



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location

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DATE	COMM	ACTION
4/9/08	SM	Favorable

April 9, 2008

The Honorable Ken Pruitt
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 28 (2008)** – Senator Dave Aronberg
HB 479 (2008) – Representative Susan Bucher
Relief of J. Rae Hoyer

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED VERDICT-BASED JUDGMENT CLAIM FOR \$1,129,042.44 IN FUNDS OF THE FLORIDA SHERIFF'S SELF-INSURANCE FUND, AS INSURER FOR THE SHERIFF OF COLLIER COUNTY, TO COMPENSATE J. RAE HOYER FOR THE DEATH OF HER HUSBAND, DAVID HOYER, M.D., A PSYCHIATRIST WHO WAS STRANGLERED WHILE CONDUCTING A MENTAL HEALTH EVALUATION OF AN INMATE IN THE COLLIER COUNTY JAIL.

FINDINGS OF FACT:

On January 3, 2001, David J. Hoyer, M.D., a psychiatrist, was strangled by an inmate in the Collier County Jail. Dr. Hoyer was meeting privately with the inmate to conduct a court-ordered forensic mental health evaluation for the State of Florida. As a result of his injuries, Dr. Hoyer died, after being removed from life support, on January 6, 2001.

Dr. Hoyer was 58 years old. He was a graduate of the Ohio State School of Medicine, and an honorably discharged veteran of the United States Navy. He had been married, at the time of his death, for 18 years to J. Rae Hoyer, who was 51 years old. The Hoyers had no children.

Dr. Hoyer was employed by the David Lawrence Center, a not-for-profit mental health facility in Naples, Collier County, Florida. He worked for the center part-time, approximately 24 hours a week, and earned \$88,500 a year. He was also planning an association with a group of private practitioners.

Dr. Hoyer was appointed by the State of Florida to perform a forensic mental health evaluation to determine whether an inmate, Rodrigus Patten, was competent to stand trial. At the time he was strangled, Dr. Hoyer was conducting the evaluation in an interview room located in the Collier County Jail in Naples. The room had windows but no guards posted inside or outside the room. Mr. Patten was charged with carjacking, kidnapping, and robbery, and had been incarcerated in the County Jail since October 3, 2000.

There were numerous incidents involving Mr. Patten's self-injurious, destructive, and homicidal behavior during his approximately 90-day incarceration. Because of his threats to kill himself and other inmates, his intimidation of staff and inappropriate behavior, including masturbating in front of nurses, he frequently was disciplined, with measures ranging from restraints to special confinement.

Among other increasingly frequent incidents, on October 28, 2000, at Mr. Patten's own request, he was moved to a different area of the jail because "he was going to kill someone." In November 2000, at the request of inmates who were concerned about his "violent attitude," Mr. Patten was moved again. During the same month, he was evaluated and determined to be suffering from auditory, visual, and command hallucinations and delusions, and spent time requiring closer monitoring on a segregated suicide watch.

In the 10 days preceding the strangling of Dr. Hoyer, Mr. Patten was shackled to his bunk five times for refusing to stop banging objects and hitting his head on his cell door. On the day before Dr. Hoyer was strangled during a fight in a recreation yard, another inmate reported that Mr. Patten tried to strangle him.

In 2001, there were approximately 600 inmates in the jail and a total of 110 to 120 deputies, working in shifts of 23 to 28 at any one time.

At the joint House and Senate Special Masters' hearing in January 2007, as at trial, undisputed testimony and documentary evidence established Mr. Patten's violent and aggressive behavior in jail. Ms. Vickie Freeman, the staff mental health counselor, testified at trial that he was extremely dangerous and, she felt he was "a predator about to pounce on me." Over the course of her interactions with him, she decided not to see him unless they were separated by bars and a guard was present.

On January 3, 2001, Ms. Freeman received a telephone call from someone on his staff telling her that Dr. Hoyer was coming to evaluate Mr. Patten. He arrived at the jail around 9:00 or 9:15 a.m., was met at the control center by Ms. Freeman, and accompanied her to her office where he reviewed Mr. Patten's medical records. Ms. Freeman says she told Dr. Hoyer that Mr. Patten was the "most antisocial person" she had ever met, that he "exposed himself in a very threatening way"; "that he needed to watch out for this guy," and that she herself did not meet with Mr. Patten without security. Ms. Freeman testified that Dr. Hoyer ignored her warnings about inmate risk factors and chose to interview Mr. Patten in an interview room without a guard inside the room or at the window.

Detention Deputy Gary Decker also testified that he encountered Dr. Hoyer in passing in the hallway, and also warned Dr. Hoyer about Mr. Patten's posing an unusual risk and the need for someone to be with him during the interview. Deputy Decker said he told Dr. Hoyer that Mr. Patten was a "good sized guy and he's kind of whacky." He also said he looked into the interview room two times, saw Dr. Hoyer seated on the side of the table closest to the door and facing the window that is on the opposite side of the room. He said the first time he looked in the room Mr. Patten was seated on the opposite side of the table and that the second time he looked in the room Mr. Patten was standing.

Deputy Decker's credibility is undermined significantly and his testimony, without corroboration, lacks the reliability to serve as the basis for a factual finding because he failed to mention warning Dr. Hoyer in a report on the day of the incident and in a sworn statement to a detective investigating

the incident 2 days later. There was also testimony contradicting Deputy Decker's testimony that he was present at the control center where he said he had the conversation with Dr. Hoyer. Jail logs indicate that Deputy Decker was transporting inmates to and from court that morning.

The most reliable independent evidence of what, if any, warnings were given to Dr. Hoyer is the information provided to Dr. Carl Sieg. Approximately 2½ weeks earlier, Dr. Sieg was in a similar situation preparing to conduct the same type of court-ordered evaluation of Mr. Patten. He also met with Ms. Freeman before conducting the interview.

Ms. Freeman testified that she gave Dr. Sieg essentially the same information that she gave Dr. Hoyer. Her testimony is that she told both of them that Mr. Patten was dangerous, antisocial, and that she repeated some of the key statements he had made in interviews. She testified that she did not recall telling Dr. Sieg where to conduct his interview with Mr. Patten.

Dr. Sieg recalled that, on December 18, 2000, he met with Mr. Patten in the front family visitation room, a room that is larger than the interview room, with large windows and visible from the control center at the suggestion of Ms. Freeman who only "told me that she had something akin to a hunch, or suspicion--I'm not sure she used those exact words--that you may want to consider meeting with this inmate in the family visitation room." Dr. Sieg does not remember her giving him any factual basis for her recommendation.

Dr. Sieg also did not recall Ms. Freeman's saying that Mr. Patten was "the most antisocial person she had ever met," nor that she gave any details about Mr. Patten's exposing himself. He testified that he does not recall her saying that she was afraid of the inmate or that she always had a guard with her whenever she met with Mr. Patten.

From 1996 to 2001, Dr. Sieg conducted mental health evaluations at the Collier County Jail in Naples, from 25 to 100 times. One of those evaluations was successfully completed while the inmate was in shackles. Other than being shown around the jail by Ms. Freeman on one of his first visits, Dr. Sieg testified that he was not given any

information on safety precautions, the alarm system, or the locations and use of panic buttons.

After Dr. Hoyer arrived at the jail on January 3, 2001, around 9:00 or 9:15 a.m., and met with Ms. Freeman to review her records for 10 or 15 minutes, he began his evaluation of Mr. Patten at approximately 9:30 a.m. Sometime after that (varying from a half-hour to an hour), Mr. Patten was seen walking near the central control area of the jail and told someone that there was something wrong with Dr. Hoyer. Deputies began CPR and summoned emergency workers, while others returned Mr. Patten to his cell. The deputies suspected that Dr. Hoyer was suffering from a heart attack.

After Dr. Hoyer was in the hospital, his wife and the hospital staff noticed marks on his neck. During the course of an investigation, Mr. Patten confessed and strangulation was confirmed as the cause of death by the medical examiner.

Ms. Freeman recovered notes from the interview room, apparently made by Dr. Hoyer before the interview. In responding to the question, “[W]hat does he say?” regarding the notes, Ms. Freeman testified as follows:

- A. He says 20-year-old single black male. Was on Trilafon, four milligrams, QHS Lee County. Said suicidal in jail, Lee County. Said auditory hallucinations. History, drugs. Rule out antisocial. In quotes, “Voices tell him to make right choices.” Marijuana since age 16. Task, which is an education drug program, 1994. 10/10/00, mental status exam . . . within normal limits per jail doc. “How can I convince the system I’m a good guy?” Manipulating housing in jail. Meds discontinued 11/7. Reports auditory hallucinations, “To expose my private parts.” Later said “Nurse needed it.” And then it says jail three months.

That testimony concerning the notes does not support Ms. Freeman’s testimony concerning a conversation that included warnings over and above the information that Dr. Hoyer copied from the medical record. Ms. Freeman did not know and, therefore, could not have told Dr. Hoyer about the attempted strangling of another inmate on the day before his evaluation.

Dr. Hoyer was described as 5 feet 10 inches tall and 118 pounds. The human resources manager at the mental health center where he worked said that Dr. Hoyer was not aggressive and not a risk taker who would knowingly put himself in harm's way. It is reasonable to assume that Dr. Hoyer might have complied with Ms. Freeman's suggestion that he, like Dr. Sieg, conduct the interview in a different location, if she had made that suggestion to him. She did not make that suggestion, according to her own testimony and if, as she said, she gave both psychiatrists the same warnings, Dr. Sieg's testimony supports a finding that the warning of her "hunch" was vague and, given her lack of knowledge of the most recent strangling incident, inadequate.

LITIGATION HISTORY:

Seeking compensation for the strangling of her husband by Mr. Patten, Mrs. Hoyer filed a wrongful death lawsuit in state court that was later, because of federal claims included in the complaint, removed to federal court at the request of the Sheriff. The central issues at trial and, before the Senate, are whether Mr. Patten's increasingly violent behavior in jail was conveyed to Dr. Hoyer by Vickie Freeman or anyone else on the Sheriff's staff before he attempted to conduct the interview and evaluation in the interview room alone with the inmate; and whether, in spite of the duty the Sheriff owed to Dr. Hoyer to warn him of known dangerous propensities of inmates and to protect him while he was in the jail, Dr. Hoyer assumed the risk of conducting the interview under circumstances that directly caused his death.

On May 10, 2005, after a 5-day trial, the jury found the Sheriff and Dr. Hoyer equally at fault, and awarded damages to Mrs. Hoyer in the amount of \$31,079 for funeral expenses; \$244,047 for past support and \$375,134 for future support; \$1,000,000 for past pain and suffering; and \$1,000,000 for future pain and suffering, for a total of \$2,650,260. After a 50 percent reduction for Dr. Hoyer's comparative share of negligence, the trial court entered an amended judgment, on June 23, 2005, of \$1,325,130 in damages, and \$3,912.44 in costs. The Sheriff's motion for a new trial was denied.

In its opinion on March 28, 2006, the United States Court of Appeal for the Eleventh Circuit affirmed the trial court's judgment, rejecting arguments that jury instructions and the

verdict form were improper. Following the decision on appeal, Mrs. Hoyer was paid \$200,000, the sovereign immunity limit, leaving \$1,129,042.44, as the excess judgment for the claim bill.

An expert, who prepared an economic loss analysis of Dr. Hoyer's death, estimated \$1,199,750 as the past and future loss of support and services that resulted from his death. At the Special Masters' hearing, Mrs. Hoyer confirmed her dependence on Dr. Hoyer's income during their marriage. She is a high school graduate who worked as a secretary and office manager at a hospital and in a mental health institute in Virginia. After their marriage and move to Florida in 1988, Mrs. Hoyer and her late husband agreed that she would not work and would instead spend some time pursuing her talent for painting. Since his death, she has taken \$100,000 from the equity in her home to support herself and pay debts, and has made interest payments only totaling approximately \$22,000 to \$25,000, on the home equity loan. As of October 31, 2007, her attorney reports that Mrs. Hoyer continues to live in Bonita Springs, is unemployed, and continues to experience "a financial crunch."

CLAIMANT'S POSITION:

Sheriff Hunter owed a duty to Dr. Hoyer to protect him while he was in jail, and breached that duty by negligently failing to:

- advise Dr. Hoyer of the risk posed by the inmate;
- follow the standards in the Collier County Jail Policy and Procedure Manual, that required direct or visual supervision of a business invitee;
- instruct Dr. Hoyer on the availability of a panic button in the interview room;
- reschedule the interview to a time or date when the jail would not be short-staffed; and
- classify Mr. Patten as high risk and use restraints appropriate for that level of risk.

COLLIER COUNTY SHERIFF'S POSITION:

There was no active, egregious wrongdoing by the Sheriff or his agents that justifies the enactment of a claim bill. Dr. Hoyer assumed the risk of interviewing Mr. Patten without supervision after being adequately warned by Ms. Freeman, the jail's mental health counselor, and by another staff person of the inmate's past violence and dangerous propensities.

Regardless of the standards in the Sheriff's Manual, a psychiatrist, like an attorney for whom the psychiatrist is conducting the mental health evaluation, may demand a private interview with an inmate, including rejecting the offer of a guard observing the interview.

Dr. Hoyer, a former employee of the Collier County Jail was familiar with the facility, including presumably the location of panic buttons and the use of the security system. There was no need to postpone the evaluation when Dr. Hoyer's office called in advance or when he arrived, due to staff limitations. When the jail is short-staffed, security is not compromised; rather, more optional activities, such as visits and programs sponsored by community groups, for example, are postponed.

The failure to classify Mr. Patten as high risk did not affect the conduct of the interview. A high risk classification means an inmate is transported with shackles, handcuffs, and two guards, but restraints generally are, but not always, removed for the evaluation.

CONCLUSIONS OF LAW:

The Collier County Sheriff agreed that he had a duty to protect business invitees to the jail from known dangerous inmates. There is no dispute that Rodrigus Patten was known to be dangerous by the Sheriff, through the actual knowledge of his own staff and through the actual knowledge of the Prison Health Services staff, the private contractor that provided mental health services and employed Vickie Freeman, the jail's mental health counselor.

On the issue of negligence, the Restatement (Second) of Torts § 319 (1965) provides that:

One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.

In Nova University v. Wagner, 491 So.2d 1116 (Fla. 1986), the Florida Supreme Court accepted Section 319 as an applicable statement in Florida of traditional tort principles.

In Nova, the operator of a residential rehabilitation program that accepted ungovernable and emotionally disturbed delinquent children that exhibited, on numerous occasions, a propensity for physical violence toward younger children was held to have a duty to exercise reasonable care to avoid harm to the general public. 491 So.2d at 1117.

The Restatement (Second) of Torts § 496B describes express assumption of the risk as follows:

A plaintiff who by contract or otherwise expressly agrees to accept a risk of harm arising from the defendant's negligent or reckless conduct cannot recover for such harm, unless the agreement is invalid as contrary to public policy.

The facts do not support any claim that Dr. Hoyer agreed to relieve the Sheriff of his duty of care by expressly assuming the risks. While certain risks were inherent in the job Dr. Hoyer was performing, there is no evidence, even in the testimony of Ms. Freeman, that he rejected proposed safety measures and absolved the Sheriff of any responsibility for his negligence. See, e.g., Mazzeo v. Sebastian, 550 So.2d 1113 (Fla 1989). Therefore, whether the Sheriff breached his duty depends on whether Dr. Hoyer impliedly assumed the risks.

In Blackburn v. Dorta, 348 So.2d 287 (Fla. 1977), the Florida Supreme Court abolished the use of the defense of implied assumption of the risk as a total bar to recovery of damages and, instead held that it was merged into the defense of contributory negligence, as defined in the Restatement (Second) of Torts, § 466 (1965).

The Restatement (Second) of Torts, § 466 (1965) describes contributory negligence as follows:

§ 466 Types of Contributory Negligence

The plaintiff's contributory negligence may be either

(a) an intentional and unreasonable exposure of himself to danger created by

the defendant's negligence, of which danger the plaintiff knows or has reason to know, or

(b) conduct which, in respects other than those stated in Clause (a), falls short of the standard to which the reasonable man should conform in order to protect himself from harm.

The legal conclusion must be that, in effect, even assuming that the Sheriff's assertion that Dr. Hoyer can be implied to have assumed the risk of interviewing Mr. Patten under dangerous circumstances is correct, the comparative negligence of each party must be apportioned, as it was by the jury.

Resolving any doubts in favor of Sheriff Hunter, the jury found, as I do, that the Sheriff was at least, if not more, negligent than Dr. Hoyer. I do not recommend that more fault be apportioned to the Sheriff than the jury did solely because the amount of the award, when reduced by 50 percent, is sufficiently close to the estimated economic loss.

ATTORNEY'S FEES AND LOBBYIST'S FEES:

The Claimant's attorney's fees are 25 percent plus costs, consistent with s. 768.28(8), F.S. Lobbyist's fees are an additional five percent of any award, or \$56,452.13 for the full amount of this claim bill.

OTHER ISSUES:

The Florida Sheriff's Self-Insurance Fund allocated \$3.5 million to Collier County for claims in the 2001 fiscal year. Of that, at least \$1.2 million remains available for an award of this claim bill.

LEGISLATIVE HISTORY:

This is the second year that a bill has been filed on behalf of this Claimant. During the 2007 session, SB 42 died in the Committee on The Special Master on Claim Bills on May 4, 2007.

RECOMMENDATIONS:

For the reasons set forth above, I recommend Senate Bill 28 (2008) be reported FAVORABLY.

Respectfully submitted,

Eleanor M. Hunter
Senate Special Master

cc: Senator Dave Aronberg
Representative Susan Bucher
Faye Blanton, Secretary of the Senate
House Committee on Constitution and Civil Law
Tom Thomas, House Special Master
Counsel of Record