

ELEEMOSYNARY INSTITUTIONS: Board of Managers not liable for torts of its agents. Superintendent liable to patient for property entrusted where lack of reasonable care is exercised. X

January 4, 1940 1/5



Mr. W. Ed Jameson, President
Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri

Dear Mr. Jameson:

We are in receipt of your recent letter wherein you state as follows:

"I enclose you herewith some correspondence with reference to a claim of \$79.50 by two attorneys, Harry W. Durall and R. R. Greenlee, for a tweed coat which a patient brought with her to St. Joseph, and it was delivered to her husband and a receipt taken there for.

Our Board would like to have an opinion from your office as to what we should do with reference to this claim."

A letter from Mr. Harry W. Durall, under date of October 2, 1939, states as follows:

"I wrote to the St. Joseph Hospital No. 2, sometime ago, relative to claim of Irene Ware, but am informed that I should take the matter up with you.

Mrs. Ware was confined in the St. Joseph Hospital No. 2, in July, 1938, and while there some unauthorized person was allowed to take away from the hospital her coat, described as a Brown Londoner Tweed coat, Shagmore Raccoon collar, of the value of \$79.50.

This coat was given to this party by the agents of the Hospital, without her consent or authorization, and while in their possession.

She is therefore claiming damages to the amount of \$79.50, for which she asks to be reimbursed."

Dr. Ralf Hanks, Superintendent of State Hospital No. 2, replied to the above letter as follows:

"In response to your letter of October 17th regarding a coat which was brought to the hospital by Irene Ware, this coat was taken from the hospital by her husband, Charles C. Ware, on July 9th, 1938.

Mr. Ware signed a receipt to the hospital for the receipt of same."

Under date of October 25, 1939, Mr. Durall again wrote:

"I have your letter of the 23rd, and thank you for your courtesy in this matter.

I also have a letter from the hospital at St. Joseph, in which they admit having given this coat to a Charles Ware, purporting to be the husband of Irene Ware, and therefore I assume they claim they are not liable.

This claimant's name is Irene Boyd, and she states she never was married to Charles Ware, who incidentally has a very checkered career.

Mrs. Boyd, or Ware, was inducted in the hospital by her brother, and did not herself give the name of Ware. She does

admit, during her demented condition, having lived with or cohabited with Mr. Ware.

There could be no reason for letting Mr. Ware have this coat, except to make away with it as he evidently did. And he had nothing to do with having Mrs. Boyd placed in the asylum.

Mrs. Boyd was restored to sanity sometime the first of this year. Even if Ware was her husband, under the circumstances I do not see how they can escape liability, after giving him this coat."

59 C. J., Section 337, page 194, in discussing the liability of the state, declares that:

"A state is not liable for the torts of its officers or agents in the discharge of their official duties unless it has voluntarily assumed such liability and consented to be so liable,
* * * * *"

In further discussing the liability of a state agency, it is pointed out (Section 340, page 196) that:

"An action against a state agency or instrumentality is an action against the state * * * * *"

We have examined the laws governing State Eleemosynary Institutions, and find no statute wherein the state has made itself subject to liability for the torts of its officers and agents.

We are therefore of the opinion that neither the state nor the Board of Managers of the State Eleemosynary Institutions would be liable for the loss of the patient's coat.

Whether the superintendent would be personally liable for the loss of the coat under the facts presented depends upon a showing being made that he failed to exercise reasonable care under the circumstances.

In the case of *Worsham v. Votgsberger*, 129 S. W. 157, l. c. 159, One Hundred Forty Dollars (\$140.00) was found on the person of the plaintiff when he was received at the State Lunatic Asylum. This was placed in a safe and entered upon the books of the institution as a credit to the plaintiff. On the following day, plaintiff's sister appeared at the asylum and asked Dr. Worsham, the superintendent and defendant in the case, if the plaintiff had any money, and stated that someone had stolen One Hundred Forty Dollars (\$140.00) out of the house. Dr. Worsham informed her that amount had been taken from the plaintiff, and turned it over to her, taking a receipt. A judgment was awarded in favor of plaintiff, and, upon appeal, was affirmed.

The court, in its opinion, stated:

"It is a well-settled rule of law that, while a ministerial officer in possession of property lawfully received is not an insurer of its safety, he is required to exercise reasonable and ordinary care and diligence to keep and preserve it, in order that it may be restored to the person entitled to it or disposed of in the manner directed by law. *Mechem on Public Officers*, Section 760."

In the case of *St. Joseph Fire and Marine Insurance Company v. Leland*, 90 Mo. 177, l. c. 182, the court said:

"The right of action against a ministerial officer for a violation or neglect of duty by one injured in consequence thereof is a different matter. The common law gave the party aggrieved an action against the officer in such case."

January 4, 1940

Whether the superintendent exercised reasonable care under the facts presented in disposing of the property, would be a question for a jury to pass on, and we do not herein rule on same. Suffice to say that it is the opinion of this department that while superintendents of state hospitals are not insurers of the property of their patients, they are charged with the exercise of reasonable care in preserving it for restoration to the persons entitled thereto, or for disposition as directed by law.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

MW:VC