Circuit Court for Prince George's County
Case No. CAL16-28718

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2408

September Term, 2016

MARCIA WRIGHT, *et al.*

v.

DIMENSIONS HEALTHCARE SYSTEM

Nazarian,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: June 12, 2018

On July 15, 2016, appellants Marcia Wright, Brandi Wright, and Mytte Pardillo ("appellants") filed a complaint in the Circuit Court for Prince George's County against appellee Dimension Healthcare System ("DHS")[1] alleging that they were each injured by a DHS facility patient as a result of DHS's negligence. DHS filed a motion to dismiss the complaint, and on September 21, 2016, appellants filed an amended complaint. The circuit court denied DHS's motion to dismiss the original complaint, and DHS filed a motion to dismiss appellants' amended complaint on the basis that the complaint did not state a claim for which relief could be granted. On December 14, 2016, the circuit court granted DHS's motion to dismiss the amended complaint.[2] Appellants present two issues for our review, which we reword as follows:

1. Whether the circuit court erred in dismissing appellants' complaint on the basis that DHS owed no duty to appellants.
2. Whether the circuit court erred in dismissing appellants' complaint on the basis that appellants failed to allege facts sufficient to overcome the immunity of Maryland healthcare providers provided by Md. Code (1973, 2013 Repl. Vol.), § 5-609 of the Courts & Judicial Proceedings Article ("CJP").

[1] In DHS's Opposition to Plaintiffs' Motion to Vacate Order of Dismissal, DHS stated that the correct name of the entity was "Dimensions Health Corporation (d/b/a/ Laurel Regional Hospital)," rather than "Dimensions Healthcare System," as it was called by the appellants in their complaint.

[2] The circuit court did not provide a memorandum opinion with its order granting DHS's motion to dismiss.

BACKGROUND

Brandi Wright was a patient at the DHS facility. On January 17, 2015, her mother, Marcia Wright, and girlfriend, Pardillo, came to the facility to visit her. During their visit, Brandi Wright and Pardillo began holding hands. At some point the three women encountered a male patient ("the patient") at the facility. The amended complaint presented conflicting facts regarding whether the patient "known only as 'Mark'" was already present when appellants entered the visiting room or whether the patient entered after appellants. Appellants alleged, however, that "[t]here was at the same time and place a mental patient known only as 'Mark.'" Their amended complaint stated:

> 7. Upon information and belief, Mark had delusions that he was Jesus and also had violent tendencies.
> 8. Upon information and belief, the Defendant knew Mark had violent tendencies.
> 9. Mark was being held in an unlocked room in the [m]ental ward of the Defendant hospital pending his transport to a more secure location at the mental ward of Prince George's Hospital Center in Cheverly, Maryland.
> 10. When the Plaintiffs Pardillo and Marcia Wright came into the visiting area, Mark began ranting and raving and screaming that he was Jesus and telling the Plaintiff Pardillo to "lay down and die bitch."
> 11. His actions frightened and terrified all three plaintiffs.
> 12. A nurse, an employee of the Defendant, was able to get Mark out of the visiting room and back into his room.
> 13. However, the nurse negligently failed to lock the door to the room so that Mark was secured and could not get out and get back into the visiting area until his transport arrived.

14. A few minutes later, Mark again came out of his room and entered the visiting room where all three plaintiffs were sitting. He began to rant and rave and told Plaintiff Pardillo several times to "lay down and die bitch." He then lunged at Pardillo and hit her from behind. Injuring her neck, shoulder, and back.

15. Plaintiff Brandi Wright then stood up and tried to get him to stop. He then grabbed and pulled on her arm, scratching her arm. He also spit in her face and in her mouth.

16. Mark then pushed Plaintiff Brandi Wright into the chest of Plaintiff Marcia Wright, injuring a portacath which was in her chest.

17. As a result of the actions of Mark, all three of the Plaintiffs were all injured physically and were mentally terrified.

18. The Defendant, by and through its agents and employees was negligent [in] not securing a violent and delusional patient so that he could not come in contact and injure other patients and visitors to the facility.

19. Mark intentionally targeted the Plaintiffs Myett Pardillo and Brandi Wright because they were lesbians.

* * *

21. That the Defendant, having knowledge of the propensity for violence of Mark, owed a duty to the Plaintiff [Marcia Wright] to protect her from harm from him.

22. That the Defendant was negligent by making sure [sic] that Mark was kept in a secure location while awaiting transport to a more secure facility.

Thereafter, appellants alleged in the amended complaint that DHS's negligence was the direct and proximate cause of each of the appellants' injuries. Additionally, appellants repeated the same list of injuries and losses for each count of negligence per appellant, alleging that all three, individually, "expended vast sums for medical care and treatments, nursing services, physical therapy and other protracted medical-related attention" and that each "lost extensive wages and will continue to lose such wages in the future."

DHS, in its motion to dismiss, argued that the appellants failed to allege facts sufficient to support a finding that DHS owed appellants a duty of care and overcome the immunity provided to mental health care providers by Maryland law. Appellants filed no response opposing DHS's motion to dismiss. The circuit court granted DHS's motion, and this appeal followed.

DISCUSSION

I. Standard of Review

We review a circuit court's dismissal of a complaint for failure to state a claim for which relief may be granted for legal error. *See Higginbotham v. Pub. Serv. Comm'n*, 171 Md. App. 254, 265 (2016) (quoting *Britton v. Meier*, 148 Md. App. 419, 425 (2002)). Our review is focused on "whether the complaint, on its face, discloses a legally sufficient cause of action." *Lewis v. Baltimore Conv'n Cntr.*, 231 Md. App. 144, 151 (2016) (Citations omitted). Accordingly, we "may look only to the facts and allegations contained in the. . . complaint. *Polek v. J.P. Morgan Chase Bank, N.A.*, 424 Md. 333, 350 (2012) (Citations omitted). We have previously explained that "[d]ismissal of the action is only warranted 'if the allegations and permissible inferences, if true, would not afford relief to the plaintiff.'" *Williams v. Peninsula Reg'l Med. Ctr.*, 213 Md. App. 644, 651 (2013), *aff'd*, 440 Md. 573 (2014) (quoting *Gomez v. Jackson*, 198 Md. App. 87, 93 (2011)). The Court of Appeals outlined an appellate court's review of a trial court's decision to grant a motion to dismiss in the following way:

> In reviewing the ruling on the motion to dismiss, "we accept all well-pled facts in the complaint, and reasonable inferences

> drawn from them, in a light most favorable to the non-moving party." *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475, 860 A.2d 871 (2004). When examining the pertinent facts, the Court limits its analysis to the "four corners of the complaint . . . ." *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 497, 92 A.3d 400 (2014) (cleaned up). The pleader must set forth a cause of action with sufficient specificity -- "bald assertions and conclusory statements by the pleader will not suffice." *Id.*

Davis v. Frostburg Facility Operations, LLC, 457 Md. 275, 284-85 (2018).

II. The Circuit Court Did Not Err in Dismissing Appellants' Amended Complaint.

Appellants contend that the circuit court erred by dismissing their amended complaint, arguing that it contained facts sufficient to establish all of the elements for their claims of negligence. The Court of Appeals articulated recently, in *Davis*, the four well-established elements that a plaintiff must establish "to prevail in a claim of negligence":

> 1) [T]he defendant owed the plaintiff a duty to conform to a certain standard of care; 2) the defendant breached this duty; 3) actual loss or damage to the plaintiff; and 4) the defendant's breach of the duty proximately caused the loss or damage.

Id. at 293-94 (Citations omitted).

At issue in this case is whether DHS owed a duty to appellants to protect them from the violent conduct of the patient, "[f]or without a duty, no action in negligence will lie." *Evergreen Assocs., LLC v. Crawford*, 214 Md. App. 179, 187 (2013) (quoting *Dehn v. Edgecombe*, 384 Md. 606, 619 (2005)). The duty, if any, may be owed to a specific plaintiff or to a class of people of which he or she is a member. *See Chassels v. Krepps*, 235 Md. App. 1, 12 (2017), *cert. denied*, 457 Md. 677 (2018). As we have said before,

"[g]enerally, there is no duty to control the conduct of a third person and prevent him or her from causing physical harm by criminal acts, absent a 'special relationship.'" *Evergreen Assocs.*, 214 Md. App. at 188.

A. Law of "Special Relationships"

In Maryland, we apply the principles of special relationships as outlined in sections 314 to 319 of the *Restatement (Second) of Torts* (hereinafter "*Restatement*"). *See Veytsman v. New York Palace, Inc.*, 170 Md. App. 104, 115 (2006) (citing *Remsburg v. Montgomery*, 376 Md. 568, 593 (2003)). In *Lamb v. Hopkins*, 303 Md. 236, 245 (1985), the Court of Appeals adopted § 315 of the *Restatement* as the "appropriate analytical framework" for an appellate court's review of whether a particular defendant "has a duty to control a third person." Section 315 of the *Restatement* provides the general principle that

> [t]here is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives to the other a right to protection.

Restatement, § 315. Even where a "special relationship" exists, however, the duty owed by the defendant is to exercise reasonable care. *See Veytsman*, 170 Md. App. at 115 (citing *Corinaldi v. Columbia Courtyard, Inc.*, 162 Md. App. 207, 220, (2005)).

On appeal, appellants argue that a special relationship existed between DHS and the appellants because appellants "were guests on [DHS's] property" and imply, further, that

appellants occupied the position of business invitees.[3] A special relationship that may give rise to a duty to protect others from harm may arise between landowners and invitees or licensees, such as between businesses and business invitees. *See Veytsman*, 170 Md. App. at 115-16. As we explained in *Veytsman*, the special duty of a business owner "generally arises when three circumstances are present": "(1) the [owner] controlled the dangerous or defective condition; (2) the [owner] had knowledge or should have had knowledge of the injury causing condition; and (3) the harm suffered was a foreseeable result of that condition." *Id.* (quoting *Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship*, 375 Md. 522, 537 (2003)) (Internal quotation marks omitted) (Footnote omitted). DHS asserts that appellants failed to allege in their complaint facts sufficient to establish that DHS knew of the patient's potential danger to others or that the harm that the patient caused was foreseeable. Without such allegations in the complaint, they argue, appellants failed to establish that DHS owed a duty to appellants to protect them from the patient's conduct.

A defendant's knowledge of a third party's prior similar conduct, however, adds another layer of analysis to a defendant's duty to protect others from the conduct of a third party. *See Corinaldi*, 162 Md. App. at 223 (discussing three factual scenarios in which a

[3] At the trial level, appellants did not file an opposition to DHS's motion to dismiss, in which DHS argued, in part, that it did not owe appellants a duty to protect them from the conduct of the patient. Appellants, therefore, ceded a clear opportunity to raise, and to have the trial court decide, the issue of whether DHS had a duty of reasonable care as a landowner or business. We address this theory of liability (briefly) because the allegations in the complaint contained facts that, if established, would support a finding that DHS had ownership of the premises. We note, however, that appellants should have made this argument before the trial court prior to the court's decision.

landowner may be liable "for injuries inflicted by the intentional act of a third person"). A distinct type of special relationship may arise when the defendant is in charge of "a person having dangerous propensities." *See Lamb*, 303 Md. at 245. *Restatement* § 319 provides the common law principle that "[o]ne who takes charge of a third person whom he [or she] knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him [or her] from doing such harm." The Court of Appeals in *Lamb* discussed the application of § 319 at length:

> The operative words of [§ 319], such as "takes charge" and "control," are obviously vague, and the Restatement makes no formal attempt to define them. The comment to § 319, however, indicates that the rule stated in that section applies to two situations[:] . . . [1] where the actor has charge of one or more of a class of persons to whom the tendency to act injuriously is normal . . . . [and 2] . . . where the actor has charge of a third person who . . . has a peculiar tendency so to act of which the actor from personal experience or otherwise knows or should know.
>
> Illustrations appended to § 319, which concern the negligent release of an infectious patient from a private hospital for contagious diseases and the escape of a homicidal maniac patient through the negligence of guards employed by a private sanitarium for the insane, provide further guidance regarding the scope of § 319. Because there are degrees of being "in charge" and having "control," these illustrations are obviously not by way of limitation. *See McIntosh v. Milano*, 168 N.J. Super. 466, 483 n. 11, 403 A.2d 500, 508-09 n. 11 (1979). These illustrations suggest, however, that § 319 has [a] peculiar application to custodial situations. *See Prosser and Keeton, supra*, § 56 & n. 16, at 383 (indicating that the relationships discussed in § 319 "are custodial by nature").

303 Md. at 243-44; *see Restatement*, § 319 cmt. a, illus. 2 (providing that liability may arise where "A, who operates a sanitarium for the insane," is in custody of a patient who is deemed to be "a homicidal maniac," who ultimately escapes because of a sanitarium guard's negligence and attacks another person).[4]

Like the issue of DHS's duty as a landowner or business, however, appellants did not raise the argument before the trial court that DHS's duty was established by virtue of a special relationship due to its position of control over a third party with violent propensities. Appellants included in their complaint a general allegation that "the Defendant knew [the patient] had violent tendencies," but did not state with any specificity what knowledge DHS had regarding the patient's prior violent conduct.

Even to the extent that appellants' allegation that the patient "was being held . . . pending transport to a more secure location at the mental ward of Prince George's Hospital Center in Cheverly, Maryland" was sufficient to establish that DHS knew the patient had violent propensities,[5] it remains questionable that appellants' allegations would establish

[4] The Court of Appeals suggested in *Hartford Ins. Co. v. Manor Inn* that the state mental health care facility in that case may had a special relationship with a patient, who was involuntarily committed, while he was in custody as a patient. 335 Md. 135, 151 (1994). Because of that special relationship, the facility may have had a "duty to prevent [the patient] from causing physical harm to others" while the patient was in custody. *Id.* The Court concluded that, for those reasons, "it would appear that the State fell within the provisions of section 319" of the *Restatement*. *Id.*

[5] Although we need not decide the issue, we note that there may be a variety of reasons a patient may need to be transferred to a different mental health care facility, including reasons unrelated to the patient's propensities for violent conduct towards others. The amended complaint does not allege the reason for the patient's transport to a "more secure" facility.

that DHS breached its duty of reasonable care, given the additional obligations of a mental health care provider to its patients. Under H-G § 10-701(c), each individual patient in a mental health care facility has a legal right to:

> (1) Receive appropriate humane treatment and services in a manner that restricts the individual's personal liberty within a facility only to the extent necessary and consistent with the individual's treatment needs and applicable legal requirements;
>
> * * *
>
> (3) Be free from restraints or seclusions except for restraints or seclusions that are:
>
> (i) Used only during an emergency in which the behavior of the individual places the individual or others at serious threat of violence or injury; and
>
> (ii) 1. Ordered by a physician in writing; or
>
> 2. Directed by a registered nurse if a physician's order is obtained within 2 hours of the action[. . .]

HG § 10-701(c).

Title 10 of the Code of Maryland Regulations (COMAR) defines a "seclusion" as "the involuntary confinement of a patient under the direction of a physician or registered nurse alone in a room which a patient is physically prevented from leaving." COMAR 10.21.13.02B(9). The use of seclusion may be ordered by certain authorized staff members after determining: "(1) The patient's behavior poses: (a) An emergency situation; or (b) A serious disruption to the therapeutic environment; and (2) Less restrictive or alternative approaches have been considered and, if clinically indicated and reasonable, have been attempted, and are considered ineffective." COMAR 10.21.13.03D. An "emergency

situation" is defined as "any situation in which a patient's behavior poses a serious and imminent danger to the physical safety of self or others." COMAR 10.21.13.02B(3). One such "less restrictive or alternative approach" is the use of a "quiet room." *See* COMAR 10.21.13.03E(2). A "quiet room" is "an unlocked room that patients are not physically prevented from leaving, which is designated for patients' voluntary use to allow them time out of the company of other patients." COMAR 10.21.13.02B(7).

Among other requirements, to place the patient in a locked room under these circumstances, as appellants suggest DHS should have done, the patient's behavior must have "posed a serious and imminent danger to the physical safety of self or others." *See* COMAR 10.21.13.02B(3) (defining emergency situation). Whether the patient's statement to one of the appellants, "lay down and die bitch," should have indicated to DHS staff that the patient posed "a serious and imminent danger to the physical safety" of appellants remains questionable. However, we need not decide whether, or in what form, a special relationship existed under these circumstances, or whether the facts alleged were sufficient to establish that DHS breached the duty of reasonable care. As we explain below, assuming appellants' amended complaint provided facts sufficient to establish that a special relationship, they failed to allege facts sufficient to overcome DHS's statutory immunity as a mental health care provider.

B. Immunity of Mental Health Care Providers From Liability For Failing to Protect Others From a Patient's Violent Behavior

In addition to alleging facts sufficient to establish each and every element of a general claim of negligence, appellants had the additional burden of alleging facts that, if

true, would overcome DHS's immunity from liability under CJP § 5-609(b). Appellants do not dispute on appeal that DHS is a "mental health care provider"[6] that is generally entitled to the protections of CJP § 5-609(b), absent certain exceptions. The statute provides the following immunity from liability for health care providers in Maryland:

> A cause of action or disciplinary 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) (Emphasis added). In *Falk v. S. Maryland Hosp., Inc.*, we interpreted the statute based on its plain language:

> We read § 5-609 as stating that a mental health provider is not liable for the violent behavior of [its] patients unless [the provider or administrator of the provider] 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*.

129 Md. App. 402, 406 (1999) (Emphasis added).

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[6] 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).

Accordingly, the exception to a provider's immunity under CJP § 5-609 requires three basic elements: (1) The provider had actual knowledge of the patient's propensity for violence; (2) the patient indicated to the provider his or her "intention to inflict imminent physical injury" by "speech, conduct, or writing"; and (3) the patient's communicated intention to inflict physical injury was directed toward "a specified victim or group of victims." *See* CJP § 5-609(b). The immunity and its exception under § 5-609(b) are consistent with the common law as outlined in *Restatement* § 319, which provides that a special relationship may impose some liability when one is in charge of a third party with known dangerous propensities. *See also Falk*, 129 Md. App. 402 at 406 (explaining that "the wording of [§ 5-609(b)] is entirely consistent with the reasoning" of prior Maryland opinions in which mental health care providers were not held liable for harm caused to unforeseeable victims).

On appeal, appellants argue that the facts they alleged in their complaint established that this case falls within the exception. DHS asserts, however, that the facts asserted in the amended complaint -- that, during the first encounter, the patient began "ranting and raving" and said to one of the appellants, "lay down and die bitch" -- were not enough to establish that the patient "threatened" appellants in the presence of DHS employees and communicated an intent to inflict imminent physical injury to DHS. In addition, DHS points out that appellants include in their appellate argument several facts that they did not

include in their amended complaint. Most of these additional assertions characterize the first interaction between the patient and appellants in stronger terms.[7]

Plaintiffs alleging the negligence of a health care provider carry the burden of alleging facts that, if true, are sufficient to overcome the health care provider's immunity from liability. *See Williams*, 213 Md. App. at 662-63 (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 Md. Code (1982, 2015 Repl. Vol.), Health–Gen. Art. ("HG"), § 10-629[8] did not apply). In *Williams*, where we concluded that the immunity statute at issue applied, we said that "a complaint that solely alleges negligence . . . is

[7] In their appellate brief, appellants include in their summary of facts that after the first interaction between the patient and appellants, "[t]he patient was then controlled by *employees* of the Appellee and detained in the same room . . . ." (Emphasis added). In their amended complaint, however, they allege that "[a] nurse, an employee of the Defendant, was able to get [the patient] out of the visiting room and back into his room." Appellants also contend on appeal that "[t]he employee failed to take any precaution with first-hand knowledge of the patient's violent disposition and threat to the Appellants." Even on appeal, however, appellants do not indicate what knowledge of the patient's violent propensity that DHS had prior to his encounter with appellants -- such as that he had a prior physical altercation with other visitors, or lunging at appellants during his first encounter with him -- their assertions before this Court go beyond the allegations contained in the complaint.

[8] We explained in *Williams* that, under HG § 10-618, "the medical professionals would be covered under the immunity provision if they acted in good faith and with reasonable grounds when they made the decision to admit or not to admit." 213 Md. App. at 656. The family members who brought the wrongful death suit alleged that the health care providers were negligent in deciding not to involuntarily admit Williams who was acting erratically. They did not, however, allege facts that would establish that the medical professionals did not act in good faith and on reasonable grounds when they decided not to involuntarily commit the prospective patient. *Id.* at 664.

insufficient to overcome the immunity." *Id.* at 648. We observed that "[t]he complaint does not even allege, let alone provide facts to support" the contention that the immunity did not apply." *Id.* at 664. We held that "even if the facts and allegations in the complaint were true, they would not afford relief to the family members" and the circuit court's decision to dismiss the complaint was therefore correct. *Id.* Here, appellants were required to allege facts sufficient to establish both that DHS "had actual knowledge of the patient's propensity for violence" prior to the alleged altercation, and that the patient's behavior communicated to DHS that he intended to inflict imminent physical injury on appellants. *See* CJP § 5-609(b).

After the dismissal of their original complaint, appellants added in their amended complaint the conclusory allegation, "Upon information and belief, the Defendant knew [the patient] had violent tendencies." Appellants added no specific facts related to whether DHS knew of any prior violent conduct.[9] They suggest on appeal that the patient's conduct of "ranting and raving and screaming that he was Jesus and telling Plaintiff Pardillo to 'lay down and die bitch'" prior to a nurse taking the patient back to his room was sufficient to establish both that DHS knew the patient had violent propensities and that the patient communicated an intent to inflict imminent physical injury to DHS. We disagree.

[9] Additionally, we note that appellants' assertions that Wright and Pardillo were holding hands, that the patient believed that he was Jesus, and that he targeted appellants "because they were lesbians" did not add any specific facts that would support the allegation that DHS should have known of the patient's propensity for violence.

As we said above, a complaint must contain sufficient specificity for the case to move forward, and "bald assertions and conclusory statements by the pleader will not suffice." *Davis*, *supra*, 457 Md. at 284-85. An allegation that merely restates the law, therefore, does not provide facts that are sufficient to satisfy this standard. Thus, the assertions made, upon information and belief, that "[the patient] had delusions that he was Jesus and also had violent tendencies" and "the Defendant knew [the patient] had violent tendencies" do not contain sufficient specificity to satisfy the element of the exception that appellants merely restate.

Further, the allegation that the "delusional" patient, who believed that he was Jesus, had previously begun "ranting and raving" and said to one of the appellants, "lay down and die bitch," does not suffice to demonstrate that DHS knew or should have known that the patient had violent propensities. Additionally, the fact that the patient initially told Pardillo to "lay down and die bitch," without more, does not establish that the patient indicated to DHS that he, himself, intended to inflict imminent physical injury on appellants. Even if proven at trial, these facts would not establish that DHS's staff understood or should have understood that the patient intended to inflict imminent physical injury on appellants, or even that the nurse who allegedly returned the patient to his room heard the statement. Nevertheless, as we explained above, even if appellants had established in their amended complaint that the patient threatened the appellants with imminent physical harm and that

DHS staff heard the threat[10] prior to the alleged altercation, appellants failed to allege with sufficient particularity that DHS had actual knowledge of the patient's violent propensities.

DHS's knowledge, under both elements of the exception, is critical in these circumstances. Mental health care providers are not at liberty to restrain mental health care patients or to place a patient in a locked room except in urgent situations as defined by statute, *see* H-G § 10-701(c). The mere possibility of a patient's violent conduct prior to a subsequent physical altercation is, therefore, not enough to demonstrate an alleged failure to seclude or restrain a mental health care patient. Pursuant to CJP § 5-609(b), mental health care providers may not be held liable for failing to prevent physical injury to others unless the conduct of a particular mental health care patient was imminently foreseeable due to the provider's actual knowledge of the patient's history of violent conduct and his or her indication to the provider of an intent to harm a particular person or specific group of persons. Appellants failed to allege facts beyond merely conclusory allegations that, if proven at trial, would establish that DHS was not entitled to immunity under CJP § 5-609(b). Accordingly, we hold that the circuit court did not err in granting DHS's motion to dismiss appellants' amended complaint.

[10] Although, in their brief on appeal, appellants assert that "[a]n employee was able to get control of the patient and lead him back to the room after witnessing and hearing the threats and behavior of the patient," they did not allege that an employee witnessed or heard the patient's statement in their amended complaint. Regardless, the employee's awareness of the patient's statement to one of the appellees would not establish that DHS knew of the patient's alleged violent propensities.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.