

James Sullivan
for

JUDICIARY COMMITTEE

H.J No. 11

BRYAN BROUILLARD,

STATE OF CONNECTICUT

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March 3, 2010

**BRYAN BROUILLARD'S POSITION STATEMENT REGARDING RESOLUTION
CONFIRMING THE DECISION OF THE CLAIMS COMMISSIONER TO DISMISS
THE CLAIMS AGAINST THE STATE**

Bryan Brouillard respectfully submits a position statement to the Judiciary Committee concerning H.J. No. 11 (COMM) Resolution Confirming the Decision of the Claims Commissioner to Dismiss the Claims Against the State of Bryan Brouillard. For the reasons set forth below, Bryan respectfully requests that the Judiciary Committee recommend to the General Assembly that it reconsider the Claims Commissioner's decision denying this claims, and to permit Bryan to pursue his claims in Superior Court.

I. BACKGROUND

Bryan Brouillard, now 31 years old, spent over 6 years in custody after successfully petitioning to be adjudged not guilty by reason of insanity, as an in-patient at Connecticut Valley Hospital (CVH) under the jurisdiction of the Psychiatric Security Review Board (PSRB). Bryan

request permission to pursue claims that the State of Connecticut, through CVH, the Department of Mental Health and Addiction Services (DMHAS), and the PSRB and their respective board members, officers and employees harmed him due to their mistreatment and wrongful confinement of him at CVH. He further claims that he received psychiatric treatment from Dr. Young and psychological treatment from Dr. Hillbrand that was continuous for several years until March 26, 2008, and that CVH and these licensed health care providers deviated from the standard of care, leading to his wrongful confinement, injuries and damages.

During his wrongful confinement at CVH, Bryan was housed for a period of time in the Whiting section of CVH with an extremely dangerous, volatile and severely mentally ill population. In the Whiting section, he had onerous restrictions and conditions placed on him in such a setting as well as his drastically limited interaction with anyone who is not psychotic or otherwise severely mentally disabled and antisocial, despite the fact that CVH, PSRB, DMHAS, and its members, officers and employees knew that Bryan was not insane or dangerous to himself or others for a period of three years before March 26, 2008.

Bryan was arrested in July 1999 and charged with attempted murder and threatening relating to an incident in which he pointed a gun at police officers and refused to drop the gun when directed to do so. Mr. Brouillard did not fire the weapon. He was shot and disarmed by the police. In

August 2001, he was, on application by his counsel, adjudged not guilty by reason of insanity and subsequently remanded to the custody of the Psychiatric Security Review Board (PSRB) for a period not to exceed 10 years. A person adjudged not guilty by reason of insanity is referred to as an “acquittee,” and is committed to the jurisdiction of the Psychiatric Security Review Board (PSRB). Conn. Gen. Stat. § 17a-602©. An acquittee may petition the Superior Court for discharge from the jurisdiction of the PSRB. Conn. Gen. Stat. §§ 17a-593(a); 17a-580(11). An acquittee is entitled to immediate discharge from the PSRB when he either: (1) has recovered his sanity or (2) is no longer dangerous.

On August 24, 2006, Bryan Brouillard filed an application for discharge from the jurisdiction of the PSRB. On April 20, 2007 and June 22, 2007, the PSRB took testimony from representatives of CVH as to their position on whether Mr. Brouillard is a danger to himself or others such that he should be discharged. The representatives of CVH wrongfully testified before the PSRB that, in their opinion, Bryan was a danger to himself or others and should, therefore, not be discharged. Based on this testimony, the PSRB filed a report with the Court, as required by law, recommending against Bryan’s discharge (“PSRB Report”).

On October 16, 2007, as permitted by law, Bryan Brouillard timely filed an independent psychiatric evaluation. See Conn. Gen. Stat. § 17a-593(d). The State filed no independent psychiatric evaluation.

On December 28, 2007, the Superior Court (Robaina, J.) held a hearing on Bryan Brouillard's application for discharge. At the hearing, Bryan called three witnesses: Dr. John Young, Bryan's treating psychiatrist at CVH, who had previously testified before the PSRB; Dr. James Beck, the psychiatrist who conducted an independent psychiatric evaluation of Bryan; and Dr. Stephen Heller, a physician who, along with his wife, has agreed to take Bryan into their home when he is discharged. At the hearing in this case, Dr. Young testified that he and the administration of CVH have concluded that Bryan would not be a danger if discharged. Dr. Beck, an expert in evaluating the propensity for dangerousness in persons with mental illness, testified that Bryan would not be a danger if discharged. The state offered no evidence to the contrary, other than an outdated PSRB report based on stale testimony from CVH personnel, which CVH repudiated. The hearing was continued until January 23, 2008 at which point the hearing was closed. On March 25, 2008, the Superior Court thereafter granted Bryan's application for discharge pursuant to Conn. Gen. Stat. § 17a-593(g) and released him from the custody of the PSRB. The PSRB, DMHAS, and CVH

did not have sufficient grounds to maintain custody of an Bryan because he was not a person who is an imminent risk of substantial danger to himself or another.

Bryan should have been discharged shortly after being sent to CVH. He was treated by Dr. Young and Hillbrand, who also had Mr. Brouillard attend a once a week Alcohol Anonymous group session and weekly sessions with a psychology student. He was not on any medication, except a sleep aid. He was unlike the other inmates and suffered from no serious psychological disorder. Yet he was housed among some very violent and psychotically disturbed individuals and was the victim of violent attacks, including at least one that caused him serious injury.

Bryan was never dangerous to himself or others or insane while confined at CVH. Despite that fact, CVH, DMHAS, and PSRB and their respective officers, members, and employees continued to confine him at CVH. They provided psychiatric and psychological treatment that deviated from the standard of care up until March 26, 2008 and going back three years. Because of Bryan's wrongful confinement and the malpractice of the State through CVH, Dr. Young, and Dr. Hillbrand, Bryan has suffered severe damages and harm.

On December 22, 2008, Bryan filed his Notice of Claim with the Claims Commissioner. On March 18, 2009, Bryan filed an Amended Notice of Claim as of Right under Regulation § 4-157-4 asserting a claim for malpractice by a licensed health care providers and hospital against the state.

On May 28, 2009, the state filed a motion to dismiss arguing, inter alia, that this claim is untimely. Bryan argued that the claim was timely because the one year statute of limitations had been tolled by the doctrines of continuing course of conduct and continuous treatment. On October 15, 2009, the Claims Commissioner granted the state's motion as to his claims Nos. 21727, 21806 holding that the claim was untimely because it was not commenced within one year as required by Conn. Gen. Stat. §4-148(a). The Claims Commissioner ignored Bryan's arguments that the statute of limitations was tolled by the continuing course of conduct and continuous treatment doctrine.

II. ARGUMENT

- A. Bryan's Claims Should Be Heard on the Merits Because the Commencement of the Statute of Limitation Set Forth in Conn. Gen. Stat. § 4-148 Is On March 26, 2008, the Date That Health Care Treatment of Mr. Brouillard Was Terminated

Mr. Brouillard continued to receive continuous psychiatric and psychological treatment until March 26, 2008, the date he was released from Whiting. Under the doctrine of continuous treatment and continuing course of conduct doctrines, March 26, 2008 is the proper commencement date for the statute of limitations..

“The statute of limitations, in the proper circumstances, may be tolled under the continuous treatment ... doctrine, thereby allowing a plaintiff to commence his or her lawsuit at a later date. As a general rule, the statute of limitations begins to run when the breach of duty occurs. When the injury is complete at the time of the act, the statutory period commences to run at that time. When, however, the injurious consequences arise from a course of treatment, the statute does not begin to run until the treatment is terminated So long as the relation of physician and patient continues as to the particular injury or malady which [the physician] is employed to cure, and the physician continues to attend and examine the patient in relation thereto, and there is something more to be done by the physician in order to effect a cure, it cannot be said that the treatment has ceased.” Grey v. Stamford Health System, Inc., et al, 282 Conn. 745, 751, 924 A.2d 831 (Conn. 2007)(quoting Blanchette v. Barrett, 229 Conn. 256, 265, 274-75, 640 A.2d 74 (Conn. 1994)(internal quotations omitted).

“The continuous treatment doctrine has been justified on a number of public policy grounds. First, we have recognized that “[i]t may be impossible to pinpoint the exact date of a particular negligent act or omission that caused injury during a course of treatment. In those case it is appropriate to follow the course of treatment to terminate before allowing the repose section of the statute of limitations to run, rather than having the parties speculate and quarrel over the date on which the act or omission occurred that caused te injury during a course of treatment. Grey, 282 Conn. at 752, 924 A.2d 831 (quoting Blanchette, 229 Conn. at 277, 640 A.2d 74)(internal quotations omitted). Second, we have recognized that public policy favors maintaining the physician/patient relationship in the belief that the most efficacious medical care will be obtained when the attending physician remains on a case from onset to cure. Id. (quoting Connell v. Colwell, 214 Conn. 242, 253, 571 A.2d 116 (Conn. 1990).

“In order to establish a continuous course of treatment doctrine for purposes of tolling the statute of limitations in medical malpractice actions, the plaintiff is required to prove: (1) that he or she had an identified medical condition that required ongoing treatment or monitoring; (2) that the

defendant provided ongoing treatment or monitoring of that medical condition after the allegedly negligent conduct, or that the plaintiff reasonably could have anticipated that the defendant would do so; and (3) that the plaintiff brought the action within the appropriate statutory period after the date that treatment terminated.” Martinelli v. Fusi, et al, 290 Conn. 347, 365-66, 963 A.2d 640 (Conn 2009); See also Grey, 282 Conn. at 754-55, 924 A.2d 831 (quoting Blanchette, 229 Conn. at 276, 640 A.2d 74)(internal quotations omitted). “When the injurious consequences arise from a course of treatment, the statute does not begin to run until the treatment is terminated.” Zielinski v. Kotsoris, 279 Conn. 312, 323, 901 A.2d 1207 (Conn. 2006)(quoting Blanchette, 229 Conn. at 274, 640 A.2d 74)(internal quotations omitted).

Here, the continuous treatment doctrine applies because CVH, Dr. Young and Dr. Hillbrand provided psychiatric and psychological treatment continuously to Bryan until March 26, 2006, thereby tolling the running of the statute of limitations until that date. In the Superior Court’s Decision in Bryan Brouillard v. The State of Connecticut Psychiatric Security Review Board, dated March 25, 2008, the Court (Robaina, J.) held that “Dr. John Young who is an attending psychiatrist for the past two and one half-years at Connecticut Valley Hospital . . . [was] Mr. Brouillard’s treating psychiatrist for the past two and one-half years.” Id. at 4. The Court further found that “Mark Hillbrand, who is the Director of Psychology at Connecticut Valley Hospital . . . has also treated the

petitioner for several years.” Id. Indeed, the court noted that the PSRB wanted to continue treating Bryan as of March 25, 2008 on an out-patient basis. Id. at 6. CVH’s treatment of Bryan was not isolated. He was confined there and the treatment was both extensive and continuous.

Moreover, the state’s wrongful confinement by way of malpractice or other actionable conduct of Bryan constituted a continuous course of conduct that also tolled the statute of limitations.

When the wrong sued upon consists of a continuing course of conduct, the statute does not begin to run until that course of conduct is completed. Keleman v. Rimrock Corporation, 207 Conn. 599, 724 542 A.2d 720 (1988); Handler v. Remington Arms Co., 144 Conn. 316, 312 130 A.2d 793 (1957). “[A] precondition for the operation of the continuing course of conduct doctrine is that the defendant must have committed an initial wrong upon the plaintiff . . . there must be evidence of the breach of a duty that remained in existence after commission of the original wrong related thereto. . . . [T]hat continuing wrongful conduct may include acts of omission as well as affirmative acts of misconduct . . .” (Internal quotation marks omitted.) Rosenfield v. Rogin, Nassau, Caplan, Lassman & Hirtle, LLC, 69 Conn. App. 151, 161 795 A.2d 572 (2002). Furthermore, “[t]he doctrine of continuing course of conduct as used to toll a statute of limitations is better suited to claims where the situation keeps *evolving* after the act complained of is complete” Sanborn v. Greenwald, 39

Conn. App. 289, 297-98, 664 A.2d 803, cert. denied, 235 Conn. 925 (1995) (emphasis added). There are two alternative ways to prove a continuing course of conduct. Sherwood v. Danbury Hospital, 252 Conn. 193, 203, 746 A.2d 730 (2000). There must be evidence of a “special relationship between the parties . . . or some later wrongful conduct of a defendant related to the prior act.” Id.

“The continuing course of conduct doctrine reflects the policy that, during an ongoing relationship, lawsuits are premature because specific tortious acts or omissions may be difficult to identify and may yet be remedied. “Blanchette v. Barrett, 229 Conn. 256, 275 640 A.2d 74 (1994). The doctrine is generally applicable under circumstances where the negligence consists of a series of acts or omissions and it is “appropriate to allow the course of [action] to terminate before allowing the repose section of the statute of limitations to run....” Id. The continuous course of conduct doctrine is “conspicuously fact-bound.” Id. at 276.

The wrongful confinement of Bryan Brouillard took place over several years and involved wrongful conduct that evolved as CVH, the Department of Mental Health and Addiction Services (DMHAS), and the PSRB and their respective board members, officers and employees harmed him in a series of events that included concealment, negligence, and false reports and testimony. During his wrongful confinement at CVH, Bryan was housed for a period of time in the Whiting section of CVH with an extremely dangerous, volatile and severely mentally ill population. In the Whiting

section, he had onerous restrictions and conditions placed on him in such a setting as well as his drastically limited interaction with anyone who is not psychotic or otherwise severely mentally disabled and antisocial, despite the fact that CVH, PSRB, DMHAS, and its members, officers and employees knew that Bryan was not insane or dangerous to himself or others. There clearly was a special relationship between Bryan and CVH and Mr. Brouillard's health care providers, and the wrongful conduct related to a prior act, namely maintaining the position that Bryan remain under the jurisdiction of the Psychiatric Security Review Board which, according to Dr. Hillbrand, should continue to provide a treatment plan and supervision over Mr. Brouillard. Id. at 5.

B. This Claim Should Be Resolved on the Merits Because It Raises Issue of Substantial Public Interest

At the time that Bryan was a patient at CVH, the United States Justice Department in 2006 was conducting a wide-ranging study of the adequacy of CVH, which study culminated in a 56 page report dated August 6, 2007 from the Justice Department to Governor Rell. In that report, the Justice Department makes extensive findings that the conditions and practices at CVH are grossly inadequate. Concerning discharging patients, the Justice Department found:

The discharge planning process for CVH patients falls well short of these standards of care. Consequently, the patients are subjected to unnecessarily extended hospitalizations and a

high likelihood of readmission, all of which result in harm. CVH fails to initiate, maintain, monitor, or adjust adequate discharge criteria. Several patients' treatment planning documents demonstrate that CVH teams often carry over the "discharge plan" language verbatim from one treatment plan review to another, without assessing new options and any changes that may have effected the patients' discharge plans. CVH fails to maintain an adequate review process necessary to ensure appropriate lengths of stay. As a result, CVH's patients are likely being unnecessarily institutionalized and potentially deprived of a reasonable opportunity to live successfully in the most integrated, appropriate setting. *Id.* at 42.

In Dr. Beck's report of October 15, 2007, which was attached to the original notice of claim, he references the Justice Department's investigation, echoes these finding as they apply to Bryan, and sets forth in detail how the state failed to adequately diagnose, treat and assess the Bryan. The supplemental report of April 20, 2009 provides that "Connecticut Valley Hospital repeatedly fell below the standard of care in their care and treatment of Mr. Brouillard. I hold this opinion to a reasonable degree of medical certainty."

Although Bryan does not ask this Judiciary Committee to resolve these important questions that affect the public interest, he respectfully requests that he be able to raise these issues in a court of law, specifically in the Superior Court.

III. CONCLUSION

For the foregoing reasons, Bryan respectfully requests that the General Assembly reconsider the Claims Commissioner's decision denying this claim, and to permit Bryan to pursue his claim in Superior Court.

RESPECTFULLY SUBMITTED,
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