

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED

DEC 01 2009

Tennessee Claims Commission
CLERK'S OFFICE

SHIRLEY ANN ATKINSON,)
ADMINISTRATOR OF THE ESTATE)
OF ROBERT LEE PATTEE, JR.,)
DECEASED,)
)
CLAIMANT,)
)
VS.)
)
STATE OF TENNESSEE,)
)
DEFENDANT.)

CLAIM No. D20400245
REGULAR DOCKET

JUDGMENT

The claimant, Shirley Ann Atkinson, brings this claim for wrongful death as administrator of the estate of Robert Lee Pattee, Jr. Mr. Pattee committed suicide on August 15, 2002, while he was incarcerated in the custody of Tennessee Department of Correction ("TDOC"). The claim was heard by the Commission on April 14-15, 2009. David Raybin, Esq., represented the claimant. Senior Counsel Mark Hudson appeared on behalf of the State. The parties subsequently submitted proposed findings of fact and conclusions of law in support of their respective positions and the matter is ready for decision.

As required by Tenn. Code Ann. § 9-8-403(i), the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Shirley Ann Atkinson is the Administrator of the Estate of Robert Pattee, Jr., who committed suicide on August 15, 2002. At the time of his death, Mr. Pattee, who was fifty-one years old, was serving a life sentence for first degree murder.

SUICIDE ATTEMPT IN SUMNER COUNTY JAIL

Robert Lee Pattee, Jr. was arrested on February 23, 1999, for the murder of his estranged wife's boyfriend and was incarcerated in the Sumner County Jail. On April 30, 1999, jail officials determined that Mr. Pattee had attempted to cut his wrist. A suicide note was also found and Mr. Pattee was taken to Sumner County Regional Hospital for treatment. Mr. Pattee was subsequently sent to the Middle Tennessee Mental Health Institute as an emergency admission. Mr. Pattee was discharged back to the Sumner County Jail on May 28, 1999. His discharge diagnosis was "Major Depression, single episode severe [with] no psychotic features."

His discharge order reflected that he had been prescribed Paxil and Elavil for his condition.

TRANSFER TO DEBERRY SPECIAL NEEDS FACILITY

On June 1, 1999, Sumner County Criminal Court Judge Jane Wheatcraft determined that Mr. Pattee was a high security risk and ordered that he be transferred to the custody of the TDOC for safekeeping. Pattee was received at DeBerry Special Needs Facility ("DeBerry"), a TDOC prison with medical and mental health facilities, on June 3, 1999, where he was housed on Unit 7C, the acute psychiatric unit. Due to his status as a safekeeper, Mr. Pattee was moved to 7F, a max unit on June 22, 1999. He remained at DeBerry pending his trial and conviction on November 3, 1999, for first degree murder. Pattee received a life sentence and was assigned permanently to DeBerry.

A psychology note entered on November 4, 1999, reflects that Pattee reported depression since his return from court with a life sentence. He was highly emotional and reported that the Prozac was not helping him with the depression. He denied suicidal ideation.

On November 5, 1999, Pattee was moved to unit 7C for several days after he refused to take his medication, reporting hopelessness since going "to court." Pattee denied suicidal ideation and promised to advise staff if they recurred. Mr. Pattee resumed taking his medication and was returned to 7F. On November 24, 1999, Pattee was transferred to unit 7B. His condition at that time was stable, he was compliant with his medication and mentally alert.

On January 17, 2000, Mr. Pattee saw Dr. Arney reporting increased social anxiety, hand tremors, and decreased sleep. Pattee denied suicidal ideation. Dr. Arney initiated a change in Pattee's medication.

Mr. Pattee's records for February of 2000 reflect "fair" control of his depression. When he was seen by the treatment team in March of 2000, he reported ongoing anxiety, decreased concentration and memory. Dr. Arney continued his dosage of Prozac and increased his dosage of Nortriptyline, another antidepressant. On March 14, 2000, Mr. Pattee's records reflect that he "doesn't feel ready for 6A."

On May 16, 2000, Dr. Arney noted that Mr. Pattee complained of ongoing anxiety and tremulousness. Arney noted no suicidal ideation,

psychosis or new stressors. Mr. Pattee was tolerating his medication well and Arney noted that he would try adding Hydroxyzine in the daytime.

At his 90-day psych evaluation on June 6, 2000, Mr. Pattee complained of continued "anxiety, unrelieved by the addition of Hydroxyzine." Pattee stated that he feels "ok" until he remembers things happening in the past. He denied suicidal or homicidal ideation. He appeared very anxious, timid, and dysthymic, but was sleeping well.

On June 20, 2000, Pattee was seen by the treatment team. Dr. Arney noted that he continued to complain of anxiety, decreased concentration, social anxiety, and mild depressed mood, without suicidal ideation.

Pattee's monthly summary for June of 2000 reflects that he was alert and oriented, his affect was bright, and he was pleasant and cooperative. He continued to complain of anxiety, however.

In a psychiatric review conducted on July 3, 2000, Ms. Griffis-Parrish noted that Pattee appeared slightly improved with "less complaints of anxiety, affect brighter, decreased somatic concerns." A nursing note on July 8, 2000, reflected that Mr. Pattee was on Elavil, Prozac, and

Hydroxyzine. He was stable and had a bright affect, good mood and behavior, good insight and fair judgment.

Ms. Griffis-Parrish noted in a 90-day psych evaluation in August of 2000 that Mr. Pattee was depressed and anxious and reported just staying in his room and daydreaming. He denied active suicidal ideation, but expressed hopelessness regarding his situation.

On September 6, 2000, Dr. Arney noted that Mr. Pattee had been seen by the treatment team. He complained of ongoing anxiety and depressed mood, without suicidal ideation. Dr. Arney recorded that options and risks had been discussed and ordered a change of medication.

Pattee continued to suffer from depression and anxiety despite the administration of a variety of medications as well as therapy. In January of 2001, Ms. Griffis-Parrish noted that Pattee had had a difficult month with medications changes and episodes of anxiety. She also wrote that he continued to be isolative and irritable with a flat affect and depressed mood.

In a 90-day psych evaluation in February of 2001, Griffis-Parrish noted that Pattee reported being unable to sleep. He denied suicidal

ideation or auditory/visual hallucinations. Pattee's mood was dysthymic, his affect sad. He appeared weary. Griffis-Parrish assessed him as chronically depressed and anxious.

When he was evaluated on May 15, 2001, Griffis-Parrish quoted Pattee as saying "I've just about given up." She noted that he had been lying in bed and that although he frequently complained of not sleeping, he appeared to be sleeping well at that time. According to her note, Pattee had denied active suicidal ideation, but she recorded that he did appear "passively suicidal." She recorded that his mood was very depressed, his affect was flat and he appeared distressed. She also wrote, "he is extremely self pitying, shows little insight, no positive coping skills. Prefers to focus on the injustices done to him. Interacts little with others." Griffis-Parrish's assessment was that he "remains much the same."

In July of 2001, Pattee was transferred to Unit 6A. Ms. Griffis-Parrish noted that he reported that he was doing well except for chronic anxiety. His affect was flat and depressed. Griffis-Parrish noted that there was no evidence of thoughts of self-harm, but that overall he was self-

pitying and hopeless. She noted that he was resistant to working on the issue and improving his coping skills.

On July 31, 2001, Bob O'Berry, M.S.S.W., recorded that Pattee was keeping to himself on the unit. O'Berry also noted, however, that Pattee had started a job that might help him overcome some of his depressive thoughts and wrote, "Mr. Pattee has a great deal of anger inside him. [He] does not feel he should be in prison." O'Berry recorded that there were no other major symptoms to report and no suicidal ideation was noted.

Mr. Pattee told Ms. Griffis-Parrish that he thought he was hearing someone call his name while he was napping and he felt as if there was someone in the room with him. Pattee denied any other change in symptoms, suicidal or homicidal ideation or paranoia. He was getting along well with his peers and staff and was working on the unit. She noted that he appeared chronically sad, his affect remained flat, and his mood dysthymic.

In her assessment, Griffis-Parrish concluded that Pattee's symptoms appeared to be sleep related, but noted that he might be exaggerating as

well. She recommended that his medication be continued and that he be placed on sick call for an evaluation.

On September 6, 2001, Griffis-Parrish noted that Pattee continued much the same, dysthymic with poor coping skills. Dr. Arney wrote on September 26, 2001, that Mr. Pattee complained of ongoing tension, anxiety, social isolation, and depressed mood. Arney recorded that Pattee had no suicidal ideation or psychosis, but reported that he never felt relaxed. Dr. Arney noted that he would try increasing his Fluoxetine (Prozac) for ongoing depression and anxiety.

In a treatment team note recorded by Ms. Griffis-Parrish on November 1, 2001, she wrote that Pattee continued to be depressed and anxious, although he reported some lessening of anxiety with the increase of his Prozac. He was encouraged to become more active with a job.

According to Ms. Griffis-Parrish, Pattee "continues to isolate and exhibit poor motivation to improve his level of functioning." She noted that he reluctantly agreed to the treatment team's goals, but did not want to move to "side B."

PATTEE'S TRANSFER TO UNIT 6B

Mr. Pattee was transferred to Unit 6B on November 15, 2001, and began a job as a clerk for CCO Mary Hilla. Unit 6B was an open unit in which inmates held jobs and could go to the cafeteria for meals.

As reflected in the November nursing note, Mr. Pattee was alert and had good eye contact. His affect was pleasant, his behavior appropriate and he denied suicidal ideation. On November 19, 2001, Ms. Griffis-Parrish noted that Mr. Pattee appeared to be doing better. He had been working utilizing his clerical skills and verbalized no complaints.

In his 90-day psych evaluation in December of 2001, Ms. Griffis-Parrish noted that Pattee reported being pretty busy with his job. He indicated, however, that he had problems when he had to leave the unit because crowds made him nervous. He denied any suicidal or homicidal ideation or paranoia. She noted that he was adjusted to the unit. His affect, however, was flat and his mood was dysthymic. Griffis-Parrish assessed Mr. Pattee as having been significantly improved since his last evaluation.

On January 21, 2002, Ms. Griffis-Parrish wrote that Pattee continued to exhibit improvement in mood. He was active in his job and was observed out on the unit more often. When she evaluated him again on February 15, 2002, however, Pattee reported anxiety and hopelessness. Although he indicated no suicidal ideation, he told Griffis-Parrish that “[he’d] like to go so sleep and not wake up.” She wrote that they discussed various ways of coping and noted that she would refer him for individual therapy.

Mr. Pattee’s mood was improved on February 22, 2002, when the nursing staff described his affect as bright, his behavior appropriate and his sleep patterns as good. He was compliant with his medication and denied any suicidal ideation or hallucinations.

On March 15, 2002, Ms. Griffis-Parrish recorded the results of Pattee’s 90-day psych evaluation. She quoted Pattee’s statement that “[t]he past few days have been awful.” Pattee described being increasingly depressed, with feeling of hopelessness, without suicidal ideation. They discussed “Prozac becoming less effective” and Pattee requested individual therapy. Ms. Griffis-Parrish wrote that he appeared very

depressed and that they discussed having a supportive girlfriend and other family members and focusing on the positive aspects of life. She also noted that he had responded well to working with Ms. Hilla, the CCO. Griffis-Parrish assessed Pattee as remaining chronically depressed and noted that she would discuss a medication change with Dr. Arney.

Pattee's monthly summary was completed on March 19, 2002. At that time he reported, "I'm not doing so well." The record reflects that he was dealing with a post-conviction appeal and reported increased anxiety and sleep problems.

During this period, staff began to notice that Mr. Pattee had formed a close relationship with Ms. Hilla. Hilla was reportedly arriving early for work and leaving late and was spending this time with Pattee. Officers noted occasions when Hilla came early and went to get Pattee out of his cell, often before 6:00 a.m. Hilla had been seen sharing food brought in from outside the prison with Pattee, a violation of prison rules.

On April 2, 2002, Griffis-Parrish noted that Mr. Pattee continued to be depressed and that he had requested to see Dr. Arney. Dr. Arney recorded on April 15, 2002, that Pattee "had functioned helping staff and

doing well in some ways.” His main complaint was general anxiety throughout the day, which Pattee found distressing. Arney also wrote that Mr. Pattee did not go to the chow hall due to anxiety and was eating food from the commissary instead. Dr. Arney noted that Mr. Pattee’s mood remained moderately depressed and that his main coping mechanism was to keep busy. Arney noted no suicidal ideation, manic symptoms or psychosis. Dr. Arney decided to add Buspar for Pattee’s anxiety symptoms.

On May 13, 2002, Ms. Griffis-Parrish notes that Mr. Pattee remained much the same with chronic anxiety. She logged that he appeared slightly improved with the addition of the Buspar. She had observed him frequently on the unit, assisting the CCO.

A nursing note entered on May 24, 2002, reflects that Mr. Pattee reported feeling okay. Sometimes he felt as if the Buspar was helping and sometimes he did not. He stated that he did not go to the cafeteria because of the crowds and ate commissary instead. His sleep was “screwed up.” Pattee was working with the CCO on the unit and reported that he

enjoyed his job. He complained that he was “feeling tired of the whole prison thing,” but tried to stay busy.

In the 90-day psych evaluation completed by Ms. Griffis-Parrish on June 7, 2002, she quoted Pattee who had told her “I just keep busy. I don’t know if that Buspar is working or not.” He denied auditory or visual hallucinations, suicidal or homicidal ideation, and paranoia. He reported chronic low level anxiety. Griffis-Parrish noted that working with the CCO had been therapeutic for Pattee. She characterized his affect as flat and his mood as anxious. Her assessment was “chronic anxiety and dysthymia.”

The nursing summary for June of 2002 indicates that Pattee was still not going to the cafeteria for meals and interacted minimally with his peers, but was pleasant and cooperative with staff. He denied auditory or visual hallucinations, suicidal or homicidal ideation, or paranoia. He complained of anxiety, although he was unable to verbalize a reason for it. Pattee stated that he just tried to get through each day. He reported that he had returned early from a visit the previous day and stated “[i]t just wasn’t going well.”

On June 19, 2002, officers found Mr. Pattee, CCO Hilla and two other inmates in the midst of a party. Hilla admitted financing and organizing the party, which was not authorized. Ms. Hilla received a written warning as a disciplinary action.

Ms. Griffis-Parrish noted in the 90-day psych evaluation completed on July 2, 2002, that Pattee "continues to struggle with anxiety and depression, allegations of improper relationship with staff member which appear unfounded, probable false positive drug test." Mr. Pattee reported no suicidal ideation.

Mr. Pattee's relationship with Ms. Hilla had begun to cause dissension among the other inmates, which was a security concern. The treatment team believed that Mr. Pattee was getting too close to Ms. Hilla and that he was getting extra favors and decided to swap Pattee with an inmate in 7B. Sometime in July of 2002, Bob O'Berry met with Pattee and discussed his discharge from the unit and his relationship with CCO Hilla. O'Berry also met with Ms. Hilla and Pattee and cautioned them about being professional.

On July 6, 2002, Ms. Griffis-Parrish recorded that she had seen Pattee for paranoia. Pattee had reported, "If I see two people talking, I think they're talking about me." "If anything goes wrong, I think someone has done it on purpose." Pattee denied suicidal ideation, although Griffis-Parrish noted that he appeared agitated and had a constricted affect. She recorded that she would add a short course of low-dose Risperdal for synergistic effect with the SSRI and low-grade paranoia and would follow up at his next review in two weeks. The monthly nursing summary for July reflects that Pattee denied suicidal ideation, but had increased anxiety and paranoia,

In her psych evaluation on July 30, 2002, Ms. Griffis-Parrish noted that Pattee had shown some improvement in depression and anxiety since the addition of the low-dose Risperdal. Pattee reported, "I don't want to do anything. Just lie around." Griffis-Parrish noted that his affect was broad, his mood was less depressed, and he was more interactive. The Risperdal was discontinued at that time.

RETURN TO UNIT 7B

Pattee was moved back to Unit 7B on August 9, 2002. The nurse charted that he was alert, verbal, and appeared to be in no distress. He was putting away his personal things until count time.

Dr. Arney saw Mr. Pattee on August 12, 2002, and noted that he was quiet and sullen. Arney wrote “[n]o acute change in his condition seen. Overall stable. Continue current [treatment].”

Mr. Pattee committed suicide by hanging himself with his shoe strings on August 15, 2002.

CLAIMANT’S EXPERT WITNESS

Mary Griffis-Parrish testified that she has a master’s degree in nursing from Vanderbilt University and holds certifications in adult psychiatry and family practice. In 2000, Ms. Griffis-Parrish was employed by a private vender, MHM Health Services, at DSNE, which she testified has mental health facilities for the prison system. MHM Health Services had a contract with the State to provide mental health care to its inmates. Ms. Griffis-Parrish testified that her duties included making rounds, doing thirty day reports on her patients, attending team meetings, and meeting

and “no real reason for him to stay.” His ultimate control was his ability to be able to end his life when he was ready.

Griffis-Parrish testified that the precautions that should be undertaken for a person at risk for suicide include 24 hour monitoring and making sure that there was nothing in the room with which they could harm themselves. She testified that she believed that Mr. Pattee should have been on suicide watch when he was returned to unit 7B because of the situational change involved.

Ms. Griffis-Parrish was the mental health provider who had the most contact with Pattee and testified that she could have seen him as much as every day. She made rounds in the unit and there was a list each day of patients who needed to talk to her or whose charts needed to be reviewed. Griffis-Parrish testified that she did not have authority to place Mr. Pattee on suicide precautions. Despite her belief that precautions were appropriate because Pattee was a suicide risk, she did not make any record of that fact. Asked why it was not documented, she testified:

I'm careful about what I document for a lot of reasons. And a lot of time in my - - in my documentation, you have to read it closely and there's more than what I'm actually saying

because I'm trying to say something without actually saying it.

Once I document this - - that I think this man is a high risk suicide, I am legally responsible at that point to do something. I am going to be liable if I say in a document that he is suicidal. So that was why I did not do that. Because there was nothing I could do. So why document that? It was just going to cause a lot of trouble for a lot of people.

Tr., p. 92-93. Although Griffis-Parrish testified that she "probably" conveyed her belief that Pattee should be on suicide precaution to Dr. Arney, who did have that authority, he listened to other people rather than to her. Dr. Arney, Griffis-Parrish believed, did not document their conversations for the same reason that she did not - that is, because once it was documented, something had to be done.

Griffis-Parrish testified that as the vendor, they were there "on the good graces of the Department of Corrections (sic)" . . . and did not "want to make waves." According to Ms. Griffis-Parrish, it was Department of Correction employees, namely Shefrin and Bob Stevens, the unit manager, who were of the opinion that Mr. Pattee was not high risk for suicide and Dr. Arney listened to them. Nonetheless, Griffis-Parrish testified that had

Dr. Arney believed that Pattee was high risk for suicide, he would have placed him on suicide precautions. Arney did not do so, however.

CONCLUSIONS OF LAW

I. CLAIMS COMMISSION JURISDICTION

Ms. Atkinson has not identified the statute that she relies upon as providing jurisdiction for her complaint. Pursuant to Tenn. Code Ann. § 9-8-307(a)(1) the Claims Commission “has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of “state employees,” as defined in § 8-42-101(3),” falling within certain categories, including the following

(D) Legal or medical malpractice by a state employee; provided, that the state employee has a professional/client relationship with the claimant;

(E) Negligent care, custody and control of persons[.]

II. LIABILITY

Ms. Atkinson contends that the Department of Correction negligently failed to take adequate precautions to protect Mr. Pattee from the risk that he might commit suicide. Because Pattee had a known history

of depression as well as a prior suicide attempt in the Sumner County Jail, she argues that the Department should have recognized that moving him to Unit 7 would place him at an increased risk of suicide and placed him on suicide watch.

Tenn. Code Ann. § 9-8-307(c) provides that the State's liability "shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care." Under these concepts, a plaintiff in a negligence action must prove (1) a duty owed to the plaintiff; (2) conduct below the applicable standard of care that amounts to a breach of that duty; (3) injury or loss; (4) cause in fact; and (5) proximate cause. *Kilpatrick v. Bryant*, 868 S.W.2d 594 (Tenn.1993); *Lewis v. State*, 73 S.W.3d 88, 92 (Tenn.Ct.App. 2001).

Prison officials have a duty to exercise ordinary and reasonable care with respect to the persons in their custody. *Cockrum v. State*, 843 S.W.2d 433, 436 (Tenn.App. 1992); *see also Linkous v. Lane*, 276 S.W.3d 917, 924 (Tenn.Ct.App. 2008). This includes the duty to protect prisoners from reasonably foreseeable self-inflicted injury or death. *Cockrum*, 843 S.W.2d at 436.

In *Cockrum v. State*, *supra*, the Tennessee Court of Appeals found the suicide of a prison inmate with a history of suicidal thoughts and statements, repeated self-injury, and a previous suicide attempt to be foreseeable, imposing upon prison officials the duty to take reasonable precaution to protect her from self-injury. *Id.* at 437. With respect to the proof necessary to prove such a case, the Court held, however:

Prison officials are not insurers of a prisoner's safety. *Figueroa v. State*, 604 P.2d at 1205; *Pretty on Top v. Hardin*, 597 P.2d at 60-61. In a case such as this one, their conduct must only be reasonably commensurate with the inmate's known condition. *See Stokes v. Leung*, 651 S.W.2d 704, 708 (Tenn.Ct.App.1982). Except in the most obvious cases, whether the prison officials acted reasonably to protect a prisoner's safety requires expert proof or other supporting evidence. *Hughes v. District of Columbia*, 425 A.2d 1299, 1303 (D.C.App.1981).

Cockrum, 843 S.W.2d at 438. Here, Ms. Atkinson offers the decedent's medical records, the summary of the TDOC Internal Affairs Investigation into the suicide, and the testimony of Mary Griffis-Parrish, the nurse practitioner who treated Mr. Pattee under the supervision of Dr. Arney, as proof of her claim.

Ms. Griffis-Parrish, a nurse practitioner with a certification in adult psychiatry, was offered as both a fact and as an expert witness.² Ms. Griffis-Parrish testified that after he was moved to unit 6B, which she described as an open unit where inmates were permitted to have jobs and go to the cafeteria, Pattee seemed to be doing better. However, when he was moved back to unit 7, which she described as a closed unit for people who are chronically depressed and unable to do well in a more open environment, he “decompensated,” becoming severely depressed and suicidal. In her opinion, it should have been anticipated that the cell change would put Pattee at an increased risk of suicide and, she testified, she expressed this concern “to several people in the treatment team,” including Dr. Arney.

Although Ms. Griffis-Parrish testified that in her opinion Mr. Pattee should have been placed on suicide precautions, her testimony fails to set forth the standard of care, either for the correctional officials responsible for his incarceration or for the medical staff responsible for his treatment, by which the reasonableness of their actions can be judged.

² Upon questioning from the Commission, counsel indicated that Ms. Griffis-Parrish’s testimony would not go outside of the area of the standard of care with respect to adult psychiatric nursing. Tr., 40.

Ms. Griffis-Parrish is not a correctional officer and there was no showing made that she had knowledge or training with respect to correctional practices or procedures relative to the protection of inmates from self-injury. To the extent that Griffis-Parrish's testimony might be relevant to the duty owed Pattee by the mental health professionals outside the nursing field, there was no showing that she was qualified to render an opinion as to the care and treatment that they provided.

This is not a case in which the decedent's depression went unnoticed and untreated. Mr. Pattee had been under continuous treatment for depression for the entirety of his incarceration in the TDOC, a period of more than three years. Ms. Atkinson does not claim and the proof did not show that Pattee should have been on suicide watch for the entire period of his incarceration. The questions raised here is whether it should have been foreseen that Pattee's transfer back to unit 7, where he had lived for approximately two years, would pose an imminent risk of suicide. Such a determination, the Commission finds, is outside the common knowledge and experience of laypeople and requires expert proof that Ms. Atkinson did not provide.

The testimony showed that Mr. Pattee had been transferred to 6A in July of 2001. During his time in unit 7, his records reflect various degrees of depression and anxiety, but no suicide attempts or suicidal ideation. Although his records after his transfer to Unit 6B make references to improvement, such improvements would appear to have been meager. His records reflect that Pattee continued to complain of depression and anxiety. Indeed, it was during his time on 6B that he told Griffis-Parrish on February 15, 2002, that “[he’d] like to go so sleep and not wake up,” on March 15, 2002, that “the past few days have been awful,” and stated on March 19, 2002, that “I’m not doing so well.” Pattee continued to refuse to leave the unit. It was also during this period that Pattee experienced paranoia, for which he was prescribed the antipsychotic drug Risperdal. Certainly, despite any therapeutic benefit that Pattee might have experienced from being on unit 6B, the record reflects that he remained significantly depressed.

There is little proof, except perhaps the fact of his suicide, as to Pattee’s alleged decompensation after his return to unit 7B. His records contain no entry by Ms. Griffis-Parrish indicating that she saw him during

this time. His medical records on August 9, 2002, the day he was transferred, reflect that he was up putting away his personal things until count time and describe him as alert, verbal, and in no distress. When Dr. Arney saw Pattee on August 12, 2002, he described him as "quiet and sullen," but determined that there was "no acute change in his condition seen" and that he was "overall stable." There were no other medical entries prior to his death on August 15, 2002, and no witnesses were offered as to Pattee's condition between August 12, 2002, and his suicide.

There is no question but that Pattee had a history of chronic depression and that he possessed certain risk factors for suicide, including a suicide attempt three years prior while he was awaiting trial. This was the same risk, however, that he had posed throughout the period of his incarceration at DeBerry, at no time during which had he apparently been on suicide watch or attempted suicide.

Pattee's depression and anxiety persisted, however, despite regular evaluation and treatment by the mental health staff with a variety of antidepressant drugs and individual and group therapy. There is no indication, however, that the psychiatrist treating him and who saw him

three days before his death determined that he posed a danger to himself warranting extraordinary precautions.

Like the circumstances in *Cockrum, supra*, the conduct here was not so obviously improper that claims commissioners or appellate court judges could conclude that any duty owed to Mr. Pattee was breached. Therefore, as the *Cockrum* Court concluded, "expert proof delineating the precise scope of the staff's duty and evaluating the adequacy of the staff's conduct" was necessary. *Cockrum*, 843 S.W. 2d at 438. That burden of proof, however, has not been satisfied.

Much of Ms. Atkinson's case is premised upon the concept that the State has ultimate responsibility for the inmates in its charge, including their protection from harm. Based on Ms. Griffis-Parrish's testimony that she expressed concern that the change in Pattee's environment put him at risk of suicide, she argues that the State should have placed Pattee on suicide monitoring.

Ms. Griffis-Parrish testified that, although she made no record in his chart, she believed that Mr. Pattee should have been on suicide precaution and made this known to Dr. Arney and certain members of the treatment

team.³ The proof showed, however, that Dr. Arney was her supervisor and that he was the person authorized to place Pattee on suicide watch. Ms. Griffis-Parrish testified that had Arney believed that Pattee was a suicide risk he would have placed him on suicide watch.

Although the State may be held liable based on the negligence of State employees in the care, custody or control of inmates or their medical, the State cannot be held liable for the acts of independent contractors under a theory of vicarious liability. *See Younger v. State*, 205 S.W.3d 494 (Tenn.Ct.App. 2006). The proof established that Griffis-Parrish and Dr. Arney were employed by a private vendor, CMS Healthcare, which contracted with the State to provide healthcare services to inmates.⁴ As such, they are not employees of the State for whose negligence the State is vicariously liable.

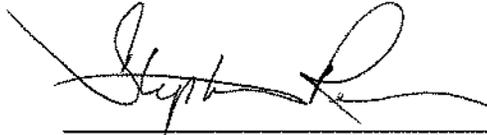
The claimant bore the burden of demonstrating by competent evidence that state employees failed to take reasonable action to protect Mr. Pattee from the risk of self-inflicted injury. Because the Commission

³ Griffis-Parrish's testimony that she did not bother to chart this obviously important assessment because she believed it would make her legally responsible to act is baffling.

⁴ The Department of Correction is authorized to enter into contracts for correctional services, including "medical services." *See* Tenn. Code Ann. § 41-21-102(2)(D), Tenn. Code Ann. § 41-21-103.

concludes that she failed to bear her burden of proof as to this issue,
judgment is entered for the defendant.

It is so **ORDERED** this the 18 day of December, 2009.



STEPHANIE R. REEVERS
Claims Commissioner

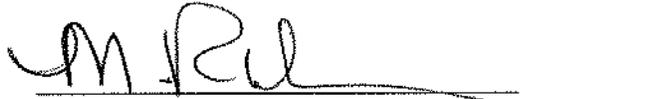
CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 1 day of Dec, 2009.


Marsha Richeson, Administrative Clerk
Tennessee Claims Commission