SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3751-20

RALPH ANGELES,

Plaintiff-Appellant/
Cross-Respondent,

v.

NEVIER RUIZ and
TOWN OF KEARNY,

Defendants-Respondents/
Cross-Appellants.

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Argued May 15, 2023 — Decided May 26, 2023

Before Judges Whipple, Mawla, and Walcott-Henderson.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-0468-19.

F.R. "Chip" Dunne, III, argued the cause for appellant/cross-respondent (Dunne, Dunne & Cohen, LLC, attorneys; F.R. "Chip" Dunne, III, of counsel and on the briefs; David P. Cerqueira, on the briefs).

Monique D. Moreira argued the cause for respondents/cross-appellants (Moreira & Moreira, PC,

attorneys; Monique D. Moreira, Denis F. Driscoll, and Graham K. Staton, on the briefs).

PER CURIAM

Plaintiff Ralph Angeles appeals from a July 1, 2021 order granting defendants Nevier Ruiz and the Town of Kearny summary judgment dismissing plaintiff's personal injury complaint, pursuant to N.J.S.A. 59:4-7 of the New Jersey Tort Claims Act (TCA).[1] Plaintiff also challenges an August 6, 2021 order denying a motion for reconsideration. Defendants cross-appeal from an April 1, 2019 order denying their motion to dismiss the complaint for failure to file a timely notice of claim, under N.J.S.A. 59:8-3. They also challenge a May 14, 2019 order denying their motion for reconsideration. We affirm in part, and reverse and remand in part, for the reasons expressed in this opinion.

On February 10, 2016, Ruiz was driving a Town of Kearny snowplow near the intersection of Woodland Avenue and Devon Street in Kearny. He had the plow in the lowered position because he planned to clear Kearny Avenue of snow because it is a snow emergency route. According to a vehicle report, Ruiz's truck was traveling at twenty-two miles per hour approximately two-tenths of a mile away from the intersection. The truck slowed to ten miles per

[1] N.J.S.A. 59:1-1 to 12-3.

hour as it entered the intersection and collided with the passenger side of a car driven by plaintiff, injuring him.

Kearny Police Sergeant Phillip Finch responded to the scene and wrote a report detailing his investigation. He noted Ruiz "state[d] he was traveling south on Devon St[reet] and began to slow by taking his foot off of the gas approximately 200 feet prior to the stop sign. When he began to [brake,] the truck began to slide through the stop sign and struck [plaintiff's vehicle]." Plaintiff told the sergeant "he was crossing Devon St[reet] heading west on Woodland Ave[nue] when he was struck by [Ruiz's vehicle]." Sergeant Finch's report noted the damage to plaintiff's car, his injuries, and

> conclude[d] that [the truck] was traveling south on Devon St[reet] when it failed to stop at the stop sign[,] at which time [the snowplow] struck [plaintiff's car]. [The car] was then pushed south and picked up off the ground. The momentum of [the truck] then forced [plaintiff] towards the passenger side of [his car] and, due to not having a seatbelt on, caused [plaintiff] to hit his face against the top driver side of [the truck's] snowplow which was now through [plaintiff's car's] passenger window. [Plaintiff's car] came loose [from] the plow, began to rotate clockwise, and skidded on its front driver wheel until it struck [another car] and came to a final uncontrolled rest with all of [its] wheels returning to the ground. [The truck] and snowy conditions are at fault for this crash.

On February 16, 2017, plaintiff's counsel faxed a letter of representation to Kearny's insurance carrier, "Re: Ralph Angeles Date of Accident: 2/10/2017." The letter stated it was "with regard to the injuries [plaintiff] sustained in the above captioned accident" and "request[ed] that a [b]odily [i]njury claim be opened on behalf of [plaintiff]." The letter requested the carrier send plaintiff's counsel a copy of the insurance declaration page in place at the time of the accident and direct all future correspondence to counsel. The following day, the carrier sent an email to Kearny staff stating: "Do you have additional info on this claim[? T]here is not enough detail to put [the] claim in [the] system." Town staff then forwarded the email to plaintiff's counsel stating: "Please see response from . . . [the c]arrier. Insurance needs more information on this case. You can also download a **Tort Claim** from our web site www.kearnynj.org under Departments/Town Clerk." (emphasis in original).

Plaintiff's counsel never completed the tort claim form on the Kearny website. Instead, on February 22, 2017, counsel sent a reply email stating:

> [Plaintiff] was injured on February 10, 2017[,] when his vehicle was struck by a Town of Kearny snowplow truck . . . . I have attached a copy of the [p]olice [r]eport for your review. [Plaintiff] required over 100 stitches to repair a long and deep laceration to his face, he is experiencing jaw pain, he cannot hear out of his right ear, cannot move the area above his right eye nor does he have any feeling in the area. Additionally, [he]

> suffers headaches and is having trouble sleeping as a result of the accident.
>
> All of [plaintiff's] personal information is contained in the [p]olice [r]eport but I request that all communications be submitted to my office.
>
> Please let me know if you need any additional information in order to open the claim.

The next day, an insurance claims representative from the carrier responded to counsel reserving Kearny's[2] right to disclaim coverage under the TCA but requesting additional information to assist him in his investigation, including plaintiff's: social security number; a list of his doctors; medical releases; insurance carrier information and a copy of his insurance declaration page; and photos of the vehicle's damage. Plaintiff's counsel and the representative then engaged in email correspondence, exchanging information related to plaintiff's injuries and damage to his car.

On February 1, 2019, plaintiff filed a complaint in the Law Division against defendants for negligence and damages. Defendants filed a motion to dismiss the complaint for failure to file a timely notice of claim or move to file a late claim notice under N.J.S.A. 59:8-9. While the motion was pending,

[2] The representative's letter incorrectly stated he was responding on behalf of the "Township of Bloomfield." The error appears to be inadvertent.

plaintiff's counsel emailed defense counsel advising he received an acknowledgment of the claim and had been in communication with the claims adjuster. Counsel attached correspondence from the carrier dated February 23, 2017 opening the claim, and requested defendants withdraw their motion because it was "unreasonable and illogical for Kearny to now argue it was not placed on proper notice."

Defense counsel emailed plaintiff's counsel asking he provide her "with proof that the information was sent to [its insurance carrier] or [itself]." Counsel responded asking: "What information are you referring to?" and noted he responded to Kearny's email asking for more information to open the claim and that a "claim was then opened." He "received written confirmation from the . . . carrier opening the claim and referencing this as a Title 59 action[,]" and noted he then had "further communications [with the adjuster,] both oral and written, on this claim."

At oral argument on the motion to dismiss, defendants asserted plaintiff never submitted a timely notice of claim because counsel did not complete Kearny's form. Plaintiff's counsel pointed to the emails between him and the carrier, Kearny's staff, and defense counsel, which he argued provided all the information that would normally be included on the TCA claim form and

responded to all the requests made by Kearny and the carrier. Counsel noted Kearny received detailed information regarding the accident, plaintiff's injuries, and his medical history.

The motion judge observed even though the better practice was for plaintiff to complete Kearny's claim form, "[t]here is nothing in the statute that says that a claimant has to fill out the municipality's [n]otice of [c]laim form. They have to merely give all [the information required by N.J.S.A. 59:8-4]." The judge declined to dismiss the case, noting plaintiff had "serious injuries."

Defendants moved for reconsideration, arguing the judge erred because the filing of the TCA claim form was mandatory. The judge was unpersuaded because Kearny's email directing plaintiff's counsel to its form did "not unequivocally state plaintiff's claim will not be considered unless a form is [filled] out. The email merely states 'can' and not 'must.' Moreover, . . . a series of emails between counsel and the insurance adjuster took place—where counsel provided the required information."

Following the denial of defendants' motion, they answered the complaint and the parties exchanged discovery. At deposition, Ruiz testified he had been driving since midnight "with breaks in between" to sleep and eat. A little before 8:00 a.m. he "was traveling south on Devon Street, and . . . started braking . . .

150 feet, maybe a little bit more, and . . . felt the truck give way, kind of kick—start sliding a little bit as [he] was braking." Ruiz "saw [plaintiff] coming up from the park to the corner . . . but [he] knew the truck wasn't stopping . . . ." He believed he "must have hit slush and . . . a little bit of ice left and [the truck] did not stop, and that is when it traveled through the intersection and struck the vehicle." He remembered the truck going approximately sixteen to seventeen miles per hour when he started to brake between 150 to 200 feet prior to the intersection, and believed he was traveling five or six miles per hour as he entered the intersection.

At Sergeant Finch's deposition, he testified that when he arrived at the scene of the accident, "[i]t had recently snowed[, t]here was still some snow and ice on the ground with slush[, and i]t was pretty bad conditions at the time." He believed "driver inattention" on the part of Ruiz was a "contributing factor" to the crash. He also noted plaintiff was not using his seatbelt at the time of the crash because "it was still in the original unused position along the side of the door as if it wasn't worn. And, upon further inspection, [he] could see that it wasn't stretched out or ha[d] any burn marks, friction burn marks on it [demonstrating] . . . the seatbelt had been on . . . ." He saw "no burning on the buckle and there [were] no deformations to the buckle . . . ."

Plaintiff's expert opined that if Ruiz was going five to six miles per hour as he entered the intersection, and sixteen to seventeen miles per hour when he initially hit the brakes, "it can be concluded that [Ruiz] . . . never stepped on the brake until he was [forty-two to eighty-four] feet from the intersection." The expert found

> [t]he primary cause for this accident was on the part of . . . Ruiz . . . for failing to stop at the stop sign. Roadway conditions may have been a contributing factor but [the expert did] not believe that [Ruiz's truck] could not have come to a full and complete stop if he applied the brakes 150-200 feet from the intersection as he claims.

Defendants' expert did not analyze the effect of snow and ice on the roadway and whether Ruiz's negligence contributed to the crash. However, the expert opined plaintiff was not paying proper attention to potential hazards on the road and should have yielded to the truck at the time he entered the intersection.

Following discovery, defendants moved for summary judgment. They argued plaintiff's case was predicated on whether Ruiz applied the brakes at the time of the accident and "[t]here's no regulation that states you have to hit your [brakes] at ['X'] speed before a stop sign." Defendants alleged Ruiz applied the brakes but "slid through the intersection because of snow and ice." Plaintiff

contended weather was not the sole cause of the accident. Rather, the accident happened because Ruiz did not apply the brakes at the proper time.

The motion judge granted defendants summary judgment pursuant to N.J.S.A. 59:4-7, which states: "Neither a public entity nor a public employee is liable for an injury caused solely by the effect on the use of streets and highways of weather conditions." Moreover, defendants were not liable for plaintiff's injuries because, pursuant to N.J.S.A. 59:4-2, Ruiz's conduct before the accident was not "palpably unreasonable." The judge pointed to the vehicle data printout, which showed Ruiz had slowed from twenty-two miles per hour to "around [ten] miles per hour just before the accident." The judge subsequently denied plaintiff's motion for reconsideration.

I.

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 that there are no "genuine issues of material fact" and "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)); see also R. 4:46-2(c). "An issue of material fact is 'genuine only if, considering the burden of persuasion at trial, the evidence

submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.'" Grande, 230 N.J. at 24 (quoting Bhagat, 217 N.J. at 38).

Our review of a trial court's grant of summary judgment is de novo, applying the same legal standard as the trial court. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018). Summary judgment cannot be granted where there are material facts in dispute and which facts are material is a question of substantive law. See Higgins v. Thurber, 413 N.J. Super. 1, 6 (App. Div. 2010), aff'd, 205 N.J. 227 (2011).

We also review the denial of a motion to dismiss a complaint for failure to comply with the notice provision of the TCA on a de novo basis. Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021). On the other hand, we grant motions for reconsideration only where "the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or . . . it is obvious that the . . . [c]ourt either did not consider, or failed to appreciate the significance of probative competent evidence." Dennehy v. E. Windsor Bd. of Educ., 469 N.J. Super. 357, 363 (App. Div. 2021), aff'd, 252 N.J. 201 (2022) (first and third alterations in original) (quoting Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010)). We review a court's adjudication of a motion for

reconsideration for an abuse of discretion. Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996).

II.

Plaintiff argues the judge improperly granted summary judgment because weather was not the sole cause of the accident. He asserts the cause of the accident was a material fact in dispute for a jury to resolve. Plaintiff points to the fact his expert opined weather "may" have been a factor and that Ruiz pled guilty to a motor vehicle charge for causing the accident.[3] Further, Sergeant Finch's report found the cause of the accident to be a combination of both the truck and the snowy weather conditions. Plaintiff asserts the court should have viewed the facts through the lens of plain reasonableness rather than the palpably unreasonable standard.

"The TCA provides general immunity for all governmental bodies except in circumstances where the Legislature has specifically provided for liability." Caicedo v. Caicedo, 439 N.J. Super. 615, 623 (App. Div. 2015) (quoting Kain v. Gloucester City, 436 N.J. Super. 466, 473 (App. Div.), certif. denied, 220 N.J. 207 (2014)). "Even if liability exists, '[c]ourts must "recognize[] the precedence

[3] Ruiz pled guilty in municipal court to obstructing the flow of traffic, N.J.S.A. 39:4-67. Defendants have filed a motion to vacate the plea, which has not been decided.

of specific immunity provisions," and ensure "the liability provisions of the Act will not take precedence over specifically granted immunities."'" Patrick ex rel. Lint v. City of Elizabeth, 449 N.J. Super. 565, 572 (App. Div. 2017) (alterations in original) (quoting Parsons v. Mullica Twp. Bd. of Educ., 440 N.J. Super. 79, 95 (App. Div. 2015)). Accordingly, in order to determine whether a public entity is immune, "courts should employ an analysis that first asks 'whether an immunity applies and if not, should liability attach.'" Bligen v. Jersey City Hous. Auth., 131 N.J. 124, 128 (1993) (quoting cmt. on N.J.S.A. 59:2-1(a)). The burden of proof rests on the public entity to establish immunity. Caicedo, 439 N.J. Super. at 623. "Where a public entity is immune from liability for injury, so too is the public employee." Id. at 624 (citing N.J.S.A. 59:3-1(c)).

A public employee is liable for an injury caused by their acts or omissions to the same extent as a private person unless there is a specific immunity granted by the TCA. N.J.S.A. 59:3-1(a). Further, "[a] public entity is liable for injury proximately caused by an act or omission of a public employee within the scope of [their] employment in the same manner and to the same extent as a private individual under like circumstances." N.J.S.A. 59:2-2(a). "Although a public entity is generally immunized from suits based on discretionary acts, the public entity may be liable for 'negligence arising out of acts or omissions of its

employees in carrying out their ministerial functions.'" Ogborne v. Mercer Cemetery Corp., 197 N.J. 448, 457-58 (2009) (quoting N.J.S.A. 59:2-3).

N.J.S.A. 59:4-7 provides that "[n]either a public entity nor a public employee is liable for an injury caused solely by the effect on the use of streets and highways of weather conditions." However, if weather conditions combine with other causes, then the weather condition immunity will not act as a bar. Dickerson ex rel. Duberson v. Twp. of Hamilton, 400 N.J. Super. 189, 198-99 (App. Div. 2008); see also Meta v. Twp. of Cherry Hill, 152 N.J. Super. 228, 232 (App. Div. 1977). "[T]he plain language of the statute offers immunity only when the weather is the sole cause of an accident, not when it is a 'but for' cause in conjunction with other factors." Manna v. State, 129 N.J. 341, 350 (1992) (finding the State's argument "that 'but for' the adverse weather, no accident would have occurred" unpersuasive).

We conclude N.J.S.A. 59:4-7 does not grant defendants immunity at this stage of the proceedings. Plaintiff's expert opined "[t]he primary cause for this accident was on the part of . . . Ruiz" for not applying the brakes soon enough. The expert also stated that Ruiz's truck "could not have come to a full and complete stop if he applied the brakes 150-200 feet from the intersection[,] as he claims." On the other hand, Sergeant Finch blamed the truck and the snowy

conditions for the accident, but also cited Ruiz's "inattention" as a "contributing factor." The parties also disputed braking distance, road conditions, and whether Ruiz was in the process of plowing the road. These fact disputes should be resolved by a jury, rather than on summary judgment.

For these reasons, summary judgment was improvidently granted to defendants. As a result, the denial of plaintiff's reconsideration motion was also error.

III.

On the cross-appeal, defendants argue the judge should have dismissed the complaint due to plaintiff's failure to file a timely notice of claim. They assert an email from plaintiff's counsel to the carrier, and the subsequent emails between the attorneys, were not the notice required by N.J.S.A. 59:8-6. Further, counsel never filed a motion for leave to file a late notice of claim.

N.J.S.A. 59:8-8 requires a claimant to file their claim with the public entity or its employee within ninety days "after accrual of the cause of action." The notice of claim must include the following information:

> a. The name and post office address of the claimant;
>
> b. The post-office address to which the person presenting the claim desires notices to be sent;

> c. The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
>
> d. A general description of the injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;
>
> e. The name or names of the public entity, employee or employees causing the injury, damage or loss, if known; and
>
> f. The amount claimed as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim, together with the basis of computation of the amount claimed.
>
> [N.J.S.A. 58:8-4.]

"A public entity may . . . adopt forms specifying information to be contained in claims filed against it or its employee . . . [which] include the requirements of [N.J.S.A.] 59:8-4 . . . and may include . . . additional information or evidence . . . ." N.J.S.A. 59:8-6; see also Guerrero v. City of Newark, 216 N.J. Super. 66, 68-69 (App. Div. 1987).

In Guerrero, the plaintiff sued the City of Newark for injuries from a motor vehicle accident caused by an inoperative traffic light the city failed to maintain. 216 N.J. Super. at 70. The plaintiff's attorney served notice on the city by letter stating: the plaintiff's name and address; the law firm representing plaintiff's

address; the date, time, place, and alleged cause of the accident; the known extent of the plaintiff's injuries; the public entity responsible for the injuries; and that medical expenses were unknown at the time of the letter. Id. at 70-71. The attorney provided additional information on the city's specialized notice of claim form but failed to "furnish defendant with the names and addresses of the police officers who investigated the accident, the dates on which he was treated by his physician or the amount of his medical expenses and property damage." Id. at 71. The plaintiff "merely indicated on the form that this information was 'to be supplied.'" Ibid.

We concluded the plaintiff "substantially complied" with the notice requirements of N.J.S.A. 59:8-4. Id. at 72. The failure to answer all the questions on the City's specialized claim form was not fatal because the "defendant received information sufficient to allow it to investigate the facts and either settle the claim, if meritorious, or prepare a defense to it." Ibid.

Our "[c]ourts have invoked the equitable doctrine of substantial compliance to prevent barring legitimate claims due to technical defects." Lebron v. Sanchez, 407 N.J. Super. 204, 215-16 (App. Div. 2009). "This remedy 'temper[s] the draconian results' wrought by a dismissal with prejudice resulting

from 'an inflexible application of the statute.'" Id. at 216 (quoting Ferreira v. Rancocas Orthopedic Assocs., 178 N.J. 144, 151 (2003) (alteration in original)).

Here, plaintiff substantially complied with the notice requirements in N.J.S.A. 59:8-4. Counsel's February 22, 2017 email to defendants included counsel's address and a general description of plaintiff's injuries meeting the requirements of N.J.S.A. 59:8-4(b) and (d). It attached and referenced a police report bearing plaintiff's name and address, the circumstances giving rise to the claim, and the name of the public entity and employee causing the injury as required by N.J.S.A. 59:8-4(a), (c), and (e). The correspondence between plaintiff's counsel and the carrier provided more information, including the damage amount claimed pursuant to N.J.S.A. 59:8-4(f). And counsel furnished this information within the ninety-day window set forth in N.J.S.A. 59:8-8.

Finally, the motion judge correctly concluded the Kearny form was not mandatory. Kearny informed counsel that "[y]ou can also download a **Tort Claim** from our web site . . . ." Therefore, the judge did not err when she denied defendants' motion to dismiss on grounds of inadequate notice and the denial of defendants' reconsideration motion on this issue was not an abuse of discretion.

Affirmed in part and reversed and remanded in part. We do not retain jurisdiction.