Volume 7 | Issue 3 Article 11

1962

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Recommended Citation

William F. Coyle, *Torts - Wrongful Death - Suicide as Result of Uncontrollable Impulse Caused by Negligently Inflicted Injuries*, 7 Vill. L. Rev. 494 (1962).
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TORTS—WRONGFUL DEATH—SUICIDE AS RESULT OF UNCONTROLLABLE IMPULSE CAUSED BY NEGLIGENTLY INFLICTED INJURIES.

Orcutt v. Spokane County (Wash. 1961).

On January 4, 1956, plaintiff's intestate was a passenger in an automobile which fell into a road washout, as a result of which she suffered serious and painful injuries and was compelled to undergo surgery. On October 13, 1957, plaintiff's intestate took her life by consuming an overdose of sleeping pills. In the interim, the decedent had consulted a neuropsychiatrist and had three times been thwarted in suicide attempts. Plaintiff administratrix brought a wrongful death action, alleging that decedent's injuries were caused by the negligence of the defendant county in maintaining the road where the accident occurred, and that decedent took her own life as a result of an uncontrollable impulse caused by pain and suffering resulting from those injuries. The neuro-psychiatrist who had examined decedent testified in support of the latter allegation. The trial court dismissed the action with prejudice on the ground that plaintiff's evidence was insufficient to show causal connection between the accident and decedent's death. On appeal, the Supreme Court of Washington with four judges dissenting, reversed and remanded, *holding* that the evidence raised a jury question as to whether decedent's suicide was a result of an uncontrollable impulse resulting from a mental condition caused by her injuries. *Orcutt v. Spokane County*, 364 P.2d 1102 (Wash. 1961).

The problem of the causal connection between a defendant's negligence and the harm suffered by his victim is generally dealt with by the courts in terms of proximate cause.[1] This is, in effect, a limitation which the courts have deemed expedient, as a practical matter, to place upon one's liability for the consequences of his acts, even though those acts have actually caused harm to another.[2] Recovery in cases where suicide follows harm negligently inflicted upon the decedent is generally denied on the ground that the negligence was not the proximate cause of death in that the suicide was an unforeseeable and intervening cause.[3] However, a defendant will be liable for the death of his victim if the latter takes his life while in a mental state caused by his injuries, as a result of which he either does not understand the nature of his actions or their inevitable or probable consequences, or, realizing that his acts will culminate in death, he is powerless to govern his conduct rationally because of an uncontrollable impulse to take his life.[4] This is, as even

1. PROSSER, TORTS § 44 (2d ed. 1955).
2. North v. Johnson, 58 Minn. 242, 59 N.W. 1012 (1894).
3. Scheffer v. RR. Co., 105 U.S. 249 (1882); Cooper v. Mass. Mutual Life Ins. Co., 102 Mass. 227 (1869); Long v. Omaha Ry., 108 Neb. 342, 187 N.W. 930 (1922); McMahon v. City of New York, 141 N.Y.S.2d 190 (Sup. Ct. 1955).
4. Tate v. Canonica, 181 Cal. App. 2d 898, 5 Cal. Rptr. 28 (1960); Elliot v. Stone Baking Co., 49 Ga. App. 515, 176 S.E. 112 (1934); Brown v. American Steel & Wire Co., 43 Ind. App. 560, 88 N.E. 80 (1909); Daniels v. N.Y. Ry. Co.,

the dissenting judges in the instant case agree,[5] the generally accepted case law on this point and it agrees with the rule set forth by the *Restatement of Torts*[6] and the leading text writers.[7] Although damages have been awarded for suicidal death under workmen's compensation laws,[8] and in situations involving the special duty owed to patients by hospitals,[9] plaintiffs in *negligence* actions involving suicide in most cases have not obtained favorable results, generally because the difficulty of establishing proximate or legal causation is by no means slight; proof that decedent did not understand what he was doing when he took his life, or that he acted under an uncontrollable impulse may often be difficult to obtain.[10] Added to this evidentiary obstacle to recovery is the ghost of the old common law abhorrence of suicide which lingers yet today.[11] Unlike the negligent tortfeasor, however, whose purse is often put beyond the grasp of the plaintiff by these barriers to recovery, the intentional tortfeasor is liable if his conduct was a substantial factor[12] in bringing about harm of the general type which he intended.[13] The fact that his conduct causes harm through an independent force for which he is not responsible, or that the intervention of this new force was entirely unexpected matters not, if the tortious conduct is intentional.[14]

The instant case clearly sets forth the prevailing rule of law in this area,[15] yet the case differs from most others in that it allows recovery in a situation where other tribunals have refused to do so. In vain did the court attempt to find authority for the result it reached. Illustrative

183 Mass. 393, 67 N.E. 425 (1903); Cooper v. Mass. Mutual Life Ins. Co., 102 Mass. 227 (1869); Long v. Omaha Ry., 108 Neb. 342, 187 N.W. 930 (1922); McMahon v. City of N.Y., 141 N.Y.S.2d 190 (Sup. Ct. 1955); Arsnow v. Red Top Cab Co., 159 Wash. 137, 292 Pac. 436 (1930).

5. Orcutt v. Spokane County, 364 P.2d 1102, 1110 (Wash. 1961).

6. RESTATEMENT, TORTS § 455 (1934).

7. PROSSER, TORTS § 49 (2d ed. 1955).

8. Zytkewich v. Ford Motor Co., 340 Mich. 309, 65 N.W.2d 813 (1954); Nohe v. Sheffield Farms, 163 N.Y.S.2d 455 (Sup. Ct. 1957); Allen v. Industrial Comm'n, 110 Utah 328, 172 P.2d 669 (1946).

9. Hawthorne v. Blythewood, 118 Conn. 617, 174 Atl. 81 (1934); Murray v. St. Mary's Hosp., 113 N.Y.S.2d 104 (Sup. Ct. 1952); Spivey v. St. Thomas Hosp., 31 Tenn. App. 12, 211 S.W.2d 450 (1947).

10. Very often, a person attempting to recover in a situation like the present one will encounter difficulty when seeking to obtain the testimony of psychiatrists who often object to the way in which they are forced to present their opinion testimony insofar as they are forced to restrict their answers to the questions of counsel. Others do not like to be used as partisans, while still others rebel against certain phraseology used in the courtroom. For example, some psychiatrists contend that the phrase "irresistible impulse" has no reality in mental life. See Guttmacher, *Why Psychiatrists Do Not Like To Testify In Court*, 1 PRAC. LAW. 50 (1955). See note 20, *infra*.

11. At common law suicide was a crime. ". . . the suicide is guilty of a double offense; one spiritual, in invading the prerogative of the Almighty, and rushing into His immediate presence uncalled for; the other temporal, against the king, who hath an interest in the preservation of all his subjects . . . making it a peculiar species of felony . . . committed on one's self." 4 BLACKSTONE'S COMMENTARIES 189 (8th ed. 1778).

12. RESTATEMENT, TORTS §§ 279, 280 (1934).

13. *Id.*

14. See note 12, *supra*.

15. See note 4, *supra*.

of this difficulty is the previous Washington case of *Arsnow v. Red Top Cab Co.*,[16] which was relied upon by the court to a great extent for the rule announced there. In *Arsnow,* a case factually similar to the present one, the court expressly approved the rule applied in the instant case, but significantly it held as a matter of law[17] that sufficient evidence had not been produced to establish that death was caused by the defendant's negligence. The plaintiff in *Arsnow,* like the plaintiff in the instant case, offered expert testimony to prove that the decedent was insane at the time of his death. This expert opinion, however, was not given the weight which the court in this case attached to it.[18] In *Daniels v. N.Y. Ry. Co.*[19] there was also expert testimony that the decedent was insane at the time of his death, but the court, in denying recovery, was evidently not as much impressed by such expertise as was the court here.[20] Perhaps the essential weakness of the instant case is the court's failure to distinguish between an "impulse" and a "compulsion," the former being a spontaneous involuntary tendency to action which cannot be traced directly to external stimuli, while the latter is traceable to some irresistible stimulus or suggestion, such as the obsession of decedent to take her life.[21] From the facts of the instant case, it appears that decedent's suicide resulted from a compulsion of many months' duration, rather than from a sudden impulse to commit suicide. Perhaps the rule in the instant case should be stated so as to allow recovery where suicide is caused by an uncontrollable "urge" or "drive" to take one's life. This would avoid the distinction heretofore drawn by the courts between "impulse" and "compulsion,"[22] but it would not overcome the

16. See note 4, *supra.* Decedent was injured by one of defendant's vehicles and, after threatening several times to take his life, shot himself with a pistol which he had been hiding under his pillow.

17. 159 Wash. 137, 292 Pac. 436, 444 (1930).

18. 364 P.2d 1102, 1106 (Wash. 1961).

19. See note 4, *supra.*

20. After "shopping around" for expert opinion favorable to their respective positions, litigants then offer such expert opinion testimony to a jury often incompetent to resolve conflict in the scientific opinions. See McCormick, *Some Observations Upon The Opinion Rule And Expert Testimony,* 23 TEX. L. REV. 109 (1945). The use of neutral court-appointed experts has been widely recommended to correct this weakness. Hand, *Historical and Practical Considerations Regarding Expert Testimony,* 15 HARV. L. REV. 40, 56 (1901); Morgan, *Suggested Remedy for Obstruction To Expert Testimony By Rules of Evidence,* 10 U. CHI. L. REV. 285, 293 (1943); Van Dusen, *The Impartial Medical Expert System: The Judicial Point of View,* 34 TEMP. L.Q. 386 (1961). MCCORMICK, EVIDENCE, 35, 38 (1954). This suggestion has, of course, been implemented in some jurisdictions, such as the U.S. District Court for the Eastern District of Pennsylvania.

21. WARREN, DICTIONARY OF PSYCHOLOGY (1934). On the validity of the distinction see also COLEMAN, ABNORMAL PSYCHOLOGY AND MODERN LIFE 215 (2d ed. 1956).

22. Anderson v. Armour, 257 Minn. 281, 101 N.W.2d 435 (1960). Decedent grabbed a knife and plunged it into a piece of meat. Shortly thereafter he was found dead in his truck with his wrists slashed. In Blasczak v. Crown Cork, 193 Pa. Super. 422, 165 A.2d 128 (1960), which it should be noted arose under the Pennsylvania Workmen's Compensation Act, decedent's leg was amputated after an accident. His wife found him hanged. He left no note, nor had he ever given any indication of suffering from melancholia. In both cases, plaintiffs recovered judgments, relying on the uncontrollable impulse rule.