

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 453

S.P. 156

In Senate, February 20, 1987

Reference to the Committee on State and Local Government suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator BERUBE of Androscoggin.
Cosponsored by Senator PERKINS of Hancock, Representative STEVENS of Sabattus, Representative NADEAU of Lewiston.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 Resolve, to Permit Lucille A. Clavette,
2 Personal Representative of the Estate
3 of Richard J. Clavette, to Sue the
4 State for Wrongful Death.
5

6 Lucille A. Clavette, personal representative of
7 the Estate of Richard J. Clavette; authorized to sue
8 the State. Resolved: That, notwithstanding any law
9 to the contrary, Lucille A. Clavette, personal repre-
10 sentative of the estate of Richard J. Clavette, is
11 authorized to bring suit against the State and its
12 employees for wrongful death.

13 Richard J. Clavette died on or about February 21,
14 1986, while he was a resident of the Pineland Center
15 in Pownal, Maine. Mr. Clavette had wandered off the
16 Pineland Center premises on the morning of Friday,
17 February 21, 1986, and was not found until the after-

1 noon of Sunday, February 23, 1986. The State Medical
2 Examiner fixed the time of death as the evening of
3 February 21, 1986.

4 Lucille A. Clavette is Richard J. Clavette's
5 mother and the personal representative of his estate.
6 She alleges that the negligence of the State and its
7 employees was the proximate cause of her son's death.

8 This action is to be brought in the Superior Court
9 for Kennebec County, within one year from the passage
10 of this resolve, against the State for damages, if
11 any, and the conduct of this action shall be accord-
12 ing to the practice of actions or proceedings between
13 parties in the Superior Court. The liabilities of
14 the parties and elements of damage, if any, shall be
15 the same as liabilities and elements of damage as be-
16 tween individuals. The complaint issuing out of the
17 Superior Court under the authority of this resolve
18 shall be served on the Secretary of State by attested
19 copy by the sheriff or his deputies in any county of
20 the State. The Attorney General is authorized and
21 designated to appear, answer and defend this action
22 but none of the provisions of or defenses specified
23 in the Maine Tort Claims Act, Maine Revised Statutes,
24 Title 14, chapter 741, shall apply. The Attorney
25 General or his designee is further authorized to en-
26 ter into a compromise settlement, if agreed to by the
27 parties, which shall be binding on the State.

28 Any judgment that may be recovered in this civil
29 action shall be payable from the State Treasury on
30 final process issued by the Superior Court or, if ap-
31 plicable, the Supreme Judicial Court and costs may be
32 taxed for Lucille A. Clavette, personal representa-
33 tive of the estate of Richard J. Clavette, if she re-
34 covers in the action. Her recovery shall not exceed
35 \$65,000, including costs. Hearing thereon shall be
36 before a Justice of the Superior Court with or with-
37 out jury; the justice to be the regularly scheduled
38 justice presiding in the Kennebec County Superior
39 Court when this matter is scheduled for trial.

STATEMENT OF FACT

1
2 Richard J. Clavette died on or about February 21,
3 1986, while he was a resident of the Pineland Center
4 in Pownal, Maine. Mr. Clavette had wandered off the
5 Pineland Center premises on the morning of Friday,
6 February 21, 1986, and was not found until the after-
7 noon of Sunday, February 23, 1986. The State Medical
8 Examiner fixed the time of death as the evening of
9 February 21, 1986.

10 Lucille A. Clavette is Richard J. Clavette's
11 mother and the personal representative of his estate.
12 She alleges that the negligence of the State and its
13 employees was the proximate cause of her son's death.
14 An inquiry panel, appointed by Kevin W. Concannon,
15 Commissioner of Mental Health and Mental Retardation,
16 found that, throughout the search for Mr. Clavette,
17 major system failures and serious errors in judgment
18 did occur. The inquiry panel further found that
19 there were substantive problems regarding administra-
20 tive leadership and continuity of command, that com-
21 munications broke down severely on several levels
22 during the search and that the Pineland Center's own
23 missing or lost resident search policy was not fol-
24 lowed. The inquiry panel specifically found that if
25 the search policy had been followed, the search ef-
26 fort would have been conducted in a more realistic
27 manner and Mr. Clavette might have been found before
28 he died. In addition, the panel concluded that the
29 Clavette family was not well served during the obvi-
30 ously stressful time while Mr. Clavette was missing
31 and recommended that one state employee be dismissed,
32 that another be demoted, that another's salary be re-
33 duced, that another be suspended for a period and
34 that 3 others receive written reprimands.

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