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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2116-16T4

PATRICIA RUFF,

Plaintiff-Respondent,

v.

WEST KINNEY GARDENS, ROIZMAN  
PROPERTIES, STRIKE FORCE OF  
NEW JERSEY INC., USI SERVICES  
GROUP INC., NEWARK HOUSING  
AUTHORITY, HAYES GARDENS, AND  
HAYES HOMES FAMILY ORGANIZATION,

Defendants,

and

NEWARK PUBLIC SCHOOLS,<sup>1</sup>

Defendant-Appellant.

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Argued June 8, 2017 – Decided July 11, 2017

Before Judges O'Connor and Whipple.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Docket No. L-4983-  
14.

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<sup>1</sup> This party is improperly pled as Newark Public Schools. The correct name is State-Operated School District of the City of Newark.

Ryan A. Richman argued the cause for appellant (McCarter & English, L.L.P., attorneys; Natalie S. Watson, of counsel and on the briefs; Mr. Richman, Christopher Rojao and Elizabeth Monahan, on the briefs).

Alan Berliner argued the cause for respondent (Rothenberg, Rubenstein, Berliner & Shinrod, L.L.C., attorneys; Mr. Berliner, on the brief).

PER CURIAM

On our leave granted, defendant, the State-Operated School District of the City of Newark (Newark), appeals from an October 28, 2016 order denying its motion for summary judgment. We reverse.

Plaintiff filed suit against all the defendants, following the alarming events of August 4, 2012, when she was walking with her daughter and grandchildren and was shot by an unknown assailant on a public sidewalk at the corner of Sayre and West Kinney Streets in Newark. Plaintiff was on her way to a reunion hosted by the Hayes Homes Family Organization (Hayes) at the West Kinney Vocational High School playground. Newark issued a permit for the Hayes reunion to be held at the playground, allowing access to the playground area but not the school building. Newark was to arrange for a police officer to be present from 12:00 p.m. to 8:30 p.m.

In plaintiff's deposition, she described approaching the playground, when two women yelled someone had a gun and they all

began running. Plaintiff felt a pinch and realized she had been shot in the arm, but yelled for her grandchildren to keep running. Plaintiff then felt the gun hit her and she was "knocked out cold." Plaintiff could not identify who shot her or from where the shots originated, but she had been shot three times: once in the arm, once in the breast, and once in the back. Plaintiff was not on Newark property when she was shot, but argued the shooter was located on Newark property, and asserted Newark is responsible for a lack of police protection.

On October 28, 2016, the trial court denied Newark's motion for summary judgment, finding a material factual dispute as to the location of the shooter at the time of the incident. Newark moved for reconsideration, which was denied by the trial court on December 2, 2016. The court wrote in its order Newark failed to demonstrate how the court erred or failed to consider relevant case law or facts pursuant to Rule 4:49-2. On January 26, 2017, we granted Newark's motion for leave to appeal the October 28, 2016 order and the December 2, 2016 order denying Newark's motion for reconsideration.

When reviewing a grant of summary judgment, we use the same standard as that of the trial court. Globe Motor Co. v. Igdaley, 225 N.J. 469, 479 (2016). A court should grant 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." Ibid. (citing R. 4:46-2(c)). The evidence must be viewed in "the light most favorable to the non-moving party." Mem'l Props., LLC v. Zurich Am. Ins. Co., 210 N.J. 512, 524 (2012). "Rule 4:46-2(c)'s 'genuine issue [of] material fact' standard mandates that the opposing party do more than 'point[] to any fact in dispute' in order to defeat summary judgment." Globe Motor Co., supra, 225 N.J. at 479 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995)) (alterations in original).

Newark argues the trial judge erroneously denied summary judgment, arguing it was entitled to immunity under the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to 12-3, as a matter of law pursuant to N.J.S.A. 59:5-4, which states "Neither a public entity nor a public employee is liable for failure to provide police protection service or, if police protection service is provided, for failure to provide sufficient police protection service." Therefore, Newark contends, the location of the shooter was not a material factual dispute warranting the denial of summary judgment because, even if the shooter were located on Newark property, Newark would still qualify for immunity pursuant to N.J.S.A. 59:5-4. We agree.

The Tort Claims Act's guiding principle is that "immunity from tort liability is the general rule and liability is the exception." Coyne v. Dep't of Transp., 182 N.J. 481, 488 (2005) (quoting Garrison v. Twp. of Middletown, 154 N.J. 282, 286 (1998)). It is the public policy of this state that a public entity will only be liable for negligence as set forth in the Tort Claims Act. Pico v. State, 116 N.J. 55, 59 (1989).

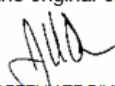
This court has stated the legislative purpose behind N.J.S.A. 59:5-4 "is to protect the public entity's 'essential right and power to allocate its resources in accordance with its conception of how the public interest will best be served, an exercise of political power which should be insulated from interference by judge or jury in a tort action.'" Rodriguez v. N.J. Sports & Exposition Auth., 193 N.J. Super. 39, 43 (App. Div. 1983), (quoting Suarez v. Dosky, 171 N.J. Super. 1, 9 (App. Div. 1979), certif. denied, 82 N.J. 300 (1980)), certif. denied, 96 N.J. 291 (1984). Additionally, N.J.S.A. 59:5-4 precludes suits against public entities "based upon contentions that damage occurred from the absence of a police force or from the presence of an inadequate one." Suarez, supra, 171 N.J. Super. at 9. Therefore, a public entity may "determine with impunity whether to provide police protection service and, if provided, to what extent." Rodriguez, supra, 193 N.J. Super. at 43.

Plaintiff concedes her theory of liability against Newark is the failure to provide police protection at the time of the incident.

The statute is clear Newark is immune from the present suit pursuant to N.J.S.A. 59:5-4. Therefore, Newark is entitled to summary judgment. The location of the shooter is not a material fact warranting the denial of summary judgment. Where the shooter was is of no moment. Newark qualifies for immunity because plaintiff's claim is Newark did not provide adequate police protection, a claim from which Newark is protected pursuant to N.J.S.A. 59:5-4.

Reversed and remanded for the entry of judgment of dismissal in Newark's favor.

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

  
CLERK OF THE APPELLATE DIVISION