

The Law of Wrongful Incarceration

In *Ferroni v St. Joseph's Health Centre*, 2012 ONSC 1208, Justice Belobaba granted the defendants' Motions for summary judgment in a case where the plaintiff, Mr. Ferroni, alleged that he had been wrongfully incarcerated as a psychiatric patient by the hospital and doctor and that, as a result of the doctor's actions, his driver's license was revoked resulting in financial losses. The Ministry of Transportation had also been named as a defendant, although the action had previously been dismissed against it on consent.

The case is notable, as it is not a straightforward medical malpractice case. In addition to allegations that the Hospital and the doctor acted negligently, the case also involved the application of the statutory protections under the *Health Care Consent Act, 1996* and the *Highway Traffic Act*.

On January 9, 2004, Mr. Ferroni was brought to the Hospital on a Form 2 under the *Mental Health Act*. On that date, he was assessed and admitted pursuant to a Form 1 on the basis that he was manic, delusional, had poor insight and judgment, and there were reasonable grounds to believe that he had behaved or was behaving violently toward another person. Dr. Driver, the defendant psychiatrist, first assessed Mr. Ferroni on January 12, 2004, at which time she concluded that he suffered from a bipolar affective disorder, was experiencing a manic episode with psychotic features and was at risk of harm to others. Dr. Driver was of the further opinion that Mr. Ferroni met the criteria for continued involuntary admission as set out in section 20 of the *Mental Health Act* and also found him to be incapable to consent to treatment. She completed a Form 3, noting "Box B" (section 20(1.1) of the *Mental Health Act*) as the section she was relying on in respect of his involuntary admission.

Mr. Ferroni challenged both of these findings before the Consent and Capacity Board ("CCB"). In its decision, the CCB upheld Dr. Driver's finding of incapacity, but held that the Box B criteria for continued involuntary admission were not met, as the requirement that consent of his substitute decision-maker to his treatment in hospital be obtained was not satisfied.

Thereafter, Mr. Ferroni refused to remain in the Hospital as a voluntary patient. Dr. Driver had learned that Mr. Ferroni had been driving erratically and had made multiple covert threats. Thus, prior to his discharge, Dr. Driver completed a mandatory report to the Ministry of Transportation stating that Mr. Ferroni was suffering from a mental illness that appeared to affect his ability to drive.

Mr. Ferroni's claim against Dr. Driver was that because of Dr. Driver's negligence he was wrongfully incarcerated at the Hospital for approximately two weeks in January 2004 contrary to his will. Additionally, his driver's licence was wrongfully revoked by the Ministry of Transportation as a result of Dr. Driver's report. Without his licence, Mr. Ferroni was unable to work as a truck driver and lost a significant amount of income. In the Court's endorsement of February 21, 2012, Justice Belobaba reiterated the law that where liability issues are not within the ordinary knowledge and expertise of the trier of fact, such as this medical malpractice action, a finding of negligence must be based on a supporting expert opinion. His Honour also affirmed that where the allegations have not been supported by an expert report, a genuine issue for trial has not been raised, and summary judgment ought to be granted to the defendant accordingly.

Justice Belobaba then considered the statutory protections from liability set out in the *Health Care Consent Act, 1996* and the *Highway Traffic Act*, exercising the expanded powers of a judge hearing a motion for summary judgment pursuant to the amended *Rules of Civil Procedure*.

On the evidence before him, Justice Belobaba found that Dr. Driver had the benefit of the statutory protection from liability in subsections 29(1) and 48(1) of the *Health Care Consent Act, 1996* in respect of her decision to extend his involuntary admission, as Mr. Ferroni did not adduce any evidence that Dr. Driver breached the standard of care, acted in bad faith or acted unreasonably.

Justice Belobaba also held that s. 203 of the *Highway Traffic Act* applied in respect of Dr. Driver's report to the Ministry of Transportation. This section provides that no action may be brought against a physician for complying with the statute's mandatory reporting requirements. In addition, Justice Belobaba noted that Mr. Ferroni had not



produced any evidence that Dr. Driver breached the standard of care by filing the mandatory report, and that Dr. Driver had obtained a supportive expert opinion.

The Court's decision confirms that a psychiatric patient advancing claims of wrongful incarceration and negligence in the making of a mandatory report must obtain a supportive expert opinion in order to successfully make out those claims. The case also confirms that a doctor's decision to incarcerate a patient will be given significant deference.

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