

IN THE COURT OF CLAIMS OF OHIO

DAMIEN CORLEY	:	
	:	
Plaintiff	:	CASE NO. 2002-05212
	:	Judge J. Warren Bettis
v.	:	
	:	<u>DECISION</u>
NORTHCOAST BEHAVIORAL	:	
HEALTHCARE SYSTEM	:	
	:	
Defendant	:	
.....	:	

{¶ 1} Plaintiff brought this action against defendant, Northcoast Behavioral HealthCare System (NBHCS), alleging that defendant was negligent in failing to prevent him from harming another patient at its facility. Specifically, plaintiff alleges that defendant breached its duty of care by assigning plaintiff to share a room with another patient, Bhomeshwar Deokarran, who was on assaultive precautions. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} The court heard testimony from the following witnesses: plaintiff, nurse Patricia Singleton, nurse Rheta Staley, Dr. Hong Kim, and nurse Charles Seasor. Plaintiff’s counsel offered the transcript of the trial testimony of Mr. James Robinson, who was employed by defendant as a therapeutic program worker and who was a personal friend of plaintiff’s parents. Robinson’s testimony was transcribed from a related proceeding conducted on June 26, 2000. Defendant also presented the testimony of its expert, Dr. Stephen Noffsinger.

{¶ 3} Plaintiff testified that on or about December 26, 1997, he attended a party where he consumed three or four drinks and smoked a cigarette that he obtained from another party member. According to plaintiff, he soon began to feel dizzy and fearful. Over the next several hours plaintiff continued to act strangely, and his behavior eventually led plaintiff’s family to take him to the hospital for treatment. Plaintiff recalled being examined and receiving sedation at St. Vincent’s

Hospital for symptoms arising from Phencyclidine (PCP) ingestion, and then being transferred to NBHCS.

{¶ 4} Upon arriving at NBHCS on December 28, 1997, plaintiff was evaluated by Dr. Kim and then assigned to a room on the fifth floor. Plaintiff stated that soon after admission he attempted to escape from this unit by running headfirst into a plexiglass window. Plaintiff recalled being dazed but unhurt. As a result of his actions, plaintiff was placed in restraints in a seclusion room for observation. After approximately four hours, plaintiff was released from restraints, returned to Room 550, and placed on suicide precautions such that he was to be observed once every 15 minutes. According to plaintiff, he fell asleep and did not awaken until some time between midnight and 2:00 a.m. Plaintiff stated that he remembers feeling afraid to leave his room; that he dressed himself in his own clothes; and that he fell back asleep. He stated he next awoke when Deokarran was “pushed” into the room by a nurse; that Deokarran struck the wall with his hand and then punched plaintiff in the forehead. Plaintiff testified that the next memory he has is of Deokarran restraining him from behind. According to plaintiff, the two began fighting and knocking things over in the room. Plaintiff specifically recalled lifting Deokarran and slamming him to the floor. Plaintiff further related that he hit Deokarran several times in the mouth and placed him in a chokehold until he stopped struggling. Plaintiff testified that he again went to sleep. On cross-examination, plaintiff admitted that at the time he was admitted to NBHCS he was skilled in martial arts such that he was capable of subduing an opponent efficiently and lethally.

{¶ 5} Nurse Seator testified that he was working during the early morning hours of December 29, 1997. He informed the court that while he knew that plaintiff was paranoid and that Deokarran was on assaultive precautions, he believed it was appropriate for the two patients to be assigned to the same room for the following reasons: they were both males; there was no indication from either person that there would be an altercation; and the beds to which they were assigned were the only non-occupied beds on the ward at the time they were admitted. Seator maintained that he had made rounds on these two patients every 15 minutes from 5:15 a.m. through 5:45 a.m. According to Seator, he never heard any commotion from the room and he saw no interaction between the two residents every time he had checked on them. Seator testified that plaintiff appeared to be sleeping during each check and that Deokarran was either sleeping or sitting quietly on his own bed. Seator

stated that at 6:00 a.m. he found Deokarran lying in a small pool of blood, face down on the floor between the two beds, tied to the two bed rails with hospital gowns, without respiration and with a faint pulse. Seasor stated he immediately commenced resuscitation efforts but that after being transported to the hospital Deokarran was subsequently pronounced dead.

{¶ 6} Dr. Kim testified that he examined both plaintiff and Deokarran during their admission and that he did not find it unusual to place these two patients in the same room. According to Kim, “all of our patients have paranoia,” many are delusional, but not all are violent. Dr. Kim also stated that based on his experience, training, and observations, he did not believe that Deokarran would be assaultive in the hospital setting.

{¶ 7} Patricia Singleton, the nurse who admitted plaintiff to the fifth floor, testified that she made the decision to place plaintiff in the same room as Deokarran and that she was aware of the diagnoses for each. She stated that she had been notified of plaintiff’s earlier escape attempt but that he was allowed to be released from seclusion once he had become calm and cooperative. According to Ms. Singleton, “I assessed that the two patients could be in the same room together *** based on the behavior I observed on the ward.”

{¶ 8} Nurse Rheta Staley testified that she was working the afternoon shift on December 28, 1997, and that she had an opportunity to observe both plaintiff and Deokarran. She recalled that plaintiff was sleepy but arousable; that he was cooperative; and that he did not appear to pose any harm to himself or others. According to Staley, Deokarran was essentially mute, but he would follow directions requested by staff.

{¶ 9} Upon review of Mr. Robinson’s trial testimony, the court learned that plaintiff’s father had expressed concern to Mr. Robinson regarding plaintiff’s martial arts training. However, Mr. Robinson testified that he did not convey this information to any staff members. Mr. Robinson further testified that he observed plaintiff and Deokarran in their room at approximately 2:00 a.m. on December 29, 1997, and that he did not detect any problems between them.

{¶ 10} Defendant’s expert, Dr. Noffsinger, testified that, in his opinion, NBHCS acted within the standard of care based on the fact that the staff performed a timely and appropriate evaluation of plaintiff upon admission and subsequently formed a treatment plan that reflected the appropriate level of supervision. This plan included placing plaintiff on suicide precautions such that

he was to be observed at least once every 15 minutes. Plaintiff also received anti-psychotic medications. Noffsinger further opined that it was not a deviation from the standard of care to place the two patients together. Noffsinger stated that plaintiff had not displayed aggression toward the staff or other patients nor had he made any threats. In addition, Noffsinger testified that it was not reasonably foreseeable that plaintiff would injure or kill another patient inasmuch as he had not voiced any threats of violence, and there was no evidence of conflict with the staff or between the two patients. According to Noffsinger, plaintiff's training in the martial arts did not increase the likelihood that he would commit a violent act, nor did it make him more likely to be violent.

{¶ 11} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Under Ohio law the existence of a duty depends on the foreseeability of the injury. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. An injury is foreseeable if a reasonably prudent person would have anticipated that an injury was likely to result from the performance or nonperformance of the act. *Menifee*, supra, at 77.

{¶ 12} This court has heard testimony in previous cases involving a patient at a mental health facility who was assaulted by a fellow patient. See *Hendrickson v. Rollman Psychiatric Institute* (1989), 61 Ohio Misc.2d 76; *Knoll v. Ohio Department of Mental Health* (1987), 61 Ohio Misc.2d 196. In deciding those cases, the court addressed the duty owed in the context of the statutory provisions of R.C. 5122.29, which state in pertinent part:

{¶ 13} “All patients hospitalized or committed pursuant to this chapter have the following rights:

{¶ 14} “***

{¶ 15} “(B) The right at all times to be treated with consideration and respect for his privacy and dignity, including without limitation, the following:

{¶ 16} “***

{¶ 17} “(2) A person who is committed, voluntarily or involuntarily, shall be given reasonable protection from assault or battery by any other person.”

{¶ 18} Plaintiff maintains that defendant owed him a duty to monitor his behavior to protect him from himself or from the consequences of his actions.

{¶ 19} Generally, there is no duty to control the conduct of a third person by preventing him from causing physical harm to another. *Littleton v. Good Samaritan Hospital & Health Ctr.* (1988), 39 Ohio St.3d 86, 92. An exception to this general rule has been found when a special relationship exists between the actor and the third person that imposes a duty upon the actor to control the third person's conduct, or when a special relationship exists between the actor and the other that gives to the other a right to protection. *Id.* "Such a 'special relation' exists when one takes charge of a person whom he knows or should know is likely to cause bodily harm to others if not controlled." *Littleton*, *supra*, at 92; 2 Restatement of the Law 2d, Torts (1965) at 129, Section 319; see 2 Restatement of the Law 2d, Torts (1965) at 123, Section 315, Comment c.

{¶ 20} The degree of care owed to mental patients is measured by the degree of incapacity known to hospital employees. *Orosz v. Ohio Dept. of Mental Health* (July 18, 1991), Franklin App. No. 90AP-1065. Here, plaintiff argues that defendant's duty should be extended to include the prevention of his own violent outburst. However, this court has also held that "it is unreasonable and arbitrary to impose a mandate upon [a psychiatric institute] that it must foresee and prevent hostile actions of each patient. It is difficult to predict a patient's violent outbursts and the ramifications thereof ***." *Hendrickson* at p. 81.

{¶ 21} In the instant case, the court did not find plaintiff's testimony to be worthy of belief. Further, the court finds that the evidence adduced at trial was insufficient to substantiate plaintiff's statement that Deokarran initiated the altercation. In addition, the medical records admitted as evidence did not substantiate that plaintiff suffered any observable wounds. The court finds that plaintiff failed to offer any testimony or evidence to rebut either Seasor's recollection of events or Dr. Noffsinger's opinions. Accordingly, the court finds that NBHCS was not negligent by assigning plaintiff to reside in a room occupied by Deokarran. Upon review of all the evidence presented, the court further finds that plaintiff failed to prove by a preponderance of the evidence that defendant failed to properly monitor his behavior.

{¶ 22} For the foregoing reasons, the court concludes that plaintiff cannot prevail on his claim of negligence and judgment shall be rendered in favor of defendant.

IN THE COURT OF CLAIMS OF OHIO

DAMIEN CORLEY

:

Plaintiff :

CASE NO. 2002-05212

Judge J. Warren Bettis

v.

:

JUDGMENT ENTRY

NORTHCOAST BEHAVIORAL
HEALTHCARE SYSTEM

:

:

Defendant

.....

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. WARREN BETTIS
Judge

Entry cc:

Almeta A. Johnson
489 East 260th Street
Euclid, Ohio 44132-1461

Attorney for Plaintiff

Eric A. Walker
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

Attorney for Defendant

SJM/cmd
Filed October 6, 2004

To S.C. reporter November 5, 2004