

**IN THE COURT OF APPEALS OF TENNESSEE, WESTERN SECTION
AT NASHVILLE**

**DONNA LAMBERT, Individually,
and as widow of CHARLES LAMBERT,
Deceased,**

Plaintiff/Appellant.

VS.

BAPTIST HOSPITAL, INC. ,

Defendant/Appellee.

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) Davidson Circuit 95-C-2503
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) C. A. NO. 01A01-9606-CV-00284
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FILED

January 29, 1997

**Cecil W. Crowson
Appellate Court Clerk**

From the Circuit Court of Davidson County at Nashville.
Honorable Barbara N. Haynes, Judge

Thomas F. Bloom, Nashville, Tennessee
Attorney for Plaintiff/Appellant.

**Gayle Malone, Jr.,
Kathryn J. Ladd,**
TRABUE, STURDIVANT & DeWITT, Nashville, Tennessee
Attorney for Defendant/Appellee.

OPINION FILED:

AFFIRMED AND REMANDED

FARMER, J.

CRAWFORD, P.J., W.S. : (Concurs)
LILLARD, J. : (Concurs)

The plaintiff, Donna Lambert, sued for the wrongful death of her husband, Charles Lambert, allegedly caused by the negligence of the defendant and its agents and employees. The defendant's motion for partial summary judgment was granted, the trial court directed the entry of a final judgment pursuant to Rule 54.02 T.R.C.P. and this appeal results.

Charles Lambert was admitted to Baptist Hospital Drug and Alcohol Recovery Center around 9:30 p.m. on November 28, 1994. He smelled strongly of alcohol and stated that he had nightmares from Vietnam, which only alcohol relieved, and that he suffered from post-traumatic stress. He stated that he had attempted suicide in the past. At approximately 11:50 p.m. he was discovered hanging by a boot strap from a door stop at the top of his bathroom door. He did not respond to resuscitation efforts.

It is alleged that his death was a direct and proximate result of the negligence of the defendant, through its employees and agents, in failing to identify him as a suicide risk, failing to take precautions such as removing his belt and laces, failure to monitor him and the negligent designing of the room in that it did not contain collapsible fixtures.

The motion for partial summary judgment was sought on those portions of the complaint seeking to recover from Defendant on the theory of *respondeat superior*. It asserted that Defendant is immune pursuant to T.C.A. § 33-10-102 which states:

Immunity. -- (a) No person serving as a counselor at a counseling center shall be liable, either criminally or civilly, as a result of the suicide or attempted suicide of any person consulting the counselor while he is serving at the counseling center.

(b) If such counselor leaves the counseling center to provide further emergency counseling in good faith to a person who initiated such counseling at the center at such person's home or office, then such counselor shall not be liable, either criminally or civilly, as a result of the suicide or attempted suicide of such person; provided, however, that such immunity shall only apply during such emergency at such person's home or office and shall not be construed to apply during continuing or follow-up visits. The immunity granted a counselor by the preceding sentence shall be construed as being the same as but no greater than the immunity granted such a counselor while he is serving at the counseling center.

“Counseling center” and “Counselor” are defined in T.C.A. § 33-10-101 as follows:

(1) "Counseling center" means any nonprofit service operated at least partially with volunteer assistance which provides counseling, assistance or guidance, either in person or by telephone, to persons with mental or emotional problems; and

(2) "Counselor" means any psychiatrist, psychologist, licensed clinical psychologist, certified marital and family therapists or other professional trained in the fields of psychiatry or psychology or any nonprofessional person acting under the guidance or supervision of such professionals.

The motion for summary judgment was supported by the affidavit of Dr. Murray Smith, medical director of Baptist Hospital Drug and Alcohol Recovery Center. According to the affidavit, Baptist Hospital, Inc. is a not for profit Tennessee corporation that owns and operates the Baptist Drug and Alcohol Recovery Center as a part of Baptist Hospital. The hospital, including the drug and alcohol recovery center, is operated partially with volunteer assistance. The medical staff provides counseling and assistance to persons with drug and alcohol dependency. These patients usually have mental or emotional problems stemming from dependency that are also treated while the patients are in the center. Dr. Smith is board certified in internal medicine and specializes in treatment of patients with drug or alcohol dependency. As part of his treatment, he counsels the patients concerning the mental and emotional problems associated with their chemical dependency. As part of his general medical education, he was trained in psychiatry and psychology. When the mental and/or emotional problems of the particular patient require in-depth treatment, he refers that patient to a more specialized physician. The nurses that assisted Mr. Lambert at the drug and alcohol recovery center were at all times acting under Dr. Smith's guidance and supervision.

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56.03 T.R.C.P. The burden is on the party seeking summary judgment to persuade the court that no genuine and material factual issue exists. Once that is shown, the nonmoving party must then demonstrate, by affidavits or discovery material that there is a genuine material fact dispute. The nonmoving party may not rest upon the mere allegations or denials of his pleadings. *Byrd v. Hall*, 847 S.W.2d 208 (Tenn. 1993).

Plaintiff contends that the trial court's application of the statute to the defendant is overly broad and that the statute does not apply to this Defendant. She contends that the Hospital's protocols make no mention of counseling of mental or emotional problems. However, it is clear

from Dr. Smith's affidavit, which is unrefuted, that this is part of the treatment. In fact, the Center's Special Treatment Procedures state that an increase in risk factors would lead to supervision or transfer to psychiatry. Also, the progress notes state that when Mr. Lambert asked if he could get help for post traumatic stress, he was told there were trained people available to help him with this.

Plaintiff further contends that the legislative history should be examined to determine the intent of the general assembly in passing the above statutes. Courts are restricted to the natural and ordinary meaning of the language contained in the statute unless an ambiguity requires resort elsewhere to determine legislative intent. *Austin v. Memphis Pub. Co.*, 655 S.W.2d 146, 148 (Tenn. 1983). We do not find the above statutes to be ambiguous. When a statute is unambiguous legislative intent can be ascertained from the face of the statute. *James Cable Partners v. Jamestown*, 818 S.W.2d 338, 341 (Tenn. App. 1991). Nevertheless, we have examined the legislative history as contained in this record and do not find it to limit the plain language of the statute.

Plaintiff further argues that the statute granting immunity is in derogation of the common law and should, therefore, be strictly construed. They further argue that a strict construction would limit immunity to counseling centers which deal exclusively with mentally disturbed individuals whose illness makes suicide a frequent and recurring threat. Defendant argues that this statute is not in contravention of the common law. Assuming *arguendo* that Plaintiff is correct, we do not believe that a strict construction of the statute would limit it to the extent sought by the plaintiff.

The only case which has been brought to our attention concerning the interpretation of this statute is the opinion of this Court in *Willis v. Guyton*, No. 02A01-9311-CV-00247 (Tenn. App. June 2, 1995). In affirming the trial court's grant of summary judgment as to the claim based on *respondeat superior*, this Court said:

The Tennessee cases are clear that "if an injured person is barred by law from suing the servant he is likewise barred from maintaining a suit against the master when liability is predicated solely on the doctrine of *respondeat superior*." *Stewart v. Craig*, 344 S.W.2d 761, 763 (Tenn. 1961); *see also Carr by Carr v. Carr*, 726 S.W.2d 932,

933 (Tenn. App. 1986). This rule is true in cases where the servant has been granted immunity, where the servant has been given a covenant not to sue, or where the servant has been adjudged not liable. *Carr by Carr v. Carr*, 726 S.W.2d 932 (Tenn. App. 1986); *Raines v. Mercer*, 55 S.W.2d 263 (Tenn. 1932); *Graham v. Miller*, 187 S.W.2d 622 (Tenn. 1945); *Stewart v. Craig*, 344 S.W.2d 761, 763 (Tenn. 1961); and *Loveman Co. v. Bayless*, 160 S.W. 841 (Tenn. 1913). Therefore, since the individual doctors in the present case are immune from suit pursuant to T.C.A. § 33-10-102(a), the defendants, Jackson Counseling Center and Jackson Psychiatric Hospital, West Tennessee Behavioral Center and Jackson-Madison County General Hospital, cannot, as a matter of law, be held liable for the negligent acts of the doctors under the theory of *respondeat superior*. The trial court properly granted summary judgment to the defendant hospitals as to the claim based on *respondeat superior* with regard to the negligent acts of the doctors.

Willis, slip op. at 3.

Pursuant to § 33-10-102, immunity is granted to a counselor at a counseling center as a result of the suicide of any person consulting the counselor while serving at the counseling center. Applying § 33-10-101 to the unrefuted facts of this case, Baptist Hospital is a nonprofit service. The Hospital, including the Center, is operated at least partially with volunteer assistance. The staff provides counseling, assistance or guidance to persons with drug and alcohol dependency. Those persons having mental or emotional problems are also treated while in the Center. Therefore, we believe the Center falls within the statutory definition of a “Counseling Center”. Dr. Smith meets the definition of “counselor” as he is a professional trained in the fields of psychiatry and psychology and all of the nurses alleged to have been involved were acting under his guidance or supervision.

The judgment of the trial court granting partial summary judgment is affirmed and this cause is remanded to the trial court for further proceedings consistent with this opinion. The costs of this appeal are taxed to the appellant, for which execution may issue if necessary.

FARMER, J.

CRAWFORD, P.J., W.S. (Concurs)

LILLARD, J. (Concurs)