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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3641-21**

JEANINE ANTHONY,

Plaintiff-Appellant,

v.

COUNTY OF MORRIS,
MORRIS COUNTY
CORRECTIONAL FACILITY,
MELISSA BROCK, OFFICER
WILDER PEREIRA, OFFICER
CAMILLE MASTROENI,
and OFFICER SLINGER,

Defendants-Respondents.

Argued September 26, 2023 — Decided October 25, 2023

Before Judges Marczyk and Chase.

On appeal from the Superior Court of New Jersey, Law
Division, Morris County, Docket No. L-0462-21.

Eldridge Hawkins argued the cause for appellant
(Eldridge Hawkins, LLC, attorneys; Eldridge Hawkins,
on the brief).

R. Scott Fahrney, Special Morris County Counsel, argued the cause for respondents (John A. Napolitano, County Counsel, attorney; R. Scott Fahrney and Kimberlin L. Ruiz, Special Morris County Counsel, on the brief).

PER CURIAM

Plaintiff Jeanine Anthony, a former inmate at the Morris County Correctional Facility ("MCCF"), appeals from a June 16, 2022 order dismissing with prejudice a seven-count amended complaint, claiming that the court's order and accompanying statement of reasons failed to comply with Rule 1:7-4 and that her claims were adequately pleaded under Rule 4:6-2(e). Based on our review of the record and the applicable legal principles, we affirm in part, reverse in part, and vacate and remand in part.

I.

Plaintiff was incarcerated at MCCF from December 29, 2019, through February 13, 2020. She complains of seven incidents from her incarceration: on two occasions she was not permitted to attend church; she requested but was denied medication; she was threatened with bodily harm; she was unfairly subjected to disciplinary action; she was denied contact with her attorney; she was not taken to scheduled court appearances; and she was subjected to disparate treatment as compared to other inmates.

On April 7, 2020, the County of Morris ("Morris") received a document addressed to Sheriff James M. Gannon with the message, "[p]lease accept this Notice of Claim." Attached to the cover page was what appeared to be email correspondence between plaintiff and her attorney. The email outlined the seven complaints detailed above. It included a demand of \$350,000, exclusive of attorney's fees or punitive damages, and a narrative of plaintiff's statement of facts.

Plaintiff then filed a complaint naming Morris, MCCF, and four MCCF employees of the facility (collectively, "defendants"). Plaintiff named the employees both officially and individually and stated she filed a notice of claim. The complaint included seven counts with the following headings: (1) the negligent, reckless, wanton violation of plaintiff's rights; (2) a breach of the covenant of good faith and fair dealing; (3) the reckless and intentional infliction of severe emotional distress; (4) violations of several paragraphs of Article I of the New Jersey Constitution; (5) violations of N.J.S.A. 10:6-2(c); (6) state-created danger "class of one" violation; and (7) *res ipsa loquitur*.

In lieu of an answer, defendants filed a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 4:6-2(a) and (e). In October 2021, the court granted defendants' motion, dismissing plaintiff's claims

without prejudice. The trial court attached a five-page opinion. Plaintiff sought reconsideration and clarification of that order, and the court sua sponte entered an order of clarification on October 8, 2021, which recounted procedural issues only.

On February 22, 2022, plaintiff moved for leave to file an amended complaint. The amended complaint attached to the motion was substantially similar to the original pleading. It named the same defendants, listed acts and omissions occurring on the same dates, and charged the same seven counts as those in the original complaint. The trial court granted plaintiff's motion and the amended complaint was filed. Defendants again, without filing an answer, filed a motion to dismiss.

On June 16, 2022, the court granted defendants' motion and dismissed all seven counts in the amended complaint with prejudice. In addition to finding the factual allegations insufficient to support the causes of action, the court held qualified immunity barred claims against defendants, the tort claims should be dismissed for failure to file a timely notice under N.J.S.A. 59:8-8, and plaintiff's claims were barred by the statute of limitations under N.J.S.A. 2A:14-2. The court incorporated by reference its October 8, 2022 opinion, adding its prior

opinion on the insufficiency of plaintiff's allegations had been "wholly unremedied by the plaintiff."

Plaintiff appeals from this order.

II.

Rule 1:7-4 requires a trial court to "'state clearly [its] factual findings and correlate them with the relevant legal conclusions, so that parties and the appellate courts [are] informed of the rationale underlying th[ose] conclusion[s].'" Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 594-95, (App. Div. 2016) (alterations in original) (quoting Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986)). "Naked conclusions do not satisfy the purpose" of the rule. Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (citation and internal quotation marks omitted).

The trial court provided reasons for its disposition of the individual counts in both its October 8, 2021 order and the June 16, 2022 order from which plaintiff appeals, except as discussed below in Point IV. The October 8, 2021 opinion details the parties and their arguments as well as the applicable legal authority governing a motion to dismiss under Rule 4:6-2. It evaluates each of the seven counts of plaintiff's complaint, failing to find cognizable claims based on the facts alleged. The June 16, 2022 opinion expands on the earlier version

with respect to some counts and incorporates the prior opinion. These statements of reasons satisfy Rule 1:7-4, except as discussed below in Point IV. Whether the trial court was correct in holding plaintiff failed to state a cause of action in certain counts is a separate question discussed below.

III.

A Rule 4:6-2 (e) motion to dismiss for failure to state a claim upon which relief can be granted is reviewed de novo. Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019)). "A reviewing court must examine 'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" Ibid. (quoting Dimitrakopoulos, 237 N.J. at 107). A court must search the complaint thoroughly "and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Ibid. (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). "[I]f the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed." Ibid. (quoting Dimitrakopoulos, 237 N.J. at 107). A motion to dismiss under Rule 4:6-2 is

limited to "the pleadings themselves." Dimitrakopoulos, 237 N.J. at 107 (quoting Roa v. Roa, 200 N.J. 555, 562 (2010)).

"[A] dismissal with prejudice is 'mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted,' if 'discovery will not give rise to such a claim.'" Mac Prop. Grp. LLC & The Cake Boutique LLC v. Selective Fire & Cas. Ins. Co., 473 N.J. Super. 1, 17 (App. Div. 2022) (citations omitted), certif. denied sub nom. MAC Prop. Grp. LLC & The Cake Boutique LLC v. Selective Fire & Cas. Ins. Co., 252 N.J. 258 (2022), and certif. denied sub nom. MAC Prop. Grp. LLC – The Cake Boutique LLC v. Selective Fire & Cas. Ins. Co., 252 N.J. 261 (2022).

In Rule 4:6-2 dismissals, "the [c]ourt is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint[,]" rather, "plaintiffs are entitled to every reasonable inference of fact." Green v. Morgan Properties, 215 N.J. 431, 451-52 (2013) (citations omitted). The issue is simply "whether a cause of action is suggested by the facts." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988).

Our review of a trial court's dismissal is de novo. A reviewing court "appl[ies] a plenary standard of review from a trial court's decision to grant a motion to dismiss." Gonzalez v. State Apportionment Comm'n, 428 N.J. Super

333 (App. Div. 2012) (quoting Rezem Family Assocs., L.P. v. Borough of Millstone, 423 N.J. Super 103, 114 (2011)). We "owe no deference to the trial court's conclusions." Rezem, 423 N.J. Super. at 114.

Applying these well-established principles, we conclude that the trial court's dismissal of plaintiff's complaint in its entirety was based on a mistaken application of the law. We now turn to the specific components of our conclusion.

A.

Count One of plaintiff's amended complaint alleges defendants negligently, recklessly, and wantonly violated plaintiff's rights. More particularly, plaintiff alleges that defendants were in a position of trust over plaintiff, who was in their custody, and that they violated several of plaintiff's rights. The amended complaint referenced defendants' "failure to exercise a high degree of care." It also identified duties: "a duty against cruel and unusual punishment, and a duty from infringing on plaintiff's rights to free speech." Plaintiff alleged defendants breached these duties by imposing disciplinary action, by throwing out witness statements, by disallowing her to call her attorney or make witness statements, and by failing to take her to court. The amended complaint stated the harm plaintiff allegedly suffered as a result: unfair

disciplinary action, becoming a target of the officers, hindering of her ability to defend her legal rights, and loss of jail time credit, resulting in more time being incarcerated.

Plaintiff argues the trial court's dismissal of Count One was improper because, though plaintiff's counsel "utilizes causes of action not customarily seen by Judges," the claim itself is still valid. Plaintiff argues "BREACH OF INMATE DUTY OF CARE IS A VALID CLAIM" as laid out by the "plain meaning of the words and the facts and First Count of the Complaint." Plaintiff also reiterates the complaint sufficiently plead claims for a deprivation of plaintiff's constitutional rights. In opposition, defendants contend plaintiff "fails to identify what rights were violated, how they were violated, when, or under what theory of liability such claim exists."

In dismissing Count One, the trial court stated plaintiff failed to articulate "who owed a duty to her[,], what the duty was, in what manner the duty was breached, or what, if any, damages were suffered as a result of the breach." This conclusion is not borne out upon a reading of the amended complaint. At this stage of the proceedings, whether plaintiff can prove these allegations is not relevant. Although the complaint is not a model of clarity, giving plaintiff every reasonable inference of fact and searching the complaint thoroughly and with

liberality, as we must do under Rule 4:6-2, we are satisfied plaintiff plead the elements of a cognizable claim. Therefore, the dismissal as to Count One is reversed and remanded for further proceedings. We further address plaintiff's constitutional claims in more detail below.

B.

Count Two of plaintiff's complaint appears to plead an action sounding in contract. Plaintiff contends that the court was incorrect in ruling that there was no contract, because her amended complaint specifically cited four different items that are contracts: (1) state and county policies requiring inmates to be brought to court; (2) the state's Equal Employment Opportunity ("EEO") policy; (3) N.J.S.A. 10:1-2, regarding places of public accommodation; and (4) the Inmates' Rights Manual, which plaintiff alleged is an implied contract. Defendants counter that none of the items described are contracts between plaintiff and defendants, and the claim was therefore properly dismissed by the court.

"To prevail on a claim of breach of contract, a party must show that a contract has been made, with an offer, acceptance, and consideration all present, and that the moving party has performed or is excused from performing." Goldfarb v. Solimine, 245 N.J. 326, 341 (2021). See also Globe Motor Co. v.

Igdalev, 225 N.J. 469, 482 (2016) (identifying the four elements of a contract claim as those stated in Model Jury Charge (Civil), § 4.10A "The Contract Claim—Generally" (May 1998)).

"An implied contract must be found before the [finder of fact] could find that the implied covenant of good faith and fair dealing had been breached." Wade v. Kessler Inst., 172 N.J. 327, 345 (2002). A contract requires "offer and acceptance . . . sufficiently definite 'that the performance to be rendered by each party can be ascertained with reasonable certainty.'" Weichert Co. Realtors v. Ryan, 128 N.J. 427, 435 (1992) (quoting Borough of W. Caldwell v. Borough of Caldwell, 26 N.J. 9, 24-25 (1958)). "[I]f parties agree on essential terms and manifest an intention to be bound by those terms, they have created an enforceable contract." Ibid. "Mutual assent requires that the parties have an understanding of the terms to which they have agreed." Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442 (2014). "Whether parties acted in a manner sufficient to create implied contractual terms is a question of fact generally precluding summary judgment." Troy v. Rutgers, 168 N.J. 354, 365-66 (2001). Nevertheless, if "no reasonable juror" could conclude that an implied contract existed, the issue can be resolved on a motion. Id. at 366.

The first three of plaintiff's claimed contracts are simply regulations or statutes and do not represent contracts in any way. Additionally, the inmate handbook cannot be said to be the product of an "acceptance" on the part of plaintiff, as there can be no "meeting of the minds" where plaintiff was not able to agree or disagree with the handbook's essential terms. No reasonable juror could find that plaintiff was either a party or an intended third-party beneficiary to any contract with defendants under any of the items cited.

The trial court correctly determined that there was no express or implied contract. Therefore, the dismissal as to Count Two is affirmed.

C.

Plaintiff argues the court's dismissal of Count Three was improper because the trial court misunderstood what was alleged. Count Three of the amended complaint appears to be rooted in a claim for the intentional infliction of emotional distress ("IIED"). An IIED claim requires a plaintiff to establish "intentional and outrageous conduct by the defendant, proximate cause, and distress that is severe." Tarr v. Ciasulli, 181 N.J. 70, 77 (2004) (quoting Buckley v. Trenton Sav. Fund Soc'y, 111 N.J. 355, 366 (1988)). The emotional distress must be so severe that "no reasonable [person] could be expected to endure it." Soliman v. Kushner Cos., Inc., 433 N.J. Super. 153, 177 (App. Div. 2013). In

connection with Count Three, plaintiff alleged she was removed from her cell and subjected to unwarranted disciplinary action. Even taking all these statements as true and resolving all factual inferences in plaintiff's favor, the alleged behavior does not constitute the sort of extreme and outrageous behavior to support an IIED claim. Therefore, we affirm the dismissal of Count Three.

D.

Count Four of the amended complaint alleged violations of plaintiff's rights under the New Jersey Constitution. Count Five alleged "Violations" of N.J.S.A. 10:6-2(c), which is part of the New Jersey Civil Rights Act ("NJCRA"). Because the NJCRA is not itself a cause of action, but rather a statutory mechanism permitting private suit for violations of constitutional rights, these counts will be considered together.

Plaintiff argues the judge's conclusions on Counts Four and Five were unsupported by facts or reasons, and mistakenly placed upon plaintiff a burden to prove her allegations, which is the incorrect standard under Rule 4:6-2. Plaintiff argues the deprivation of her right to medical treatment, to religious exercise, and to speedy justice through her court appearances were sufficiently plead in the amended complaint.

Defendants argue the pleading requirements of the NJCRA require an articulation of a specific constitutional violation and then either an allegation of the deprivation of the right or an allegation of interference with the right through threats, intimidation, coercion, or force. Defendants concede plaintiff alleged threat and coercion but argue the amended complaint is devoid of details as to what interference resulted. Alternatively, defendants argue even if the factual allegations as to filing grievances and attending religious services could support the constitutional claims, they do not allege any permanent deprivation and do not meet a "shock the conscience" standard.

The federal analogue to NJCRA is 42 U.S.C. § 1983 and NJCRA claims are often analyzed in parallel to § 1983. Tumpson v. Farina, 218 N.J. 450, 474 (2014). In Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 694 (1978), the Supreme Court ruled that § 1983 did not allow local government units to be held vicariously liable for the acts of their employees under a theory of respondeat superior. Plaintiffs must instead allege that the constitutional violations arose directly from actions by the government unit through its policies or customs. City of Canton v. Harris, 489 U.S. 378, 389 (1989) (quoting Monell, 436 U.S. at 694). "The term 'official policy' usually refers to formal governmental rules or practices." Stomel v. City of Camden, 192 N.J. 137, 146

(2007) (citing Pembaur v. City of Cincinnati, 475 U.S. 469, 479 (1986)). "Custom, on the other hand, can be proven by showing that a given course of conduct, although not specifically endorsed or authorized by law, is so well-settled and permanent as to virtually constitute law." Bielevicz v. Dubinon, 915 F.2d 845, 850 (3d Cir. 2007). In pursuing either theory, a plaintiff must show "an official who has the power to make policy" is responsible for establishing the policy or knowing of and acquiescing to the custom. Ibid. There also must be a causal link between the policy or custom and the alleged deprivation. City of Canton, 489 U.S. at 385. A direct claim against the entity may lie under a theory of failure to supervise where the behavior of the supervisor rises to the level of "recklessness or deliberate indifference." Schneider v. Simonini, 163 N.J. 336, 375 (2000).

A prisoner's constitutional rights, including the right to free exercise of religion, may be infringed by institutional procedures that "forward the central objective of safeguarding institutional security." Allah v. Dep't of Corr., 326 N.J. Super. 543, 547 (App. Div. 1999). An inmate's constitutional rights must be balanced with prison management concerns. Jackson v. Dep't. of Corr., 335 N.J. Super 227, 233 (App. Div. 2000) (quoting Sandin v. Conner, 515 U.S. 472, 478 (1995)). Deference and flexibility toward prison officials' decisions are

"especially warranted in the fine tuning of the ordinary incidents of prison life."
Jackson, 335 N.J. Super. at 233.

Here, plaintiff alleged she was denied attendance at religious services on two consecutive Sundays, despite having followed the correct procedure to request attendance. Plaintiff did not appear to challenge the procedure itself as unconstitutional, only that error was made in applying the policy to her on two dates. Allowing prisoners to leave their cells only if they appear on the appropriate list is reasonably related to the institutional needs of the prison. Plaintiff did not make out a cognizable claim for deprivation of the right to freely exercise her religion.

Prisoners have a constitutional right to access courts, but their claims must establish denial of that right resulted in some impairment of the inmate's ability "to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement." Lewis v. Casey, 518 U.S. 343, 355 (1996) (citing Bounds v. Smith, 430 U.S. 817 (1977)). Here, plaintiff alleged several dates on which MCCF staff failed to bring her to scheduled court appearances. She alleged these absences resulted in "lost jail time credit, causing her to spend more time incarcerated." Taking these facts as true, plaintiff made out a

cognizable claim for deprivation of her constitutional right to access courts, resulting in a specific harm related to her confinement.

Here, plaintiff alleged defendants had a number of policies that caused deprivation of her rights: "a policy of intimidating, ignoring, and simply refusing inmates from making grievances . . . a policy of denying inmates access to due process . . . [and] a policy of lack of accountability [causing] [p]laintiff to be incarcerated in the same institution where the sister of the man who reported her happens to work as a social worker (Defendant Melissa Brock)." Plaintiff also alleged defendants' "lack of oversight of its officers" caused her harm. Because the amended complaint asserted the constitutional claims against Morris and MCCF under a negligent supervision theory, we reverse the dismissal of Counts Four and Five.

E.

Plaintiff argues the trial court improperly dismissed Count Six for failure to allege facts to support a meritorious state created danger claim. Plaintiff notes the trial court did not list the elements of the claim when concluding that the pleading requirements were unmet. Defendants argue the fails to include sufficient facts to support any of the requisite elements of a state-created danger claim as laid out in Bright v. Westmoreland County, 442 F.3d 276, 281 (3d Cir.

2006). Defendants argue the cited paragraphs do not explain "what state action put [plaintiff] in a grave danger that she suffered a harm that shocks the conscience."

New Jersey courts follow the Third Circuit's application of the "state-created danger doctrine." Gonzales v. City of Camden, 357 N.J. Super. 339, 347 (App. Div. 2003). Under that approach, "[a] 'state-created danger' may exist where a state actor either creates a harmful situation or increases a citizen's exposure or vulnerability to an already-present danger." Haberle v. Troxell, 885 F.3d 171, 175 n.5 (3d Cir. 2018). The test under Bright requires that the state action shocks the conscience as analyzed under a deliberate indifference standard. Gormley v. Wood-El, 218 N.J. 72, 102 (2014). The standard is "higher than the negligence, or even gross negligence, standard under which public officials and employees may be found liable in Tort Claims Act cases." Id. at 112.

Here, plaintiff's allegations in Count Six were simply that she was not taken to scheduled court appearances. There were no allegations as to how these absences placed her in harm's way or increased risks to her safety. At most, these claims were repetitive of plaintiff's other claims and did not meet the

enhanced deliberate indifference standard required for state-created danger claims. The dismissal of Count Six is affirmed.

F.

Lastly, plaintiff argues the trial court improperly dismissed Count Seven, *res ipsa loquitur*, by failing to consider that when she was not taken to her scheduled court date, she was under the full control of the defendants while incarcerated. Defendants argue the facts set forth do not meet the standard for *res ipsa loquitur*.

Res ipsa loquitur is not an independent theory of liability, but an "evidentiary rule that governs the adequacy of evidence in some negligence cases." Myrlak v. Port Auth. of N.Y. & N.J., 157 N.J. 84, 95 (1999). A plaintiff invoking *res ipsa loquitur* must establish "(a) the occurrence itself ordinarily bespeaks negligence; (b) the instrumentality causing the injury was within the defendant's exclusive control; and (c) there is no indication in the circumstances that the injury was the result of the plaintiff's own voluntary act or neglect." Szalontai v. Yazbo's Sports Café, 183 N.J. 386, 398 (2005).

Res ipsa loquitur is not a cognizable claim on its own. Therefore, the dismissal of Count Seven is affirmed.

IV.

In both the October 8, 2021 and June 16, 2022 statement of reasons, the court lists as additional bases for dismissal: qualified immunity, the notice provisions of the Tort Claims Act ("TCA"), and the failure to plead recognized exceptions to public entity immunity. The June 16, 2022 decision also adds that the amended complaint is untimely under N.J.S.A. 2A:14-2, with no further discussion. These additional bases for dismissal are listed in a conclusory manner, without the legal analysis required by Rule 1:7-4. We are compelled to vacate and remand to the Law Division the dismissals of Counts One, Four, and Five based on qualified immunity, the TCA, the failure to plead recognized exceptions to public entity immunity, and the amended complaint's noncompliance with statute of limitations. On remand, the trial court should address which of these additional bases for dismissal, if any, would be appropriate, and determine whether the amended complaint relates back to the timely filed original complaint under Rule 4:9-3.

Affirmed in part, reversed in part, and vacated and remanded in part. The trial court shall conduct a case management conference within thirty days. We do not retain jurisdiction.

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


CLERK OF THE APPELLATE DIVISION