Circuit Court for Baltimore City
Case No. 24-C-18-000031

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED

No. 1066

September Term, 2019

No. 430

September Term, 2020

RONNIE BARNES, JR., *ET AL.*

v.

UNIVERSITY OF MARYLAND MEDICAL SYSTEMS CORPORATION

Meredith,
Arthur,
Friedman,

JJ.

Opinion by Arthur, J.

Filed: July 24, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal arises from the untimely death of DiAndre Barnes, a thirteen-year-old child who was shot and killed by Anthony Clark, Jr., on June 11, 2016. The Barnes family brought a wrongful death and survival action against the University of Maryland Medical System Corporation ("UMMS") and others. The family sought to hold UMMS liable for failing to prevent Clark from absconding from the University of Maryland Medical Center during his stay as a psychiatric patient at the center 11 days earlier.

The Circuit Court for Baltimore City granted UMMS's motion for summary judgment on the basis that, as a mental health care provider, UMMS was statutorily immune from liability for Clark's violent conduct under Md. Code (1974, 2013 Repl. Vol.), § 5-609(b) of the Courts & Judicial Proceedings Article ("CJP"). The Barnes family appealed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On May 26, 2016, several officers of the Baltimore City Police Department arrested Anthony Clark, Jr., on charges of armed robbery, fleeing a crime scene, breaking and entering, and engaging in a stand-off with police.

After allegedly robbing a person at gunpoint at a gas station, Clark had been spotted fleeing into a nearby residence. A number of police officers responded. The officers observed Clark "behaving violently[,] cut[ting] his wrists with a box-cutter, and warn[ing] that [the officers] would 'have to kill him.'" The officers entered the home and subdued Clark.

As the medics transported Clark to the University of Maryland Medical Center ("UMMC") for emergency medical treatment, Officer J.B. Rippetoe completed a petition

for an emergency psychiatric evaluation. Therein, he documented that he had observed Clark "cutting his wrist and trying [to] jump out of a second-floor window." On the portion of the petition that states, "The evaluee presents a danger to the life or safety of the evaluee or others because: ____," Officer Rippetoe wrote "S/A," shorthand for suicide attempt.

Clark was admitted to UMMC, where he underwent surgery the following day to repair the self-inflicted laceration on his wrist.

Within several hours of his admission to UMMC, Clark submitted to a psychiatric evaluation performed by Dr. Andrea Naaum, M.D. Dr. Naaum documented her interview with Clark in a medical chart entry titled "UMMC Psychiatry Consult Note."

In her post-consult plan, Dr. Naaum reported that Clark would benefit from inpatient treatment, writing, "patient requires 1:1 sitter due to recent suicide attempt." Dr. Naaum noted that "since [Clark] is being arrested, [he] cannot be admitted to [the] inpatient psychiatric unit." The following day, however, "the police did not stay to place [Clark] under arrest." Consequently, "he was free to be admitted to psychiatry" from the shock trauma unit.

On May 29, 2016, Clark executed an application for voluntary admission to the inpatient psychiatric unit. His admission was apparently contingent upon the availability of a bed in that unit. Clark continued in his status as a medical inpatient pending his voluntary transfer to the psychiatric unit.

Per UMMC policy, armed law enforcement officers were not allowed in the area of the hospital where Clark was being treated. According to a "Care Plan Note" in

Clark's medical records, a member of the Baltimore City Police Department notified Clark's doctors that "warrants for patient arrest will be served upon his discharge from inpatient psych."

Early in the morning of May 31, 2016, Clark, still in a hospital gown, walked out of his hospital room and left the building.[1] Within minutes, the University of Maryland Police Department called the Baltimore City Police Department to report that Clark had absconded from his room. A police report regarding the incident explained that "Mr. Clark was being watched by a security sitter from UMD, as BPD is not allowed on the psych floor while armed." The sitter, who was "supposed to sit in the room with the patient and advise the staff/nurses of any issues with the patient," reportedly may have fallen asleep, thus enabling Clark to leave his room undetected.[2]

On June 11, 2016, 11 days after Clark absconded from UMMC, he shot and killed DiAndre Barnes. The police arrested Clark later that day.

On January 3, 2018, Ronnie Barnes, Jr., as personal representative of the estate of DiAndre Barnes, and Ronnie Barnes, Sr., as the wrongful death beneficiary ("the Barnes family"), filed a multi-count complaint in the Circuit Court for Baltimore City. As defendants, they named UMMS and several Baltimore City police officers. The Barnes family amended the complaint several times. In relevant part, the family sought to hold

[1] Hospital cameras confirmed that Clark was walking the halls of the hospital at 5:47 a.m. and exited the UMMC building at 5:55 a.m.

[2] According to a police report, a nurse told the investigating officer that the sitter "was possibly asleep at the time Mr. Clark walked out."]

UMMS liable for negligently failing to secure Clark during his stay as a patient at UMMC.

UMMS moved for summary judgment, asserting the absence of a genuine dispute of material fact and its entitlement to judgment as a matter of law on two grounds. First, UMMS argued that it was immune from liability under CJP § 5-609(b), which generally states that a cause of action does not arise against a mental health care provider for failing to take precautions to provide protection from a patient's violent behavior, unless the provider knew of the patient's propensity for violence and the patient had indicated an intention to inflict imminent physical injury upon a specified victim or group of victims. Second, UMMS argued that even if it did not have immunity under CJP § 5-609(b), it had no duty to protect DiAndre Barnes from Clark's criminal conduct and that, as a matter of law, Clark's conduct was unforeseeable. The Barnes family opposed UMMS's motion.

In an order docketed on March 27, 2019, the circuit court granted summary judgment in favor of UMMS on all claims in the survival action and the wrongful death action. The court determined that the Barnes family had failed to present evidence sufficient to overcome the statutory immunity. At the same time, the court denied a motion for summary judgment filed by UMMS's co-defendants, the police officers.

On approximately June 16, 2019, the Barnes family reached a settlement with the police officers. On July 15, 2019, while the family's claims were still technically pending against the officers, the family filed a notice of appeal (No. 1066, September Term, 2019). On the following day, July 16, 2019, the family and the officers filed a joint stipulation of voluntary dismissal with prejudice as to the claims against the officers.

Upon reviewing the record on appeal, we questioned whether the Barnes family had filed their appeal prematurely, before all of their claims against all of the parties to the case had been resolved. In addition, we observed that the circuit court had not set forth its judgment in a separate document, as required by Maryland Rule 2-601(a). *See generally Hiob v. Progressive Am. Ins. Co*., 440 Md. 466 (2014). On our own motion, we expressed these concerns to the parties.

In response to our concerns, the parties asked for and obtained a separate document reflecting the circuit court's judgment. The Barnes family then filed a second notice of appeal, which is unquestionably timely, because the time for noting an appeal begins to run only upon the docketing of the separate document (*Hiob v. Progressive Am. Ins. Co*., 440 Md. at 500). On our own motion, we consolidated the timely second appeal (No. 430, September Term, 2020) with the first.

QUESTIONS PRESENTED

The Barnes family raises two questions for our review, which we have rephrased as follows:

1. Did the trial court err in granting summary judgment in favor of UMMS on the basis that appellants failed to present evidence sufficient to overcome the statutory immunity conferred upon mental health care providers by CJP § 5-609(b)?

2. Did the trial court err, as a matter of law, in concluding that UMMS did not owe a duty to protect DiAndre Barnes? [3]

We hold that the circuit court properly granted summary judgment in favor of UMMS. Because the circuit court judge based her decision solely on the grounds of statutory immunity, we need not address the second question.[4]

STANDARD OF REVIEW

When a party moves for summary judgment, the court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f).

The issue of whether a trial court properly granted summary judgment is a question of law. *Butler v. S & S P'ship*, 435 Md. 635, 665 (2013) (citation omitted). In an appeal from the grant of summary judgment, this Court conducts a *de novo* review to

[3] The Barnes family presented the following questions in its brief:

1. Whether the trial court erred, as a matter of law, in granting defendants' motion for summary judgment where their [sic] existed genuine issues of matrial [sic] facts between the parties.

2. Whether the trial court erred, as a matter of law, in ignoring facts in the record in order to find defendant University of Maryland Medical System Corporation had no knowledge of their patient's propensity to [sic] violence towards other people, and therefore, had no duty owed to the deceased.

[4] *See Springer v. Erie Ins. Exch.*, 439 Md. 142, 156 (2014) (internal citation omitted) (stating that, "[o]n appeal from an order entering summary judgment, we review only the grounds upon which the trial court relied in granting summary judgment").

determine whether the circuit court's conclusions were legally correct. *See D'Aoust v. Diamond*, 424 Md. 549, 574 (2012). The relevant inquiry is well known:

> When reviewing a grant of summary judgment, we determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This Court considers the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party.

Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 107-08 (2014) (citations and quotation marks omitted).

DISCUSSION

The Barnes family's claims against UMMS rest solely upon a theory of negligent security. The family alleges that UMMS failed to implement the security measures necessary to protect DiAndre Barnes from its patient, Clark, who was "mentally unstable."

In Maryland, a mental health care provider is generally immune from civil liability for failing to provide protection from a patient's violent behavior:

> A cause of action . . . may not arise against any mental health care provider or administrator for failing to predict, warn of, or take precautions to provide protection from a patient's violent behavior unless the mental health care provider or administrator knew of the patient's propensity for violence and the patient indicated to the mental health care provider or administrator, by speech, conduct, or writing, of the patient's intention to inflict imminent physical injury upon a specified victim or group of victims.

CJP § 5-609(b).

The Barnes family does not dispute that UMMS falls within the statute's definition of a "mental health care provider."[5]

A party that alleges negligence on the part of a mental health care provider carries the burden of presenting facts that, if true, are sufficient to overcome the immunity from liability. *See Williams v. Peninsula Reg'l Med. Ctr.*, 213 Md. App. 644, 662-63 (2013) (affirming the circuit court's dismissal of an action in which the plaintiffs failed to allege facts to explain why the health care provider's immunity under Maryland's involuntary commitment statutory scheme did not apply), *aff'd,* 440 Md. 573 (2014).

In light of CJP § 5-609(b), the Barnes family could prevail on a claim against UMMS only if the family established (1) that UMMS knew of Clark's propensity for violence and (2) that Clark in some way indicated to UMMS his intention to inflict imminent physical injury upon a specified victim or group of victims. *See Falk v. Southern Maryland Hosp., Inc.*, 129 Md. App. 402, 406 (1999) (reading CJP § 5-609(b) as stating that mental health providers are not liable for the violent behavior of their patients unless they "1) had actual knowledge of the patient's propensity for violence; **and** 2) the patient indicated to the mental health provider in some way that he or she intended to harm **a specific victim**[]") (emphasis in original).

CJP § 5-609(b) appears to have been shaped by the leading case of *Tarasoff v. Regents of the University of California*, 17 Cal. 3d 425 (1976), which held that if a

[5] A "mental health care provider" is defined as: "(i) A mental health care provider licensed under the Health Occupations Article; and (ii) Any facility, corporation, partnership, association, or other entity that provides treatment or services to individuals who have mental disorders." CJP § 5-609(a)(3).

psychiatrist knows that a patient intends to harm a known and identifiable victim, the psychiatrist has a duty to take reasonable steps to inform the victim of the threat. *See also Furr v. Spring Grove State Hosp.*, 53 Md. App. 474, 487-88 (1983) (holding, before the enactment of CJP § 5-609(b), that a state psychiatrist was not liable for a rape and murder committed by an absconding psychiatric patient, in part because the psychiatrist did not know the identity of the specific victim). Under CJP § 5-609(b), mental health providers can be liable only if they fail to take adequate precautions to protect a "specified victim or group of victims" from a patient's violent behavior.

In the only reported opinion concerning CJP § 5-609(b), this Court held that a hospital and two physicians were immune from liability for the serious injuries that occurred when a psychiatric patient suddenly attacked a psychiatric nurse, who fell over and knocked down another patient in the same unit. *See Falk v. Southern Maryland Hosp., Inc.*, 129 Md. App. at 409. "The evidence," we explained, simply did not demonstrate that the patient who caused the injuries had "informed the hospital staff that he intended to harm a particular person or group of persons." *Id.*

Although some of Clark's violence was directed at himself, we shall assume for the sake of argument that UMMS knew Clark's propensity for violence towards others. Even so, there is no evidence in this record that Clark ever indicated to UMMS that he intended to inflict "imminent physical injury upon" DiAndre Barnes or any other "specified victim or group of victims." CJP § 5-609(b). The Barnes family, therefore, cannot satisfy the second of the two conditions necessary to overcome the immunity.

In advocating for a contrary conclusion, the Barnes family asserts that, while he was hospitalized at UMMC, Clark informed the staff of "his tendency to commit violence on others indiscriminately." According to the family, Clark disclosed that his violent intentions were directed toward "males in Baltimore that crossed his path." In another formulation, the family asserted that Clark's violent intentions were directed toward African-American men (and male children) in Baltimore.

Under the Barnes family's formulation, the inchoate group of Clark's potential victims could number in the thousands, if not the tens or hundreds of thousands. In our judgment, therefore, Clark did not indicate an intention to inflict "imminent physical injury upon a *specified* victim or group of victims." CJP § 5-609(b) (emphasis added). For that reason, the circuit court did not err in directing the entry of summary judgment in UMMS's favor.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1066s19cn.pdf