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NO. COA06-382

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

IRENE MAYO and RONALD MAYO,
Co-Administrators of the
Estate of CHRISTOPHER J.
MAYO, Deceased,
Plaintiffs

v.

North Carolina Industrial Commission
I.C. File No. TA-17544

N.C. DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
Defendant.

Appeal by Plaintiffs from decision and order entered 18 August 2005 by the North Carolina Industrial Commission. Heard in the Court of Appeals 21 September 2006.

*Law Offices of Wade Byrd, P.A., by Gerald F. Meek, for Plaintiffs-Appellants.*

*Attorney General Roy Cooper, by Special Deputy Attorney General Robert T. Hargett, for the State.*

STEPHENS, Judge.

On 9 July 1999, Christopher J. Mayo ("Decedent") was examined by Dr. Mohammad Abu-Salha at Duplin-Sampson Mental Health ("Duplin-Sampson") after "complaints that he [had] been unhappy and depressed and having confrontations with the family." Dr. Abu-Salha diagnosed Decedent with "major depression" and a "family conflict . . . relational . . . problem[.]" As a result of his diagnosis, Dr. Abu-Salha recommended treatment with Prozac, counseling, and family therapy. Decedent was treated by doctors at Duplin-Sampson for

approximately four months when his family decided to stop treatment because, "[t]hings had gotten normal again" and Decedent had started "acting like himself[.]"

However, over time, Decedent's problems and the conflict with his family recurred and, on 9 June 2000, he was examined by Dr. Ralph Berg at Cherry Hospital. At the conclusion of his evaluation, Dr. Berg found that Decedent was "[m]entally ill;" "[d]angerous to self;" and "[d]angerous to others[;]" and recommended that Decedent be involuntarily committed. Decedent was treated at Cherry Hospital between 9 June and 15 June 2000. During this time, staff noted that Decedent was not suicidal, homicidal, depressed, or manic. Decedent participated in the ward routine, was involved in groups, and did not display any aggressive or inappropriate behaviors. During a conference with staff, Decedent's family agreed that an outpatient commitment was the desirable plan of treatment. While Decedent was hospitalized at Cherry, his treatment team developed an "Aftercare Plan for Community Follow Up." This plan recommended that Decedent (1) receive weekly individual and family therapy, (2) would benefit from participation in anger management groups, (3) receive weekly substance abuse treatment, (4) pursue an alternative living arrangement, and (5) receive case management to ensure the utilization of all available resources. This plan was signed by Decedent and his father and was forwarded to the staff at Duplin-Sampson.

On 12 June 2000, after a twenty-minute meeting with Decedent, Dr. Martin Williams, Decedent's attending psychiatrist, determined that Decedent denied any suicidal or homicidal ideation, did not suffer from psychosis, and that an outpatient commitment was appropriate. Decedent was discharged from Cherry Hospital on 15 June 2000. Once Decedent was discharged from Cherry Hospital and Duplin-Sampson was made aware of his status, Decedent's care became the responsibility of Duplin-Sampson.

On 23 June 2000, Decedent became angry and made a reference to committing suicide. Later that day, Dr. Abu-Salha conducted a suicide risk assessment on Decedent and determined that "removing him from home would reduce [the] risk [of suicide] greatly." After staying with family friends for several days, Decedent returned home. On 8 July 2000, Decedent and his parents had several arguments regarding Decedent's failure to regularly take his medication and other family issues. After one argument had escalated, Decedent's father started to call a hotline to begin the process to have Decedent involuntarily committed once again. Before he could place the call, Decedent "walked . . . into the kitchen and . . . pull[ed] out a kitchen knife." Decedent then stabbed himself in the chest. Although Decedent was immediately treated by his family and eventually by emergency medical personnel, he died as a result of the self-inflicted knife wounds. He was fifteen years old.

On 17 June 2002, Ronald L. Mayo, Decedent's father, filed a claim against Defendant under the Tort Claims Act, N.C. Gen. Stat.§143-291, *et. seq.*, seeking damages in the amount of $1.75 million as a result of Defendant's alleged negligence in the death of Decedent.**[Note 1]** By an answer signed 2 July 2002, Defendant denied liability, and the case was heard on 24 March 2004 before Deputy Commissioner George T. Glenn, II of the North Carolina Industrial Commission. In a decision and order filed 23 July 2004, Deputy Commissioner Glenn concluded that "[t]here was no negligence on the part of any named officer, employee or agent of the State . . . which proximately caused decedent's death." Deputy Commissioner Glenn therefore denied Plaintiffs' claim for damages. On 3 August 2004, Plaintiffs gave notice of appeal to the Full Commission. The case was then heard by the Full Commission on 7 February 2005 and, in a decision and order filed 18 August 2005, the Full Commission also denied Plaintiffs' claim. For the reasons stated herein, we affirm the decision of the Full Commission.

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The standard of review under the Tort Claims Act is well settled. "[W]hen considering an appeal from the Commission, our Court is limited to two questions: (1) whether competent evidence exists to support the Commission's findings of fact, and (2) whether the Commission's findings of fact justify its conclusions of law and decision." *Simmons v. N.C. DOT*, 128 N.C. App. 402, 405-06, 496 S.E.2d 790, 793 (1998) (citing *Bailey v. N.C. Dep't of Mental Health*, 272 N.C. 680, 159 S.E.2d 28 (1968)). Additionally, our Supreme Court has held that when this Court reviews a decision of the North Carolina Industrial Commission, we do "'not have the right to weigh the evidence and decide the issue on the basis of its weight. The court's duty goes no further than to determine whether the record contains any evidence tending to support the finding.'" *Deese v. Champion Int'l Corp.*, 352 N.C. 109, 115, 530 S.E.2d 549, 552 (2000) (quoting *Anderson v. Lincoln Constr. Co.*, 265 N.C. 431, 434, 144 S.E.2d 272, 274 (1965) (citation omitted)). Findings of fact not assigned as error are presumed to be supported by competent evidence and are binding on appeal. *Anderson Chevrolet/Olds, Inc. v. Higgins*, 57 N.C. App. 650, 292 S.E.2d 159 (1982).

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By their first assignment of error, Plaintiffs argue that the Full Commission erred in finding as fact that "Dr. Berg did not note any suicide risk[.]" Plaintiffs argue further that this finding constitutes reversible error because the Full Commission's conclusion of law that the conduct of Defendant was not the proximate cause of Decedent's death was predicated in part on this alleged erroneous finding. Specifically, Plaintiffs argue that because there was evidence presented at the hearing that Dr. Berg did note a risk of suicide on Decedent's part, the Full Commission erred in finding to the contrary. We disagree.

Based on precedent established by this Court and our Supreme Court, we must determine if the challenged finding of fact is supported by competent evidence presented at the hearing. Plaintiffs take issue with the finding that "Dr. Berg did not note any suicide risk[;]" however, this sentence is only part of the finding made by the Full Commission. To accurately evaluate the propriety of the finding, we must examine it in its entirety, which is as follows: "Dr. Berg did not note any suicide risk and no problems were noticed *while decedent was on the ward over the weekend.*" (Emphasis added).

To support their position that contrary evidence was offered before the Full Commission, Plaintiffs direct our attention to Dr. Berg's initial "Examination and Recommendation to Determine Necessity for Involuntary Commitment[.]" After completing the commitment evaluation, Dr. Berg determined that Decedent should be admitted to Cherry Hospital, in part because he was "[d]angerous to self[.]" Plaintiffs argue that because Dr. Berg marked that Decedent was "[d]angerous to self[]" on the commitment form, he necessarily noted a risk of suicide. We find this contention without merit.

On the Involuntary Commitment form and in accord with N.C. Gen. Stat. §122C-3(11)a (1999), "dangerous to himself" is defined to mean that

> [w]ithin the recent past: (a) the individual has acted in such as way as to show: (1) that he would be unable without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgement [sic], and discretion in the conduct of his daily responsibilities and social relations or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and(2) that there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given . . . or (b) the individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given; or (c) the individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given.

Therefore, Dr. Berg's assessment that Decedent was "[d]angerous to self[]" does not necessarily signify that he believed Decedent was suicidal. That is, Dr. Berg may have noted that Decedent was "[d]angerous to self[]" based on other statutory criteria.

Moreover, after completing his "Initial Psychiatric Evaluation[,]" Dr. Berg reported that Decedent "[d]enies suicidal or homicidal ideations. Has thought about death in the past, [but] would never hurt himself." The Full Commission's finding is further supported by Dr. Berg's "Initial Treatment Plan" which indicated that Decedent would be admitted to be "further evaluated by [a] [p]sychiatrist in [the] morning for initiation of medication, which does not appear to be a requisition at this point in time[,]" and his recommendation that the "[l]evel of care" be "[r]outine." In addition, once Decedent was admitted to the hospital, there is no evidence that while he "was on the ward over the weekend[,]" he exhibited any indications of a risk of suicide. On the contrary, the evidence showed that while Decedent was admitted at Cherry Hospital, he "was not psychotic nor was he suicidal or homicidal. There were no symptoms of depression or mania." Decedent did not display any "aggressive or inappropriate behaviors on the ward. . . . He was not physically [a]ggressive at all." Therefore, there is competent evidence to support the Full Commission's finding. As this finding in turn provides support for the Full Commission's conclusion of law that the conduct of Defendant was not the proximate cause of Decedent's death, we overrule this assignment of error.

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Next, Plaintiffs argue that the Full Commission erred in finding the testimony of Plaintiffs' expert, Dr. Dulmus, "as to a violation of the standard of care by June Waller [Decedent's treating social worker] to be unpersuasive and not supported by the greater weight of the evidence." Plaintiffs also challenge the Full Commission's finding "that plaintiffs failed to

prove by the greater weight of the evidence that defendant's officers, agents and employees deviated from the standard of care in their provision of services to the decedent." We disagree.

With regard to Dr. Dulmus's testimony, because the Full Commission made their determination based on the amount of evidence presented and the weight they assigned to that evidence, we conduct our review to determine if there is competent evidence in the record tending to support the finding at issue.

Once again, Plaintiffs have assigned error to only part of the finding made by the Full Commission regarding its evaluation of Dr. Dulmus's testimony. In its entirety, Finding of Fact 20 reads:

> Plaintiff presented Catherine Norton Dulmus, Ph.D, CSW, ACSW, as an expert witness in social work. Ms. Dulmus, however, has never been licensed as a social worker in the State of North Carolina, had never been to Cherry Hospital, had not reviewed the policies and procedures for social workers at Cherry Hospital, and had no knowledge as to whether or not the adolescent unit at Cherry Hospital was similar to the facilities at which she worked in New York. Ms. Dulmus testified that she believed the bio-social assessments at Cherry Hospital were below accepted practices and standards. In the year 2000, when the assessment for decedent was done, Ms. Dulmus did not review a psycho-social assessment done in North Carolina. Ms. Dulmus was not familiar with the social work policies, practices and procedures at the adolescent units at Dorothea Dix Hospital, Broughton Hospital, or John Umstead Hospital, nor did she review any of the North Carolina mental health policies and procedures for social work in its State facilities. Ms. Dulmus was not aware of any of the North Carolina policies and procedures on treatment team planning that were in place in 2000, and specifically was not aware of what services were available for residential treatment in North Carolina in June of 2000. Her social work experience in inpatient facilities was not done in North Carolina. Ms. Dulmus was not aware of how many counties fell within the Cherry Hospital catchment area. The Commission finds Ms. Dulmus' [sic] testimony as to a violation of the standard of care by June Waller to be unpersuasive and not supported by the greater weight of the evidence.

Read in whole, it is clear that the Full Commission found Dr. Dulmus's testimony to be unpersuasive because of her lack of familiarity with the practices of social workers in North Carolina and in particular at Cherry Hospital. The uncontested portions of Finding of Fact 20 clearly support the Full Commission's ultimate finding that Dr. Dulmus's testimony was not persuasive. Moreover, even if the entire finding had been contested, a thorough review of all the evidence presented at the hearing establishes that the entire finding is supported by the testimony of Dr. Dulmus. Accordingly, Plaintiffs' argument is without merit.

Plaintiffs also contend that the Full Commission erred in not finding the expert testimony of Dr. Dulmus credible because her testimony was unopposed. That is, because Defendant presented no expert witnesses regarding the standard of care applied to social workers in North Carolina and Ms. Waller's adherence to that standard, Plaintiffs argue that the testimony of their expert witness carried their burden. Defendant asserts that it did present expert testimony rebutting Plaintiffs' expert. However, even if that were not the case, Plaintiffs' argument in this regard would fail because "[u]ncontradicted expert testimony is not binding on the trier of fact." *Scott v. Scott*, 336 N.C. 284, 291, 442 S.E.2d 493, 497 (1994). Questions of credibility and weight still are the province of the Commission, which may accept *or reject* all the testimony of a witness. *Lineback v. Wake County Bd. of Comm'rs*, 126 N.C. App. 678, 486 S.E.2d 252 (1997).

Although the Full Commission made no findings on the credibility of Defendant's expert's testimony regarding Ms. Waller's alleged violation of the standard of care applied to social workers in North Carolina, the Full Commission nonetheless determined, as was its prerogative, that Plaintiffs' experts were not persuasive and, consequently, that Plaintiffs had not met their burden of proving a violation of the applicable standard of care. Moreover, while Plaintiffs argue further that the Full Commission was required to make findings as to why they

found Dr. Dulmus's testimony unpersuasive, this contention is not supported by the law of our State. *See, e.g., Deese*, 352 N.C. at 116, 530 S.E.2d at 553 (citation omitted) ("[T]he Commission does not have to explain its findings of fact by attempting to distinguish which evidence or witnesses it finds credible"). Nevertheless, Finding of Fact 20, listed above in its entirety, clearly and thoroughly details the Full Commission's rationale for discounting Dr. Dulmus's testimony. Accordingly, Plaintiffs' argument is without merit and is overruled.

Plaintiffs also argue that the finding of the Full Commission that "plaintiffs failed to prove by the greater weight of the evidence that [June Waller] deviated from the standard of care in [her] provision of services to the decedent" constitutes reversible error. We likewise find this contention without merit.

Under the Tort Claims Act, "'[t]he burden of proof as to [negligence is] on the plaintiff. Evidence is usually not required in order to establish and justify a finding that a party has failed to prove that which he affirmatively asserts. It usually occurs and is based on the absence or lack of evidence.'" *Drewry v. N.C. DOT*, 168 N.C. App. 332, 337, 607 S.E.2d 342, 346 (quoting *Bailey v. N.C. Dep't of Mental Health*, 2 N.C. App. 645, 651, 163 S.E.2d 652, 656 (1968)), *disc. review denied*, 359 N.C. 410, 612 S.E.2d 318 (2005).

As stated above, while the Full Commission made no findings on the credibility of Defendant's expert's testimony regarding Ms. Waller's alleged violation of the standard of care applied to social workers in North Carolina, Plaintiffs' experts were not found to be credible. Therefore, acting as the trier of the facts, it was permissible for the Full Commission to discount the testimony of Plaintiffs' experts. *Melton v. City of Rocky Mount*, 118 N.C. App. 249, 256, 454 S.E.2d 704, 709 (The Industrial Commission is "the sole judge of the credibility of the witnesses and the weight to be given their testimony") (citing *Hilliard v. Apex Cabinet Co.*, 305 N.C. 593,

290 S.E.2d 682 (1982)), *disc. review denied*, 340 N.C. 568, 460 S.E.2d 319 (1995). Accordingly, before the Full Commission, Plaintiffs failed to meet their burden of proof. This assignment of error is overruled.

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By their final assignment of error, Plaintiffs argue that the Full Commission erred by concluding that "Decedent's death was not proximately caused by any negligence on the part of any named officer, employee or agent of the State of North Carolina while acting within the scope of his or her office, employment, service, agency, or authority." Specifically, Plaintiffs contend that the Full Commission misapplied the concept of proximate causation as evidenced by their finding that "it was not reasonably foreseeable upon discharging decedent to an outpatient commitment . . . that decedent would injure himself by committing suicide[.]" We do not agree. On the contrary, because we believe the Full Commission applied the correct test to determine the issue of proximate cause and because there were sufficient findings of fact to support the Full Commission's conclusion of law, this assignment of error is also overruled.

"Foreseeable injury is a requisite of proximate cause, which is, in turn, a requisite for actionable negligence." *Barefoot v. Joyner*, 270 N.C. 388, 393-94, 154 S.E.2d 543, 547 (1967) (citing *Osborne v. Atlantic Ice & Coal Co., Inc.*, 207 N.C. 545, 177 S.E. 796 (1935)).

> North Carolina appellate courts define proximate cause as "a cause which in natural and continuous sequence, unbroken by any new and independent cause, produced the plaintiff's injuries, and without which the injuries would not have occurred, and one from which a person of ordinary prudence could have reasonably foreseen that such a result, or consequences of a generally injurious nature, was probable under all the facts as they existed."

*Williamson v. Liptzin*, 141 N.C. App. 1, 10, 539 S.E.2d 313, 319 (2000) (quoting *Hairston v. Alexander Tank & Equip. Co.*, 310 N.C. 227, 233, 311 S.E.2d 559, 565 (1984) (citations

omitted)), *disc. review denied*, 353 N.C. 456, 548 S.E.2d 734 (2001). "The plaintiff need not prove the defendant foresaw the exact injury which occurred." *Taylor v. Interim Healthcare of Raleigh-Durham, Inc.*, 154 N.C. App. 349, 354, 574 S.E.2d 11, 15 (2002) (citation omitted), *disc. review denied*, 356 N.C. 695, 579 S.E.2d 102 (2003).

In its "Conclusion of Law 2," the Full Commission stated:

> Proximate cause is a cause which in the natural and continuous sequence produced the plaintiff's injury, without which the injury would not have occurred and one from which a person of ordinary prudence could have reasonably foreseen that consequences of an injurious nature would result under all the facts as they existed. *Hairston v. Alexander Tank & Equipment Co.*, 310 N.C. 227, 311 S.E.2d 558 (1984). Foreseeability is a requisite of proximate cause. *Nance v. Parks*, 266 N.C. 206, 146 S.E.2d 24 (1966). To prove forseeability, plaintiffs must show that "defendant might have foreseen that some injury would result from his act or omission, or that consequences of a generally injurious nature might have been expected." *Williamson* at 10, 539 S.E.2d at 319. While the element of foreseeability is necessary to reach proximate cause, the defendant is not required to "foresee events which are merely possible but only those which are reasonably foreseeable." *Id.* at 11 (*citing Hairston v. Alexander Tank & Equipment Co.*, *supra*). The court in *Williamson* further held,
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> > If the connection between negligence and the injury appears unnatural, unreasonable and improbable in the light of common experience, the negligence, if deemed a cause of the injury at all, is to be considered remote rather than a proximate cause. It imposes too heavy a responsibility for negligence to hold the [tort-feasor] responsible for what is unusual and unlikely to happen or for what was only remotely and slightly possible.

It is clear that the test applied by the Full Commission meets the standard to determine proximate cause as established by our appellate courts. Therefore, the Full Commission did not misapply the concept of proximate cause, as argued by Plaintiffs.

Plaintiffs additionally argue that the Commission applied this test incorrectly by focusing only on whether suicide was reasonably foreseeable, rather than whether "some injury" was reasonably foreseeable. However, in their brief to this Court, the thrust of Plaintiffs' argument is directed at the foreseeability of suicide. Therefore, in light of the nature of Plaintiffs' argument, we cannot conclude that the Commission erred by focusing on the foreseeability of suicide specifically, rather than "some injury" generally.

Further, as Plaintiffs assign error only to the Full Commission's conclusion of law that Defendant's alleged negligence was not the proximate cause of Decedent's death, we need only determine if the contested conclusion is supported by the Full Commission's findings of fact. Because Plaintiffs do not assign error to relevant findings of fact made by the Commission, those findings are binding on appeal. *Anderson Chevrolet/Olds, Inc.*, 57 N.C. App. at 653, 292 S.E.2d at 161.

In this case, we believe the following uncontested findings of fact support the Full Commission's challenged conclusion on proximate cause:

> 8. The report on decedent was routine without any indication for suicide precautions. Dr. Williams did note that decedent cried while on the telephone, which is fairly common for adolescents who are admitted. Dr. Williams spoke with decedent the morning of June 12, 2000 and reviewed with him the information from Dr. Jennings' commitment and referral, as well as Dr. Berg's assessment and the information that one of the hospital nurses collected. Dr. Williams specifically asked decedent about Mr. Mayo's allegations that decedent struck his brother and used drugs. Decedent responded, "Well, they're trying to get me some help and the only way they can get me in anywhere is if I'm a danger to myself or someone else. And I said 'So what would happen if I punched my brother?'" Decedent also stated, "I love my brother and I don't want to do anything to hurt him, but this is what was said that we had to do to get some help." Decedent stated that he tried cocaine five times over a year before, that he used marijuana three to four weeks prior to admission, that he did not drink much, and that he did not have any alcohol in the immediate

preceding time. Decedent's blood test results of June 13, 2000, confirmed that he did not have any cocaine, alcohol, or marijuana in his system and did not have a history of heavy alcohol abuse.

9. Dr. Williams performed a suicide risk assessment of decedent on June 12, 2000. Decedent denied any suicidal ideations. Decedent said he made one statement that others interpreted to be suicidal, but that he would never hurt himself. Decedent said several weeks earlier, after an argument with his father, "they will find me by the side of the road." Neither decedent nor his brother, who heard this statement, considered it a suicide threat. In fact, decedent's brother, Ronald Mayo, Jr., never heard decedent make any suicidal threats. Decedent never made any plans for suicide, like saving up medications or identifying a firearm. Dr. Williams found decedent had passive thoughts about suicide, as opposed to active thoughts. Decedent's only other violent act toward another person occurred over a year earlier when decedent pushed his mother onto a bed after she slapped him during an argument. Decedent also admitted he broke a window with his fist during an argument with his father. Dr. Williams considered decedent's drug use a high-risk indicator but determined from the blood tests and decedent's statements that the drug use indicator was outweighed by other factors, including decedent's verbalized desire to continue with treatment, his relationship with his girlfriend, his lack of physical health problems, his age and gender, and a mental health diagnosis of oppositional defiance disorder as opposed to major depression. Dr. Williams found that decedent did not meet the diagnostic criteria for major depressive disorder, which would be a key risk factor for suicide.

10. Dr. Williams met with decedent every day for 20 minutes from their first meeting on Monday, June 12, 2000, until decedent's discharge on Thursday, June 15, 2000. In addition, Dr. Williams was on the ward four to five hours per day and was able to observe and evaluate decedent's actions. Decedent's charts showed that he was eating and sleeping normally, was taking care of his personal needs, and was interacting appropriately with others. Decedent had one argument with his father on June 14, 2000 and threw a soda can, but decedent was easily redirected.

. . . .

12. An Aftercare Plan for Community Follow-up was developed for decedent and was sent to Duplin-Sampson. Pursuant to that plan, decedent was to receive weekly individual therapy, group anger management therapy, substance abuse therapy

> included in the weekly therapy, and in-home therapy as an option. The Plan also indicated that there had been a problem with compliance and that if the Plan was not working, alternate living arrangements were to be considered for decedent. Decedent, his father, and Dr. Williams, June Waller and Lula Newkirk, the members of decedent's treatment team, signed the Aftercare Plan. The Aftercare Plan was then sent to Duplin-Sampson.
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> 13. On June 15, 2000, Ms. Waller met with decedent and his father for a discharge conference. Ms. Waller discussed the family's need to work on communication, as well as the parents' need to "pick their battles" with decedent. Based on her contact with decedent, Ms. Waller did not feel that decedent was a risk for suicide. While Ms. Waller felt decedent had some anger management problems, she could not predict that decedent would become violent after being discharged. Ms. Waller hoped decedent and his family would become involved in therapy, utilize available services, and develop appropriate methods of dealing with anger and communicating with each other.

These findings, uncontested by Plaintiffs, clearly support a determination that it was not reasonably foreseeable that Decedent would commit suicide or harm himself in any way. Therefore, the Full Commission did not err in concluding that Decedent's death was not proximately caused by any negligence on the part of Defendant. This assignment of error is overruled.

For all of the reasons stated, the decision and order of the Full Commission is

AFFIRMED.

Judges STEELMAN and GEER concur.

Report per Rule 30(e).

**NOTE**

1. Although Irene Mayo, Decedent's mother, was not named on the original claim form included in the Record on Appeal, she is listed as a Plaintiff on every court document thereafter. Therefore, we will refer to the complaining party in the plural.