IN THE SUPREME COURT OF THE UNITED KINGDOM

ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)

B E T W E E N

ARON TRASK

Claimant

and

THE HOLBORN NHS TRUST

Defendant

MOOT PROBLEM

1. On 31.07.19 Aron Trask (“Aron”) was seriously assaulted with an iron bar by his brother, Cal Trask and suffered serious life changing injuries.
2. Aron seeks damages from the Holborn NHS Trust (“the defendant”) in respect of his injuries. Cal was a psychiatric patient of the defendant.

Factual Background

1. Aron had enjoyed a reasonable relationship with Cal until approximately 2018. Cal developed a psychiatric illness and suffered auditory hallucinations. He made several threats of serious violence against Aron and, on one occasion in late 2018, assaulted him (without a weapon). Aron was able to defend himself sufficiently to avoid serious injury. Cal otherwise had no history of violence.
2. In May 2019 Cal was (voluntarily) admitted to the defendant’s hospital for in-patient treatment. In the weeks that followed he received psychiatric medication as prescribed by his Consultant Psychiatrist, Dr Nick Riviera, and therapy. Cal was thought by those treating him to be showing signs of improvement.
3. Dr Riviera considered that it would significantly aid Cal’s recovery if Aron attended the hospital and participated in sessions of family based therapy with Cal.
4. The defendant duly contacted Aron and invited him to therapy. Aron was told, and understood, that the sole purpose of therapy was to aid Cal’s recovery. Cal’s diagnosis, treatment and prognosis was not disclosed to Aron.
5. Initially Aron was reluctant to participate in therapy but upon being given assurances by Dr Riviera that the sessions would be supervised, and that security staff would be present, he ultimately agreed to attend.
6. Aron attended the hospital on two occasions in June 2019 and took part in therapy sessions with Cal. Both sessions passed without incident; Cal was placid throughout. Aron was amazed by the apparent change in Cal’s persona and his lack of hostility. He believed that Cal had managed to overcome whatever issues had been the cause of his previous malevolence and would no longer be a threat.
7. On 14.07.19 Cal was reviewed by Dr Riviera and advised that he had made sufficient progress to be discharged home the following day. Cal protested. He did not want to be discharged. He told Dr Riviera that following the two therapy sessions in June, he had experienced a re-emergence of urges to harm Aron stronger than anything he had felt previously. He feared that if he was discharged he would find it difficult to comply with his medication regime, would arm himself, and would act on his violent urges.
8. Notwithstanding Cal’s disclosure, the plan remained to discharge him the following day. Dr Riviera did note that a full psychiatrist assessment prior to discharge would be required, and that Cal should be offered regular out-patient appointments and a supply of medication following discharge.
9. On 15.07.19 Cal was discharged by Dr Riviera without any further assessment being undertaken. No outpatient appointments were arranged. Cal failed to collect his prescription medication from the hospital pharmacy.
10. Aron was not told that Cal had been discharged, nor was he warned of the disclosures made by Cal to Dr Riviera on 14.07.19. He was not contacted at all by the defendant.
11. On 01.08.19 Cal made an unannounced visit to Aron’s home. It was the first time the two had seen each other since the therapy sessions in June 2019. Aron invited Cal inside. Once inside, Cal proceeded to attack Aron with an iron bar he had been concealing in his jacket. Cal then stripped the Aron, tied him up and hit him repeatedly with the bar causing significant orthopaedic and head injuries.

Claim

1. Aron issued a claim for damages against the NHS Trust alleging common law negligence and breach of his rights pursuant to Article 3 of the ECHR.

Trial

1. The claim proceeded to trial and was dismissed. The findings were as follows:
2. No responsible body of psychiatrists would have discharged Cal on 15.07.19 without:
3. Undertaking a full assessment.
4. Ensuring weekly out-patient appointments were arranged.
5. Ensuring Cal had a supply of medication.
6. There was a real risk that, at some point, Cal would assault Aron following discharge on 15.07.19.
7. An assault following discharge was foreseeable.
8. The events on 01.08.19 constituted *inhuman and degrading treatment* for the purposes of Article 3.
9. Factually, the assault on 01.08.19 would not have occurred if:
10. A full assessment had been undertaken prior to discharge on 15.07.19. In those circumstances, Cal would have been found too unwell to be discharged. He would have remained an inpatient (on either a voluntary or compulsory basis) for his own well-being and to receive further treatment.
11. Weekly out-patient appointments had been arranged. In those circumstances Cal would have attended those appointments and on assessment would have been admitted for his own well-being and to receive further treatment.
12. Cal had been provided with a supply of medication rather than simply a prescription.
13. Aron had been warned, in light of the disclosure made to Dr Riviera on 14.07.19, that Cal might be a danger to him. In those circumstances Aron would not have invited Cal into his home on 01.08.19.
14. The Judge dismissed the common law claim on the basis that:
15. The defendant did not owe Aron a duty to protect him from a criminal assault by Cal. There is a general rule against liability for injury caused by third parties and this claim did not fall within any of the exceptions.
16. Healthcare providers do not owe a duty of care to members of the public who might be harmed by psychiatric patients.
17. There was no duty requiring the defendant to breach patient confidentiality and warn Aron, a non-patient, of the matters disclosed to Dr Riviera on 14.07.19. Insofar as such duty may arise in genetic cases, it should not be extended to non-genetic cases.

1. The Judge dismissed the ECHR claim on the basis that:
2. The defendant did not owe the absolute obligation to protect Aron, a non-patient, from infringement of his Article 3 rights by a third party. Instead, it was the local police authority that would be under an operational duty to protect the safety of the claimant if it became aware of a real and immediate threat to his safety.
3. In any event, even if the duty had been owed by the defendant there was no breach as the risk of harm to Aron was not immediate; the assault occurred more than a fortnight post discharge.

Court of Appeal

1. Aron’s appeal was dismissed on appeal and the reasoning of the Judge at first instance was endorsed.

Supreme Court

1. Aron now appeals on the following grounds:
2. The Judge was wrong to find that the defendant did not owe a common law duty to protect Aron from, or warn him of the risk of, the assault by Cal.
3. The Judge was wrong to find that the defendant did not owe Aron a duty pursuant to Article 3 of the ECHR and that any such duty (if owed) was not breached.

Moot set by:

Craig Carr

7 Bedford Row

October 2021