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Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001430-MR

BETHANY L. STANZIANO, INDIVIDUALLY, AND ALEXANDRA STANZIANO AS ADMINISTRATRIX OF THE ESTATE OF MARK JOSEPH STANZIANO, DECEASED — APPELLANTS

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE ERNESTO M. SCORSONE, JUDGE
ACTION NO. 15-CI-02408

ANDREW M. COOLEY, M.D., CHARLES I. SHELTON, AND UNIVERSITY MEDICAL CENTER, D/B/A UK HEALTHCARE, D/B/A EASTERN STATE HOSPITAL — APPELLEES

AND

NO. 2017-CA-001476-MR

UNIVERSITY OF KENTUCKY MEDICAL CENTER, D/B/A UK HEALTHCARE, D/B/A EASTERN STATE HOSPITAL — CROSS-APPELLANT

CROSS-APPEAL FROM FAYETTE CIRCUIT COURT
v. HONORABLE ERNESTO M. SCORSONE, JUDGE
ACTION NO. 15-CI-02408

BETHANY L. STANZIANO, INDIVIDUALLY,
AND ALEXANDRA STANZIANO AS
ADMINISTRATRIX OF THE ESTATE OF
MARK JOSEPH STANZIANO, DECEASED CROSS-APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, NICKELL AND K. THOMPSON, JUDGES.

NICKELL, JUDGE: On the morning of June 27, 2014, Mark Stanziano was murdered by Clinton Inabnit in Somerset, Kentucky. Mark's widow, Bethany Stanziano, in her individual capacity and as Administratrix of Mark's estate,[1] commenced the instant wrongful death and medical malpractice action against Andrew M. Cooley, M.D., Charles I. Shelton, Jr. D.O., (collectively "physicians") and University of Kentucky Medical Center d/b/a UK Healthcare d/b/a Eastern State Hospital ("Eastern State"). Inabnit, a former mental patient, was released by Eastern State approximately forty-four days prior to murdering Mark. The trial

[1] Mark's daughter, Alexandra Stanziano, was subsequently substituted as Administratrix of the estate. For clarity, unless the context requires otherwise, we shall refer to the Stanziano parties in whatever capacity collectively as "Bethany."

court determined the physicians were shielded from liability by the provisions of KRS[2] 202A.400 and further concluded Bethany had failed to carry her burden of proof to proceed against Eastern State. A claim of sovereign immunity by Eastern State was denied as moot. This appeal and cross-appeal followed. After a careful review of the record, briefs, oral arguments and the law, we discern no error and affirm.

Inabnit had a lengthy history of mental illness, having been diagnosed as a paranoid, delusional schizophrenic. He had three involuntary hospitalizations at Eastern State between 2010 and 2011. From May 8 to May 14, 2014, Inabnit was again involuntarily hospitalized at Eastern State. He was disoriented and illogical at admission. During his stay, it was clear Inabnit suffered from delusions of prophesies and conspiracies. Although he communicated some violent ideologies, Inabnit never communicated an actual, specific threat of harm or physical violence against Mark to any of his mental health providers. Inabnit was discharged on May 14 with instructions for follow-up care; he did not complete any of the recommended treatments.

Inabnit's apartment was located across the street from Mark's law office and the two had spoken on occasion, but otherwise had no relationship. Approximately six weeks after his discharge, Inabnit approached Mark and, during

[2] Kentucky Revised Statutes.

a lengthy conversation, threatened to kill him. Later that evening, Mark told his wife and daughter about the threat and the decision was made to contact law enforcement the next day to make a report. Unfortunately, the following morning, Inabnit shot and killed Mark as he was preparing to enter his office.

One year after the murder, Bethany filed the instant suit[3] against the physicians, Eastern State, and two other doctors who had allegedly treated Inabnit during his 2010 and 2011 involuntary hospitalizations.[4] The complaint alleged claims of loss of consortium and negligent discharge of Inabnit from Eastern State. A subsequent amended complaint added a claim for negligence *per se* pursuant to KRS 202A.400[5] for the failure to warn Mark of the danger posed by Inabnit.

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[3] On the same day, Bethany filed suit in Pulaski Circuit Court against Inabnit, Lake Cumberland Hospital, LLC; The Adanta Group Behavioral Health Services; and Caney Fork Sportsman Center (the company who sold Inabnit the firearm used to murder Mark), raising claims nearly identical to those raised herein.

[4] These other two doctors would later be voluntarily dismissed as defendants.

[5] In pertinent part, KRS 202A.400 states:

> (1) No monetary liability and no cause of action shall arise against any mental health professional for failing to predict, warn of or take precautions to provide protection from a patient's violent behavior, unless the patient has communicated to the mental health professional an actual threat of physical violence against a clearly identified or reasonably identifiable victim, or unless the patient has communicated to the mental health professional an actual threat of some specific violent act.
>
> (2) The duty to warn of or to take reasonable precautions to provide protection from violent behavior arises only under the limited circumstances specified in subsection (1) of this section. The duty to warn a clearly or reasonably identifiable victim shall be discharged by the mental health professional if reasonable efforts are made to communicate the threat to the victim, and to

Following a period of discovery, the physicians and Eastern State moved for summary judgment on May 16, 2016, asserting liability could not attach pursuant to KRS 202A.400 because the record showed Inabnit had never communicated to them an actual threat of harm directed at Mark. Eastern State subsequently moved for summary judgment on grounds of sovereign immunity. Bethany responded, claiming the physicians had failed to act in good faith and within accepted professional practice requirements as mandated by KRS 202A.301,[6] and therefore, the immunity provisions of KRS 202A.400 did not apply to shield the physicians from liability. She further argued the plain language of KRS 202A.400 did not extend immunity to Eastern State. Several hearings and additional discovery ensued.

> notify the police department closest to the patient's and the victim's residence of the threat of violence. When the patient has communicated to the mental health professional an actual threat of some specific violent act and no particular victim is identifiable, the duty to warn has been discharged if reasonable efforts are made to communicate the threat to law enforcement authorities. The duty to take reasonable precaution to provide protection from violent behavior shall be satisfied if reasonable efforts are made to seek civil commitment of the patient under this chapter.

[6] KRS 202A.301 states:

> Persons carrying out duties or rendering professional opinions as provided in this chapter shall be free of personal liability for such actions, provided that such activities are performed in good faith within the scope of their professional duties and in a manner consistent with accepted professional practices.

On June 20, 2017, the trial court granted summary judgment in favor of the physicians, finding Bethany had come forward with no evidence to support a claim under KRS 202A.400. The trial court further concluded no viable common law claims existed as the enactment of KRS 202A.400 eliminated the general, common law duty to predict, warn against or take precaution against the violent behavior of a patient, citing *Devasier v. James*, 278 S.W.3d 625 (Ky. 2009). The trial court ordered additional briefing on the issue of whether Eastern State could remain liable for damages in light of the dismissal of all claims against the physicians.

Bethany asserted the plain language of KRS 202A.400 extended immunity to a limited class of mental health professionals which clearly did not include mental health facilities such as Eastern State. She further claimed nothing in the statute could be seen as a legislative intent to abrogate the common law doctrine of *respondeat superior* liability, and thus, Eastern State could still be held responsible for damages notwithstanding the grant of immunity to its agents.

Conversely, Eastern State asserted it lacked a psychiatrist-patient relationship with Inabnit and therefore owed no duty to third parties such as Mark. It further argued liability could not attach because the trial court's order granting summary judgment to the physicians made clear insufficient evidence had been presented of Inabnit's communicating an actual threat of violence. In the absence

of wrongdoing or negligence by its agents, there could clearly be no *respondeat superior* liability.

Following a hearing on July 28, 2017, the trial court determined Eastern State could not be held liable in the absence of negligence by the physicians and Bethany had failed to prove existence of any other theory of liability for her damages. A final and appealable order was subsequently entered granting summary judgment to Eastern State on these grounds and denying Eastern State's motion for summary judgment on sovereign immunity grounds. The parties timely appealed the rulings adverse to their positions.

Before this Court, Bethany argues the trial court erred in concluding the physicians were entitled to summary judgment under KRS 202A.400 absent a showing they treated Inabnit in good faith, consistent with acceptable professional practices and within the applicable standard of care. She further contends the trial court erred in concluding the personal immunity conferred by KRS 202A.400 covered Eastern State.

CR[7] 56.03 provides summary judgment is appropriate when no genuine issue of material fact exists and the moving party is therefore entitled to judgment as a matter of law. Summary judgment may be granted when "as a

[7] Kentucky Rules of Civil Procedure.

matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 483 (Ky. 1991) (internal quotation marks omitted). Whether summary judgment is appropriate is a legal question involving no factual findings, so a trial court's grant of summary judgment is reviewed *de novo*. *Coomer v. CSX Transp., Inc.*, 319 S.W.3d 366, 370-71 (Ky. 2010). With these standards in mind, we turn to Bethany's arguments.

Because people are inherently less controllable than physical things, the common law has traditionally imposed no duty to control the conduct of others except in certain circumstances, such as where a special relationship exists. The General Assembly enacted KRS 202A.400 in 1986 to "define[] the circumstances in which mental health professionals in Kentucky would incur liability for harm inflicted by their patients. The general duty of care of the *Restatement (Second) of Torts § 315* was superseded by the statute." *Devasier*, 278 S.W.3d at 629. Under the statute, as applicable to the matter at bar, a mental health professional has a duty to warn the public, or specific individuals, of possible danger from a patient when the patient 1) communicates to a mental health professional, 2) an actual threat of physical violence, or 3) against an identifiable or reasonably identifiable victim. KRS 202A.400(1). Here, there has been a complete failure of proof of the

statutory requirements to trigger a duty to warn as was correctly found by the trial court.

Nowhere in the record is there any indication Inabnit communicated to the physicians a threat of any kind regarding Mark. In fact, the name Mark Stanziano appears nowhere in Inabnit's mental health records. When pressed to indicate where proof of an actual threat could be located, Bethany was unable to do so. The record simply does not establish Inabnit communicated to anyone at Eastern State an actual threat to inflict harm on Mark by physical violence. "[T]he duties described in KRS 202A.400(2) arise only when the patient has communicated to the mental health professional, directly or indirectly, by words or gestures, that he will commit an act of physical violence. Simply *being* a threat of physical violence does not constitute communicating a threat of physical violence." *Devasier*, 278 S.W.3d at 632 (emphasis in original). Clearly, the inability to provide proof of the basic statutory requirements was fatal to Bethany's failure to warn claim.

In an effort to avoid the consequences of her failure of proof, Bethany attempts to apply common law principles of negligence to her claims by asserting the physicians deviated from accepted standards of professional care in treating Inabnit for his mental illness. Bethany avers the deviation from accepted professional standards constitutes a failure to comply with the provisions of KRS

202A.301, thereby foreclosing application of the immunity provisions of KRS 202A.400. She gives no indication of how the physicians allegedly deviated from appropriate standards nor what they could have done differently in their treatment of Inabnit. Her own expert could not and did not say the physicians breached the applicable standard of care. Bethany's allegations miss wide of the target.

The duty to observe appropriate standards of medical care was a duty owed to Inabnit, not a duty owed to Mark. Mark was a stranger to the treatment process. Mark had no relationship with the physicians from which a duty to him could arise. His position was no different from that of any member of the general public as far as the physicians were concerned. In these circumstances, even if the physicians failed to observe due care in treating Inabnit, there was no liability to Mark.

"To prove negligence it is not enough to shew that the defendant has been negligent to others, the plaintiff must shew that there has been a breach of duty towards himself." *Thomas v. Quartermaine*, (1887) 18 Q.B.D. 685, 698 (per Bowen, L.J.). A plaintiff must sue in her own right for a breach of duty personal to her, and not as the vicarious beneficiary of a breach of duty to another. *Palsgraf v. The Long Island Railroad Co.*, 248 N.Y. 339, 342, 162 N.E. 99, 100 (1928). The existence of a duty owed is not incidental to a cause of action for negligence; it is an indispensable element of the plaintiff's case. The question of liability for

negligence cannot arise at all until it is established the one who has been negligent owed some duty to the person who seeks to make him liable for his negligence. *Le Lievre v. Gould*, [1893] 1 Q.B.D. 491 (per Lord Esher, M.R.). "Proof of negligence in the air, so to speak, will not do." *Palsgraf*, 248 N.Y. at 341, 162 N.E. at 99 (citations omitted). Bethany has failed to establish the requisite duty and her inability to produce evidence or expert testimony regarding a breach of the standard of care is fatal to her claims for relief. The trial court properly granted summary judgment in favor of the physicians.

Next, Bethany asserts the trial court erred in concluding the personal immunity conferred by KRS 202A.400 covered Eastern State. Thus, she argues summary judgment was improvidently granted. Bethany misapprehends the trial court's ruling. It is undisputed the plain language of the statute extends immunity to nine enumerated classes of mental health professionals, none of which would include a mental health facility or organization such as Eastern State. Had the trial court relied on the statutory language to grant summary judgment, we have no doubt reversal would have been warranted. However, it did not do so.

In granting summary judgment in favor of Eastern State, the trial court made no mention of KRS 202A.400 as a basis for its ruling. Rather, the decision focused on the doctrine of *respondeat superior* and was based on the failure of proof of negligence or wrongdoing by the physicians. In the absence of liability of

the physicians, there simply was no liability to shift "up the ladder" to Eastern State. "The employer is strictly liable only for damages resulting from the tortious acts of his employees." *Patterson v. Blair*, 172 S.W.3d 361, 364 (Ky. 2005). Bethany's assertions to the contrary are without merit. Our review of the record reveals the trial court's determination was sound. There was no error.

Finally, in its protective cross-appeal, Eastern State contends the trial court erred in failing to grant it summary judgment on sovereign immunity grounds. However, our resolution of the issues raised on direct appeal renders the issue raised on cross-appeal moot. No discussion is necessary or warranted.

For the foregoing reasons, the judgments of the Fayette Circuit Court are AFFIRMED.

ALL CONCUR.

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