UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

EMILY STORY, *as Trustee for the Next of Kin of Andrew Story*,
Plaintiff,

v. **Case No. 23-CV-0458**

MARQUETTE UNIVERSITY,
Defendant.

DECISION AND ORDER

Plaintiff Emily Story, as Trustee for the Next of Kin of Andrew Story ("Drew"), brings this wrongful death action against Marquette University alleging that the negligence of the Marquette University Police Department ("MUPD") lead to Drew's death. Plaintiff alleges that in invoking Wisconsin's emergency detention statute, Wisconsin Statute § 51.15, to detain Drew, MUPD officers assumed a duty to deliver a detailed statement of emergency detention to the psychiatrist who evaluated him. Plaintiff alleges that by failing to deliver this statement, the officers breached their duty and set off a chain of events ultimately leading to Drew's death. Before me is defendant's motion for judgment on the pleadings.

I. BACKGROUND

Drew Story began his undergraduate studies at Marquette University in Milwaukee, Wisconsin in September of 2016. In early April of 2020, Marquette converted to remote learning due to the COVID-19 pandemic, and Drew returned home to Minnesota to complete his final semester online. On May 8, 2020, Drew graduated from Marquette with a degree in physics. On May 11, 2020, Drew spoke on the phone with his primary care physician in Minnesota, concerned that he was developing bipolar disorder. Drew was

referred to a psychiatrist, but his condition worsened over the following week, leading him to fall into the grips of a psychotic manic episode. “Drew became convinced that sinister forces were conspiring against him, that certain of his former professors were conspiring against him telepathically, and that he should return to campus to investigate whether those professors were conducting malevolent human experiments.” ECF No. 1, ¶ 12. Drew drove to Milwaukee the morning of May 18, 2020, to search his professors’ labs. Later that day, Drew sent a series of cryptic emails to a professor at Marquette, informing her that he had used his key to let himself into her lab and suggesting that he might have to flee the country. The professor immediately called MUPD to report the emails and Drew’s strange behavior.

MUPD officers Joseph Erwin and Joseph Weingart confronted Drew in the lobby of the campus building that housed the professor’s lab. Drew told the officers that he wanted to leave, but the officers to placed him in handcuffs due to their concerns that he posed a risk of harm to himself and others. As a basis for detainment, the officers allegedly relied on Wisconsin Statute § 51.15, Wisconsin’s emergency detention statute. Weingart and MUPD Officer Andrew Huber then transported Drew to the emergency department of the Milwaukee County Behavioral Health Division. While in the waiting room, psychiatrist Clarence Chou, M.D., performed a brief evaluation of Drew. Although Drew was in handcuffs during this evaluation, Weingart and Huber told Dr. Chou that Drew was at the emergency department voluntarily. Plaintiff alleges that the officers did not inform Dr. Chou that they had invoked Wisconsin Statute § 51.15 as a basis for the detention. After the brief evaluation, Drew told Dr. Chou that he wished to leave. Drew was permitted to do so, and the officers returned Drew to his off-campus apartment.

Drew then left Milwaukee and returned to Minnesota. On May 19, Drew was contacted by a former co-worker, Genevieve Skouge, after she responded to a Snapchat video Drew had posted of himself earlier in the MUPD squad car. Drew and Ms. Skouge met at a park on May 20, where they talked for a few hours, and made plans to meet again the following evening. On the evening of May 21, Drew met Ms. Skouge at her home in Bloomington, Minnesota. The two sat in Drew's car talking for a few minutes. When they exited the car:

> Drew—still in the throes of a manic psychotic episode—beat [Ms. Skouge] with a baseball bat that he had in his trunk because he played in an intramural league. Drew, who had no history of violence prior to that incident, later told Larry Berger, M.D., the psychiatrist who treated him between July 1, 2020[,] and his death, "I thought I was joining the Illuminati and that she had to sacrifice herself so I could join the Illuminati…. I did think that we were sharing thoughts and that it was mutual that she had to be sacrificed.

Id., ¶ 32. Drew fled back to Milwaukee immediately following the incident. Ms. Skouge was discovered unconscious by her neighbors shortly after the incident and died at the hospital approximately two hours later.

On May 22, Officer Weingart, aware that Drew was a suspect in the death of Ms. Skouge, again encountered Drew near the Marquette University campus. Weingart, along with Lieutenant Erwin and Officer Kevin Kaczmarek, arrested Drew on charges of second-degree murder. Drew was extradited to Hennepin County, Minnesota. Drew was released on a $700,000 bond, intending to pursue an insanity defense to the second-degree murder charge. On July 1, 2020, Drew began seeing Dr. Berger, who diagnosed Drew with "bipolar disorder with psychotic features" and prescribed him psychiatric medications.

Despite continuous visits with Dr. Berger, Drew took his own life on December 7, 2020, for reasons seemingly related to his remorse for the Skouge killing.

II. DISCUSSION

Rule 12(c) of the Federal Rules of Civil Procedure permits a party to seek judgment on the pleadings after the pleadings have been closed. *Buchanan–Moore v. County of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009). I review a Rule 12(c) motion under the same standard employed in reviewing a Rule 12(b)(6) motion to dismiss for failure to state a claim. *Id.* (citing *Pisciotta v. Old Nat'l Bancorp*, 499 F.3d 629, 633 (7th Cir. 2007)). I thus consider whether the complaint states a claim for relief that is "plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). I take the facts alleged in the complaint as true, drawing all reasonable inferences in favor of the nonmoving party. *Pisciotta*, 499 F.3d at 633.

I begin by determining whether Wisconsin or Minnesota law governs this case. Plaintiff argues that I need not analyze this issue because Wisconsin's wrongful death statute, § 573.02, is written in such a way that it cannot apply. I disagree. The statute provides:

> **Recovery for death by wrongful act.** Whenever the death of a person shall be caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured; provided, that such action shall be brought ***for a death caused in this state.***

Wis. Stat. § 895.03 (emphasis added). Wisconsin courts interpreting this statute have held that the phrase "a death caused in this state" does not require a decedent's death to

occur in Wisconsin, "but rather merely require[s] that some substantial factor contributing to the decedent's death occur within the state." *Tillet v. J.I. Case Co.*, 756 F.2d 591, 594 (7th Cir. 1985). Instructive here is *Schnabl v. Ford Motor Company*, 195 N.W.2d 602 (Wis. 1972). In *Schnabl*, the plaintiff alleged that a car manufacturer and dealer were liable for a death caused by defective seat belts in a vehicle sold to the decedent in Wisconsin. 195 N.W.2d at 604. The defendants argued that Indiana law governed the action because the decedent's death occurred as a result of a car accident in that state. The Wisconsin Supreme Court disagreed, rejecting the defendants' argument that the death had been "caused" in Indiana merely because that is where the decedent died. *Id.* at 606. The court explained that such an argument "confuse[d] the term 'caused' with the word 'occurring'," and found that the death was "caused in this state" under § 895.03 due to the plaintiff's allegation that death resulted from a wrongful act or omission occurring in Wisconsin. *Id.* at 606–07.

Here, as in *Schnabl*, plaintiff confuses "caused" with "occurring." Drew's death occurred outside of Wisconsin. But plaintiff alleges that negligent conduct by MUPD in Wisconsin caused Drew's death. The alleged negligent act or omission occurred within this state, as the statute requires. Thus, nothing in Wisconsin's wrongful death statute precludes it from applying to this case. However, I still must apply choice of law principles to determine which state's law should apply. A federal court exercising its diversity jurisdiction over state-law claims applies the choice-of-law rules of the state in which it sits. *Auto–Owners Ins. Co. v. Websolv Computing, Inc.*, 580 F.3d 543, 547 (7th Cir. 2009)). Thus, to determine whether Minnesota or Wisconsin law applies, I apply Wisconsin choice-of-law rules. The preliminary question in the choice-of-law analysis is

whether the case presents an actual conflict of laws—that is, whether the law of the two states is different. *See Waranka* v. *Wadena Ins. Co.*, 847 N.W.2d 324, 332 (Wis. 2014). The parties acknowledge that there is a conflict between the Minnesota and Wisconsin statutes.

The law of the forum presumptively applies "unless it becomes clear that nonforum contacts are of the greater significance." *Drinkwater v. Am. Fam. Mut. Ins. Co.*, 714 N.W.2d 568, 576 (Wis. 2006) (*State Farm Mut. Auto. Ins. Co. v. Gillette*, 641 N.W.2d 662, 676 (Wis. 2002)). I first consider whether the nonforum contacts are "more than minimal." *Waranka*, 847 N.W.2d at 332 (citing *Beloit Liquidating Tr. v. Grade*, 677 N.W.2d 298, 307 (Wis. 2004)). If nonforum contacts are "so obviously limited and minimal that application of that state's law constitutes officious intermeddling," then those contacts are not "of the greater significance," and I apply Wisconsin law. *Drinkwater*, 714 N.W.2d at 576 (quoting *Beloit Liquidating*, 677 N.W.2d at 307; *Gillette*, 641 N.W.2d at 676). If more than minimal nonforum contacts exist, but "it is not clear that the nonforum contacts are of greater significance," *Drinkwater*, 714 N.W.2d at 576, then I must consider each of "five factors that influence the choice of law," *Gillette*, 641 N.W.2d at 676. Those choice-influencing factors are "predictability of results, maintenance of interstate and international order, simplification of the judicial task, advancement of the forum's governmental interests, and application of the better rule of law." *Waranka*, 847 N.W.2d at 332 (citing *Beloit Liquidating*, 677 N.W.2d at 307).

In determining which state has the more significant contacts, I consider, among other factors, where the injury occurred, where the conduct causing the injury occurred, the residence of the parties, and the place where the relationship between the parties is

centered. Restatement (Second) of Conflict of Laws § 145(2) (1971). Considering plaintiff's allegations, I find that sufficient nonforum contacts with Minnesota exist, but I cannot say they are of greater significance than Wisconsin's contacts. Plaintiff resides in Minnesota, and Drew's death occurred there. But the allegedly negligent conduct by MUPD that plaintiff bases this action on occurred in Wisconsin. Additionally, the relationship between plaintiff and defendant in centered in Wisconsin, where Marquette University is located. Because more than minimal nonforum contacts exist but it is not clear that the nonforum contacts are of greater significance, I consider the choice-influencing factors.

The first factor, predictability of results is a factor that "deals with the parties' expectations." *Gillette*, 641 N.W.2d at 676. I must ask "what legal consequence [of the alleged act or omission] comports with the predictions or expectations of the parties?" *Id.* Plaintiff alleges that MUPD was negligent in failing to follow the requirements of Wisconsin Statute § 51.15. At the heart of the plaintiff's allegations is that defendant did not take steps in the state of Wisconsin pursuant to Wisconsin law to prevent Drew's death. From this perspective, it appears foreseeable to the parties that the dispute would be resolved under Wisconsin law. Thus, predictability of results weighs in favor of Wisconsin law.

The second factor, maintenance of interstate and international order, "requires that the jurisdiction that is minimally concerned defer to the jurisdiction that is substantially concerned." *Id.* Here, both states appear to be equally concerned. Wisconsin has an interest in litigation of negligence claims stemming from § 51.15 and how such claims could impact the work of law enforcement. Minnesota has an interest as plaintiff is a

citizen of that state. This factor is neutral. The third factor, simplification of the judicial task is also neutral. The distinction between the Wisconsin and Minnesota wrongful death statute matters little, and the court could as easily apply either state's law.

The fourth factor, advancement of the forum's governmental interests, addresses "whether the nonforum rule comports with the standards of fairness and justice that are embodied in the policies of the forum law." *Id.* at 678. "If it appears that the application of forum law will advance the governmental interest of the forum state, this fact becomes a major, though not in itself a determining, factor in the ultimate choice of law." *Id.* As discussed above, Wisconsin has an interest in how negligence claims stemming from § 51.15 are litigated. Defendant argues that it would be unusual and unpredictable to Wisconsin law enforcement that their negligence would be judged according to the requirements of a Wisconsin statute, but their liability would be determined according to the law of a different state. I agree with defendants and find that advancement of the forum's governmental interests weighs in favor of applying Wisconsin law.

The final factor is application of the better rule of law. Plaintiff argues this factor favors Minnesota's wrongful death statute, as it would allow for Drew's sister and three living grandparents to be entitled to a share in any proceeds of the suit under Minnesota law, while under Wisconsin law, only Drew's parents would be entitled to recover. Additionally, plaintiff notes that the statutory scheme of the Minnesota statute providing for specific distribution of the proceeds to the next of kin, of which there is no Wisconsin equivalent, "is grounded in Minnesota's policy of providing judicial oversight to ensure that tort victims in Minnesota receive equitable compensation." ECF No. 14 at 6 (citing *Bond v. Roos*, 358 N.W.2d 654, 657 (Minn. 1984)). While this factor may favor application

Minnesota law, I find that in total the choice-influencing factors as well as the presumption that forum law applies unless nonforum contacts are clearly of greater significance merit the application of Wisconsin law to plaintiff's claims.

Applying Wisconsin law, I address defendant's argument that Drew's volitional decision to commit suicide constitutes an intervening force that breaks the line of causation, precluding liability. Wisconsin follows the general rule that "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." *Bogust v. Iverson*, 102 N.W.2d 228, 232 (Wis. 1960). The Wisconsin Supreme Court explained:

> As a general rule a person will not be relieved of liability by an intervening force which could reasonably have been foreseen, nor by one which is a normal incident of the risk created. However, if such intervening force takes the form of suicide the practically unanimous rule is that such act is a new and independent agency which does not come within and complete a line of causation from the wrongful act to the death and therefore does not render defendant liable for the suicide.

Id. at 233. (quoting Civil Liability for Death by Suicide, 11 A.L.R.2d 751, 756–57 (1950)). There are two exceptions to this general rule. First, a defendant may still be liable if the negligence or wrongful act creates in the deceased an "uncontrollable impulse," a delirium, frenzy or rage, during which the deceased commits suicide "without conscious volition to produce death."[1] *Id.* at 232. And second, "where a special relationship exists between the defendant and the deceased justifying the creation of a duty to prevent suicide or other physical harm." *Logarta v. Gustafson*, 998 F. Supp. 998, 1004 (E.D. Wis. 1998). The special relationship exception typically applies where the relationship is

[1] Plaintiff concedes that the uncontrollable impulse exception does not apply to this case. ECF No. 14 at 7.

"custodial" or "supervisory" in nature, such as "the doctor-patient relationship associated with hospitals or mental institutions, the jailor-inmate relationship associated with prisons and local jails, and sometimes the teacher-student relationship associated with schools." *Id*. at 1005.

Plaintiff contends that the special-relationship exception applies here, arguing that the MUPD officers "assumed a duty to Drew on May 18, 2020[,] because he was in their custody." ECF No. 14 at 9. That one of the officers said on video that he feared Drew might harm himself, plaintiff argues, demonstrates that it was foreseeable to them that Drew would cause harm to himself or others if they failed to properly carry out their duties under Wisconsin Statute § 51.15. *See* ECF No. 1, ¶ 16. Defendant argues in response argue that Drew was not in the custody of MUPD when he took his own life on December 7, 2020. Defendant also notes the six-month delay between the alleged negligence and Drew's death.

The Wisconsin Supreme Court recognized the special-relationship exception in *Hofflander v. St. Catherine's Hospital, Inc.*, 664 N.W.2d 545 (Wis. 2003). In *Hofflander*, a patient confined to a mental health institution for threatening suicide sought to hold the institution liable for damages sustained while attempting to escape from the facility by jumping out a window. 664 N.W.2d at 551. The court determined that "when a mental health institution assumes the custody and control of a mentally disabled person as a suicide precaution, the risk of suicide is clearly foreseeable," and that such foreseeability "requires the institution to act with a heightened duty of care to prevent this particular risk of harm." *Id.* at 557. The facts of this case, however, are distinguishable. The plaintiff in

Hofflander was confined within the institution at the time the injury occurred.[2] But Drew was no longer in MUPD custody at the time he committed suicide and had been released from such custody almost six months prior. After the alleged negligence but before Drew took his own life, he was in the custody of at least two other law enforcement agencies. Drew was diagnosed, prescribed psychiatric medication, and had regular visits with Dr. Berger in the months leading up to his death.

Because Drew was no longer in the custody of MUPD when he took his own life, the special-relationship exception does not apply. I therefore must find that Drew's suicide is an intervening and superseding cause and is thus too remote from the alleged negligence to render defendant liable. Defendant is thus entitled to judgment as a matter of law.

III. CONCLUSION

For the reasons stated, **IT IS ORDERED** that defendant's motion for judgment on the pleadings is **GRANTED**. The Clerk of Court shall enter final judgment.

Dated at Milwaukee, Wisconsin, this 29th day of March, 2024.

/s/ Lynn Adelman
LYNN ADELMAN
United States District Judge

[2] Indeed, courts in Wisconsin applying the special-relationship exception have done so exclusively in cases where the individual was in active custody. See *Wells v. Govier*, No. 18-CV-693-JDP, 2019 WL 7281935, at *7 (W.D. Wis. Dec. 27, 2019) (holding that an inmate's overdose attempts did not break the causal chain in a negligence action against an institution aware of prior self-harm attempts); *Davis v. Harding*, No. 12-CV-559-WMC, 2014 WL 4976605, at *28 (W.D. Wis. Oct. 3, 2014) (denying summary judgment on negligence claim based on the recognized exception to the superseding-cause limitation for in the prison context); *Taylor v. Wausau Underwriters Ins. Co.*, 423 F. Supp. 2d 882, 898–901 (E.D. Wis. 2006) (discussing the special-relationship exception at length before dismissing plaintiff's state-law wrongful death claim without prejudice for lack of federal jurisdiction after dismissal of related federal claims). I am unaware of any case considering this exception under Wisconsin law and applying it to an individual no longer in custody or under the supervision of the defendant.