SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0399-22

MIRIAM DUBOY GONZALEZ,

Plaintiff-Respondent,

v.

MORRIS COUNTY BOARD OF COUNTY COMMISSIONERS, MORRIS COUNTY SHERIFF'S OFFICE,

Defendants-Appellants,

and

STATE OF NEW JERSEY ADMINISTRATIVE OFFICE OF THE COURTS and PRIYA RENGARAJAN,

Defendants.

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Argued January 24, 2023 – Decided February 3, 2023

Before Judges Geiger and Susswein.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-0051-21.

William G. Johnson, Special Counsel, argued the cause for appellants (John Napolitano, Morris County Counsel, attorney; William G. Johnson, of counsel and on the briefs).

Nicholas M. Torres argued the cause for respondent (Law Office of Nicholas M. Torres, LLC, attorney; Jeff Thakker, of counsel; Nicholas M. Torres, on the brief).

PER CURIAM

Upon leave granted, defendants Morris County Board of County Commissioners (Board), and Morris County Sheriff's Department[1] (collectively, the county defendants) appeal a Law Division order denying their motion for summary judgment in this personal injury action brought under the New Jersey Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3, arising from a trip and fall at the Morris County Courthouse. We reverse.

We take the following facts from the summary judgment record, viewing them in the light most favorable to the non-moving plaintiff. See Richter v. Oakland Bd. of Educ., 246 N.J. 507, 515 (2021).

[1] Improperly pleaded as the Morris County Sheriff's Office.

On the day of the incident, plaintiff was working in a county courthouse as a freelance interpreter, and was directed by defendant Priya Rengarajan, a State-employed court clerk, to enter courtroom 10/300C of the Morris County Courthouse through a limited access door. Unbeknownst to plaintiff, there was a step located just inside the side door. As plaintiff was walking into the courtroom, she was "looking" at and "talking to" Rengarajan, rather than where she was going or her foot placement, and tripped and fell over a single step that was located just inside the entrance. The courtroom and single step were carpeted green, while the hallway leading to that area was carpeted dark blue. Plaintiff claims she did not see the step, which she contends was a dangerous condition camouflaged by carpet installed decades after the construction project, that caused her to trip, fall, and sustain serious injuries requiring surgery.

The step was created by the platform leading to the judge's elevated bench as part of a major courthouse enlargement project. As shown on a blueprint, the plans drawn by the County's architect called for a six-inch high platform creating the step. Primarily at issue in this matter is whether the plans and specifications were officially approved by the Board giving rise to plan or design immunity under N.J.S.A. 59:4-6. Plaintiff also claims the replacement carpet falls within

maintenance, not subject to plan or design immunity, and that the height of the platform is five and one-half inches high.

Plaintiff retained Raymond J. Nolan, P.E., as her expert. In his original November 13, 2019 report, he opined that "within a reasonable degree of engineering certainty, the single step up, located just inside the door, was palpably dangerous." In his November 8, 2021 supplemental report, Nolan opined that "within a reasonable degree of engineering certainty, the existence of a single step located against the closed side door was a dangerous and hazardous condition," and that "[m]atters were made worse by the carpeting colors in the hall and courtroom." The report also stated that "[i]f a bright yellow or other bight color strip or similar highlight had been added to the single [step] and to the elevated courtroom flooring . . . a person entering or exiting the courtroom could have noticed it and reacted appropriately." The county defendants expert, Walter Wysowaty, P.E., testified that the current carpeting was likely installed "within the last 10 years."

Plaintiff brought this action against the county defendants (which also included the County of Morris Department of Buildings and Grounds), and the State of New Jersey, the New Jersey Administrative Office of the Courts, and court clerk Priya Rengarajan (the state defendants). The case was subsequently

transferred to Passaic County. The county defendants and the state defendants asserted crossclaims against each other. Discovery then ensued.

In her answer to Interrogatory 2, plaintiff provided the following description of her version of the accident:

> [P]laintiff] was intending to enter through the main entrance. She was directed away from the main entrance by court personnel, believed to be the [d]efendant, Priya Regarajan, a court clerk for Judge Ironson. She was instructed to enter through a secondary entrance which is reserved for court personnel and inmates. [Plaintiff] was not familiar with this entrance. As she was directed towards this entrance by the [d]efendant, Ms. Rengarajan was speaking to [plaintiff] causing [plaintiff] to not notice the dangerous single step inside the door threshold. As a result, [plaintiff] tripped over the step, falling on her right side causing her to sustain severe injuries to her right shoulder and arm.[2]

During her deposition, plaintiff testified she had previously been in the courtroom where the accident occurred fifteen times but had always used a different doorway to enter the courtroom. As plaintiff approached the courtroom, Rengarajan was standing outside the courtroom by an open door that plaintiff had never used. Plaintiff then testified:

> And I turned to go into the other door, and [Rengarajan] said, "You can come in this way," and her arm extended

[2] Plaintiff does not claim the county defendants are liable for the actions or failure to act of court clerk Rengarajan, who is a State employee.

> so that I could walk in. I'm still looking to her and talking to her, and I said, "Are you sure?" And I didn't see the step, and I tripped over it[,] and I fell. That's how it happened.

Plaintiff added that when Rengarajan stood with her back to the door and her arm extended, she told plaintiff, "You can come in this way." Plaintiff responded, "Are you sure?" "[Rengarajan] nodded and as I'm taking the step I fell, because I didn't realize that there was a step right there."

Relevant here, the courtroom's plans and specifications dated June 12, 1969, were prepared by Edward A. Berg, a licensed architect. The plans included a six-inch high "platform" for the judge's bench, which created a "step" when entering the courtroom through the limited access side door used by plaintiff.

Discovery revealed the approval process relating to these plans. The minutes of the Board's May 14, 1969 meeting reflect that the Board introduced a "Bond Ordinance providing for enlargement of the County Court House building in and by the County of Morris . . . appropriating $3,000,000 therefor, and authorizing the issuance of $2,857,000 bonds or notes of the County for financing such appropriation." The meeting minutes provided that "[t]he improvement described in . . . th[e] bond ordinance" was "authorized as a general improvement to be made or acquired by the County of Morris," and

further stated that "the plans and specifications with respect thereto" were "approved."

The minutes of the Board's May 28, 1969 meeting stated the project was "authorized" and "approved," but mentioned that "final consideration of the [bond] ordinance" would "take place after [p]ublic [h]earing." The minutes of Board's July 23, 1969 meeting stated that additional information relating to the project could be "examined at the office of the [a]rchitect, Edward A. Berg."

The minutes of the Board's August 19, 1969 meeting reflect that the bond ordinance to fund the construction project had been introduced and passed upon first reading at the Board's August 5, 1969 meeting and would "be further considered for final passage, after public hearing thereon," at the Board's meeting on August 19, 1969. The minutes also set forth the entire bond ordinance.

Section 1 of the ordinance states: "The improvement described in Section 3 of this bond ordinance has heretofore been and is hereby authorized as a general improvement to be made or acquired by the County of Morris, New Jersey, by the ordinance . . . of the County adopted May 28, 1969 . . . ." In turn, Section 3 of the ordinance refers to the "plans and specifications with respect

thereto on file in the office of the Morris County Superintendent of Public Works and heretofore and hereby approved."

The minutes of the Board's August 19, 1969 meeting further reflect that the public hearing on the bond ordinance was conducted at that meeting. Following the public hearing, the bond ordinance was moved, seconded, and unanimously "adopted on second and final reading." Notice of the adoption of the bond ordinance was then published as required.

Finally, the minutes of the Board's September 10, 1969 meeting reflect that on July 23, 1969, the Board "received the bids from contractors" for the courthouse construction project. The minutes listed the "successful bidders" for the "the additions and alterations to the Morris County Court House," and set forth the resolution unanimously adopted by the Board authorizing execution of the awarded bid contracts

> in accordance with the drawings and specifications prepared by Edward A. Berg, Architect, which drawings and specifications are on file in the office of the Morris County Superintendent of Public Works. The contracts to be signed and executed by the Director and Clerk of the Board shall be in the form as contained in said specifications with the necessary amendments as prepared by the County Counsel.

The adoption of these resolutions and the bond ordinance by the Board preceded construction.

Following discovery, the county defendants moved for summary judgment, contending they were immune from liability for the approved plan and design of the courthouse, specifically the platform that created the step, under N.J.S.A. 59:4-6. They further argued that they were immune from liability relating to the alleged failure to a post a sign or provide other warning, such as a yellow strip, of the step and the installation "of carpet[s] of contrasting colors on the step" that were not called for in the plans, are not "maintenance."

In response, plaintiff argued that plan or design immunity did not apply because: (1) the Board could not have approved the June 12, 1969 plans at its May 28, 1969 meeting; (2) the "coloring of the carpet" and "lack of warning" that contributed to the accident were not addressed in the architect's designs; and (3) the color choice for the replacement carpeting was a maintenance decision, not planning or design, and that maintenance decisions are not covered by plan or design immunity. The county defendants replied that if plaintiff's argument was adopted, plan or design immunity would be "essentially eliminated."

In his written statement of reasons, the judge reasoned:

> There is no question that this step was an approved feature of the plans. It is undisputed that the June 12, 1969, plans prepared by the County's architect, Edward A. Berg, included the 6-inch raised platform, which, by

its design, caused the step at issue to be located just inside the limited access door to the courtroom. According to the plaintiff's expert, the existence of that step, and its location just inside the door, was a dangerous condition and caused the [p]laintiff's fall. The step, on which the plaintiff tripped, was featured in the plans for courtroom 10. The fact that Mr. Berg's plans were approved by the governing body is amply demonstrated by the minutes of the meetings of the Board of Chosen Freeholders. In the minutes of May 14, 1969, there is a reference in the ordinance appropriating funding for the project to "the plans and specifications with respect thereto on file in the office of the Morris County Superintendent of Public Works and hereby approved." However, [p]laintiff's expert also opined that the defendants failed to properly maintain the property by failing to make proper carpeting color choices or a safety strip at the front of the step to adequately warn of the dangerous condition. Not present in the 1969 approved plans are provisions for warning signs, flooring surface or color. The plans clearly addressed the step but in no way addressed safety issues. Thus, looking to Thompson [v. Newark Housing Authority, 108 N.J. 525, 536-37 (1987)], the issue here is whether the County's failure to address safety in the plans is fatal to the County's design immunity defense. The absence of safety considerations simply means that, despite the plaintiff's fall on the step, design immunity does not attach to this particular entrance into the courtroom. On that basis alone, the defense of design immunity must fail.

Even if this court found that design immunity is available to the [d]efendant, because the step, as the physical condition that the plaintiff fell on was part of the original plan, then the failure of safety measures are easily maintenance failures. Costa v. Josey, 83 N.J. 49, 53 (1980). Since the initial construction of this

> entrance, flooring choices have been made and replacements made of surfaces in and outside the courtroom. These choices and maintenance items are not immunized.

The court denied summary judgment and the county defendant's motion for reconsideration. This appeal followed.

On appeal, defendants argue:

> THE TRIAL COURT ERRED WHEN IT RULED THAT PLAINTIFF'S CLAIMS AGAINST THE COUNTY OF MORRIS AND MORRIS COUNTY SHERIFF'S OFFICE WERE NOT BARRED BY N.J.S.A. 59:4-6, PLAN OR DESIGN IMMUNITY.

We review a grant of summary judgment "de novo and apply the same standard as the trial court." Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021). Summary judgment will be granted when "the competent evidential materials submitted by the parties," viewed in the light most favorable to the non-moving party, show there are no "genuine issues of material fact," and that "the moving party is entitled to summary judgment as a matter of law." Grande v. Saint Clare's Health Sys., 230 N.J. 1, 23-24 (2017) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)). We must give the non-moving party "the benefit of the most favorable evidence and most favorable inferences drawn from that evidence." Est. of Narleski v. Gomes, 244 N.J. 199, 205 (2020) (quoting Gormley v. Wood-El, 218 N.J. 72, 86 (2014)). We owe no special deference to the motion judge's

legal analysis. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018).

Public entity liability in New Jersey is governed by the TCA, which "establish[es] the parameters" of recovery for tortious injury against public entities and public employees. Coyne v. State, 182 N.J. 481, 488 (2005). "The guiding principle . . . is that 'immunity from tort liability is the general rule and liability is the exception.'" Ibid. (quoting Garrison v. Twp. of Middletown, 154 N.J. 282, 286 (1998)); accord Est. of Gonzalez v. City of Jersey City, 247 N.J. 551, 570 (2021). If "both liability and immunity appear to exist, the latter trumps the former." Est. of Gonzalez, 247 N.J. at 570 (quoting Tice v. Cramer, 133 N.J. 347, 356 (1993)). The rationale behind granting immunity is to avoid judicial interference with authorized governmental decisions. See Thompson, 108 N.J. at 534.

Under the TCA, a public entity is liable if a plaintiff establishes:

> [public] property was in dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:
>
> a. a negligent or wrongful act or omission of [a public employee] within the scope of his employment created the dangerous condition; or

> b. a public entity had actual or constructive notice of the dangerous condition under section 59:4-3 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.
>
> Nothing in this section shall be construed to impose liability upon a public entity for a dangerous condition of its public property if the action the entity took to protect against the condition or the failure to take such action was not palpably unreasonable.
>
> [N.J.S.A. 59:4-2.]

However, the TCA insulates a public entity from liability related to an officially approved plan or design of public property.

> Neither the public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of public property, either in its original construction or any improvement thereto, where such plan or design has been approved in advance of the construction or improvement by the Legislature or the governing body of a public entity or some other body or a public employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved.
>
> [N.J.S.A. 59:4-6(a).]

"A public entity does not automatically receive the benefit of that immunity." Wymbs v. Twp. of Wayne, 163 N.J. 523, 539 (2000). The plan or design immunity provided under N.J.S.A. 59:4-6 is an affirmative defense that must be pleaded and proven by the public entity. See Birchwood Lakes Colony

Club v. Borough of Medford Lakes, 90 N.J. 582, 600 (1982). "[T]o succeed on a motion for summary judgment, the entity must 'come forward with proof of a nature and character [that] would exclude any genuine dispute of fact . . . .'" Kolitch v. Lindedahl, 100 N.J. 485, 497 (1985) (alteration in original) (quoting Ellison v. Hous. Auth. of S. Amboy, 162 N.J. Super. 347, 351 (App. Div. 1978)). "[T]he defect that causes the injury must be in the plans before immunity is conferred." Thompson, 108 N.J. at 535.

For plan or design immunity to attach, the public entity must establish that "the condition that allegedly caused the injury was 'an approved feature of the plan or design.'" Kain v. Gloucester City, 436 N.J. Super. 466, 474 (App. Div. 2014) (quoting Thompson, 108 N.J. at 533-34). "However, the public entity need not show that a particular feature of the plan had been considered and rejected." Ibid. (citing Thompson, 108 N.J. at 537). "[I]mmunity for an original design does not fail because alternative options regarding the feature of concern . . . were not considered in the original plans." Manna v. State, 129 N.J. 341, 358 (1992). "Instead, the evidence must show merely that the entity had considered 'the general condition about which a plaintiff complains in formulating the original plan or design.'" Kain, 436 N.J. Super. at 474 (quoting Luczak v. Twp. of Evesham, 311 N.J. Super. 103, 109 (App. Div. 1998)).

The public entity must demonstrate that such plan or design was approved in advance of construction or improvement by a body vested with the authority to give such approval. See Manna, 129 N.J. at 352-54 (holding the State immune from liability after the State demonstrated that a bridge design was adequately approved in advance of its construction).

Ordinarily, a determination whether there was advance approval of a plan or design may not be resolved by summary judgment. Ellison, 162 N.J. Super. at 351. However, summary judgment is appropriate when the record is sufficient to eliminate any genuine dispute of material fact as to prior approval by the governmental body. Ciambrone v. State Dep't of Transp., 233 N.J. Super. 101, 105, 107 (App. Div. 1989).

A public entity need not show that safety features were "specifically considered and rejected." Luczak, 311 N.J. Super. at 109 (quoting Thompson, 108 N.J. at 537). The public entity must only provide "evidence that it had considered the general condition about which [the] plaintiff complains in formulating the original plan or design." Ibid. (quoting Manna, 129 N.J. at 358).

Importantly, "plan or design immunity does not depend upon any showing of the reasonableness of the design, nor can it be lost by changed circumstances." Birchwood Lakes, 90 N.J. at 599 (citing N.J.S.A. 59:4-6 cmt.). Moreover,

"[o]nce design immunity attaches, it cannot be lost if later knowledge shows a design or plan to be dangerous." Rocco v. N.J. Transit Rail Operations, Inc., 330 N.J. Super. 320, 336 (App. Div. 2000) (citing Thompson, 108 N.J. at 532). Nor is the immunity lost if a "subsequent event or change of condition" renders it dangerous. Russo Farms, Inc. v. Vineland Bd. of Educ., 144 N.J. 84, 111 (1996) (quoting N.J.S.A. 59:4-6 cmt.). "A public entity "has [no] duty to undertake design improvements." Luczak, 311 N.J. Super. at 112-13 (quoting Manna, 129 N.J. at 358).

As correctly found by the trial court, the condition primarily complained of – the step formed by the platform immediately inside the door plaintiff entered – was an approved feature of the plan or design. The record establishes that the Board formally approved the June 12, 1969 plans prepared by the architect at its subsequent public meetings. Therefore, the county defendants have met their burden proving their entitlement to plan or design immunity for the platform forming the step.

Plaintiff claims the plans called for a six-inch platform height, but the platform was only five and one-half inches high. A photograph submitted by plaintiff clearly shows that the top of the carpeting was actually five and three-quarters inches high. Plaintiff's expert does not opine that the quarter-inch

difference made the step more dangerous. Nor does he opine that the actual height violated the Uniform Construction Code or any applicable building code or construction standard. We deem the difference to be de minimis. Indeed, in her appellate brief, plaintiff acknowledges that the exact height of the step is not controlling, stating: "the step could have been 5 or 6 or 7 inches -- the fact that the step was disguised is what is at issue."

Plaintiff contends the record does not establish that the County considered the danger created by the step or whether warnings of the step were needed during the approval process. As we explained in Luczak:

> A public entity, however, need not show that a feature of the plans (such as the installation of guardrails or paving an entire intersection) "was specifically considered and rejected." Thompson, 108 N.J. at 537; see Manna, 129 N.J. at 358 ("[I]mmunity for an original design does not fail because alternative options regarding the feature of concern . . . were not considered in the original plans."). Rather, a public entity must offer evidence that it had considered the general condition about which a plaintiff complains in formulating the original plan or design. See Manna, 129 N.J. at 358[.]
>
> [311 N.J. Super. at 109.]

Here, the plans approved by the County clearly provided for the platform creating the step at issue. Plaintiff does not allege negligent construction. The plans did not specify warning signs or a yellow warning strip on the step. Thus,

the absence of a yellow warning strip after recarpeting did not deviate from the plans or amount to a modification of the design through maintenance. The county defendants had no duty to make design improvements incorporating safety features when recarpeting the courtroom. "[T]he State has [no] duty to undertake design improvements. That fact cannot be avoided by labeling the desired improvement a 'maintenance' activity." Luczak, 311 N.J. Super. at 112-13 (alterations in original) (quoting Manna, 129 N.J. at 358).

We recognize that plan and design immunity does not extend to "dangerous conditions created by [a public entity's] careless or negligent affirmative acts arising out of its maintenance as distinguished from improvements to its property." Costa, 83 N.J. at 53 n.1.

Plaintiff contends that the replacement carpet, which was installed on an unknown date up to ten years before the accident and may have been a different color than the original carpet, amounted to maintenance, not an improvement to the design. The trial court agreed, stating: "Not present in the 1969 approved plans are provisions for warning signs, flooring surface or color. The plans clearly addressed the step but in no way addressed safety issues." The court then addressed the County's alleged failure to address safety considerations in the plans. The court concluded that "[t]he absence of safety considerations

simply means that, despite the plaintiff's fall on the step, design immunity does not attach to this particular entrance into the courtroom. On that basis alone, the defense of design immunity must fail."

While the record does not reflect whether the plans specified the color of the courtroom carpeting or whether the color of the replacement carpeting materially differed from the original carpet, that does not end our analysis. The county defendants are not liable unless the carpeting created a "dangerous condition" and their acts or failure to act were "palpably unreasonable." N.J.S.A. 59:4-2.

Plaintiff does not contend that the carpet was negligently installed or that subsequent wear and tear caused her to fall. Instead, she claims that the color of the replacement carpet camouflaged the step. Plaintiff argues that "[a] rational juror could find that the alleged defect is the camouflage effect created by the carpet. We disagree. Color photographs in the record visibly demonstrate the dark blue carpeting in the hallway is markedly different in color from the lighter green carpeting in the courtroom. The step is not "camouflaged" by the color of the replacement carpeting. On the contrary, the photographs demonstrate that the step is easily discernable due to the different color carpets.

No rational factfinder could determine that the replacement carpet camouflaged the step.

Moreover, plaintiff's own testimony and answers to interrogatories candidly acknowledged that she "didn't see the step" because she was "looking to . . . and talking to [Rengarajan]," rather than watching where she was going or her foot placement when entering the courtroom through a door she had never previously used. These undisputed facts show that a different colored carpet or the yellow strip recommended by plaintiff's expert would not have prevented the accident.

"[W]hen the evidence is so one-sided," a judge may "decide that a party should prevail as a matter of law." Gilhooley v. Cnty. of Union, 164 N.J. 533, 546 (2000) (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). That is the case here. Summary judgment should have been granted dismissing plaintiff's claims against the county defendants. Considering our ruling, we do not separately address the denial of the motion for reconsideration, which was not briefed on appeal.

Reversed.