

1990

Kathy Lynn Higgins, individually and as guardian
ad litem for Shaundra Higgins, her daughter, v.
SALT LAKE COUNTY, by and through SALT
LAKE COUNTY MENTAL HEALTH, DR.
WILLIAM KUENTZEL, SHERYL STEADMAN,
THE UNIVERSITY OF UTAH and THE
UNIVERSITY OF UTAH MEDICAL CENTER
: Brief of Appellant

Utah Supreme Court

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TIME COURT

IN THE SUPREME COURT OF THE STATE OF UTAH

KATHY LYNN HIGGINS, individually
and as guardian ad litem for
SHAUNDRA HIGGINS, her daughter,

Plaintiff-Appellant.

v.

SALT LAKE COUNTY, by and through
SALT LAKE COUNTY MENTAL HEALTH,
DR. WILLIAM KUENTZEL, SHERYL
STEADMAN, THE UNIVERSITY OF
UTAH and THE UNIVERSITY OF UTAH
MEDICAL CENTER,

Defendants-Appellees.

Case No. 90255

PRIORITY 16

BRIEF OF APPELLANT

On Appeal from the Judgments of the Third District Court
In and For Salt Lake County
Honorable James Sawaya, Judge

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PARTIES

The parties to this litigation are:

Appellant: Kathy Lynn Higgins, individually and as guardian ad litem for her daughter Shaundra Higgins;

Appellees: Salt Lake County, by and through Salt Lake County Mental Health, Dr. William Kuentzel and Sheryl Steadman;
The University of Utah and the University Medical Center;

Other
Defendants: This action was originally commenced against the Appellees, Caroline Trujillo and the State of Utah, by and through the Department of Corrections and by and through the Department of Social Services. This is an appeal from summary judgment entered pursuant to Rules 54(b) and 56 of the Utah Rules of Civil Procedure, in favor of the Appellees. Caroline Trujillo remains as a party in the trial court. Appellant settled with the State of Utah and the case against it was dismissed.

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JURISDICTION

Jurisdiction is vested in the Utah Supreme Court under Article VIII, Section 3 of the Constitution of Utah and Rules 4(a), 54(b) and 56 of the Utah Rules of Civil Procedure.

STATEMENT OF ISSUES

1. Did the lower court err in granting summary judgment where there were issues of controverted material fact?

2. Did the lower court err in granting summary judgment that County Mental Health and the Medical Center owed no duty to Kathy Higgins and her daughter, who was stabbed by Appellees' mentally ill and dangerous patient with whom they had a special relationship, when County Mental Health and the Medical Center had the right or ability to control their patient and negligently breached the recognized standards in the community in failing to do so?

3. Did the lower court err in granting summary judgment that County Mental Health and the Medical Center owed no duty to Kathy Higgins and her daughter, who was stabbed by a mentally ill and dangerous patient of County Mental Health and the Medical Center, when their breach of recognized standards of care in the community in evaluating and treating the patient caused the stabbing?

4. Did the lower court err in granting summary judgment that County Mental Health owed no duty to Kathy Higgins and her daughter, who was stabbed by a mentally ill patient placed into the care and custody of County Mental Health as a condition of a probation order, where the stabbing resulted from County Mental

Health's failing to evaluate and treat the patient as required by the court order and from County Mental Health improperly causing probation to terminate by making false and inadequate disclosures to probation authorities?

5. Did the lower court summary judgments violate the Open Courts Provision, and the due process and equal protection guarantees of the Utah and United States Constitutions?

DETERMINATIVE PROVISIONS

The determinative provisions are the Open Courts, due process and equal protection guarantees of the Utah and United States Constitutions.

STATEMENT OF THE CASE

This is a civil action against Salt Lake County, by and through Salt Lake County Mental Health and its employees Dr. William Kuentzel and Sheryl Steadman (hereinafter "County Mental Health"), and the University of Utah and the University Medical Center (hereinafter "Medical Center") for permanent and severe physical and psychological injuries suffered by Shaundra and Kathy Higgins when Caroline Trujillo (hereinafter Trujillo), a dangerous and mentally ill patient of the Appellees, stabbed Shaundra on April 10, 1984.^{1/}

Appellant's claims against County Mental Health and the Medical Center are based upon their breach of a duty to meet minimum standards recognized in this community in evaluating,

^{1/}Appellant's claims were brought in two separate lawsuits which were consolidated into the present case. [R. at 751-752].

treating and controlling their dangerous patient, Trujillo, including the minimum standards recognized in this community to take reasonable and medically accepted precautions to control a violent patient that is seeking in-patient hospitalization for her mental illness.

The Appellant carefully pled her claims of negligence in the lower court. [R. at 955-973; 1030-1042]. The Complaints specifically allege that County Mental Health and the Medical Center breached duties owed by psychotherapist/mental health care providers that have consistently been recognized by the Courts to run to assaulted victims of mentally ill and dangerous patients, including: (1) the duty arising from the "special relationship" between the patient and her psychotherapist/mental health care providers; (2) the duty of the psychotherapist/mental health care provider to properly treat the patient and to use reasonable care to take necessary precautions to protect the patient's victims; and, (3) the duty imposed upon and accepted by psychotherapist/mental health care providers under court orders to care for and treat a mentally ill probationer and to accurately and properly advise probation authorities about the probationer/patient's failure to meet court-ordered conditions.^{2/}

The Appellees moved for summary judgment asserting no duty

^{2/} The Amended Complaints also claim damages for the emotional distress suffered by Shaundra's mother, Kathy Higgins, from the stabbing. The arguments in this brief as to "duty" owed Shaundra apply to the emotional distress claim and Appellant asserts, without repeating the arguments, that Appellees owed her this duty as well.

was owed to Appellant and her daughter. To support their motions, the Appellees submitted lengthy statements of fact to minimize their relationship with Trujillo and their involvement with her. [R. at 1144-1252; 1849-1869].

Appellant disputed most of Appellees' lengthy and unsupported facts with precise citations to the record [R. at 1609-1634, 1931-1983] and submitted detailed affidavits from respected local mental health experts and from members of Trujillo's family to show that, together with the deposition testimony, this stabbing could have been avoided had the Appellees met appropriate and recognized standards of care in evaluating, treating or controlling their dangerous and mentally ill patient. [R. at 1701-1715; 1761-1767; 2123-2126]. Copies of the Affidavits are attached as Exhibits 1 for the experts and 2 for Trujillo's family.

The lower court granted summary judgment on the basis that no duty was owed to Appellant and her daughter. [R. at 2346-2351]. Copies of the Judgments are attached as Exhibits 3 and 4. Appellant timely filed her Notice of Appeal, a copy of which is attached as Exhibit 5. [R. at 2360].

STATEMENT OF FACTS

Every case thoughtfully examining the duties owed by psychotherapist/mental health care providers to third parties arises within the context of a trial of the facts of the particular

case.^{3/} Recent cases from the Utah Supreme Court examining the duty to control the conduct of a third person also carefully review the facts to determine if a duty exists.^{4/} The following recitation of facts, and the reasonable inferences that can be drawn in Appellant's favor, are based on this principle. These facts demonstrate the close and special relationship of County Mental Health and the Medical Center and Trujillo, her long and well-known history of violence and the negligent evaluation, treatment and control of Trujillo resulting in the stabbing of Shaundra.

A. THE STABBING OF SHAUNDRA HIGGINS.

Trujillo, a known dangerous, mentally ill schizophrenic with an organic brain disorder, began to display obvious signs of increased psychotic disorder in the late winter and spring of 1984. [R. at 1761-1767; Aff'd. of Dr. Louis A. Moench].

Although a long-term patient of County Mental Health with a history of voluntary and court-ordered hospitalizations at the Medical Center, Trujillo was negligently denied proper care and treatment during this time from County Mental Health and the Medical Center. For instance, she was not voluntarily nor

^{3/} See e.g., Perreira v. State, 768 P.2d 1198 (Colo. 1989); Naidu v. Laird, 539 A.2d 1064 (Del. 1988).

^{4/} See Owens v. Garfield, 784 P.2d 1187, 1188-90 (Utah 1989) (examining facts necessary to establish special relationship); Ferree v. State, 784 P.2d 149 (Utah 1989) (examining history of assailant's violence in considering duty).

involuntarily hospitalized when the standard of care mandated it for her intensified psychotic and dangerous condition. [R. at 1761-1767, 2123-2126, 2127; Aff'ds. of Drs. Moench and Attiyal].

On the afternoon of April 10, 1984, as Trujillo, then age 26, sat alone in her bedroom, she thought about an imagined incident between Shaundra Higgins and Trujillo's daughter that Trujillo had brooded over for six months. Trujillo became quite agitated and responded to an inner voice telling her to get a knife and stab Shaundra. [R. at 2067, 2068]. Psychotic symptoms like these had caused Trujillo to act violently and stab other people in the past and had led, among other things, to three involuntary commitments by court order to County Mental Health and four involuntary commitments by court order to the Medical Center. [R. at 1678, 1682, 1688, 2179].

Trujillo followed these voices and began walking toward the Higgins home. She stepped into an alley next to the home and found Shaundra returning from an errand to a local 7-11 convenience store. Trujillo stabbed Shaundra with a knife at least three times, piercing Shaundra's chest, severing her aorta and puncturing her abdomen. [R. at 621-629, 2031-2037]. An ambulance was summoned which rushed Shaundra to Primary Children's Hospital where complex and delicate surgery was performed.

Shaundra is now afflicted with extensive and permanent scars from the surgery, including one that runs the entire length of Shaundra's chest and abdomen, together with two other scars from the stabbing that indicate the precise locations where Trujillo

stuck the knife. [Depo. of Kathy Higgins, p. 48-50, 72-90; R. at 2372].

The stabbing also strongly impacted Shaundra's and Kathy's emotional and psychological well-being. Shaundra now has a substantial psychiatric disorder which impairs her interpersonal relationships, education and employment prospects and which will require intensive psychiatric therapy and possible hospitalization. The disorder is manifested by nightmares, the fear of being alone and a decline in school performance and grades. In addition, Shaundra's mother, Kathy Higgins, suffers from emotional distress that has also caused nightmares, fear of others and fear for her now afflicted daughter. [Depo. of Kathy Higgins, p. 48-50, 72-90; R. at 2372].

B. TRUJILLO'S HISTORY OF MENTAL ILLNESS AND VIOLENCE AND HER SPECIAL RELATIONSHIP WITH COUNTY MENTAL HEALTH AND THE MEDICAL CENTER.

Trujillo's stabbing of Shaundra Higgins followed a decade of extensive, well-documented psychological problems and violent, assaultive criminal behavior which included a similar violent stabbing.^{5/}

1. Trujillo's Mental Illness and Her Treatment From County Mental Health and the Medical Center.

Trujillo, before and at the time she stabbed Shaundra, had been diagnosed as having a major mental illness, schizophrenia,

^{5/}A lengthy chronology of Trujillo's history of psychiatric problems is attached to Appellant's Opposition to the Medical Center's Motion for Summary Judgment [R. at 2128-2234].

paranoid type, as well as organic brain dysfunction, and marginal intelligence. Her behavior fit into a category of an anti-social personality disorder, which distinguished her from most schizophrenics and set her apart as someone needing extra attention and precautions. [Aff'd. of Dr. Louis A. Moench; R. at 1761 - 1767].

The first official indications of Trujillo's illness and anti-social behavior are documented in criminal records indicating five arrests for being "ungovernable" as a young teenager [R. at 2023] and hospital records indicating Trujillo, at age fifteen, was violent and belligerent and a user of amphetamines, barbituates, hallucinogenics, heroine, cocaine and "anything that she can get her hands on." [R. at 2142].

Trujillo was placed by Court order in a detention center to control this destructive behavior and then was involuntarily and "temporarily" committed by Court Order for hospitalization to the Medical Center after she made delusionary claims that her parents were trying to kill her. [R. at 650, 663, 1679 and 1680].

As early as 1976, the Medical Center itself diagnosed Trujillo as a paranoid schizophrenic with poor judgment and no insight into her illness. [R. at 660]. Three physicians, including ones from the Medical Center, testified at a mental health hearing that resulted in Trujillo's temporary commitment becoming an indeterminate order of hospitalization, there being no appropriate, less restrictive alternative. [R. at 1679].

Thereafter, as an involuntarily committed patient, Trujillo was transferred to the care of County Mental Health where her course of treatment consisted of failed appointments for therapy and where she demonstrated vague, global and anxious tendencies, with forced and irregular speech and loose and tangential thoughts. County Mental Health psychiatrists also diagnosed her as a schizophrenic at this early age. [R. at 633-634].

Trujillo was again involuntarily hospitalized at the Medical Center in 1978 after she had abandoned a ten-day-old child at Holy Cross Hospital because she was delusional. She was treated with in-patient therapy and then discharged to be followed by County Mental Health where she was almost immediately arrested for assault and felony theft. [R. at 634, 667, 668, 2033, 2153].

The Courts sent Trujillo to the Utah State Hospital to determine if she was competent to stand trial. [R. at 670]. Trujillo was threatening and violent at the hospital and State Hospital psychiatrists diagnosed her as having borderline to below normal intelligence, with probable organic brain syndrome and some psychotic features, including schizophrenia and a personality disorder with anti-social and hysterical features. [R. at 571-576].

Trujillo was eventually determined to be "competent" and was released from the State Hospital. [R. at 577] Five months after her release, she was again committed by Court Order to the Medical Center for a fourth time because she had been arrested, was

threatening social workers, having trouble with police arrests and altercations and evidencing increased paranoia. [R. at 579]. The order of hospitalization on this occasion again found that Trujillo was mentally ill and needed custodial care, there being no less restrictive alternative. [R. at 1682]. The Medical Center on this occasion evaluated Trujillo as follows:

This is the fourth psychiatric admission for this patient diagnosed as paranoid schizophrenia. There have been previous problems of disposition as well as previous involuntary commitments. It should be noted that she has had trouble in the past following medication instructions, caring for herself, and children.

[R. at 2179].

Trujillo was again discharged from the hospital with follow-up care to be provided by County Mental Health. In 1981, Trujillo was admitted to the Utah State Hospital for a second time to determine if she was competent to stand trial for stabbing a senior citizen. [R. at 2195]. The medical records on this occasion describe Trujillo as talking to herself and then stabbing the senior citizen while yelling, "Die, bitch." [R. at 2202]. The records further show Trujillo's family pleading for help and warning that Trujillo had to be arrested to be hospitalized. [R. at 2203].

While hospitalized for this earlier stabbing, Trujillo was diagnosed as having "subnormal intelligence crowded by the appearance of a mild organic brain syndrome and a personality style with anti-social features." [R. at 2201]. She attacked patients and

had to be secluded. [R. at 2197]. After her medications were increased to therapeutic levels, she was found competent and not overtly psychotic and returned to the criminal court to stand trial. [R. at 2197].

Trujillo pled guilty to this stabbing and to other charges pending against her for striking pedestrians. [R. at 1688-1690]. She was placed on probation with the condition she receive mental health care from County Mental Health. [R. at 1688 -1690]. As a condition of this probation, Trujillo was required to receive treatment three times a week [R. at 1725] and see her primary therapist once a week at County Mental Health. As set forth in detail below, Trujillo utterly failed to meet these conditions [R. at 1727-1730] and her probation was improperly terminated because of representations made by County Mental Health that Trujillo had complied with the conditions of probation. [R. at 1737].

After the probation terminated, Trujillo began to display obvious signs that her condition was worsening. She suffered persistent auditory hallucinations, confusion and thought disturbances. She engaged in self-harmful acts, including attempted suicide, and erratically used medications prescribed for her. [R. at 1761-1767]. As shown below, she sought, but was denied, the care and treatment from County Mental Health and the Medical Center that was necessary to control her and avoid the stabbing of Shaundra. [R. at 1761-1767, 2123-2126].

A number of mental health experts evaluated Trujillo after the stabbing. Virtually every one of them indicated the stabbing

could be attributed to Trujillo's mental illness and propensity for violence. Trujillo was seen as (1) mentally ill, dangerous and in need of care and treatment in an in-patient hospital before the stabbing [Aff'd. of Dr. Manya Attiya, R. at 1673-1676]; (2) having a very constricted mental status which was compatible with mild to moderate mental retardation, exhibiting signs of paranoid schizophrenia, that made Trujillo an ongoing threat to others and likely to repeat her assaultive behavior [Report of Dr. Allen Jeppson; R. at 629-632]; and, (3) having an organic brain impairment with a schizophrenic personality disorder that made Trujillo a danger to others with little ability to appreciate the extent and consequences of her actions. [Depo. of Dr. Robert Howell, p. 38 and Exhibit 4 to Depo; R. at 2369].

Dr. Louis A. Moench, a licensed general and forensic psychiatrist, reviewed the medical records and the depositions of Appellees' key employees in this case. [R. at 1761-1767]. His full affidavit is set forth as Exhibit 1. Dr. Moench unequivocally concluded that Trujillo presented an unacceptable high level of risk prior to the stabbing because of her mental illness and substantial history of violence that set her apart from other schizophrenics. He further noted that Appellees acted negligently in assessing Trujillo's treatment and in failing to hospitalize her. [R. at 1761-1767]. Indeed, his testimony, together with that of Dr. Manya Attiya, indicates that had the proper evaluation and treatment been provided, including hospitalization, Trujillo's

psychosis and the risk of violence could have been better controlled and it would have been unlikely that this stabbing would have occurred. [R. at 1761-1767, 1673-1677].

2. The Criminal and Violent History of Trujillo Which County Mental Health and the Medical Center Knew or Should Have Known.

Trujillo had a long history of violence and crime that Appellees knew or could have easily learned from examining Trujillo's medical records. That history is set out in full detail as Exhibit 19 to Appellant's Opposition to the Medical Center's Motion for Summary Judgment. [R. at 2241-2282].

The record in this case shows Trujillo had committed several violent and assaultive acts between the ages of twelve and twenty-three, from 1972 through 1981. For instance, Trujillo had attempted suicide [R. at 2239], had been declared ungovernable five times [R. at 2239], had been diagnosed as a danger to herself and others [R. at 2243], had been repeatedly arrested for loitering and loitering for the purposes of prostitution [R. at 2240], had been arrested for trespassing [R. at 2240] and had been arrested for assault and battery and for theft. [R. at 2240].

In addition, Trujillo had been committed by Court order to the Medical Center on four separate occasions [R. at 2180], had been committed to the care of County Mental Health on at least two occasions [R. at 1680, 1688] and had twice been committed to the care of the Utah State Hospital [R. at 2199]. Many of these commitments were characterized by assaults and threats on jailers

[R. at 2263], hospital staff [R. at 2278 and 2269], social workers and other patients [R. at 2252, 2257 and 2273]. On many occasions, Trujillo was placed in closed wards, in seclusion and in restraints to control her violence. [R. at 2252 and 2272].

In July, 1981, at the age of twenty-three, Trujillo was arrested in Ogden for assaulting pedestrians. The Ogden City Police indicated on this occasion that "a crazy lady" using obscene gestures and abusive language struck several pedestrians, including a woman and her small child. [R. at 581]. Trujillo pled guilty to the reduced charge of disorderly conduct, [R. at 713] and sentencing was continued until August 1981, pending the completion of a presentence report, during which time Trujillo was placed "on her own recognizance." [R. at 713, 714].

Trujillo failed to appear for sentencing and was arrested in September 1981, in Salt Lake City for the unprovoked stabbing of a senior citizen. As briefly set forth in the following chart, the facts of that stabbing are remarkably similar to Shaundra's stabbing:

	<u>1981 Stabbing of Senior Citizen</u>	<u>1984 Stabbing of Shaundra</u>
Address:	505 East 900 South	932 Princeton (1052 S.)
Address of Victim:	846 South Park St.	932 Princeton
Injury Inflicted:	Stab wound	Stab wound to heart and abdomen
Weapon:	Pocket knife	Small knife

Description of
stabbing:

Victim had just
left 7-11 when
Trujillo ran toward
her with concealed
knife and stabbed
her.

Shaundra was coming
home from 7-11 when
Trujillo ran toward
her with a concealed
knife.

[R. at 2202-2203].

Trujillo pled "no contest" to assault charges for the 1981 stabbing and was sentenced to one year probation on the condition she be treated by County Mental Health in a group home. Trujillo was also placed in the care of County Mental Health for the reduced disorderly conduct charge she pled to in Ogden. [R. at 1688]. As conditions of her sentences, Trujillo was required to continue to take medications, to receive mental health treatments three days a week and to visit Sheryl Steadman, her "primary therapist," at County Mental Health. [R. at 1725]. Importantly, County Mental Health was consulted about and agreed to these conditions. [Steadman Depo. at 91; R. at 1725].

Trujillo stayed in the group home a short while and utterly failed to meet any of the other court-ordered conditions of her probation. She rarely attended the daily sessions and she failed to attend weekly visits to Appellee Steadman. [R. at 1727-1730]. Eventually, she grew increasingly psychotic. [R. at 1731]. Even so, County Mental Health erroneously advised probation authorities at the end of one year that Trujillo was "taking her medications and attending her treatment sessions." [R. at 1733]. The

authorities were also advised that County Mental Health would "continue to monitor her medication" and "urge her to attend therapy." [R. at 1744]. Based upon these erroneous representations, probation officials recommended and in 1983 the Court ordered termination of Trujillo's probation. [R. at 1744].

Subsequent to the erroneous termination of her probation, Trujillo began to be more tangential and to decompensate. [R. at 2232]. She specifically sought to be hospitalized by County Mental Health and the Medical Center, both of which negligently failed to hospitalize, treat and control her.

**C. COUNTY MENTAL HEALTH'S AND THE MEDICAL CENTER'S
TREATMENT AND CONTROL OF TRUJILLO IMMEDIATELY
BEFORE AND AT THE TIME OF THE STABBING.**

In the three months prior to Shaundra Higgins' stabbing, Trujillo and her family desperately sought treatment and care from County Mental Health and the Medical Center to control Trujillo's psychosis and violence. [Aff'd. of Rebecca Navarro; R. at 1701; Aff'd. of Richard Navarro; R. at 1708; Aff'd. of Dorothy Candelaria; R. at 1713].

Indeed, Trujillo, in "crisis" and on her own initiative, sought care and treatment in January of 1984, when, without an appointment, she went to County Mental Health to obtain medications. County Mental Health, although noting Trujillo to be "demanding to see her primary therapist," agitated," "unreasonable" and "angry," refused to prescribe the medications. [Crosby Depo. at 40; R. at 2234, 2377].

Trujillo went to see her primary therapist, Sheryl Steadman one week later for a "regular appointment," which appointments she had repeatedly failed to attend in the past. At the time, Trujillo had head and neck tremors. Steadman did not change her usual "approach" to Trujillo and prescribed a dosage of medication that was inadequate, even though Trujillo was so "loose and tangential" as to make Steadman unsure whether Trujillo could comprehend what Steadman was telling her about her medications. [R. at 2234; Steadman Depo. at 125-128; R. at 2371].

Shortly thereafter, on February 17, 1984, Trujillo again went to see Sheryl Steadman who found her "funny today" and only capable of answering "yes" or "no" to open-ended questions. [R. at 2235]. Again, Steadman merely prescribed the medications Trujillo had been receiving. Importantly, Steadman did not consult with Dr. William Kuentzel, the County Mental Health psychiatrist "responsible" for Trujillo [Steadman Depo. at 116; R. at 2371], and her failure to do so fell far below the standard of care. [Aff'd. of Dr. Moench, R. at 1764-1766].

In addition, Dr. Kuentzel did not see Trujillo at all in 1984. Medications continued to be prescribed by nurses, which medications were insufficient to control Trujillo's psychotic symptoms and propensity for violence, [Aff'd. of Dr. Moench, R. at 1765, 1766], and which medications were even less than those necessary and considered appropriate by another County Mental

Health psychiatrist. [R. at 1765].6/

On February 25, 1984, Trujillo's aunt, a nurse employed in a psychiatric ward at Pioneer Valley Hospital, called County Mental Health, claiming Trujillo had slit her wrists, was threatening suicide and requesting that Trujillo be hospitalized because her family could not handle her. [R. at 1893; Aff'd. of Dorothy Candelaria; R. at 1713]. County Mental Health referred Trujillo to the Medical Center but told her aunt that "no county beds were available," [R. at 1893], purportedly referring to a contractual arrangement between County Mental Health and the Medical Center through which the Medical Center served as the "in-patient unit" for County Mental Health. [R. at 2082-2096]. However, when deposed, the Supervisor of County Mental Health responsible for the telephone service, testified that "no county beds available" really meant there were "no beds available for people who had no funds to pay." [Depo. of Sue Fisher, p. 32].

Trujillo and her mother went to the Medical Center on February 25, 1984. At the time of their arrival, Trujillo's chief

6/ County Mental Health followed the substandard procedure of allowing a nurse to prescribe medications and have a doctor at a later time sign the record for legal purposes. Dr. Kuentzel admitted in his deposition that nurses prescribed medication for Trujillo; and the records show he personally evaluated her only one time in 1977. Dr. Kuentzel admitted he never devised a treatment plan for Trujillo and never undertook to determine if Trujillo could follow through with treatments [Kuentzel Depo. Vol. 1 Page 53, 55 and 72; R. at 2152]. Although the records show Dr. Kuentzel prescribed substantial psychotropic medications from 1977 to 1984 for Trujillo, including an ineffective amount just before the stabbing, he swore under oath: "I have very little memory of Caroline Trujillo at all." [Kuentzel Depo. at 85].

medical complaint was a lacerated wrist from a suicide attempt. Both Trujillo and her mother requested that Trujillo see the "crisis people" [Ashcraft Depo. at 35; R. at 2370]]. Trujillo's mother specifically requested her daughter be admitted to the hospital because of her mental illness. [R. at 1701-1705].

The lacerated wrist was treated by Scott Lechman, a medical student not yet licensed to practice. Mr. Lechman, although having no psychiatric training, recalled Trujillo as a "Hispanic woman sitting on a structure, accompanied by another person, with this wound on her wrist." He further recalled that Trujillo absurdly claimed to be "angry with God for about a year" and described her as "an obviously disturbed woman." [Lechman Depo. at 35-38].

Trujillo was then referred to Katy Jones, a "crisis specialist" and a registered nurse. Nurse Jones had never taken a course in treating mentally ill individuals with criminal backgrounds and had only limited authority at the Medical Center. She was a part-time nurse who was not able to, for instance, admit a patient without consulting a physician. [Jones Depo. at 43, 50, and 56; R. at 2371].

Nurse Jones interviewed Trujillo and her mother using a procedure to assess Trujillo's condition that did not meet recognized standards of care. [Aff'd. of Dr. Moench; R. at 1761-1767]. Specifically, Nurse Jones did not review Trujillo's extensive medical records and file, [Jones Depo. at 81; R. at

2374], so she did not even know Trujillo had four prior commitments and was a dangerous paranoid schizophrenic. Nor did Nurse Jones even call a resident psychotherapist. [Jones Depo. at 110; R. at 2374].

Nurse Jones was advised by Trujillo's mother that Trujillo had been "behaving in an erratic manner" [Jones Depo. at 85; R. at 2374], "had episodes of self-abuse" including "head banging, bruising and cutting" [Jones Depo. at 85; R. at 2371], and was having "persistent auditory hallucinations" that "instruct her to harm herself and insist she must die." [Jones Depo. at 87; R. at 2371]. Nurse Jones viewed Trujillo as having confusion in her thought processes, "intertwined with hallucinations and delusions." [Jones Depo at 89-99; R. at 2374]. In fact, there was "turmoil going on in her head" with thoughts compromised by "hallucinations and delusions" while at the Medical Center. This type of hallucination precipitated the "self-inflicted laceration." [Jones Depo. at 90 -94; R. at 2374]. Finally, Nurse Jones found Trujillo was "tearful," her memory of recent and remote events was "poor" and her "insight and judgment was impaired." [Jones Depo. at 94; R. at 2379].

Despite this appearance and the existence of a recorded diagnosis of schizophrenia and violence, Nurse Jones reached a totally erroneous diagnosis that Trujillo was "depressed" and suffering from a minor "affective" disorder. [Jones Depo. at 75-76; R. at 2379; Aff'd. of Dr. Moench, R. at 1761 to 1766].

Nurse Jones thereafter lied to Trujillo's mother, telling her a bed was not available [R. at 1703-1704], even though the records establish beds were available [R. at 2112-2113] and there was no limit on the so-called "county beds." [Erickson Depo. at 109; R. at 2380]. Instead of taking the necessary and medically required steps to admit Trujillo, Nurse Jones referred her to County Mental Health for a "crisis" admit in a group home known as the Adult Residential Treatment Unit (ARTU). [R. at 1897]. Importantly, this referral violated the Medical Center's own policy that a psychotic or actively suicidal patient or a patient in need of constant supervision not be sent to ARTU. [R. at 2110].

ARTU was a minimally therapeutic setting without adequately qualified or sufficiently available staff to treat Trujillo. [R. at 1668]. It was not an appropriate substitute for the in-patient hospitalization Trujillo required. [Id; R. at 1761-1766]. Even the part-time psychiatrist at ARTU described it as not providing the degree of protection or the level of consistency of care of a hospital. [Ely Depo at 90; R. at 2376]. Nevertheless, Trujillo was referred to this "stepped down" facility on the basis that she could then be seen by Sheryl Steadman, her primary therapist; however, Sheryl Steadman never saw Trujillo while she was in ARTU. [Steadman Depo. at 139; R. at 2371].

Even though Trujillo's family did not believe the group home would help her, they took her there because they could not afford a private hospital and because they believed Trujillo would be

returned to the Medical Center once a bed became available. [R. at 1701-1712]. At the group home, Trujillo was met by a "crisis line" phone receptionist. The crisis line worker, who was not authorized to diagnose patients, [Romero Depo. at 40] conceived of and authored ARTU's "treatment plan" for Trujillo without the assistance of a physician and in contravention of County Mental Health's own policies and procedures. [Romero Depo. Vol. II. at p. 5]. The "plan," developed without consultation with Ms. Steadman or Dr. Kuentzel and without review of Trujillo's medical records [Romero Depo. at 81], called for Trujillo to stay at ARTU for the short term in order to assess her living environment. [Romero Depo. Ex. 5]. The plan was based upon the telephone worker's erroneous impression that Trujillo's main problem was simply, "manipulative, attention-seeking behavior." [Romero Depo. at 86].

While she stayed at ARTU for approximately the next sixteen days, Trujillo was never seen by the "responsible physician," Dr. William Kuentzel or by her "primary therapist," Sheryl Steadman. On two brief occasions she was seen by a Dr. Joy Ely, a part-time psychiatrist whose limited role was to evaluate ARTU residents for medications. [Ely Depo. at 22; R. at 2376]. Dr. Ely candidly admitted in her deposition that she had no training with mentally ill individuals with criminal backgrounds, was not involved in treatment plans for group home residents, was not involved in directly working with residents and had learned "quite quickly"

that the ARTU staff would not allow her to refer a resident for hospitalization. [Ely Depo. at 31, 32, 36 and 46; R. at 2376].

Dr. Ely also evaluated Trujillo without medical records and without talking to Dr. Kuentzel. Her interviews were so limited she had no independent recollection of Trujillo. [Ely Depo. at 138; R. at 2376]. She was able to interpret her notes of Trujillo that indicated Trujillo was "erratic" (inconsistent), "non-adaptive" (not aware of what she was doing), "labile" (crying one minute, laughing the next, angry another time) and displaying a complete "lack of insight." [Ely Depo. at 69-75; R. at 2376]. Dr. Ely prescribed substantial increases in dosages of the psychotropic medications Trujillo was taking for these problems, [Ely Depo. at 77; R. at 2376] but these increased dosages were never administered. [Stevens Depo. at 36; R. at 2382].

Trujillo's dramatic psychosis and symptoms continued while in ARTU. Once she left and returned within hours because she felt suicidal. [Whitaker Depo., Ex. 3, R. at 2373]. Another time she left "against" medical advice. [Id.]. Trujillo again requested to be hospitalized at the Medical Center, but her request was denied. [R. at 2235].

Trujillo was sent home by ARTU on March 15, 1984, even though her family was reluctant to take her back because of the hallucinations, delusions and violence. [Id.] The family took Trujillo back, however, because she "had no other place to go." [R. at Id.].

At this time, Trujillo was placed as a patient in the "evening-weekend" program operated by County Mental Health. This program was not mental health treatment but was to provide a transition into the community from ARTU. [Steadman Depo. at 150; R. at 2371]. Predictably, the therapist for the program did not see Trujillo after she left ARTU and Trujillo missed most of the "evening-weekend" sessions required by the program. [R. at 0177]. Indeed, at the very time Shaundra Higgins was stabbed, Trujillo was supposed to be in a recreational session for the program. [R. at 1757].

Trujillo was seen by Sheryl Steadman during a one-half hour appointment between the time she was released from ARTU and when she stabbed Shaundra. Steadman diagnosed Trujillo as being stable, in part because Trujillo indicated that she was starting a dish washing job arranged for her, [R. at 2235], which job Trujillo hysterically quit on her first day because the dishes were talking to her. [R. at 1708 to 1711]. Steadman did not alter Trujillo's medications, so they remained at an insufficient level to control Trujillo; and Dr. Kuentzel, following substandard procedures, approved this inadequate medication prescription without seeing Trujillo at all. [R. at 2235].

**D. COUNTY MENTAL HEALTH'S AND THE MEDICAL CENTER'S
FAILURE TO MEET STANDARDS OF CARE IN CONTROLLING
AND TREATING TRUJILLO.**

Appellant submitted uncontradicted affidavits from Dr. Louis A. Moench and Dr. Manya Attya to oppose the summary judgment

motions. These affidavits indicate Trujillo was a violent, mentally ill patient that was negligently treated and controlled by Appellees in contravention to the recognized standard of care. Indeed, in their affidavits, Psychiatrists Moench and Attiya persuasively establish:

1. Trujillo presented an unacceptably high level of risk at the time of the stabbing that she would act violently toward herself and others.

2. The Appellees should have known, by a proper evaluation and diagnosis of Caroline Trujillo, of the unacceptable high level of risk.

3. The Appellees failed to properly assess and treat the risk because, among other things:

- (a) they did not review medical records;

- (b) they did not involve experienced and qualified personnel to evaluate and diagnose Trujillo;

- (c) they failed to provide meaningful psychiatric intervention;

- (d) they allowed medication to be prescribed by non-psychiatrists which medication was less than that recommended to control Trujillo, even by ARTU's own psychiatric doctors;

- (e) they did little to evaluate and diffuse Trujillo's propensities for violence; and,

- (f) Appellees should have either voluntarily or involuntarily hospitalized Trujillo for an extended period.

4. Had the Appellees met the appropriate standard of care, Trujillo's psychosis would have been better controlled, the risk for violence significantly reduced and it is unlikely this stabbing would have occurred. [R. at 1761-1767, 2123-2126].

From these expert opinions and evidence, a jury can easily find this tragic stabbing could and should have been avoided had the Appellees only met recognized standards of care.

SUMMARY OF ARGUMENT

This case presents important issues concerning the duty of psychotherapists/mental health professionals to follow the standard of care in the profession and control and properly treat mentally ill and violent patients that injure innocent victims.

A. THE LOWER COURT ERRED IN DECIDING ON SUMMARY JUDGMENT THAT NO DUTY WAS OWED.

Duty is a legal question that is fact-dependent in this case and requires a review of the facts. Almost all of the courts that have examined the question of the duty owed by psychotherapists/hospitals to third parties have carefully reviewed the facts at trial. The lower court committed error in granting summary judgment when there were extensive disputes of material fact. Doe v. Arguelles, 716 P.2d 179, 280 (Utah 1985).

B. UNDER THE FACTS OF THIS CASE, COUNTY MENTAL HEALTH AND THE MEDICAL CENTER OWED WELL-RECOGNIZED DUTIES TO KATHY AND SHAUNDRA HIGGINS TO CONTROL AND PROPERLY TREAT THEIR DANGEROUS PATIENT.

Courts and commentators have recognized three bases upon which an affirmative legal duty is owed by psychotherapists/-mental health care providers to innocent victims injured by their dangerous patients:

1. County Mental Health and The Medical Center Had a Special Relationship With Trujillo Requiring Them to Control and Properly Treat Her.

Under the Restatement (Second) of Torts, § 315, an affirmative duty is owed to victims of dangerous mental patients by psychotherapists/mental health care providers to control the actions of their dangerous patients as a result of the "special relationship" existing with their patients. The duty was owed in this case because of Trujillo's relationship with County Mental Health and the Medical Center and their right or ability to control her.

2. County Mental Health and the Medical Center Owed a Duty as Psychotherapists/Mental Health Care Providers to Use Reasonable Care to Take Precautions to Protect Kathy and Shaundra Higgins.

Historically, health care professionals have had an affirmative duty to protect the public from their dangerous patients. A large number of courts have extended this duty to the psychotherapists/mental health care providers to provide the necessary care and treatment to protect innocent victims from a dangerous and mentally ill patient. The duty is to meet reasonable standards of care, ordinarily possessed and exercised by members of the profession, to properly control and treat the patient.

3. County Mental Health Owed Duties Arising Out of Two Court Sentences Placing Trujillo Into Its Care.

Salt Lake County Mental Health owed duty, arising from its agreement to properly control and treat Trujillo when she was

placed into its care as a probationer under two criminal sentences. County Mental Health agreed but failed to provide the treatment and then caused probation to terminate by falsely reporting to probation authorities that Trujillo had been treated and would continue to receive mental health treatments. Shaundra Higgins has an actionable claim arising out of the failure to provide the court-ordered treatments and accurate information to probation authorities.

C. THE DISTRICT COURT'S HOLDING VIOLATES OPEN ACCESS TO COURT, DUE PROCESS AND EQUAL PROTECTION GUARANTEES OF THE UTAH AND UNITED STATES CONSTITUTIONS.

The District Court's holding in this case violates open access to court, due process and equal protection guarantees of the Utah and United States Constitutions because it deprives the plaintiff of a remedy at law for her injuries and unfairly discriminates against victims who are injured by health care providers who breach accepted standards of care and by making a certain group of "therapists" immune from suit despite that breach.

LEGAL ARGUMENT

This case addresses important issues concerning the legal rights of Shaundra and Kathy Higgins, injured due to the negligence of County Mental Health and the Medical Center, who were entrusted with the care of Trujillo, a mentally ill and violent patient. Specifically at issue is the question of the legal duty

owed by County Mental Health and the Medical Center to Kathy and Shaundra in the factual context of this case. Importantly, Kathy and Shaundra have not and are not seeking a ruling that County Medical Health and the Medical Center are strictly liable for all harmful acts committed by their mentally ill and dangerous patients. Rather, Kathy and Shaundra seek only to hold County Mental Health and the Medical Center responsible for breaching their duty to control and properly treat their patient, using the accepted standards of care, when that breach caused Shaundra to be viciously stabbed.^{7/}

Recent Utah Supreme Court pronouncements and the majority of case law from other jurisdictions, as well as sound public policy, recognize a duty of psychotherapists and mental health care providers to victims of their mentally ill patients to use reasonable care in diagnosing and treating patients that are known or should be known, in accordance with the standards of the psychiatric profession, to present a danger to themselves or others. In appropriate circumstances, this means the psychotherapist and mental health care provider must take reasonable precautions to control the patient, especially where the right or ability to control the patient is not at issue.

^{7/}"Recognition of an affirmative duty owed persons other than the patient does not mean the psychiatrist is liable for the negligence of the patient. Rather, the psychiatrist will be liable only when his own negligence is responsible for the injury in question." Naidu v. Laird, 539 A.2d 1064 (Del. 1988).

The compelling facts in this case present just such a circumstance. Trujillo voluntarily submitted to the control of County Mental Health and the Medical Center by seeking hospitalization for her illness. She also came directly under the control of County Mental Health because of the two court sentences placing her in its care.

A. THE LOWER COURT ERRED IN GRANTING SUMMARY JUDGMENT AND RULING THAT NO DUTY TO CONTROL AND PROPERLY TREAT TRUJILLO WAS OWED WHEN THERE WERE DISPUTED ISSUES OF MATERIAL FACT.

This is an appeal from the grant of summary judgment. As such, this Court gives no deference to the trial court's conclusions. Blue Cross and Blue Shield v. State, 779 P.2d 634, 636 (Utah 1989).

Also, fundamental to the consideration of this case is the propriety of awarding summary judgment despite the existence of disputed issues of material Fact. Utah R. Civ. P. 56(c). While "duty" is a legal question, it is also highly fact-dependent and requires a careful review of the facts. See e.g. Owens v. Garfield, 784 P.2d 1187 (Utah 1989). Accordingly, almost all of the courts that have examined the question of the duty owed by psychotherapist/hospitals to third parties have done so only in the context of a full trial of the facts. See e.g. Perreira v. State of Colorado, 768 P.2d 1198 (Colo. 1989); Naidu v. Laird, 539 A.2d 1064 (Del. 1988).

There were many disputes of material fact in the court below. The standard of review on summary judgment requires all facts and

all reasonable inferences drawn therefrom to be reviewed in the light most favorable to the appellant and her daughter, with all doubts being resolved in their favor. Doe v. Arguelles, 716 P.2d 179, 280 (Utah 1985).

Under this standard, it is apparent that the lower court erred. When the uncontroverted facts are viewed in a light most favorable to the Kathy and Shaundra Higgins, it is undeniable that County Mental Health and the Medical Center owed a duty when the Appellees had the right and ability to control Trujillo and the standard of care required them to do so. The facts are clear that Trujillo was dangerous and mentally ill, that she presented an unacceptable risk of harm and that Appellees had the ability and right and did actually control her. Appellant is entitled to show at trial that the injuries suffered were proximately caused by Appellees' failure to meet even the minimal standards of care imposed in this community in treating and controlling their patient. Naidu v. Laird, 539 A.2d 1064 (Del. 1988).

**B. COUNTY MENTAL HEALTH AND THE MEDICAL CENTER OWED
A DUTY TO CONTROL AND PROPERLY TREAT TRUJILLO SO
AS NOT TO INJURE KATHY AND SHAUNDRA HIGGINS UNDER
THE FACTS OF THIS CASE.**

The courts which have considered the question of the affirmative duty owed by psychotherapists and mental health care providers to innocent victims provide three bases that give rise to a "duty." The first recognizes that certain relationships provide for legal duty: "The relationship giving rise to that duty may be

found either in that existing between the therapist and the patient [citation omitted] or in the more broadly based obligation the practitioner may have to protect the welfare of the community." McIntosh v. Milano, 403 A.2d 500, 511-12 (N.J. Super. 1973). See also Naidu v. Laird, 539 A.2d 1064 (Del. 1988).

In addition, the courts have imposed a duty running to victims when a mental health care provider such as County Mental Health agrees to provide mental health care for a mentally ill probationer with a history of violence. Semler v. Psychiatric Institute of Washington D.C., 538 F.2d 121, 127 (4th Cir. 1976), cert. denied, 429 U.S. 827 (1977); see also Whalen v. State of Nevada, 679 P.2d 248 (Nev. 1984); Payton v. United States, 679 F.2d 475 (5th Cir. 1982).

Appellant's claims are founded upon these three bases. Appellant carefully alleged that County Mental Health and the Medical Center breached the duty created by their special relationship with Trujillo, by their professional obligations and by the agreement to provide care and treatment to Trujillo under the two sentencing orders.

1. The Special Relationship Between Trujillo and County Mental Health and the Medical Center Gave Rise to a Duty to Shaundra and Kathy Higgins to Meet Appropriate Standards of Care in Controlling and Treating Trujillo.

The first and most frequently relied upon basis to impose legal duty is set forth as an exception to the proposition found in Section 315 of the Restatement (Second) of Torts that absent a

"special relationship" there is no duty to control the conduct of a third person to prevent physical harm to another. Owens v. Garfield, 784 P.2d 1187 1189 (Utah 1989). The Utah Supreme Court has established that a "special relationship" cannot be determined in the abstract but applies to different situations from which legal rights and obligations flow:

Determining whether one party has an affirmative duty to protect another from the other's own acts or those of a third party, requires a careful consideration of the consequences for the parties and society at large. If the duty is realistically incapable of performance, or if it is fundamentally at odds with the nature of the party's relationship, we should be loath to determine that relationship "special" and to impose a resulting "duty" for it is meaningless to speak of a "special relationship duty" in the abstract. These terms are only labels which the legal system applies to different situations to indicate that certain rights and obligations flow from them; they are "an expression of the sum total of those considerations of policy which lead the law to say that a particular plaintiff is entitled to protection. W. Prosser, Law of Torts, 333 (3rd Ed. 1964), quoted in Bradshaw v. Rawlings, 612 F.2d 135, 138 (3rd Cir. 1979), cert. denied, 446 U.S. 909, 100 S.Ct. 1836, 64 L.Ed.2d 261 (1980).

Beach v. University of Utah, 726 P.2d 418 (Utah 1986).

Most commentators and almost all courts have recognized the relationship of a hospital or psychotherapist and a dangerous mental patient as such a "special relationship." This is because such a relationship typically allows for the right or ability to control the patient and the standard imposed on the psychotherapist or health care provider is only that which is recognized

in the community. Thus, the duties imposed are realistically capable of performance and are commonly accepted and understood. Indeed, where the patient seeks treatment and hospitalization, the duty is in harmony and not at odds with the nature of the relationship. See Prosser and Keaton, Law of Torts, P. 383-384 (1985) (hospitals and psychotherapists who have charge of dangerous patients have a duty to control their charges and to guard other persons against their charges' dangerous propensities. See also Harper and Kind, The Duty To Control The Conduct Of Another, 43 Yale L.J. 886 (1984).

Under the Restatement approach a duty exists to control and properly treat a patient even where the patient is deemed to be "voluntary." In these instances, the courts impose a standard of reasonable care to protect victims against the voluntary patient's acts whenever the psychotherapist has reason to foresee, in accordance with accepted psychiatric standards, that the patient presents an unreasonable risk of serious bodily harm to others.^{8/} The only departure from this rule is made in a limited number of cases where the assailant is classified as "voluntary," is resistant to

^{8/} See Tarasoff v. Regents of the University of California, supra, 551 P.2d 334 (Cal. 1976) (imposing duty to take reasonable precautions where the assailant was voluntary out-patient); McIntosh v. Milano, 403 A.2d 500 (1979) (psychotherapist responsible for voluntary acts of out-patient); Lipari v. Sears, Roebuck and Co., 497 F. Supp. 185, 187 (D. Neb. 1980) (V.A. Hospital responsible for voluntary out-patient previously in day care treatment); Bradley Center, Inc., v. Wessner, 296 S.E. 2d 693 (1982) (private mental health hospital owed duty to control patient upon accepting voluntary admission).

treatment and has little or no history of violence.^{9/} But even the cases making the "voluntary patient" distinction recognize that in certain circumstances, the psychotherapist/ voluntary relationship will give rise to a duty to protect a third party.^{10/} Those circumstances generally are based upon the psychotherapist's ability or right to control the patient, the patient's mental health and the patient's history of violence.

The recent and well-reasoned decision in Perreira v. State, 768 P.2d 1198 (Colo. 1989) analyzes most of the special relationship cases in this area and indicates they can be understood by employing a continuum reflecting factual situations with different levels of control over the patient.

The Perreira Court indicates that at one end of the continuum are factual situations involving involuntarily committed mentally ill patients who have violent propensities. Perreira v. State,

^{9/} See, for example, the cases cited by the Appellees in the Court below. Cooke v. Berlin, 735 P.2d 830 (Ariz. App. 1987) (no history of violence, not seeking hospitalization and no ability or opportunity to control conduct); Brady v. Hopper, 570 F. Supp. 1333 (D. Colo. 1983), Aff'd, 751 F.2d 329 (1984) (no history of violence and not seeking hospitalization); Abernathy v. United States, 773 F.2d 184, 189 (1985) (no history of violence and not diagnosed as dangerous); Hasenai v. United States, 541 F. Supp. 999 (D. Md. 1982) (resistant to treatment and hospitalization).

^{10/} Brady v. Hopper, 570 F. Supp. 1333 (D. Colo. 1983) (it is implicit in the majority of cases in this area that the therapist/ patient relationship is one which under certain circumstances will give rise to a duty on the part of the therapist to protect third persons from harm); Hasenai v. United States, 541 F. Supp. 999 (D. Md. 1982) (implicit in the exception to Section 315, however, is the proposition that such a special relationship must include the right or ability to control another's conduct).

supra at 1212.^{11/} In that instance, where the right and ability to control the patient is established, a greater duty of care is imposed. Perreira v. State, supra at 1213; Naidu v. Laird, supra at 1064. This case fits within this standard.

"At the mid-point in the continuum are cases involving a mentally ill person who voluntarily seeks psychiatric treatment in a hospital as an in-patient." Id. at 1211. The majority of cases in this area impose a duty to take reasonable precautions--including temporary retention or commitment--to protect potential victims from the patient's violent propensities. Id. at 1212. This is elementary because when a voluntary patient seeks hospitalization for his mental illness, questions and problems of the right and ability to control or assess dangerousness evaporate. Indeed, where a voluntary mentally ill out-patient who has violent propensities seeks hospitalization, the health care provider "is under a duty to establish control." Hasenai v. United States, 541 F. Supp. 999, 1012 N.23 (D. Md. 1982) (citing Greenburg v. Barbour, 322 F. Supp. 745 (E.D. Pa. 1971)). This case also fits within this standard.

On the other end of the continuum is a situation, not present in this case, where there is a limited right to control a patient

^{11/}"Once a mentally ill person has been involuntarily committed to a mental health facility, the treating psychiatrist has adequate opportunity to learn of the patient's condition, including any propensity to violence, and the corresponding ability to prolong the patient's confinement in the interest of the patient's safety and the safety of others."

and a limited opportunity to observe the patient's violent propensities. Perreira v. State, supra at 1210.^{12/} These cases usually include voluntary out-patients who refuse hospitalization and have no prior history of violence. In those instances, the duty imposed is correspondingly limited, e.g. a duty to warn when a specific threat is made against an identifiable victim.^{13/}

The cases from the Utah Supreme Court that address liability of actors for the conduct of another are generally consistent with

^{12/}"Because in these cases the therapist is treating the mentally disturbed person as a voluntary out-patient and has limited opportunity to observe and determine the patient's violent propensities, and even less opportunity to control the patient's behavior, some court's have limited the duty to take protective action to those instances in which the patient makes a specific threat against a readily identifiable victim, e.g. Thompson v. County of Alameda. . .; see also Brady v. Hopper. . . ."

^{13/}The duty to warn cases have been criticized because they focus on the wrong issue:

The query as to who might be the appropriate party to warn in light of a general threat to the public is, for the most part, a mis-directed question. Specifically, where a patient's dangerous tendencies are imminent yet generalized, the only effective resource for the psychiatrist or psychologist, in most instances, would be to contact the police in order to initiate emergency detention proceedings. Society must not become the victim of a dangerous patient's ambiguity. Stated otherwise: "In some circumstances, when the potential victim is an unidentifiable individual or group (as in the Lipari case), the only responsible intervention may be clinical--for example, hospitalization.

Schuster v. Altenburg, 424 N.W.2d 159, 172-173 (Wis. 1988).

this analysis. A negligent actor in Utah may be liable for conduct which causes harm to an innocent victim. Doe v. Arguelles, 716 P.2d 279 (Utah 1985) (Corrections Officers liable where released juvenile violently injures fourteen-year-old non-identified victim); Little v. Division of Family Services, 667 P.2d 49 (Utah 1983) (Division of Family Services liable for wrongful death of a child placed in foster home).

Moreover, the Utah Supreme Court has recently indicated a relationship like the one in this case is a "special relationship" under the Restatement approach. In Owens v. Garfield, 784 P.2d 1187 (Utah 1989) the Court used the Restatement approach to determine the State owed no duty to control a babysitter that abused a child where there was no meaningful relationship between the State and the babysitter. In reaching its conclusion, the Court found that a more significant relationship was necessary for duty and cited cases relied upon by the Appellant throughout this litigation to show the "special relationship" in this case sufficient to impose duty. Peterson v. State, 671 P.2d 230 (Wash. 1983) (recognizing duty arises out of psychotherapist and mental health patient relationship); Division of Corrections v. Neakok, 721 P.2d 1121 (Alaska 1987) (recognizing special relationship between parole officer and parolee).

Appellant asserts that the evidence indicates the right or ability to control as being uncontestable in this case. First, Trujillo was in the care of County Mental Health by virtue of Court-ordered sentences. County Mental Health agreed to and

assumed a duty to treat Trujillo as the Court ordered and to make full and accurate reports to probation authorities. Thus, there was no question of control. See Perreira v. State, 768 P.2d 1198, 1213 (Colo. 1989) (involuntary commitment imposes duty); Naidu v. Laird, 539 A.2d 1064 (Del. 1988) (duty where patient committed).

Second, Trujillo voluntarily sought and requested hospitalization. She actually relinquished control to County Mental Health and the Medical Center, who exercised control by referring her to the emergency room for treatment, evaluating her, referring her to ARTU, treating her at ARTU, a residential program and sending her back into the same environment where it was inevitable she would stab the child about which she had been brooding for six months. Hasenei v. United States, 541 F. Supp. 999, 1012 n.23 (D. Md. 1982) (duty to establish control); Greenberg v. Barbour, 322 F. Supp. 745 (E.D. Pa. 1971).

Third, Trujillo was a Utah resident entitled to receive mental health services as a patient of a mental health system, in which Appellees had a critical role, that had the responsibility to supervise and treat the mentally ill. Utah Code Ann. § 64-7-7 (1977). In addition, the Medical Center had the responsibility under statute to provide emergency services without discriminating with regard to sex, race or prior inquiry as to the ability to pay, Utah Code Ann. § 26-8-1 et seq. and the Medical Center had the duty, as a publicly funded hospital, to provide services to all persons. Hill-Burton Act, 42 U.S.C. § 291 et seq.

Fourth, County Mental Health and the Medical Center had the legal right to control Trujillo. The Utah Mental Health Statutes in 1984 provided for admission of a voluntary patient for care and observation. Section 64-7-29 of the Utah Code Ann. stated that a "mental health facility [including by designation County Mental Health and the Medical Center] . . . may admit for observation, diagnosis, care and treatment any individual who is mentally ill or has symptoms of mental illness. . . ." In addition, section 64-7-31 of the Utah Code Ann. provided that the Appellees may exercise control over a patient to restrict release if conditions warrant. The Appellees could even hold a patient who demanded release for up to forty-eight hours during which time they could try to persuade the patient to continue in the hospital, to be voluntarily committed, or so that involuntary commitment procedures could be commenced. Lipari v. Sears, 497 F. Supp. 185 (D. Neb. 1980) (duty to initiate reasonable precautions including commitment); Williams v. United States, 450 F. Supp. 1040 (D. S.D. 1978) (duty to seek involuntary commitment).¹⁴

¹⁴/In 1988, the Utah Legislature passed Utah Code Ann. S 78-14(a)-101 et. seq. which became effective on April 25, 1988. The law provides a "therapist" [as defined] has no duty to warn or take precautions for violent behavior of a client, except where there is a threat and a reasonably identifiable victim, which duty can be discharged by communicating the threat to the victim and law enforcement agencies. The legislative history of the law indicates it was introduced in a much different form that gave "therapists" total immunity when a patient injured a victim. Strong objection and explicit debate narrowed the law so that it would not apply to a case like this one where professional standards were breached. [R. at 2296, 2304-2308, 2310-2315]. Of

Thus, there is no question or problem of the Appellees' right or ability to control Trujillo. Accordingly, the duty owed was one of reasonable care to protect Appellant and her daughter from the dangers of their mentally ill patient. The evidence shows the Appellees breached this duty by failing to provide full professional evaluation of Trujillo, by failing to admit her for treatment, by failing to detain her to be voluntarily committed, and by failing to detain her for a period to permit involuntary commitment. Appellant is now entitled to demonstrate this breach proximately caused her injury. See Littleton v. Good Samaritan Hospital and Health Center, 529 N.E.2d 449, 460 (Ohio 1988); Naidu v. Laird, 539 A.2d 1064 (Del. 1988); Petersen v. State, 671 P.2d 320 (Wash. 1983); Lipari v. Sears, 497 F. Supp. 185, 190 (D. Neb. 1980); Bradley Center, Inc. Wessner, 296 S.E.2d 693 (Ga. 1982); McIntosh v. Milano, 403 A.2d 500, 511 (N.J. 1979).

2. County Mental Health and the Medical Center as Psychotherapist/Mental Health Care Providers Owed Duty to Use Reasonable Care to Take Necessary Precautions to Protect Kathy and Shaundra Higgins from Trujillo.

The second basis the courts have used to impose duty is founded upon a health care provider's affirmative duty to protect others, including the general public, from its patients.

(Cont.) course, the law cannot be applied because the Appellee institutions are not "therapists" under it and because it would violate the rule against retroactive application of substantive law. Stevens v. Hendersen, 741 P.2d 952 (Utah 1987).

Acknowledgement of this basis initially occurred in cases where patients had infectious or contagious diseases. Where a health care provider negligently fails to diagnose a contagious illness, or fails to protect the public from an infected person by means of seclusion or other appropriate steps, the courts have unanimously recognized a cause of action against the health care provider by an injured third party who is infected by contact with the contagious patient. Fosgate v. Corona, 330 A.2d 355 (N.J. 1974) (failure to diagnose epilepsy that injured person while patient driving); Tisdale v. Fields, 433 A.2d 212 (N.J.1982); Freeze v. Lemon, 210 N.W.2d 576 (Iowa 1973) (failure to diagnose epilepsy that injured persons when patient later had seizure while driving); Hofman v. Blackmon, 241 S.2d 752 (Fla. Dist. Ct. App. 1970) (failure to diagnose tuberculosis); Gooden v. Tipps, 651 S.W.2d 364 (Tex. Ct. App. 1983) (doctor prescribing Quaalude without caution liable to person injured by patient driving under the drug's influence); Warton Transport Corp. v. Bridges, 606 S.W.2d 521 (Tenn. 1980) (trucking company may sue doctor for injury arising out of doctor's negligent physical examination of driver.

Following these holdings, most courts have taken the logical step of imposing a similar liability on a health care provider who negligently fails to diagnose, treat or hospitalize mentally ill patients who have known violent propensities and who, as a result

of the health care provider's negligence, injure third parties.^{15/}

For instance, in Schuster v. Altenburg, 424 N.W.2d 159 (Wis. 1988) the court faced a fact situation similar to this case. In Schuster, the plaintiffs complaint stated a claim for relief based on a psychotherapist's failure to commit and to properly diagnose and treat a voluntary patient, including the failure to prescribe proper medications to the patient and the failure to take reasonable measures to protect members of the public from the patient's dangerous conduct. In holding that such a claim is proper, the Court reasoned:

We can conceive of no reason why a psychiatrist, as a specialist in the practice of medicine, should not be compelled, as are all other practitioners, to meet the accepted standard of care established by other practitioners in the same class.

Id. at 172. The Schuster Court also noted that the duty imposed is one of "reasonable care to protect a victim," which care in-

^{15/} Salt Lake County, citing the case of Ferree v. State, 784 P.2d 149 (Utah 1989) in the trial court, attempted to invoke the "public duty" rule to suggest it could not be liable for failing to perform a breach of duty owed to the general public. In Ferree, the Court found corrections officials could not be liable to a member of the general public particularly where the plaintiff presented "no evidence" that the released offender had exhibited violent behavior to another. (Id. at 152). No case in the country has applied the "public duty" rule to the psychotherapist/mental patient relationship. Indeed, one court has recently indicated the provision of psychiatric care is an exception to the rule. See e.g., Woodrow v. Benton County, 783 P.2d 1102 (Wash. App. 1989) (citing Petersen v. State, 671 P.2d 230 (1983) (psychotherapist/patient relationship a special relationship)). Of course, the facts show that this stabbing was not committed on a general member of the public but on a neighbor about whom Trujillo had been brooding.

cludes conventional clinical intervention such as reassessment, medical charges or hospitalization designed to relieve the patient's symptoms. Id. at 168. The Schuster Court clarified the scope of the duty defined and stated that "the therapist need only exercise that degree of skill, knowledge, and care ordinarily possessed by members of [that profession] under similar circumstances." Id.

Other jurisdictions in cases similar to this one have had no difficulty holding mental health care providers/hospitals liable for their negligence in diagnosing and treating violent mental patients who injure third parties. See e.g. Clark v. State, 472 N.Y.S.2d 170 (1984) (decision to not hospitalize a mentally ill patient not founded upon a careful examination of the patient and the medical record); Jablonski by Pauls v. United States, 712 F.2d 391 (9th Cir. 1983) (assailant not involuntarily hospitalized because physicians negligently failed to obtain and review past medical records); McIntosh v. Milano, 403 A.2d 500, 511-12 (N.J. 1973) (court recognized that hospital had duty to take reasonably necessary precautions to protect against violence of an out-patient treated on weekly basis); Greenburg v. Barbour, 322 F. Supp. 745 (E.D. Pa. 1971) (failure to act within reasonable time to admit individual seeking hospitalization). See also Perreira v. State of Colorado, 769 P.2d 1198 (Colo. 1989); Naidu v. Laird, 539 A.2d 1064 (Del. 1988); Peterson v. State of Washington, 671 P.2d 230, 237 (1983); Lipari v. Sears Roebuck and Co., 497 F. Supp. 185, 191 (D. Neb. 1980).

The reasoning in these cases is compelling. The duty that is imposed on the health care provider is simply the generally recognized duty owed by a professional practitioner, i.e. "to exercise that reasonable degree of skill, knowledge, and care ordinarily possessed and exercised under similar circumstances." Tarasoff v. Regents of the University of California, 551 P.2d at 345, cited in Schuster v. Altenburg, 424 N.W.2d at 164; McIntosh v. Milano, 403 A.2d at 511-12.

A psychiatrist is not expected to render a fool-proof prediction of future violence. Lipari, 497 F. Supp. at 192. On the contrary, "[t]he concept of 'due care' in appraising psychiatric problems, assuming proper procedures are followed, must take account of the difficulty often inevitable in definitive diagnosis." Hicks v. United States, 511 F.2d 407, 417 (D.C. Cir. 1975). What is required of the psychiatrist is to exercise that reasonable degree of skill and knowledge ordinarily possessed by practicing psychiatrists in arriving at an informed and realistic assessment of the patient's present condition and propensity for violence. . . .

Perreira v. State, 768 P.2d at 1217.

This duty of exercising due care is consistently applied by the Utah Supreme Court which has recognized that public institutions have a duty of care and may be held liable for their negligent treatment of the mentally ill which results in harm to the patient or others. In Frank v. State, 613 P.2d 517 (Utah 1980), the Court refused to shield the Medical Center from a wrongful death suit brought by a father alleging the negligence of a state-employed psychologist in allowing his son to leave the hospital, which resulted in his son's suicide.

Furthermore, the Utah Supreme Court has cited, with approval, cases imposing similar duties upon health care professionals. See e.g. Payton v. United States, 679 F.2d 475 (5th Cir. 1982)^{16/} (negligence of mental health care provider is actionable in case resulting in injury to third party); Peterson v. State, supra,^{17/} (holding a state hospital and its psychiatrists responsible for harm caused by mental patient who voluntarily left the hospital); Semler v. Psychiatric Institute of Washington D.C., 538 F.2d 121 (4th Cir. 1976)^{18/} (psychiatric institute and psychiatrists responsible when out-patient killed non-identifiable third party).

The facts in this case reveal that the Appellees failed in their duties by, among other things, not reviewing Trujillo's substantial medical records, not involving qualified personnel in the treatment and evaluation of Trujillo, not evaluating Trujillo's threat of danger to others, not prescribing the proper medications to control Trujillo's psychosis and violence, and not admitting Trujillo to the Medical Center.

3. County Mental Health Owed Duty to Shaundra and Kathy Higgins to Properly Treat Trujillo and to Convey Accurate Information to Probation Authorities Under Two Court Sentences.

The third basis upon which duty is imposed on County Mental Health arises out of its role in the criminal justice system and

^{16/}Cited in Little v. Division of Family Services, 667 P.2d 49 (Utah 1983).

^{17/}Cited in Owens v. Garfield, 784 P.2d 1187 (Utah 1989).

^{18/}Cited in Doe v. Arguelles, 716 P.2d 279, 283 (Utah 1985).

its acceptance of Trujillo as a patient in accordance with court orders. The two Courts sentencing Trujillo in 1981, one resulting from Trujillo's prior stabbing, required Trujillo to receive mental health treatments through County Mental Health. In accepting Trujillo as a patient, County Mental Health was aware of her condition and agreed that she would receive the treatment the Court deemed necessary.

It is clear that County Mental Health did not provide these treatments and Trujillo's condition and propensity for violence was not addressed. The County Mental Health failure to insure Trujillo met her probation conditions and received the necessary care and treatment breached a duty arising from the Court sentences. See Semler v. Psychiatric Institute of Washington, D.C., 538 F.2d 121, 123-24 (4th Cir. 1976) (psychiatric institute liable for failing to provide care necessary to mental patient under sentence requiring that care); Payton v. United States, 679 F.2d 475 (5th Cir. 1982) (Complaint stated claim against Bureau of Prisons for failing to provide proper psychiatric care for prisoner/patient).

Likewise, County Mental Health breached an actionable duty recognized by the courts to convey accurate information to sentencing authorities. The Court records indicate that even though Trujillo did not meet these probation conditions, County Mental Health falsely advised probation authorities that she had done so.

Hicks v. United States, 511 F.2d 407, 420 (D.C. Cir. 1975) is on point. In that case, the plaintiff brought a wrongful death action seeking damages for the death of a patient's wife, who was shot by her husband after he was discharged from a government hospital. The hospital in Hicks, like County Mental Health here, was aware of the patient's violent psychological record but failed to properly represent the record in a letter to the Court. The assailant was released on the basis of the hospital's letter and later killed his wife.

In affirming the judgment entered for the plaintiff, the Court of Appeals held that the hospital, in exercising due care, had the responsibility to accurately advise the Court and was "negligent" when it did not do so. Id. at 418.

County Mental Health had the responsibility to accurately advise probation authorities about Trujillo, her abysmal compliance with court-ordered mental health treatments and her propensity for violence when she was placed into an unstructured setting. They failed to fulfill this responsibility resulting in the termination of her probation with no constraints on Trujillo and the placement of Trujillo in the environment where she would inevitably become psychotic and violent. Shaundra Higgins now has a claim based on County Mental Health's breach of duty in not treating Trujillo in accordance with her probation conditions and in not properly advising probation authorities about her.

**C. THE RULING BELOW VIOLATES THE OPEN COURTS PROVISION,
THE DUE PROCESS AND THE EQUAL PROTECTION GUARANTEES
OF THE UTAH AND UNITED STATES CONSTITUTIONS.**

To rule that no duty was owed under the circumstances of this case, as the lower court did, violates the Open Courts Provision of the Utah Constitution, Article 1, Section 11, and the due process and equal protection guarantees of the Utah and United States Constitutions, U.S. Constitutional Amendment XIV, Utah Constitution, Article 1, Section 7, Utah Constitution, Article 1, Section 24.

The lower court's ruling effectively denies Appellant access to the judicial process without meaningful alternatives and effectively eliminates "remedies designed to protect basic individual rights without sufficient justification." Berry by and Through Berry v. Beach Aircraft, 717 P.2d 670 (Utah 1985). This violates Utah's Open Courts Provision found at Section 11 of the Constitution's Declaration of Rights which "specifically guarantees a remedy by due course of law for injuries to a person, property or reputation." Berry at 675.

Furthermore, the lower courts' order violates the due process guarantees of the Utah Constitution applicable under the Open Courts Provision because the Appellant's right to recover for personal injuries is a substantive right that is guaranteed by Article 1, Section 11, Condemarin v. The University Hospital, 775 P.2d 348 (Utah 1989). This is particularly true because there is no meaningful alternative allowed to seek redress for injury and

the ruling favors psychotherapists/mental health care providers' economic interest in avoiding liability over the Appellant's interest in recovering damages. Sun Valley Water Beds v. Hughes & Sons, 782 P.2d 188 (Utah 1989).

Finally, the ruling below violates equal protection guarantees by unconstitutionally treating persons in the same class differently. First, the ruling discriminates between victims who are injured by health care providers who breached accepted standards of care. Second, the ruling discriminates by making a certain group of professionals immune from suit despite their departure of standards of care. See e.g. Condamerin v. The University Hospital, supra, (Stewart, J.).


CONCLUSION

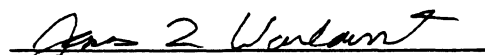
Appellant and her daughter submit that County Mental Health and the Medical Center owed them the duty of controlling and properly treating their dangerous and mentally ill patient and respectfully request the Court reverse the summary judgments and remand this case for trial.

DATED this 5th day of December, 1990.

STOKER & THOMAS

CLYDE, PRATT & SNOW


Stephen G. Stoker
David B. Thomas


Rodney G. Snow
Neil A. Kaplan
James L. Warlaumont

CERTIFICATE OF SERVICE

I hereby certify that I caused four true and correct copies of Brief of Appellant to be served, postage prepaid thereon, this 5th day of December, 1990, to the following:

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A handwritten signature in cursive script, reading "James Z. Wadsworth", is written over a horizontal line.

Tab A

A F F I D A V I T

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Dr. Louis A. Moench states as follows:

1. I am a general and forensic psychiatrist licensed to practice in the State of Utah. I am aware of the standard of care in this community for evaluating and treating the mentally ill with violent propensities.

2. I have reviewed a large volume of documents outlining the psychiatric, treatment, and criminal history of Caroline Trujillo as it relates to the stabbing of Shaundra Higgins. In particular, I have reviewed the evaluation and treatment records from the University of Utah, where Ms. Trujillo was seen in the emergency room and hospitalized on four occasions; the Utah State Hospital, where Ms. Trujillo was hospitalized three times; and, Salt Lake County Mental Health, where Ms. Trujillo was evaluated and treated individually and in residential placement at various times from 1976 through 1984. I have also reviewed the depositions of William Kuentzel, M.D., Joy Ely, M.D., Sheryl Steadman, R.N., Katy Jones, R.N., Lynn Whitaker and Larry Romero.

3. Based on my review of the record and the depositions, the defendants in this case should have known, by a proper evaluation and diagnosis of Caroline Trujillo, that there was an unacceptably

EXHIBIT 1A

high level of risk that Caroline Trujillo at the time of the stabbing would act violently towards herself or others. Specifically, the records set forth above indicate:

a. Caroline Trujillo, since her teens, had been diagnosed as having a major mental illness, schizophrenia, paranoid type, as well as organic brain dysfunction, and marginal intelligence. In addition, her behavior fit in a category of anti-social personality disorder.

b. Ms. Trujillo had been described in the records by psychiatrists as hostile, dangerous, having an explosive personality disorder, disorganized in her behavior, confused in her thoughts, inappropriate in her mood, lacking insight into a need for medication, and lacking any commitment to self-therapeutic or self-betterment goals. Psychotic symptoms were prevalent near the time of the stabbing, including hallucinations of voices derogating herself, hallucinations telling her to harm herself, and paranoid delusions.

c. Unlike most schizophrenics, Caroline Trujillo had a substantial history of violent behavior. This set her apart as someone needing extra attention and precautions. There were episodes of random assaults on strangers, including a prior stabbing. There were many episodes of assaults on patients and staff, during prior hospitalizations, necessitating seclusion and restraint.

d. Caroline Trujillo's assaultiveness was attributable to the features of her mental illness and not merely to "bad acting" of a voluntary nature.

e. When medication in proper type and dosage was given in conjunction with an inpatient environment, her symptoms of psychosis were markedly reduced and propensities for violence diminished. In the several months prior to the stabbing, Ms. Trujillo's medication and environment were not sufficient to control her psychotic symptoms and her propensity for violence.

f. For at least four months before the stabbing of Shaundra Higgins, Caroline Trujillo displayed obvious signs of psychotic relapse as indicated by: (i) The persistence of auditory hallucinations; (ii) aberrant behavior, including self-harmful acts; (iii) confusion and thought disturbances; and, (iv) erratic use of medications and failure to appreciate her need for them.

4. The defendants should have known that Caroline Trujillo posed an unacceptably high level of risk of bodily harm to others, which risk was not properly assessed and treated because:

a. The crisis nurse at the emergency room did not review records which would have alerted her that Caroline Trujillo was a paranoid schizophrenic with organic brain damage and a history of violence due to her illness and had required involuntary hospitalization four times.

b. The crisis nurse misdiagnosed Caroline Trujillo as "depressed" and suffering from an "affective disorder," a conclusion she should not have reached had she reviewed the records, or more carefully evaluated Miss Trujillo.

c. The crisis nurse failed to properly interview available family members about Caroline Trujillo and her history.

d. The crisis nurse failed to inquire as to prior history of violence.

e. The crisis nurse failed to consult with the psychiatric resident on call.

f. The crisis nurse improperly referred Caroline Trujillo to the Adult Residential Treatment Unit ("ARTU"), a minimally therapeutic setting without adequately qualified or sufficiently available staff to treat her illness at that time.

g. No record was made of any consideration or evaluation at the hospital or ARTU as to Miss Trujillo's potential for repeating past violence.

h. There was little evidence of meaningful psychiatric intervention. A psychiatric resident or physician was not involved at the emergency room, and Dr. Joy Ely's role at the ARTU Unit was very limited. There is no indication that Dr. Ely participated in a treatment plan beyond the prescribing of medication and Joy Ely indicated that Salt Lake County Mental Health would not allow her to do more than that.

i. The responsible physician for Caroline Trujillo at Salt Lake County Mental Health, Dr. William Kuentzel, did not examine Ms. Trujillo in 1984. The record shows Dr. Kuentzel had only one psychiatric evaluation in the seven years of treatment of Caroline Trujillo at Salt Lake County Mental Health. This is so even though Dr. Kuentzel authorized antipsychotic medications for much of this period. Psychiatric evaluations at three month intervals are considered necessary by the Joint Task Force on Community Psychiatry of the National Council of Community Mental Health Centers and the American Association of Community Psychiatrists in Association with Committees of the American Psychiatric Association, especially for the severely mentally ill, to monitor the efficacy of, tolerance to, and need for medication, and to supervise the formulation and modification of treatment plans.

j. Likewise, psychotropic medication evaluation and prescription, including dosage changes, must be performed by a psychiatrist. Medication decisions for Caroline Trujillo were mostly made by Sheryl Steadman, who lacked the qualifications or experience necessary.

k. Despite the recommendations by a psychiatrist at ARTU that Caroline Trujillo's medications be increased to control her symptoms, it does not appear that increases were administered.

l. There is little recorded evidence that any attention was paid to evaluating or diffusing propensities for violent behavior through County Mental Health, and especially through ARTU.

m. The treatment plan for Caroline Trujillo developed at ARTU was not sufficient because it included mainly elements with which Caroline had not complied in the past and family therapy which never occurred.

n. Larry Romero, who was principally assigned to Caroline Trujillo at ARTU, had no experience with Ms. Trujillo and was not qualified to devise a treatment plan for a suicidal, schizophrenic, actively psychotic patient. Sheryl Steadman, who knew Ms. Trujillo, was involved inadequately in her disposition and treatment at ARTU and made no change in the treatment plan after discharge to respond to her intensified distress.

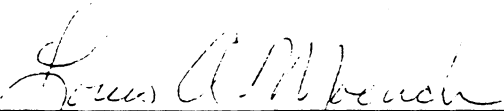
o. Caroline Trujillo was a known abuser of heroin and amphetamines. There was a failure to deal seriously with substance abuse in her treatment and there were no serious attempts to intervene in her drug use though amphetamines may have contributed to her paranoid psychosis. On the day of the stabbing, it is reported that Caroline Trujillo smoked marijuana. Therefore, abuse was apparently still occurring.

5. There is clear evidence that Caroline Trujillo gradually improved when psychotic relapses were treated by a highly structured, inpatient hospital setting, with an increase in her antipsychotic medications. At the time of the stabbing, her medication dose was materially less than that most recently recommended by a

psychiatrist to control her symptoms. In light of her psychotic state, the low dosage of medications was not sufficient to control her violence.

6. In my opinion, the minimum standard of care for Caroline Trujillo, given the psychotic symptoms she displayed on February 25, 1984, and her past history of violence when psychotic, required inpatient psychiatric treatment. Past history of gradual response to extended inpatient treatment indicates that her psychosis would have been better controlled and risk for violent behavior significantly reduced had she been hospitalized.

DATED this 1st day of September, 1989.



Louis A. Moench, M.D.

SUBSCRIBED AND SWORN to before me this 1st day of September, 1989.

NOTARY PUBLIC

My Commission Expires: _____

Residing at: _____

Tab B

A F F I D A V I T

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Dr. Manya Attiya states as follows:

1. I am a psychiatrist licensed to practice in the State of Utah and have been since 1972.

2. I was employed as a psychiatrist for Salt Lake County Mental Health for the years 1981 through 1985.

3. As part of my duties as a psychiatrist for Salt Lake County Mental Health I worked in the Salt Lake County Jail. I assessed, evaluated and diagnosed the mentally ill with violent propensities.

4. I have served as a psychiatrist in many civil proceedings for the involuntary hospitalization of individuals who were mentally ill and posed an immediate danger to themselves or others or needed custodial care or treatment.

5. As a staff psychiatrist for Salt Lake County Mental Health, I assessed and evaluated Caroline Trujillo in the jail after two separate stabbings. The first occasion occurred in 1981 after Caroline Trujillo had stabbed a senior citizen. I also assessed and evaluated Caroline Trujillo in 1984 after she had stabbed Shaundra Higgins.

EXHIBIT 1B

6. I have reviewed my progress notes from these assessments and evaluations and I have reviewed documents arising out of Caroline Trujillo's emergency room visit at the University of Utah Medical Center on February 25, 1984 and subsequent treatment at the Adult Residential Treatment Unit.

7. Based on my review of these documents and my evaluations and assessments of Caroline Trujillo, my opinion is that Caroline Trujillo was mentally ill, dangerous and in need of care and treatment in an in-patient hospital setting in February, March and April of 1984. My assessments and evaluations and the records I have reviewed indicate:

a. Caroline Trujillo suffered from a major mental illness, paranoid schizophrenia and was intellectually impaired.

b. Caroline Trujillo was openly hostile and had a history of psychotic behavior. She acted out aggressively when pushed or bothered and required isolation cells to protect her from hurting others or from being hurt.

c. Psychotic symptoms were present at the time of both stabbings. In particular, in 1984, Caroline responded to a voice telling her to stab someone to feel better. She was unable to control her thoughts at this time and had no idea why she acted out violently.

8. The records further indicate that during February and March of 1984, the symptoms of psychosis that made Caroline

Trujillo dangerous were present. The records indicate a persistence of auditory hallucinations instructing her to harm herself and insisting she must die, despite regular medication use. Her thought processes were confused and there are reported hallucinations and delusions. There are references to self-inflicted lacerations and bruises with a suspicious mood and impaired insight and judgment. There is a continuation of suicide ideation and hostility even though placed in a residential treatment setting.

9. Further, Caroline Trujillo in 1984, had a past behavior that included violence and a prior stabbing. Caroline Trujillo, on the basis of this past behavior and on the basis of the presentment of violent behavior secondary to psychotic symptoms, required in-patient hospitalization, and no less restrictive environment was appropriate, including a residential placement at the Adult Residential Treatment Unit. ARTU was not sufficient to evaluate and assess Caroline Trujillo and her propensity for violence and properly treat Caroline Trujillo and did not properly treat Caroline Trujillo.

9. Furthermore, my examinations of Caroline Trujillo demonstrated that Caroline Trujillo gradually improved when her psychosis was treated by a highly-structured, in-patient hospital setting, with strict attention to anti-psychotic medications being paid. For instance, in 1981, the records reflect that after Caroline Trujillo was hospitalized at the Utah State Hospital for

approximately three months, her hostility and psychosis gradually improved. Likewise, in 1984 after eight and one-half months in the Utah State Hospital, Caroline Trujillo's violent thoughts improved.

10. Accordingly, in my opinion, the minimum standard of care for Caroline Trujillo, given the psychotic symptoms she displayed in February and March of 1984, and her past history of violence when psychotic, required extended in-patient psychiatric treatment for at least ninety days. The records indicate that Caroline Trujillo sought in-patient hospital treatment; thus, involuntary hospitalization was not necessary. In the event, however, that Caroline Trujillo opposed in-patient treatment, there was a substantial basis to initiate involuntary hospitalization procedures. Past history of gradual response to extended in-patient treatment indicates that Caroline Trujillo's psychosis would have been better controlled in this manner and it is unlikely this stabbing would have occurred had she been hospitalized.

DATED this 16th day of August, 1989.

Manya Attiya, M.D.
Manya Attiya, M.D.

SUBSCRIBED AND SWORN to before me this 16th day of August, 1989.

My Commission Expires:

August 15, 1991

Linda Brooks
NOTARY PUBLIC
Residing at: Salt Lake County

Tab C

A F F I D A V I T

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

1. I am the natural mother of Caroline Trujillo.

2. Caroline began to use drugs in her early teens. The drugs made Caroline uncontrollable and caused Caroline to be hostile and act out.

3. Caroline was first hospitalized in 1975 for her mental illness at the University of Utah. I was told by doctors at that time that the drugs Caroline had taken had damaged Caroline's brain and had made her a schizophrenic.

4. Caroline's behavior since her early teens has been unpredictable, and at times dangerous. She would often cry or scream hysterically for no reason. She heard voices that would tell her to hurt herself and make her act out.

5. Caroline was involved in numerous violent and unpredictable incidents over the years. Caroline impulsively slashed her wrists and almost killed herself. She stabbed an elderly woman.

6. Caroline was either in jail, hospitalized, on the street, or living with me from the time she was fourteen. When she lived with me, she would disappear for long periods of time and would then reappear in a battered condition. I was always very worried about her. I had nightmares that Caroline would be left dead on

EXHIBIT A

our porch as a result of the fights and beatings that occurred. On one occasion when Caroline disappeared, I received a call from a young woman demanding monies because Caroline had stabbed her. This was an incident different from the other stabbings.

7. Caroline did not understand her illness. She would not take medications that were prescribed unless someone made her and made sure she took them when she was supposed to. Caroline was not capable of attending therapy sessions set up for her. Caroline could not and never did hold a job. Caroline could not care for herself or the two children that were born to her. The two children were taken from her and were adopted because Caroline could not care for them. When Caroline lived with us, we could not leave her at home with our other children because of the danger she presented.

8. Caroline suffered from hallucinations and delusions. These hallucinations made her act in a bizarre way. She would violently hit herself, scream in terror and bang her head against the wall. She did this even though she took the medications that were given to her. The medications did not seem to help.

9. My husband and I tried over and over to get long-term inpatient treatment for Caroline. It seemed that for Caroline to get treatment, she had to be picked up by the police. Caroline was hospitalized at the University of Utah in 1975 when she told the police that my husband and I were trying to kill her brothers and sisters. Caroline was hospitalized in 1978 after she left her

ten-day-old daughter at Holy Cross Hospital and did not tell the Hospital who she was. At the time Caroline claimed the baby had a broken neck. Just after this, Caroline was sent to the State Hospital at my request. Caroline was arrested for stabbing an elderly lady in 1981 and was sent to the State Hospital for a second time.

10. I signed commitment papers in an effort to have Caroline hospitalized for an extended period, but Caroline was never placed in the hospital for a sufficient time period to help her. It seemed the hospitals would always let her out even though she was not better and was still acting out.

11. At the time, I was very angry that I could not get my daughter hospitalized. Once I went to the Sugarhouse unit of Salt Lake County Mental Health and demanded Caroline be hospitalized. I was told that I would have to talk to someone else. On several occasions I angrily had words with Sheryl Steadman and demanded that Caroline be hospitalized.

12. Sheryl Steadman and the other people always passed the buck. They continually referred me to someone else who would refer me to another person. The result was that Caroline did not receive the long-term hospitalization that she needed.

13. My husband and I again requested that Caroline be hospitalized in February of 1984. Caroline slashed her wrists at that time with disposable razors we kept at home. We kept those type of razors so that Caroline could not kill herself. I took Caroline to the

University Hospital in order to get her cuts fixed so there would be no infection. I specifically requested that Caroline be hospitalized for her mental illness.

14. Caroline and I met with a crisis worker in the emergency room. I told the crisis worker that:

- (a). Caroline had been hallucinating and was experiencing delusions;
- (b). The hallucinations and delusions caused Caroline to act out in a dangerous way, and resulted in her beating her head, hitting her chest and cutting herself;
- (c). The medications that Caroline was taking did not control her or stop her from acting out.

15. I specifically requested that Caroline be hospitalized as an inpatient. The crisis worker told me that there were no beds available at that time. I felt that the crisis worker did not really care about my daughter and was indifferent about her problems. I could not believe that this big hospital did not have any beds for my ill daughter.

16. The crisis worker referred me to a group home called ARTU that was operated by Salt Lake County and told me Caroline could come back to the University when a bed was available. Caroline had been in the group home before and I did not feel it would help her since it had not helped her in the past and since it was apparent Caroline could not follow the rules of a group

home. But my husband and I could not afford to place Caroline in a private hospital. We had no alternative and took her to the group home until she could be transferred to the University Hospital at the time a bed became available.

17. We told the crisis worker at the group home that we understood Caroline would be hospitalized at the University of Utah when a bed became available. We also told the worker that Caroline had a long-term mental illness and had been in trouble with the police in the past. We explained that Caroline suffered from hallucinations and delusions, and we were concerned she would attempt suicide.

18. Even though we were told and requested that Caroline would be hospitalized, she never was. Caroline spent several days at the group home and was then sent home. At the time Caroline was picked up, we did not believe we could handle Caroline and told the persons at the group home. We also told the people that Caroline's hallucinations, delusions and violence would continue. It was clear to me and clear to the people at the group home that Caroline could not follow through with outpatient treatments. Since Caroline had no place to go, she came back into our home.

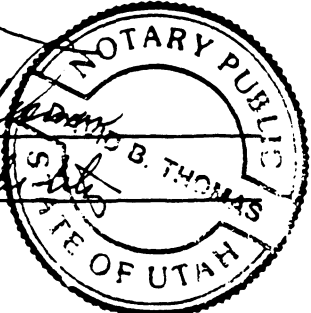
19. Caroline continued to have problems after she came home. Someone arranged for a job for her as a dishwasher, which Caroline immediately quit because she could not handle it. Caroline claimed the dishes were talking to her. We picked her up when she quit and she was hysterically crying. A few days later, Caroline stabbed Shaundra Higgins.

20. Carolyn was mentally ill at the time she was taken to the University Hospital, the group home and at the time she stabbed Shaundra Higgins. She was totally unable to provide the necessities of life, including food, clothing and shelter. She had to be followed to make sure she took her medications. She could not weigh the costs and benefits of treatment.

Rebecca Navarro
Rebecca Navarro

SUBSCRIBED AND SWORN to before me this 18th day of May,
1988.

David F. Thomas
NOTARY PUBLIC
Residing at: Salt Lake City

A circular notary seal for David F. Thomas, a Notary Public in the State of Utah. The seal contains the text "NOTARY PUBLIC" at the top, "DAVID F. THOMAS" in the center, and "STATE OF UTAH" at the bottom.

My Commission Expires:

1991

Tab D

A F F I D A V I T

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

1. I am the step-father of Caroline Trujillo and have been since she was two years old.

2. Caroline began to use drugs when she was fourteen years old. The drugs made Caroline uncontrollable and caused Caroline to be hostile and act out.

3. Caroline was first hospitalized at the University of Utah in 1975. At that time, she claimed that my wife and I had killed our other children. I was told the doctors at that time indicated that the drugs Caroline had taken had damaged Caroline's brain and had made her a schizophrenic.

4. Caroline was involved in numerous violent and unpredictable incidents over the years. On one occasion, Caroline impulsively slashed her wrists after I confronted her about drugs. On another, she stabbed an elderly woman. Once I had to go to Elko, Nevada to pick her up after a doctor called. Apparently she became uncontrollable while in a casino.

5. Caroline was either in jail, hospitalized, on the street or living with me from the age of fourteen. When she lived with me, she would disappear for long periods of time and would then reappear in a battered condition.

EXHIBIT R

6. Caroline did not understand her illness. She would not take medications that were prescribed for her unless someone made her. She was not capable of attending therapy sessions set up for her. She could not hold a job and could not care for herself and two children that were born to her. The two children were taken from her and were adopted because Caroline could not care for them. When Caroline lived with me and my wife, we could not leave her at home with our other children because of the danger she presented.

7. Caroline suffered from hallucinations and delusions that made her act very strange. She would hear voices that would tell her to hurt herself and others. She would violently hit herself, scream in terror and bang her head against the wall.

8. My wife and I tried over and over to get long-term inpatient treatment for Caroline. The only times that Caroline would be placed into an inpatient treatment program was when she had trouble with the police. On these occasions, Caroline was never placed in the hospital for a sufficient time period to help her. The hospitals would always let her out even though she was not better and was still acting out.

9. In February of 1984 Caroline slashed her wrists. I took Caroline with my wife to an adult residential treatment unit after my wife had tried to have Caroline hospitalized at the University of Utah.

10. At the adult residential treatment unit, we met with a crisis worker. We told the crisis worker it was our understanding

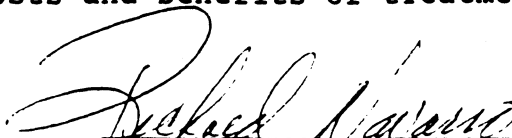
that Caroline would be allowed to go to the University when a bed was available. Caroline had been in the group home before and I did not feel it would help her because it had not helped her in the past, and because Caroline could not follow the rules of the group home. But we could not afford to place Caroline in a private hospital. We had no alternative but to take her to the group home until she would be transferred to the University at the time a bed became available.

11. Caroline was never sent to the University Hospital. She spent several days at the group home and then was sent to our home. I advised the person at the group home that I was reluctant to take Caroline back because I did not feel her hallucinations, delusions and violence would stop and that she would still create problems for our family. But Caroline had no other place to go, so we took her back into our home.

12. After she came home, Caroline continued to have problems. She continued to beat herself and scream in the middle of the night. She took a job as a dishwasher and quit. I picked her up and she cried hysterically. Not long after she came home, Caroline stabbed Shaundra Higgins.

13. I believe that Caroline was mentally ill at the time we took Caroline to the adult residential treatment unit and at the time she stabbed Shaundra Higgins. She was and had been totally unable to provide the necessities of life, including food, clothing and shelter. We had to follow her to make sure she took

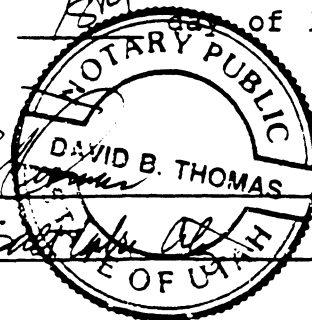
her medications. She did not understand the nature of her illness and could not weigh the costs and benefits of treatment.


Richard Navarro

SUBSCRIBED AND SWORN to before me this 15th of May, 1988.


NOTARY PUBLIC

Residing at: Salt Lake City, Utah



My Commission Expires:

1993

Tab E

AFFIDAVIT OF DOROTHY CANDELARIA

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

1. I am an aunt of Caroline Trujillo.

2. I am a nurse and have been employed on a psychiatric ward at Pioneer Valley Hospital since 1983.

3. As the aunt of Caroline Trujillo, I have personal knowledge of her mental illness, her hostile and violent nature and the efforts undertaken by her family to obtain long-term institutionalized care for Caroline.

4. After she first cut her wrists and attempted suicide, Caroline showed schizophrenic behaviors. She attempted suicide after police told her that her habitual drug use was addictive. As a result of her severe mental illness, Caroline was treated by Salt Lake County, through its Division of Mental Health, and the University of Utah. At times the care was due to involuntary commitments. During the periods she was treated:

- (a) Caroline engaged in self-mutilation and abuse, including suicide attempts.
- (b) Caroline assaulted and fought with other persons.
- (c) Caroline would leave home for long periods and would unexpectedly return with cuts, bruises and other wounds.
- (d) Caroline could not care for herself or her children who were eventually taken from her because Caroline could not care for them.

4. Caroline did not have insight into her illness or understand it.

5. Caroline's history of acting out and violence resulted in her mother and step-father trying on many occasions to obtain long-term care for Caroline. Despite their efforts, the only long-term treatment Caroline received was medication administered by Salt Lake County Mental Health. The medication was not enough to control Caroline and did not help Caroline.

6. In 1984, before and at the time of the stabbing of Shaundra Higgins, Caroline was predisposed to violent behavior and was dangerous. The slashing of her wrists in February of 1984 was an indication of her violence and dangerousness.

7. In February of 1984 and at the time she stabbed Shaundra Higgins, Caroline was dangerous to herself and others. She was unable to provide the basic necessities of life, such as food, clothing and shelter, and she lacked the ability to engage in decision making regarding the acceptance of mental treatment.

Dorothy Candelaria
Dorothy Candelaria

SUBSCRIBED AND SWORN to before me this 7th day of May, 1988.

Donna D. [Signature]
NOTARY PUBLIC

Residing at: Salt Lake County

My Commission Expires:

August 15, 1991

Tab F

DAVID E. YOCOM
Salt Lake County Attorney
By: PATRICIA J. MARLOWE, #2084
Deputy County Attorney
2001 South State, #S3400
Salt Lake City, Utah 84190-1200
Telephone: (801) 468-3421

APR 23 1990

William C. Gray

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

KATHY LYNN HIGGINS,	:	
	:	JUDGMENT AND ORDER
Plaintiff,	:	
	:	
vs.	:	
	:	Civil No. 84-4921PI
CAROLINE TRUJILLO, et al.,	:	
	:	Judge James S. Sawaya
Defendants.	:	

Defendants Salt Lake County, William Kuentzel and Sheryl Steadman's Motion for Summary Judgment came on regularly for hearing before the Court, the Honorable James S. Sawaya, District Court Judge, presiding, on March 26, 1990. Plaintiffs were represented by their attorneys, James L. Warlaumont and David B. Thomas; defendants University of Utah and University of Utah Hospital were represented by their attorney, Bruce H. Jensen, and Defendants Salt Lake County, William Kuentzel and Sheryl Steadman were represented by their attorney, Patricia J. Marlowe, Deputy Salt Lake County Attorney. The Court heard the arguments of counsel and took the matter under advisement.

The Court having reviewed the memoranda filed by the parties, having heard and considered the arguments of counsel, and being fully advised in the premises, and having previously issued its Minute Order granting summary judgment to defendants Salt Lake County, William Kuentzel and Sheryl Steadman for the reasons that these defendants owed no duty to the plaintiffs,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of defendants Salt Lake County, William Kuentzel and Sheryl Steadman. The Court finding no reason for delay, directs the entry of Judgment against the plaintiffs and in favor of Salt Lake County, William Kuentzel and Sheryl Steadman, in accordance with Utah Rules of Civil Procedure, 54(b).

DATED this 23 day of April, 1990.

BY THE COURT:

JAMES S. SAWAYA
Third District Court Judge

THIS IS A TRUE AND CORRECT COPY OF THE
JUDGMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY, STATE OF
UTAH.

DATE May 23, 1990

Sheryl Steadman
DEPUTY COURT CLERK

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of JUDGMENT AND ORDER to be mailed, postage prepaid thereon, this 24 day of April, 1990 to the following:

James L. Warlaumont, Esq.
CLYDE, PRATT & SNOW
200 American Savings Plaza
77 West 200 South
Salt Lake City, Utah 84101
Attorneys for Plaintiffs

David E. Thomas, Esq.
STOKER & THOMAS
311 South State Street, #440
Salt Lake City, Utan 84111
Attorneys for Plaintiffs

Bruce H. Jensen
SNOW, CHRISTENSEN & MARTINEAU
#10 Exchange Place
P.O. Box 45000
Salt Lake City, Utah 84145
Attorneys for University of Utah and
University of Utah Hospital

Thompson

Tab G

BRUCE H. JENSEN (A1667)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Defendants
University of Utah and
University Hospital
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

KATHY LYNN HIGGINS,
individually and as
Guardian ad Litem for
SHAUNDRA HIGGINS,

SUMMARY JUDGMENT

Plaintiff,

v.

THE UNIVERSITY OF UTAH
MEDICAL CENTER and JOHN
DOES 1 through 10,

Civil No. C84-4921

Judge James S. Sawaya

Defendants.

The Motion for Summary Judgment of defendants University of Utah and University Hospital (incorrectly identified as The University Medical Center) came on regularly for decision before the above-entitled Court, pursuant to Rule 4-501, Rules of Judicial Administration.

The Court, being fully advised in the premises having reviewed the pleadings, memoranda and discovery materials on file herein, having ordered publication of all discovery depositions taken in this matter, and having heard the arguments of counsel

for the parties after granting plaintiff's Request for Oral Argument, hereby grants defendants' Motion for Summary Judgment on the ground and for the reason that the Court finds these defendants owed no duty to these particular plaintiffs under the circumstances of this case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Summary Judgment is entered in favor of defendants University of Utah and University Hospital and against plaintiff upon plaintiff's Amended Complaint and Second Amended Complaint, no cause of action. The Court, finding no just reason for delay, directs the entry of Judgment against the plaintiff and in favor of the University of Utah and University Hospital in accordance with Utah Rules of Civil Procedure, Rule 54(b).

DATED this 22 day of July, 1990.

BY THE COURT:

JAMES S. SAWAYA, District Judge

APPROVED AS TO FORM AND CONTENT:

STOKER & THOMAS

By: _____

DAVID B. THOMAS
Attorneys for Plaintiffs

LS\BHV\9193.100\SO

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of
JUDGMENT AND ORDER to be mailed, postage prepaid thereon, this
2nd day of April, 1990 to the following:

James L. Warlaumont, Esq.
CLYDE, PRATT & SNOW
200 American Savings Plaza
77 West 200 South
Salt Lake City, Utah 84101
Attorneys for Plaintiffs

David B. Thomas, Esq.
STOKER & THOMAS
311 South State Street, #440
Salt Lake City, Utah 84111
Attorneys for Plaintiffs

Bruce H. Jensen
SNOW, CHRISTENSEN & MARTINEAU
#10 Exchange Place
P.O. Box 45000
Salt Lake City, Utah 84145
Attorneys for University of Utah and
University of Utah Hospital

Tab I

RODNEY G. SNOW (3028)
NEIL A. KAPLAN (3974)
JAMES L. WARLAUMONT (3386)
CLYDE, PRATT & SNOW
Attorneys for Plaintiff
200 American Savings Plaza
77 West 200 South
Salt Lake City, Utah 84101
Telephone: (801) 322-2516

STEPHEN G. STOKER (3122)
DAVID B. THOMAS (3218)
STOKER & THOMAS
Attorneys for Plaintiff
311 South State Street, Suite 440
Salt Lake City, Utah 84111
Telephone: (801) 359-4000

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY
STATE OF UTAH

KATHY LYNN HIGGINS, individually :	:	
and as Guardian ad Litem for :	:	
SHAUNDRA HIGGINS, :	:	
Plaintiff, :	:	AMENDED NOTICE
vs. :	:	OF APPEAL
SALT LAKE COUNTY, WILLIAM :	:	
KUENTZEL, SHERYL STEADMAN, :	:	Civil No. 34-4921
THE UNIVERSITY OF UTAH, THE :	:	
UNIVERSITY MEDICAL CENTER, :	:	Judge James S. Sawaya
CAROLINE TURJILLO AND JOHN :	:	
DOES I through 10, :	:	
Defendants. :	:	

The Plaintiff Kathy Higgins, individually and as guardian
ad litem for her daughter Shaundra Higgins, pursuant to Rule

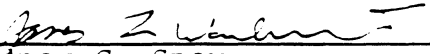
3(a) of the Utah Rules of Appellate Procedure, appeals the following summary judgments entered by the Honorable James S. Sawaya, Third District Court Judge pursuant to Rule 54(b), U.R.C.P., in the above entitled action:

1. The April 23, 1990 Judgment and Order finding the defendants Salt Lake County, William Kuentzel and Sheryl Steadman owed no duty to Plaintiff or her daughter, Shaundra.

2. The April 23, 1990 Summary Judgment finding the defendant University of Utah and University Medical Center owed no duty to Plaintiff or her daughter, Shaundra.


DATED this 11th day of May, 1990.

CLYDE, PRATT & SNOW



Rodney G. Snow
Neil A. Kaplan
James L. Warlaumont

STOKER & THOMAS



Stephen B. Stoker
David B. Thomas

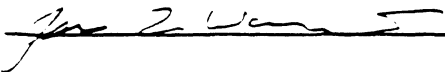
Attorneys for Plaintiff Kathy Lynn
Higgins, individually and as guardian
ad litem for Shaundra Higgins

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of NOTICE OF APPEAL to be mailed, postage prepaid thereon, this 11th day of May, 1990 to the following:

Patricia J. Marlowe, Esq.
Assistant Salt Lake County
Attorney
2001 South State Street
Room #S3400
Salt Lake City, Utah 84190-1200
Attorneys for Steadman,
Kuentzel and Salt Lake County

Bruce H. Jensen, Esq.
SNOW, CHRISTENSEN & MARTINEAU
1100 Newhouse Building
Salt Lake City, Utah 84111
Attorneys for University
Medical Center



Tab J

64-7-7. Supervision and treatment of mentally ill persons by division.

The Division of Mental Health shall have the responsibility for supervision and treatment of mentally ill persons in the state, who have been admitted to its care under the provisions of this act, whether residing in the hospital or elsewhere.

64-7-29. Admission of voluntary patient for observation or care — Age of patient.

The superintendent of the Utah State Hospital or director of a mental health facility or either of their designees may admit for observation, diagnosis, care, and treatment any individual who is mentally ill or has symptoms of mental illness and who, being sixteen years of age or over, applies therefor, and any individual under sixteen years of age who is mentally ill or has symptoms of mental illness, if his parent or legal guardian applies therefor in his behalf.

No person over sixteen years of age may be hospitalized or continue to be hospitalized against his will, except as provided in this chapter.

AMENDMENT XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial Officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Sec. 11. [Courts open—Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Sec. 24. [Uniform operation of laws.]

All laws of a general nature shall have uniform operation.