

## Justices remand wrongful-death action in murder-suicide

■ Barbara L. Jones

A WRONGFUL-DEATH ACTION against medical providers survives after a patient receiving outpatient treatment for mental illness killed himself, the Minnesota Supreme Court ruled on Sept. 7 in *Smits v. Park Nicollet Health Services*.

The court was divided, with Justice Natalie Hudson writing part of the opinion of the court but dissenting in another part. The other justices also joined and dissented in part.

The court said that health care providers have a duty to exercise the degree of care exercised by other practitioners, and that a patient's suicide does not relieve the duty.

But the court ruled that under the facts of the case the providers' duty of care did not extend to the deaths of the wife and children who were murdered by the patient, Brian Short, before he shot himself.

Patrick Arenz, attorney for the plaintiff, said the family does not want similar occurrences in the future. They trusted the medical system, he said.

"We intend to show at trial that this horrific set of events was entirely preventable had Park Nicollet simply done its job: Park Nicollet should have assigned a psychiatrist, not a nurse, to treat Brian's severe depression; Park Nicollet should have informed Brian and his wife of the FDA's "Black-Box" warnings about the severe side effects of the powerful drugs that it prescribed him; and Park Nicollet should have

closely monitored Brian's rapidly deteriorating condition while taking those powerful drugs as directed, among other basic steps that Park Nicollet failed to provide to Brian," Arenz said in an email.

"This decision is also an important milestone in the family's efforts to ensure that this type of tragedy never happens to anyone else. This decision will improve the overall quality of mental health care because those who seek mental health treatment can be assured that their providers have a duty to act reasonably."

### PLAINTIFF: BREACH OF STANDARD OF CARE

In the summer of 2015, Brian Short, who lived on Lake Minnetonka with his family, sought treatment for anxiety and depression from several Park Nicollet entities. In early September he killed his family and himself.

Short saw several different providers and received several different medications between June and September, but always denied suicidal ideation. He never appeared violent.

When the suit commenced, Park Nicollet moved for summary judgment. The plaintiff, David Smits, the trustee for the Short family, introduced expert evidence that Park Nicollet committed malpractice by failing to follow the standard of care. Specifically, the testimony said that providers failed to warn and monitor Short after prescrib-



This September 2014 file photo shows Brian Short, photographed for a business column in the Star Tribune in Minneapolis. (AP file photo: Star Tribune)

ing Lexapro and Zoloft, which may cause suicidal thinking and behavior. Those drugs have warnings from the U.S. Food and Drug Administration called "Black-Box" warnings.

The District Court dismissed the case, determining that Park Nicollet had no duty to Short or his family members because it had no duty to control Short. Since Short was an outpatient, he did not have a custodial "special relationship" with Park Nicollet. The court also found Short's actions unforeseeable.

The Court of Appeals reversed and remanded, finding genuine issues of material fact as to duty and foreseeability.

### COURT: ORDINARY PRINCIPLES OF NEGLIGENCE

Part I of the Supreme Court opinion sets out the opinion of the court on duty of care in a patient suicide, with the court relying on ordinary principles of negligence.

The trustee's evidence addressed the standard of care, defendants' negligence by not meeting the standard, and harm caused by the negligence. The opinion rejected the argument that it was expanding the scope of liability.

"[W]hen the standard of care requires medical providers to take action to prevent a particular injury, a hospital can be liable for failing to exercise the requisite degree of skill and care even when that injury is caused by the intentional, criminal wrongdoing of a third party outside the hospital's control and hospital grounds," Hudson wrote.

The court continued, "[W]e do not hold that Park Nicollet had a duty to control [Short] or to prevent his suicide. We simply hold that Park Nicollet had a duty to provide treatment that met the standard of care. And a healthcare provider's lack of control over a patient does not negate that duty." (Emphasis in original.)

Park Nicollet proposed a narrow standard of care for mental health care, and also that it should be subject only to a duty to exercise a good faith professional judgment. The court was not persuaded. It again noted the limitations of its holding: a duty to provide reasonable care, not a duty to prevent suicide. Additionally, it did not hold that Park Nicollet breached the standard of care because that is a question that must be resolved by a jury.

"The hospitals were looking for good faith immunity," said Patrick Stoneking, who wrote an amicus brief for the Minnesota Association for Justice. But medical malpractice law provides enough protection for providers, he said.

### **SPLIT OVER DUTY TO FAMILY MEMBERS**

The next section of the opinion was a dissent by Hudson with respect to the duty between a mental health care provider and a patient's family. Hudson agreed with the court that it was not foreseeable under the facts that the family would rely on Park Nicollet, but disagreed that the harm to the family was not foreseeable as a matter of law, making summary judgment on the issue inappropriate.

Hudson wrote that the court should consider more than the presence or absence of prior threats to the family. She said that as the trustee's expert opines, a mental health care provider should have foreseen the risk of future violence and should have interceded in Short's "documented downward worsening trajectory." Hudson said that the matter presents a "close case" of foreseeable risk that should be submitted to the jury. "I reject the court's claims that under my position, 'every case is a close case' and the court would effectively abdicate our responsibility by sending this case to a jury," she wrote.

The next part of the opinion was an opinion and dissent written by Justice G. Barry Anderson, who concurred with the overview and statement of facts in Hudson's opinion.

Anderson said in Part I of his opinion and dissent that the defendants did not owe a duty of care because the harm to Short was caused by his own independent and uncontrollable actions.

"All our prior decisions contemplating liability for the suicide of another involve custodial inpatient treatment," wrote Anderson (emphasis in original).

"It is not reasonable to hold Park Nicollet responsible for [Short's] independent decision to commit suicide absent some degree of custodial control over his actions," Anderson continued.

Part II of Anderson's opinion is the opinion of the court on the duty between a mental health care provider and the patient's family. Here the court found no duty to Short's wife and children. The court rejected the argument that Park Nicollet owed a duty of care because it created a foreseeable risk that the family would be harmed.

Generally, a party is not liable for the actions of another, with two exceptions. One exception is the "special relationship" which is based on power and control over another which creates a foreseeable risk. The "own conduct" exception applies when there is a foreseeable risk created by the defendant's acts, Anderson wrote. (Emphasis in opinion.) The court determined that Short's actions were unforeseeable as a matter of law. "We do not accept the trustee's argument that this dispute is a 'close case' of foreseeability," Anderson wrote. Nothing about Short's behavior suggested that he was a particular danger to those around him," Anderson continued.

In the absence of a documented history of violent behavior or threats, the court will not impose liability on a health care provider for the independent actions of patients not under the provider's control, the court concluded.

Attorneys for Health Partners had no comment. An attorney for the Minnesota Defense Lawyers Association could not be reached for comment.