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Court: No liability for motel owner

High court rules 4-3 against wife of man who died after motel room staff allegedly refused to check on him

By Alyson M. Palmer, Staff Reporter



(File photo)

Attorney Michael Ruppensburg made the winning argument for the motel. According to his counsel, the motel's staff doesn't recall being alerted to the possibility of a guest's distress.

The Supreme Court of Georgia on Tuesday ruled 4-3 that a motel doesn't have a legal duty to check on a guest's welfare at his worried wife's request.

The decision likely means the end to the wrongful death action brought by the wife of Sidney Rasnick, a 77-year-old Texas man who on March 13, 2006, was found in distress on the floor of his motel room in Jesup, about 65 miles southwest of Savannah. He died of heart trouble later that day. The wife's lawyer, James M. Poe of Atlanta, said Tuesday he was contemplating asking the court to reconsider. But such requests seldom are granted.

The wife, Virginia Rasnick, alleged that the night before her husband died she had called the motel and asked staff to check on him, telling staff she was worried because her husband was on medication. She sued the owner of Motel Jesup, where her husband had stayed on a work assignment.

Tuesday's ruling says Georgia law doesn't impose on innkeepers the duty to check on a guest's welfare, although the decision appeared to leave open for another day the question of whether the court might ever impose on innkeepers a duty to summon medical aid for a guest they actually observe in distress. "To require that an innkeeper monitor in any manner the possible health problems of a guest, which are not caused by or are unrelated to the stay at the facility, is not only unwarranted as a matter of law but unworkable as a matter of fact and practicality," Justice P. Harris Hines wrote in the majority opinion joined by Justices Hugh P. Thompson, Harold D. Melton and David E. Nahmias.

Tools:



Presiding Justice George H. Carley wrote a dissent, joined by Chief Justice Carol W. Hunstein and Justice Robert Benham, saying Georgia law gave innkeepers a duty to protect guests from danger and that a jury should be allowed to consider whether that duty had been triggered by Virginia Rasnick's calls. The dissenters urged the state Legislature to address what they said was the majority's "inexplicable" rejection of a rule that would allow liability for the motel.

The majority opinion said the case raised "issues of morality and humanity" but to rule for the plaintiff "would be an epitomization of the adage 'bad facts make bad law.'"

According to a lawyer for the defendant, Krishna Hospitality Inc., Sidney Rasnick was an engineer and in March 2006 had been working in the local plant of Rayonier Inc., a forest products company. As reported in a Court of Appeals ruling in the case, Sidney Rasnick spoke with his wife multiple times a day during his business trip. But Virginia Rasnick said she had trouble reaching her husband at the motel the night of March 12.

As recounted in the appellate opinion, Virginia Rasnick testified in her deposition that after at least two attempts to reach her husband in his room through the motel operator, she called back and a man answered the motel telephone. She said she told him that she was in Texas and was very worried about her husband, as he was on medication. She said she told the man she needed someone to check on her husband. The man told her that she was disturbing her husband and hung up on her, she said.

A little later, she called back and was connected to her husband's room again by a female operator. Again, there was no answer. She tried again about 15 minutes later, and, again, a man answered the phone. She said that when she asked the man if he had found out anything about her husband, the man "went off," saying that she was disturbing her resting husband and suggesting that he might have been working late or gone out.

Virginia Rasnick said she explained that she had already called her husband's office and been told he had left for the motel, but the man simply told her to dial her husband's room number and then hung up. She said she tried the motel several more times that night but received only a recorded message.

David F. Root of Atlanta's Carlock, Copeland & Stair, who represents the motel company defendant, said last year that although phone records indicate Virginia Rasnick made phone calls from her home in Texas to the motel switchboard, his client's employees don't recall getting any phone calls from her indicating her husband was in distress.

The next morning, a motel housekeeper found Sidney Rasnick in his room, able to speak but unable to get up off the floor, according to the Court of Appeals opinion. Transported by ambulance to a nearby hospital, the man died a short time later.

According to the Court of Appeals opinion, an autopsy revealed that Sidney Rasnick died from coronary artery disease and an enlarged heart. One cardiologist said that had Sidney Rasnick received medical treatment the night of March 12, he would have survived, the opinion noted. But Root, the defense lawyer, said last year there was a dispute on that point, saying there was evidence Rasnick's medical episode did not begin until shortly before he was found.

Brunswick Circuit Superior Court Judge Stephen G. Scarlett granted summary judgment to the motel company, a ruling affirmed by a Court of Appeals panel of Judges J.D. Smith, Herbert E. Phipps and Debra H. Bernes. The Supreme Court initially declined the plaintiff's request to take up the case, over the dissents of Hunstein, Carley and Benham, but Poe reported he filed a motion for reconsideration and picked up the votes of Nahmias and Thompson.

In the end, Poe couldn't convince those two justices to vote with him on the merits of the case. The majority opinion rejected the idea that a hotel guest becoming debilitated falls within an innkeeper's well-settled duty to keep hotel premises safe for guests. And the majority rejected the plaintiff's request that the court adopt a section of the American Law Institute's Restatement (Second) of Torts, § 314A(2), that says an innkeeper has a duty to give his guests first aid after he knows or has reason to know they are ill or injured. In cases from other states cited by Rasnick in support of adopting such a rule, wrote Hines, the owner or operator of the premises knew the guest was in imminent danger because he had observed it and didn't need to investigate further.

Hines added that the Legislature's failure to adopt a broader duty made sense given concerns about guest privacy. "In light of a legislative reluctance to do so and in recognition of clear considerations of policy and pragmatism, we decline to judicially engraft into the caselaw of this State, the additional duty upon innkeepers to investigate or check on their guests to determine if they are in medical need, as urged by Rasnick," wrote Hines. "This holding is sufficient to decide this case, and thus, we need not determine now whether any duty to render or summon medical aid as may be set forth Section 314 (A) (2) should be adopted in Georgia."

Carley's dissent emphasized that the Restatement section didn't apply only when the innkeeper had observed a guest in physical peril. And he wrote that the Rasnick case presented "a significantly more compelling case for the denial of summary judgment" than an unpublished Arkansas federal case in which jurors were permitted to consider the liability of a motel when a guest's girlfriend asked the desk clerk to call 911 because she couldn't get into the

guest's room but didn't give any information from which the clerk could reasonably conclude the guest was having a medical emergency.

"I further urge the General Assembly to close the gap in the common law resulting from the majority opinion's unnecessary limitation on the duties of an innkeeper and its inexplicable rejection of the application of § 314A to this case," wrote Carley.

Root's associate, H. Michael Ruppensburg, made the winning arguments at the Court of Appeals and Supreme Court. Ruppensburg said the decision was consistent with Georgia law, which he said doesn't impose on persons a duty to provide assistance unless that person has done something to cause or contribute to another's distress. "We couldn't find any case where a person just called up a hotel or a restaurant or a business and made a request to check on or investigate a guest's medical condition," he said.

Poe, the plaintiff's lawyer, said cases over hotel guests found dead or unconscious in their rooms don't arise often, surmising that oftentimes a guest who has problems is travelling with a companion who can summon help. More common, he said, were claims over restaurant patrons who need medical attention. "It is not something that comes up all the time at all," he said.

The case is *Rasnick v. Krishna Hospitality*, No. S10G0971.

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