

Resident's Accidental Drowning: Court Places Blame On Assisted Living Facility.

The children placed their elderly father in an assisted living facility.

The facility offered different levels of service to residents, depending on their needs. One of the principles behind assisted living arrangements is that residents' needs can change over time.

Landlord / Tenant

Apartments were rented to residents who did not need assistance with activities of daily living. The legal relationship between the facility and these residents was essentially landlord – tenant.

Caregiver / Patient

Services were offered to residents who needed help. The contract with the deceased's family obligated the facility to administer his medications, assist him with bathing, provide two meals a day and do his laundry. The legal relationship between the facility and these residents was essentially nursing home – patient.

No Assessment of Mental State

According to the District Court of Appeal of Florida, there was no clear evidence his cognitive acuity was assessed when he first moved in or later.

After several months in the facility, right before he drowned in a drainage canal on the facility's premises right behind the facility, the children had, they said, begun to notice what they described as mild dementia.

Accidental Drowning Foreseeable

The court pointed out the facility's residents had been walking down by the canal so much that a dirt path was worn in the grass. The path led off the premises to a nearby flea market that the residents were known to frequent.

First thing in the morning a nurse's aide tried to find him to give him his medications. Not until that evening was the family notified. The staff assumed he had wandered off and they urged the children to report him to the police as a missing person.

The next morning he was found face down in the canal, dead from accidental drowning.

In general, the common law places no duty on the owner of a natural or artificial body of water to fence it for the protection of the public at large.

The common law places no liability on landowners when an adult or unsupervised child voluntarily assumes the risks associated with certain features of another person's property.

By contrast, there is a special relationship between the owner and residents of an assisted living facility. An assisted living facility has a special legal obligation for the care and protection of its residents.

Some residents enter assisted living facilities because advancing age has diminished their mental and perceptual acuity, cognitive capacity, memory and physical abilities.

For these residents an assisted living facility is not like an apartment or hotel. There is an obligation to assess and appreciate residents' limitations and a need to take special care with conditions that would not be the least bit hazardous for younger adults or even children.

DISTRICT COURT OF APPEAL OF
FLORIDA, 2001.

Assisted Living / Special Relationship

The court ruled that an assisted living facility has a special legal relationship with its residents. They have been forced by deteriorating mental acuity and physical decline to give up their homes. For their safety they go to live where trained personnel can give them special care and attention and protect them from danger.

Open, Obvious Hazards Common-Law Principles

By contrast, apartment buildings, hotels, motels, real estate developments, stores, malls, public parks, etc., in general have no special obligation to put up fences around open, obvious hazards like natural or artificial bodies of water.

There are special statutes and ordinances that require, for example, that swimming pools in apartment complexes be fenced. Nevertheless, the common law generally exonerates landowners from liability for open and obvious hazards on the premises. Adults and children alike are considered to have the ability to make their own reasoned choices whether to assume the risks associated with conditions present on other people's property, and the owner is not liable when they get hurt.

Assisted Living Is Like Nursing Home

The court's ruling establishes that an assisted living facility is more like a nursing home or hospital and less like a residential apartment or hotel, at least for the residents who come to live in the facility because they need personal assistance.

The common law rules of liability that are highly landlord- and landowner-friendly do not apply to assisted living facilities serving vulnerable adults.

The court ruled expressly that the canal should have been fenced, even though there was no state statute, city ordinance or administrative regulation requiring it.

Implicitly the court said this man's status should have been assessed more carefully and much better care should have been taken to account for this man's whereabouts. ***Selvin v. DMC Regency Residence, Ltd.***, 807 So. 2d 676 (Fla. App., 2001).