IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Linda Lou Christopher, Special Administrator of the Estate of Richard Wroblewski, deceased,	)	
Plaintiff,	)	
v.	)	
	)	No. 20 L 10296
Restoration Ministries, Inc., an Illinois not-for-profit corporation,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Although parties can contract to avoid liability for their own negligence, a contract cannot spare parties from liability for willful and wanton negligence. Here, the plaintiff died of a drug overdose while enrolled in the defendant's rehabilitation program. Whether conduct is willful and wanton is a question usually reserved for a jury; therefore, the motion to dismiss is denied.

Facts

On October 28, 2019, Richard Wroblewski enrolled with Restoration Ministries, Inc. (Restoration Ministries), a Christian-training residential program for men struggling with drug and alcohol addictions. Restoration Ministries operates multiple facilities; Wroblewski joined the location at 253 East 159th Street, Harvey, Illinois (Harvey Facility). According to Linda Lou Christopher, the special administrator of Wroblewsi's estate, a criminal drug charge compelled Wroblewski's enrollment in a treatment program. The Restoration Ministries program "usually takes approximately twelve to

eighteen months." General Consent, Assumption of Risk, and Release at 1.

Wroblewski transferred to Harvey Facility from Branden House—another treatment facility. There is no official relationship between Harvey Facility and Branden House, but Harvey Facility often receives Branden House residents.

To enroll at Harvey Facility, new residents must sign a liability release. This release would immunize Restoration Ministries from all injuries to persons or property that are "a result of or connected with participation in the Program," including injuries caused by the "use of any equipment or facilities for the Program." *Id.* at 3. Derrick Fields, who was then Restoration Ministries' Associate Director, reviewed the liability release with Wroblewski. According to Fields' April 29, 2021 deposition, Fields broadly explained the release's significance. He watched Wroblewski read and sign the three-page document, and he does not recall Wroblewski having any release-related questions.

At Harvey Facility, residents—including new arrivals—must be sober. The program does not offer clinical addiction treatment; instead, it promotes "a closer relationship with Jesus Christ and a firm foundation in his personal Christian walk, as well as better social skills to function as a productive member of society and to live a life free of addiction." General Consent, Assumption of Risk, and Release at 1. According to Fields, although Restoration Ministries did not drug test Wroblewski on the day of his arrival, Wroblewski did not appear intoxicated; he told Fields that he was not intoxicated; and he had just come from Brendan House, which had a policy of drug-testing. Harvey Facility had Wroblewski drug tested four days later—on November 1, 2019—and the results were negative.

Harvey Facility has a roof deck. The complaint alleges that the roof deck "was not intended to be used by residents," that "[a]ll residents were strictly forbidden and prohibited from using or being

present on the roof deck," and that Harvey Facility "had provided training and instruction to its agents and employees that residents were prohibited from entry onto and the use of the roof deck." Complaint ¶¶ 13, 15. The roof deck was nonetheless regularly used by residents as a smoking area. This roof deck sat atop a single story, and it lacked a railing along its perimeter. The roof deck could be accessed through a door with a sliding bolt lock. When residents used the deck, the bolt was extended so the door would not close. The last person to go inside would slide the bolt shut.

According to a Harvey Police report, on Saturday, August 15, 2020, Derrick Gray—another Harvey Facility resident—noticed that Wroblewski was acting differently and "nodding off." Harvey Supplemental Report at 2. On Sunday, August 16, Wroblewski admitted to Gray that he had relapsed. Relying on security camera footage, the police partially reconstructed the events of Sunday, August 17, 2020. At 6:36 p.m., Wroblewski went onto the roof deck, accompanied by Mike Williams. At 6:52 p.m., Williams returned inside, and he did not secure the door. At 6:53 p.m., Eugene Dixon went onto the roof deck; at 7:02 p.m., Dixon returned inside and *did* secure the door. Over the next hour, while additional residents came and went—using the roof deck, locking and unlocking its door—Wroblewski never re-entered the building. On Tuesday, August 18, Wroblewski was found dead, in bushes directly beneath the roof deck.

The September 28, 2020 complaint alleges that Wroblewski fell off the deck and "died from his injuries that resulted from his body striking the ground with great force and violence." Complaint ¶ 24. The complaint states a cause of action—rooted in negligence—under the Illinois Wrongful Death Act. 740 ILCS 180/01, et seq. According to the complaint, Restoration Ministries breached its duty to maintain safe premises by letting residents use a roof deck that lacked a railing, and it breached its duty to properly care for Wroblewski.

The September 14, 2020 coroner's report does not cite blunt force trauma as the cause of death. Instead, the coroner found the cause of death an accident, concluding that Wroblewski "died of combined drug (fentanyl, despropionyl fentanyl, and methamphetamine) toxicity." Report of Postmortem Examination at 5.

On November 12, 2020, Restoration Ministries filed a motion to dismiss under section 2-619 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-619, arguing that Wroblewski had contractually waived his estate's right to a lawsuit. Christopher's June 14, 2021 response brief presented three arguments: first, that the contract is invalid because Wroblewski lacked meaningful bargaining power; second, that the contract is irrelevant because Restoration Ministries' alleged conduct amounted to willful and wanton negligence; and third, that the contract is irrelevant because the cause of Wroblewski's death—a drug overdose—was not a covered activity. On June 29, 2021, Restoration Ministries filed its reply brief.

Analysis

A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). It "admits the legal sufficiency of the plaintiff's claim, but asserts certain defects or defenses outside the pleading that defeat the claim." *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 579 (2006). Its purpose is "to dispose of issues of law and easily proved issues of fact early in the litigation." *Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008).

In Illinois, parties may contract to avoid liability for their own negligence. *Garrison v. Combined Fitness Centre, Ltd.*, 201 Ill. App. 3d 581, 584 (1990). But some conditions apply: a contract cannot immunize parties from fraud or willful and wanton negligence; the liability release cannot violate public policy; the exculpatory clause cannot benefit parties that had a substantial bargaining advantage during the

contract's formation; and the social relationship of the parties cannot militate against upholding the contract. *Id.* These conditions are variations of a theme; they do not necessarily represent discrete propositions.

Christopher argues that the contract is invalid because Wroblewski lacked meaningful bargaining power, since an alleged drug-related criminal prosecution required his enrolled in a rehabilitation program, and since he had to sign the liability release to enroll with Restoration Ministries. But Christopher provides no case law indicating that such a scenario amounts to a contract-thwarting disparity in bargaining power. A disparity in bargaining power requires that "the agreement does not represent a free choice on the part of the plaintiff, such as a monopoly." *Johnson v. Salvation Army*, 2011 Ill. App. LEXIS 877, ¶ 19. Restoration Ministries was not the only available rehabilitation facility; there are other programs Wroblewski could have entered. Tran. p. 88, lines 16-23. It may be that liability waivers are standard issue across Chicagoland rehabilitation clinics, such that they cannot be avoided, but this court can only analyze the contract before it. *See also Johnson*, 2011 Ill. App. LEXIS 877, ¶ 24 (not finding a disparity in bargaining power between the Salvation Army and an unemployed, homeless, and substance-abusing resident of its rehabilitation program, even though the plaintiff had to "accept the terms . . . or be denied food and shelter," because the plaintiff "could have sought rehabilitation services elsewhere"). In sum, this Court does not find the contract's formation improper.

Christopher next argues that Restoration Ministries knew its residents used the roof deck—even though this was against Harvey Facility policy, and even though the roof lacked a railing—and that their permissive inaction was willful and wanton. Unlike ordinary negligence, willful and wanton negligence cannot be sanctioned by contract. *See Garrison*, 201 Ill. App. 3d at 584.

Willful and wanton negligence requires "an utter indifference to or conscious disregard for a person's own safety or the safety or property of others." *Oelze v. Score Sports Venture, LLC*, 401 Ill. App. 3d 110, 122 (1st Dist. 2010) (quoting *Pfister v. Shusta*, 167 Ill. 2d 417, 421 (1995)). Even if Restoration Ministries violated internal policies by allowing residents on the roof, that would not prove willful and wanton negligence since legal duties "will not generally be created by a defendant's rules or internal guidelines." *Rhodes v. Illinois Cent. Gulf R.R.*, 172 Ill. 2d 213, 238 (1996). Whether conduct is willful and wanton is "generally a question of fact for the jury to determine." *Oelze*, 401 Ill. at 123. This court lacks the facts to decide the issue as a matter of law.

Christopher did not, however, allege willful and wanton negligence in her complaint. "[T]o recover damages based on willful and wanton conduct, a plaintiff must plead and prove the basic elements of a negligence claim . . . . In addition, a plaintiff must allege either a deliberate intention to harm or a conscious disregard for the plaintiff's welfare." *Doe-3 v. McLean County Unit. Dist. No. 5 Bd. of Dirs.*, 2012 IL 112479, ¶ 19. If this claim is to continue, Christopher's complaint must be amended. *See Thornton v. Shaw*, 333 Ill. App. 3d 1011, 1018–19 (1st Dist. 2002) ("Dismissal pursuant to section 2-619 is warranted only where it clearly is apparent that no set of facts can be proved which would entitle a plaintiff to recover. . . . [However,] a reviewing court is concerned only with the questions of law presented by the pleadings.") (internal citations omitted).

Relatedly, Christopher argues the contract should be invalidated for failing to specify that its negligence waiver did not license willful and wanton negligence. That, in short, the contract impliedly authorized more than it could legally authorize, and that this overreach defeats the whole contract. This argument claims too much. A contract is not undone for failing to specify that its liability waiver cannot sanction willful and wanton negligence. *See, e.g.*, *Oelze*, 401 Ill. App. 3d at 118 (upholding a contract's broad waiver language).

Christopher's final argument is peculiar. Christopher argues the contract is inapplicable because it only covers "Program activities," and Wroblewski died from a drug overdose, which was *not* a program activity. But Christopher's efforts to evade the contract undermine the argument that Restoration Ministries should be liable for Wroblewski's death. *See* Plaintiff's Response Brief at 10 ("The Decedent taking drugs was not a Program activity. It was a prohibited activity and Decedent died from taking drugs. Decedent was not participating in a Program activity when he overdosed on drugs and died as a result."). In other words, if Wroblewski's death arose independently of Restoration Ministries, Restoration Ministries is not at fault.

In any case, the liability release was not limited to *activities*; it also covered the "use of any equipment or facilities for the Program." General Consent, Assumption of Risk, and Release at 3. Thus any roof-related negligence would be covered, so long as that negligence was not willful and wanton.

A final note: the September 28, 2020 complaint states that Wroblewski died from "injuries that resulted from his body striking the ground with great force and violence." Complaint ¶ 24. But the September 14, 2020 coroner's report concludes that Wroblewski "died of combined drug (fentanyl, despropionyl fentanyl, and methamphetamine) toxicity." Report of Postmortem Examination at 5. Christopher fails to advance a theory of liability that reconciles its complaint with the coroner's findings. If Christopher wishes to sustain her cause of action, this divergence must be addressed.

Conclusion

For these reasons, it is ordered that:

1. The defendant's motion to dismiss is denied, and
2. The plaintiff amend her complaint by August 26, 2021.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JUL 29 2021

Circuit Court 2075