

MSC Opinion: Mental-health professionals' common-law duties to warn and protect patients survive the enactment of MCL § 330.1946

31. March 2010

On March 30, 2010, the Supreme Court issued a unanimous decision in *Dawe v. Dr. Reuven Bar-Levav & Assocs., P.C.*, No. 137092, holding that a patient may pursue a common-law, medical-malpractice claim against his or her treating mental-health professional if the professional negligently placed the patient in danger of harm from another patient. The question before the Court was whether MCL § 330.1946 completely abrogated the common-law duty of a mental-health professional to warn or protect others, including patients. In an opinion written by Justice Cavanagh, the Court held that by enacting MCL § 330.1946, the Legislature only intended to limit, not to completely abrogate, the common-law duties of mental-health professionals toward patients based on the “special relationship” between them. A copy of the Court’s opinion can be found [here](#).

In *Dawe*, the plaintiff was shot and injured by a fellow patient during a group-therapy session at her psychiatrists’ office. One of the psychiatrists was also shot, and killed, during the same incident, along with another patient. The plaintiff brought an action against the psychiatry practice, the surviving psychiatrist, and the estate of the deceased psychiatrist, for both common-law medical malpractice and violation of MCL § 330.1946, for failure to warn and protect her from a threat of physical harm. At trial, the defendants moved for partial directed verdict as to the plaintiff’s MCL § 330.1946 claim, which was denied. After the jury returned a verdict for the plaintiff, the defendants moved for JNOV and for a new trial, which the court also denied.

On the defendants’ appeal, the Court of Appeals revised the trial court’s denial of the motion for partial directed verdict, concluding that MCL § 330.1946 abrogated all common-law claims for failure to warn or protect third persons, including patients. The Court of Appeals reasoned that the statute “preempt[ed] the field on the issue of a mental-health professional’s duty to warn or protect others, including the psychiatrist’s other patients. . . .”

The Supreme Court rejected the Court of Appeals’ conclusion, holding that MCL § 330.1946 was only intended to limit the duties of mental-health professionals to the specific situation described in the statute and did not affect such professionals’ broader common-law duties to patients. Unlike other statutes in which the Legislature had enacted statutes with comprehensive language “completely cover[ing] the details” of the subject matter and “includ[ing] enumerated exceptions to or conditions on the statute’s application,” in MCL § 330.1946 the Legislature only describes the mental-health professional’s duties with respect to “very limited circumstances.” Therefore, “[n]othing in the statute indicates that the Legislature intended to completely abrogate a mental health professional’s common-law special relationship duty to his or her patients.” The Court noted that in the

event that the “third person” against whom a threat has been made is a patient, then the mental-health professional may have duties to that patient under both the common law and MCL § 330.1946.