

vital signs

DIAGNOSING THE CHANGING STATE OF MEDICAL MALPRACTICE & NURSING HOME LIABILITY

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Appellate Court Upholds Dismissal Of Claim Against Adult Foster Care Group Home

By Lisa Anstess

In a recent unpublished decision, the Court of Appeals reviewed the trial court's granting of defendant's motion for summary disposition which had effectively dismissed plaintiff's claim that the defendant adult foster care group home had failed to protect a resident from injury and death. In *Revell v. D & J Home Care, Inc.* (docket number 249234), a resident's family had been given notice that the resident was going to be evicted from the home after an incident where he threw a phone and some trophies out of a window and damaged the screens. There had been prior incidents where the resident had been verbally and physically abusive; however, the administrator testified that these incidents were not a factor in deciding to evict him.

Just prior to the discharge date, the resident was included in a group outing to a local parade pursuant to his request. After the parade and while preparing to leave, the resident became irate and abusive, striking his caretakers and swearing at them. Police arrived on the scene and while inquiring what was going on, the resident punched an officer in the face. Another officer intervened and attempted to restrain the resident, taking him to the ground. As he fell, the resident struck his head on a brick wall. When EMS personnel tried to take him to the hospital, the resident again became combative and had to be restrained. A fractured neck was discovered at the hospital and the resident ultimately died within a few weeks due to complications related to his injury.

SECRET WARDLE NOTES:

It is important for facilities providing care to individuals to recognize the potential for liability when a resident gets injured. There is a duty to provide reasonable care; however, all four elements of negligence must be present to create a viable claim. If the injury actually occurred due to an unforeseeable superseding event or act, then the necessary connection between the alleged breach of duty and the damages may not be established.

Secret Wardle, as counsel for the defendant adult foster care group home regarding this matter, is proud to have obtained this excellent result. Our firm achieved a complete dismissal in the trial court, which ruling was upheld by the Court of Appeals. This is further evidence of our continued efforts to provide the best possible defense for our clients.

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Plaintiff, the deceased resident's family, filed suit claiming the foster home failed to provide adequate supervision, protection and personal care by placing him in a dangerous situation, and that this negligence directly caused his death.

The trial court ruled that plaintiff must establish the requisite elements of negligence to survive a motion for summary disposition. The four elements of negligence are: (1) a duty owed to the plaintiff, (2) a breach of the duty, (3) proximate cause, and (4) damages. Proximate cause means that "but for" the fact that the duty was breached, the damages would not have occurred. In other words, the resident's family was saying the foster home staff was negligent in taking this resident to the parade and that the injury that ultimately occurred was a direct and foreseeable result. The trial court did not agree. The trial court ruled that the fatal injury to this resident was not directly caused by the foster care staff but rather by the police officer that knocked him down and caused him to strike his head. The Court of Appeals upheld the trial court's ruling saying that the police officer's act of knocking the decedent's head against the wall while subduing him was an unforeseeable superseding cause of the injury that led to his death. The facility could not be held responsible for the action of the police officer as the injury could not be said to have been a predictable result of taking this individual to the parade.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

1550 East Beltline, S.E., Ste. 305, Grand Rapids, MI 49506-4361
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

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CONTRIBUTORS

Professional Liability Practice Group Chair

Mark E. Morley

Medical Malpractice Practice Group Chair

Jeffrey H. Chilton

Nursing Homes / Assisted Living Practice Group Chair

Lisa Anstess

Editor

Carina Carlesimo

We welcome your questions and comments.

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