp.2d, 315 (D.N.J. 2010)

Triarsi v. BSC Group Services, LLC, 422 N.J. Super. 104, 114 (App. Div. 2011)

Appellant's Amended Complaint asserts damages for personal injury, as she claims to have been "humiliated…endure severe emotional distress and other wise damaged", along with invasion of privacy. (Pa146, Pa272). As has

been established, personal injuries include "[a]ny invasion of a personal right, including mental suffering and false imprisonment" (Pa272).

While not using the term "malpractice", "[i]t is not the label placed on the action that is pivotal but the nature of the legal inquiry." Couri, supra. at 340. Notably, the Amended Complaint states that the TRMC Respondents "acted in a reckless, wanton disregard for the technicalities of the law that requires a **professional determination** that [Appellant] was a danger to herself or others prior to utilizing the procedure utilized to force [Appellant] to the Hospital against her will." (Pa144) (*emphasis added*) It is then asserted that "[n]o determination by **any professional** was made in accordance with and required by R. 4:74-8(b)(1); N.J.S.A. 52:14b-1, *et seq.*; N.J.S.A. 30:4-27. The law before [TRMC Respondents forced her to Trinitas Hospital" (sp) (Pa144) (*emphasis added*)

Attorneys and courts should determine if a complaint's allegations require proof of a deviation from professional standards of care applicable to that specific profession. If such proof is required for that claim, an affidavit of merit is required for that claim, unless some exception applies. Couri, supra. at 340. When denying Appellant's first motion for reconsideration, the Trial Court again highlighted the allegations of professional negligence against the TRMC Respondents. "[Screener Escobedo] at all times acted as an agent of Defendant

Trinitas Hospital under their ***policies*** pertaining to involuntary psychiatric admission against Plaintiff's will and her constitutional, statutory and regulatory rights…[i]f [Screener Escobedo] did not know that Plaintiff was not eligible for involuntary commitment that [Screener Escobedo] was ***not properly trained, not properly supervised.*** (Pa197, Pa309)(*emphasis added*)[8] Appellant also asserted the TRMC Respondents "did not follow the procedure of N.J.S.A. 30:4-27.5" and did not "compl[y] with the procedures required of a health screeners" (Pa143).

Clearly Appellant has implicated professional standards of care within the Amended Complaint as Dr. Farag, a licensed professional, made the determination to both bring Appellant for a "face to face" evaluation through the Screening Service. N.J.S.A. 2A:53A-26f, N.J.S.A. 30:4-27.4. Dr. Farag then determined Appellant needed further evaluation in accordance with N.J.S.A. 30:4-27.5, N.J.S.A. 30:4-27.9(c), R. 4:74-7(b)(1). There is no "common knowledge" exception applicable here either which would obviate the need for an AOM. Appellant's failure warranted a dismissal with prejudice.

[8] The Trial Court also determined the lack of a Ferreira conference in accordance with Ferreira v. Rancocas Orthopedic Associates 178 NJ144 (2003) did not warrant overturning the initial dismissal of the TRMC Respondents with prejudice, as Appellant was placed on notice of the need to secure an AOM and exceptional circumstances did not apply to excuse Appellant's failure to obtain an AOM. See Paragon Contractors v. Peachtree Condo, 202 NJ 415 (2010) (Pa199, Pa307-308)

The question of whether Screener Escobedo is a licensed professional was never brought before the Trial Court and therefore should not be considered. However, in the event the Panel wishes to entertain this argument, it is of no moment that Screener Escobedo is not a "licensed professional" as the involuntary evaluation was not ordered by her but instead by Dr. Farag. It should be again noted that Appellant did not argue this point at any juncture with the Trial Court and therefore should be barred from raising this issue on appeal.

> "[I]t is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." (*quoting* Nieder v. Royal Indem. Ins. *Co.*, 62 *N.J.* 229, 234, (1973)

State v. Legette, 227 N.J. 460, 467 n.1 (2017)

Assuming the Panel entertains Appellant's argument, Respondent Escobedo was not providing services to Appellant in her capacity as a licensed social worker. She was acting as the "eyes and ears" for Dr. Farag of the Screening Service after receiving reports from Respondent Cook. Therefore, it is essentially not Respondent Escobedo's care of Appellant which is at issue, she merely followed the directives of Dr. Farag as the on-call psychiatrist of the Screening Service on February 12, 2020. This entire lawsuit as to the TRMC Respondents is about Dr. Farag's decision, as a licensed professional, to have

Appellant evaluated in person at TRMC with the Screening Service and further with the psychiatric team at the New Point Campus. (Da141-209). As was made clear by Respondent Escobedo, she did not make the decision to have Appellant brought to TRMC, but rather it was Dr. Farag. (Da118, 30:16-24; Da123, 50:2-9)

Furthermore, by statutory definition, Screener Escobedo was not able to make the decision to bring Appellant to the hospital on an involuntary basis. According to N.J.A.C. 10:31-3.3(g), the duties of a screener shall include:

- Screening of consumers who may be in need of commitment;
- Assessment, referral and linkage;
- Hotline coverage;
- Crisis stabilization;
- Development of alternative treatment plans;
- Consultation, training and technical assistance to other clinical staff;
- Consultation with the psychiatrist;
- Supervision and monitoring of consumers;
- Screening outreach;
- Screening for admission to STCFs;
- Arranging for a consumer's discharge or transfer out of the screening service;
- Arranging for a consumer's appropriate transport to a receiving facility; and
- Determining whether the consumer has executed an Advance Directive for Mental Health Care.

By Code, Respondent Escobedo could not provide any treatment which Appellant has placed at issue, which is the decision to involuntarily evaluate a

patient for mental health issues/crises. On the other hand, N.J.A.C. 10:31-3.5(b) states duties of the psychiatrist shall include:

- Psychiatric assessment to determine if the consumer meets the standard for commitment, regardless of consensual or involuntary status.
    - The assessments in (b)1 above may be accomplished by means of a Division-approved telepsychiatry program, upon grant of a waiver under N.J.A.C. 10:31-11 and in accordance with the telepsychiatry standards in 10:31-2.3(f);
- **Psychiatric evaluation and management**;
- Prescription and monitoring of medication;
- Completion of screening certificates;
- Participation in the planning of alternatives to hospitalization;
- **Consultation with screeners**;
- Consultation with other treating psychiatrists and physicians, as needed; and
- **Consultation with emergency room doctors involved in the case and those at the receiving facility**. (*emphasis added*)

As is evident by the New Jersey Code, Dr. Farag as a psychiatrist was responsible for the decision to have Appellant involuntarily evaluated. Our courts have also recognized that there is overlap with respect to care and treatment rendered by various care providers.

> The Legislature clearly recognized, as did our Supreme Court in Rosenberg by Rosenberg v. Cahill, 99 N.J. 318, 331-3,4 (1985) and in Sanzari v. Rosenfeld, *34 N.J. 128*, 136, (1961), that there are overlaps in practice between and among the various medical professions and specialties. Thus, a doctor in one field would be qualified to render an opinion as to the performance of another with respect to their common areas of practice.

Wacht v. Farooqui, 312 N.J. Super. 184, 187-88 (App. Div. 1998)

In Wacht, the Appellate Division addressed the AOM prepared by Dr. Ianotti, who was not a diagnostic radiologist, in which he opined the care and treatment of defendant Dr. Farooqui, a Board Certified diagnostic radiologist, fell below accepted standards of care for diagnostic radiologists. Even though Dr. Ianotti was not a diagnostic radiologist, because he specialized in interpreting the same type of radiology images at issue, he was determined to be qualified to author an AOM against Dr. Farooqui. Id.

As with overlapping care, this principle is applicable to the instant case. Even though Dr. Farag made the determinations which are at issue here (involuntary evaluation), if the Panel addresses Respondent Escobedo's involvment separately, her involvment was part and parcel of the determination made by Dr. Farag, the licensed professional. Furthermore, additional nurses were part of the Screening Service and psychiatric team at Respondent TRMC and New Point Campus, who are also licensed professionals. N.J.S.A. 2A:53A-26(i) (CR141-209) Moreover, an AOM is required for claims against entities of licensed professionals (such as a healthcare facility like Respondent TRMC, N.J.S.A. 2A:53A-26(j)) when a plaintiff "pursues litigation against the [entity] alone under respondeat superior principles." Albrecht v. Corr. Med. Svcs., 422

NJ Super. 265, 273, (App. Div. 2011) Therefore, it was appropriate for the Trial Court to determine than an AOM was necessary as to the TRMC Respondents.

It is worth noting again the TRMC Respondents acted reasonably and in good faith in their dealings with Appellant in accordance with N.J.S.A. 30:4-27.7. Dr. Farag was told about Respondent Escobedo's observations of Appellant and determined a face to face evaluation was indicated. (Da114-115, 16:18-17:15; Da162, Da167)

Appellant relies on Seeward v. Integrity, 357 NJ Super. 474 (App. Div. 2003) to argue that an AOM is not required in cases asserting constitutional right claims and violation of the New Jersey Law Against Discrimination Act, N.J.S.A. 10:5-12, *et seq.* However, this reliance is not applicable as Seeward is a case in which the Court found that federal constitutional rights claims brought under the Civil Rights Act, 42 USC 1983, specifically violation of Eight Amendment right for a prisoner to be free from "cruel and unusual" punishment. "The gravamen of plaintiff's claim against the CMS defendants is that they subjected him to cruel and unusual punishment by acting deliberately indifferent to his complaints of pain. In other words, he alleges a violation of rights secured by the Eighth Amendment" Id. at 482.

New Jersey is a "notice-pleading" state, meaning that only a short statement of the claim need be placed. Velop, Inc. v. Kaplan, 301 NJ Super. 36,

52. Additionally, "all pleadings shall be liberally construed in the interest of justice." Rule 4:5-7. It is still necessary, however, for the pleadings to "fairly apprise the adverse party of the claims and issues to be raised at trial." Spring Motors Distribs., Inc. v. Ford Motor Co. , 191 NJ. Super. 22, 29 (App. Div. 1983), *aff'd in part and rev'd in part on other grounds*, 98 N.J. 555 (1985). Entirely new causes of action that were not litigated below will not be considered on appeal. State v. Robinson, 2 00 N.J. 1, 20-22 (2009). Coehlo v. Newark Bd. of Educ., No. A-3073-09T1 (App. Div. Sep. 19, 2011) (slip op. at 8-9)

Appellant has not filed any claims of federal constitutional rights violation. (Pa137-150) The instant matter does not involve 42 USC 1983 or "Bivens" claims (actions against federal government officials for violating federal constitutional rights). Even though not asserted, disagreement with medical professionals who are in custody do not constitute an Eight Amendment violation. See Pierce v. Pitkins, No. 12-083, 2013 WL 1397800 at 1. (3d Cir. Apr. 8, 2013). A plaintiff's claim of medical malpractice is not actionable under 42 USC 1983 and/or Bivens, and there is no federal question jurisdiction under 28 USC 1331. Shaker v. Corr. Care Solutions Med. Dep't, Civil Action No. 11-7275 at 6 (D.N.J. Oct. 21, 2013).

Appellant also confusingly argues N.J.S.A. 2A:14-1, *et seq.*, referring to torts with 6-year statute of limitations ("injuries to rights" as stated by Appellant) is grounds for reversal of the TRMC Respondents' dismissal. Needless to say, the instant matter does not involve dismissal on statute of limitations grounds so this is entirely inapplicable and her position that six-year statute of limitation torts do not require an AOM for personal injury is not based in law. To the contrary, Couri, supra., makes clear it is not the title of the torts which matters, but the underlying claims themselves which is dispositive.

Lastly, Appellant argues the medication Versed ordered by emergency medicine physician, Dr. Khamis Khamis, to be administered to Appellant due to her unruly behavior in the emergency department (Da178-180, Da188). Again, for Respondent TRMC to be vicariously liable for Dr. Khamis's treatment of Appellant, she would have needed to obtain an AOM from a properly credentialed physician against Respondent TRMC. N.J.S.A. 2A:53A-27.

For these reasons, Appellant's arguments against the TRMC Respondents contained in Point Ten, which are the only issues raised as to the TRMC Respondents, should be rejected and the dismissal by the Trial Court remain in place.

CONCLUSION

The TRMC Respondents have successfully established dismissal with prejudice in accordance with N.J.S.A. 2A:53A-29 was appropriate. Appellant filed a professional negligence case against the TRMC Respondents, as the decision made by Dr. Farag to have Appellant involuntarily evaluated at TRMC and New Point Campus was a professional / medical decision implicating the "AOM Statute", N.J.S.A. 2A:53A-27. Even if the Panel determines that an AOM was not required, the TRMC Respondents are entitled to complete immunity pursuant to N.J.S.A. 30:4-27.7

Plaintiff argued to the Trial Court that claims of constitutional violations which did not cause injury did not require an AOM. (Da1-34). The Trial Court correctly determined otherwise. Every other argument raised by Appellant herein either is only properly before the Union Township Respondents or cannot be considered on appeal for not being raised before the Trial Court. For these reasons, the TRMC Respondents were properly dismissed, with prejudice, and the Trial Court's May 13, 2022 Order should remain in place.

FLYNN WATTS, LLC
Attorneys for Respondents,
TRMC and Sylvia Escobedo

Dated: September 12, 2024

By: _____
Randall S. Watts, Esq.

Superior Court of New Jersey
Appellate Division

Docket No. A-000697-23

ARTULDE POINT DU JOUR, *Plaintiffs-Appellants,* v. TOWNSHIP OF UNION, TRINITAS REGIONAL MEDICAL CENTER HOSPITAL, DETECTIVE DONALD COOK, LIMAGE WILSON, OFFICER DELVALLE, BADGE #3259, SYLVIA ESCOBAR, & JOHN DOES, 1-10 (fictitious names, presently unknown), STATE OF NEW JERSEY, HARR ROES, 1-10 (fictitious names, presently unknown), *Defendants-Respondents*.	CIVIL ACTION On Appeal From: SUPERIOR COURT OF NEW JERSEY LAW DIVISION, UNION COUNTY Docket No. UNN-L-0045-21 Sat Below: Hon. Daniel R. Lindemann, J.S.C. Date of Submission: November 12, 2024

BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS TOWNSHIP OF UNION, DETECTIVE DONALD COOK, LIMAGE WILSON, OFFICER DELVALLE, AND BADGE #3259

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PRELIMINARY STATEMENT

This appeal arises out of Orders entered by the Superior Court of New Jersey granting Defendants-Respondents' respective dispositive motions. As to the Township Respondents, Township of Union, Det. Donald Cook, Limage Wilson, Officer DelValle, and Badge #3259 (collectively, the "Township Respondents"), Appellant challenges the trial court's entry of summary judgment declaring the Township Respondents are **absolutely immune** as a matter of law.

The trial court was correct in determining, while affording Appellant all reasonable inferences, the uncontroverted facts establish the Township Respondents complied in all respects with the New Jersey Involuntary Commitment Act, N.J.S.A. 30:40-27.1, et seq., (the "Act"), and Appellant produced absolutely no evidentiary support for any cause of action pled in the Amended Complaint. The trial court properly found, the Township Respondents are **absolutely immune** under the Act given the Township Respondents at all times acted in good faith and took reasonable steps to assess, take custody of, detain, and/or transport Appellant for purposes of mental health assessment or treatment.

Further, while not specifically addressed by the trial court, the Township Respondents are also entitled to qualified immunity pursuant to

the New Jersey Tort Claims Act. Moreover, the trial court properly concluded, as verified by Appellant's own testimony, that no violation of Appellant's civil rights occurred, and all record evidence makes clear no discrimination or no racial motives exist. Also, the trial court also correctly held Appellant's "false light" claim fails as a matter of law, and no evidence exists in the record establishing any basis for a claim of emotional distress. It is evident Appellant failed to provide any evidence in support of Appellant's claims and to overcome the absolute immunity the Township Respondent are afforded under the Act.

Accordingly, in affording Appellant all reasonable inferences from the factual record, there exists no genuine issue of material fact and all record evidence demonstrates the Township Respondents are entitled to absolute (and qualified) immunity as a matter of law. Therefore, and for the reasons established herein, it is respectfully submitted the Superior Court of New Jersey, Appellate Division, should affirm the trial court's entry of summary judgment in its entirety.

PROCEDURAL HISTORY

On January 6, 2021, Appellant commenced this action by filing a Complaint in the Superior Court of New Jersey, Union Vicinage, bearing docket number UNN-L-0045-21. [Pa1-Pa12]. On April 15, 2021, the Township Respondents filed a Motion to Dismiss for Failure to State a Claim. [Pa13-Pa33]. On June 10, 2021, the trial court granted the Township Respondents' Motion to Dismiss. [Pa47-Pa48]. On August 3, 2021, Defendants/Respondents Trinitas and Escobedo filed an Answer with Counterclaim, Crossclaim, and Jury Demand. [Pa51-Pa63].

On August 11, 2021, Appellant filed a Motion for Reconsideration of the trial court's June 10, 2021, Order. [Pa66-Pa81]. On September 8, 2021, the trial court partially granted Appellant's Motion for Reconsideration. [Pa82-Pa87]. On September 22, 2021, the Township Respondents filed a second Motion to Dismiss for Failure to State a Claim. [Pa88-Pa91]. In response, Appellant filed a Cross-Motion to Amend the Complaint on October 4, 2021. [Pa92-Pa108]. On October 22, 2021, the trial court denied the Township Respondents' Motion to Dismiss and granted Appellant's Cross-Motion to Amend the Complaint. [Pa136].

On October 21, 2021, Trinitas and Escobedo filed a Motion for Summary Judgment. [Pa109-Pa119]. On November 16, 2021, the trial court withdrew the

Motion. [Pa120]. On November 16, 2021, Trinitas and Escobedo filed an Amended Motion for Summary Judgment. [Pa121-Pa128]. On February 8, 2022, the trial court denied the Amended Motion for Summary Judgment. [Pa153-Pa160].

On January 19, 2022, Appellant filed an Amended Complaint. [Pa137-Pa150]. On February 9, 2022, the Township Respondents filed an Answer with Crossclaim and Jury Demand. [Pa161-Pa180]. On February 22, 2022, Trinitas and Escobedo filed an Amended Answer. [Pa181-Pa193].

On March 29, 2022, Trinitas and Escobedo filed a Motion to Dismiss the Amended Complaint for Failure to State a Claim. [Pa194-200]. On May 13, 2022, the trial court granted the Motion to Dismiss and dismissed Appellant's professional negligence claims as to Trinitas and Escobedo. [Pa266-Pa273]. On May 27, 2022, Appellant filed a Motion for Reconsideration, which the trial court denied on June 28, 2022. [Pa288-Pa297, Pa306-Pa309].

On June 15, 2022, Defendant State of New Jersey filed a Motion to Dismiss the Amended Complaint for Failure to State a Claim. [Pa300-Pa305]. On July 25, 2022, the trial court granted the State of New Jersey's Motion to Dismiss. [Pa310-Pa311].

On September 8, 2023, the Township Respondents filed a Motion for Summary Judgment. [Pa630-Pa791]. On September 26, 2023, Appellant

filed Opposition to the Motion for Summary Judgment. [Pa798-Pa807]. On October 2, 2023, the Township Respondents filed a Reply Brief in further support of the Motion for Summary Judgment. On October 10, 2023, Appellant filed an improper sur reply without leave of court in further opposition to the Motion for Summary Judgment. [Pa808-Pa855]. On October 13, 2023, the trial court permitted the Township Respondents to file a second reply. On October 17, 2023, the Township Respondents filed a second Reply Brief in further support of the Motion for Summary Judgment. [Pa856-Pa859].

On October 20, 2023, the trial court held oral argument on the Motion for Summary Judgment. On October 23, 2023, the trial court entered an Order granting the Township Respondents' Motion for Summary Judgment, holding the Township Respondents were absolutely immune from all claims and dismissing Appellant's Amended Complaint with Prejudice as to the Township Respondents. [Pa860-Pa873].

COUNTER-STATEMENT OF FACTS

This matter stems from a series of UPD reports which refer or relate to Appellant, her home, and/or Appellant's interactions with her neighbors. Specifically, on or about January 20, 2020, Appellant filed Citizen's Report #20-568 ("Report 20-568") complaining her neighbor, Dean Rocco ("Rocco") had damaged a computer delivered to Appellant's house and placed something in Appellant's car engine causing it to break down. [Pa863, Pa633]. On or about January 28, 2020, Defendant Det. Donald Cook (Ret.) ("Cook") was assigned to investigate the claims made in Report 20-568. [Pa863, Pa633].

On January 29, 2020, Cook responded to Appellant's residence seeking to speak with Appellant. [Pa863, Pa633]. Immediately upon arrival, Cook noticed there were paper notes taped all over the exterior of the house, on the steps, and the railings. [Pa863, Pa633]. The notes accused unnamed people of, among other things, entering Appellant's home and taking her son's socks, her papers, and damaging her car (which is in the garage). [Pa863, Pa633]. Cook also observed someone had squeezed citrus on the steps and some type of vegetation. [Pa863, Pa633]. Cook felt this was extremely out of the ordinary and took photographs to document same. [Pa863, Pa633].

Cook conducted a search on Appellant's address in the UPD system and found Appellant had numerous Suspicious Acts reports on file. [Pa863,

Pa634]. On January 8, 2020, there was a report taken where Appellant believed someone entered her home by removing the locking latch on the bathroom window. [Pa863, Pa634]. Appellant stated that nothing was missing inside Appellant's residence, and Appellant replaced the latch prior to the Officer's arrival. [Pa863, Pa634]. Cook then spoke with Rocco, who lives to the right of Appellant. Rocco informed Cook of ongoing issues with Appellant. [Pa863, Pa634]. Of note, during one of dispute, Appellant exposed herself, "mooned," and threatened Rocco and his young children. [Pa863, Pa634]. Specifically, Appellant told Rocco's teenage sons, "I hope you drop dead." [Pa863, Pa634-Pa635]. Responding police officers viewed cell phone camera footage wherein Appellant was seen,

> screaming profanities to Mr. Rocco when he confronted her. In the video she clearly tells Mr. Rocco, "**fuck you** leave me alone, you always are looking to get me in trouble."

[Pa864, Pa634].

Thereafter,

> **[Appellant] was pointing her middle finger** to Mr. Rocco. [Appellant] then exited her vehicle and as **she turned her back to Mr. Rocco she pulled down her white underwear and grey tights exposing her buttocks to Mr. Rocco and stating "here talk to my ass" as she was grabbing her buttocks**.

[Pa864, Pa635 (emphasis added)].

Rocco also advised Cook of a separate incident where someone poured some type of liquid on his property. [Pa864, Pa635]. Rocco believes Appellant did this as she had previously threatened him with voodoo. [Pa864, Pa635].

Next, Cook spoke with Appellant on the telephone who advised she is a nurse and works in New York, leaving her residence at approximately 6:00am and returning home after 6:00pm. [Pa864, Pa635]. Appellant stated she believes someone watches her and enters her home as soon as she leaves. [Pa864, Pa635]. Appellant further stated she believed her neighbor damaged a computer she ordered and she had pictures of it, which Cook requested Appellant forward same to him. [Pa864, Pa635]. Cook then took reasonable and fair actions to investigate Appellant's claims.

On January 30, 2020, Cook spoke with Det. Lt. Correia ("Correia") about what Cook observed at Appellant's residence. [Pa864, Pa635]. Cook stated to Correia that Cook believed Appellant may be having some type of mental health crisis. [Pa864, Pa635]. Correia advised Cook to contact Trinitas and request Trinitas conduct a mental health evaluation of Appellant if Cook deemed it necessary, in accordance with statutory guidelines. [Pa864, Pa635].

On February 10, 2020, Cook received Appellant's email with the photographs Appellant took. [Pa864, Pa636]. The photographs showed boxes which appeared to have minor damage from shipping and tools which Appellant

claimed were left in her house. [Pa864, Pa636]. On February 10, 2020, Cook advised Appellant via email that there was no evidence her neighbors damaged her packages or entered her home. [Pa864, Pa636]. On February 10, 2020, Appellant replied, "[t]hese **people have some magic** to go in my house and **they are not appearing in the camera**" and could enter while "invisible." [Pa864, Pa636 (emphasis added)].

On February 11, 2020, Cook spoke with another of Appellant's neighbors, Jane Supuko ("Supuko"). [Pa864, Pa636]. Supuko stated she knows who Appellant is but no one in Supuko's household socialized with Appellant and they tried to avoid her. [Pa864, Pa636]. Additionally, Supuko stated Appellant lives alone and at times Supuko hears Appellant yelling inside the house and sees Appellant talking to herself. [Pa864, Pa636].

At this point, on February 11, 2020, Cook contacted Trinitas, informed them of his observations, and requested Trinitas conduct an evaluation for Appellant's safety and well-being. [Pa864-Pa865, Pa636]. Cook specifically testified he requested the evaluation based on what Cook observed, the conversations Cook had with Appellant and Appellant's neighbors, and the emails Cook received from Appellant:

> Q. So between the E-mails and your observation of what she had all around her house, it wasn't so difficult to determine that she was mentally

> handicapped or disabled in some kind of mental way. Is that correct?
>
> A. Yes.

[Pa865, Pa636-Pa637].

Given these observations, Cook "felt [Appellant] was having a crisis and . . . felt she needed help." [Pa865, Pa637]. On February 12, 2020, Cook responded to Lafayette Ave at approximately 5:45am, in order to investigate Appellant's claims of others unlawfully trespassing on Appellant's property. [Pa865, Pa637]. Cook observed Appellant leave her residence at 6:21am and walk towards Elmwood Ave. [Pa865, Pa637]. Cook drove past Appellant to see where she was going and Cook could hear Appellant talking out loud to herself. [Pa865, Pa637]. Cook watched her house until 6:45am and no one approached it. [Pa865, Pa637].

Thereafter, on February 12, 2020, Cook informed Appellant that Cook surveilled her house in hope of giving her some peace of mind. [Pa865, Pa637]. Appellant responded with the following email:

> Thank you for keeping an eye for me.
>
> I have to go to work. I can not stay in the house.
>
> I had a big 20 lbs white rice in my kitchen and maybe I used 20% of it. I went to get rice over the weekend and yesterday only 10% remains in the bag. They broke my printer.

When can i come to see you and show you all the pictures I have on my phone for things they break.

My mails they steal that too. Chase bank sent me an A TM card and it has passed 3 weeks I did not get it. I suspected they saw my 2 checking accounts in my draw in the bedrooms so I closed them.

I know it is difficult now to put hands on them since we can not catch them yet but we have to do something. I live in the house by myself bec my 2 children are not there.

My son is in the army. He is only 19 years old. Since he was trying to leave the house I encouraged him to go to the army. My daughter moved out and staying with friends bee all these things happening to me.

They are jealous of me because I am a Nurse. And, about 2 years ago I told them my house is paid off but I am moving out for my other neighbor. I did not know they were jealous of me. They are doing these malicious act to push me out quickly.

I am trying to rent the two bedrooms so I can have other people in the house. And, I am planning to put an outside camera but one that is not visible so i can catch them.

I don't know if we will ever because **these people can tum into cats or dogs and fly like a birds. They are not 100 %human.**

I saw them wearing hospital uniform I thought they were good people but it seemed they are Nursing Assistants and transporters at the hospital bee they wear hospital gown too.

Just to give you what probably motivated them.

I have camera inside the house but sometimes I see a blue light flashing inside the house in some room of the house.

I was reading online if a thief want to steal you and does not want them to show in camera they use a flash light or a blue flash light directly at the camera. As a result, you can never see them. No wonder I can not catch them in the camera.

This is driving me crazy. I can not sleep in peace and i am afraid to eat in the house.

Any food I leave in the refrigerator or anything I open, I don't use it anymore.

In October I went home the whole house smell poison. I had to throw out everything powder and liquid and cook food.

They taught they got me I was going to die. That week and following they kept looking at me funny thinking how come she is still alive.

My families and friends keep telling to tell the police Dept and put camera and they don't understand how come I can not catch them in camera.

I did not understand it either but now I do bee **they can pass in front of you or they go inside my house invisible.** Sometimes,

I saw some flashing blue light flying inside the house.

They steal my important papers and they are in all my personal business, my computer they sign in . I had to change the login sign in screen

They sent evil things after my children for them not to stay in the house so I go to work they have plenty times to get in. They do evils after my kids so they won't go to College. My kids report card used to be in the wall unit with all A's and I guess they saw they grades and now they don't want to go to College. I worked 2 jobs in Nursing to pay my house and now it's pay off and I can not stay in there.

In couple of months I am moving out because I can not take this anymore. I am going to rent the place for now.

> I am thinking they are going to scare my tenants away by doing the same thing to them.
>
> I don't want to be a pain but this is terrified me.

[Pa865-Pa867, Pa637-Pa639].

Subsequent to Cook's referral to the appointed screening service, Trinitas, Sylwia Escobedo, MSW, LSW ("Escobedo"), a New Jersey Certified Mental Health Screener, went to Appellant's residence to conduct an outreach visit on February 12, 2020. [Pa867, Pa639]. Escobedo was accompanied by Union Township Police Department Officers Limage and DelValle (the "Officers" and collectively with Escobedo, "Respondents"). [Pa867, Pa639]. Defendants knocked on Appellant's door who opened the door and permitted entry. [Pa867, Pa640]. Appellant testified she did not refuse entry to Defendants:

> Q. ... And did you refuse entry to [Respondents]?
>
> A. No.

[Pa867, Pa640].

The full and complete interaction between Appellant and Respondents (Escobedo, Limage, and DelValle) was recorded on the Officers' Body Worn Cameras. [Pa867, Pa640].

When speaking with Escobedo, Appellant continued to reiterate many of the same beliefs about her neighbors' purported actions she had conveyed to Cook, including the use of magic and transforming into various animals

to enter Appellant's home. [Pa867, Pa640]. During the interaction, Appellant made the following claims:

a. Feces had been put inside Appellant's car, despite the car being locked inside of a locked garage;
b. Appellant's house was full of "poison" because people were coming in and out of Appellant's house while she was at work;
c. Appellant's neighbors were using magic to enter her residence, steal and damage property, and spread feces undetected by her security cameras and motion sensors at each window.

[Pa867, Pa640].

Escobedo and Appellant interacted and spoke for approximately one hour. [Pa867, Pa640]. During this time, Wilson and DelValle were present but had limited conversation and interactions with Appellant. [Pa867, Pa641].

Escobedo then contacted the attending psychiatrist on duty to report Appellant's statements. [Pa867, Pa641]. Escobedo and Cook did not speak or otherwise communicate at any time prior to, during, or after Appellant's involuntary commitment regarding Appellant. [Pa867, Pa641]. Escobedo was instructed by the attending psychiatrist at Trinitas that Appellant needed to be brought to Trinitas for a medical clearance based on Appellant's statements. [Pa867, Pa641]. Pursuant to N.J.S.A. 30:4-27.6(b), Escobedo executed a Screening Outreach Request for Police Transport. [Pa867, Pa641].

After Escobar's determination Appellant should be involuntarily committed, DelValle again explained to Appellant, Defendants were present on behalf of doctors who wanted her brought to Trinitas. [Pa867, Pa641]. Upon EMT's arrival to transport Appellant to Trinitas, Escobedo explained the situation to the EMTs. [Pa867, Pa641]. During this time, Limage asked Appellant to put her shoes on. [Pa867, Pa641]. DelValle again advised Appellant it is the psychiatrist's decision to bring her in for evaluation and again requested Appellant put her shoes on. [Pa867-Pa868, Pa641]. Due to Appellant's protestations, the Officers directed Appellant towards the door approximately ninety (90) minutes after Respondents first arrived. [Pa868, Pa641]. The Officers paused on the way out and permitted Appellant to put the house alarm on and lock her front door upon exiting. [Pa868, Pa642]. After exiting, Appellant sat on the gurney and allowed EMTs loaded her into the ambulance. [Pa868, Pa642].

Subsequently, Limage handed his service weapon to DelValle and boarded the ambulance. [Pa868, Pa642]. Thereafter, Appellant was transported to Trinitas with Limage riding in the ambulance and DelValle following in a squad car. [Pa868, Pa642]. Upon arrival at Trinitas, Limage escorted the gurney inside. [Pa868, Pa642]. DelValle arrived shortly thereafter, joined Limage and Appellant inside, and returned Limage's service weapon. [Pa868,

Pa642]. At no time did Defendants physically touch or lay a hand on Appellant, nor did the Officers use any force whatsoever. [Pa868, Pa642].

Appellant further testified she left the house voluntarily:

> Q. . . . So you did leave the house on your own accord?
>
> A. Yeah.
>
> Q. Okay. The police did not handcuff you or restrain you?
>
> A. No, No.

[Pa868, Pa642].

The Officers departed Trinitas after dropping Appellant off at the Emergency Department:

> Q. So the police left after dropping you off at the ER, correct?
>
> A. Yes.

[Pa868, Pa642].

Thereafter, Limage completed an Investigation Report outlining the events of Appellant's involuntary commitment. [Pa868, Pa642].

The UPD Mental Illness Policy (the "Policy") provides in pertinent part:

> There are generally four (4) situations in which a mentally ill person . . . may be taken into custody.
>
> ... 2. Where from acts observed by the officer or other reliable persons (such as a screener), the officer believes the person is a danger to others or property.

[Pa868-Pa869, Pa643].

The Policy goes on to state:

> Upon determining that a person is in need of involuntary commitment or further evaluation, the officer on scene shall inform the Supervisor, if he/she is not already on scene, and the OIC of their finding.
>
> 1. The officer, along with any back up officers or Supervisors on scene, shall inform the person of the need for an involuntary and restrain them. (i.e., Handcuffs, Leg Restraints, etc.)
> 2. If force is to be used to restrain the person, only that amount of force reasonably necessary to overcome their resistance is justified.
> 3. The officer, or Supervisor on scene, shall instruct Dispatch to have an ambulance respond to the location to assist with transport of the individual.
> 4. Once the person has been properly restrained, they are to be properly searched for any weapons, and placed in the ambulance, or radio car, and transported to Trinitas Regional Medical Center (225 Williamson St. Elizabeth, NJ 07202) to receive medical clearance before being transported to the Psychiatric Campus.
> 5. Upon receiving medical clearance, the person will be transported to the Trinitas Dialectical Behavior Therapy (DBT) Campus (654 E. Jersey St. Elizabeth, NJ 07206).
>
> ...
>
> 7. For any involuntary commitment an officer must accompany the ambulance personnel (EMT) by being onboard the ambulance, with a radio car following behind.
> 8. Prior to boarding the ambulance, the officer accompanying the ambulance personnel (EMTs)

> shall relinquish his/her service weapon (handgun) to the officer in the radio car that is following the ambulance. Upon arrival at the hospital, the officer shall re-take possession of their service weapon.
>
> ...
>
> 10. Once hospital personnel take custody of the person, the primary officer will complete all required reports (I.R., and if necessary a UOF report.

[Pa869, Pa643-Pa644].

Appellant was later discharged from Trinitas on February 14, 2020. [Pa869, Pa644]. Thereafter, Appellant went to see her primary care provider. [Pa869, Pa644]. Appellant was not instructed to follow up with any type of psychiatrist or psychologist. [Pa869, Pa644].

Appellant did not suffer any injuries as a result of Appellant's involuntary commitment. [Pa869, Pa644]. Appellant is not being treated by any medical or psychological professional. [Pa869, Pa644]. Cook was not advised of the mental health evaluation until February 13, 2020, after the screener had responded and transported Appellant to Trinitas. [Pa869, Pa645].

LEGAL ARGUMENT

I. STANDARD OF REVIEW.

The standard of review for a summary judgment motion is, "de novo, employing the same standard used by the trial court." Tarabokia v. Structure Tone, 429 N.J. Super. 103, 106 (App. Div. 2012) (citing Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div. 1998), certif. denied, 154 N.J. 608 (1998)). Under this standard, a party against whom a claim is made may move for summary judgment in its favor before the case is tried. R. 4:46-1.

Pursuant to R. 4:46-2, a party is entitled to summary judgment where "there is no genuine issue as to any material fact . . . and . . . the moving party is entitled to a judgment or order as a matter of law." The movant bears the "burden to exclude any reasonable doubt as to the existence of any genuine issue of material fact" regarding the claims asserted. Judson v. Peoples Bank and Trust, 17 N.J. 67, 74 (1954) (citation omitted).

The Supreme Court has cautioned that "a court should deny a summary judgment motion **only** where the party opposing the motion has come forward with evidence that creates a 'genuine issue as to any material fact challenged.'" Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (quoting R. 4:46-2(c)) (emphasis added). "That means a non-moving party cannot

defeat a motion for summary judgment merely by pointing to any fact in dispute." Ibid. Moreover, "when the evidence is so one-sided that one party must prevail as a matter of law the trial court should not hesitate to grant summary judgment." Id. at 540 (quotations omitted).

Additionally, summary judgment is mandated after:

> adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, **there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial**. The moving party is entitled to a judgment as a matter of law because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.
>
> [Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (internal quotations omitted) (emphasis added).

The standard for such a determination is "whether the competent materials presented . . . 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 529 (1995) (quoting R. 4:46-2). Immaterial or frivolous evidence is insufficient to defeat a motion for summary judgment. Ibid. Moreover, an issue that has only "a single, unavoidable resolution" is not "genuine" under R. 4:46-2. Id. at 540.

II. THE TRIAL COURT DID NOT COMMIT ANY ERRORS IN DETERMINING THE TOWNSHIP RESPONDENTS WERE ENTITLED TO SUMMARY JUDGMENT AS THERE WERE NO MATERIAL FACTS IN DISPUTE.

The trial court's decision was proper and should be affirmed as no genuine issues of material fact were in dispute, the Township Respondents were entitled to summary judgment as a matter of law, and Appellant's contention otherwise is unsupported. Appellant did not and could not proffer any specific discovery as to any specific factual issues in opposition to the Township Respondents' Motion for Summary Judgment. In fact, Appellant failed to produce a scintilla of evidentiary support for any cause of action throughout the entire course of discovery. That is because the facts material to Appellant's claims in the Amended Complaint regarding the Township Respondents' actions are known and indisputable as demonstrated by all record evidence, including verified body camera footage.

Appellant **never** identified any disputed issues of material facts, either before the trial court in opposition to the Township Respondents' Motion for Summary Judgment, nor in Appellant's Brief on appeal. Simply, this is because no issues of material facts exist and all record evidence clearly establishes the Township Respondents acted in good faith at all times with respect to Appellant.

Indeed, as properly recognized by the trial court, Appellant failed to comply with the explicit requirements of R. 4:46 and provide a response to the Township Respondents' Statement of Material Facts. In pertinent part, R. 4:46-2 states:

> A party opposing the motion shall file a responding statement either admitting or disputing each of the facts in the movant's statement. Subject to R. 4:46-5(a), all material facts in the movant's statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation conforming to the requirements of paragraph (a) demonstrating the existence of a genuine issue as to the fact. An opposing party may also include in the responding statement additional facts that the party contends are material and as to which there exists a genuine issue. Each such fact shall be stated in separately numbered paragraphs together with citations to the motion record.
>
> [R. 4:46-2(b).]

In the Reply Brief, the Township Respondents presented this very issue to the trial court for consideration. Thereafter, "even with [the] improper, self-granted-right to file a sur reply after [the Township Respondents] had exposed Appellant's fundamental deficiencies in [Appellant's] opposition, [Appellant] continued to ignore the R. 4:46-2 requirements for providing an appropriate response to [the Township Respondents'] Statement of Material Facts." [Pa862].

As such, the trial court properly concluded "no new facts were presented beyond those presented in [the Township Respondents'] . . . Statement of

Material Facts." [Pa863]. In essence, all facts submitted by the Township Respondents were deemed admitted because same were not refuted by any evidence in the motion record. See, R. 4:46-2(b). Appellant did not, could not, and has not on appeal pointed to any competent record evidence to refute any of the Township Respondents' facts, and failed to properly submit any facts to contradict those facts or attempt to raise a genuine issue of material fact. In sum, the material facts in the motion record were wholly undisputed and summary judgment was appropriate.

Appellant's Brief repeatedly asserts the legally baseless proposition that Appellant attached documents, including Appellant's own affidavit, responses to interrogatories, and deposition transcripts, to Appellant's opposition to the Township Respondents' Motion for Summary Judgment. However, as already stated, such conduct by Appellant fails to comply with the explicit requirements of R. 4:46 to properly oppose a motion for summary judgment and cannot serve as the basis to claim the existence of a genuine issue of material fact.

Moreover, Appellant's conduct is akin to that specifically prohibited by R. 1:6-6. The comments to the Court Rules make clear it is "egregious" to attempt to present facts by way of statements made by counsel in supporting briefs, memoranda, and/or oral argument. Pressler & Verniero, Current N.J. Court Rules, cmt. on R. 1:6-6 (2024). "Such statements do not

constitute cognizable facts." Ibid.; see Gonzalez v. Ideal Tile Importing Co., 371 N.J. Super. 349, 358 (App. Div. 2004), aff'd 184 N.J. 415 (2005); Albrecht v. Correctional Medical, 422 N.J. Super. 265, 267 n.1 (App. Div. 2011), declining to consider uncertified information about defendant presented through its brief and its counsel at oral argument. and same were correctly disregarded by the trial court.

Further, on appeal, Appellant's claim that material facts in dispute and contested credibility issues precluded entry of summary judgment is erroneous. Appellant's Brief raises exactly one purported issue of fact – Appellant's claim of being kidnapped versus the Township Respondents' good faith acts. However, Appellant has repeatedly refused to acknowledge the **entire** involuntary commitment was captured on the Township Respondents' body-worn cameras. Appellant repeatedly seeks to submit facts, by affidavit under penalty of perjury, which **directly contradict the events recorded on body worn cameras.**

Despite Appellant's claim, the trial court was not required to afford Appellant the benefit of inferences which run contrary to well-established and verifiable facts submitted by the Township Respondents. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonably jury could believe it, a court should not

adopt that version of the facts for purposes of ruling on a motion for summary judgment." Alfano v. Schaud, 429 N.J. Super. 469 (App. Div. 2013) (quoting Scott v. Harris, 550 U.S. 372, 380, 127 S. Ct. 1769, 1776, 167 L. Ed. 2d 686, 694 (2007). "Normally . . . discredited testimony is not considered a sufficient basis for drawing a contrary conclusion." Ibid. (quoting Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485, 512, 104 S. Ct. 1949, 1966, 80 L. Ed. 2d 502, 524 (1984).

Given the foregoing, Appellant has failed to show the existence of any genuine issue of material fact, nor set forth any material fact overlooked by the trial court. Therefore, the trial court's decision should be upheld in its entirety.

II. THE TRIAL COURT CORRECTLY DETERMINED THE TOWNSHIP RESPONDENTS WERE ENTITLED TO ABSOLUTE IMMUNITY AND SUMMARY JUDGMENT WAS PROPERLY GRANTED.

Here, the trial court correctly determined, as confirmed by all record evidence, the Township Respondents are entitled to **absolute immunity** such that entry of summary judgment was warranted and appropriate. In 1987, the Legislature enacted the New Jersey Involuntary Commitment Act, N.J.S.A. 30:4-27.1, et seq. (the "Act"), to provide a mechanism for the short-term civil commitment of individuals deemed to be harmful to themselves, others, or property. See, N.J.S.A. 30:4-27.1. The Act requires each county, in consultation with its county health board, to designate

a mental health agency as a "screening service." N.J.S.A. 30:4-27.4. A certified screening service is required to "serve as the facility in the public mental health care treatment system wherein a person believed to be in need of involuntary commitment to outpatient treatment, a short-term care facility, psychiatric facility or special psychiatric hospital undergoes an assessment to determine what mental health services are appropriate for the person[.]" N.J.S.A. 30:4-27.5(a).

Under the Act, a law enforcement officer may refer an individual to a screening service when, "[o]n the basis of personal observation, the law enforcement officer has reasonable cause to believe that the person is in need of involuntary commitment[.]" N.J.S.A. 30:4-27.6(a) (emphasis added). If the **mental health screener** determines treatment is necessary, the screener must complete a screening certificate, in consultation with a psychiatrist or physician, indicating its findings and reasons why commitment is necessary. N.J.S.A. 30:4-27.5(b). The screener **only** needs to determine whether "there is reasonable cause to believe that a person is in need of involuntary commitment[.]" N.J.S.A. 30:4-27.5(e).

Pursuant to N.J.S.A. 30:4-27.9(b), an individual may not be involuntarily committed unless the person "is in need of involuntary commitment to treatment." This means:

> that an adult with mental illness, whose mental illness causes the person to be dangerous to self or dangerous to others or property and who is unwilling to accept appropriate treatment voluntarily after it has been offered, needs outpatient /treatment or inpatient care at a short-term care or psychiatric facility or special psychiatric hospital because other services are not appropriate or available to meet the person's mental health care needs.
>
> [N.J.S.A. 30:4-27.2(m).]

Here, the trial court properly entered summary judgment and concluded the Township Respondents were entitled to absolute immunity as a matter of law for any claims related to Appellant's involuntary commitment. It is well-settled, given the decision to commit an individual is **discretionary**, the Legislature has provided immunity from civil and criminal liability for those involved in the commitment of an individual for mental health reasons. Ziemba v. Riverview Med. Ctr., 275 N.J. Super. 293, 300 (App. Div. 1994). In furtherance thereof, the Act provides **absolutely immunity for police officers** (as well as screening services and short-term care providers) **who act in good faith** and take "reasonable steps to assess, take custody of, detain or transport an individual for the purposes of mental health assessment or treatment[.]" N.J.S.A. 30:4-27.7(a).

Specifically, the Act provides in pertinent part:

> A **law enforcement officer**, screening service, outpatient treatment provider or short-term care facility

> designated staff person or their respective employers, **acting in good faith** pursuant to P.L.1987, c.116 (C.30:4-27.1 et seq.) and P.L.2009, c.112 **who takes reasonable steps to assess, take custody of, detain or transport an individual for the purposes of mental health assessment or treatment is immune from civil and criminal liability**.
>
> [N.J.S.A. 30:4-27.7(a) (emphasis added).]

The immunity afforded to police officers has been extended to municipalities who are sued under a theory of *respondeat superior* for the actions of employees. See generally Ziemba, 275 N.J. Super. 293.

As explicitly determined by the trial court, the uncontroverted evidence of record clearly demonstrates the Township Respondents acted in good faith and followed the letter of the law in all dealings with Appellant. Therefore, as correctly found by the trial court, the Township Respondents are properly entitled to absolute immunity and summary judgment was properly granted.

Here, Appellant cries foul at the actions of three Township police officers – Cook, DelValle, and Limage. Cook, after thoroughly investigating Appellant's complaints and consulting with a supervisory officer, ultimately contacted the designated screening service because Cook had reasonable cause to believe Appellant may need evaluation and/or treatment based on Cook's personal observations.

Meanwhile, DelValle and Limage accompanied the mental health screener as required by statute and Township policy, entitling both to absolute immunity as a matter of law. Further, the Township is similarly immune from liability given the immunity afforded to all individual officers involved. Therefore, the trial court properly determined all Township Respondents are entitled to absolute immunity as a matter of law and entry of summary judgment was appropriate as a matter of law.

A. The Trial Court Correctly Determined Cook Acted in Good Faith and Followed the Dictates of the Statutory Guidelines Referring Appellant for a Mental Health Evaluation and Thus is Entitled to Absolute Immunity.

The trial court properly concluded Cook was entitled to absolute immunity for his good faith actions and referral of Appellant for mental health evaluation. As set forth hereinabove, a law enforcement officer who acts in good faith and takes **"**reasonable steps to assess, take custody of, detain or transport an individual for the purposes of mental health assessment or treatment" is **absolutely immune** from liability. N.J.S.A. 30:4-27.7(a). Explicitly, officers who make "a prima facie showing they acted in good faith and took reasonable steps to assess, take custody of and detain [an individual] for purposes of mental health assessment or treatment[,]" are entitled to summary judgment on any claims arising out of the commitment unless the plaintiff can show

by competent evidential material that a genuine issue of material fact existed. Ziemba, 275 N.J. Super. at 301.

In this matter, as confirmed by the trial court, all record evidence establishes Cook acted in good faith and thus is entitled to absolute immunity and entry of summary judgment. Explicitly, the trial determined the record evidence "demonstrates irrefutably the good faith actions of Officer Cook giving rise to a good faith belief that [Appellant] was (or was going to be) a threat to herself, others, and/or the property of others." [Pa872]. Further, it is also indisputable Appellant failed to submit any competent evidence demonstrating a genuine issue of material fact exists to rebut the trial court's finding that Cook established a *prima facie* showing of Cook's good faith and reasonable steps.

As established, Cook was assigned to investigate Appellant's complaint that her neighbor had damaged a computer delivered to Appellant's house and placed something in Appellant's car engine causing it to break down. All evidence in the appellate record demonstrates, as the trial court determined, Cook conducted a full and fair investigation and, based on Cook's personal observation, Cook had reasonable cause to believe Appellant may be in need of involuntary commitment. See, N.J.S.A. 30:4-27.6(a).

On January 29, 2020, Cook responded to Appellant's residence to investigate and speak with Appellant. Upon arrival at Appellant's residence, Cook made the following observations: (i) paper notes taped all over the house exterior, on the steps, and on the railings accusing unnamed people of, among other things, entering Appellant's home and taking her son's socks, her papers, and damaging her garaged car; and (ii) squeezed citrus on the steps and some type of vegetation. Based on his investigatory experience, Cook felt this was extremely out of the ordinary and took photographs to document same.

Cook then conducted a search on Appellant's address in the UPD system and found Appellant had numerous Suspicious Acts reports on file. On January 8, 2020, a report was taken wherein Appellant believed someone entered her home by removing the locking latch on the bathroom window. Appellant stated that nothing was missing inside Appellant s residence, and Appellant replaced the latch prior to the Officer's arrival. Cook then spoke with Rocco, Appellant's neighbor, who informed Cook of his ongoing issues with Appellant. Of note, during one dispute, Appellant exposed herself, "mooned," and threatened Rocco and his young children. Rocco also advised Cook of another incident where he believes Appellant, who had previously threatened him with voodoo, poured some type of liquid on his property.

Next, Cook spoke with Appellant on the telephone who stated she believes someone watches her and enters her home as soon as she leaves. Appellant further stated she believed her neighbor damaged a computer she ordered, and she had pictures of it, which Cook requested Appellant forward same to him. Cook then took reasonable and fair actions to investigate Appellant's claims.

On February 10, 2020, Cook received Appellant's email with the photographs Appellant took. The photographs showed boxes which appeared to have minor damage from shipping and tools which Appellant claimed were left in her house. On February 10, 2020, Cook advised Appellant via email there was no evidence her neighbors damaged her packages or entered her home. On February 10, 2020, Appellant replied, "[t]hese **people have some magic** to go in my house and **they are not appearing in the camera**" and could **enter while "invisible.**" (emphasis added).

On February 11, 2020, Cook spoke with another of Appellant's neighbors, Supuko. Supuko stated she knows who Appellant is but no one in Supuko's household socialized with Appellant and they tried to avoid her. Additionally, Supuko stated Appellant lives alone and at times Supuko hears Appellant yelling inside the house and sees Appellant talking to herself.

During the course of his investigation, Cook grew concerned for Appellant and believed she may be experiencing a mental health crisis. Cook relayed

his belief, along with his observations of Appellant, to a superior officer. That superior advised Cook to contact Trinitas and request Trinitas conduct a mental health evaluation of Appellant if Cook deemed it necessary, in accordance with statutory guidelines and departmental procedure. On February 11, 2020, Cook contacted Trinitas, informed them of what Cook observed, and requested Trinitas conduct an evaluation for Appellant's safety and well-being.

Explicitly, a **law enforcement officer may refer an individual to a screening service if, "[o]n the basis of personal observation, the law enforcement officer has reasonable cause to believe that the person is in need of involuntary commitment[.]"** N.J.S.A. 30:4-27.6(a). Cook specifically testified he requested the evaluation based on what Cook observed, the conversations Cook had with Appellant and Appellant's neighbors, and the emails Cook received from Appellant:

> Q. So between the E-mails and your observation of what she had all around her house, it wasn't so difficult to determine that she was mentally handicapped or disabled in some kind of mental way. Is that correct?
>
> A. Yes.

Given these observations, Cook "felt [Appellant] was having a crisis and . . . felt she needed help." As such, Cook exercised his statutory authority

and personal obligation to Appellant by referring Appellant to the appointed screening service pursuant to N.J.S.A. 30:4-27.6(a). In doing so, all evidence of record demonstrates Cook's good faith belief Appellant was (or was going to be) a threat to herself, others, and/or the property of others such that Cook had reasonable cause to refer Appellant to the screening service.

More specifically, Appellant repeatedly leveled unfounded accusations at Rocco and his children and acted aggressively towards them, including by screaming profanities, pouring liquid on Rocco's property, and threatening Rocco and his children. This includes, notably, Appellant exposing herself to Rocco's minor children by "mooning" them outside their home and threatening them. Specifically, Appellant told Rocco's teenage sons, "I hope you drop dead." Responding police officers viewed cell phone camera footage wherein Appellant was seen,

> screaming profanities to Mr. Rocco when he confronted her. In the video she clearly tells Mr. Rocco, "**fuck you** leave me alone, you always are looking to get me in trouble." [Pa864].

Thereafter,

> **[Appellant] was pointing her middle finger** to Mr. Rocco. [Appellant] then exited her vehicle and as **she turned her back to Mr. Rocco she pulled down her white underwear and grey tights exposing her buttocks to Mr. Rocco and stating "here talk to my ass" as she was grabbing her buttocks**. [Pa864].

Further, Cook observed a litany of behavior which also concerned him, such as the exterior of Appellant's home being covered with notes, believing magic was being used to enter her home and evade security cameras, Appellant talking to herself, Appellant stating to Cook people could "turn into cats or dogs and fly" like birds, and believing her entire home smelled like poison. As such, based on the foregoing, Cook acted in good faith and had reasonable cause, based upon his observations and interactions with Appellant, to request a mental health evaluation. Cook explicitly testified he contacted Trinitas owing to his belief "[Appellant] was having a crisis and . . . felt she needed help."

Rather, all record evidence on appeal clearly supports the trial court's decision that Cook established a prima facie case Cook exercised good faith and took reasonable steps to obtain care for Appellant in accordance with N.J.S.A. 30:4-27.6(a). Based on the foregoing, the trial court expressly detailed its finding as to Cook's good faith actions:

> Here, the **record is replete with evidence irrefutably demonstrating Officer Cook's conscientious, diligent, and thorough investigations and inquiries over a period of several days**. Inquiries directly with [Appellant], interviews, surveillance for her own peace of mind at her request, witnessing first-hand [Appellant's] statements about poisoning, thefts, voodoo and magic, as well as email communications directly with [Appellant], especially the extensive response email from [Appellant] . . . which she concludes her discussion of mail theft, 10% less rice in a bag, a broken printer in her house, a stolen ATM card,

> people who can "turn into cats or dogs and fly like birds. They are not 100% human", posion, and closes off by saying she is "terrified." Moreover, Officer Cook directly observed the exterior of [Appellant's] residence including a spread of notes covering the home to ward off magic or other dangers. **All of the foregoing demonstrates irrefutably the good faith actions of Officer Cook giving rise to a good faith belief that [Appellant] was (or was going to be) a threat to herself, others, and/or the property of others.** [Pa871-Pa872] (emphasis added).

As such, the trial court appropriately entered summary judgment and dismissed Appellant's Amended Complaint as to the Township Respondents.

Further, Appellant produced no evidence, during discovery, to the trial court, or on appeal, to rebut the trial court's determination that Cook's actions conformed with the statutory guidelines for involuntary commitment. See, Ziemba, 275 N.J. Super. at 301. Additionally, Appellant's efforts on appeal to characterize Appellant's statements as to the abilities of those to transform into animals as "analogies" are, at best, disingenuous. Appellant's own words make clear Appellant believed unknown individuals could, "turn into cats or dogs and fly like birds. **They are not 100% human**." [Pa865].

Appellant merely seeks to distract from her failure to produce any relevant evidence by misdirection by stating the sort of "fanciful, frivolous, gauzy or merely suspicious" allegations which the courts have explicitly found insufficient to defeat an application for summary judgment. Id. at 302.

Similarly, when a plaintiff claims bad faith in connection with a civil commitment, she must show beyond mere allegations, an **improper purpose**. Leang v. Jersey City Bd. of Educ., 198 N.J. 557, 595 (2009). **Unsupported allegations** of bad faith, without more, **will not deprive a defendant of immunity**. Id. at 581.

Appellant testified to having no evidence of conspiracy. [Pa870, Pa645]. Moreover, Appellant testified she never witnessed any racist behavior from the Township Respondents. [Pa870, Pa645]. Here, Appellant has not proffered any evidence of an improper purpose beyond mere allegations which all competent evidence expressly refutes. Notably, Appellant has tried to establish bad faith by asserting Escobedo, the screener, repeatedly spoke with Cook during the screening and even told Cook that Appellant was not a candidate for involuntary transfer. See, Appellant's Brief at p. 13. Such contention is factually baseless in the record on appeal; rather, Escobedo was explicit that she stepped out solely to speak to the on-duty psychiatrist, not to Cook. [Da120 at 37:1-14]. Notably, Escobedo testified she only spoke with Cook on route to Appellant's home. [Da114 at 16:3-4]. Further, Escobedo explicitly testified Cook did not ask her to do anything, contrary to Appellant's factually baseless accusation that Cook directed the removal of Appellant from her home. [Da114 at 15:20-21].

Therefore, given Cook, as well as all Township Respondents, sufficiently established a prima facie showing of good faith consistent with N.J.S.A. 30:4-27.7 and Ziemba, the trial court properly concluded the Township Respondents are entitled to absolute immunity, Appellant's Amended Complaint was correctly dismissed with prejudice, and the trial court's decision should be affirmed.

B. The Trial Court Correctly Held Limage and DelValle Acted in Good Faith and Complied with All Procedures During the Entirety of Appellant's Evaluation and Are Entitled to Absolute Immunity.

The trial court correctly determined Limage and DelValle acted in good faith and in accordance with all applicable law and police procedure throughout the entirety of Appellant's mental health evaluation and thus were entitled to absolute immunity. As previously set forth, police officers **who act in good faith** and take "reasonable steps to assess, take custody of, detain or transport an individual for the purposes of mental health assessment or treatment" are entitled to **absolute immunity** as a matter of law. See, N.J.S.A. 30:4-27.7(a).

Importantly, the **full and complete interaction** between Appellant and Respondents (Escobedo, Limage, and DelValle) was recorded on the Officers' Body Worn Cameras. Subsequent to Cook's good-faith referral of Appellant to Trinitas, Escobedo, a New Jersey Certified Mental Health Screener, went to Appellant's residence to conduct an outreach visit on February 12, 2020.

Escobedo was accompanied by Limage and DelValle. Respondents knocked on Appellant's door who opened the door and permitted entry. While Appellant perplexingly argues on appeal the Township Respondents forced their way into Appellant's home, all record evidence supports Appellant welcoming Defendants inside. Explicitly, Appellant testified she did not refuse entry to Respondents:

> Q. ... And did you refuse entry to [Respondents]?
>
> A. No.

A review of the body worn camera footage irrefutably demonstrates the Officers followed all statutory guidelines as a matter of law and fact. Additionally, during the encounter, Appellant continued to report similar things observed and reported to Cook with respect to her neighbor's actions, including the use of magic and turning into various animals to enter Appellant's residence. Specifically, during the interaction, Appellant made the following claims:

a. Feces had been put inside Appellant's car, despite the car being locked inside of a locked garage;
b. Appellant's house was full of "poison" because people were coming in and out of Appellant's house while she was at work;
c. Appellant's neighbors were using magic to enter her residence, steal and damage property, and spread feces undetected by her security cameras and motion sensors at each window.

Escobedo and Appellant conversed for approximately one hour. During this time, Wilson and DelValle were present but had limited conversation and interactions with Appellant.

Escobedo then contacted the attending psychiatrist on duty to report Appellant's statements. Escobedo and Cook did not speak or otherwise communicate at any time prior to, during, or after Appellant's involuntary commitment regarding Appellant. Escobedo was instructed by the attending psychiatrist at Trinitas that Appellant needed to be brought to Trinitas for a medical clearance based on Appellant's statements. Pursuant to N.J.S.A. 30:4-27.6(b), Escobedo executed a Screening Outreach Request for Police Transport.

At this point, DelValle and Limage were obligated, pursuant to all applicable law and police procedure, to transport Appellant to Trinitas for further evaluation. In furtherance thereof, N.J.S.A. 30:4-27.6 establishes various requirements which must be met to permit involuntary commitments and affords immunity to those involved. N.J.S.A. 30:4-27.6 states in pertinent part:

> A State or local **law enforcement officer shall take custody of a person and take the person immediately and directly to a screening service if**:
>
> ...
>
> (b) **A mental health screener has certified on a form** prescribed by the division that based on a screening outreach visit **the person is in need of involuntary commitment** to treatment **and has requested the**

> **person be taken** to the screening service for a complete assessment (emphasis added).

As written, N.J.S.A. 30:4-27.6 is clearly disjunctive; **law enforcement needs only one of the grounds listed** in the statute to take a person to a screening service. Here, it is uncontroverted Escobedo, a New Jersey Certified Mental Health Screener and employee at Trinitas, executed a "Screening Outreach Request for Police Transport and Supervision" in accordance with N.J.S.A. 30:4-27.6(b). Specifically, Escobedo certified she had made an outreach visit and based thereon believes Appellant "is in need of involuntary commitment" as she "is dangerous to self, others, or property because of a mental illness and is unwilling to go to the screening service" on her own.

Thus, as summarized by the trial court, "as demonstrated in the record, Escobedo specifically required assistance from law enforcement to transport [Appellant] to [Trinitas] for a complete assessment." [Pa872]. Clearly, in accordance with N.J.S.A. 30:4-27.6, the Township Respondents acted in good faith and in accordance with applicable law, thus entitling them to absolute immunity.

Specifically, after Escobar's determination Appellant should be taken to Trinitas for further evaluation, the Officers took good faith and reasonable steps to transport Appellant, including explaining to Appellant what was happening, waited as Appellant to put her shoes on, and allowed Appellant to lock her front

door on the way out. The trial court explicitly noted the good faith nature of the reasonable actions undertaken by the Officers beyond what was required:

> The record further demonstrates that Officer DelValle continued to provide appropriate, if not **above that which was required**, in explaining to [Appellant] why she was being brough to Trinitas. Both Officers DelValle and Limage requested she put on her shoes to attend the evaluation that the psychiatrist had required so that she could leave the house. The record of their pausing to allow [Appellant] to take assurance in the proper exiting of her house by setting her alarm and locking it down further **demonstrates not only their good faith efforts, but also a conscientious concern for [Appellant's] own reassurance that they were simply doing their job, which included her well-being first and foremost**, as they ensured she left the house properly secured. No restraints or handcuffs were needed.

[Pa872] (emphasis added).

DelValle again explained to Appellant, Respondents were present on behalf of doctors who wanted her brought to Trinitas. Upon EMT's arrival to transport Appellant to Trinitas, Escobedo explained the situation to the EMTs. During this time, Limage asked Appellant to put her shoes on. DelValle again advised Appellant it is the psychiatrist's decision to bring her in for evaluation and again requested Appellant put her shoes on. Due to Appellant's protestations, the Officers directed Appellant towards the door approximately ninety (90) minutes after Respondents first arrived. The Officers paused on the way out and permitted Appellant to put the house alarm on and lock her front

door upon exiting. After exiting, Appellant sat on the gurney and allowed EMTs loaded her into the ambulance.

Per Appellant, Respondents at no time physically touched nor laid a hand on Appellant, nor did the Officers use any force whatsoever. Appellant further testified she left the house voluntarily. Clearly, Appellant's own testimony provided the foundation for the trial court's holding "that no Officer ever used force on [Appellant], did not touch her physically or lay a hand on her." [Pa872].

The Officers departed Trinitas after dropping Appellant off at the Emergency Department. Thereafter, Limage completed an Investigation Report outlining the events of Appellant's involuntary commitment. It is clear the Township Respondents fully complied with applicable law and departmental policy regarding involuntary commitment procedures.

Without doubt, the Township Respondents acted in good faith at all times and are thus entitled to absolute immunity. The Officers accompanied a certified mental health screener to Appellant's home. After spending over an hour speaking with Appellant and consulting with Trinitas' psychiatrist, Escobedo certified the need for Appellant to be taken to Trinitas for further evaluation. Thereafter, the Township Respondents complied with all applicable rules and policies regarding transporting an individual to Trinitas.

Clearly, all material facts indisputably demonstrate the Township Respondents acted reasonably and in good faith based on the record on appeal and no genuine issues of fact suggest otherwise. No reasonable factfinder could view the body camera footage and conclude anything other than these behaviors showcasing the very behavior that should be lauded. All record facts unequivocally support the trial court's determination of "the good faith actions of Officers Limage and DelValle." [Pa872].

Therefore, based on the foregoing, the trial court correctly determined the Limage and DelValle, as all Township Respondents, acted in good faith and are entitled to absolute immunity.

C. The Trial Court Correctly Determined the Township Is Immune as a Matter of Law.

Similarly, the trial court appropriately concluded the Township is absolutely immune from liability as a matter of law. Because, as the trial court found, all individually named police offers are properly afforded absolute immunity in accordance with N.J.S.A. 30:4-27.1, et seq., that statutory immunity also expressly shields the Township. Explicitly, **immunity under N.J.S.A. 30:4-27.1 has been extended to municipalities who are sued under a theory of *respondeat superior* for the actions of their employees**. See generally, Ziemba, 275 N.J. Super. 293. Further, our Supreme Court, nearly a quarter century ago, also recognized a public entity would be shielded by any immunity

or defense which would shield its employee from liability. Tice v. Cramer, 133 N.J. 347, 355 (1993).

As such, being that Cook, Limage, and DelValle are shielded by the specific immunity provisions of N.J.S.A. 30:4-27.7(a) as a matter of law, it necessarily follows all claims pled against the Township were properly dismissed by the trial court. Therefore, the Township is entitled to immunity as a matter of law and Appellant's Complaint should be dismissed with prejudice.

II. THE TOWNSHIP RESPONDENTS ARE ENTITLED TO QUALIFIED IMMUNITY UNDER THE NEW JERSEY TORT CLAIMS ACT.

Notwithstanding the Township Respondents are entitled to absolute immunity, the Township Respondents are also entitled to qualified immunity. The Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3, "re-established" sovereign immunity. D.D. v. Univ. of Med. & Dentistry of N.J., 213 N.J. 130, 134 (2013) (citation and alteration omitted). When enacting the TCA, the Legislature declared that it is "the public policy of this State that public entities shall only be liable for their negligence within the limitations of this act and in accordance with the fair and uniform principles established herein." N.J.S.A. 59:1-2.

To that end, "[i]t is well recognized that, through the TCA, the Legislature established that '[g]enerally, immunity for public entities is the rule and liability is the exception.'" Nieves v. Off. of the Pub. Def., 241 N.J. 567, 575 (2020)

(quoting Fleuhr v. City of Cape May, 159 N.J. 532, 539 (1999)). "The statute strikes a balance between allowing municipal governments to perform their necessary functions without an avalanche of tort liability while holding public entities accountable for injuries that are a direct result of their wrongful conduct." Lee v. Brown, 232 N.J. 114, 127 (2018).

Toward that end, N.J.S.A. 59:2-1(a) states, "[e]xcept 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." But N.J.S.A. 59:2-2(a) provides, "[a] public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances." That said, "[a] public entity is not liable for an injury resulting from an act or omission of a public employee where the public employee is not liable." N.J.S.A. 59:2-2(b).

A. Cook is Immune under the TCA for his Discretionary Actions.

The TCA precludes liability against the Township Respondents because the Township Respondents properly exercised discretion as to all determinations and interactions with Appellant. N.J.S.A. 59:3-2(a) sets forth that, "[a] public employee is not liable for an injury resulting from the exercise of judgment or discretion vested in him." See also N.J.S.A. 59:2-3 (parallel provision

containing identical language as to public entities). In application, this statute cloaks public entities and employees with immunity for decisions that require, "the exercise of personal deliberations and judgment." Costa v. Josey, 415 A.D. 337 (1980).

New Jersey courts have clarified the distinction, "between a planning-level or discretionary decision, which is generally entitled to immunity, and an operational or ministerial action, which is not." Kolitch v. Lindedahl, 100 N.J. 485, 495 (1985). "A 'discretionary act . . . calls for the exercise of personal deliberations and judgment, which in turn entails examining the facts, reaching reasoned conclusions, and acting on them in a way not specifically directed.'" S.P. v. Newark Police Dep't, 428 N.J. Super. 210, 230 (App. Div. 2012) (quoting Kolitch, 100 N.J. at 495). In contrast, a ministerial act not entitled to immunity under the TCA "is 'one which a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety of the act being done.'" Parsons v. Mullica Twp. Bd. of Educ., 440 N.J. Super. 79, 91-92 (App. Div. 2015), aff'd 226 N.J. 297 (2016) (quoting S.P., 428 N.J. Super. at 231).

Here, Cook's investigation and referral to the screening service are discretionary decisions entitled to qualified immunity pursuant to the TCA.

Cook's decisions were based upon thoughtful analysis and deliberations such that discretionary immunity attaches. For example, Cook had to consider the fact Appellant was making fanciful claims of magic, humans being able to transform into animals, individuals entering and exiting her home without a trace to vandalize/destroy her property, and Appellant's belief her home was being poisoned. Further, Cook had to consider Appellant's previous encounters with police and her neighbors, including Appellant mooning young children, screaming obscenities, and thrusting her middle finger.

As Cook explicitly testified, he exercised his discretionary authority to request the evaluation based on these observations Cook observed, the conversations Cook had with Appellant and Appellant's neighbors, and the emails Cook received from Appellant. Given these observations, Cook "felt [Appellant] was having a crisis and . . . felt she needed help." As such, all evidence supports the determination that Cook is entitled to TCA qualified immunity and the trial court's determination should be upheld.

B. Limage & DelValle are Immune under the TCA for their Actions to Enforce New Jersey Law.

Moreover, the Officers are also entitled to the TCA's qualified immunity for their good faith actions enforcing the law. The TCA provides qualified immunity with respect to the enforcement of a law: "A public employee is not liable if he acts in good faith in the execution or enforcement of any law." N.J.S.A. 59:3-3. A public

employee is entitled to this immunity if the employee can establish either that his or her conduct was "objectively reasonable" or that he or she acted with subjective good faith. Fielder v. Stonack, 141 N.J. 101, 131-32 (1995) (citations omitted). In determining whether an employee has established qualified immunity under N.J.S.A. 59:3-3, the court applies the same standards of objective reasonableness used in federal civil rights cases. Id. at 131-32; see also Wildoner v. Borough of Ramsey, 162 N.J. 375, 387 (2000). If there are disputed facts that underlie the claim, the TCA's applicability may require submission to a jury. Fielder, 141 N.J. at 132 (quoting Evans v. Elizabeth Police Dep't, 236 N.J. Super. 115, 117 (App. Div. 1983)).

A defendant's entitlement to qualified immunity based on objectively reasonable conduct "is a question of law to be decided [as] early in the proceedings as possible, preferably on a properly supported motion for summary judgment or dismissal." Wildoner, 162 N.J. at 387 (referring to qualified immunity claims under 42 U.S.C. § 1983 and observing that the same standards apply to questions of objective reasonableness under N.J.S.A. 59:3-3); Fielder, 141 N.J. at 131-32 (stating public employees are entitled to summary judgment under N.J.S.A. 59:3-3 if they can establish that their conduct was objectively reasonable).

A court must examine whether the actor's allegedly wrongful conduct was objectively reasonable in light of the facts known to him or her at the time.

State v. Shannon, 222 N.J. 576, 602 (2015), cert. denied, 578 U.S. 940, 136 S. Ct. 1657, 194 L. Ed. 2d 800 (2016) (quoting State v. Handy, 206 N.J. 39, 46-47 (2011). Objective reasonableness will be established if the actor's conduct did not violate a **clearly established** constitutional or statutory right. Gormley v. Wood-El, 218 N.J. 72, 113 (2014) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L. Ed. 2d 396, 410 (1982)).

In this matter, all record evidence makes clear Limage and DelValle acted objectively reasonable in enforcing New Jersey law. Specifically, as verified by the body camera footage, acted properly and in good faith in enforcing New Jersey's civil commitment statute as required by N.J.S.A. 59:3-3. As set forth hereinabove, the Officers were required to bring Appellant to Trinitas for further evaluation once the screener executed a "Screening Outreach Request for Police Transport and Supervision" in accordance with N.J.S.A. 30:4-27.6(b). Therefore, in accordance with N.J.S.A. 30:4-27.6, the Township Respondents acted in good faith and as required by applicable law, thus entitling them to qualified immunity under the TCA.

C. As all Employees are Entitled to Qualified Immunity, the Township is Similarly Immune under the TCA.

Given the foregoing, the Township is immune under the TCA as all individual employees are entitled to qualified immunity. "A public entity is not

liable for an injury resulting from an act or omission of a public employee where the public employee is not liable." N.J.S.A. 59:2-2(b); see also Tice, 133 N.J. at 355 ("when the public employee is not liable, neither is the entity."); Harry A. Margolis and Robert Novack, Claims Against Public Entities, cmt. 5 on N.J.S.A. 59:2-2 (Gann 2012) ("[T]he entity will be shielded by any immunity or defense which would shield the employee from liability.").

Although there exists an exception to the application of immunity provision with respect to Cook should there be a finding of willful misconduct, N.J.S.A. 59:2-10 expressly provides, "[a] public entity is **not liable for** the act or omission of a public employee constituting a crime, actual fraud, actual malice, or **willful misconduct**." (emphasis added). Said immunity provision has been held to be sufficiently broad so as to immunize a municipality for alleged willful and malicious conduct of even a Township attorney. Martin v. Twp. of Rochelle Park, 144 N.J. Super. 216, 222 (App. Div. 1976). Similarly, the New Jersey District Court has held that immunity provision would shield a public entity from vicarious liability for an employee's battery or intentional infliction of emotional distress. Ward v. Barnes, 545 F. Supp. 2d 400, 420-21 (D.N.J. 2008).

In the present matter, the record is entirely void of any evidence demonstrating negligence, much less, willful misconduct on the part of Cook or

any other Township employee. Notwithstanding, even if the Court were to find evidence demonstrating willful misconduct on behalf of the defendant officers, the Township would still be shielded under Ziemba and N.J.S.A. 59:2-10.

As set forth above, all individual employees are entitled to qualified immunity under the TCA. Therefore, the Township cannot be liable where its employees are not liable.

III. THE TRIAL COURT CORRECTLY DETERMINED THE TOWNSHIP RESPONDENTS DID NOT VIOLATE APPELLANT'S CIVIL RIGHTS.

A. N.J.S.A. 2C:30-6 is Inapplicable and Cannot Provide a Basis for Civil Relief as to the Township Respondents.

Appellant seemingly maintains, absent any legal support, to proceed with a civil cause of action based on provisions of the New Jersey criminal code. However, it is well-settled that private citizens are generally not allowed "to enforce the state penal laws," and "[v]iolations of these laws 'are left to the agencies charged with the enforcement of the criminal law.'" Matter of State Comm'n of Investigation, 108 N.J. 35, 42 (1987). While not applicable in this matter, a private cause of action could be implied from the legislative intent of a state penal law. Ibid.

Here, Appellant purports to invent her own cause of action based on N.J.S.A. 2C:30-6, which creates a criminal offense where:

> [a] public servant acting or purporting to act in an official capacity . . . knowing that his conduct is unlawful, and acting with the purpose to intimidate or discriminate against an individual or group of individuals because of race, color, religion, gender, handicap, sexual orientation or ethnicity . . . subjects another to unlawful arrest or detention, including, but not limited to, motor vehicle stops, search, seizure, dispossession, assessment, lien or other infringement of personal or property rights; or denies or impedes another in the lawful exercise or enjoyment of any right, privilege, power or immunity.
>
> [N.J.S.A. 2C:30-6(a).]

Neither the statute's explicit language nor the legislative nor procedural history evinces any intent by the Legislature to permit a private cause of action. Notably, as recently recognized by the District Court of New Jersey:

> **[N]o New Jersey state court** . . . **has found an implied private cause of action under [N.J.S.A. 2C:30-6]**, and it does not appear from either the text of the statute or its legislative history that any such private cause of action was intended. Indeed, given the existence of private causes of action under the NJCRA and similar statutes for violations of a citizen's rights by those acting under color of state law, it is doubtful that any such private cause would be necessary as the statute appears to have been created merely to create a criminal penalty to coincide with the NJCRA's civil cause of action for certain egregious examples of actionable denials of constitutional rights.
>
> [Henry v. Essex Cty. Prosecutor's Office, Civ. No. 16-8566, 2017 U.S. Dist. LEXIS 26673, 2017 WL 1243143, at *9 (D.N.J. Feb. 24, 2017) (emphasis added).]

Based on the foregoing, Appellant has no legal basis on which to rest a legal claim under N.J.S.A. 2C:30-6 and this argument should be disregarded by the Court. Notwithstanding same, Appellant at no time presented evidence for consideration which would support any claim of kidnapping, and the trial court below never made any factual findings which would support an inference the Township Respondents kidnapped Appellant.

Additionally, even assuming N.J.S.A. 2C:30-6 was applicable or a valid civil cause of action to be asserted, N.J.S.A. 2C:30-6 imposes culpability only where an individual acts "knowing" that his conduct was unlawful. Not only has Appellant failed to set forth any competent evidence showing any unlawful conduct, but Appellant failed to produce any evidence asserting same was done knowingly. Generally, "[a] person acts knowingly with respect to the nature of his conduct . . . if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence." N.J.S.A. 2C:2-2(b)(2). Simply, Appellant's clear failure to produce any evidence to support the Township Respondents' mental states, or any evidence whatsoever of unlawful conduct, renders such claim fatal.

Further, even if such relief were permissible, Appellant's claim fails due to Appellant's failure to produce any evidence in support of such claim.

Therefore, Appellant cannot seek civil relief based upon N.J.S.A. 2C:30-6 as a matter of law.

B. Appellant's Equal Protection Rights Were Not Violated by the Township Respondents.

Notwithstanding the Township Respondents' entitlement to absolute and qualified immunities, Appellant failed to properly demonstrate any claim for violation of equal protection. The New Jersey Constitution declares, "[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." N.J. Const. art. I, ¶ 1.

As such, the New Jersey Civil Rights Act (the "NJCRA"), N.J.S.A. 10:6-1 to -2, provides for civil actions for civil rights violations. The NJCRA provides in pertinent part:

> Any person who has been deprived of any substantive due process or equal protections rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief.
>
> [N.J.S.A. 10:6-2(c).]

"The principle of substantive due process, founded in . . . our State Constitution, N.J. Const. art. I, ¶ 1, protects individuals from the 'arbitrary exercise of the powers of government' and 'governmental power being used for the purposes of oppression.'" Felicioni v. Admin. Office of the Courts, 404 N.J. Super. 382, 392 (App. Div. 2008), abrogated in part by Perez v. Zagami, LLC, 218 N.J. 202 (2014) (quoting Daniels v. Williams, 474 U.S. 327, 331, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986)).

"The substantive due process doctrine 'does not protect individuals from all governmental actions that infringe liberty or injure property in violation of some law.'" Rivkin v. Dover Twp. Rent Leveling Bd., 143 N.J. 352, 366 (1996) (quoting PFZ Properties, Inc. v. Rodriguez, 928 F.2d 28, 31 (1st Cir. 1991)). "Rather, substantive due process is reserved for the most egregious governmental abuses against liberty or property rights, abuses that 'shock the conscience or otherwise offend . . . judicial notions of fairness . . . [and that are] offensive to human dignity.'" Ibid. (quoting Weimer v. Amen, 870 F.2d 1400, 1405 (8th Cir. 1989)). For a right to be clearly established, "[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Gormley, 218 N.J. at 113 (quoting Anderson v. Creighton, 483 U.S. 635, 640 (1987)); see also, Lapolla v. Cty. of Union, 449 N.J. Super. 288, 304-05 (App. Div. 2017).

For claims under art. I, § 1 of the New Jersey Constitution, the courts use a balancing test which considers "the nature of the affected right, the extent to which the governmental Friction intrudes upon it, and the public need for the restriction." Greenberg v. Kimmelman, 99 N.J. 552, 567 (1985); see also J.D. ex rel. Scipio-Derrick v. Davy, 415 N.J. Super. 375, 386-87 (App. Div. 2010). Appellant must demonstrate that the Township Respondents' acts (1) had a discriminatory effect on Appellant and (2) the acts were motivated by a discriminatory purpose. Major Tours, Inc. v. Colorel, 799 F.Supp.2d 376, 391 (D. N.J. 2011) (citing Bradley v. U.S., 299 F.3d 197, 205 (3d Cir. 2002); see also State v. Segars, 172 N.J. 481 (2002).

In this case, the record is entirely void of any evidence indicating the Township Respondents exhibited discriminatory behavior against Appellant beyond mere unverified allegations and uncorroborated assertions of Appellant's counsel. As is Appellant's pattern, Appellant has failed to submit any evidence in support thereof and cannot because no such evidence exists. By way of example, nowhere in the record is any evidence indicating, let alone establishing, the Township Respondents "wanted to contain [Appellant] because she was black Haitian woman filing too many complaints." Appellant Brief, p. 22. This represents precisely the sort of baseless, self-serving statement which Appellant seeks to rely on without providing any evidence to support same.

Further, as concluded by the trial court, Appellant submitted no evidence showing any alleged deprivation against her was racially motivated. Moreover, Appellant **explicitly testified to never witnessing any racist behavior from the Township Respondents**. [Pa870, Pa645]. Specifically, Appellant testified Cook never made any racist statements:

> Q. ... Did Detective Donald Cook ever make any racist statements to you or in your presence?
> . . .
> A. He never made any -- no.

[Pa870, Pa645].

Appellant further testified neither of the Officers present at Appellant's mental health screening made any racist statements:

> Q. Now, the other officers that were there on the night of February 12, 2020, did they ever make any racist statements to you or in front of you?
>
> A. No.

[Pa870, Pa645].

As such, as determined by the trial court, "the record of **[Appellant's] own unrefuted deposition testimony demonstrates unquestionably that no violation of any civil rights, no discrimination, no racial motives or motivation**." [Pa873] (emphasis added). Therefore, given the total lack of record evidence, Appellant failed to establish a deprivation of her constitutional

rights and the trial court properly entered summary judgment as to the Township Respondents.

C. Article 1, § 22 is Inapplicable and Appellant's Claim Fails as a Matter of Law.

While not specifically addressed by the trial court, Appellant improperly asserts a cause of action under article 1, § 22 of the New Jersey Constitution which necessarily fails as a matter of law. Article I of the New Jersey Constitution provides in relevant part:

> A victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system. A victim of a crime shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony as a witness, the victim is properly sequestered in accordance with law or the Rules Governing the Courts of the State of New Jersey. A victim of a crime shall be entitled to those rights and remedies as may be provided by the legislature. For the purposes of this paragraph, **"victim of a crime" means**: a) **a person who has suffered** physical or psychological **injury or has incurred loss** of or damage to personal or real property **as a result of a crime or an incident involving another person operating a motor vehicle while under the influence of drugs or alcohol**, and b) the spouse, parent, legal guardian, grandparent, child or sibling of the decedent in the case of a criminal homicide.
>
> [N.J. Const., art. I, ¶ 22].

In this case, Appellant fails entirely to allege that she was the victim of a crime or incident involving another person operating a motor vehicle while under the influence of drugs or alcohol, or that she is related to an individual in

the case of criminal homicide. While Appellant perplexingly claims this section does not apply solely to motor vehicle crimes, Appellant conveniently omits the permanent language defining the victim of a crime for purposes of this section – "person who has suffered . . . as a result of . . . another person operating a motor vehicle." See, N.J. Const., art. I, ¶ 22.

Plainly, Appellant has put forth no evidence in support of such claim and Appellant's efforts to continue pursuing same on appeal is either willfully ignorant or an attempt to intentionally mislead the court.

IV. THE TRIAL COURT CORRECTLY HELD THE RECORD CONTAINED NO EVIDENCE TO SUPPORT APPELLANT'S "FALSE LIGHT" CLAIM.

The trial court properly determined Appellant's "false light" claim fails and Appellant failed to produce any evidence to support same. Similarly, Appellant cannot demonstrate the tort of false light and thus same must be dismissed. As set forth hereinabove, given all allegedly tortious conduct related to the Township Respondents' good faith efforts as Appellant's mental health screening, the Township Respondents are absolutely immune under N.J.S.A. 30:4-27.6(a). Further, Appellant has failed to vault the threshold necessary to make a tort claim against a public entity/employees under the TCA. Moreover, as set forth herein, the Township Respondents are entitled to qualified immunity pursuant to the TCA, further shielding the Township Respondents from liability.

Nevertheless, the tort of false light has two elements: (1) the false light in which the other was placed would be highly offensive to a reasonable person; and (2) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Leang, 198 N.J. at 588-89 (citing Romaine v. Kallinger, 109 N.J. 282, 294 (1988)). The tort is rooted in a plaintiff's interest "'in not being made to appear before the public in an objectionable false light or false position, or in other words, otherwise than he is." Romaine, 109 N.J. at 294 (quoting Rest. 2d of Torts, § 652E, cmt. b). A fundamental requirement of a false light tort claim is that the disputed publicity is false, and thus a requirement is that the offending party must make "'a major misrepresentation of plaintiff's character, history, activities, or beliefs."' G.D. v. Kenny, 205 N.J. 275, 307-08 (2011) (quoting, Romaine, 109 N.J. at 295).

The published material must "invade a protectable privacy interest" and constitute a "major misrepresentation of [the plaintiffs'] character, history, activities or belief." Romaine, 109 N.J. at 295-97. Here, Appellant has failed to produce any evidence demonstrating the Township Respondents made **any** public statement as to Appellant. As the trial court concluded, "[n]o 'false light' claim presents in the record . . . [and Appellant's] opposition [to summary judgment] at no time sets forth sufficient argument to sustain that claim under

the record." [Pa873]. Rather, the record on appeal merely evinces statements made by Respondents to each other for the purposes of obtaining and facilitating medical care for Appellant.

As Appellant has failed to demonstrate the Township Respondents made any public statement as to Appellant, it necessarily follows the Township Respondents could not have made a major misrepresentation as to Appellant. Given the foregoing, Appellant has failed to prove a false light tort and it is respectfully submitted the trial court's decision should be affirmed in its entirety.

V. APPELLANT PRESENTED NO EVIDENCE OR LEGAL BASIS TO SUSTAIN A CLAIM FOR VIOLATION OF THE NEW JERSEY LAW AGAINST DISCRIMINATION.

While never addressed by the trial court, the Township Respondents did not discriminate against Appellant and the trial court's determination should be affirmed on appeal. Pursuant to the New Jersey Law Against Discrimination ("LAD"), N.J.S.A. 10:5-1 et seq., practices that discriminate against any of the State's inhabitants on the grounds of race or disability, "are matters of concern to the government" and should be "liberally construed in combination with other protections available under the laws of this State" to provide compensatory and punitive damages for violations of the LAD. N.J.S.A. 10:5-3.

On appeal, Appellant endeavors to direct the Court to case law and statutes which do not have any bearing to the instant action. Specifically, Appellant's repeated citation to irrelevant case law applicable in the employment context should be disregarded by the Court. For the sake of completeness, Appellant's LAD claims of discrimination and retaliation necessarily fail as a matter of law.

In order for Appellant to succeed in a claim of disability discrimination, she must show that (1) she had a disability, (2) she was otherwise qualified to participate in the activity or program at issue, and (3) she was denied the benefits of the program or otherwise discriminated against because of her disability. Wotjkowiak v. N.J. Motor Vehicle Comm'n, 439 N.J. Super. 1, 15 (App. Div. 2015); see also N.J.S.A. 10:5-4.

Under N.J.S.A. 10:5-12(d), in order for Appellant to establish a prima facie case of discriminatory retaliation she must demonstrate that (1) Appellant engaged in a protected activity known by Respondents; (2) thereafter Respondents unlawfully retaliated against them; and (3) Appellant's participation in the protected activity caused the retaliation. See, Craig v. Suburban Cablevision, 140 N.J. 623, 629-60 (1995); citing Jamison v. Rockaway Twp. Bd. of Educ., 242 N.J. Super. 436, 455 (App. Div. 1990) and Wrighten v. Metro. Hosp., Inc., 726 F.2d 1346, 1354 (9th Cir. 1984). However, "as a condition precedent to a retaliation claim under the LAD, a plaintiff **bears the burden of proving** that his or her initial complaint that

triggered the claimed retaliation was filed reasonably and in good faith in the first instance." Rios v. Meadowlands Hosp. Med. Ctr., 463 N.J. Super 280, 289 (App. Div. 2020) (quoting Carmona v. Resorts Int'l Hotel, Inc., 189 N.J. 354, 370 (2007)).

Appellant's argument she established a *prima facie* case of LAD discrimination and retaliation fails on its face. In support of her claim on appeal, Appellant cites the burden-shifting analysis set forth by the Supreme Court in McDonnell Douglas v. Green, 411 U.S. 792 (1972). In short, Appellant argues she submitted sufficient circumstantial evidence to show that, a "brown skin Haitian lady did not get the same treatment as a white woman," and thus discrimination is the sole basis for her being involuntarily committed. Even assuming *arguendo* Appellant had submitted any circumstantial evidence, all statements upon which Appellant relies directly contradict the verifiable events as captured by body worn cameras.

In this matter, Appellant has submitted no evidence whatsoever regarding discrimination or which would implicate a retaliation claim. Rather, Appellant repeatedly she was informed by the Township Respondents that Appellant had filed too many police reports against her neighbors. However, Appellant has put forth no evidence to show said complaints provided the underlying basis by which the Defendants took steps to follow-up on Appellant's well-being

and move forward with a statutory involuntary commitment procedure. See, Carmona, 189 N.J. at 373-74.

In fact, Appellant's own testimony demonstrates no racist behavior ever took place. Plainly, Appellant testified Cook never made any racist statements. [Pa870, Pa645]. Appellant further testified neither of the Officers present at Appellant's mental health screening made any racist statements. [Pa870, Pa645].

Given Appellant's entire discrimination rests on baseless assertions of racism, and Appellant has explicitly testified to never experiencing any racist treatment by any of the Township Respondents, same represents another fatal deficiency to Appellant's discrimination claim.

Moreover, Appellant's citation to unpublished and irrelevant case law should be disregarded by the Court. Appellant, either intentionally or negligently, misrepresents the Appellate Division's unpublished decision in Upchurch v. City of Orange Twp., Docket No. A-0236-16T4, 2018 N.J. Super. Unpub. LEXIS 2070, 2018 WL 4374276 (App. Div. Sept. 14, 2018). In Upchurch, the plaintiff was a police lieutenant who filed a complaint alleging LAD violations. Ibid. The plaintiff appealed from the trial court's denial of plaintiff's summary judgment motion, grant of defendants' summary judgments, and dismissal of the complaint with prejudice. Id. at *2. On appeal, the Appellate Division ultimately rejected all of plaintiff's arguments as meritless except one

– plaintiff's claim of supervisory sexual harassment. Id. at *3. The Appellate Division determined the lower court, "granted summary judgment on plaintiff's . . . claim on the narrow ground . . . defendants were unaware of the harassment."

Here, Appellant cites Upchurch for the proposition that a public entity's "failure to have a policy that prevents discrimination is a fatal flaw." Appellant's Brief at p. 17. Taking Appellant's argument to its logical conclusion, any policy that fails to prevent all discrimination would be fatally deficient. Clearly, such argument is unreasonably and legally unsupported. Setting aside the logical fallacy of Appellant's argument, it misrepresents the nature of the Appellate Division's opinion in Upchurch. Seemingly, Appellant relies on the Appellate Division's statement that:

> Significantly, the trial court never mentioned whether the Orange defendants had a policy in place to prevent sexual harassment. It does not appear from the appellate record the Orange defendants included or argued such a policy in support of their summary judgment motion. That flaw is fatal.
>
> [Upchurch, 2018 N.J. Super. Unpub. LEXIS 2070, at *7.]

A plain reading of the Appellate Division's unpublished decision makes obvious the incorrect nature of Appellant's conclusion. Contrary to Appellant's representations, the Appellate Division's remand was expressly premised on the record not containing information as to a policy being in place. Here, that is not the case as the Township Respondents submitted same in support of summary

judgment and demonstrated, as held by the trial court, the Township Respondents stringent compliance with same. Notwithstanding, at no point did Appellant present any evidence for the trial court's consideration which would support Appellant's improper reading the Township Respondents' failed to have a policy in place. As such, Upchurch is unpublished, distinguishable, and lends no legal support to Appellant's misreading.

Therefore, the Township Respondents are entitled to summary judgment as a matter of law and the trial court's decision should be affirmed in full.

VI. THE TRIAL COURT CORRECTLY HELD APPELLANT FAILED TO PROVE A CLAIM OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

The trial court correctly determined Appellant failed to provide a claim of intentional infliction of emotional as Appellant failed to submit any evidence to support such claim. Under New Jersey law, in order for a plaintiff to establish a claim for intentional infliction of emotional distress, she must show; (1) defendant acted intentionally; (2) in such a manner that the conduct was "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community"; (3) that defendant's actions proximately caused plaintiff's emotional distress; and (4) the emotional distress was so severe that no reasonable person could be expected to endure it. Segal v. Lynch,

413 N.J. Super. 171, 191 (App. Div. 2010) (quoting, Buckley v. Trenton Saving Fund Soc., 111 N.J. 355, 367 (1988)); see also Aly v. Garcia, 333 N.J. Super. 195, 204-05 (App. Div. 2000).

In this matter, Appellant wholly failed to set forth any competent record evidence demonstrating Appellant suffers emotional distress. Appellant failed to produce an expert or any medical records related to treatment related to emotional distress. In fact, the only evidence proffered by Appellant demonstrates the opposite. Appellant explicitly testified she suffered no injuries and she is not being treated by any medical professional as a result of the involuntary commitment. As such, the trial court properly determined Appellant's claim failed as a matter of law. As the trial court stated, "the record . . . demonstrates no evidence, and certainly does not demonstrate sufficient evidence to sustain any claim for emotional distress." [Pa873].

Given Appellant's failure to produce any, there is no basis to conclude Appellant suffered any damages as a result of this incident and it is respectfully submitted the trial court's decision should be affirmed in its entirety.

VII. APPELLANT'S CLAIM OF STATE CREATED DANGER FAILS AS A MATTER OF LAW AS TO THE TOWNSHIP RESPONDENTS.

Finally, despite not being ruled on by the lower court, Appellant's claim of "state created dangers" is inapplicable as against the Township Respondents

and as such the entry of summary judgment should be affirmed. Appellant claims a deprivation of her rights under art. IV, § VII, ¶ 5 of the New Jersey Constitution, which provides that:

> No law shall be revived or amended by reference to its title only, but the act revived, or the section or sections amended, shall be inserted at length. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act.
>
> [N.J. Const., art. IV, § VII, ¶ 5].

Given that this provision is a limitation upon the exercise of "the legislative power," it must be strictly construed. Twp. of Landis v. Div. of Tax Appeals of State Dept. of Taxation and Finance, 137 N.J.L. 224, 228 (E. & A. 1948). The purpose of the provision is the "'suppression of deceptive and fraudulent legislation, the purpose and meaning of which (can) not be discovered either by the legislature of the public without an examination of and a comparison with other statutes.'" Twp. of Princeton v. Bardin, 147 N.J. Super. 557, 568 (App. Div. 1977); quoting Jersey City v. Martin, 127 N.J.L. 18, 23 (E. & A. 1940). Thus, the provision is not meant to "'obstruct or embarrass legislation,' but rather 'to secure a fair and intelligent exercise of the lawmaking power.'" Ibid.

In Bradley & Currier Co. v. Loving, the defendant unsuccessfully argued before our Supreme Court that a statute was invalid in part because the statute referenced on a pre-existing mechanics' lien law and failed to insert the relevant portions of that law in the new statute. The Supreme Court rejected the argument, stating:

> This supplement does not amend the original act, except in the sense that every beneficial addition to a law must, of necessity, be an improvement of it. This supplement refers to the primary act simply for the purpose of defining its own subject, and such reference is not essential to its efficacy…. The purpose of this provision of the constitution was to prevent covert legislation; and consequently whenever the later law is completely intelligible in itself, and without comparison with the act to which, in a general way, it refers, such legislation is plainly unobjectionable. Most of the supplements to our laws now standing on our statute-book have been build upon this plan, and consequently this entire class would be invalidated by the adoption of the criterion claimed by the Defense in this case. Supplements to laws, from their very nature, must, either by expression or implication, refer to their antecedents, to whose scheme they are designed as complements; and all legislation since the establishment of the amended constitution of the state has been constructed on this theory. Such statutory enactments must be regarded as complete in themselves, and consequently as unprohibited.
>
> [Bradley & Currier Co. v. Loving, 54 N.J.L. 227, 228 (1982)].

In this case, to the extent Appellant challenges the constitutionality of N.J.S.A. 30:4-27.5, same was not drafted or enacted by the Township

Respondents. Thus, the Township Respondents' connection to this claim is tenuous at best, and thus Appellant cannot properly maintain such a claim against the Township Respondents.

Moreover, Appellant has failed to demonstrate any basis which establishes the legislation is unconstitutional; Appellant has failed to articulate how N.J.S.A. 30:4-27.5 is in any way deceptive or fraudulent. Because Appellant has not articulated why the statute is unconstitutional and how said unconstitutionality is in any way a claim against the Township Respondents, Appellant's state-created danger claim fails as a matter of law and the trial court's entry of summary judgment should be affirmed in its entirety.

CONCLUSION

Based upon the foregoing, the Township Respondents respectfully submit the Superior Court's decision must be upheld in its entirety.

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By: /s/ Gregory D. Emond
Gregory D. Emond, Esq.

Date: November 12, 2024

ARTLUDE POINT DU JOUR **PLAINTIFF** **V** **TOWNSHIP OF UNION, TRINITAS REGIONAL MEDICAL CENTER HOSPITAL, DETECTIVE DONALD COOK, LIMAGE WILSON, OFFICER DELVALLE, BADGE #3259, SYLVIA ESCOBAR, & JOHN DOES, 1-10 (FICTITIOUS NAMES, PRESENTLY J UNKNOWN), STATE OF NEW JERSEY, HARRY ROES, 1-10 (FICTITIOUS NAMES, PRESENTLY UNKNOWN)** **DEFENDANTS**	**SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION-A-000697-23** **SAT BELOW:** **HON. DANIEL R. LINDEMANN, JSC** **SUPERIOR COURT OF NEW JERSEY** **LAW DIVISION:UNION COUNTY** **Docket No: UNN-L-45-21** **Submitted: November 27, 2024**

REPLY BRIEF OF ARTLUDE POINT DU JOUR

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Answer by Trinitas Regional Medical Center and Escobar dated 8/3/2021 (Attached at Pa0051)

Consent Order Vacating default 7/28/2021 (Attached at Pa0049)

Exhibit C to Certification of Counsel

Submitted to Trial Court under separate cover (Not attached)

Exhibit D to Certification of Counsel

Medical Record Item in Confidentiality folder (Confidentiality folder)

Eldridge Hawkins Response to the Defendant's Certification **in lieu of statement of Material facts**[1] filed 11/06/2021 Pa0115

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Exhibit A to Certification of Counsel

Complaint and Declaratory Action Jury Demand dated 01/06/021 (attached at Pa0001)

[1] There was no statement of Material facts filed by defense Counsel, so plaintiff responded to the defense Counsel's Certification

Exhibit B to Certification of Counsel

Answer by Trinitas Regional Medical Center and Escobar dated 8/3/2021 (Attached at Pa0051)

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Submitted to Trial Court under separate cover (Not attached)

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[2] Communication by Hawkins, not a brief

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Citizens Report dated 1/18/2020
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Exhibit 4

Trinitas Regional Medical Center Balance Statement Dated 4/20/2020 (Attached Confidential folder)

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P.D.A.B., INC. Letter to Plaintiff Regarding Collection of Debt. Dated 9/18/2020 (Attached at Confidential Folder)

Trinitas Physicians Practice, LLC, Patient Account Status Balance Dated 3/27/2020 (Attached at Confidential folder)

Trinitas Physicians Practice, LLC, Patient Account Status Balance Dated 6/5/2020 (Attached at Confidential folder)

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Receivable Collection Services, LLC Letter Regarding Collection of Plaintiff's Debt towards University Radiology Group's Services Dated 6/2/20 (Attached at Confidential folder)

Exhibit 9

Hawkins Notice of Claim Letter to Clerk and Defendants dated 11/25/2020 (Attached at Pa0043)

Proof of Service of Notice of Claim dated 10/16/2020 Pa0262

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Medical Record 2/13/2020 with Ed Admitting Diagnosis (Attached at Confidentiality folder)

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Exhibit C

Exhibit 1 **(Attached at Pa0233)**

Citizens Report Dated 8/20/19
(Attached at Pa0250)

Citizens Report- plaintiff reports strong order from AC, c/o harassment from neighbor and fears for life dated 8/16/19 (Attached at Pa0252)

Citizen report-plaintiff found all the screws on her Verizon box removed and outside the box she called police as box was previously intact
(Attached at Pa0254

Exhibit 2 **(Attached at Pa0255)**

Citizens Report dated 1/18/2020
Plaintiff reports Screen door broken, keys in drawer gone, sheets missing, clothes, pictures taken, garage key taken
(Attached at Pa0257)

Exhibit 3

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(Attached at Pa0258)

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Exhibit F
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[3] Response to Statement of Material Facts was in narrative form

CONFIDENTIAL APPENDIX INDEX[1]

[1] Exhibit Cover Pages Numberings are not consistent, exact page number used as opposed to letter or number exhibits.

Carl v Carl

Preliminary Statement

Defendants and the Trial Court failed to understand that the statute that governs involuntary Commitment of Citizens and Article 1 para 1 of the New Jersey Constitution, do not allow involuntary commitment of individuals who look mentally ill, act mentally ill, talk to themselves, have odd beliefs, have false or bizarre beliefs, act in strange fashion or use profanity. A person can only be Involuntarily Committed in New Jersey if they are mentally ill **and** ***dangerous to self and others or to property within the foreseeable future.*** Any ALLEGED good faith act of a police officer or screener in involuntarily committing a citizen to a mental facility must be done in *good faith pursuant to this act* i.e., N.J.S.A. 30:4-27.1 to -27.11. Escobar testified at her deposition that plaintiff was not suicidal, not homicidal and not an imminent threat to herself or others prior to being kidnapped from her home.

Procedural History

Plaintiff hereby incorporates the Appellate Brief's procedural History here.

Statement of Facts

Plaintiff hereby incorporates the Appellate Brief's Statement of Facts here.

Counter to Defendant Statement Of Facts

Note that defendant cites to the Trial Court statement of reasons and the defense Counsels statement of material facts for support that Cook went to Rocco's house only after he went to plaintiff's house. **(Pa710-Pa716, Pa798, Pa360, Pa863, Pa634).** As certified by plaintiff, Rocco filed 20 complaints against the plaintiff when she filed only four. **(Pa360).** There was a prior Court Order compelling

neighbor Rocco to stay away from her, yet Officer Cook felt compelled to take the enemy's (Rocco)'s statement as proof that the plaintiff was the problem. **(Pa360).** All of Rocco's alleged stories about the plaintiff that Cook relied on occurred in 2016. **(Pa736-Pa738, Pa710-Pa716).** Cook's report is filled with what Rocco said plaintiff allegedly did historically in 2016 which were not relevant to plaintiff's current 2020 concerns. **(Pa736-Pa738, Pa710-Pa716).** There is NO mention in Cook's report that fingerprints were done on plaintiff's behalf. **(Pa710-Pa716).** There is no mention that Fedex was contacted to ask about the condition in which the packages were delivered. **(Pa710-Pa716).** Page 9 to 10 of the respondents' brief speaks for itself. **(DB9-10).** There is no mention in any police report that the plaintiff seemed unreasonably dangerous to herself, others or property within the immediate future nor did she seem unable to care for her own wellbeing **(Pa828, Pa710-716).**

Defense Counsel states that "Escobedo and Cook did not speak or otherwise communicate at any time prior to, during, or after Appellant's involuntary commitment regarding Appellant." **(DB-14).** Cook was the assigned investigator to the plaintiff's case who referred her to the screener." **(Pa710-Pa716, Pa863)** Cook and all officers had reason to know that plaintiff was not dangerous to self, others or property and did not meet the criteria for involuntary commitment. **(Pa835).**

Point I:The Court Erred in Granting Summary Judgment to Defendants (Pa0860, Pa862, Pa835)

The exercise of good faith by the police pursuant to the act was at issue

as well as Escobar's credibility. **(Pa835).** Thus, Plaintiff was entitled to summary judgment, or a jury trial. See Judson v. Peoples Bank and Trust, 17 N.J. 67(1954). Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995). **(Pa0860- Pa862)**

Point II:The Court Engaged In Numerous Errors In Granting Summary Judgment To The Defendants Pa213-Pa219, Pa266-Pa271, Pa743, CPa002, Pa100-Pa105, Pa203-Pa204,Pa828, Pa356, Pa845, Pa863, Pa835, Pa233, Pa95, Pa353, Pa798-817)

The court engaged in numerous errors in granting summary judgment to the defendants. The Court erred by failing to understand that plaintiff did not file a medical malpractice claim against Trinitas or Escobar thusly preventing need for any affidavit of merit. **(Pa213-Pa214, Pa266-Pa271).** Significantly, Plaintiff accused *only* Escobar, who is not a medical professional (*Not Trinitas Medical Center*) of not complying with N.J.S.A. 30:4- 27.5 (b) (c) (d) (e), as she made no proper determination . . . *that involuntary commitment to treatment seems necessary* and no proper screening certification was made by a physician. **(See Pa743, CPa002, Pa100, Pa101, Pa102, Pa105)**. Escobar admitted at her deposition that plaintiff did not meet the criteria for involuntary commitment. (**Pa854-Pa835**)

Trinitas and Escobar attached their attorney's Certification to their motion for Summary Judgment that identified Trinitas Hospital and Sylia Escobar together as "TRMC defendants. **(Pa203). The Trial Court simply accepted defendants' description of two separate defendants identified as one for purposes of an Affidavit of Merit. (See Pa211**). The Certification states that "TRMC defendants"

is a licensed person under N.J.S.A. 2A:53A-26(j), as it is a health care facility. **(Pa203-Pa204).** This was an impossibility because Escobar was not a Nurse. The Statute expressly identifies what providers are considered licensed professionals for purposes of the Act and **does NOT include** Social Workers on its list. Even if Escobar was a Nurse, an affidavit of Merit would have been required for her and against Trinitas Hospital only as respondent superior based on her actions.

Pursuant to NJSA 2A:53A-26-1, only those licensed professionals specifically delineated under the AOM Act are entitled to an affidavit of Merit. Id. See Saunders v. Capital Health System at Mercer, 398 N.J. Super. 500 (App. Div 2008). Social workers are **not** listed among licensed persons defined under NJSA 2A:53A-26 -1. Escobar also testified that she is not a medical professional. **(Pa828).** The Trial Court also erred because None of the defendant defended against the violation of privacy allegation before the trial court and should not have prevailed on that Count. The Privacy invasion Count was one of the most important aspects of the plaintiff's case. **(Pa101, Pa356, Pa845). See** Amended complaint, interrogatories and affidavit and deposition transcripts attached at Summary Judgment pursuant to Rule 4:46-2 (c). **(See Pa233, Pa95, Pa226 Pa219, Pa215, Pa353, Pa798-815, Pa808).**

The trial judge also erred when he stated that there were no new facts presented by plaintiff at Summary judgment because plaintiff's Counter statement of facts was not in chronological order. **(Pa863).** There is no requirement under Rule

4:46-2 that a Counterstatement of fact be presented in ***chronological order***. Rule 4:46-2 (b) expressly states that an opposing party may also include in the responding statement additional ***facts that the party contends are material*** and as to which there exists a genuine issue. Plaintiff complied with 4:46-2 (b) by mentioning facts that ***she considered material*** without need for chronology. She used separately numbered paragraphs together with citations to the motion record. **(Pa808-Pa817).**

The trial Judge said that plaintiff admitted to defendants' facts because plaintiff cited to various documents as the source of each set of facts that plaintiff considered to be relevant without going in order from point A to point B neatly as the defendants did. **(Pa863).** The App Division states that failure to strictly comply with Rule 4:46-2 will not justify a grant of a motion on the assumption that the movant's statement of Material facts is true, ***when the record as a whole shows a material dispute.*** Leang v Jersey City Bd. of Ed., 399 NJ Super 329 (App. Div 2008).

The deposition transcripts of the Screener Escobar (upon whom the police relied) caused the record as a whole to show a material dispute wherein Escobar states that "plaintiff was not homicidal or suicidal and was not a threat to herself or others" prior to being unlawfully removed from her home by the police. **(Pa835).**

Point II:The Trial Court Incorrectly Determined That The Defendants Were Entitled To Absolute and Qualified Immunity Because None Of Them Acted In Good Faith (Pa710-Pa716, Pa863, Pa240-Pa243, Pa743-Pa744, Pa853, Pa867, Pa641, (Pa235-Pa237, Pa662-63, Pa266-73, Pa662-663, Pa736-Pa738, Pa241-254, Pa710-Pa716)

NJSA 59:3-14 (a) states as follows:

> Nothing in this act shall exonerate a public employee from liability if it is established that his conduct was outside the scope of his employment or constituted a **crime,** actual **fraud**, actual **malice** or **willful** misconduct. Id.

Pursuant to NJSA 59:3-14 (b):

> Nothing in this act shall exonerate a public employee from the full measure of recovery applicable to a person in the private sector if it is established that his conduct was outside the scope of his employment or constituted a **crime,** actual **fraud**, actual **malice**, or **willful misconduct**.
>
> > A public employee is not liable if he acts in **good faith** in the execution or enforcement of any law. Nothing in this section exonerates a public employee from liability for false arrest or false imprisonment. NJSA 59:3-3.

Pursuant to N.J.S.A. 59:2-2 (a), a public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of his employment in the same manner and to the same extent as a private individual under like circumstances. Qualified immunity will be denied to a public official when a reasonable person in the same situation would have recognized a constitutional infringement." Monteiro v. City of Elizabeth, 436 F.3d 397, 436 (3d Cir. 2006).

Under New Jersey's laws, a person may not be involuntarily committed to a psychiatric facility without proof by clear and convincing evidence that the individual has a mental illness, **and** the mental illness causes the patient to be **dangerous to self, to others, or to property** . .. by reason of mental illness **within the reasonably foreseeable future**. In re Commitment of S.L., 94 N.J. 128, 138 (1983) (citing State v. Krol, 68 N.J. 236, 257, 260 (1975). The mental illness must

be such that the person ***cannot provide basic care.*** NJSA 30:4-27.1; N.J.S.A. 30:4-27.9(6); N.J.S.A. 30:4-27.15(a); R. 4:74-7(f). Matter of Commitment of Raymond S., 263 N.J. Super. 428, 43 (App. Div. 1993).

Pursuant to NJSA 30:4-27.2h:

> "Dangerous to self' means that by reason of mental illness the person has threatened or attempted suicide or serious bodily harm, or has behaved in such a manner as to indicate that the person is unable to satisfy his need or nourishment, essential medical care or shelter, so that it is probable that substantial bodily injury, serious physical harm or death will result within the reasonably foreseeable future ... .Id.

> Dangerous to others or property" means that by reason of mental illness there is a substantial likelihood that the person **will inflict serious bodily harm upon another person or cause serious property damage within the reasonably foreseeable future.** This determination shall take into account a person's history, recent behavior, and any recent act, threat, or serious psychiatric deterioration. NJSA 30:4-27.2i

Moreover, pursuant to See NJSA 30:4-27.7, the act requires that the law enforcement officer exercise **good faith** in order to be immune from liability. Id.

N.J.S.A. 30:4-27.7(a) states as follows:

> A law enforcement officer, screening service or short-term care facility designated staff person or their respective employers, **acting in good faith pursuant to this act [N.J.S.A. 30:4-27.l to-27.11]** who takes reasonable steps to assess, take custody of, detain or transport an individual for the purposes of mental health assessment or treatment is immune from civil and criminal liability. Id.

Good faith requires a showing of **honest intention**. " In re Tamecki, 229 F.3d 205, 207 (3d Cir. 2000). **Good faith must be in accordance with the Applicable law (N.J.S.A. 30:4-27.l to -27.11]** which requires that the police and screener are **absolutely sure** that plaintiff was **"dangerous to self or others or property"** ***within the foreseeable future***

before removing the adult American Citizen from her private home, because the risk of deprivation of substantive rights is too great. **Reasonable steps** mean making **absolutely sure** that the person is not dangerous to self, others property before their substantive rights, rights to privacy and civil rights are violated.

A mentally disabled patient has the same right that a physically disabled patient has to not be forcibly removed from their home for treatment. Plaintiff as a Haitian American's right to belief in Voodoo or magic is protected under the same Constitution that protects the rights of a person of the catholic faith to pray to Mary the mother of Jesus who has been dead for many years. Plaintiff's right to sprinkle lemon juice on steps to ward off evil is protected by the same Constitution that protects another person's right to sprinkle holy water around their home. Cook's defense that "he did not speak or otherwise communicate at any time prior to, during or after Appellant's involuntary commitment regarding Appellant" is exactly what makes him liable to the plaintiff. (**DB14**). Because Cook was the one assigned investigator to the plaintiff's case and referred her to the screener." **(Pa710-Pa716, Pa863), (Pa713).** Cook had a duty to know and ensure that the plaintiff was absolutely d**angerous to self, others or property within the foreseeable future *before*** he allowed Escobar Limage or Devalle to transport her to Trinitas. NJSA 30:4-27.1(b) clarifies that the reason for this **strict procedural requirement is to prevent citizens from being deprived of their liberty rights. It states in part:**

> Because involuntary commitment to treatment entails certain deprivations of liberty, it is necessary that State law balance the basic value of liberty with the need for safety and treatment, a balance that is difficult to effect because of the limited ability to predict behavior; and, therefore, it is necessary that State law provide clear standards and procedural safeguards that ensure that only those persons who are dangerous to themselves, others or property, are involuntarily committed to treatment. Id.

NJSA 2C:13-1(b) defines Kidnap as follows in relevant part:

> Holding for other purposes. A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period, with any of the following purposes: (2) To inflict bodily injury on or to terrorize the victim or another Id.

There is no dispute that plaintiff was terrorized while at Trinitas Hospital. Plaintiff certified that she refused the psychiatric medication then threatened to sue the hospital staff when they still came towards her with the unwanted medication. **(Pa240-Pa243).** Six strong men were called to hold her down while she was injected against her will with the unwanted mediation while screaming. **(Pa240-Pa241**). The Court must look to the plain meaning of the words utilized by the legislature that enacted NJSA 59:3-3 and find the following sections to conflict with defense counsel's suggested limitations. Whether the police officers in this case acted with actual fraud, actual malice or willful misconduct is subject to those motive intent determinations that are to be determined by the Jury. Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75, (1954). Moreover it is clear that Escobar engaged in Fraud because she certified on defendants' Exhibit H that plaintiff "was dangerous to self

and others or property because of a mental illness," then admitted at her deposition that plaintiff was not homicidal or suicidal and did not meet the criteria for involuntary commitment. **(Pa743-Pa744, Pa853, CPa001-CPa002).**

Defense Counsel admits in his brief that Cook did not rely on Escobar's fraud because he stated on page 14 of his brief that "Escobedo and Cook did not speak or otherwise communicate at any time prior to, during, or after Appellant's involuntary commitment regarding Appellant [Pa867, Pa641](DB14). Defendants actions were certainly not reasonable and not based on good faith. This is supported by the very fact that plaintiff stated at her deposition that the police blocked pushed and forced the plaintiff out of her home against her will after 10 Pm at night. **(Pa235-Pa237, Pa662-63, Pa266-73).** The transcripts speak for itself regarding the willfulness and outrageous malicious acts of the defendant Devalle and Limage in threatening and cornering the plaintiff, yelling and forcing the plaintiff out of her house against her will, thusly violating her civil rights. This exchange took place at plaintiff's deposition:

> **Q.** Okay. So they did not physically --
> **A.** They were blocking me. One blocking me, the other one like – and then **Limage** was about to put his – and the other one and – and I said, "**Do not touch me.**" And so like the -- and then they – then ***they said they were going to carry me if I don't want to walk out.*** I said, then the -- "Here, take her out. Get out" – or they carry me. And the other was blocking me

(Pa662)(Emphasis added)

This exchange also took place at plaintiff's deposition:

> **Q:** Okay. And Again, they did not physically touch you or hand cuff you.
> **A:** Well, **they got so close to me that Devalle,** and the other one, they just, have me in the middle-in this what you call it. The lady was standing very close and all two of them and they were very very very close. Its not-they don't touch me with their hands but then when they-***they were blocking me***, they were very close to touching like this to. . . .**(Pa662-Pa663)**

As per the plaintiff "officer Delvalle did not even want me to close my door." **(Pa240).** Devalle did this knowing that plaintiff had concerns about her home being burglarized.**(Pa252-57)** Neither NJSA 59:3-3 nor NJSA 59:3-14 (a)(b) will immunize law enforcement officers from charges of false imprisonment at Trinitas. Ibid; Pisano v. City of Union City, 198 N.J. Super. 588, 590 (Law Div.1984). Plaintiff certified as follows:

> *Again, my white neighbor Dean Rocco living next door to me conspired with the detective Donald Cook to send me to jail and when they could not find anything in their record, they come up with the involuntary psychiatry hospital. . All these things happened to me because I am a black female. The Union police discriminated against me, violated my civil rights, cause defamation of character for throwing in psychiatry, bias of my race, humiliated and shamed me, traumatized me psychologically and emotionally. . . .* **(Pa243-Pa244)**

There were no good faith acts by the police who kidnapped plaintiff from her home after she refused to go with them. **(Pa241-Pa254).** *Mooning Rocco in 2016 did not make plaintiff dangerous to self or others in year 2020. (See Defendants' Exhibit E same as* ***Pa736-Pa738*** *stating that the mooning allegedly occurred in 2016). Even if the alleged mooning had occurred in February 2020 when plaintiff reached out to defendants for help it would not make her dangerous to self or others.* ***(Pa710-Pa716).*** *Screaming profanities at Rocco in 2016 did not make plaintiff foreseeably dangerous to self, others or to property in year 2020. (See Defendants'*

*Exhibit E-**Pa736-Pa738** stating that mooning allegedly occurred in 2016). Even if the screaming of profanities had occurred in February 2020 it would not have made her foreseeably dangerous to self or others or property. **(Pa710-Pa716).***

*Plaintiff's belief in voodoo and magic, opining that her enemies were placing feces in her property and trying to poison her and Sprinkling lemon juice and placing notes around her house did not make plaintiff dangerous to self, others or property. **(Pa964-Pa868)**. Thus, neither absolute or qualified immunity applied.* Reasonable police officers in the same situation would have recognized a constitutional infringement. The Township is liable for the injuries proximately caused to plaintiff by the police officers.

Point III: The Court Erred By Not Finding That Plaintiff's Civil Rights Were Violated(Pa770, Pa761, Pa750-Pa752, Pa835, Pa915).

42 U.S.C.A. § 1983, is a means of vindicating rights guaranteed under the United States Constitution and federal statutes. Baker v. McCollan, 443 U.S. 137, 144 n. 3 (1979). The New Jersey Civil Rights Act is modeled after 42 U.S.C.A. § 1983 and provides, in relevant part:

> Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States. . . by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. N.J.S.A. 10:6-2(c) (emphasis added).]

The Due Process Clause guarantees more than fair process, " it provides heightened protection against government interference with certain fundamental rights and liberty interests." Washington v. Glucksberg, 521 U.S. 702, 719-20 (1997).

Article 1 para 1 of the New Jersey Constitution is the counterpart to the due process clause of the fourteenth amendment and affords all persons the same fundamental rights as the fourteenth amendment to the United States Constitution. See King v. S. Jersey Nat'l Bank, 66 N.J. 161, 178 (1974). Here, plaintiff was deprived of her substantive due process and equal protection rights by being forcefully removed from her home by Escobar and the police acting under color of law without meeting the criteria for involuntary commitment. **(Pa835).** Thusly violating her civil rights.

The Appellate Division held that the City's failure to have a policy that would protect others was a ***fatal flaw***. See Upchurch v City of Orange **(Pa915).** Defendant Cook admitted at his deposition that he was not properly trained. **(Pa770, Pa761, Pa750-Pa752).** The Township is liable for plaintiff's injury proximately caused by Cook, Devalle and Limage. Had the Township had an effective policy in place, its police would have known that removing plaintiff from her home without her being dangerous to self or others was a violation of her civil rights. Plaintiff a victim of kidnap, assault and battery was denied of the protections of Article 1 para 22 by being falsely imprisoned in a psychiatric treatment facility for two days.

Point IV:The Court Erred in Finding that Plaintiff Did Not Prove False Light (CPa101-CPa102, CPa090, Pa834-Pa835, Pa241)

A fundamental requirement of a false light tort is that the disputed publicly is "'a major misrepresentation of plaintiff's character history, activities, or beliefs

occurred"' G.D. v. Kenny. 205 NJ. 275, 307-08 (2011). An RN falsely labelled as Homicidal and dangerous to others and in need of involuntary commitment is the worse light in which a professional Nurse can be placed. **(CPa101-CPa102, Pa835)** The police removing plaintiff from her home yelling blocking and pushing after hours, Trinitas Hospital calling six men from security to hold plaintiff down and injecting her against her will with a psychiatric medication while she screamed "I don't want it" was a "dramatic pantomime and objectionable false light affecting plaintiff's character. The doctor at Trinitas and Escober said that plaintiff did not meet the criteria for involuntary transfer. **(CPa090, Pa834-Pa835, Pa241)**

Point V: The Court Erred in not Finding that Plaintiff Proved Violation Of Her Rights Under the NJLAD(Pa636-37; Pa865, Pa740, Pa754, Pa834, ((Pa234-Pa246, Pa848, Pa849, CPa021, Pa358, Pa359).

The NJLAD protects those who are *perceived* to be mentally ill. Victor v. State, 203 N.J. 383, 408 (2010). Defendant Cook and even Escobar who found plaintiff "altered" (not dangerous) perceived that plaintiff was mentally disabled. **(Pa636-37; Pa865, Pa740, Pa754, Pa834).** Despite their perception, Escobar and the police discriminated against plaintiff and denied her public accommodation and the equal liberty right to call her own doctor. Plaintiff who filed 4 complaints while her white neighbor filed 20, was accused of filing too many and treated in a disparate fashion from her white neighbor due to her skin color, race and national Origin. **(Pa234-Pa246, Pa848-849, CPa021, Pa358-359).**

Point VI: Plaintiff Proved Intentional Infliction of Severe Emotional Distress(Pa354-Pa357, Pa234-Pa246, Pa662-Pa666, Pa673, (Pa853; Pa850, Pa361, Pa365).

Plaintiff showed that the defendants' conduct was "so outrageous in character, and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. **Plaintiff described how** *Escobar and Union police came inside her home in the middle of the night, all over her bedroom, disturbed her peace, with hostility, shoved, blocked, yelling, screamed at her, threatening to carry her if she refuse to walk, discriminated against her, violated her civil rights, caused defamation of character by throwing her in psychiatry, and were biased because of her race, humiliated and shamed her, traumatized her emotionally and psychologically, her refusal of a psychiatric injection ignored, caused her to he held down at a psychiatric facility by six strong men, and forcibly injected.* **(Pa354-Pa357, Pa234-Pa246, Pa662-Pa666, Pa673). Plaintiff sufficiently described her severe emotional distress, flash backs, inability to sleep, shakiness, nervousness, lack of energy, headaches, shock, appetite loss, not being herself anymore** related to the incident in her interrogatories. **(Pa853; Pa850, Pa361, Pa365).**

Conclusion

Based on all the foregoing Plaintiff is entitled to prevail on her Appeal.

/s/ Cecile D. Portilla
CECILE D. PORTILLA, ESQUIRE