

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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FRANCES R. BROWN and CURTISS BROWN	>:	CIVIL ACTION
as parents and natural guardians for	:	
ELLIOTT F. BROWN,	:	NO. 94-3125
	:	
Plaintiffs,	:	
v.	:	
	:	
THE DEVEREUX FOUNDATION,	:	
	:	
Defendant.	:	

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**MEMORANDUM**

ROBERT F. KELLY, J.

MARCH 20, 1998

Before this Court is Defendant's renewed Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. This Court previously denied Defendant's Motion for Summary Judgment because we felt there were material issues of fact with respect to the questions of immunity and expert testimony. Defendant has renewed its Motion for Summary Judgment in light of recent Pennsylvania Supreme Court decisions. For the reasons that follow, Defendant's Motion will be granted as to Plaintiffs' negligence claim.

**Background**

This case involves Elliott Brown, an incompetent who was a resident of the Devereux Foundation ("Devereux") from 1972 until 1994. In 1992, Brown was involved in an incident of sexual misconduct with a teenage girl while on a shopping trip off the premises of the Devereux Foundation. Criminal charges were brought and later withdrawn, but the alleged victim filed a civil

suit against Brown and his parents.

Brown was discharged from Devereux in 1994. Plaintiffs (Brown and his parents) brought this action based upon Devereux's alleged negligence in leaving Brown unattended in a shopping area, thereby enabling his assault of the young girl which caused damages to the Plaintiffs.<sup>1</sup> Devereux asserted a counterclaim alleging that Plaintiffs have failed to pay for extra services rendered to Brown since 1992.

### **Standard**

Summary judgment is proper if "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The moving party has the burden of informing the court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The non-moving party cannot rest on the pleading, but must go beyond the pleadings and "set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); Celotex, 477 U.S. at 324. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812

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Plaintiffs' damages include emotional harm to Elliott Brown as well as legal costs incurred by Frances and Curtiss Brown as a result of the criminal action. By Order of March 15, 1996, this Court dismissed claims of Frances and Curtiss Brown for emotional distress.

F.2d 81, 83 (3d Cir. 1987).

### **Discussion**

Defendant asserts immunity under the Pennsylvania Mental Health Procedures Act ("MHPA"), 50 P.S. § 7101 et seq. The MHPA grants limited immunity in the absence of "willful misconduct or gross negligence" to any authorized person who participates in a mental health treatment decision. 50 P.S. § 7114(a). Defendant now argues that since this Court's earlier denial of summary judgment, two recent Pennsylvania Supreme Court decisions have eliminated any genuine issue of material fact.

The Pennsylvania Supreme Court recently examined the extent of this limited immunity. Allen v. Montgomery Hosp., 696 A.2d 1175 (Pa. 1997). In Allen, a mental patient was injured after she was transferred from her treatment facility to another hospital for treatment of physical ailments. The court construed the MHPA limited immunity to include not only treatment relating directly to a patient's mental illness, but also to include all treatment of the mentally ill, including physical ailments. Id. at 1179. In this case, limited immunity is clearly applicable. Decisions made concerning the supervision of a patient fall within the definition of treatment in the MHPA. Holland v. Norristown State Hosp., 584 A.2d 1056, 1059 (Pa. Commw. 1990). Defendant allowed Brown to go to a public place as part of his regular treatment for mental health problems. Thus, Plaintiffs cannot recover unless they can show gross negligence or willful misconduct.

The Pennsylvania Supreme Court also recently addressed gross negligence under the MHPA. Albright v. Abington Memorial Hosp., 696 A.2d 1159 (Pa. 1997). In Albright, a woman died as a result of a fire she started while she was receiving mental health treatment as an outpatient. The court defined gross negligence as "a form of negligence where the facts support substantially more than ordinary carelessness, inadvertence, laxity, or indifference. The behavior of the defendant must be flagrant, grossly deviating from the ordinary standard of care." Id. at 1164 (quoting Bloom v. DuBois Reg'l Med. Ctr., 597 A.2d 671, 679 (Pa. Super. 1991)). Further, the court held that where a plaintiff presents facts that could amount only to ordinary negligence, the trial court may remove from the jury's consideration the issue of whether the defendant's conduct amounts to at most gross negligence and decide the issue as a matter of law. Albright, 696 A.2d at 1164-65.

In the instant case, Plaintiffs have not presented any evidence that would justify a jury finding of gross negligence on the part of the Defendant. Plaintiffs have not identified any expert testimony that would support such a finding.<sup>2</sup> Plaintiffs argue that the MHPA also provides for liability if the Defendant engaged in "willful misconduct," and that the complaint alleges that Defendant "willfully and wantonly disregarded its duties of

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Until recently, Plaintiffs contended that they did not need expert testimony in this case. Plaintiffs now argue that, based upon Albright, expert testimony would be required. It is the opinion of this Court that expert testimony would be necessary in this case, regardless of Albright.

care." The Pennsylvania Supreme Court has defined willful misconduct as conduct whereby the actor desired to bring about the result that followed or at least was aware that it was substantially certain to follow. Evans v. Philadelphia Transp. Co., 212 A.2d 440, 443 (Pa. 1965). The term "willful misconduct" is synonymous with the term "intentional tort." King v. Breach, 540 A.2d 976, 981 (Pa. Commw. 1988). Under this definition, Plaintiffs have offered no evidence to support an allegation of willful misconduct on the part of the Defendant.

#### **Conclusion**

In summary, this Court will grant summary judgment in favor of the Defendant on Plaintiffs' negligence claim because Plaintiffs are unable to offer any evidence showing gross negligence on the part of the Defendant. This Court will not grant summary judgment on Defendant's counterclaim for damages resulting from Plaintiffs' alleged failure to pay for services rendered.

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	:	
Plaintiffs,	:	
v.	:	
	:	
THE DEVEREUX FOUNDATION,	:	
	:	
Defendant.	:	
	:	
	:	

**ORDER**

AND NOW, this 20TH day of March, 1998, upon consideration of Defendant's Motion for Summary Judgment and all responses thereto, it is hereby ORDERED that Defendant's Motion is GRANTED to the extent that Plaintiffs seek damages for negligence.

BY THE COURT:

Robert F. Kelly,	J.
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