

Family Member Barred From Nursing Home: Court Throws Out Lawsuit For Retaliation.

A nursing home resident's son sued the nursing home after he was barred from the premises at the request of the nursing staff.

His civil lawsuit alleged retaliation for his complaints to state authorities about alleged substandard practices at the nursing home. His lawsuit further alleged he was the victim of emotional distress intentionally inflicted by the nursing staff.

The jury dismissed the retaliation claim but awarded \$25,000 in damages for emotional distress against the nursing home and \$25,001 against the nursing home administrator. But then the judge awarded judgment in favor of the nursing home and the administrator notwithstanding the verdict, that is, the judge overruled the jury and dismissed the emotional distress claim along with the retaliation claim the jury itself had dismissed.

The Supreme Court of Rhode Island affirmed the judge's decision, effectively throwing out the lawsuit in its entirety.

Facts Disputed

There were two sides to the story. The son claimed the nurses took a cavalier attitude toward their duties while residents' needs went unmet and their complaints went unheeded.

The nurses claimed the son made himself a general nuisance, hurling insults at the nurses and the aides and even trying to feed a resident himself.

The nursing home administrator barred him from the facility and told him he could sue if he did not like it. While the suit was pending the lawyers provisionally set up three weekly half-hour sessions when the son could see his mother in the lobby with staff supervision.

Retaliation Was Presumed

Nursing Home Had Burden of Proof

The son phoned in several reports to the state Department of Health and Elderly Affairs that he thought the nurses and aides were neglecting their duties, but he never filed a formal written complaint.

Federal regulations grant residents of nursing facilities that participate in Medicare and Medicaid very broad rights to have relatives visit them.

Code of Federal Regulations Title 42, Section 483.10(j)(1)(vii) expressly says a long-term care resident has the right to visits from immediate family and other relatives and the facility must provide immediate access if the resident so requests, subject to the resident's right to deny or withdraw consent at any time.

Many states have similar rules and regulations that give residents the right to have visitors, as long as the visitors do not pose a health or safety risk to other residents, staff or visitors and comply with reasonable policies for visiting hours and security procedures.

However, these laws, rules and regulations do not confer legal rights on visitors, only upon residents.

These laws, rules and regulations do not give visitors the right to file civil lawsuits for damages or injunctive orders if they are denied access to a nursing home.

SUPREME COURT OF RHODE ISLAND
March 26, 2003

Nonetheless, according to the court, the son was entitled to legal protection against retaliation. That is, because the adverse action of barring him from the nursing home took place soon after he contacted the state authorities, the nursing home had the burden of proof to convince the court that retaliation was not the reason he was barred from the facility.

The law strongly favors the rights of persons who blow the whistle on actual or suspected abuse or neglect of nursing home residents.

It is not necessary that the charges a whistleblower raises or threatens to raise actually be proven valid, as long as the whistleblower genuinely thought valid issues were being raised and was not motivated solely by malicious intent to harass.

That being said, the court was satisfied that the son's vexatious behavior toward staff and other residents was sufficiently bothersome that his behavior, not retaliation for going to the state authorities, was the nursing home's motivation, notwithstanding the law's presumption there is retaliation a situation like this.

They were acting to protect the staff and other residents' from the son's inappropriate behavior.

Right To Have Visitors

Is Resident's Right

The court also pointed to the wording of Federal regulations, state regulations in Rhode Island and comparable regulations in other states on the subject of visitation rights. Residents of nursing homes have an important right to have family and others visit them. However, it does not say anywhere that family members have the right to visit persons in nursing homes.

Residents have the right to sue when their rights are violated and, in general, family members can sue on residents' behalf when residents' rights are violated.

However, according to the court, it would be a stretch to interpret the statutes and regulations that give nursing home residents the right to sue, to give persons other than nursing home residents the right to sue and collect for themselves. **Jalowy v. The Friendly Home, Inc., ___ A.2d ___, 2003 WL 1524569 (R.I., March 26, 2003).**