

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D32167
O/kmb

_____AD3d_____

Argued - February 28, 2011

JOSEPH COVELLO, J.P.
THOMAS A. DICKERSON
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2010-05753

DECISION & ORDER

Cynthia A. Kouril, respondent, v SLS Residential, Inc.,
etc., et al., defendants, Jacqueline Marshall, appellant.

(Index No. 16243/09)

Purcell & Ingrao, P.C., Mineola, N.Y. (Lynn A. Ingrao of counsel), for appellant.

Cynthia A. Kouril, c/o Robert L. Folks & Associates, LLP, Melville, N.Y., respondent
pro se.

In an action, inter alia, to recover damages for personal injuries, the defendant Jacqueline Marshall appeals, as limited by her brief, from so much of an order of the Supreme Court, Nassau County (Murphy, J.), entered May 20, 2010, as denied that branch of her motion which was to dismiss the complaint pursuant to CPLR 3211(a)(7) insofar as asserted against her.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the appellant's motion which was to dismiss the complaint pursuant to CPLR 3211(a)(7) insofar as asserted against her is granted.

The appellant, Jacqueline Marshall, is the mother of Evan Marshall. In November 2005 Evan began residing and receiving treatment, as a voluntary patient, at the defendant SLS Residential, Inc. (hereinafter SLS), a substance abuse and mental health facility located in Brewster, New York. On August 16, 2006, Evan, who was then 31 years old, was released on a "pass" from the facility for the ostensible reason of visiting his mother. On August 17, 2006, at around 8:15 A.M., Evan drove onto a footpath where the plaintiff was jogging and struck her with his vehicle. Shortly thereafter, Evan murdered his mother's neighbor. Evan has since pleaded guilty to criminal charges arising from both of these incidents (*see Fox v Marshall*, _____AD3d_____ [decided herewith]).

August 9, 2011

Page 1.

KOURIL v SLS RESIDENTIAL, INC.

The plaintiff then commenced this action against, among others, SLS and the appellant, whom she alleged was liable for Evan's actions because she knew of his violent propensity and failed to take steps to protect "the public from Evan." In the order appealed from, the Supreme Court, inter alia, denied that branch of the appellant's motion which was to dismiss the complaint pursuant to CPLR 3211(a)(7) insofar as asserted against her. We reverse the order insofar as appealed from.

A parent is not liable for the tortious or intentional conduct of an emancipated child (*see Troiano v DeMarco*, 50 AD3d 1020; *Hartsock v Hartsock*, 189 AD2d 993; *Minoun v Bartlett*, 162 AD2d 506; *Fischer v Lunt*, 162 AD2d 1016).

Accordingly, the complaint failed to state a cause of action against the appellant, and that branch of her motion which was to dismiss the complaint pursuant to CPLR 3211(a)(7) insofar as asserted against her should have been granted (*see* CPLR 3211[a][7]).

COVELLO, J.P., DICKERSON, ENG and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court