Robinson & Cole Attorney Prevails In Case, Arising Out of Two Notorious Boston Murders, Which has Significant Implications for Mental Health Professionals in Massachusetts

Robinson & Cole partner Steven P. Perlmutter recently prevailed in a social worker/medical malpractice wrongful death case in Massachusetts Superior Court which has significant implications for mental health professionals in the state. The case was decided under a Massachusetts statute (G.L. c.123 § 36B), which had never been interpreted by the courts since its enactment in 1989, regarding the duty of mental health professionals in Massachusetts to warn or protect potential victims of violence by mental health patients.

The statute and decision have significant implications for mental health professionals in the state because they provide them with an extremely high level of protection against malpractice suits for damages. Under the statute, a mental health professional has no duty to warn or protect the victim of a murder or serious bodily injury caused by a mental health patient unless the patient has communicated to the mental health professional an explicit threat to kill or inflict serious bodily injury on an identified victim or the mental health professional knows that the patient has a history of physical violence and is aware of a clear and present danger the patient will attempt to kill or inflict serious bodily injury on an identified victim.

The case involves Jason Potter, a 21 year old adult with a long history of mental illness, who stabbed and murdered his mother and stepfather at the family home on September 25, 2002. Potter had been released from a voluntary commitment at Carney Hospital the day before the murders, saw his personal social worker for about 90 minutes on the afternoon of the murders and saw a social worker at the Boston Emergency Services Team for about 90 minutes during the evening of the murders. The psychiatrist at Carney Hospital and the two social workers concluded that they did not have a basis to involuntarily commit or hospitalize Potter. After seeing the two social workers on September 25, 2002, Potter was found by the Boston Police in his parents’ home covered in blood. He had murdered his mother and stepfather with a knife in their Dorchester home. There are indications that Potter may have thought that his stepfather, a retired Boston police officer, was Whitey Bulger and that it was his mission to kill him. Potter was subsequently found not guilty of the murders of Marie and Richard Sheehan by reason of insanity. Thereafter, the executor of the Estates of Richard and Marie Sheehan brought a wrongful death medical and social worker malpractice suit against the psychiatrist and the two social workers.

On July 30, 2009, Superior Court Judge Thomas E. Connolly ruled that the provisions of G.L. c. 123, § 36 barred the plaintiff from proceeding against the psychiatrist and the social workers because there was insufficient evidence presented to the court that they had reason to believe that there was a clear and present danger that Potter would attempt to kill or inflict serious bodily injury on his mother and stepfather. In so ruling, the court determined that the statute supplanted the duties the doctor and social workers may have had under the Massachusetts common law of negligence. The plaintiff had argued that negligence law applied and entitled the plaintiff to a jury trial. The court disagreed and concluded that no trial was warranted because the plaintiff could not demonstrate that the defendants had breached any of the limited duties created by the statute.