



Rosenn Jenkins
& Greenwald LLP
ATTORNEYS AT LAW

ESTATE OF SUICIDE VICTIM MAY FILE WRONGFUL DEATH LAWSUIT

“Lackawanna Judge allows theory that accident prompted decent to take his own life”
By Christopher Lilienthal
Of *The Law Weekly*

A negligent liable driver in an automobile accident may be sued for wrongful death and survival damages deriving from the accident victim's suicide, a Lackawanna County judge has ruled in an apparent case of first impression.

Thomas Mackin took his own life after struggling with pain and depression borne out of injuries sustained in the October 1998 accident, Senior Judge S. John Cottone explained in *Mackin v. Arthur J. McHale Heating and Air Conditioning Co.*, PICS Case No. 05-0856 (C.P. Lackawanna May 19, 2005) Cottone, S.J. (6 pages).

He originally sued Arthur J. McHale Heating and Air Conditioning and driver Justin Burkhart for personal injuries stemming from the accident, according to the plaintiff's attorney, Richard A. Russo.

But after Thomas's August 2002 suicide, Deborah Mackin, acting as the administratrix of her husband's estate, was substituted as the plaintiff, and the complaint was amended to include wrongful death and survival claims.

Deborah is now claiming that the defendants' negligence caused Thomas to suffer a concussion, herniated disc, radiculopathy, post-traumatic headaches, post-concussion syndrome and depression. Thomas became dependent on narcotic medications prescribed to address his injuries, and his suicide was a direct result of the accident, according to the plaintiff.

Burkhart was the liable driver of the vehicle, which was owned by Arthur J. McHale Heating and Air Conditioning.

In preliminary objections, the defendants argued that they owed no duty to prevent Thomas's suicide since his actions were not foreseeable.

Cottone said that as a "general rule" in Pennsylvania, litigants cannot bring wrongful death claims involving suicide. However, the judge said his research did not

unveil "any Pennsylvania cases addressing whether there is a cause of action against a tortfeasor from the suicide of a party from negligently inflicted personal injuries.

"Deborah cited cases in Delaware, Indiana and California in support of proceeding on her theory of liability, which Cottone found persuasive.

"These jurisdictions have recognized that where a negligent wrong resulted in suicide induced by mental illness which is so severe that a person cannot control his conduct, the suicide may not be considered an intervening cause so as to preclude recovery," Cottone wrote.

In *Porter v. Murphy*, 792 A.2d 1009 (Del. Super. 2001), a Delaware man was injured when a vehicle rear-ended his car, Cottone said. The man's injuries led to depression, which ended with his suicide. His estate then sued the liable driver.

Ruling on the viability of this claim, the "Delaware Superior Court rejected the view that suicide is always an independent intervening act relieving a tortfeasor of liability," Cottone explained. "It found that this approach was too restrictive."

Instead, the Delaware court adopted the reasoning of the California Court of Appeals in *Tate v. Canonica*, 180 Cal.App.2d 898 (Cal. Ct. App. 1960), which drew a distinction between an individual who knowingly commits suicide (and could have chosen not to), and one whose "uncontrollable impulse" to commit suicide stems directly from a mental illness caused by the negligent wrong.

Cottone noted that the U.S. District Court for the Eastern District of Michigan and the Washington Supreme Court have also adopted this standard.

The defendants cited *McPeake v. Cannon*, 553 A.2d 439 (Pa. Super. 1989), to argue that suicide is not a basis for recovery in negligence cases in Pennsylvania.

But Cottone distinguished this case, noting the "*McPeake* Court found that it would be inappropriate to impose liability upon an attorney for a client's suicide which allegedly occurred from his negligent representation since to do so would expose an attorney in litigation."

The *McPeake* court held that such exposure would discourage attorneys from taking on criminal defense work involving an unstable defendant.

The *Porter* court's view that suicide is not always an intervening force relieving a tortfeasor of liability is more appropriate in a general negligence case, Cottone held.

"This Court believes that in circumstances such as presented herein, a jury should be given an opportunity to determine whether the Defendants' actions were the proximate cause of the decedent's suicide," Cottone wrote. "The Defendants' demurrer is, therefore, denied."

Russo, an attorney with Rosenn Jenkins & Greenwald in Wilkes-Barre, called Cottone's opinion "a very enlightened decision that is consistent with the longstanding rule in Pennsylvania that a tortfeasor takes the victim as he or she finds that person."

Unless the defense pursues an interlocutory appeal, Russo said, the case will proceed to trial.

Defense attorney Michael F. Frisbie of the Law Offices of John Hendrzak in Center Valley declined to comment.

Copyright 2010. ALM Media Properties, LLC. All rights reserved.