legal note

Improper Release of Patient from Hospital

A Florida appeals court held that the doctrine of sovereign immunity did not bar a suit against the State alleging that a State hospital negligently released an involuntarily committed patient before he was sufficiently treated and cured, causing injury to a third party. *Bellavance v. State of Florida,* 390 So.2d 422 (Fla. App. 1980).

Ever since the California Supreme Court in *Tarasoff* v. *Regents of the University of California,* 551 P. 2d 334 (Cal. 1976), found that a psychotherapist had a duty to warn third parties of reasonably foreseeable danger arising from a patient's violent tendencies, there has been increasing attention given to the liability issues surrounding patient care. One line of cases in this area involves the liability of governmental entities for negligently releasing mental patients in the community when such release results in injury to the patient or others. This case involves the liability of the State of Florida for injury to a third party because of the negligent release by a State hospital of an involuntarily committed patient.

The patient, Gary Riccardelli, had been involuntarily committed to the Northeast Florida State Hospital under Florida's Baker Act immediately following his release from prison. During his stay in prison, Riccardelli had a long and troubled history of fights and other violent acts and, while in the hospital for only 2 months, tried to escape twice. The patient was released from the hospital on December 25, 1976, even though the staff had subjected him to "homicidal precautions" as recently as December 10, 1976. Plaintiffs Norman and Paul Bellavance brought suit against the State of Florida alleging that, following his release, the patient injured Paul Bellavance causing loss to both Paul and his father, Norman, and that this injury was due to the State's negligent release of the patient before he was properly treated and cured.

The only issue before the appellant court was whether the suit should have been dismissed because of the State's sovereign immunity. The court decided dismissal was not justified.

WAIVER OF IMMUNITY

Historically, the Federal and State governments were immune from tort liability arising from activities which were governmental in nature. However, most jurisdictions have abandoned this doctrine by permitting suits in limited situations. A Florida tort claims statute waives sovereign immunity except for certain "discretionary" governmental functions. The Florida Supreme Court described four factors to consider in determining whether an alleged wrongful act fell within a government's discretionary function:

1. Does the act involve a basic governmental policy?
2. Is the act essential to the accomplishment of the policy or just peripheral?
3. Does the act require the exercise of a basic policy judgment on the part of the governmental entity involved?
4. Does the governmental entity possess the proper authority to perform the act?

If all of these questions are answered in the affirmative, the challenged activity is most likely within the government's discretionary functions and, thus, the responsible entity would be immune from liability.

The court found the answers to questions 1 and 4 affirmative in that the act of releasing a mental patient clearly involves the basic governmental policy set forth in the Baker Act "to seek the least restrictive means of intervention and treatment for the particular patient" and that the State hospital had the necessary authority to release the patient.

In answering questions 2 and 3 in the negative, the court reasoned that the release of Riccardelli was not essential to maintenance of the Baker Act policy favoring least restrictive means of treatment and that, although the State's standards for releasing mental patients might be discretionary, the act of releasing Riccardelli under those standards did not achieve the status of a basic policy evaluation. Concluding that consideration of these four questions did not clearly support application of the sovereign immunity doctrine, the court determined that additional analysis was needed on whether the State should be immune from suit in this instance.

EFFECT OF STATE POLICY

The court described the policy behind the Baker Act, the Florida commitment statute, as one favoring the least restrictive means of treatment for the individual patient. In deciding whether the release of Riccardelli involved a discretionary function and, thus, immunity from suit, the court was concerned whether "to subject the State to liability for the negligent release of . . . [mental patients] will have a chilling effect" upon the State

policy to "secure the earliest possible release and subsequent return to society of persons afflicted with mental illness." The court concluded that this potential chilling effect was limited because of a provision in the Florida tort claims act restricting the liability of the State's employees for negligence ("No officer, employee, or agent of the state . . . shall be held personally liable in tort . . . as a result of any act, event, or omission of action in the scope of his employment or function, unless . . . [he] acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property").

Further, the court stated its doubt "that the potential liability of the State itself will be a significant inhibitor to the exercise of professional judgment by the personnel involved. Indeed, some inhibiting effect may well be healthy, for it should not be forgotten that the State's employees serve the needs of society as a whole as well as the needs of individual persons."

At the end of its analysis, the court concluded "[i]n sum, the equities of the instant factual situation do not present a compelling justification for the invocation of sovereign immunity."

IMPLICATION OF THE RULING

The court found that the doctrine of sovereign immunity did not protect the State of Florida from tort actions by injured third parties for the negligent release of mental patients. The precedential effect of this decision by a Florida appellate court is limited to that State. Courts in other jurisdictions which have considered this and similar questions have split on whether the governmental entity should be subject to liability, although in some instances the cases turn not on the issue of sovereign immunity but on some other ground, such as whether a duty exists to protect against the harm caused by the negligent release. For cases holding that the governmental entity may be held liable, *See Maroon* v. *Indiana Department of Mental Health,* 411 N.E.2d 404 (Ind. Ct. App. 1980) (escape of mental patient); *Leverett* v. *Ohio,* 399 N.E.2d 106 (Ohio Ct. App. 1978); *Payton* v. *United States,* 636 F. 2d 132 (5th Cir. 1981), rehearing en banc granted, 649 F. 2d 385 (1981) (release of psychotic prisoner on parole); *Lipari* v. *Sears, Roebuck & Co.,* 497 F. Supp. 185 (D. Neb. 1980). For cases finding that liability should not be imposed, *See Thompson* v. *County of Alameda,* 614 P. 2d 728 (Cal. Sup. Ct. 1980) (release of juvenile on parole); *Neal v. Donahue,* 611 P. 2d 1125 (Okla. Sup. Ct. 1980) (release of juvenile); *Ellis* v. *United States,* 484 F. Supp. 4 (D.S.C. 1978); *Heifetz* v. *Philadelphia State Hospital,* 393 A. 2d 1160 (Pa. Sup. Ct. 1978) (case has been refiled following abolishment of Pa. sovereign immunity); *Leedy v. Hartnett,* 510 F. Supp. 1125 (M.D. Pa. 1981) (discharge of voluntary patient).

In those jurisdictions which allow governmental liability, what implications might this have for public policies favoring treatment of mental patients in the community? The answer to this question is, of course, speculative but the court in *Bellavance* reasoned that the partial immunity from personal liability provided by the Florida tort claims act would diminish any negative impact of State liability on the policy favoring patient release at the earliest possible date. As the laws which apply to the Federal Government and many other states also limit employee liability, applying this reasoning in other jurisdictions would suggest a limited impact on policies favoring community treatment.

It seems reasonable to assume that this protection from personal liability would help insulate the governmental employee from any direct concern over personal financial loss from *Bellavance* type lawsuits. However, there is less reason to agree with the court's conclusion that "the potential liability of the State itself will [not] be a significant inhibitor to the exercise of professional judgment by the personnel involved." There is little doubt that few mental health professionals wish to be involved in a lawsuit in which their judgment is at issue. It also seems likely that governmental liability will lead to institutional procedures or pressures which will cause employees to be more timid in discharging patients. Even without personal liability, it is unlikely a governmental employee would willingly jeopardize his career by acting against the best interests of his employer. Thus, the rise of *Bellavance* type lawsuits may threaten public policies favoring community treatment of the mentally ill by making public hospitals generally less willing to release mental patients early because of the liability that may arise if they erroneously release patients who are dangerous and commit harm to third parties. (At least one court apparently agrees with the view that the prospect of liability will lessen the likelihood of release, although the question considered by that court concerned the liability of court-appointed psychiatrists and not the State. *See Seibel* v. *Kemble,* 631 P. 2d 173 (Hawaii Sup. Ct. 1981).

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