SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3052-15T4

EVELYN SEDA LEQUERICA and
STEVE A. LEQUERICA,

Plaintiffs-Appellants,

v.

METROPOLITAN YMCA OF THE ORANGES
and CAROL D. SCANLON,

Defendants-Respondents,

and

CAROL DE SCAGLIONE and
YOUNG MEN'S AND YOUNG WOMEN'S
HEBREW ASSOCIATION OF NORTH JERSEY,

Defendants.

Argued March 29, 2017 – Decided April 21, 2017

Before Judges Fuentes, Simonelli and Carroll.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Docket No. L-0099-15.

Raymond S. Vivino argued the cause for appellants (Vivino & Vivino, attorneys; Mr. Vivino, on the briefs).

Paul Daly argued the cause for respondents (Hardin, Kundla, McKeon & Poletto, P.A.,

attorneys; Mr. Daly, of counsel and on the brief; Jennifer Suh, on the brief).

PER CURIAM

Plaintiff Evelyn Seda Lequerica[1] was injured when she fell and hit her head on a concrete wall while participating in a fitness class at defendant Metropolitan YMCA of the Oranges (YMCA) that was taught by defendant Carol Scanlon. Before the close of discovery, defendants moved for summary judgment, contending that: (1) they were entitled to the protections afforded by the Charitable Immunity Act (CIA), N.J.S.A. 2A:53A-7 to -11; and (2) plaintiff could not establish a prima facie case of negligence. The trial court found the CIA did not bar plaintiff's claim, but dismissed the action because plaintiff failed to establish that defendants were negligent. The court subsequently denied reconsideration. We conclude that consideration of the summary judgment motion was premature, as additional discovery was necessary to develop both plaintiff's negligence claim and defendants' CIA defense. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

[1] The complaint contained a per quod claim by her husband Steve A. Lequerica. Because his claim is derivative only, the singular term "plaintiff" is used herein to refer to Evelyn Seda Lequerica.

I.

We recite the facts found in the summary judgment record. We view all facts in a light most favorable to plaintiff. Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014).

Defendant YMCA is a non-profit organization, as defined in § 501(c) of the Internal Revenue Code (IRC). 26 U.S.C.A. § 501(c)(3) (exempting from taxation the earnings of corporations "organized and operated exclusively for religious, charitable, . . . literary, or educational purposes," subject to stated restrictions). Plaintiff became a member of the YMCA in or about 2011, and paid an $89 monthly membership fee. She made regular use of the YMCA's fitness facility, had previously attended fitness classes taught there by Scanlon, and was familiar with the layout of the gym and the workout space.

On April 23, 2012, plaintiff took part in a group strength and conditioning class taught by Scanlon at the YMCA. It was the first time plaintiff participated in this particular program, and she certified she was not screened in terms of her physical condition or fitness, but "simply walked into the class." Scanlon led a warm-up and gave a "very short instruction" before beginning the session. Scanlon instructed the class to "back pedal away and run toward[] a wall that had some padding," touch the wall, and then "run back to the wall" where they started. On her return,

plaintiff realized she was going too fast, and when she tried to stop she fell forward and hit her head "extremely hard" on the concrete wall in front of her. While running toward the wall, plaintiff was competing with a friend to see who could reach it first. Before she fell, plaintiff put her arm out in front of her friend in an effort to beat her to the wall. Plaintiff testified she was running so fast she felt she would not be able to stop at the wall, that she "tr[ied] to stop [herself]," and that ultimately, she "tripped."

Plaintiff briefly lost consciousness and was taken by ambulance to the hospital. She suffered a concussion, a large scalp laceration, and a left wrist fracture. She certified that she continues to have residual pain, physical restrictions, balance deficits, left arm pain and numbness, headaches, hearing loss in her left ear, and memory and concentration loss. Plaintiff, a physician, was fifty-eight-years old when the incident occurred. She expressed concern that these conditions, and especially her short-term memory loss, may prevent her from effectively treating her patients if she resumes employment.

Scanlon testified at her deposition that she began working in the fitness field around 2008, when she obtained a "Group Power" certification from Body Training Systems, a licensed company that teaches group fitness classes in different levels and formats.

The course cost $500 and involved three days of training. Approximately a year later, she obtained a General Group Fitness certification. These certifications allow Scanlon to teach group classes involving kickboxing, cardio, sculpting, or any class involving weights or equipment. She began instructing at the YMCA in 2010, after applying and being interviewed by the YMCA's group fitness manager. She was paid $35 per each one-hour class she taught there.

Scanlon indicated she received no specific training from the YMCA at any time and, generally, no YMCA staff member oversaw her class. There were, however, bimonthly meetings that fitness instructors were required to attend. The purpose of these meetings was to discuss attendance and ways to better the classes, and they did not include any additional training.

At some point, YMCA management asked Scanlon to develop an afternoon class that "would draw in a variety of people with a variety of different needs from fit people to non-fit people." The class Scanlon taught at the time of plaintiff's injury focused on building strength, endurance, and speed. There were no restrictions on who could take the course, and participants were not required to sign up in advance. Scanlon did not assess the participants' fitness for the class, nor give them any written instructions about it. The YMCA instructed Scanlon on how to

prepare the room for the course, but did not require her to maintain an inspection log.

Eight to ten persons attended the class the day plaintiff was injured. Scanlon testified she did not remember any specifics about the instructions she gave the participants, and that plaintiff "seemed to strike the wall in front of her" while running forward. She described the incident as follows:

> [The participants] were running in a line toward[] the wall and [plaintiff] was trying to get ahead of her friend who was running next to her. They were all laughing and joking, but it was competitive, so she put her arm out to try to push the other lady to prevent her from getting ahead of her, almost to not let her beat her, and when she did that, she tripped over her feet, it appeared, and she fell forward.

Plaintiff filed her initial complaint on January 8, 2015, followed by an amended complaint on February 18, 2015, asserting claims against defendants for negligence; nuisance; violation of Occupational Safety and Health Administration (OSHA) and other codes, statutes, and ordinances; and willful, wanton, and reckless misconduct. On October 23, 2015, defendants moved for summary judgment on the basis that they were entitled to immunity under the CIA, and that plaintiff could not establish a prima facie case of negligence. Plaintiff opposed the motion, arguing that the YMCA did not qualify for charitable immunity, that material factual

issues precluded summary judgment, and that discovery was incomplete. At the time defendants moved for summary judgment, the discovery end date (DED) was December 12, 2015, and it was then extended automatically to February 12, 2016.

The trial court conducted oral argument on the motion on December 3, 2015. The court reserved decision, and issued an order granting summary judgment on January 8, 2016. In its attached written opinion, the court rejected defendants' CIA defense. It reasoned:

> [I]n examining element two of the [CIA], the [c]ourt must determine whether or not the YMCA was operating exclusively for religious, charitable, or educational purposes. The [c]ourt finds that it was not.
>
> While the YMCA's Mission Statement reads that it is to "enrich the lives of the children, families, and communities [they] serve, through programs that build spirit, mind and body, welcoming all people, in an environment nurturing positive values," the evidence submitted to the [c]ourt by the parties by way of [s]ummary [j]udgment and at oral argument indicates that like the healthcare facility in Kuchera [v. Jersey Shore Family Health Ctr., 221 N.J. 239 (2015)], the YMCA has a hybrid purpose — that of profit — that would prevent it from receiving the immunity that N.J.S.A. 2A:53A-7 provides for.
>
> The YMCA makes its services and facilities available for both members and non-members of the community. In so doing, members and non—members are charged fees for the use of the YMCA's services and facilities.

> For example, there are several membership types that can be purchased from the YMCA, including: individual memberships, family memberships, program memberships, and even "gold card" memberships. Additionally, the YMCA offers a day care facility and a full—time kindergarten, and an afterschool program[,] each with monthly charges. The YMCA offers a variety of other programs . . . including swimming, music, summer camp, and team sports. In addition, the YMCA offers its facility auditorium to host non-member events including dance and theater performances and conference and meeting space. These examples, among others, demonstrate that the YMCA does not clearly operate exclusively for religious, charitable, or educational purposes. Because the YMCA operates dually for profit, it is not entitled to the immunity as set forth in N.J.S.A. 2A:53A-7.

Alternatively, however, relying on Sayers v. Ranger, 16 N.J. Super. 22 (App. Div. 1951), certif. denied, 8 N.J. 413 (1952), the court found that plaintiff assumed the risk of injury by participating in the gym activity. It concluded:

> It is apparent that [p]laintiff has admitted on numerous occasions throughout her deposition that she was running very quickly and could not stop in time before hitting the wall. No evidence has been presented to the [c]ourt that indicates that the instructor of the group fitness class or the YMCA were negligent in any manner or were the proximate cause of [p]laintiff's injuries. While it may have been [p]laintiff's first time taking this particular strength and conditioning class, it was certainly not her first time taking a group fitness class, nor was it her first time in the YMCA's gym. Plaintiff was an active member of the YMCA and took group fitness classes regularly. Plaintiff was familiar

> with the workout space as she regularly took Zumba and Group Power fitness classes in the room where she was injured. Plaintiff, of sufficient intelligence and experience also, appreciated and understood the risk of injury she undertook by running competitively toward[] a wall. There is no indication that the room or wall were in a dangerous or defective condition or that the group fitness instructor or YMCA knew of the dangerous condition and failed to remedy it. Plaintiff failed to establish that [d]efendants have a duty to tell her to run in a gym. Thus, because [p]laintiff has failed to make out a prima facie case [of] negligence, [d]efendant[s'] [m]otion for [s]ummary [j]udgment is granted.

Between the time the summary judgment motion was argued and decided, plaintiff received the report of her liability expert, Neil J. Dougherty, Ed.D. In his report, Dr. Dougherty, citing various authoritative sources, opined that a wall should never be used as a boundary line, goal line, or touching point. "Rather, lines should be drawn [ten] feet from the wall to allow for deceleration. Cones also can be used to mark the deceleration zone." Dr. Dougherty further noted that there were eighteen inches of unpadded space between the floor and the wall of the YMCA facility where plaintiff was injured. This, he stated, violated standards established by the American Society for Testing and Materials, which required that "[p]adding shall be installed no more than [four inches] from the floor." Ultimately, Dr. Dougherty concluded:

> Carol Scanlon conducted an activity wherein the participants were directed to run from wall to wall. Any stumbling or inadvertent contact among the runners in the vicinity of the walls would virtually guarantee an uncontrolled collision with a wall that was insufficiently padded at the lower extremes where it would more likely be contacted by anyone who had fallen. If one were to intentionally create a formula for injury, it would be difficult to do better. This situation is all the more heinous because it could have been so easily avoided. [] Scanlon could simply have used cones or floor tape to mark turning and ending points that were ten or more feet from the walls and reminded the women that, for their own safety, they should decelerate before reaching the walls at the conclusion of the exercise. In so doing, she would have provided ample buffer zones for safe turning and stopping and would have, almost certainly, avoided this accident. I believe that in directing and/or allowing participants in her fitness class to run from wall to wall, [] Scanlon created an unreasonably dangerous condition which directly resulted in the injuries sustained by [plaintiff] on April 23[, 2013].

In the intervening period before plaintiff's counsel received the court's decision, he forwarded Dr. Dougherty's report to defense counsel on January 4, 2016, and to the court on January 13, 2016. After receiving the order and decision, plaintiff timely moved for reconsideration. The court denied the motion without oral argument on February 19, 2016. In a February 24, 2016 amended order, the court wrote: "Plaintiff['s] [m]otion for [r]econsideration is not a valid [m]otion for [r]econsideration.

This is a [m]otion to admit expert reports after the discovery end date and to permit depositions."

Plaintiff now appeals from the January 8, 2016 summary judgment, and the February 24, 2016 order denying reconsideration. Plaintiff argues that summary judgment was prematurely granted; that Dr. Dougherty's expert report establishes a material issue of fact with respect to defendants' negligence that precludes summary judgment; and that the trial court misunderstood the nature of her reconsideration motion and mistakenly believed her expert report was not timely provided. Defendants in turn contend the trial court correctly found that plaintiff failed to establish a prima facie case of negligence. They alternatively assert that the grant of summary judgment should be sustained on the basis of charitable immunity. We address these arguments in turn.

II.

We review a grant of summary judgment de novo, observing the same standard as the trial court. Townsend v. Pierre, 221 N.J. 36, 59 (2015). Summary judgment should be granted only if the record demonstrates 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(c). We 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." Davis, supra, 219 N.J. at 406 (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). If no genuine issue of material fact exists, the inquiry then turns to "whether the trial court correctly interpreted the law." DepoLink Court Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (citations omitted).

A party may file a motion for summary judgment as early as thirty-five days from the service of the complaint. R. 4:46-1. However, summary judgment is generally "inappropriate prior to the completion of discovery." Wellington v. Estate of Wellington, 359 N.J. Super. 484, 496 (App. Div.), certif. denied, 177 N.J. 493 (2003). We seek to provide "every litigant who has a bona fide cause of action or defense the opportunity for full exposure of his [or her] case." Mohamed v. Iglesia Evangelica Oasis De Salvacion, 424 N.J. Super. 489, 498-99 (App. Div. 2012) (citations omitted).

Thus, for example, in Laidlow v. Hariton Mach. Co., Inc., 170 N.J. 602, 619 (2002), the Court reversed a grant of summary judgment and remanded the matter for trial. In doing so, it noted that summary judgment was granted prematurely, as it was awarded before the close of discovery. Id. at 624. On remand, the Court directed that plaintiff be afforded a "reasonable opportunity to

complete discovery[.]" Ibid. Similarly, in Crippen v. Cent. Jersey Concrete Pipe Co., 176 N.J. 397, 409 (2003), the Court reiterated its position that a trial court should not grant a motion for summary judgment when discovery is incomplete. As in Laidlow, Crippen featured an instance in which a party presented evidence that was "highly relevant" to a factual determination in the matter after the summary judgment motion was filed but before the discovery end date. Ibid.

A.

Guided by these standards, we agree with plaintiff that summary judgment on the negligence issue was prematurely granted. Discovery was not yet complete, and it is undisputed that plaintiff served her expert report within the discovery period.

To sustain a cause of action for negligence, a plaintiff must establish: (1) a duty of care; (2) a breach of that duty; (3) proximate causation; and (4) actual damages. Townsend, supra, 221 N.J. at 51. A plaintiff bears the burden of establishing those elements by some competent proof. Ibid. (citations omitted). Negligence must be proved by a plaintiff by a preponderance of the evidence, and it is never presumed. See Myrlak v. Port Auth. of N.Y. and N.J., 157 N.J. 84, 95 (1999).

Here, Dr. Dougherty's report directly spoke to defendants' alleged negligence. Specifically, it asserted that the fitness

class was not properly conducted, and that a ten-foot buffer area should have been maintained so that participants would not sustain injury should they fall while attempting to decelerate, as happened here. Additionally, Dr. Dougherty opined that the injuries plaintiff sustained when she fell and hit the wall could have been prevented or mitigated had the padding on the wall complied with applicable safety standards. We thus conclude it was error for the court to deny plaintiff the opportunity to present this expert evidence, and determine whether it, and any further information developed within the discovery period, established a genuine issue of material fact with respect to defendants' negligence.[2] Ultimately, "[i]t [is] not the court's function to weigh the evidence and determine the outcome but only to decide if a material dispute of fact exist[s]." Gilhooley v. Cty. of Union, 164 N.J. 533, 545 (2000).

In light of our decision that summary judgment was prematurely granted on the negligence issue, we reverse and remand to the

[2] We note that, before receiving the court's decision on the summary judgment motion, plaintiff moved to extend the February 12, 2016 DED. It does not appear this motion was ever specifically decided, presumably because summary judgment was granted. We also decline to address defendants' argument, raised for the first time on appeal, that Dr. Dougherty provided an inadmissible net opinion. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (discussing the limited circumstances in which an appellate court will consider an argument first raised on appeal). Defendants are, however, free to raise this argument on remand.

trial court for further proceedings. The court shall re-open the discovery period and provide the parties with a reasonable amount of additional time to conduct discovery, serve additional expert reports, and complete depositions, followed by such further proceedings as may be scheduled in the normal course.

B.

For the same reason, we conclude the trial court prematurely rejected defendants' contention that they are immune from liability under the CIA. Although the court denied summary judgment on this issue, it is nonetheless properly before us because we review final orders and judgments, rather than the written opinions that support them. Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001).

We begin our analysis of defendants' position by noting that "[t]he CIA serves two primary purposes. First, immunity preserves a charity's assets. Second, immunity recognizes that a beneficiary of the services of a charitable organization has entered into a relationship that exempts the benefactor from liability." Kuchera, supra, 221 N.J. at 247 (citing O'Connell v. State, 171 N.J. 484, 496 (2002)). The CIA provides:

> No nonprofit corporation . . . organized exclusively for religious, charitable or educational purposes or its trustees, directors, officers, employees, agents, servants or volunteers shall, except as

> hereinafter set forth, be liable to respond in damages to any person who shall suffer damage from the negligence of any agent or servant of such corporation, society or association, where such person is a beneficiary, to whatever degree, of the works of such nonprofit corporation, society or association; provided, however, that such immunity from liability shall not extend to any person who shall suffer damage from the negligence of such corporation, society, or association or of its agents or servants where such person is one unconcerned in and unrelated to and outside of the benefactions of such corporation, society or association.
>
> [N.J.S.A. 2A:53A-7(a).]

Importantly, the Legislature declared the provisions of the Act are "remedial"

> and shall be liberally construed so as to afford immunity to the said corporations, societies and associations from liability as provided herein in furtherance of the public policy for the protection of nonprofit corporations, societies and associations organized for religious, charitable, educational or hospital purposes.
>
> [N.J.S.A. 2A:53A-10.]

The Court directly interpreted these provisions, stating:

> This expression of the Legislature's intent is unlike the ordinary language utilized to identify the purposes of remedial legislation. Most often, remedial legislation is interpreted so that it is applied liberally for the benefit of claimants. The Charitable Immunity Act, however, specifies that it is to be "liberally construed" in favor of the protected entities, that is, the charitable institutions that the Legislature has chosen

> to shield, and against the interests of those who would make claims against them.
>
> [P.V. ex rel. T.V. v. Camp Jaycee, 197 N.J. 132, 167 (2008) (citations omitted).]

The scope of immunity under the CIA extends to the buildings and other facilities actually utilized by the charitable organization to fulfill its qualifying purposes. N.J.S.A. 2A:53A-9. Notably, it is the actual use and operation of the facility, rather than its formal designation, that determines whether it serves a charitable purpose. N.J.S.A. 2A:53A-9; see also Kuchera, supra, 221 N.J. at 242 ("Whether a nonprofit organization is entitled to charitable immunity . . . turns on the purpose of the institution, not the use to which the facility is put on any given day."). Further, "[w]hen a non-profit organization undertakes an activity ancillary to its stated charitable purpose, the related function is subject to charitable immunity if the ancillary function is integral to the charitable purpose." Roberts v. Timber Birch-Broadmoore Athletic Ass'n, 371 N.J. Super. 189, 195 (App. Div. 2004).

Immunity is not automatic because an organization declares its purpose as charitable; rather it is "conditional," Schultz v. Roman Catholic Archdiocese, 95 N.J. 530, 551 (1984), and heavily dependent upon the specific facts and circumstances presented when immunity is sought, showing the organization's function is

religious, educational or charitable. To receive the benefit of the affirmative defense of charitable immunity, Rule 4:5-4, an organization bears the burden of demonstrating it was formed for non-profit purposes; organized exclusively for religious, charitable or educational purposes; was promoting such purposes at the time of a plaintiff's injury; and the plaintiff was a beneficiary of the organization's charitable works. O'Connell, supra, 171 N.J. 484, 489 (2002); Snyder v. Am. Ass'n of Blood Banks, 144 N.J. 269, 305 (1996).

With respect to the first prong, here there is no dispute the YMCA was formed as a non-profit corporation and retains non-profit status for federal income tax purposes. Yet, an organization's non-profit status "does not automatically qualify it to invoke the defense of charitable immunity[.]" Roberts, supra, 371 N.J. Super. at 194.

Regarding the final, beneficiary prong, because plaintiff was a member of the YMCA, she was entitled to the privileges of general membership and the use of defendant's various facilities and programs. Likely, defendants can satisfy this prong, which the record does not fully develop. Auerbach v. Jersey Wahoos Swim Club, 368 N.J. Super. 403, 413 (App. Div.) (holding a Y.M.C.A.'s recreational services "bear[s] a 'substantial and direct relationship' to [its] 'general purpose'" (first alteration in

original) (quoting Loder v. St. Thomas Greek Orthodox Church, 295 N.J. Super. 297, 303 (App. Div. 1996))), certif. denied, 180 N.J. 458 (2004).

In the present case, the trial judge concluded the YMCA was not organized "exclusively for religious, charitable or educational purposes," N.J.S.A. 2A:53A-7. It is upon this discrete issue that our analysis shall now focus.

"Whether a nonprofit entity, whose certificate of incorporation and by-laws provide that it is organized exclusively for charitable, religious, educational, or hospital purposes, actually conducts its affairs consistent with its stated purpose often requires a fact-sensitive inquiry." Kuchera, supra, 221 N.J. at 252 (citing Bieker v. Cmty. House of Moorestown, 169 N.J. 167, 175 (2001)). "What is required is an examination of the entity seeking to clothe itself in the veil of charitable immunity to discover its aims, its origins, and its method of operation in order to determine whether its dominant motive is charity or some other form of enterprise." Parker v. St. Stephen's Urban Dev. Corp., Inc., 243 N.J. Super. 317, 325 (App. Div. 1990).

The phrase "organized exclusively for religious, charitable or educational purposes" has been interpreted broadly, Ryan v. Holy Trinity Evangelical Lutheran Church, 175 N.J. 333, 341 (2003) (quoting N.J.S.A. 2A:53A-7), with the focus of the inquiry

centering "on the essence of the entity itself." Snyder, supra, 144 N.J. at 305 (quoting Parker, supra, 243 N.J. Super. at 327). "Although the overarching character of all three categories is eleemosynary," they are distinct and warrant slightly different analyses. Ryan, supra, 175 N.J. at 343.

Courts have found this analysis simpler where an organization serves solely educational or religious purposes, because religious and educational purposes are specific as to subject matter, but charitable is a "generic" catchall term. Abdallah v. Occupational Ctr. of Hudson Cty., Inc., 351 N.J. Super. 280, 284 (App. Div. 2002). Stated another way: "Both 'educational' and 'religious' have a limited and commonly understood meaning. On the contrary, 'charitable' is a more complex notion that defies precise definition." Ryan, supra, 175 N.J. at 343.

A finding that an entity is organized exclusively for educational or religious purposes obviates further inquiry regarding its finances. Id. at 346; O'Connell, supra, 171 N.J. at 491. "Entities that can prove they are organized exclusively for educational or religious purposes automatically satisfy the second prong of the charitable immunity standard"; that is, "no further financial analysis is required to satisfy the second prong of the Act." Ryan, supra, 175 N.J. at 346. On the other hand, an entity organized for "charitable" purposes requires a reviewing

court to undergo a "source of funds assessment" to discern the charitable purpose was being fulfilled. Ibid.; see also Abdallah, supra, 351 N.J. Super. at 284.

1.

Religious purposes are not narrowly limited to parochial activities by churches. See Ryan, supra, 175 N.J. at 350 (stating a religious organization's purpose is not limited to narrow religious objectives). Associations or societies committed to religious works may qualify and activities by a religious organization not advancing religious tenets, or promoting religion at all, also may be "engaged in its 'good works.'" Id. at 336. The "works" of a church have been broadly defined to include "'the advancement of the spiritual, moral, ethical and cultural life of the community in general.'" Id. at 350 (quoting Bianchi v. S. Park Presbyterian Church, 123 N.J.L. 325, 332-33 (E. & A. 1939)). "The Court recognized in Bieker that some nonprofit associations, such as churches, provide a wide range of services beyond their core purpose." Kuchera, supra, 221 N.J. at 252 (citing Bieker, supra, 169 N.J. at 176). "Such a liberal reading is consistent with the statute." Auerbach, supra, 368 N.J. Super. at 412 (citing N.J.S.A. 2A:53A-10, which mandates the "[A]ct . . . be liberally construed").

Here, the YMCA contends it was formed exclusively for religious purposes. In its 1987 certificate of incorporation, the YMCA's stated purpose "is to develop Christian Character and to aid in building a Christian Society." Earlier cases more clearly highlight the advancement of this purpose. See, e.g., Leeds v. Harrison, 9 N.J. 202, 208 (1952). The current entity, however, appears more secular and the record blurs the relationship between the advancement of Christian values and the YMCA's current instructional programs and offered facilities. The YMCA's Mission Statement presently states it "is a cause-driven organization that is for youth development, healthy living and social responsibility." We are thus unable to conclude on this record that the YMCA's activities exclusively pursue a religious purpose.

2.

The YMCA also argues that it is organized exclusively for educational purposes. The term "education" as used in the CIA broadly defines instructional pursuits, which is not constrained to mean a scholastic institution. Estate of Komninos v. Bancroft Neurohealth, Inc., 417 N.J. Super. 309, 320 (App. Div. 2010); see, e.g., Kain v. Gloucester City, 436 N.J. Super. 466, 480 (App. Div.) (noting it was undisputed the defendant was "incorporated as a nonprofit organization . . . for the purpose of providing maritime education" qualifying it as a charitable organization

under the Act), certif. denied, 220 N.J. 207 (2014); Roberts, supra, 371 N.J. Super. at 194 ("[The defendant]'s purpose of teaching and promoting good citizenship and sportsmanship and assembling teams and groups for participation in sports qualifies it as a non-profit organization within the scope of the charitable immunity statute."); Bloom v. Seton Hall Univ., 307 N.J. Super. 487, 491-92 (App. Div.) (concluding operation of on-campus pub did not alter fundamental educational nature of college as educational institution), certif. denied, 153 N.J. 405 (1998)); Morales v. N.J. Acad. of Aquatic Scis., 302 N.J. Super. 50, 54 (App. Div. 1997) ("A non-profit corporation may be organized for 'exclusively educational purposes' even though it provides an educational experience which is 'recreational' in nature." (citation omitted)); Rupp v. Brookdale Baptist Church, 242 N.J. Super. 457, 465 (App. Div. 1990) (noting utilization of crafts and games to "foster sportsmanship, honesty and creativity" did not thwart educational purpose); Pomeroy v. Little League Baseball of Collingswood, 142 N.J. Super. 471, 474 (App. Div. 1976) (concluding organization designed to advance "good sportsmanship, honesty, loyalty, courage and reverence . . . through the teaching and supervision of baseball skills" qualified for immunity under the CIA).

Non-profit organizations exclusively dedicated to religious or educational purposes are afforded "substantial latitude in determining the appropriate avenues for achieving their objectives." Bloom, supra, 307 N.J. Super. at 491. Thus, engaging in other activities or services will not necessarily "eviscerate[]" charitable status "as long as the services or activities further the charitable objectives the [entity] was organized to advance." Kuchera, supra, 221 N.J. at 253 (citing Bieker, supra, 169 N.J. at 176). Therefore, our analysis mandates a review of the extent and nature of non-educational activities, and requires we differentiate between whether they have supplanted or furthered the educational objectives of the organization.

On the present record, we are not in a position to compare the extent of the educational programs against the whole of the YMCA's activities to discern if education is the dominant purpose of its organization, or to examine the relationship of the gym facility and the fitness classes to the organization's asserted educational purposes. We conclude the parties should be allowed to complete discovery in order to further develop their positions with respect to whether the YMCA's activities qualify as exclusively educational as that term is construed under the CIA.

3.

We likewise determine the record is incomplete as to whether the YMCA is otherwise organized exclusively for charitable purposes. As we have noted, a "source of funds assessment" is necessary in analyzing the dominant motive of the entity's operations. See Abdallah, supra, 351 N.J. Super. at 284 ("[W]here a non-profit, non-religious, non-educational organization relies on the immunity based on its asserted charitable status, a traditional analysis as exemplified by Parker, which looks beyond the organization's non-profit structure and social service activities, continues to be mandated.").

An organization's efforts, either by the dedication of donations or other programs of charitable solicitation, must be shown to further a charitable purpose that lessens a government burden. Courts must examine the entity's "aims, its origins, and its method of operation in order to determine whether its dominant motive is charity or some other form of enterprise." Parker, supra, 243 N.J. Super. at 325; Abdallah, supra, 351 N.J. Super. at 284. To accomplish this, the court scrutinizes the organization's charter, daily operations, relationship to other entities, the extent to which an organization lessens a burden on the government, and its operational funding. See Allen v. Summit Civic Found., 250 N.J. Super. 427, 433 (Law Div. 1991) (holding

although defendant non-profit organization's certificate of incorporation set forth a charitable purpose, immunity was not granted because it received no gifts, was not supported through charitable contributions, and did not make charitable contributions or perform charitable services); Beicht v. Am. Polish Veterans, Inc., 259 N.J. Super. 79, 82 (Law Div. 1992) (denying charitable immunity to a fraternal organization because "[f]raternal societies or those organizations whose purpose is to promote the welfare of their members are benevolent, but not charitable").

The distinction of whether an entity's dominant purpose was "charity or another form of enterprise," is revealed through its receipts. If significant charitable donations are designated for the organization's charitable purpose, immunity will attach even if receipts are also raised from non-charitable activity. Bieker, supra, 169 N.J. at 178-79; Komninos, supra, 417 N.J. Super. at 323-25 (concluding one million dollars in charitable contributions significant to charitable status despite it being a small percentage of overall organizational revenue); Bixenman v. Christ Episcopal Church Parish House, 166 N.J. Super. 148, 151-52 (App. Div. 1979) (finding that a church did not lose its charitable immunity by leasing the church premises for a nominal fee to a church of a different denomination).

Here, at oral argument before the trial court, plaintiff's counsel pointed out that the YMCA had yet to produce in discovery information about how much revenue it derives from its membership fees and other activities, which include the fitness center, a pool, daycare facility, and other programs, as opposed to revenue derived from fundraising and government grants. Defendants' counsel confirmed he was still attempting to obtain that documentation, and further indicated that the deposition of an appropriate YMCA representative had not yet been conducted. In the absence of this information, the trial court was not in a position to conduct an evidentiary review to determine what revenue the YMCA derives from charitable contributions and what it derives from "commercial" type services offered to the general public.

In summary, we conclude that a remand is also necessary to allow the parties to complete discovery on defendants' affirmative defense of charitable immunity. Upon completion of such discovery, either party may bring a new motion for summary judgment. "Where there are no disputed material facts, the determination of charitable immunity is a question of law for the court to decide." Roberts, supra, 371 N.J. Super. at 197. If necessary, the court shall conduct an evidentiary hearing on whether the YMCA is organized exclusively for religious, educational, or charitable purposes as those terms are construed for purposes of conferring

immunity under the CIA. See, e.g., Barblock v. Barblock, 383 N.J. Super. 114, 124 (App. Div.) (requiring a plenary hearing on a motion presenting genuine issues of material fact that bear on a critical question), certif. denied, 187 N.J. 81 (2006).

III.

Finally, we agree with plaintiff that the trial court erred in denying reconsideration. This issue requires only limited discussion.

The decision to grant or deny a motion for reconsideration is addressed to the motion judge's sound discretion. Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 462 (App. Div.), certif. denied, 174 N.J. 544 (2002); D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). "Motions for reconsideration are granted only under very narrow circumstances[.]" Fusco, supra, 349 N.J. Super. at 462. Reconsideration is reserved for those cases where "either (1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Ibid. (quotation and citations omitted).

> Alternatively, if a litigant wishes to bring new or additional information to the [c]ourt's attention which it could not have provided on the first application, the [c]ourt should, in the interest of justice (and in the exercise

> of sound discretion), consider the evidence. Nevertheless, motion practice must come to an end at some point, and if repetitive bites at the apple are allowed, the core will swiftly sour.
>
> [Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996) (citations omitted).]

Here, plaintiff had not yet received Dr. Dougherty's expert report when defendants' summary judgment motion was filed and argued. After the motion was decided, plaintiff promptly moved for reconsideration. The court, in the exercise of its reasoned discretion and the interest of justice, should have considered this additional information, especially since there is no dispute the discovery period had not yet ended. In denying the motion, the court found that plaintiff sought to admit the expert report after the DED. This decision is clearly erroneous, and mandates reversal of the February 24, 2016 order.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.