

In the
Indiana Supreme Court

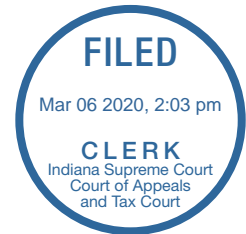
Linda Martinez,
Appellant(s),

v.

Oaklawn Psychiatric Center Inc.,
Appellee(s).

Court of Appeals Case No.
18A-CT-02883

Trial Court Case No.
71D05-1803-CT-140



Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 3/6/2020.

A handwritten signature in black ink that reads "Loretta H. Rush". The signature is written in a cursive style and is positioned above a horizontal line.

Loretta H. Rush
Chief Justice of Indiana

Rush, C.J., and Massa, Slaughter, JJ., vote to deny transfer.

David, J. dissents to the denial of transfer with separate opinion in which Goff, J. joins.

David, Justice, dissenting.

I respectfully dissent from the denial of transfer in the case because I believe transfer should be granted and the trial court reversed.

At issue is whether the Medical Malpractice Act applies in this case. Here, Martinez was a patient in a voluntary group home operated by Oaklawn. The home is a qualified healthcare provider.

One night, an incident occurred between Martinez and one of the resident assistants at the home, Kafatia. That is, Kafatia told Martinez that he needed to go to bed because it was past curfew. Martinez refused because he wanted to finish his drink and his television show. An altercation ensued when Kafatia tried to turn off a lamp resulting in Kafatia extending his foot into Martinez, causing injury to Martinez's leg. (Id.) Martinez later died and his estate brought a negligence suit. (Id. at 16, 51.) Oaklawn argued that prior to bringing suit, the estate must present its claim to the Medical Review panel. Both the trial court and our Court of Appeals agreed. *Martinez v. Oaklawn Psychiatric Ctr., Inc.*, 128 N.E.3d 549, 552 (Ind. Ct. App. 2019), *decision clarified on reh'g*, 131 N.E.3d 777 (Ind. Ct. App. 2019)).

I disagree. I believe this is a case that sounds in ordinary negligence. Further, I believe our Court of Appeals conflated whether the claims fall under the Act with whether Kafatia was acting in the scope and course of his employment at the time of the incident.

As our Court of Appeals noted in its opinion:

A case sounds in ordinary negligence [rather than medical negligence] where the factual issues are capable of resolution by a jury without application of the standard of care prevalent in the local medical community. By contrast, a claim falls under the Medical Malpractice Act where there is a causal connection between the conduct complained of and the nature of the patient-health care provider relationship.

Id. at 557 (citing *Preferred Prof'l Ins. Co. v. West*, 23 N.E.3d 716, 727 (Ind. Ct. App. 2014) (citation omitted), *trans. denied* (quotations and citations omitted)). Here, I believe a lay jury could assess whether Kafatia's actions were tortious or not without applying a medical standard of care. Whether he was negligent is not something beyond the knowledge of the jury and I'm not sure what a panel of healthcare providers could make clear here. The only tie between this matter and medical malpractice is the fact that Kafatia happened to be employed by a healthcare facility. The provision of healthcare here is asking Martinez to go to bed. I don't think this set of facts is much different than if this incident occurred at a hotel, for instance, and Kafatia had been a hotel employee urging Martinez, a guest, to return to his room after the lobby closed or if it occurred in a college dorm where the resident advisor sought to enforce curfew. Both of these scenarios, as well as this case, are capable of resolution by a lay jury without invoking the medical malpractice standard of care.

I also think that the question of whether the complained-of conduct falls within the purview of the Act is completely distinct from whether Martinez was acting in the course and scope of his employment. Even if he was acting in the course and scope of his employment (there seems to be no dispute between the parties that he was), this does not automatically transform his actions into the provision of healthcare, outside the understanding of the lay jury and necessitating a panel of experts to weigh in regarding the standard of care. See *Madison Ctr., Inc. v. R.R.K.*, 853 N.E.2d 1286, 1288 (Ind. Ct. App. 2006), *trans. denied* (citations omitted) (The fact that the alleged misconduct occurred in a healthcare facility, or that the injured party was a patient at the facility, has not been dispositive in determining whether the claim sounds in medical malpractice).

For these reasons, I respectfully dissent from the denial of transfer.

Goff, J., joins.