DOCKET NO. CV-02-0819015	:	SUPERIOR COURT
	:	
MARIA TORRES, INDIVIDUALLY	:	JUDICIAL DISTRICT OF HARTFORD
and as ADMINISTRATRIX OF THE	:	
ESTATE OF YOANNA MARIA NODA	:	AT HARTFORD
	:	
v.	:	
	:	
STATE OF CONNECTICUT,	:	
DEPARTMENT OF CORRECTION	:	NOVEMBER 12, 2003

PRETRIAL MEMO

I. STATUS OF PLEADINGS:

The Connecticut legislature has issued a resolution pursuant to C.G.S. § 4-159 waiving the sovereign immunity status of the defendant, state of Connecticut, Department of Corrections (hereinafter "DOC"), and granting the plaintiffs, Maria Torres, individually and as Administratrix of the estate of her daughter, Yoana Maria Noda, the right to sue the defendant to seek damages. The operative Complaint against the DOC is dated August 19, 2002. The DOC filed an Answer and Special Defenses dated November 20, 2002. There are no other pending motions and trial has not been scheduled.

II. PLAINTIFF'S CLAIM:

Plaintiff, Maria Torres ("Torres") was the mother of a toddler, Yoanna Maria Noda ("Yoanna"), who is now deceased. Ms. Torres is pursuing this action both individually and in her capacity as the duly-appointed Administratrix of the Estate of Yoanna Maria Noda (collectively "plaintiffs"). The defendant, Department of Correction ("DOC") is a department of the State of Connecticut. On October 28, 1990, three (3) days before Yoanna's second birthday, Alcides Quiles ("Quiles"), an escaped inmate from the DOC with a history of sexual assaults, robberies and batteries on several victims, including a young boy, raped, sodomized and murdered Yoanna.

Quiles had been arrested in Connecticut three and half years earlier, on March 31, 1987,and placed in various detention centers for maximum security offenders, after a series of charges relating to sexual assaults, robberies and batteries upon several victims, including a young boy. While in detention, Quiles was disciplined numerous times and perpetrated an armed assault on another inmate. In May, 1988, after a conviction on several counts, the court sentenced Quiles to an eighteen-year term of imprisonment. The Probation Department observed that Quiles had **no ability to control his impulses** and represented an "**extreme threat**" to the community. Quiles was committed to CCI-Somers ("SCI"), a maximum security prison facility and was classified as a Level Four security risk; Level Five is maximum security and reserved for death row inmates. While incarcerated, Quiles refused to participate in sex offender or rehabilitation programs.

Between June 20, 1988 and February, 1990, Quiles was in protective custody due to the nature of his offenses. In February, 1990, SCI assigned Quiles to work for the recreation director and he remained in this status until May 31,1990, when SCI arbitrarily reduced Quiles to a Level Three security risk despite his violent background and his refusal to participate in rehabilitation. Thereafter, Quiles was transferred on June 4, 1990 to a "minimum to moderate" level security prison, Carl Robinson Correctional Institution ("CRCI"). CRCI questioned the wisdom of the decision to reduce Quiles' classification, and assigned him to work in the kitchen area. On August 11, 1990, Quiles was reassigned to the paint shop where he could exit the compound and perimeter with minimal supervision.

On August 11, 1990, Quiles requested consideration for a furlough away from prison grounds. CRCI officials denied the request due to the "violent nature of the I.O. [initial offense]."

CRCI, however, continued to permit Quiles to exit the facility and wander the perimeter of the facility, unattended and unsupervised. At dusk on August 31, 1990, while CRCI staff attended a party at the lake and recreation area of the facility, Quiles climbed the fence in a DOC uniform and escaped the facility through a poorly illuminated area to meet an awaiting car. The staff did not notice the escape vehicle until it sped away. Although correction personnel learned of the escape at about 8:07p.m., the prison did not issue notice until approximately 10:00 p.m. that night to various local residents, police officials and local businesses of the escape.

Quiles made his way to Florida and on October 28, 1990, he raped, sodomized, and murdered little Yoanna just three days short of her second birthday. To avoid the death penalty, Quiles plead guilty to the crimes of first degree murder, kidnaping, and sexual assault upon a minor and was sentenced to three life terms in Florida. The plaintiffs claim that the DOC, its agents servants and employees acted negligently in allowing Quiles to escape and in failing to apprehend him prior to the death of Yoanna Maria Noda.

III. DUTY TO PROTECT YOANNA MARIA NODA:

The DOC had a duty to protect Yoanna Maria Noda from Quilles's actions because of its "special relationship" with Quilles. It is the general rule that an actor has no duty to control the conduct of a third person to prevent that person from causing harm to others unless a "special relationship" exists between the actor and the third party or the actor and the injured party. Restatement (Second) of Torts § 315 (1963). Connecticut has adopted the "special relationship" rule imposing liability on parties in custody or control of third parties. Fraser v. United States, 236 Conn. 625, 632, 674A.2d 811 (1996).

According to 2 Restatement (Second), Torts § 315, p. 122 (1965), "[t]here is no duty so to control the conduct of a third person as to prevent him from causing physical harm to another unless (a) a special relation exists between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives to the other a right to protection." Comment c to § 315 explains: "The relations between the actor and a third person which require the actor to control the third person's conduct are stated in §§ 316-319. The relations between the actor and the other which require the actor to control the conduct of third persons for the protection of the other are stated in §§ 314A and 320." "A special relationship may exist between parent and child, master and servant, the possessor of land and licensees, persons in charge of one with dangerous propensities, and persons with custody of another. Restatement (Second) of Torts §§ 316-320 (1964)." It does not matter whether the DOC or Torres actually caused the harm as liability falls on the state because of the special relationship it had with Quiles..

Cases in which courts have applied § 319 typically have involved prisoners. See, Cansler v. State, 234 Kan. 554, 675 P.2d 57 (1984); (state is liable for escaped inmates and has a duty to confine inmates securely and, if inmates escape, to notify area residents and area law enforcement); Washington v. State, 17 Kan. App. 2d 518, 839 P.2d 555, rev. denied 252 Kan. 1095 (1992). ("Prison officials owe a duty of ordinary or reasonable care to safeguard a prisoner in their custody or control from attack by other prisoners."). C.J.W. v. State, 253 Kan. 1, 853 P.2d 4 (1993), involved the alleged assault and sexual molestation of a 12-year-old child by a 17 year-old bully, both of whom were in the custody of juvenile officials at the time of the alleged attack. SRS was aware of the older child's "history of violent and sexually deviant acts." 253 Kan. at 12. The court applied §§

315, 319, and 321 of the Restatement, holding the State had a duty to warn the officials of the child's propensity toward violence and to protect children who are taken into custody from others, including other children. C.J.W. v. State, 253 Kan. 1 (1993) (State has a duty to securely confine inmates and to notify residents in the area and other law enforcement officers of an escape.); Doe v. United Social & Mental Health Services, 670 F. Supp. 1121 (D. Conn. 1987) (a halfway house is liable to a rape victim by a prisoner who escaped custody); Tarasoff v. Regents of the Univ. of Cal., 551 P.2d 334 (Cal. 1976) (imposing an affirmative duty to use reasonable care to protect a potential victim when the patient presents serious danger of violence); see, State v Silva, 86 Nev. 911, 478 P.2d 591 (1983); see also, Jean W. V. Commonwealth of Mass., 414 Mass. 496 (1993); Rum River Lumber Co. V. State, 282 N.W.2d 882 (1979); see generally, Anot., 44 ALR 3D 899, Liability of Public Officials for harm Done by Prisoners Permitted to Escape; State v. Woolcock, 201 Conn. 605, 615, 518 A.2d 1377 (1986) (even a trial judge has a duty to do what may be necessary to prevent escape); Commonwealth v. Brown, 364 Mass. 471, 475, 305 N.E.2d 830(1973) (a judge has the duty to do what may be necessary to prevent escape, to minimize danger of harm to those attending trial as well as to the general public). Likewise, the DOC had the duty to confine Quiles securely, prevent his escape and, to promptly notify area residents and area law enforcement of his escape and it is now incumbent on the DOC to present evidence that the escape could not have been avoided. Maroon v. State, 411 N.E.2d 404 (1980); White v. United States, 780 F.2d 97, 103, n.17 (D.C. Cir. 1986). This the DOC cannot do because of the affirmative acts it took that led to Quiles escape including lowering his risk rating, transferring him to a less secure facility and placing him in a position where access to the outside was available. Courts have increased the number of instances in which

affirmative duties are imposed by expanding the list of special relationships. See generally, J. Speiser, The American Law of Torts§ 4:11 (1983 & Supp. 1987); W. Prosser, Law of Torts 348-50 (4th ed. 1971).

In Lipari v. Sears, Roebuck & Co.,497 F. Supp. 185 (D.Neb. 1980), a mental patient was receiving day care from the Veterans Administration. Against the advice of his doctors, the patient stopped attending therapy, and shortly thereafter shot two individuals in a crowded night club. The court held the VA hospital treating the patient liable for failing to detain him or involuntarily commit him. Relying on § 315, the court held that the special relationship of a psychotherapist and his patient gives rise to a duty to take whatever precautions are necessary to protect potential victims of the patient. Id. at 191. The court reasoned that a psychiatrist or therapist has a duty to third persons when he or she knows or should know that the patient has dangerous tendencies. Id. at 193. Likewise, Quiles was under psychiatric care and as in Lapari, he had a violent background, was extremely dangerous and refused to participate in any treatment programs. The Lipari court explicitly rejected the "readily identifiable" victim limitation, and stated that the duty to protect extends not only to those third parties specifically known to the therapist, but also to those for whom the therapist could have reasonably foreseen an unreasonable risk of harm. Id. at 194.

In Naidu v Laird, 539 A.2d 1064 (1988), the Delaware Supreme Court has found a special relationship and, therefore, a duty to third persons, even where no "intended victim" has been identified prior to the violent act. This duty requires that precautions have to be initiated as are necessary to protect potential victims. Id. at 1073. The Delaware Supreme Court recognized a "broad-based obligation to protect the public from potentially violent people who present an unreasonable danger. Id. Likewise, Quiles was violent, an extreme threat and a sex offender

involving children. He was a heavy substance abuser, he could not control his impulses, and he refused rehabilitation. The DOC had a duty to protect the public and they failed.

In Petersen v. State, 100 Wn.2d 421, 426, 671 P.2d 230 (1983), the issue was whether a State psychiatrist who released a patient, knowing that the patient was on probation, and that the patient had an extensive history of drug abuse and mental disease, had a duty to protect potential victims from the dangerous propensities of the released patient. The court concluded that the psychiatrist incurred a duty to take precautions to protect anyone who might foreseeably be endangered by the patient's drug-related mental problems. There is no doubt that little Yoanna was entitled to this protection.

IV. NEGLIGENCE PER SE:

"Negligence per se operates to engraft a particular legislative standard onto the general standard of care imposed by traditional tort law principles, i.e., that standard of care to which an ordinarily prudent person would conform his conduct. To establish negligence, the jury in a negligence per se case need not decide whether the defendant acted as an ordinarily prudent person would have acted under the circumstances. They merely decide whether the relevant statute or regulation has been violated. If it has, the defendant was negligent as a matter of law." (Internal quotation marks omitted.) Gore v. People's Savings Bank, 235 Conn. 360, 376, 665 A.2d 1341 (1995). Connecticut uses a "two-prong test for negligence per se: (1) that the plaintiffs were within the class of persons protected by the statute; and (2) that the injury suffered is of the type that the statute was intended to prevent." Id., 368-69. C.G.S. Sec. 18-81 imposes on the Commissioner of the DOC the affirmative responsibility for "establishing disciplinary, diagnostic, classification, treatment . . . services and programs throughout the department." The diagnostic, classification and

treatment programs were designed to rehabilitate prisoners so that they would not pose a risk, let alone a serious risk, to society. "Prison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating . . . the inmates placed in their custody." Procunier v. Martinez, 416 U.S. 396 at 405 (1974). In the present matter, Quiles was determined to be as an extreme threat with no ability to control his impulses (diagnostic). Based on this diagnosis and his crimes, he was classified as an extreme risk and classified as a Level Four security risk; Level Five being reserved for death row inmates (classification). Despite the diagnosis and Quiles refusal for treatment and rehabilitation, the DOC reduced his security classification and transferred him to a less secure institution where escape was inevitable. The plaintiff, therefore, have met the two pronged test for negligence per se for purposes of this statute and the DOC was negligent per se for failing keep Quiles in a Level Four risk classification and for transferring him to a less secure facility.

In and Crawford v. Ohio Div. of Parole & Community Serv., 57 Ohio St.3d 184, 566 N.E.2d 1233 (1991), the court held that the state of Ohio was negligent per se for failing to confine a furloughed prisoner during non-working hours. The courts reasoned that the decision to furlough a prisoner was an executive decision, but once the decision was made, the law imposed a specific affirmative duty to confine the prisoner during non-working hours. Likewise, the DOC made an affirmative decision to reduce Quiles from a Level Four to a Level Three security risk despite his violent background, his refusal to participate in rehabilitation and his extreme threat to the community. The DOC then transferred him to a “minimum to moderate” level security prison where he was assigned to a work position where he could exit the facility and wander the perimeter. See, Reynolds v. State, 14 Ohio St.3d 68, 471 N.E.2d 776 (1984). Because the law

imposed a specific affirmative duty to diagnose, classify and treat prisoners, the DOC was negligent per se in failing as it relates to Quiles. Because other DOC conduct falls outside this statutory duty, foreseeability and proximate cause are addressed below.

V. FORESEEABILITY:

In Stewart v. Federated Department Stores, Inc., 234 Conn. 597 (1995), the Connecticut Supreme Court upheld a jury verdict which found a defendant liable for the murder of the plaintiff's decedent in the defendant's parking garage where previous robberies as well as other violent crimes had occurred in the garage and the defendant had been advised by its security manager of the need for increased security in the garage. In the present matter, the DOC was well aware of Quiles' dangerous propensities including sexual assault, robbery and battery, his inability to control his impulses as well as his refusal to participate in rehabilitation. Despite being an "extreme threat" to the community and his refusal to participate in rehabilitation, they reduced his security risk and placed him in a less secure environment at CRCI. The risk and probability for harm was so foreseeable that the CRCI staff questioned the legitimacy of the decision to reduce Quiles from a level 4 to a level 3. This meets the foreseeability test of Stewart.

VI. PROXIMATE CAUSE:

As to causation, "a plaintiff must establish that the defendant's conduct `legally caused' the injuries, that is, that the conduct both caused the injury in fact and proximately caused the injury. Paige v. St.Andrew's Roman Catholic Church Corp., 250 Conn. 14, 24-25, 734 A.2d 85 (1999); Wu v.Fairfield, 204 Conn. 435, 438, 528 A.2d 364 (1987). "The test for cause in fact is, simply, would the injury have occurred were it not for the actor's conduct." Kowal v. Hofher, 181 Conn.355, 359 (1980). In the present matter, Yoanna Maria Noda would be alive were it not for the DOC reducing

the security risk of an extreme threat such as Quiles and moving him to a less secure institution. They then placed him in a position that would allow him access to the perimeter of the facility. The test of proximate cause is whether the defendant's conduct is a 'substantial factor' in producing the plaintiff's injury. The substantial factor test asks, 'whether the harm which occurred was of the same general nature as the foreseeable risk created by the defendant's negligence.' Merhi v. Becker, 164 Conn. 516, 521, 325 A.2d 270 (1973). "The substantial factor test, in truth, reflects the inquiry fundamental to all proximate cause questions; that is, whether the harm which occurred was of the same general nature as the foreseeable risk created by the defendant's negligence . . . In applying this test, we look from the injury to the negligent act complained of for the necessary causal connection." Craig v. Driscoll, 262 Conn. 312, 330-31 (2003). In the present matter, it was foreseeable that placing an extreme threat to the community such as Quiles in a less secure environment would result in trouble and that the public would be harmed because Quiles was unable to control his impulses and would not be rehabilitated. The violence perpetrated on Yoanna Maria Noda was of the same general nature as the foreseeable risk created by the DOC's negligence.

VII. INTEREST OF THE STATE:

The state has a duty to protect the public and more specifically a duty to protect the children. It is in the interest of the state to settle this matter as the state legislature recognized the need and authorized suit.

VIII. DAMAGES:

The plaintiffs seek $3,000,000.00.

PLAINTIFFS,
MARIA TORRES, Individually and as the
ADMINISTRATRIX OF THE ESTATE
OF YOANNA MARIA NODA

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