

Resident vs. Resident Assault: Nursing Home Ruled Not Liable.

Two months after being admitted to the nursing home a resident entered an elevator by herself on the first floor to return to her room on the third floor.

The elevator stopped on the second floor. A male resident with whom she had had no prior interaction was taking some time trying to decide whether or not to get on the elevator and she asked him to please make up his mind.

He entered the elevator and when the doors closed attacked her causing severe bruising around her eye and elsewhere on her face, hand, arm and thigh. She rang the elevator alarm but the doors did not open until the third floor.

The nurses responded quickly when they heard the elevator alarm, tended to the resident's immediate needs and had her transported to the hospital for further medical evaluation and care.

About 60% of the facility's residents suffer from some sort of mental illness. According to the court record, the perpetrator had been diagnosed with schizoaffective disorder, bipolar disorder and depression but had never shown violent tendencies at this facility nor were any such tendencies documented in his medical history.

After the attack he was agitated and confused but did not exhibit any more aggressive behavior. He soon eloped from the facility and his present whereabouts are unknown. The police were never called.

No Past History of Violence

No Basis to Sue Nursing Facility

The Appellate Court of Illinois dismissed the victim's lawsuit.

The Court said the facility had no prior knowledge concerning this perpetrator that would have reasonably caused its staff to conclude that he posed a danger to other residents.

Violence by a resident against another resident, to be grounds for a civil lawsuit by the victim against a nursing facility, must be objectively reasonable to expect, not merely a conceivable occurrence, and the facility, being on notice of a potential problem, must have failed to take reasonable measures to protect the victim from foreseeable harm. Vinci v. Balmoral Home, Inc., 2013 WL 6500121 (Ill. App., December 9, 2013).

The nursing home houses about two-hundred residents who are allowed to walk around the public areas of the facility ad lib.

The facility has no security guards or inside surveillance cameras, but the entry doors have alarms and all visitors must sign in and out.

The facility screens incoming patients for histories of violence or aggressive behavior and refuses patients with histories of heroin abuse, sex offenses, violence or suicidal behavior.

The facility performs a state police background check to eliminate potential patients with criminal histories.

The perpetrator in this case was the subject of the above screening measures and no disqualifying information showed up.

The patient had been diagnosed with schizoaffective disorder. According to a medical text published by the American Psychiatric Association, persons with that disorder might have violent tendencies.

The nurses were aware of the patient's diagnosis and familiar with its definition, yet there was no specific factual basis to expect violence from this perpetrator.

APPELLATE COURT OF ILLINOIS
December 9, 2013

Skin Care: Court Disputes Nursing Expert's Qualifications.

The fifty year-old patient was flown to the hospital by helicopter following a rollover pickup truck accident in which he sustained multiple injuries including fracture and dislocation of the cervical spine at C5-C6, rib fractures and a collapsed lung.

While recovering in the hospital's ICU he developed a pressure ulcer in the area of his coccyx for which he filed a lawsuit against the hospital.

In support of his lawsuit he filed expert reports prepared by a nurse and a physician who are geriatric specialists with extensive professional experience in the prevention and care of pressure ulcers in elderly nursing home patients.

The hospital objected to their qualifications to give opinions upon which this patient's lawsuit could proceed.

The patient's nursing expert and medical expert both have extensive resumes covering many decades of professional experience in patient care.

However, their expertise in the skin care of geriatric patients in a nursing home setting does not necessarily translate into expertise in the care of an adult paraplegic trauma patient recovering in a hospital ICU.

COURT OF APPEALS OF TEXAS
December 12, 2013

The Court of Appeals of Texas agreed with the hospital, but gave the patient thirty days leeway for his experts to amend their reports or to come up with different experts before facing dismissal of his case.

According to the Court, the experts' experience in a geriatric care setting did not qualify them to opine about the standard of care for skin care in an adult ICU. Christus Spohn v. Castro, 2013 WL 6576041 (Tex. App., December 12, 2013).