

# Torts - Causation - Attempted Suicide - Mental Instability: Result of Injury or Independent Act?

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TORTS—CAUSATION—ATTEMPTED SUICIDE—MENTAL  
INSTABILITY: RESULT OF INJURY OR  
INDEPENDENT ACT?

On June 27, 1955, plaintiff was injured in a three-car collision when the defendant's truck struck a car causing it to veer into the plaintiff's automobile. The plaintiff was injured about the head and face and was taken to the hospital where fragments of glass and bone tissue were removed from his cuts. Following the accident, he began to complain of headaches and nervousness. He worked continually after once recovering from the initial injury. On the afternoon of June 24, 1960, five years after the accident, and while he was still consulting his physician, he picked up his paycheck at work, spent the evening in various taverns, returned home about five in the morning and took poison. His wife was awakened by his screams, and he was rushed to a hospital where he was saved. The Illinois Supreme Court, affirming the judgment of the appellate court, held that unless a plaintiff could not understand the nature of his act or was not capable of deciding against it, evidence of a suicide attempt which fails is inadmissible in a negligence action. *Little v. Chicago Hoist & Body Co.*, 32 Ill. 2d 156, 203 N.E. 2d 902 (1965).

The court, in treating this case, applied the prevailing law as to suicides. Upon the facts here presented, where the plaintiff did not attempt his suicide until five years after the accident, it would seem difficult for him to prevail. In analyzing this problem, it is necessary to determine what the court's attitude is in regard to such a recovery from the original tortfeasor for suicide or its attempt, whether the incident of suicide is inherently an event which breaks the causation chain between the negligent act and the injury, and whether the law in this area has kept abreast of current medical knowledge.

The law upon this subject, as it emerged as early as 1881, was that there was no recovery for a person who, subsequent to an injury committed suicide.<sup>1</sup> There had been previous decisions to the effect that if the decedent, because of his insanity, is not capable of understanding the nature and consequences of his act, or is impelled thereto by an irresistible impulse, then the death is not suicide in the full meaning of the term as contemplated by an insurance contract.<sup>2</sup> However, the Court, in *Scheffer v. Washington City, V. M. & G. S. R.R.*,<sup>3</sup> did not seem to give any con-

<sup>1</sup> *Scheffer v. Washington City, V. M. & G. S. R.R.*, 105 U.S. 249 (1881).

<sup>2</sup> *Mutual L. Ins. Co. v. Terry*, U.S. (15 Wall.) 580 (1873); *Breasted v. Farmer's Loan & Trust Co.*, 8 N.Y. 299 (1852).

<sup>3</sup> *Supra* note 1.

sideration to the actor's state of mind at the time he committed suicide when considering the problem of suicide in a wrongful death action. In that case, due to a train collision, the decedent was injured and became deranged. Eight months later he committed suicide. The Supreme Court stated that as a causal matter, his insanity had as little to do with the railway's negligence as his suicide had with his insanity, and that each were unforeseeable intervening causes.

While the *Scheffer* case treated the suicide, even though committed by an insane person, as an independent act, and cut off proximate causation at the immediate injury, there were decisions following it in which other courts, while adhering to the rule laid down in *Scheffer*, began to range farther afield. While finding the defendant not liable, in these cases, the courts, however, began to add dicta to the effect that had the decedent not been merely insane, but had he acted in a frenzy or rage so that he could not control his actions, or was not aware of the consequences of his act, and had this frenzy been produced by the accident, then perhaps the plaintiff might have been able to recover.<sup>4</sup>

In the case of *Daniels v. New York*,<sup>5</sup> the court, while following the rule of *Scheffer*, examined the early insurance cases which held that if the decedent was unaware of the consequence of his act or was acting in a frenzy, he did not commit suicide in the full sense of the term. After considering the insurance cases, the court in *Daniels* added dicta to the effect that the decedent might have been able to recover had he acted in a rage or frenzy instead of being merely insane.

Five years after the *Daniels* case, *Brown v. American Steel & Wire Co.*<sup>6</sup> added further dicta on the subject. In that case, the decedent was injured while working with one of the defendant's machines as an employee of defendant. Due to the accident, he became of unsound mind, and some nine months later he killed himself. The court, in examining the cases dealing with suicide, stated that the rule seemed to be that an action for wrongful death could be maintained where one inflicted the death upon himself if the act of suicide was the result of frenzy, rage or delirium caused by the tortfeasor's negligence. Thus, the law, as stated in the *Scheffer* case, was gradually refined.

The *Scheffer* rule, however, is still in effect where the individual knew the nature of his act.<sup>7</sup> However, where suicide is committed in response

<sup>4</sup> *Brown v. American Steel & Wire Co.*, 43 Ind. App. 560, 88 N.E. 80 (1909); *Daniels v. New York, N. H. & H. R.R. Co.*, 183 Mass. 393, 67 N.E. 424 (1903).

<sup>5</sup> *Daniels v. New York*, *supra* note 4.

<sup>6</sup> *Brown v. American Steel & Wire Co.*, *supra* note 4.

<sup>7</sup> *McMahon v. City of New York*, 16 Misc. 2d 143, 141 N.Y.S.2d 192 (1955); *Arsnow v. Red Top Cab Co.* 159 Wash. 137, 292 Pac. 436 (1930); *Long v. Omaha & C. B. Street*

to an irresistible impulse or when the decedent is in a rage or frenzy, then recovery may be had if this mental state came about as a result of the defendant's wrongful act.<sup>8</sup> *Elliot v. Stone Baking Co.*<sup>9</sup> is the first time that the decision was based on the exception to the rule with the court holding in a syllabus opinion that

[w]here, as the proximate result of an injury upon his head caused by the negligence of another, the person injured becomes insane and bereft of reason, and while in this condition and as a result thereof he takes his own life, his act is not a voluntary one, but is involuntary, and is not an act which breaks the causal connection between the homicide and the act which caused the injury, and the latter act is the proximate cause of the homicide.<sup>10</sup>

The situation is recognized in the *Restatement of Torts*, which states that if an individual, through his negligence, causes another to become insane or delirious so that the individual is liable for it, then he will also be liable for harm which the other inflicts upon himself while in that condition if he does not realize the harm or consequences likely to result from his act, or if he acts while under the influence of an irresistible impulse.<sup>11</sup>

Today, the law is much the same as in the aforementioned case. There are, however, no previous decisions dealing with an attempted suicide subsequent to, or resulting from a physical injury.<sup>12</sup> In Illinois, the law dealing with evidence of such an attempt has followed that which has developed as to completed suicides.<sup>13</sup> Since the estate of the insane would have been allowed recovery for the decedent's suicide had it been successful, the plaintiff could introduce evidence of the attempt where it was unsuccessful.

On the other hand, where the suicide is deemed to insulate the defendant's negligence, or cut off the chain of causation, then, if the actor is

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Ry. Co. 108 Neb. 342, 187 N.W. 930 (1922). Accord, *Salsedo v. Palmer*, 278 Fed. 92 (2d Cir. 1921). A thorough discussion of this subject is given in *Tate v. Canonica*, 180 Cal. App.2d 898, 5 Cal. Rptr. 28 (1960). For comprehensive coverage of the law pertaining to civil liability by suicide, see Annot., 11 A.L.R.2d 745 (1948).

<sup>8</sup> *Elliot v. Stone Baking Co.* 49 Ga. App. 515, 176 S.E. 112 (1934).

<sup>9</sup> *Ibid.*

<sup>10</sup> *Elliot v. Stone Baking Co.*, *supra* note 8 at 515, 176 S.E. at 112.

<sup>11</sup> RESTATEMENT, TORTS, § 445 (1934).

<sup>12</sup> See generally as to attempted suicides, *Callahan v. State*, 179 Misc. 781, 40 N.Y.S.2d 109 (1943). A point of interest, though a somewhat morbid one, is that in *Eckerd's Inc. v. McGhee*, 19 Tenn. App. 277, 86 S.W.2d 570 (1935), the decedent's suicide attempt was ultimately successful. Although saved from drowning, he contracted pneumonia and died. See also, *Waas v. Ashland Day & Night Bank*, 201 Ky. 469, 257 S.W. 29 (1923).

<sup>13</sup> *Little v. Chicago Hoist & Body Co.*, 32 Ill.2d 156, 203 N.E.2d 902 (1965).

unsuccessful, the court, as in the present case, will not allow evidence of the suicide attempt.

Despite the fact that the law upon the subject seems to be well established, there is some undercurrent of dissatisfaction and criticism of the prevailing view.<sup>14</sup> The Illinois Supreme Court granted recovery in a workmen's compensation case where the defendant committed suicide while merely insane, the injury being the cause of his insanity.<sup>15</sup> In an article on proximate causation, the problem of suicide was dealt with in the following manner:

Where the injury causes septic changes in the body, there being no new outside force concurring, the resulting harm is a direct and proximate consequence of the injury. In one important class of cases, however, the courts seem to have held the opposite view. Where defendant negligently caused a physical injury, the immediate effect of which was the insanity of the injured person, who in a fit of insane mania committed suicide, the death is held not to be of a proximate result of the injury.

This opinion seems hardly reconcilable with the current of authority on this subject.<sup>16</sup>

It would seem to follow that if a defendant is liable to one for a subsequent disease<sup>17</sup> or injury,<sup>18</sup> where the defendant's negligence has rendered the plaintiff susceptible to the same, that defendant should also be liable where he has caused one to become insane and, therefore, susceptible to depression and neurosis which cause his death.

The rigid rule applied today does not allow recovery where the decedent was insane and committed suicide but imposes the further restriction that he must have been in a rage or not in control of his actions. This further requirement is imposed in all cases of insanity, and the law in this area is applied as if insanity is a uniform or standard thing which is constantly the same. There is, however, a wide variety of mental illness which varies in kind and degree from case to case.<sup>19</sup> In many of these, judgment is impaired and conduct becomes irrational.<sup>20</sup> There are, therefore, certain

<sup>14</sup> In *Cauverien v. DeMetz*, 20 Misc. 2d 144, 188 N.Y.S.2d 627 (1959), the court, while giving lip service to the rigid rule as to suicides, allowed recovery where an individual committed suicide following the conversion of a consigned diamond. The court did not examine the decedent's state of mind at the time he took his life. Although he was insane, they did not appear to dwell upon whether he acted in a rage or frenzy.

<sup>15</sup> *Harper v. Industrial Commission*, 24 Ill.2d 103, 180 N.E.2d 480 (1962). This case was distinguished by the court in *Little v. Chicago Hoist & Body Co.* *supra* note 13 as being of a different factual background than the *Little* case.

<sup>16</sup> Beale, *The Proximate Consequences of an Act*, 33 HARV. L. REV. 633, 645 (1920).

<sup>17</sup> *Hazelwood v. Hodge*, 357 S.W.2d 711 (Ky. 1961); *Wallace v. Ludwig*, 292 Mass. 251, 198 N.E. 159 (1935).

<sup>18</sup> *Squires v. Reynolds*, 125 Conn. 366, 5 A.2d 877 (1939).

<sup>19</sup> *Lewis v. Lewis*, 199 S.C. 490, 20 S.E.2d 107 (1942).

<sup>20</sup> *Blackstone v. Standard Life & Acc. Ins. Co.*, 74 Mich. 592, 42 N.W. 156 (1889).

types of insanity in which the insane person is not conscious of the consequences of his act. The law, by not inquiring into the nature of the individual decedent's illness when considering the suicide, but imposing an arbitrary rule in all cases is not taking into consideration that knowledge of insanity recognized by courts in other areas.<sup>21</sup>

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<sup>21</sup> Lewis v. Lewis, *supra* note 19. See also Blackstone v. Standard Life & Acc. Ins. Co. *supra* note 20.

### TORTS—IMPLIED WARRANTY—PHARMACISTS' LIABILITY FOR USE OF MANUFACTURER'S SEALED PACKETS

John McLeod's physician prescribed for his use a drug known as "Mer/29"<sup>1</sup> to control his body cholesterol. The drug was manufactured by the defendant W. S. Merrell Co., and was sold to retail druggists including International Pharmacies, Inc., and the James Drug Shop, Inc., for resale on a prescription only basis. Both of these drug stores filled McLeod's prescription at some time and the drug was sold in the original sealed packets in which it was received from the manufacturer. McLeod was not warned by either of the retail druggists as to any possible inherent danger from usage of the drug. The drug, when taken in the recommended dosage produced severe side effects, which included the formation of cataracts and other eye damage. McLeod brought suit against W. S. Merrell Co. and joined the two retailers in a count charging breaches of the implied warranties of fitness for intended purpose, merchantability, and wholesomeness or reasonable fitness for human consumption. The trial court ruled that a retail druggist does not warrant the inherent fitness of drugs sold on prescription and dismissed the defendant retail drug stores. On appeal, the appellate court affirmed the finding of the Circuit Court,<sup>2</sup> but on the basis of impelling public interest the question was certified to the Supreme Court of Florida. The supreme court found no evidence of a breach of implied warranty and affirmed the opinions of the lower courts. *McLeod v. W. S. Merrell Co.*, 174 So. 2d 736 (Fla. 1965).

The uniqueness of the *McLeod* case is two-fold. Initially, it restates and reaffirms what previous decisions have held to be the implied warranties made by a druggist filling a prescription, and secondly the theory of strict liability in tort, in relation to the liability of a druggist filling a prescription, was discussed and rejected.

<sup>1</sup> For an interesting medical-legal statement of the history of triparanol, or "Mer/29," see Spangenberg, *Aspects of Warranties to Defective Prescription Drugs*, 37 U. COLO. L. REV. 194 (1965); and Note, 16 W. RESERVE L. REV. 392 (1965).

<sup>2</sup> *McLeod v. W. S. Merrell*, 167 So. 2d 901 (Fla. App. 1964).