

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

WAYNE COUNTY JAIL INMATES MICHAEL
HARRIS, JAMES JOHNSON, LAWRENCE
ROBERT PLAMONDON, NORMAN RICHARDSON,
CAROLYN TRAYLOR, and NORA WARE,
individually and on behalf of all
other persons similarly situated,

Plaintiffs,

v

WAYNE COUNTY BOARD OF COMMISSIONERS:
ROBERT E. FITZPATRICK, Chairman of
the Board; WILLIAM LUCAS, Sheriff of
Wayne County; FRANK WILKERSON, Admin-
istrator of the Wayne County Jail;
ARTHUR A. SUMERACKI and JOHN F.
WILLIAMS, members of the Wayne County
Board of Auditors, and LOUIS H. FUNK,
Wayne County Treasurer,

Defendants.

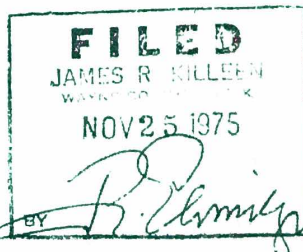
Judge Victor J. Baum
(No. P-10556)

Judge John D. O'Hair
(No. P-18432)

Judge Thomas J. Brennan
(No. P-11173)

Civil Action
No. 173-217

OPINION ON CAUSAL CONNECTION BETWEEN
VIOLATIONS OF THE JUDGMENT AND
SUICIDE OF DAVID FREGIN



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individually and on behalf of all)	(No. P-10556)
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)	
Plaintiffs,)	Judge John D. O'Hair
)	(No. P-18432)
v)	
)	
WAYNE COUNTY BOARD OF COMMISSIONERS:)	Judge Thomas J. Brennan
ROBERT E. FITZPATRICK, Chairman of)	(No. P-11173)
the Board; WILLIAM LUCAS, Sheriff of)	
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)	
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)	

OPINION ON CAUSAL CONNECTION BETWEEN
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An issue which the court raised in this case was whether the violation of any of the court's orders played a causal role in the death of David Fregin. The court asked the parties to consider and to offer evidence on this issue for the following reasons. The court questioned whether its existing orders were adequate to provide reasonable safeguards against inmate suicide and whether these orders were being carried out. If the orders themselves are inadequate, strengthening amendments would be

appropriate. If the orders are sufficient but compliance poor, stronger enforcement would seem apposite. If both the orders and compliance are satisfactory, we would be satisfied that the judicial branch of government is discharging its responsibility, under the law, to preserve and protect life.

The court now finds that if the orders and judgment of this court had been complied with, the life of David Fregin would not have been taken by his own hand on November 13th. To put this another way, but for multiple violations of this court's judgment, the suicide of David Fregin would not have occurred when and as it did.

David Fregin's presence in the Wayne County Jail violated two separate court orders. There was, at the time of his admission to the jail, a superintending control order of the Circuit Court which provided that prisoners charged with felonies were to be held in the local lockups of Wayne County municipalities ^{1/} until such time as the prisoner was bound over for trial in the Circuit Court. David Fregin had not been bound over to Circuit Court at the time he was received in the county jail.

It is not enough for the Sheriff to state that he was under an order by a District Judge to receive Fregin on the day that Fregin was admitted to the county jail. The Sheriff is a lawyer and he will know, or was bound to know, that the superin-

^{1/} Except for Detroit and those local lockups which had been "condemned" by the Michigan Corrections Department. The amended order of superintending control was filed on January 9, 1974.

tending control order of the Circuit Court of the County of Wayne took precedence over the commitment order of the District Judge upon which the jail received Fregin.

The evidence is also clear that no one, including the Sheriff, obtained permission from the Presiding Judge of the Wayne County Circuit Court to lodge Fregin in the county jail, pursuant to paragraph four of the superintending control order, which permitted exemptions and relief in certain cases.

But for the violation of the superintending control order, Fregin would not have died when he did, as he did.

The second order violated by the Sheriff when he admitted Fregin into the jail, was a provision in the court's judgment which controls population. Construing the judgment in a manner most favorable to the Sheriff for purposes of this discussion only, the largest number of prisoners which could be lawfully held in the county jail at the time David Fregin was admitted was 799. The jail population was well in excess of 799 ^{2/} at the time the Sheriff received Fregin into the jail. The Sheriff is a lawyer who knew, or was bound to have known that the order of the District Judge committing Fregin was inferior to the maximum population order of the three-judge Circuit Court tribunal. The Sheriff chose to obey an order of a District Judge which conflicted with an order of a higher court. The Sheriff did this without

^{2/}

The evidence tends to show an inmate population of approximately 840.

first having come to this court, or any other court, to seek relief from the population limit ordered by us. Neither did the Sheriff come to the court to seek instructions or directions before receiving Fregin in violation of our order. Instead of asking the judicial branch for an amendment of, an exception to, or relief from, its inmate population order, the Sheriff took it upon himself to violate the order on the ground that a lower court had issued orders inconsistent with that of the Circuit Court. Had our order been obeyed, Fregin would not have been admitted to the county jail.

But for the Sheriff's violation of this court's order limiting inmate population, David Fregin would not have died where he did, when he did, as he did.

Provision 4 of this court's second interim order provides:

"The defendant Sheriff shall secure prompt psychiatric attention for inmates who, in apparent earnest, attempt or threaten suicide."

This was not done. David Fregin entered the Wayne County Jail on Saturday, November 9, 1974. He was placed in Ward 614, one used for inmates with mental problems. He attempted suicide on his very first day in jail. He did this by trying to hang himself with a sheet. He was not seen by a psychiatrist on Saturday, November 9th. Some 24 hours after his first attempt, David Fregin was seen by a social investigator named Obodzinski.

Obodzinski was not a psychiatrist and the attention he gave Fregin was not the psychiatric attention required by our order 3/.

On the eleventh of November, Fregin orally threatened to kill himself in the morning and tried for a second time to hang himself later in the day. Fregin was not seen promptly by a psychiatrist following his threat to kill himself. Fregin was first seen by a psychiatrist quite some time after his second suicide attempt. Dr. Leon Quinn, one of the jail's psychiatrists, saw David Fregin on the night of November 11th, or during the small hours of the morning on November 12th. This psychiatric examination was the first, but this psychiatric examination did not come promptly after Fregin's second suicide attempt as required by the court's order. Thus, approximately two days went by after Fregin's first attempt by hanging before he was seen by a psychiatrist. This, of course, was anything but a prompt examination.

Indeed, before David Fregin saw psychiatrist Quinn, he had attempted three times to kill himself, if one includes an effort by Fregin to bang his head against the cell wall or cell bars.

There was still another suicide threat by Fregin which

3/

The testimony was undisputed that Obodzinski had no "recognized" psychiatric training. To us this means that he had no academic education in psychiatry and no training in any psychiatric institution or clinic. Social investigators at the jail must have a college degree or its equivalent, but need not have any academic studies in the behavioral sciences. The standards for employment of social investigators are quite different than those for psychiatric social workers.

was not followed by a prompt psychiatric examination. On the morning of the day on which he killed himself, Fregin threatened in the presence of jail personnel, to take his life. His threat was clearly in earnest and was perceived as such by the jail employees who heard him. Yet, he successfully suicided over eight hours later without having seen a psychiatrist between the time of his threat in the morning and its execution at about 8:45 the same evening.

There were at least four violations of the court order concerning psychiatric care for inmates who attempt suicide or threaten in earnest to do so. First, David Fregin was not given prompt psychiatric attention after his initial attempt at suicide. Second, he was denied prompt psychiatric attention after his second suicide attempt. Third, he was not given prompt psychiatric attention after the head-banging incident, which should have been treated as an earnest suicide attempt or threat. Fourth, he was not given prompt psychiatric attention after his earnest oral suicide threat made over eight hours before he carried it out.

No one can say for certain that the violation of our order requiring prompt psychiatric attention for those who attempt or threaten suicide in earnest played a causal role. The reason for this is a strange one. When Fregin finally saw a psychiatrist, that psychiatrist, Leon Quinn, diagnosed Fregin as psychotic, but not acutely suicidal. The psychiatrist made the diagnosis without making any effort to learn the seriousness of Fregin's two or three prior attempts at suicide by hanging and by banging his head against

the wall. In at least one of these attempts, the first, Fregin had actually started the hanging process and was dangling by a sheet tied around his neck when he was cut down by a guard. If Fregin had been examined promptly by the same psychiatrist, there is no reason to believe that this psychiatrist would have made findings any different than those which he made after his belated examination of Fregin.

It is safe to say that everyone in the jail who had observed Fregin up to the night of November 12th, other than the psychiatrist, knew that he was acutely suicidal, including those who were somewhat sophisticated concerning suicide and psychiatry and those who were not.

It is a mystery to us how a psychiatrist, with knowledge that ~~there had been~~ ^{a person had had} at least two suicide attempts, in the jail, within the preceding forty-eight hours, could find ~~a person~~ not acutely suicidal, without first carefully checking these attempts to see how close the person had come to success in his efforts at self destruction.

We cannot find that the violations of our order concerning psychiatric attention for suicidal inmates were a proximate cause of the death of David Fregin. We take into account the likelihood that if there had been an attempt to provide Fregin prompt psychiatric attention after each actual attempt and earnest threat of suicide, a psychiatrist, other than Leon Quinn, would have examined him with quite different results. But we cannot

say with certainty that a personal psychiatric examination after Fregin's last threats would have staved off the suicide.

Psychiatric responsibilities at the jail in early November of 1974 were shared largely by Dr. Quinn, Dr. Lebedovych and Dr. _____ 3a/. On the morning of November 13th, the day of his suicide, when Fregin's suicidal threats had alarmed a jail nurse, she communicated with Dr. Lebedovych. The communication was by telephone. Dr. Lebedovych was not in the jail at the time. Dr. Lebedovych did prescribe drugs for Fregin, which apparently had a calming effect. However, Dr. Lebedovych did not give psychiatric attention within the meaning of our order. We will explain this, shortly.

As the words "psychiatric attention" are used in our order, they are clearly intended to mean attention given in person by the psychiatrist to the suicidal inmate. While courts speak through their orders, any question concerning the meaning of the order is to be resolved in light of the court's opinion. The court's opinion recites the following:

"The jail handles its suicide attempts in a way which is likely to encourage further attempts. The jail administration does not have a policy of taking persons who attempt suicide to a psychiatrist." (Emphasis supplied)

Thus the opinion resolves any possible doubts that as

3a/

Regrettably, our notes do not reveal the name of the third psychiatrist and the time which would be required for a search of court reporter's notes seems unwarranted.

used in our order "psychiatric attention" means an in person examination of the inmate by a psychiatrist. We believe that our order for psychiatric attention is adequate as written. Nevertheless, to avoid any question of interpretation, the pertinent provision of our interim order should be amended by adding the following sentence: "As used herein, psychiatric attention means an in person examination of the inmate by a licensed medical doctor, including doctors of osteopathic medicine, certified by the appropriate board of physicians as a specialist in psychiatry."

We wish to make it plain that strict compliance with our order is expected. We believe that strict compliance will go a long way to prevent suicides in the future.

Another part of the court's judgment was violated. In the first interim order, of March 25, 1971, we specified:

"That in any case in which an inmate appears to be mentally disturbed, and appears to represent a substantial danger to himself, or a serious threat to the welfare or safety of others within the jail, the Sheriff shall forthwith take appropriate steps to have such inmate admitted to a mental health care facility, where he may receive all necessary and appropriate treatment, and the Sheriff shall use his best efforts with a view to avoiding a return to the jail of such person so long as he continues to represent a significant danger to himself or to the welfare and safety of others."

This order means that when an inmate appears to a member of the Sheriff's staff to be mentally disturbed and to represent a substantial danger to himself or a serious threat to

the welfare or safety of others within the jail, the Sheriff must immediately take appropriate steps to have the inmate admitted to a mental hospital. This order was not altered or repealed by subsequent orders in the case 3b/.

Our order was violated in this case. The evidence was overwhelming that inmate, David Fregin, appeared to all who saw him, layman and professional alike, to be clearly mentally disturbed from the moment he entered the jail. It also appeared very soon after his admission that he was a danger to himself. This occurred when he was found hanging by his sheet and was cut down in time to avoid death. At that point, if not before, it was incumbent upon the Sheriff to have him admitted to a mental hospital. This was not done.

In the first few days of Fregin's stay, no effort was made, even to discover whether his papers were in order for entry into the Forensic Center at Ypsilanti. Later, inquiries were made to determine whether or not his papers were in order. Even so, it does not appear that a strenuous effort was made to have him admitted on a priority basis to the Forensic Center until the day on which he suicided.

A few observations are in order. The court did not order that persons who are mentally disturbed and who appear to be dangerous to themselves be sent to the Forensic Center, only. The court's order calls for transfer of such persons to a mental

3b/

See section 21 of the Judgment.

health care facility where the inmate can receive necessary and appropriate treatment. This court pointed out in its opinion how this could be done on an emergency basis, without first resorting to proceedings in the Probate Court. In its opinion, the court called attention to MSA Sec. 14.809 which, at that time, provided:

" * * * Any peace officer of this state ^{4/} with the approval of the prosecuting attorney obtained within 24 hours of the taking into custody and confinement, is hereby authorized to take into temporary protective custody and confine in any hospital, home, or other place of detention for a period not to exceed 48 hours, not counting Sundays and holidays, a person believed to be mentally ill manifesting homicidal or other dangerous tendencies. Proceedings under this act, temporary or permanent, shall be instituted by the peace officer within 48 hours, not counting Sundays and legal holidays." ^{4a/}

And the court, in its opinion, called to the Sheriff's attention another procedure available for swiftly transferring dangerous, mentally disturbed inmates from the jail to a suitable hospital.

Furthermore, in its interim order, this court did not call for the transfer to a mental health facility of obviously mentally deranged and suicidal inmates, dependent upon effective arrangements being made by a psychiatrist for such transfer. The

^{4/} This certainly includes the Sheriff.

^{4a/} There is a counterpart 24 hour emergency commitment provision in the new Mental Health Code. It is to be found in Sections 427 and 429 of the Code.