IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00372 COA

ORVAL RAY GLISSON, II — **APPELLANT**

v.

METHODIST MEDICAL CENTER, INC.; HINDS COUNTY BOARD OF SUPERVISORS; AND DR. BINFORD NASH, D/B/A WEST JACKSON FAMILY MEDICAL CENTER — **APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	02/07/96
TRIAL JUDGE:	HON. JAMES E. GRAVES JR.
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	WILLIAM LISTON III
	PAUL SNOW
	WILLIAM LISTON
ATTORNEYS FOR APPELLEES:	RANDALL D. NOEL
	HEBER S. SIMMONS, III
NATURE OF THE CASE:	CIVIL - WRONGFUL DEATH
TRIAL COURT DISPOSITION:	GRANTED SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS
DISPOSITION:	AFFIRMED - 11/18/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/23/98

BEFORE McMILLIN, P.J., HINKEBEIN, AND SOUTHWICK, JJ.

HINKEBEIN, J., FOR THE COURT:

During December 1992, the Chancery Court of the First Judicial District of Hinds County ordered Orval Ray Glisson, III committed to the Mississippi State Hospital at Whitfield for mental treatment pursuant to Section 41-21-61 through 41-21-105 of the Mississippi Code. The court further ordered that Glisson be held at Methodist Medical Center in Jackson temporarily until space at the state facility became available. In early January, while still awaiting transfer, Glisson attempted to commit suicide. He was successfully resuscitated, but sustained serious injuries that ultimately caused his

death. His father, Orval Ray Glisson, II, thereafter filed suit against the Hinds County Board of Supervisors, Methodist Medical Center, Pendleton Detectives of Mississippi, and Doctor Binford Nash for wrongful death. Each of the defendants requested and the trial court granted summary judgment based on statutory immunity. Feeling aggrieved, Glisson's father appeals the grant as to all but Pendleton based on the following assignment of error:

> **THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE APPELLEES ON THE GROUND THAT THEY ARE IMMUNE UNDER SECTION 41-21-105 OF THE MISSISSIPPI CODE FROM THE CIVIL CLAIMS ASSERTED IN THIS ACTION.**

Holding this assignment of error to be without merit, we affirm the judgment of the circuit court.

FACTS

Prior to 1986, the Hinds County Detention Center held involuntarily committed mental patients awaiting admission into the state psychiatric hospital. During that year, the United States Department of Justice investigated detention center conditions pursuant to the Federal Civil Rights of Institutionalized Persons Act. Upon concluding its probe, the department opined that the rights of the mental patients housed therein were being violated. Department officials wrote, "[s]uch mentally-ill persons have rights to adequate medical care, reasonably safe conditions of confinement, and that degree of treatment necessary to ensure that they are not exposed to unreasonable risks to their personal safety and are free from undue bodily restraint. ***Youngberg v. Romeo,* 457 U.S. 307 U.S. 324 (1982).** Then, while characterizing the county's treatment of the patients as "cruel and unusual," the department cited the housing of such patients in a facility designed and used primarily for the detention of convicted and accused criminals as well as the complete lack of mental health professionals, services, or treatment.

Thereafter, the Hinds County Board of Supervisors attempted to comply with the recommendations. It established an alternative "holding area" via an agreement with Hinds General Hospital -- later leased by Methodist -- wherein these individuals might be housed separately and receive the required "necessary medical care" while awaiting transfer. However, neither party envisioned "necessary medical care" to encompass immediate implementation of aggressive psychiatric treatment. Methodist merely provided an environment designed to prevent patients from causing harm to themselves and/or others, dispensed care for physical ailments, and maintained previously prescribed psychiatric protocols. More extensive efforts were postponed until arrival at the better equipped state facility.

As stated, Glisson entered Methodist near the end of 1992. On December 17, as a prerequisite to his involuntary commitment, he underwent a thorough mental and medical evaluation. After arriving at a diagnosis of paranoid schizophrenia with accompanying threats of harm to others, both a physician and a psychologist recommended Glisson's hospitalization. Later that day, he was admitted to Methodist. Upon his arrival, Glisson was examined again by Dr. Nash, a family practitioner and staff physician at West Jackson Family Medical Center, who happened to be "on call" to attend the needs of the detainees. Dr. Nash noted Glisson's condition, the accompanying symptoms, and scars from a prior suicide attempt. He then elected to continue Glisson's previously prescribed medication and gave the "observe at all times" order which was standard for these transitional patients. Being aware of Glisson's recent evaluation, Dr. Nash requested no assistance from additional psychiatric experts.

Two weeks later, Glisson still awaited transfer. On the evening of January 2, nurses observed no unusual behavior when checking Glisson, as they did every two hours on average. But around 11:30, a guard hired through Pendleton Detectives discovered him hanging from his bathroom door knob by a noose fashioned from his bed linens. Hospital staff successfully resuscitated Glisson, but he had suffered severe complications which resulted in a persistent vegetative state and ultimately in his death several months later.

ANALYSIS

> **THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE APPELLEES ON THE GROUND THAT THEY ARE IMMUNE UNDER SECTION 41-21-105 OF THE MISSISSIPPI CODE FROM THE CIVIL CLAIMS ASSERTED IN THIS ACTION.**

The party moving for summary judgment bears the burden of persuading the trial court that no genuine issue of material fact exists, and that they are, based on the established facts, entitled to judgment as a matter of law. ***Skelton v. Twin County Rural Elec. Ass'n,* 611 So.2d 931, 935 (Miss. 1992).** However, to prevent summary judgment the non-moving party must produce "evidence of *significant* and *probative* value" tending to show the inappropriateness of the measure. ***Palmer v. Biloxi Reg'l Med. Ctr., Inc.*, 564 So. 2d 1346, 1355 (Miss. 1990)**(emphasis in original). In that vein, the trial court analyzes all affidavits, admissions in pleadings, interrogatory answers, depositions and other matters of record, and considers all such evidence in the light most favorable to the party against whom the motion for summary judgment is made. ***Clark v. St. Dominic-Jackson Mem'l Hosp.*, 660 So. 2d 970, 972 (Miss. 1995).** As an appellate court, we conduct a de novo review of the trial court's granting of summary judgment. ***Seymour v. Brunswick Corp.*, 655 So. 2d 892, 894 (Miss. 1995).** Therefore this court again analyzes such evidence and may reverse the trial court's decision to grant summary judgment if a legal issue was incorrectly decided or material facts are in dispute. ***Clark v. St. Dominic-Jackson Mem'l Hosp.*, 660 So. 2d 970, 972 (Miss. 1995); *Radmann v. Truck Ins. Exchange*, 660 So. 2d 975, 977 (Miss. 1995).** In this light, we examine the granting of summary judgment to each of the appellees separately.

A. HINDS COUNTY BOARD OF SUPERVISORS

Glisson's father first criticizes the Board's selection of Methodist as the temporary holding facility. He claims that because the hospital was ill-equipped for providing psychiatric treatment, the Board breached its duty to provide adequate care and maintenance for Glisson during this interim period. The Board, rather than addressing Mr. Glisson's assertions directly, claims immunity from suit under Section 41-21-105 of the Mississippi Code. Because its handling of the situation failed to rise to the level of gross negligence, we agree that the Board is entitled to such immunity. For efficiency's sake, we will move directly to the statute on which the trial court based its granting of summary judgment. Section 41-21-105 reads as follows:

> (1) All persons acting in *good faith* in connection with the preparation or execution of applications, affidavits, certificates or other documents; apprehensions; finding; opinion of physicians and psychologist; transportation; examination; treatment; emergency treatment; detention or discharge of an individual, under the provisions of §§ 41-21-61 to 41-21-107, shall

incur no liability, civil or criminal, for such acts.

(2) No civil suit of any kind whatsoever shall be brought or prosecuted against the board, any member thereof, any director or employee for acts committed within the scope of employment, except for *wilful or malicious acts or acts of gross negligence*.

Miss. Code Ann. § 41-21-105 (Rev. 1993)(emphasis added). While Methodist and Dr. Nash claim immunity under subsection (1) as persons acting in good faith in connection with the detention of Glisson, the Board falls under subsection (2) of the statute. Therefore, the trial court's granting of summary judgment, as it relates to the Board, presents this court with only one inquiry -- whether Mr. Glisson has produced "evidence of *significant* and *probative* value" tending to show gross negligence.***See Palmer v. Biloxi Reg'l Med.Ctr., Inc.,* 564 So. 2d 1346, 1355 (Miss. 1990)** (discussing the requirements for defeating a motion for summary judgment)(emphasis in original). If such evidence is lacking, he may not proceed.

Mr. Glisson attempts to base his case on this narrow exception by arguing that the "holding area" scheme devised by the Board and carried out by Methodist and Dr. Nash in and of itself provides the requisite showing. He proposes an absolute duty arising at the moment of commitment to provide and implement an individually tailored psychiatric plan.

In support of the proposition, Mr. Glisson looks to various authorities for guidance as to the required level of care. The first of these is the Justice Department's conclusions regarding pre-1986 detention center conditions. He theorizes that if the Justice Department considered the circumstances within the detention center "cruel and unusual" under the U.S. Constitution, then certainly the conscious decision to merely move these patients to other, albeit more aesthetically pleasing, cells might fairly be considered gross negligence. We need not address the proposition directly because the conditions found by the Justice Department in 1986 and those encountered by Glisson over six years later bear virtually no resemblance to one another.

In 1986 the county not only provided these individuals with "no mental health services or treatment whatsoever," it exposed them to conditions that department officials feared "might actually exacerbate their mental illness." Those not confined to the detention center's "drunk tank" or placed in hand and/or leg irons were held among convicted and sometimes dangerous felons. The department's conclusions were clearly driven by the totality of these circumstances. When Glisson entered Methodist in 1992 only the absence of individualized psychiatric care remained. In our view, these improvements, while perhaps imperfect, are decisive. A finding of "reckless indifference to consequences without exertion of substantial effort to avoid them" would be utterly inconsistent with the substantial efforts made by the Board to ensure the safety of these patients. ***See Planters Wholesale Grocery v. Kincade,* 210 Miss. 712, 50 So. 2d 578 (1951)** (defining gross negligence).

Likewise, Mr. Glisson cites ***Chill v. Miss. Hosp. Reimbursement Comm'n,* 429 So. 2d 574 (Miss. 1983).** In *Chill*, the Mississippi Supreme Court addressed the State's power to demand from the estate of an involuntarily committed patient reimbursement for costs accumulated over his twenty-eight year stay at the Whitfield facility. The administrator erroneously claimed that because the deceased's procedural due process rights were violated at the time of his commitment, the State could not subsequently seek reimbursement while remaining within the confines of the United States and Mississippi Constitutions. ***Chill,* 429 So. 2d at 582.** While disposing of this contention our supreme

court wrote as an aside, "once involuntarily committed, Covington had a substantive right not to be 'warehoused'. If he was indeed substantially mentally ill, the state had a right to commit him involuntarily only on the condition that it afforded him minimally adequate care and treatment." ***Id.*****at 583.** But the court made no firm judgments as to the sufficiency of the care received by that patient as such was unnecessary to the resolution of the case. And in any event, the patient endured nearly three decades of electroshock and a prefrontal lobotomy. ***Id.*** **at 577.** Assuming that such care rose to the level of gross negligence, it may not reasonably be compared with two weeks of drug therapy and round-the-clock monitoring. The case thus reveals no reason for denying the Board the statutory immunity granted by the legislature.

Glisson's father also relies on certain "Minimum Standards of Operation for Psychiatric Hospitals" promulgated by the Mississippi State Board of Health. In calling for individual treatment plans as well as implementation by qualified staff, the standards provide insight into the minimum level of adequate care to be provided mental patients. However, their usefulness ends there. The bare conclusion that the Board's arguable breach of these duties constitutes gross negligence is both unsupported and unconvincing. A mere recitation of these standards suggests at most simple negligence, but certainly fails to convince this Court of the inapplicability of statutory immunity.

Finally, Mr. Glisson cites Section 19-21-43 of the Mississippi Code, again claiming the Board departed from the standard of care established therein. The statute places with each county's respective board of supervisors the responsibility for the care and maintenance of their so-called "insane paupers" during the period between commitment and admission into a state mental institution. Again the phrase "care and maintenance" provides little insight into precisely what level of treatment is required, but the provision does explicitly acknowledge the occasional necessity of these interim periods of detention. Because the statutory scheme gives an implicit affirmative nod to the temporary holding scheme devised by the Board, we find no basis for a finding of gross negligence. As such, the Board is entitled to immunity from civil suit.

B. METHODIST MEDICAL CENTER

Next, Mr. Glisson simultaneously emphasizes and discounts the importance of the agreement between Methodist and the Board. He alleges that the hospital's awareness of its inability to provide appropriate care to suicidal patients elevates the hospital's agreement with the Board to the type of action exempted from statutory immunity. He then discards any explicit or implicit limitations therein placed on the type of treatment to be provided, and characterizes Methodist's failure to prevent Glisson's action as a breach of the hospital's independent duty of care toward its patient. Rather than addressing the appellant's contentions directly, Methodist, like the Board, claims immunity. As with the Board, we agree that the hospital is entitled to such protection.

Mr. Glisson first directs our attention to a 1992 publication produced by Methodist wherein the hospital acknowledges having inadequate facilities for treating suicidal patients. The article concludes by advising staff against the admission of such individuals. Indeed, the reasonableness of Methodist's decision to hold these patients despite this awareness is questionable. However, the hospital's subsequent actions preclude a finding of bad faith. Methodist presents the following undisputed facts for this court's consideration: (1) both a staff psychiatrist and social service professionals were available for consultation if needed;

(2) patient rooms were specially equipped with key operated locks making them inoperable to patients, shatterproof windows, safety electrical outlets, and no window treatments;

(3) shatterproof observation windows and ceiling mounted stainless steel mirrors allowed hospital staff to view patients periodically and with increasing frequency commensurate with the rising level of risk;

(4) room inspections were conducted on each shift while environmental inspections were performed every two hours;

(5) approximately six medical doctors examined Glisson during his stay at the facility; and

(6) Glisson received a thorough psychiatric evaluation immediately before his admission.

In hindsight these precautions were obviously insufficient to prevent Glisson's suicide attempt. However, a defendant claiming good faith is not required to prove freedom from negligence, only that his breach was neither wilful nor the result of wantonness or recklessness. ***Strawbridge v. Day,* 232 Miss. 42, 98 So. 2d 122 (1957).** As such, these substantial efforts to ensure proper security and medical care bring the hospital's actions within the purview of the good faith immunity provided by Section 41-21-105 (1).

Alternatively, Mr. Glisson urges liability arising solely from the hospital's separate and distinct relationship with his son. In essence, he argues that in light of the known seriousness of his son's diagnosis and history, and certainly following the suicide death of a fellow patient two days prior, Methodist should have foreseen the event. Allegedly, the hospital's failure to remove interior door knobs following the first suicide supports a finding of wilful disregard for Glisson's security. However, the likelihood of Glisson's attempt may not have been connected to this other patient's actions.

By design, the wing housed severely mentally ill individuals, several of whom were predisposed to suicidal tendencies. Occasional episodes of self-directed harm are always a threat in such facilities. One patient's successful suicide, despite Methodist's actions to prevent it, in no way transforms the absence of additional efforts into a wilful or wanton disregard for safety. This is especially true here since the two patients employed differing methods of self-destruction. Since Mr. Glisson presents no substantial basis for assigning to Methodist any prior knowledge of the danger of its door knobs, a finding of bad faith is precluded.

C. DOCTOR BINFORD NASH D/B/A WEST JACKSON FAMILY MEDICAL CENTER

Glisson's father further contends that by treating his son rather than consulting with a psychiatrist, Dr. Nash subjected himself to the standard of care applicable to such a specialist. He argues that Dr. Nash grossly deviated from this standard by merely continuing Glisson's previously prescribed drug therapy rather than devising and administering an individually tailored treatment plan. Dr. Nash, like Methodist, responds by claiming good faith immunity under Section 41-21- 105 (1). Because Mr. Glisson presents only suggestions of simple negligence, we hold that Dr. Nash is entitled to protection as well.

In support of his assertions, Mr. Glisson provides the affidavits of two experts in the field of

psychiatry. While the credentials of both are impressive, their affidavits do little to resolve the issue before this Court. We are provided, as was the trial court, with opinions as to the alleged heightened standard of care and the course of conduct required for compliance. Mr. Glisson presents lengthy discussions regarding the necessity of individualized treatment plans and the lack thereof. However, neither expert claims that Dr. Nash's actions rose above simple negligence. Whatever the applicable standard of care, the continuation of previously prescribed medication and the ordering of continuous observation may not logically be characterized as having been undertaken with either wilful or reckless disregard for his well being. Because Dr. Nash's actions in connection with Glisson's detention were undertaken in good faith, he is protected from civil suit as well.

We find no fault with the trial court's determination that the Board of Supervisors, Methodist Medical Center and Dr. Nash are each entitled to judgment as a matter of law. Because all are afforded statutory immunity by Section 41-21-105 of the Mississippi Code, this assignment of error is without merit.

THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, KING, AND SOUTHWICK, JJ., CONCUR. PAYNE, J., NOT PARTICIPATING.