SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3691-20

ALAN MALONEY,

Plaintiff-Appellant,

v.

GEORGE T. MAXWELL, DAVID ALBERTSON, BUENA REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION,

Defendants-Respondents,

and

NEW JERSEY STATE INTERSCHOLASTIC ATHLETIC ASSOCIATION, LARRY WHITE, VINCENT SMITH, MARY LIZ IVINS, DAVID FRAZIER, and ANTHONY MASELLI,

Defendants.

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Argued October 24, 2022 – Decided February 7, 2023

Before Judges Sumners and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Atlantic County, Docket No. L-4128-20.

Louis M. Barone argued the cause for appellant (Jacobs & Barbone, PA, attorneys; Louis M. Barbone and David A. Castaldi, on the briefs).

Roshan D. Shah argued the cause for the respondents (Anderson & Shah, LLC, attorneys; Roshan D. Shah, of counsel and on the brief; Erin Donegan, on the brief).

PER CURIAM

On December 19, 2018, high school wrestling referee Alan Maloney went to the Buena High School (BHS) locker room just before a wrestling match between BHS and Oakcrest High School to inspect the student-athlete wrestlers to confirm their compliance with the prevailing rules. Maloney informed A.J.[1] that, in accordance with the National Federation of State High School Association's (NFHS) wrestling rules, he had to wear a head gear with a hair cover due to his dreadlock hairstyle. When A.J. later appeared to wrestle, Maloney told him his hair cover was non-compliant because it was not attached to his head gear's ear guards. Standing firm in his position, Maloney dismissed the request by BHS wrestling coach George T. Maxwell to ignore

[1] We use the minor's initials to protect his identity.

the violation because A.J. wrestled days earlier wearing the purported non-compliant hair cover. To avoid forfeiting his match, A.J. decided to have BHS's trainer cut his braided hair in the public's view. A.J., with his freshly cropped hair, was permitted to wrestle.

A day after the match, a local sports reporter posted on social media that "a referee wouldn't allow A.J." to wrestle with a "cover over his dreadlocks" and included a video of A.J.'s impromptu haircut. The post went viral, which plaintiff contends resulted in the incident being "manipulated and misconstrued as a national race issue." As a result, Maloney was subsequently suspended from refereeing wrestling matches by Larry White, Executive Director, New Jersey State Interscholastic Athletic Association (NJSIAA). The disciplinary action was upheld by the Commissioner of Education. Maloney v. N.J. State Interscholastic Athletic Ass'n, No. 4-1/20, final decision (Dep't. of Ed. Jan. 26, 2021) (slip op. at 8-9), https://www.nj.gov/education/legal/commissioner/2021/20-21.pdf. (stating Maloney's actions placed A.J. in the "untenable position of choosing between forfeiting an important match and having his hair cut in front of his teammates, opponents, coaches, and spectators.").

Maloney filed a Law Division complaint, which was later amended (first amended complaint), suing Maxwell, David Albertson, BHS Athletic Director, and the Buena Regional School District Board of Education (collectively defendants). He alleged Board employees Maxwell and Albertson, despite being fully aware of the rules requiring A.J. to wear a compliant head gear, breached the duty of care owed to him in facilitating A.J.'s rule violation, which proximately caused him to "suffer serious and severe injuries and damages" and "public disgrace, humiliation . . . so pervasive [he received] calls, emails, letters and the like, threatening [his] life."[2]

Defendants moved under Rule 4:6-2(e) to dismiss Maloney's first amended complaint with prejudice for failure to state a claim upon which relief can be granted. The motion judge dismissed the first amended complaint without prejudice.[3] In his memorandum of decision, the judge reasoned defendants had immunity under the New Jersey Tort Claim Act (TCA), N.J.S.A 59:1-1 to 12-3; specifically, N.J.S.A. 59:3-5 "provides absolute

[2] Maloney also sued the NJSIAA, White, and other NJSIAA officials Anthony Maselli, Vincent Smith, Mary Liz Ivins, and David Frazier, alleging they suspended him without due process. The claims were a dismissed by the parties' stipulation.

[3] The motion judge's initial order was amended to correctly reflect that the dismissal of Maloney's complaint was without prejudice.

immunity to a public employee who causes injury 'by his adoption of or failure to adopt any law or by his failure to enforce any law.'" The judge also held Maloney's negligence allegations failed to set forth a duty defendants owed to him. The judge stressed defendants did not post the incident on social media, Maloney was the "ultimate enforcer" of the rules which A.J. was required to follow, and defendant never asserted Maloney was "racially motivated or . . . incorrect[ly] enforce[d] . . . the rules."

In response to the dismissal without prejudice, Maloney filed an unopposed motion to file a second amended complaint. The judge denied the motion. In his memorandum of decision, he reasoned the additional facts in the second amended complaint, which merely tried to reinforce that defendants knowingly failed in their duty to Maloney to require A.J. to wear a compliant head gear, did not overcome the absolute immunity afforded to defendants under the TCA.

Before us, Maloney only appeals the order denying his motion file a second amended complaint. Importantly, even though Maloney does not appeal the order dismissing his first amended complaint, the legal reasoning the judge applied in that determination applies equally to rejecting the request

to file the second amended complaint. We conclude there is no merit to the appeal.

The motion judge did not abuse his discretion in denying Maloney's motion to amend his pleading. See Franklin Med. Assocs. v. Newark Pub. Sch., 362 N.J. Super. 494, 506 (App. Div. 2003). Although leave to amend should be liberally granted under Rule 4:9-1 "without consideration of the ultimate merits of the amendment," it need not be granted "when a subsequent motion to dismiss must be granted." Notte v. Merchs. Mut. Ins. Co., 185 N.J. 490, 501 (2006) (citations omitted). Hence, the judge must determine whether there is a cause of action suggested by the facts in the pleadings. Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 192 (1988).

The motion judge had a sound basis to deny Maloney's motion for leave to file a second amended complaint. To establish defendants' tort liability, Maloney's pleading had to set forth facts establishing defendants owed him "a legal duty, the duty was breached, the breach proximately caused a foreseeable injury, and [he] suffered damages." Franco v. Fairleigh Dickinson Univ., 467 N.J. Super. 8, 24 (App. Div. 2021) (citing Townsend v. Pierre, 221 N.J. 36, 51 (2015)). As with the first amended complaint, Maloney failed to establish a negligence cause of action against defendants for several reasons.

Maloney is incorrect in alleging defendants owed him a duty of care to insure that A.J. complied with the rules of competition. Whether a party owes a duty to another party is not a question for the fact finder, but for the court. See Robinson v. Vivirito, 217 N.J. 199, 208 (2014). Maloney cites no law to support his position that defendants owed him a duty regarding the situation in question. There were no new facts alleged in the second amended complaint which established defendants owed Maloney a duty of care. Granted, under certain situations, defendants may owe a duty to their student-athletes to insure they comply with the governing rules. But here, Maloney, as the referee, had the ultimate authority to prevent A.J. from competing if he determined A.J.'s head gear was non-compliant. And, correctly or incorrectly, he chose to exercise that power.

In addition, Maloney's assertions do not establish defendants' actions or inactions were the proximate cause of his foreseeable injury – public humiliation. "Ordinarily, the issue of proximate cause should be determined by the factfinder." Fleuhr v. City of Cape May, 159 N.J. 532, 543 (1999). The allegations here, though, are an exception. There is no assertion that A.J. was advised or directed by defendants to cut his hair to avoid forfeiting his wrestling match. Indeed, the pleading asserts "A.J. declared that he would cut

his hair because he was not going to forfeit the match." Moreover, Maloney pleads a reporter made the social media post regarding A.J.'s decision to cut his hair. There is no allegation that defendants were in some way complicit in the reporter's social media post regarding the incident. Based on the facts alleged, Maloney's injury was not foreseeable.

Given our conclusion that the second amended complaint does not set forth a viable tort action against defendants, we do not need to address whether defendants are entitled to absolute immunity under the TCA as the motion judge held. In addition, to the extent we have not addressed any of the parties' arguments directly, we find they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.