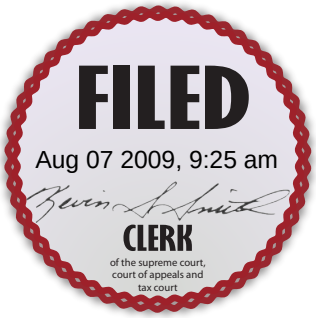
Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANTS:

I. PETER POLANSKY
Polansky, Cichon & Batey
Chicago, Illinois

ATTORNEYS FOR APPELLEE:

PETER C. BOMBERGER
DOUGLAS K. WALKER
Blackmun, Bomberger, Tyler & Walker
Highland, Indiana

IN THE
COURT OF APPEALS OF INDIANA

TERRY DENNIE, SR., as Personal Representative of the Estates of Darion Dennie, deceased, LaDanna Dennie, deceased, and Isaiah Dennie, deceased, and ELIZABETH WALTON, individually and as the Personal Representative of the Estate of Angela Walton Scruggs, deceased,	)	
Appellants-Petitioners,	)	
vs.	)	No. 45A03-0901-CV-26
THE METHODIST HOSPITALS, INC.,	)	
Appellee-Respondent.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable William E. Davis, Judge
Cause No. 45D05-0501-CT-17

August 7, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellants-petitioners Terry Dennie, Sr., as Personal Representative of the Estates of Darion Dennie, LaDanna Dennie, and Isaiah Dennie, and Elizabeth Walton, individually and as Personal Representative of the Estate of Angela Walton Scruggs, (collectively, the appellants) appeal the trial court's order entering summary judgment in favor of the appellee-respondent The Methodist Hospitals, Inc. (Methodist). First, the appellants argue that Methodist failed to establish as a matter of law that it was entitled to statutory immunity pursuant to Indiana Code section 34-30-16-1. Second, the appellants argue that the trial court erred in dismissing all claims when Methodist's motion for summary judgment addressed only the claims that were relevant to the statutory immunity provision. Concluding that the trial court properly entered summary judgment in favor of Methodist, we affirm.

FACTS

On September 20, 2002, Terry Dennie, Jr., was brought to Methodist's emergency department in Gary. Terry was diagnosed with depression and suicidal ideations and agreed to a voluntary psychiatric inpatient admission. During this admission, Terry was observed and treated by Dr. Mohammed Butt, a psychiatrist. On September 27, 2002, Dr. Butt discharged Terry, with instructions to undergo follow-up care at Edgewater Systems for Balanced Living (Edgewater). An Edgewater psychiatrist diagnosed Terry with

schizophrenic disorder and was prescribed Risperdal and, eventually, Haldol. On December 3, 2002, Terry and his mother, Angela Walton Scruggs, met with an Edgewater therapist regarding Terry's alcohol and marijuana abuse. Terry denied having any problems with either, but agreed to meet with an Edgewater psychiatrist the following day. On December 4, 2002, Terry and Angela failed to show up for that appointment.

On December 22, 2002, Terry was again brought to the emergency department at Methodist, was diagnosed with acute psychosis and a history of paranoid schizophrenia, and was prescribed Geodon to treat acute mania. Terry agreed to a voluntary psychiatric inpatient admission. On December 24, 2002, Angela reported that she knew Terry had not been taking his medications and had smoked marijuana. At a December 30, 2002, family meeting, led by clinical therapist Terry Smith, Angela stated that Terry was behaving in a threatening manner towards family members when he became upset. She then signed an application for emergency detention based on her belief that Terry was a danger to himself or others. The application also contained a statement from a psychiatrist that he believed Terry to be mentally ill and a danger to himself as defined by Indiana Code section 16-14-9.1(a) and (c).

On January 2, 2003, clinical therapist Smith filed a petition for involuntary commitment stating that Terry presented a substantial risk of harm to himself or others due to his refusal to take his medication and a history of threatening his family. The petition also sought a medication order because of Terry's refusal to take medication. On January 3, 2003, a hearing on the petition for involuntary commitment was held, and

Terry was committed to Methodist for a temporary period not to exceed ninety days. A medication order was also entered.

On January 10, 2003, at a meeting with clinical therapist Smith and Angela, Terry agreed not to harm himself and to return to Edgewater for outpatient treatment. Terry was discharged on January 13, 2003, with instructions to report to Edgewater the next day. On January 14, 2003, Terry and Angela met with an Edgewater psychiatrist, who assessed Terry and instructed him to follow up in four weeks. Terry followed up and took part in various individual and group therapy sessions during February and March.

On March 4, 2003, Gary Police officers brought Terry to Methodist's emergency department. Angela had contacted the police at the direction of Edgewater staff. Terry had been refusing to take his medications and had threatened to kill his family. Dr. Butt evaluated Terry and recommended close observation for four or five days, followed by a discharge home. Terry was then admitted to Methodist as a voluntary psychiatric admission.

On March 10, 2003, Angela, Darion Dennie (Terry's brother), and LaDanna Dennie (Terry's sister) attended a family meeting with Terry and clinical therapist Smith. When Angela confronted Terry about his refusal to take his medications and his continued illegal drug use, Terry stated that he could take his gun and "kill everyone in the room." Appellants' App. p. 334-35. Smith immediately communicated the incident to Dr. Butt, who immediately directed Smith to file a petition for involuntary commitment. The petition requested that Terry be transferred to a state hospital for a period of time longer than ninety days and for "the necessary care, treatment and

protection of the patient and others." Appellant's App. p. 337-38. A hearing on the petition was set for March 14, 2003.

On March 14, 2003, prior to the commitment hearing, Terry and Angela attended a meeting with Dr. Butt. At the meeting, Angela requested that the commitment hearing be cancelled and indicated that Terry could come home. Angela also acknowledged that she was aware of Terry's previous threatening behavior and comments, but stated that neither she nor any other family members harbored concerns that they would be in imminent danger. Terry then agreed to take his medications and attend outpatient therapy. At Angela's request, Dr. Butt cancelled the commitment hearing and Terry was discharged that same day with instructions to follow up with Edgewater on March 26, 2003. Terry and Angela failed to show up for the March 26, 2003, appointment at Edgewater. On July 14, 2003, Terry was discharged from Edgewater because he failed to seek treatment at the facility for over ninety days.

On September 27, 2003, Terry shot and killed Darion, LaDanna, Isaiah Dennie (his nephew), and Angela. Terry also shot and wounded Elizabeth Walton (his grandmother). Terry then shot and killed himself.

On January 20, 2005, the appellants filed a complaint against Methodist, Dr. Butt, and Edgewater, alleging multiple counts for negligence and medical malpractice. On January 30, 2005, Dr. Butt and Edgewater were dismissed with prejudice after settling with the appellants. The remaining claims against Methodist alleged, collectively: (1) Methodist owed the appellants a duty pursuant to Indiana Code section 34-30-16-1, (2) Methodist's negligence in failing to continue with the involuntary commitment

proceedings and failing to properly treat Terry amounted to medical malpractice, and (3) Methodist owed the appellants additional duties under the common law and gratuitously assumed these duties when Terry was admitted for care. On July 3, 2008, Methodist filed a motion for summary judgment on the remaining counts, claiming immunity under Indiana Code section 34-30-16-1 et seq.

The trial court heard oral argument on Methodist's motion for summary judgment on November 17, 2008. On November 25, 2008, the trial court ruled that Methodist was entitled to immunity under Indiana Code section 34-30-16-1 et seq., and judgment was entered in favor of Methodist. The appellants now appeal.

DISCUSSION AND DECISION

I. Standard of Review

Summary judgment is only appropriate when the pleadings and evidence show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Owens Corning Fiberglass Corp. v. Cobb, 754 N.E.2d 905, 909 (Ind. 2001); see also Ind. Trial Rule 56(C). On a motion for summary judgment, all evidence must be construed in favor of the opposing party, and all doubts as to the existence of material issues of fact must be resolved against the moving party. Owens Corning, 754 N.E.2d at 909. The party appealing from the grant of summary judgment has the burden of persuading this court that the trial court erroneously determined that there is no material issue of fact and the movant was entitled to summary judgment as a matter of law. Ind. Bd. of Pub. Welfare v. Tioga Pines, 622 N.E.2d 935, 940 (Ind. 1993). If there is any doubt as to what conclusion a jury could reach, then summary judgment is

improper. Owens Corning, 754 N.E.2d at 909. The interpretation of a statute is an issue of law, which this court reviews de novo. Porter Dev., LLC v. First Nat'l Bank, 866 N.E.2d 775, 778 (Ind. 2007).

II. Background

The duty to warn potential victims of patient-inflicted violence was first recognized in 1976, in Tarasoff v. Regents of the University of California. 551 P.2d 334 (Cal. 1976). In Tarasoff, a severely depressed graduate student sought voluntary outpatient therapy. Id. at 341. During the course of his treatment, the patient told his therapist that he was thinking about killing a young woman. Id. at 339. The patient did not specifically refer to the victim, but the victim was reasonably identifiable from the patient's statements. Id. at 341. The young woman was not warned, however, and the patient killed her two months after initially making the statements to the therapist. Id. at 339.

On appeal, the California Supreme Court recognized that, generally, a person owes no duty to control the acts of another; however, relying on the Restatement (Second) of Torts section 315 (1965) the court held that:

> When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of the case. Thus it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever steps are reasonably necessary under the circumstances.

Id. at 340.

Currently, twenty-seven states, including Indiana, impose a statutory duty to warn potential victims, similar to the one established in Tarasoff. Paul B. Herbert, The Duty to Warn: A Reconsideration and Critique, 30 J. Am. Acad. Psych. Law 417, 417 (2002). Nine other states grant a psychotherapist permission to warn potential victims, while not imposing a strict duty. Id. Virginia is the only state that specifically rejects the concept of a "Tarasoff duty" or "duty to warn." Id. Indiana's duty to warn is codified at Indiana Code section 34-30-16-1. Interpretation of this statute is an issue of first impression.

III. Statutory Immunity

The appellants first argue that the trial court erred by finding Methodist immune to the remaining claims pursuant to Indiana Code section 34-30-16-1 et seq. As originally enacted in 1987, Indiana Code section 34-4-12.4-3 recognized the common law duty of a mental health service provider to warn potential victims of patient-inflicted violence. The statute also clarified the conditions a mental health service provider must satisfy to qualify for immunity from civil liability. In 1998, the statute was amended and recodified as Indiana Code section 34-30-16-1. The current version of the statute provides:

> A mental health service provider is immune from civil liability to persons other than the patient for failing to:
>
> (1) predict; or
> (2) warn or take precautions to protect from;
>
> a patient's violent behavior unless the patient has communicated to the provider of mental health services an actual threat of physical violence or other means of harm against a reasonably identifiable victim or victims, or evidences conduct or makes statements indicating an imminent danger that

> the patient will use physical violence or use other means to cause serious personal injury or death to others.

Ind. Code § 34-30-16-1. Thus, a mental health service provider's duty will be triggered in one of two situations: (1) when a patient has communicated to a mental health services provider an actual threat of physical violence aimed at a reasonably identifiable victim or victims, or (2) when a patient's conduct or statements indicate imminent danger to any third party.

Once a mental health service provider's duty is triggered, it may discharge this duty in one of five ways. Specifically:

> The duty to warn of or take reasonable precautions to provide protection from violent behavior or other serious harm arises only under the limited circumstances specified in section 1 of this chapter. The duty is discharged by a mental health service provider who takes one (1) or more of the following actions:
>
> (1) Makes reasonable attempts to communicate the threat to the victim or victims.
> (2) Makes reasonable efforts to notify a police department or other law enforcement agency having jurisdiction in the patient's or victim's place of residence.
> (3) Seeks civil commitment of the patient under I.C. 12-26.
> (4) Takes steps reasonably available to the provider to prevent the patient from using physical violence or other means of harm to others until the appropriate law enforcement agency can be summoned and takes custody of the patient.
> (5) Reports the threat of physical violence or other means of harm, within a reasonable period of time after receiving knowledge of the threat, to a physician or psychologist who is designated by the employer of a mental health service provider as an individual who has the responsibility to warn under this chapter.

I.C. § 34-3-16-2. Thus, a mental health service provider whose duty has been triggered need only satisfy one of the above five conditions to regain immunity from civil liability.

It is clear in this case that Methodist's duty to warn was triggered by Terry's threats. The threats were: (1) communicated by the patient, (2) to a mental health service provider, (3) indicating an actual threat of physical violence or other means of harm, (4) against reasonably identifiable victims. Specifically, his statements were made to clinical therapist Smith, occurred during a family meeting, and indicated that Terry wanted take his gun and kill everyone in the room. The potential victims in this case were those present at the family meeting: clinical therapist Smith, Angela, Darion, and LaDanna. Terry did not threaten his grandmother or nephew, so Methodist owed them no duty.

Turning to whether Methodist discharged its duty to warn, we observe that the public policy underlying Tarasoff and the Indiana Code's duty to warn is aimed at balancing public safety with the patient's right to doctor-patient confidentiality. Here, although Methodist did not explicitly warn Terry's family members of his threats against them, they were actually present when he made those threats. If we were to hold, as requested by the appellants, that a mental health service provider is required to reiterate a patient's threat to potential victims who already possess actual knowledge of the threat, the underlying policy of the statute would not be served. Angela, Darion, and LaDanna were all present when Terry threatened to kill them. Because Methodist was aware that they had actual knowledge of Terry's threats, it did not need to add an explicit warning to that effect to satisfy the requirements of Indiana Code section 34-30-16-2(1). Therefore, the trial court properly found that Methodist's duty under Indiana Code section 34-30-16-1 was discharged and, as a result, it was immune from these claims.

IV. Allegations of Negligence

The appellants next argue that the trial court erred in dismissing all claims in the case, and not just those predicated on Indiana Code section 34-30-16-1 et seq. Specifically, they claim that the trial court erred in dismissing claims arising from Methodist's: (1) failure to properly treat Terry, (2) premature discharge of Terry, (3) failure to proceed with Terry's involuntary commitment hearing, (4) failure to ensure Terry's compliance with outpatient treatment, (5) failure to monitor Terry's compliance with outpatient psychiatric treatment, (6) failure to warn that Terry was failing to comply with his outpatient psychiatric treatment, and (7) failure to notify law enforcement officials regarding Terry's failure to comply with outpatient psychiatric treatment. Appellants' Br. 22. These claims may be divided into two categories: (1) medical malpractice claims, and (2) claims based upon common law and gratuitously assumed duties.

A. Medical Malpractice Claims

The appellants argue that the trial court should not have entered judgment in Methodist's favor on their claims that Methodist failed to properly treat Terry and negligently discharged him prematurely. Our Medical Malpractice Act provides, in relevant part, that "an action against a health care provider may not be commenced in a court in Indiana before: (1) the claimant's proposed complaint has been presented to a medical review panel established under IC 34-18-10; and (2) an opinion is given by the panel." Ind. Code 34-18-8-4. Indiana Code section 34-18-2-18 defines malpractice as "a tort or breach of contract based on health care or professional services that were

provided, or that should have been provided, by a health care provider, to a patient." "Health care" is defined as "an act or treatment performed or furnished, or that should have been performed or furnished, by a health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement." I.C. § 34-18-2-13. Further, "health care provider" is defined, in relevant part, as "a facility or institution licensed or legally authorized by this state to provide health care or professional services as a . . . hospital . . . ." Ind. Code § 34-18-2-14.

Thus, before the appellants' medical malpractice claims may be commenced in any court of this state against a health care provider, the Medical Malpractice Act requires that the proposed complaints be presented to a medical review panel and an opinion rendered by the panel. Methodist Hosp. v. Ray, 551 N.E.2d 463, 469 (Ind. Ct. App. 1990), aff'd by 558 N.E.2d 829 (Ind. 1990); Ind. Code § 34-18-8-4. The appellants have not provided this court with any evidence that their malpractice claims were presented to the medical review panel. Because the appellants fail to demonstrate that these claims were first presented to and an opinion rendered by the medical review panel before filing the complaint with the trial court, we must find that they were precluded from proceeding at the trial court. Therefore, the trial court properly entered judgment in Methodist's favor on these claims.

B. Common Law and Gratuitously Assumed Duties

Finally, the appellants allege that Methodist owed multiple common law and gratuitously assumed duties. While we acknowledge the underlying tragedy of this case, we simply cannot hold that such duties exist under these facts.

The evidence in this case paints a picture of a patient with a history of mental illness coupled with alcohol and illegal drug abuse. Terry repeatedly failed to take his medication or attend psychiatric therapy for any extended period of time, even with Angela's assistance and support. On at least three occasions, Terry was discharged from Edgewood for failure to show up for his scheduled appointments. Under the direction of Dr. Butt, involuntary commitment proceedings had begun, but were cancelled at Angela's request. Furthermore, despite their presence at the family meeting where they were threatened and their knowledge of his past struggles to take his medication and attend scheduled therapy sessions, Terry's family chose to allow him to return home, even stating that they were not concerned about any imminent danger.

If we were to hold that Methodist was obligated to continue with the involuntary commitment hearing, despite his family's wish that he return home, or monitor Terry's participation in outpatient therapy, we would be imposing an untenable burden on every mental health service provider each time they discharged a patient. Exactly how far would such a duty extend? The appellants suggest that Methodist's duty extended over six months after Terry's discharge. Imposing such a duty would result in higher insurance and operating costs and discourage a mental health service provider from even attempting to undertake treatment of the patients most in need of their services. Finding that such a duty exists would be counter-productive and extremely poor public policy. Therefore, we find that Methodist owed the appellants no common law or gratuitously assumed duties.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.