



Home Healthcare Aide Murders Quadriplegic Man and Grandmother (1991)

Incident Summary

In 1991, only eight out of 200 Massachusetts home-care agencies screened potential employees for criminal records and *Trusted Health Resources Inc.*, did not check the background of Jesse Rogers when they hired him to care for John W. Ward, a 32-year-old quadriplegic with cerebral palsy and his 77-year-old grandmother, Alba Pellegrini who resided together on the first floor of John Ward's parent's home in Boston, Massachusetts.

On September 10, 1991, a few weeks after he was removed from the assignment for failing to consistently show up for work, Rogers wearing his *Trusted Health Resources* photo identification badge suddenly reappeared at the Ward household under the guise of providing the handicapped man physical therapy. Once inside the apartment, Rogers brutally murdered Ward and his grandmother, as he had reportedly been stealing from Ward and committed the murder to cover up the thefts. The attack was so brutal that it resulted in John Ward's head being partially decapitated.

If *Trusted Health Resources* had conducted a background check on Jesse Rogers, they would have found that Rogers had six larceny-related convictions in the state of Massachusetts. They would have also found out that he lied on his employment application when he stated that he had attended Northeastern University as a nursing student and that he had previously been employed by the Massachusetts Registry of Motor Vehicles.

At the time of his hiring, his criminal background was readily available to prospective employers and his phony education credentials and false employment record could have been revealed with a simple phone call. Finally, had *Trusted Health Resources* just checked Jesse Rogers' references, it would have learned that a former employer *Uphams Corner Health Committee, Inc.* had experienced many problems with the aide, whom they eventually fired amid allegations that he had physically abused one elderly client and stolen money from others.

Charged with the killings one year later, Rogers pleaded guilty to two counts of second-degree murder in 1994 and is currently serving a life sentence in state prison.

Wrongful Death Lawsuit

In *Ward, et al. v. Trusted Health Resources, Inc., et al.*, the parents of John W. Ward sued *Trusted Health Resources* and others, alleging that they were grossly negligent in not conducting a background check on Jesse Rogers and as a result they allowed a convicted felon to care for their son and that negligence ultimately led to his wrongful death.

The defense team for *Trusted Health Resources* argued that the standard of care in the health care industry was not to conduct criminal-background checks on prospective employees. The Plaintiff's attorney successfully demonstrated that home-service agencies like telephone and electric companies and the United Parcel Service had been performing such checks since 1982 and that a background check was already an established good practice by the year 1991.

The defense also argued that Jesse Roger's prior offenses had been theft-related; a crime such as murder was unforeseeable. The defense countered that by not doing a criminal check, even convicted rapists and murderers could be home-health aides. The Plaintiff's attorney asserted that if *Trusted Health Resources* had conducted a simple background check on Rogers, then John Ward and his grandmother would not have been murdered.

The court agreed and the jury found *Trusted Health Resources* was grossly negligent and that their negligence led to Ward's death. On Feb. 25, 1999 the jury came back with a verdict of \$26.5 million against Trusted Health, awarding Ward's parents \$8.5 million in compensatory damages and \$18 million in punitive damages.

Trusted Health declared bankruptcy the day after the verdict.

On another note, the *Visiting Nurse Association of Boston (VNA)*, which had subcontracted Mr. Ward's care to *Trusted Health Resources*, was found vicariously liable for the judgment (but had its liability capped at \$20,000 by the judge pursuant to the state charitable immunity cap). VNA had unsuccessfully argued that Trusted Health Resources was an independent contractor and was not an agent of VNA, which the court ultimately found it was. VNA could have required *Trusted Health Resources* to perform background checks on their employees as part of their subcontracting agreement, but failed to do so. The VNA settled with the plaintiffs for an undisclosed sum before an appeal of the immunity cap issue was made.

This verdict and award was Massachusetts' largest jury verdict of 1998 and the second-largest jury verdict in a negligent hiring and wrongful death case in Massachusetts state history, and encouraged home-care agencies across the U.S. to radically rethink the way they hire employees.

Lessons Learned

The risks of negligent hiring are clearly demonstrated in this case. Courts have repeatedly found that they will hold employers responsible for the actions of their employees and the employees of subcontractors if they hurt someone and it is discovered that the employer did not properly conduct a proper background investigations of the employee.

The onus is on the employer to demonstrate that they exercised due care in ensuring that their new hire did not have something in his/her background that would indicate that they were not suitable for the job. If the employer made a legitimate, reasonable and prudent attempt to screen an employee and that employee's actions resulted in a negligence claim against the employer, the employers would have a much greater chance of successfully defending themselves against a negligent hiring lawsuit.

MSA Investigations

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