SYLLABUS

This syllabus is not part of the Court's opinion. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Court. In the interest of brevity, portions of an opinion may not have been summarized.

J.H. v. R&M Tagliareni, LLC (A-6-18) (081128)

Argued March 26, 2019 -- Decided July 31, 2019

FERNANDEZ-VINA, J., writing for the Court.

The Court considers whether liability should be imposed on a landlord based on a theory of regulatory responsibility over an apartment building's heating system, or based on a new common law duty to cover an apartment unit's radiator with insulating material.

On March 30, 2010, a nine-month-old infant, J.H., suffered permanent scarring when he was burned by an uncovered, free-standing cast iron loop radiator in an apartment owned and managed by defendants R&M Tagliareni, LLC, and Robert & Maria Tagliareni, II, LLC. J.H.'s father placed J.H. in a twin bed to sleep with his ten-year-old stepsister. The bed did not have rails and was adjacent to a steam-heated radiator that did not have a cover. The next morning, J.H. was discovered lying on the floor with his head pressed against the hot radiator.

As a result of the seriousness of J.H.'s injuries, the Hudson County Prosecutor's Office launched a child abuse investigation. Detectives spoke with the building's superintendent, who explained that while the individual apartments were not equipped with thermostat controls, the radiators in each room of the apartments could be shut off by the tenants through valves located at the base of each radiator unit.

J.H. and his guardian ad litem filed suit, alleging defendants' negligence was the cause of J.H.'s injuries. At his deposition, Robert Tagliareni testified that none of his tenants at the property were ever burned by coming into contact with a radiator, and none ever asked for a radiator cover or complained about not having one. Tagliareni testified that his building had been inspected both by state agencies and by insurance companies, but he had never been cited for the absence of radiator covers.

Defendants' apartment building is inspected by the Bureau of Housing Inspection, part of the Department of Community Affairs (DCA), for compliance with the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 to -28, and the Regulations for Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10-1.1 to -29.1. Myles Pryor, an inspector for the Bureau, inspected defendants' apartment building and its individual units in 2010.

Pryor testified that he has seen radiators that do not have any sort of radiator cover on them and that he would not issue a violation to a property owner for not having covers on radiators. Based on his training as a housing inspector, Pryor testified that it is his understanding that there is no requirement under the Hotel and Multiple Dwelling Law that radiators be covered.

The trial court granted defendants' motion for summary judgment, holding that defendants did not owe a common law duty of care to place a cover on the apartment's radiator and were not required by a regulation that governs "heating systems,, -- N.J.A.C. 5:10-14.3(d) -- to cover the radiator with insulating material. The Appellate Division reversed, concluding that, under the common law, defendants maintained sufficient control over the heat emanating from the radiator such that a duty of care was owed to J.H. Regarding the regulatory issue, the Appellate Division concluded that plaintiffs should be allowed to argue at trial that N.J.A.C. 5:10-14.3(d) imposed a duty of care upon defendants, and that the duty was breached. The Court granted defendants' petition for certification. 235 N.J. 213 (2018).

HELD: The Court is unpersuaded that N.J.A.C. 5:10-14.3(d) imposes any regulatory duty on landlords to cover in-unit radiators with insulating material or a cover. The regulatory scheme provides no evidence of an express or implied intent to include radiators as part of the "heating system,, required to be insulated. Having concluded that no such regulatory duty has been imposed, and because the tenants in this case maintained exclusive control over the heat emanating from the radiator, the Court declines to impose on landlords a new common law duty to cover all in-unit radiators.

1. Within the DCA, the Bureau of Housing Inspection administers the Hotel and Multiple Dwelling Law, to which any multi-dwelling building containing three or more apartments is subject. The Law confers broad authority upon the Commissioner of Community Affairs to regulate the construction and maintenance of hotels and multiple dwellings. N.J.S.A. 55:13A-7 (emphasis added) provides that "[a]ny . . . regulations issued and promulgated by the [C]ommissioner pursuant to this section shall provide standards and specifications for such maintenance materials, methods and techniques . . . and such other protective equipment as the [C]ommissioner shall deem reasonably necessary to the health, safety and welfare of the occupants or intended occupants of any units of dwelling space in any hotel or multiple dwelling . . . .,, The regulations therefore define with the force of law, see N.J.S.A. 55:13A-7, -9(a), the minimum standards for safety and habitability in multiple dwellings. (pp. 14-17)

2. At issue in this appeal is the application of a regulation contained in the Regulations for Maintenance of Hotels and Multiple Dwellings, which provides as follows with respect to an owner or landlord's specific responsibility concerning the heating system: "The heating system, including such parts as heating risers, ducts and hot water lines, shall be covered with an insulating material or guard to protect occupants and other

persons on the premises from receiving burns due to chance contact.,, N.J.A.C. 5:10-14.3(d) (emphases added). And N.J.A.C. 5:10-14.7(a) (emphasis added) provides that the heating system as herein defined shall be inspected annually.,, On the other hand, the regulatory scheme calls for in-unit inspections of dwellings only every five years. N.J.A.C. 5:10-1.10(a)-(b). (pp. 17-18)

3. A plain reading of the text of N.J.A.C. 5:10-14.3(d) reveals that the DCA did not include radiators in the regulation's list of items that must be covered with insulating material or a guard. Although "heating system,, is not otherwise detailed, the list of what it includes -- besides the unstated but obvious heating source itself -- mentions only heating risers, ducts, and hot water lines. The items listed are all of a kind -- they are beyond the control of the end user and are in the exclusive control of the landlord. Had the DCA determined that radiators required covering, the agency possessed the knowledge and expertise to include them in N.J.A.C. 5:10-14.3(d), and could have easily done so. There is no cause to attribute the absence of the term "radiator,, to anything other than the DCA's reasoned determination not to impose under this regulation any requirement that radiators be covered. Even if the regulation were ambiguous, the canons of construction lead to the same conclusion -- radiators need not be covered under N.J.A.C. 5:10-14.3(d). If in-unit radiators are included in the definition of "heating system,,, the DCA would need to include radiators when inspecting annually under N.J.A.C. 5:10-14.7. The trial court did not err in taking into account Pryor's testimony that he would not issue a violation for not having covers on radiators. (pp. 18-24)

4. Turning to the common-law claim, the Court notes that, in the landlord-tenant context, a landlord has a duty to exercise reasonable care to guard against foreseeable dangers arising from use of those portions of the rental property over which the landlord retains control. The Appellate Division concluded that defendants maintained control over the radiator, relying heavily on Coleman v. Steinberg, 54 N.J. 58 (1969). That reliance is misplaced. The duty imposed in Coleman was to require insulation on a heating system's up-pipe -- which was below the control valve on that radiator such that the control valve did not regulate its temperature. The Court thus found that the up-pipe was within the landlord's control. Here, the tenants' radiator was equipped with a control valve that allowed the tenants to regulate the heat emanating from the radiator. Unlike in Coleman, the radiator's control valve in this case allowed the tenants to determine whether the radiator was on or off, and thus, whether the radiator was hot or cold. The heat emanating from the radiator was therefore solely the result of the tenants' decision to turn on the radiator. That distinction factors into the analysis of fairness in the imposition of a common law duty. Absent control over property or equipment, it violates a sense of fairness to hold a landlord liable for harm caused by an item in the tenant's control. Noting that New York's highest court has declined to impose a duty to cover radiators and that experts in the regulatory area have likewise not imposed any such an obligation, the Court reverses the holding of the Appellate Division judgment that found the existence of a new common law duty. (pp. 24-34)

The judgment of the Appellate Division is REVERSED and the trial court's grant of summary judgment to defendants is REINSTATED.

CHIEF JUSTICE RABNER, dissenting, notes that, in the past decade, thousands of individuals, many of them children, were injured from contact with hot radiators. Landlords have a duty to use reasonable care to guard against foreseeable hazards to tenants that arise from areas within the landlord's control, Chief Justice Rabner observes. More broadly, to assess whether a duty exists under the common law, courts consider the relationship of the parties, the foreseeability and nature of the risk of harm, the opportunity and ability to exercise care, and the public interest; they draw on notions of fairness and common sense to conduct that fact-specific analysis. Based on those principles, in Chief Justice Rabner's view, landlords should have a duty to take reasonable steps to prevent the serious harm that scalding hot radiators can cause. Chief Justice Rabner notes that the DCA's regulations on this point are not entirely clear but at the very least do not preempt a common law duty of care.

JUSTICES LaVECCHIA, PATTERSON, SOLOMON, and TIMPONE join in JUSTICE FERNANDEZ-VINA'S opinion. CHIEF JUSTICE RABNER filed a dissent, in which JUSTICE ALBIN joins.

SUPREME COURT OF NEW JERSEY

A-6 September Term 2018

081128

J.H., an infant by his
Guardian Ad Litem, A.R.,
and A.R., individually,

Plaintiffs-Respondents,

v.

R&M Tagliareni, LLC, Robert &
Maria Tagliareni, II, LLC,

Defendants-Appellants.

R&M Tagliareni, LLC, Robert &
Maria Tagliareni, II, LLC,

Defendants/Third-Party Plaintiffs,

v.

J.H., Sr., V.H. and
L.C.,

Third-Party Defendants.

On certification to the Superior Court,
Appellate Division, whose opinion is reported at
454 N.J. Super. 174 (App. Div. 2018).

Argued	Decided
March 26, 2019	July 31, 2019

Danielle M. Hughes argued the cause for appellants (Koster, Brady & Nagler, attorneys; Danielle M. Hughes, on the briefs).

John E. Molinari argued the cause for respondents (Blume, Forte, Fried, Zerres & Molinari, attorneys; John E. Molinari and Alexa C. Salcito, on the brief).

Michael J. Epstein argued the cause for amicus curiae New Jersey Association for Justice (The Epstein Law Firm, attorneys; Michael J. Epstein, of counsel and on the brief, and Michael A. Rabasca, on the brief).

JUSTICE FERNANDEZ-VINA delivered the opinion of the Court.

In this appeal, the Court considers whether liability should be imposed on a landlord based on a theory of regulatory responsibility over an apartment building's heating system, or based on a new common law duty to cover an apartment unit's radiator with insulating material.

On March 30, 2010, a nine-month-old infant, J.H., suffered permanent scarring when he was burned by an uncovered, free-standing cast iron loop radiator in an apartment that was owned and managed by defendants, R&M Tagliareni, LLC, and Robert & Maria Tagliareni, II, LLC (collectively, defendants).

On the night of the accident, J.H. was under the supervision of his father, James,[1] who placed J.H. in a twin bed that did not have railings. The bed was adjacent to a radiator that did not have a cover. The next morning, J.H. was discovered lying on the floor with his head pressed against the hot radiator. J.H. was then rushed to a hospital where it was determined that he had third-degree burns on his head, right cheek, and left arm.

J.H. and his guardian ad litem, A.R., acting both on behalf of J.H. and individually (collectively, plaintiffs), filed suit against defendants alleging that their negligence was responsible for J.H.'s injuries. Following discovery, the trial court granted defendants' motion for summary judgment, holding that defendants did not owe a common law duty of care to place a cover on the apartment's radiator. The trial court further held that, based on a plain reading of N.J.A.C. 5:10-14.3(d), radiators are not encompassed by the term "heating system,, and, as a result, the regulation did not require defendants to cover the radiator with insulating material.

The Appellate Division reversed the trial court's summary judgment ruling, concluding that, under the common law, defendants maintained sufficient control over the heat emanating from the radiator such that a duty of care was owed to J.H. as a guest staying in the apartment. According to the

[1] "James,, is a pseudonym used in this opinion to protect the identity of J.H.

Appellate Division, whether that duty was violated was a question for a jury to consider. Regarding the regulatory issue, the Appellate Division concluded that plaintiffs should be allowed the opportunity to argue at trial that N.J.A.C. 5:10-14.3(d) imposed a duty of care upon defendants to prevent the radiator from burning J.H., and that the duty was breached.

After considering the parties' arguments, we are unpersuaded that N.J.A.C. 5:10-14.3(d) imposes any regulatory duty on landlords to cover in-unit radiators with insulating material or a cover. The regulatory scheme provides no evidence of an express or implied intent to include radiators as part of the "heating system,, required to be insulated. Having concluded that no such regulatory duty has been imposed, and because the tenants in this case maintained exclusive control over the heat emanating from the radiator, we decline to impose on landlords a new common law duty to cover all in-unit radiators. We therefore reverse the judgment of the Appellate Division and reinstate the trial court's order granting summary judgment in favor of defendants.

I.

A.

This action arises from the injuries nine-month-old J.H. suffered in a Jersey City apartment managed and owned by defendants. At the time of the

accident, J.H. was under the supervision of his father, James, who was staying at the apartment for the night. James's estranged wife, V.H., lived in the apartment along with her two daughters. At some point in the early morning hours of March 30, J.H. awoke crying in the car seat he was sleeping in. James removed J.H. from the car seat and placed him in a twin bed to sleep with his ten-year-old stepsister.

J.H. was swaddled in blankets to prevent him from falling out of the bed, which did not have rails. The bed was adjacent to a steam-heated cast iron loop radiator. Later that morning, at approximately 6:30 a.m., J.H.'s stepsister found him lying on the floor with his head pressed against the radiator. J.H. was immediately taken to the hospital, where it was determined that he had third-degree burns on his head, right cheek, and left arm, which resulted in permanent scarring. Dr. Hani Mansour advised that due to the severity of J.H.'s burns, J.H. had to have been in direct contact with the radiator for "an extended period of time.,,

As a result of the seriousness of J.H.'s injuries, the Hudson County Prosecutor's Office investigated the apartment as part of a child abuse investigation. While observing the radiator, Detective Andrew Dellaquila noticed a piece of dried skin and dark colored hairs attached to the exterior of the radiator. Thereafter, the investigating detectives spoke with the building's

superintendent, Francisco Nieves. Nieves escorted Detective Dellaquila down to the basement to show him the boiler room, which was locked and under the exclusive control of defendants. Nieves explained that while the individual apartments were not equipped with thermostat controls, the radiators in each room of the apartments could be shut off by the tenants through valves located at the base of each radiator unit.

Police officers arrested James, and he subsequently pled guilty to fourth-degree child abuse or neglect, contrary to N.J.S.A. 9:6-1 and -3.

B.

On October 7, 2014, plaintiffs filed suit against defendants, alleging defendants' negligence was the cause of J.H.'s injuries. Defendants denied the allegations and also filed a third-party complaint against James, V.H., and Linda -- V.H.'s sister[2] -- claiming that they, as tenants, had control over the apartment's heating and were therefore responsible for J.H.'s injuries.

At his deposition, Robert Tagliareni testified that none of his tenants at the property were ever burned by coming into contact with a radiator, and none ever asked for a radiator cover or complained about not having one. Further, he said that he and his property managers never discussed putting covers on

[2] Unbeknownst to defendants, V.H. was subletting the apartment from Linda.

radiators because he said he was never told he needed to do so. Tagliareni testified:

> I'm registered with the Department of Housing and Economic Development in the State of New Jersey. They come in every five years, go through the building from top to bottom. They give you your registration and green card, which I have. The City of Jersey City has . . . been in the apartment from time to time. They do inspections. Code Enforcement. I have never been cited with that. I had inspections from insurance companies, I never was cited with that.

Defendants' apartment building is inspected by the Bureau of Housing Inspection, part of the Department of Community Affairs (DCA), for compliance with the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 to -28, and Regulations for Maintenance of Hotels and Multiple Dwellings, N.J.A.C. 5:10-1.1 to -29.1. Myles Pryor, an inspector for the Bureau, inspected defendants' apartment building and its individual units in 2010.

Pryor testified at his deposition that in order to ensure that hotels and multiple family dwelling units are properly maintained and do not pose a threat to the health and safety of their inhabitants, the Bureau performs inspections every five years. Pryor testified that during the course of his inspections he has seen radiators that do not have any sort of radiator cover on them and that he would not issue a violation to a property owner for not having covers on radiators. Based on his training as a housing inspector, Pryor testified that it is

his understanding that there is no requirement under the Hotel and Multiple Dwelling Law that radiators be covered.

The trial court granted defendants' motion for summary judgment, holding that defendants did not owe J.H. a common law duty to cover the tenants' radiator. Regarding the regulatory duty, the trial court determined that radiators were not meant to be included in the term "heating system,, based on a plain reading of N.J.A.C. 5:10-14.3(d). Plaintiffs appealed.

The Appellate Division reversed the trial court's decision, holding that defendants owed J.H. a duty to cover the radiator because, "under [the] common law and N.J.A.C. 5:10-14.3(d), the radiator was part of the apartment's heating system subject to defendants' control.,, J.H. v. R&M Tagliareni, LLC, 454 N.J. Super. 174, 178 (App. Div. 2018). The Appellate Division concluded that a jury must be allowed "to determine whether defendants breached their duty owed to [J.H.].,, Ibid.

We granted defendants' petition for certification. 235 N.J. 213 (2018). This Court also granted the New Jersey Association for Justice (NJAJ) leave to appear as amicus curiae.

II.

A.

Defendants argue that the Appellate Division erred in determining that N.J.A.C. 5:10-14.3(d) requires landlords to cover all radiators, and that the Appellate Division's interpretation of the regulation "imposes a never before articulated duty on landlords.„ In support of their argument, defendants assert that the DCA, "the very agency responsible for interpreting and enforcing the Hotel and Multiple Dwelling [Law],„ conducted mandatory inspections of defendants' building -- including all dwelling units -- and has repeatedly issued certificates of inspection, indicating that defendants were in compliance with the Regulations for Maintenance of Hotels and Multiple Dwellings, "both before [and] after the subject accident.„

Defendants also argue that the Appellate Division's interpretation of "heating system„ conflicts with the regulatory scheme, which reflects that the DCA did not intend for the term "heating system„ to include radiators.

> If the [DCA] intended radiators to be part of the "heating system„ for the purposes of N.J.A.C. 5:10-14.3(d), then it follows that radiators must also be considered part of the "heating system„ for purposes of N.J.A.C. 5:10-14.7. In that case, all radiators in each individual dwelling unit, as a part of the "heating system,„ would require an annual inspection pursuant to N.J.A.C. 5:10-14.7. However, it is undisputed that the [DCA] does not inspect individual dwelling units on an annual basis. Rather, individual dwelling units and

> whatever radiators they may contain, are only inspected every five years pursuant to N.J.A.C. 5:10-1.10.

Next, defendants contend the Appellate Division erred in holding that defendants retained exclusive control over the heat emanating from the tenants' radiator and therefore owed J.H. a common law duty with respect to the radiator. Defendants maintain that while landlords do provide heat to tenants -- as required by law -- the landlord does not control the amount of heat emanating from a tenant's individual radiator. According to defendants, the radiator in this case was equipped with a valve that was used by the tenants to control the heat coming into their apartment.

Defendants conclude that the radiator in this case "was simply being used for the only purpose for which it was intended[,] and holding landlords liable for a parent's failure to properly supervise an infant is tantamount to making the landlord an insurer of the property, which is clearly contrary to well-settled public policy.„

B.

Plaintiffs argue the Appellate Division properly concluded that the phrase "heating system„ in N.J.A.C. 5:10-14.3(d) encompasses radiators in apartment buildings. Although plaintiffs concede that N.J.A.C. 5:10-14.3(d) does not define the term "heating system,„ plaintiffs contend "it is clear that the term 'system' encompasses all items relating to the functionality of the

heating system.„ Plaintiffs further argue that "[a]lthough the list included in the regulation [does] not specifically state the word 'radiator,' the language of the statute does not indicate that the provided list [is] exclusive, and thus, the list is not exhaustive.„ Plaintiffs assert that the DCA's failure to cite defendants for violating N.J.A.C. 5:10-14.3(d) is "neither dispositive nor relevant,„ and that "[p]lacing considerable weight on the [DCA's] failure to issue a violation and one employee's testimony would produce a result that isn't at all verifiable.„

Regarding the issue of common law duty, plaintiffs assert that the Appellate Division was correct in holding that defendants, not the tenants, maintained control over the radiator's temperature. Plaintiffs argue that their radiator's shut-off valve "does not control the temperature of the heat emanating from [the] radiator; only a thermostat can control the specific temperature setting of a radiator.„

In support of their position, plaintiffs cite to Coleman v. Steinberg, in which the landlord supplied heat to all tenants of the house "through a single-control heating unit,„ and this Court held that the landlord therefore "must be deemed to have retained control of the entire system . . . such as the pipes leading from the furnace throughout the building and connecting with the radiators in the rented apartments.„ 54 N.J. 58, 63-64 (1969). Plaintiffs assert

that, "[s]imilarly, the [defendants] here retained control over the entire heating system because the temperature of the radiator[] stemmed from the building's boiler, which was outside of the [tenants'] control.„ As such, plaintiffs contend that "it would be illogical to conclude that [defendants] did not retain control of the radiator at the time of the incident.„

C.

The arguments presented by NJAJ are similar to those offered by plaintiffs. NJAJ asserts that this Court "should affirm the [A]ppellate [Division]'s determination that N.J.A.C. 5:10-14.3(d) imposes a duty of care on landlords to cover radiators.„ NJAJ argues that "the enactment's plain language and the available extrinsic evidence of the purposes and objectives of the Act and Regulations support the [A]ppellate [Division]'s findings that N.J.A.C. 5:10-14.3(d) applies to radiators and imposed a duty of care on defendants.„ NJAJ asserts that N.J.A.C. 5:10-14.3(d)'s focus is to protect the health and welfare of the residents of New Jersey and that the Appellate Division's inclusion of radiators within its purview "undoubtedly advances the objectives of the Act and Regulations.„

Regarding the alleged common law duty owed by defendants, NJAJ contends that this Court "should clarify and reaffirm a landlord's well-settled common law dut[ies] to exercise reasonable care[,] to prevent reasonably

foreseeable harm[,] and to properly maintain and operate common elements.„ Like plaintiffs, NJAJ relies on this Court's holding in Coleman.

III.

"In reviewing a grant of summary judgment, we 'apply the same standard governing the trial court -- we view the evidence in the light most favorable to the non-moving party.'„ Qian v. Toll Bros. Inc., 223 N.J. 124, 134-35 (2015) (citation omitted). Summary judgment must be granted if "there is no genuine issue as to any material fact challenged and . . . the moving party is entitled to a judgment or order as a matter of law.„ R. 4:46-2(c).

"If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact for purposes of Rule 4:46-2.„ Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995). "While 'genuine' issues of material fact preclude the granting of summary judgment, those that are 'of an insubordinate nature' do not.„ Id. at 530 (first quoting R. 4:46-2; then quoting Judson v. Peoples Bank & Tr. Co. of Westfield, 17 N.J. 67, 75 (1954)). As such, "where the party opposing summary judgment points only to disputed issues of fact that are 'of an insubstantial nature,' the proper disposition is summary judgment.„ Id. at 529 (quoting Judson, 17 N.J. at 75).

In deciding whether the Appellate Division appropriately reversed the trial court's order granting defendants' motion for summary judgment, we are tasked with determining whether radiators are part of a multiple dwelling building's "heating system," that N.J.A.C. 5:10-14.3(d) requires to be covered with insulating material or a guard. We must also determine whether defendants in this case maintained control over the tenants' radiator such that defendants owed J.H. a duty under the common law to cover the radiator with insulating material. We address the scope of the regulation first.

IV.

A.

By way of background, "[t]he [DCA] is a State agency created to provide administrative guidance, financial support and technical assistance to local governments, community development organizations, businesses and individuals to improve the quality of life in New Jersey." About DCA, https://www.nj.gov/dca/about/index.html (last visited July 29, 2019). Within the DCA, the Bureau of Housing Inspection administers the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 to -28.[3]

[3] According to its website, "[t]he Bureau is responsible for ensuring that hotels and multiple-family buildings of three or more dwelling units operating within the State of New Jersey are properly maintained and do not pose a threat to the health, safety and welfare of their residents, nor the community in general."

Any multi-dwelling building containing three or more apartments is subject to the Hotel and Multiple Dwelling Law and its Regulations for Maintenance of Hotels and Multiple Dwellings. N.J.A.C. 5:10-1.1 to -29.1; N.J.S.A. 55:13A-3(k). Enacted in 1967, the Hotel and Multiple Dwelling Health and Safety Law, now known as the Hotel and Multiple Dwelling Law, superseded the Tenement House Act and "provide[d] stronger and more detailed measures than the [Tenement House Act] for the protection of tenants.„ Trentacost v. Brussel, 82 N.J. 214, 230 (1980) (citing Braitman v. Overlook Terrace Corp., 68 N.J. 368, 383 (1975)). The Hotel and Multiple Dwelling Law was

> [d]eemed and . . . declared remedial legislation necessary for the protection of the health and welfare of the residents of this State in order to assure the provision therefor of decent, standard and safe units of dwelling space, [and] shall be liberally construed to effectuate the purposes and intent thereof.
>
> [N.J.S.A. 55:13A-2.]

"The Hotel and Multiple Dwelling Law confers broad authority upon the Commissioner of Community Affairs to regulate the construction and maintenance of hotels and multiple dwellings.„ Rothman v. Dep't of Cmty. Affairs, 226 N.J. Super. 229, 231 (App. Div. 1988). "Most significant is the

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Bureau of Hous. Inspection, https://www.state.nj.us/dca/divisions/codes /offices/housinginspection.html (last visited July 29, 2019).

Legislature's delegation of power to the State Commissioner of Community Affairs to promulgate comprehensive and detailed regulations concerning the condition of a multiple dwelling.„ Trentacost, 82 N.J. at 230. Pursuant to the Hotel and Multiple Dwelling Law, the Commissioner of the DCA is authorized to

> issue and promulgate . . . such regulations as the [C]ommissioner may deem necessary to assure that any hotel or multiple dwelling will be maintained in such manner as is consistent with, and will protect, the health, safety and welfare of the occupants or intended occupants thereof, or of the public generally.
>
> Any such regulations issued and promulgated by the [C]ommissioner pursuant to this section shall provide standards and specifications for such maintenance materials, methods and techniques . . . and such other protective equipment as the [C]ommissioner shall deem reasonably necessary to the health, safety and welfare of the occupants or intended occupants of any units of dwelling space in any hotel or multiple dwelling . . . .„
>
> [N.J.S.A. 55:13A-7 (emphasis added).]

"These 'standards and specifications' represent the [C]ommissioner's expert judgment that the given safeguards are 'reasonably necessary to the health, safety and welfare of the occupants or intended occupants of any . . . multiple dwelling.'„ Trentacost, 82 N.J. at 230 (quoting N.J.S.A. 55:13A-7). "The regulations therefore define with the force of law, see N.J.S.A. 55:13A-7,

-9(a), the minimum standards for safety and habitability in 'multiple dwellings.'„ Ibid.

At issue in this appeal is the application of a regulation contained in the Regulations for Maintenance of Hotels and Multiple Dwellings: N.J.A.C. 5:10-14.3(d). Section 14.3 generally addresses the standards of maintenance for heating. Subsection (a) of the regulation requires "heating equipment, facilities and system and all parts„ to be "kept in good operating condition, free of defects, corrosion and deterioration.„ Heating equipment, undefined, is addressed in subsections (b) and (c). However, subsection (d), which is at issue here, provides as follows with respect to an owner or landlord's specific responsibility concerning the heating system:

> The heating system, including such parts as heating risers, ducts and hot water lines, shall be covered with an insulating material or guard to protect occupants and other persons on the premises from receiving burns due to chance contact.
>
> [N.J.A.C. 5:10-14.3(d) (emphases added).]

N.J.A.C. 5:10-14.7(a) further states:

> The heating system as herein defined shall be inspected annually. Such inspection shall be for the following purposes:
>
> 1. To insure that the system is being maintained in accordance with the standards applicable to the system as of the time of installation;

2. To locate and remove hazards or conditions that may, if not corrected, foreseeably develop into hazards or become violations of these regulations;

3. To confirm the ability of the system to fulfill the heating requirements provided hereunder.

[(emphasis added).]

Thus, the "heating system„ requires insulation and requires inspection access annually for safety and integrity maintenance purposes. On the other hand, the regulatory scheme calls for in-unit inspections of dwellings only every five years. N.J.A.C. 5:10-1.10(a)-(b).

B.

"When it establishes an administrative agency, the Legislature 'delegate[s] the primary authority of implementing policy in a specialized area to governmental bodies with the staff, resources, and expertise to understand and solve those specialized problems.'„ Commc'ns Workers of Am., AFL-CIO v. N.J. Civil Serv. Comm'n, 234 N.J. 483, 514-15 (2018) (alteration in original) (quoting Bergen Pines Cty. Hosp. v. Dep't of Human Servs., 96 N.J. 456, 474 (1984)). We have recognized that the scope of judicial review of an administrative regulation is therefore "highly circumscribed,„ Lower Main St. Assocs. v. N.J. Hous. & Mortg. Fin. Agency, 114 N.J. 226, 236 (1989), and a

reviewing court "will not substitute its judgment for the expertise of the agency.„ Dougherty v. Dep't of Human Servs., 91 N.J. 1, 6 (1982).

A "regulation should be construed in accordance with the plain meaning of its language and in a manner that makes sense when read in the context of the entire regulation.„ Medford Convalescent & Nursing Ctr. v. Div. of Med. Assistance & Health Servs., 218 N.J. Super. 1, 5 (App. Div. 1985) (citation omitted). "Whether construing a statute or a regulation, it is not our function to 'rewrite a plainly-written enactment,' or to presume that the drafter intended a meaning other than the one 'expressed by way of the plain language.'„ U.S. Bank, N.A. v. Hough, 210 N.J. 187, 199 (2012) (quoting DiProspero v. Penn, 183 N.J. 477, 492 (2005)).

In this case, a plain reading of the text of N.J.A.C. 5:10-14.3(d) reveals that the DCA did not include radiators in the regulation's list of items that must be covered with insulating material or a guard. Notably, although "heating system„ is not otherwise detailed, the list of what it includes -- besides the unstated but obvious heating source itself -- mentions only heating risers, ducts, and hot water lines. Those consist solely of component parts integrally related to the heating source and its conveyance of heat to the individual dwelling units subject to the statutory and regulatory scheme. Further, the items listed are all of a kind -- they are beyond the control of the

end user and are in the exclusive control of the landlord. Thus, the express, and plain, language of the regulation reveals that the term "radiator„ was omitted from the regulation's list. Further, the terms that are included describe component parts with a fundamentally different functionality than a radiator.

Had the DCA determined that radiators required covering, the agency possessed the knowledge and expertise to include them in N.J.A.C. 5:10-14.3(d)'s language, and could have very easily done so. We see no cause to attribute the notable absence of the term "radiator„ to anything other than the DCA's reasoned determination not to impose under this regulation any requirement that radiators be covered, unlike the identified heating system parts such as ducts and hot water lines, which are required to be insulated. See Hough, 210 N.J. at 199 (declining, when enforcing the plain language of a regulation, to engage in "conjecture that will subvert [the regulation's] plain meaning„).

The dissent's argument that the DCA did not seek to enter the case as amicus fails to recognize that this Court did not request the DCA to provide its expertise as we have done in numerous cases in the past. Post at ___ (slip op. at 33-34).

C.

Having found that the plain language of N.J.A.C. 5:10-14.3(d) is indicative of the DCA's intent to exclude radiators from the list of items that must be insulated or covered, we need not proceed further. However, even if the regulation's language were ambiguous, application of the canons of construction leads to the same conclusion -- radiators need not be covered under N.J.A.C. 5:10-14.3(d).

The Appellate Division held that the inclusion of a radiator "as part of the apartment's heating system is a logical and sensible interpretation of the regulation's fundamental purpose.„ J.H., 454 N.J. Super. at 187. The Appellate Division further held that the "[t]he regulation clearly seeks to protect tenants and their guests from being burned [by] 'chance contact' with parts of the heating system.„ Ibid. The Appellate Division explained that there is "no part of an apartment's heating system that individuals are more likely to be in contact with than the radiator,„ and concluded that "as a matter of law, plaintiffs can argue at trial that [N.J.A.C. 5:10-14.3(d)] impose[d] a duty of care upon defendants to guard the radiator to prevent it from burning [J.H.], and that the duty was breached.„ Id. at 187-88. We disagree.

When assessing a regulation's intent, "[t]he same rules of construction that apply to the interpretation of statutes guide our interpretation of

regulations.„ Headen v. Jersey City Bd. of Educ., 212 N.J. 437, 451 (2012) (citing Hough, 210 N.J. at 199). "[A]n agency's construction of a statute over a period of years without legislative interference will under appropriate circumstances be granted great weight as evidence of its conformity with the legislative intent.„ Malone v. Fender, 80 N.J. 129, 137 (1979). As this Court explained in Cedar Cove, Inc. v. Stanzione,

> [a]ssistance in interpreting a statute can also be derived from the understanding of the administrative agency charged with enforcing it. The meaning ascribed to legislation by the administrative agency responsible for its implementation, including the agency's contemporaneous construction, long usage, and practical interpretation, is persuasive evidence of the Legislature's understanding of its enactment.
>
> [122 N.J. 202, 212 (1991) (citations omitted).]

This "judicial deference to administrative agencies stems from the recognition that agencies have the specialized expertise necessary to enact regulations dealing with technical matters and are 'particularly well equipped to read and understand the massive documents and to evaluate the factual and technical issues that . . . rulemaking would invite.'„ Guild of Hearing Aid Dispensers v. Long, 75 N.J. 544, 575 (1978) (quoting Bergen Pines Cty. Hosp., 96 N.J. at 474); see also In re Election Law Enf't Comm'n Advisory Op. No. 01-2008, 201 N.J. 254, 262 (2010) (holding that this Court "will defer to an agency's interpretation of both a statute and implementing regulation, within