

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

Christopher Anthony Roller,

COURT FILE NO. _____

Case Type: Other Civil

Plaintiff,

vs.

**MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANT FAIRVIEW'S
MOTION TO DISMISS PURSUANT
TO MINN. R. CIV. P. 12.02**

Quello Clinic, Ltd. and
Fairview Health Services,
formerly Fairview-Hospital and
Health Care Service d/b/a Fairview
University Medical Center

Defendants.

INTRODUCTION

This lawsuit arises out of pro se plaintiff Christopher Roller's hospitalization at Fairview University Hospital (hereafter "Fairview") on October 28, 2004. Upon being transferred to Fairview from his primary care physician's office, plaintiff was diagnosed with acute psychosis and was placed on an emergency 72-hour hold pursuant to Minn. Stat. § 523B.05. On November 2, 2004, plaintiff was discharged from the hospital.

Plaintiff claims that defendant Fairview is guilty of defamation and slander because his hospitalization at Fairview University Hospital resulted in damage to his character and negatively impacted his future credibility and reputation. Plaintiff was committed pursuant to the Minnesota Commitment and Treatment Act (Minn. Stat. § 253B.01 et seq.). Any person

acting in good faith pursuant to any provision of the Act is immune from civil or criminal liability. Therefore, Fairview is immune from liability and suit, and plaintiff's Complaint should be dismissed.

ISSUES PRESENTED

1. Whether the immunity provision of the Minnesota Commitment and Treatment Act, Minn. Stat. § 253B.23, subd. 4, requires that plaintiff's claims against defendant Fairview be dismissed?

DOCUMENTS RELIED UPON

1. Plaintiff's Complaint; and
2. Excerpts from Plaintiff's Medical Records.

STATEMENT OF FACTS

On October 28, 2004, plaintiff voluntarily went to the Quello Clinic in Burnsville, Minnesota seeking an MRI scan of his head because he was concerned about possible injury related to two previous concussions. (Plaintiff's Complaint, ¶ 1). Dr. Daniel Reeves examined plaintiff. (*Id.*) During the examination, plaintiff informed Dr. Reeves that he was becoming God, and that he believed he was living the movie "The Truman Show." (*Id.*) Dr. Reeves' concluded that plaintiff was delusional, and was a threat to himself and to others. (Ex. A attached to the affidavit of Paula M. Semrow, hereafter "Semrow Affid."). Dr. Reeves contacted the Burnsville Fire Department to transport plaintiff to Fairview University Hospital where he was placed on a 72-hour emergency hold pursuant to Minn. Stat. 253B.05. (See Exs. A and B attached to Semrow Affid.).

Plaintiff voluntarily walked to the ambulance. (Ex. C to the Semrow Affid.). Ambulance personnel observed that plaintiff continually referred to himself as "god" and talked about running for president. (*Id.*).

Upon arriving at Fairview, plaintiff was triaged in the Emergency Department. (Ex. D attached to the Semrow Affid.). During this initial examination plaintiff told hospital staff that he had bipolar disorder, and that he was god and could not stay at the hospital because he was running for president. (*Id.*). Dr. Steven Klos determined that plaintiff should be placed on a 72-hour emergency hold and admitted plaintiff to the mental health unit. (Exs. B and E attached to the Semrow Affid.).

After being admitted, plaintiff was examined by Dr. Raymond Kennedy. (Ex. F attached to the Semrow Affid.). During plaintiff's examination, he told Dr. Kennedy that he had been diagnosed with bipolar disorder and had been hospitalized on four prior occasions. (*Id.*). Plaintiff told Dr. Kennedy that he saw his brain as a light bulb, that he had contacts with the FBI and CIA and felt they were watching him, and again described himself as the second coming of Christ. (*Id.*). Dr. Kennedy continued the 72-hour hold and ordered an MRI, as well as neuropsychological testing, and consultation by an internal medicine doctor. (*Id.*).

During subsequent examinations by internal medicine, neuropsychology, and behavioral health staff, plaintiff reiterated that he had been diagnosed with bipolar disorder and was experiencing paranoia and delusional behavior. (Exs. G and H attached to the Semrow Affid.). Plaintiff explained that he thought the FBI and CIA were watching him, told staff he was the second coming of Christ, and stated that he believed he was the person from the movie "The Truman Show." (*Id.*).

Plaintiff was discharged from Fairview on November 2, 2004. (Ex. I attached to the Semrow Affid.). Defendant Fairview was served with this lawsuit on February 17, 2005. Plaintiff has recently filed similar lawsuits in federal court. (See Ex. J attached to the Semrow Affid.).

ARGUMENT

I. MOTION TO DISMISS STANDARD.

A motion to dismiss for failure to state a claim upon which relief may be granted is the proper method for testing the legal sufficiency of a claim. David F. Herr & Roger S. Haydock, 1 Minnesota Practice § 12.9 (2002). Under Minn. R. Civ. P. 12.02(e), a motion to dismiss should be granted when a pleading fails to state a claim upon which relief can be granted. Such a motion will be granted where “it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded.” *Elzie v. Commissioner of Public Safety*, 298 N.W.2d 29, 31 (Minn. 1980).

II. PLAINTIFF’S CLAIMS ARE BARRED BY THE IMMUNITY PROVISIONS OF THE MINNESOTA CIVIL COMMITMENT ACT.

Minn. Stat. § 253B.23, subd. 4 of the Minnesota Civil Commitment Act specifically grants immunity to those who hold a patient based on the Civil Commitment Act. The statute provides:

Immunity. All persons acting in good faith, on either actual knowledge or information thought by them to be reliable, who act pursuant to any provision of this chapter or who procedurally or physically assist in the commitment of any individual, pursuant to this chapter, *are not subject to any civil or criminal liability under this chapter.*

Minn. Stat. § 253B.23, subd. 4. Section 253B.23, subd. 4 “provides complete immunity from suit, not simply a defense to liability.” *Mjolsness v. Riley*, 524 N.W.2d 528, 530 (Minn. Ct. App. 1994).

Because immunity is such an important protection, Minnesota courts have consistently recognized that claims subject to immunity should be dismissed at the earliest stages of a lawsuit:

Questions of immunity should be resolved at the earliest possible stages of litigation. *Prompt resolution of the issue is desirable to allow persons to act independently and without fear of consequences including this burden*

of submitting officials to vicissitudes of trial. It is primarily for these reasons that immunity provides immunity from suit rather than a mere defense to liability.

Culberson v. Chapman, 496 N.W.2d 821, 825 (Minn. Ct. App. 1993) (internal citations omitted)(construing Minn. Stat. § 148.975, reversing trial court's denial of summary judgment).

Dismissal of actions based on the immunity provision of Minn. Stat. § 253B.23 have been upheld by the Minnesota Court of Appeals. *See Brooks ex. rel. Brooks v. State*, 2003 WL 21743708 (Minn. Ct. App. July 29, 2003) (dismissing claims against various treatment facilities) (unpublished a copy of which is attached as Ex. K to the Semrow Affid.); *McDeid v. O'Keefe*, 2003 WL 21525128 (Minn. Ct. App. July 8, 2003) (dismissing action alleging defamation and a number of other claims stemming from commitment to the Minnesota Sex Offender Program)(unpublished a copy of which is attached as Ex. L to the Semrow Affid.).

Absent a showing of bad faith, plaintiff's claims against defendant Fairview must be dismissed. Bad-faith is defined as "the commission of a malicious, willful wrong." *Mjolsness*, 524 N.W.2d at 530.

Fairview's actions were in no way "malicious or willful." Fairview physicians placed plaintiff on a 72-hour hold pursuant to the Minnesota Commitment and Treatment Act based on information provided by plaintiff, his primary physician, and their independent examinations. There is no evidence that Fairview acted in bad faith in holding plaintiff.

Based on the information provided by plaintiff, his primary care physician, and subsequent examinations of plaintiff, there is no question that Fairview and its staff acted in good faith in placing plaintiff on a 72-hour hold. Nor is there any allegation of bad faith by plaintiff. Therefore, defendant Fairview is immune from liability and suit, and plaintiff's claims must be dismissed.

CONCLUSION

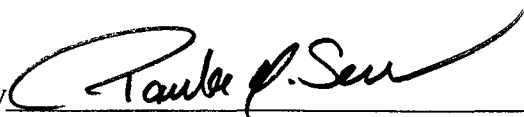
Defendant Fairview is immune from liability and suit pursuant to Minn. Stat. § 253B.23, subd. 4, and therefore respectfully requests that plaintiff's claims be dismissed with prejudice.

ACKNOWLEDGMENT

Defendant hereby acknowledges that sanctions may be imposed under the circumstances set forth in Minn. Stat. § 549.211.

BASSFORD REMELE
A Professional Association

Dated: 3-8-05

By 

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