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Hospital's Duty to Protect Mental Patient from Suicide

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HOSPITAL'S DUTY TO PROTECT MENTAL PATIENT FROM SUICIDE

In a California wrongful death action against defendant hospital for failing to take adequate precautions to prevent deceased, a mental patient with known suicidal tendencies, from making a fatal leap from a hospital window, the trial court instructed the jury that if deceased's suicidal conduct was voluntary, defendant could not be held liable. On appeal the California Supreme Court in *Vistica v. Presbyterian Hospital & Medical Center of San Francisco*[1] held this to be erroneous and remanded the controversy for a new trial. The opinion suggested, however, that the jury should be instructed that it could deny recovery if it found that decedent's voluntary conduct was "the responsible cause of her death." Without attempting to speculate as to what the court expected the jury to do with this rather ambiguous phrase, it is difficult to grasp the full implication of the holding. Under the facts of this case, it would be absurd to construe the holding to mean that the defendant hospital could set up as a defense against its own negligence the very condition that gave rise to the hospital's duty in the first place—the mental incapacity and suicidal tendencies of the decedent. The case, therefore, invites inquiry into the duty a private hospital owes to this type patient[2] and the effect of the patient's voluntary conduct on this duty.

Generally, the duty of a hospital is to exercise that degree of reasonable care, skill, diligence, and protection used by other hospitals in the community.[3] The hospital must exercise such reasonable care toward a patient as his known condition may require,[4] including reasonable care to safeguard the patient from dangers resulting from his mental incapacity.[5] In this regard, hospitals have been held liable for allowing a mentally ill patient to commit suicide in such ways as drowning in a vat of boiling soap,[6] slashing his wrist or throat,[7] leaping from windows,[8] taking poi-

1. 67 Cal.2d 471, 432 P.2d 193, 62 Cal. Rptr. 557 (1967).

2. The defendant is a private hospital operated for profit. Such private hospitals, as opposed to charitable institutions, do not come under the doctrine of charitable immunity to limit tort liability. Fowler v. Norways Sanitorium, 112 Ind. App. 347, 42 N.E.2d 415 (1942).

3. Birmingham Baptist Hosp. v. Branton, 218 La. 464, 118 So. 741 (1928).

4. Wood v. Samaritan Institution, Inc., 26 Cal.2d 847, 161 P.2d 556 (1945).

5. Tate v. McCall Hosp., 57 Ga. App. 824, 196 S.E. 906 (1938); Brawner v. Bussell, 50 Ga. App. 840, 179 S.E. 228 (1935).

6. Daley v. State, 273 App. Div. 552, 78 N.Y.S.2d 584 (1948).

7. Brawner v. Bussell, 50 Ga. App. 840, 179 S.E. 228 (1935).

8. Emory Univ. v. Shadburn, 47 Ga. App. 643, 171 S.E. 192 (1933); Spivey v. St. Thomas Hosp., 31 Tenn. App. 12, 211 S.W.2d 450 (1947).

son,[9] and hanging.[10] The hospital's knowledge or notice that the patient was likely to harm himself and its subsequent failure to take reasonable precautionary measures had consistently been the determinative factor influencing courts and juries to impose liability in these cases.[11]

Liability has also been found where the hospital's negligence in allowing a mentally deranged patient to escape resulted in death caused by exposure to inclement weather, [12] a train[13] or streetcar[14] accident or drowning.[15] In addition to considering reasonable care after notice of elopement, the jury must examine the broad question of whether the negligently allowed escape was the proximate cause of death. Many cases absolve the hospital because of some later intervening force.

Notwithstanding those holdings which have imposed liability on hospitals under the broad requirements of reasonable care, a hospital is not an insurer of a patient's safety, and the standard of care required is limited by the rule that no one is required to guard against or take measures to avert that which reasonable men under the circumstances would not anticipate as likely to happen.[16] However, if the risk of harm is an appreciable one, as it is in the case of a suicidal patient, the question of reasonable anticipation is not one of mathematical probability alone. "As the gravity of the possible harm increases, the apparent likelihood of its occurrence need be correspondingly less."[17]

In addition to the duty to take reasonable preventive measures after notice of a patient's tendency to harm himself, a hospital is also required to use reasonable care and skill to detect a patient's tendencies toward self-destruction.[18] It is not necessary for the hospital to have had notice of the particular method by which the accident might happen if its occurrence could have

9. Broz v. Omaha Maternity & Gen. Hosp. Ass'n, 96 Neb. 648, 148 N.W. 575 (1914).

10. Smith v. Simpson, 221 Mo. App. 550, 288 S.W. 69 (1926); Dow v. State, 183 Misc. 674, 50 N.Y.S.2d 342 (Ct. Cl. 1944).

11. Wood v. Samaritan Institution, Inc., 26 Cal.2d 847, 161 P.2d 556 (1945); Edwards v. Grace Hosp. Soc'y, 130 Conn. 568, 36 A.2d 273 (1944).

12. Burtman v. State, 188 Misc. 153, 67 N.Y.S.2d 271 (Ct. Cl. 1947).

13. Arlington Heights Sanitarium v. Deaderick, 272 S.W. 497 (Tex. Civ. App. 1925).

14. Phillips v. St. Louis & S.F. Ry., 211 Mo. 419, 111 S.W. 109 (1908).

15. Hawthorne v. Blythewood, Inc., 118 Conn. 617, 174 A. 81 (1934).

16. DeMartini v. Alexander Sanitarium, Inc., 192 Cal. App. 2d 442, 13 Cal. Rptr. 564 (1961). *See also* Rice v. California Lutheran Hosp., 27 Cal.2d 296, 163 P.2d 860 (1945).

17. W. PROSSER, HANDBOOK OF THE LAW OF TORTS 222 (3d ed. 1964).

18. Hignite's Adm'x v. Louisville Neuropathic Sanitorium, 233 Ky. 497, 4 S.W.2d 407 (1928); Maki v. Murray Hosp., 91 Mont. 251, 7 P.2d 228 (1932).

been reasonably anticipated.[19] It therefore follows that if a hospital has been put on guard as to a patient's suicidal tendencies and as to his probable method of accomplishing his purpose (as in the case where suicides or dangerous escapes have been attempted in a particular way in the past), the duty of the hospital to protect and prevent is increased correspondingly.[20]

Thus, several factors are relevant in determining whether a hospital exercised reasonable care under the circumstances to prevent a mentally ill patient from committing suicide: (1) knowledge or reasonable notice of suicidal tendencies or intent, (2) anticipation of the method or instrumentality the patient could be expected to utilize, (3) responsive or corrective measures the hospital takes to avert the reasonable consequences of the patient's anticipated conduct, and (4) the risk of harm to the patient that can be reasonably expected if the hospital fails in its duty.

These factors assist the jury in deciding whether the hospital was negligent in its care of the patient, but as to the final question of liability, there are other considerations. What effect, if any, should the voluntary actions of a mentally ill patient under the care and control of a hospital have upon the question of the hospital's liability in suicide cases? As illustrated by the *Vistica* case, the voluntary conduct of the patient can vitally effect the question of defendant hospital's liability if the jury determines that conduct to be the "responsible cause" of the death.

The exact inference to be drawn from this case is perhaps only known to the court, but the decision does invite a consideration of the standard of care mental incompetents are required to observe for their own protection. Cases considering this question reflect the inclination of courts to deal with it in terms of contributory negligence as a bar to the insane plaintiff 's recovery. This tendency seems at least questionable since many cases involve very intentional, well planned acts (suicide, escapes, etc.) by the plaintiff, and not the customary failure to use reasonable care for one's protection as in the usual contributory negligence context. It is rather absurd to assert that plaintiff negligently stole a razor blade and with it negligently slit his throat. Nevertheless, in light of the consistent application of contributory neg-

19. Munsey v. Webb, 231 U.S. 150 (1913); Robert v. United States Shipping Board Emergency Fleet Corp., 240 N.Y. 474, 148 N.E. 650 (1925); Condran v. Park & Tilford, 213 N.Y. 314, 107 N.E. 565 (1915); Spivey v. St. Thomas Hosp., 31 Tenn. App. 12, 211 S.W.2d 450 (1947).

20. Paulen v. Shinnick, 291 Mich. 288, 289 N.W. 162 (1939).

ligence terminology in the cases, an analysis of this area of the law necessitates its continued use by the writer.

The early decisions considering the question adopted the very conservative and sometimes harsh presumption that all persons were responsible for conduct that would amount to contributory negligence for the average, reasonable man unless it was shown that at the time they were absolutely insane or completely devoid of intellect.[21] The reason for the adoption of this presumption appears to be that the courts were reluctant to introduce into the law the necessity of correlating the lesser degrees of insanity with the degree of plaintiff's contributory negligence. There seems to be a small minority of courts today that still follows this line of cases.[22]

This reluctance has been overcome in most jurisdictions today by submiting the question to the jury after introduction into evidence of the facts pertaining to the plaintiff's particular type of mental incapacity and his actions under the circumstances of the case. The question of the effect of the plaintiff's mental condition upon his recovery is for the court to decide as a matter of law only in those cases where reasonable men following the law could come to no other conclusion.[23]

There is unanimity among the cases on the proposition that one who is completely insane or devoid of intelligence to the extent of being unable to appreciate a dangerous situation and avoid exposure to it cannot be guilty of contributory negligence as a matter of law.[24] However, even among those states adopting the more liberal approach of allowing lesser degrees of mental incapacity to affect the jury's consideration, there is still some disagreement as to the exact effect this should have on the issue of whether plaintiff exercised reasonable care for his own protection.[25] *The Restatement of Torts (Second)* reflects the unset-

21. Johnson v. Texas & P. Ry., 16 La. App. 464, 133 So. 517 (2d Cir. 1931); Riesbeck Drug Co. v. Wray, 111 Ind. App. 467, 39 N.E.2d 776 (1942).

22. *See* Riesbeck Drug Co. v. Wray, 111 Ind. App. 467, 39 N.E.2d 776 (1942); Eckerd's Inc. v. McGhee, 19 Tenn. App. 277, 86 S.W.2d 570 (1935).

23. DeMartini v. Alexander Sanitarium, Inc., 192 Cal. App. 2d 442, 13 Cal. Rptr. 564 (1961).

24. Johnson v. Texas & P. Ry., 16 La. App. 464, 133 So. 517 (2d Cir. 1931); DeMartini v. Alexander Sanitarium, Inc., 192 Cal. App. 2d 442, 13 Cal. Rptr. 564 (1961); Emory Univ. v. Lee, 97 Ga. App. 680, 104 S.E.2d 234 (1958); Riesbeck Drug Co. v. Wray, 111 Ind. App. 467, 39 N.E.2d 776 (1942); Noel v. McCaig, 174 Kan. 677, 258 P.2d 234 (1953); Hill v. Abram Smith & Son, 176 Mich. 151, 142 N.W. 565 (1913); Oliver v. State, 17 Misc. 2d 1018, 186 N.Y.S.2d 151 (Ct. Cl. 1959).

25. *See* DeMartini v. Alexander Sanitarium, Inc., 192 Cal. App. 2d 442, 13 Cal. Rptr. 564 (1961); Emory Univ. v. Lee, 97 Ga. App. 680, 104 S.E.2d 234 (1958).

tled character of this area of the law by expressing no opinion as to whether insane persons are required to conform for their own protection to the standard of conduct which society demands of sane persons.[26]

In those cases where the mentally ill plaintiff was under the care and control of a hospital at the time of the accident, the distinction between absolute insanity and less severe mental illness, as well as the disagreement as to its effect upon the degree of care expected of the plaintiff appears less significant.[27] These cases place considerable emphasis upon the special duty relationship formed and tend to require a lower standard of care from the patient for his own safety. However, since a hospital is not an insurer, the patient is always required to exercise whatever capacity he has for his own protection.[28] Other than this somewhat more liberal approach when the patient-plaintiff is under the care of a hospital, few generalizations can be deduced.

Thus, as the California Supreme Court expressed in the *Vistica* case, in perhaps too succinct a manner, the jury has the well-placed but difficult responsibility of weighing the patient's capacity to protect himself with the hospital's concomitant duty to guard the patient in determining the "responsible cause" of the accident.

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LOUISIANA LOAN LAWS

We are living in a society geared to a "buy-now-pay-later" plan. Almost any consumer[1] can finance his goods and services over an extended monthly payment plan. The financing of goods and services is broadly categorized as consumer credit. The arrangement for extension of credit may be made by the consumer with the person or organization providing the goods or furnishing the services or with some other entity which advances the cash to the consumer to pay for such goods or services in return for the consumer's promise to repay the advance. Consumer

26. RESTATEMENT (SECOND) OF TORTS § 464, caveat (1965).

27. *See* Lange v. United States, 179 F. Supp. 777 (N.D.N.Y. 1960; Emory Univ. v. Lee, 97 Ga. App. 680, 104 S.E.2d 234 (1958); Doty v. State, 33 Misc. 2d 330, 226 N.Y.S.2d 901 (Ct. Cl. 1961).

28. DeMartini v. Alexander Sanitarium, Inc., 192 Cal. App. 2d 442, 13 Cal. Rptr. 564 (1961).

1. Any person who acquires goods or services which he or his family will use primarily for purposes other than business or capital producing is, at least in relation to such goods or services, a consumer.