[Cite as *Bhola v. Northcoast Behavioral Health Care Ctr.*, 2003-Ohio-4012.]

IN THE COURT OF CLAIMS OF OHIO

KENNY BHOLA, Admr.	:	
Plaintiff	:	CASE NO. 98-11553
v.	:	DECISION
NORTHCOAST BEHAVIORAL HEALTH CARE CENTER	:	Judge J. Warren Bettis
Defendant	:	

: : : : : : : : : : : : : : : : :

Plaintiff brought this action against defendant, Northcoast Behavioral Health Care Center (NBHCC), alleging claims of wrongful death and negligence.[1] In a prior decision on the issue of liability, the court granted defendant's Civ.R. 41(B)(2) motion to dismiss following the close of evidence. However, the Tenth District Court of Appeals reversed this court's decision and remanded the case for further proceedings. See *Bhola v. State* (2001), 143 Ohio App.3d 644.

The causes of action arose as a result of the death of plaintiff's decedent, Bhomeshwar Deokarran, at the hands of Damien Corley.[2] Plaintiff alleges that defendant's negligent failure to monitor and supervise the psychiatric care of Deokarran and Corley was the proximate cause of Deokarran's death. The issues of

---

[1] Plaintiff's complaint also named the Ohio State Highway Patrol as a defendant; however, plaintiff dismissed that agency as a party at the June 26, 2000, trial.

[2] Kenny Bhola is the duly appointed administrator for the decedent's estate.

liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

On December 26, 1997, Deokarran was admitted to NBHCC because he had exhibited bizarre behavior and threatened family members with a knife. Dr. Hong Kim, a psychiatrist employed by NBHCC, diagnosed Deokarran as having bipolar disorder with manic and psychotic affects. Dr. Kim determined that Deokarran had a potential for violence and placed him on "assaultive precautions" so that he would be closely monitored by NBHCC staff members.

On December 27, 1997, Damien Corley began to exhibit confused and delusional behavior. Corley informed his father, Matthew Dumas, that he had attended a party where he smoked marijuana laced with Phencyclidine (PCP). Dumas became concerned and arranged for paramedics to transport Corley to a local hospital for treatment. Corley was released from the hospital that same day, and while his sister was driving him home, he grabbed the steering wheel and stepped on the accelerator pedal because he believed that passing motorists were trying to kill him. Dumas took Corley to another hospital where he was evaluated, given medication, and referred to NBHCC for admission.

Shortly before noon on December 28, 1997, Corley was placed in restraints and transported to NBHCC where he was evaluated by Patricia Singleton, a psychiatric nurse. Nurse Singleton determined that Corley exhibited signs of paranoia and was confused but that he was able to follow her directions. Although Singleton testified that she did not consider Corley to be dangerous at the time of his admission, the evaluation notes she made upon admission state that Corley exhibited dangerous behavior and that he was a "danger to others and self." Singleton also noted that Corley was under the influence of PCP and marijuana.

After his son was admitted to defendant's facility, Dumas became concerned that Corley might use his martial arts skills to

harm someone. Dumas called his friend James Robinson, a therapeutic program worker at NBHCC, to warn him and to ask that he warn other hospital staff members. Dumas also testified that he personally called Dr. Kim to warn him about Corley's martial arts skills and to relate his fear that his son would harm hospital personnel.

Several hours after his admission, Corley tried to escape by running headfirst through a plexiglass window on the fifth floor ward. According to a nurse's report, Corley bounced back after striking the window and suffered no apparent injury. Dr. Kim, who was in the area at the time, examined Corley and determined that he was responding to "internal stimuli" during the escape attempt. Dr. Kim ordered that Corley be sedated and placed in four-point restraints in a seclusion room. Because Dr. Kim believed that Corley might try to harm himself, Corley was placed on level one suicide precaution (SP1), which required a hospital employee to monitor him every 15 minutes. Corley was released from restraints after approximately four hours; however, he remained in the seclusion room for several more hours before he was moved to make room for a newly admitted patient. Corley was transferred to Room 550, the same room occupied by Deokarran.

On the morning of December 29, 1997, Charles Seasor, a registered nurse, was assigned to the fifth floor ward. Seasor was required to periodically enter Corley and Deokarran's room because Corley remained on SP1. According to Seasor, Room 550 was the farthest room from the fifth floor nursing station. Seasor knew that the reason Deokarran had previously been restrained and placed on assaultive precautions was that Deokarran had failed to comply with directions from the staff and had been observed entering other patients' rooms. When Seasor entered Room 550 at 5:15 a.m., he had a short conversation with Deokarran while Corley appeared to be sleeping. Seasor testified that the room was dark and that both

Deokarran and Corley were in bed when he looked into the room with a flashlight at 5:30 a.m. and 5:45 a.m.

When Seasor returned at 6:00 a.m., the room was still dark and Corley appeared to be sleeping; however, Seasor discovered Deokarran lying on the floor with his arms, legs, and neck tied to the beds with hospital gowns. Dr. Kim and other staff members responded to Seasor's call for emergency medical assistance. Defendant's staff discovered that Deokarran had sustained severe head trauma and transported him to a hospital where he died a short time later. Corley was charged with Deokarran's murder and was subsequently found not guilty by reason of insanity.

Initially, defendant argues that it is immune from liability, under R.C. 5122.34. R.C. 5122.34[3] provides, in pertinent part: "Persons, including *** mental health services and community mental health agencies, acting in good faith, either upon actual knowledge or information thought by them to be reliable, *who procedurally or physically assist in the hospitalization or discharge, determination of appropriate placement,* or in judicial proceedings of a person under this chapter, do not come within any criminal provisions, and are free from any liability to the person hospitalized or to any other person. ***" (Emphasis added.)

Contrary to defendant's assertion, the Supreme Court of Ohio has held that former R.C. 5122.34 does not immunize mental health

---

[3] Effective September 15, 1999, R.C. 5122.34 was amended by H.B. 71 which abrogated the holdings in *Estates of Morgan*, infra, that had determined that R.C. 5122.34 does not impose a duty upon psychotherapists to protect against or control the patient's violent propensities. Section 3 of H.B. 71 states as follows: "SECTION 3. In amending section 5122.34 and in enacting section 2305.51 of the Revised Code, it is the intent of the General Assembly to respectfully disagree with and supersede the statutory construction holdings of the Ohio Supreme Court relative to section 5122.34 of the Revised Code as set forth in Estates of Morgan v. Fairfield Family Counseling Ctr. (1997), 77 Ohio St.3d 284, under heading G of section I at 304-305, and, thereby, to supersede the second, third, and fourth syllabus paragraph holdings of the Court in that case."

professionals from liability in all contexts. *Estates of Morgan v. Fairfield Family Counseling Ctr.* (1997), 77 Ohio St.3d 284, 304; See, also, *Barker v. Netcare Corp,* 147 Ohio App.3d 1, 2001-Ohio-3975. The court finds that R.C. 5122.34 has no application to the facts of this case because the issues involved do not relate to defendant's participation in a decision to hospitalize, discharge, or provide placement services to patients. Rather, plaintiff asserts that defendant breached its duty to protect Deokarran from a foreseeable and unreasonable risk of harm while he was in defendant's control.

In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Under Ohio law the existence of a duty depends on the foreseeability of the injury. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

Generally, there is no duty to control the conduct of a third person by preventing him from causing physical harm to another. *Littleton v. Good Samaritan Hospital & Health Ctr.* (1988), 39 Ohio St.3d 86, 92. However, an exception to this general rule arises when a special relationship exists between the actor and the third person that imposes a duty upon the actor to control the third person's conduct, or when a special relationship exists between the actor and the other that gives to the other a right to protection. Id. "Such a 'special relation' exists when one takes charge of a person whom he knows or should know is likely to cause bodily harm to others if not controlled." *Littleton*, supra, at 92; 2 Restatement of the Law 2d, Torts (1965) at 129, Section 319; see 2 Restatement of the Law 2d, Torts (1965) at 123, Section 315, Comment c.

In this case, Corley was subject to hospitalization by court order pursuant to an application for emergency admission under R.C. 5122.01(B) because it was determined that he represented a substantial risk of physical harm to himself or others. (Plaintiff's Exhibit 6.) The emergency commitment statement was signed by a physician as required by R.C. 5122.10.

Patients who are committed pursuant to R.C. Chapter 5122 are entitled to certain rights that are enumerated in R.C. 5122.29. This court has previously applied R.C. 5122.29(B)(2) in a case involving a patient at a mental health facility who was assaulted by a fellow patient. See *Hendrickson v. Rollman Psychiatric Institute* (1989), 61 Ohio Misc.2d 76. R.C. 5122.29 provides that: "All patients hospitalized or committed pursuant to this chapter have the following rights:

"***

"(B) The right at all times to be treated with consideration and respect for his privacy and dignity, including without limitation, the following:

"***

"(2) A person who is committed, voluntarily or involuntarily, shall be given reasonable protection from assault or battery by any other person."

A determination of whether defendant breached a duty pursuant to R.C. 5122.29(B)(2) turns upon the issue of foreseeability. See *Hendrickson*, supra. An injury is foreseeable if a reasonably prudent person would have anticipated that an injury was likely to result from the performance or non-performance of the act. *Menifee*, supra at 77. Defendant asserts that the assault that resulted in Deokarran's death was not foreseeable because Corley did not have a history of violence and because defendant's

treatment of Corley met the standard of care for providing mental health services.

To address the psychiatric care that was provided to Deokarran and Corley and the issue of whether Corley's assault on Deokarran was foreseeable, plaintiff presented the expert testimony of Mark Houser, M.D., a practicing psychiatrist. Dr. Houser first testified regarding the symptoms that Deokarran exhibited and the treatment and monitoring that he received at NBHCC. According to Dr. Houser's review of Deokarran's medical records, Deokarran had exhibited signs of depression, agitation, and sleeplessness when he had threatened family members. Dr. Houser noted that Deokarran continued to exhibit similar behavior after his admission to defendant's facility. In Dr. Houser's opinion, Deokarran showed symptoms of mania, including anxious and intrusive behavior towards other patients that resulted in his being restrained and placed on assaultive precautions.

Dr. Houser testified that Corley's assessment upon admission reflected that he suffered from PCP intoxication and a psychotic disorder that was manifested by paranoid symptoms which caused him to develop an irrational fear of harm by others. Dr. Houser explained that the medications that Corley received lessened, but did not resolve, the psychotic symptoms that he experienced; that when the medications were metabolized, his symptoms were likely to reappear. Although Dr. Houser opined that Dr. Kim's treatment was within the standard of care, Dr. Houser also testified that defendant's staff improperly placed Corley with Deokarran and failed to sufficiently monitor them. According to Dr. Houser, room placement is a part of the monitoring strategy and he concluded that Deokarran's death could have been prevented if defendant's staff had properly monitored Corley and Deokarran.

With regard to the psychological effects of PCP, plaintiff offered the expert testimony of Dr. Robert Smith, Ph.D., a licensed

clinical psychologist and certified addiction specialist. Dr. Smith explained that the psychological symptoms related to PCP are similar to the symptoms of schizophrenia and include impulsive, belligerent, disoriented, and paranoid behavior. According to Dr. Smith, the symptoms of PCP-induced psychosis can persist for several weeks, long after the drug has been metabolized. Dr. Smith further explained that PCP psychosis has three phases. During the first phase, the patient is psychotic, highly agitated and may experience hallucinations, delusions, and become belligerent. In the second phase, patients become less agitated, but may exhibit bizarre or assaultive behavior. The third phase is characterized by a resolution of abnormal symptoms and a return to normalcy.

Dr. Smith testified that the difference between PCP-induced psychosis and PCP intoxication is that the latter term refers to a condition during which the user understands that the symptoms are a result of the drug. However, a patient experiencing PCP-induced psychosis "crosses over" and believes that his hallucinations and delusions are real, causing the patient's behavior to become unpredictable.

Dr. Smith determined that Corley's unpredictable and erratic behavior, including his attempt to escape through a window, was consistent with the diagnosis of PCP psychosis. Dr. Smith testified that Corley's paranoia was particularly significant because his belief that others intended to harm him had caused him to act erratically and without warning on two prior occasions. Dr. Smith testified that it is common for PCP abusers to perceive the conduct of others as threatening and to respond with violence when they feel threatened. According to Dr. Smith, there was a high probability that Corley's symptoms would continue after the medication that he had been given had worn off and, for this reason, he should have been closely monitored at all times by

defendant's staff. Dr. Smith opined that Corley's PCP-induced psychosis contributed to the attack on Deokarran.

Defendant's expert, Jeffrey Janofsky, M.D., a board-certified psychiatrist, testified that the medications that were given to both Deokarran and Corley were within the standard of care for treating their symptoms. Although Dr. Janofsky noted that Corley had not expressed any suicidal intent and had not tried to harm himself, he was not critical of Dr. Kim's decision to place Corley on SP1. In Dr. Janofsky's opinion, there was no indication that Corley had threatened anyone in the hospital and it was not foreseeable that he would become involved in an altercation. Dr. Janofsky also testified that Corley's martial arts training did not result in an increased risk of violence.

Stephen Noffsinger, M.D., defendant's forensic psychiatrist, provided expert testimony by deposition. Dr. Noffsinger agreed with Dr. Janofsky's opinion that Corley's martial arts skills did not make him more likely to engage in violent behavior. Although Dr. Noffsinger agreed with Dr. Smith's opinion that the presence of psychotic indicators such as paranoia, hallucinations, and delusions increase the risk of violence, Dr. Noffsinger opined that Corley's assault on Deokarran was unforeseeable. Dr. Noffsinger acknowledged that defendant's staff had some concern about Deokarran harassing other patients and that he was placed on assaultive precaution based upon a diagnosis of his symptoms. Dr. Noffsinger explained that the respective psychological assessment of each patient was taken into consideration in making the nursing decision to place Deokarran and Corley in the same room.

With regard to defendant's awareness of Corley's psychological symptoms, the medical records establish that Corley experienced delusions and hallucinations which caused him to act in a bizarre and dangerous manner. Although Dr. Noffsinger testified that Corley's psychosis could have been either drug-induced or due to

some other psychotic disorder such as schizophrenia, the court finds that there is no evidence that Corley had any history of psychotic behavior prior to his use of PCP. The court finds that the behavior that is documented in Corley's medical records is consistent with the behavior that Dr. Smith described as typical of PCP-induced psychosis. The court also finds Dr. Smith's testimony to be persuasive regarding Corley's unpredictable behavior in reaction to his hallucinations and delusions. The court concludes that the evidence and expert testimony support a finding that Corley suffered from symptoms of PCP-induced psychosis.

When Corley was admitted to defendant's facility, one of defendant's physicians also determined that Corley represented "a substantial risk of harm to himself or others." (Plaintiff's Exhibit 6.) Dr. Kim decided to place Corley on SP1 based upon a determination that he might try to harm himself. The expert witnesses agreed that Dr. Kim's treatment of Corley fell within the standard of care for providing mental health services. Although defendant asserts that Corley had not exhibited any violent tendencies prior to the incident, Dr. Ciccone, M.D., defendant's own expert, conceded that individuals who are under the influence of PCP combined with THC, a chemical derivative of marijuana, are more likely to become aggressive or violent towards others. Dr. Ciccone also testified that patients who are under the influence of PCP are often segregated from the general population in mental health facilities and placed in a "calm, safe environment." The medical evidence establishes that defendant's employees knew that Corley was under the influence of PCP and THC. Furthermore, the court finds that Corley had displayed violent and dangerous behavior by punching and kicking the door at a police station, grabbing the steering wheel while he was a passenger in his family's car, and attempting to escape by running headfirst into a plexiglass window.

The experts also agreed that defendant's employees acted reasonably when they medicated, restrained, and secluded Corley after he had attempted to escape. However, plaintiff asserts that defendant failed to assess Corley's condition before releasing him from seclusion and assigning him to share a room with Deokarran. Defendant's expert, Dr. Noffsinger, conceded that the increased risk of violence associated with Corley's PCP use would continue as long as the drug remained in his system. Furthermore, defendant did not dispute Dr. Smith's opinion that PCP-induced psychosis can continue for weeks after the drug is ingested. Dr. Smith was particularly critical of the decision to remove Corley from isolation and room him with another patient because Dr. Smith believed that Corley's psychotic symptoms would recur after his medication began to wear off. Given Corley's history of psychotic and violent behavior, the court finds that Corley remained a danger to himself and others after he was released from seclusion and that defendant had a duty to closely monitor him and his interactions with other patients.

Indeed, the court finds that defendant had a heightened duty to monitor Corley in light of its decision to place him in a room with a patient who was on assaultive precautions. Although Corley's martial arts training did not make him more likely to engage in violence, his training did make him a more dangerous opponent in the event of an altercation. Furthermore, the court finds that it was foreseeable that Corley would pose a danger to Deokarran in the event that he was not properly monitored.

Plaintiff also contends that defendant's employees failed to follow defendant's own procedures for monitoring patients on SP1. When Corley was released from seclusion and placed in a room with Deokarran, he was still on SP1 which required defendant's employees to observe him every 15 minutes. According to Dr. Smith, the applicable standard of care required defendant's employees to

constantly monitor Corley, keeping him within their sight or hearing at all times. Defendant's own expert, Dr. Janofsky, testified that it would be a "violation of the standard of care" if Seasor did not check on the room between 5:30 a.m. and 6:00 a.m. However, even assuming that a 15-minute interval between observations was reasonable, the evidence established that Corley was not observed every 15 minutes.

Trial testimony revealed that Room 550, the room to which Corley and Deokarran were assigned, was located at the end of a hallway approximately 90 feet from the nursing station. Therefore, staff members could not effectively monitor the patients in Room 550 from the nursing station. Nurse Seasor was the only nurse making rounds on the fifth floor ward on the night of the assault, while a co-worker, Nurse Jones, remained at the nursing station. According to Seasor, neither he nor Jones noticed anything unusual prior to 6:00 a.m.

Seasor's account of his actions on the night in question was inconsistent with other testimony and evidence presented at trial. On December 29, 1997, Ohio State Highway Patrol Trooper T. P. Halligan interviewed Charles Walters, a patient on the fifth floor ward. Walters informed Trooper Halligan that at approximately 12:30 a.m. on the morning of the incident, he observed a male staff member who appeared to be sleeping in the ward "TV room." Although Walters did not know the staff member's name, the description he provided resembled that of Nurse Seasor. According to Walters' statement, the staff member was still asleep at the same location when Walters returned at approximately 4:00 a.m. However, Seasor testified that he did not sleep while he was on duty and that he checked on Corley and Deokarran every 15 minutes between 5:15 and 6:00 a.m.

Furthermore, Seasor's shift notes were inconsistent with a statement that Velnora Wiggins, a therapeutic program worker at

NBHCC, gave to Trooper Halligan. According to Wiggins, at approximately 2:30 a.m., Deokarran was "anxious" when he returned from having a cast on his fractured arm replaced. Wiggins' statement that Deokarran "paced back and forth" in the hallway for over an hour before he returned to his room contradicts Seasor's statement in his shift notes that Deokarran slept the balance of the night after his return from having his cast replaced at MetroHealth Medical Center. The court concludes that Seasor's testimony that he observed Deokarran and Corley every 15 minutes on the morning of the incident was not credible.

Moreover, the nature and severity of the attack on Deokarran suggests that the assault began prior to 5:45 a.m. Deokarran was discovered bound with hospital gowns and severely beaten 15 minutes after Seasor claims to have used his flashlight to observe both Deokarran and Corley sleeping in their dark room. Nurse Harry McKee responded to the emergency code within seconds after it was called at approximately 6:00 a.m. McKee testified that Deokarran's arms, legs, and neck were tied to the bed frames with hospital gowns and that he was lying face down in blood, some of which had dried on Deokarran's face. Considering the totality of the circumstances, the court finds that it is inconceivable that the attack was initiated and then completed within 15 minutes.

Having determined that Corley remained a danger to others when he was released from seclusion and that defendant's employees failed to properly monitor him after assigning him to share a room with Deokarran, the court concludes that defendant breached its duty to provide Deokarran with reasonable protection from assault by another patient. Accordingly, judgment shall be rendered in favor of plaintiff.

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set

forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff in an amount to be determined after the damages phase of the trial. The court shall issue an entry in the near future scheduling a date for the trial on the issue of damages.

_____
J. WARREN BETTIS
Judge

Entry cc:

Gordon Friedman — Attorneys for Plaintiff
Bradley L. Greene
1370 Ontario Street, Suite 1700
Cleveland, Ohio 44113-1726

Eric A. Walker — Attorney for Defendant
Assistant Attorney General
65 East State St., 16th Fl.
Columbus, Ohio 43215

AMR/cmd
Filed 7-14-2003
To S.C. reporter 7-28-2003