**RECORD IMPOUNDED**

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0626-20

C.V., a minor by and
through her parents and
guardians ad litem, C.V. and R.V.,
and C.V. and R.V. individually
and in their own rights,

Plaintiffs-Appellants,

v.

WATERFORD TOWNSHIP
BOARD OF EDUCATION,
WATERFORD TOWNSHIP
SCHOOL DISTRICT, T&L
TRANSPORTATION, INC.,
THERESA BREDELL, and
LESLIE BREDELL,

Defendants-Respondents.

**APPROVED FOR PUBLICATION**
**June 13, 2022**
**APPELLATE DIVISION**

---

Submitted March 7, 2022 – Decided June 13, 2022

Before Judges Sabatino, Rothstadt, and Natali.

On appeal from the Superior Court of New Jersey, Law Division, Camden County, Docket No. L-1981-14.

Leo B. Dubler, III, attorney for appellants.

Connor, Weber & Oberlies, attorneys for respondents Waterford Township Board of Education and

Waterford Township School District (Amelia M. Lolli and Michael S. Mikulski, II, on the brief).

White and Williams, LLP, attorneys for respondents T&L Transportation, Inc., Theresa Bredell, and Leslie Bredell (Robert G. Devine, of counsel and on the brief; Kimberly M. Collins, on the brief).

The opinion of the court was delivered by

ROTHSTADT, J.A.D.

This appeal gives rise to an issue of first impression. Specifically, we consider whether the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -50, applies to claims arising from a sexual predator's criminal assaults against a young schoolgirl where those crimes were committed on a school bus. Under the circumstances of this case, we conclude the LAD does not apply, especially where, as here, there was no evidence that the predator's compulsive and repetitive behavior was the result of any proven intention to discriminate specifically against young women.

Plaintiff C.V. (Claire)[1] was five years old when she was sexually assaulted by a bus aide, A.D. (Alan), while riding on a school bus that transported students for defendant Waterford School District (WSD). At the time, Alan was employed by

[1] We use initials and pseudonyms to protect the privacy of the victim and preserve the confidentiality of these proceedings. R. 1:38-3(c)(9).

the bus's owner, defendant T&L Transportation, Inc., whose principals were defendants Theresa Bredell and Leslie Bredell (collectively, T&L). Thereafter, Claire's parents, plaintiffs C.V. (Coleen) and R.V. (Ralph), filed this action against T&L, defendant Waterford Township, and WSD (collectively, Waterford). In their complaint, plaintiffs asserted a claim for negligence and claims for relief under the LAD based on what they termed Alan's "harassment and sexual" abuse of Claire.

Plaintiffs now appeal from a May 12, 2017 order, denying their motion for partial summary judgment on the LAD claim as to T&L, and granting T&L's motion for partial summary judgment, dismissing the same claim. They also appeal from a June 9, 2017 order, granting Waterford summary judgment as to plaintiffs' LAD claim.[2] Plaintiffs also challenge a June 9, 2017 order, denying their motion for reconsideration of the order denying plaintiffs' motion for partial summary judgment as to T&L; a June 23, 2017 order, denying plaintiffs' motion for leave to amend their complaint to assert a cause of action under the LAD for age discrimination; and an August 4, 2017 order, denying their motion for production of documents relating to

[2] Plaintiffs' negligence claims in this case were resolved through a June 29, 2018 settlement agreement with T&L and a September 2020 consent order for judgment with Waterford, wherein they reserved their right to appeal from the orders relating to the LAD claims.

Alan's prosecution by the Camden County Prosecutor's Office and Alan's records from the Adult Diagnostic Center at Avenel (Avenel).

On appeal, plaintiffs argue that, contrary to the motion judge's decision, under the circumstances presented, the LAD protects a female child victim from sexual harassment stemming from child sex abuse in places of public accommodation; that the "but for" element of the hostile school environment prong under the LAD is automatically satisfied when the victim is subjected to any sexual touching or penetration; that the sexual abuser's subjective intent is not relevant in demonstrating discrimination under the LAD; that under the principles of agency, Waterford is liable for conduct carried out by T&L's employee; that the motion judge abused her discretion when she denied plaintiffs' motion for leave to amend their complaint to add a claim of age discrimination; and that the motion judge abused her discretion when she denied their motion to compel the production of documents.

We have considered plaintiffs' contentions in light of the record and applicable principles of law. We affirm, as we conclude the evidence on summary judgment could not sustain a claim under the LAD, and plaintiffs' remaining claims, to the extent they did not relate to the LAD, are either moot, not preserved for appeal in the parties' settlement, or without merit.

I.

The facts taken from the record on summary judgment, when viewed in the light most favorable to plaintiffs, are summarized as follows. Prior to Claire being assaulted, Waterford contracted with T&L to transport her and other students to its elementary schools during the 2009-2010 school year. Alan was hired by T&L as a bus aide after a criminal background check and was assigned to the bus that Claire took to and from school. It is undisputed that while working in that capacity, Alan sexually assaulted Claire while she rode on the bus beginning December 1, 2009 until April 12, 2010.[3] Before doing so, Alan made sure that the video camera installed on the bus was not able to record his actions. He evidently did so with the bus driver's knowledge.

Thereafter, Alan was criminally charged, and on August 20, 2010, he pled guilty to first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1). Alan was evaluated and determined to be a compulsive and repetitive sex offender, so when he was sentenced later to ten years, subject to the No Early Release Act, N.J.S.A. 2C:43-7.2, it was to be served at Avenel.[4] Although not convicted of any charges

[3] The record indicates that Alan also abused other children on the bus.

[4] See State v. A.D., No. A-4597-13 (App. Div. Dec. 9, 2015) (slip op. at 2-3).

for sexually abusing any other child,[5] during the sentencing hearing on December 3, 2010, the prosecutor stated that for decades, Alan sexually abused several children, including his stepson.

Plaintiffs filed their complaint in this matter on May 21, 2014, asserting negligence and violations of the LAD. During discovery, several depositions were taken of various individuals, including Alan. During his deposition, Alan admitted to sexually assaulting five children in the past, including his stepson. He confirmed that he assaulted children because he could not help it, and it was "like a disease or something." Alan stated that his behavior was the result of "something that goes in your mind that . . . you can't control . . . . You do it. [Y]ou don't worry about the consequences."

Each of the parties[6] moved for partial summary judgment on plaintiffs' LAD claims. On May 12, 2017, after considering the parties' submissions and oral

---

[5] We note that although plaintiffs argue that Alan only abused girls on the bus, there is no evidence in the record that was true. There was no record of any other convictions and Alan never testified at his deposition that he only assaulted girls. Plaintiffs contend that "[n]ot a single male student ever accused [Alan] of harassing or abusing them or brought a lawsuit alleging harassment or abuse." While plaintiffs attempt to rely on that argument and on settlements reached in other matters that allegedly involved girls, we do not consider those allegations proof of plaintiffs' claim that Alan only abused girls on the bus or ever.

[6] As discussed below, Waterford's motion for partial summary judgment was not considered and decided until approximately a month later.

arguments, the motion judge issued an oral opinion in which she denied plaintiffs' motion for partial summary judgment against T&L and granted T&L's motion for partial summary judgment.

In her decision, the judge reasoned that T&L's motion had to be granted because there was no evidence that T&L's employee sexually abused Claire because she was female, and the LAD was not "intended to stretch to situations such as [those] present" in this case. She explained that "the evidence here is that [Alan] acted on compulsions." She also noted that he testified in his deposition that "he couldn't control it" and "unfortunately for [the child], she just happened to be near him." Therefore, she did "not believe that this [case fell] within the LAD."

The judge acknowledged that under our Supreme Court's opinion in L.W. ex rel. L.G. v. Toms River Regional Schools Board of Education, 189 N.J. 381 (2007), an LAD claim for conduct that occurred on a school bus may be permissible "in [a] school setting" but only "under the right circumstances." She explained that those circumstances did not exist in this case as compared to L.W. because in that case the victim was "being harassed in the school, and that transfer[ed onto] the bus he [got] on." She further distinguished L.W. from the present case saying, "The but for element [cannot] be satisfied, . . . in this case, where you have a compulsive

sexual predator, a pedophile such as [Alan]." The judge concluded that "the LAD was [not] intended to be stretched in this kind of situation" where "[t]here is no discrimination" and Alan "would [have] abuse[d] any child . . . on that bus." On the same day, the motion judge entered an order consistent with her decision.

Plaintiffs filed a motion for reconsideration. On June 9, 2017,[7] the judge considered the parties' oral arguments before entering an order denying the motion for the reasons she placed on the record that day. The judge found plaintiffs failed to establish that she overlooked evidence or provided any new evidence. She continued to adhere to her original determination for the same reasons expressed in her May 12, 2017 oral decision, adding that, like counsel, she "could not find any case in which there were allegations of child abuse and the LAD was applied." Moreover, she again distinguished the facts in this case from L.W. by explaining the following:

[7] Earlier, on May 26, 2017, the judge in another oral decision denied plaintiffs' motion to compel the release of Alan's records from Avenel because plaintiffs did not indicate that they served a subpoena. The judge stated that serving a motion to compel on a non-party who is not subpoenaed is not the correct procedure to obtain documents from non-parties. She also observed that she did not see the relevance of the documents under N.J.R.E. 401. An order consistent with this oral decision was not included in the record on appeal.

[L.W.] involved, as you all know, a boy who, from about fourth grade to ninth grade, was abused and bullied and harassed, based on perceived sexual orientation. His mother certainly put the school on notice, had meetings with the principal, vice principal, et cetera.

So there is no doubt [that L.W. resembled] the employment setting, where you have a continual harassment based on a protected category. And while I agree with [plaintiffs that] intent is not necessary, it doesn't matter whether the people who are harassing or engaging in the discriminatory conduct intended it, it's the impact that matters. [In] L.W. . . . it seems . . . that they had intent and the impact. The administration was on notice, and nevertheless, did nothing.

[It is] clear in L.W., which isn't clear here, and it's something [plaintiffs] asked me last time, is whether or not this is even a public accommodation. And I had said last time, I believe it depends on the facts. And perhaps there might be a situation in which a school bus was, but it depends on the facts. I've thought about it some more, and actually, I don't see that, in this situation, the school bus is a public accommodation. [Nonetheless, in] L.W., that was not even a dispute there because, clearly, that was a public accommodation. The harassment was in a school setting. And clearly, there, the bullying, the harassment was based on perceived sexual orientation. Here, even if you try to apply the Lehmann[8] standard of sex harassment, as you very well know, the first prong . . . the discriminatory conduct is based on an individual's protected category.

[Alan's] intent isn't the issue. [The issue is] that there . . . is no evidence here that he was engaging in

---

[8] Lehmann v. Toys 'R' Us, Inc., 132 N.J. 587 (1993).

> the sexual abuse because of her being a female. He . . . indicated [in his deposition] that he is a compulsive sexual abuser of children, boys and girls.
>
> And so, even if one tried to apply the LAD, the Lehmann standard, which was applied in L.W., but I think the facts are completely different in this case, which is why I don't even think the LAD applies in this case, but if one tried, I don't think you get past the first prong because the conduct was not against [Claire] because she's a female.

On the same day, the judge issued a brief decision that she was granting Waterford's motion for partial summary judgment dismissing plaintiffs' LAD claim for the same reasons she granted T&L's partial summary judgment motion. Consistent with her oral decision, on the same day, she entered an order granting Waterford's motion for a partial summary judgment.

Also, on the same day, the motion judge heard arguments on plaintiffs' motion for leave to amend the complaint to add a claim for age discrimination under the LAD and a common law claim for sexual harassment. She denied plaintiffs' motion to amend the complaint on the LAD age discrimination claim because of her prior decision that this case does not fall within the LAD and finding that "it would be futile to add a count under LAD for any reason." Regarding plaintiffs' motion to amend the complaint to add a common law claim, she reserved her decision.

On June 16, 2017, in an oral decision, the motion judge denied plaintiffs' motion to amend the complaint to add a common law sexual harassment claim. In her decision, the judge noted that the Appellate Division previously held in Dale v. Boy Scouts of America, 308 N.J. Super. 516, 542-533 (App. Div. 1998), aff'd, 160 N.J. 562 (1999), rev'd on other grounds, 530 U.S. 640 (2000) and Catalane v. Gilian Instrument Corp., 271 N.J. Super. 476, 492 (App. Div. 1994) that the LAD preempted or supplanted common law sexual harassment claims, and as "such[,] separate common law counts are not permissible or appropriate." She further reasoned:

> The [c]ourt has previously decided that, under the undisputed facts of this case, plaintiff[s are] not able to show that [Claire] was harassed because of her gender under the LAD, and that is why the [c]ourt granted defendant[s'] partial motion for [summary judgment] on the LAD count. It would be illogical for the [c]ourt now to permit a common law sexual harassment claim.
>
> The [c]ourt has [previously] stated that the undisputed facts in this case show that T&L's bus aide, [Alan], is now incarcerated at [Avenel], which is a prison for sexual offenders. Unfortunately, it turned out that [Alan] was a pedophile. He says he abused children, due to a compulsion. In any event, the [c]ourt ruled that, under the facts of this case, defendants were entitled to partial summary judgment of plaintiff[s'] LAD claim based on gender because [Claire] was not harassed based on gender.
>
> . . . .

> If I didn't think that [Claire] was harassed under the LAD because of her gender, it would be illogical to now permit a common law claim for sex harassment. It is subsumed in the LAD; and once that is out, so, too, is this type of identical claim. Otherwise, it would seem to the [c]ourt that, every time an LAD count is dismissed, plaintiff would file nearly identical common law counts, and essentially, have a second bite at the apple.

A few days later, on June 23, 2017, the judge entered an order denying plaintiffs' motion.

On August 4, 2017, the motion judge denied plaintiffs' motion to compel the production of Alan's records from Avenel and records from the prosecutor's office. In an oral decision issued on the same day, the judge explained that she denied the motion "because it is undisputed that [Alan] pleaded guilty to sexually assaulting [Claire] on the bus" and the records are "not likely to lead to any [relevant] discoverable information." She observed that the information may "lead on a side tangent" and this "case is not going to be about re-litigating what [Alan] did or didn't do on the school bus." According to the judge, the "issue has to do with these defendants and this civil cause of action, as to whether or not they were negligent in hiring or in their method of running this school bus company." She also noted that the records from Avenel may contain "a number of privileged and confidential medical records and psychological examinations." She also denied plaintiffs' motion

to compel the records kept at the prosecutor's office relating to Alan's conviction because the prosecutor's office indicated that the records are impounded since they contain sensitive, confidential information regarding a criminal case involving minors. Consistent with her oral opinion, on the same day, the judge entered an order denying plaintiffs' motion to compel.

Thereafter, plaintiffs and T&L entered into a Settlement Agreement and General Release of Certain Claims, on June 29, 2018, settling plaintiffs' negligence claims for an unspecified amount but preserving their right to appeal the dismissal of the LAD and common law sexual harassment claims. On September 21, 2020, plaintiffs and Waterford settled plaintiffs' remaining negligence claim, which was memorialized in an Order for Judgment that also preserved plaintiffs' right to appeal from the summary judgment determinations as to their LAD claims. This appeal followed.

II.

Our review of a ruling on summary judgment is de novo, applying the same legal standard as the trial court. Green v. Monmouth Univ., 237 N.J. 516, 529 (2019). In reviewing summary judgment rulings, we adhere to customary principles under Rule 4:46 and case law. State v. Anderson, 248 N.J. 53, 67 (2021). In particular, we review the record in a light most favorable to the non-moving party

and give that party all reasonable inferences from the facts. R. 4:46-2(c); see also Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). In reviewing the same written record as the motion judge, we do not afford the judge's decision any special deference when no credibility findings are made. W.J.A. v. D.A., 210 N.J. 229, 237-38 (2012). "The court's function is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021) (quoting Brill, 142 N.J. at 540). If "the evidence 'is so one-sided that one party must prevail as a matter of law,'" summary judgment is proper. Brill, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). Summary judgment, however, "is not meant 'to shut a deserving litigant from . . . trial.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (quoting Brill, 142 N.J. at 540).

III.

Initially, we note that the painful and disturbing facts of this case remind us of Justice Albin's warning in Frugis v. Bracigliano, 177 N.J. 250 (2003), which addressed claims of negligence against a board of education arising from a teacher's abuse of a student. The words were quoted by Judge Payne in Hardwicke v. American Boychoir School, 368 N.J. Super. 71, 75 (App. Div. 2004), aff'd in part, modified and remanded in part, 188 N.J. 69 (2006), in our consideration of claims

similar to those raised in Frugis but under the New Jersey Child Sexual Abuse Act of 1992 (CSAA), N.J.S.A. 2A:61B-1.

In Frugis, Justice Albin wrote the following about an educators' obligation to protect the children entrusted to them:

> The law imposes a duty on children to attend school and on parents to relinquish their supervisory role over their children to teachers and administrators during school hours. While their children are educated during the day, parents transfer to school officials the power to act as the guardians of those young wards. No greater obligation is placed on school officials than to protect the children in their charge from foreseeable dangers, whether those dangers arise from the careless acts or intentional transgressions of others. Although the overarching mission of a board of education is to educate, its first imperative must be to do no harm to the children in its care. A board of education must take reasonable measures to assure that the teachers and administrators who stand as surrogate parents during the day are educating, not endangering, and protecting, not exploiting, vulnerable children.
>
> [Frugis, 177 N.J. at 268.]

Here, "[w]ith those fundamental principles in mind, we address plaintiffs' claims[,]" ibid., which arose from the similar acts addressed in Frugis and Hardwicke, but are now in this case limited only to the LAD.

For the reasons that follow, we conclude, as did the motion judge, that the LAD has no application to a sexual predator's assault of a student on a school bus

where there is no evidence his actions were based solely on the victim's status as a member of a protected group. Having said that, to be clear, by our holding in this case, we by no means imply that sexual assault on a school bus can never be an act that is subject to an LAD claim.

IV.

New Jersey's LAD prohibits discrimination and bias-based harassment directed towards many protected classes, including gender and age, that occurs in various settings, employment, housing, and places of public accommodation. Lehmann, 132 N.J. at 600; N.J.S.A. 10:5-4. The LAD expressly provides:

> All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, familial status, disability, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression or source of lawful income used for rental or mortgage payments, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right.
>
> [N.J.S.A. 10:5-4.]

The purpose of the LAD "is 'nothing less than the eradication of the cancer of discrimination.'" Lehmann, 132 N.J. at 600 (quoting Fuchilla v. Layman, 109 N.J.

319, 334 (1988)). Without providing an age limitation, a "person" is defined under the statute, in pertinent part, as "one or more individuals." N.J.S.A. 10:5-5(a). In defining "[a] place of public accommodation" the statute includes, but is not limited to, "summer camp, day camp or resort camp, . . . swimming pool, amusement and recreation park, . . . any public library and any kindergarten, primary and secondary school, trade or business school, high school, academy, college, and university." N.J.S.A. 10:5-5(l).

In Lehmann, our Supreme Court defined the elements "for determining whether workplace acts of sexual harassment constitute prohibited discrimination under the LAD." Cutler v. Dorn, 196 N.J. 419, 430 (2008) (citing Lehmann, 132 N.J. at 603-04). There, the Court concluded that a female plaintiff alleging a hostile environment based on acts of sexual harassment must prove the following four elements: "the complained-of conduct (1) would not have occurred but for the employee's gender; and it was (2) severe or pervasive enough to make a (3) reasonable woman believe that (4) the conditions of employment are altered and the working environment is hostile or abusive." Ibid. (emphasis omitted) (quoting Lehmann, 132 N.J. at 603-04). Even "one incident of harassing conduct can create a hostile work environment." Taylor v. Metzger, 152 N.J. 490, 499 (1998).

Moreover, the Lehmann Court further explained that "[w]hen the harassing conduct is sexual or sexist in nature, the but-for element will automatically be satisfied." 132 N.J. at 605. The Court provided examples of such conduct, including "sexual touching or comments, or where [a woman] has been subjected to harassing comments about the lesser abilities, capabilities, or the 'proper role' of members of her sex," and it held that where such conduct is proven, a plaintiff "has established that the harassment occurred because of her sex." Ibid.

The Court also observed harassing conduct supporting a sexual harassment claim "need not be sexual in nature; rather, its defining characteristic is that the harassment occurs because of the victim's sex." Id. at 602 (emphasis added). "For example, if a supervisor is equally crude and vulgar to all employees, regardless of their sex, no basis exists for a sex harassment claim." Id. at 604. However, a female plaintiff establishes "non-facially sex-based" conduct occurred because of her sex by demonstrating the conduct "was accompanied by harassment that was obviously sex-based," or by "show[ing] that only women suffered the non-facially sex-based harassment." Id. at 605.

The Lehman principles have been extended to claims made by children. For example, in J.M.L. ex rel. T.G. v. A.M.P., 379 N.J. Super. 142 (App. Div. 2005), we considered whether a minor-employee can establish a claim of sexual harassment

where she "welcomed" the sexual encounters of her adult-employer. Id. at 145-46. The motion judge in that case granted the franchisor-defendant's summary judgment motion after finding that "a plaintiff must demonstrate that the actions of a co-employee or employer must have a negative effect on her, such as . . . unwanted or undesired alteration of the terms and conditions of employment" and "proof that the behavior was welcome[d]" is an affirmative defense against a sexual harassment claim. Id. at 147.

In affirming the motion judge's order, we rejected the judge's reasoning. Id. at 149. We observed that sexual relations between minors and adults is not only against public policy, regardless of the victim's consent, but also contrary to N.J.S.A. 2C:14-2(a) (aggravated sexual assault). Id. at 148-49. Thus, we found that there was no reason to believe that the Legislature meant to carve out this type of exception "in the context of workplace relationships between a minor and an adult." Id. at 149. Therefore, we "reject[ed] the notion that a minor may consent to or welcome the prohibited conduct." Ibid. We affirmed the motion judge's order that the defendant-franchisor was not subject to liability under the LAD because it had no "role in hiring or terminating employees or involved in any other personnel issues at any franchise. Each franchise was individually owned and operated as an individual business." Id.

at 152. Thus, "their status as franchisor [did not] expose[] them to liability on the account of [the adult's] actions." Id. at 152-53.

As already noted, in L.W., the Court considered "whether a school district may be held liable under the [LAD], when students harass another student because of his perceived sexual orientation." 189 N.J. at 389. In that case, the minor plaintiff eventually withdrew from school after being exposed to what began as students spewing occasional insults and taunts using homosexual epithets beginning in fourth grade, but which intensified to daily frequency, and "escalated to physical aggression and molestation" in seventh grade, culminating with physical attacks in high school. Ibid. Later, the plaintiff, through his mother, filed an action under the LAD against the school district. Ibid.

The Court analyzed the statute's plain language, discerning who is covered (all persons within the protected class, id. at 400), the conduct prohibited (discrimination, ibid.), and location (place of public accommodation, id. at 401, such as a school bus, classroom, or playground, id. at 412). Considering the expansiveness of LAD's language, the Court held "that the LAD recognizes a cause of action against a school district for student-on-student affectional or sexual orientation harassment." Id. at 389-90. It also held "that a school district is liable for such harassment when the school district knew or should have known of the

harassment but failed to take actions reasonably calculated to end the mistreatment and offensive conduct." Id. at 390. In so holding, the Court reasoned that the LAD's broad language supported such remedial goal because of the "prevalent nature of peer sexual harassment." Id. at 402.

In this regard, in L.W. the Court held that "in the educational context, to state a claim under the LAD, an aggrieved student must allege" more than "isolated schoolyard insults or classroom taunts." Id. 402-03. Instead, the student must allege and demonstrate:

> [1] discriminatory conduct that would not have occurred "but for" the student's protected characteristic, [2] that a reasonable student of the same age, maturity level, and protected characteristic [3] would consider sufficiently severe or pervasive enough to create an intimidating, hostile, or offensive school environment, and [4] that the school district failed to reasonably address such conduct.
>
> [Ibid.]

In this case, plaintiffs contend that the LAD extends to criminal sexual assault committed by a confirmed predator, regardless of the victim's gender. We disagree.

Plaintiffs are correct that the LAD should be, and is, broadly construed, Victor v. State, 203 N.J. 383, 420-21 (2010), that it protects all persons, including minors, see L.W., 189 N.J. at 389, that a school bus is "a place of public accommodation," see id. at 401, 412, and that the LAD claim may be based on conduct that violates

other statutes, including our criminal statutes, see J.M.L., 379 N.J. Super. at 148-49. However, plaintiffs gloss over the single most important detail that glues all these factors together: discrimination "because of" a protected characteristic. N.J.S.A. 10:5-4; see also Lehmann, 132 N.J. at 601.

Here, the record contained no evidence that Alan acted because of Claire's gender. On the contrary, his own deposition testimony and history of sexual abuse towards at least one boy and other girls, indicated that his conduct was fueled by his pedophilia, and not gender discrimination. The LAD was simply not intended to provide a civil remedy for child sex abuse[9] committed by compulsive pedophiles. See N.J.S.A. 10:5-4. Even if it was, a victim must demonstrate the "discriminatory conduct would not have occurred 'but for' the student's protected characteristic." L.W., 189 N.J. at 402-403. Here, plaintiffs could not meet that burden.

To be sure, without the pedophilia element and evidence that Alan assaulted at least one boy and girls, his sexual assaults could carry with them a presumption that the act was based on discrimination that triggered the LAD. For example, in

[9] Plaintiffs other remedy, in addition to the negligence claim already brought and settled, is the CSAA. Under the CSAA, a minor-plaintiff who demonstrates an "injury or illness" that has a "causal relationship to the acts of sexual abuse," committed by an adult is entitled to damages. N.J.S.A. 2A:61B-1(h); J.L. v. J.F., 317 N.J. Super. 418, 433 (App. Div. 1999). The CSAA does not require discrimination. N.J.S.A. 2A:61B-1.

J.T.'s Tire Service, Inc. v. United Rentals North America, Inc., 411 N.J. Super. 236 (App. Div. 2010), we considered whether the LAD protected women business owners from prohibited "discriminatory conduct which arises after companies begin engaging in business transactions." Id. at 241. The plaintiff in that case alleged that the defendant's branch manager ceased doing business with her company after she declined to provide sexual favors. Id. at 238-39. The business relationship finally ended after the manager kissed and groped plaintiff's body against her will, and she refused his sexual advances. Id. at 238-39.

The trial court dismissed the plaintiff's complaint reasoning that no evidence existed to suggest that the defendant discriminated against the plaintiff based on her sex as contemplated by the LAD. Id. at 239. We reversed and remanded for trial after determining that if "harassment consists of sexual overtures and unwelcome touching or groping, it is presumed that the conduct was committed because of the victim's sex. 'Thus when a plaintiff alleges that she has been subjected to sexual touchings or comments, . . . she has established that the harassment occurred because of her sex.'" Id. at 241-43 (alteration in original) (quoting Lehmann, 132 N.J. at 605).

In this case, the presumption of harassment simply cannot apply, especially in light of the undisputed fact that Alan's actions were the result of his pedophilia

directed to all children. Despite plaintiffs' arguments, there is no evidence of discrimination. Instead, there is overwhelming evidence that Alan was a child sex predator who abused children for decades before he was eventually thwarted by Claire's parents who sensed something wrong with their daughter's uncharacteristic behavior.

Thus, we agree with the motion judge's determination that in light of the evidence in this matter's record, the LAD[10] did not apply to the claims preserved by the parties for our review.

V.

To the extent that we have not addressed any of plaintiffs' remaining claims, we conclude that they were either now moot, barred under the parties' settlement agreement, not properly raised before the motion judge, or without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.



[10] We reiterate that plaintiffs' claims are confined to the LAD and we have not been asked to consider whether a female child victim could have a viable claim against a pedophile under the CSAA.