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A Gaping Hole in Causation? The Appellate Court Disagrees

Challenging the sufficiency of expert testimony on causation is often one of the best defenses to a medical negligence action. Proximate cause is composed of two separate elements: cause in fact and legal cause. *Jinkins v. Evangelical Hospitals Corp.,* 336 Ill. App. 3d 377, 382 (1st Dist. 2002). To establish cause in fact, there must be reasonable certainty that a defendant's acts caused the injury. A defendant's conduct is the cause in fact of the injury if the conduct was a material element and a substantial factor in bringing about the injury. Legal cause is a question of foreseeability: a negligent act is a proximate cause of an injury if an injury is of the type which a reasonable man would see as a likely result of his conduct. Where there is an intervening act by a third person, the test we apply is whether the first wrongdoer reasonably might have anticipated the intervening cause as a natural and probable result of the first party's own negligence. *Jinkins,* 336 Ill. App. 3d at 382.

The Illinois Appellate Court First District recently addressed a challenge to proximate cause in *Binkowski v. International Health Systems,* 2024 IL App (1st) 221557. The plaintiff filed suit against the defendant hospital and others for medical negligence for her husband's suicide. Several defendants were dismissed, and the case proceeded to trial against the defendant hospital only. The plaintiff obtained a verdict against the hospital. Appealing from the denial of a motion for judgment notwithstanding the verdict, the hospital contended that the plaintiff failed to prove that its physician proximately caused her husband's suicide. *Binkowski*, 2024 IL App (1st) 221557, ¶ 1.

The *Binkowski* decision is fact intensive. The decedent, Phillip Carrano, began treating for anxiety in 2010. Carrano's condition worsened over time, and in 2013, he developed depression. *Id. ¶*5. By 2014, Carrano was under the care of a psychiatrist. *Id.* On December 2, 2014, Carrano attempted suicide and was taken to Good Samaritan Hospital where he was medically stabilized before transferring to the psychiatric unit. *Id.* ¶ 9. Carrano was treated by Dr. Maleeha Ahsan until his discharge on January 27, 2015. *Id.* It was determined that Carrano was a threat to himself which was characterized by suicidal ideation, increased severity of symptoms, inadequate response to medication, and an inability to participate in an outpatient program. *Id.* ¶ 10. Good Samaritan defined three levels of suicide precaution (SP): SP I for high risk of suicide, SP II for moderate risk, and SP III for low risk. *Binkowski*, 2024 IL App (1st) 221557, ¶ 10. Dr. Ahsan designated Carrano as SP II, which meant that someone checked on him every 15 minutes during his hospitalization, and his status never changed during his stay. *Id.* When Carrano developed a respiratory illness during his hospitalization that required him to be transferred to a medical floor for treatment of sepsis on December 17, 2014, someone sat in his room the whole time because of his suicide risk. *Id.* On December 20, 2014, after returning to the psychiatric floor, Carrano was assessed as a high suicide risk because his depression had regressed. *Id.* ¶ 11. Beginning January 7, 2015, he underwent electroconvulsive therapy (ECT). *Id.* Carrano received a total of nine ECT treatments, the last occurring on January 26, 2014, the day before he was discharged from Good Samaritan. *Id.*

A hospital social worker advised the plaintiff to seek an emergency order of protection for herself and her family due to Carrano's symptoms and conditions during his hospitalization on December 10, 2014. *Binkowski*, 2024 IL App (1st) 221557, ¶ 12. The order was served on Carrano at the hospital on January 9, 2015. *Id.* Per the hospital's standard procedure in such cases, the sheriff was escorted to a private room, and the patient along with medical staff for support,

were brought to the room. *Id.* Following service of the order of protection, a social worker was present to monitor Carrano's coping response and to see how the order of protection affected him. *Id.* On January 18, 2015, Dr. Ashan spoke with Carrano about going to an intermediate care facility (ICF). *Id.* ¶ 15. An ICF is a treatment facility where a patient resides and can receive individual, group and milieu therapy. Carrano indicated that he was willing to look at it. *Id.* Carrano subsequently met with the director of Concord Place, an independent living facility, not an ICF. *Binkowski*, 2024 IL App (1st) 221557, ¶ 16. Concord Place was not a mental health facility and had no psychiatrists or psychologists on staff and did not offer suicide monitoring or checks. *Id.* Carrano was accepted into Concord Place, and the director indicated that he had little discretion on admittances and could not discriminate based on mental health or physical needs. *Id.*

Dr. Ahsan testified that Carrano denied suicidal or homicidal thoughts on the date of discharge. *Id.* ¶ 19. He had been compliant with his treatment, showed an improved mental status, was not suicidal, and was able to complete activities of daily living. *Id.* Dr. Ahsan also testified that a nurse documented that Carrano was having suicidal ideation/thoughts prior to his discharge, but she discharged him anyway based on her own assessment. *Id.* Dr. Ashan's discharge instructions indicated that Carrano was to follow up with the psychiatrist at Concord Place, and when the circuit court judge questioned if she knew that Concord Place had no psychiatrist on staff, Dr. Ahsan replied that "they are at every facility . . . . and had to come and see the patient sooner or later if they were needing a psychiatrist or medical doctor." *Binkowski*, 2024 IL App (1st) 221557, ¶ 20. Dr. Ahsan admitted at trial that there was no safety plan written in Carrano's discharge orders, but she said she reviewed the coping plan with the patient before discharge. *Id.*

Carrano arrived at Concord Place by taxi with his medications on January 27, 2015. *Id.* ¶ 21. His primary physician at Concord Place was identified as Dr. Haebich, who did not work for the facility although he rented an office there. *Id.* Two days later, a checklist prepared by a nurse on Dr. Haebich's behalf indicated that Carrano displayed some psychological symptoms. *Id.* On January 30, 2015, a psychiatrist, Dr. Aldura, wrote a prescription for Carrano, and this was Dr. Aldura's only known involvement. *Id.* Dr. Haebich referred Carrano for a psychological evaluation, with psychologist Dr. Neher, who was not employed by Concord Place. *Binkowski*, 2024 IL App (1st) 221557, ¶ 22. Dr. Neher did not meet with Carrano until February 21, 2015. *Id.*

When Dr. Neher met with Carrano on the morning of February 21, 2015, he performed a 45-minute initial evaluation in Carrano's room. *Id.* ¶ 24. Dr. Neher noted Carrano's prior history and that Carrano suffered from suicidal and homicidal impulses. *Id.* During the evaluation, Carrano appeared depressed, had a flat affect, and did not smile or exhibit a lot of emotion. *Id.* Nevertheless, Carrano denied suicidal ideation or plans, and Dr. Neher made a provisional diagnosis of depression. *Id.* Dr. Neher testified that his interaction with Carrano did not suggest that Carrano was at risk of committing suicide that day. *Binkowski*, 2024 IL App (1st) 221557, ¶ 24. Dr. Neher's plan was to meet with Carrano weekly. *Id.* At 2:33 p.m. on February 21, 2015, Carrano was served with another order of protection extending the January 9th emergency order for two years. *Id.* ¶ 25. Unlike at the hospital, there was no one present when Carrano was served except the sheriff. *Id.* Carrano then went onto the roof and jumped to his death. *Id.*

The appellate court detailed the testimony of the plaintiff's expert who identified several deviations in the standard of care. The plaintiff's expert opined that Carrano was at moderate to high risk for suicide when he was discharged from the hospital. *Id.* ¶ 45. His criticisms of Dr. Ashan included that it was inappropriate to discharge Carrano from the hospital and that independent living was not suitable follow-up care for Carrano. *Binkowski*, 2024 IL App (1st) 221557, ¶ 45. The plaintiff's expert further professionally opined that each deviation from the standard of care committed by Dr. Ashan caused or contributed to Carrano's suicidal death on February 21, 2015. *Id.* ¶ 48. On appeal, the hospital argued that the record contains a "gaping hole" regarding proximate causation which was unsupported by the testimony of the plaintiff's sole expert witness. *Id.* ¶ 64.

Jinkins v. Evangelical Hospitals Corp.

Jinkins provides a similar fact pattern with a key distinction in legal cause. The wife of a patient who committed suicide brought a negligence action against the hospital where the patient was initially treated. *Jinkins*, 336 Ill. App. 3d at 379. At the hospital, the patient was diagnosed with acute psychosis, suicidal behavior and alcohol intoxication. *Id.* A petition for involuntary admission was prepared and signed by the patient's mother and supported by the opinion of the patient's treating physician. *Id.* A social worker for the hospital subsequently informed the patient's physician that the patient was to be transferred to a mental health facility. *Id.* The decision was "administrative." *Id.* at 380. The patient was transferred the following day. *Id.* At the mental health facility, the patient was interviewed and evaluated. *Jinkins*, 336 Ill. App. 3d at 380. The patient was not believed to be suicidal, and it was decided that he would be released with a referral for outpatient treatment. *Id.* at 381. Within an hour of his release, the patient committed suicide. *Id.*

The plaintiff appealed summary judgement granted in favor of the defendant hospital contending that the patient would not have died if he had been kept at the hospital. *Id.* at 384. This was essentially a "but for" argument reaching only to the issue of cause in fact and not legal cause. *Id.* The *Jinkins* court found it inconceivable that the defendants could be held responsible for the patient's death where they transferred the patient to a mental health facility and informed that facility's staff of the patient's history. *Id.* Therefore, the plaintiff failed to show the defendants reasonably might have anticipated that the mental health facility would release the patient as a probable result of their negligent acts. *Jinkins*, 336 Ill. App. 3d at 384. Summary judgement was affirmed. *Id.* at 384-85.

Cause in Fact and Legal Cause in *Binkowski*

Cause in fact was established in *Binkowski* through testimony of the plaintiff's expert. Specifically, the plaintiff's expert testified that:

> Dr. Ashan's discharge of Carrano, before he was ready per Advocate's own policy and without the proper discharge plans in place, coupled with his discharge to Concord Place, an independent living facility that did not offer any mental health services or have the same procedures in place as the hospital or an ICF, was a material element and a substantial factor in Carrano's suicide.

Binkowski, 2024 IL App (1st) 221557, ¶ 75.

As far as legal cause, the court acknowledged that the service of the order of protection was an intervening act by a third person but found it reasonable for Dr. Ashan to anticipate that such an act, or realistically any stressor facing Carrano under the circumstances presented, was a natural and probable result of her negligence and deviations from the standard of care in discharging Carrano before he improved, without a safety plan, and to an independent living facility, rather than an ICF. *Id.* ¶ 76.

From a defense perspective, there appears to be several unforeseeable intervening acts. The decedent was discharged to a healthcare facility whose director met the decedent prior to transfer and was aware of his mental health history. While the onsite staff was more limited than in a hospital setting, the record further shows the involvement, albeit minimal, of a primary care physician, psychiatrist, and psychologist. Nursing staff also assessed the decedent and identified psychological symptoms. Arguably, the acts or inaction of these professionals, particularly the psychologist who saw the

decedent within hours of his suicide, are difficult to anticipate. However, as the court reasoned, proximate cause is a question for the fact finder, and it is the province of the jury to weigh the evidence. *Id.* ¶ 78. The *Binkowski* decision further highlights the heavy burden necessary to disturb a jury's verdict.

About the Author

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