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Torts—Duty of Reasonable Care Toward Mental Patients

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DUTY OF REASONABLE CARE TOWARD MENTAL PATIENTS

Prior to his transfer to the Brooklyn State Hospital, plaintiff's intestate, who had a history of mental illness, had twice attempted suicide, once by phenobarbitol and the other by hanging. While in the Brooklyn Hospital he succeeded in committing suicide by swallowing approximately 12 capsules of seconal. How these were obtained was never determined. The plaintiff, in *Hirsch v. State*,¹¹ charged the State with negligence in failing to exercise reasonable care to prevent the deceased from carrying out his suicidal tendencies. The verdict of the Court of Claims for the plaintiff was affirmed by the Appellate Division but reversed by the Court of Appeals.¹²

The deceased was confined to a ward with 84 other suicidal patients. He took his meals there and left only for psychiatric treatments, each time in the company of an attendant. His door was always locked. Any medications, none of which were seconal, were brought only in the necessary amounts and were administered immediately. All visitors were supervised and gifts checked. Suicidal patients were limited to a monetary allowance of less than \$1 at a time which was insufficient to bribe anyone to get drugs, and deceased had not even claimed all of this small sum to which he was entitled. Upon admission to the hospital, the deceased was completely examined, his clothes removed, and state clothing furnished. The regular practice of the night shift was to put these patients to bed wearing only a pair of shorts and only after a search of his bed and clothing.

The majority pointed out that mental patients cannot be watched 24 hours a day, and that if mental institutions were required to take all the precautions contended for in this case, strait jackets would be required, a measure hardly conducive to recovery.

While the State must exercise reasonable care to protect such patients against themselves,¹³ the plaintiff must prove a lack of such care. The majority held that no such evidence was here introduced. A mental patient who is determined to take his own life cannot always be thwarted.

The basis of the dissent's opinion was that 12 seconal capsules could not be easily concealed and that the failure of the hospital staff to find them was negligence. In addition, the dissent argued that while the record showed what duties the staff is supposed to perform on such patients, the record did not show that such duties were actually performed in this case.

This case recognizes the difficulty as well as the necessity of caring for the mentally ill, and seeks to continue the obligation of reasonable care which has been imposed upon the State and to avoid imposing absolute liability.

11. 8 N.Y.2d 125, 202 N.Y.S.2d 296 (1960).

12. 18 Misc. 2d 360, 183 N.Y.S.2d 175 (Ct. Cl. 1959), aff'd 9 A.D.2d 1006, 194 N.Y.S.2d 935 (3d Dep't 1959), rev. 8 N.Y.2d 125, 202 N.Y.S.2d 296 (1960).

13. *Martindale v. State*, 269 N.Y. 554, 199 N.E. 667 (1935); *Gries v. Long Island Home* 274 App. Div. 938, 83 N.Y.S.2d 728 (2d Dep't 1948).