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William Weaver

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## *Ill Treatment as the Cause of Suicide*

*William Weaver\**

SUICIDE IN THE UNITED STATES is becoming an ever increasing problem. The annual rate (based on number of deaths per 100,000 population) increased steadily from 10.2 in 1955 to 11.0 in 1963,<sup>1</sup> with the only decrease being experienced in 1961.<sup>2</sup> The number of lives taken each year by suicide is presently more than twice that of homicide, and almost half the number lost in motor vehicle accidents.<sup>3</sup> In 1962, 20,207 persons took their own lives as compared with 20,825 in 1963.<sup>4</sup> It must be noted, however, that statistics on suicide can never be complete, as many thousands of cases each year go unreported due to the stigma which society attaches to this act.<sup>5</sup>

While legislatures and law enforcement agencies are constantly striving to control both motor vehicle accidents and homicides, it seems that little concern is given to suicide and certainly progress in this important field has been extremely limited.

It is suspected that each year many self-inflicted deaths are actually consequences of ill treatment by other persons, which treatment is often cruel and inhuman, and in fact, is sometimes with the purposeful intention of inducing another to take his own life. Because of the very nature of the act, proof of any causal relationship between ill treatment and subsequent suicide is extremely difficult, since the principal is now deceased and mere speculation is all that remains to mortal man as to the suicide's motives for his violent act.

This paper attempts to summarize the law with respect to the liability of one whose ill treatment of another ultimately results in the suicidal death of such other.

Perhaps the most recent case, and one that is most indicative of the present feeling of the majority of courts in this country, is *Lancaster v. Montesi*,<sup>6</sup> a Tennessee case decided in 1965. In this case the mother and son of the female decedent brought suit against the decedent's alleged paramour. The

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\* B.S. in S.S., John Carroll University; Fourth-year student at Cleveland-Marshall Law School of Baldwin-Wallace College.

<sup>1</sup> U. S. Bureau of the Census, Statistical Abstract of the United States 59 (86th ed. 1965).

<sup>2</sup> *Ibid.*

<sup>3</sup> 21 Encyclopaedia Britannica 533-34 (1962).

<sup>4</sup> World Almanac and Book of Facts, 336 (1965), although it should be noted that there was a slight decrease from 1963 to 1964 as noted in the 1966 ed. at page 299.

<sup>5</sup> Perr, Suicide Responsibility of Hospital and Psychiatrist, 9 Clev.-Mar. L. R. 427 (1960).

<sup>6</sup> 390 S.W.2d 217 (Tenn. 1965).

plaintiffs claimed that as a result of the defendant's treatment of the deceased in forcing her to carry on an illicit affair and inflicting physical beatings upon her, the defendant so controlled the will of the deceased that she could conceive of no other means of escape save suicide.

In deciding this case, the Supreme Court of Tennessee declared that the act of suicide was an intervening cause and could not have been reasonably foreseen by the defendant, thus concluding that the ill treatment was not the proximate cause of death. It appears that inclusion or exclusion of these three factors, *intervening cause*, *proximate cause* and *foreseeability*, are the major defenses interposed in actions of this type.

The majority of courts have been prone to hold that the act of suicide is in itself an intervening cause and, as such, renders any ill treatment inflicted by the defendant a remote cause of death. The rule normally applied is that if a new independent force intervenes, causing an injury, such new force will be considered the proximate cause<sup>7</sup> of death.

An illustration of this is found in the case of *Scott v. Greenville Pharmacy*,<sup>8</sup> wherein the court held:

The voluntary willful act of suicide of an injured person, who knows the purpose and physical effect of his act, is generally held to be such a new and independent agency as does not come within and complete a line of causation from the injury to the death so as to render the one responsible for the injury civilly liable for the death.

Dean Prosser, in his work on torts, states that the defendant will ordinarily be relieved of liability by an intervening cause which is both unforeseeable and abnormal and which produces a result which could not have been foreseen. But he further states that the defendant will not be relieved from liability by an intervening cause which could have been reasonably foreseen or which is a normal incident of the risk created.<sup>9</sup>

The oft-quoted case of *Salsedo v. Palmer*<sup>10</sup> reflects this thinking. Here, the complaint was that the defendants unlawfully seized, held and assaulted the plaintiff's husband, inflicting upon him severe physical and mental suffering which caused him to lose control of his mind and ultimately resulted in his suicide. The facts of this case are that the deceased, an alien, was seized by the police, taken into custody and there held and accused of certain crimes; that he was forced to undergo intensive questioning with the culmination of these events resulting in suicide. The District Court sustained demurrers to these al-

<sup>7</sup> *Orton v. Pennsylvania R. Co.*, 7 F. 2d 36 (6th Cir. 1925).

<sup>8</sup> 212 S. C. 485, 495, 48 S.E.2d 324, 328 (1948).

<sup>9</sup> Prosser, *Torts* 309-28 (3d ed. 1964).

<sup>10</sup> 278 F. 92 (2d Cir. 1921).

legations and the Circuit Court affirmed, holding that a new and independent cause (suicide) intervened, which could not have been foreseen by the defendants.

This same point of law was relied upon by the Supreme Court of Georgia which held in the case of *Stevens v. Steadman*,<sup>11</sup> that a petition which alleged a conspiracy among certain members of a corporation to cause another member to commit suicide was subject to demurrer. Here, a letter was sent to the decedent containing false charges and threatening to expose him unless he submitted his immediate resignation. It was argued that defendants were aware that the deceased was in failing health, both mentally and physically, and were further aware that in all likelihood this letter would result in decedent's suicide. The court felt that the result could not have been the known and natural consequence of the act charged; that it cannot be held that any particular state of mind would naturally result from such act of the defendant or, that such act would have the effect of producing any particular physical reaction.

It would appear then that the courts in considering the question of suicide have thus far been reluctant to look "beyond the last efficient cause, especially where an intelligent and responsible human being has intervened,"<sup>12</sup> it being held that the intervention of this new, independent and efficient cause "renders the negligence of the defendant a remote cause of the injury."<sup>13</sup>

It is well established that in order for a cause to be an effective intervening cause it must not be put into operation by the defendant's wrongful act, but must be a completely separate, independent act such as would cause the result even without the original wrong.<sup>14</sup>

Certainly, in cases involving suicide as in other types of tort cases, the plaintiff in order to succeed must prove that the negligence of the defendant was, in fact, the proximate cause of the injury complained of. However, such proof is often rendered more difficult in this type of case since there is generally no physical contact between the parties, the ill treatment being of purely mental origin and hardly susceptible to proof.

The New York Court of Appeals, in attempting to define proximate cause, said:

The proximate cause being given, the effect must follow. . . .  
The remote cause being given, the effect may or may not follow.<sup>15</sup>

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<sup>11</sup> 140 Ga. 680, 79 S. E. 564 (1913).

<sup>12</sup> 65 C. J. S. 1198-1200, Negligence § 111(1) (1966).

<sup>13</sup> 38 Am. Jur. 841, Negligence § 167 (1941).

<sup>14</sup> *Dougherty v. Hall*, 70 Ohio App. 163, 45 N.E.2d 608 (1942).

<sup>15</sup> *Laidlaw v. Sage*, 158 N. Y. 73, 100, 52 N.E. 679, 688 (1899).

The test as to proximate causation is not in the number of events taking place between the act complained of and the result, but whether or not there was an unbroken connection between these two.<sup>16</sup> In applying this test, the courts must determine whether the act of suicide is indeed an intervening cause or whether it is merely a link in an unbroken chain from the ill treatment to death.

In the *Salsedo* case it was held that the suicide of the prisoner, and not the acts of torture of the officers, was the proximate cause of death, since suicide does not ordinarily follow such acts and could not have been foreseen. The court conceded "that a course of either mental or physical torture, or of both combined," could conceivably "produce a frame of mind that desires death as a means of relief."<sup>17</sup> The court goes further though, by maintaining that even given such frame of mind, suicide would nevertheless be held to be an intervening act since it is not considered a natural or a reasonable result which can be foreseen.

Justice Mayer, in his noteworthy dissent in this case, stated that when the suicide occurred the decedent had no mind, that is, he had a complete inability to understand what he was doing, so that as far as the decedent was concerned, the act of suicide was no act at all and, therefore, was not an independent intervening cause of death. This dissent, although rendered in 1921, would be considered forward thinking even today.

The question we must ask is whether suicide is not many times a natural, foreseeable and probable result of cruel and inhumane treatment. Is it not possible for a strong-willed person to goad a person of less strength into a suicidal act and even to do so intentionally? If it can be established that the injury was a natural and probable result and could reasonably have been foreseen by the defendant, then the mere fact that other forces have intervened between the negligence of the defendant and the injury of the plaintiff should not absolve the defendant of liability.<sup>18</sup>

In recent years the courts in some of the more forward thinking states have begun to inquire more and more into the state of mind of the decedent in determining whether the act of suicide will or will not be held to be an effective intervening cause.<sup>19</sup> Many courts hold that the act of suicide is an effective intervening cause only if a decedent was sane at the time of the act or if he committed the act during a lucid interval, but if decedent was insane as the result of ill treatment at the

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<sup>16</sup> *Mouse v. Central Savings & Trust Co.*, 120 Ohio St. 599, 167 N.E. 868 (1929).

<sup>17</sup> *Salsedo v. Palmer*, 278 F. 92, 99 (2d Cir. 1921).

<sup>18</sup> 65 C. J. S. 1201-02, Negligence § 111(1) (1966).

<sup>19</sup> *Cauverien v. De Metz*, 20 Misc. 2d 144, 188 N. Y. S. 2d 627 (Sup. Ct. 1959).

hands of the defendant, the recent trend has been to hold such ill treatment to be the proximate cause of suicide.<sup>20</sup>

In the case of *Daniels v. New York, N. H. and H. R. Co.*,<sup>21</sup> the court in the course of its opinion stated that the defendant could be held liable if the death was a result of an uncontrollable impulse accomplished in a delirium or frenzy without any intention to produce death or without a knowledge or understanding of the act. This is the type of thinking used today in the courts of the more forward thinking states. They are beginning to recognize that there may be a causal relationship between ill treatment and subsequent suicide and are attempting to allow recovery where it can be proved that such ill treatment resulted in the defendant's loss of mental faculties and ultimately in suicide.

The course of cause and effect in cases of this type seems to be, (1) injury, (2) loss of mind, and (3) death. It follows, therefore, that if No. 2 is eliminated as not being an effective intervening cause but is considered instead as a link in the chain of causation leading from the negligence of the defendant to the death of the decedent,<sup>22</sup> then recovery should be allowed. This appears to be a more equitable approach to the matter and may, at least, result in a plaintiff being allowed to get his case to the jury, thus avoiding a harsh result such as was arrived at in the *Salsedo*<sup>23</sup> and *Stevens*<sup>24</sup> cases, wherein the plaintiff was unable to get past a demurrer.

The Restatement<sup>25</sup> has adopted this view, stating in essence that if the negligent conduct of one results in the delirium or insanity of another so as to render the negligent person liable, such negligent person is also liable for harm done by the other to himself while in this state, provided that the delirious or insane condition prevents such other from realizing the nature of the act or the risk of harm involved, or presents an irresistible impulse. Thus, if A negligently injures B, causing B to become insane and to take his own life, A's negligence may be said to be the legal cause of B's death. This liability will not be upheld, however, if the injury results only in recurrent attacks of melancholia, and the suicide is committed during a lucid interval.<sup>26</sup>

The Supreme Court of New York County in 1959 rendered a landmark decision in the case of *Cauverien v. DeMetz*.<sup>27</sup> It

<sup>20</sup> Prosser, *op. cit. supra* n. 9, at 320.

<sup>21</sup> 183 Mass. 393, 67 N.E. 424 (1903).

<sup>22</sup> *Salsedo v. Palmer*, *supra* n. 10, referring to the dissenting opinion.

<sup>23</sup> *Supra*, n. 10.

<sup>24</sup> *Supra*, n. 11.

<sup>25</sup> Restatement (Second), Torts § 455 (1965).

<sup>26</sup> *Ibid.*

<sup>27</sup> *Supra*, n. 19.

stated that although suicide is generally considered a new and intervening cause which breaks the causal relationship, it will not be so considered if the person is insane at the time of committing the act and such act is committed in response to an uncontrollable impulse. In this situation recovery was allowed under the wrongful death statute, the court holding that the mental state was caused by the wrongful acts of the defendant.

Here, the decedent, a diamond broker, took possession of a valuable diamond on consignment, this being the usual business procedure at the time. The decedent then gave this diamond to the defendant retailers, also under normal business procedures, in order that defendants could attempt to find a buyer for this diamond. The defendants subsequently refused to return the diamond and further refused to pay decedent for it, stating that they would deny ever having received it. The petition in the case alleged that the defendants maliciously and intentionally attempted to cause injury to the decedent and to ruin his reputation and that the decedent, under great emotional stress as a result of the action of the defendants, committed suicide under an irresistible impulse.<sup>28</sup>

This appears to have been the first actual case in which the act of suicide was not in itself held to be the proximate cause of death.

It thus appears that although the old defenses of intervening cause, proximate cause and foreseeability are still all important, the more forward looking states are basing their decisions most heavily on the *state of mind* of the decedent in determining whether these defenses are valid as to the suicidal act in each particular case. Stated more simply, they are looking to see whether or not this state of mind was caused by the negligence of the defendant, thus establishing an unbroken causal relationship.

It would appear that any progress made by the courts in allowing recovery under the wrongful death statutes for suicide resulting from ill treatment would have to closely parallel the progress made by the particular states in allowing recovery for mental suffering and emotional distress without accompanying physical injury, since in most cases the act of suicide is brought on by mental or emotional distress rather than physical suffering.

It would, therefore, be expected that Ohio will lag somewhat behind the other states in allowing a recovery of this type since Ohio presently is one of the very few states which usually will not allow recovery for the infliction of mental suffering without accompanying physical injury.<sup>29</sup>

<sup>28</sup> For discussion of "Irresistible Impulse" see Eliasberg, *Irresistible or "Irresisted" Impulse?* 9 Clev.-Mar. L. R. 447 (1960).

<sup>29</sup> Young, *Damages for Emotional Distress in Ohio*, 15 Clev.-Mar. L. R. 51 (1966).

The trend of the courts may be seen in this quotation from *Magruder*<sup>30</sup> in his noted article entitled *Mental and Emotional Disturbance in the Law of Torts*:

(T)he courts have already given extensive protection to feelings and emotions. They have shown a notable adaptability of technique in redressing the more serious invasions of this important interest of personality. No longer is it even approximately true that the law does not pretend to redress mental pain and anguish "when the unlawful act complained of causes that alone."

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<sup>30</sup> 49 Harv. L. R. 1033, 1067 (1936).