DOCKET NO. CV-02-0819015-S

MARIA TORRES, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF YOANNA MARIA NODA	:	SUPERIOR COURT
VS.	:	JUDICIAL DISTRICT OF HARTFORD AT HARTFORD
STATE OF CONNECTICUT, DEPARTMENT OF CORRECTIONS	:	NOVEMBER 15, 2004

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

In this case, the mother and the estate of a child killed by an escapee from a Connecticut correctional facility sues the Department of Correction, State of Connecticut for negligence. While the defendant disputes the majority of the plaintiff's allegations, the defendant State of Connecticut submits that even accepting all of the plaintiff's alleged facts as true for the purposes of this motion, the injury was not legally foreseeable, and thus the defendant State cannot be found negligent and is entitled to judgment as a matter of law. Nor is there a sufficient causal nexus. In addition, the Public Duty Doctrine precludes recovery in this action.

The defendants reiterate that, should this matter go to trial, numerous allegations made by the plaintiffs in their complaint will be disputed and contrary evidence presented. Even accepting all of plaintiff's allegations as true for purposes of this motion, however, the plaintiff fails to make out a claim for relief. Both long-established negligence precepts and the public duty doctrine preclude any finding of liability in this matter.

I. FACTS

The undisputed facts are as follows. The plaintiff, Maria Torres, is the mother of the decedent, her child, who was raped and killed on October 28, 1990, three days before her second birthday by Alcides Quiles. Amnd. Com. ¶ 1, 4. Quiles, a sentenced inmate,[1] had escaped from the custody of the State of Connecticut Department of Correction on August 31, 1990. Amnd. Com. ¶ 8, 21. Quiles had somehow made his way to Miami, Florida, and there perpetrated his horrific crime on the plaintiff's daughter two months after his escape. Amnd. Com. ¶ 23. Quiles is now serving time in Florida, having plead guilty there to first degree murder, kidnapping, and sexual assault. Amnd. Com. ¶ 24. The plaintiff does not allege any previous relationship between her family or the child and Quiles. Nor does she allege any knowledge or suspicion on the part of the defendant or any law enforcement person anywhere that Quiles was in Miami, or had any reason to suspect that a Miami toddler was at risk of harm by Quiles. None of the foregoing facts are disputed by either party.

The plaintiff's claims which are disputed by the State are as follows here: The plaintiff claims that State of Connecticut Department of Correction was negligent in allowing the plaintiff to escape and failing to apprehend Quiles caused the harm. Amnd. Com. ¶ 28. The plaintiff does not actually allege that the State's alleged negligence caused the toddler harm, but alleges that the death of the child "would not have" occurred "had it not been for the negligence of the defendant." Amnd. Com. ¶ 28.

The negligence alleged by the plaintiff is that the Department of Correction (hereinafter "the Department") improperly classified Quiles as an inmate, reducing his inmate classification

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[1] The plaintiff's convictions included a conviction for sexual assault.

level from a Level Four to Level 3 after he had been in the custody of the Department for over three years. Amnd. Com. ¶ 5, 15. The plaintiff further alleges that on the date of Quiles' escape, August 31, 1990, facility "staff attended a party at the lake and recreation area of the facility." Amnd. Com. ¶ 21.[2] The plaintiff further alleges that there was an unspecified delay by correctional officials in notifying the police and others of the escape. Amnd. Com. ¶ 22. Two months later, Quiles killed the plaintiff's decedent in Florida. Amnd. Com. ¶ 23.

The plaintiff presented their claim to the Claims Commission, who denied permission to sue. After several years, the plaintiff received permission from the legislature to initiate this suit. Amnd. Com. ¶ 2. The plaintiff's sole claim sounds in negligence. Amended Complaint.

II. ARGUMENT:

A. Standard of Review

Connecticut Practice Book § 17-49 mandates that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Gupta v. New Britain General Hospital,* 239 Conn. 574, 581 (1996); *Doty v. Nucci,* 238 Conn. 800, 805 (1996); *Budris v. Allstate Insurance Co.,* 44 Conn. App. 53, 57 (1996). A material fact is a fact that will make a difference in the result of the case. *See Budris,* 44 Conn. App. at 57. The party seeking summary judgment has the burden of showing the absence of any genuine issue as to all material facts which under applicable principles of substantive law entitle him to judgment as a matter of law. The party opposing such a motion must provide evidentiary

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[2] The complaint does not allege that the facility itself or positions within the facility were not fully staffed. See Amended Complaint.

foundation to demonstrate the existence of a genuine issue of material fact. *Gupta,* 239 Conn. at 581; *Doty,* 238 Conn. at 805; *Budris,* 44 Conn. App. at 57.

In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the non-moving party. The test is whether a party will be entitled to a directed verdict on the same fact. *Budris,* 44 Conn. App. at 57. Merely alluding to disputed material facts without providing substantiation does not sufficiently establish those facts to preclude summary judgment. *Gupta,* 239 Conn. at 582; *Strada v. Connecticut Newspapers, Inc.,* 193 Conn. 313, 317 (1984).

B. No Negligence Can be Legally Attributed to Defendants

Both the Connecticut law of negligence and Connecticut's public duty doctrine preclude liability in this matter. While the State certainly acknowledges the horrific tragedy Quiles visited on this family after his escape, it respectfully submits that the State should not be held liable for this crime. Current law and prudent public policy dictate against the infinite liability that would adhere were the State to be liable for all criminal acts of persons who either escape or are discharged pursuant to the discretion of a government official.

1. Legal Duty of Care

"The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury." *RK Constructors, Inc. v. Fusco Corp.,* 231 Conn. 381, 384 (1994). "The existence of a duty of care is an essential predicate requirement of any negligence claim." *Hamden Sand & Stone v. Great American Life Ins. Co.,* 2004 Conn. Super. LEXIS 424 (J.D. New Haven, Feb. 25, 2004). "*The ultimate test of the*

existence of a duty to use care is found in the ***forseeability*** *that harm may result if it is not exercised." Burns v. Board of Ed.,* 228 Conn. 640, 646 (1994) (emphasis added).

a. Forseeability Requires Identifiable Victim

In Connecticut, forseeability requires not just an understanding on a defendant's part that some generalized harm might result, but, rather, an identifiable victim or group of victims of the harm must exist in order for a duty of care to be imposed. *Fraser v. United States,* 236 Conn. 625, 632 (1996). In *Fraser,* the Connecticut Supreme Court held that psychotherapists did not owe a duty of care to unidentifiable victims of a patient's potential violence. *Id.* In so ruling, the Court made highly pertinent observations about Connecticut's negligence law generally. The Court noted first that Connecticut's "decisions defining negligence do not impose a duty to those who are not identifiable victims." *Id.* Likewise, "there is no duty except to identifiable persons." *Id.* Finally, "courts in other jurisdictions have overwhelmingly declined to extend any duty to control to encompass harm to unidentifiable third persons." *Id.*

The defendant State respectfully submits that the victim in this case, albeit terribly sympathetic, was too far removed both in time and in distance to be legally considered an "identifiable victim", and that the State cannot be held liable for the criminal act of an escaped inmate committed well after the escape and with no tie to the inmate or to his escape whatsoever. The Supreme Court noted in *Fraser* that in other jurisdictions, absent a **"specifically identifiable victim"** no duty of physical harm was imposed. *Id.* at 633 (emphasis added), *citing Tarasoff v.*

Regents of University of California, 17 Cal.3d 425, 431, 551 P.2d 334, 131 Cal. Rptr. 14 (1976) (imposing duty on psychiatrist to protect only foreseeable victims of outpatient under care).[3]

Although the *Fraser* decision dealt with the duty owed by a psychiatrist to third persons harmed by a patient, the reasoning of the *Fraser* court is instructive to this case in a number of ways. First of all, the Connecticut Supreme Court noted generally that "[r]elated areas of Connecticut negligence law provide support for the proposition that proof that *the victim was an identifiable target is ordinarily an essential element of an action in negligence."* 236 Conn. at 634 (emphasis added) (citations omitted). In *Shore v. Town of Stonington,* the Connecticut Supreme Court held that a duty exists for a public official "in situations where it would be apparent to the public officer that his failure to act would be likely to subject *an identifiable person to imminent harm."* 187 Conn. 147, 153 (1982) (declining to find a duty of a police officer who stopped an intoxicated driver who later injured another driver); *see also Hodges v. Rocky Mountain Helicopters, Inc.,* 1997 Conn. Super. LEXIS 1809 (J.D. Htfd. 1997) ("[I]dentifiable victim or class of victims" subject "to imminent harm" necessary to a subject municipal officer to liability).

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[3] In *Fraser's* context of a treating psychiatrist and a violent patient, the Connecticut Supreme Court cited to numerous cases in other jurisdictions in which the absence of an identifiable victim or group of victims meant that no duty of care to third person existed: *Fraser,* 236 Conn. at 635-36, *citing: Santa Cruz v. Northwest Dade Community Health Center, Inc.,* 590 So.2d 444, 445, 16 Fla.L. Weekly D 2800 (Fla. App. 1991), *review denied,* 599 So.2d 1278 (Fla. 1992); *Boulanger v. Pol,* 258 Kan. 289, 900 P.2d 823, 834-35 (1995); *Nasser v. Parker,* 249 Va. 172, 455 S.Ed.2d 502, 505-506 (1995); *Hamman v. County of Maricopa,* 161 Ariz. 58, 64, 775 P.2d 1122 (1989) (victim within identifiable zone of danger); *Thompson v. County of Alameda,* 27 Cal.3d 741, 752-53, 614 P.2d 728, 167 Cal. Rptr. 70 (1980) (specifically foreseeable and readily identifiable victim). The *Fraser* decision cites at least 9 additional cases holding similarly.

The *Fraser* Court further noted that while "numerous changes in tort law have affected the remedies that may be recovered for breach of duty, none has enlarged the scope of liability in negligence to injured third parties." *Id.*

b. Foreseeable Victims Required By Other Jurisdictions

While Connecticut has not specifically considered whether criminal acts by an escapee from custody perpetrated well after the escape and far from the scene of the escape are beyond forseeability absent an identifiable victim or group of victims, other jurisdictions considering the same issue have declined to impose liability in this context absent an identifiable victim. For example, in Mississippi, a federal District Court applying Mississippi law declined to hold a sheriff liable for the acts of an escapee. *Robinson v. Williams,* 721 F. Supp. 806, 808 (S.D.Miss. 1989). The Court cited Mississippi precedent:

> When the duty imposed on an officer is one solely to the public, the failure to perform it, or an erroneous or negligent performance, is regarded as an injury to the public and not to an individual member of the public; and an individual harmed thereby may not have redress against the officer unless the individual had in it such a direct and distinctive interest as to set him apart from all others of the public in respect to it, and the fact of the injury does not in itself serve to make out the direct and distinctive interest which is essential.

State v. Matthews, 196 Miss. 833, 18 So.2d 156 (Miss. 1944).

The Supreme Court of Florida likewise rejected the proposition that "the Department of Corrections ... may be held liable for the criminal acts of an escaped prisoner." *Vann v. Department of Corrections,* 662 So.2d 339, 1995 Fla. LEXIS 1751, 20 Fla. L. Weekly S552 (Fla. 1995). "No common law duty was owed by the Department to protect a *particular individual*

from such potential harm." *Id.* (emphasis added).[4] Kentucky has also held that there is no duty of care to the victim of an individual "negligently released" from jail because the harm was not foreseeable and the victim not identifiable. *Fryman v. Harrision*, 896 S.W.2d 908 (1995). This case was considered dispositive in Kentucky in a subsequent case involving escaped inmates. *Corrections Cabinet v. Vester*, 956 S.W.2d 204 (1997).

In *Graham v. State,* the Louisiana appellate court held that the state owed no duty to protect a 12 year-old boy from his murder at the hands of an escapee from a mental hospital. 354 So.2d 602 (La. App. 1977). The Louisiana court reasoned:

> An institution's duty to restrain a convicted criminal is not based upon the purpose of protecting the general public from all harms that the prisoner might inflict if he were allowed to escape. A convicted person may be as dangerous on the day of his *legal* release as he was on the first day he was confined, although the institution may still be under a legal duty to … release him. There is no more reason for the State to be civilly responsible for the convict's general misconduct during the period of his escape than for the same misconduct after a legal release, unless there is some further causal relationship than the release or escape to the injuries received.

Id. at 603 (emphasis added).[5]

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[4] *See also Department of Correction v. McGhee,* 653 So.2d 1091, 1995 Fla. App. LEXIS 3687, 20 Fla. L. Weekly D. 945 (Fla. App. 1995).

[5] Another Louisiana case makes the same point from a different perspective, allowing a claim by the victim of an escaped inmate when the crime against the victim occurred "during or as an integral component of the escape process." *Marceaux v. Gibbs,* 699 So.2d 1065, 1070 (La. 1997); *cf Webb v. State,* 91 So.2d 156 (La. Ct. App. 1956) (prisoner escaped and shot victim at residence the next day near the prison). In one case, a federal District Court in Connecticut found that a negligence claim could be viable against a private contractor running a half-way house for the State who knew a parolee with violent tendencies was in Willimantic at a place where he could be picked up and failed to pick him up. *Doe v. United Social and Mental Health Services, Inc.,* 670 F. Supp. 1121, 1130-31 (D.Conn. 1987) ("Though public officials have specific law enforcement duties, they are not to be held liable … for every abhorrent act of individuals who act in disregard of the law and in a manner that injures another. Yet, if the general duties of a public official are brought to focus on circumstances in which a *particular*

See also Davenport v. Community Corrections of the Pikes Peak Region, Inc., 962 P.2d 963, 967 (Colo. 1998), cert. denied, 526 U.S. 1068 (1999) (Colorado Supreme Court determined that correction facility did not owe a duty to victim for conduct of escaped prisoner); *Solano v. Goff,* 985 P.2d 53 (Colo. App. 1999) (murder by escapee was not foreseeable and sheriff owed no duty to victim); *Buchler v. State,* 316 Ore. 499, 853 P.2d 798 (Or. 1993) (an Oregon escapee killed two people with a gun that he had stolen during a burglary following his escape. The killings occurred two days following the escape and fifty miles from the point of escape. Held: no duty of care existed); *Moss v. Bowers,* 216 N.C. 546, 5 S.E.2d 826 (N.C. 1939). In *Moss,* the North Carolina Supreme Court affirmed dismissal of the complaint alleging similar facts, holding the cause of action insufficient absent legal forseeability.

The defendant State of Connecticut urges that this Court should rule consistently with the majority of other courts that have considered this issue and find that as the victim in this matter was no more identifiable than any other person in the country or the world, for that matter, no legal duty of care existed.

c. Question of Legal Duty One of Public Policy

The *Fraser* court further noted that the recognition of a legal duty is a matter of "public policy." *Id.*. In 1998, the Connecticut Supreme Court reaffirmed this:

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citizen or class of citizens are foreseeably subject to real risk of injury at the hands of one who within the realm of the officer's duties and whose conduct may properly and reasonably be the subject of the officer's duties, then the officer's duties to the public at large can legitimately be said to have created a duty to an individual citizen."). In this case, correctional officials could not ever be said to have any kind of duty to citizens in Florida. A parole officer is expected to go out into the community, a corrections official is not. Moreover, in *Doe* the parole officer knew where the offender was, as opposed to the offender in this case, whose whereabouts were entirely unknown.

> The test for the existence of a legal duty of care entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) ***a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligence conduct should extend to the particular consequences or particular plaintiff in the case.***

Mendillo v. Board of Ed., 246 Conn. 456, 483-84 (1998) (emphasis added).

As a matter of policy, burdening the State of Connecticut with liability for any and all acts, no matter how outrageous or vile, committed by persons who have escaped from custody is unwise. As the Connecticut Supreme Court has stated, "While it may seem that there should be a remedy for every wrong, this is an ideal limited perforce by the realities of this world. Every injury has ramifying consequences, like the ripplings of the waters, without end. The problem for the law is to limit the legal consequences of wrongs to a controllable degree. . . . The final step in the duty inquiry, then, is to make a determination of the fundamental policy of the law, as to whether the defendant's responsibility should extend to such results." *RK Constructors, supra,* 231 Conn. at 386.

While the fact that this case presents a question of first impression implies that this is an uncommon scenario, the burden on the State were this Court to determine that it owed a limitless duty to all persons harmed by any person negligently released from its custody would be substantial. State defendants could be found liable for a never-ending string of violent acts were the perpetrators to undertake a crime spree. There is simply no practical way to limit the ramifications of finding a legal duty in this matter.

The Connecticut Appellate Court recently quoted the Connecticut Supreme Court's decision in *First Federal Savings & Loan Assn. of Rochester v. Charter Appraisal Co.*, 247 Conn. 597, 604 (1999), which noted the restrictions on both legal causation and a legal duty:[6]

> Essential to determining whether a legal duty exists is the fundamental policy of the law that a tortfeasor's responsibility should not extend to theoretically endless consequences of the wrong.... Even where harm was foreseeable, [our Supreme Court] has found no duty when the nexus between a defendant's negligence and the particular consequences to the plaintiff was too attenuated.

Malloy v. Colchester, 85 Conn. App. 627, 634 (2004).

The defendant respectfully submits that the attenuation in this matter is too great to allow this matter to proceed. This policy question is especially relevant in given the policy changes in process in Connecticut favoring alternatives to incarceration and shorter sentence terms with more rehabilitative elements. Were discretionary decisions the State makes regarding classification of inmates and their placement in less secure living arrangements subject to review despite the intervening cause of the offender's own behavior, the burden on the State could be enormous.

In applying Indiana law in a similar context, the Seventh Circuit considered the District Court's weighing of the general public's interest in safety against the "important rehabilitative interest in assisting federal inmates in their transition to 'self-sufficient, contributing members of the community.'" *Bailor v. Salvation Army,* 51 F.3d 678, 684 (7th Cir. 1995). The Seventh

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[6] Indeed, both the Connecticut Appellate Court and the Connecticut Supreme Court have noted that "the question of legal causation is practically indistinguishable from an analysis of the extent of the tortfeasor's duty to the plaintiff." *Malloy v. Colchester,* 85 Conn. App. 627, 634 (2004) (reversing judgment based on jury verdict awarding damages on negligence claim found to be too attenuated), *quoting First Federal Savings & Loan Assn., supra.* Legal causation is addressed below.

Circuit affirmed the lower court's holding that the halfway house owed no duty of care to a member of the public raped by an escapee from the halfway house. *Id.* Having found no duty of care, the Court stated that it "therefore need not consider [the plaintiff's] further contentions: Whether the [halfway house] exercised reasonable care... and whether [it] proximately caused [plaintiff's] injuries." *Id.*

2. Legal or Proximate Cause

As noted above in footnote 6, the question of whether a legal duty exists is unavoidably related to the question of legal causation. The Connecticut Supreme Court has noted Prosser's commentary on this relationship:

> It is quite possible to state every question which arises in connection with 'proximate cause' in the form of a single question: was the defendant under a duty to protect the plaintiff against the event which did in fact occur? . . . The question whether there is a duty has most often seemed helpful in cases where the only issue is in reality whether the defendant stands in any such relation to the plaintiff as to create any legally recognized obligation of conduct for the plaintiff's benefit. Or, reverting again to the starting point, whether the interests of the plaintiff are entitled to legal protection at the defendant's hands against the invasion which has in fact occurred. Or, again reverting, whether the conduct is the 'proximate cause' of the result. The circumlocution is unavoidable, since all of these questions are, in reality, one and the same." W. Prosser & W. Keeton, Torts (5th Ed. 1984) § 42, p. 274.

First Federal S&L Ass'n., supra, 247 Conn. at 605, n. 7.

In this case, whether it is termed a question of legal duty or legal causation, the nexus between whatever behavior is attributed to the defendant State and the horrific crime committed months later is insufficient. "The test of proximate cause is whether the defendant's conduct is a substantial factor in bringing about the plaintiff's injuries. ...This causal connection must be based on more than conjecture and surmise." *Weigold v. Patel,* 81 Conn. App. 347, 354-55, *cert. denied,* 268 Conn. 918 (2004).

Naturally, "[a] defendant is not liable for damages to another unless the allegedly negligent conduct proximately caused the injury." *Doe v. Manheimer,* 212 Conn. 748, 757 (1989). As this Court is aware, "Proximate cause has two components, causation in fact, that is, would the injury have occurred were it not for the actor's conduct, *id* ...and legal cause, or whether the harm which occurred was of the same general nature as the foreseeable risk created." *Id.* "The proximate cause requirement tempers the expansive view of causation in fact by the pragmatic shaping of rules which are feasible to administer, and yield a workable degree of certainty." *Paige v. St. Andrew's Roman Catholic Church Corp.,* 250 Conn. 14, 25 (1999) (reversing judgment entered on jury verdict absent sufficient causal link), *quoting* 2 Harper & James, Torts § 20.4, p. 1133.

"[T]he test of proximate cause is whether the defendant's conduct is a substantial factor in bringing about the plaintiff's injuries." *Id.* "It is the plaintiff who bears the burden to prove an *unbroken* sequence of events that tied his injuries to the defendants' conduct." *Id.* (emphasis added). In this case, the sequence of events was broken by the two month period between Quiles' escape and his murder of the child, and was broken by Quiles' violent and intentional horror.

While causation is often a question for the jury, in this case, the plaintiff's claims of causation are insufficient as a matter of law. The plaintiff is only able to claim and only does claim "but for" causation, which the law has held numerous times to be insufficient.

The defendant State of Connecticut respectfully submits that the application of the basic requirements of a cause of action sounding in negligence results in a finding that the State cannot

be held liable for the plaintiff's injuries in this matter. Both the requirement of a legal duty of care and of legal causation, or proximate cause, are lacking in this matter.

C. Public Duty Doctrine Bars This Claim

The Public Duty Doctrine provides a separate basis to preclude the plaintiff's action, also grounded in the lack of a legal duty owed the plaintiffs in this matter given the insufficient forseeability that harm would befall the particular plaintiff's child in this matter. The public duty doctrine, long-established in Connecticut, disallows an individual negligence action against a state or local government entity which is "predicated on the breach of a general duty owed to the public." *Nealy v. State of Connecticut,* 1997 Conn. Super. LEXIS 2552 (J.D. Waterbury 1997); *see Sestito v. Gordon,* 178 Conn. 520, 527 (1979). The public duty doctrine provides that an individual harm brought about by an inadequate or erroneous performance of a duty owed to the general public "must be redressed, if at all, in some form of public prosecution." *Shore v. Stonington,* 187 Conn. 147, 152 (1982). Only the failure to perform a public duty owed to an individual can form the basis for an individual action for damages. *Id.* This is because "[t]he law does not recognize a 'duty in the air.'" *Id., citing,* Polluck, Torts (13th Ed.) 468; Winfield, "Duty in Tortious Negligence," 34 Colum. L. Rev. 41, 42 n. 8 (1934).

In *Leger v. Kelley,* the Connecticut Supreme Court set down the following test to determine whether a duty claimed is one owed to the public or to an individual: "If the duty imposed ... is of such a nature that the performance of it will affect an individual in a manner different in kind from the way it affects the public at large" then a duty is owed to that individual or group of individuals. 142 Conn. 585, 590 (1955). In this case, the State of Connecticut Department of Correction owed its duty to the public at large, not specifically to any person or

persons in Florida. The plaintiff's complaint itself does not claim any way that any correctional official had of recognizing any harm to a person so far away so long after the escape.

Like the test for a legal duty, the public policy doctrine rests in "policy considerations which lead the law to determine whether interests of a particular type are entitled to protection against conduct by officials." *Shore, supra,* 187 Conn. at 152. As argued above, the imposition of liability upon the State for the criminal behavior of any person alleged to have been erroneously classified or supervised would set a dangerous precedent and ignores the common sense limitations on the liability the State can sustain for others' criminal behavior.

"Policy considerations have also resulted in the establishment of certain exceptions which provide that an individual cause of action may be brought against an official for breach of duty without regard to whether the duty is technically a public or private one." *Id.* at 153. The first exception is when "If by statute or other rule of law [an] official's duty is clearly ministerial rather than discretionary." *Id.* No such statute exists in this instance. Moreover, as alleged by the plaintiff, the placement or classification of Quiles in this matter was clearly discretionary rather than ministerial. It was allegedly a decision that was made and which was disagreed with by others, hence, a judgment call discretionary in nature. Numerous times the Amended Complaint refers to Department of Correction staff making recommendations or decisions regarding Quiles' treatment needs, classification level and work assignments based upon interviews and other variable. Amnd. Com. ¶¶ 9, 10, 13-17, 19.

Similarly, the other exceptions to the public duty doctrine are inapplicable. The other exceptions are as follows:

> [F]irst, where the circumstances make it apparent … that … failure to act would be likely to subject an identifiable person to imminent harm, … second, where a

> statute specifically provides for a certain cause of action… for failure to enforce certain laws, … and third, where the alleged acts involve malice, wantonness, or intent to injure rather than negligence.

Mulligan v. Rioux, 229 Conn. 716, 728 (1994), *citing Evon v. Andrews,* 211 Conn. 501, 505 (1989) *and Burns v. Bd. of Ed.,* 228 Conn. 640, 645 (1994).

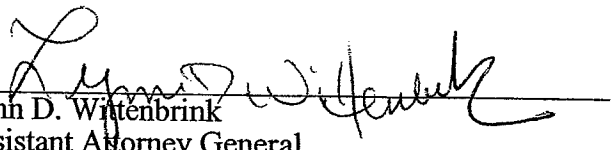
The State had no reason to expect harm to the child in Florida. No statute provides an cause of action here for failure to enforce any law. The Amended Complaint's reference to the Commissioner of Correction's duties of general safety, Conn. Gen. Stat. § 18-81, falls well short of this requirement. Finally, nothing more than negligence is alleged in this matter.

C. CONCLUSION

The State in no way seeks to imply that the injuries sustained by the plaintiff and the plaintiff's decedent were anything short of tragic. Nonetheless, the law does not provide any remedy for this wrong, and summary judgment should enter in favor of the State of Connecticut.

DEFENDANT,
State of Connecticut, Department of Correction

RICHARD BLUMENTHAL
ATTORNEY GENERAL

BY: 

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CERTIFICATION

I hereby certify that a copy of the foregoing was sent by first-class mail, postage prepaid, to the following on this 15th day of November, 2004:

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