2d Civil No. B045337

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CESAR GUZMAN,

Plaintiff and Appellant,

vs.

MARTIN LUTHER KING, JR., HOSPITAL, et al.,

Defendants and Respondents.

Appeal From The Superior Court Of The County of Los Angeles,
Honorable Cary Nishimoto, Judge
Los Angeles Superior Court Case No. C 535358

RESPONDENT'S BRIEF

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INTRODUCTION

Plaintiff Cesar Guzman has appealed the trial court's decision granting summary judgment in favor of defendant County of Los Angeles on the ground that the County is immune from liability for any injuries suffered by plaintiff while he was confined for mental illness pursuant to Government Code section 854.8. In December 1983, plaintiff was brought into the emergency room at Martin Luther King, Jr./Drew Medical Center ("Drew" or "Drew Hospital") with minor wrist lacerations. Although his physical injuries were not serious, County personnel determined that they were inflicted in a suicide attempt and that plaintiff continued to present a danger to himself. Accordingly, plaintiff was placed on a 72-hour hold for mental evaluation pursuant to Welfare and Institutions Code section 5150 ("section 5150").[1/] Normally, persons confined for mental evaluation are housed at Augustus F. Hawkins Mental Health Center ("Hawkins"); but on this particular occasion, there were no beds available at Hawkins. Therefore, plaintiff was confined to a single room at Drew, adjacent to Hawkins, in a relatively secure area, under the supervision of psychiatrists and a nursing staff that had been instructed on his special needs. While there, he received several shots of Demerol, one of which, he alleges, was negligently administered and caused injury to his leg.

Plaintiff does not dispute that he was confined for mental illness, that he was in a County facility, or that he received virtually the same treatment and care he would have received had he been confined to Hawkins; neither does he question the County's decision to confine him. The only issue plaintiff raises in this appeal is whether his

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1/ Section 5150 provides, in pertinent part: "When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county . . . may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation."

confinement at Drew rather than Hawkins satisfied the requirement of Government Code section 854.8 ("section 854.8") that he be confined "in a mental institution." Specifically, plaintiff insists that the County was required to hold him in a "designated" facility--i.e., Hawkins--and that Drew was not such a facility. As we explain, plaintiff's extremely narrow reading of section 854.8 cannot withstand scrutiny.

Section 854.8 immunizes a public entity for injuries sustained by an inpatient of a "mental institution." The Government Code defines "mental institution" as any "county psychiatric hospital," and further defines a "county psychiatric hospital" as any facility provided by the county under the provisions of Welfare and Institutions Code section 7100 ("section 7100"). Section 7100, in turn, authorizes a county, in its discretion, to establish or designate certain facilities for the evaluation and treatment of mental illness. However, contrary to plaintiff's intimations, section 7100 does not require a county to designate certain facilities to hold persons confined under section 5150. Rather, the purpose of section 7100 appears to be an attempt to regulate the level of services provided for mental health care: i.e., the focus is on the quality of care, rather than on the location in which that care is provided. The only restriction on the situs in section 7100 itself is that the location be open to investigation by the board--merely a guarantee that the level of services offered will be monitored.

The Legislature has immunized public entities and public employees for virtually all decisions involving examination and treatment of mental illness, including decisions to confine or release mental patients, as well as determinations with respect to conditions of confinement. (See Hernandez v. State of California (1970) 11 Cal.App.3d 895, 898.) When section 854.8 and section 7100 are read in harmony with this legislative intent, it becomes clear that it is a patient's status as an inpatient being treated for mental illness, and not his physical location while being treated, which triggers the immunity. Indeed, any other interpretation of these sections would render the immunity essentially meaningless under these circumstances. Public entities faced with a facility filled to

capacity would be placed in the awkward position of making a choice between not confining a patient who would benefit from inpatient treatment--a decision for which the entity would be immune under Government Code section 856--or confining him in another facility (albeit one with comparable facilities and level of care) and facing potential civil liability for any injuries sustained by that person. If the public entity is not immune for confining a person to another facility when the so-called "designated" facility is full, then the choice for the public entity will be obvious, and the patient will be the one who suffers the consequences.

Public policy of this state requires that decisions about mental health be made with an eye towards the welfare of the patient and the public: such decisions should not be tainted by the threat of liability for the decisionmakers. In short, the application of the immunity cannot and should not be based on something outside the control of the public entity--i.e., the unfortunate lack of funds available to the government to provide sufficient public hospital space for the mentally ill, which results in the situation presented here: a person in need of inpatient mental health care, and no beds available in the mental health ward.

The record is clear that plaintiff was confined for his own benefit, because County personnel believed he presented a danger to himself. He was furnished the same care he would have received in the mental health ward had a bed been available there. Thus, the mere fact that plaintiff was physically located in a room outside the mental health facility should not and does not vitiate the immunity of section 854.8, and plaintiff has not demonstrated otherwise. Accordingly, the judgment should be affirmed.

STATEMENT OF FACTS

On December 3, 1983, plaintiff Cesar Guzman was admitted to Drew Hospital with superficial lacerations on his wrists. (Clerk's Transcript on Appeal ["CT"] 13, 18; Appellant's Opening Brief ["AOB"] 3.) Plaintiff was examined by Serena Young, M.D., who determined that the lacerations were not serious enough to warrant hospitalization. However, Young believed the wounds to be inflicted as part of a suicide attempt, and therefore recommended that plaintiff be seen by a psychiatrist. (CT 48-49.) Plaintiff was then examined by Omar Schusselin, M.D., a psychiatrist, who, concluding that plaintiff had suicidal ideations and that he was a danger to himself (CT 21), took appropriate steps to put plaintiff on a 72-hour hold for mental evaluation pursuant to section 5150. (CT 13, 21, 57.)

Augustus F. Hawkins Mental Health Center is a portion of Drew Hospital which primarily handles patients admitted for mental evaluation. (CT 13, 88.) At the time when plaintiff was admitted to Drew Hospital and put on a 72-hour hold, there were no beds available at Hawkins. (CT 13, 88.) County personnel therefore confined plaintiff instead to Drew Hospital, where he was observed and treated as a mental patient, just as if he had been admitted to Hawkins. (CT 13, 89.) During the 72 hours plaintiff was confined, County personnel continued to check for available beds at Hawkins, but none opened up until after plaintiff's release. (CT 13, 88.)

While plaintiff was hospitalized pursuant to section 5150, he received four injections of Demerol. (CT 14, 84.) He alleges the one of the injections caused the injuries to his leg which are the subject of the complaint. (CT 42-43, AOB 4.)

STATEMENT OF THE CASE

On February 20, 1985, plaintiff filed the instant action against the County of Los Angeles (erroneously sued as Martin Luther King, Jr. Hospital), alleging that he suffered injuries as a result of medical treatment he received while hospitalized. (CT 1-2.) The summons and complaint were served in December 1987. (CT 26.) The County filed its answer on January 28, 1988. (CT 4.)

On June 6, 1989, the County filed a motion for summary judgment based on section 854.8.[2/] The County asserted that it was immune from liability to plaintiff because any injuries he suffered as a result of the Demerol injections were sustained while he was an inpatient for mental illness--precisely the situation covered by section 854.8. (CT 11, 14, 15.) Plaintiff filed opposition to the motion, arguing that the immunity did not apply because he was not technically confined to a "mental institution" and was being treated for a medical problem (the wrist injuries) rather than a mental problem.[3/] (CT 62-63, 63A.)

The County's motion was granted on June 30, 1989. (CT 91.) The trial court determined that plaintiff was involuntarily confined for mental illness pursuant to section 5150, and not for his physical injuries. The court further explained that the nature of a 5150-hold revolves around "the ability of the patient to leave in the exercise of his own discretion" rather than around the patient's actual confinement to a particular building or ward. (CT 91; Reporter's Transcript of Proceedings ["RT"] 1, 4, 5.) Since the injection which allegedly caused plaintiff's injuries was administered while he was involuntarily

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2/ The County's separate statement undisputed material facts in support of the motion was inadvertently omitted from the record on appeal. Accordingly, the County has filed concurrently with this brief a motion to augment the clerk's transcript on appeal to include the missing document.

3/ On appeal plaintiff urges only that he was not confined in a mental institution. (AOB 7.)

confined to Drew pursuant to section 5150, the County was immune from liability for the injuries. Judgment was entered in the County's favor on July 19, 1989 (CT 100-101), and notice of entry of judgment was sent on August 1, 1989. (CT 103.) This appeal followed. (CT 104.)

LEGAL DISCUSSION

THE JUDGMENT SHOULD BE AFFIRMED BECAUSE THE COUNTY IS IMMUNE FROM LIABILITY FOR INJURIES SUSTAINED BY PLAINTIFF WHILE HE WAS CONFINED AS A MENTAL PATIENT.

The following facts were established by the County in support of its motion for summary judgment:

(1) On December 3, 1983, plaintiff was treated at Drew Hospital for superficial wrist lacerations.

(2) Because his injuries appeared to be self-inflicted, plaintiff was examined by Dr. Omar Schusselin, a psychiatrist, who placed plaintiff on a 72-hour hold for mental evaluation pursuant to section 5150.

(3) There were no beds available at August F. Hawkins Mental Health Center on December 3, 1983; therefore, plaintiff was confined to a single room in Drew Hospital, in a reasonably secure area. At all times between December 3, when he was first confined, and December 5, 1983, when he was transferred to UCLA, plaintiff was involuntarily confined pursuant to section 5150.

(4) While he was confined at Drew, plaintiff was monitored by psychiatrists and observed by nurses who were instructed to monitor his mental condition.

(5) While plaintiff was confined at Drew between December 3 and December 5, 1983, he was given four shots of Demerol--one of which he contends caused injuries to his leg.

(6) On December 5, 1983, plaintiff was transferred to UCLA/Harbor Medical Center for further psychiatric evaluation and treatment.

The trial court granted the County's motion based on these facts and Government Code section 854.8. On appeal, plaintiff does not dispute the facts; indeed, he essentially concedes--as he must--that the County would be immune for the injuries to his leg but for the fact that he was confined at Drew rather than Hawkins at the time he received the allegedly negligently administered injection of Demerol. Plaintiff's only contention on appeal is that section 854.8 does not apply because he was not technically confined at a "mental institution." As we now explain, this argument must be rejected.

Government Code section 854.8, subdivision (a)(2), provides, in pertinent part:

> "Notwithstanding any other provision of this part, . . . a public entity is not liable for: . . . An injury to an inpatient of a mental institution."

Government Code section 854.2 defines "mental institution" as "any county psychiatric hospital," and Government Code section 854.3 defines "county psychiatric hospital" as "the hospital, ward, or facility provided by the county pursuant to the provisions of Section 7100 of the Welfare and Institutions Code." Section 7100 provides, in pertinent part:

> "The board of supervisors of each county may maintain in the county hospital or in any other hospital situated within or without the county or in any other psychiatric health facility situated within or without the county, suitable facilities and nonhospital or hospital service for the detention, supervision, care, and treatment of persons who are mentally disordered, developmentally disabled, or who are alleged to be such. . . ."

The courts of this state have broadly construed statutes immunizing public entities for injuries sustained by persons being treated for mental illness. For example, in Goff

v. County of Los Angeles (1967) 254 Cal.App.2d 45, the court held that the county was immune from liability for injuries sustained by the plaintiff after his release from a 10-day confinement for mental illness. (After his release, the plaintiff had jumped off a bridge in an apparent suicide attempt.) The Court based its decision on section 854.8 which, at that time, provided that a public entity was not liable for injury to any person "committed or admitted to a mental institution." (254 Cal.App.2d at p. 49.) The language that currently appears in section 854.8 is considered broader, encompassing a wider spectrum of situations. (See, e.g., Guess v. State of California (1979) 96 Cal.App.3d 111, 119 [section 854.8 "embodies an absolute, broad immunity prevailing over all other provisions of the Tort Claims Act"].)

Indeed, an examination of the broader language of the new section compels the conclusion that the instant judgment must be affirmed. The Law Revision Commission distinguishes subdivision (a)(1) (immunity for injuries caused "by a patient of a mental institution") from subdivision (a)(2) (immunity for injuries "to an inpatient of a mental institution") in terms of the patient's status, explaining that the latter "refers only to inmates of mental institutions and not outpatients" (Cal. Law Revision Com. com., Deering's Ann. Gov. Code § 854.8 (1982) p. 347), whereas the word "patient" in the former refers to both inpatients and outpatients of mental institutions. (Ibid.; see also Bohrer v. County of San Diego (1980) 104 Cal.App.3d 155, 163.) Clearly, it was not the Legislature's intention to distinguish mental patients confined in one facility from mental patients confined in another facility; rather, the distinction is between those persons confined for mental care and those confined purely for medical care--the law providing immunity in the former situation only.

Although it involved a different immunity, Los Angeles County USC Medical Center v. Superior Court (1984) 155 Cal.App.3d 454 ("Pedregon") is instructive. There, the court granted immunity to the County of Los Angeles for injuries sustained by a woman escaping from confinement in a medical facility. The woman had been confined

for mental illness pursuant to section 5150--like plaintiff in this case. During the pendency of the 72-hour hold, she was transferred to a county medical center for tests which the mental ward was not equipped to perform. While at the medical center, the woman escaped and jumped off a freeway overpass. She sued the county for injuries sustained in the jump. The county asserted immunity based on Government Code section 856.2 for injuries sustained by an escaped or escaping person "who has been confined for mental illness." The plaintiff urged, as plaintiff here urges, that she was not confined in a mental institution when she escaped, but rather was at a medical hospital, and therefore the immunity did not apply. The Court of Appeal flatly rejected this argument, holding that "a person on a 72-hour psychiatric hold is 'confined' for purposes of section 856.2." (155 Cal.App.3d at p. 461.) The court explained (id. at p. 463):

> "The mere fact that at the precise moment she escaped she was in a location within the County Medical Center housing medical testing equipment and not 'in custody' in the psychiatric ward at the huge and complex county facility, does not a fortiori rule out escape immunity. The section clearly states public entities and employees are not liable for injury to an escaped person who has been confined for mental illness."

Here, as in Pedregon, supra, the temporary displacement of plaintiff cannot and does not change the fact that he was being held for mental evaluation and that he was not free to leave at his discretion.[4/] The mere fact that he was physically located in a room outside the mental health facility is irrelevant under the circumstances: the County's liability or immunity simply cannot hinge on so thin a reed as whether or not there were enough beds available in a particular facility at a given time. As Pedregon,

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4/ Plaintiff cites no cases directly or indirectly in support of his position. He merely attempts to distinguish cases on which the County relied in its moving papers.

makes clear, it is a person's status as an inpatient being treated for mental illness, and not his physical location while being treated, which triggers immunity.

Indeed, any other interpretation of section 854.8 would render the immunity essentially meaningless. Public entities faced with mental facilities which are already filled to capacity would be placed in the awkward position of making a choice between not confining a new patient for treatment he requires--a decision for which the entity would be immune under Government Code section 856--or confining him in a facility other than one specifically designated for mental health care (but nonetheless capable of providing such care) and facing potential civil liability for any injuries sustained by that person. Significantly, the option which provides the public entity with immunity would not be in the patient's best interest, while the option which would work to the patient's benefit would give rise to potential liability for the public entity. The general purpose of immunizing public entities seeks to prevent this kind of conflict of interest between the public entity's concerns and the welfare of the patient and the public. The immunity granted public entities for decisions in this area frees the public entity to make decisions based solely on the patient's welfare rather than on the public entity's potential civil liability, thus affording the patient the best possible public health care.

Plaintiff urges, however, that the County was required to demonstrate that Drew Hospital met the requirements of Welfare and Institutions Code section 7100--i.e., that it was specifically designated by the County and approved by the State Department of Mental Health as a facility for treatment of persons confined pursuant to section 5150. This argument ignores the plain language of section 7100, which provides, as noted above, that the County "may" maintain appropriate mental health facilities. The use of the word "may" clearly evinces a Legislative intent that the designation of specific mental health facilities is within the county's discretion: it is not required by section 7100 to establish separate facilities to house and handle the mentally ill. (See In re Richard E. (1978) 21 Cal.3d 349, 353-354 ["The ordinary import of 'may' is a grant of discretion" and

is not mandatory].) Indeed, the following language from section 7100 specifically indicates that the only restriction on location placed on the county is that the facility be subject to the right of investigation by the Department of Mental Health:

> "Nothing in this chapter means that mentally disordered or developmentally disabled persons may not be detained, supervised, cared for, or treated, subject to the right of inquiry or investigation by the department, in their own homes, or the homes of their relatives or friends, or in a licensed establishment."

Clearly section 7100 does not limit the County's ability to provide mental health services in facilities other than those specifically "designated" for 5150-holds--including private homes and licensed establishments. Rather, the purpose of this section was to allow public entities to provide a certain level of mental health services: the specific site for provision of those services is not important, as long as it is "subject to the right of inquiry or investigation by the department," thus guaranteeing the level of services provided will be adequate. This is consistent with the legislative history of governmental immunity, which focuses on concern for the welfare of the mentally ill. As explained in Hernandez v. State of California, supra, 11 Cal.App.3d at p. 898:

> "Public entities and public employees should not be liable for negligence in diagnosing that a person is afflicted with mental illness or mental deficiency. Nor should liability be imposed for negligence in prescribing treatment for such conditions. Much of the diagnosis and treatment of these conditions goes on in public mental institutions. The field of psychotics is relatively new and standards of diagnosis and treatment are not as well defined as where physical illness is involved. Moreover, public mental hospitals must take all patients committed to them; hence, there are frequently problems of supervision and treatment created

by inadequate staff and excessive patient load that similar private hospitals do not have to meet. For the same reasons, no tort liability should exist for determining whether to confine a person for a mental or emotional disturbance for which commitment to a public hospital is authorized, nor for determining the terms and conditions of the confinement." (Emphasis added, internal quotation marks omitted.)

As explained above, the evidence here showed that plaintiff was confined to Drew Hospital only because Hawkins was full to capacity when the 5150-hold was initiated. During his confinement at Drew, plaintiff was under the care of psychiatrists and was "provided with suitable services for the detention, supervision, care and treatment for his mental disability." (CT 88.) He was confined in a "reasonably secure area, . . . in a single room, and was observed by nurses who were properly instructed to monitor his condition, including his mental disability." (CT 89.) In short, plaintiff was given the same supervision, care and treatment at Drew that he would have been given if he had been confined at Hawkins. The level of care being the same, the requirements of section 7100 were met. Drew Hospital was clearly a proper facility under section 7100 for confining plaintiff and treating his mental illness under the circumstances.

Consideration of the other options open to the County under the circumstances of this case further compels the conclusion that the County made the best choice for the patient, and therefore, the immunity plainly must apply. Since Hawkins was already full, the County had only limited options with respect to treating plaintiff: it could have unconditionally released plaintiff--a decision for which it would have been absolutely immune from liability (Gov. Code § 856); or it could have treated plaintiff on an outpatient basis--another decision for which it would have been absolutely immune. (Gov. Code § 854.8, subd. (a)(1).) The County's choice to confine plaintiff for his own benefit, in spite of the lack of space at Hawkins, was the only option geared towards

protecting plaintiff from himself: it would be absurd to hold the County liable for choosing the option best suited to the patient's needs, merely because there was "no room at the inn."

CONCLUSION

Public policy, statutory language, case authority and common sense require that immunity for the County be upheld under the circumstances of this case. Plaintiff has not demonstrated otherwise. Accordingly, the judgment of the trial court in favor of defendant County of Los Angeles should be affirmed.

Dated: March 18, 1991

Respectfully submitted,

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