



Doctor's docket

Responsibility for anesthesiologist suicide relating to drug abuse

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1. Facts

Dr C was an anesthesiologist. Before 12/2004, the hospital and the Director of Anesthesiology, Dr H, knew that Dr C had a prior personal history of drug or controlled substance abuse, but that Dr C was recovered. However, on 12/10/04, Dr H confronted Dr C during work hours about Dr C's taking fentanyl from the Hospital and his possible personal abuse of it. No support persons were present during the confrontation. Dr H directed Dr C to submit to a urine test that day. Dr DC, who was Dr C's spouse, was not advised or notified about the confrontation or about Dr C's suspected drug abuse at the time. Hospital and Dr H did not remove Dr C from the on-call schedule for 12/11/04.

After completing call, on 12/12/04, Dr C returned home. Dr C committed suicide in his automobile after parking it in his driveway. Dr DC discovered Dr C's body after arriving home.

Plaintiff Dr DC filed suit against defendants Dr H and Hospital, claiming, amongst other actions, wrongful death and negligence by defendants causing Dr C's suicide. Dr DC indicated that the defendants had a duty to protect Dr C from suicide. In her complaint, Dr DC noted that the

defendants "knew and/or should have known that [Dr C] had a prior personal history of drug or controlled substance abuse or addiction" Plaintiff indicated that Dr C's suicide resulted "out of [defendants'] improper or negligent confrontation of [Dr C], concerning his drug abuse/relapse and [defendants'] subsequent continuing neglect in failing to take steps to protect him from thereafter harming himself as a result of their inappropriate conduct." Because of these facts, Dr DC argued that there was a special relationship between defendants and Dr C and hence a duty to protect him from suicide.

The trial court, upon motion by the defendants, dismissed Dr DC's complaint. The trial court indicated that the facts pleaded by the plaintiff did not establish as a matter of law that defendants owed a duty to protect Dr C from suicide.

Plaintiff Dr DC appealed. She indicated, amongst other arguments, that there was a "special relationship" between defendants and Dr C, based upon cases involving failure to warn, civil rights actions, and medical privilege laws, as well as traditional tort law. Defendants argued that the trial court was correct in its conclusions, and its decision should be affirmed.

2. Legal analysis

The appellate court affirmed the trial court judgment and dismissed the case (Cooper v. Frankford Health Care System, Inc., 960 A.2d 134 (Pa. Super. 2008).

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The appellate court first noted that it would reverse the trial court ruling only when there has been an error of law or abuse of discretion by the lower court. It noted that the key issue was whether the defendants owed a duty to Dr C to prevent him from committing suicide on the basis of a special relationship in failure to warn cases, civil rights actions, and privilege law as well as traditional tort law. It concluded that there was no such duty.

Addressing the failure to warn issue, the appeals court noted that the basis of plaintiff's claim was the Tarasoff case [1]. In that case, the California Supreme Court held that a psychotherapist could be liable for wrongful death to a third party whose daughter was murdered by the psychotherapist's patient. However, the appellate court here noted that the duty and potential liability there was based expressly on the underlying psychotherapist-patient relationship. Such a circumstance did not exist between the defendants and Dr C. Hence, the court here rejected this basis for any defendant duty to Dr C.

The appeals court then turned to plaintiff's next contention, under the Arocho civil rights case [2]. In that case, a cause of action against prison authorities in relation to prisoner suicides was allowed under federal law. However, the appeals court noted that there was no special custodial relationship that required special precautionary measures as there was in a prison authority-prisoner situation. Hence, no duty or special relationship between defendants and Dr C could be based on this case.

The court next reviewed plaintiff's claim that because the defendants granted Dr. C privileges to practice medicine at Hospital, there was a special relationship between defendants and Dr C to prevent his suicide based upon several state privilege cases. The court summarily rejected this claim. It noted that the privilege cases cited were not negligence actions. Those cases involved a physician suing a hospital that denied him privileges, an appeal from a board of medicine action against suspension, suspension of privileges due to disruptive behavior, and termination of a physician

from a residency program. These cases, according to the appellate court, were not relevant to support any purported duty to protect Dr C.

Finally, the appeals court reviewed plaintiff's claim that by choosing to confront Dr C, defendants assumed an obligation under traditional tort law to use reasonable care to protect Dr C given Dr C's history and its foreseeable consequences. However, the court rejected this claim on two grounds. Under traditional tort law, the court noted that one can indeed be liable if he or she undertakes services to another that should be recognized as necessary for the protection of the other's person or things. In this case, the court concluded that there was no indication in the context of the confrontation that defendants undertook to render any services to Dr C, and hence it could not be a basis of liability here.

The court also noted that traditional tort law allows liability against a party who, being under no duty to do so, takes charge of another who is helpless to aid or protect him or herself, then fails to exercise reasonable care or leaves the other person in a worse position than when the party found him or her. However, the court similarly rejected this basis as well in the present case. It noted that Dr C was never in the defendants' "charge" nor was there any indication that Dr C was in a worse position after the confrontation. Importantly, the appellate court noted that even if one realizes, or should realize, that action on his or her part is necessary for another's aid or protection, this realization in itself does not impose a duty on one to actually take such an action.

The appellate court concluded that the trial court did not err or abuse its discretion in dismissing the case. It then affirmed the trial court's decision.

References

- [1] Tarasoff v. Regents of University of California, 551 P.2d 334 (Cal. 1976).
- [2] Arocho v. County of Lehigh, 922 A.2d 1010 (Pa. Comwlth. 2007).