MARION v. LaFARGUE

2004 | Cited 0 times | S.D. New York | February 20, 2004

OPINION AND ORDER

This case involves an involuntary commitment to Bellevue Hospital.The case was assigned to me for all purposes on August 20, 2003. Ipresided at the jury trial on November 3-6, 2003. The jury returned averdict of $1,000,001 in compensatory damages.

On December 19, defense counsel served a timely motion for judgment asa matter of law, or a new trial on all issues, or at least a"substantial" remittitur.

On January 23, 2004, plaintiff's counsel served an opposing memorandumand a declaration which annexed the trial transcript ("Tr.").

On February 14, 2004, defense counsel served a reply memorandum.

During the trial, it was undisputed that plaintiff had a serious mentalillness. The issue was whether he was dangerous. Plaintiff Robert Marionwas born in 1941 in North Carolina and has lived in New York City since1970, mainly in the East Village. In 1985 a car hit his bicycle; while hewas recuperating from injuries to his head, neck and back, he "startedseeing the world, reality more and more, how the corporations werefleecing the world." (Tr. 221.) Since then, he has had no regularemployment. He has been receiving Social Security disability paymentssince about 1993. (Tr. 221-23; Exh. 1 p. 39; Exh. 2 p. 16.) In 1995 and1996, he received prescriptions for two anti-psychotic medications,Mellaril andPage 2Thorazine. (Tr. 189-92.) In June 1996, the Stuyvesant Polyclinicdischarged him from its outpatient mental health program.

. . .[This discharge was] due to the impression by the doctors [at Stuyvesant] that he was no longer benefitting from his [outpatient] treatment there. A question was raised with regard to Mr. Marion's treatment compliance, although his treating psychiatrist did note that he was taking at least some of the medication dosages. It appears that they considered his preoccupation with political causes the primary obstacle to successful treatment and discharged him without recommending any other alternatives.(Tr. 193.) Plaintiff's expert psychiatrist, Dr. Peter Stastny, firstexamined him in February 2001. Dr. Stastny reached a preliminarydiagnosis of schizo-typal personality disorder. In our case the crucialdate is December 23, 1998, when Marion was involuntarily committed to thepsychiatric ward of Bellevue Hospital. Although Dr. Stastny was not atBellevue, he reviewed Bellevue's records and testified: For that particular day, I believe the most likely diagnosis would have been adjustment disorder with mixed emotional features. . . .(Tr. 61.)

Marion's six-day stay in Bellevue is the only time he has ever been aninpatient in a mental hospital. Except during those six days, there is noevidence that anyone ever found him to be dangerous to himself or toothers, or that anyone ever complained that he had made any threats ofviolence or committed any acts of violence. He has lived in New York Cityfor the past 33 of his 62 years. He is of medium height and weight.

During the month prior to December 23, 1998, Marion had visitedBellevue's medical department four times as a diabetes patient who neededsome diabetes-related surgery. (Tr. 75.) He believed that December 23 wasthe date for his surgery. That morning, when he came to Bellevue, thereception staff either told him that he was mistaken, or told him thatBellevue had postponed the surgery date. (Tr. 223-24.) In any event, hebecame angry. Instead of escorting him to the sidewalk, the staffescorted him within the building to the Psychiatric Emergency Room (alsoknown as CPEP, for Comprehensive PsychiatricPage 3Emergency Program, Tr. 280, 288).

At trial, the parties submitted a written stipulation concerning thelegal requirements for an involuntary commitment, (Exh. 3, read by thejurors at Tr. 262.) This stipulation included the following: 3. . . . New York Mental Hygiene Law § 9.39 authorizes [involuntary] admission only when the mental illness . . . is likely to result in serious harm to the person himself or to others. 4. Under New York Mental Hygiene Law § 9.39 "likely to result in serious harm" means (1) a substantial risk of physical harm to oneself as manifested by threats of, or attempts at, suicide or serious bodily harm or other conduct demonstrating that the person is dangerous to himself or (2) a substantial threat of physical harm to other persons as manifested by homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm. * * * 6. If a hospital admits a person [involuntarily], it may not hold the person for more than forty-eight hours unless the finding by the first physician that the plaintiff met the criteria of the statute is confirmed by another physician. . . .

The first finding was signed by defendant psychiatrist Robert T.LaFargue at 12:45 p.m. on December 23. (Exh. 1, p. 79.) The confirmingfinding was signed by defendant psychiatrist Robert Nadrich at 3:45 p.m.on December 24. (Exh. 1, p. 80.) The jury had sufficient evidence tofind, as it did, that each of these men "acted in a manner that wassubstantially below the standards generally accepted in the medicalcommunity when he caused Mr. Marion to remain in Bellevue Hospitalagainst Mr. Marion's will." The intake records repeatedly recorded thatMarion showed no evidence of suicidal ideation or aggressive ideation.Only Dr. Nadrich wrote anything about dangerousness, and what he wrotewas speculative and unimpressive. Dr. Stastny testified that both menfailed to ask questions designed to discern whether Marion had anyintention or likelihood for causing physical harm. (Tr. 109-20.)Page 4

At trial, the only witnesses were Dr. Stastny, Marion, Dr. LaFargue andDr. Nadrich. The jury heard excerpts from the deposition of psychiatricnurse Jessie Emmanuel, who was the first person in the PsychiatricEmergency Room to interview Marion. (Tr. 288.) She testified that "at thetime that I had seen him, he was not agitated. . . . not exhibitingany aggression," although he was "pointing his fingers at staff tellingus we are all `slaves.'" (Tr. 267, 277, Exh. 1 p. 24.)

At 11:50 a.m. on December 23, Marion was interviewed by a medicalstudent named Danny Sperling. He wrote: . . . The pt. repeatedly states that he needs 100 million dollars from the government so that he could lead a better life. The pt. reports that the government is involved in a plot of "povercide" to kill all of the homeless by not giving them money. The pt. states he believes he can solve all of these world problems. The pt. currently denies suicidal ideation and denies homicidal ideation as well. Pt. believes that the police are evil and involved in the government conspiracy to kill the poor. The pt. currently has flight of ideas and extremely pressured speech. ["Pressured speech" is a rapid monologue that is hard to interrupt; Tr. 292.] Pt. denies a past psychiatric hospitalization, denies past suicidal attempts and denies any past acts of violence. The pt. reports suffering head trauma in a bicycle-car accident 8 yrs. [ago].(Exh. 1 p. 27.) Dr. LaFargue presumably read this a few minutes later. Hewas the attending physician in the Psychiatric Emergency Room, and he wasin a central area with glass windows so that he was able to see all ofthe patients in the Emergency Room. (Tr. 303.) At trial, he pointed toSperling's notes that Marion was complaining about "the governmentconspiracy to kill the poor." Dr. LaFargue told the jury: "Whenever apsychotic person is starting to say their thought content is about killingand conspiracy, that raises more red flags and makes me more concernedthat this patient is indeed very dangerous." (Tr. 294.)

Dr. LaFargue testified: "I don't recall what happened as far as —how many minutes I spent with Mr. Marion. But anyPage 5patient who is agitated like i[t']s described that Mr. Marion is, we'renot going to take into a room and have — and sit down with that patient.Because that patient's inappropriate for that type of dialogue and can bedangerous. . . . I don't recall the case at this point. But I'm sure [I]observed Mr. Marion." (Tr. 302-03.) He acknowledged that Marion had nothit anyone. (Tr. 304.) His attorney then asked: Q: Can you explain for the jury how you still came to the determination that he was dangerous? A: When his behavior continues to escalate, when he continued to escalate coming from the medical emergency room to the psychiatric emergency room, and it didn't — didn't dissipate with verbal intervention or even when he's put behind a locked door, he continues to escalate, then that's dangerous.(Tr. 305.)

Q: Doctor, if someone said [as Dr. Stastny did] that it was a grave omission that you did not ask the plaintiff if he intended to cause harm, what would your response be? A: . . .[T]he patient is exhibiting behavior that's consistent with danger, and so, his body language is telling me the answer to that question, which is he's dangerous.(Tr. 330.) The jury could rationally find that there was no cleardocumentation or testimony about such "`body language," and that Marion,albeit psychotic, was not dangerous. The jury could rationally choose toagree with plaintiff's expert that finger-pointing was not a threat.(Tr. 100.) Moreover, the jury could rationally find that Dr. LaFargue,while sincerely convinced as to what would benefit Marion, did not followthe stipulated legal requirement that there must be "a substantial threatof physical harm to other persons as manifested by homicidal or otherviolent behavior by which others are placed in reasonable fear of seriousphysical harm." (Exh. 3, ¶ 4, emphasis added.) On cross examination, Dr.LaFargue testified:

Q: Would you agree that if[,] even if there is a small risk of harm, you should hospitalize a person

because you cannot takePage 6 a chance?

A: Yes. That's the Hippocratic oath.

(Tr. 344, emphasis added.)

Dr. LaFargue ordered that the staff medicate Marion with a combinationof Haldol and Ativan, to be injected intramuscularly ("IM") if he refusedto take it orally (per os, "PO"). (Tr. 322-24.) Nurse Emmanuel wrote: 12/23/98 12pm Pt. became increasingly anxious [with positive] delusions, not following directions at this time, talking rapidly, he is offered Ativan 3 mg PO and Haldol 5mg PO, pt. refused — He is given Haldol 5mg IM and Ativan 2 mg IM and placed on a stretcher with waist support.(Exh. 1 p. 32.) This medication quickly causes the patient to go tosleep for a period of time. (Tr. 385.)

At about the same time, Sperling filled out a one-page form entitled"Comprehensive Assessment Form, Initial Treatment Plan." (Exh. 1 p. 33.)Where the form asked for "Rationale for Admission," Sperling wrote, ". .. active mania, flight of ideas and pressured speech, with grandioseideas, with active psychosis." Where the form asked for "DischargeCriteria," he wrote, "When pt's mania is resolved and mood isstabilized." He and Dr. LaFargue both signed this form at 12:15 p.m.

Sperling also filled out the first page of the State of New York Officeof Mental Health form OMH 474 entitled "Emergency Admission Section 9.39Mental Hygiene Law." (Exh. 1 p. 79.) The first page (which can result ina involuntary commitment for up to 48 hours) does not specifically askfor details to support a finding of dangerousness. It asks for"Circumstances which led to the person being brought to this hospital,"and Sperling wrote: "Pt. came to this hospital for a DM [diabetesmellitus] checkup and was brought to CPEP for psychotic behavior. Pt. iscurrently actively manic and agitated." In the last part of the firstpage, the form states:

I HAVE EXAMINED THE ABOVE-NAMED PERSON PRIOR TO ADMISSION AND FIND THERE IS REASONABLE CAUSE TO BELIEVE THAT THE PERSON HAS A MENTAL ILLNESS FOR WHICH IMMEDIATE OBSERVATION, CARE AND TREATMENT IN A MENTAL HOSPITAL IS APPROPRIATE AND WHICH ISPage 7 LIKELY TO RESULT IN SERIOUS HARM TO HIMSELF OR HERSELF OR OTHERS.

In the box under this statement, both Sperling and Dr. LaFargue placedtheir signature at 12:45 p.m. Dr. LaFargue acknowledged that the initialcommitment was his responsibility, since Sperling was a medical studentand not a licensed physician.

The second page of the form OMH 474 had to be filled out by a differentstaff psychiatrist. This responsibility was undertaken by the otherindividual defendant, Dr. Nadrich, some 27 hours later. Dr. Nadrichconceded that he discontinued his interview with Marion early, after only5 to 10 minutes,

or maybe 10 to 15 minutes. (Tr. 400-01.)

In the commitment certificate, Dr. Nadrich wrote: He was initially relatively calm and cogent in my interview but he became more and more manic — psychotic with paranoia, as my interview progressed. He is appearing during the interview to be responding to internal stimuli, is disorganized and illogical at times and is grandiose, saying that he will be in charge of the new world order.

The form then asks: "Does the patient show a tendency to cause seriousharm to him/herself? ___ Yes ___ No to others? ___ Yes ___ No If yes,explain:" Dr. Nadrich did not mark Yes or No; his explanation saidnothing about harm to others, and spoke only about a possible harm toMarion himself:

He can get into situations that could easily provoke others and get [himself] hurt. He also has grossly impaired judgment now.(Exh. 1 p. 80.) A rational jury could find that this explanationwas flimsy and speculative. Dr. Nadrich (or another of the psychiatristsat Bellevue) could have held another interview with Marion at any timebetween Hour 27 and Hour 48, but this was not done. (Dr. Nadrich didobserve each patient, including Marion, several times a day, as the"doctor walked around the 18th Floor; Tr. 442.) At 3:45 p.m. on December24, Dr. Nadrich signed, "I hereby confirm that there is reasonable causeto believe that the patient has a mental illness . . . which is likelyto result in serious harm to himself or herself or others." (Exh. 1 p.80.)Page 8

At the trial, Dr. Nadrich claimed, for the first time, something thathe had not mentioned in his various hospital entries or in his deposition— he claimed that he felt physically threatened during his interview withMarion, and that Marion practically pushed the table at him with hisbody. (Tr. 397, 400, 440, 442-44.) He acknowledged that he "didn't putthat down" in his notes. (Tr. 403.) In summation, plaintiff's counselargued that this belated claim of danger was a pretext, and that Dr.Nadrich was simply convinced that Marion was mentally ill and neededhospitalization. (Tr. 530.)

On Monday December 28, Dr. Nadrich wrote in Marion's chart: "I fearthat if he is discharged, the pressured thoughts will continue andpossibly turn hostile if his delusions are refuted. He needs continuedtreatment in this facility at this time." (Tr. 417; Exh. 1 p. 54.)

Every Tuesday, a New York State Supreme Court Justice came to the 19thFloor Courtroom at Bellevue. (Tr. 420.) On Tuesday December 29, JusticeWilliam F. McCooe heard brief testimony from Dr. Nadrich and from Marion,who had been receiving Depakote for six days, the amount of time Depakotenormally takes to calm a manic patient. (Tr. 322.) Justice McCooe orderedBellevue to release Marion. (The transcript of the hearing was Exh. 2.)

The defendants now argue that they are entitled to judgment as a matterof law because the chart notes of some other psychiatrists allegedly showthat "they all concurred with the assessments made by defendants LaFargueand Nadrich." (Def. Mem. p. 4.) Those notes were read to the jury at

Tr.408-15. At best, those notes suggest concurrence with the finding ofmental illness. None of them addresses the issue of dangerousness.Morning team meetings were held on December 24, 28 and 29. (Tr. 415-16.)Apparently no one spoke up and argued in favor of releasing Marion, butthis hardly required the jury to absolve Dr. LaFargue and Dr. Nadrich ofresponsibility for the involuntary commitment. Nor did it require thejury to reject Dr. Stastny's opinions.

For all the reasons stated above, I deny defendants' motion forjudgment as a matter of law. I find no seriously erroneous result ormiscarriage of justice requiring a new trial on liability, and thereforeI deny the alternative motion for that relief. I turn now to the motionattacking the damages as excessive.

At Tr. 312-13, I granted the defendants' motion to dismiss the claimsfor punitive damages. By agreement (Tr. 354-56), IPage 9waited until after the jury's verdict on liability before instructingthem on damages and giving them a verdict sheet on damages. (Tr. 500-01,591-93.) Neither attorney chose to discuss damages in summation. Defensecounsel did not request me to instruct that compensatory damages shouldnot include punishment or deterrence, and I did not do so at Tr. 591-93.In hindsight, I think this omission was a mistake. As will be seen, Itried to cure this omission, but I was too late.

After deliberating on damages for approximately 24 minutes, the jurysent out a note asking: "Can the judge overrule our award amount if hethinks it's too high?" (Tr. 594.) I talked with the attorneys at somelength about my proposed answer. (Tr. 594-98.) Unbeknownst to us, thejury decided, during this interval, that the jury had the responsibilityto set a just award regardless of whether the judge had the power toreduce it; they were about to hand the marshal their verdict sheet ondamages (and to tell him they withdrew their question) when I called themout and delivered my answer. (We learned this from the foreperson andJuror No. 3, who returned to the courtroom for an off-the-recorddiscussion that I offered to the jurors at Tr. 604-05.) At Tr. 598-99, Itold the jury about the "very restrictive rules" that govern any motionto reduce a damage award. I then said: Now, I think that I ought to give you a little more guidance on the word "compensate" or compensation. That's the word here on each of these three questions, How much do you award to compensate Mr. Marion for these three different types of injuries. You should not be thinking along the lines of adding something in order to punish one of the defendants, or to change that defendant's behavior in the future, or to deter the defendant.(Tr. 599-600.) I then discussed the three questions on the verdictsheet, and ended as follows:

. . . So I think the bottom line is that you should stop thinking now about what I think about the case. I don't have the power to substitute my thinking and just say, Oh, well, he's had his jury trial, but he's now getting [a] jury [of] 1, me. That's just not the way it works. So the responsibility is very much your responsibility, and there is a very heavy limit, a constitutional limit on what any judge or anyPage 10 appeals judge could do.

So I think that answers your question. If you have another question, we're happy to answer that.(Tr.

601-02.) At that point, the foreperson pulled the verdict sheet outof her jacket and said: "No. We have our verdict." (Tr. 602.) As thejurors nodded, I said: Oh. All right. Everyone is satisfied with this? Okay. I take that to mean that you were thinking along the lines that I was, and we don't have any second thoughts about it. Okay. All right. Court's Exhibit 9, verdict sheet as to damages. Question 1: How much do you award to compensate Mr. Marion for the commitment to Bellevue Hospital against his will? $750,000. Question 2: How much do you award to compensate Mr. Marion for the injection of medication against his will? $250,000. [Question] 3: How much do you award to compensate Mr. Marion for the coerced oral medication? The jury awards $1. Nominal damages for the oral medications. And, therefore, the numbers will be added together, resulting in a total verdict of $1,000,001.(Tr. 602-03.) I then polled the jurors, and each of the seven jurorsaffirmed the verdict.

I interpret the nominal verdict on Question 3 to mean that the oralmedications (Haldol and Depakote) were not harmful to plaintiff andprobably were beneficial to him even though wrongfully coerced. I findthe other two verdicts to be excessive. One possibility is that the juryadded something to punish or deter the defendants. (At the lateroff-the-record session, no one asked about that possibility.) I amconvinced that the jury was not swayed by passion or prejudice. (I notethat Juror No. 3 was a certified public accountant; at the later sessionhe articulately explained why the jury found liability.)Page 11

The only evidence on damages came from plaintiff's testimony. Hetestified for only 33 pages (Tr. 217-49) and defense counsel chose not tocross-examine him (Tr. 261). His testimony was rambling, colorful andemphatic, but he did not yell and he did not sob. His testimony aboutdamages was very sparse and superficial.

"In order to recover damages for mental and emotional distress, theplaintiff must present credible evidence either by competent medical proofor by the circumstances of the case." Reiter v. Metropolitan Transp.Authority of New York, 2003 WL 22271223, *6 (S.D.N.Y. Sept. 30, 2003)(Koeltl, J.). Marion did not offer any medical proof, and therefore thequestion is what emotional damages were "proved by the plaintiff's owntestimony corroborated by reference to the circumstances of the allegedmisconduct." Ibid. First, I will analyze whether plaintiff suffered anyemotional damages with a duration beyond his six days in Bellevue.Second, I will analyze his damages for the six days of wrongfulconfinement. Third, I will analyze his damages from the single wrongfulinjection.

1. Emotional Damages Beyond the Six Days in Bellevue

The final question asked of plaintiff by his counsel was: "Mr. Marion,after your hospitalization from [at] Bellevue, did you come away with anyphysical problems that you didn't have before your hospitalization?" (Tr.248.) Marion listed some physical problems and speculated that they werecaused by Bellevue's medications; I will discuss these later. He alsoadded: . . . And these, among other things, not to mention this trauma and the anxiety and the frustration. . . . I am . . . afraid of these doctors and [afraid to] go into Bellevue.(Tr. 249.) This is the sum total of any evidence of

emotional damageshaving a duration beyond the six days in Bellevue. There is no claim thathis reputation was stigmatized, or that he had any trouble eating orsleeping after his release from Bellevue. On this topic, his evidence iseven weaker than that in Reiter, where Judge Koeltl reduced a jury awardof $140,000 for emotional damages to $10,000. I do not know whetherMarion's jury awarded him anything for emotional damages having aduration beyond the six days; if it did, I find that $5,000 would be themaximum sustainable award for that component of damages.Page 12

2. Damages for Involuntary Commitment for Six Days

In Gardner v. Federated Dept. Stores, Inc., 907 F.2d 1348 (2d Cir.1990), Gardner was wrongfully detained for 8 hours — consisting of 2hours in a store detective's cell where he was punched several times inthe ear, and 6 hours in a jail cell where he was taunted by otherprisoners in the dead of night. Gardner's evidence on damages included amedical expert and a psychiatric expert, and the Second Circuit upheldthe jury's verdict of $150,000 for pain and suffering. But the juryawarded an additional $150,000 for deprivation of liberty, which waspurely to "redress the denial of free movement and the violation done toGardner's dignity as a result of the unlawful detention, and not thephysical and mental injuries arising from the incident." 907 F.2d at1353. The Second Circuit held: . . .[T]he evidence cannot justify the magnitude of the award for deprivation of liberty. Accordingly, we order a new trial on the issue of these damages, unless Gardner agrees to remit the amount in excess of $50,000.Ibid. "Needless to say, any comparison with damages awards in other casesmust take into account the increase in the cost of living. . . ." Mazyckv. Long Island Railroad Co., 896 F. Supp. 1330, 1337 (E.D.N.Y.1995)(Seybert, J.). The award of $50,000 in 1990 is equivalent to about$77,000 in 2003 dollars. (I have used the Consumer Price Index InflationCalculator located at www.jsc.nasa.gov/bu2/inflateCPI.html.)

Of course, Marion was detained for 6 days, not 8 hours. On the otherhand, he was detained in a hospital with doctors and nurses on his flooraround the clock; arguably, a jail cell involves a more severe "denial offree movement" and "violation done to [a plaintiff's] dignity."

Defense counsel cited Gardner and other false imprisonment cases andsaid "defendants have not been able to find any federal remittitur oradditur cases relating to an improper commitment to a psychiatricfacility." (Def. Mem. p. 13.) They should have looked harder, especiallyafter a million-dollar verdict. In response, plaintiff's counsel citedthe very pertinent case of Wagenmann v. Adams, 829 F.2d 196 (1st Cir.1987), affirming Wagenmann v. Pozzi, 1986 WL 715 (D. Mass. Jan. 7,1986). (Pl. Mem. pp. 30-31.) My own legal research has found:

Dick v. Watonwan County, 562 F. Supp. 1083 (D. Minn. 1983), reversed onother grounds applicable only to one defendant,Page 13738 F.2d 939 (8th Cir. 1984).

Kennedy v. Sams, 1997 WL 33100527 (N.D. Ga. Oct. 21, 1997).

Barker v. Netcare Corporation, 147 Ohio App.3d 1, 768 N.E.2d 698 (OhioApp. 10 Dist. 2001), defendants' motion for stay denied (with threedissents), 94 Ohio St.3d 1428 (2002), leave to appeal denied,95 Ohio St.3d 1421 (2002).

Defendants' reply brief ignores Wagenmann and falsely writes:"`Significantly, plaintiff could not find a single damage award casearising out of an involuntary civil commitment to support his assertion."(Reply Mem. at 4.) Wagenmann was wrongfully arrested, held in jail for 17hours, and then involuntarily committed to a mental hospital for 19hours. A federal jury awarded compensatory damages totaling $1,600,000and punitive damages totaling $85,000. District Judge Frank H. Freedmanreduced those to $225,000 in compensatory damages and $60,000 in punitivedamages, and Wagenmann consented to these remittiturs. 829 F.2d at 200and n. 2. The defendants insisted that those amounts were stillexcessive, but the First Circuit affirmed in a lengthy opinion. The awardof $225,000 in January 1986 is equivalent to about $385,000 in 2003dollars.

In the Dick case, the plaintiffs (husband and wife) were wrongfullyarrested and confined in separate detoxification centers for 3 days. Afederal jury awarded each plaintiff $500,000 in compensatory damages plus$6,000 in punitive damages. District Judge Harry H. MacLaughlin reducedeach plaintiff's total damage award to $125,000. 562 F. Supp. at1107-08. The award of $125,000 in April 1983 is equivalent to about$230,000 in 2003 dollars.

In the Kennedy case, a federal jury in Georgia awarded $2,925,000 incompensatory damages and $500,000 in punitive damages in 1997. The casesettled for $1,000,000 subsequent to the verdict. JAS Publications, Inc.describes the facts as follows:

Plaintiff, a pediatrician, was visiting Ridgeview Institute, a psychiatric facility, to discuss with the staff the care of her aunt who was a patient there. She was looking through he aunt's medical files when she became angry and hostile with the staff over their treatment of her aunt. Defendant, an internist employed by the facility, witnessed the incident. He subsequently tricked plaintiff into returning to thePage 14 hospital and had her involuntarily admitted for observation.

Plaintiff alleged that: (1) defendant wrongfully and in bad faith signed a Form 1013 certificate, falsely stating he had examined her within the past 48 hours; (2) defendant failed to comply with [a Georgia statute] by involuntarily admitting her when she did not meet the criteria for involuntary treatment; (3) she was admitted for improper and impermissible purposes; and (4) defendant damaged her reputation. Defendant contended that plaintiff was a threat to herself and others and that his concerns were confirmed by two independent evaluations conducted at the institute.1997 WL 33100527. On February 19, 1997, the Athens Daily News reportedthat plaintiff was sent to the psychiatric hospital for five days in1993. It also said that the jury awarded $1.6 million for pain andsuffering and $1.3 million for loss of income. It said that, as a directresult of the commitment, plaintiff's license to practice medicine wassuspended from 1994 to 1996. (The article is on the Internet atwww.athensnewspapers.com/1997/102997/1029.a3committed.html.)

Marion's case for damages was significantly weaker than the three casesdescribed above. It was undisputed that Marion has had serious mentalillness for many years. It seems clear that the other three juries wereconvinced that the plaintiffs never had any mental illness (and that Mr.and Mrs. Dick were never alcoholics). Accordingly, the amounts that thoseplaintiffs received for emotional damages are attributable only in partto the days of confinement, and in large part to the lingering stigmathat unfortunately attaches to findings of mental illness or alcoholism.On the other hand, it appears that no injections were given to Wagenmann,Mr. and Mrs. Dick, or Kennedy.

Accordingly, in some respects a more relevant precedent is theBarker case. Shortly before she had contact with the psychiatricfacility operated by Netcare Corporation, Barker had some serious mentaland emotional problems, apparently caused by a recent trauma. The Courtof Appeals of Ohio said:

On August 25, 1998, Barker called the Franklin County Sheriff to report that she had been raped the week before. One of thePage 15 deputies testified that, upon arrival at her home, he observed that Barker was very upset, raising her voice, and was out of control and crawling on the sidewalk. He also testified that Barker told him that she had cut her hair, removed the caps from her teeth and put Tabasco sauce on the floor to prevent people from entering her house. The deputies recommended that she receive counseling at Netcare. When Barker agreed, the deputies transported her to Netcare.

. . . Dr. Basobas then ordered Lithium and Ativan to calm Barker [apparently orally and with consent]. [Nurse] Payton testified . . . that Barker made vague statements about someone putting her (Barker) out of her misery and killing her, and at that time Payton believed that Barker could potentially be a danger to herself.147 Ohio App.3d at 5-6. At 3:30 a.m., Barker walked away from thebuilding. At Dr. Basobas's direction, Barker was promptly picked up bythe police, returned to the building, placed in restraints, held as "aninvoluntary holdover patient," (id. at 7) and injected with Haldol andCogentin (id. at 4).

. . . She passed out from the drugs and, when she awoke in the morning, she was permitted to call her husband [who had been away that night]. She was interviewed by a staff psychiatrist who concluded that Barker was not a danger to herself or others and sent her home.(Id. at. 8.)

For false imprisonment and intentional infliction of emotionaldistress, the state jury awarded $100,000 in punitive damages and $50,000in compensatory damages. The defendants attacked both amounts asexcessive. The appellate court upheld the punitive award. It noted thatNetcare had failed to prepare a written statement required by Ohio lawwhen Barker became an involuntary patient. It also noted that thephysical restraint and injection of drugs can awaken special feelings ofvulnerability in cases of rape victims. (Id. at 10, 16.) The court alsoupheld the compensatory award. It noted some evidence of bruises, cuts andscars. Barker's husband testified that she suffered personality changes.On the other hand, "Barker did not visit her treating psychiatrist anymore frequently following thePage 16incident at Netcare than she had before the incident." (Id. at 17.)

Thecourt said the jury could also "properly consider humiliation, injury tofeelings, and mental suffering that resulted from the wrongfulimprisonment." (Id. at 18.) On the other hand, Barker, like Marion, didhave serious mental and emotional problems prior to the wrongfulcommitment.

By letter dated February 12, 2004, Marion's counsel sent me copies ofthe complaint and verdict sheet in a state court case named Lund v.Northwest Medical Center, Civ. No. 1805-1995 in the Court of CommonPleas of Venango County, Pennsylvania. The complaint alleged as follows.The Oil City Police Department received a telephone call from Lund's wifealleging that Lund threatened her life. The police committed Lundinvoluntarily to a mental health facility, and he was released 6½days later. The jury awarded $750,000 in compensatory damages and$425,000 in punitive damages against Northwest Medical Center. Marion'sattorney has been informed that the trial judge is in the process of"writing an opinion for the appellate court."

With all of these other cases in mind, I turn to Marion's evidence ofdamages during his six days of involuntary confinement. Marion testified: . . . They stripped my clothes and . . . gave me this little skimpy thing that you would be embarrassed to be seen in. I had [a fellow patient,] one young Chinese poor guy, beautiful kid, but I can understand they got him doped up, he don't know what he's doing. He is drooling. And he comes over and . . . was coming on groping my crotch. * * * Q: . . . can you tell the jury what it felt like to be hospitalized in Bellevue for the period of time that you were. A: It's total terror. Torture and terror. Threats, torture, and terror every time you see a nurse. You know, you see Nadrich, it's like the demon from hell or something.(Tr. 236, 244.)

Despite this conclusory hyperbole, Marion acknowledged thatPage 17"I was told through my papers . . . that there was a mental hygieneservice" at Bellevue (Tr. 246), and that he met with one of its patientadvocates, attorney Roberta Rattiner, even before December 29 when shesuccessfully represented him before Justice McCooe. (Tr. 243, 245-46.)The hospital record contains a note at "12/23/98 — 3pm . . . Pt. madeaware of legal status & rights." (Exh. 1 p. 32.) This was three hoursafter the injection, and probably shortly after he woke up. Page 82 ofExh. 1 is the standard form that was handed to Marion. It quoted thestatutory definition of serious harm, and said "you . . . may make awritten request for a court hearing that will take place as soon aspossible within 5 days. Copies of such a request will be forwarded by thehospital director to the appropriate court and the Mental Hygiene LegalService." The next three paragraphs discussed the Service at length,explained that it was "a court agency independent of this hospital," andlisted its address and telephone number.

Accordingly, right from the start, Marion had the comforting knowledgethat he would have an attorney and a court hearing. There is no evidence(as there was in the Dick case) that the facility was unsanitary. Onenursing note, read to the jury at Tr. 459, shows that the conditions werefar from grim: "Pt . . . began interacting well [with] selected peers indining room. Placed chess and now looking at T.V." (Exh. 1 p. 53.)

Excluding the wrongful injection, I find that the maximum sustainableaward to Marion for the six

days of deprivation of liberty is $150,000.

3. Damages for Involuntary Injection of Medication

Marion received an injection only once at Bellevue. It was a forcibleinjection, against his will, of 5 mg of Haldol and 2 mg of Ativan. Duringthe next five days, under coercion, he orally took Haldol and Depakote.Three years earlier, Marion had voluntarily taken Mellaril and Thorazinefor some period of time. (Tr. 189-92.) Marion told the jury that he hadsuffered side effects from the medications at Bellevue: Q: Mr. Marion, after your hospitalization from [at] Bellevue, did you come away with any physical problems that you didn't have before your hospitalization?

A: Well, I have problems of — I call it semi-paralysis. When I go to sleep I have difficulty getting up. I sometimes — my musclesPage 18 and my nervous system and my brain, my cognitive dysfunctions with memory and disorientation and concentration and disorientation. When I look up I get very dizzy, nauseated, sometimes to the point that I almost fall, I can't stand up. I have this constant problem with my muscles and I don't know what these drugs did to me, but it wasn't like this before. . . .

(Tr. 248-49.) Dr. LaFargue then testified about the known side effects ofHaldol, Ativan and Depakote, and explained why he believed that they gaveno side effects to Marion. (Tr. 324-27.) Dr. Stastny later testified onrebuttal, but he did not venture to dispute Dr. LaFargue on this topic.Nor did Dr. Stastny or anyone else offer any evidence to corroborateMarion's speculations about any side effects from the medications. Ipresume that the jury credited Marion's sincerity, but it clearly did notfind that there were any side effects. Otherwise, the jury would not havedelivered its verdict of only one dollar for the coerced oralmedications.

Accordingly, the injection damages should compensate Marion for perhapstwo seconds of pain, and for perhaps ten minutes of pre-injection fearafter he refused to take the medication orally, and for perhaps tenminutes of post-injection fear until the medication put him to sleep. Iacknowledge that Marion's pain and fear may have been especially intensebecause of his strongly held belief that governmental institutions areoften malicious and aggressive, and perhaps because of a belief that hewas harmed by the Mellaril and Thorazine he took in 1995 and 1996. TheBarker case involved a similar forcible injection, but with a far moreaggravating circumstance: the defendant had information that Barker hadbeen raped one week earlier. Barker's jury awarded $50,000 incompensatory damages and $100,000 in punitive damages, but there seems tobe no way to know how much of those amounts were attributable to herinjection.

I find that the maximum sustainable award to Marion for the injectionof medication is $25,000.

CONCLUSION

It is obvious that Dr. Nadrich bears no liability for the injection ofmedication, or for the oral medications, or for the first 27 hours ofconfinement. I find that Dr. LaFargue's liability should be limited tothose three categories of damage.Page 19I allocate $25,000 to the first 27 hours, I then add $25,000 forthe injection, plus the $1 award for the coerced oral medications. HenceI find that the maximum sustainable award against Dr. LaFargue is$50,001.

Dr. LaFargue had the responsibility to make a decision concerningemergency admission. Dr. Nadrich had much more time to make a decision onwhether to confirm or release. Accordingly, I find that Dr. Nadrich isliable for all of the other damage. I allocate $125,000 for the nearly 5days of confinement that followed Dr. Nadrich's confirming determinationof dangerousness. I then add $5,000, which I previously found to be themaximum sustainable award for any emotional damages having a durationbeyond the six days. Hence I find that the maximum sustainable awardagainst Dr. Nadrich is $130,000.

I hereby order remittiturs as follows. I direct plaintiff to servenotice, by March 5, 2004, as to whether he accepts a reduced award of$50,001 against Dr. LaFargue (for which The New York City Health andHospitals Corporation will be jointly and severally liable). Otherwise, Iwill set a date for a new trial on the issue of damages as to Dr.LaFargue.

I direct plaintiff to serve notice, by March 5, 2004, as to whether heaccepts a reduced award of $130,000 against Dr. Nadrich (for which TheNew York City Health and Hospitals Corporation will be jointly andseverally liable). Otherwise, I will set a date for a new trial on theissue of damages as to Dr. Nadrich.

If plaintiff accepts one or both of the remittiturs, then I will hold atelephone conference with the attorneys to discuss the form of thejudgment — including whether it should direct that the money be paid intosome sort of a trust for Marion's benefit.Page 1