

IS A PUBLIC HOSPITAL LIABLE FOR THE ACTIONS OF A MISBEHAVING PATIENT?

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The Supreme Court of the ACT recently found a public hospital liable to a plaintiff who was sexually assaulted by a fellow patient who was under the influence of alcohol and had been behaving aggressively at the time of his admission to the plaintiff's ward.

IN ISSUE

- Whether a public hospital breached its duty of care to the plaintiff after she was assaulted by a fellow patient on the ward.

The Background

The plaintiff, a young female, was admitted to the hospital overnight. Subsequently, another patient, Mr Southwell, was admitted. Mr Southwell was intoxicated and behaving in an agitated manner. Mr Southwell had a significant history of similar attendances at the hospital. During the night, Mr Southwell proceeded to abuse and sexually assault the plaintiff. The plaintiff suffered significant post traumatic stress disorder as a result.

The Decision

No evidence was led that the hospital was unable to have admitted Mr Southwell to an alternative room or ward. The court was not satisfied that the hospital had adequately supervised the plaintiff's ward, nor that the plaintiff had knowledge of any call button nearby to her so that she could summon emergency assistance if necessary.

The hospital admitted it owed the plaintiff a duty of care, but denied breaching that duty. The hospital sought to rely on the legislative principles applicable in deciding whether a public authority has breached its duty of care, namely the impact of financial resources in limiting the functions of the authority. The court was not convinced by the argument, as there was no evidence about the hospital's funding or capacity to provide extra staff and warning systems to prevent assaults by patients upon other patients.

The court found that the hospital breached the duty it owed to the plaintiff to ensure that she would be treated in a safe environment and free from foreseeable dangers. The court noted Mr Southwell presented a foreseeable danger because of his history and his conduct pre and post-admission. The court held that Mr Southwell should not have been in that particular ward, and should not have been so unsupervised that he was able to assault other patients.

The risk of a patient such as Mr Southwell causing harm to another patient was foreseeable and not

insignificant. A hospital acting reasonably would have taken precautions to avoid the risk to the plaintiff, and judgment was awarded to the plaintiff in the sum of \$267,662.83 plus the costs of her proceedings.

IMPLICATIONS FOR YOU

Caring for patients who are under the influence of alcohol or drugs or are otherwise behaving aggressively is a challenge for public hospitals. In cases where such a patient may pose a foreseeable risk to other patients, adequate precautions must be taken. This is especially so where that patient is known to the hospital.

The principles applicable to determining a public authority's duty of care in section 110 of the *Civil Law (Wrongs) Act 2002* (ACT) are mirrored in the various Australian States' respective civil liability legislation. This case serves as a reminder, however, that any attempted reliance on these principles ought to be supported by evidence of the public authority's specific functions and restrictions, financial or otherwise.

[AB v Australian Capital Territory \[2018\] ACTSC 16](#)

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