

Modified by the Court

Sean M. Pena, Esq. (Attorney ID No. 024072009)
Weiner Law Group, LLP
629 Parsippany Road
Parsippany, New Jersey 07054
Telephone (973) 403-1100
Attorneys for defendant, Teaneck Board of Education

DONALD LACLAIR,

Plaintiff,

v.

TEANECK BOARD OF EDUCATION
(d/b/a TEANECK PUBLIC SCHOOLS
and d/b/a BENJAMIN FRANKLIN
MIDDLE SCHOOL); RHETTA MAIDE
a/k/a RHETTA ACKERMAN;
DEFENDANTS DOE 1-10;
DEFENDANTS DOE INSTITUTION 1-
10;

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO.: BER-L-5692-21

CIVIL ACTION

ORDER

THIS MATTER having been brought before the court by way of motion of Sean M. Pena, Esq. of the Weiner Law Group, legal counsel for defendant, Teaneck Board of Education, seeking the entry of an order reconsidering the court’s order of June 19, 2025; and the court having reviewed the moving papers, any opposition thereto, if any, and for good cause having not been shown;

IT IS on this **1st day of August, 2025;**

ORDERED that defendant, Teaneck Board of Education’s motion seeking the entry of an order for reconsideration of the court’s order of June 19, 2025, pursuant to R. 4:42-2, be and is hereby **DENIED***; it is further

ORDERED that ~~summary judgment be and is hereby granted in favor of defendant, Teaneck Board of Education for all claims of vicarious liability; *DENIED~~ and it is further

ORDERED that the court provides a copy of this order to all counsel of record on this date via eCourts Civil. Movant is directed to serve a copy of this order within seven (7) days of the date hereof on all parties not served electronically, by regular mail and certified mail, return receipt requested.



Hon. Kelly A. Conlon, J.S.C.

 X OPPOSED

 UNOPPOSED

***See the attached Rider incorporated herein.**

DONALD LACLAIR

v.

TEANECK BOARD OF EDUCATION, et als.

DOCKET NO. BER-L-5692-21

RIDER TO ORDER DATED: August 1, 2025

**[NOT FOR PUBLICATION WITHOUT APPROVAL
OF THE COMMITTEE ON OPINIONS, See, R. 1:36-1]**

THIS MATTER has been brought before the court by way of motion filed by defendant, Teaneck Board of Education seeking reconsideration of this court's June 19, 2025 order denying defendant's motion for summary judgment for all claims of vicarious liability pursuant to R. 4:42-2.

Motions for reconsideration of interlocutory orders are governed by R. 4:42-2, which provides:

any order or form of decision which adjudicates fewer than all the claims as to all the parties shall not terminate the action as to any of the claims, and it shall be subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice.

“Until entry of final judgment, only ‘sound discretion’ and the ‘interest of justice’ guides the trial court, as Rule 4:42-2 expressly states.” Lawson v. Dewar,

468 N.J. Super. 128 (App. Div. 2021). Until the suit ends, a trial court “has complete power over its interlocutory orders and may revise them when it would be consonant with the interests of justice to do so.” Ford v. Weisman, 188 N.J. Super. 614, 619 (App. Div. 1983). In addition, “[R]econsideration cannot be used to expand the record or reargue a motion.” Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008).

At the outset, defendant, Teaneck Board of Education bears the burden of establishing that the interest of justice compels reconsideration and modification of the court’s order. That must, by way of necessity, include a demonstration that the court’s order was incorrect when made, or has been rendered incorrect. If the order applied the applicable law correctly, the interest of justice could not require its correction. Mere dissatisfaction with the court’s ruling does not satisfy that demonstration.

Defendant, Teaneck Board of Education’s reconsideration brief argues that the court erred in its June 19, 2025 decision denying the Board’s summary judgment motion on all vicarious liability claims. The Board asserts that, under the New Jersey Tort Claims Act (TCA), public entities can only be held liable for torts committed by employees within the scope of their employment (N.J.S.A. 59:2-2(a)), and there are no exceptions allowing for vicarious liability for intentional criminal acts, such as sexual abuse, outside that scope. The defendant emphasizes that sexual abuse,

constituting willful misconduct, is explicitly barred from public entity liability under N.J.S.A. 59:2-10, except through direct negligence theories like negligent hiring or supervision. The Board cites recent unpublished appellate decisions, including Hornor v. Upper Freehold Reg'l Bd. Of Educ., Dkt No. A-03-66-22, 2024 WL 4440951 (Oct 8, 2024) and Simpkins v. S. Orange-Maplewood Sch. Dist., Dkt. No. A-2181-21, 2024 WL 4440613 (Oct 8, 2024), which held that public school districts cannot be held vicariously liable under the "aided-by-agency" theory for intentional torts like sexual abuse. The brief further argues that, even when viewing facts most favorably to the plaintiff, there are no material disputes regarding the lack of on-campus abuse or school district notice. Therefore, according to the Board, reconsideration is warranted to correct the prior erroneous order and grant summary judgment dismissing all vicarious liability claims as a matter of law.

By way of background, the New Jersey Supreme Court made it clear in Hardwicke v. American Boychoir School, 188 N.J. 69, 902 A.2d 900 (2006) that an institution can be held vicariously liable for the intentional acts of its employees in child sex abuse cases. In Hardwicke, the New Jersey Supreme Court addressed a case involving child sexual abuse of a former student that occurred outside the boarding school property by a music teacher both while he was a student and over the summer. The school asserted that it could not be held liable for the teacher abuser's acts because they were outside the scope of his employment. Id. at 902.

The New Jersey Supreme Court held that the school could be vicariously liable for the teacher's acts under modern agency principles. Id. at 919. Additionally, they held that the Restatement (2nd) of Agency § 219 applies to cases involving child sexual abuse as this section promotes the goal of protecting children from victimization. The Restatement (2nd) of Agency §219(2)(d) provides that an employer is liable for the acts of its employee while acting "outside the scope of their employment" when "the servant purported to act or to speak on behalf of the principal and there was reliance upon apparent authority (ostensible agency) or he was aided in accomplishing the tort by the existence of the agency relationship (aided agency)".

Relying on this section of the Restatement, the Hardwicke court found that the school could be liable under agency law for the abuse of the student that occurred over the summer because the teacher had used his position (i.e. aided agency) as leverage to gain access to and exert power and control over the victim over the summer. Id. at 910.

Defendant argues that in denying summary judgment on the issue of vicarious liability, the court departed from controlling case law. Specifically, defendant relies upon two recent **unpublished** Appellate Division decisions in child sex abuse cases that hold that a public entity cannot be held vicariously liable for child sexual abuse by its employee under the Tort Claims Act (N.J.S.A. 59:2-2(a)) as distinguished

from the Harwicke case which pertained to a private institution. The unpublished cases relied upon by defendant were Honor v. Upper Freehold Reg'l Bd. Of Educ., Dkt No. A-03-66-22, 2024 WL 4440951 (Oct 8, 2024) and Simpkins v. S. Orange-Maplewood Sch. Dist., Dkt. No. A-2181-21, 2024 WL 4440613 (Oct 8, 2024).

As stated in the court's opinion on summary judgment, a trial court in New Jersey is not bound by unpublished Appellate Division decisions. Specifically, New Jersey Court Rule 1:36-3 explicitly states that "no unpublished opinion shall constitute precedent or be binding upon any court" except in limited circumstances such as when required by principles like res judicata, collateral estoppel or the single controversy doctrine. Hansen v. Rite Aid Corp., 253 N.J. 191, 220 (2023).

Further, both the Honor and Simpkins matters were decided on motions to dismiss, not summary judgment.

In deciding defendant's motion for summary judgment as it pertained to the vicarious liability claim, the court found that there were genuine issues of material fact that precluded summary judgment on the issue, specifically, as to whether certain of defendant, Rhett Ackerman's acts were committed within the scope of her employment and whether N.J.S.A. 59:2-10 would bar recovery for specific acts.

On reconsideration, defendant, Teaneck Board of Education failed to meet their burden before this court that the court's order was incorrect when made or has been rendered incorrect. To the contrary, the court carefully examined the motion

and set forth its statement of reasons on the record as to why the court denied the requested relief.

In addition, if defendant intended to request oral argument, the court determined oral argument was not necessary. Although R. 1:6-2 provides for oral argument as a matter of right, case law makes clear that the court may deny the request in certain circumstances:

While a request for oral argument respecting a substantive motion may be denied, see Great Atlantic and Pacific Tea Co. v. Checchio, 335 N.J. Super. 495, 497-98, 762 A.2d 1057, 1058-59 (App. Div. 2000); Spina Asphalt Paving v. Fairview, 304 N.J. Super. 425, 427 n. 1, 701 A.2d 441, 442 n. 1 (App. Div. 1997); cf. Cobra Products, Inc. v. Federal Ins. Co., 317 N.J. Super. 392, 396, 722 A.2d 545, 547 (App. Div. 1998), certif. denied, 160 N.J. 89, 733 A.2d 494 (1999), the reason for the denial of the request, in that circumstance, should itself be set forth on the record. That being the case, plaintiffs' motion for reconsideration might quite properly have been decided without oral argument, if, for example, that motion on its face did not meet the applicable test for that relief, see Cummings v. Bahr, 295 N.J. Super. 374, 384, 685 A.2d 60, 65-66 (App. Div. 1996), and if that substantive shortcoming were given as the reason for denying oral argument. Raspantini v. Arocho, 364 N.J. Super. 528, 531-32 (App. Div. 2003).

Raspantini has been cited with approval in additional Appellate Division decisions. See, Personal Serv. Ins. Co. v. Relievus, 455 N.J. Super. 508, 511 n.2 (App. Div. 2018) (“[U]nder Rule 1:6-2, the trial court has the discretion to dispense with oral argument on substantive issues where the record provides all that is necessary to make a decision on the issue presented.”); Clarksboro, LLC v. Kronenberg, 459 N.J. Super. 217 (App. Div. 2019). The court finds that oral

argument in connection with reconsideration of the subject motion is not warranted as the record provides all that is necessary to make a decision on the issue presented.

As stated above, defendant, Teaneck Board of Education fails to present any new evidence, information, or an otherwise compelling argument to justify vacating this court's denial of defendant's motion for summary judgment as it relates to vicarious liability. Defendant, Teaneck Board of Education does not meet the requisite standard for reconsideration, pursuant to R. 4:42-2. Thus, for the reasons stated above, defendant, Teaneck Board of Education's motion for reconsideration is **DENIED**.