COMMONWEALTH OF MASSACHUSETTS

Appeals Court

No. _____

CHO HYUN SHIN AND KISUK SHIN, INVIDUALLY AND AS ADMINISTRATORS OF THE ESTATE OF ELIZABETH H. SHIN,
PLAINTIFFS/APPELLEES,

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY, ET AL.,
DEFENDANTS/APPELLANTS.

ON APPEAL FROM AN INTERLOCUTORY ORDER OF
THE SUPERIOR COURT, MIDDLESEX COUNTY

Petition for Relief Under G.L. c. 231, § 118 (First Paragraph) by MIT Administrators Arnold Henderson and Nina Davis-Millis

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Daryl J. Lapp (BBO# 554980)
EDWARDS ANGELL PALMER & DODGE LLP
111 Huntington Avenue
Boston, Massachusetts 02199
(617) 239-0174

Request for Interlocutory Review

The Superior Court (Christine M. McEvoy, J.) has ruled that an associate student-life dean and a librarian who is also a dormitory housemaster at the Massachusetts Institute of Technology ("MIT") could have a legal duty to prevent a college student from committing suicide, even though these non-clinician administrators knew the student was in the care of expert psychiatrists, the psychiatrists were fully apprised of the student's suicidal ideation, and only the psychiatrists had the expertise to decide what measures were appropriate to assess and respond to this student's risk of self-harm.[1] That ruling should be reviewed immediately because (1) it is squarely contrary to established Massachusetts law on an issue of vital importance to thousands of students, hundreds of administrators, and dozens of colleges throughout the state; and (2) it is presently causing severe adverse effects in colleges here and across the country, as attested by the *amici*, that will be

[1] The student, Elizabeth Shin, died as a result of burns she sustained in a fire in her dormitory room. The defendants would argue at trial that Elizabeth's death likely was an accident, not a suicide. For purposes of summary judgment, the MIT Administrators said that the Superior Court could assume her death was a suicide, as the plaintiffs allege.

further exacerbated if the claims proceed to trial without appellate review.

The Superior Court's order, which denied the MIT Administrators' motion for summary judgment,[2] is contrary to established Massachusetts law on two essential points:

First, clear Massachusetts precedent holds that persons other than treating clinicians have no duty to prevent suicide except in two limited circumstances not present here: where the defendant either caused the decedent's suicidal condition or had the decedent in physical custody, such as a hospital or prison. The Superior Court acknowledged that the Administrators "correctly assert that neither of these two situations occurred in this case and therefore, they owed no duty to prevent Elizabeth's suicide." Add., 20-21. The Court should have granted summary judgment on that ground, and its failure to do so is clear error.

Second, even if binding precedent did not already control this case, the Superior Court's ruling that a

[2] Judge McEvoy's Order and Memorandum is included in the Addendum ("Add.") at 1-27. The Court denied the Administrators' motion for summary judgment on the plaintiffs' wrongful death claims, but granted summary judgment on other counts against the Administrators and other defendants, including MIT.

legal duty of care could be found on the basis of a "special relationship" because the MIT Administrators were actively involved in helping Elizabeth in their student life roles and "could reasonably foresee that Elizabeth would hurt herself without proper supervision" (Add. 23-24), represents a dramatic departure from Massachusetts law. That law holds that a duty of care never can be based on foreseeability alone and recognizes a "special relationship" in the context of self-inflicted harm only where the defendant has the other person in physical custody.

The Court's ruling not only is contrary to established law, but also has directly and immediately harmful consequences for the large number of college students with significant mental health problems. Judge McEvoy's ruling provides the wrong incentives and already is affecting students, as the national associations of higher education and other *amici* attest. It discourages some university administrators to become informed about the nature or extent of students' mental health needs. If a duty can be found because a student life administrator is "well aware" of a student's problems, and "could reasonably foresee that [she might] hurt herself without proper

supervision," some administrators reluctantly will avoid becoming so "well aware." Most importantly, they are afraid that the duty to second-guess the judgment of mental-health experts and to substitute their own inexpert judgment may harm students; at the same time, they worry about liability because they lack the expertise to prevent suicide. Other dedicated administrators will feel they have no choice but to take the most extreme approach by trying to force students who appear to be at risk to be hospitalized or to withdraw from the university, even though such steps may be contrary to, and disrupt or terminate altogether, any expert treatment the student may have been receiving. Some administrators also may feel compelled to involve a student's parents even when - as in this case - expert clinicians determine that is not advisable.

Interlocutory review is needed because Judge McEvoy's ruling already is having these directly and immediately harmful consequences. Having the claims proceed to trial will greatly exacerbate those problems. Moreover, absent interlocutory appellate review, these harmful incentives will persist for a period of years, either until a full appeal of her

decision following trial or for even longer - until another university suicide case reaches appellate review - if the Administrators prevail at trial.

Judge McEvoy also abused her discretion in denying the MIT Administrators' motion for reconsideration of her summary judgment decision, which sought clarification of two glaring inconsistencies in that ruling. First, as noted above, Judge McEvoy stated that the MIT Administrators had no duty to prevent suicide under established Massachusetts law, but then went on to say that they nevertheless could have a duty to prevent the harm at issue, which was a suicide. Second, Judge McEvoy's order at one point appears to say not merely that the Administrators could have a duty, but in fact that a duty does exist. Add., 24. However, Judge McEvoy at the same time denied the plaintiffs' cross-motion for partial summary judgment on the issue of duty, which asked the Court to hold affirmatively that a duty of care exists.[3]

The Administrators' motion for reconsideration asked Judge McEvoy to address both of these issues,

[3] The Order denying plaintiffs' cross-motion is attached at Add. 28.

but she denied the motion without opinion.[4] The Court's erroneous and inconsistent rulings on the issue of duty must be corrected before the case is tried.

Issue of Law Raised by this Petition

1. Whether it was clear error to hold that non-clinician university administrators can have a legal duty to prevent a student's suicide, where it is undisputed that the administrators neither caused the student's suicidal condition nor had the student in physical custody, and that the student was in the care of expert psychiatrists who were fully aware of the student's suicidal ideation.

2. Whether the Superior Court abused its discretion in denying a motion for reconsideration, where the motion identified two glaring inconsistencies in the Court's rulings.

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[4] The Order denying the MIT Administrators' August 10, 2005 Motion for Reconsideration, or in the Alternative for a Rule 64 Report, is attached at Add. 29. This petition is timely because it was filed within 30 days of the Court's order denying the motion for reconsideration, docketed January 25, 2006. Rich v. Great Am. Ins. Co., 54 Mass. App. Ct. 1108, 2002 WL 480913, at *1 n.1 (Mar. 29, 2002)(single justice petition seeking review of underlying order was timely because filed within 30 days of order denying motion for reconsideration); Carpenter v. MIT, No. 05-J-466, slip. op. at 1 n.3 (Mass. App. Ct. Oct. 5, 2005)(same, provided motion for reconsideration presented new issues, rather than merely repeating arguments previously advanced). Here, the Administrators' motion for reconsideration presented new issues, as it identified and sought clarification of significant inconsistencies in Judge McEvoy's summary judgment ruling.

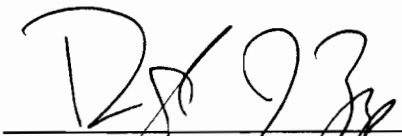
Request for Relief

The MIT Administrators request that the Single Justice authorize an interlocutory appeal to a full panel of this Court or the Supreme Judicial Court, or, in the alternative, vacate the orders below and remand for further proceedings on the parties' cross-motions for summary judgment.

Request for Oral Argument

The MIT Administrators request a hearing before the Single Justice on this petition.

Respectfully submitted,



Daryl J. Lapp (BBO# 554980)
EDWARDS ANGELL PALMER & DODGE LLP
111 Huntington Avenue
Boston, Massachusetts 02199
(617) 239-0100

February 24, 2006

PROOF OF SERVICE

I certify under the penalties of perjury that on February 24, 2006, I caused a true copy of the above document to be served by first-class mail, postage prepaid, upon David A. DeLuca, Esq., Murphy, Hesse, Toomey & Lehane LLP, 300 Crown Colony Drive, Ste. 410, Quincy, MA 02269-9146, James P. Donohue, Jr., Esq., Sloane & Walsh LLP, 3 Center Plaza, Boston, MA 02108, and Curtis R. Diedrich, Esq., Sloane & Walsh LLP, 3 Center Plaza, Boston, MA 02108.

Daryl J. Lapp

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