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1996 Survey of Rhode Island Law: Cases: Tort Law

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Tort Law. *Rock v. State*, 681 A.2d 901 (R.I. 1996). Foreseeability of harm is determined by the totality of the circumstances and, while foreseeability is a factor to be considered when evaluating whether a duty of care exists, it does not, in and of itself, give rise to a duty.

In an action for wrongful death, as in any negligence action, the threshold question is whether a duty runs from the defendant to the plaintiff. In *Rock v. State*,[1] the Rhode Island Supreme Court addressed whether a private vocational school, contracting with the Rhode Island Training School[2] to accept a juvenile inmate as part of a community based learning program, owed a duty of care[3] to persons living within the vicinity of the school.[4] In *Rock*, a divided court refused to impose liability because, unlike the training school, the private school was a non-custodial facility,[5] it did not receive full disclosure regarding the inmate's violent history,[6] and finally, because of the laws governing confidentiality of juvenile records, even an independent investigation of Jewett's background by the school would have been futile.[7]

FACTS AND TRAVEL

In 1990, while still a minor, Robert Jewett (Jewett) was serving a sentence at the Rhode Island training school for first degree sexual assault of a twelve year old girl.[8] While at the school, Jewett participated in an experimental, community-placement educational program at a private vocational school, Motoring Technical

1. 681 A.2d 901 (R.I. 1996).

2. R.I. Gen. Laws § 42-56-33 (1956). "The department of corrections shall maintain a school to be known as the training school for youth for the detention of children by order of the family court and for the confinement, instruction, and reformation of children found delinquent or wayward by the family court." *Id.*

3. The duty at issue here is a duty to *monitor* the student, not a duty to warn the community that he was attending this community-based school. *Rock*, 681 A.2d at 901.

4. *Id.*

5. *Id.* at 902. "[Motoring Technical Services, Inc.] is not a custodial or a penal facility. It is a vocational school open to the public and therefore under no obligation to maintain continuous supervision of the students." *Id.* at 903 (citing Beauchene v. Synanon Foundation, Inc., 88 Cal. App. 3d 342 (1979)).

6. *Id.* at 901.

7. *Id.* at 903.

8. *Id.* at 902.

Services, Inc. (Motoring).[9] During a morning break from classes on January 8, 1990, Jewett left the school premises, broke into the Rock household, and sexually assaulted and murdered young Kimberly Rock.[10] On October 30, 1991, Jewett pled guilty to her murder, and was sentenced to life in prison.[11]

Kimberly Rock's parents, plaintiffs in this action, filed a wrongful death action against numerous defendants, including Motoring.[12] The plaintiffs alleged that Motoring "owed a duty of care" to the community, which included an obligation to monitor Jewett while he was in their program.[13] In response, Motoring filed a motion for summary judgment.[14] Granting the motion, the trial judge concluded that Motoring did not owe the plaintiffs a duty.[15] That issue was appealed to the Rhode Island Supreme Court.

BACKGROUND

In order to prove a case of wrongful death, the four elements of negligence must first be met.[16] Recovery in negligence requires proof of: (1) a duty, or obligation recognized by law, for the protection of others against unreasonable risks; (2) a breach of that duty, defined as a failure to conform to the prescribed standard of care; (3) a reasonably close causal connection between the conduct and the resulting injury (proximate cause); and (4) actual loss or damage.[17] The only significant difference between traditional negligence actions and wrongful death claims is the last element of damages.[18] Whereas in negligent actions it is the injured party seeking damages, in wrongful death claims, it is the survivors who seek compenstation for the losses they suffered as a result of the decedent's death.[19]

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9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. Joseph W. Glannon, The Law of Torts 287 (1995).
17. *Id.*
18. *Id.* at 288.
19. *Id.*

While Rhode Island's Supreme Court has avoided "definitively committ[ing] itself" to any particular analytical approach in determining the existence of a duty,[20] in *Banks v. Bowen's Landing*,[21] the court held that the existence of a duty is a question for the court and not the jury.[22] In *Banks*, the court stated that it would consider "the foreseeability of harm . . . the degree of certainty that the plaintiff [was injured], . . . the [causal] connection between the defendant's conduct and the injury, . . . the policy of preventing future harm, and . . . the extent of the burden to the defendant and the consequences to the community for imposing a duty."[23] Additionally, the court has concluded that while "foreseeability" is a factor to be considered when determining whether a duty exists,[24] it "does not, in and of itself, give rise to a duty."[25] Finally, consideration regarding the existence of a duty must reflect interests of "public policy, as well as notions of fairness."[26]

ANALYSIS AND HOLDING

In *Rock*, Motoring claimed that the wrongful death action failed for lack of evidence establishing existence of the first element, duty.[27] The majority acknowledged the elusiveness of a workable test to determine whether a duty of care exists.[28] Nonetheless, it outlined the principles guiding its decision.

In reaching its conclusion, the majority concentrated on the nature of Motoring as a vocational school open to the public.[29] As such, its intended role was neither "jailor nor security agency,"[30] rather it was education. The majority notes that it is the training facility's responsibility to determine which residents are capable of leaving the grounds without posing a danger to others.[31] This re-

20. D'Ambra v. United States, 338 A.2d 527 (R.I. 1975).
21. 522 A.2d 1222 (R.I. 1987).
22. *Id.* at 1224.
23. *Id.* at 1225.
24. *Id.* at 1224-25; Builder's Specialty Co. v. Goulet, 639 A.2d 59, 60 (R.I. 1994).
25. Marchetti v. Parsons, 638 A.2d 1047, 1051 (R.I. 1994); D'Ambra v. United States, 338 A.2d 527, 528 (R.I. 1975).
26. Ferreira v. Strack, 636 A.2d 682, 685 (R.I. 1994).
27. Rock v. State, 681 A.2d 901, 902 (R.I. 1996).
28. *Id.* at 903.
29. *Id.*
30. *Id.*
31. *Id.* at 904.

sponsibility stems largely from the custodial relationship between training school authorities and their charges. This element is noticeably absent from the relationship Motoring and other educational facilities have with their pupils.[32]

In reviewing decisions of other jurisdictions, the court cited both a California case involving what duty, if any, a drug rehabilitation center had to the general public[33] and a Vermont case involving whether a university had a legal duty to control the criminal acts of its students.[34] In both cases, the courts held that the institution did not have a legal duty. As in *Rock*, a central element in the courts' analysis was that of control.

While Motoring's function as a vocational school was fundamental to the court's analysis, the State's failure to provide reasonable notice proved dispositive. The court distinguished a school, "open to the public," from custodial and penal facilities, and indicated that as a vocational school Motoring was "under no obligation to maintain continuous supervision of its students."[35]

The court's analysis continued to demonstrate that Motoring had not received sufficient notice of the threat posed by Jewett.[36] Neither Robert Jewett nor the agents for the training school disclosed Jewett's adjudication for first degree sexual assault.[37] Motoring was told simply that Jewett was incarcerated for breaking and entering.[38] In addition, "the state portrayed Jewett as a highly motivated individual and indicated that he was among 'the best kids allowed to utilize this opportunity in terms of working off grounds.' "[39] Motoring was told that Jewett was to be treated "like any other student."[40] Indeed, as the majority points out, the state

32. *Id.*

33. *Id.*; *see also* Beauchene v. Synanon Foundation, Inc., 88 Cal. App. 3d 342 (1979) (An escapee from the facility shot a member of the public, and the California court refused to find liability.).

34. Smith v. Day, 538 A.2d 157 (Vt. 1987).

35. *Rock*, 681 A.2d at 903.

36. *Id.* at 902-03. The majority dismissed the dissent's contention that Motoring was effectively provided with notice, in part, because he was driven to and from Motoring's facilities in a state-owned van. The majority found this fact to be "utterly without significance," observing, "[a]ny training school resident would be so transported." *Id.*

37. *Id.* at 903.

38. *Id.*

39. *Id.*

40. *Id.*

represented Jewett as among "the best kids [who were] allowed to utilize [the opportunity of] working off grounds,"[41] and further informed Motoring that Jewett had been allowed to spend weekends away from the training school with one supervising adult. The majority determined that the cumulative effect of details provided to Motoring regarding Jewett, combined with information withheld in accordance with a statute governing confidentiality of juvenile records,[42] led to the conclusion that Jewett's actions were not foreseeable.[43]

This statutory provision was a significant factor resulting in the division of the court. Whereas the majority read section 42-72-87 of the Rhode Island General Laws to require juvenile records in this case to remain confidential, not satisfying any of the exceptions listed in subsection (b),[44] the dissent argued that the statute clearly provides an exception applicable to the facts of this case.[45] The training school entered into this agreement with the vocational facility for the purpose of educating Jewett. According to the dissent, "the state was prepared to provide Motoring with 'whatever information was necessary to secure the placement.'"[46] Additionally, the dissent postulates that even if Motoring was unable to acquire information about Jewett's convictions and juvenile history, there was enough evidence for it to know that Jewett posed a risk to the community and therefore required close monitoring.[47]

The dissent also placed weight on Jewett's application to enroll in Motoring's program.[48] Notice that Jewett was dangerous, according to the dissent, was provided when, on his application, Jewett reported convictions of an "unspecified number of breaking and entering offenses."[49] Acknowledging that the application did

41. *Id.*

42. R.I. Gen. Laws § 42-72-8(a) (1956). "Any records of the department [of children, youth, and families] pertaining to children . . . shall be confidential and only disclosed as provided by law." *Id.*

43. *Rock*, 681 A.2d at 904.

44. R.I. Gen. Laws § 42-72-8(b) (1956). "Records may be disclosed when necessary: to individuals, or public or private agencies engaged in . . . education of the person under the supervision of the department . . . ." *Id.*

45. *Rock*, 681 A.2d at 911 (Flanders & Lederberg, JJ., dissenting).

46. *Id.*

47. *Id.*

48. *Id.* at 909-11.

49. *Id.* at 906.

not provide a complete rendition of Jewett's offenses,[50] the dissent found that the information provided on the application was sufficient to alert Motoring that this student "was not just any juvenile delinquent; rather he was a rapist and an attempted murderer of a twelve-year old girl."[51] The majority points out, however, that when Motoring asked Jewett the reasons for his incarceration, he disclosed only that he had been confined for a breaking and entering charge.[52] Neither the rape nor the attempted murder was ever disclosed to Motoring by either Jewett or the state.[53] Both the majority and the dissent find support in *Restatement (Second) Torts* section 319, ("[o]ne who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.") The majority emphasizes cognizance, whereas the dissent emphasizes control.

CONCLUSION

Unfortunately, the majority responds only to a relatively minor point made by the dissent regarding Jewett's transportation to and from Motoring. Then the Court expresses its own fears that if liability extends to Motoring, it would portend the demise of programs such as work release.[54] Never does the majority address the dissenting justices' contention that Motoring was provided with statutory mechanisms to learn of Jewett's actual criminal history. The majority's conclusion that no duty of care existed is premised only in part on the representations made by the state and Jewett himself. The other pillar supporting the majority's position is reliance on the statutory prohibition concerning disclosure of juvenile records. But dissenting Justice Flanders appears to topple that pillar, noting the exception to the rule, found in section 42-72-8(b)(1) which permits disclosure "when necessary" to those "individuals, or public or private agencies engaged in . . . [the] education

50. *Id.*
51. *Id.*
52. *Id.* at 904.
53. *Id.* at 903. Regardless of Motoring's alleged lack of knowledge, the dissent argues that liability attached anyway when Motoring "took charge" of Jewett, receiving him into the vocational program each day. *Id.* at 909 (Flanders & Lederberg, JJ., dissenting).
54. *Id.* at 905.

of the person under the supervision" of the Department of Children, Youth and Families.[55] Finding that the plaintiffs did not establish a duty owed by Motoring, the majority asserted that plaintiffs' reliance on the Restatement (Second) Torts was misplaced.[56] To the contrary, if Justice Flanders's understanding of Rhode Island General Laws section 42-72-8(b) is correct, is not Motoring a party who, at the very least, "should have known" the potential threat posed by Robert Jewett? That question is never answered by the majority.

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55. *Id.* at 911.
56. *Id.* at 904 n.2.