FRANTASIA PARKER, a minor by her Guardian Ad Litem, Saniyah Lane, and SANIYAH LANE, Individually, Plaintiffs-Appellants,
v.
STOKES ELEMENTARY SCHOOL, TRENTON BOARD OF EDUCATION, Defendants-Respondents.

No. A-2204-12T2.

Superior Court of New Jersey, Appellate Division.

Submitted November 6, 2013.
Decided November 19, 2013.

Stark & Stark, P.C., attorneys for appellants (Denise M. Mariani, of counsel and on the brief).

Methfessel & **Werbel**, attorneys for respondents (William S. Bloom and Kyle E. Vellutato, on the brief).

Before Judges Espinosa and Koblitz.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

PER CURIAM.

Plaintiff's[1] mother commenced this suit, alleging that her then eight-year-old daughter, Frantasia Parker, suffered personal injuries when at lunchtime on October 30, 2009, she slipped and fell on a wet floor in her Trenton elementary school cafeteria. The motion judge granted summary judgment to defendant by order dated October 26, 2012, and denied reconsideration without further oral argument on January 2, 2013. Plaintiff now appeals, arguing the motion judge mistakenly concluded that there was no evidence of notice given to the school of any dangerous condition that might have caused the fall. We affirm.

Frantasia testified that around the time she fell, she saw a school custodian mopping up a spill on the other side of the cafeteria without placing warning signs around the spill. After she ate lunch, she left her seat to ask her principal a question. She did not notice the floor was wet, but testified that when she fell her hands got wet. She stated that the school principal and guidance counselor were seated close to where she fell and that a security guard was also nearby, all of whom saw her fall and were in a position to see the dangerous condition of the wet floor before she fell.[2]

We review a grant of summary judgment de novo, using the same standard that applied in the trial court. Town of Kearny v. Brandt, 214 N.J. 76, 91 (2013). That standard is "`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.'" Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 536 (1995) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202, 214 (1986)); R. 4:46-2(c).

The mere occurrence of an incident causing an injury is not alone sufficient to impose liability. Long v. Landy, 35 N.J. 44, 54 (1961). Under the New Jersey Tort Claims Act (TCA), N.J.S.A. 59:1-1 to 12-3, the test applicable to plaintiff's claim against the defendant is set forth in N.J.S.A. 59:4-2:

A public entity is liable for injury caused by a condition of its property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury was proximately caused by the

dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:
a. a negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or
b. a public entity had actual or constructive notice of the dangerous condition under section 59:4-3 [definitions of actual and constructive notice] a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.
Nothing in this section shall be construed to impose liability upon a public entity for a dangerous condition of its public property if the action the entity took to protect against the condition or the failure to take such action was not palpably unreasonable.

Although plaintiff asserts on appeal that "[t]he issue of notice is the only relevant issue in the within matter[,]" she also argues that because the custodian was mopping another area of the cafeteria, he must have previously mopped the area where plaintiff fell, creating the dangerous condition of the wet floor. Although the issue of negligence was not addressed by the motion judge, plaintiff did not present proof that the school custodian created a dangerous condition by mopping the area where she fell and leaving it wet without any cautionary warning. This scenario is pure speculation on plaintiff's part.

With regard to notice, plaintiff argues that because the principal and guidance counselor were close enough to ask plaintiff "if she was ok" after she fell, "they knew or should have known of the existence of the dangerous condition."

The TCA explains notice in N.J.S.A. 59:4-3:

a. A public entity shall be deemed to have actual notice of a dangerous condition within the meaning of subsection b. of section 59:4-2 if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character.
b. A public entity shall be deemed to have constructive notice of a dangerous condition within the meaning of subsection b. of section 59:4-2 only if the plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character.

Plaintiff presented no evidence that the school custodian, principal, guidance counselor, or security guard knew of the wet floor before plaintiff slipped. Plaintiff did not notice there was water on the floor until after she fell and noticed that her hands were wet. It is just speculation that the custodian left the floor in a slippery condition or that the adults saw that it was wet before plaintiff fell. The proofs were so one-sided that defendant must prevail as a matter of law.

Affirmed.

[1] When referring to plaintiff we refer to the child, although her mother also sued in her own name for loss of consortium.

[2] Three of the adults testified at deposition that they did not see plaintiff fall. The custodian was not deposed as the parties could not locate him.