RACHEL MERCER	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
PLAINTIFF/APPELLANT	:	APPELLATE DOCKET #A-002885-24
	:	
vs.	:	
	:	CIVIL ACTION
THE GLOUCESTER TOWNSHIP	:	
BOARD OF EDUCATION	:	APPEAL FROM ORDERS OF THE
	:	SUPERIOR COURT, CAMDEN
and	:	COUNTY LAW DIVISION
	:	DATED MAY 2, 2025 & MARCH 11,
THE GLOUCESTER TOWNSHIP	:	2025
PUBLIC SCHOOLS	:	
	:	SAT BELOW:
and	:	HON. DANIEL A. BERNARDIN, JSC
	:	
GLEN LANDING MIDDLE	:	TRIAL COURT DKT NO:
SCHOOL	:	CAM-L-1672-20
	:	
and	:	
	:	
STEPHEN KLINE	:	
	:	
and	:	
	:	
ORLANDO MERCADO	:	
	:	
DEFENDANTS/RESPONDENTS	:	

BRIEF OF APPELLANT RACHEL MERCER DATED: JULY 14, 2025

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I. PRELIMINARY STATEMENT

Plaintiff, Rachel Mercer, following her life-long dream to be a teacher, had her young career abruptly ended when she was wrongfully identified by Glen Landing Middle School's assistant vice-principal, Stephen Kline ("Kline"), as the target of a Department of Child Protection and Permanency ("DCP&P") investigation following a parental report of an inappropriate student-teacher relationship. The parent reported that her daughter relayed a conversation with a friend (the alleged victim), both then 8th grade students at the school, that the friend had a relationship with a 25-year-old substitute teacher named Mrs. Meads. Kline volunteered Rachel Mercer's name to the DCP&P investigator rather than providing a full list of all substitute teachers who could have been the subject of the complaint. Ms. Mercer was called to the office over the public address system, accused and sent home, never to return to her teaching career, even though a few months later the investigation concluded with her being cleared of any wrongdoing.

On March 11, 2025, the trial court entered an Order granting summary judgment in favor of Defendants, Kline, Orlando Mercado ("Mercado") and The Gloucester County Board of Education ("BOE"). The trial court further denied Plaintiff's motion for reconsideration of the summary judgment order, by Order dated May 2, 2025. The trial court erred on both accounts as it made factual and credibility determinations and failed to view the facts in a light most favorable to

Plaintiff as required by Rule 4:46-2(c). Contrary to the trial court's rulings, there were, in fact, genuine issues of material fact which go to the heart of Plaintiff's claims.

The trial court further erred in ignoring the law of the case, and in particular, its earlier Order on April 29, 2021, when it denied Defendants' motion to dismiss Plaintiff's complaint based on their alleged investigation immunity. When the trial court denied the motion to dismiss, it was not known that Defendants were the source of the identification of Plaintiff. While it was learned that the Defendants were the source of Plaintiff's identification, the reality was that this did not alter the facts (or law) at the summary judgment stage, and for that reason alone, the trial court should have denied the motion for summary judgment and permitted the case to proceed to trial.

The trial court also erred in dismissing Plaintiff's complaint in its entirety without even addressing those claims not the subject of the principal summary judgment motion, i.e., Count II, slander per se; Count IV, intentional infliction of emotional distress; Count V, negligent infliction of emotional distress and the repetition of the defamatory statement. Since claims for defamation and negligent and intentional infliction of emotional distress required an inquiry into the conduct of Kline and his state of mind, summary judgment should not be considered as it would have required the trial court to conduct a credibility analysis which is not

proper on a motion for summary judgment. However, the trial court denied all of those other claims when it denied Plaintiff's Motion for Reconsideration.

Plaintiff therefore submits that the trial court committed multiple errors of law and abused its discretion in granting the Motion for Summary Judgment (and denying reconsideration) such that the Orders should be reversed and this matter proceed to trial.

II. PROCEDURAL HISTORY

This action was initiated on or about May 20, 2020. The matter was thereafter dismissed, without prejudice, by Order dated January 22, 2021. Plaintiff filed her First Amended Complaint on March 7, 2021. (Pa46) On March 25, 2021, Defendants again moved to dismiss asserting that there was never a report made by any of the named Defendants or their employees and even if such allegations were made, Defendants were entitled to immunity under N.J.S.A. 9:6-8.13. (Pa62) On April 30, 2021, the Honorable Michael Kassel, J.S.C. denied the motion to dismiss and on May 24, 2021, Defendants filed their Answer to the First Amended Complaint. (Pa92) On or about October 12, 2023, present counsel substituted in for Plaintiff; at which point a new case management order was entered and discovery undertaken, including the depositions of approximately fourteen (14) of the key personnel of Defendants and the DCP&P investigator. The parties additionally exchanged expert reports.

On January 24, 2025, Defendants filed a Motion for Summary Judgment. (Pa114) On February 18, 2025, Plaintiff filed her Opposition to the Motion for Summary Judgment. (Pa141) Defendants subsequently filed a Reply Brief on February 24, 2025, and another Sur-Reply Brief on February 25, 2025. On February 26, 2025, Plaintiff filed a Sur-Reply Brief.[1] Oral Argument on the Summary Judgment Motion was held on February 28, 2025. Both parties appeared for oral argument. On the record, the Honorable Daniel A. Bernardin granted Defendants' Motion for Summary Judgment.[2] (Pa1)

On March 28, 2025, Plaintiff filed a Motion for Reconsideration of the Order granting Summary Judgment (Pa339). Defendants filed their Opposition on April 17, 2025. Plaintiff filed a Reply Brief on April 21, 2025. Oral Argument was held on April 25, 2025. The trial court denied Plaintiff's Motion for Reconsideration on May 2, 2025. (Pa3)

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[1] In Defendants' Reply Brief on Summary Judgment, they raised arguments not asserted in their motion and opening brief and unrelated to any contention Plaintiff advanced. Plaintiff objected to the trial court considering such arguments. Thereafter and without leave of Court, Defendants filed a Sur-Reply raising, for the first-time additional bases for the grant of summary judgment. Again, Plaintiff objected to the court's considering the arguments advanced in the Sur-Reply. The trial court never addressed Plaintiff's objections and then allowed Defendants' counsel to present those arguments during oral argument and further considered them in arriving at its decision as evidenced by the court's oral opinion.

[2] Transcripts of the Motion for Reconsideration Decision are marked as 1T (May 1, 2025) and 2T (May 2, 2025).

III. FACTUAL BACKGROUND

Plaintiff had a life-long dream to be a teacher. She especially wanted to teach in the middle school that she attended. Upon graduating Magna Cum Laude from Rowan University (Pa161), she applied for teaching positions within the Gloucester School District and several other public schools. (Pa163) While waiting for a permanent position, Plaintiff applied to Source4Teachers ("ESS") a substitute teacher placement agency. (Pa164) She applied to be the Glen Landing Middle School ("Glen Landing") building substitute. (Pa165) When she was selected, she became the building sub starting in April 2018. (Pa311) Glen Landing controlled what she did as a substitute teacher, where she went, if not to the school but to another middle school and when she worked. (Pa310) She continued into the next school year as the building substitute teacher. She would receive text messages from Allison Stauffenberg, one of the school secretaries, advising her if there were a need for her to work at another school in the district. (Pa137) Every morning when she went to work, she would clock in in the main office and interact with the three secretaries and assistant principals, Kline and Mason. At the time Plaintiff was the Glen Landing building sub, there were also a few other female substitute teachers her age working at the school. (Pa174)

Unbeknownst to Plaintiff, on April 23, 2019, the parent of an 8th grade female student at Glen Landing notified the police that her daughter told her that a friend

had had an improper relationship with a substitute teacher at the school named Mrs. Meads. (Pa231; Ca9) On that date, the allegation was communicated by the detective to the DCP&P and recorded on a Screening Summary. (Pa231; Ca9). The report was then assigned to the IAIU worker Rosiland Russ-Tobias ("Russ-Tobias"). (Ca9). The police report was made known to DCP&P and on the morning of April 24, an investigator with the DCP&P contacted the school and spoke with assistant principal Kline at approximately 11 a.m. to advise him that there had been a complaint presented and that she was coming to the school at 1 p.m. that day to meet with the 8th grade student A.W. and her mother and she would speak with him. (Ca9).

Russ-Tobias was greeted by Kline after being let into the building by one of the secretaries to whom she provided her name and reason for her coming to the school. Russ-Tobias advised Kline that the alleged perpetrator, according to the parent's report, was a 25-year-old substitute teacher named Ms. Meads (the only information Russ-Tobias had). Russ-Tobias did not inform Kline when the alleged improper relationship began or whether it was on-going at the time of her call or their meeting. Id. Kline responded that "we don't have a Ms. Meads. We have a teacher with a name close to that, the only 25-year-old female substitute I can think of is Ms. Mercer, Rachel Mercer." (Pa232). Kline told Russ-Tobias that Plaintiff would be called down to the office, told she would be paid for the rest of the day and until the allegations are put to bed she would be out of the district. (Ca1).

Kline did not offer Russ-Tobias the substitute teacher list that he had or provide the names of other substitute teachers who were or had been working at the school during the alleged victim's attendance period whose name started with an "M."[3] (Pa214) There were lists available to Kline that he could have accessed showing for the school year 2017-2018 thirty-one (31) female substitutes of which there were five (5) having a last name starting with "M" and for school year 2018-2019 thirty-five (35) female substitutes of which there were six (6) having a last name starting with "M." (Pa240a-Pa242) Kline had no independent reason to believe that Plaintiff had or was having an improper relationship with any student. (Pa207) The only way Russ-Tobias would have learned the name "Rachel Mercer" was from Kline. (Pa218-Pa219) The District's Human Resource Supervisor, Orlando Mercado "Mercado") testified that the better procedure Kline should have followed was to supply Russ-Tobias with a roster of the substitute teachers in the building during the alleged timeframe. He testified that if Kline had asked him, "I would have advised . . . to get a roster of all of our substitutes that were in the building for the school year or a particular month and then compare, you know, what the information [Russ-Tobias] provide, but I wouldn't provide any direction to the investigator." (Pa227) Kline testified if it were not for him suggesting the alleged perpetrator was Plaintiff,

[3] Kline had no reason to believe that the alleged perpetrator's name began with the letter "M" since the name given was wrong. The same applies to the alleged perpetrator her being 25 years of age.

she would not have been the focus of the investigation. (Pa218).

Russ-Tobias met with the alleged victim (A.W.) and her mother, with another student K.C. (who was the one whose mother initiated the complaint) and then met with Plaintiff. During the interview with the alleged victim, Russ-Tobias asked her about a Ms. Meads, substitute teacher. The student responded that there was no such person. Then she was asked about Rachel Mercer. While the alleged victim denied any involvement with Plaintiff, the interview continued. Then, when A.W.'s friend K.C. was interviewed, Russ-Tobias did not inquire about a Ms. Meads- her questions began directly with Plaintiff. Eight days after those interviews, Russ-Tobias interviewed 3 other friends of the alleged victim. Russ-Tobias testified that she was not aware whether the three friends had discussed the original interviews with A.W. or K.C. before she met with them. In attendance for all three May 2 interviews was Sheila Carvalho, the 7th grade school counselor and the interviews were conducted in her office. Russ-Tobais asked Carvalho questions specifically about Plaintiff. (Pa237-Pa238); (Ca1).

On April 24, 2019, prior to Plaintiff being called to the office and learning about the allegations (and being accused and sent home), while she was performing her job as the hall monitor, Shari Foster, a 6th grade science teacher called Plaintiff into her classroom and gratuitously suggested that teaching might not be Plaintiff's vocation and she should consider becoming a radiology technician. Foster wrote out

information on a post-it with the number for the Gloucester County Community College and the salary for the position and handed it to her. Plaintiff had not solicited Foster's input on her possible career choice and Plaintiff reiterated that she only wanted to be a teacher. (Pa264); (Pa159).

In the afternoon of April 24 at 20 p.m., Plaintiff was paged over the school-wide public address system to report to the principal's office. When she got there three secretaries were sitting at their desks. (Pa171) Each was aware that someone from DCP&P had come to the school; each was aware that a student was called down and that her parent had come to the school; and each was aware that Kline escorted a visibly distraught Rachel Mercer out of the office (after their meeting). Plaintiff was told by Allison Stauffenberg to speak with assistant principal Kline. Kline then told Plaintiff that there was an investigator present from DCP&P who wanted to speak with her. Defendant Mercado was already waiting in Kline's office. Mercado explained to Plaintiff that there was an allegation of improper relationship with a student, however, she was not provided with the name of alleged student or any details of the allegations. Kline and Mercado told Plaintiff that there was a DCP&P person who was going to speak with her. (Pa172).

Plaintiff then met with Russ-Tobias in the office next to Kline's; and then she left the building as Kline had told her that she had to leave, turn in her badge and keys and was not allowed back. (Pa173).

A little over two (2) months later, by letter dated July 1, 2019, Plaintiff was advised that DCP&P had determined that the allegations were unfounded and nothing further would be pursued. As of that date, Plaintiff was unaware how or why she was identified or who provided her name to DCP&P. However, the damage had been done. From the time she left the building on April 23, 2019, Plaintiff has been unable to interact with other people and her dream of being a teacher is shattered. She has not worked since that day and for most of the past almost 6 years, she has lived like a recluse. (Pa162); (Pa175).

In discovery, Plaintiff took depositions of Kline, Mercado, Russ-Tobias, and multiple members of the Glen Landing Middle School staff. Among relevant revelations, was Kline's denial that he provided Russ-Tobias with the name Rachel Mercer. Kline testified, in conflict with the statements made by Russ-Tobias:

Q: Okay. Is it your recollection that she [Russ-Tobias] gave you the name of the teacher?

A: Yes.

Q: Do you remember what name she gave you?

A: Rachel Mercer.

Q: So, it's your recollection that Rosalind Russ-Tobias who is clearly the investigator gave you Rachel Mercer' name?

A: Yes

(Pa204).

IV. LEGAL ARGUMENT

A. Standard of Review

This Court exercises plenary review of legal conclusions. The standard of review of legal conclusions is *de novo*, applying the same legal standard as the trial court. (internal citations omitted) Ng v. Farleigh Dickinson University, 478 N.J. Super. 41, 49 (App. Div. 2024).

B. The Trial Court Erred in Making Factual Determinations on a Motion for Summary Judgment. (Pa1, Pa3)

Pursuant to Rule 4:46-2(c), summary judgment should be granted only where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a **matter of law**." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 529 (1995) (emphasis added). When deciding a motion for summary judgment the motion judge is required to consider the evidence presented and reasonable inference deduced therefrom in a light most favorable to the non-moving party and determine whether such evidence is sufficient to permit a "rational factfinder" to resolve the alleged disputed issue in favor of the non-moving party. Id. at 523. On a motion for summary judgment, the court's function is not to weigh the evidence and determine the truth of the matter. Id. at 540. Rather, the court is to determine whether the

evidence is "so one-sided that one party must prevail as a matter of law." Davis v. Brickman Landscaping, Ltd., 98 A.3d 1173 (2014) citing Anderson v. Liberty Lobby, Inc., 277 U.S. 242, 259, 106 S.Ct. 2505, 2516 (1986). It is "critical" in ruling on a summary judgment motion for the court to not deny a deserving litigant his or her trial. Brill, 142 N.J. at 540.

On a motion for summary judgment, it is the court's job to determine whether a material dispute of fact exists, it is not the court's function to weigh the evidence and determine the merits of the case." Gilhooley v. County of Union, 164 N.J. 533, 545 (2000). Despite these well-settled principles and plainly recognizing that "[t]he case is very fact based and fact specific in terms of how it needs to be decided certainly" (Pa350), the trial court made various factual and credibility determinations in concluding that summary judgment was warranted. Review of this legal decision is *de novo.*

Among the trial court's factual conclusions was a finding that Plaintiff was the subject of the DCP&P investigation from the outset. There are no facts in the record to support this conclusion. Yet the trial court concluded that:

> It was candidly Ms. Mercer **all along**. That's who we know that the alleged victim child who made up this story she was talking about Ms. Mercer, all the friends knew that she was talking about Ms. Mercer, all the friends knew that the investigation regarded Ms. Mercer and no one else. (emphasis added)

(Pa347).

Despite the absence of evidence that Rachel Mercer was always the target of the investigation and the contradictory evidence based on the investigator's summary and report (i.e., that the name provided by the complainant was Mrs. Meads), the trial court found that "all the friends knew" it was Ms. Mercer. But in contradiction, the court acknowledged that:

> There is no question in the Court's mind that the children discussed Rachel Mercer before interviews with at least the other three friends before interviews with Ms. Russ-Tobias and they came up with her name because by that point, 8 days later, it was established clearly that there was an investigation involving the teacher.

In further contradiction, the trial court continued:

> It certainly is conceivable that these eighth graders would discuss the very serious matter that was presented and that they understood, and that is that there was an investigation relative to Ms. Mercer and the alleged minor child victim AW and when they were talked to, they mentioned her name.

Id.

It was error then, on summary judgment, to base any finding of reasonableness on Kline's part on the notion that Plaintiff was the intended target of the investigation and that his solicitous "help" didn't cause her to be wrongfully targeted.

In the same vein, it was erroneous, in light of the factual disputes (including whether Kline offered Plaintiff's name and whether the friends were prompted, told by the others or believed the alleged perpetrator to be Plaintiff as well), that the trial

court found that Kline not offering the list of other substitute teachers was of no significance. The court stated, "failure to provide a list of substitutes to the investigator was not necessary." (Pa350) The head of Human Relations testified that the better practice is not to offer one name, under these circumstances but to provide the list of all substitute teachers to allow the investigator to conduct the investigation. (Pa227)[4] Whether Kline should have jumped to help by offering Plaintiff's name or, as Mercado testified, not provide any direction to the investigator but rather provide a roster of all substitutes that were in the building for the period, should have been left for the jury to decide.

And, one of the most glaring errors the trial court made was resolving the material issue of fact as to what Kline actually said to Russ-Tobias. This ignores a significant element of Plaintiff's claims – the reason why Kline asserted that he did not identify Rachel Mercer as the alleged perpetrator and instead, testified (and said in his answers to interrogatories that Russ-Tobias did. (Pa208).

Throughout his deposition Kline asserted that it was the investigator, Russ-Tobias who told him the accused was Rachel Mercer. (Id). However, Russ-Tobias' report states that Kline responded to her statement of "Meads," "We don't have a Ms. Meads, we have teacher with a name close to that, the only 25-year-old female

[4] While Defendants argued that the testimony was not a statement of Board Policy, the trial court should have given weight to the head of Human Resources statement about the "better" practice and leave the ultimate issue to the jury.

substitute I can think of is Ms. Mercer, Rachel Mercer." (Ca1). There is thus a clear factual dispute- Kline points to the investigator as the one who named Plaintiff, but the investigator testified it was Kline. This factual issue is a critical one – one that casts doubt on the trial court's later finding that "Principal Mr. Kline addressed the matter and really cooperated in all regards with Ms. Russ-Tobias." (Pa347).

Plaintiff is not suggesting that the investigation of alleged misconduct by a teacher should not have been the primary concern for DCP&P; but when approached by DCP&P, Kline had a responsibility to not jump to his own conclusions with minimal information. His quick attempt to "help" had a devasting impact on Plaintiff's life, and a jury should decide whether or not he acted reasonably. Obviously, Kline understood the consequences of his actions, which is why he gave testimony (and answered the Complaint and Interrogatories) denying that the introduction of Rachel Mercer's name was by him, rather than Russ-Tobias. The reasonableness of Kline's conduct in volunteering Rachel's name, when there were other possibilities (one of the over 30 female substitutes in the building that school year, several with the first letter M in their last name, several other young women, and even the possibility that the accusation was false or description from the word of mouth from the victim to her friend to her friend's mother was inaccurate), is plainly in dispute. The inference to be drawn from Kline's defensiveness is that he recognized he had not acted reasonably, but rather even if he were "trying to help"

it was reckless to point the finger at an innocent person, one as to whom he had no reason to believe was engaged in such conduct.

It should be up to the factfinder to decide whether the DCP&P investigator or Defendant Kline is telling the truth (and if they find that Kline is not telling the truth, what significance they attach to his deception).

Couple his deception (and/or defensiveness) and basing his accusation merely on a name presented word of mouth by a victim's friend's mother to the police where so many other possibilities existed (e.g., other female substitutes, the time-frame was not established by the accusation, and Kline could not even remember the description beyond "Meads" in any event), a jury could certainly find that he acted unreasonable, recklessly, etc.

Further, the trial court erred in concluding when all reasonable inferences should have been drawn in favor of Plaintiff that "the school was required to cooperate with DCPP, did that, **did nothing to point blame at Ms. Mercer**," when Kline is the one to have pointed the blame at her? Almost immediately after Kline's interview (at 1:00 p.m. on April 24, 2019), the alleged victim herself denied any abuse by Plaintiff (at 1:10 p.m.) even given the direct mention of her name at that time because of the Kline interview (Russ-Tobias asked, the alleged victim, "Do you know a Substitute Teacher name Ms. Mercer? Did you have a relationship with Ms. Mercer?").

It was not for the trial court to make a factual finding as to Kline's credibility yet, determine that Kline acted reasonably. For these reasons, summary judgment should have been denied and the trial court's Order granting same be reversed.

C. The Trial Court Further Erred in Making A Factual Determination as to Kline's State of Mind. (Pa1, Pa3)

The trial court erred in granting summary judgment in favor of Defendants on Plaintiff's claim of defamation as the trial court misapplied the standard of proof. In defamation cases on motions for summary judgment, the Supreme Court of New Jersey has stated that, "only subjective evidence will satisfy the actual-malice burden[.]" Costello v. Ocean County Observer, 136 N.J. 594, 617 (1994). "Because the issue of a defendant's state of mind does not readily lend itself to summary disposition, courts are wary of disposing cases involving actual malice through summary judgment." Hopkins, 358 N.J. Super. at 282. See also Gray v. Press Communications, LLC, 342 N.J. Super. 1, 12 (App. Div. 2001) (Where a party's state of mind is critical, and there is a genuine critical issue of material fact as to the state of mind, summary judgment should be denied since the issue of state of mind does not readily lend itself to summary disposition).

The focus of the 'actual malice' inquiry is on a *defendant's attitude toward the truth or falsity* of the publication, on his *subjective* awareness of its probable falsity, and his actual doubts as to its accuracy. (Emphasis added) Costello, 136 N.J. at 617. Thus, critical to the inquiry is Defendant Kline's subjective state of mind.

The trial court made improper credibility findings on this issue to determine that Kline was reasonable when he offered Rachel Mercer's name to the investigator because "Meads" and "25" were essentially close enough to justify his offering her name. But, at the time he offered her name, he had to have had a good faith belief that she was or could have been the actual perpetrator.

The trial court's analysis was flawed. Instead of looking at Kline's belief as to whether Rachel Mercer could have been the perpetrator, the trial court considered:

> In an effort to be helpful clearly, Mr. Kline tried to determine who the person could be, that was the nature of the investigation, that was the nature of the inquiry while not made in a specific fashion of like do you know who this person is or give me a name, she clearly in describing Ms. Meads as a 25-year-old substitute was looking for the Vice Principal who would have knowledge of the persons that worked as substitutes in the building in an effort to identify who Mrs. Meads, the fictional Mrs. Meads if you will, who that person is.

(Pa348).

The trial court went on to find that Kline:

> [D]id nothing to point blame at Ms. Mercer, simply Mr. Kline tried to help and be cooperative with this very serious matter and did just that. Nothing that Mr. Kline did was designed or intended or negligently jumped to a conclusion to name Ms. Mercer.

(Pa352).

But, the trial court's conclusion is wrong- it was Kline's statement that pointed the finger at Rachel Mercer. Moreover, the trial court never looked to or considered

whether Kline had any reason to suspect or believe that Rachel Mercer was the substitute teacher who was being accused. Being helpful is not a substitute for a reasonable, good faith belief. The trial court's failure to consider the evidence Plaintiff offered, i.e. that Kline had no reason to believe it was Rachel Mercer, was error.

While negligent publication does not satisfy the actual-malice test, a finding of reckless publication may result if the publisher publishes a story or accusation that is wholly unbelievable, or relies on an informant of dubious veracity, or purposely avoids the truth. Gray v. Press Communications, LLC, 342 N.J. Super. 1, 11 (App. Div. 2001). There is no question that after meeting with Kline, the investigation conducted by Russ-Tobias became solely directed at Plaintiff; that Kline was the one that caused the investigation to be focused upon Plaintiff and Kline had no reasonable basis to believe she was actually the perpetrator. The failure to investigate fully will not by itself be sufficient to prove actual malice, however, "a failure to pursue the most obvious available sources for corroboration may be clear and convincing evidence of actual malice." Hopkins v. City of Gloucester, 358 N.J. Super. 271, 281 (App. Div. 2003). Here, Kline did not allow the investigation to be conducted appropriately. Defendants suggest and the trial court agreed Kline had enough information to say the teacher that was the subject of the report was Plaintiff. This was clear error. A reasonable juror could find that Defendant Kline

relied on facts with dubious veracity in asserting that the report was actually referring to Plaintiff as the only information shared with Defendant was an alleged age, that the individual was a substitute and a name that did not match anyone at the school. There was a world of other possibilities, including the lengthy list of substitutes who had worked at Glen Landing during the time the alleged victim attended.

Lastly, even in making the factual determinations it did, the trial court failed to consider that as an assistant principal, Kline should have known and appreciated the ramifications in offering Plaintiff's name as the person being accused of having an inappropriate relationship with a student with such a vague (and obviously incorrect) description being offered by the complainant (and without providing the substitute teacher roster that was readily available to him). *See* Hopkins, 358 N.J. Super. at 281 (where the court found it to be reasonable to infer that a defendant tax collector was knowledgeable about relatively simple banking terminology, such that, the court found defendant tax collector knew the meaning of the phrase "bounced check" and still used it to describe a transaction with plaintiff when he actually knew the check was returned because of an irregular endorsement). In doing so, the trial court infringed upon the proper function of the factfinder in determining Defendant Kline's state of mind and as a result, entering summary judgment in Defendants' favor as to Plaintiff's claim for defamation.

D. The Trial Court Erred in Failing to Adhere to the Law of the Case in Regard to Defendants' Alleged Immunity Defense. (Pa1, Pa3)

On April 29, 2021, the trial court entered an order denying Defendants' motion to dismiss in which they argued that they could not be liable because of the immunity afforded to reporters of child abuse under N.J.S.A. 9:6-8.10 and N.J.S.A. 9:6-8.13. (Pa92) Notwithstanding, Defendants asserted the very same argument on summary judgment and the trial court, despite its previous ruling (predecessor judge), erroneously agreed.

Defendants contend again they are entitled to summary judgment because they acted in accordance with the laws of New Jersey, specifically, N.J.S.A. 9:6-8.13, "Reports of Child Abuse." In the absence of a change of law or new facts, the trial court's April 29, 2021 Order was binding on the trial court. Defendants offered no new facts, even with discovery complete, and there was no change in the law on immunity.

Even if that were not the case, Defendants were not entitled to a finding on summary judgment that they were afforded immunity in the present circumstances.

N.J.S.A. 9:6-8.10 provides, "[a]ny person having **reasonable** cause to believe that a child has been subjected to child abuse or acts of child abuse shall report the same immediately." (Emphasis added). However, as discussed above, Kline had no facts or reasonable belief that Plaintiff had been engaged in such conduct to justify his providing her name to Russ-Tobias when she informed him that the complaint

was that a Meads had had an improper relationship with a student.

The Appellate Division in F.A. by P.A. v. W.J.F., 248 N.J. Super. 484, 489 (App. Div. 1991) states, "it is obvious therefore, that in making a report 'pursuant to this act' a person must have 'reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse.'" The Court further stated, "[t]he significant words in that clause are 'reasonable cause to believe.'" Ibid. While the Court acknowledged the purpose of such legislation was to protect those who report instances of child abuse from criminal and civil liability so as not to discourage people from reporting instances of child abuse, "[W]e find no legislative intent to protect those people who report child abuse without any reasonable ground for doing so." Id. at 491.

At the time of Defendants' motion to dismiss, the individual who reported Plaintiff as the 25-year-old substitute having an inappropriate relationship with a student was unknown. Plaintiff was unaware of the source of the accusation against her. Nevertheless, the Court found the immunity argument without merit. At the time of addressing summary judgment, it was still unclear as to whether it was Kline or Russ-Tobias. For all intents and purposes, the facts were no different than at the time of the Motion to Dismiss. The mother who reported the alleged abuse to the police was not the individual who made any report or accusation against Plaintiff – it was Kline or Russ-Tobias. Prior to Russ-Tobias speaking with Kline, Plaintiff's name

was not associated with the report to the police and to DCP&P investigation. In his own deposition, Kline (and in contradiction to his answer to the complaint, his answers to interrogatories and other parts of his deposition testimony), finally admitted he was the person who offered Plaintiff's name to the investigator. (Pa218); (Pa219).[5] As such, Kline was not merely "participating or aiding" in the investigation of Plaintiff as Defendants suggested to the court. Rather, but for Kline, Plaintiff would not have become the subject of the investigation. It was Kline and Kline alone who made the initial false, defamatory accusation against Plaintiff. And he did so without any basis or belief that she was involved. His reaction to Russ-Tobias telling him it was a Meads was to say we have no such substitute teacher, we have a Ms. Mercer. Why if the name "Meads" was wrong did Kline even accept the fact that the accused was a 25-year-old substitute teacher or that her name began with the letter "M?" Why not provide the name of all of the female substitute teachers who substituted during the 2017-2018 and 2018-2019 school years? In fact, the head of Human Relations for the School District, Mercado, testified that Kline did not follow procedure and he should have provided to Russ-Tobias the list of substitute teachers.[6] (Pa227)

[5] "Q: The only way that this investigator would have known the name Rachel Mercer would have been from you, correct? A: Yes..."

[6] Mercado's attempt to justify Kline's failure to follow protocol was to suggest that he knew the substitutes that fit the description. However, there was nothing

To find that Kline had a **reasonable basis** for accusing Plaintiff of sexually abusing a child is directly contradicted by the record. The call log clearly states the accusation was against a "Mrs. Meads." Kline knew this name was incorrect as there was no substitute by that name. Kline also knew that Plaintiff was single. Kline offered Plaintiff's name to an investigator essentially at random as he had no cognizable basis to reasonably believe that Plaintiff was the accused substitute teacher. Kline admitted that he believed Plaintiff was wrongly terminated.

E. The Trial Court Also Erred in Dismissing Plaintiff's Complaint in its Entirety Without Even Addressing Each of Her Claims. (Pa1, Pa3)

The crux of the trial court's decision was that Kline acted "appropriately" and tried to help and be cooperative with the DCP&P investigator. (Pa352) Defendants argued (although not raised in their principal brief) that if the trial court finds in its favor on the issue of defamation, then it must dismiss all of Plaintiff's remaining claims. However, the trial court never addressed Plaintiff's remaining claims, and in particular, those relating to the failure of the Defendants to keep the investigation confidential. It is inconceivable and defies logic on a motion for summary judgment to accept the assertion that an accusation by Kline that Plaintiff had an inappropriate relationship with a student was simply never discussed with anyone else at the

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inherently reliable about the description Russ-Tobias provided especially when the name was incorrect.

school. It is not credible that not one school personnel (besides Kline and Mercado) have a recollection of the investigation occurring or knowing the substance of the accusations (*e.g.* the school counselor who was identified by the DCP&P investigator as having sat in on three student interviews where admittedly Plaintiff was identified as the accused). The credibility of such testimony should be decided by a jury. This is especially true based upon the testimony of former secretary Kinzler and Stauffenberg that: if a substitute teacher or teacher were disciplined or suspended, the secretaries would all be told at a staff meeting in the principal's office. (Pa260) Stauffenberg as the secretary working with the building substitute teacher would need to know if Plaintiff as the building substitute was no longer the building sub and she would be told by Kline or the principal. (Id). If Plaintiff was not performing her job, the administrators would have had the authority to replace Plaintiff and Stauffenberg would have been made aware of that. (Pa202; Pa203). To believe that none of the secretaries asked why is a credibility issue for the factfinder. (Pa190-Pa191); (Pa194-Pa195); (Pa200); (Pa258-Pa259); (Pa262-Pa263).

A trier of fact "is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it…contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth. D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997) (quoting In re Perron's

Estate, 5 N.J. 514, 521-22 (1950)). The Court in Perrone goes on to say, "[t]estimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances." 5 N.J. at 522.

Kline's veracity is at issue; again, it should be up to the factfinder to decide whether the DCP&P investigator or Defendant Kline is telling the truth. But also, many of Defendants' witnesses deny being told what the accusations against Plaintiff were; they even deny having knowledge of the accusations, or any recollection of any events surrounding April 24, 2019. These denials are inherently improbable and in combination with the surrounding circumstances excite suspicions of their truth. (Pa190-Pa191); (Pa194-Pa195); (Pa200); (Pa258-Pa259); (Pa262-Pa263)

It is inherently improbable that a DCP&P worker came to a middle school to investigate claims of an inappropriate relationship between a substitute teacher and an 8th grade student and not one person besides Kline or Mercado was told what was going on. It is inconceivable that Kline would not have discussed the allegations with the acting principal, Mason. (Pa285); (Pa286-Pa287). Mason contends that he knew nothing about the allegations or at the time of his deposition, that a lawsuit had been filed because of the earlier events. According to Kline and Mason the only information he was provided was that "there was a complaint that came in for one

of the substitutes." (Pa287); (Pa210-Pa211). On July 22, 2019, Mason signed the acknowledgement of the delivery of the Notice of Tort Claim filed against Glen Landing. The letter identified the plaintiff and the defendants, sets forth the claims that were going to be asserted and the damages suffered. Is it believable that Mason did not open the envelope and read the letter? (Pa290-Pa293). Is it believable that having opened and read the letter, he simply forgot the fact that his former school was being sued? Here again, it will be up to the factfinder to decide his credibility.

It is inherently improbable and alarming that school counselors at Glen Landing have no recollection of being present for an investigation or being told the nature of the allegations that had been made by a student. Furthermore, that the 7th grade school counselor, Carvalho who, according to the DCP&P report was present for three interviews of 8th grade students conducted in her office and who was herself questioned following these interviews, has absolutely no memory of any of it happening or any of the questions the students were asked or the questions she was asked. Is it believable that the 7th grade school counselor having heard the questions asked did not inform the 8th grade counselor about the possible emotional harm caused to one of his students? Is it believable that Carvalho never mentioned what had transpired to either the assistant principal Kline or the acting principal Mason?

It is inherently improbable that none of the three secretaries whose desks are positioned so that they can be seen from the main entrance of the hallway would

have seen the DCP&P investigator come in, see Mercado enter, Plaintiff come into the office and then subsequently leave the office and were later told she was not coming back, were never informed of the accusations against Plaintiff.

Finally, it cannot be mere coincidence that Plaintiff was called into Shari Foster's 6th grade science classroom, after the DCP&P investigator's call to the school on the morning of April 24, 2019, and before Plaintiff was called down to the principal's office at 2 p.m., to be offered the unsolicited advice that she should look into becoming a radiology technician and be provided with a piece of paper with the telephone number for the Gloucester County Community College that referenced $73,000 as the salary for a radiology technician. (Pa266-Pa268) Foster went on to explain that "it could be just like in passing conversation. I believe she has kids. (Pa269-Pa270); (Pa177-Pa181). A factfinder certainly could deduce that the teacher's learning of the accusation that morning was the impetus for giving such advice.

There is no other reasonable inference to be drawn from Defendants' intentional, unbelievable denials and lack of memory to events relating to an accusation that a female substitute teacher had or was having an improper relationship with an 8th grade female student that they are covering up their improper

conduct and the very fact that the defamatory allegations were repeated.[7] The jury is entitled to make determinations regarding not only Defendants' credibility from their demeanor but also from the believability of their testimony.

V. CONCLUSION

For the foregoing reasons, Plaintiff submits that the trial court erred in granting defendants' motion for summary judgment and requests that the Order be reversed.

Respectfully submitted,

WEIR LLP
A Pennsylvania Limited Liability Partnership

By: */s/ Steven E. Angstreich*
Steven E. Angstreich, Esquire (019441979)
Attorneys for Appellant

Dated: July 14, 2025

[7] Even Kline who is responsible for Plaintiff being presented to the investigator as the perpetrator, believes Plaintiff was wrongly terminated. (¶19)

	: SUPERIOR COURT OF NEW JERSEY
	: APPELLATE DIVISION
RACHEL MERCER	: APPELLATE DOCKET #A-002885-24
	:
PLAINTIFF/APPELLANT	:
vs.	: CIVIL ACTION
	:
THE GLOUCESTER TOWNSHIP BOARD OF EDUCATION	: APPEAL FROM ORDERS OF THE : SUPERIOR COURT, CAMDEN : COUNTY LAW DIVISON
and	: DATED MAY 2, 2025 & MARCH 11, 2025
	:
THE GLOUCESTER TOWNSHIP PUBLIC SCHOOLS	: SAT BELOW: : HON. DANIEL a. BERNARDIN, JSC
	:
and	: TRIAL COURT DKT NO. : CAM-L-1672-20
GLEN LANDING MIDDLE SCHOOL	:
	:
and	:
	:
STEPHEN KLINE	:
	:
and	:
	:
ORLANDO MERCADO	:
	:
DEFENDANTS/RESPONDENTS	:

BRIEF OF DEFENDANT-RESPONDENTS THE GLOUCESTER TOWHSHIP BOARD OF EDUCATION, THE GLOUCESTER TOWNSHIP PUBLIC SCHOOLS, GLEN LANDING MIDDLE SCHOOL, STEPHEN KLINE, AND ORLANDO MERCADO IN OPPOSITION TO PLAINTIFF-APPELLANT'S APPEAL OF THE TRIAL COURT'S ORDER GRANTING SUMMARY JUDGMENT AND DENYING RECONSIDERATION IN FAVOR OF DEFENDANTS

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[1] Pa-Plaintiff's Appendix; Da-Defendants Appendix; DCa-Defendants Confidential Appendix; 1T-May 1, 2025, Reconsideration Decision; 2T-May 2, 2025, Reconsideration Decision; 3T-March 11, 2025, Summary Judgment Decision; 4T-April 29, 2021, Motion to dismiss oral argument transcript; 5T-February 28, 2025, Summary Judgment oral argument transcript.

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PRELIMINARY STATEMENT

Plaintiff Rachel Mercer ("Plaintiff") appeals the trial court's March 11, 2025, Order granting Defendants Gloucester Township Board of Education, Gloucester Township Public Schools, Glen Landing Middle School, Vice Principal, Stephen Kline (hereinafter, "Kline"), and Human Resources Supervisor Orlando Mercado's (collectively, "Defendants") Motion for summary judgment dismissing all counts of Plaintiff's Complaint. Plaintiff also appeals the trial court's May 2, 2025, Order denying her Motion for reconsideration.

Plaintiff alleges Defendants defamed her during an ongoing New Jersey Division of Child Protection and Permanency ("DCP&P") investigation when Kline responded to the initial inquiry of DCP&P Investigator Rosalind M. Russ-Tobias ("Russ-Tobias"). Specifically, on April 24, 2024, Russ-Tobias appeared at the Glen Landing Middle School and informed Kline she was investigating a complaint that a 25-year-old female substitute teacher, with the last name "Meads," was having an inappropriate sexual relationship with a Glen Landing Middle School student. In response to this inquiry, Kline responded: "We don't have a Ms. Meads. We have a teacher with a name close to that, the only 25-year-old female substitute I can think of is Ms. Mercer, Rachel Mercer." The investigation was conducted solely by DCP&P. Kline was not involved in the investigation. DCP&P decided who to speak

with and what to do, if anything, with the information obtained during its investigation.

Plaintiff's entire Complaint stems from this singular and factual statement made by Kline. On March 11, 2025, after close to five (5) years of litigation, the Court heard oral argument on Defendants' Motion for summary judgment, where it was agreed that the lynchpin to Plaintiff's entire case is Kline's response to the DCP&P inquiry of a Ms. Meads. That is the only statement Plaintiff claims is defamatory. The trial court considered the facts surrounding this statement in the light most favorable to Plaintiff. After careful consideration of this statement, and the context in which it was given, the trial court correctly determined that Kline's statement was not made with actual malice and therefore was not defamatory. Moreover, the court ruled that absent a defamatory statement, the entirety of Plaintiff's Complaint must be dismissed.[2]

Plaintiff now appeals the trial court's decision. Plaintiff's appeal again ignores all context regarding the investigation and makes overbroad assumptions regarding investigation procedure and Klien's intent. For example, Plaintiff now argues that Klien accused Plaintiff of sexual misconduct. (Pb 1). Kline never accused Plaintiff of sexual misconduct and was only responding to a DCP&P inquiry with factual information, which he is required to do by law. Despite these uncontested facts,

[2] For the same reasons, the Court denied Plaintiff's Motion for reconsideration.

Plaintiff ignores the gravity of the DCP&P investigation and completely ignores the immunity protections afforded to Defendants under the New Jersey Tort Claims Act.

As will be discussed in this brief, the facts, when made in the light most favorable to Plaintiff is that Kline made the following statement: "We don't have a Ms. Meads. We have a teacher with a name close to that, the only 25-year-old female substitute I can think of is Ms. Mercer, Rachel Mercer." When applying those facts to the law, the trial court correctly held Kline did not defame Plaintiff, and as a result, Plaintiff's entire complaint must be dismissed. Putting aside the Title 59 immunity protections afforded to Defendants, for Plaintiff to establish defamation, Plaintiff must prove that Kline made the above statement with actual malice and present clear and convincing evidence that his statement was knowingly false or made with reckless disregard for the truth. There is simply no evidence to support this argument. Accordingly, the trial court's Orders should be affirmed.

PROCEDURAL HISTORY

Plaintiff filed a ten (10) count Complaint on May 10, 2020, alleging defamation, libel, slander, and intentional/negligent infliction of emotional distress against Defendants. (Pa70.) The Complaint essentially alleges that because an unknown person reported an allegation of an inappropriate relationship between Plaintiff and a minor student, Plaintiff no longer wants to be a teacher and has suffered physical, emotional, and financial as a result of the required reporting and investigation. (Pa72-76.)

On December 15, 2020, Defendants filed a Motion to dismiss for failure to state a claim pursuant to Rule 4:6-2(e). (Da1.) Defendants argued that Plaintiff's Complaint did not accuse Defendants of reporting Plaintiff. Moreover, even if true, Defendants were afforded immunity protection under NJ Rev Stat § 9:6-8.13 (Da1.). On January 22, 2021, the Honorable Michael J. Kassel J.S.C. granted Defendants' Motion, and dismissed the Complaint without prejudice.[3] (Pa60.). The Court allowed Plaintiff (45) forty-five days to amend the Complaint. (Pa60.)

On March 7, 2021, Plaintiff filed an Amended Complaint, containing new information in support of her defamation, libel, and slander claims. (Pa46.) The Amended Complaint states that *"one or more of the employees, agents,*

[3] Plaintiff filed a Motion for reconsideration on Judge Kassel's Order to dismiss. Judge Kassel denied Plaintiff's Motion for reconsideration on February 9, 2021. (Da14.)

representative, etc. Of the "School Defendants" identified the Plaintiff as the teacher… having and inappropriate relationship with the female minor student." (Pa51.) The Amended Complaint does not plead any facts indicating that Defendants report was made with knowledge of its falsity or with reckless disregard for the truth. Plaintiff has never plead facts of actual malice against Defendants. (Pa46-59.)

On March 25, 2021, Defendants again filed a Motion to dismiss for failure to state a claim pursuant to Rule 4:6-2(e). (Pa62.) The Motion reiterated the same arguments contained in the December 15, 2020, Motion. On April 29, 2021, Judge Kassel denied Defendants' Motion and allowed Plaintiff to pursue additional discovery. (Da16) During oral argument, the trial court, for the purposes of a pre-answer Motion to dismiss, accepted Plaintiff's argument that she needed to conduct additional discovery to determine if Defendants were the parties that made the accusation against Plaintiff and to determine all the facts regarding the investigation. (4T at T30:4-32:20.) Judge Kassel did not rule on Defendants NJ Rev Stat § 9:6-8.13 and § 9:6-8.10 immunity arguments and noted that he would address them as additional discovery was garnered. (4T at T30:4-32:20.) Notably, at this period of time, neither party was in possession of the DCP&P investigation file, which documented that the DCP&P investigation originated with a complaint made by the mother of a student at the Glen Landing Middle School. (Da9.)

On January 24, 2025, after the conclusion of discovery, Defendants filed a Motion for Summary Judgment as to all Defendants and on all counts of Plaintiff's Amended Complaint. (Pa114.) Oral argument was scheduled for February 28, 2025. On February 18, 2025, Plaintiff filed an Opposition to Defendants' Motion for summary judgment. (Pa141.) In Plaintiff's Opposition she admitted for the first time that the DCP&P investigation began when the parent of an 8th grade female student at the Glen Landing Middle School notified the police that her daughter told her a friend had an improper relationship with a 25-year-old substitute teacher at the school named Mrs. Meads. (Pa141.)

On February 24, 2025, Defendants filed a Reply to Plaintiff's Opposition. Based on the arguments/admissions contained in Plaintiff's Opposition, Defendants argued that in addition to immunity protection under NJ Rev Stat § 9:6-8.13 and § 9:6-8.10, they were also entitled to immunity protection under the New Jersey Tort Claims Act ("TCA"). (Pa297.) On February 25, 2025, Defendants filed a Sur-Reply, consistent with the order attached to its' motion for Summary Judgement, which emphasized that if the Court ruled for summary judgment on the issue of defamation, then the Court must dismiss all of Plaintiff's remaining claims.

On February 26, 2025, Plaintiff filed a Sur-Reply opposing the arguments made in Defendants February 25, 2025, Sur-Reply. Plaintiff's Sur-Reply argued that Plaintiff's intentional/negligent infliction of emotional distress claims should

survive, even if the Court dismisses Plaintiff's defamation claim. Plaintiff did not address the New Jersey Tort Claims Act ("TCA") defenses. Plaintiff did not request that the Court postpone the February 28, 2025, oral argument, nor did he request leave to amend his Opposition to include arguments against the TCA.

On February 28, 2025, Judge Daniel Bernardin heard oral argument on Defendants' Motion for summary judgment. During oral argument, Plaintiff's Counsel did not address Defendants TCA and actual malice arguments and instead focused on Kline's statement to Russ-Tobias, arguing that Kline should have never offered Plaintiff's name, and that Kline did not act in good faith. (5T at T22:16-27:25) Additionally, Plaintiff's Counsel argued that any determination of Kline's intent should be decided by the factfinder and not on a Motion for summary judgment. Plaintiff never questioned the factual accuracy of Kline's statement to Russ-Tobias or presented any facts or evidence showing Kline acted with actual malice. (5T at T22:16-27:25.) Following oral argument, Judge Bernardin withheld his decision and stated that he would place his decision on the record at a later date. (5T at T39:18-22.)

On March 11, 2025, after considering the lengthy Moving and Opposition papers, numerous discovery exhibits, and oral argument, Judge Bernardin granted Defendants' Motion for Summary Judgment and dismissed all counts of Plaintiff's Amended Complaint. (Pa344-353).

On March 28, 2025, Plaintiff filed a Motion for reconsideration of Judge Bernardin's March 11, 2025, summary judgment decision. Plaintiff's moving papers did not provide any new case law or facts and relied upon the same arguments presented in her Opposition to Defendants' Motion for summary judgment.

On April 17, 2025, Defendants filed an Opposition to Plaintiff's Motion for reconsideration. This Opposition reiterated the arguments presented in Defendants Motion for summary judgment, including, but not limited to, arguments regarding TCA immunity protection, and Plaintiff's failure to present any clear and convincing evidence that Kline's statement was made with actual malice. Plaintiff filed a Reply on April 23, 2025. The Reply did not address any of Defendants' TCA arguments, nor did it present any clear and convincing evidence that Kline's response to Russ-Tobias was made with actual malice. On May 2, 2025, Judge Bernardin denied Plaintiff's Motion for reconsideration. (2T.) Judge Bernardin's decision emphasized that Kline's statement did not amount to defamation, and that absent proof of defamation, the remainder of Plaintiff's claims must be dismissed.

FACTUAL BACKGROUND

In the beginning of 2018, Plaintiff began employment with Source4teachers, a substitute teacher outsourcing agency. (Pa48.) On or about March 2018, Plaintiff was placed as the building substitute by Source4teachers for Glen Landing Middle School. (Pa49.) As the building substitute, Plaintiff would report to the Glen Landing Middle School every day and would be assigned to any class opening. (Pa136-137 at T47:18-24.) Plaintiff was the building substitute for the Glen Landing Middle School from March 2018 through April 24, 2019. (Pa49.)

On April 23, 2019, at roughly 4:05 pm, a call was made to the Gloucester Township Police department regarding a complaint that a twenty-five (25) year old female substitute teacher was having an inappropriate sexual relationship with a Glen Landing middle school student. (DCa4.) Detective Scott Obermeirer[4] received the complaint and reported the accusation to the DCP&P. (DCa4.)

The DCP&P summary report states that the mother of a Glen Landing Middle School student called and reported that her daughter's friend (hereinafter, "A.W.") "recently confided in her that she was bisexual and has been "dating" a substitute teacher, Mrs. Meads (25), at school [Glen Landing Middles School]." (DCa4.) The mother reported that the relationship began back in September and that she did not know "how far" the relationship progressed. (DCa4.) The mother stated that

[4] Detective Scott Obermeier was never deposed in this matter.

according to her daughter, A.W. and Mrs. Meads had seen each other naked. (DCa4.) The mother did not know if this happened in person or by electronic device. (DCa4.)

Pursuant to N.J.S.A. 9:6-8.18, DCP&P is required to take action to ensure the safety of the child/victim. In response to the April 23, 2019, report, and in accordance with N.J.S.A. 9:6-8.18, the DCP&P assigned Institutional Abuse Investigation Unit ("IAIU") Investigator Russ-Tobias (hereinafter "Russ-Tobias") to investigate the April 23, 2019, complaint. (DCa11.) Russ-Tobias began her investigation on April 24, 2019. (DCa14.). At 10:58 am, she contacted Detective Obermeier, who was not available. (DCa14.) At 11:15 am she contacted A.W.'s father, who instructed her to contact A.W.'s mother. (DCa15.) At 11:20 am, she contacted A.W.'s mother. (DCa15.) Russ-Tobias told the mother the reason for the call and stated she needed to conduct an in-person interview with A.W. The mother agreed to allow A.W. to be interviewed at Glen Landing Middle school at 1 pm. (DCa15.). At 11:25 am, Russ-Tobias contacted the Glen Landing Middle School and spoke with Kline. (DCa15.) She informed Kline about the ongoing investigation and that she would be at the Glen-Landing Middle School to interview A.W. and her mother. (DCa15.) She provided no other details to Kline. (Da94 at T64:5-7.)

Russ-Tobias expected schools to cooperate with all DCP&P investigations. (Da94 at T26:24-T27:10.) She, however, did not need the school's permission to interview students. (Da94 at T64:11-13.) Russ-Tobias had total control over the

investigation. (Da94 at T64:11-13 & DCa1-30.) The schools do not have any control or oversight of DCP&P's investigation. (DCa1-30.)

Russ-Tobias arrived at the Glen Landing Middle School at 1:00 pm and introduced herself to Kline. (DCa16.) She reiterated the reason for the visit and inquired as to the identity of a 25-year-old substitute teacher with the last name "Meads." (DCa16.) Per the DCP&P report, Kline responded: "We don't have a Ms. Meads, We have a teacher with a name close to that, the only 25-year-old female substitute I can think of is Ms. Mercer, Rachel Mercer." (DCa16.) There was no school policy on how to handle DCP&P investigations. (Da103 at T80:19-81:5.) There was no school policy requiring Kline to provide Russ-Tobias with a list of all substitute teachers at the Glen Landing Middle School. (Da103 at T80:19-81:5.) When questioned at her deposition regarding Kline's response, Russ-Tobias testified she believed Kline was merely answering her questions. She acknowledged that regardless of Kline's answers to her questions, the investigation would have gone forward, and she would have conducted multiple interviews. (Da94 at T75:9-76:12.) Moreover, she testified that it was not uncommon to receive incorrect names at the outset of an investigation but through her investigation, the correct name is usually identified. (Da94 at T24:19-25:9.)

After speaking with Kline, Russ-Tobias interviewed A.W., the alleged victim.[5] (DCa16-17.) Each of Russ-Tobias's interviews were conducted in a private room with no one else present. (DCa16-17.) A.W. was first asked a series of questions regarding whether she knew a substitute named "Ms. Meads." (DCa16-17.) A.W. responded "No. I don't think there was ever a Ms. Meads at the school." Russ-Tobias asked A.W. about Ms. Mercer, A.W. acknowledged she knew Ms. Mercer and liked Ms. Mercer, but denied that she did anything inappropriate to her. (DCa16-17.) In response to the following question: "Did you tell any other student that you had a relationship with Ms. Mercer," A.W. responded: "I've talked to my friends about crushes. I said that I really like Ms. Mercer as a sub. We rank the teachers and a lot of students like Ms. Mercer." (DCa16-17.) A.W. also acknowledged that she talked about Ms. Mercer with her friend K.C., whose mother first reported the relationship to Detective Obermeirer. (DCa4 & DCa16-17.) Russ-Tobias then interviewed A.W.'s mother, [6] who denied any knowledge of the alleged claims. (DCa17.) A.W.'s mother rejected having A.W. evaluated at the CARES[7] Institute but acknowledged that her

[5] The victim interview took place at 1:10 pm.
[6] The victim's mother was interviewed at 1:25 pm.
[7] CARES is the Child Abuse Research Education and Service Institute that specializes in helping children that experience abuse and offers an array of medical and mental health services developed to meet the diagnostic and therapeutic needs of children.

daughter "is going to counseling to discuss things with her identity and stuff." (DCa17.)

Russ-Tobias next interviewed with A.W.'s friend K.C., whose mother made the initial complaint.[8] (DCa4 & DCa17-18.) K.C. stated she and A.W. were close friends. (DCa17-18.) In response to the following question: "Have you heard anything about A.W. having a relationship with a substitute teacher named Rachel Mercer," K.C. responded as follows:

> The beginning of the year, she [A.W.] was telling me and my other friends, C.W. and A.O. she claimed she dated a substitute teacher last year. She said they would make out and she would go over to her apartment. And of course, I was worried, but she [A.W.] asked me to keep it a secret. It made me feel uncomfortable, cause if it was true, there was a child predator in the school. I didn't want to let her down. She [A.W.] kept telling me stories. Then she told a few more people, S.J. I told my sister. We tell each other everything. We were talking about the new teacher and everyone thinks he's hot. My sister was teasing me about it, and I said at least I don't actually date teachers like A.W. and my mom made me explain. I didn't want her to call the cops or call the school, but my mom said that as a mother, she had to tell someone. (DCa17-18.)

K.C. did not deny Rachel Mercer is the substitute teacher A.W. claimed to have a relationship, never correct Russ-Tobias when she mentioned Rachel Mercer, and she never suggested that the teacher that A.W. described to her was anyone other than Rachel Mercer. (DCa17-18.) Moreover, K.C. acknowledged that A.W. told her that she and Rachel Mercer saw each other naked and that they would text each other.

[8] The interview of K.C. took place at 1:40 pm.

(DCa17-18.) K.C. believed A.W. because she would frequently see A.W. speaking with Rachel Mercer in the hallway. (DCa17-18.)

After K.C. confirmed that Plaintiff was the substitute teacher that A.W. claimed to have an inappropriate relationship with, Russ-Tobias interviewed Plaintiff.[9] (DCa18.) During the interview, Russ-Tobias introduced herself to Plaintiff and advised her of the reason for her visit. (DCa18.) Russ-Tobias instructed her that she would contact her at a later date to schedule a second interview. (DCa18.) After the interview, Plaintiff left the school. Russ-Tobias did not conduct any additional interviews on April 24, 2019. (DCa18.) When asked why she did not interview the other students named by K.C, including C.W., A.O., and S.J., she stated that she was in control of the investigation and that she had 60 days to complete any interviews. (DCa1-30 & Da94 at T85:18-25.). Furthermore, she stated that it is not unusual to conduct additional interviews a week after the start of an investigation. (Da94 at T85:18-25.)

Between April 24, 2019, and April 28, 2019, Russ-Tobias spoke with Plaintiff and scheduled an interview for April 30, 2019, at 2:00 pm. (DCa18-19.) On April 29, 2019, Plaintiff's Counsel, Scott Schweiger, left a voicemail for Russ-Tobias and cancelled the April 30th interview. (DCa18-19.) In the voicemail, Mr. Schweiger requested that Russ-Tobias call him back to reschedule the interview. (DCa18-19.)

[9] Plaintiff was interviewed at 2:00 pm.

On May 1, 2019, Russ-Tobias spoke with Mr. Schweiger, and scheduled Plaintiff's interview for May 3, 2019, at his law office. (DCa19.) On May 1, 2019, Russ-Tobias contacted Kline and informed him that she would be coming to the school on May 2, 2019, to interview C.W., A.O., and S.J. (DCa20.)

On May 1, 2019, Russ-Tobias also contacted Jamie Guenther, HR Manager of Education Solutions Services ("ESS"), plaintiff's employer.[10] (DCa20.) She introduced herself to Ms. Guenther and informed her of the allegations made against Plaintiff. (DCa20.) Ms. Guenther stated that Plaintiff was placed on suspension pending the completion of the investigation. (DCa20.)

On May 2, 2019, Russ-Tobias interviewed A.O. C.W. and S.J. The interviews took place in the presence of Guidance Counselor Sheila Carvalho. (DCa20-22.) A.O was the first to be interviewed.[11] (DCa20-21.) A.O. acknowledged that she was friends with A.W. and that A.W. told her that she was dating a teacher at Glen Landing Middle School but later told her it was a joke. (DCa20-21.) When asked who the teacher was, A.O. responded "Ms. Mercer." (DCa20-21.) A.O. was not told Rachel Mercer's name before she provided it to Russ-Tobias. (DCa20-21.) A.O. did not know any specific details about the alleged relationship but acknowledged that

[10] Plaintiff was employed as a substitute teacher through ESS.
[11] A.O.'s interview started at 10:45 am.

A.W. told her that she had been to Mr. Mercer's house and that she once walked in on Ms. Mercer changing. (DCa20-21.)

C.W. was the next student interviewed.[12] (DCa21.) She confirmed her friendship with A.W., who told her she was dating a teacher at Glen Landing Middle School. (DCa21.) When asked who the teacher was, C.W. responded "Ms. Mercer." (DCa21.) As with A.O., C.W. was not told Rachel Mercer's name before she provided it to Russ-Tobias. (DCa21.) When asked what A.W. specifically said about Ms. Mercer, she responded: "Like they saw each other naked," and that it took place in the school bathroom. (DCa21.) C.W. further stated that A.W. told her that she would text Rachel Mercer and that she would go over to her house. She stated that A.W. later told her and her friends (A.O. and K.C.) that her claims were a lie. (DCa21.) When asked if she saw A.W. and Rachel Mercer talking, C.W. responded: "Yes. We would see her [Ms. Mercer] in the hallway, and she [Ms. Mercer] would just say get to class. I think A.W. saw Ms. Mercer as more of a friend, than a teacher." (DCa21.)

S.J. was the last student to be interviewed.[13] (DCa22.) She also confirmed her friendship with A.W, who told her in math class that she was together with a staff member, but that it was over in a couple of days. (DCa22.) When asked "did A.W.

[12] C.W. was interviewed at 10:55 am.
[13] S.J. was interviewed at 11:10 am.

say the name of the staff," S.J. responded: "Yes, Ms. Mercer." (DCa22.) As with A.O. and C.W., Russ-Tobias did not mention Rachel Mercer's name before S.J. provided it to her. (DCa22.) S.J. did not know any specific details about the relationship. (DCa22.) However, when asked "Have you ever witnessed any inappropriate contact between Ms. Mercer and A.W.," S.J. responded: "No, but I heard from A.W. that they met in the bathroom one time or something. That's what I heard. I've never seen anything." (DCa22.)

On May 3, 2019, Russ-Tobias interviewed Plaintiff in the presence of her counsel, Scott Schweiger. (DCa22-23.) Plaintiff acknowledged that she knew A.W., but only as her substitute teacher. (DCa22-23.) Plaintiff denied ever having a relationship with A.W.; that she ever texted A.W.; that A.W. ever came to her house; and that her and A.W. ever saw each other naked. (DCa22-23.) Following Plaintiff's interview, Russ-Tobias attempted to speak with Detective Obermeier on May 7, 2019, May 13, 2019, and May 20, 2019. (DCa23-24.) Russ-Tobias left messages with Detective Obermeier on all occasions. (DCa23-24.) On May 24, 2019, Russ-Tobias spoke with Detective Obermeier, and was told that his office was not taking up a case against Plaintiff and that the Camden County Prosecutor's office would rely on the IAIU findings. (DCa24.) Russ-Tobias informed him that she completed all her interviews and that there was no evidence to confirm that a sexual relationship existed between Rachel Mercer and A.W. (DCa24.) On June 12, 2019, Russ-Tobias

informed ESS Manager Vincent Cinaglia that she was closing her investigation and that there was no evidence that Plaintiff had any inappropriate contact with Glen Landing Middle School students. (DCa25-26.)

During the course of Discovery, all parties received Russ-Tobias's DCP&P investigation file on October 21, 2022. (Da9.) This was over two years after the original Complaint was served and after all parties served written discovery responses. In Plaintiff's Appellate Brief, she continually takes issue with the fact that Kline testified that he remembered Russ-Tobias providing him with Plaintiff's name at the onset of her investigation. Regarding this discrepancy, during Kline's deposition, he acknowledged that the situation could have transpired as Russ-Tobias described it in her report:

> Q: It's okay. To the best of your recollection, the name Meads, you don't recall that at all?
>
> A: Would I have done that had that been what was said to me? Yes. Maybe I was trying to clear up any confusion or do I have somebody by that name? We have a Ms. Mercer. I can see myself saying that, but I don't remember a sticking point where the name was introduced to me incorrectly. I just don't remember. (Da106 at T61:5-18.)

Regardless of these arguments, for the purpose of Defendants Motion for summary judgment, Defendants accepted the facts in the light most favorable to

Plaintiff, which was that Russ-Tobias's account of the incident was an undisputed material fact. (Da50.)

During the course of discovery, Plaintiff deposed Glen Landing Middle School employees Allison Stauffer, Kelly Kinzler, Shari Foster, Charles Pildis, and Audrey Benckert. (Da108 at T24:24-T25:2.; Pa262 at T44:25-45:23; Da112 at T7:7-14; Da114 at T10:7-22; Pa323 at T58:11-18.) Every employee testified that they were unaware of the accusations made against Plaintiff, and that they did not hear anything from any other Glen Landing Middle School employees. In particular, Plaintiff has put great focus on Shari Foster, and the fact that she spoke to Plaintiff about becoming a radiology technician and she gave her a posted note with a community college course and the salary connected to the position. Ms. Foster testified that she is always looking for different opportunities and that her giving Plaintiff the note had nothing to do with the DCP&P investigation. (Pa336-338.) Moreover, Ms. Foster testified that she had no knowledge of Plaintiff's investigation. (Da112 at T7:7-14.)

LEGAL ARGUMENT

I. STANDARDS GOVERNING APPEAL

This court reviews a ruling on a motion for summary judgment de novo and applies the same standard as the motion judge. Templo Fuente De Vida Corp. v. Nat'L Union Fire Ins. Co., 224 N.J. 189, 199 (2016). An appellate court considers as the motion judge did, "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, [here, Plaintiff,] are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

A judge grants summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). "To defeat a motion for summary judgment, the opponent must come forward with evidence that creates a genuine issue of material fact." Cortez v. Gindhart, 435 N.J. Super. 1, 32 (App. Div. 2012)).

However, as is the case here, an appellate court is presented mixed questions of law and fact, the Appellate Court gives deference to the supported factual findings

of the trial court but reviews de novo the trial court's application of legal rules to the factual findings. Sullivan v. Port Auth. Of N.Y. & N.J., 449 N.J. Super. 276, 283 (App. Div. 2017) (quoting State v. Pierre, 223 N.J. 560, 577 (2015)). Thus, the factual findings the motion judge made regarding the DCP&P investigation are entitled to deference, but any legal conclusions that stem from those findings are reviewed de novo. See also Balducci v. Cige, 240 N.J. 574, 595 (2020) (appellate courts apply a deferential standard in reviewing factual findings by a judge).

II. PLAINTIFF'S ARGUMENTS REGARDING THE COURTS FACTUAL DETERMINATIONS ARE WITHOUT MERIT AND IGNORE THE UNDISPUTED MATERIAL FACTS ACCEPTED BY DEFENDANTS

The lynchpin to Plaintiff's entire case is Kline's response to Investigator Russ-Tobias' inquiry into a complaint that a 25-year-old female substitute teacher at Glen Landing Middle School was having an inappropriate sexual relationship with a Glen Landing Middle School student. This is the only statement Plaintiff claims is defamatory.

The trial court correctly held that Kline's statement to Investigator Russ-Tobias is not defamatory. The trial court's holding is correct because "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, confirm there is no genuine issue as to any material fact challenged

and Defendants are entitled to a judgment or order as a matter of law." See, R. 4:46-2(c).

Plaintiff has failed to come forward with evidence that creates a genuine issue of material fact on the issue of Kline's alleged defamatory statement. See Cortez v. Gindhart, 435 N.J. Super. 1, 32 (App. Div. 2012)). Plaintiff tries to point to insubstantial controverted facts. i.e., that Kline cannot remember if Russ-Tobias provided Mercer's name to him or if he responded to her inquiry as to a "Ms. Meads" with "we don't have a Ms. Meads. We have a teacher with a name close to that, the only 25-year-old female substitute I can think of is Ms. Mercer, Rachel Mercer." (DCa16) Plaintiff, however, fails to recognize that the trial court took the facts in the light most favorable to her. Plaintiff's entire case is based on Kline's response to Russ-Tobias during her investigation. She has nothing without Kline's response. The trial court analyzed the facts in the light most favorable to Plaintiff (i.e., Kline's statement to Russ-Tobias) and found the statement is not defamatory. That is the trial court's obligation on a motion for summary judgment. See Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

Despite Plaintiff's pleas, a Court cannot deny a motion for summary judgment merely because the opposing party points to an insubstantial controverted fact. Id. Plaintiff may not rest upon the mere allegations or denials of the pleading. Id. She

must respond by affidavits… setting forth specific facts showing that there is a genuine issue for trial. See R. 4:46-5(a).

Speculation, fanciful arguments, disputes over irrelevant facts, unsupported assertions/conclusions are insufficient to defeat a motion for Summary Judgment. Courts must only consider those facts that are properly presented by competent evidential material. R. 4:46-5(a). The determination that a genuine issue of material fact cannot be made based on a mere argument of counsel or the bare assertion of a conclusion opposite to the factual position of the adversary. Amabile v. Lerner, 74 N.J. Super 43 (App. Div. 1963); U.S. Pipe &Foundry Co. v. Am. Arb. Assoc., 67 N.J. Super 384, 400 (App. Div. 1961); Ocean Cape Hotel Corp. v. Masefield Cor., 63 N.J. Super 369 (App. Div. 1960).

Here, the evidence is so one-sided that Defendants were entitled to summary judgement as a matter of law. Brill, 142 N.J. at 536 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 251-52 (1986)). The trial court correctly considered all legitimate inferences from the facts and did not take a leap of faith as Plaintiff wants this Court to do.

Plaintiff takes issue with the trial court's finding that the facts lead to a legitimate inference that Ms. Mercer is the person alleged to have been involved with A.W., a minor. Plaintiff's argument is without merit and ignores the trial court's thorough review of the record, which included all of the discovery/documents

provided in Plaintiff's Appendix, and the unredacted DCP&P report, which Plaintiff chose not to include in her Appendix. (5T at T39:18-22.)

Plaintiff ignores the legal authorities on TCA and defamation and its application to Kline's statement to Russ-Tobias. Plaintiff presents no facts to overcome the TCA defenses or clear and convincing evidence that Kline's statement was made with actual malice. Plaintiff instead focuses on speculative arguments, fanciful assertions and tries to create a factual dispute that does not address the facts relevant to the legal authority and its application to Kline's statement.

For example, Plaintiff takes issue with the Court finding the facts lead to a legitimate inference that Mercer is the person (substitute teacher) A.W. told her friends she was in a relationship with. (Pb12.) Plaintiff ignores that A.W. was first interviewed by Russ-Tobias. (DCa16-17.) That interview initially focused on Ms. Meads and it was only after A.W. advised there is no Ms. Meads that Russ-Tobias asked about Ms. Mercer. In total 5 students were interviewed, inclusive of A.W. None of the students, including A.W., identified a Ms. Meads or corrected Investigator Russ-Tobias when she asked about Ms. Mercer. (DCa16-22.) All of A.W.'s friends (K.C., C.W., A.O. and S.J.) told Russ-Tobias that A.W. claimed she was in a relationship with Ms. Mercer. Id. Further, A.W. told Russ-Tobias that she talked to her friend K.C. (whose mother first reported the relationship to Detective Obermeirer), about Ms. Mercer and that she really liked Ms. Mercer. Id. K.C. did

not correct Russ-Tobias when she mentioned Rachel Mercer, and she never suggested that the teacher that A.W. described to her was anyone other than Rachel Mercer. Id. K.C. acknowledged that A.W. told her that she and Rachel Mercer saw each other naked and that they used to text each other. (DCa16-18.) K.C. believed A.W. because she would frequently see A.W. speaking with Rachel Mercer in the hallway. Id.

The other three (3) students interviewed mentioned Ms. Mercer without Investigator Russ-Tobias ever mentioning her. (DCa20-22.) A.O. told Russ-Tobias that A.W. claimed to be dating Ms. Mercer and that A.W. had been to Ms. Mercer's house and that she once walked in on Ms. Mercer changing. Id. A.O. believed that A.W. saw Ms. Mercer more as a friend than a teacher. Id. C.W. also confirmed that A.W. claimed to be dating Ms. Mercer and claimed they had seen each other naked. Id. S.J., like A.O. and C.W., acknowledged that A.W. claimed to have a relationship with Ms. Mercer and that they had met up in the school bathroom. Id.

Plaintiff ignores that A.O., C.W., and S.J. all voluntarily provided her name to Investigator Russ-Tobias. Id. Without any supporting facts, Plaintiff asks this Court to speculate that the kids all got together and colluded to name her. Plaintiff doesn't know when and how A.O., C.W. and S.J. learned they were going to be interviewed by Russ-Tobias. Plaintiff never interviewed or deposed any of the minors interviewed by Russ-Tobias. Plaintiff also did not interview or depose K.C.'s mother,

who filed the report with the Gloucester Township PD, and she did not interview or depose anyone with the Gloucester Township PD. Instead, Plaintiff speculates as to what could have happened while ignoring the actual factual record. Those facts confirm that A.W. lied and told her friends she was in a relationship with Rachel Mercer.

Plaintiff ignores that the interviews of A.W. and K.C. were conducted in a private room with no one else present. (DCa16-18.) The interviews with A.O., C.W., and S.J. were all conducted in the presence of Guidance Counselor Sheila Carvalho. (DCa20-22.) Despite Plaintiff deposing Guidance Counselor Sheila Carvalho, she cannot present any evidence that the minor children discussed her or the ongoing investigation before interviewing with Investigator Russ-Tobias. Instead, Plaintiff wishes for this Court to speculate while ignoring the facts and not explaining how these facts go to the issue of Kline's entitlement to discretion under the TCA and that Kline acted with actual malice.

In this section of her brief, Plaintiff relies upon mere speculation, belief, surmise, and conjecture to try and create a question of fact. In doing so, Plaintiff takes great liberty with the facts and now claims that Kline accused her of being a sexual predator. (Pb1.) That is simply not true. The investigation was started when K.C.'s mother informed the Gloucester Township PD that A.W. was dating a

substitute teacher at Glen Landing Middle School. (DCa4.) The Gloucester Township PD then reported the complaint to DCP&P. Id.

The following morning, Investigator Russ-Tobias was assigned to the investigation. (DCa11.) Kline and Defendants did not start the investigation. It is undisputed that the Defendants never reported Plaintiff to the police and that they never initiated a report against her with the DCP&P. Russ-Tobias came to Defendants with a complaint and conducted an investigation at Defendants' School. (DCa15-16.) Defendants complied with the investigation. The safety of the school's minor children was of the upmost concern. Defendants had no involvement in how the investigation was conducted or who was investigated or interviewed. Russ-Tobias was in complete control of the investigation and decided who she wanted to interview, when she wanted to interview them and when and if she wanted to continue with her investigation. (DCa1-30 & Da94 at T85:18-25.) Defendants had no authority to stop Russ-Tobias from continuing her investigation after A.W. and her mother denied A.W. was having a relationship with Plaintiff. (Da 94 at T64:5-13.)

The uncontested truth is the investigation was open and ongoing before Kline learned of the facts surrounding the DCP&P investigation, which is when Investigator Russ-Tobias showed up at school for a pre-arranged meeting with A.W. and her mother. (DCa14-15.) Prior to Russ-Tobias sitting down to interview Kline,

he had no knowledge of the alleged perpetrator and/or any of the descriptors of the alleged perpetrator. (Da94 at T64:5-13.) The first time Kline heard the allegation that a 25-year-old female substitute teacher named Ms. Meads was the alleged perpetrator was when Russ-Tobias mentioned this information in his office. Id. Kline responded to this inquiry with a truthful statement; "we don't have a Ms. Meads. We have a teacher with a name close to that, the only 25-year-old female substitute I can think of is Ms. Mercer, Rachel Mercer". (DCa16.) This response is not tantamount to accusing Plaintiff of being a pedophile as she now suggests. Russ-Tobias testified that Kline was merely answering her questions, which he is not only obligated to do but is clearly in the best interest of the school children, their parents and DCP&P. Russ-Tobias' investigation was going forward regardless of Kline's answers to her questions. That investigation continued to focus on Ms. Meads until A.W. denied there was a Ms. Meads at the school and then A.W. and K.C. confirmed Ms. Mercer was the substitute teacher A.W. lied about. According to Russ-Tobias it was not uncommon to receive incorrect names at the outset of a DCP&P investigation but through her investigation, the correct name is usually identified. (Da94 at T24:19-25:9.)

If Plaintiff were to have her way, everyone who provides a name in response to an ongoing DCP&P investigation is liable for defamation. Kline should not have shared his thoughts with Investigator Russ-Tobias, i.e., not cooperate. Instead, he

would have kept his mouth shut and never mentioned the one name he could think of thereby putting his students at risk. Plaintiff seems to forget that this investigation wasn't about her. The investigation was conducted by DCP&P to protect a minor. Protecting the minor student was of the upmost importance. The trial court, however, did not lose focus and noted that *"[o]ur judicial system, or legal system is hypersensitive concerning sexual abuse of children. For that reason, our state has an investigatory agency, the DCP&P, that response very quickly to these issues."* (3T at 17:15-18).

Furthermore, Plaintiff ignores that Defendants, inclusive of Kline, are afforded immunity protection under N.J.S.A. 59:3-3, and had a responsibility, under N.J.S.A 9:6-8.8, to make the interests of minor children their primary concern. Kline's response falls directly in line with this obligation. Plaintiff does not challenge that Kline was compelled to assist DCP&P with their investigation and instead focuses on facts that do not address this issue. (Pb15.) The Court correctly recognized this issue in granting summary judgment. The trial court's decision falls squarely within the protections of the qualified immunity afforded to Kline. This qualified immunity is further discussed below in Section IV.

Plaintiff wishes to ignore this immunity and the context of Kline's response. She tries to make the DCP&P investigation about her when in fact it was about protecting a minor child. Plaintiff plays Monday morning quarterback by telling this

Court how she believes Kline should have responded without any facts, evidence, or expert opinion to support her speculation and opinion. This is exactly why the TCA provides Kline with immunity for his discretionary actions and Plaintiff is required to show clear and convincing evidence to overcome these protections, which she has not done.

Plaintiff's continuous argument that Kline should have provided a complete substitute list to Investigator Russ-Tobias without providing the names of the substitutes that meet the descriptors of the alleged perpetrator is also without merit and does not go to the heart of the issue. As Orlando Mercado ("Mercado") testified, there was no policy in place to provide DCP&P investigators with a substitute lists. (Da103-T80:19-81:5.) Kline's only duty was to cooperate with the investigation which he did.

These facts and testimony, however, do not stop Plaintiff from speculating that the roster of substitute teachers provides the name of other substitute teachers that meet all the descriptors provided by Investigator Russ-Tobias. Plaintiff presents no facts or evidence to support this argument. Plaintiff does not name one female with the last name starting with "M" that is on the roster, that was 25 years old and was on site on a regular basis during the time of the alleged assault. Instead, Plaintiff asks the Court to speculate that it is possible while ignoring that all of the students

interviewed named Ms. Mercer in their interview and never mentioned a different 25-year-old substitute teacher who has a last name starting with "M".

The factual record is clear. Speculation does not create a question of material fact to overcome summary judgement. The trial court correctly viewed the facts in the light most favorable to Plaintiff and correctly held Kline's response to Investigator Russ-Tobias was not a defamatory statement.

III. THE TRIAL COURT CORRECTLY HELD DEFENDANTS DID NOT DEFAME PLAINTIFF.

The lynchpin to Plaintiff's entire case is Kline's response to Investigator Russ-Tobias' inquiry about a complaint her office received regarding a 25-year-old female substitute teacher, with the last name Meads, was having an inappropriate sexual relationship with a Glen Landing Middle School student. After having this allegation dropped on him, Kline responded to Russ-Tobias' inquiry by stating: "We don't have a Ms. Meads. We have a teacher with a name close to that, the only 25-year-old female substitute I can think of is Ms. Mercer, Rachel Mercer." (DCa16.)

On appeal, Plaintiff argues for the first time that Kline's statement was made with "actual malice." (Pb17-20.) Plaintiff complaint pleads no facts indicating Kline provided his statement to Russ-Tobias "with knowledge of its falsity or with reckless disregard for the truth." New York Times v. Sullivan 376 U.S. 254 (1964). (Pa46.) In her appeal, she continues to provide no facts to meet this standard.

In both Defendants Motion for summary judgment and the Opposition to Plaintiff's Motion for reconsideration, Defendants made lengthy arguments supporting the fact that Plaintiff could not put forth any evidence that Kline's statement to Russ-Tobias was made with actual malice. (Da116.) Plaintiff chose to never address the issue of proving the elements of defamation and proving that Kline's statement was made with actual malice under the standards set forth in New York Times Co. 376 U.S. 254. (Da136 & Da146.) The Court generally does not consider arguments raised for the first time on appeal if they were not presented to the trial court. This principle is rooted in the idea that appellate review is intended to address errors properly raised and preserved in the trial court, not to retry cases or introduce new issues. Exceptions to this rule exist for matters involving jurisdiction or public policy. (See Domestic Fuel Co. V. American Petroleum Corp., 6 N.J. 538 (1951); Flammia v. Maller, 66 N.J. Super. 440 (1961); Yannuzzi v. United States Casualty Co., 19 N.J. 201 (1955); and Saul v. Midlantic Nat. Bank/South, 240 N.J. Super 62 (1990). Moreover, R. 2:6-2(a) requires that appellate briefs indicate if an issue was not raised below. Considering this, the Court should ignore Plaintiff's argument and uphold the lower court's ruling that Kline's statement was not made with actual malice and dismissing the entirety of the Complaint. (T2 & T3).

Regardless of whether the Court accepts the above argument, Plaintiff's new arguments do not change the underlying facts, the arguments made by Defendants, and the fact that the trial court correctly held Defendants did not defame Plaintiff.

In arguing actual malice, Plaintiff asks this Court to ignore the factual accuracy of Kline's statement and its context. Instead, she assigns an unsupported nefarious motive to his response to an open and ongoing DCP&P investigation.

Plaintiff wishes for this Court to ignore the Courts history of disposing of frivolous defamation claims on summary judgment. See DeAngelis v. Hill, 180 N.J. 1 (2004); Lynch v. N.J. Educ. Ass'n. 161 N.J. 152 (1999); Mehta v. Hirsh Singh, No. A-0409-23, 2025 N.J. Super. Unpub. LEXIS 1201 (Super. Ct. App. Div. July 1, 2025) (Da157.); Nikola v. Altice USA, et al No. A-1164-22, 2025 N.J. Super. Unpub. LEXIS 1387 (App. Div. July 24, 2025). (Da164.)

The New Jersey Supreme Court has instructed the lower courts to dispose of non-meritorious defamation suits through summary judgment. Costello v. Ocean County Observer, 136 N.J. 594, 605, 643 A.2d 1012 (1994). As instructed by our Supreme Court, a trial court should not hesitate to employ summary judgment in defamation suits. Sedore v. Recorder Publ'g Co., 315 N.J. Super. 137, 163, (App.Div.1998), citing Costello, supra, 136 N.J. at 605. ("Summary judgment is … an important tool for disposing of non-meritorious libel lawsuits."). That is because First Amendment values are compromised by long and costly litigation in

defamation cases." Sedore, supra, 315 N.J. Super. at 163. "By discouraging frivolous defamation actions, motions for summary judgment keep open lines of communication to the public on" matters of public concern. See Rocci v. Ecole Secondaire Macdonald-Cartier, 165 N.J. 149, 158 citing Dairy Stores, Inc. v. Sentinel Publ'g Co., 104 N.J. 125, 157 (1986).

To prove a claim of defamation, Plaintiff must prove: "(1) the assertion of a false and defamatory statement concerning another; (2) the unprivileged publication of that statement to a third party; and (3) fault amounting at least to negligence by the publisher." DeAngelis, 180 N.J. 1, 13 (2004).

When evaluating a statements content, the Court must consider "the fair and natural meaning that will be given to the statement by reasonable persons of ordinary intelligence." Id. at 14. Courts are reminded that speech related to matters of public concern is at the heart of the First Amendment Protection. Dunn & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749 (1985) (quoting Connick v. Myers, 461 U.S. 138, 145 (1983). Such speech "requires maximum protection." Sisler v. Gannett Co., 104 N.J. 256, 275 (1986). Thus, when alleged defamatory remarks touch on a matter of public concern, "the interests of free speech justify, and fairness to individual reputation permits, application of a strict and high burden of proof to establish actionable defamation." Id. at 275. Within this context, to satisfy a defamation claim, a plaintiff must demonstrate through clear and convincing

evidence that the statement was made with actual malice. New York Times 376 U.S. 279-80.

There is no doubt this matter touches on a matter of public concern. Kline's response to Investigator Russ-Tobias' inquiry was made during an open and ongoing DCP&P investigation into an allegation of sexual misconduct of a minor by a 25-year-old female substitute teacher. (DCa1-30.) Plaintiff's role as a substitute teacher is one as a fiduciary charged with the care of the school's students. DCP&P's investigation was directly linked to the well-being of a minor student. In view of Plaintiff's fiduciary role and the public's interest in a minor child's well-being, there must be free discourse, commentary, and criticism regarding a teacher's professionalism and behavior with a student. That principle, which is at the heart of this case, requires Plaintiff to show through clear and convincing evidence that Kline acted with actual malice when he cooperated with the DCP&P investigation and responded to Russ-Tobias' inquiry about Ms. Meads.

To find actual malice, Plaintiff must show through clear and convincing evidence that the defendant published the statement "with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times 376 U.S. 279-80. See also, See Schiavone Constr. Co. v. Time, 847 F.2d 1069, 1089 (3d Cir. 1988). Plaintiff did not and cannot meet this burden.

In Costello v. Ocean County Observer, 136 N.J. 594 (1993), the Court granted summary judgment to a reporter who published information that was mistakenly obtained. The reporter worked for the Ocean County Observer and was investigating Seaside Heights police officers. In the course of his investigation, the reporter was given a pro se Order to Show Cause titled *Nicholas J. Guiliano v. Borough of Seaside Heights and James Magovern, III.* Id. at 601. Within this file the reporter discovered a typewritten unsigned federal court draft complaint that made sexual assault allegations against Lieutenant Costello. Id. The reporter published the information in the unsigned complaint, which led to Lieutenant Costello filing suit for defamation. Id. The NJ Supreme Court granted defendant summary judgment finding that the article was not published with actual malice. Id. at 619. The court did not accept the plaintiff's argument that more due diligence should have been done before the article was printed. The court found that such arguments establish only the possibility of negligence and do not establish subjective knowledge of falsity or serious doubt about the truth of the story. Id.

Plaintiff attempts a similar argument to the one in Costello, by arguing Kline should have performed additional due diligence before responding to Russ-Tobias' initial inquiry. (Pb17-20.) In effect, Plaintiff argues that Kline should have kept his mouth shut and only provided Russ-Tobias with a list of substitute teachers. Although Defendants totally disagree with Plaintiff's argument as set forth in

Section II above, this argument, at best, can only establish the possibility of negligence. See Costello 136 N.J. at 619. This is not enough to establish that Kline acted with actual malice towards Plaintiff, which she is required to prove a claim of defamation. Id.

The New Jersey Supreme Court applies the same reasoning to defamation claims involving teachers. In Rocci v. Ecole Secondaire Macdonald-Cartier, 165 N.J. 149 (2000) the Court found that a complaint alleging misconduct against a teacher was not made with actual malice and granted summary judgment. In Rocci, plaintiff, a teacher, went on a student trip to Ontario and joined a Canadian school and a group of teachers. Id. at 153. After the trip, one of the Ontario teachers wrote a letter claiming that plaintiff had consumed alcohol on the trip and kept multiple students out late. Plaintiff denied the claims in the letter and filed a defamation suit against the teacher that wrote the letter. Id. The Court granted summary judgment finding that there was insufficient evidence to prove that defendant knew the information he wrote in the letter was false, or that he acted with reckless disregard for the truth when he wrote the letter. Id. at 159. The Court opined that even when considering the facts in the most favorable light to plaintiff, a reasonable factfinder could not find 'clear and convincing' evidence of [defendant's] actual malice. Id.

The case law clearly supports the trial court holding that Defendants did not defame Plaintiff and are entitled to summary judgment.

> the school was required to cooperate with DCP&P, did that, did nothing to – to point blame at Ms. Mercer. Simply Mr. Kline tried to help and be cooperative with this very serious matter and did just that. Nothing that Mr. Kline did was designed or intended or negligently jumped to a conclusion to name Ms. Mercer. (3T at T17:24-18:5.)

As demonstrated by Rocci and Costello, this Court should uphold the trial courts summary judgment decision. Taking the facts in the light most favorable to Plaintiff, she fails to satisfy her burden of showing through clear and convincing evidence that Kline's statement: "We don't have a Ms. Meads. We have a teacher with a name close to that, the only 25-year-old female substitute I can think of is Ms Mercer, Rachel Mercer," was made with actual malice. See Rocci, 165 N.J. at 159. (DCa16.)

The most obvious available measure to protect students from a teacher who poses a danger to their safety or welfare is for DCP&P to investigate all allegations brought to its' attention and to communicate its' concerns to the school district which employs the alleged perpetrator. In turn, the school district must be allowed to freely cooperate with DCP&P concerning the well-being of one of its students. Courts must therefore ensure that our jurisprudence does not act to establish a chilling effect on school officials' free speech due to fear of being sued for defamation when cooperating with DCP&P. See cf. Givhan v. Western Line Consol. Sch. Dist., 439 U.S. 410, 99 S. Ct. 693, 58 L. Ed. 2d 619 (1979). See, Dairy Stores, Inc. v. Sentinel Publ'g Co., 104 N.J. 125, 157, 516 A.2d 220 (1986) (Courts must ensure that our

jurisprudence does not act to chill complaints about a teacher's behavior involving the public's interest).

Plaintiff has presented no facts to show that Kline acted maliciously. There is no evidence he was out to get her, that there was animosity between her and him, or that he had a motive or vendetta to name her in response to Russ-Tobias' inquiry. All he did was cooperate and provide the name of the only 25-year-old female substitute he could think of. He simply gave a truthful response in the course of a serious investigation that directly affected students at Glen Landing Middle School. No reasonable factfinder could find clear and convincing evidence that Kline's statement was made with actual malice.

Kline never told Russ-Tobias he suspected her or that she should interview her. (DCa16.) Plaintiff ignores the context of Kline's statement and his obligation to protect the children at the Glen Landing Middle school. She ignores that she was the only building substitute, was twenty-five at the time, female, had a last name that starts with an "M," and had daily access to children of the school during the time of the alleged relationship. Russ-Tobias acknowledges that this is not the first time she received a complaint with an improper name. Regardless of Kline's answers to her questions, the investigation would have gone forward, and she would have conducted multiple interviews, and she would have learned the name of the alleged perpetrator through her investigation; "even if the alleged information comes in

unknown, it does give some descriptive information. So more than likely, based on descriptive information, we can figure out who the alleged person is." (Da94 at T24:19-25:9; Da94 at T75:9-76:12.)

The trial court recognized this in its decision stating:

> And, again, I'm sensitive to the upsetness of Ms. Mercer. But, I have to agree with defense counsel and the argument at summary judgment that, you know, it all funnels down – this huge amount discovery and – aggressive defense and prosecution of the claim has funneled down in the statement of Mr. Kline, who simply stated that we don't have a Ms. Meads. We do have a 25 your-old teacher named Ms. Mercer. That is not violoative of Ms. Mercer's rights under the totality of the circumstance. I'm finding that the principal acted appropriately, and that the school district acted appropriately, respecting, again, the very troubling event for Ms. Mercer. I -- the Court has no choice but to grant summary judgment in the defendants' favor and dismiss Ms. Mercer's complaint. (3T at T18:6-20).

The uncontested facts clearly support the trial court's decision and it finding that Defendants did not defame Plaintiff.

IV. AS A MATTER OF LAW, THERE ARE NO FACTS TO OVERCOME DEFENDANTS' IMMUNITY PROTECTION PROVIDED BY THE NEW JERSEY TORT CLAIMS ACT.

In this appeal, Plaintiff again fails to address the immunity protections afforded to Defendants under the TCA. Instead, Plaintiff leans into the argument that Defendants accused Plaintiff of sexual misconduct and the baseless argument that the Court addressed Defendants immunity arguments in Defendants' pre-answer Motion to Dismiss under R. 4:6-2(e). (Pb21-24.) Both arguments are without merit

and ignore the sweeping immunity protection afforded to Defendants under the TCA.

The Court dismissed Defendants pre-answer motion on procedural grounds and did not address the merits of any immunity arguments. (4T at T30:4-32:20.) The trial court determined that Plaintiff was entitled to discovery to determine if Defendants reported her to the DCP&P and the facts surrounding the investigation. Id. Judge Michael Kassel did not rule on any immunity arguments and noted he would address them as additional discovery was garnered. Id.

Discovery confirms that Defendants were not the "reporter" of abuse to DCP&P and instead were complying with an open and ongoing DCP&P investigation. (DCa1-30.) The investigation was started after K.C.'s mother called to the Police after overhearing her daughter K.C.'s remarks. Id.

Plaintiff argues that Kline's mention of Plaintiff's name to Russ-Tobias is akin to labeling her a sexual predator. (Pb21-24.) This argument ignores the context of the DCP&P investigation, the descriptors of the alleged perpetrator given to Kline, his duties, and responsibilities to his students and to DCP&P and is presumptuous. The facts confirm Kline never accused Plaintiff of sexual misconduct and only offered factual information to Russ-Tobias. (DCa16.) Kline was obligated under the law to comply with the investigation, which triggers immunity protections under the TCA. Defendants do not concede the immunity protections offered under N.J.S.A.

9:6-8.13, however, the nature of a DCP&P investigation falls squarely within the TCA, which offers far broader immunity protection than N.J.S.A. 9:6-8.13.

The TCA limits a public entity's or a public employee's liability where a public employee "acts in good faith in the execution or enforcement of any law," N.J.S.A. 59:3-3; "insitut[es] or prosecut[es] any judicial or administrative proceeding within the scope of his employment," N.J.S.A. 59:3-8; or causes an injury through misrepresentation while acting within the scope of his employment. N.J.S.A. 59:3-10. See also, Davis v. Township of Paulsboro, 371 F. Supp. 2d 611, 617 (D.N.J. 2005).

Under the TCA, Defendants are immune from their discretionary decisions, as well as for their good faith actions. See N.E. for J.V. v. State Dept. of Children and Families, Div. of Youth and Family Services, 449 N.J. Super. 379 (App. Div. 2017); Delbridge v. Schaefer, 238 N.J. Super. 323 (App. Div. 1989); Perona v. Township of Mullica, 270 N.J. Super. 19 (App. Div. 1994); Frediti v. Pines County Hosp., 190 N.J. Super. 344(App. Div. 1983); B.F. v. Div. of Youth and Family Servs., 296 N.J. Super. 372 (App. Div. 1997); Bernstein v. State, 211 N.J. Super. 316 (App. Div. 2010); and Wildoner v. Borough of Ramsey, 162 N.J. 375 (1999).

Pursuant to N.J.S.A. 59:3-3, a public employee will be afforded qualified immunity from civil liability if he/she can establish their conduct was "objectively reasonable" or he/she acted with subjective good faith. Fielder v. Stonack, 141 N.J.

101, 131-32 (1995). To overcome this immunity, a plaintiff must prove more than ordinary negligence.

A public employee's entitlement to qualified immunity under N.J.S.A. 59:3-3 is based on objectively reasonable conduct and *"is a question of law to be decided [as] early in the proceedings as possible, preferably on a properly supported motion for summary judgment dismissal."* See Wildoner v. Borough of Ramsey, 162 N.J. at 387 (2000) (*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*) (emphasis added). Objective reasonableness is established if the public employee's conduct did not violate a clearly established constitutional or statutory right. Gormley v. Wood-El, 218 N.J. 72, (2014) (quoting Harlow v. Fitzgerald 457 U.S. 800, 818, (1982). Plaintiff has no facts to overcome this burden.

A defendant who cannot establish that his or her conduct was objectively reasonable may still invoke qualified immunity and is entitled to summary judgment if his or her actions were carried out in good faith. Fielder, supra, 141 N.J. at 132.

When analyzing immunity under N.J.S.A. 59:3-3, the Court must consider that Defendant Kline's responsibility, more than anything else, is the protection of the children at his school. N.J.S.A. 9:6-8.8 establishes that the safety of children under the age of 18 shall be of paramount concern and the best interests of the child shall be a primary consideration.

DCP&P investigations, which are governed by N.J.S.A. 9:6-8.18, are required to take action to ensure the safety of the child. As such, Kline, as a public-school vice principal, was obligated by law to comply with the ongoing DCP&P investigation and therefore is afforded immunity protection under N.J.S.A. 59:3-3.

The Courts have granted public employees and their entities immunity under the TCA even in situations involving horrible tragedies. In N.E. for J.V. v. State Dept. of Children and Families, Div. of Youth and Family Services, 449 N.J. Super. 379 (App. Div. 2017), plaintiff brought suit on behalf of an infant against child protective services after the infant was seriously injured by the infant's father. Plaintiff argued that the Dept. of Children and Family Services ("the Division") was vicariously liable for a series of discretionary decisions made by a division case worker. The case went to trial and a jury awarded $165,972,503 dollars. Id. at 388.

This Court reversed the jury verdict finding that the caseworkers were entitled to immunity under N.J.S.A. 59:3-3 because the record demonstrated their conduct was objectively reasonable and that they acted in good faith in carrying out their statutory responsibilities. Id. at 404-405. To reach this decision, the Court relied heavily on Judge Charles E. Villanueva's reasoning in a similar case involving a caseworker's actions in connection with the sexual abuse of a 4-year-old girl. Id. at 408. Delbridge v. Schaeffer, 238 N.J. Super. 323, 328-29 (Law Div. 1989). In that

case, Judge Villanueva opined that defendants were entitled to immunity and stated the following:

> If these defendants were not immune and were obligated to defend their actions in a civil trial (and litigate the same issues already litigated, decided and currently on appeal), a most chilling effect would be visited upon them. When others in the field of preventing child abuse learn of this case, it could have a catastrophic effect if persons, such as these defendants, were held not to be immune. What reasonable DYFS employee, in deciding whether to pursue an allegation of child abuse, would fail to ask himself whether he wants to end up at risk in a similar lawsuit? What is worse, it is precisely in those cases where the indications of abuse are subtle or sketchy – and, thus, most in need of investigation -- that the chilling effect of such a decision will be felt most. Id. at 408; quoting Delbridge v. Schaeffer, 238 N.J. Super. 323, 346-48 (Law Div. 1989).

Here when taking the facts in the light most favorable to Plaintiff, Kline not only was objectively reasonable but acted in good faith. Judge Villanueva's rationale and reasoning as quoted by the Court in N.E. for J.V. v. State Dept. of Children and Families, Div. of Youth and Family Services, 449 N.J. Super. 379 (App. Div. 2017) must be applied in this case. Kline was merely responding to Russ-Tobias' inquiry and was obligated by law to comply with the DCP&P investigation. He is therefore entitled to immunity under N.J.S.A. 59:3-3 and N.J.S.A. 59:3-8. The case law is clear. The trial court had the authority and was correct in determining that Kline's response to Russ-Tobias was in good faith and objectively reasonable.

Plaintiff wishes to ignore the context of Kline's response, and the immunity protections he is afforded. If Plaintiff were to have her way, Kline would not have shared his thoughts with Russ-Tobias, i.e., not cooperate. The trial court correctly recognized this issue by granting summary judgment:

> The fact of the matter is a – what I'll submit may be a very troubled young person made allegations here that were untrue. Our judicial system, or legal system is hypersensitive concerning sexual abuse of children. For that reason, our state has an investigatory agency, the DCP&P, that respond very quickly to these issues, maybe don't resolve them or determine them as quickly as we would all like. I came off of 14 months in Family, coming back into Civil in October. I'm extremely familiar with the DCP&P, with their investigations. And, I don't find, again, that anything here violated the rights of Ms. Mercer. To the contrary, the school was required to cooperate with DCP&P, did that, did nothing to – to point blame at Ms. Mercer. Simply Mr. Kline tried to help and be cooperative with this very serious matter and did just that. Nothing that Mr. Kline did was designed or intended or negligently jumped to a conclusion to name Ms. Mercer. (3T at 17:10-18:5.)

Imagine if Kline did keep his mouth shut and the minor was actually being sexually assaulted. By keeping quiet and not responding in good faith with the only name that came to his mind, the minor would continue to be abused. This is not the result that anyone would want and would probably lead to a lawsuit brought on behalf of the minor against Kline for keeping quiet, not providing the name he could think of to the investigator, and interfering with the investigation by not allowing the investigator to decide what to do with the information that he thought of. This is why public employees are entitled to immunities for use of their discretion and good faith efforts in complying with the law.

If defendants, like Kline, are not immune from cooperating and responding to a DCP&P investigator and then forced to defend their responses in a civil trial, a chilling effect would be visited upon them. This situation would go directly against public interest and is precisely why TCA immunity exists for school employees. By overturning the lower court's decision, this Court would invite school officials, teachers, and administrators to remain silent during DCP&P investigations for fear of being sued. This will hurt investigations, which in turn could lead to further abuse of minor children. As quoted by Judge Charles Villanueva: "*it is precisely in those cases where the indications of abuse are subtle or sketchy – and, thus, most in need of investigation -- that the chilling effect of such a decision will be felt most"* (emphasis added).

V. IN DISMISSING PLAINTIFF'S DEFAMATION CLAIM THE COURT CORRECTLY DISMISSED THE ENTIRTY OF PLAINTIFF'S COMPLAINT.

As a matter of law, in dismissing Plaintiff's defamation claim, the Court correctly dismissed Plaintiff's entire complaint. In this appeal, Plaintiff does not cite any case law that supports her belief that the remaining claims of her Complaint survive without her defamation claim.

This Court has consistently held that emotional distress claims (negligent and intentional) that are predicated on the same facts as a defamation claim are derivative and cannot survive if the defamation claim fails. This principle is rooted in the idea

that defamation and emotional distress claims share a "symmetry or parallel" that requires consistent results. See Fortenbaugh v. New Jersey Press, Inc., 317 N.J. Super. 439, (App. Div. 1999); Griffin v. Tops Appliance City, Inc., 337 N.J. Super. 15 (App. Div 2001); Lobiondo v. Schwartz, 323 N.J. Super 391 (App. Div. 1999)

In Salek v. Passaic Collegiate School, 255 N.J. Super. 355 (App. Div. 1992), plaintiff, a teacher at a school, brought a suit for defamation, negligent and intentional emotional distress after a photograph of her was published in the school yearbook inferring a sexual relationship with another teacher. Id. at 358. After her case was dismissed on summary judgment, plaintiff appealed, arguing that even if her defamation theory was properly rejected, her claims of negligent and intentional emotional distress should have been presented to a jury. The court rejected this theory stating that claims of defamation and emotional distress are inherently linked and call for a consistent result, and to hold otherwise would permit plaintiff to use the tort of negligent infliction of emotional distress to circumvent defenses to the defamation action. Id. at 361.

Here, the same reasoning applies. Plaintiff's defamation claim is inherently linked with all of her claims. Thus, if Plaintiff's defamation claim is dismissed, the entirety of her Complaint must also be dismissed. The lower court correctly recognized this in granting summary judgment. (3T.)

In denying Plaintiff's Motion for reconsideration, the trial court further expanded on the above decision stating that because Kline did not make a defamatory statement, Plaintiff could not prove the elements of intentional infliction of emotional distress (i.e. Defendants acted intentionally/recklessly and that said conduct was extreme/outrageous). (2T.)

Absent proof of defamation, Plaintiff cannot support a claim of slander since slander is a form of defamation and proof of actual malice is necessary. Moreover, despite Plaintiff's speculative arguments this Court must recognize that Plaintiff has not produced any evidence that her reputation was damaged in the community. Plaintiff could not point to any school employees, outside of Defendants Kline and Mercado, who were aware of the details surrounding the DCP&P investigation. (Da108 at T24:24-25:2.; Pa262 at T44:25-45:23; Da112 at T7:7-14; Da114 at T10:7-22; Pa323 at T58:11-18.) Plaintiff disputes this claim because she does not believe the deposition testimony, under oath, of the fact witnesses.

Simply put, there is no actual evidence to support this theory, and Plaintiff cannot rely on conjecture, surmise, speculation, and disbelief to survive summary judgment. Thus, this Court should affirm the trial court's decision to dismiss Plaintiff's entire Complaint.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court affirm the order granting summary judgment in it's their favor.

Respectfully submitted,

O'TOOLE SCRIVO, LLC

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Attorneys for Respondents

Dated: August 13, 2025

RACHEL MERCER	:	SUPERIOR COURT OF NEW JERSEY
	:	APPELLATE DIVISION
PLAINTIFF/APPELLANT	:	APPELLATE DOCKET #A-002885-24
	:	
vs.	:	
	:	CIVIL ACTION
THE GLOUCESTER TOWNSHIP	:	
BOARD OF EDUCATION	:	APPEAL FROM ORDERS OF THE
	:	SUPERIOR COURT, CAMDEN
and	:	COUNTY LAW DIVISION
	:	DATED MAY 2, 2025 & MARCH 11,
THE GLOUCESTER TOWNSHIP	:	2025
PUBLIC SCHOOLS	:	
	:	SAT BELOW:
and	:	HON. DANIEL A. BERNARDIN, JSC
	:	
GLEN LANDING MIDDLE	:	TRIAL COURT DKT NO:
SCHOOL	:	CAM-L-1672-20
	:	
and	:	
	:	
STEPHEN KLINE	:	
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and	:	
	:	
ORLANDO MERCADO	:	
	:	
DEFENDANTS/RESPONDENTS	:	

REPLY BRIEF OF APPELLANT RACHEL MERCER DATED: 08/27/2025

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I. INTRODUCTION

This appeal arises from the grant of summary judgment where there are material facts in dispute. Nonetheless, as they had done before the trial court, Defendants ignore the evidence and make conclusory statements of what they contend are "undisputed" facts. Plaintiff agrees that the most critical of the facts at issue is Vice-Principal Kline's offering Plaintiff, Rachel Mercer's, name to the DCP&P investigator as the alleged perpetrator of an inappropriate relationship with a middle school student. That Kline stated, "we don't have a Ms. Meads. We have a teacher with a name close to that, the only 25-year-old female substitute I can think of is Ms. Mercer, Rachel Mercer," (Pa232) is disputed by -- of all people—Kline,[1] whose credibility is highly relevant to Plaintiff's claims. Defendants cannot avoid his denial by simply agreeing in the aftermath that this statement was in fact made. Further, Kline's statement is not the only material fact at issue. The circumstances surrounding his actions are also at issue. And, the trial court made credibility determinations and failed to view the evidence offered by Plaintiff in the light most favorable to her as to whether the Defendants' conduct, in totality, gives rise to liability to Plaintiff. For these reasons, as more fully set forth in Plaintiff's opening brief, the trial court's Orders granting summary judgment and denying reconsideration should be reversed.

II. LEGAL ARGUMENT

A. The trial court erred in making the factual determination that Plaintiff was the subject of the investigation "all along."

There are material facts in dispute as to how Plaintiff became the target of the DCP&P investigation. Nonetheless, the trial court erroneously found that it was Plaintiff who was the subject of the DCP&P investigation from the outset of the investigation. And Defendants continue to make conclusory statements in that vein, despite the actual disputed facts. The evidence of record absolutely established that the communication to the police and then to DCP&P was that a substitute teacher by the name of Meads was the alleged perpetrator and not Plaintiff. For the Court to conclude otherwise, was clear error and mandates reversal. It also ignores the disputed facts as to who offered Plaintiff's name first (the DCP&P investigator or Kline); and whether her being named in the subsequent interviews with the students was the result of chatter between the girls themselves; which the trial court assumed was the case. With these critical facts in dispute, the trial court should have afforded Plaintiff all reasonable inferences, including as set forth below, that Kline's denial of his being the source implicates his lack of reasonableness. Plaintiff should be able to argue to the jury that Kline's refusal to acknowledge that he offered Plaintiff's name was because he knew he acted improperly and so he could blame the DCP&P investigator.

The court erred in functioning as the factfinder and taking that duty away

from a jury entitling Plaintiff to have the summary judgment reversed.

B. The trial court erred in making a factual determination that Kline acted reasonably.

In concluding that Kline acted reasonably in offering Plaintiff's name (and that she was the target all along), the trial court again took away the function of the jury as to Plaintiff's defamation claim. Plaintiff was deprived of having the jury consider whether Kline's testimony (and answers to interrogatories[1]) was evidence of his "hiding" the truth, and whether his offering her name was justified in the first place where, as Mercado testified, the proper course of action, especially in light of the gravity of the accusations as far as the impact on the accused, was to offer a complete list of substitute teachers. Plaintiff should have been afforded the opportunity to present these facts to the jury, along with evidence that Kline had no reason to state that Plaintiff was the teacher to whom the complaint referred; that he had no prior dealing with her that would have caused him to suspect her of wrongdoing; and, as he testified, that had it not been for him, Plaintiff would not have been the subject of the investigation. (Pa218); (Pa219). As set forth in Plaintiff's opening brief, these issues should have been left for a jury to determine whether in light of the circumstances, Kline acted reasonably or unreasonably and

[1] Kline's answers to Interrogatories, he swore that "[t]he Case Manager [Russ-Tobias] advised they received a call advising plaintiff, Rachel Mercer was engaged in an inappropriate testing relationship with a student."

without consideration of the severe impact his accusation would have on Plaintiff where the only information before him was obviously an incorrect secondhand description (or perhaps, as it turned out, a lie). The court erred in making a factual determination that Kline "addressed the matter and really cooperated." (Pa 347) This was not for the court to decide.

C. The trial court erred in holding that Plaintiff did not sufficiently make out her claim for defamation.

Given the evidence that supports the jury finding that Kline acted unreasonably in offering Plaintiff's name in the face of there being no "Mrs. Meads," his never having had an issue with Plaintiff in the past, the availability of a substitute teacher list, the multiple female substitutes in the building over the relevant time period, as well as those with last names beginning with "M,"[2] and the known impact a false accusation would have on the accused, Plaintiff certainly can prove her claim for defamation- that Kline acted recklessly. Nonetheless, the trial court again made factual findings that should have been for a jury – i.e., as to Kline's state of mind.

Defendants nonetheless argue that Plaintiff did not "plead" actual malice or preserve a specific error about the element of actual malice to support her defamation claim. That is not the issue before this Court. The issue, which has been properly preserved, is whether the trial court should have determined Kline's state of mind

[2] ." For example, there were substitutes named Dana McEady and Nicole Maises. Both of those names are closer to Meads then Mercer.

on summary judgment. (*See* opening brief at p. 17) The issue is that Kline's subjective awareness as to whether Plaintiff was the intended target of the investigation when he offered her name must be looked at by evidence of his attitude toward the truth or falsity of the accusation. That Meads is close in spelling to Mercer or that the accused was 25 was not sufficient to withstand the test. The trial court ignored that, but instead determined that Kline tried to be helpful. While the failure to investigate fully will not by itself be sufficient to prove actual malice, "a failure to pursue the most obvious available sources for corroboration may be clear and convincing evidence of actual malice." *Hopkins v. City of Gloucester*, 358 N.J. Super. 271, 281 (App. Div. 2003). The trial court should have left it for the jury to determine Kline's subjective intent, rather than make its own finding that he was simply being cooperative. Again, as set forth in Plaintiff's opening brief, being helpful is not a substitute for having a good faith belief in the truth of the information, particularly while being aware of the devasting consequences a false accusation would have on the accused. For this reason, the trial court's orders should be reversed.

D. The trial court erred in upholding the immunity defense.

The immunity defense is only applicable where there is "reasonable cause to believe." The immunity defense was rejected by the trial court on Defendants' motion to dismiss in the face of the same factual circumstances before the court on

the motion for summary judgment. Whether because of the law of the case or the fact that the trial court erred in determining that Kline acted reasonably, the trial court erred in holding that the defense applies. Kline was not merely participating in the investigation; he was the source of directing the investigation at Plaintiff, which not only turned out to be a lie, but caused Plaintiff severe and permanent consequences. As such, the trial court's orders should be reversed.

E. The trial court erred in dismissing Plaintiff's Complaint while only addressing her claim for defamation.

The trial court never addressed Plaintiff's claims relating to the failure of the Defendants to keep the investigation confidential (e.g., claims for infliction of emotional distress, interference with contractual relations, repetition of untrue allegations). These claims are separate from the defamation claims. As set forth in Plaintiff's opening brief, there is an abundance of evidence to support her claims that the accusation against her was wrongfully shared with others in the school. These claims, having not been addressed by the trial court on summary judgment, should not have been dismissed and therefore, the court's order should be reversed and the claims reinstated.

III. CONCLUSION

For the foregoing reasons, as well as those stated in Plaintiff's opening brief, Plaintiff requests that the trial court orders granting summary judgment and denying reconsideration be reversed.

Respectfully submitted,

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Dated: August 27, 2025