

STATE OF MINNESOTA  
IN COURT OF APPEALS

OFFICE OF  
APPELLATE COURTS

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A08-1478

FILED

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Regina C. Losen, trustee for the heirs and next-of-kin of Deborah Miller, deceased, et al.,

Appellants,

vs.

Allina Health System, d/b/a United Hospital, et al.,

Respondents,

Minnesota Epilepsy Group, P.A., et al.,

Respondents.

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**BRIEF OF AMICUS CURIAE**

**MINNESOTA ASSOCIATION FOR JUSTICE**

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  ) ss  
COUNTY OF HENNEPIN    )

Civil Action No. A08-1478

Candace McGuire-Sager, being first duly sworn on oath, deposes and says, that on the 18th day of November, 2008, she made service of the attached **Brief of Amicus Curiae Brief by Minnesota Association for Justice** by mailing a true and correct copy thereof to:

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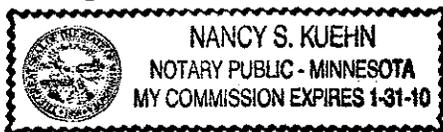
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Subscribed and sworn to before me  
this 18<sup>th</sup> day of November, 2008.

  
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Notary Public



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## **I. THE INTERESTS OF THE MINNESOTA ASSOCIATION FOR JUSTICE**

The Minnesota Association for Justice, formerly the Minnesota Trial Lawyers Association, founded in 1954, is an organization of legal professionals who primarily represent plaintiffs in personal injury, employment, workers compensation, family and commercial cases. One of the missions of the Minnesota Association for Justice is to advance the cause of those who are damaged in person, property, or civil rights and who must therefore seek redress in the courts.<sup>1</sup>

## **II. FACTS**

The Minnesota Association for Justice incorporates the procedural history and factual background outlined in pages three through eleven of the appellants' brief.

## **III. ARGUMENT**

### **A. The District Court Erred as a Matter of Law When it Interpreted the Civil Commitment Act's Immunity Provision to Apply to Appellants' Medical Negligence Claims Against Physicians Who Took No Actions Under the Civil Commitment Act**

The district court erred as a matter of law when it interpreted the civil commitment act, § 253B.23, subd.4, to bar as a matter of law appellants' medical negligence claims against appellees for their inadequate assessment and treatment of Ryan Miller. Relying on this immunity provision, the district court dismissed the claims against Drs. Dickens and Penovich and the Minnesota Epilepsy Group, P.A. for the failure to place Miller on a 72-hour hold, but denied summary judgment as to the other

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<sup>1</sup> Rule 129.03 certification: Counsel for any party did not author any part of this brief. No one other than *amicus curiae* or its counsel made a monetary contribution to the preparation or submission of this brief.

medical negligence claims.<sup>2</sup> As appellants explain in their brief, their medical negligence claims against Allina Health System, d/b/a United Hospital and Dr. Paul Goering are not only based upon the failure to admit Ryan Miller on a 72-hour hold, but stem also from these appellees' failure to properly and thoroughly assess for presence of dangerousness, failure to recognize and act upon evidence of the potential for imminent danger, failure to make a good faith effort to gather information from sources that had insight to Miller's behavior, failure to reconcile conflicting data, failure to recommend an appropriate antipsychotic medication, and failure to do additional assessments when Miller became unmanageable. (Appellants' Br. at 10, 20.) Despite analyzing only the medical negligence claim based upon the failure to place Miller on a 72-hour hold, the district court nevertheless dismissed all medical negligence claims against Allina Health System, d/b/a United Hospital, and Dr. Goering pursuant to the § 253B.23, subd. 4 immunity provision. (Order at 2, 5.)

However, because appellees: (1) took no action pursuant to any provision of the civil commitment statute; and (2) did not procedurally or physically assisted in the commitment of Ryan Miller, then on its face, the statutory immunity provision in Minn. Stat. § 253B.23, subd. 4 does not apply. The district court's application of the immunity provision in these circumstances is reversible error.

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<sup>2</sup> Appellants argue that these defendants were also negligent in assessing, documenting, and treating an acutely psychotic Ryan Miller, in failing to appropriately prescribe antipsychotic medication, failing to observe the effects of medication, failing to reevaluate, failing to perform proper discharge planning, and failing to refer to a specific psychiatrist with a detailed letter. (Appellants' Br. at 10-11.)

Questions of statutory interpretation are reviewed de novo. *State v. Engle*, 743 N.W.2d 592, 593 (Minn. 2008). “The objective of all statutory interpretation is to give effect to the intention of the legislature in drafting the statute.” *State v. Thompson*, 754 N.W.2d 352, 355 (Minn. 2008) (internal quotation marks omitted); Minn. Stat. § 645.16 (2008). Relying on the plain meaning of the statute is the “principal method of determining the legislature’s intent.” *Thompson*, 754 N.W.2d at 355. When a statute is plain and unambiguous, no further construction is needed. *In re Stadvold*, 754 N.W.2d 323, 328 (Minn. 2008). If a statute is open to more than one interpretation, a court adopts “the most logical and practical definition” in light of the legislature’s intent. *In re Welfare of Child of T.P. and P.P.*, 747 N.W.2d 356, 360-61 (Minn. 2008). Courts “also presume that the legislature did not intend absurd or unreasonable results.” *In re Stadvold*, 754 N.W.2d at 328. Courts “read and construe a statute as a whole” and “interpret each section in light of the surrounding sections to avoid conflicting interpretations.” *In re Welfare of Child of T.P. and P.P.*, 747 N.W.2d at 361.

Minn. Stat. § 253B.23, subd. 4 provides:

All persons acting in good faith, upon either actual knowledge or information thought by them to be reliable, *who act pursuant to any provision of this chapter or who procedurally or physically assist in the commitment of any individual*, pursuant to this chapter, are not subject to any civil or criminal liability under this chapter. Any privilege otherwise existing between patient and physician, patient and psychologist, patient and examiner, or patient and social worker, is waived as to any physician, psychologist, examiner, or social worker who provides information with respect to a patient pursuant to any provision of this chapter.

This statute contains unambiguous language that the immunity provision only applies to persons “who act pursuant to any provision of this chapter or who procedurally or physically assist in the commitment of any individual.” The legislature’s intention is

evident—the immunity provision is designed to protect individuals who play a role in civilly committing a patient from claims such as wrongful commitment, unlawful detention, or battery brought by that patient for actions taken as part of the commitment process. The last sentence of the statute regarding the waiver of professional privileges would provide a defense to a professional accused by a former patient of violating professional privilege by disclosing information during the commitment process. This is further evidence that the legislature’s intent when passing the immunity provision was to protect those involved in the commitment process against claims brought by an individual who was subject to commitment proceedings. *See In re Welfare of Child of T.P. and P.P.*, 747 N.W.2d at 361 (statutes must be read and construed as a whole).

Despite the plain-language parameters of the act’s immunity provision, the district court held that Minn. Stat. § 253.B.23, subd. 4 “grants immunity to physicians who determine in good faith based on their actual knowledge and the information they have available that they cannot place an emergency hold on a person because the person does not meet the requirement of” the 72-hour hold procedure. (Order at 5.) The district court cited no authority for this expansive application of the immunity provision to medical negligence claims based upon negligent omissions where the medical professionals took no steps towards a 72-hour hold or civil commitment. No such precedent exists.

On the contrary, Minnesota courts have uniformly held that this statutory immunity provision protects professionals from liability only for actions taken during attempts to civilly commit a patient under the civil commitment act. *See, e.g., Mjolsness v. Riley*, 524 N.W.2d 528, 530 (Minn. Ct. App. 1994) (immunity provision in § 253B.23

“provides civil and criminal immunity for all persons involved in the commitment process who act in good faith”); *Mellett v. Fairview Health Svcs.*, No. CX-00-608, 2000 WL 137644, at \*4 (Minn. Ct. App. Sept. 26, 2000), *rev'd on other grounds* (describing § 253B.23, subd. 4 as establishing that “persons assisting in proceeding to commit individual under civil commitment act are immune from suit unless they act maliciously or commit willful wrong”) (Ex. 1); *Brooks v. State*, No. C3-02-2267, 2003 WL 21743708, at \*3 (Minn. Ct. App. July 29, 2003) (describing the immunity provision as providing immunity to persons “who perform services under the act”) (Ex. 2).

Rather than advance their position, the cases cited by appellees in their summary judgment motion provide support for this plain-language interpretation of the statute, as the parties receiving immunity in those cases *actually did take steps* towards obtaining the civil commitment of the party later bringing suit. In *Mjolsness v. Riley*, the civil commitment act’s immunity provision was found to apply to Riley, an attorney who had provided information to authorities that led to a 72-hour hold and subsequent filing of a petition to commit Mjolsness. 524 N.W.2d at 529-530. In that case, the court rejected the claim by Mjolsness that Riley was not entitled to immunity because the commitment petition was ultimately dismissed. *Id.* at 531. The court stated that the eventual outcome of the commitment proceedings was not the focus of inquiry but rather Riley’s actions as a participant in the commitment proceedings. The court stated, “The statute’s grant of immunity is designed to protect all persons *who participate in the commitment process* in good faith.” *Id.* (emphasis added).

Similarly, both the *Enberg* and *Reuter* cases involve the application of immunity to persons who took action towards the civil commitment of the individual filing suit. *Enberg v. Bonde*, 331 N.W.2d 731, 733 (Minn. 1983) (immunity under § 253B.23 properly granted to physician who decided to hospitalize patient and provided a written statement in support of patient's commitment); *Reuter v. City of New Hope*, 449 N.W.2d 745, 748 (Minn. Ct. App. 1990) (qualified immunity under 42 U.S.C. § 1983 properly granted to police officer who prepared application for 72-hour hold and provided testimony that patient was a danger to herself and others). These cases provide no support for appellees' claim that the immunity provision applies to them, as they took no actions to hold or commit Ryan Miller. It is undisputed that in this case appellees *did not act* pursuant to § 253B or perform services under the act, therefore they may not invoke the privilege provisions within the statute. The district court erred as a matter of law when it interpreted the statute to apply to persons who took no actions under the statute.

**B. The District Court's Holding that the Civil Commitment Act Preempts Medical Negligence Claims Establishes a Lower Standard of Care for Patients with Mental Illness and Developmental Disabilities**

The district court's broad interpretation of § 253B.23, subd. 4 to bar appellants' medical negligence claims<sup>3</sup> should be reversed because this holding creates a lower standard of care for patients with mental illness and developmental disabilities who may be subject to the civil commitment act. Action or inaction under the civil commitment act has no bearing on appellees' common law obligations. That a defendant in a medical

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<sup>3</sup> The district court entered judgment for defendants for all medical negligence claims against Defendants Allina Health System, d/b/a United Hospital and Dr. Paul Goering, and for claims against the Minnesota Epilepsy Group, Dr. Deanna Dickens, and Dr. Patricia Penovich based upon the failure to place Miller on a 72-hour hold. (Order at 2.)

negligence lawsuit provides care to a patient with psychiatric or psychological issues does not bring that defendant's actions, or failures to act, outside the rubric of medical malpractice law or lessen the standard of care owed to that patient. Yet in this case, that is exactly what the district court held by precluding these claims as a matter of law. There is no evidence that, in enacting § 253B.23, the legislature intended to absolve medical professionals of their common law duty of care pursuant to their physician/patient relationship or to lower the standard of care for this population, and to so interpret the statute would be disastrous as a matter of public policy.

The Supreme Court of Mississippi warned of this very danger in the case of *Carrington v. Methodist Med. Center, Inc.*, when it held that its civil commitment statute's immunity provision only immunized persons from liability for good faith actions taken during the civil commitment process. 740 So.2d 827, 829-830 (Miss. 1999). In that case, the lower courts had applied the civil commitment immunity provision to bar the medical negligence claims of the personal representative of a patient who had committed suicide after being civilly committed. *Id.* at 829.

The Supreme Court reversed this broad application of the immunity provision to medical negligence claims, holding that the statute was intended only to apply to actions during the "actual commitment process." *Id.* "It speaks to wrongful commitment, unlawful detention, battery (based on non-consensual treatment) and the like." *Id.* Any broader application would result in a second-class status standard of care for some patients, which the court would not allow. "Persons deemed incapable of making rational decisions, such that they must be committed, are not to be protected by a lesser standard

than reasonable care under the circumstances.” *Id.* at 830. This Court should similarly reject the idea that individuals with developmental disabilities and those suffering from mental illness are entitled to a lower standard of care from the medical profession than other individuals. This powerful policy concern is all the more reason why the civil commitment act’s immunity provision must be limited to the narrow application of its plain language.

If this Court decides that the civil commitment act’s immunity provision does apply to these circumstances, then reversal is still necessary because the question of whether or not appellees acted in good faith under the statute in their care of Ryan Miller is a fact question for the jury, and not appropriate for resolution at summary judgment. *See Contractors Edge, Inc. v. City of Kilkenney*, No. C0-02-802, 2003 WL 175681, at \*2 (Minn. Ct. App. Jan. 28, 2003) (“[S]everal cases have held that good faith is typically a question of fact.”) (Ex. 3); *Olson v. Penkert*, 90 N.W.2d. 193, 196 (Minn. 1958) (determinations of whether parties acted in good faith were questions for the jury); *Sviggum v. Phillips*, 15 N.W.2d 109, 111 (Minn. 1944) (“The issue of good or bad faith is ordinarily a question of fact for the jury.”) Appellants’ brief demonstrates many genuine issues of material fact on this issue. (Appellants’ Br. at 7, 9, 10-11, 14-15.)

#### IV. CONCLUSION

For the foregoing reasons, the district court’s interpretation of § 253B.23, subd. 4 to bar appellants’ medical negligence claims against appellees for their inadequate assessment and treatment of Ryan Miller should be reversed.

Respectfully Submitted,

Dated: November 18, 2008.



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**WORD COUNT CERTIFICATE**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. By automatic word count, the length of this brief is 2,670 words. This brief was prepared using Microsoft Word 2003.

Dated: November 18, 2008

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