

Pinelake Nursing Home Massacre Underscores Need for Heightened Security at Nursing Homes

By Mark R. McGrath

As the recent attacks at the Pinelake Health and Rehab nursing home in Carthage, North Carolina so dramatically illustrate, nursing homes are not immune from the violent crime that plagues every corner and segment of society. On March 29, 2009, a lone gunman entered the Pinelake facility and began shooting. By the time a heroic police officer ended the rampage with a well-placed pistol shot in a hallway of the facility, seven victims, six elderly residents and a nurse, lay dead.

We live in a violent world and, sadly, the most vulnerable among us, children and the elderly, are all too frequently the targets and victims of this violence. For this reason, it is critically important that nursing homes implement sufficient security measures to protect their elderly residents from the criminal conduct of others.

Under North Carolina law, nursing homes, hospitals and other healthcare facilities are required to provide reasonable security measures to protect those who are present on the premises. As long as the occurrence of criminal conduct at the facility is foreseeable, the owner of the nursing home is required to implement reasonable security measures to protect its residents, patients, guests, employees and others from such crimes.

The threshold issue in the Carthage case, as in all inadequate security cases, will be determining whether the occurrence of violent crime was foreseeable. For example, if crime data surveys and other research reveal a history of criminal conduct at the Pinelake nursing home or in its immediate vicinity, the occurrence of the March 29 attacks could be deemed foreseeable.

Under the legal precedent that establishes this principle, the families of the eight victims would have standing to bring wrongful death lawsuits against the owner and operator of the nursing home. The viability of their wrongful death claims would depend on a number of factors that are not presently known.

For example, has the Pinelake nursing home been the scene of prior crimes, or have prior crimes been committed in its immediate vicinity? Is there something about the crime data of this location that made these attacks foreseeable from the perspective of the nursing home's owners? If the answer to any of these questions is yes, the March 29 attacks would likely be deemed foreseeable.

Foreseeability could be established by other means as well. Published accounts of the incident suggest that the attacker was the estranged ex-husband of a woman who worked at the Pinelake nursing home. These accounts also suggest that the attacker had a history of violent behavior, and that his friends and family were not surprised when they learned that he was responsible for the massacre.

One wonders whether the former wife-employee informed her superiors of her ex-husband's violent tendencies. Or what if the owners of the facility possessed other information about the attacker that should have caused them to anticipate the possibility that he would carry out this kind of attack. Should the owners have foreseen that the ex-husband might attempt to harm his former wife, that he might

attempt to do so while she was working at the facility, and that residents might be harmed in the process? Again, if the answer to any of these questions is yes, the shooting spree would likely be deemed foreseeable.

If the occurrence of the March 29 attacks was foreseeable, this would trigger a duty on the part of the nursing home to provide reasonable security measures at the facility. What, if any, security measures were in place at the Pinelake facility? No significant security measures or systems have been identified or described in the accounts published to date. Did the Pinelake nursing home provide reasonable security measures to protect its residents from criminal conduct?

There is not presently sufficient evidence to answer this question. If, however, the families of the eight victims bring wrongful death claims against the facility and are ultimately able to prove that the implementation of additional security measures, such as the hiring of an armed security guard or the installation of security gates, security fences, limited access locks or other access control systems, would have prevented the attack, the Pinelake nursing home would be deemed liable for their deaths. The families of the victims would then be entitled to recover damages from the nursing home or its insurance company, including monetary damages for both the physical pain and suffering experienced by the victims prior to their deaths and the emotional pain, grief, anguish and overall sense of loss suffered by the spouses, children and others whom the victims left behind.

Sadly, the catastrophe in Carthage is not the only recent example of killers gaining easy access to a nursing home facility. In December 2007, a housekeeper with a history of defrauding elderly customers entered the Galloway Ridge nursing home near Chapel Hill, North Carolina to visit two elderly residents from whom she had once again been stealing money. When the two residents questioned the housekeeper about her misdeeds, the housekeeper flew into a rage and bludgeoned both residents to death.

Our firm represents the families of the two women who were killed in that attack. At the time of the murders the housekeeper was under a court order prohibiting her from working in facilities where she would come into contact with the property of elderly customers. Visiting or rendering services to the two Galloway Ridge victims was, therefore, a direct violation of the housekeeper's probation and order, both of which were matters of public record. Sadly, no one at the facility investigated the housekeeper's criminal background, and no one attempted to prevent her from entering the Galloway Ridge facility on the day of the attack.

Anyone having even a passing familiarity with current events realizes that violent crimes occur everywhere. No area of the country or segment of society has a monopoly on violent crime. Violent crimes strike schools in rural communities, hospitals in huge metropolitan areas, and every public facility and place of business in between. No business is safe and no facility is secure unless adequate security measures are implemented. Given this irrefutable fact of modern life it is disingenuous for any business owner to claim that the occurrence of crime at his particular place of business is not foreseeable.

Nursing homes are no exception. In fact, because nursing homes are in the business of caring for people who are among the most defenseless members of society, a strong argument can be made that nursing homes should be even more vigilant than other businesses in taking steps to prevent the commission of violent crimes against their residents.

Given the many contributions our "Greatest Generation" has made to make our communities, our nation and our world a better place to live, and considering the exorbitant sums that nursing homes demand from the government and private payors in exchange for their services, one would think that nursing homes always err on the side of safety and security.

Sadly, as recent history so dramatically illustrates, they do not.