[Cite as *Yurkowski v. Univ. of Cincinnati*, 2013-Ohio-5959.]

Court of Claims of Ohio
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SHARON YURKOWSKI, Admr., etc., et al.

Plaintiffs

v.

UNIVERSITY OF CINCINNATI

Defendant

Case No. 2007-04311

Judge Patrick M. McGrath

DECISION

{¶ 1} Plaintiff[1] brings this action against defendant for wrongful death on behalf of herself and the heirs of decedent, Peter Yurkowski. Pursuant to a previous entry, the issues of liability and damages were bifurcated for trial. Following a trial on the issue of liability, this court entered judgment in favor of defendant. Following an appeal, the case was remanded to the court to determine "whether Dr. Curell's decision to release Peter from [the hospital] on March 22, 2005 fell below the applicable standard of care." *Yurkowski v. Univ. Cincinnati*, 10th Dist. No. 11AP-974, 2013-Ohio-242, ¶ 31. On remand, this court determined that it was not necessary to hold a new trial or hearing to obtain any additional evidence inasmuch as both parties' expert witnesses had previously testified regarding the applicable standard of care in accordance with the decision of the Tenth District Court of Appeals. *Id*.; *Bruni v. Tatsumi*, 46 Ohio St.2d 127 (1976). Accordingly, the case was submitted to the court for decision.

[1] Plaintiff shall refer to Sharon Yurkowski.

{¶ 2} The operative facts were laid out by the Tenth District Court of Appeals as follows: "Peter Struggled with mental health issues in his youth, culminating in a suicide attempt at age 18. He recovered from that episode and married Sharon in 1985. The couple subsequently had two children, Daniel and Cara. Peter received a doctorate in pharmacy and, in 1992, began working as a clinical pharmacist at University Hospital ('UH') in Cincinnati. In addition to his clinical duties at the hospital, Peter traveled extensively throughout the country lecturing on pharmacology-related topics. He also participated in various community activities.

{¶ 3} "Peter's mental health issues resurfaced in September 2000, when he became extremely anxious and began to suffer from psychosomatic illnesses that prevented him from traveling. Peter was admitted to the UH emergency room with symptoms of severe anxiety and depression. Because he did not want to be treated at the same hospital at which he was employed, he was subsequently transferred to Christ Hospital for inpatient treatment. He was released a few days later, but was again treated at Christ Hospital in December 2000.

{¶ 4} "In January 2001, Peter had another psychiatric episode. Due to a shortage of beds at Christ Hospital, he was admitted to UH for inpatient treatment with Dr. James Curell. Dr. Curell, an associate professor of clinical psychiatry at the university and an attending psychiatrist on the inpatient adult psychiatry unit at UH, knew Peter professionally and was aware that he had been diagnosed at Christ Hospital with major depression and panic disorder. Dr. Curell adjusted the medications Peter had been prescribed at Christ Hospital and urged him to curtail his lecturing and community activities in order to relieve stress. Peter responded well to the adjustments, and thereafter saw Dr. Curell only on an outpatient basis for the next two and one-half years. Early in this period, Dr. Curell diagnosed Peter with bipolar 2 disorder; however, he subsequently abandoned that diagnosis and confirmed that Peter suffered from major depression and panic disorder.

{¶ 5} "In June 2004, Peter began a series of inpatient hospitalizations and outpatient treatment due to his worsening psychiatric state and multiple suicide attempts. In total Peter was admitted to UH for inpatient psychiatric treatment ten times between June 2004 and February 2005. Medical records from each admission include detailed evaluations, diagnoses, progress notes, treatment plans, and discharge summaries from Dr. Curell and his psychiatric treatment team. Peter's treatment regimen included a combination of various mood-stabilizing, anti-anxiety, and anti-depressant medications, group and individual psychotherapy sessions, and electroconvulsive therapy.

{¶ 6} "In early February 2005, Dr. Curell sought a second opinion regarding Peter's treatment from psychiatrist Dr. Paul Keck, an expert in bipolar disorders and related psychopharmacology. After meeting with Peter and reviewing his medical and psychiatric history, Dr. Keck concurred with Dr. Curell's diagnosis of major depression and panic disorder and agreed that Peter did not suffer from bipolar 2 disorder. While Dr. Keck recommended adjustments to some of Peter's medications, including the addition of lithium, he did not recommend involuntary commitment to a mental health facility. Peter was subsequently discharged from UH.

{¶ 7} "One day after his discharge, Peter obtained a bottle of lithium from the UH pharmacy and ingested a significant quantity of the drug. Following medical treatment related to the overdose, Peter was transferred to the UH inpatient psychiatric unit. In mid-February 2005, Peter reported to Dr. Curell that his wife was planning to divorce him, and that he would not be permitted to return to the marital home upon his release from UH.

{¶ 8} "Peter remained in the inpatient psychiatric unit until March 22, 2005. During this period, Peter often expressed suicidal thoughts, and Dr. Curell contemplated transferring him to Summit Behavioral Health ('Summit'), a state psychiatric hospital, for long-term inpatient psychiatric treatment. However, in late February 2005, Peter began

to improve, and Dr. Curell authorized him to leave UH for one day in order to secure a place to live upon his release. Upon his return to UH, Peter reported that he had located an apartment.

{¶ 9} "On March 1, 2005, Peter was served with divorce papers, and by March 4, 2005, had 'decompensated' to the point where Dr. Curell believed Peter to be 'acutely dangerous' to himself. (Tr. 155.) Dr. Curell ordered that Peter be placed in restraints and adjusted his medication in the hope of preventing another psychiatric episode. At this point, Dr. Curell was convinced Peter should be transferred to Summit; his progress notes in early-to-mid March indicate that transfer was imminent. However, by March 18, 2005, Peter exhibited significant improvement. According to Dr. Curell, Peter denied suicidal ideation, completed paperwork related to his divorce, discussed returning to work, and requested that he be discharged to his apartment rather than to Summit. At this point, Dr. Curell, although 'still suspicious' and 'worried because of [Peter's] up-and-down pattern,' concluded that Peter would not benefit from long-term inpatient treatment at Summit. (Tr. 161.) Indeed, Dr. Curell believed that involuntary commitment would be so devastating to Peter's self-esteem that he would never recover.

{¶ 10} "Dr. Curell candidly discussed with Peter his reservations about discharging him from inpatient treatment. He ultimately concluded that Peter's best chance at recovery was to return to employment and begin living independently. Dr. Curell discharged Peter on March 22, 2005, with the proviso that Peter contact him immediately upon experiencing anxiety or suicidal ideation. Dr. Curell's progress notes from that day indicate that Peter was engaged with the staff, had no anxiety issues of suicidal ideation, and was planning to return to work the next week.

{¶ 11} "Peter attended outpatient treatment sessions with Dr. Curell on March 25, April 4 and 13, 2005. Dr. Curell's progress notes from those sessions indicate that, although Peter was sad about his impending divorce and remained 'at risk,' he had no depressive episodes or acute suicidal thoughts, had a bright and hopeful affect, had

returned to work and moved into his apartment, and was taking his medications as prescribed. (Tr. 179.)

{¶ 12} "Sharon and the children remained in close contact with Peter following his discharge. According to Sharon, Peter was sad about living apart from the family, but was not anxious or agitated and did not exhibit any suicidal behavior. On April 17, 2005, Sharon and Peter celebrated their daughter's birthday together and made plans to attend an event later in the week. The next day, Peter committed suicide by ingesting a lethal overdose of olanzapine, a prescription medication, and diphenhydramine, an over-the-counter antihistamine." *Id*., at ¶ 2-12.

{¶ 13} Plaintiff alleges that Dr. Curell's decision to release Peter from UH on March 22, 2005 fell below the applicable standard of care. In order to prevail on a claim of medical malpractice, plaintiffs must first prove: 1) the standard of care recognized by the medical community; 2) the failure of defendant to meet the requisite standard of care; and 3) a direct causal connection between the medically negligent act and the injury sustained. *Bruni, supra*; *Yurkowski, supra*. The appropriate standard of care must be proven by expert testimony. *Id*., at 130. That expert testimony must explain what a medical professional of ordinary skill, care, and diligence in the same medical specialty would do in similar circumstances. *Id*.

{¶ 14} Plaintiff presented the expert testimony of Robert Granacher, M.D., a physician licensed to practice medicine and psychiatry in Ohio. Dr. Granacher opined that Dr. Curell breached the applicable standard of care by discharging Peter on March 22, 2005. According to Dr. Granacher, Dr. Curell failed to perform and properly document a suicide risk assessment, which includes evaluating multiple risk factors associated with suicide. Dr. Granacher testified that had Dr. Curell performed a suicide risk assessment, Peter would not have been discharged and would not have committed suicide on April 18, 2005.

{¶ 15} Dr. Granacher opined that Dr. Curell failed to develop the necessary psychopharmacology plan and failed to properly monitor the dispensation of Peter's psychiatric medications after his discharge. According to Dr. Granacher, Dr. Curell should have monitored the dispensing of medication or enlisted a family member to do so to ensure that Peter complied with the medication regimen. Dr. Granacher also testified that Dr. Curell misdiagnosed Peter with major depression rather than the allegedly proper diagnosis of bipolar disorder and that such a misdiagnosis led Dr. Curell to prescribe anti-depressants, resulting in his suicide. Additionally, Dr. Granacher was critical of Dr. Curell's decision to discontinue lithium after a short trial period, which according to Dr. Granacher was not a sufficient period of time to determine whether Peter would have benefited from the drug.

{¶ 16} Regarding outpatient care, Dr. Granacher testified that the standard of care requires the participation of Peter's family and the assistance of a therapist. Dr. Granacher opined that Dr. Curell should have required daily therapy and should have monitored Peter's progress. Dr. Granacher further criticized Dr. Curell's personal relationship with Peter. Dr. Granacher explained that where a close relationship develops between a patient and a psychiatrist, the decision making of the psychiatrist is affected.

{¶ 17} Defendant presented the expert testimony of Mark Schecter, M.D., a board-certified adult psychiatrist and Chairman of the Department of Psychiatry at North Shore Medical Center in Salem, Massachusetts. Dr. Schecter testified that Dr. Curell complied with the standard of care by performing a suicide risk assessment prior to the March 22, 2005 discharge. According to Dr. Schecter, the standard of care does not require that a suicide risk assessment be memorialized in the form of a single document. Dr. Schecter explained that performing a suicide risk assessment requires an evaluation of objective and subjective factors. Dr. Schecter opined that a review of

the medical records demonstrates that Dr. Curell performed a suicide risk assessment on a daily basis prior to the March 22, 2005 discharge.

{¶ 18} Dr. Schecter opined that Dr. Curell did not breach the standard of care by allegedly failing to diagnose Peter with bipolar disorder. Indeed, Dr. Curell sought the opinion of Dr. Keck regarding the diagnosis of major depression and he agreed that Peter did not suffer from bipolar disorder.

{¶ 19} Regarding Dr. Curell's psychopharmacologic treatment plan, Dr. Schecter opined that such a treatment plan met the standard of care. Dr. Schecter asserted that Dr. Curell prescribed appropriate mood stabilizers and anti-depressants, and adjusted such medications and treatments whenever necessary. Additionally, Dr. Schecter explained that lithium is potentially toxic in a person who has recently overdosed and it is not a breach of the standard of care to discontinue its use given the speculative benefits of the drug.

{¶ 20} With respect to Peter's outpatient treatment plan, Dr. Schecter did not believe that Dr. Curell's actions or inactions fell below the standard of care. Dr. Schecter did not believe it was necessary for Peter to meet with a therapist following his discharge. According to Dr. Schecter, plaintiff was consistently involved in Peter's treatment. Additionally, Dr. Schecter testified that prior to his discharge, Peter's mental health appears to have improved while demonstrating an ability to understand his outpatient treatment plans. Dr. Schecter further noted that in Peter's outpatient treatment sessions, Peter does not appear to have become increasingly suicidal. Accordingly, Dr. Schecter opined that Dr. Curell's decision to discharge Peter on March 22, 2005 did not fall below the standard of care.

{¶ 21} Based upon the foregoing, the court concludes that plaintiff has failed to prove by a preponderance of the evidence that Dr. Curell's actions or inactions fell below the standard of care. The court finds the testimony of Dr. Schecter to be more persuasive and more credible then that of Dr. Granacher. Indeed, the evidence

establishes that Dr. Curell evaluated Peter's mental health on a daily basis under a suicide risk assessment plan. Although no formal document entitled suicide risk assessment exists, the court is convinced that Dr. Curell continually evaluated the risks and benefits of discharging Peter throughout his final hospitalization. Moreover, the court is convinced that Dr. Curell was aware that Peter had a tendency to minimize his complaints and exaggerate his improvement when he wished to be released. Accordingly, Dr. Curell accounted for such factors while performing a suicide risk assessment.

{¶ 22} Plaintiff argues that Dr. Curell's statement that he was "putting his neck on the line" is evidence that Dr. Curell deviated from the standard of care. However, the court finds that such a statement only indicates the difficulty of the decision regarding whether to discharge Peter or place him in a long-term psychiatric facility. Indeed, the evidence establishes that Dr. Curell accounted for Peter's psychiatric history and assessed his clinical risk factors to determine whether to discharge Peter.

{¶ 23} The court is persuaded that Peter did not suffer from bipolar disorder. Indeed, Dr. Curell sought the opinion of Dr. Keck regarding the diagnosis of major depression and he agreed that Peter did not suffer from bipolar disorder. Furthermore, the court finds it to be significant that Peter did not commit suicide immediately after his release on March 22, 2005. The evidence establishes that Peter attended multiple outpatient sessions with Dr. Curell, had dinner with his family on April 17, 2005, and went to work on April 18, 2005 prior to his suicide. Additionally, Dr. Curell was available to plaintiff for consultation regarding Peter's treatment.

{¶ 24} Finally, plaintiff has not persuaded the court that Dr. Curell failed to develop the necessary psychopharmacology plan and failed to properly monitor the dispensation of Peter's psychiatric medications after his discharge. Indeed, Dr. Schecter opined that the option of requiring Peter to return to Dr. Curell's office to obtain medication was impractical under the circumstances. Accordingly, the court finds that

plaintiff failed to prove that Dr. Curell's actions or inactions fell below the standard of care and failed to prove that any alleged failure was the proximate cause of Peter's death. In short, the court finds that plaintiff has failed to prove her claim by a preponderance of the evidence.

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PATRICK M. MCGRATH
Judge

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JUDGMENT ENTRY

{¶ 25} On October 6, 2011, this court issued a judgment against defendant. On January 29, 2013, the Tenth District Court of Appeals reversed the judgment of this court and remanded the case for further proceedings.

{¶ 26} Based upon the court's review of the evidence in the record, the briefs of counsel, and in accordance with the opinion of the court of appeals, judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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PATRICK M. MCGRATH
Judge

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