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ORDER OF THE
SUPREME COURT OF NEW JERSEY
(SEPTEMBER 20, 2021)

SUPREME COURT OF NEW JERSEY
C-72 September Term 2021
085997

Carolyn L. Baburka

Plaintiff-Petitioner,

v.

State of New Jersey
(as per: Title 59 Requirements,
suing a Public Entity),

Defendant,

And

Hazlet Township, Hazlet
Township Police Department,
Police Chief Philip Meehan,
and Police Officer Charleigh
Logothetis,

Defendants-Respondents.

A petition for certification of the judgment in A-004112-19 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification be denied, with costs.

WITNESS, the Honorable, Stuart Rabner, Chief Justice at Trenton, this 20th day of September, 2021.

/s/Heather Baker
Clerk of the Supreme Court

OPINION OF THE SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION (JUNE 21, 2021)

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-4112-19

CAROLYN L. BABURKA,
Plaintiff-Appellant,
v.

STATE OF NEW JERSEY
(as per: Title 59 Requirements,
suing a Public Entity).
Defendants,
and

HAZLET TOWNSHIP, HAZLET TOWNSHIP POLICE DEPARTMENT, POLICE CHIEF PHILIP MEEHAN, and POLICE OFFICER CHARLEIGH LOGOTHETIS,

Defendants-Respondents.

Submitted April 19, 2021 – Decided June 10, 2021

Before Judges Currier and Gooden Brown.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-1266-18 Carolyn L. Baburka, appellant pro se.

Manna & Bonello, attorneys for respondents Hazlet Township and Police Chief Philip Meehan (John L. Bonello, on the brief).

Chamlin, Uliano & Walsh, attorneys for respondents Hazlet Township Police Department and Police Officer Charleigh Logothetis (Andrew T. Walsh, on the brief).

PER CURIAM

Plaintiff Carolyn Baburka appeals from the May 22, 2020 Law Division orders granting summary judgment dismissal of her civil rights complaint to defendants Hazlet Township, Hazlet Township Police Department, Hazlet Township Police Chief, Philip Meehan, and Hazlet Township Police Officer, Charleigh Logothetis.[1] Plaintiff's complaint stemmed from a frisk conducted by Officer Logothetis as part of an administrative search [2] at the Hazlet Township

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1 On August 2, 2019, an order was entered granting summary judgment dismissal of the complaint to the State of New Jersey. However, that order is not challenged in this appeal.

2 An administrative search is "a limited warrantless search of a person seeking to enter sensitive facilities" and "is lawful if 'conducted as part of a general regulatory scheme in furtherance of an administrative purpose, rather than as part of a criminal

municipal building when plaintiff was screened for weapons prior to entering the municipal courtroom to address her motor vehicle summonses. The frisk occurred after plaintiff triggered the metal detector situated outside the courtroom. No weapon was found on plaintiff.

On appeal, plaintiff raises the following arguments for our consideration:

> 1. THE ARGUMENT OF SUMMARY JUDGMENT BY THE COURT BELOW WAS CONTRARY TO ESTABLISHED UNITED STATES CONSTITUTIONAL LAW CONCERNING THE 4TH, 5TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION.
>
> 2. HAZLET POLICE OFFICER LOGOTHETIS WAS NOT ENTITLED TO RECEIVE QUALIFIED IMMUNITY.
>
> 3. ALL THE DEFENDANTS WERE DELIBERATELY INDIFFERENT TO THE RIGHTS OF THE PLAINTIFFS [SIC] RIGHTS TO RECEIVE A REASONABLE [SIC] CONDUCTED SEARCH OF PLAINTIFF'S BODY, PRIOR TO PLAINTIFF ENTERING THE COURTROOM.

We reject plaintiff's contentions and affirm substantially for the reasons articulated by Judge Henry P. Butehorn in his comprehensive and well-

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investigation to secure evidence of crime." Klarfield v. United States, 944 F. 2d 583, 586 (9th Cir. 1991) (quoting United States v. $124,570 U.S. Currency, 873 F. 2d 1240 (9th Cir. 1989)).

reasoned statement of reasons accompanying the orders.

I.

We recite the facts from evidence submitted by the parties in support of, and in opposition to, the summary judgment, "giv[ing] the benefit of all favorable inferences to plaintiff]." Angland v. Mountain Creek Resort, Inc., 213 N.J. 573, 577 (2013) (citing Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995)).

In an amended pro se complaint filed on April 24, 2019, plaintiff alleged that at approximately 4:00 p.m. on January 16, 2018, [3] she "went...to the Hazlet [Township] municipal building to appear for her court date" at the Hazlet Township Municipal Court. After plaintiff 'proceeded through the metal detector," Logothetis, the female officer who was "monitoring the metal detector," directed plaintiff "to turn around." According to plaintiff, when she complied, instead of using a "wand," Logothetis "touched [her] extremely inappropriately," "unnecessarily squeez[ing her] breasts ...hard."

In the complaint, plaintiff alleged that although she "lawfully submitted to a search," she was subjected to an unreasonably "harsh search" that caused her "excruciating pain," "emotionally and mentally traumatized [her.]" and violated her constitutional

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[3] On April 5, 2018, plaintiff served a timely Notice of Tort Claim upon the State as required by the New Jersey Tort Claims Act (TCA), N.J.S.A. 59: 8-8, requiring the filing of a notice of claim within ninety days of the accrual of the cause of action against a public entity or employee unless the claimant demonstrates good cause to justify a late filing.

rights. She asserted the Township and Chief Meehan breached their duty "to provide an appropriate security monitor[] with a wand,"[4] "provide a proper means for frisking individuals without violating a... woman's space," or "otherwise furnish adequate and proper warnings to invitees" and members of the public entering the premises.

The complaint also alleges that Hazlet Township and Hazlet Township Police Department failed "to properly train...Logothetis." Additionally, the complaint asserted that "[t]he inaction of [Hazlet Township] rose to the level of deliberate indifference."

Plaintiff alleged defendants' actions caused her to suffer severe physical injuries and mental trauma that will continue throughout her lifetime. Plaintiff sought $5 million in damages against defendants, "individually" and "jointly," for her losses. Attached to plaintiff's complaint was a medical note prepared by a nurse during a January 17, 2018 office visit. The note indicated that plaintiff complained of breast and chest "pain and discomfort" from being "frisked while going through [a] courthouse metal detector." The physical examination revealed "tenderness on palpation of right lateral breast tissue and intercostal area" and "axillary tenderness." The diagnosis noted "[b]reast pain, right; [c]hest wall tenderness; [a]nxiety." X-rays of plaintiff's chest and right ribs conducted on the date reported no "significant findings."

During the discovery period, plaintiff failed to submit an expert evidence to support her claim for

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[4] A wand is a common name for "a hand-held magnetometer." Klarfeld, 944 F. 2d at 586.

psychological and physical damages. Plaintiff was cleared to return to work on January 19, 2018. Subsequently, on February 8, 2018, when plaintiff followed up with the same nurse she had visited on January 17, 2018 the nurse concluded that there were "no long[-]tern effects from the right upper arm and chest wall pain, which has resolved at this time." Additionally, plaintiff underwent a bilateral breast ultrasound on February 13, 2020, and submitted bills evidencing multiple visits to a licensed clinical social worker for psychotherapy. However, no reports were provided.

In her answers to interrogatories, plaintiff reiterated that although she "consented to a reasonable search of [her] body for weapons," Officer Logothetis "failed to ask [her] if [she] had any item that could have set off the metal detector," "failed to...,request that [she] pass through the metal detector again," and "possessed no wand." Instead, Logothetis "immediately requested that [she]...turn around" and proceeded to "squeeze[her] breasts."

Through Chief Meehan's and Officer Logothetis' answers to interrogatories, it was revealed that Logothetis had been a Hazlet Township police officer since August 2015, and underwent basic training at the Cape May County Police Academy from August 2013 to January 2014, as well as twelve weeks of field training that included conducting frisks. Although Logothetis had no specific recollection of the event, she acknowledged being assigned to work the security detail for the Hazlet Township Municipal Court on January 16, 2018, and being positioned outside the courtroom to conduct screenings for weapons prior to people entering the courtroom. The police department

provided security for the municipal courtroom in accordance with directives issued by the Administrative Office of the Courts and the Attorney General's Office. See Administrative Directive #15-06, "Statewide Municipal Court Security Policy" (Aug. 7, 2006) (requiring municipal courts to submit security plans to the Assignment Judge of the vicinage); Hazlet Township Police Department Policy and Procedures, "Municipal Court Security" (May 10, 2018) (codifying departmental policy and procedure in providing security for the municipal court).

According to Officer Logothetis, there was a metal detector in the foyer of the municipal building and posted signs stating that "All Persons Entering the Courtroom Are Subject to Search for Weapons." Ordinarily, when a person activates the metal detector, the person can pass through the detector again, be screened using a hand-held metal detector, or frisked. Prior to a frisk, Logothetis generally advises the individual that she is going to conduct a quick pat down to search for weapons and instructs the individual to face the other way with arms extended. When frisking a woman, consistent with her training, Logothetis feels for weapons under the arms, below the bra strap, and sweeps up and down the legs.

On average, Officer Logothetis conducted approximately one frisk at each court session. Logothetis denied ever touching anyone "extremely inappropriately" or "unnecessarily squeez[ing]" anyone's breasts. Prior to plaintiff's complaint, Logothetis never received any complaints regarding her frisks, and only became aware of plaintiff's complaint when she was notified by the Internal Affairs Unit (IA) that an investigation into plaintiff's complaint was underway. The IA

investigation determined that the allegations were unfounded.

The Discovery period ended on March 30, 2020. Over thirty days prior to the June 8, 2020 trial date, defendants moved for summary judgment.[5] In support, the Police Department and Officer Logothetis relied in part on a January 16, 2018 video of the security checkpoint outside the municipal courtroom depicting the incident.

Plaintiff opposed the summary judgment motion on the ground that there were disputed material facts, and specifically objected to defendants' reliance on the video. In a supporting certification, plaintiff stated that although there was a sign indicating that there would be a search for weapons, there was no sign indicating that the search would be videotaped and plaintiff "never gave any informed consent for the making of the video."[6] Plaintiff also objected to the late disclosure of the video, stating that it was not provided to her until February 10, 2020, more than two years after it was supposedly made. Plaintiff "suspect[ed] that the video was either edited and/or altered" due to "the long delay in its presentation and the failure of any of the [d]efendant[s]...to submit an affidavit of certification that the video was not altered and/or edited in any respects."

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[5] An earlier motion for summary judgment filed by defendants was "[d]enied without prejudice... to allow for discovery."

[6] In her Notice of Tort Claim, plaintiff responded to the question requesting the identification of witnesses to the occurrence by indicating that "cameras" were "onsite."

On May 22, 2020, Judge Butehorn conducted oral arguments on the motions. On the same date, the judge entered orders granting defendants summary judgment. In the accompanying statement of reasons, after recounting the parties' respective positions and applying the governing legal principles, including viewing the evidence in the light most favorable to plaintiff,[7] the judge determined that based on the undisputed material facts, defendants were entitled to summary judgment as a matter of law.

Preliminarily, the judge noted that he "did not view or consider [the] video" or "any outline of the events purportedly depicted therein as part of []his decision." The judge agreed with plaintiff that defendants failed to submit "as part of the initial moving papers" any evidence indicating the video's "authenticity."

Next, the judge explained that although not specifically identified in the complaint, plaintiff seemed "to assert a claim under the Federal Civil Rights Act (42 U.S.C. Section 1983), or the New Jersey Civil Rights Act[,N.J.S.A. 10:6-1 to -2]" (CRA) as well as "claims of negligence...subject to the New Jersey Tort Claims Act [(TCA), N.J.S.A. 59: 1-1 to 12-3]." Further, "[a]lthough unclear," the judge deciphered

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[7] The judge noted that despite plaintiff's noncompliance with Rule 4:46-2(b), requiring a conforming "responding statement" of material facts together with citations to the motion record," instead of "disregarding plaintiff's submission and granting the motion solely upon defendants' submissions," he accorded plaintiff "leniency" given the fact that she was "self-represented." Thus, the judge considered "the substance of her submission" as "disput[ing] certain factual allegations" in defendants' "statement of material facts."

plaintiff's claims as challenging both the type of search performed, namely, a frisk, as well as the manner in which the search was conducted.

Addressing liability under the TCA, the judge acknowledge the statutory immunity afforded under N.J.S.A. 59:3-3 when a public employee acts in good faith in the execution or enforcement of any law. See N.J.S.A, 59: 3-3 ("A public employee is not liable if he acts in good faith in the execution or enforcement of any law.") According to the judge, assessing good faith involved considering "whether the employee's conduct [was] objectively reasonable under the circumstances." See Bombace v. Newark, 125 N.J. 361, 374 (1991) (nothing that good faither for purposes of immunity under N.J.S.A. 59: 3-3 applies "if the public employee can show either objective or subjective good faith" and defining objective good faith as the objective reasonableness of the conduct in the circumstances).

The judge pointed out that plaintiff "consented to a search prior to entering the municipal court," "admit[ted] to a further search in light of the detector going off. Further, it was undisputed that "municipal police departments, through their officers, provide[d] security for municipal courts and, as part thereof, the officers [were] executing the law." Other than objecting to the type of search performed, the judge determined that plaintiff could not "point to any facts upon which it might be found that Officer Logothetis was not executing the law" in good faith.

The judge explained:

> In this case the court finds the decision to frisk plaintiff objectively reasonable under

the circumstances. The plaintiff admits she triggered the metal detector when entering the municipal courts. Any objective person would find a further search reasonable; plaintiff admits as much. Moreover, there are different forms of further searches, one might be asked to walk through the detector again. The other forms might include, as plaintiff suggest, a "wand," another form of electronic or non-touching search. However, considering the detector [was] already triggered it is objectively reasonable to undertake a different form of search.

In addition, Logothetis is the first line of security for people coming into the public courthouse...The first detector was triggered upon plaintiff walking through it and it is objectively reasonable for the officer in this case to have determined a further search was required and to perform it through a different means than that already triggered as a follow up.

Therefore, the court finds N.J.S.A. 59: 3-3 provides Officer Logothetis immunity from any tort claim against her for selecting to frisk plaintiff rather than a different form of follow up search. Similarly, the public entity defendants...cannot be liable on this claim. N.J.S.A. 59: 2-2(b)[8] Nor is there a basis

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[8] See N.J.S.A. 59:2-2(b) ("A public entity is not liable for an injury resulting from an act or omission of a public employee where the public employee is not liable.").

upon which to hold the Chief liable.

Specifically addressing plaintiff's tort claim against the Chief, the Police Department and the Township, the judge stated:

> [P]laintiff's claim as outlined in her complaint are a failure to provide appropriate security, failure to provide warnings for those entering the premises, and a failure to provide proper means of frisking entrants to the municipal courts. However, plaintiff cannot point to any evidence in support of same as against those defendants. There is no evidence of any potential incidents, or issues, regarding screenings or security at the municipal court. The only evidence in this case would be as to plaintiff's screening in particular. There is no evidence upon which a jury might find the security was inappropriate of insufficient. Plaintiff may take issue with the way her screening was handled, however, that is not a basis to sustain a claim for failure to have generally appropriate security.
>
> The same is true as to a claim for failure to provide warnings or failure to provide proper-frisking of entrants. That is, there is no evidence regarding any incidents or issues other than plaintiff's assertions regarding her entry alone. As to the claim against the Chief for failure to supervise, that is based upon – as the allegation is put in the complaint – overlooking what took place after the fact. There is no evidence to support a claim against him upon a failure to act (or

an act) prior to the frisk at issue.

Addressing liability for negligence based on "the manner in which the frisk was executed," the judge reasoned that "issues of proximate cause and damages under the TCA" barred plaintiff's claims. The judge stated that to sustain a claim under the TCA, plaintiff must establish "a casual nexus" between "the claimed tortious conduct" and her injuries by "objective, credible medical evidence." See Mack v. Passaic Valley Water Comm'n, 294 N.J. Super 592, 598 (App. Div. 1996) (explaining that in TCA cases "the critical question is whether plaintiff has presented objective and credible medical evidence, if believed by a fact-finder, of a permanent loss of bodily function"). Although plaintiff "identified certain medical providers" and provided some medical records, the judge pointed out that "plaintiff has not served an expert report" and "the medical records/documents" provided "do not make any correlation...to the events of January 16, 2018." Thus, in the absence of objective and credible medical evidence, plaintiff cannot "sustain a claim based in tort under the TCA."

Furthermore, according to the judge, plaintiff's evidence was insufficient to satisfy the $3600 minimum for damages required under the TCA for pain and suffering resulting for an injury, failed to satisfy the two-pronged standard to vault the pain and suffering threshold under the TCA, and failed to prove psychological trauma accompanied by or resulting in physical symptoms to meet the requirements of the TCA. See N.J.S.A. 59:9-2(d) ("No damages shall be awarded against a public entity or public employee for pain and suffering resulting from any injury" except "in cases of permanent loss of a bodily function...where

the medical treatment expenses are in excess of [$3600]."); Ghilooley v. Cnty of Union, 164 N.J. 533, 540-41 (2000) ("[I]n order to vault the pain and suffering threshold under the [TCA], a plaintiff must satisfy a two-pronged standard by proving (1) an objective permanent injury, and (2) a permanent loss of a bodily function that is substantial."); Brooks v. Odom, 150 N.J. 395, 403 (1997) ("Temporary injuries, no matter how painful and debilitating, are not recoverable" and "a plaintiff may not recover under the [TCA] for mere subjective feelings of discomfort." (internal quotations omitted)).

Turning to the civil rights claim, Judge Butehorn was guided by Filgueiras v. Newark Pub Sch., where this court explained that "[t]he elements of a substantive due process claim under the CRA are the same as those under Section 1983." 426 N.J. Super, 449, 468 (App. Div. 2012). In Filgueiras, we held that in order to establish a claim under either Section 1983 or the CRA, "the first task...is to identify the state actor, the person acting under color of law, that has caused the alleged deprivation." Ibid, (alteration in original) (citations and quotation marks omitted). "The second task is to identify a right, privilege or immunity secured to the claimant by the Constitution or other federal laws of the United States." Ibid, (citations and quotation marks omitted).

Judge Butehorn explained that as to the second element, "plaintiff cannot identify a specific constitutional violation for the Officer's decision to frisk her rather than [conduct] another form of search." As to the manner in which the frisk was conducted, the judge explained that such a claim was one "for excessive force in violation of the Fourth Amendment

to the United States Constitution" and was "properly analyzed under the Fourth Amendment's 'objective reasonable' standard, rather than under a substantive due process standard." See Graham v. Connor, 490 U.S. 386, 388 (1989) (holding that a "citizen's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other 'seizure' of his person" was "properly analyzed under the Fourth Amendment's objective reasonableness' standard rather than under a substantive due process standard").

Applying that standard, Judge Butehorn determined that "the frisk was objectively reasonable." In support, the judge noted that "plaintiff made no complaints of the force or discomfort at the time of the frisk," and there was "a lack of any evidence casually relating any medical care or treatment to the frisk." See Gilles v. Davis, 427 F.3d 197, 208 (3d Cir. 2005) (holding "the facts alleged constitute[d] insufficient evidence as a matter of law for excessive force by handcuffing" to sustain a civil rights action for damages under Section 1983 based on the plaintiff's failure to demonstrate or express "signs of discomfort at the time he was handcuffed" or "seek...medical treatment after the fact").

Additionally, considering the totality of the surrounding circumstances, including the fact that "plaintiff went through the metal detector and triggered its alarm" and the necessity for determining whether "there were any impermissible, and potentially dangerous, object[s] being brought into the courtroom" that were secreted on plaintiff's person, the judge found that "the frisk...satisfie[d] the

objectively reasonable standard under the Fourth Amendment such that plaintiff cannot sustain a claim under the Federal Civil Rights Act." Further, according to the judge, for the same reasons, plaintiff's claim against Officer Logothetis under the CRA failed as a matter of law because "qualified immunity is an affirmative defense and would be applicable based upon the objectively reasonable basis" for the frisk. See Brown v. State, 230 N.J. 84, 97-98 (2017) (explaining that in suits brought under the CRA, "[t]he affirmative defense of qualified immunity protects government officials from personal liability for discretionary actions taken in the course of their public responsibilities, 'insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." (quoting Morillo v. Torres, 222 N.J. 104, 116 (2015))).

Regarding liability by "the entity defendants" under Section 1983 or the CRA, the judge noted that although a local government entity could be held liable under limited circumstances "for the deprivation of constitutional rights by its employees or officers," such circumstances did not exist here. See Stomel v. City of Camden, 192 N.J. 173, 145-46 (2007) (explaining that "a municipality generally cannot be held liable in a Section 1983 action for the acts of employees under the principle or respondeat superior" unless "an official municipal 'policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy," is the cause of the constitutional deprivation" (quoting Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978))).

Finding "no evidence in support any claim against the municipal entities," the judge explained:

> [t]here is no evidence on the record to state the Hazlet Police Department or Hazlet Township implemented a policy, ordinance, regulation, or any of the sort to promote unreasonable searches. Even when viewing [the] evidence in [the] light most favorable to...plaintiff, there is no dispute of facts which should be submitted as a jury question. The plaintiff does not point to any policy, nor does she cite any ordinance which could possibly lead to a jury question of whether [the] Police Department and Hazlet Township officially adopted an unconstitutional policy. Without more evidence, summary judgment should be granted for the Police Department and Hazlet Township.

Further,

> [t]here is no evidence to show the officer's decision – or the manner in which she carried out the frisk – was sanction[ed] or ordered by the municipal entities. There is no evidence of any policy, either formally or informally, adopted by them as to the decision by Officer Logothetis or the manner in which she carried out the frisk. There is only plaintiff's blank allegation as put forth in her complaint. Although plaintiff states she "alleged a custom or policy,"...an allegation alone is not sufficient

.Likewise, as to the Chief, the judge stated plaintiff cannot point to any facts that would estab-

lish a claim for "supervisor[y] liability" under the "recklessness or deliberate indifference' standard ...applicable to plaintiff[s] claim" under Section 1983 or the CRA. See Schneider v. Simonini, 163 N.J. 336, 373-74 (2000) (adopting a recklessness or deliberate indifference" standard for evaluating supervisory liability under Section 1983 that requires a plaintiff to "establish 'that (1) the supervisor...failed to supervise the subordinate official; (2) a causal link exists between the failure to...supervise amounts to deliberate indifference' or recklessness" (quoting Hinshaw v. Doffer, 785 F. 2d 1260, 1263 (5th Cir. 1986))). According to the judge, there was "[n]o evidence plac[ing the Chief] at the courthouse nor being aware of the events that day." "Plaintiff makes conclusory statements, but conclusory statements are insufficient to overcome a motion for summary judgment."

II.

In this ensuing appeal, plaintiff argues the judge erred in granting summary judgment to defendants. We review a grant of summary judgment applying the same standard used by the trial court. Steinberg v. Sahara Sam's Oasis, LLC., 226 N.J. 344, 366 (2016). The standard is well-settled:

> if the evidence of record – the pleadings, deposition, answers to interrogatories, and affidavits—"together with all legitimate inferences therefrom favoring the non-moving party, would require submissions of the issue to the trier of fact," then the trial court must deny the motion. On the other hand, when no genuine issue of material fact is at issue and the moving party is

> entitled to a judgment as a matter of law, summary judgment must be granted.

[Ibid, citations omitted) (quoting R. 4:46-2(c)).]

If there is no genuine issue of material fact, we must "decide whether the trial court correctly interpreted the law." DepoLink Ct. Rep. & Litig Support Servs. V. Rochman, 430 N.J. Super 325, 333 (App. Div. 2013) (quoting Massachi v. AHL Servs, Inc., 396 N.J. Super 486, 494 (App. Div. 2007)). We review issues of law de novo and accord no deference to the trial judge's legal conclusions. Nicholas v. Mynster, 213 N.J. 463, 478 (2013).

Applying this standard, we agree with the judge's determination that there were no disputed issues of material fact and defendants were entitled to summary judgment as a matter of law. Plaintiff maintains that she was "subjected to an unreasonable search for weapons" "in violation of [42 U.S.C. Section 1983.]" She asserts that the injury she suffered was the result of official policy or custom and "indifferen[ce] to providing the necessary court training to Officer Logothetis prior to the incident," exposing the municipality, the police department, and the Chief to liability under Section 1983. She further contends that "Officer Logothetis was not entitled to qualified immunity" at the summary judgment stage given the material disputed facts surrounding "the reasonableness component" of the search.

However, our Supreme Court has recognized that in cases, involving Section 1983 claims, the "doctrine of qualified immunity shields law enforcement officers, from personal liability for civil rights violations when

the officers are acting under color of law in the performance of official duties" unless their performance was not "objectively reasonable." Morillo, 222 N.J. at 107-08. Determining whether the conduct was objectively reasonable "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." Graham, 490 U.S. at 396. "The inquiry requires analyzing the totality of the circumstances." Plumhoff v. Rickard, 572 U.S. 765, 774 (2014).

Here, we agree with the judge that based on the evidence in the record, Officer Logothetis' conduct was objectively reasonable, and plaintiff failed to point to any facts that dictated otherwise. Moreover, contrary to plaintiff's contention, this reasonableness determination obviated a finding of "willful misconduct" to vitiate immunity under the TCA. See N.J.S.A. 59:3-14 (providing an exception to immunity for public employees under the TCA where a public official's conduct "was outside the scope of his employment or constituted a crime, actual fraud, actual malice or willful misconduct").

We also reject plaintiff's contention that neither the township nor the police department were entitled to summary judgment. "A local government entity is deemed a 'person' under Section 1983 only where the action alleged to be unconstitutional 'implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." Bayer v. Twp. of Union, 414 N.J. Super 238, 270 (App. Div. 2010) (quoting Monell, 436 U.S. at 690). "It is not, however, liable for the actions of its employees solely on a theory of respondeat

superior." [Ibid, "it is only when 'execution of a government's policy or custom...inflicts the injury that the government as an entity is responsible under Section 1983." [Ibid, (quoting Monell, 436 U.S. at 694).

"[T]here are limited circumstances in which an allegation of a 'failure to train' can be the basis for liability under Section 1983." City of Canton v. Harris, 489 U.S. 378, 387 (1989). "[T]he inadequacy of police training may serve as the basis for Section 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." Id, at 388. "Only where a failure to train reflects a 'deliberate' or 'conscious' choice by a municipality...can a city be liable for such failure under Section 1983." Id, at 389. To survive summary judgment on a failure to train theory, a plaintiff "must present evidence that the need for more of different training was so obvious and so likely to lead to the violation of constitutional rights that the policymaker's failure to respond amounts to deliberate indifference." Brown v. Muhlenberg Tw., 269 F. 3d 205, 216 (3d, Cir. 2001).

Here, we agree with the judge that plaintiff failed to present any evidence to support a failure to train theory and her conclusory statements are inadequate to defeat summary judgment. "bare conclusory assertions, without factual support in the record, will note defeat a meritorious application for summary judgment." Horizon Blue Cross Blue Shield of N.J. v. State, 425 N.J. Super, 1, 32 (App. Div. 2012), accord Puder v. Buechel, 183 N.J. 428, 440-41 (2005) ("[C]onclusory and self-serving assertions of one of the parties are insufficient to overcome the

[summary judgment] motion."). "The opponent must 'come forward with evidence' that creates a genuine issue of material fact." Horizon Blue Cross Blue Shield of N.J., 425 N.J. Super, at 32 (quoting Brill, 142 N.J. at 529). Plaintiff failed to do that here.

Likewise, to the extent plaintiff appears to asset claims of negligent supervision and failure to investigate on the part of the Chief, such claims also fail. The deliberate indifference test also applies to claims to "negligent supervision and failure to investigate." Groman v. Twp. of Manalapan, 47 F. 3d 628, 637 (3d Cir. 1995). "[D]eliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." Connick v. Thompson, 563 U.S. 51, 61 (2011) (quoting Bd. of the Cnty, Comm'rs v. Brown, 520 U.S. 397, 410 (1997)).

To sustain a claim under those theories, "the plaintiff must identify specific acts of omissions of the supervisor that evidence deliberate indifference and persuade the court that there is a 'relationship between the "identified deficiency" and the "ultimate injury."" Brown, 269 F. 3d at 216. To that end, "it is not enough for a plaintiff to argue that the constitutionally cognizable injury would not have occurred if the superior had done more than he or she did." Sample v. Diecks, 885 F. 2d 1099, 1118 (3d Cir. 1989). Here, plaintiff has failed to establish the requisite elements. Plaintiff failed to present evidence of any complaints other than her own, and failed to point to any facts to indicate that the Chief was even aware of plaintiff's encounter with Officer Logothetis

on the date in question."[9] See Schneider, 163 N.J. at 373-74 ("The knowledge element of a plaintiff's case requires proof that the supervisor was aware of facts from which an inference could be drawn that the subordinate was acting in an unconstitutional manner that carried a substantial risk of causing serious harm.")

We also reject plaintiff's claim that she "was greatly prejudiced" by the late production of the video depicting the search. First, at her request, the judge did not consider the video in making his decision. Second, plaintiff's claims of surprise is belied by her acknowledgement in her Notice of Claim that there were cameras onsite recording the encounter.[10]

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[9] A Claim of supervisory liability may also be predicated on the supervisor "participat[ing] in violating the plaintiff's rights, direct[ing] others to violate them, or, as the person in charge, hav[ing] knowledge, of an acquiesce[ing] in [the] subordinates' violations." A.M. ex rel. J.M.K. v. Luzerne Cnty. Juvenile Det. Ctr., 372 F. 3d 572, 586 (3d Cir. 2004). The record does not support a finding of liability on this basis either.

[10] The judge correctly rejected plaintiff's apparent claim, reiterated on appeal, that her failure to consent to a video recording of her entering the municipal courtroom constituted yet another constitutional violation. The judge noted that the claim was "not part of her complaint...nor a basis for her allegations." Moreover, according to the judge, "there is no viable cause of action against any of the defendants" based upon them "recording those at the entrance, or within the public areas of the municipal court building." Nor "is there a potential claim based upon the lack of a sign indicating [same]." See Tarus v. Borough of Pine Hill, 189 N.J. 497, 512 (2007) (condoning "videotaping of public proceedings" and acknowledging that "[t]he broad and pervasive use of video cameras at public events evidences a societal acceptance of their use in public fora"), see also Key v. Compass bank, Inc., 826 So. 2d 159, 165

To the extent we have not specifically addressed plaintiff's remaining arguments we deem them without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

/s/
Clerk of the Appellate Division

(Ala. Civ. App. 2001) ("Normally, there is no liability for photographing a person in a public place.").

RIDER AND STATEMENT OF REASONS FOR TWO (2) ORDERS OF MAY 22, 2020 GRANTING ALL DEFENDANTS MOTIONS FOR SUMMARY JUDGMENT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MONMOUTH COUNTY
DOCKET NO.: MON-L-1266-18
Civil Action

CAROLYN L. BABURKA,

Plaintiff

vs.:

STATE OF NEW JERSEY (as per title 59 Requirements, "suing a Public Entity) COUNTY OF MONMOUTH, HAZLET TOWNSHIP POLICE DEPARTMENT, CHIEF PHILIP MEEHAN, AND SUPERVISOR OF THE HAZLET POLICE; WHOMSOEVER THAT MAY BE, HAZLET TOWNSHIP, SCIBAL ASSOCIATES of Somers, Point, Egg Harbor Township, New Jersey, also or now known as Qual-Lynx or Qualcare a/k/a Qualcare, Inc. a Division or owned or acquired b CIGNA INSURANCE COMPANIES, Qual-Lynx or 'QualCare INC havings its offices now at 30 Knightsbridge, Rd.- Piscataway Township, New Jersey ABC MAINTENANCE COMPANY, JOHN DOES (1-6) (FICTITIOUS NAMES), JOHN DOE, ROBERT ROE, DEF LANDLORD, HIJ ENTITY,

Defendants

This decision addresses two (2) motions for summary judgment. The first was filed on behalf of defendants Hazlet Township and Chief Philip Meehan. The second was filed on behalf of defendants Hazlet Township Police Department and Officer Charleigh Logothetis. The court heard oral arguments on this date. The court also reviewed all written submissions by all parties in relation to each motion as briefly outlined at the outset of oral arguments.

BACKGROUND/PROCEDURAL HISTORY:

This action revolves around events on January 16, 2018 when plaintiff went to the Hazlet Township Municipal Court, Plaintiff filed a Notice of Tort Claim on April 6, 2018. There was an original complaint filed in this action and then an amended complaint. The amended complaint was filed on April 24, 2019. The amended complaint[1] outlines the allegations in this matter. It states plaintiff appeared at the Hazlet Township Municipal Court on January 16, 2018 in response to a summons issued by an "Officer Torres." It states plaintiff appeared at approximately 4:00 p.m. on that date and proceeded through the metal detector. The complaint alleges defendant Charleigh Logothetis was monitoring the metal detector and directed plaintiff to turn around after she proceeded through the detector. It goes on to stated Officer Logothetis

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[1] Any reference to Plaintiff's complaint in this decision refers to the amended complaint unless otherwise indicated. Any quotations from the complaint in the background and procedural history section do not include any emphasis as contained in the complaint. However, the court did not change any grammar or words within the quotations unless indicated (e.g."[]").

did not "wand" plaintiff but touched her "extremely inappropriately." (Paragraph seven (7)). Plaintiff she was in "excruciating pain and so emotionally and mentally traumatized." (Id). Paragraph 22 identifies the Hazlet Police Department, the Chief and Officer Logothetis, as its employees.

Paragraph eight (8) alleges defendants had a "duty to provide an appropriate security monitor with a wand or to otherwise furnish adequate and proper warnings to invitees who might utilize or who might transgress said premises." Paragraph nine (9) states it was defendants' duty "not to violate one(')s person and space and inappropriate touching, or violate ones rights under the Constitution of the United States." Plaintiff alleges defendants breached those duties causing her injury and trauma. Paragraph eleven (11) identifies "serious, severe and diverse physical injuries and (she) has suffered severe great pain, sever shock and severe mental anguish, and severe mental trauma." It further states plaintiff "was and still is traumatized and will be permanently mentally traumatize for plaintiffs lifetime." Paragraph 12 alleges loss for medical care and other services. Paragraph 13 alleges economic loss, including wages future earning power.

The allegation as to the "police supervisor," as identified in paragraph 14, is a knowing and willfully intentional decision to overlook the violation of plaintiff by Officer Logothetis.

Later in the complaint plaintiff states defendants had a duty to provide "proper means for frisking individuals without violating a human woman's space, and traumatizing a woman mentally and/or on her body, her person" (Paragraph 16). The

following paragraph inserts a similar duty and also mentions a duty to provide "proper warning to invitees...and maintain said premises in a proper appropriate manner." (Paragraph 17). Paragraph 18 and 19 allege physical and mental injury or trauma resulting from breaches of those duties.

Plaintiff alleges the deprivation of her rights occurred pursuant to custom or policy and decision officially adopted by governmental offices. (Paragraph 23). She further alleges the action of the Township rose to the level of deliberate indifference. (Paragraph 24). Although Paragraph 24 was limited to the Township, Paragraph 25 alleged the Township and Police Department failed to properly train their employee Officer Logothetis.

The discovery period in this matter ended March 30, 2020. The matter proceeded through a civil arbitration and has a pending trial date of June 8, 2020. These notices were filed to be returnable May 8, 2020, at least 30 days prior to the trial date. The court adjourned the motions to this date. See footnote 2.

HAZLET TOWNSHIP & CHIEF MEEHAN'S ARGUMENTS:

Hazlet Township argues it is afforded the immunities of the Tort Claims Act (TCA). The Township asserts it is a "public entity" as defined by the Act. It further asserts plaintiff's allegations arise out of an incident at its municipal court and the court, or tribunal, exists by reason of N.J.S.A. 2B:12-1(a). The Township then argues administrative searches are limited warrantless searches and are lawful if conducted as part of a general scheme to

further an administrative purpose. The Township states plaintiff alleges Officer Logothetis should have used a "wand" rather than physically touching her. It argues, however, a frisk as part of an administrative search is lawful and a public entity is not liable for an injury resulting from the exercise of judgment or discretion by an employee. It states, if the frisk performed by Officer Logothetis was warranted, the Township cannot be found liable. The Township also argues it cannot be liable if the employee is immune from liability and points to the immunity for public employees acting in good faith when executing or enforcing any law.

The Township goes on to argue, if plaintiff's allegations is that Officer Logothetis groped plaintiff, or frisked her in a manner not permitted, the Township is immunized from liability pursuant to the TCA immunity for conduct of public employees with actual malice or willful misconduct.

As to Chief Meehan, he asserts there is no allegation he ordered the Officer's conduct in relation to plaintiff. He points to Paragraph 14 of her complaint that alleges the "police supervisor" was aware of and overlooked the claimed violation of plaintiff by Officer Logothetis. He argues plaintiff does not identify what he should have done after the fact. He then argues civil service discipline as an administrative proceeding and plaintiff lacks standing to assert that claim. He further argues immunity applies to him pursuant to N.J.S.A. 59:3-3 that bars liability for an injury claims upon a failure to enforce the law.

Both movants also argue plaintiff cannot establish liability as against them as there are no proofs of

any claimed damages. They point to the lack of any expert testimony as required to demonstrate psychological and medical damages. Movants state plaintiff's visit to a professional for physical or psychological injury is insufficient; she, they state, did not provide any expert evidence correlating any claimed injury to the encounter with Officer Logothetis. They also state plaintiff failed to put forward proofs of medical treatment expenses in excess of $3,000.00 as required by the Act. Finally, as to damages, they argue plaintiff cannot recover punitive damages as that is not permitted under the TCA.

As to any potential claim pursuant to 42 U.S.C. Section 1983, movants state plaintiff needs to satisfy two (2) factors in order to be held responsible. First, that plaintiff's harm was caused by a constitutional violation, and second, if so, the municipal actor is responsible for the violation. Defendants state public employees are only liable for constitutional violations when either they commit or direct them. They further state public entities can only be liable for acts committed by one of its employees or agents pursuant to a government policy or custom.

Defendants assert paragraphs 22-25 of plaintiff's complaint make conclusory references to the Township and Meehan violating her rights through policy, a lack of training, or a deliberate indifference. They state, in order to claim a failure to train properly, plaintiff must establish municipal liability on the basis the municipal action taken either officially adopted by the governing body or through policymaking. The policymaking must a deliberate indifference to the action known or of obvious consequences However, they argue, there is no proof of a

policy, nor lack of training or supervision that is so systematic as to amount to deliberate indifference.

Finally, they argue plaintiff does not have a cause of action for a New Jersey Civil Rights Act (NJCRA) claim. Defendants argue the Act only permits actions for deprivation of rights that are not adequately safeguarded elsewhere. They argue plaintiff's claimed deprivation would be protected under the Section 1983 claim. Although, they assert, there is no basis for the Section 1983 action, movants argue the fact plaintiff could pursue a claim – if she had one – through that remedy negates a claim under the NJCRA.

HAZLET POLICE DEPARTMENT & OFFICER LOGOTHETIS' ARGUMENTS

First, Officer Logothetis argues she is entitled to immunity under the TCA pursuant to N.J.S.A. 59:3-3 affording immunity for acts in the good faith in the execution or enforcement of any laws. She states there is no dispute she was acting within the scope of her duties for the Hazlet Police Department. The Officer points to a video that confirms she conducted the frisk of plaintiff in the same appropriate manner she did not those before and after plaintiff. She asserts her conduct in frisking plaintiff was objectively reasonable and that is sufficient to afford her immunity under the statute. The Township argues it is afforded immunity upon the immunity afforded Officer Logothetis. Both argue the immunity applies even if there is evidence to find the officer was negligent during the frisk as she was acting in good faith performing her job duties.

Next, defendants argue there is qualified immunity to any potential claim under 42 U.S.C. Section 1983. They state plaintiff's claim is based upon an alleged use of excessive force. First, they argue there are no facts upon which plaintiff can demonstrate the Officer's conduct violated a clearly established statutory or constitutional right. Second, defendants state the court must apply a "reasonable" standard and determine whether the officer's actions were objectively reasonable. That, they state, involves balancing the nature and quality of the intrusion on a person's Fourth Amendment rights and the countervailing governmental interests at stake. Defendants argue, under the "totality of the circumstances." They argue all evidence in this case establishes that Officer Logothetis acted reasonably under the circumstances. They state all persons entering the court were subject to a search in order to protect the health, safety and welfare of others. And, they argue, there is no evidence to show Officer Logothetis used excessive force.

The next arguments put forth are specific to the Police Department. It argues there cannot be liability upon it due to the lack of ability to establish a claim against the Officers. They further argue, if the court does not find immunity for the officer it is entitled to absolute immunity for any acts by a public employee that constitute a crime or involve malicious or willful misconduct. N.J.S.A. 59:2-10. The Police Department also argues, as to the Section 1983 claim, plaintiff cannot sustain a claim against it for a deprivation of a constitutional right unless that was done pursuant to a custom, policy, ordinance, regulation or officially adopted governmental decision.

The foregoing arguments are followed by further arguments on behalf of both the Department and the Officer. The arguments address the issue of damages. Movants argue plaintiff cannot establish she suffered a permanent injury under N.J.S.A. 59:9-2(d). They state the term permanent injury requires credible, medical objective evidence supporting plaintiff's injury. Defendants argue plaintiff is alleging subjective injuries and not permanent ones required. Plaintiff complains of breast pain and tenderness without muscle pain, bruising, or swelling. In addition, they state x-rays taken of the plaintiff's chest and ribs were normal. Moreover, they state, 23 days after the incident, on February 8, 2018, plaintiff met with a nurse who made notes stating the plaintiff would have no long-term effects. Therefore, defendants argue plaintiff has not suffered a permanent injury.

PLAINTIFF'S OPPOSITION

Plaintiff filed a single opposition to both motions. She submitted a certification and legal brief. Much of that put forth in each was also asserted in the other and the court summarizes both herein. Her certification states she appeared at the municipal court building to answer various traffic summons on January 16, 2018. In relation to the video referenced by defendants, plaintiff states it is improper to present it at this point. She states the video was first brought to her attention and served upon her more than two (2) years after the incident. (Certification at paragraph 2). She also asserts there is no indication the attorney who submitted the video had anything to do with its making or that it was unaltered /unedited. Plaintiff states she believes it to be altered. Plaintiff states there was a sign in the foyer indicating

there would be a search for weapons. She states, however, there was no sign about being videotaped and she did not consent to a video of the events that day.

Although referencing the video tape, plaintiff certifies she is "alleging that (her) Federal Constitutional rights have been violated when (she) was subject to an improper and unreasonable search of (her) body for weapons." (Certification paragraph 2). Plaintiff goes on to address the substantive allegations in this matter. She states her claim is based upon the violation of her rights under 42 U.S.C. Section 1983. Plaintiff asserts any search of her body must conducted in a reasonable manner. She states that was not done. She states Officer Logothetis' action was a ministerial act and not entitled to qualified immunity. Plaintiff states the Officer failed to "wand" her prior to touching her breasts. Plaintiff states the Officer squeezed her breasts. Plaintiff states her conduct did not warrant her being frisked and she had every expectation she would be treated reasonably under all the circumstances. She argues a jury must decide whether that took place.

Plaintiff goes on to argue her claim remains viable regardless of any state law claim as the Federal Constitution has supremacy. She argues a reasonable search must be consistent with her age and sex.

Although plaintiff's opposition focuses on her constitutional claim, the brief also response to movants' arguments under the Tort Claim Act. She argues that Act is preempted by the Federal Constitution and her claim for violation of same.

Plaintiff also references her mental anguish and physical injury as a result of the search by Officer Logothetis. Plaintiff certifies she is in mental therapy and under "physical care for the personal injury to (her) breasts and person." (Certification at paragraph 8). She further states all things are postponed at this point in light of the coronavirus pandemic. Plaintiff also states her claim under 42 U.S.C. 1983 is not subject to the physical injury limitation of the Tort Claims Act.

Plaintiff also states she alleged a custom or policy by the Hazlet Township Police Department that caused her injury. She references Chief Meehan's interrogatory answers that the policy to search for weapons was instituted pursuant to Order of the Attorney General. She then states "(e)vidently it has been the custom of the Hazlet Police Department to not inform persons entering the courtroom in the Hazlet Township Municipal building that its entrance would be subject to a video being made of the entrance and never informed the public about this." (Brief at paragraph 3, page 8) She further references the Chief admitting there exists a color of law and, hence, deemed a state actor.

Last, plaintiff states the case is already listed for trial and she desires a jury trial. She argues there are disputes of material facts in this case and she is entitled to all presumptions in her favor when the court decides this motion. Therefore, plaintiff argues, the present motions must be denied.

DEFENDANTS' REPLY:

There was a reply submitted in relation to both motions. Both replies raised procedural arguments

as to plaintiff's opposition. The reply on behalf of the Township and Chief also argued various aspects of the opposition was irrelevant, and refuted other arguments in plaintiff's opposition. The reply on behalf of the Police Department and Officer Logothetis also argued plaintiff failed to point to any evidential materials that provide a basis to submit this case to a jury.

LAW AND FINDINGS:

A motion for summary judgment is governed by Rule 4:46-2[2]. The rule states summary judgment shall be "rendered forthwith if the pleadings, depositions, answers to interrogatories and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2. In deciding a motion for summary judgment the court does not weigh the evidence nor determine the truth of any matter. Brill v. Guardian Life Ins. Co. of Am.,

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[2] Plaintiff's certification in opposition to this motion made reference to her request for a trial de novo and states the motions were filed too late and should be referred to the trial court. However, the motions were filed timely pursuant to 4:46-1. The motion was filed to be returnable on May 8, 2020 and the trial date is June 8, 2020. The court adjourned the motion to May 22, 2020 in that plaintiff's opposition was only filed two(2) days prior to the May 8, 2020 return date. Plaintiff's certification made reference to an inability to file a timely opposition (paragraph 10), and the court wanted to ensure proper and full consideration of the opposition by the court prior to the return date. The court also wanted to ensure plaintiff was afforded an opportunity for oral argument as she requested, and to provide defendants an opportunity to submit a reply.

142 N.J. 520, 536 (1995). (quoting Anderson v. Liberty Lobby, 477 U.S. 242, 251-52 (1986)). Rather, the essence of the inquiry should be the same as is applied in motions for directed verdicts: "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Ibid.

> [T]he motion judge [is] to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

Brill ante 142 N.J. at 540.

The opposing party must do more than "point[ ] to any fact in dispute." Brill 142 N.J. at 529. If the party opposing the summary judgment motion "offers...only facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful, frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants summary judgment, taking as true the statement of uncontradicted facts in the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact" Brill 142 N.J. at 529 (quoting Judson v. Peoples Bank & Trust Co. of Westfield 17 N.J. 67, 75 (1954)). That party must "come forward with evidence that creates a 'genuine issue as to any material fact challenged." Brill, 142 N.J. at 529 (quoting R. 4:46-2) Those questions of fact must be left for the jury and not the judge. Brill at 540.

Determining whether there is a genuine issue for trial "does not require a court to turn a blind eye to the weight of the evidence the 'opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Triffin v. Am. Int'l Grp.,Inc. 372 N.J.Super. 517, 523-24 (App. Div. 2004) (quoting Big Apple BMW, Inc, v. BMW of N. Am. Inc., 974 F.2d 1358, 1363 (3d Cir. 1993)). Opposition to a motion for summary judgment requires "competent evidential material" beyond mere "speculation" and "financial arguments[ ]" Merchs. Express Money Order Co. v. Sun Nat'l Bank, 374 N.J.Super. 556, 563 (App. Div. 2005). To survive summary judgment, the opposing party must, with the benefit of all favorable inferences, show a rational factfinder could determine the plaintiff met her burden of proof. Globe Motor Co. v. Igdalev, 225 N.J. 469, 481 (2016). If there is no evidence in a case upon which a plaintiff may carry that burden, the simple fact that a jury were requested by one, or every, party is of no consequence as the court must grant the motion for summary judgment.

This action arises around events on January 16, 2018. Plaintiff filed a Notice of Tort Claim on April 6, 2018. There was an original complaint filed in this action and an amended complaint filed on April 24, 2019. The amended complaint[3] was filed thereafter. It states plaintiff appeared at the Hazlet Township Municipal Court on January 16, 2018 in response to a summons issued by an "Officer Torres."

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[3] See Footnote 1

The complaint outlines the allegations in this matter.[4] The complaint asserts various potential causes of action. It states plaintiff appeared at approximately 4:00 pm. On that date and proceeded through the metal detector. The complaint alleges defendant Charleigh Logothetis was monitoring the metal detector and directed plaintiff to turn around after she proceeded through the detector. It goes on to stated Officer Logothetis did not "wand" plaintiff but touched her "extremely inappropriately." (Paragraph seven (7)). Plaintiff alleges she was in "excruciating pain and so emotionally and mentally traumatized." (Id). Paragraph nine (9) states it was defendants' duty "not to violate one[ ]'s person and space and inappropriate touching, or violate ones rights under the Constitution of the United States." Paragraph 22 identifies the Hazlet Police Department, the Chief and Officer Logothetis, as its

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[4] Plaintiff's opposition to this motion makes references her objection to a video recording being made of her at the entrance to the municipal building. Plaintiff states she did not consent to the video recording. Although Plaintiff may not have consented to the video recording, that is not part of her complaint in this matter nor a basis for her allegations. Plaintiff's opposition indicates she was not aware of the video until referenced months after the institution of this action. Regardless of that point, even if aware prior to filing her complaint, there is no viable cause of action against any of the defendants based upon their having video surveillance or recording those at the entrance, or within, the public areas of the municipal court building. Nor is there a potential claim based upon the lack of a sign indicating there was video surveillance or it recording he search at issue here. The foregoing is the case even when viewing the evidence in a light most favorable to plaintiff as the non-moving party. Therefore, the court does not address any purported claim upon video monitoring of the court area in this motion.

employees. Plaintiff alleges the deprivation of her rights pursuant to custom or policy and decision officially adopted by governmental offices. (Paragraph 23). She further alleges the action of the Township rose to the level of deliberate indifference. (Paragraph 24). The foregoing might seek to assert a claim under the Federal Civil Rights Act (42 U.S.C. 1983), or the New Jersey Civil Rights Act.

Although Paragraph 24 was limited to the Township, Paragraph 25 alleged the Township and Police Department failed to properly train their employee Officer Logothetis. That paragraph, and the others in the complaint, appear to put forth claims of negligence or that otherwise subject to the New Jersey Tort Claims Act The allegation as to the "police supervisor," as identified in Paragraph 14, is a knowing and willfully intentional decision to overlook the violation of plaintiff by Officer Logothetis. Paragraph eight (8) alleges defendants had a "duty to provide an appropriate security monitor with a wand or to otherwise furnish adequate and proper warnings to invitees who might utilize or who might transgress said premises."

Plaintiff alleges defendants breached those duties causing her injury and trauma. Paragraph eleven (11) identifies "serious, severe and diverse physical injuries and [she] has suffered severe great pain, sever shock and severe mental anguish, and severe mental trauma." It further states plaintiff "was and still is traumatized and will be permanently mentally traumatize for plaintiffs lifetime." Paragraph 12 alleges loss for medical care and other services. Paragraph 13 alleges economic loss, including wages future earning power.

Later in the complaint plaintiff states defendants had a duty to provide "proper means for frisking individuals without violating a human woman's space, and traumatizing a woman mentally and/or on her body, her person." (Paragraph 16). The following paragraph asserts a similar duty and also maintains a duty to provide "proper warning to invitees...and maintain said premises in a proper appropriate manner." (Paragraph 17). Paragraphs 18 and 19 allege physical and mental injury or trauma resulting from breaches of those duties. The allegation as to the "police supervisor," as identified in Paragraph 14, is a knowing and willfully intentional decision to overlook the violation of plaintiff by officer Logothetis.

In that the complaint may be read as asserting a claim under the Tort Claims Act, 42 U.S.C. Section 1983, and the New Jersey Civil Rights Act, the court shall address all such potential claims in this decision. When viewing the evidence[5] in the light required by this motion[6] the court takes into account plaintiff's

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[5] The court did not view or consider a video, nor did the court consider any outline of the events purportedly depicted therein as part of this decision. The court was not provided the video and, even if it were, there is nothing to indicate its authenticity as part of the initial moving papers as required for the court to consider same. Plaintiff's opposition made reference to a claim her due process rights were violated by improper introduction of the video. (brief at page 7). However, the court need not address the assertion in that it does not consider the video herein.

[6] Plaintiff did not provide a response to defendants' Statement of Material Facts in the form as required by Rule 4:46-2(a). The court could consider movants' statement of material facts as undisputed pursuant to that Rule. However, rather than disregarding plaintiff's submission and granting the motions

answers to interrogatories[7] She identifies the bases for her allegations in response to interrogatory number eleven (11). It states the "police officer, Officer Logothetis, conducted a reckless and unreasonable search of her body which [plaintiff] did not consent to." Plaintiff expended on the foregoing by asserting in relevant part, she

> only consented to a reasonable search of [her] body for weapons. The P.O. failed to ask [her] if [she] had any item that could have set off the metal detector that [she] had originally passed through. Police officer Logothetis failed to ask and request that [she] pass through the metal detector again. She, police officer Logothetis possessed no wand and immediately requested that [she] plaintiff Carolyn Baburka turn around and

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solely upon defendants' submissions, the court considered that put forth in plaintiff's submission in that she submitted a certification and is a party (self-represented) and the substance of her submission disputed certain factual allegations as put forth in movants' statement of material facts such that the court must consider same as put forth in that regard. Plaintiff also failed to provide specific citations to the record in support of her counterstatement of material facts. However, again – rather than disregarding plaintiff's submission and granting the motions solely upon defendants' submissions – the court gave the plaintiff leniency in ~~relation~~ to Rule compliance in that regard as well.

[7] Although the court references plaintiff's interrogatory responses in this decision, the court also reviewed and considered her certification in opposition to this motion. The court, however, only references the interrogatory answers as the certification submitted in opposition to this motion is identical to that put forth in her interrogatory responses in all regards as outlined in the decision.

> she, police officer Logothetis immediately squeezed [her] breasts...Plaintiff's answer to interrogatory number 11.

Initially, plaintiff acknowledges she consented to a search. She voluntarily walked through the metal detector. She further admits the metal detector was "set off" when she walked through it. That admission is made by asserting the police officer failed to ask her (plaintiff) if she had anything that might have set off the detector she originally passed through. Although unclear, the potential claim[8] could be based

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[8] Plaintiff's opposition also made reference to, and cited case law regarding, probable cause. However, there is not basis to find a lack of probable cause for Officer Logothetis' search of plaintiff. Probable cause "is a well-grounded suspicion." State v. Marshall 199 N.J. 602, 610 (2009). "Probable cause exists where "the facts and circumstances within...[the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed." Schneider v. Simonini 163 N.J. 336, 361 (2000) (alterations in original) (citation omitted). In this case the potential offense of brining a weapon into a municipal court contrary to a prohibition of same.

"When determining whether probable cause exists, courts must consider the totality of the circumstances, and they must deal with probabilities." Ibid. (citing) Illinois v. Gates 462 U.S. 213, 230-231, 103 S. Ct. 2317, 76 L.Ed 2d 527 (1983)). All that is required is a "probability, and not a prima facie showing, of criminal activity is the standard of probable cause." Gates ante 462 U.S. at 235 (citation omitted); see also Schneider 163 N.J. at 361; State v. Gamble 218 N.J. 412, 428 (2014).

"[W]hether, under the circumstances, a reasonable police officer could have believed that probable cause existed....is a standard of objective reasonableness, which is a lesser standard is not satisfied is when, 'on an objective basis, it is obvious that no reasonably competent officer would have concluded that"

upon (1) frisking plaintiff rather than "wanding" her or (2) the manner in which the officer allegedly frisked plaintiff and squeezing her breasts.

First the court will address any potential claim based upon the former as such a claim might only be asserted based upon the decision between means and not the manner of executing the means. In the context of a tort claim, as distinguished from a claim based upon a constitutional violation under the Federal Civil Rights Act and New Jersey Civil Rights Act, a public entity liability in New Jersey is governed by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to 12-3 (TCA or ACT). The purpose of the Act is to "establish[] the parameters" for which recovery for tortious injury may be sought against public entities or public employees. Coyne v. State 182 N.J. 481, 488 (2005). Except as otherwise provided by Act, "[t]he guiding principle...is that "immunity from tort liability is the general rule and liability is the exception." Coyne 182 N.J. at 488 (quoting Garrison v. Twp. of Middletown, 154 N.J. 282, 286 (1998)). That means, as a general proposition, the tort liability of public entities in New Jersey is the exception, and immunity from liability is the rule. Fluehr v. City of Cape May 159 N.J. 532, 539 (1999).

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probable cause existed, Id. at 366 (citation omitted); see Morillo v. Torres 222 N.J. 104, 108 (2015).

There was advisement of a search for weapons for those entering the court area. The metal detector was triggered when plaintiff walked through it. Weapons would trigger the alarm on a metal detector. Under those undisputed facts a reasonable officer would have believed probable cause existed to undertake a further search for weapons or similar prohibited possessions.

The rationale behind granting immunity is to avoid judicial interference with authorized decisions of public entities or employees. See Thompson v. Newark Housing Auth., 108 N.J. 525, 534 (1987). The overall approach of the statute is to broadly limit public liability. D.D. v. UMDNJ 213 N.J. 130, 133-34 (2013). That is the public policy as adopted by the Legislature, that is, to construe the immunity provisions of the TCA broadly and the liability provisions narrowly. See e.g. Gerber ex rel. Gerber v. Springfield Bd. of Educ., 328 N.J. Super, 24, 34 (App. Div. 2000)); see also N.J.S.A./ 590:1-2 (declaring "the public policy of this State [to be] that public entities shall only be liable for their negligence within the limitations of [the TCA] and in accordance with the fair and uniform principles established herein").

Plaintiff consented to a search upon entered the municipal court. She consented to walking through the metal detector. She admits the detector went off. Plaintiff also acknowledges consent to a further search in light of the detector going off. It is the type of search performed she claims was wrongful, she alleges the frisk was improper. However, plaintiff cannot point to any fact upon which it might be found Officer Logothetis was not executing the law. At a minimum the court would point to the fact municipal police departments, through their officers, provide security for municipal courts and, as part thereof, the officers are executing the law. See N.J.S.A. 40A:14-118 (providing for establishment of municipal police forces to execute and enforce functions of municipal government) and N.J.S.A. 2B:12-15 (providing that municipal governments provide

suitable courtrooms for their municipal courts, and that would necessarily include providing a safe one).

Pursuant to N.J.S.A. 59:9-3 a public employee is not liable if acting in good faith in the execution or enforcement of any law. Good faith an "honest purpose and integrity of conduct without knowledge, either actual or sufficient to demand inquiry that the conduct is wrong." Marley v. Palmyra Bar, 193 N.J. Super 271, 294-295 (1983). It has two (2) considerations and either will suffice. Alston v. City of Camden 168 N.J. 170, 186 (2001); see also Leang v. Jersey City Bd. of Educ., 198 N.J. 557, 582 (2009). The first is an "objective" standard and the second is "subjective" one. Leang, ante. The first is whether the employee's conduct is objectively reasonable under the circumstances. Bombace v. Newark, 125 N.J. 361, 374 (1991).

In this case the court finds the decision to frisk plaintiff objectively reasonable under the circumstances. The plaintiff admits she triggered the metal detector when entering the municipal court. Any objective person would find a further search reasonable; plaintiff admits as much. Moreover, there are different forms of further searches; one might be asked to walk through the detector again. The other forms might include, as plaintiff suggest a "wand;" another form of electronic or non-touching search. However, considering the detector were already triggered it is objectively reasonable to undertake a different form of search.

In addition, Logothetis is the first line of security for people coming into the public courthouse. In light of a similar means having been triggered it is objectively reasonable to select a different form such as a pat-down. The first detector was triggered upon

plaintiff walking through it and it is objectively reasonable for the officer in this case to have determined a further search was required and to perform it through a different means than that already triggered as a follow up.

Therefore, the court finds N.J.S.A. 59: 3-3 provides Officer Logothetis immunity from any tort claim against her for selecting to frisk plaintiff rather than a different form of follow up search. Similarly, the public entity defendants in this matter cannot be liable on this claim. N.J.S.A. 59:2-2(b). Nor is there a basis upon which to hold the Chief liable.

Next, as to any claim under Federal of New Jersey Civil Rights Act, plaintiff's complaint points to the United States Constitution, she does not cite the New Jersey Constitution. As to a claim under either act, for a claimed Federal Constitutional violation, "[t]he elements of a substantive due process claim under the [NJCRA] are the same as those [for a federal CRA claim] under Section 1983." Filgueiras v. Newark Public School, 426 N.J. Super, 449, 168 (App. Div. 2012) (citing Rezem Family Assocs., LP v. Borough of Millstone 423 N.J. Super 103, 115 (App. Div. 2011). Namely, a party must first "identify the state actor, the person acting under color of law, that has caused the alleged deprivation." Ibid. (internal quotations omitted) (quoting Rivkin v. Dover Twp., rent Leveling Bd., 143 N.J. 352, 363 (1996)). Next, the party needs to "identify a right, privilege or immunity secured to the "party by the constitutions of the state and federal governments or by state and federal laws. Ibid. (internal quotation omitted) (quoting 42 U.S.C. Section 1983). Thus, to establish a cause of action under either act, the second element

requires a party to "allege a specific constitutional violation." Matthews v. N.J. Inst. of Tech., 717 F. Supp. 2d 447, 452 (D.N.J. 2010) (citing N.J.S.A. 10:6-2(c)).

As to the last point, plaintiff cannot identify a specific constitutional violation for the Officer's decision to frisk her rather than another form of search. Plaintiff acknowledges a consent to the search and even indicates the basis for same, her interrogatory answers point to the metal detector being triggered when she went through it. There can be no constitutional violation upon the foregoing. Moreover, qualified immunity is an affirmative defense and would be applicable based upon the objectively reasonable basis outlined above.

More generally, as to the entity defendants, a local government entity generally cannot be held liable under 42 U.S.C. Section 1983 for the deprivation of constitutional rights by its employees or officers. Stomel v. City of Camden, 192 N.J. 137, 145 (2007) (citing Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690-91, 98 S Ct. 2018m, 2035-36, 56 L. Ed. 2d 611, 625-26 (1978)). "A local governmental entity is deemed a person under Section 1983 only where the action alleged unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." Bayer v. Township of Union 414 N.J. Super. 238, 270 (2010).

"A municipality generally cannot be held liable under a Section 1983 action for the acts of employees under the principle of respondeat superior." Stomel v. City of Camden 192 N.J. 137, 145 (2007). There is an exception to that rule" when an official municipal

'policy or custom, whether made by its lawmakers or by those whose edicts or acts may be fairly be said to represent official policy,' is the cause of the constitutional deprivation." Ibid (citing Monell ante 436 U.S. at 694, 98 S. Ct. at 2037-38, 56 L. Ed 2d at 638). In that regard, "[t]he term 'official policy' usually refers to formal governmental rules or practices." Id. at 146 (citing Pembaur v. City of Cincinnati, 475 U.S. 469, 480-81, 106 S. Ct. 1292, 1299, 89 L. Ed. 2d 452, 463 (1986)). "The official policy requirement was intended to distinguish acts of the municipality from acts of employees, and thereby make clear that municipal liability is limited to action for which the municipality is actually responsible." Stomel ante. 192 N.J. at 145.

Thus, a local government entity may be liable under 42 U.S.C. Section 1983 for the single act or decision of a municipal employee when (1) the government entity has officially sanctioned or ordered the employee to take the act or decision; (2) the employee has final policymaking authority, as determined in accordance with state law; and (3) the action was taken pursuant to an official policy adopted by the employee or by officials responsible under state law for making policy in that particular field of endeavor. Ibid. (citing Loigman v. Twp. Comm. of Middletown, 185 N.J. 566, 591 (2006). Similarly, modeled after 42 U.S.C. Section 1983, a municipality may be liable under the NJCRA, only when a policymaking official, either through promulgating or acquiescing in a municipal policy, or through deliberate indifference, causes a citizen's constitutional injury.

Here, the alleged unconstitutional violation is the fourth amended unreasonable search.[9] There is no evidence on the record to state the Hazlet Police Department or Hazlet Township implemented a policy, ordinance, regulation, or any of the sort to promote unreasonable searches. Even when viewing evidence in light most favorable to the plaintiff, there is not dispute of fact which should be submitted as a jury question. The plaintiff does not point to any policy, nor does she cite any ordinance which could possibly lead to a jury question of whether Police Department and Hazlet Township officially adopted an unconstitutional policy. Without more evidence, summary judgment should be granted for the Police Department and Hazlet Township.

There is no evidence to support any claim against the municipal entities upon <u>any</u> potential claim plaintiff might assert in this case. There is no evidence to show the officer's decision – or the manner in which she carried out the frisk – was sanctions or ordered by the municipal entities. There is no evidence of any policy, either formally or informally, adopted by them as to the decision by Officer Logothetis <u>or</u> the manner in which she carried out the frisk. There is only plaintiff's blank allegations as put forth in her complaint. Although plaintiff states she "alleged a custom or policy." (brief at paragraph 3, page 8) an allegation alone is not sufficient.

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[9] See footnote 4 as to any suggestion by plaintiff of a violation of the process and footnote 5 as to any suggestion of a violation for videotaping the area.

Moreover, as to the Chief, in Schneider v. Simonini 163 N.J. 336 (2000), cert. denied, 531 U.S. 1146, 121 S. Ct. 1083, 148 L. 3d. 2d 959 (2001), the New Jersey Supreme Court adopted a "recklessness or deliberate indifference: standard for supervisor liability that is applicable to plaintiffs' claim under Civil Rights Act. Id. at 373. That requires the plaintiff to establish "that: (1) the supervisor...failed to supervise the subordinate official; (2) a casual link exists between the failure to...supervise and the violation of the plaintiff's rights; and (3) the failure to ... supervise amounts to deliberate indifference" or recklessness. Ibid. (citation omitted). The Court stated "[t]he knowledge element...requires proof that the supervisor was aware of facts from which an inference could be drawn that the subordinate was acting in an unconstitutional manner that carried a substantial risk of causing serious harm." Id. at 373-74.

In this case plaintiff cannot point to any fact that would establish those elements as to any potential claim plaintiff may assert for a constitutional violation. She alleges the Chief failed to act after the fact. (See complaint paragraph 14). However, the only legally viable claim against him would be based upon his failure to supervise, and a deliberate indifference. There is no evidence to suggest either the foregoing. No evidence places him at the courthouse nor being aware of the event that day. Plaintiff makes conclusory statements, but conclusory statements are insufficient to overcome a motion for summary judgment. James v. State Farm Ins. Co., 457 N.J. Super 576, 586 (2019). As such plaintiff cannot establish a claim against the Chief

upon any basis under the Federal or New Jersey Civil Rights Act.

The remaining issue for the court to address in this motion is a claim under the TCA, of either Civil Rights Act, based upon the manner in which Officer Logothetis performed the frisk. The complaint alleges the Officer squeezed her breasts and touched her in an extremely inappropriate manner (Paragraph 7, plaintiff's answers to interrogatory number 7).

Initially, as to any claim under the Tort Claims Act upon such conduct, to the extent the claim is upon the Officer's intentional act, as previously noted, there is no evidence upon which to indicate there was a policy, practice, instruction, or otherwise as to the manner in which the Officer carried out the frisk. Plaintiff makes a general allegation, but her allegation is not sufficient to create a question of fact that could support a jury finding same existed. Further, in light of the absence of such evidence, as plaintiff alleges the squeezing was inappropriate in would require a finding the Officer engage in "misconduct." It being intentional, that requires it be found willful misconduct in order for plaintiff to prevail. The foregoing leads to the application of N.J.S.A. 59: 2-10. That provides a public entity cannot be liable for "the acts or omissions of a public employee constituting...willful misconduct." N.J.S.A. 59:2-10(b).

As to any tort claim against the Township, Police Department, and the Chief, plaintiff's claims as outlined in her complaint are a failure to provide appropriate security, failure to provide warnings for those entering the premises, and a failure to provide

proper means of frisking entrants to the municipal courts. However, plaintiff cannot point to any evidence in support of same as against those defendants. There is no evidence of any potential incidents, or issues, regarding screenings or security at the municipal court. The only evidence in this case would be as to plaintiff's screening in particular. There is not evidence upon which a jury might find the security was inappropriate or insufficient. Plaintiff may take issue with the way her screening was handled, however, that is not a basis to sustain a claim for failure to have generally appropriate security.

The same is true as to a claim for failure to provide warnings or failure to provide proper frisking of entrants. That is, there is no evidence regarding any incidents or issues other than plaintiff's assertions regarding her entry alone. As to the claim against the Chief for failure to supervise, that is based upon – as the allegation is put in the complaint – overlooking what took place after the fact. There is no evidence to support a claim against him upon a failure to act (or an act) prior to the frisk at issue.

Moreover, as to the Township, Police Department, and the Chief, even if the claim were based upon alleged negligent conduct by the Officer, to sustain a claim under TCA plaintiff must establish any claimed injuries were proximately caused by the claimed tortious conduct. Her answers to interrogatories generally reference medical care and medical providers. The complaint states plaintiff obtained x-rays on January 17, 2018. The findings stated no cardiac silhouette enlargement, mediastinal contours unremarkable, no osseous lesion identified, no displaced fracture, and no other significant findings.

In her amended complaint the plaintiff alleges her injuries are physical pain and mental trauma. Plaintiff uses words as "extremely severely physically and mentally inured and traumatized." She visited a medical professional on February 8, 2018. She also underwent a bilateral breast ultrasound on February 13, 2020.

However, plaintiff has not served an expert report in this matter and the medical records/documents do not make any correlation of any matters referenced therein to the events of January 16, 2018. Plaintiff must establish a casual nexus between the accident and her injuries "by objective, credible medical evidence." Puso v. Kenyon 272 N.J. Super. 280, 284 (App. Div. 1994) (internal quotation marks omitted). This normally requires the testimony of an expert, particularly where "the existence of a nexus between the accident and [a] plaintiff's [injury] is not something that can be based upon common knowledge." Kennelly-Murray v. Megill 381 N.J. Super. 303, 311 (App. Div 2005); see also Amaechi v. Clark 268 N.J. Super. 186, 187-88, 194 (Law Div. 1993) (requiring expert medical testimony to prove casual nexus between car accident and injury in verbal threshold suit).

Plaintiff does not have any expert evidence in this case to sustain a claim based in tort under the TCA. Although she identified certain medical providers and there are even medical records, there is no record that casually relates anything therein to the incident at issue in this matter. Furthermore, N.J.S.A. 59:9-2(d) sets forth the following limits on recovery of pain and suffering damages against a public entity or public employee.

No damages shall be awarded against a

> public entity or public employee for pain and suffering resulting from any injury; provide, however, that this limitation on the recovery of damages for pain and suffering shall not apply in cases of permanent loss of a bodily function, permanent disfigurement or dismemberment where the medical treatment expenses are in excess of $3,600.00.

This limitation "reflects the policy judgment that in view of the economic burdens presently facing public entities a claimant should not be reimbursed for non-objective type damages, such as pain and suffering, except in aggravated circumstances[] ..."Gilhooley v. Cnty of Union 164 N.J. 533, 539 (2000) (quoting Harry A. Margolis and Robert Novack, Claims 'Against Public Entities, 1972 Task Force Comment on N.J.S.A. 59:9-2 (Gann 2000). In Gilhooley; ante the Court held that in order to satisfy the pain and suffering threshold of "the Tort Claims Act, a plaintiff must satisfy a two-pronged standard by proving (1) an objective permanent injury, and (2) a permanent loss of a bodily function that is substantial." Gilhooley, ante 164 N.J. at 540-41. The Court further elaborated that

> Temporary injuries, no matter how painful and debilitating, are not recoverable. Further, a plaintiff may not recover under the Tort Claims Act for more "subjective feelings or discomfort."

Id. at 540 (quoting Brooks v. Odom, 150 N.J. 395, 402).

In this case there is no evidence to support a finding of claimed injury sufficient to satisfy the Act's verbal threshold. In addition, as to potential psychological trauma or claimed harm, it "may qualify for pain and suffering recovery [only] if it is accompanied by, or results in, physical symptoms which meet the requirements of the section." Ayers v. Jackson Tp., 106 N.J. 557, 572 (1987). There is no expert evidence relating any claimed injury by plaintiff to the incident at issue. Moreover, there is no evidence of plaintiff's claimed medical expenses whatsoever, let alone evidence of such expenses beyond the $3,600,00 minimum as required to sustain an action under the Act.

The same is true as to any potential claim under the TCA against Officer Logothetis. That is if plaintiff's claim is perceived as one for negligence against the Officer for the manner in which the frisk was executed it would be subject to the provisions of the TCA. That just outlined as to the issues of proximate cause and damages under the TCA would apply the same as to any claim against the Officer in that regard.

That outlined above necessarily dismisses all claims except those that may be asserted against Officer Logothetis under the Federal or New Jersey Civil Rights Act. Plaintiff's claim is outlined in her answer to interrogatory number 11. She starts her answer by noting "[t]he basis of the allegation contained in this complaint is that the police officer, Officer Logothetis conducted reckless and unreasonable search of [her] body." Therefore, she explains the basis of her claim as a failure to perform an alternative means of search and the Officer turned

her around and "immediately squeezed [her] breasts." That is a claim for excessive force in violation of the Fourth Amendment to the United States Constitution.[10]

A plaintiff's claim that a police officer has used excessive force in effectuating a lawful arrest is "properly analyzed under the Fourth Amendment's 'objective reasonable' standard, rather than under a substantive due process standard." Graham v. Connor, 490 U.S. 386, 388, 109 S. Ct. 1865, 1867-68, 104 L. Ed. 2d 443, 450 (1989).

> [T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional.

Id. at 397, 190 S. Ct. at 1872, 104 L. Ed. 2d at 456 (citation omitted).

Whether the officer's conduct was objectively reasonable "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively

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[10] Plaintiff's complaint only makes reference to a claim under the United States Constitution and makes no reference the State Constitution.

resisting arrest or attempting to evade arrest by flight." Graham ante 470 U.S. at 396 (citing Tennessee v. Garner, 471 U.S. 1, 8-9, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985)). "The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." Id. at 396-97.

In evaluating whether there was excessive force under the objective standard courts have taken into account whether there was any complaint of force or signs of discomfort at the time of the alleged excessive force. See Gilles v. Davis 427 F. 3d 197 (3d Cir. 2005) (noting plaintiff displayed no signs of discomfort at the time of the handcuffing at issue). The Gilles court also noted the plaintiff did not receive treatment casually related to the claimed excessive force. Id. at 208. Further, in a case the court found the force at issue (handcuffs) objectively reasonable the fact plaintiff stated the handcuffs tightened down on his wrists each time he moved, while in a squad car for approximately 45 minutes, causing pain and disfigurement, was insufficient to sustain a motion for summary judgment where there was no complaint the handcuffs were too tight. Brassell v. Turner 468 F. Supp. 2d 854, 861 (S.D. Miss. 2006).

In this case, as noted, the frisk was objectively reasonable. In addition, as in Gilles and Brassell plaintiff makes no complaints of the force or discomfort at the time of the frisk by Officer Logothetis. There is also a lack of any evidence casually relating

any medical care or treatment to the frisk done with allegedly excessive force.

The court must also look to the facts in the circumstances as they presented themselves; that is the surrounding and totality of circumstances. That includes security for a municipal court and the screenings necessarily associated with same. In addition, the court must also take into account the objectively reasonable decision to frisk plaintiff rather than undertake an alternative form of search. That objectively reasonable determination would be based, in part, upon the fact plaintiff went through the metal detector and triggered its alarm. The screening, and frisk, would be to determine if there were any impermissible, and potentially dangerous, object being brought into the courtroom. A search, therefore, requires sufficient investigation to determine if there is a potentially dangerous possession on the person that triggered the metal detector in the first instance. That includes those areas of a person's body where such matters might be hidden. The court finds he frisk at issue satisfies the objectively reasonable standard under the Fourth Amendment such that plaintiff cannot sustain a claim under the Federal Civil Rights Act.

Qualified immunity "protects government officials from personal liability for discretionary actions taken in the course of their public responsibilities, "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Brown v. State 230 N.J. 84, 97-98 (2017) (quoting Morillo v. Torres, 222 N.J. 104, 116 (2015). Qualified immunity protects law enforcement officials, who serve a discretionary

function, from civil liability under Section 1983 where the officer "[did] not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L. Ed. 2d 396, 410 (1982). [Q]ualified immunity balances two important interests – the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Parson v. Callahan, 555 U.S. 223, 231, 129 S. Ct. 808, 815, 172 L. Ed. 2d 565, 573 (2009).

"This state's qualified immunity doctrine tracks the federal standard, shielding from liability all public officials except those who are 'plainly incompetent or those who knowingly, violate the law." Brown, ante 230 N.J. at 97-98 (quoting Morillo, 222 N.J. at 118). As to any potential claim under the New Jersey Civil Rights Act, it "was adopted in 2004 'for the broad purpose of assuring a state law cause of action for violation of state and federal constitutional rights and to fill any gaps in state statutory anti-discrimination protection." Ramos v. Flowers, 429 N.J. Super. 13, 21 (App. Div. 2012) (quoting Owens v. Feigin, 194 N.J. 607, 611 (2008)). The NJCRA is analogous to the federal counterpart, Filgueiras v. Newark Public Schools, 426 N.J. super. 449, 468 (App. Div. 20120), and "[t]he interpretation given to parallel provisions of [42 U.S.C.] 1983 may provide guidance to construing our [CRA]." Trumpson v. Farina, 218 N.J. 450, 474 (2014). Therefore, for the same reasons there is no liability under the Federal Civil Rights Act, the court grants summary judgment

as to any claim against Officer Logothetis under the New Jersey Civil Rights Act.

Upon all the foregoing the court grants both motions for summary judgment in their entirety.[11]

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[11] This being a final judgment plaintiff may file an appeal in accordance with Part II of the New Jersey Rules of Court.

ORDER GRANTING THE MOTION OF DEFENDANTS HAZLET TOWNSHIP AND CHIEF PHILIP MEEHAN, AND DISMISSING PLAINTIFF'S CLAIMS AGAINST THEM (JUNE 22, 2018)

John L. Bonello – 246831968
MANNA & BONELLO
648 Ocean Avenue
Long Branch, NJ 07740
(732) 728-1300
Attorneys for Defendants Hazlet
Township and Chief Philip Meehan

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MONMOUTH COUNTY
DOCKET NO.: MON-L-1266-18
Civil Action

CAROLYN L. BABURKA,

Plaintiff

vs.:

STATE OF NEW JERSEY (as per title 59 Requirements, "suing a Public Entity) COUNTY OF MONMOUTH, HAZLET TOWNSHIP POLICE DEPARTMENT, CHIEF PHILIP MEEHAN, AND SUPERVISOR OF THE HAZLET POLICE; WHOMSOEVER THAT MAY BE, HAZLET TOWNSHIP, SCIBAL ASSOCIATES of Somers, Point, Egg Harbor Township, New Jersey, also or now known as Qual-Lynx or Qualcare a/k/a Qualcare, Inc. a Division or owned or acquired by

CIGNA INSURANCE COMPANIES, Qual-Lynx or 'QualCare INC having its offices now at 30 Knightsbridge, Rd.-Piscataway Township, New Jersey ABC MAINTENANCE COMPANY, JOHN DOES(1-6) (FICTITIOUS NAMES), JOHN DOE, ROBERT ROE, DEF LANDLORD, HIJ ENTITY,

Defendants

THIS MATTER having been brought before the Court on motion by John L. Bonello (Manna & Bonello) as counsel for Defendants Hazlet Township and Chief Philip Meehan said motion on motion to the Plaintiff; and the Court having reviewed the papers submitted to

Support of the motion, and any opposition papers; and good cause for granting the motion appearing;

IT IS on this __22__ day of June 2018, **ORDERED** as follows:

1. The motion of Hazlet Township and Chief Philip Meehan is granted.
2. All claims asserted by plaintiff against Hazlet Township and Chief Philip Meehan are dismissed, without prejudice.
3. A copy of this Order shall be served on all counsel of record, electronically, simultaneously with the electronic filing of this Order. (The pro se plaintiff, and any counsel appearing who are exempt from e-courts registration, shall be served a copy

of this Order within _7_ days from the date hereof).

4. This Court made findings of fact and conclusions of law in connection with this motion. ~~These findings and conclusions are in an opinion which is ___in writing ___ verbally set forth on the record.~~

5. The opinion referenced in paragraph 4 issued on the Following date(s): ____22___, 2018.

/s/ Owen C. McCarthy, J.S.C.
Hon. Owen C. McCarthy, J.S.C.

The motion of defendants
Hazlet Township and Chief
Philip Meehan was:

XXX Opposed

___Unopposed

For reasons on the record.

ORDER GRANTING DEFENDANT QUAL/SCIBAL'S MOTION AND DISMISSING PLAINTIFF'S CLAIMS WITH PREJUDICE PURSUANT TO RULE 4:6-2(E) (JUNE 22, 2018)

John L. Bonello – 246831968
MANNA & BONELLO
648 Ocean Avenue
Long Branch, NJ 07740
(732) 728-1300
Attorneys for Defendant Qual-Lynx
(a division of Qual-Care, Inc),
doing business as Scibal Associates ("Qual/
Scibal"), improperly pled as SCIBAL
ASSOCIATES of Somers Point, Egg Harbor
Township, New Jersey, also or now known as
Qual-Lynx or Qualcare a/k/a Qualcare, Inc. a
Division or owned or acquired by CIGNA
INSURANCE COMPANIES Qual-Lynx or QualCare
INC. having its offices now at 30
Knightsbridge Rd., Piscataway Township,
New Jersey"

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MONMOUTH COUNTY
DOCKET NO.: MON-L-1266-18
Civil Action

CAROLYN L. BABURKA,

Plaintiff

vs.

STATE OF NEW JERSEY (as per Title 59 Requirements, "suing a Public Entity) COUNTY OF MONMOUTH, HAZLET TOWNSHIP POLICE DEPARTMENT, CHIEF PHILIP MEEHAN, AND SUPERVISOR OF THE HAZLET POLICE WHOMSOEVER THAT MAY BE HAZLET TOWNSHIP, SCIBAL ASSOCIATES of Somers, Point, Egg Harbor Township, New Jersey, also or now known as Qual-Lynx or Qualcare a/k/a Qualcare, Inc. a Division or owned or acquired by CIGNA INSURANCE COMPANIES, Qual- Lynx or QualCare INC. having its offices now at 30 Knightsbridge Rd., Piscataway Township, New Jersey, et al.

Defendants

THIS MATTER having been brought before the Court on motion by John L. Bonello (Manna & Bonello), counsel for defendant Qual-Lynx (a division of Qual-Care, Inc.) doing business as Scibal Associates ("Qual/Scibal") [1] and motion on notice to the plaintiff, and the Court having reviewed the papers submitted in support of Qual/Scibal's motion, and any opposi-

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1 The complaint caption identifies the defendant-movant as "SCIBAL ASSOCIATES of Somers Point, Egg Harbor Township, New Jersey, also or now known as Qual-Lynx or Qualcare a/k/a Qualcare, Inc. a Division or owned or acquired by CIGNA INSURANCE COMPANIES, Qual-Lynx or 'QualCare INC. having it offices now at 30 Knightsbridge Rd., - Piscataway Township, New Jersey."

tion papers, and good cause for granting Qual/ Scibal's motion appearing:

IT IS on this _22_ day of June, 2018, **ORDERED** as follows:

1. Qual/Scibal's motion is granted.
2. All claims asserted by plaintiff against (Qual/Scibal are dismissed, with prejudice, pursuant to **Rule** 1:6-2(e).
3. A copy of this Order shall be served on all counsel of record, electronically, simultaneously with the electronic filing of this Order. (The pro se plaintiff, and any counsel appearing who are exempt from e-courts registration, shall be served with a copy of this Order within _7_ days from the date hereof).
4. The Court made findings of fact and conclusions of law in connection with this motion.
5. The opinion referenced in paragraph 4 issued on the following date(s):

June 22, 2018.

/s/ Owen C. McCarthy, J.S.C.
Hon. Owen C. McCarthy, J.S.C.

Defendant Qual/Scibal's motion was:

XXX Opposed
____ Unopposed

ORDER OF THE SUPERIOR COURT OF NEW JERSEY LAW DIVISION MONMOUTH COUNTY (JUNE 22, 2018)

ATTORNEY ID NUMBER: 030391985
Donald K. Greer, Jr., Esquire

Our File No.: 22541

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Attorneys for Defendant, County of Monmouth

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MONMOUTH COUNTY
DOCKET NO.: MON-L-1266-18

CAROLYN L. BABURKA

Plaintiff(s)

vs.

STATE OF NEW JERSEY
(as per Title 59 requirements,
Suing a Public entity)
COUNTY OF MONMOUTH, HAZLET TOWNSHIP POLICE DEPARTMENT, CHIEF PHILIP MEEHAN, AND SUPERVISOR OF THE HAZLET POLICE WHOMSOEVER THAT MAY BE, HAZLET

TOWNSHIP, SCIBAL ASSOCIATES OF Somers Point, Egg Harbor Township, New Jersey, also or now known as Qual-Lynx or Qualcare a/k/a Qualcare, Inc. a Division or owned or acquired by CIGNA INSURANCE COMPANIES, Qual-Lynx or QualCare, Inc. having its offices now at 30 Knightsbridge Road, Piscataway Township, New Jersey ABC MAINTENANCE COMPANY, JOHN DOES (1-6) (FICTITIOUS NAMES), JOHN DOE, ROBERT ROE, DEF LANDLORD, HIJ ENTITY

Defendant(s)

This matter having come before the Court on the application of Donald K. Greer, Jr., attorney for Defendant County of Monmouth, and the Court having considered the papers within, the argument of counsel (if any) and for other good cause shown

IT IS on this ___22___ day of ____June___, 2018

ORDERED that all claims of all parties be and are dismissed against County of Monmouth, with prejudice, and it is

FURTHER ORDERED that a copy of this Order be served on all parties within seven (7) days of its entry.

/s/ Owen C. McCarthy, J.S.C.
Hon. Owen C. McCarthy, J.S.C.

XXX Opposed

___ Unopposed

For reasons on the record.

ORDER OF THE SUPERIOR COURT OF NEW JERSEY LAW DIVISION MONMOUTH COUNTY (JUNE 25, 2018)

John L. Bonello – 246831968
MANNA & BONELLO
648 Ocean Avenue
Long Branch, NJ 07740
(732) 728-1300
Attorneys for Defendants Hazlet Township and Chief Philip Meehan

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SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY LAW DIVISION
DOCKET NO.: MON-L-1266-18

CAROLYN L. BABURKA,

Plaintiff

vs.

STATE OF NEW JERSEY (as per Title 59 requirements, "suing a Public entity) COUNTY OF MONMOUTH, HAZLET TOWNSHIP POLICE DEPARTMENT, CHIEF PHILIP MEEHAN, AND SUPERVISOR OF THE HAZLET POLICE WHOMSOEVER THAT MAY BE, HAZLET Point, Egg Harbor Township, New Jersey, also or now known as Qual-Lynx or Qualcare a/k/a Qualcare,

Inc. a Division or owned or acquired by
CIGNA INSURANCE COMPANIES,
Qual-Lynx or 'QualCare INC. having
Its offices now at 30 Knightsbridge Rd.
Piscataway Township, New Jersey
ABC MAINTENANCE COMPANY,
JOHN DOES (1-6) (FICTITIOUS
NAMES),M JOHN DOE, ROBERT
ROE, DEF LANDLORD, HIJ ENTITY,

Defendants

THIS MATTER having been brought before the Court on motion for summary judgment in lieu of answer by John L. Bonello (Manna & Bonello) as counsel for defendants Hazlet Township and Chief Philip Meehan; said motion on notice to the plaintiffs; and the Court having reviewed the papers submitted in support of the motion, and any opposition papers; and good cause for granting the motion appearing;

IT IS on this _25__ day of June, 2018, **ORDERED** as follows:

1. The summary judgment motion of Hazlet Township and Chief Philip Meehan is granted.
2. All claims asserted by plaintiff against Hazlet Township and Chief Philip Meehan are dismissed.
3. A copy of this Order shall be served on all counsel of record, electronically, simultaneously with the electronic filing of this

Order. (The pro se plaintiff, and any counsel appearing who are exempt from e-courts registration, shall be served a copy of this Order within _7__ days from the date hereof):

4. This Court made findings of fact and conclusion of law in connection with this motion. These findings and conclusions are in an opinion which is ___ in writing _____ verbally set forth on the record.

5. The opinion referenced in paragraph 4 issued on the following date(s): June 22, ____, 2018.

/s/ Owen C. McCarthy, J.S.C.____
Hon. Owen C. McCarthy, J.S.C.

The motion of defendants
Hazlet Township and Chief
Philip Meehan was:

XXX Opposed

___ Unopposed

All claims against Hazlet Township and Chief are dismissed without prejudice per N.J.S.A. 59 8-3 and N.J.S.A. 59: 8-8

ORDER GRANTING SUMMARY JUDGMENT (JUNE 25, 2018)

CHAMLIN, ROSEN, ULIANO & WITHERINGTON, P.C.
268 Norwood Avenue, P.O. Box 38
West Long Branch, NJ 07764
(732) 229-3200
Attorneys for Defendant, Hazlet Police Department

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY LAW DIVISION
DOCKET NO.: MON-L-1266-18

CAROLYN L. BABURKA

Plaintiff

v.

STATE OF NEW JERSEY
(as per Title 59 requirements
suing a Public entity
(COUNTY of MONMOUTH,
HAZLET TOWNSHIP
POLICE DEPARTMENT,
CHIEF PHILIP MEEHAN, AND
SUPERVISOR OF THE
HAZLET POLICE
WHOMSOEVER THAT MAY
BE, HAZLET TOWNSHIP
SCIBAL ASSOCIATES of Somers Point,
Egg Harbor Township, New Jersey,

also or now known as Qual-Lynx or Qualcare a/k/a Qualcare, Inc. a Division or owned or acquired by CIGNA INSURANCE COMPANIES, Qual-Lynx or QualCare INC. having its Offices now at 30 Knightsbridge Rd., Piscataway Township, New Jersey, ABC MAINTENANCE COMPANY JOHN DOES (1-6) (FICTITIOUS NAMES), JOHN DOE, ROBERT ROE, DEF LANDLORD, HIJ ENTITY.

Defendants

THIS MATTER having been brought to the attention of the Court by Elizabeth Uliano Giblin, Esq. of Chamlin, Rosen, Uliano & Witherington, attorneys for Defendant, Hazlet Township Police Department, for an Order Granting Summary Judgment and Dismissing Plaintiff's Complaint, upon notice to Pro Se Plaintiff, and the Court having considered of the papers submitted and the arguments on behalf of the parties, and for good cause shown;

IT IS on this ___25___ day of ____ June ____, 2018, ORDERED as follows:

1. ~~Summary Judgment is granted and Plaintiff's Complaint is dismissed with Prejudice as to Defendants, Hazlet Police Department;~~

2. A copy of this Order shall be served upon all parties within ___7__ days of its filing.

/s/ Owen C. McCarthy, J.S.C
Hon. C. McCarthy, J.S.C.

XXX Opposed

___ Not opposed

All claims against Hazlet Police Department are dismissed without prejudice per N.J.S.A. 59: 8-3 and N.J.S.A. 59: 8-8

ORDER GRANTING REINSTATEMENT/ RESTORING OF DOCKET # L-1266-18 (MARCH 5, 2019)

CAROLYN L. BABURKA, PRO SE
25 DURANT AVENUE
HOLMDEL, NJ 07733

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION OF NEW JERSEY
DOCKET NO.: MON-L-1266-18
CIVIL ACTION

CAROLYN BABURKA,

Plaintiff,

vs.

HAZLET TOWNSHIP, CHIEF MEEHAN, POLICE CHIEF OF HAZLET POLICE DEPARTMENT HAZLET POLICE SUPERVISOR HAZLET POLICE OFFICER CHARLEIGH LOGOTHETIS

Defendants

This matter having been presented to the court by Carolyn L. Baburka, Pro Se, Litigant, for an Order Reinstating the Complaint, Docket # L-1266-18 as against the State of New Jersey, et al. **(State**

of New Jersey, Hazlet Township, Hazlet Township Police Chief Meehan, Hazlet Police Department, Hazlet Police Supervisor, and Hazlet Police Officer Charleigh Logothetis,) pursuant to Notice from the Court dated December 28, 2018, Upon notice of this Motion to the Attorney's for respective Defendant parties, and the Court having considered the papers submitted by the parties and having heard oral arguments on January 25, 2019, and good cause appearing.

5 day of March, 2019

It is on this 25th day of January, 2019 as follows:

The Motion of Plaintiff, Carolyn L. Baburka, to restore **Docket # L-1266-18 is granted.**

~~During the pendency of this litigation all parties shall maintain all documents currently in existence.~~

Signed:

/s/ Owen C. McCarthy, J.S.C.
Honorable **Owen C. McCarthy,**
J.S.C. of the Superior Court of New Jersey Monmouth County

Date: March 5, 2019

For reasons on the record Complaint is solely re-instated as to previously named parties. Plaintiff is required to file a Motion to amend complaint as to new defendants, Officer Charleigh Logothetis and defendant Hazlet Township Police Supervisor who were not named in previously filed Complaint.

ORDER GRANTING PLAINTIFF'S MOTION TO AMENDED COMPLAINT UNDER DOCKET# L-1266-18 (APRIL 12, 2019)

CAROLYN L. BABURKA, PRO SE
25 DURANT AVENUE
HOLMDEL, NJ 07733
646-352-3656

SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY LAW DIVISION
DOCKET NO.: MON-L-1266-18

CAROLYN L. BABURKA

Plaintiff

vs

HAZLET TOWNSHIP, CHIEF
MEEHAN POLICE CHIEF OF
HAZLET POLICE DEPARTMENT
HAZLET POLICE SUPERVISOR
HAZLET POLICE OFFICER
CHARLEIGH LOGOTHETIS
CHARLEIGH LOGOTHETIS

Defendant(s).

This matter having been presented to the Court by Carolyn L. Baburka, Pro Se, Litigant/Plaintiff, for

an Order pursuant to Rule 1:6-2, granting Plaintiff's motion to file an Amended Complaint **(State of New Jersey, Hazlet Township, Hazlet Township Police Chief Meehan. Hazlet Police Department, Hazlet Police Supervisor John Doe (true name unknown), and Hazlet Police Officer Charleigh Logothetis,)** pursuant to Notice from the Court dated March 1, 2019, Upon notice of this Motion to the Attorney's for respective Defendant parties, and the Court having considered the papers submitted by the parties and having heard oral arguments on April 12, 2019, and good cause appearing.

It is on this ~~12~~ 15th day of April, 2019 as follows:

1. The Motion of Plaintiff, Carolyn L. Baburka, plaintiff to file an Amended Complaint under **Docket # L-1266-18 is granted.**

"Denied ~~2. During the pendency of this litigation all parties should maintain all documents currently in existence.~~

3. No Discovery End Date has been set.

Signed:

/s/ Owen C. McCarthy, J.S.C.

HONORABLE, OWEN C. McCARTHY, J.S.C.
OF THE SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY
DATE: April 12, 2019

The motion, which was not opposed, is GRANTED for the reasons set forth in the moving papers.

ORDER GRANTING THE MOTION OF DEFENDANT HAZLET TOWNSHIP AND CHIEF PHILIP MEEHAN, AND DISMISSING THE COMPLAINT (JULY 26, 2019)

John L. Bonello – 246831968
MANNA & BONELLO
648 Ocean Avenue
Long Branch, NJ 07740
(732) 728-1300
Attorneys for Defendants Hazlet Township and Chief Philip Meehan

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MONMOUTH COUNTY
DOCKET NO.: MON-L-1266-18
CIVIL ACTION

CAROLYN L. BABURKA

Plaintiff

vs.

STATE OF NEW JERSEY (as per Title 59 requirements 'suing a Public entity) HAZLET TOWNSHIP POLICE DEPARTMENT CHIEF PHILIP MEEHAN, and JOHN DOE OR JANE DOE, HAZLET TOWNSHIP POLICE SUPERVISOR ON-THE DATE AND TIME OF INCIDENT ALLEGED IN THIS COMPLAINT WHOSE TRUE NAME IS UNKNOWN and HAZLET POLICE OFFICER CHARLEIGH LOGOTHETIS, ABC MAINTENANCE COMPANY, JOHN DOES (1-6) (FICTITIOUS NAMES), JOHN

DOE, ROBERT ROE, DEF LANDLORD, HIJ ENTITY,

Defendants

THIS MATTER having been brought before the Court on Motion by John S. Bonello (Manna & Bonello) as counsel for defendants Hazlet Township and Chief Philip Meehan; said motion on notice to the plaintiff; and the Court hearing reviewed the papers submitted in support of the motion, and any opposition papers; and good cause for granting the motion appearing;

IT IS on this ___26___ day of July, 2019, **ORDERED** as follows:

1. ~~The motion of Hazlet Township and Chief Philip Meehan is granted.~~

   DENIED

2. ~~All claims asserted by plaintiff against Hazlet Township. And Chief Philip Meehan are dismissed, without prejudice.~~

   DENIED

3. ~~A copy of this Order shall be served on all counsel of record, electronically, simultaneously with the electronic filing of this Order. (The pro se plaintiff, and any counsel appearing who are exempt from e-courts registration, shall be served a copy of this Order within __ days from the case hereof).~~

4. ~~This Court made findings of fact and conclusion of law in connection with this~~

~~motion. These findings and conclusions are in an opinion which is ____ in writing ____ verbally set forth on the record.~~

~~5. The opinion referenced in paragraph 4 issued on the following date(s): _____, 2018.~~

/s/ Joseph P. Quinn, P.J. Cv_____
Honorable Joseph P. Quinn, P.J. Cv

The motion of defendants
Hazlet Township and Chief
Philip Meehan was:

_XXX Opposed
____ Unopposed

DENIED Reasons on the record at oral on July 26, 2019, Movants may answer within 20 days.

ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF STATE DEFENDANT (AUGUST 2, 2019)

GURBIR S. GRUWAL
Attorney General of New Jersey
R.J. Hughes Justice Complex
PO Box 116
Trenton, New Jersey 08625
Attorney for State Defendant,
State of New Jersey

By: Andrew C. Monger (105012016)
Deputy Attorney General
609-376-2743
Andrew.Monger@law.njoag.gov

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MONMOUTH COUNTY
DOCKET NO.: MON-L-1266-18
CIVIL ACTION

CAROLYN L. BABURKA

Plaintiff

vs.

STATE OF NEW JERSEY, HAZLET TOWNSHIP POLICE DEPARTMENT, POLICE CHIEF PHILIP MEEHAN, HAZLET TOWNSHIP POLICE OFFICER CHARLEIGH LOGOTHETIS, JOHN DOES 1-6 (Fictitious Names) and ABC CORPORATIONS 1-6 (FICTITIOUS NAMES)

Defendants.

This matter having been opened to the Court on application of Gurbir S. Gruwal, Attorney General of New Jersey, Andrew C. Monger, Deputy Attorney General, appearing on behalf of State Defendant for an Order Granting Summary Judgment, and the Court having considered the moving papers and for good cause shown.

It is on this 2 day of **August**, 2019 ORDERED that Summary Judgment is hereby granted in favor of State defendant dismissing Plaintiff's Complaint and any and all crossclaims against it and its employees with prejudice; and it is further

ORDERED that a copy of this Order shall be served upon all counsel of record via Ecourts.

/s/ Owen C. McCarthy, J.S.C.
Hon. Owen C. McCarthy, J.S.C.

XXX Opposed
_____ Unopposed

For reasons on the record. State of New Jersey to serve a copy of the Order via regular mail to plaintiff.

ORDER FOR SUMMARY JUDGMENT
(SEPTEMBER 16, 2019)

ANDREW T. WALSH, ESQ. Atty ID No 016431996
CHAMLIN ROSEN ULIANO & WITHERINGTON, P.C.
268 Norwood Avenue, P.O. Box 38
West Long Branch, NJ 07764
(732) 229-3200
Attorneys for Defendants, Officer Charleigh Logothetis and Hazlet Township Police Department

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SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY LAW DIVISION
DOCKET NO.: MON-L-1266-18

CAROLYN L. BABURKA

Plaintiff

v.

STATE OF NEW JERSEY (as per Title 59 requirements, suing a Public entity), HAZLET TOWNSHIP POLICE DEPARTMENT, CHIEF PHILIP EEHAN, and "JOHN DOE" OR JANE DOE" HAZLET TOWNSHIP POLICE SUPERVISOR, ON THE DATE AND TIME OF THE INCIDENT ALLEGED IN THIS COMPLAINT WHOSE TRUE NAME IS UNKNOWN, AND HAZLET POLICE OFFICER CHARLEIGH LOGOTHETIS, ABC MAINTENANCE COMPANY, JOHN DOES (1-6) (fictitious names), JOHN DOE, ROBERT ROE, DEF LANDLORD, HIJ

ENTITY

Defendants.

THIS MATTER having been brought to the attention of the Court by Andrew T. Walsh, Esq. of Chamlin, Rosen, Uliano & Witherington, attorneys for Defendants, Officer Charleigh Logothetis and the Hazlet Township Police Department, for an Order Granting Summary Judgment and Dismissing Plaintiff's Complaint upon motion to Carolyn Baburka, *Pro Se,* and John Bonello, Esq. counsel for Defendant Hazlet Township and Chief Philip Meehan, and the Court having considered of the papers submitted and the arguments on behalf of the parties, and for good cause shown:

IT IS on this 16 day of September, 2019, ORDERED as follows:

DENIED

1. ~~Summary Judgment is granted and Plaintiff's Complaint and any and all crossclaims are dismissed with Prejudice as to Defendants Officer Charleigh Logothetis and the Hazlet Police Department and it is further ordered~~

2. A copy of the Order shall be served upon all parties within 7 days of its filing.

/s/ Owen C. McCarthy, J.S.C.
Hon. Owen C. McCarthy, J.S.C

XXX Opposed

_____ Unopposed

Denied without prejudice for reasons on the record to allow for discovery.

CONFIDENTIALITY AND PROTECTIVE ORDER (JANUARY 24, 2020)

ANDREW T. WALSH, ESQ. Atty ID No. 016431996
CHAMLIN, ULIANO & WALSH
268 Norwood Avenue, P.O. Box 38
West Long Branch, NJ 07764
(732) 229-3200
Attorney for Defendants Officer Charleigh Logothetis and Hazlet Township Police Department

---

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MONMOUTH COUNTY
DOCKET NO.: MON-L-1266-18
CIVIL ACTION

CAROLYN L. BABURKA

Plaintiff

vs.

STATE OF NEW JERSEY (as per Title 59 Requirements, suing a Public entity) HAZLET TOWNSHIP POLICE DEPARTMENT CHIEF PHILIP MEEHAN AND SUPERVISOR OF THE HAZLET POLICE WHOMSOEVER THAT MAY BE, HAZLET TOWNSHIP POLICE OFFICER CHARLEIGH LOGOTHETIS ABC MAINTENANCE COMPANY, JOHN DOES: (1-6) (FICTITIOUS NAMES), JOHN DOE, ROBERT ROE, DEF LANDLORD, HIJ ENTITY.

Defendants.

THIS MATTER having been opened to the Court by Chamlin, Uliano & Walsh, Attorneys for Defendants Officer Charleigh Logothetis and Hazlet Township Police Department, on notice to all parties, for the entry of a Protective Order pursuant to R. 4:10-3 with respect to production of all confidential information, for good cause shown;

IT IS, on this 24 day of January, 2020, ORDERED:

1. Any party may designate as "Confidential" any materials produced by it in discovery or filed by it in the captioned litigation containing information or communications which are private, personal, proprietary or otherwise confidential. "Confidential Material" shall mean information which a producing party believes in good faith to be private, confidential and personal information of a proprietary nature. The materials will be designated as "Confidential" by so marking the first page of each such document or, if only a portion of a document is confidential, then by marking those specific pages or portions therein. For each document or motion of a document a party marks "Confidential", the party shall provide a specific reason, for the designation. This designation shall be made the first time the documents are produced or filed.

2. All Confidential Materials which are produced in this litigation shall be used solely for the purposes of the litigation and not for any other purpose whatsoever, and shall not be disseminated or copied except as permitted and specified by this Confiden-

tiality Agreement and Protective Order (hereinafter referred to as the "Protective Order").

3. If counsel for any party objects to the designation of any documents, records or information as confidential, that party may move for in camera review of the documents or information in question and a determination as to whether the designation is proper.

4. Confidential Materials produced by any party in this litigation shall not be disseminated, copies or used directly or indirectly, nor their contents or data disclosed, to anyone other than the following persons:

(a). The law firms representing the respective parties in this litigation;

(b). the parties;

(c). expert witnesses and/or consultants retained by the parties or their counsel for this litigation;

(d). the Court.

5. Before any Confidential Materials are shown or given to any person referred to in Section 4(b) and/or (c) above, the person must sign an acknowledgement in the form set forth below as Exhibit A, by which he or she consents to be bound by the terms of this Protective Order and agrees to be subject to the continuing Jurisdiction of this Court for the enforcement of this Protective Order. The party receiving the Confidential Materials ("Receiving Party") shall provide copies of all signed acknowledgements to the other parties.

6. If any of the Confidential Materials are marked as exhibits or quoted or referred to in any deposition, then, at the request of the party claiming confidentiality, that portion of the deposition transcript shall be deemed to be designated as Confidential and treated as Confidential Materials subject to the terms of this Protective Order.

7. If any Confidential Materials or portions therefrom are filed with the Court or offered into evidence at any pretrial hearing or are quoted, referred to or attached to any brief, memorandum, deposition transcript or any other paper filed with the Court before trial, then the party claiming the privilege ma request that the Court maintain the filed papers or transcript under seal. If the Receiving Party intends to file and Confidential Materials with the Court or refer to any portions of Confidential Materials in any briefs or other papers to be field in the Court before trial, then prior to do so, the Receiving Party shall notify counsel for the Producing Party to enable it to timely request that the Court maintain the materials under seal. However, the Protective Order shall not apply to materials designated as "Confidential Materials" which are introduced as exhibits at trial. Should the party who produced such materials desire to have the materials filed under seal, the burden is on that party to move for a Protective Order before trial. Prior to trial, each party shall advise the other of any "Confidential Materials" it intends to introduce at trial, so the other will have the opportunity to move for such an order.

8. Any party may object to another party's designation of any materials as "Confidential Materials" by serving a written notice of its objection within

thirty (30) days of receiving notice of the designation. In the event such an objection is served and the dispute is submitted to the Court, the confidentiality of the designated material at issue shall be preserved and the material shall be treated as "Confidential Materials" subject to the Protective Order pending resolution of the dispute by the Court, including the determination of any interlocutory appeals. The provision does not apply to "Confidential Materials" that are introduced as exhibits at trial.

9. At the conclusion of the litigation, including any appeals, all originals and all copies of all Confidential Materials, and all documents which quote or summarize the Confidential Materials or data therefrom, other than documents filed with the Court, shall be either (a) returned to the party who produced them, or (b) destroyed by the party who received them. Each counsel shall provide a certification that all Confidential Materials and any and all copies of summaries deemed were collected from all persons who received them and were either returned to the Producing Party or its counsel or destroyed by the Receiving Party or its counsel, except that each party may retain copies of any exhibits introduced at trial.

10. The terms of this Protective Order precluding the dissemination, disclosure, copying and return of Confidential Materials, shall continue to be binding after the conclusion of this action. The Court shall retain continuing jurisdiction to enforce the terms of this Protective Order. The parties and all persons who received Confidential Materials with knowledge of this Order consent to the jurisdiction of the Court for the enforcement of the terms herein.

11. The signatures of counsel before signify the consent of the respective parties to the firm and entry of this Protective Order and their agreement to be bound by the terms herein. This Protective Order may be executed in any number of counterparts. It is not necessary that all parties sign all or any one of the counterparts, but each party must sign at least one counterpart for the Protective Order to be effective.

ENTERED as an Order of the Court this 24 day of Jan, 2020.

/s/Joseph P. Quinn, P.J. Cv
JOSEPH P. QUINN, P.J. Cv.

No opposition. Granted based on moving papers.

ORDER GRANTING PLAINTIFF'S MOTION TO EXTEND DISCOVERY & ADJOURN ARBITRATION DATE (JANUARY 27, 2020)

CAROLYN BABURKA, PRO SE
25 DURANT AVE
HOLMDEL, NJ 07733
646-352-3656

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION OF NEW JERSEY
DOCKET NO.: MON-L-1266-18
CIVIL ACTION
PROPOSED ORDER

CAROLYN BABURKA,

Plaintiff,

vs.

HAZLET TOWNSHIP, CHIEF MEEHAN CHIEF OF HAZLET POLICE DEPARTMENT, HAZLET POLICE SUPERVISOR, HAZLET POLICE OFFICER CHARLEIGH LOGOTHETIS

Defendant(s).

This matter having been presented to the Court by Carolyn L. Baburka, Pro Se, Litigant/PLAINTIFF, for an Order pursuant to **R.** 1:6-2, to extend the

Discovery period in this action and to adjourn Arbitration scheduled for **January 10, 2020.**

THIS MOTION HAVING BEEN:

XXX Opposed

____ Unopposed

The Court having considered the papers submitted herein, by the party/parties hereto, and good cause appearing.

IT IS on this 27th day of Jan, 2020, ORDERED as follows:

1. The Discovery period is hereby extended for a period of 60 days and the Arbitration set for January 30, 2020, is hereby adjourned to March 12, 2020.

2. Plaintiff shall serve a copy of this Order upon Defendants' within 7 days of Plaintiff's receipt of same.

Signed:

/s/ Joseph P. Quinn, P.J. Cv
Honorable Joseph P. Quinn, P.J. Cv.
of the Superior Court of New Jersey
Monmouth county

Date: 1/27/20

ORDER OF THE SUPERIOR COURT OF NEW JERSEY LAW DIVISION MONMOUTH COUNTY (JANUARY 27, 2020)

PREPARED BY THE COURT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MONMOUTH COUNTY
DOCKET NO.: MON-L-1266-18
CIVIL ACTION

CAROLYN L. BABURKA

Plaintiff

vs.

State of New Jersey, et. Al.

Defendants.

THIS MATTER having been opened by the Court, *sua sponte,* in order to reinstate plaintiff's Complaint against defendant Hazlet Township Police Department, which was inadvertently dismissed without prejudice for lack of prosecution on December 20, 2019 notwithstanding that an Answer was submitted by defendant on June 17, 2018, and for other good cause appearing:

IT IS on the 27th day of January 2020;

ORDERED that the December 20, 2019, Order dismissing the Complaint as to defendant Hazlet Township Police Department, without prejudice for lack of prosecution be and the same is hereby vacated, and it is further

ORDERED that the Complaint be and the same is hereby reinstated against defendants, and it is further

ORDERED that a copy of this Order shall be served upon all parties within 7 days.

/s/ Henry P. Butehorn, J.S.C.
Henry P. Butehorn, J.S.C.

REPORT AND AWARD OF ARBITRATOR(S)
(MARCH 12, 2020)

SUPERIOR COURT OF NEW JERSEY
REPORT AND AWARD OF ARBITRATOR(S)

ARBITRATION TYPE CHECK BOX
PERSONAL INJURY

COUNTY: MONMOUTH
DOCKET NO.: MON-L-1266-18
DATE: 3-12-2020

BABURKA

Plaintiff,

v.

STATE OF N.J.

Defendant

The undersigned arbitrator(s) make(s) the following award(s) for the reasons set forth:

Plaintiff claims that Officer Logothetis who was stationed at security entrance to Hazlet/Matawan municipal court improperly conducted pat down search.

Plaintiff further claims that Officer "grabbed" her breast causing substantial pain.

Plaintiff had visit with Dr. Movva, her PCP, next day with soft tissue injury diagnosed. No permanency determined.

Defendants deny incident occurred; video discussed

Defendants further note Plaintiff did not complain at time of incident

Defendants assert Tort Claim Act defenses.

Defense presented x yes __ no

	Party	Liability
Def	Hazlet Twp Police Dept.	0%
Def	Logothetis	0%
Def	Hazlet Twp	0%
Def	Philip Meehan	0%
Pl	Carolyn Baburka	0%
	Gross Damages	$ 0
	Net Damages	$ 0

ARBITRATOR(S) PLEASE SIGN BELOW AND PRINT NEXT TO SIGNATURE

/s/ Gary E. Linderoth
Gary E. Linderoth

Parties deciding to reject his award and obtain a trial de novo must file with the division manager a trial de novo request together with a $200 fee within thirty (30) days of today. Parties requesting a trial de

novo may be subject to payment of counsel fees and costs as provided by R.4:21A-6(o). Note that unless otherwise expressly indicated this award will be filed today.

Counsel and pro se litigants acknowledge receipt of this award by signing here. Print name next to signature.

/s/Andrew Walsh, Esq.
/s/John L. Bonello

ORDER FOR SUMMARY JUDGMENT
(MAY 22, 2020)

ANDREW T. WALSH, ESQ. Atty ID NO. 016431996
CHAMLIN ULIANO & WALSH
268 Norwood Avenue, P.O. Box 38
West Long Branch, NJ 07764
(732) 229-3200
Attorney for Defendants, Officer Charleigh Logothetis and Hazlet Township Police Department

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MONMOUTH COUNTY
DOCKET NO.: MON-L-1266-18
CIVIL ACTION

CAROLYN L. BABURKA

Plaintiff

vs.

STATE OF NEW JERSEY (as per Title 59 requirements, suing a Public entity) HAZLET TOWNSHIP POLICE DEPARTMENT, CHIEF PHILIP MEEHAN, and "JOHN DOE" or "JANE DOE" HAZLET TOWNSHIP POLICE SUPERVISOR, ON THE DATE AND TIME OF THE INCIDENT ALLEGED IN THIS COMPLAINT WHOSE TRUE NAME IS UNKNOWN, AND HAZLET POLICE OFFICER CHARLEIGH LOGOTHETIS, ABC MAINTENANCE: COMPANY, JOHN DOES (1-6) (fictitious names), JOHN DOE, ROBERT ROE, DEF LANDLORD, HIJ ENTITY :

Defendants.

THIS MATTER having been brought to the attention of the Court by Andrew T. Walsh, Esq. of Chamlin Uliano & Walsh, attorneys for Defendants, Officer Charleigh Logothetis and the Hazlet Township Police Department, for an Order Granting Summary Judgment and Dismissing Plaintiff's Complaint: upon notice to Carolyn Baburka, *Pro Se,* and John Bonello, Esq. counsel for Defendants Hazlet Township and Chief Philip Meehan, and the Court having considered of the papers submitted and the arguments on behalf of the parties, and for good cause shown;

IT IS on this 22nd day of May 2020, ORDERED as follows:

1. Summary Judgment is granted and Plaintiff's Complaint and any and all crossclaims are dismissed with Prejudice as to Defendants, Officer Charleigh Logothetis and the Hazlet Police Department, and it is further ordered

2. The moving party shall serve a copy of this order upon all parties within seven (7) days of its filing. The court will also serve a copy of this order upon plaintiff by mail.

/s/ HENRY P. BUTEHORN, J.S.C.
Hon. Henry P. Butehorn, J.S.C.

XXX Opposed

_____ Not opposed

The court's findings and conclusions for this Order were written, See Rules and Statement Of Reasons attached to May 22, 2020 order granting summary judgment in favor of defendants Hazlet Township and Chief Philip Meehan

ORDER GRANTING SUMMARY JUDGMENT AND DISMISSING ALL CLAIMS AGAINST HAZLET TOWNSHIP AND CHIEF MEEHAN (MAY 22, 2020)

John L. Bonello (#246831968)
MANNA & BONELLO
648 Ocean Avenue
Long Branch, NJ 07740
Phone: (732) 728-1300
E-Mail: bonellolaw@yahoo.com
Attorneys for Defendants Hazlet Township and Chief Philip Meehan

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION MONMOUTH COUNTY
DOCKET NO.: MON-L-1266-18
CIVIL ACTION

CAROLYN L. BABURKA

Plaintiff

vs.

STATE OF NEW JERSEY (as per Title 59 requirements, suing a Public entity) HAZLET TOWNSHIP POLICE DEPARTMENT, CHIEF PHILIP EEHAN, and "JOHN DOE" or "JANE DOE" HAZLET TOWNSHIP POLICE SUPERVISOR, ON THE DATE AND TIME OF THE INCIDENT ALLEGED IN THIS COMPLAINT WHOSE TRUE NAME IS UNKNOWN, AND HAZLET POLICE OFFICER CHARLEIGH LOGOTHETIS, ABC MAINTENANCE: COMPANY, JOHN DOES (1-6)

(fictitious names), JOHN DOE, ROBERT ROE, DEF LANDLORD, HIJ ENTITY:

Defendants.

THIS MATTER having been brought before this Court via motion by John L. Bonello (MANNA & BONELLO), counsel for defendants Hazlet Township ("the Township") and Chief Philip Meehan or Hazlet Police Chief Philip Meehan ("Meehan"): said motion on notice to the plaintiff and to all defense counsel of record; and the Court having reviewed the papers submitted to support of the motion, and any opposition papers thereto, as well as hearing argument of counsel; and good cause for granting the motion appearing;

IT IS on this 22nd day of May, 2020, **ORDERED** as follows:

1. The motion of the Township and Meehan is granted.
2. Summary judgment is entered in favor of the Township and Meehan is granted, and all claims asserted against them are dismissed with prejudice.
3. A copy of this Order is being served on all counsel of record, electronically, simultaneously with the electronic filing of this Order. Movants shall serve a copy of this order upon the pro se plaintiff shall be served a copy of this order within seven (7) days from the date hereof. The court shall

also serve a copy of this order upon plaintiff by mail.

4. This Court made findings of fact and conclusions of law in connection with this motion. Those findings and conclusions are in an opinion which is in writing **See Rider and Statement of Reasons attached to this Order** ~~____verbally set forth on the record.~~

5. The opinion referenced in paragraph 4 issued on the following date(s): May 22, 2020.

/s/ Henry P. Butehorn, J.S.C
Henry P. Butehorn, J.S.C.

This motion was:

XXX Opposed

____ Unopposed

See attached Rider and Statement of Reasons

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