

Neomi Escobar, et al, v. Newark Beth Israel Medical Center, et al.:
Clarifying the Scope of Public Entity Immunity in New Jersey

By: Jemi G. Lucey, Esq.

On October 16, 2017, after almost four years of appellate practice regarding the scope and landscape of public entity liability under the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq. (“NJTCA”), the State of New Jersey defendants achieved a significant victory in the form of the denial of the plaintiff Escobar’s petition to the New Jersey Supreme Court for Certification. Plaintiff sought the review of New Jersey’s intermediate appellate court’s April 4, 2017 ruling overturning a \$100+ million judgment against the State of New Jersey defendants on immunity grounds.

The underlying case, Neomi Escobar, et al, v. Newark Beth Israel Medical Center, et al., was tried in New Jersey state trial court in December 2013. David Mazie, Esq. and Beth G. Baldinger, Esq., with Mazie, Slater, Katz & Freeman LLC, represented plaintiff Neomi Escobar, both individually and on behalf of her four-year-old grandson. John D. North, Esq. and Jemi G. Lucey, Esq. with Greenbaum, Rowe, Smith & Davis LLP, represented defendants, The State of New Jersey, New Jersey Department of Children and Families, New Jersey Division of Child Protection and Permanency (“DCPP”), and certain individual DCPP caseworkers.

Plaintiff’s complaint asserted claims of negligence under the NJTCA in connection with catastrophic injuries sustained by her grandson, at 4 months of age, at the hands of his natural father, while the child was under the “care and supervision” of DCPP. Prior to the ultimate assault on the child, DCPP was conducting an investigation into the natural father as to allegations of potential abuse. Over a 45-day period, DCPP investigated the natural father, during which time it established a Case Plan regarding the care and supervision of the child. The Case Plan, which was signed by both natural parents and Ms. Escobar, mandated, among other things, that the natural father was not to be left alone with the child. Tragically, 45 days into the investigative period, as a result of the natural mother’s breach of the Case Plan, the natural father was left alone with the child, shook him, and caused catastrophic injuries associated with shaken baby syndrome.

The State of New Jersey defendants made and renewed multiple motions, both prior to and during trial, arguing that the State of New Jersey defendants were immune from liability under various sections of the NJTCA because they were state actors discharging discretionary functions and/or acting in good faith. These motions were denied and, after a two-week trial, the jury returned a verdict against the State of New Jersey defendants for \$166 million. The original award was remitted to \$102+ million, as a result of post-trial motion practice, based on the weight of the evidence and certain other factors.

In early 2014, the State of New Jersey defendants appealed, on immunity grounds under the NJTCA, arguing, among other things, that the State should not and cannot sustain such enormous verdicts given the broad scope of State activities undertaken for the public good, and the statutorily protected limitations on such liability under the NJTCA.

In April 2017 the New Jersey intermediate appellate court vacated the jury's verdict in its entirety, and entered judgment in favor of the State of New Jersey defendants on immunity grounds. The Court concluded:

The potential tort claims arising from a particularly vulnerable class of litigants can be fiscally ruinous. The Division is uniquely responsible for protecting the State's children from abuse and neglect. The Legislature adopted the TCA to protect public funds from being diverted to underwrite the cost of civil liability in these type of cases. The Division employees named as defendants in this case are entitled to immunity under N.J.S.A. 59:3-3 because the record shows their conduct was objectively reasonable. Alternatively, defendants are entitled to qualified immunity because they acted with subjective good faith in carrying out their statutory responsibilities.

N.E. for J.V. v. State Dep't of Children & Families, Div. of Youth & Family Servs., 449 N.J. Super. 379, 408 (App. Div. 2017).

Plaintiff sought leave to appeal the intermediate appellate court's decision by way of a petition for Certification to the New Jersey Supreme Court. This petition was denied on October 16, 2017, leaving untouched a significant development in the area of sovereign immunity law in New Jersey, the boundaries of which will certainly be tested in the coming years.