sonality-disordered defendants competent; that is, a finding of not competent and not restorable means individuals with severe personality disorders would never be tried and therefore could continue to pose a significant risk to the community.

Another relevant factor for a forensic examiner to consider related to this case is the statutory exclusion of self-induced intoxication as the cause for mental deficiency in NGMI pleas. Examiners are tasked with considering the difficult distinction between psychosis occurring in the context of intoxication, which most jurisdictions would not entertain in an NGMI plea, and persisting psychotic disorder triggered by substance use, which arguably could qualify for an NGMI plea. Although the DSM-5 may be the best guide in making such a distinction, there is plenty of room in its definitions for reasonable interpretation. For example, while the "with perceptual disturbances" specifier for stimulant intoxication specifically indicates that hallucinations occur with intact reality testing, the diagnostic note for substance-induced psychosis is more ambiguous, explaining that the diagnosis should only be made instead of substance intoxication when delusions and/or hallucinations predominate in the clinical picture.

Parens Patriae Liability Prevented by Governmental Immunity

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Government Does Not Owe a Special Duty to Protect Citizen About Whom Report of Aberrant Behavior Was Made to Police

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In *McLaughlin v. City of Martinsburg*, 2017 W. Va. LEXIS 638 (W. Va. 2017), the Supreme Court of Appeals of West Virginia held that there was no evidence of police negligence for failure to take Peter James McLaughlin into custody after emergency dispatchers received a report that he exhibited abnormal behavior at a local restaurant. The appeals court affirmed there was no evidence of a "special duty" doctrine owed by the state in the case of Mr. McLaughlin when police did not observe signs of mental distress after he was discharged from a psychiatric hospital.

Facts of the Case

Mr. McLaughlin voluntarily admitted himself to a local psychiatric hospital on or about December 22, 2013, in West Virginia. On December 28, 2013, Mr. McLaughlin requested to be discharged. According to his treating physician, he "appeared to be in control of his actions and was alert and completely oriented" (*McLaughlin,* p 2, FN 1). He denied any suicidal, self-harm, or homicidal ideation, nor did he appear to be responding to internal stimuli, and he was subsequently discharged. He started his journey on foot from the hospital to a local restaurant where an employee called police due to concern that Mr. McLaughlin exhibited psychotic behavior. The police arrived and met with Mr. McLaughlin. However, police stated that Mr. McLaughlin did not ask for help related to a mental illness, nor was there an indication of a medical emergency or crisis situation. Thus, he was not taken into police custody. Ms. McLaughlin (who was either Mr. McLaughlin's wife or former wife at the time of the incident), also called 911 requesting a safety check on Mr. McLaughlin by the police; however, officers were unable to locate him. Later that day, Mr. McLaughlin was struck and killed by a vehicle while walking along a public roadway.

In December 2014, Mr. McLaughlin's petitioner, Connor McLaughlin (as administrator of Peter McLaughlin's estate) filed a lawsuit against the City of Martinsburg alleging the city was negligent and that its negligence resulted in Mr. McLaughlin's death. In January 2016, the estate filed a motion for declaratory judgment contesting the standard responses by police in emergency situations and requesting that the circuit court declare that emergency dispatchers and officers need to treat individuals with a mental illness, bizarre behavior, or drug addiction behavior as a special class of citizen that may benefit from special services. The estate contended that the prevailing standard of police interaction was insufficient to protect special citizens and police should provide additional interventions when warranted.

In asserting that the city owed a special duty to protect Mr. McLaughlin, the estate noted that the state is "entitled to prevent a person from injuring himself . . . when it can be demonstrated that an individual . . . is so mentally ill that by sheer inactivity he will permit himself to die . . . . [T]hen the state is entitled to hospitalize him" (*State ex rel. Hawks v. Lazaro,* 202 S.E.2d 109 (W. Va. 1974), p 123).

The court denied the estate's motion to seek declaratory judgment and, in July 2016, the Circuit Court of Berkeley County granted summary judgment in favor of the City of Martinsburg, stating that the city is a political subdivision and is thus entitled to all protections and immunities under the purview of the West Virginia Governmental Tort Claims and Insurance Reform Act (W. Va. Code § 29–12A-1 (2013)). Further, the circuit court cited police protection from lawsuit under W. Va. Code § 29–12A-5(a)(5) (2013). The estate subsequently appealed that decision to the Supreme Court of Appeals of West Virginia, leading to the present case.

Ruling and Reasoning

In reaching its decision, the court reasoned that the petitioner cannot prove negligence against the respondents and officers because there was no evidence that a special relationship existed between the local governmental entity and Mr. McLaughlin. The court upheld that the local governmental entity is immune from tort liability given that it is a political subdivision and police protection falls under a general duty to serve and protect the public, citing W. Va. Code § 29–12A-5(a)(5) (2013).

The court cited *Benson v. Kutsch* (380 S.E. 2d 36 (W. Va. 1989)) in positing that a lawsuit could be pursued if there were evidence that a special relationship existed between the local governmental entity and an individual. However, the court found no substantial evidence that a special relationship was established between emergency respondents and Mr. McLaughlin. Mr. McLaughlin did not seek assistance at the time he interacted with officers, did not exhibit any behavioral disturbances, and did not appear to be in a state of duress or under the influence of a substance or medication. Thus, the court noted, Mr. McLaughlin did not demonstrate any evidence of imminent danger to himself or others as described in *Hawks*. According to officers, Mr. McLaughlin's speech was coherent, and he provided law enforcement the name and telephone number of a friend who had apparently made arrangements to pick him up. The court found the estate did not support its claim that the city officers breached their constitutional and statutory duties.

Finally, the court rejected the estate's request for a jury determination rather than summary judgment to determine whether Mr. McLaughlin was in imminent danger, stating that his claim was "unprecedented" and referenced West Virginia Rule of Appellate Procedure, which states that the determination should be rendered by the court as a matter of law (W. Va. R.A.P. Rule 10(c)(7) (2013)). The court unanimously affirmed that there was no error in granting summary judgment to the City of Martinsburg on this ground or in denying the estate's motion for declaratory judgment.

Discussion

In May 2018, Mr. McLaughlin's estate also pursued litigation against the health care system and the attending psychiatrist who discharged him from the hospital. Ultimately, the court of appeals affirmed the circuit court's ruling to dismiss the case against the health care system and psychiatrist. Although this case focused primarily on police conduct, it also reflected legal considerations which are important for psychiatrists to consider when discharging a patient from the inpatient setting.

Over the past 50 years, there has been an evolution in the field's understanding of the criteria for which a patient can be involuntarily hospitalized. This standard has shifted from the *parens patriae* doctrine, where the "state protects those unable to protect and care for themselves," to the standard of dangerousness to self or others (Wall B, Anfang S: Legal regulation of psychiatric treatment, in The American Psychiatric Association Publishing Textbook of Forensic Psychiatry. Edited by Gold LH, Frierson RL. Arlington, VA: American Psychiatric Association Publishing, 2018, p 134), to a civil commitment standard that focuses on the presence of dangerousness and/or grave disability (Simpson JR, Carannante V: Hospitalization: voluntary and involuntary, in Principles and Practice of Forensic Psychiatry. Edited by Rosner R, Scott CL. Boca Raton, FL: CRC Press, 2017, p 126). Further, although police officers have significant discretion regarding if or when to take an individual into their custody, this dangerousness standard now often guides police officers' decisions to bring an individual to an emergency department for

a psychiatric evaluation. This case highlights that the dangerousness model is the current standard for determining whether hospitalization or police intervention is warranted.

McLaughlin highlights the complexities involved in decisions about psychiatric admission and discharge and the balance of police power or *parens patriae* principles with individual autonomy. In this case, the estate explored the possibility of reclaiming the *parens patriae* doctrine to minimize harm via a model of beneficent paternalism in the state known for case law rejecting that doctrine in favor of the dangerousness model. Whether this pendulum might swing again toward the direction attempted by the estate remains to be seen.

Civil Commitment after Dismissal of Criminal Charges for Incompetent Defendants

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Bridgewater State Hospital Maintains the Authority to Hold a Defendant and File for Civil Commitment After a Defendant's Charges Have Been Dismissed

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In *In re E.C.*, 92 N.E.3d 724 (Mass. 2018), the Supreme Judicial Court of Massachusetts held that Bridgewater State Hospital could amend a petition for civil commitment and hold a defendant whose charges were dismissed but who remained in need of psychiatric hospitalization while the petition for civil commitment was pending. In making the decision, the justices considered the due process rights of criminal defendants as well as the interests of safety for the public and the individual.

Facts of the Case

E.C. was charged in the Boston Municipal Court with malicious destruction of property worth more than $250 in May 2012. After a psychologist testified that E.C. was not competent to stand trial in July 2012, he was transferred to Bridgewater State Hospital for further competency evaluation. In August 2012, the judge ordered that E.C. return to Bridgewater for a 35-day hospitalization after Bridgewater reported that E.C. was not competent to stand trial. Then Bridgewater petitioned the court to commit E.C. for a six-month period of treatment as authorized by Massachusetts law, which was granted.

Before the end of the six-month commitment period, Bridgewater filed a petition in the Brockton Division of the District Court Department for a one-year extension of the commitment of E.C., in accordance with Massachusetts law. One week before the scheduled hearing, E.C. filed a motion to dismiss his criminal charge, which was granted. Bridgewater was not informed about the dismissal until six days later. Bridgewater thereafter immediately filed a motion to amend its original petition to a petition for civil commitment under a separate provision of Massachusetts law.

Bridgewater reasoned that the law allowed for civil commitment of defendants whose charges had been dismissed. E.C. opposed the motion, reasoning that dismissal of his criminal charge ended his original commitment order. The judge denied Bridgewater's motion to amend, finding that the hospital could not detain E.C. after dismissal of his criminal charges. Furthermore, the judge ruled that the hospital did not have the authority to begin civil commitment proceedings since E.C. could no longer be considered a patient at Bridgewater after dismissal of his criminal charges. E.C. was discharged from Bridgewater in March 2013.

Bridgewater filed a motion for reconsideration by the district court, which was denied in March 2013. The Appellate Division of the District Court affirmed that decision in November 2013. The appeals court reversed that decision in August 2016. The Supreme Judicial Court of Massachusetts then reviewed the matter.

Ruling and Reasoning

To reach its decision, the court aimed to determine the legislature's intent in passing the law allowing for one-year extensions of the initial six-month commitment, given that the statute "does not address the procedure to follow if criminal charges are dismissed while a petition for recommitment is