Michigan Law Review

Volume 53 | Issue 3

1955

Torts - Liability of Physician Erroneously Certifying Insanity

Richard Z. Rosenfeld
University of Michigan Law School

TORTS—LIABILITY OF PHYSICIAN ERRONEOUSLY CERTIFYING INSANITY—A physician certified plaintiff to be insane, when in fact she was sane; she was thereafter committed to a state sanitarium. Upon her release, she sued the physician for negligence in examination. Defendant's demurrer for failure to state a cause of action was sustained. On appeal, *held,* affirmed. Quoting almost the entirety of an analogous 1900 decision from the same jurisdiction,[1] the court held that defendant had owed no duty to plaintiff. Because the administration of the law "should not be obstructed by the fears of physicians that

[1] Niven v. Boland, 177 Mass. 11, 58 N.E. 282 (1900).

they may render themselves liable to suit,"[2] certifying physicians "should be exempt from liability."[3] Furthermore, because commitment had been upon order of a judge, defendant's negligence, if any, was not the proximate cause of plaintiff's confinement. *Mezullo v. Maletz*, (Mass. 1954) 118 N.E. (2d) 356.[4]

Physicians generally are required to exercise reasonable care in the practice of their profession.[5] Elsewhere than Massachusetts, this liability has been extended to physicians certifying insanity.[6] But since insanity is often hard to determine with certainty, the Massachusetts court has desired to protect certifying physicians from inquiry into their care whenever a dissatisfied patient is released from an asylum.[7] Against this policy, however, must be weighed the fact that plaintiff, improperly committed, is apparently to be afforded no redress at law. Defining duty in another context, (then) Judge Cardozo said, "The risk reasonably to be perceived defines the duty to be obeyed."[8] The injury which malpractice may cause would seem to require imposing a duty of care upon certifying physicians.[9] This would lessen the possibility of cursory examination such as was apparently given here, and would reduce the likelihood of sane persons being committed to an institution without chance of reparation. However, even if a court recognizes that policy dictates imposing a duty to exercise care, liability must also be founded upon proximate causation of the confinement by the negligent act. A few courts have said that when commitment is by judicial order, "the certificates of all the doctors in the land would not of themselves have restrained her of her freedom in the least degree."[10] But the doctrine of proximate causation, in Massachusetts as elsewhere, would seem to be to the

[2] Id. at 14.

[3] Ibid.

[4] Plaintiff also alleged that defendant "maliciously" certified insanity when he "should have known" her to be sane. This was held not to state a cause of action on libel, since a certification of insanity in a judicial proceeding is privileged. See Perkins v. Mitchell, 31 Barb. (N.Y.) 461 (1860), and cases cited in 2 A.L.R. 1582 (1919). Nor did plaintiff state a cause of action for false imprisonment, since "one who procures the arrest or confinement of another on lawful process is not liable to an action of false imprisonment, although he caused the process to issue by means of false statements." Principal case at 359. Cf. Coupal v. Ward, 106 Mass. 289 (1871), and cases collected in 145 A.L.R. 711 (1943). Plaintiff alleged violation of a penal statute prohibiting conspiracy to commit a sane person to an institution. This statute was held not to create a civil cause of action, thereby effectively overruling Karjavainen v. Buswell, 289 Mass. 419, 194 N.E. 295 (1935). For a holding that such conspiracy would afford a common law remedy, see Smith v. Nippert, 76 Wis. 86, 44 N.W. 846 (1890).

[5] DuBois v. Decker, 130 N.Y. 325, 29 N.E. 313 (1891).

[6] Hall v. Semple, 3 F. & F. 337, 176 Eng. Rep. 151 (1862); Ayers v. Russell, 50 Hun (N.Y.) 282, 3 N.Y.S. 338 (1888).

[7] See Niven v. Boland, note 1 supra.

[8] Palsgraf v. Long Island Railroad Co., 248 N.Y. 339 at 344, 162 N.E. 99 (1928).

[9] "Their duty must be measured . . . by the consequences flowing from its improper performance." Ayers v. Russell, note 6 supra, at 289. Nevertheless, although broad enough to suggest a duty in certification of insanity, Judge Cardozo's definition of duty is in fact comparatively restrictive. Cf. Judge Andrews' broader definition, dissenting in the Palsgraf case at 347. See too Heaven v. Pender, [1883] 11 Q.B.D. 503.

[10] Force v. Probasco, 14 Vroom (43 N.J.L.) 539 at 541 (1881). This, however, was an action for false imprisonment, not negligence. See also Niven v. Boland, note 1 supra.

contrary. When the possibility of intervention by a third party, and consequent injury to someone, is foreseeable and is enhanced by the negligent act, the originally negligent party is not relieved of liability.[11] If it is considered that a certifying physician could reasonably have anticipated judicial commitment in reliance upon his certification, the Massachusetts court has misstated the applicable law of causation.[12]

Richard Z. Rosenfeld

[11] Scott v. Shepherd, 3 Wils. K.B. 403, 95 Eng. Rep. 1124 (1773); Lane v. Atlantic Works, 111 Mass. 136 (1872); Beale, "The Proximate Consequences of an Act," 33 HARV. L. REV. 633 at 650 (1920); PROSSER, TORTS 354 et seq. (1941), and cases there cited.

[12] In Ayers v. Russell, note 6 supra, certifying physicians were held liable for negligence despite the intervening act of judicial commitment, the court apparently considering a discussion of causation unnecessary.