

UNITED STATES DISTRICT COURT **FILED**  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

NOV 02 2001

LARRY W. PROPPES, CLERK  
CHARLESTON, SC

THOMAS R. WIETERS, MD.,  
JOHN DOE, and others similarly situated

**JUDGMENT IN A CIVIL CASE**

vs.

Case Number: 2:01-2082-12

ROPER HOSPITAL, INC., d/b/a ROPER  
CARE ALLIANCE a/k/a CARE ALLIANCE  
HEALTH SERVICES, CARE ALLIANCE HEALTH  
SERVICES, INC., CHIP NARAMORE AND SALLY DOE

- Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court.** This action came to hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the defendants' motion for summary judgment is hereby granted as to defendants Roper Hospital, Inc. d/b/a Roper CareAlliance, a/k/a CareAllilance Health Services, Care Alliance Health Services, Inc., Chip Naramore and Sally Doe for all causes of action.

IT IS FURTHER ORDERED AND ADJUDGED that this case is hereby dismissed.

LARRY W. PROPPES, Clerk

By *July A. Edwards*  
Deputy Clerk

November 2, 2001

FILED

IN THE DISTRICT COURT OF THE UNITED STATES  
DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

NOV - 7 2001

LARRY W. PROPES, CLERK  
CHARLESTON, SC

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THOMAS R. WIETERS, MD, et. al., *	2:01-CV-2082
	*
Plaintiffs *	Charleston,
	South Carolina
	November 2, 2001
VS *	10:00 a.m.
	*
ROPER HOSPITAL, INC., et. al., *	
	*
Defendants *	
*****	

EXCERPTED TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE C. WESTON HOUCK,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:	Cotty and Jonas
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For the Defendants:	Hinchey, Murray and Pagliarini
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Proceedings recorded by mechanical stenography, transcript produced by computer.

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THE COURT: I have, of course, reviewed the filings made by the Defendant in support of the motion for summary judgment and the response made by the Plaintiff in response thereto, considered the opinion therein and arguments that were made today. It seems to me that the Court is compelled to grant the Defendants' motion for summary judgment in this case.

The Health Care Quality Improvement Act provides in Section 11111(a) (1), for a health care facility such as Roper Hospital to be granted immunity from suit under the provisions of Section 11112(a) of that chapter, which reads as follows, "For purposes of the protection set forth in section 11111(a) of this title, a professional review action must be taken -

(1) In the reasonable belief that the action was in the furtherance of quality health care,

(2) After a reasonable effort to obtain the facts of the matter,

(3) After adequate notice and hearing procedures are afforded to the physician involved or after such other procedures as are fair to the physician under the circumstances, and

(4) In the reasonable belief that the action was warranted by the facts known after such reasonable effort to obtain facts and after meeting the requirement of paragraph (3)."

It's clear from looking at the Act that Congress intended for Courts such as this not to become involved in matters such as the

1 one involved in this case. They gave hospitals a considerable amount  
2 of discretion, a great amount of authority in dealing with matters of  
3 discipline of physicians and other health care providers. The reason  
4 for that is obvious: They know their profession; they know the  
5 services that their facility and the people that work therein provide;  
6 and they, better than anyone else, can determine whether or not actions  
7 taken by those persons affect the quality of health care rendered.

8 For that reason, the cases are very clear that we cannot  
9 look behind the actions of those health care officials. We must apply  
10 an objective test. Their motives, their reasons, the matters that they  
11 consider in their mind that prompt their action, to wit, those  
12 subjective matters are not to be considered and we are to look solely  
13 at the objective record in determining whether or not the immunity set  
14 forth above is provided in a particular case.

15 It's admitted that the procedures and what was done  
16 during those procedures is accurately set forth in the affidavit of  
17 Dr. Shapiro, and we will look at those matters objectively to determine  
18 whether or not the immunity applies.

19 The fact that Roper Hospital may not have followed its  
20 own by laws to the letter is also irrelevant. The Courts have said  
21 that, "In determining immunity, we should look to the four factors  
22 quoted above and see whether or not objectively they have been met and  
23 not to the letter of the bylaws."

24 The first of those factors is that the professional  
25 review action must be taken "in the reasonable belief that the action

1 was in furtherance of quality health care."

2           There's -- there's no argument about that. If a  
3 physician is in the hall at the nurses' station, in the room or  
4 elsewhere in the hospital talking in loud voices, talking in people's  
5 faces, disrupting the area, then an inquiry into that conduct is  
6 objectively in furtherance of quality health care. The fact that that  
7 eruption by the physician takes place in an attempt to correct improper  
8 care or with a sincere belief that he is serving the patient's rights  
9 and needs by trying to correct those health care problems is of no  
10 consequence. The manner in which it was done is, indeed, disruptive,  
11 and an attempt to alleviate that disruption is obviously in furtherance  
12 of quality health care.

13           The second requirement for immunity is that the  
14 professional review action must be taken "after a reasonable effort to  
15 obtain the facts of the matter." There can be no argument with that  
16 objectively. The Defendants investigated the complaints, they gave the  
17 Plaintiff an opportunity to be heard, not in a hearing, not in a formal  
18 setting, but informally to come in if he chose and address the matters  
19 and explain his side of it at the very beginning of the investigation.

20           Subsequent to that, additional efforts were taken to  
21 investigate the matter. It's not necessary that these people do this  
22 investigation themselves, it's only necessary that they make a  
23 reasonable effort to obtain the facts of the matter, and it seems to me  
24 in this case, obviously, they did that.

25           Thirdly, the professional review action must be taken

1 "after adequate notice and hearing procedures are afforded to the  
2 physician involved or after such other procedures as are fair to the  
3 physician under the circumstances."

4 As I previously stated, the Plaintiff was given an  
5 opportunity to come in and be interviewed at the very beginning. He  
6 was offered an opportunity to have a hearing as requested by him in his  
7 November 15, 1999 letter, and that hearing went into all of these  
8 matters. It went into all of the incidents of so-called disruptive  
9 behavior. It discussed all of those.

10 Counsel states that it directed its attention at the  
11 summary suspension and they have, but it offered an opportunity to the  
12 Plaintiff to explain, deny, disprove all of the allegations against  
13 him. He was permitted an opportunity to have an attorney, to  
14 cross-examine witnesses, to call his own witnesses, and obviously he  
15 was given adequate notice of the hearing in these procedures.

16 The fourth and last requirement for immunity is that the  
17 professional review action was taken "in the reasonable belief that the  
18 action was warranted by the facts known after such reasonable effort to  
19 obtain facts and after meeting the requirements" of the aforementioned  
20 paragraph (3).

21 I think that the objective evidence in the case clearly  
22 establishes that requirement as well. The Plaintiff had been found to  
23 have participated in numerous disruptive acts. In reading the list --  
24 I can't recall whether it's 14, 15, 16, how many -- but in reading the  
25 list, the facts are so vividly set forth that we can see the conduct

1 almost happen. You can visualize what was taking place. Whoever  
2 placed those incidents in words did a good job because you can, indeed,  
3 do as I say and visualize what's taking place and, thereby, conclude  
4 without hesitation that those acts were, indeed, disruptive, that those  
5 acts were acts that needed to be eliminated from that hospital if the  
6 patients were to receive proper care.

7 Now, the hospital adopted a somewhat conservative  
8 approach. It may be that they don't have the absolute right to require  
9 someone to seek psychiatric help, I doubt if they do, but they have a  
10 right to hinge such a requirement on continued privileges in that  
1 hospital under the circumstances existing here and to do so is not  
2 striking out at the Plaintiff. To do so is to try to help the  
3 situation, try to improve the situation, try to do something that gets  
4 to the bottom of his problems, corrects the same and permits him and  
5 the hospital to continue down the road to providing superior health  
6 care.

7 I believe that the fourth requirement is clearly made out  
8 by the objective facts in this case.

9 That being the case, I think that the Defendants are  
10 entitled to immunity as provided by law.

1 Section 11111 (a) (1) extends immunity as follows: "Shall  
2 not be liable in damages under any law of the United States or of any  
3 State (or political subdivision thereof) with respect to the action."

4 That language clearly covers all of the actions contained  
5 in this complaint for damages. And based on the qualification of the

1 Defendants for immunity under the law, summary as to all causes of  
2 action is granted because of that immunity damaged.

3 It might serve a useful purpose to address the State  
4 causes of action with more particularity.

5 There's a State cause of action for defamation. Because  
6 of the level of this conduct by the Defendant, they are required by law  
7 to report this conduct. If they don't do it, then they are subject to  
8 punishment under the law. The very law that grants the immunity  
9 requires them to do this, plus the reporting that they made was true,  
0 and that is a defense to the defamation action.

1 Abuse of process. There wasn't any process issued in  
2 this case upon which an abuse-of-process case can be maintained.

3 Intentional infliction of emotional distress. Under  
4 South Carolina law, the conduct in the case clearly does not rise to  
5 the level of the intentional infliction of emotional distress.

6 The cause of action for civil conspiracy. Likewise,  
7 there is no evidence to support that.

8 Plaintiff's cause of action for interference with  
9 existing contractual relationships. South Carolina does not recognize  
0 a cause of action for breach of an implied contract arising from the  
1 alleged failure to provide adequate medical treatment.

2 There's no evidence in this case to support any affect on  
3 the Plaintiff's relationship with these patients. With the number of  
4 hospitals in the Charleston area, it is reasonable to assume that these  
5 people obtained the type care they wanted elsewhere. I don't want to

1 appear facetious, but in one of these cases the Court could not resist  
2 the temptation to say that "If the defendants were providing such bad  
3 care, the plaintiff and his patients would be better off elsewhere."

4 Unfair trade practices. This is a private matter. It  
5 does not attempt to allege a public one that is likely to be repeated.

6 I think under the circumstances and for the reasons  
7 stated above, the Defendants' motion for summary judgment is  
8 appropriate and granted by the Court in all regards.

9 (Pause.)

0 THE COURT: Now, the brief in his cause of action asked  
1 the Court to grant injunctive relief. I don't have the name of the  
2 case here in front of me, but there is a Fourth Circuit case where that  
3 was done and the Fourth Circuit held that, in view of the fact that the  
4 plaintiff had alleged and pled a request for injunctive relief, he had  
5 never filed a motion for the same and they deemed that he had abandoned  
6 such a claim by the time he got to Richmond.

7 Now, I don't want to go down that route. If the  
8 Plaintiff wishes to make a motion for preliminary injunction, if the  
9 Plaintiff wishes to pursue that matter, then I'll let you do it. If  
0 you don't want to do it, then, fine. I think the Fourth Circuit would  
1 hold that you had abandoned it. But since it's in there, I don't want  
2 you to put the Defendants in the position of having to defend that if  
3 you raise it between now and the time you get to the Fourth Circuit.  
4 So you can discuss it with your client and let me know how you want to  
5 proceed on that issue. Right now.

1 MR. JONAS: I will, Judge. May take -- may take a moment,  
2 Your Honor.

3 THE COURT: All right. You take your time. You can go  
4 outside if you want to.

5 (Pause in proceedings from 11:32 a.m. until 11:33 a.m.)

6 THE COURT: Yes, sir?

7 MR. JONAS: Your Honor, there's already a restraining  
8 order granted in this case and that was the basis for the application  
9 for the injunctive relief following that, so I think that that is an  
10 appropriate matter to rule on at this point. We would have to clear  
11 that up in any event, because there is already a restraining order.

12 THE COURT: Was that granted by me?

13 MR. JONAS: No, sir. That was the State Judge.

14 THE COURT: Oh, okay. He's granted some kind of  
15 restraining order before the case was removed to this Court?

16 MR. JONAS: There was a order that was placed on us  
17 before the case actually came up here, but I think it's a status quo  
18 order. I think it's appropriate to rule on it in this.

19 THE COURT: Right now?

20 MR. JONAS: I would be happy to further argue it.

21 THE COURT: I don't think there's any reason to. I've  
22 made up my mind that the Defendant is entitled to summary judgment.  
23 I've granted summary judgment on the damage issue. I don't know how I  
24 could come down on the injunctive issue in any other way. We are  
25 supposed to balance irreparable harm.

1 MR. JONAS: Yes, sir.

2 THE COURT: And that's the first thing that we balance in  
3 looking at injunctive relief. I don't know where we come down on it.  
4 With the number of hospitals in this city, the availability of  
5 privileges at those hospitals -- I don't know that that exists. I  
6 don't know if the Plaintiff can get into one of those hospitals. I  
7 would assume that he could. I would assume that he would be given  
8 privileges at those hospitals. So I don't know the level of  
9 irreparable harm. I'm inclined to believe that it would balance out.

10 I think that it's pretty obvious that the Defendant --  
11 the Plaintiff is not going to change his ways. I mean, they gave him  
12 an opportunity to do that. He went right back on the floor and started  
13 doing the same thing and that's, according to the record, an objective  
14 review, and they can't have that. They can't have someone running up  
15 and down the hall, cursing the nurses and chewing them out. If they've  
16 got complaints, they've got procedures. They don't have to disrupt the  
17 hospital to correct improper care.

18 So I think the irreparable harm is going to balance out,  
19 but the likelihood of success is far outweighed on the Defendants' side  
20 because they're entitled to summary judgment. So if you ever get to  
21 the second prong, which I think you have to, then the likelihood of  
22 success is in favor of the Defendant.

23 The other prong, the public interest. I don't see any  
24 public interest weighing in favor of the Plaintiff here. It would seem  
25 to me that the public interest would be on the side of the institution

1 attempting to provide quiet and not disruptive care to his patients.

2 And I can't recall what the fourth one is. What is that?

3 MR. DUANE: I'm getting ready to find out.

4 THE COURT: It's the Blackwelder case. I don't think  
5 I've ever gotten to the fourth one, I don't think.

6 (Pause.)

7 MR. JONAS: Your Honor, it may be a complete remedy of  
8 law would be one of the typical allegations.

9 THE COURT: I don't think so.

10 (Pause.)

11 THE COURT: I've touched on all four of them. The  
12 Blackwelder case divides irreparable harm into two parts. Irreparable  
13 harm will be sustained by the Plaintiff if the injunction is not  
14 granted. Irreparable harm sustained by the Plaintiff if the injunction  
15 is made. So the irreparable harm, likelihood of success on the merits  
16 and affect on the public.

17 Balancing those, it seems to me that the Plaintiff's  
18 request for preliminary injunction is denied.

19 Now, I don't know where that leaves us with the  
20 injunction granted by the State Court.

21 I could look at it from the standpoint that I've got the  
22 jurisdiction of this case and I could dissolve that injunction. It  
23 seems to me that I do. It seems to me that I do. I don't know whether  
24 the Defendants would want to, in an abundance of caution, go back to  
25 that Court, but that Court doesn't have any jurisdiction because I

1 granted summary judgment and there is no case left.

2 So it seems to me that part and parcel of disposing of  
3 this case, I have a right to dismiss that injunction and I do at this  
4 time.

5 MR. JONAS: Your Honor, do we need to submit an order or  
6 is the transcript of your order entered as of today?

7 THE COURT: I'm not going to sign an order. My order is  
8 in the record. I'm just going to ask the Court Reporter that right  
9 when I got through dictating the order in the record, if she will add,  
10 Entered this day, that, that will be okay.

11 Thank you very much. We will be in recess.

12 MR. JONAS: Thank you, Your Honor.

13 MR. HINCHEY: Thank you, Your Honor.

14 (Concluded, 11:45 a.m.)

15 \*\*\*\*\*

16 I certify that the foregoing is a correct transcript from the  
17 record of proceedings in the above-titled matter.

18 Janet A. Collins  
19 Janet A. Collins, RMR, CRR, FCRR

11-7-01  
20 \_\_\_\_\_  
21 DATE