



Volk v. DeMeerleer, 187 Wash.2d. 241 (Wash. 2016)

Topics Covered: Abusive Litigation Against Physicians, Confidentiality

Outcome: Very Unfavorable

Issue

The issue in this case was whether a psychiatrist can be found liable for his patient's murder of the patient's former girlfriend and her family when the patient expressed homicidal thoughts to the psychiatrist but did not identify the former girlfriend as a target.

AMA Interest

The AMA supports state medical societies in combating lawsuit abuse. Also, with only narrow exceptions, communications between patients and physicians should be confidential.

Case Summary

Jan DeMeerleer first met with Howard Ashby, MD, a psychiatrist in 2001. Mr. DeMeerleer tried to commit suicide and he expressed suicidal thoughts during his initial meeting with Dr. Ashby. Dr. Ashby diagnosed Mr. DeMeerleer as being bipolar and prescribed Depakote, a mood stabilizing drug.

For the next several years, Mr. DeMeerleer would meet with Dr. Ashby on an intermittent basis. Dr. Ashby continued to prescribe Depakote, as well as other psychotropic medicines. When Mr. DeMeerleer was compliant with his medicine regimens, he was able to form social relationships and secure employment. However, when Mr. DeMeerleer would refuse to take his medications, which was frequent, he would lose his job and express suicidal and homicidal thoughts. Mr. DeMeerleer told Dr. Ashby that he was thinking of killing his ex-wife and her boyfriend. He also told Dr. Ashby that his girlfriend had ended their relationship in part because he had slapped the girlfriend's autistic son. This made Mr. DeMeerleer despondent. He never told Dr. Ashby that he intended to harm his now ex-girlfriend.

In 2010, DeMeerleer entered the home of his ex-girlfriend and one of her sons. He unsuccessfully tried to kill his ex-girlfriend's two other sons. He then killed himself. Post-mortem toxicology reports on Mr. DeMeerleer showed that he had not been taking his medications at the time of the incident.

Beverly Volk, guardian of the surviving sons and the representative of the estates of the ex-girlfriend and deceased son sued DeMeerleer's estate for wrongful death and related actions. Ms. Volk also sued Dr. Ashby and the medical clinic where he worked for professional malpractice. Dr. Ashby moved for summary judgment arguing that he had no professional duty to the ex-girlfriend or her children.

In opposition to the motion for summary judgment, Ms. Volk filed a declaration from a board certified psychiatrist and professor at the State University of New York. The expert opined that Dr. Ashby was negligent because he “failed to conduct a systematic and focused assessment of Mr. DeMeerleer’s condition or prepare a treatment plan with periodic follow-up care.”

The trial court entered summary judgment on behalf of Dr. Ashby and the medical clinic concluding that Dr. Ashby did not owe a professional duty to the ex-girlfriend or her children. Volk appealed to the Washington State Court of Appeals.

The Washington State Court of Appeals reversed by a split decision. Dr. Ashby and the medical clinic then appealed to the Washington Supreme Court.

On December 22, 2016, the Supreme Court, in a split decision, affirmed the Court of Appeals in part. It reversed the trial court’s summary judgment in favor of Dr. Ashby on the claim of medical negligence. Notwithstanding that DeMeerleer had been an outpatient, that, the murder had occurred more than three months after DeMeerleer had last seen Dr. Ashby, that during their most recent meeting, DeMeerleer had not expressed homicidal thoughts, and that DeMeerleer had never indicated an intent to harm the ex-girlfriend or her children, Dr. Ashby may have owed a duty to the ex-girlfriend and her children to control DeMeerleer’s conduct.

Dr. Ashby and his medical clinic moved for reconsideration of the Supreme Court ruling, but that motion was denied.

Litigation Center Involvement

The Litigation Center, along with the Washington State Medical Association filed an *amicus* brief in support of the psychiatrist and to oppose creation of a professional duty of care to persons other than the physician’s patients. The same public health organizations also submitted an *amicus* brief in support of the motion for reconsideration.

Washington Supreme Court brief

Washington Supreme Court brief in support of reconsideration