

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TINA LATIMER, as Personal Representative of  
the Estate of STEVEN LATIMER, Deceased,

UNPUBLISHED  
February 23, 2006

Plaintiff-Appellee,

v

HAVENWYCK HOSPITAL, INC., and  
MAMMOUN DABBAGH, M.D.,

No. 255277  
Oakland Circuit Court  
LC No. 2003-049625-NH

Defendants-Appellants.

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Before: Sawyer, P.J., and Wilder and H. Hood\*, JJ.

PER CURIAM.

Defendants Havenwyck Hospital and Dr. Mammoun Dabbagh appeal by leave granted the trial court order denying their motion for summary disposition. We reverse.

This case arises from the tragic shooting death of plaintiff's decedent, Steven Latimer. Latimer admitted his sixteen-year-old son to defendant Havenwyck Hospital after his son displayed violent and destructive behavior and threatened Latimer's life. Less than a month after the hospital discharged his son, Latimer took him on a vacation, during which Latimer's son fatally shot him. Plaintiff brought this wrongful death action against Havenwyck Hospital and Dr. Dabbagh, the psychiatrist who treated Latimer's son, alleging, inter alia, that defendants violated their statutory and common-law duties to warn Latimer of the threat posed by his son.<sup>1</sup> The trial court denied defendants' motion for summary disposition, concluding that the hospital records submitted by the parties raised material questions of fact regarding whether Latimer's son made threats of physical violence against Latimer giving rise to a duty to warn by defendants.

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

<sup>1</sup> Plaintiff conceded that defendants did not owe Latimer a "malpractice duty" because there was no doctor/patient relationship between defendants and Latimer. The issues on appeal are limited to whether defendants had a duty to warn Latimer of the threat posed by his son.

We review de novo a trial court's decision on a motion for summary disposition. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). Summary disposition is appropriately granted pursuant to MCR 2.116(C)(10), "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.*

MCL 330.1946(1) provides:

If a patient communicates to a mental health professional who is treating the patient a threat of physical violence against a reasonably identifiable third person and the recipient has the apparent intent and ability to carry out that threat in the foreseeable future, the mental health professional has a duty to take action as prescribed in subsection (2). Except as provided in this section, a mental health professional does not have a duty to warn a third person of a threat as described in this subsection or to protect the third person.

This statute was enacted in 1989, in order to codify the California Supreme Court's holding in *Tarasoff v Regents of Univ of California*, 17 Cal 3d 425; 131 Cal Rptr 14; 551 P2d 334 (1976), that a psychiatrist owes a duty to use reasonable care to protect persons endangered by his patient. *Hinkelman v Borgess Medical Ctr*, 157 Mich App 314, 323; 403 NW2d 547 (1987); *Swan v Wedgwood Christian Youth and Family Services*, 230 Mich App 190, 195-196; 583 NW2d 719 (1998). "Under the statute, the only duty owed is a duty to warn in those situations where a patient communicates a threat and the object of the threat is reasonably identifiable." *Id.* at 198.

In this case, the medical records submitted by the parties indicate that Latimer's son made physical and homicidal threats against Latimer before Latimer admitted him to defendant hospital. However, the records fail to establish factual support for plaintiff's claim that Latimer's son communicated a threat of violence against Latimer or anyone else during his hospitalization. Indeed, the medical records indicate that Latimer's son denied any homicidal ideations and made no threats while in the hospital. The evidence failed to establish a genuine issue of material fact with respect to whether Latimer's son communicated a threat of physical violence to a mental health professional giving rise to a duty to warn under MCL 330.1946(1).

We also reject plaintiff's argument that defendants breached a common-law duty to warn, independent of any statutory duty.<sup>2</sup> Under the common law, a mental health professional owed "a duty of reasonable care to a person who is foreseeably endangered by his patient." *Davis v Lhim*, 124 Mich App 291, 301; 335 NW2d 481 (1983), rev'd on other grounds sub nom *Canon v Thumudo*, 430 Mich 326; 422 NW2d 688 (1988). The common-law duty is limited "to only those persons readily identifiable as foreseeably endangered." *Id.* at 303. As previously indicated, the evidence in this case failed to show that Latimer's son communicated any threat of violence against Latimer during his treatment or hospitalization with defendants. Thus, the

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<sup>2</sup> Although defendants argue that the common-law duty did not survive enactment of the statute, we decline to decide that issue in light of our conclusion that defendants had no common-law duty to warn under the facts presented.

evidence did not establish a genuine issue of material fact regarding the existence of any common-law duty.

Further, a mental health professional does not have a duty to warn a person who is already aware of the danger posed by a patient. *Hinkelman, supra* at 323. In this case, the evidence established that Latimer told hospital staff that his son had threatened him physically and had threatened to kill him. There was no evidence of any additional threats against Latimer made by his son during his hospitalization and treatment with Dr. Dabbagh. Because the evidence established that Latimer was aware of the danger posed by his son, defendants did not have a duty to warn Latimer of this danger. Because the evidence established that to the extent his son posed a danger, Latimer was already aware of it, defendants did not have a duty to warn Latimer of this danger.

For these reasons, we conclude that the trial court erred in denying defendants' motion for summary disposition. In light of our decision, we need not address defendants' remaining issues.

Reversed.

/s/ David H. Sawyer  
/s/ Kurtis T. Wilder  
/s/ Harold Hood