No. 128

Kevin Kowalski,
Appellant,
v.
St. Francis Hospital and Health Centers, et al.,
Respondents,
et al.,
Defendants.

Susan E. Galvao, for appellant.
Robert A. Spolzino, for respondent Chintapalli.
Robert R. Haskins, for respondent St. Francis Hospital and Health Centers.
Timothy S. Brennan, for respondent Emergency Physician Services of New York, P.C.

SMITH, J.:

We hold that, on the facts of this case, a hospital and an emergency room doctor did not owe an intoxicated patient a duty to prevent him from leaving the hospital.

I

Plaintiff was brought by a friend to the emergency room

of defendant St. Francis Hospital and Health Centers, seeking admission to St. Francis's detoxification facility, known as "Turning Point." This was at least plaintiff's second visit to St. Francis; he had been admitted there in the previous month with suicidal thoughts and had been placed on a "one-to-one watch." On that occasion, he improved after receiving medication and was discharged. Apparently, no one at the hospital consulted the record of plaintiff's previous visit when he returned.

There is no evidence that plaintiff was suicidal on his later visit to St. Francis. But he showed signs of severe intoxication, including red eyes, garbled speech and a strong smell of alcohol. His blood-alcohol content was extremely high: .369%. He was, however, alert and able to walk. He was seen by an emergency room doctor, defendant Chandra Chintapalli, and was accepted to the Turning Point program.

About four hours after his arrival, plaintiff was waiting to be transported to Turning Point when he removed an IV from his arm and told a nurse he planned to go home in a taxi. She urged him to call a friend to pick him up, and he agreed. The nurse went to tell Dr. Chintapalli that plaintiff wanted to leave; when she returned, plaintiff was gone. The nurse asked Dr. Chintapalli if she should call the police. The doctor said no, but notified hospital security. Plaintiff left unescorted, and was hit by a car an hour or two later.

Plaintiff sued the hospital, Dr. Chintapalli and the

doctor's professional corporation ("defendants" in this opinion) for negligence and medical malpractice. Supreme Court denied defendants' motions for summary judgment. The Appellate Division reversed and granted the motions, holding that defendants had shown prima facie "that they lacked authority to confine the plaintiff upon his departure from St. Francis" and that plaintiff had failed to contradict that showing (Kowalski v St. Francis Hosp. & Health Ctrs., 95 AD3d 834, 835 [2d Dept 2012]). We granted leave to appeal (19 NY3d 809 [2012]) and now affirm.

II

The gist of plaintiff's claim is that defendants should have prevented him from leaving the emergency room. We agree with the Appellate Division that defendants had no right, and therefore could have had no duty, to do so.

There are surely few principles more basic than that the members of a free society may, with limited exceptions, come and go as they please. Of course there are people so mentally impaired that they must be denied this right, but that category is a narrow one and does not include everyone who would be safer in a detoxification facility than on the street. Thus the common law permitted the restraint of people whose mental state might make them a danger to themselves or others only in extreme circumstances. As Judge Fuld explained in Warner v State of New York (297 NY 395, 401 [1948]):

"The common law recognized the power to

> restrain, summarily and without court process, an insane person who was dangerous at the moment. The power was to be exercised, however, only when necessary to prevent the party from doing some immediate injury either to himself or others and only when the urgency of the case demands immediate intervention. On the other hand, insane persons who were not dangerous were not liable to be thus arrested or restrained . . . Emmerich v Thorley [35 AD 432 (1st Dept 1898)] . . . is a striking illustration of the sort of case wherein summary restraint is justifiable. There, the plaintiff who had been summarily and forcibly restrained was actually in the act of throwing herself out of a window to escape fancied pursuers"

(internal quotation marks and some citations omitted).

Today, Mental Hygiene Law § 22.09 specifically addresses the question of when a hospital may retain "a person whose mental or physical functioning is substantially impaired as a result of the presence of alcohol . . . in his or her body" (Mental Hygiene Law § 22.09 [a] [1]). The statute deals separately with the case of an intoxicated person "who comes voluntarily or is brought without his or her objection" to a hospital or other treatment facility (§ 22.09 [d]) and one "who is brought with his or her objection" (§ 22.09 [e]). In the latter case, the person "may be retained for emergency treatment" if he or she is examined by a doctor and found to be incapacitated to such a degree that "there is a likelihood to result in harm to the person or others" (§ 22.09 [e]); a "likelihood to result in harm" to oneself must be "manifested by threats of or attempts at suicide or serious bodily harm or other

conduct" that demonstrates a danger of self-injury (Mental Hygiene Law § 22.09 [a] [3]). For the former category -- people who, like plaintiff, come to the hospital voluntarily -- the Mental Hygiene Law makes no provision for involuntary retention.

Plaintiff concedes that he could not have been retained under Mental Hygiene Law § 22.09. He argues that the Mental Hygiene Law is not the only possible source of a right to confine an intoxicated person. We need not decide that question: Plaintiff cites no other statute, and there is no principle of common law, that would permit the restraint of a patient on the facts of this case. Plaintiff argues that a duty to restrain him flowed from the hospital's and the doctor's common law duty of care, but there can be no duty to do that which the law forbids. To restrain plaintiff on these facts would have exposed defendants to liability for false imprisonment.

Plaintiff points to two specific features of this case which show, he says, that defendants were at fault: the failure to consult the record of plaintiff's previous hospitalization, when he was contemplating suicide, and Doctor Chintapalli's rejection of a nurse's suggestion to call the police. Neither fact changes the result. A patient cannot be confined simply because he was having suicidal thoughts a month ago. And the doctor had no duty to call the police; the police could not, on the facts known to Dr. Chintapalli when plaintiff left the hospital, have forced plaintiff to return.

The dissent advances two theories. First, it says that the Mental Hygiene Law is not "implicated" here (dissenting op at 1) -- but Mental Hygiene Law § 22.09 (4) (c), (d) and (e) apply on their face to a "general hospital." Secondly, the dissent argues, not that defendants could or should have prevented plaintiff from leaving the hospital, but that defendants failed "to follow their own protocols" in other ways (dissenting op at 2). Nothing in this record, however, supports an inference that there was any causal connection between any of the alleged departures from protocol that the dissent relies on and plaintiff's injury. This case is about whether defendants had a duty to prevent plaintiff from leaving the hospital, and nothing else.

Accordingly, the order of the Appellate Division should be affirmed, with costs.

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PIGOTT, J. (dissenting):

I would reverse on two grounds: the first based upon the Appellate Division's erroneous holding that the Mental Hygiene Law is implicated here, and the second based upon what I view as defendants' common law duty to plaintiff.

With respect to the Appellate Division's analysis, it is clear that article 22 of the Mental Hygiene Law does not apply. Article 22, entitled "Chemical Dependence Programs, Treatment Facilities, and Services," is primarily addressed to an entirely different category of medical providers, not general hospitals, with a limited exception for emergency treatment (see Mental Hygiene Law § 22.09 4 [c], [d], [e]). The Appellate Division held that a person, "brought voluntarily to a medical facility for treatment of alcoholism[,] cannot be involuntarily confined solely for that treatment" (95 AD3d 834 [2d Dept 2012]). But article 22 does not, as the Appellate Division seems to imply, displace a medical provider's common law duty relative to patients, incapacitated by alcohol or any other affliction, who voluntarily present themselves for emergency treatment. To hold otherwise distorts both article 22 and the common law duty of health care providers.

Once the Mental Hygiene Law is removed from the equation, the issue then becomes: what is the common law duty of defendants to a concededly intoxicated patient once he presents himself to the hospital and comes under the care of a physician? Defendants' argument in support of their motion for summary judgment is straightforward - plaintiff did not meet the legal standard for involuntary confinement, i.e. he was not in imminent danger to himself or others, and, because he was not such a danger, they owed him no duty. He was free to leave and there was nothing defendants could have done to legally stop him.

But this case has nothing to do with whether "free" individuals may "come and go as they please" (majority op, at 3), and has everything to with defendants' duty to a patient, like plaintiff, who presents to the emergency department in an intoxicated state. Because plaintiff submitted evidence through expert affidavits establishing that defendants failed to follow their own protocols in treating him, defendants' motion for summary judgment should have been denied.

Defendants supported their position with three experts, but the opinions of only two of them – a psychiatrist and an RN with a doctorate in the field of adult nursing practice – merit discussion here. The psychiatrist opined that the "undisputed facts demonstrate that plaintiff was not suicidal and had not manifested any signs of being in imminent danger to himself and others." The RN, who submitted an affidavit on behalf of St.

Francis, claimed that there was nothing the nursing staff could have done to stop plaintiff because it had no authority to restrain plaintiff, particularly where he had not expressed any desire to harm anyone.

However, these opinions, drawn from the Mental Hygiene Law, are tangential to the basic question of the defendants' common law duty to a patient such as this plaintiff, who presented with a fractured nose and in an inebriated state. Underscoring St. Francis's duty in this regard is the fact that, just one month prior to this admission, plaintiff presented to the same emergency department in an intoxicated and suicidal state. In response to that, St. Francis placed plaintiff on a "one-to-one watch," consistent with its written policy, until he was discharged to his family two days later. The majority acknowledges that St. Francis's staff in all likelihood failed to consult the medical records concerning plaintiff's recent visit (majority op, at 2).

In opposition to the motion, plaintiff presented affidavits from his own experts – a board-certified emergency medicine physician and an expert in psychiatry and neurology. These medical experts found fault with plaintiff's care and treatment by defendants, beginning with St. Francis's failure to abide by its own policies for a patient, such as plaintiff, with a history of psychiatric hospitalization, suicidal ideations and heavy drinking, all of which indicated that one-to-one

surveillance may be needed. They also opined that, based on plaintiff's behavior, defendant Chintapalli should have assigned a one-to-one watch. These experts explained that the decision by St. Francis and Chintapalli not to monitor plaintiff deviated from the standard of care and violated hospital protocol. Moreover, St. Francis failed to abide by its policy that "potentially unstable patients by history will not be left unattended while in the emergency department," which is clearly what occurred here. These aforementioned failures were compounded by Chintapalli's instructions; when asked, after the patient had left against medical advice, whether the police should be called, he answered "no."

The majority's opinion implies that this is an "all or nothing" issue, namely, that because St. Francis had no authority to restrain plaintiff, it owed him no further duty. In my view, plaintiff, through his experts, raised a triable issue of fact with respect to the defendants' common law duty as outlined in the hospital's own protocols. Whether plaintiff would prevail at trial is another question; but serious issues of fact with respect to defendants' conduct remain, as do triable issues of fact concerning proximate cause. I would reverse the Appellate Division order, deny the defendants' motion for summary judgment and reinstate the complaint.

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Order affirmed, with costs. Opinion by Judge Smith. Chief Judge Lippman and Judges Graffeo, Read and Rivera concur. Judge Pigott dissents and votes to reverse in an opinion in which Judge Abdus-Salaam concurs.

Decided June 26, 2013