

Samantha B. v. Aurora Vista Del Mar, LLC
(2022) 77 Cal.App.5th 85

A plaintiff's damages for professional negligence are not reduced under *MICRA* if the court finds reckless neglect of a dependent adult under the Elder Abuse Act; If an employer-defendant recklessly or maliciously operates their place of business, a reasonable jury could find that the defendant is more responsible for an injury than an intentional tortfeasor; Under respondent superior, an employer may be liable to a plaintiff for the sexual misconduct of its employee if the circumstances of the employees job description makes the sexual misconduct a foreseeable hazard.

FACTS/PROCEDURE

Two female patients (S & D) at an acute psychiatric hospital filed suit against the hospital and its management company. The former patients alleged professional negligence and breach of the Elder Abuse Act for the sexual abuse they suffered by a non-licensed, mental health worker at the hospital.

Aurora, the hospital, and Signature, the management company are wholly owned by a single doctor who owns 11 similar hospitals nationwide. The perpetrator (V) was hired in July 2011. V had been arrested in 1989, 11 years prior, for sexual misconduct. However, Aurora was unaware of this because his background check did not go back more than seven years.

V's work orientation only dedicated 3-5 minutes to patient boundaries, and V was not tested or questioned on the information he was provided during this time. Male mental health workers are only allowed to be in a room with a female patient for 20 minutes. However, the nurse at the nursing station cannot see into patient's rooms from their station, and walking the halls is not sufficient to observe what may be going on in the patient's room.

Plaintiffs were patients at Aurora in 2013 during the time V was employed. Both women suffered from psychosis and did not have the mental capacity to consent to sex. V became known among other workers at Aurora as "Rapey Juan." There is no evidence that management inquired into the nickname. In 2004, a male employee at Aurora sexually molested a 17-year-old female patient. After this incident, Signature refused to pay for an increase in education to improve therapeutic boundaries. Three former employees testified that the hospital was understaffed at the time of the incident, but that the hospital failed to make any improvements.

The day after D was discharged, V was seen with her at a party. V was subsequently terminated by Aurora after an investigation had been conducted.

The trial court found that Aurora and Signature were negligent in hiring, supervising, and retaining V, and that Signature and V committed acts constituting dependent adult abuse and that they acted with recklessness. The jury found that Signature acted with malice or oppression, but not Aurora. The trial court granted the hospital's motion for nonsuit on the plaintiffs' claims alleging vicarious liability. The jury awarded \$3.75 and \$3 million in noneconomic damages, and \$50,000 in punitive damages to both women. The jury allocated 30% fault to Signature, 35% fault to Aurora, and 35% fault to V. Plaintiffs appealed the trial court's ruling on the nonsuit. Defendant's appealed, most notably, that Plaintiffs are time-barred, and their damages are limited under *MICRA*, and that there was no substantial evidence to support the fault allocation.

HOLDING/DISCUSSION

The Court of Appeal for the Second Appellate District affirmed in part and reversed and remanded in part. As for the Defendant's appeal, the Court held that *MICRA* did not reduce Plaintiff's noneconomic damages to \$250,000 because the jury found that Defendant's acted with reckless neglect and not professional negligence. The Plaintiff was not bound by the laws applicable to professional negligence under *MICRA* because the Elder Abuse Act controls reckless abuse of a dependent adult. Thus, Plaintiff's were entitled to enhanced remedies under section 15657 of the Elder Abuse Act.

With respect to fault allocation, the Court held that the jury properly allocated 65% fault to Aurora and Signature. The Defendant's cited to *Scott v. County of Los Angeles* to incorrectly argue that apportionment of

fault is not supportable when it overlooks or minimizes the fault of the party who plays the most direct and culpable role in the injury. The Court cited *Rosh v. Cave Imaging Systems Inc.* to show that a reasonable person could conclude a negligent tortfeasor was more responsible for an injury than an intentional tortfeasor. The Court reasoned that a reasonable person could attribute 65% fault to Aurora and Signature because Defendant's operated the hospital recklessly and maliciously to make what happened almost inevitable.

As for the Plaintiff's appeal, the Court found that the trial court erred in granting Aurora's motion for nonsuit on Plaintiffs' causes of action alleging vicarious liability under the doctrine of respondent superior and ratification. Although courts have held that an employer is not liable under the doctrine of respondent superior for sexual assaults committed by an employee, a sexual tort will be considered within the scope of employment if "its motivating emotions were fairly attributable to work-related events or conditions." The Court found that there was sufficient evidence for a jury to conclude that V was acting within the scope of his employment because he helped patients with daily activities, became personally involved with the patients over an extended period of time, and dealt with vulnerable patients with impaired judgement or other cognitive disabilities. The circumstances surrounding V's job description made sexual exploitation of the patients by employees a foreseeable hazard. Additionally, the Court found that Defendant's ratified V's conduct because they were informed of V's nickname and did not stop V from spending 20 minutes with female patients alone in their rooms. The Court remanded for a new trial on these grounds.