Torts: Taking the "I" out of Suicide: The Minnesota Supreme Court's Alarming Extension of Duty in "Exceptional Relationships"—Sandborg v. Blue Earth County

Daniel W. Berglund

Follow this and additional works at: http://open.mitchellhamline.edu/wmlr

Recommended Citation

I. INTRODUCTION

Legal authorities have long recognized that the state has an affirmative duty to protect an individual when a special relationship exists between the state and that individual.1 However, many courts

1. Restatement (Second) of Torts § 314A(4) (1965) (stating that when a third party is required by law to take custody of an individual and deprives that individual of his normal opportunities for protection, the third party is under a duty of reasonable care to protect that individual against an unreasonable risk of physical harm); see also 60 Am. Jur. 2d Penal and Correctional Institutions § 174 (1987). “A jailer . . . owes a duty to the prisoner to keep him safe from unnecessary harm, and to exercise reasonable and ordinary care for the prisoner’s life and
still consider an individual's intentional act as a superseding cause if the act causes self-inflicted injury, and often apply a comparative fault standard to determine the state's level of liability. It is only in "exceptional circumstances" — situations where the individual's mental condition is such that he is unable to care for himself, and a third party has assumed liability for the individual's actions because of the individual's mental condition — where the individual's actions are ignored and fault shifts entirely to that third party. ²

Recently, the Minnesota Supreme Court had an opportunity to define the limits of these "exceptional" relationships. Instead, the court presented an enigma. In Sandborg v. Blue Earth County, ⁴ the court ruled that if self-inflicted injury is reasonably foreseeable in a jail setting, the fault of the actor should not be compared, regardless of the actor's mental state. ⁵ In effect, the Sandborg decision expanded the government's liability in suicide situations, while completely eliminating the fault of the actual wrongdoer. ⁶ This was a standard that, up until Sandborg, had only been applied to mental health experts. ⁷ Even then, it was only used on rare occasions. ⁸

This note examines the development of the exceptional relationship in this country between an incapacitated individual and those in control of his well being. The note also explores the health." Id.

². Jain v. State, 617 N.W.2d 293, 300 (Iowa 2000) (holding that the state-run university was not liable for a student who committed suicide in his dorm room, the court found that "the district court logically concluded that because no legally-recognized special relationship existed between the university and [the victim], plaintiff [sic] could not rely on the exception to the intervening-superseding cause doctrine to counter the university's affirmative defense"); McMahon v. St. Croix Falls Sch. Dist., 596 N.W.2d 875, 879 (Wis. Ct. App.1999) (finding that, when a student committed suicide and the school district did not inform the parents of his absence, "suicide constitutes an intervening force which breaks the line of causation from the wrongful act to the death and therefore the wrongful act does not render the defendant civilly liable.").

³. Sandborg v. Blue Earth County, 615 N.W.2d 61, 64 (Minn. 2000) [hereinafter Sandborg I].

⁴. Id. at 61.

⁵. Id. at 64. The supreme court stated that mental illness is "a factor to consider when determining whether the suicide was reasonably foreseeable," but it is "not necessary in making a determination regarding the applicability of comparative fault." Id.

⁶. Id. In a "jailer-detainee relationship... the duty to protect against a known possibility of self-inflicted harm transfers entirely to the jailer, and comparing the fault of the detainee is therefore not appropriate." Id.

⁷. Tomfohr v. Mayo Found., 450 N.W.2d. 121, 125 (Minn. 1990).

⁸. Id.
recent decisions concerning this matter in Minnesota. The third section examines the Minnesota Supreme Court’s holding in *Sandborg*, while the fourth section analyzes the ruling and its potential consequences. The note concludes that the court has articulated a vague and potentially dangerous over-extension of an otherwise realistic legal theory.

II. HISTORY OF SPECIAL RELATIONSHIPS IN TORT LAW

A. The Development of Special Relations for Suicide

Though special relationships have been recognized for years in all jurisdictions, holding a third party civilly liable for another’s suicide is a relatively recent development. The reason for the courts’ reluctance to shift liability is that the courts have traditionally considered suicide to be a deliberate, intentional act, and therefore solely the responsibility of the actor. Furthermore, in regard to state-run institutions, the courts were still clinging to archaic legal doctrines that relieved the government from virtually all liability. Due to the concept of

9. Stephen Faberman, Note, *The Lessons of DeShaney: Special Relationships, Schools & the Fifth Circuit*, 35 B.C. L. Rev. 97, 103 (1993) (stating that a duty has long existed “when the state has incarcerated or institutionalized an individual, so as to deprive the individual of the ability to protect himself or herself”); see generally Bessemer Land & Improvement Co. v. Campbell, 25 So. 793 (Ala. 1898) (holding employers liable in situations where employees need aid); Yu v. New York, New Haven & Hartford R.R., 144 A.2d 56 (Conn. 1958) (holding that carriers have a special duty to aid passengers who are known to be in peril); Farmer v. State, 79 So.2d 528 (Miss. 1955) (holding a special relationship exists between jailers and prisoners when a prisoner is in danger).

10. Victor E. Schwartz, *Civil Liability for Causing Suicide: A Synthesis of Law and Psychiatry*, 24 VAND. L. Rev. 217, 217 (1971) (noting that in 1971, the number of cases involving liability for the suicide of another, as well as the number of courts accepting the theory behind this liability, was rising); see also Meier v. Ross Gen. Hosp., 445 P.2d 519, 522-23 (Cal. 1968) (holding liable “those charged with care and treatment of mentally disturbed patients... [if] they could reasonably conclude that the patient would be likely to harm himself”); Fernandez v. Baruch, 244 A.2d 109, 112 (N.J. 1968) (holding that determining liability for failure to prevent a suicide is based on whether the self-inflicted harm could reasonably have been anticipated).

11. Schwartz, *supra* note 10, at 217 (recognizing that even though holding someone “civilly liable for causing the suicide of another” seems a “paradox,” a growing number of courts are recognizing third-party fault).

sovereign immunity, courts were reluctant to place any sort of tort liability on the government until the middle part of the twentieth century. In fact, it was not until the Federal Torts Claims Act of 1946 that the courts began to establish specific grounds in which the federal government could be held liable for a government employee's negligent actions. Although New York abolished sovereign immunity in 1929, most states did not do so until after the federal government did so in 1946.

For government-run hospitals, the respective torts claims acts meant imposing liability for negligently running and maintaining hospitals. This soon encompassed acting negligently when

English law in cases such as Hans v. Louisiana, 134 U.S. 1 (1890), where the Court interpreted the Eleventh Amendment as a shield to protect both federal and state governments from tort liability in actions taken by its citizens); see also Emanuel Margolis, U.S. Supreme Court at ‘99: Jurisprudence or Improvident Jurists?, 73 CONN. B.J. 409, 427 n.48 (1999) (arguing that, in this day and age, it seems ludicrous "to argue that the immunity of ‘the Crown’ from suit had any place in the thinking of those who had rebelled against the tyranny and abuses of King George and Parliament, and who were committed to creating a system of equal justice under law, state agents included.")


Id. at 2674 (2001) (providing that "[t]he United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages").

Almost all states have now abolished or limited governmental immunity in tort actions. For a thorough discussion of the logic and history behind the abandonment of sovereign immunity, see Jones v. State Highway Comm’n, 557 S.W.2d 225 (Mo. 1997) (listing cases where various states have abolished sovereign immunity for tort liability); Bulman v. Hulsrand Construction Co., 521 N.W.2d 632, 639 (N.D. 1994) (same).

Standefer v United States, 511 F.2d 101 (5th Cir. 1975) (finding a Federal Torts Claims Act claim based upon a Veterans’ Administration hospital’s negligent treatment of a patient who was rendered quadriplegic); Becker v. City of New York, 140 N.E.2d 262, 268 (N.Y. 1957) (holding that the city government may be held liable for the negligent acts of its employees under the doctrine of respondeat superior); George McDonald, Medical Injury Compensation Reform Act; Interplay with Statutory Claim and Notice Procedures, CAL. MED. MALPRACT. L. & PRACT. Ch. 8 § 8.9 (1992). However, even in the first half of the twentieth century, some jurisdictions recognized an incorporated hospital’s assumed responsibility to protect mentally ill patients from self-inflicted harm. See Wetzel v. Omaha Maternity & General Hospital Ass’n, 148 N.W. 582, 583 (Neb. 1914) (stating that the care of a delirious patient in a private hospital must be proportionate to the known risk of self-injury, and the hospital must be held liable if it did not act in a reasonable way considering the circumstances); Paulen v. Shinnick, 289 N.W. 162,
assuming responsibility for mentally ill patients when the patient was unable to make rational decisions on his or her own, and the hospital was aware of this condition.\textsuperscript{18}

Prisons, on the other hand, were treated with far less scrutiny than hospitals or other state-run institutions. Because prisoners were admitted for the purpose of punishment rather than treatment, courts gave prisons far more liberty to deal with prisoners as they wished.\textsuperscript{19} Protection from harm caused by other prisoners or self-inflicted harm was often considered beyond the scope of duty for prison officials if beyond the "reasonable care" standard.\textsuperscript{20}

Sentiment began to change in the latter half of the 1970s with respect to the government's liability when it detained an individual

\textsuperscript{164} (Mich. 1939).

\textsuperscript{18} See Misfeldt v. Hosp. Auth. of Marietta, 115 S.E.2d 244, 248 (Ga. Ct. App. 1960) (finding hospital negligent when placing mentally disturbed patient in four-bed room instead of "psycho ward," thereby enabling patient to jump out of a third-story window and sustain serious injuries); Martindale v. State, 199 N.E. 667, 667 (N.Y. 1935) (holding state liable for injuries sustained from fall when the state was aware that the patient had a "desire and propensity" to escape). But see Harris Hosp. v. Pope, 520 S.W.2d 813 (Tex. Civ. App. 1975) (holding that the state could not be found liable where patient jumped out window while suffering from hallucinations when the patient's actions were not reasonably foreseeable).

\textsuperscript{19} Bell v. Wolfish, 441 U.S. 520, 546 (1979) (ruling that the fact that a prisoner is confined, combined with the prison's legitimate goals and policies, may restrict a prisoner's constitutional rights); Price v. Johnston, 334 U.S. 266, 285 (1948) (holding that "[i]lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system"); Meis v. Grammer, 411 N.W.2d 355, 359 (Neb. 1987) (ruling that "[m]aintaining institutional security and preserving internal order and discipline are essential prison goals which may require the limitation of some of a prisoner's constitutional rights"); see also Willis v. Barksdale, 625 F.Supp. 411, 417-18 (W.D. Tenn. 1985). In Willis, the court held that:

the police chief's failure to provide better suicide prevention training and to learn about and implement a new regulation and the City of Troy's failure to employ better trained jailers do not amount to constitutional violations because the failures arose from the allocation of resources-time, personnel, and money, which constitutes a legitimate government purpose.

Id.

\textsuperscript{20} See Fleishour v. United States, 365 F.2d 126, 128-29 (7th Cir. 1966) (finding the government was not liable under the Federal Torts Claims Act when prisoner was struck in the head with a fire extinguisher by a fellow prisoner); State ex. rel. Wilkins v. Markway, 353 S.W.2d 727, 734 (Mo. 1962) (ruling that, in a case involving sexual relations between prison guard and minor detainee, "the fact that such relationship may occur with the voluntary consent of the prisoner may not be made the basis for a recovery of actual or punitive damages from the guilty party or from the sheriff and his bondsman.").
and deprived him of his ability to act independently. U.S. Supreme Court decisions such as *Ingraham v. Wright*, *Estelle v. Gamble*, and *Hutto v. Finney* recognized that prisoners were constitutionally entitled to protection from cruel and unusual punishment, and that the government could be held liable if the prison willfully or negligently denied a prisoner of this protection. These decisions laid the groundwork for *DeShaney v. Winnebago County*, which provided an extensive discussion of the jailer's role in protecting inmates from harm. In *DeShaney*, the Court recognized that a jailer is obligated to exercise reasonable safety in situations where a "[s]tate by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself . . . ."

Furthermore, decisions such as *Holland v. Breen* began to recognize exceptional circumstances where a third party may assume liability for suicides. The *Holland* decision identified "bodily security" as a liberty interest, and created a new duty for prisons: safeguarding detainees from self-inflicted harm and suicide.

22. 429 U.S. 97, 104 (1976) (holding that indifference to prisoner's serious illness or injury constitutes cruel and unusual punishment in violation of the Eighth Amendment).
24. *Id.* The Supreme Court held that "unusual or unpredictable" punishments known as "punitive isolation" violated the prisoners' constitutional rights, and violated the "broad and idealistic concepts of dignity, civilized standards, humanity, and decency." *Id.* see also *Seiler v. City of Bethany*, 746 P.2d 699, 701 (Okla. Ct. App. 1987) (applying *Estelle v. Gamble*, 429 U.S. 97 (1976), the court determined that the constitutional adequacy of inmate medical care implicitly requires assessment of states of mind, and repeated instances of "deliberate indifference" indicate constitutional violations on the part of prison authorities); *Jackson v. Bishop*, 404 F.2d 571, 576 (8th Cir. 1968) (holding that a prisoner "continues to be protected by the due process and equal protection clauses which follow him through the prison door.").
26. *Id.* at 199-200. "[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *Id.*
27. *Id.* at 200.
29. *Holland*, 623 F.Supp. at 288 (extending *Hall v. Taumey*, 621 F.2d 607 (4th Cir. 1980), which held that a person should be free from the state's exercise of brutality and excessive force).
Many courts throughout the nation soon recognized that liability could be imposed if a special relationship existed between the parties, and the suicide was reasonably foreseeable. These courts reasoned that, because of the actor’s diminished ability to be responsible for his own well being, the government had a heightened responsibility to a detained individual. The actor’s own fault was still compared, however, unless the actor was mentally ill or suicide was imminent.

B. Minnesota

Although Minnesota courts did not immediately adopt the Holland rationale, the supreme court recognized that a legal duty may exist between two parties, depending on the relationship and the foreseeability of the risk involved. Minnesota courts remained

30. See, e.g., Kanayarak v. North Slope Borough, 677 P.2d 893, 897 (Alaska 1984) (recognizing the prison’s liability when suicide is foreseeable); DeMontiney v. Desert Manor Convalescent Ctr., 695 P.2d 255, 259 (Ariz. 1985) (holding that “various mental institutions have a specific duty of care to avoid the suicide of certain patients.”); Overby v. Wille, 411 So.2d 1331, 1333 (Fla. Dist. Ct. App. 1982) (ruling that a detention facility may be liable for failure to prevent foreseeable suicide); Figueroa v. State, 604 P.2d 1198, 1203 (Haw. 1979) (holding that “[t]he duty of penal institutions and detention homes to exercise reasonable care should extend to protection against suicide if such an event is reasonably foreseeable.”).

31. RESTATEMENT (SECOND) OF TORTS § 314A(4) (1965); Charles J. Williams, Fault and the Suicide Victim: When Third Parties Assume a Suicide Victim’s Duty of Self-Care, 76 NEB. L. REV. 301, 304 (1997) (recognizing that a difference exists between misfeasance and nonfeasance torts, and special relationships give rise to nonfeasance torts); see also Champagne v. United States, 513 N.W.2d 75, 80 (N.D. 1994) (“[I]f the evidence shows that the patient is incapable of being responsible for his own care and that the medical provider has undertaken the duty of care for the patient’s well-being, there would be no allocation of fault to the patient.”).

32. See, e.g., Cowan v. Doering, 545 A.2d 159, 165 (N.J. 1988) (holding that when the actions taken by a patient as a result of mental illness are the very acts which the medical provider had a duty to prevent, the provider’s failure to prevent the suicide should not be a defense); Falkenstein v. City of Bismarck, 268 N.W.2d 787, 790-91 (N.D. 1978) (holding that suicide must be anticipated before a prison could be held liable); Payne v. Milwaukee Sanitarium Found., 260 N.W.2d 386, 391 (Wis. 1977) (holding that “in the absence of some notice to the staff that a suicide attempt was imminent, the hospital, as a matter of law, was not negligent if the patient used this freedom to leave the ward and harm himself”).

33. See Donaldson v. Young Women’s Christian Ass’n, 539 N.W.2d 789, 792 (Minn. 1995) (holding that when a person is vulnerable and depends upon a second person who has considerable power over the first person’s welfare, and the risk of harm is reasonably foreseeable, that this special relationship imposes a duty on the part of the second person to protect the first from the expected harm); Erickson v. Curtis Inv. Co., 447 N.W.2d 165, 168-69 (Minn. 1989) (holding a parking ramp attendant liable for the criminal acts of a third party).
reluctant to shift fault absolutely, however, and continued the long-standing tradition of comparing fault in cases where the plaintiff failed to exercise reasonable care for his own protection.  

It was not until a decade ago, in *Tomfohr v. Mayo Foundation*, that Minnesota began to recognize and expand the *Holland* rationale. The *Tomfohr* court held that fault should not be compared when a patient diagnosed with severe depression is admitted into a hospital for the purpose of preventing suicide. The court reasoned that comparative fault in this situation was not only unnecessary, but duplicative when a jury had already been asked to determine whether the suicide attempt was reasonably foreseeable.

Thus, Minnesota recognized the "exceptional relationship" for the first time, thereby enhancing the duty of the traditional "special relationship" where a detainee is completely controlled and has lost capacity to care for himself. Notably, the *Tomfohr* court placed strict limitations on this new exception by explicitly stating that it should be reserved for the type of factual situation presented in that case — that of a specially-trained caregiver who has assumed complete control over a mentally ill patient with suicidal

---

34. MINN. STAT. § 604.01, subd.1 (2000) (allowing damages in diminished proportion according to the amount attributable to the person recovering, provided that the person’s fault does not exceed the fault of the person against whom recovery is sought); *Tomfohr v. Mayo Found.*, 450 N.W.2d 121, 123 (Minn. 1990) (noting that the court has "liberally applied comparative fault principles even to situations in which other jurisdictions have refused such application."); *see also* *Seim v. Garavalia*, 306 N.W.2d 806, 809 (Minn. 1981) (expanding comparative fault to include consumer negligence, misuse, and assumption of risk); *Quick v. Benedictine Sisters Hosp. Ass’n*, 257 Minn. 470, 485, 102 N.W.2d 36, 47 (1960) (holding it appropriate to apply comparative fault using a reduced capacity standard even if the claimant suffers from a mental deficiency or disorder); *Mesedahl v. St. Luke’s Hosp. Ass’n*, 194 Minn. 198, 208, 259 N.W. 819, 823 (1935) (holding that a hospital that did not specialize in treatment for the mentally ill was not negligent for failure to prevent a patient from jumping out of a window when the action was not anticipated). *But see Zerby v. Warren*, 297 Minn. 134, 140-41, 210 N.W.2d 58, 62 (1973) (creating an exception to the comparative fault standard in the case of statutory language designed to protect the people in that class from their own inability to protect themselves).

35. 450 N.W.2d 121 (Minn. 1990).

36. *Id.* at 125. "[T]he patient could not be at fault because he lacked the capacity to be responsible for his own well being, and . . . the obligation of self care was transferred to the health care provider when it admitted the patient into its care." *Id.*

37. *Id.*

38. *Id.*
tendencies. 39

III. THE SANDBORG DECISION

A. Facts

In 1993, Robert Sandborg ("Sandborg") was arrested for sexually molesting an eleven-year-old girl. 40 In his formal statement, Sandborg admitted that he had been suicidal, but stated that, by the time of his arrest, his suicidal tendencies had subsided. 41 During the days that followed, prison guards regularly asked him about his mental state, 42 and if he was going to do anything "foolish," to which he responded "no." 43 He showed no further signs of suicidal tendencies.

Two days later, after a visit from his mother, a custody officer found Sandborg hanging from his bed sheets. 44 Shortly thereafter, the resulting injuries caused his death.

Sandborg's mother ("Appellant") sued the county and its jail personnel for wrongful death. 45 At trial, the district court instructed the jury to compare and allocate fault between Sandborg and the county; 46 the jury found that the county and its employees were not

39. Tomfohr, 450 N.W.2d at 125 (stating that the ruling is limited to attempted suicides committed by mentally ill patients "admitted to a locked hospital ward where the medical staff was aware of his suicidal ideations."). But see Sandborg II, 615 N.W.2d at 64-65 (discussing the Tomfohr court's elimination of comparative fault in any case where self-destruction is reasonably foreseeable).

40. Sandborg II, 615 N.W.2d at 62-63.

41. Id. at 63. Sandborg's exact words when asked if he was thinking about killing himself were "[a] little, not as much as before." Id.

42. Id.

43. Sandborg v. Blue Earth County, 601 N.W.2d 192, 195 (Minn. Ct. App. 1999), rev'd en banc, 615 N.W.2d 61 (Minn. 2000) [hereinafter Sandborg I].

44. Id.

In addition to the regularly recorded hourly cell checks, [the custodial officers] each testified they performed numerous informal checks on Sandborg while walking by the cell and didn't observe any unusual behavior on Sandborg's part. Custody Officer Carstensen also testified that he observed Sandborg's behavior to be normal, giving no indication of mental illness or suicidal ideation. Id.

45. Sandborg II, 615 N.W.2d at 63.

46. Id. Sandborg's death occurred two days after the hanging. Id.

47. Id. at 62.

48. Id. at 62-63 (applying MINN. STAT. § 604.01 (1998), which allows a jury to determine the percentage of fault attributable to each party).
at fault. Appellant moved for judgment notwithstanding the verdict or a new trial, stating that the jury instruction was in error. The motion was denied, however, even though the error was recognized, due to the court's finding that the error was "harmless."

On appeal, the court of appeals reversed the lower court's decision, concluding that the instruction was not harmless because the jury could have based its decision on a determination that the county had no legal duty to protect Sandborg. However, the court also concluded that the trial court had not erred with regard to the comparative fault instructions, finding that Sandborg had the capacity to be responsible for his own well-being and, therefore, there was no reason to shift full liability to the county.

B. The Court's Analysis

The Minnesota Supreme Court agreed with the court of appeals' determination that a duty must exist to protect detainees from foreseeable harm, even when that harm is self-inflicted, because of the special relationship arising from the jailer's control over the detainee. However, the supreme court reversed the court of appeals' decision, concluding that in certain situations comparative fault is not applicable because the third party has completely assumed liability for the individual's well-being. The

49. Id. at 62.
50. Id.
51. Id.
52. Sandborg I, 601 N.W.2d at 197.
53. Id. at 198. The court of appeals held that, "[u]nlike the mentally ill patient in Tomfohr, Sandborg had the capacity to share the responsibility for his own well-being." Id. Therefore, the court concluded that "the trial court did not err by instructing the jury on comparative fault under Minn.Stat. § 604.01, subd. 1." Id.
54. Sandborg II, 615 N.W.2d at 63-64 (recognizing Donaldson v. Young Women's Christian Ass'n, 539 N.W.2d 789, 792 (Minn. 1995), which stated that absent a special relationship, a third party has no legal duty to protect another, even if that party knows or should know that action is necessary).
55. Sandborg II, 615 N.W.2d at 64. The court applied § 452 of the Restatement (Second) of Torts, which states:

[B]ecause the duty, and hence the entire responsibility for the situation, has been shifted to a third person, the original actor is relieved of liability for the result which follows from the operation of his own negligence. The shifted responsibility means in effect that the duty, or obligation, of the original actor in the matter has terminated, and has been replaced by that of the third person.

Restatement (Second) of Torts § 452 cmt. d (1965).
court reasoned that the jailer-detainee relationship is one such "exceptional" circumstance in which the duty to protect against a known possibility of self-inflicted harm shifts entirely to the jailer, and comparing the fault of the detainee is therefore not appropriate.\textsuperscript{56}

The court held that, because of Sandborg's suicidal intentions before his arrest, suicide was still foreseeable even after two days of calm and rational behavior.\textsuperscript{57} Consequently, the county should have taken measures to protect against the suicide.\textsuperscript{58} Using \textit{Tomfohr} as its guide, the court ruled that comparative fault should not be applied because Sandborg's fault was already eliminated by the foreseeability test that determined the jail's duty.\textsuperscript{59}

\section*{IV. Analysis of the Sandborg Decision}

At first blush, it would seem that the \textit{Sandborg} decision is a logical step in the Minnesota Supreme Court's trend toward increased third-party liability when that party assumes control over a person's well-being.\textsuperscript{60} Indeed, Minnesota courts are not alone; throughout the United States, there has been a push by both courts and legal scholars to severely limit the traditional nonfeasance standard that has been the norm in tort law for centuries.\textsuperscript{61} Though this desire to limit nonfeasance is a genuine concern, the means by which the standard may be changed should not be conjured up from the whimsy of the court, nor should it be concocted by cutting and pasting obscure snippets of existing law.\textsuperscript{62} In essence, the \textit{Sandborg} court did just that – by expanding \textit{Tomfohr}'s liability

\begin{footnotes}
\item[56.] \textit{Sandborg II}, 615 N.W.2d at 64.
\item[57.] \textit{Id.} at 65.
\item[58.] \textit{Id.} at 64.
\item[59.] \textit{Id.}
\item[60.] See, \textit{e.g.}, \textit{Tomfohr} v. Mayo Found., 450 N.W.2d 121 (Minn. 1990); Broughton v. Maes, 378 N.W.2d 134 (Minn. Ct. App. 1985) (extending liability in landlord-tenant relationships); \textit{supra} Part II.B.
\item[61.] See, \textit{e.g.}, W. \textit{Keeton et al., Prosser and Keeton on the Law of Torts} § 56 (5th ed. 1984) (observing that the trend in the past century toward imposing liability for nonfeasance is most pronounced where plaintiff is particularly vulnerable and dependent on defendant).
\item[62.] See Oanes v. Allstate Ins. Co., 617 N.W.2d 401, 406 (Minn. 2000) (stating that the doctrine of \textit{stare decisis} is followed in American courts to allow for stability in the law and should be adhered to unless the principle supporting former cases is unsound); \textit{see also} Deborah M. Santello, Note, \textit{Maternal Tort Liability for Prenatal Injuries}, 22 \textit{Suffolk U.L. Rev.} 747, 770 (1988) (arguing that a new duty of care should not be created simply to achieve a desired goal).
\end{footnotes}
standard far beyond the limitations expressly set forth in *Tomfohr* itself, and by resorting to the vaguest of Restatement terminology, the supreme court was able to justify its desired outcome.

Realistically, the *Sandborg* decision should have little impact on the everyday functions of government. As before *Sandborg*, liability is still negated if the government is sufficiently vigilant when suicide is reasonably foreseeable. What is disturbing about this case, however, is the means by which the supreme court arrived at its decision, the "slippery slope" that may have been created by relying on nebulous legal theory, and the fact that a person who has the capacity to make rational decisions is completely relieved from liability for his own actions. To paraphrase *DeShaney*, even though the supreme court is moved by natural sympathy to find adequate remedy for the loss of human life, we must consider who actually inflicted the injury. In essence, the Minnesota Supreme Court has abandoned *stare decisis*, solid legal reasoning, and a rational individual's freedom to make his or her own decisions, all in an effort to impose a standard the court believes just.

A. Deconstructing *Tomfohr*: The Patchwork Justification for a New Duty

The *Sandborg* court was persuaded by appellant's use of *Tomfohr v. Mayo Foundation* to establish that comparative fault should not apply when a third party has a duty to prevent foreseeable self injury. Unlike most special relationships, where

63. *Tomfohr*, 450 N.W.2d at 125.
64. *Restatement (Second) of Torts* § 452 cmt. d (1965).
65. *Sandborg II*, 615 N.W.2d at 65 (emphasizing that the plaintiff must still prove that the jailer breached a reasonable standard of care and that a jury could still find a jail's actions reasonable under the circumstances).
66. *Id.* "The fact that the suicide occurred is not sufficient to impose liability.” *Id.*
67. *DeShaney*, 489 U.S. at 202-03.

Judges and lawyers, like other humans, are moved by natural sympathy in a case like this to find a way for [the decedent] and his mother to receive adequate compensation for the grievous harm inflicted upon them. But before yielding to that impulse, it is well to remember once again that the harm was inflicted not by the State of Wisconsin, but by [the decedent's] father.

*Id.*

68. *Sandborg II*, 615 N.W.2d at 64-65. *But see Sandborg I*, 601 N.W.2d at 198 (rejecting appellant's use of *Tomfohr* because the court believed appellant's interpretation was too broad).
fault is compared when the plaintiff fails to exercise reasonable care for his own protection, the court felt that the duty to protect against self-inflicted harm shifts entirely to the jailer because the jailer was "in total control" of the detainee's physical and mental needs. To reinforce this argument, the court relied heavily on section 452 of the Second Restatement of Torts, which states that, when the duty to prevent harm is found to have shifted from the actor to a third person, "the failure of the third person to prevent such harm is a superseding cause." Comment d of the section further states that this duty shifts in "exceptional cases" – cases where the circumstances dictate that the original actor's duty has terminated, and the duty has shifted completely to a third party. Thus, the court reasoned, because the original actor is relieved of any duty in these circumstances, he can have no fault to be compared.

At first glance, this seems a solid argument. But in reality, it is a trompe-l'oeil. First, Minnesota courts have never before used section 452 in any published opinion, not even in *Tomfohr*, let alone the obscure comment d to that section. There is good reason why the courts have refrained from using this tool: the section, even in the Court's own words, does not recognize any specific means to determine whether a duty has shifted entirely to another person. The Court does not provide any further guidance in *Sandborg*, although it points to several "considerations" in the final comment to the Restatement, it never makes an effort to limit the effects of

---

69. Tomfohr v. Mayo Found., 450 N.W.2d 121, 123 (Minn. 1990); see also MINN. STAT. § 604.01, subd. 1 (1998).
70. *Sandborg* II, 615 N.W.2d at 64.
71. RESTATEMENT (SECOND) OF TORTS § 452(2) (1965).
72. *Id.* at § 452 cmt. d.
73. *Sandborg* II, 615 N.W.2d at 64.
74. Cassell's French Dictionary 736 (Denis Girard ed., MacMillan 1981) (defining a trompe-l'oeil as an "illusion" or "scam").
75. The Minnesota Court of Appeals did use section 452 in an unpublished opinion, Jonas v. North End Health Ctr., 1996 WL 107405, at *2 (Minn. Ct. App. 1996), though in this decision the court found that there is generally not a duty to prevent the harm threatened by another actor's negligent conduct.
76. *Sandborg* II, 615 N.W.2d at 64 (referencing RESTATEMENT (SECOND) OF TORTS § 452 cmt. f (1965), which acknowledges that "it is apparently impossible to state any comprehensive rule as to when" circumstances completely shift responsibility to a third party).
77. *Sandborg* II, 615 N.W.2d at 64. "Considerations" include "the degree of danger and the magnitude of the risk of harm, the character and position of the person who is to take the responsibility, his knowledge of the danger and the likelihood he will or will not exercise proper care." *Id.*
this vague yet burdensome legal theory. Instead, the court simply states that, when suicide is “reasonably foreseeable,” the detainee’s fault can no longer be considered.\textsuperscript{78} This lack of guidance is a dangerous oversight.

The second major deception employed in \textit{Sandborg} is the use of \textit{Tomfohr} to justify these new exceptional duties.\textsuperscript{79} In reality, the \textit{Tomfohr} court explicitly stated that its holding was entirely fact-specific:

[W]e wish to stress that this ruling is limited to the type of factual situation presented by this case, to-wit, an attempted suicide committed by a mentally ill patient admitted to a locked hospital ward where the medical staff was aware of his suicidal ideations . . . . [O]ur holding today only stands for the proposition that cases may exist, such as this one, where a trial judge may rule, as a matter of law, that the patient could not be at fault because he lacked the mental capacity to be responsible for his own well being, and that the obligation of self care was transferred to the health care provider when it admitted the patient into its care.\textsuperscript{80}

The situation in \textit{Sandborg} is a far cry from \textit{Tomfohr}. There was no evidence that Sandborg was mentally ill.\textsuperscript{81} There was nothing on record to indicate that Sandborg lacked the mental capacity to be responsible for his own well being.\textsuperscript{82} Moreover, Sandborg was not jailed for his own protection. Consequently, there is no reason that fault should not be compared in this situation.\textsuperscript{83} Therefore, the harsh, overreaching standards of section 452 should not apply.

\textbf{B. Duty and Foreseeability in the Eyes of the Sandborg Court}

The danger of the enhanced duty of \textit{Sandborg} does not lie in the imposition of this standard on jailers. As the Court stated, this new duty does not impose a strict liability standard; if a jailer takes

\begin{itemize}
\item \textsuperscript{78} Id. at 65.
\item \textsuperscript{79} Id. at 64-65.
\item \textsuperscript{80} \textit{Tomfohr v. Mayo Found.}, 450 N.W.2d 121, 125 (Minn. 1990).
\item \textsuperscript{81} \textit{Sandborg I}, 601 N.W.2d at 198. \textit{But see Sandborg II}, 615 N.W.2d at 64 (determining that “[w]hile a diagnosis of mental illness is a factor to consider when determining whether the suicide was reasonably foreseeable, a finding of mental illness is not necessary in making a determination regarding the applicability of comparative fault.”).
\item \textsuperscript{82} \textit{Sandborg I}, 601 N.W.2d at 198.
\item \textsuperscript{83} Id.
\end{itemize}
reasonable precautions to prevent suicide and the suicide still occurs, there can be no liability. Rather, the danger lies in its vague instructions concerning to whom the duty may be imposed, and exactly when a suicide is "reasonably foreseeable."

By using the unclear language of section 452 to justify its extension of duty in Sandborg, the supreme court has "left the door cracked" to further enhancement of duty. Nothing in the Restatement limits liability strictly to health care providers or jails, and one can imagine clever advocates stretching the new Sandborg standard to eventually include police officers, school administrators, and even parents of maladjusted adolescents. Once more, these same creative souls may find "reasonable foreseeability" in melancholy behavior and heavy metal music. Indeed, section 452 reads a bit like a Nostradamus prediction—one can find what one wants to find in it; the section can be interpreted in infinite ways, and none of those interpretations can actually be proven incorrect.

Thus, the court took this false clairvoyance and applied it to justify the next step in its assault on the nonfeasance liability standard. In the past, logically, only healthcare facilities that have admitted a patient because of his suicidal ideations—and assumed the duty to prevent those ideations from coming to fruition—could

---

84. Sandborg II, 615 N.W.2d at 65; see also Minnesota Dist. Judges Ass'N Comm. on Jury Instruction Guides, Minnesota Jury Instruction Guides (Civil) JIG 25.40 (Michael K. Steenson & Peter B. Knapp, rep.) in 4 Minn. Practice 1, 145 (4th ed. 1999) (stating that, in official immunity claims, the official must act willfully or maliciously in order to be held accountable).

85. Sandborg II, 615 N.W.2d at 64. The Court conceded that the factors used to determine when this new standard should be applied are "imprecise," sounding strikingly similar to Justice Potter Stewart's "I'll know it when I see it" pornography test. See Jim Belshaw, Free Speech Practicum, Albuquerque J. (N.M.), Sept. 28, 2001, at B1, available at 2001 WL 27270551.

86. See Restatement (Second) of Torts § 452 cmt. f (1965).

87. These are examples of traditional "custodial relationships." See Daniel Dobbs & Paul Hayden, Torts and Compensation (3d Ed. 1997); see also Mirand v. City of New York, 637 N.E.2d 263, 266 (1994) (holding that "schools are under a duty to adequately supervise the students in their charge and they will be held liable for foreseeable injuries proximately related to the absence of adequate supervision").


89. See supra Part II.B.
assume full liability in the event of suicide occurring.\textsuperscript{90} Now, it appears that the court has imposed the same liability to any situation where an individual is detained, regardless of his ability to make rational choices.

In jail-type situations, such harsh liability standards make little sense. Though many detainees may be upset or angry about their self-inflicted situations, the law should not equate such distress with an inability to make independent choices.\textsuperscript{91} The standard imposed in Sandborg is simply too far down the "slippery slope." The comparative fault standard should have been applied, as it generally is in Minnesota when an individual's intentional acts play a part in causing harm.

The danger of Sandborg applies to foreseeability as well as duty. Previously, only inmates presenting "a strong likelihood of suicide" were entitled to protection from self-destruction.\textsuperscript{92} This determination was made by considering several factors, including the recency and genuineness of the threat.\textsuperscript{93} Given that most prison suicides occur within the first twenty-four hours of detention,\textsuperscript{94} and that Sandborg showed no signs of suicide after his detention,\textsuperscript{95} it seems that the supreme court broadened the standard to include potential as well as imminent suicide.\textsuperscript{96}

\textsuperscript{90.} See Susan O'Neal, Comment, Contributory Negligence in Medical Malpractice: Recent Application in the Context of the Suicidal Patient, 69 Miss. L.J. 925, 933 (1999).

\textsuperscript{91.} See, e.g., U.S. v. Danser, 110 F.Supp.2d 792, 803 (S.D. Ind. 1999) (finding that, in an interview after being arrested, while circumstances of defendant's arrest and imprisonment annoyed and even angered defendant, that annoyance and anger were not so pronounced as to cloud or overbear his intellect and free will).

\textsuperscript{92.} See Tomfohr v. Mayo Found., 450 N.W.2d 121, 123 (Minn. 1990) (discussing the ways Minnesota has compared fault even in situations where other jurisdictions have refused to do so).


\textsuperscript{94.} Id. "Case law indicates that this threshold is not met unless the following elements are present: (1) the inmate in question has threatened suicide or made a suicide attempt; (2) this threat or attempt is known to jailers; and (3) is somewhat recent and (4) appears genuine." Id.

\textsuperscript{95.} Id. at 807.

\textsuperscript{96.} Sandborg II, 615 N.W.2d at 63.

\textsuperscript{97.} Compare Sandborg II, 615 N.W.2d at 64 (stating that all jailer-detainee relationships are exceptional circumstances where "the known possibility of self-inflicted harm transfers entirely to the jailer"), with Sandborg I, 601 N.W.2d at 198 (applying the literal language of the Tomfohr decision, finding that, since Sandborg did not appear mentally ill and was calm after his incarceration, Sandborg should have had the capacity to share the responsibility for his own well being, and therefore a full shift of liability was not appropriate).
C. Imposing Liability for the Intentional Act of Another

Despite the supreme court's paucity of case law and its vague guidance in terms of duty and foreseeability, one could still make a strong argument that these faults are, in legal parlance, "harmless error." The court could once again address this issue (as jail suicides are sufficiently frequent), find further cases to back up its argument, and more accurately place limitations on duty and foreseeability. This argument, however, overlooks the value society places on personal responsibility.

The recent trend toward increasing liability to third parties in suicide situations is, with only a handful of exceptions, contrary to both common law and common sense. Even in our enlightened age, it seems beyond logic to shift full responsibility to a third party when an uncoerced actor knowingly and consciously decides to act and subsequently acts; if the actor is able to make rational choices, there is no better individual than himself to prevent the action from taking place.

In a situation such as Sandborg, suicide is an intentional and uncoerced act by a rational individual. Thus, even a detained individual, provided that he is not mentally ill, should have the capacity to be responsible for his own actions. To shift all liability in a situation where a detained individual still retains his faculties and his ability to reason is at best baffling. At worst, it is a complete rejection of our traditional notions of fault.

V. CONCLUSION

In deciding Sandborg, the Minnesota Supreme Court had an

98. Donnie Braunstein, Note, Custodial Suicide Cases: An Analytical Approach to Determine Liability for Wrongful Death, 62 B.U. L. Rev. 177, 199 (1982) (recognizing that many courts are reluctant to impose liability in custodial situations); see also Snyder v. Baumecker, 708 F.Supp. 1451, 1463 (D. N.J.1989) (observing that because of its intentional and deliberate nature, courts have generally recognized suicide as an intervening act which is not foreseeable).

99. Daniel M. Crone, Historical Attitudes Toward Suicide, 35 Duq. L. Rev. 7 (1996) (quoting John Locke, The Second Treatise of Government, in Two Treatises of Government 302, n.23 (P. Laslett ed. 1690): "[W]hen he finds the hardship of his slavery out-weigh the value of his life, 'tis in his Power, by resisting the Will of his Master, to draw upon himself the Death he desire"); see also Jutzi-Johnson v. U.S., 263 F.3d 753, 755 (7th Cir. 2001) (holding that "when failure to prevent a suicide is claimed to be negligent, the issue of foreseeability is analyzed under the rubric of 'supervening cause' and the general rule is that the negligent actor is not liable for the victim's decision to kill himself.").

100. See Sandborg I, 601 N.W.2d at 198.
opportunity to reinforce the liability limitations imposed in *Tomfohr*. Instead, the court set an alarming precedent concerning foreseeability of suicide among prisoners. At the same time, the court imposed a duty upon prison officials that should be reserved exclusively for health care providers that have willingly, knowingly, and voluntarily assumed responsibility for the well being of someone who is no longer mentally capable of being able to do so for themselves. In overruling a logical court of appeals decision, the supreme court extended the "exceptional relationship" doctrine well beyond its original purpose, instead of reserving this responsibility for truly exceptional circumstances.