STATE OF MICHIGAN

COURT OF APPEALS

RANDALL L. DOUGLAS, Personal Representative of the Estate of DAVID E. DOUGLAS, SR. and the Estate of NORMA L. DOUGLAS,

Plaintiffs-Appellants,

v

ALPENA GENERAL HOSPITAL,

Defendant-Appellee,

and

CAROLYN KOPPENOL,

Defendant.

UNPUBLISHED
November 7, 1997

No. 188624
Alpena Circuit Court
LC No. 93-000714-NO

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant Alpena General Hospital in this negligence action. We affirm.

Plaintiff's decedents, David Douglas, Sr. and Norma L. Douglas, were the parents of William Douglas. William Douglas resided with his parents. William had a long history of psychiatric disorders and had been diagnosed by various psychiatrists as suffering from depression, schizo-affective disorder, and paranoid schizophrenia. On August 20, 1991, William became extremely paranoid and agitated. At gunpoint, he threatened to kill his parents, whom he referred to at the time as "imposters" who had killed his true parents, and drove them from their home. Police officers took William into custody. On that same date, the Montmorency County Probate Court ordered that William be examined at Alpena General Hospital. Dr. Carolyn Koppenol, M.D., a psychiatrist and medical director of Northern Michigan Community Mental Health Services (NEMCMHS), was William's attending physician.

On August 20, 1991, William was admitted to Alpena General Hospital under Dr. Koppenol's care. On August 23, 1991, William requested that a commitment hearing be deferred and agreed to combined hospitalization and alternative treatment of up to ninety days with hospitalization not to exceed sixty days. The alternative treatment was to be under the supervision of NEMCMHS. Arrangements were subsequently made for William to be admitted to Ripley Treatment Facility (Ripley House), a residential mental health facility operated by NEMCMHS.

On August 28, 1991, Dr. Koppenol released William from Alpena General Hospital to alternative care with NEMCMHS so William could begin treatment at Ripley House. Because no bed was available on that date, William's parents agreed to have him home for two days before reporting to Ripley House. William failed to accept treatment at Ripley House and continued to reside with his parents after August 1991.

On October 28, 1991, William met with Dr.Koppenol. Dr. Koppenol found William free of active psychotic symptoms and concluded that he was clear and lucid in his thinking. On December 1, 1991, William fatally shot his parents.

Plaintiff initially filed suit against defendant and Dr. Koppenol. However, plaintiff and Dr. Koppenol both accepted a mediation recommendation pursuant to which a $190,000 judgment was entered against Dr. Koppenol. On November 30, 1994, plaintiff filed a second amended complaint solely against Alpena General Hospital alleging violations of the Mental Health Code, MCL 330.1100, *et seq*.; MSA 14.800(100), *et seq*. The trial court granted summary disposition for defendant, concluding that there were no statutory grounds for imposing liability on defendant under the circumstances of this case.

I

Plaintiff first contends that summary disposition was improperly granted for the hospital on the ground that he failed to establish that Alpena General Hospital owed a duty to William's parents. To establish a prima facie case of negligence, a plaintiff must prove that (1) the defendant owed a duty to the plaintiff; (2) the defendant breached the duty; (3) the plaintiff suffered damages; and (4) the defendant's breach of duty was a proximate cause of the plaintiff's damages. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). Violation of a statute creates a rebuttable presumption of negligence. *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 194; 540 NW2d 297 (1995).

Plaintiff alleged, in his second amended complaint, that Alpena General Hospital breached its duty of care in the following manner:

> b. William was allowed to return directly to his parents' home on August 28, 1991, when it was detrimental and dangerous to his parents, contrary to R 330.4081.

c. The Hospital did not release William directly to the alternate treatment provider contrary to MCLA 330.1455(8).

d. William was released to his parents' home when he was still a "person requiring treatment" as defined in MCLA 330.1401(a) and (c) contrary to MCLA 330.1476(1).

e. No notice was given to the Court, contrary to MCLA 330.1476(3).

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j. After arrangements had been made for William to receive aftercare treatment at Ripley House, the Hospital took no action when William refused to reside in Ripley House, nor did it notify the Probate Court of William's noncompliance so that a hearing could be held and appropriate orders made for William's ongoing treatment, contrary to MCLA 300.1455(7) and (8).

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m. The Hospital violated its duty to warn William's parents as required by MCLA 300.1946 nor were any police departments advised.

A. Rule 330.4081

The pertinent portion of Rule 330.4081, promulgated by the Department of Mental Health and as in effect in 1991, provided:

(1) A leave for a visit shall constitute a conditional and revocable release of a patient, granted for temporary purposes to provide a short-term experience outside a hospital for an individual not yet thought to be capable of making a satisfactory adjustment on a long-term basis.

(2) Convalescent leave shall constitute a conditional and revocable release of a patient in his own custody or in the custody of another person, granted for purposes of continuing treatment within a hospital while providing a longer term experience outside the hospital for an individual not yet thought to be capable of making a satisfactory adjustment without this treatment. At the time the hospital director determines the suitability of this release for a voluntary patient, consideration of discharge shall have preference. An adult voluntary patient's approval shall be obtained before convalescent leave is initiated.

(3) A patient, while in the custody of a hospital, shall not be permitted leave, when in the judgment of the hospital director it would be detrimental or dangerous to the patient or others.

Rule 330.4081 concerns the procedure that applies when a "leave" is granted to a hospital patient. A leave is defined in the rule as a conditional and revocable release that will provide either (1) a short-term, or (2) a long-term experience for a hospitalized patient. Here, William was actually released from the hospital to NEMCMHS for treatment and was not merely granted a "leave" as that term is used in the rule. Accordingly, as a matter of law, Rule 330.4081 is not applicable to William's release.

B. MCL 330.1455(7)-(8); MSA 14.800(455)(7)-(8)

MCL 330.1455(7)-(8); MSA 14.800(455)(7)-(8), as in effect in 1991, provided in pertinent part:

> (7) Upon receipt of a copy of the request to temporarily defer the hearing under subsection (5), if the individual has agreed to remain hospitalized as described in subsection (2)(a) or (c), the director of the hospital shall treat the individual as a formal voluntary patient without requiring the individual to sign formal voluntary admission forms. If the individual, at any time during the period in which the hearing is being deferred, refuses the prescribed treatment or requests a hearing, either in writing or orally, treatment shall cease, the individual shall remain hospitalized with the status of a petition under section 452(a) or (b), and the court shall be notified to convene a hearing under section 452(h).
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> (8) Upon receipt of a copy of the request to temporarily defer the hearing under subsection (5), if the individual has agreed to participate in an alternative to hospitalization in the community, the director of the hospital shall release the individual from the hospital to the alternative treatment provider. If the individual, at any time during the deferral period, refuses the prescribed treatment or requests a hearing, either in writing or orally, treatment shall cease and the court shall be notified to convene a hearing under section 452(h). Upon notification, the court shall, if necessary, order a peace officer to transport the individual to the hospital where the individual shall remain until the hearing is convened. The individual shall be given the status of the subject of a petition under section 452(a) or (b).

Here, William allegedly refused treatment *after* he was placed in alternative treatment. Accordingly, the provisions of § 455(7) regarding a patient who agreed to remain hospitalized are not applicable.

Plaintiff argues that section 455(8) placed upon the hospital the duty to release William from the hospital directly to the actual physical custody of the alternative treatment provider, rather than to his parents, and a duty, if the alternative treatment ceased, to notify the court to convene a hearing. However, § 455(8) plainly states that the hospital shall "release" the individual from the hospital to the alternative treatment provider. In accordance with the statute, William was released to NEMCMHS. The fact that William's parents agreed to allow William to go home on a two-day pass because a bed was not yet available at Ripley House does not alter the fact that William was actually "released" to

NEMCMHS. Further, § 455(8) states only that "the court shall be notified" if an individual refuses treatment. It does not obligate a hospital that has released a patient to an alternative treatment provider to notify the court if the patient refuses treatment. Because the hospital would not be providing treatment, it could not reasonably be expected to know if a patient was refusing treatment. Hence, the only reasonable interpretation is that the obligation in § 455(8) to notify the court rests on the provider of the alternative treatment.

C. MCL 330.1476; MSA 14.800(476)

MCL 330.1476; MSA 14.800(476), as in effect in 1991, provided:

> (1) The director may at any time discharge a voluntarily or judicially hospitalized patient whom the director deems clinically suitable for discharge.
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> (2) The director shall discharge a patient hospitalized by court order when the patient's mental condition is such that he no longer meets the criteria of a person requiring treatment.
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> (3) If a patient discharged pursuant to subsection (1) or (2) has been hospitalized by court order, or if court proceedings are pending, the court shall be notified of the discharge by the hospital.

Section 476 concerns the *discharge* from a hospital of a patient no longer requiring treatment. Here, however, William was released from the hospital for treatment by an alternative treatment provider.[1] Thus, § 476 is inapplicable to William's release from the hospital.

D. MCL 330.1946(1)-(2); MSA 14.800(946)(1)-(2)

MCL 330.1946(1)-(2); MSA 14.800(946)(1)-(2), as in effect in 1991, provided:

> (1) If a patient communicates to a mental health practitioner who is treating the patient a threat of physical violence against a reasonably identifiable third person and the patient has the apparent intent and ability to carry out that threat in the foreseeable future, the mental health practitioner has a duty to take action as prescribed in subsection (2). Except as provided in this section, a mental health practitioner does not have a duty to warn a third person of a threat as described in this subsection or to protect the third person.
>
> (2) A mental health practitioner has discharged the duty created under subsection (1) if the mental health practitioner, subsequent to the threat, does 1 or more of the following in a timely manner:
>
> (a) Hospitalizes the patient or initiates proceedings to hospitalize the patient under chapter 4 or 4a.

(b) Makes a reasonable attempt to communicate the threat to the third person and communicates the threat to the local police department or county sheriff for the area where the third person resides or for the area where the patient resides, or the state police.

(c) If the mental health practitioner has reason to believe that the third person who is threatened is a minor or is incompetent by other than age, takes the steps set forth in subdivision (b) and communicates the threat to the department of social services in the county where the minor resides and to the third person's custodial parent, noncustodial parent, or legal guardian, whoever is appropriate in the best interests of the third person.

Plaintiff claims that the hospital violated § 946 by failing to warn William's parents that he posed a threat of physical violence to them. Section 946 applies to a "mental health practitioner" who is treating a patient. As used in this section, "mental health practitioner" means a psychiatrist, psychologist, or psychiatric social worker. MCL 330.1946(5)(b); MSA 14.800(946)(5)(b). By its plain language, § 946 does not apply to a hospital. Nonetheless, no evidence was presented to the trial court to establish that William communicated a threat against the lives of his parents to a treating professional at any time from his initial admission to the hospital in August 1991 until William fatally shot his parents in December 1991. Accordingly, no genuine issue of fact regarding whether defendant violated the statute exists.

II

Plaintiff also contends that the hospital had a duty pursuant to its contract with NEMCMHS to protect third-party beneficiaries of the contract such as William's parents. Third-party beneficiary law in Michigan is controlled by statute. *Alcona Community Schools v State of Michigan*, 216 Mich App 202, 204; 549 NW2d 356 (1996). MCL 600.1405; MSA 27A.1405 provides in pertinent part:

Any person for whose benefit a promise is made by way of contract, as hereinafter defined, has the same right to enforce said promise that he would have had if the said promise had been made directly to him as the promisee.

(1) A promise shall be construed to have been made for the benefit of a person whenever the promisor of said promise had undertaken to give or to do or refrain from doing something directly to or for said person.

The contract on which plaintiff relies concerns the provision of in-patient services by the hospital to patients referred to it by NEMCMHS. Patients covered by the agreement are plainly intended third-party beneficiaries under an objective view of the terms of the contract. The contract does not bestow benefits on persons other than patients, and the benefit bestowed on patients is directly connected with treatment. Thus, those persons who might be harmed by patients if the patients are not properly treated would only be incidentally benefited by the contract and are not intended beneficiaries of the agreement

that directly benefited patients. *Id.* at 205-206. Accordingly, the trial court properly granted summary disposition in favor of defendant of plaintiff's claim with regard to alleged contractual duties.[2]

Affirmed.

/s/ Hilda R. Gage
/s/ Gary R. McDonald
/s/ E. Thomas Fitzgerald

[1] Indeed, the provisions of MCL 330.1455; MSA 14.800(455) regarding release to an alternative treatment provider plainly contemplate that a person requiring mental health treatment may be released from a hospital although that person still requires treatment.

[2] Plaintiff also suggests that Alpena General Hospital had a common law duty to protect William's parents. However, plaintiff has failed to coherently identify the alleged common law duties and offers no authority in support of his position. This Court is not obligated to search for authority to sustain or reject a party's position. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995).