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NEGLIGENCE-DUTY OF CARE-LIABILITY OF STATE MENTAL HOSPITAL FOR ACTS OF A DANGEROUS PATIENT AFTER IMPROPER DISCHARGE

Edgar A. Strause S.Ed.
University of Michigan Law School

NEGLIGENCE—DUTY OF CARE—LIABILITY OF STATE MENTAL HOSPITAL FOR ACTS OF A DANGEROUS PATIENT AFTER IMPROPER DISCHARGE—One Jones, a mental incompetent, was erroneously released as "recovered" from a state hospital for the criminal insane, after having been transferred there because of his dangerous behavior at a state penal institution. Jones' frequent assaultive behavior at the hospital was not reported in his case history upon which the determination of his recovery was partially based, nor was any inquiry made into the motivation for such conduct. Crowded conditions and an inadequate psychiatric staff were responsible for the improper diagnosis of the patient's condition and his ultimate discharge. Four days after his release he killed four persons. The administratrix of the estate of one of the decedents sued for wrongful death, asserting negligence in the release of Jones. *Held*, judgment for the plaintiff. Having knowledge of the incompetent's dangerous tendencies, the state had the duty to follow ordinary psychiatric procedure in determining the propriety of the patient's release. By reason of its failure in this respect the state was negligent and thus liable for the death caused by the released inmate.[1] *St. George v. State*, 118 N. Y. S. (2d) 596 (1953).

The principal case is an important judicial step in negligence law, there apparently being no prior case imposing liability on a hospital for injuries caused by a mental patient who was released because of an improper evaluation of his condition.[2] An analysis of this new development would seem to depend upon the source of meaning of the artful term "duty," and the effect of social policy in the recognition of a new duty here. The *Palsgraf* case[3] developed the concept of a relative duty, the prevailing judicial view, the majority holding that the existence of a "duty" depends on the foreseeability of harm to the specific plaintiff in fact injured as a result of the defendant's conduct. However, concentration upon the element of foreseeability as the sole determinant of duty is not likely to stabilize judgment here since judges may reasonably reach different

[1] For a discussion of the theories of immunity of state charitable hospitals from tort liability, see Scott, "Tort Liability of Hospitals," 17 TENN. L. REV. 838 (1943); 25 N.Y. UNIV. L. REV. 612 (1950); 51 MICH. L. REV. 309 (1952). See also, 26 AM. JUR., Hospitals and Asylums §13 (1940); 41 C.J.S., Hospitals §8 (1944). New York, however, has waived its immunity. N.Y. Civ. Prac. Code (Cahill-Parsons 1946), Court of Claims Act §8.

[2] However, a prior New York case held the state liable for injuries sustained by a woman assaulted by a dangerous mental patient after his *escape*. Weihs v. State, 40 N.Y.S. (2d) 283 (1943), affd. 267 App. Div. 233, 45 N.Y.S. (2d) 542 (1943). Similar liability was found with respect to injuries caused a visitor by an insane inmate of a mental hospital, Joachim v. State, 180 Misc. 963, 43 N.Y.S. (2d) 167 (1943); and for injuries sustained by a mental patient as a result of exposure after she escaped, Callahan v. State, 179 Misc. 781, 40 N.Y.S. (2d) 109 (1943), affirmed 266 App. Div. 1054, 46 N.Y.S. (2d) 104 (1943). Other New York cases recognize a state duty to protect patients from injury, self-inflicted or otherwise: Kaplan v. State, 198 Misc. 62, 95 N.Y.S. (2d) 890 (1950), affd. 277 App. Div. 1065, 100 N.Y.S. (2d) 693 (1950) (caused by malpractice of state physician); Dow v. State, 183 Misc. 674, 50 N.Y.S. (2d) 342 (1944) (suicidal death); Gould v. State, 131 Misc. 884, 46 N.Y.S. (2d) 313 (1944) (death caused by the assault of another patient). For a collection of cases regarding the liability of private hospitals, see 39 A.L.R. 1433 (1925); 124 A.L.R. 202 (1940).

[3] Palsgraf v. Long Island R.R., 248 N.Y. 339, 162 N.E. 99 (1928).

conclusions.[4] Thus, either a determination that no legal duty was owed to this plaintiff, or to any other person on the theory that it was not foreseeable that harm would result to any particular person,[5] or a judgment that all persons with whom the released patient was likely to come into contact, or all persons in the world, were in the orbit of the danger zone, might be deemed proper. At best, an evaluation restricted to the etymology of "foreseeability" represents only a surface examination of this newly-conceived duty. Basically, the term "duty" is simply used to designate the inquiry into whether or not the plaintiff's interest is entitled to legal protection against the defendant's conduct.[6] No legal theory has crystallized the real factors determinative of duty, but several of a less nebulous nature than mere foreseeability are significant in appraising the principal case. Such considerations as the superior financial capacity of a governmental body to sustain the loss, and more important, a policy to prevent similar future harms may have influenced the court.[7] Furthermore, constantly changing social conditions and other factors have resulted in a marked increase in the number of insane, presenting a substantial social problem which has long been regarded as an appropriate area for state intervention and expenditure.[8] Isolation for reasons of public safety is an important basis for confinement of the criminally insane in state institutions. Thus, it seems proper to place upon the state the risk of harm resulting from the negligent discharge of a mental patient as part of the cost of government. The instant case may be interpreted as a judicial attempt to prompt legislative appropriation to eradicate the evil of overcrowded conditions in state mental institutions[9] and thus eliminate the cause of an unfortunate release such as occurred in the principal case. However, there is no apparent reason why fault unrelated to overcrowded conditions in the release or escape of an unrecovered person should produce a different result. An important matter for future determination is whether mental institutions, private as well as state, other than

[4] PROSSER, TORTS 185 (1941), in discussing the problem of the unforeseeable plaintiff suggests that foreseeability is but one factor in determining the existence of a duty, and that judgment in defining duties should not be limited by any such formula. For a developed discussion of the need for focusing on various factors for a true understanding of the evolution of a "duty," and the presentation of those factors believed to be of operative significance, see Green, "The Duty Problem in Negligence Cases," 28 COL. L. REV. 1014 (1928); 29 COL. L. REV. 255 (1929).

[5] But, on the basis of Andrew's dissenting opinion in the Palsgraf case, note 3 supra, liability extends to all persons in fact injured by the defendant's wrong.

[6] PROSSER, TORTS 178 (1941).

[7] See Green, "The Palsgraf Case," 30 COL. L. REV. 789 (1930), where it is said that these factors as applied to the Palsgraf case are subject to reasonable differences in evaluation. See also, Green, "The Duty Problem in Negligence Cases," 28 COL. L. REV. 1014 at 1034 (1928); PROSSER, TORTS 181 (1941).

[8] Well-defined systems of state care have been adopted in a majority of the states, though a few states operate under the county care method, and in still others no definite plan of public provision has been formulated. However, from this introduction of public care many ills and obstacles arose which are yet to be overcome. DEUTSCH, THE MENTALLY ILL IN AMERICA cc. 12, 13 at p. 271 (1946).

[9] For a discussion of the extent to which existing law in each of the states guarantees the purposes and policy behind public mental health care, see National Mental Health Foundation, MENTAL HEALTH LAWS IN BRIEF (1946).

those for the criminally insane, will be subject to similar liability. Further, while the principal decision is limited to a situation involving the release of a patient of known dangerous tendencies, a duty might properly be said to exist, depending on the facts, with respect to the release of other types of mental defectives.[10] In commending the result of the principal case, it is submitted that, all factors considered, reasonable men would agree that in this situation a "duty" exists.

Edgar A. Strause, S. Ed.

[10] It is clear that the *kind* of mental illness will affect the extent or nature of the duty. See Excelsior Ins. Co. of N.Y. v. New York, 296 N.Y. 40, 69 N.E. (2d) 553 (1946), where recovery was sought from the state for property damage caused by a fire started by a moron, not insane or criminal, after running away from a state school for mental defectives. It was held there was no duty since it could not be reasonably anticipated that the person's escape would result in harm to others. See also, Calabria v. New York, 289 N.Y. 613, 43 N.E. (2d) 836 (1942); Hubas v. State, 198 Misc. 130, 96 N.Y.S. (2d) 408 (1949).