3rd December 1985

85/128

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

Samedi Division

Before: P.L. Crill, C.B.E., - Deputy Bailiff
Jurat The Hon. J.A.G. Coutanche
Jurat C.S. Dupre, M.C.

BETWEEN	Luzia de Jesus Fernandes de Freitas	PLAINTIFF
AND	States of Jersey Public Health Committee	DEFENDANT

Advocate C.M.B. Thacker for the Plaintiff
Advocate C.E. Whelan for the Defendant

The Limes is a geriatric hospital, administered by the Public Health Committee of the States of Jersey. At the time the incident which gave rise to this action occurred, there were three floors available for patients: a ground floor, a first floor and a second floor. On the ground floor there was an average of five to six patients and on the second floor some eighteen patients. Apart from catering and domestic staff there were five professional nurses, either State Registered Nurses or State Enrolled Nurses, and four auxiliary nurses to care for the needs of the patients, some of whom but by no means all, were infirm. Auxiliary nurses are persons who, whilst not being given the full training of the profession, nevertheless receive some practical and a certain amount of advice from the professional nurses, to whom they are attached at the various hospitals in the Island, until they have reached a satisfactory standard. Their main duties are to assist the professional nurses in their more mundane nursing routine and in particular to help move patients from their beds into chairs during the daytime. The auxiliary nurses are taught the correct way to lift and move patients. The purpose of this teaching is in order to avoid physical injury or damage to the patients, to the auxiliary and her assistant or, in some cases, the State Registered or State Enrolled Nurse whom she is assisting. The Plaintiff in this case is an auxiliary and before the accident had worked for the Public Health Committee in several of their hospitals, finally ending up at the Limes. She is a Portuguese National with a limited command of English. By the time the incident occurred she was a competent auxiliary nurse and knew the lifting procedure. To assist lifting patients, it is sometimes necessary, particularly in the case of very heavy patients, or when moving patients from the bed other than on to a chair, to have the use of a lifting machine or hoist, which again,

the plaintiff knew how to use. In addition to the nursing staff, there was at least one such hoist on the ground floor at the Limes at the time of the incident, although there is some evidence to suggest that there may have been two, the other being in a cupboard on the second floor. It does not matter whether there was one or two hoists because the evidence showed that the manoeuvre which all the professional witnesses preferred to call it of moving patients from their beds to their chairs did not require the use of such a hoist.

On the 3rd March, 1980, the plaintiff came on duty at the Limes. Having checked the rosta, she went up to the second floor, together with Mrs. V. Branigan, who was also an auxiliary nurse. Between them, they started to get patients out of their beds and seat them in chairs, ready for their breakfast. It was the practice at the Limes for as many patients as possible to be moved from their beds into chairs during the daytime, because they were more comfortable in that position. The plaintiff, in her Order of Justice alleges that she was under some pressure to complete the moving of the patients into their respective chairs by 8.15 a.m., which was the time when the domestic staff brought the breakfast up to the wards, and it was the requirement of the sister-in-charge that patients should be ready by that time. In the course of attending to the patients the first one which she and Mrs. Branigan moved was a Mrs. Marett. She was a semi-paralysed lady, who had one useless leg and who could stand for a very short time, with assistance, on the other. No difficulty ensued during the manoeuvre of getting her to sit up on the bed, to move her legs over the side and to stand up. The plaintiff made no complaint about the methods which she had been taught to use. Indeed, it was accepted that she and Mrs. Branigan used the correct methods up to that point. The plaintiff, however, having steadied Mrs. Marett with her left elbow, then reached round with her right hand to get Mrs. Marett's chair which had been placed a little distance away from the bed and as she did so she felt her back click and she suffered an injury. She now claims that that injury was due to the failure of the Public Health Committee, her employer, to provide a safe system of work.

In the end the issues narrowed themselves down to one. The question of liability revolves around the position of the chair. The plaintiff alleges that it was common practice for the chair to be placed in the position where she said she put it, that is to say a little distance away from the bed, and for nurses having got the patients standing upright, to reach out either with their hand, or with a leg, and pull or hook the chair towards the bed. The defendant Committee submitted that that was a dangerous practice, not one that had been taught to the auxiliary nurses and that the proper procedure was to position the chair close to the bed so that the patient could be put immediately into it, without the necessity to reach for the chair either by hand or foot, after the patient had been lifted into a standing position.

Sofar as the proper establishment of sufficient staff is concerned, the Limes has the national average of staff in relation to patients, and we were told by Mrs. Revill that if more staff were needed they could be obtained from a nurses bank. On the day in question, having regard to the number of patients who either did not wish to get out of bed, or were too ill to be moved, there were about five patients requiring attention by the two auxiliary nurses, the plaintiff and Mrs. Branigan, in addition to whom, there was a fully qualified S.R.N. on duty. It should also be remembered that at that time the Limes was a small unit and it would not be difficult for any departure from the accepted nursing practice to be remarked on and reported to the senior staff. On the other hand, we were told that, because of the design of the premises, it was not always possible by looking into the wards to see what was being done, because several patients were in cubicles or small rooms. It was accepted that it was the duty of the Public Health Committee to provide a safe system of working for its staff, and all the circumstances relevant to the particular employee must be taken into consideration. In this case the plaintiff had suffered some minor injury to her back earlier in the year, but we are satisfied that the defendant Committee was not aware of this. The duty of an employer of course will vary, depending on whether there is a complicated system of work, in which case the duty may be higher, or whether there is a well-defined and understood relatively simple system of work, in which case the standard of duty may not be so high. In this case it was accepted by Mr. Thacker on behalf

of the plaintiff that what Mrs. de Freitas had been taught was right, but that there had crept in to the practice at the Limes, that is to say reaching for the chair by a hand or foot, something which the Public Health Committee had accepted as the common practice of its staff, and which as it turned out was not safe, because anyone doing that could thereby twist her spine as Mrs. de Freitas did, and injure it as indeed happened to her. The defendant Committee, Mr. Thacker said, did not even consider the matter and it did not cross its mind that this could occur. The question, he said, was whether the Public Health Committee took a chance that an employee might be tempted to take a short cut. (See Hardaker v. Huby a Court of Appeal case reported in the Solicitors' Journal of 20th April, 1962). On the other hand Mr. Whelan, for the Committee, said that for the job that Mrs. de Freitas was doing the Public Health Committee was not required to lay down a detailed system. Its arrangements were thoroughly reasonable and it could expect to rely on its employees to carry them out. What had happened was that Mrs. de Freitas had departed casually from the standard and authorised procedure that she had been taught, and he cited the case of Parkes v. Smethwick Corporation Local Government Reports, 1957, at page 438. In that case the opinion of Lord Oaksey in General Cleaning Contractors Ltd. v. Christmas (1953) A.C. 180, was referred to where he says: "It is, I think, well known to employers, (and there is evidence in this case that it was well known to the appellants) that their workpeople are very frequently, if not habitually, careless about the risks which their work may involve. It is, in my opinion, for that very reason that the common law demands that employers should take reasonable care to lay down a reasonably safe system of work. Employers are not exempted from this duty by the fact that their men are experienced and might, if they were in the position of an employer, be able to lay down a reasonably safe system of work themselves. Workmen are not in the position of employers. Their duties are not performed in the calm atmosphere of a board room with the advice of experts". This latter point was taken up by Mr. Thacker, who painted a picture of the plaintiff with her co-auxiliary nurse, in a state of extreme pressure rushing to complete her duties before the breakfast was served. He submitted that the practice of reaching out for a chair

or hooking it had been established, had been known to the senior staff and accordingly was not a reasonably safe system of working. Because of the layout of the premises which we have described there were three things Mr. Thacker said should have been done. First, there should have been a notice-board, in Portuguese and English, drawing attention to the necessity to place the chair close to the bed before attempting to manoeuvre the patient out of it. Secondly, there should have been snap inspections and thirdly, the staff should have been called together in groups from time to time to remind them of what they should do. It was clear to us in the course of the hearing that the recommended system of work, as indeed was accepted by Mr. Thacker, was ~~vunerable~~ reasonable. Accordingly, the claim that the plant was not safe no longer stands.

Mr. Whelan submitted that the nursing staff was left to carry out on the spot what they had been properly taught. If in doubt, he said, they could always call on an S.R.N. or S.E.N. for help or assistance. In this case there had been a casual departure from the correct procedure and the defendant could not do more than it had done to guard against it. It turned out in the course of the evidence that the weight of the patient and her ability to stand on one leg and to what extent no longer became important. The issue was quite simple. Was the manoeuvre, that is to say, not placing the chair close to the bed and hooking it by hand or foot, one which had been brought to the attention of the senior staff, or was it something of which the Public Health Committee should reasonably have been aware? It was a simple manoeuvre from bed to chair and the provision of a hoist, whether on that floor or in the basement, was irrelevant to the particular manoeuvre involved.

Sofar as the question of the plaintiff being in a hurry, which prevented her from applying her mind properly to what she should be doing, if the timetable was rigid, about which I shall have more to say in a moment, her co-auxiliary nurse gave evidence that they would be allowed only about three minutes for each of the five patients who required moving. Be that as it may, the hoist was not asked for because it was a simple manoeuvre for which a hoist was not necessary and there was a further nurse on duty as we have already said, namely Sister Bailey, who was the ward sister in charge, to whom they could have asked for assistance. We

are quite satisfied from the evidence we heard that Mrs. de Freitas, after a somewhat slow start, established herself as a reasonably competent auxiliary nurse, well versed in the requirements of lifting or manoeuvring patients from their beds. The evidence of the plaintiff, of Mrs. Branigan and Miss Cash, was that in fact there had been established a practice of placing the chair away from the bed, rather than close to it. On the other hand we heard the evidence of Mrs. Revill, who is the Chief Nursing Officer for the Jersey Group of Hospitals and an S.R.N. of some 24 years experience. She said, firstly, that placing the chair away from the bed was not the regular procedure. Secondly, that written individual notices were totally unnecessary and would be a burden to the staff. Thirdly, Mrs. de Freitas had been reported on for her lifting ability, which was satisfactory. Fourthly, that the reason for teaching the correct lifting or manoeuvre was as we have said, in the interests of the patient and both nurses, who were performing the manoeuvre. Fifthly, if the manoeuvre was unsafe, the nurses should not undertake it, but should ask the senior staff nurse for assistance and if she informed them that it was safe to do it and it turned out that it was not, then she would be wrong. Sixthly, Mrs. de Freitas had been offered a chance of going on a course early in her career, but she elected not to do so, but to work under an S.R.N. Seventhly, lifting techniques are important in the case of geriatric nursing and are always taught to auxiliary nurses, who are likely to be used for this purpose.

On her evidence alone we would have been satisfied that the system taught by the Public Health Committee to its auxiliary nurses was reasonable and satisfactory. As against the evidence of the wrong use of the chair being condoned by the defendant, Miss Hockenhull who was the Administrative Sister at the Limes for 11 1/2 years and an S.R.N. for 31 years saw the plaintiff employing the manoeuvre on many occasions and when she saw her she always placed the chair in its proper place. Secondly, she said, because the Limes was a small unit, it was unlikely that anyone would not know of the danger if the chair was not placed in its proper place. Mrs. Robson had been a Nursing Officer at Sandybrook for some four or five years, was an S.R.N. and an S.E.N. having qualified in 1948. There

had been no reports of injuries as far as she was concerned, as a result of the manoeuvre we have already described in detail, and as we have said, it was designed to protect the nurse herself, her colleague assisting her and the patient. All nurses were taught to get the chair ready before and her staff still do this without having to be told on each occasion, or indeed reminded of it. Sister Bailey, the Ward Sister we have already mentioned said that one of the most important things was indeed to get the chair in place first. Both she and Miss Hockenhull were quite clear that the pace in geriatric hospitals was slow and that, contrary to the allegations in the Order of Justice, there was not an extreme adherence to a timetable that would place unnecessary pressure on the staff. She, too, said that no-one else had suffered injury from this type of manoeuvre which Mrs. de Freitas carried out. Miss Edith Hamilton, an S.R.N. since 1958 and a Sister at the Grouville Hospital when Mrs. de Freitas joined it, said that all nurses were taught that the placing of the chair first in a good manageable situation was important. Lastly, Mr. Donald Sanderson, a Chartered Physiotherapist since 1951 and in charge of physiotherapy in the Jersey Hospitals for 15 years said that the manoeuvre was rudimentary and did not require three people, and that if a chair had to be reached for in the manner described by the plaintiff, then she had put herself at risk as well as the patient and her other helper. Two people were adequate to perform the manoeuvre, three would have got in the way. The only possible criticism of the defendant might be that suggested by Mr. P. Lloyd, S.R.N., an occupational health nursing specialist, who suggested that all nurses and particularly Mrs. de Freitas should have been alerted to the dangers of twisting her spine in any of the manoeuvres. However, we are satisfied that, as we have already found that the system itself was safe, the criticism was that the nurses were not told that failure to place the chair close to the bed, could damage themselves as well as the patients.

Under all the circumstances and having examined the evidence which we have outlined, we are not satisfied that the plaintiff has proved that the system of work was unsafe and that, indeed, the plaintiff carried out a casual departure from the procedure that she had clearly been carefully taught, and from the evidence, properly assimilated. We therefore find for the defendant Committee.