

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

BARBARA WHITE, as the
Administratrix of the Estate of
EARL R. WHITE, deceased,

Plaintiff/Appellee,

v.

WILLIAM H. LAWRENCE, M.D.,

Defendant/Appellant.

Carroll Circuit No. 2997
C.A. No. 02A01-9503-CV-00036

Hon. Julian P. Guinn, Judge

FILED

August 28, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

DAVID L. COOPER and JOHN M. CANNON, Cannon, Cannon & Cooper,
Goodlettsville, Attorneys for Plaintiff/Appellee.

JERRY D. KIZER, JR., Rainey, Kizer, Butler, Reviere & Bell, P.L.C., Jackson, Attorney for
Defendant/Appellant.

REVERSED AND DISMISSED

Opinion filed:

TOMLIN, Sr. J.

Barbara White (“plaintiff”), administratrix of the estate of Earl R. White, filed suit in the Circuit Court of Carroll County seeking damages for the suicide of her husband, Earl R. White (“decedent”), alleging medical malpractice on the part of Dr. William H. Lawrence (“defendant”). Defendant filed a motion for summary judgment on the grounds that decedent’s suicide was an independent, intervening cause of death that relieved defendant of any liability. The trial court denied defendant’s motion. The trial court granted defendant’s motion for an interlocutory appeal and stay of the trial court proceedings. The sole issue on appeal is whether the trial court erred in denying defendant’s motion for summary judgment. For the reasons hereinafter stated, we reverse the judgment of the trial court.

Decedent was a fifty-five year old with a history of alcoholism and depression. Defendant, a doctor of osteopathic medicine, began treating decedent for various medical problems. Later, defendant referred decedent to Dr. G. Edward Hazelhurst for blood studies, who reported that the blood studies indicated that plaintiff suffered from chronic alcoholism and chronic liver disease.

Plaintiff contacted defendant to advise him of decedent's excessive alcohol consumption and the effect it was having on his health. Defendant gave plaintiff a prescription for Disulfiram, commonly known as "Antabuse," a drug that would discourage decedent from drinking.¹ Defendant told plaintiff that the medication would make decedent feel sick and discourage him from consuming alcohol. Plaintiff contends that defendant told her to grind up the medication and surreptitiously place it in decedent's food. Plaintiff had the prescription filled, and for two weeks, plaintiff followed defendant's instructions for secretly administering the medication. Plaintiff testified that to the best of her knowledge, she did not smell alcohol on decedent during that time.

On the day before the suicide, decedent worked in his garden. Upon re-entering the house, he informed plaintiff that he was feeling ill, complaining of a headache and feeling cold. Plaintiff stated that decedent did not appear to have been drinking, and that he was still able to help prepare dinner that night.

The next day, decedent told plaintiff that he had sold some parts on his truck, and gave her twenty (\$20.00) dollars for a trip to Camden. Plaintiff testified that it was unusual for decedent to give her money unsolicited. Decedent left for the parties' farm that morning.

At 1:52 p.m., decedent was treated in the emergency room at Valley Regional

¹ Antabuse is a prescription medication which produces a sensitivity to alcohol such that a person consuming even small quantities of alcohol receives a highly unpleasant reaction. According to the Physician's Desk Reference, Antabuse plus alcohol, even in small amounts, produces the following reactions:

flushing, throbbing in the head and neck, throbbing headache, respiratory difficulty, nausea, copious vomiting, sweating, thirst, chest pain, palpitation, dyspnea, hyperventilation, tachycardia, hypotension, syncope, marked uneasiness, weakness, vertigo, blurred vision, and confusion. In severe reactions there may be respiratory depression, cardiovascular collapse, arrhythmias, myocardial infarction, acute congestive heart failure, unconsciousness, convulsions, and death.

Physician's Desk Reference 2695-96 (50th ed. 1996).

Hospital in Camden for complaints of hot flashes and pain. The emergency room records indicate that decedent complained of getting too hot while working in the garden the day before and that he became nauseated. Decedent stated that he felt weak and that his nausea continued. The nurse's assessment report, which was filled out at 1:55 p.m., indicated that decedent walked into the emergency room under his own power. The report indicated that decedent's emotional state was "cooperative" and that his neurological status was "full consciousness." The report states that decedent was under "moderate" distress. Decedent was diagnosed with diabetes type II and heat exhaustion and was discharged at 3:30 p.m.

Later that evening, decedent was found in his car by personnel of the Sheriff's Department of Carroll County, dead from a gunshot wound to the right temple. Decedent was pronounced dead on arrival at the Baptist Memorial Hospital in Huntingdon. The police found a gun that belonged to decedent in his car. The gun, which decedent normally kept in a nightstand, was found to be missing after police searched the nightstand. No autopsy was performed.

Following the filing of this suit,² defendant filed a motion for summary judgment, asserting that decedent's act of suicide was an independent, intervening cause of death under Tennessee law as applied to the facts of the case, which barred plaintiff's wrongful death claims as a matter of law. The trial court denied defendant's motion, holding that there was a genuine issue of material fact. Defendant filed a motion for an interlocutory appeal pursuant to Rule 9 T.R.A.P. and stay of the trial court proceedings. In granting defendant's motion, the trial court stated in pertinent part as follows:

This court is led to exercise its discretion in favor of permitting an interlocutory appeal because the court has distinguished this case from the long line of Tennessee cases going back to 1935 holding that suicide by a

²Plaintiff also filed suit against Asburn L. Tucker, Tony L. Tucker, and Timothy L. Tucker, d/b/a City Drug Company, a Tennessee partnership, alleging that their act of filling the Antabuse prescription and directions for use of the drug constituted negligence and deviated from the recognized standard of care in the dispensing of prescription medication. Plaintiff took a voluntary dismissal as to these defendants.

person who understands the nature of his or her act is an independent, intervening, proximate cause in a non-custodial setting as a matter of law.

It is the opinion of this court that this case represents a case of first impression in Tennessee because this case involves allegations that the defendant doctor surreptitiously prescribed a drug for the plaintiff's decedent which, because of its effects on him, caused him to commit suicide. The court feels that a need exists to develop a uniform body of law applicable to cases such as this.

SUMMARY JUDGMENT

A trial court should grant a motion for summary judgment when the movant demonstrates there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. T.R.C.P. 56.03. The party moving for summary judgment bears the burden of demonstrating that no genuine issue of material fact exists. Byrd v. Hall, 847 S.W.2d 208, 210 (Tenn. 1993). In considering a motion for summary judgment, both the trial court and this court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that party, and discard all countervailing evidence. Id. at 210-11. In Byrd, our supreme court stated as follows:

Once it is shown by the moving party that there is no genuine issue of material fact, the nonmoving party must then demonstrate, by affidavits or discovery materials, that there is a genuine, material fact dispute to warrant a trial. In this regard, Rule 56.05 provides that the nonmoving party cannot simply rely upon his pleadings but must set forth specific facts showing that there is a genuine issue of material fact for trial. "If he does not so respond, summary judgment . . . shall be entered against him."

Id. at 211 (citations omitted). Summary judgment is only appropriate when the case can be decided on the legal issues alone. Id. at 210. Because only questions of law are involved, there is no presumption of correctness regarding a trial court's granting of summary judgment. Johnson v. EMPE, Inc., 837 S.W.2d 62, 68 (Tenn. App. 1992). Review of the entry of summary judgment is, therefore, de novo, on the record in the trial court.

WRONGFUL DEATH

We first must consider whether a person's suicide is, as a matter of law, an independent, intervening cause that will shield defendant from liability for his alleged negligence.

In some wrongful death actions in this state suicide has been considered an independent, intervening cause of death where the suicide is a wilful, calculated, and deliberate act of a person who has a moderately intelligent power of choice. Lancaster v. Montesi, 216 Tenn. 50, 390 S.W.2d 217, 221-22 (1965); Jones v. Stewart 183 Tenn. 176, 191 S.W.2d 439, 440 (1946); Weathers v. Pilkinton, 754 S.W.2d 75, 78 (Tenn. App. 1988); Eckerd's, Inc. v. McGhee, 19 Tenn. App. 277, 86 S.W.2d 570, 575 (1935). The rule stated in Lancaster has been held to apply to non-custodial settings. In both prison and psychiatric hospital settings, the custodian has a duty to protect prisoners or patients from reasonably foreseeable self destructive acts. As a result, the act of suicide is not always viewed as an independent intervening act that relieves the negligent actor from liability. E.g., Cockrum v. State, 843 S.W.2d 433, 436-37 (Tenn. App. 1992).

In Weathers v. Pilkinton, 754 S.W.2d 75 (Tenn. App. 1988), the middle section of this court considered the issue now before us, namely, the liability of a physician for a patient's suicide in a non-custodial setting. In Weathers, a wrongful death action was brought against the physician alleging that he failed to take the proper steps to prevent his patient, who had a history of depression and suicide attempts, from taking his own life. Decedent's wife and other family members alleged that defendant was negligent in that he released decedent from the hospital after a drug overdose and refused to commit the decedent involuntarily to a mental health clinic seventeen days before the decedent committed suicide. Id. at 76-77.

The Weathers court summarized the rule with regard to the chain of causation between a person's negligent act and the injured person's suicide in non-custodial settings as follows:

From this line of cases we conclude that where a defendant injures another either wilfully or negligently and as a result of the injury, the injured person commits suicide the act of suicide is, as a matter of law, an intervening independent cause if the decedent knew and understood the nature of his or her act or the act resulted from a moderately intelligent power of choice.

The appellant does not contest the rule established in Jones and Lancaster, but instead argues that there is a different rule where the decedent is under the care of a health care provider and consequently the health care provider has a specific duty of care to the patient. We acknowledge that there is a difference and—since proximate cause is based on foreseeability—that the fact that mentally ill persons might take their lives if adequate precautions are not taken to protect them from themselves is more foreseeable than the fact that a person injured by an ordinary act of negligence might become so depressed that suicide would result.

However, we must recognize that this is still an action for wrongful death and the right that survives to the widow is the same cause of action the decedent would have had had he survived. Thus, if the decedent could not have sued no right survives.

Can we say that an action for wrongful death may be maintained where the decedent himself ended his life in a deliberate, calculated, and voluntary act of suicide; where he had "an understanding of the physical nature and effect of his act, and . . . a wilful and intelligent purpose to accomplish it"? In such a case the decedent himself would not have had a cause of action against his doctor for his own (the decedent's) voluntary act. Consequently, no cause of action would pass to the surviving spouse.

The rule is otherwise, of course, where the decedent did not know the nature or consequences of his act, or his reason and memory were, at the time, so far obscured that he did not know and understand what he was doing and was therefore not a responsible human agency. Under those circumstances the act of suicide would not be a wilful, calculated, deliberate act that would defeat an action for wrongful death.

Therefore, we are of the opinion that the result in this case turns on the question of whether there is evidence in the record from which the jury might conclude that on the date of his death Mr. Weathers did not know and understand the nature of his suicidal act and, therefore, did not have a wilful and intelligent purpose to accomplish it.

Id. at 78-79 (citations omitted).

The Weathers court found that although there was circumstantial evidence in the record of plaintiff's history of depression, treatment, and prior suicide attempts, neither of plaintiff's medical experts testified that decedent was bereft of reason or that he did not know or understand the nature of his actions. However, there was overwhelming

evidence in the record that decedent functioned normally and led an unremarkable life during the 17 days between defendant's decision not to involuntarily commit him to a mental health clinic and the suicide. Because there was no evidence from which the jury could conclude that decedent did not know what he was doing, the Weathers court held that trial court was correct in directing a verdict for defendant. Id. at 79.

In this case, the trial court granted the application for interlocutory appeal on the grounds that the case is one of first impression. Despite the unique and egregious facts of this case, the rule announced in Lancaster as followed by the middle section of this court in Weathers is still applicable to the facts of this case. Although Weathers involved liability for an alleged negligent omission to act—i.e., defendant's failure to involuntarily commit the plaintiff's husband prior to his suicide, the rule in Weathers is still applicable to the wilful or negligent commission of an act, which was the alleged negligent prescription and administering of Antabuse to decedent. We find that there is overwhelming evidence in the record from which the jury could find that defendant was negligent in secretly prescribing Antabuse to decedent. Accordingly, the only factual issue relevant to our determination is whether there is evidence in the record from which a jury might conclude that decedent did not know or understand the nature of his suicidal act, or that the act did not result from a moderately intelligent power of choice.

Plaintiff submitted the affidavits of Dr. J. Kirby Pate and Dr. Murray W. Smith, along with the deposition testimony of Dr. Pate, in opposition to defendant's motion for summary judgment. Dr. Pate, a board certified psychiatrist, stated that defendant's covert prescription and inappropriate instructions for the use of Antabuse probably caused decedent's suicide. In his deposition, Dr. Pate admitted that, based on the records from decedent's emergency room visit that he examined for his evaluation, there was nothing to indicate that decedent did not understand the nature of his suicidal act, or that decedent was "psychotic."

Dr. Smith, the Medical Director of the Baptist Hospital Drug and Alcohol

Recovery Center in Nashville, stated in his affidavit that within a reasonable degree of medical certainty, the inappropriate prescription and instructions for the use of Antabuse by defendant caused the suicide death from depression, which is a side effect of the Antabuse.

Nonetheless, neither of these affidavits nor any other affidavit or deposition offered by plaintiff addressed the pivotal issue in this case—to what extent, if any, the decedent did not know the nature or consequence of his act, or that at the time his memory and reason were so obscured that he did not know and understand what he was doing, or that the suicide did not result from a moderately intelligent power of choice.

We are of the opinion that as the non-moving party, plaintiff has not met the burden placed upon her by Byrd v. Hall to set forth specific facts sufficient to overcome defendant's summary judgment motion.

Accordingly, we reverse the judgment of the trial court. Summary judgment is entered in favor of defendant, and plaintiff's complaint is dismissed. Costs on appeal are taxed to plaintiff, for which execution may issue if necessary.

TOMLIN, Sr. J.

HIGHERS, J.

(CONCURS)

