

WHO IS RESPONSIBLE WHEN SOMEONE COMMITS SUICIDE? AN EXAMINATION OF *TURCIOS V. DEBRULER CO.*, 2015 IL 117962, 32 N.E. 3D 1117*

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I. INTRODUCTION

After experiencing serious doubts about ending his life, eighteen-year-old Conrad Roy jumped out of the cab of his carbon monoxide-infused pickup truck and texted his girlfriend, Michelle Carter.¹ Carter told him to get back in the truck.² Carter was “tired of Roy’s idle talk of suicide[,] . . .” and she wanted to “make sure tonight was the real thing.”³ Roy listened to his girlfriend and got back into the truck.⁴ He was later found dead inside his truck with his phone in hand.⁵ Carter was the last person Roy texted.⁶

For more than a week before Roy’s suicide, Roy and Carter exchanged hundreds of messages in which Carter capitalized on her boyfriend’s vulnerability by insisting it would be better for everyone if he was dead.⁷ She eased his apprehension towards death by assuring him “the time [was] right,” and informed him of various methods to commit suicide that “would 100 percent work.”⁸ She was relentless; even when Roy attempted to engage in lighter conversation, she directed the conversation back to suicide.⁹ She repeatedly questioned his hesitation and dismantled it

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1. Abby Phillip, *‘It’s now or never’: Texts Reveal Teen’s Efforts to Pressure Boyfriend into Suicide*, WASH. POST (Aug. 31, 2015), <http://www.washingtonpost.com/news/morning-mix/wp/2015/08/31/its-now-or-never-texts-reveal-teens-efforts-to-pressure-boyfriend-into-suicide/>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *See id.* The detail that Roy was found with his cell phone in his hand was added for relevance to this Note.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

with her advice: “You can’t think about it. You just have to do it.”¹⁰ Carter continued to cause Roy emotional distress by pressuring him to kill himself up until the very last minutes of his life.¹¹

Under these circumstances, should Roy’s family have a tort claim against Carter for driving Roy to suicide?¹² If this happened in Illinois, Roy’s family would be without redress.¹³ In *Turcios v. DeBruler*, the Illinois Supreme Court refused to recognize a wrongful death action¹⁴ where a defendant’s intentionally tortious conduct caused a decedent’s suicide.¹⁵ The court determined suicide is unforeseeable as a matter of law and acts as an intervening cause that precludes liability, even when the tortfeasor intends to harm the victim—except in undefined “rare” cases.¹⁶ While the preceding news story is factually distinguishable from *Turcios*, the court’s decision to confine redress to the exceptionally “rare” cases¹⁷ has the predominant effect of denying wrongful death claims in cases worthy of justice, like Roy’s.

This Note argues the Illinois Supreme Court incorrectly limited intentional tortfeasors’ liability to foreseeable consequences in *Turcios v. Debruler*. Although the court reached the correct result in the particular case, it went too far by creating a rigid ruling that contradicts the great weight of authority and disregards long-standing tort principles. Section II analyzes various sources of authority that provide instructive logic in defining the necessary causation requirements for negligent and intentional conduct. Section III examines the *Turcios* holding. Section IV demonstrates why the court was incorrect to limit intentional tortfeasors’ liability to foreseeable consequences and suggests the court should have followed the majority trend by adopting the substantial factor test when an

10. *Id.*

11. *Id.*

12. The fact pattern serves merely as an example of an actor who caused emotional distress that resulted in the victim’s suicide. At the time of publication, there was not a civil suit pending against Michelle Carter. However, Carter was indicted for involuntary manslaughter in Massachusetts in July 2016; the criminal charges were pending at the time of publication. Morgan Winsor, *Massachusetts Teen Accused of Urging Boyfriend to Commit Suicide Must Stand Trial*, ABC NEWS (July 6, 2016, 1:25 PM), <http://abcnews.go.com/US/massachusetts-teen-accused-urging-boyfriend-commit-suicide-stand/story?id=40370965>.

13. See generally *Turcios v. DeBruler Co.*, 2015 IL 117962, 32 N.E.3d 1117 (holding that a plaintiff must be able to plead facts showing the suicide was foreseeable).

14. A wrongful-death action is a “lawsuit brought on behalf of a decedent’s survivors for their damages resulting from a tortious injury that caused the decedent’s death.” *Wrongful-Death Action*, BLACK’S LAW DICTIONARY (10th ed. 2014).

15. See *Turcios*, 2015 IL 117962 at ¶ 31, 32 N.E.3d at 1126.

16. *Id.* at ¶ 41, 32 N.E.3d at 1128.

17. *Id.* (“[W]e believe it is the *rare* case in which the decedent’s suicide would not break the chain of causation and bar a cause of action for wrongful death, even where the plaintiff alleges the defendant inflicted severe emotional distress.”) (emphasis added).

intentional actor causes one's suicide. Finally, the Note explains the impact *Turcios* will have on future claims for death by suicide.

II. LEGAL BACKGROUND

Illinois and other jurisdictions have traditionally held that an individual's suicide is an independent intervening cause.¹⁸ This precludes plaintiffs from maintaining wrongful death actions against tortfeasors for negligently causing a suicide.¹⁹ This per se rule is sometimes referred to as the "suicide rule."²⁰ The suicide rule is a product of the courts' unwillingness to hold a negligent actor liable for another person's suicide based on actual causation²¹ alone.²² Accordingly, the suicide rule makes it virtually impossible to recover for wrongful death based on negligence where the decedent committed suicide, because classifying suicide as an intervening cause precludes a finding of proximate cause.²³ However, before *Turcios*, Illinois courts had not resolved whether the suicide rule applied to intentional tort cases.²⁴

Part A of this section discusses the alternative to extending the suicide rule to intentional torts: the substantial factor test. Part B addresses the historical distinction between intentional and negligent torts. Part C examines Illinois case law regarding causation in the context of fraudulent misrepresentation. Finally, Part D explores the variations of the substantial factor test in other jurisdictions.

A. The Substantial Factor Test

Prior to *Turcios*, the Illinois Supreme Court had not addressed a case where it had to decide whether to extend the suicide rule to wrongful death claims predicated upon an intentional tort that resulted in a victim's

18. Independent intervening cause is "[a cause] that operates on a condition produced by an antecedent cause but in no way resulted from that cause." *Cause*, BLACK'S LAW DICTIONARY (10th ed. 2014). Also known as "intervening cause," "supervening cause," and "intervening act." *Id.*

19. *Turcios*, 2015 IL 117962 at ¶ 12, 32 N.E.3d at 1122.

20. *Perks v. Cty. of Shelby*, No. 09-3154, 2009 WL 2777882, at *5 (C.D. Ill. Aug. 31, 2009). This per se rule will be referred to as "the suicide rule" throughout this Note.

21. Actual cause is "[t]he cause without which the event could not have occurred. Also termed *but-for cause*; *cause in fact*; *factual cause*." *Cause*, BLACK'S LAW DICTIONARY (10th ed. 2014).

22. *Turcios*, 2015 IL 117962 at ¶ 20, 32 N.E.3d at 1123–24; see also *Perks*, 2009 WL 1777882, at *5.

23. See *Turcios*, 2015 IL 117962 at ¶ 20, 32 N.E.3d at 1123 ("[T]he general rule, applicable in negligence actions, that the injured party's voluntary act of suicide is an independent intervening act which is unforeseeable as a matter of law, and which breaks the chain of causation from the tortfeasor's negligent conduct.").

24. *Id.* at ¶ 12, 32 N.E.3d at 1122.

suicide.²⁵ Several other courts, however, had encountered the issue and decided to depart from the suicide rule when the underlying tort was intentional.²⁶ These jurisdictions held that actual causation is sufficient to establish liability if the tortfeasor's intentional conduct is a substantial factor in bringing about the suicide.²⁷ This causation analysis is sometimes referred to as the "substantial factor test."²⁸

The substantial factor test²⁹ is an alternative to the "but for"³⁰ test often used to analyze the actual causation prong.³¹ "Under the substantial factor test, the defendant's conduct is said to be a cause of an event if it was a material element and a substantial factor in bringing the event about."³² If a tortfeasor is a substantial factor in bringing about a suicide, he is also held to be the legal cause³³ without analyzing whether suicide was a foreseeable consequence of the tortfeasor's action.³⁴ Thus, the substantial factor test does not present the same challenges for plaintiffs as the suicide rule.

In sum, the suicide rule is an absolute bar to recovery when the decedent committed suicide because the suicide is an intervening act that is

25. *Id.* at ¶ 19, 32 N.E.3d at 1123.

26. *See, e.g.,* *Tate v. Canonica*, 5 Cal. Rptr. 28 (Ct. App. 1960); *Mayer v. Town of Hampton*, 497 A.2d 1206 (1985); *R.D. v. W.H.*, 875 P.2d 26 (Wyo. 1994); *Kimberlin v. DeLong*, 637 N.E.2d 121 (Ind. 1994); *Rowe v. Marder*, 750 F. Supp. 718 (W.D. Pa. 1990); *Collins v. Vill. of Woodridge*, 96 F. Supp. 2d 744 (N.D. Ill. 2000).

27. *Kimberlin*, 637 N.E.2d at 127; *Rowe*, 750 F. Supp. at 723–24; *Mayer*, 497 A.2d at 1210–11; *Tate*, 5 Cal. Rptr. at 36.

28. *Turcios*, 2015 IL 117962 at ¶ 36, 32 N.E.3d at 1127 (quoting *R.D.*, 875 P.2d at 30–31 (discussing the substantial factor test)).

29. This Note uses the terms "substantial factor test" and "substantial factor rule" interchangeably.

30. *Turcios*, 2015 IL 117962 at ¶ 23, 32 N.E.3d at 1124 ("When considering cause in fact, courts generally employ either the traditional 'but for' test or the substantial factor test. Under the 'but for' test, 'a defendant's conduct is not the cause of an event if the event would have occurred without it.'") (quoting *Nolan v. Weil-McLain*, 910 N.E.2d 549, 557 (Ill. 2009)).

31. *Id.*

32. *Id.* (quoting *Thacker v. UNR Industries, Inc.*, 603 N.E.2d 449, 455 (Ill. 1992)).

33. Also termed proximate cause. *See Cause*, BLACK'S LAW DICTIONARY (10th ed. 2014). This Note uses the terms "proximate cause" and "legal cause" interchangeably.

Proximate cause . . . is merely the limitation which the courts have placed upon the actor's responsibility for the consequences of the actor's conduct. In a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events, and beyond. But any attempt to impose responsibility upon such a basis would result in infinite liability for all wrongful acts, and would 'set society on edge and fill the courts with endless litigation.' As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability. Some boundary must be set to liability for the consequences of any act, upon the basis of some social idea of justice or policy.

W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 41, at 264 (5th ed. 1984) (quoting *North v. Johnson*, 59 N.W. 1012, 1012 (Minn. 1894)).

34. *See Tate*, 5 Cal. Rptr. at 33, 36 (citing RESTATEMENT (FIRST) OF TORTS § 279 (AM. LAW INST. 1934)).

unforeseeable as a matter of law.³⁵ The substantial factor test, however, is a more lenient causation analysis invoked by jurisdictions that reject the rigid suicide rule when the underlying action is an intentional tort. The distinction between the suicide rule and the substantial factor test is crucial to the causation analysis and the success of wrongful death claims premised on suicide. Accordingly, it is paramount to understanding the *Turcios* decision.

B. Distinction Between Intentional and Negligent Torts

“The law has . . . long . . . recognized a distinction between intentional and negligent torts.”³⁶ In general, when the tort is intentional, the law has “recognized fewer defenses,” and has “been more inclined” to conclude the “defendant’s conduct was the legal cause of harm,” regardless of foreseeability.³⁷ Liability for intentional torts extends beyond foreseeability because “it is better for unexpected losses to fall upon the intentional wrongdoer than upon the innocent victim.”³⁸ In fact, “many of the limitations upon liability that are subsumed under the doctrine of ‘proximate cause,’ as usually expounded in negligence cases do not apply to intentional torts.”³⁹ For example, in negligence cases, the doctrine of independent intervening cause is a well-established defense.⁴⁰ However, courts rarely recognize this defense for an intentional actor to escape liability.⁴¹

When an actor is merely negligent, courts are likely to limit liability by rigorously interpreting proximate cause.⁴² Courts accomplish this by strictly analyzing the foreseeable consequences of the defendant’s negligence and considering potential intervening causes.⁴³ This thorough analysis allows the court to stay close to the basis for liability in negligence cases: the defendant’s conduct posed an unreasonable foreseeable risk of harm to others.⁴⁴ Courts are careful in applying causation rules to limit liability to the harm caused by the foreseeable risk that made the conduct negligent in the first place.⁴⁵

35. *Turcios*, 2015 IL 117962 at ¶ 20, 32 N.E.3d at 1123–24.

36. *Tate*, 5 Cal. Rptr. at 33.

37. *Id.*

38. KEETON ET AL., *supra* note 33, § 8, at 37.

39. *Tate*, 5 Cal. Rptr. at 33.

40. See Ralph S. Bauer, *The Degree of Moral Fault as Affecting Defendant’s Liability*, 81 U. PA. L. REV. 586, 589 (1933).

41. *Id.* at 589 n.8 (quoting BUCKLAND, A TEXT-BOOK OF ROMAN LAW 582 (1921)).

42. *Id.* at 589.

43. See *id.*

44. *Id.*

45. See *id.* at 591.

The analysis becomes more lenient as the conduct becomes more culpable. Gross negligence, for example, is treated more harshly than ordinary negligence. “[C]ourts, in a number of instances, have held the defendant liable for resulting damage for which he almost certainly would not have been held liable if he had been guilty of negligence only.”⁴⁶ This treatment manifests courts’ inclination to pursue more distant consequences and lower the plaintiff’s hurdle when the defendant’s conduct is more culpable.

The tendency to pursue remote consequences is most evident when the defendant is an intentional tortfeasor.⁴⁷ In such cases, courts are rarely inclined to insulate the actor from liability.⁴⁸ As a result, the court finds defenses based on proximate cause and other concepts normally invoked to cut off an actor’s liability less persuasive.⁴⁹

As discussed above, courts often recognize defenses that narrow a negligent actor’s liability but rarely do so to protect an intentional actor. Courts relax the proximate cause requirement for defendants who are a substantial factor in bringing about one’s suicide through intentional misconduct primarily because of the defendants’ greater culpability. While Illinois courts follow the suicide rule, insulating negligent actors from liability for one’s suicide, the *Turcios* court relies on a fraud case to justify its refusal to relax the proximate cause requirement in the context of intentional conduct.⁵⁰

C. Illinois Precedent Involving Fraudulent Misrepresentation

In Illinois, whether the suicide rule extended to wrongful death claims premised on intentionally tortious conduct was without precedent.⁵¹ The Illinois Supreme Court considered *Martin v. Heinold*⁵² the most compelling guidance in determining the requisite causation in the context of intentional torts.⁵³

In *Heinold*, the Illinois Supreme Court determined the type of causation a plaintiff must show to recover for intentional fraudulent

46. *Id.* at 589.

47. *Id.*

48. *See id.*

49. *Id.*

50. *Turcios v. Debruler Co.*, 2015 IL 117962, ¶ 30, 32 N.E.3d 1117, 1126.

51. *Turcios v. Debruler Co.*, 2014 IL App (2d) 130331, ¶ 23, 12 N.E.3d 167, 173 (stating that no Illinois court has directly faced this issue), *rev’d*, 2015 IL 117962, 32 N.E.3d 1117.

52. *See generally* *Martin v. Heinold Commodities, Inc.*, 643 N.E.2d 734 (Ill. 1994) (requiring the plaintiffs to prove the defendant’s actions “proximately caused their injuries” before recovering in tort).

53. *See Turcios*, 2015 IL 117962 at ¶ 30, 32 N.E.3d at 1126 (“Although the appellate court here may have been reluctant to extend the reach of *Heinold* beyond the tort at issue in that case, we do not believe that the *Heinold* court intended such a limitation.”).

misrepresentation.⁵⁴ The plaintiffs sued the defendant, a commodities dealer, for fraud in relation to the sale of securities.⁵⁵ The defendant intentionally misrepresented a service charge attached to the sale of risky securities.⁵⁶ The plaintiffs argued they were entitled to their *full* investment losses because they only needed to show “but for” causation to recover when the defendant acted intentionally.⁵⁷ The defendant, however, argued the plaintiffs were not permitted to recover their entire investment losses because the misrepresentation of the fee did not proximately cause those losses.⁵⁸ The court stated:

[I]t is a well settled principle in regard to false representations, that fraud without damage is neither sufficient to support an action at law, nor a ground for relief in equity. Fraud and injury must concur to furnish a ground for judicial action. In an action for fraudulent representations, the plaintiff must not only show, that the representations were made, and that they were false and fraudulent, but he must also show affirmatively that he has been injured thereby.⁵⁹

Relying on this, the court concluded that “plaintiffs must prove . . . a defendant’s actions proximately caused their injuries before they can recover in tort, even in instances of intentional torts where fiduciaries are involved.”⁶⁰

The court refused to award plaintiffs their full investment losses because the plaintiffs failed to establish that the defendant’s misrepresentation regarding the service fee proximately caused those losses.⁶¹ The misrepresentation persuaded the plaintiffs to pay an unnecessary fee, but it did not cause them to undertake the risk of the turbulent market.⁶² Therefore, *Heinold* determined that actual causation—by itself—is insufficient to hold an intentional tortfeasor liable for the plaintiff’s injury.⁶³ Rather, the injury must be foreseeable, and not simply a distant consequence of the tortfeasor’s conduct.⁶⁴

54. See generally *Heinold*, 643 N.E.2d at 746–47 (“In order for a plaintiff to recover for [fraudulent misrepresentation], the great majority of Federal courts require plaintiffs to show two types of causation: (1) transaction causation; and (2) loss causation.”).

55. *Id.* at 737.

56. *Id.*

57. *Id.* at 744 (emphasis added).

58. *Turcios*, 2015 IL 117962 at ¶ 26, 32 N.E.3d at 1125.

59. *Heinold*, at 746–47 (quoting *Jones v. Foster*, 51 N.E. 862, 866 (Ill. 1898)).

60. *Id.* at 747.

61. *Id.* at 748.

62. See *id.* at 749.

63. *Id.* at 746.

64. *Id.*

In the context of fraud, *Heinold* is consistent with the jurisdictions requiring only actual causation for suicide resulting from an intentional wrong, provided the intentional tort was a substantial factor in causing the suicide.⁶⁵ In fact, each of these jurisdictions requires the same immediate nexus between the tort and the damages in fraud cases, as the Illinois Supreme Court demanded in *Heinold*.⁶⁶ These jurisdictions do not, however, extend the line of reasoning used to decide fraud cases to those involving suicide caused by other intentional torts.

D. The Substantial Factor Rule in Other Jurisdictions

In six jurisdictions,⁶⁷ an intentional tortfeasor may be liable for a victim's suicide.⁶⁸ In these jurisdictions, the devices used to insulate negligent actors from liability, such as intervening cause and proximate cause, are not applicable to determining the extent of an intentional tortfeasor's liability.⁶⁹ Rather, if the intentional tortfeasor is a substantial factor in causing the plaintiff's injuries, the tortfeasor is liable for those injuries.⁷⁰ As a result, a plaintiff can sidestep the traditional causation hurdle—that suicide is an intervening cause that cuts off the tortfeasor's

65. See Brief for Plaintiffs-Appellees at 16, *Turcios v. DeBruler Co.*, 2015 IL 117962, 32 N.E.3d 1117 (No. 2-13-0331), 2014 WL 9964227, at *16 (citing *Serv. by Medallion, Inc. v. Clorox Co.*, 52 Cal. Rptr. 2d 650, 656 (Ct. App. 1996); *Sachs v. Blewett*, 185 N.E. 856, 858 (Ind. 1933); *Caledonia, Inc. v. Trainor*, 459 A.2d 613, 617–18 (N.H. 1983); *Halliburton Co. v. Claypoole*, 868 P.2d 252, 256 (Wyo. 1994)).

66. See *id.* (citing *Clorox*, 52 Cal. Rptr. 2d at 650 (“[T]o recover for fraud . . . the plaintiff must plead and prove the detriment proximately caused by defendant’s tortious conduct.”); *Sachs*, 185 N.E. at 858 (“There must be some fraudulent, overt act, . . . and such must be the efficient or proximate cause of injury”); *Caledonia*, 459 A.2d at 617–18 (“In order to prove deceit, the plaintiff must prove that defendant intentionally made false statements . . . for the purpose of causing, and which does cause, the plaintiff reasonably to rely to his detriment.”); *Halliburton*, 868 P.2d at 256 (“The elements of a claim for relief for fraud are a false representation made by a defendant which is relied upon by the plaintiff to his damage . . .”)).

67. There may be other jurisdictions that also recognize wrongful death claims based on suicide. For purposes of this Note, however, the discussion is limited to the six jurisdictions discussed in *Turcios*.

68. See *Tate v. Canonica*, 5 Cal. Rptr 28 (Ct. App. 1960); *Mayer v. Town of Hampton*, 497 A.2d 1206 (N.H. 1985); *R.D. v. W.H.*, 875 P.2d 26 (Wyo. 1994); *Kimberlin v. DeLong*, 637 N.E.2d 121 (Ind. 1994); *Rowe v. Marder*, 750 F. Supp. 718 (W.D. Pa. 1990); *Collins v. Vill. of Woodridge*, 96 F. Supp. 2d 744 (N.D. Ill. 2000).

69. See *Turcios v. DeBruler Co.*, 2015 IL 117962, ¶¶ 33–38, 32 N.E.3d 1117, 1126–27 (“We recognize that courts in some jurisdictions . . . have declined to allow the doctrine of foreseeability to limit an intentional tortfeasor’s liability in a wrongful death case involving suicide.”); see also *Collins*, 96 F. Supp. 2d at 756 (“[T]he rule appears to be different in such cases: the tort victim’s suicide is not considered a supervening cause, at least “where the plaintiff can demonstrate that the defendant’s intentional conduct caused severe emotional distress that was a substantial factor in bringing about the suicide.”) (citing *Mayer*, 497 A.2d at 1210–11; *Clift v. Narragansett Television L.P.*, 688 A.2d 805, 812 (R.I. 1996); *R.D.*, 875 P.2d at 30–31; *Tate*, 5 Cal. Rptr. at 36).

70. *Turcios*, 2015 IL 117962 at ¶¶ 39–40, 32 N.E.3d at 1127–28.

liability—and proceed with the action if the intentional tortfeasor was a substantial factor in causing the suicide.⁷¹

There are four versions of the substantial factor test discussed in *Turcios*.⁷² In analyzing the *Turcios* decision, it is helpful to contrast it with how other courts have treated the causation analysis in wrongful death actions based on suicide. In consideration of the greater culpability when an actor's conduct is intentional, the trend is to forego treating suicide as an independent intervening cause, thereby expanding the intentional actor's liability for all consequences flowing from his wrongful action.⁷³

1. California: *Tate v. Canonica*

The earliest case cited in *Turcios* in support of adopting the substantial factor test is *Tate v. Canonica*.⁷⁴ In *Tate*, the defendants tormented the decedent with threats, remarks, and accusations, intending to harass, embarrass, and humiliate him around his friends, family, and colleagues.⁷⁵ The California Court of Appeals held that in cases where the defendant intends “to cause serious mental distress or serious physical suffering, and does so, and such mental distress is shown to be a substantial factor in bringing about the suicide, a cause of action for wrongful death results.”⁷⁶ The court further noted this rule does not apply where there is no intent to cause injury, even if the defendant acted intentionally.⁷⁷ Accordingly, “[i]t is applicable only where the actor *intended to cause injury*, and the injury is a substantial factor in bringing about the suicide.”⁷⁸ The substantial factor rule set out in *Tate* laid the foundation for the variations adopted by other jurisdictions.

71. See *Kimberlin*, 637 N.E.2d at 128; *Mayer*, 497 A.2d at 1211; *Tate*, 5 Cal. Rptr. at 36; *R.D.*, 875 P.2d at 31.

72. See *Turcios*, 2015 IL 117962 at ¶¶ 32-39, 32 N.E.3d at 1126–28.

73. *Kimberlin*, 637 N.E.2d at 127.

74. *Turcios*, 2015 IL 117962 at ¶ 33, 32 N.E.3d at 1126; see also *Tate*, 5 Cal. Rptr. at 36 (“[I]n a case where the defendant intended, by his conduct, to cause serious mental distress or serious physical suffering, and does so, and such mental distress is shown by the evidence to be ‘a substantial factor in bringing about’ the suicide, a cause of action for wrongful death results” (quoting RESTATEMENT (FIRST) OF TORTS, *supra* note 34, § 279, at 280)).

75. *Tate*, 5 Cal. Rptr. at 30–31.

76. *Id.* at 36.

77. *Id.*

78. *Id.*

2. *New Hampshire: Mayer v. Town of Hampton*

Following California's decision in *Tate*, New Hampshire adopted the substantial factor test in *Mayer v. Town of Hampton*.⁷⁹ In *Mayer*, three police officers entered the home of the twenty-three-year-old decedent.⁸⁰ Shortly before the invasion, the decedent was released from a mental institution.⁸¹ The officers pinned the decedent to the ground, threatening to kill him and anyone else in the house.⁸² The decedent was arrested and released shortly thereafter.⁸³ He committed suicide sixteen hours later.⁸⁴

New Hampshire's Supreme Court, building on the standard set out in *Tate*, added a condition that the defendant's conduct "must be extreme and outrageous."⁸⁵ The court reasoned, "[s]o long as the defendant's wrongful act was a substantial cause of the suicide, there is no reason . . . to undermine the policy behind intentional torts which extends a defendant's liability almost without limit to any actual harm resulting."⁸⁶

3. *Western District of Pennsylvania: Rowe v. Marder*

In consideration of the framework set out in *Tate* and *Mayer*, the federal district court in *Rowe v. Marder* assumed Pennsylvania's Supreme Court would follow New Hampshire and California by allowing a plaintiff to recover for suicide caused by intentional torts.⁸⁷ However, it was unnecessary for the court to apply the standards from *Tate* and *Mayer* because the plaintiff was unsuccessful in proving any intentional tort.⁸⁸

79. *Turcios*, 2015 IL 117962 at ¶ 34, 32 N.E.3d at 1127; *see also* *Mayer v. Town of Hampton*, 497 A.2d 1206, 1210-11 (N.H. 1985).

[F]or a cause of action for wrongful death by suicide to lie for intentional torts, the plaintiff must demonstrate that the tortfeasor, by extreme and outrageous conduct, intentionally wronged a victim and that this intentional conduct caused severe emotional distress in his victim which was a substantial factor in bringing about the suicide of the victim.

Id.

80. *Mayer*, 497 A.2d at 1208.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Turcios*, 2015 IL 117962 at ¶ 34, 32 N.E.3d at 1127.

86. *Mayer*, 497 A.2d at 1211.

87. *Rowe v. Marder*, 750 F. Supp. 718, 724 (W.D. Pa. 1990).

88. *Id.*

4. Wyoming: R.D. v. W.H.

In *R.D. v. W.H.*, Wyoming adopted the substantial factor test.⁸⁹ There, the decedent's stepfather sexually abused her throughout her life, which caused the decedent to suffer from mental issues.⁹⁰ The decedent attempted to commit suicide on multiple occasions and was ultimately successful.⁹¹

The Wyoming Supreme Court extended the *Tate* rule to include circumstances "where the intentional tort causes an emotional or psychiatric illness that is a substantial factor in bringing about the suicide, even [if] the defendant does not intend to cause the emotional or psychiatric illness."⁹² Under this version, "an actor will be liable when he intentionally commits a tort, . . . and the commission of that tort causes an emotional or psychiatric illness which is a substantial factor in bringing about the suicide of the victim."⁹³ Moreover, "the actor will be liable for the result even though he does not intend to cause the emotional or psychiatric illness."⁹⁴ The court reasoned that "[t]he substantial factor rule recognizes that a higher degree of responsibility exists for those who commit intentional acts than for those who merely act negligently."⁹⁵

5. Indiana: Kimberlin v. DeLong

Subsequently, Indiana adopted the substantial factor test in *Kimberlin v. DeLong*.⁹⁶ There, a bomb planted in a duffel bag and deserted in a parking lot detonated, resulting in injury and disfigurement to the decedent.⁹⁷ Four years later, the decedent committed suicide.⁹⁸

Indiana's Supreme Court determined a wrongful death claim is permitted for death or injury from a suicide or suicide attempt "where a defendant's willful tortious conduct was intended to cause a victim *physical* harm and where the intentional tort is a substantial factor in bringing about the suicide."⁹⁹ This version of the rule does not, however, apply where the defendant merely intended to cause the decedent psychological harm.¹⁰⁰

89. *Turcios*, 2015 IL 117962 at ¶ 36, 32 N.E.3d at 1127; *see also* *R.D. v. W.H.*, 875 P.2d 26, 31 (Wyo. 1994).

90. *R.D.*, 875 P.2d at 28.

91. *Id.*

92. *Id.* at 31.

93. *Id.*

94. *Id.*

95. *Id.* (citing *Leithead v. Am. Colloid Co.*, 721 P.2d 1059, 1065 (Wyo. 1986)).

96. *Turcios*, 2015 IL 117962 at ¶ 37, 32 N.E.3d at 1127; *see also* *Kimberlin v. DeLong*, 637 N.E.2d 121, 128 (Ind. 1994).

97. *Kimberlin*, 637 N.E.2d at 123.

98. *Id.*

99. *Id.* at 128 (emphasis added).

100. *Id.*

The court reasoned that “[l]iability for intentional torts extends beyond foreseeability because ‘it is better for unexpected losses to fall upon the intentional wrongdoer than upon the innocent victim.’”¹⁰¹

6. *Northern District of Illinois: Collins v. Village of Woodridge*

Finally, perhaps the most persuasive non-controlling authority is *Collins v. Village of Woodridge*.¹⁰² In *Collins*, a federal district court, interpreting Illinois law, decided whether a police officer’s suicide precluded her estate from pursuing sexual harassment and retaliation claims.¹⁰³ Without precedent from Illinois, the court looked to other states for guidance.¹⁰⁴ The court concluded suicide will not be an intervening cause “where the plaintiff can demonstrate that the defendant’s intentional conduct caused severe emotional distress that was a substantial factor in [causing] the suicide.”¹⁰⁵

In summary, these jurisdictions retain the actual cause element by substituting the “but for” test with the substantial factor test. However, they remove proximate cause from the causation analysis to determine whether an intentional tortfeasor is liable for a victim’s suicide. As discussed *infra*, the Illinois Supreme Court’s approach deviates from this trend by requiring both actual causation and proximate causation to measure the extent of intentional tortfeasors’ liability.¹⁰⁶

III. EXPOSITION OF *TURCIOS V. DEBRULER*

A. Statement of Facts

Plaintiff, Maria Turcios, and her late husband, Nelsyn Caceras (decedent), lived with their children in an apartment they rented from the defendant, the DeBruler Company.¹⁰⁷ Both the decedent and plaintiff were immigrants who did not speak English.¹⁰⁸ Due to the language barrier, the couple sought assistance with the leasing process from Catholic Charities.¹⁰⁹ With this assistance, the couple found an apartment and signed a one-year lease.¹¹⁰ Upon taking possession of the apartment, the couple

101. *Id.* at 126 (quoting KEETON ET AL., *supra* note 33, § 9, at 40).

102. *See generally* *Collins v. Vill. of Woodridge*, 96 F. Supp. 2d 744 (N.D. Ill. 2000).

103. *See id.* at 746.

104. *See id.* at 756.

105. *Id.*

106. *See* discussion *infra* Section III, Part C.

107. *Turcios v. DeBruler Co.*, 2015 IL 117962, ¶ 4, 32 N.E.3d 1117, 1120.

108. *Id.* at ¶ 6, 32 N.E.3d at 1120–21.

109. *Id.*

110. *Id.* at ¶ 5, 32 N.E.3d at 1120.

paid the first month's rent.¹¹¹ Ten days into the lease, the couple received an official thirty days' notice of eviction.¹¹² The notice informed the couple of construction on the apartment building scheduled to begin on June 10.¹¹³ Three additional notices followed.¹¹⁴ On May 20, they received a reminder to leave the apartment by June 9.¹¹⁵

On May 31, the defendant offered the couple free rent for the first week in June.¹¹⁶ On June 1, the defendant declined to accept the couple's June rent payment.¹¹⁷ On June 7, the defendant informed the couple that the demolition was about to begin and offered to transfer the family to another apartment with free rent for June.¹¹⁸ In addition, the defendant offered the couple a \$2,000 incentive to move.¹¹⁹

The couple obtained legal advice and were advised that the lease was enforceable and that the defendant could not terminate the lease unilaterally.¹²⁰ Catholic Charities tried to assist the couple by contacting an agent of the defendant, but the agent relayed that the lease was not valid and could be revoked at any time.¹²¹

At some time after June 10, defendant allowed demolition to begin around the couple's unit while they still occupied the apartment.¹²² The demolition allegedly caused the decedent a lot of stress.¹²³ On June 14, the decedent told plaintiff that "he could not tolerate the situation any longer, but did not know what to do."¹²⁴ The next day, the decedent committed suicide in the apartment.¹²⁵

B. Procedural Posture

Plaintiff filed a complaint, alleging claims for breach of contract, wrongful eviction, intentional infliction of emotional distress, survivorship,¹²⁶ and wrongful death.¹²⁷ The defendant subsequently moved

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.* at ¶ 42, 32 N.E.3d at 1128.

120. *Id.* at ¶ 6, 32 N.E.3d at 1120.

121. *Id.* at ¶ 6, 32 N.E.3d at 1120–21.

122. *Id.* at ¶ 7, 32 N.E.3d at 1121.

123. *See id.*

124. *Id.*

125. *Id.*

126. A survival action is defined as "[a] lawsuit brought on behalf of a decedent's estate for injuries or damages incurred by the decedent immediately before dying." *Survival Action*, BLACK'S LAW DICTIONARY (10th ed. 2014).

to dismiss the claims.¹²⁸ The trial court granted defendant's motion as to the wrongful death and survivorship claims, dismissing these counts with prejudice on the basis that Illinois does not recognize survival claims or wrongful death claims based on suicide.¹²⁹ Plaintiff appealed and the appellate court vacated the trial court's dismissal order, holding that "where a plaintiff can satisfy the elements of the tort of intentional infliction of emotional distress and the emotional distress is a substantial factor in causing a decedent's suicide, such causes of action are cognizable in [Illinois]."¹³⁰ The Illinois Supreme Court granted defendant's petition for leave to appeal.¹³¹

C. Opinion of the Court

The court addressed whether wrongful death actions are permitted where the immediate cause of death is suicide.¹³² To decide this issue, the court had to determine whether the general rule, precluding wrongful death actions based on a defendant's negligence, should also apply where the defendant's conduct is intentional.¹³³ The court found the cases from other jurisdictions unpersuasive because the consolidation of their holdings did not create a unanimous standard and, aside from involving a suicide, were factually distinct.¹³⁴ The court relied on *Martin v. Heinold* to determine the requisite causation to impose liability for intentional torts.¹³⁵

In *Heinold*, the court held that the requirement of proximate cause "[applies] to actions for negligence as well as intentional torts, such as fraud" and concluded that "plaintiffs must prove that a defendant's actions proximately caused their injuries before they can recover in tort, even in instances of intentional torts where fiduciaries are involved."¹³⁶ Based on this holding, and the finding that fraud should not be treated differently than other intentional torts for determining the scope of an actor's liability, the court decided an intentional tortfeasor is only liable for foreseeable consequences.¹³⁷ Therefore, a wrongful death action, based on a suicide resulting from an intentional tort, is "subject to the general rule that suicide is unforeseeable as a matter of law."¹³⁸

127. *Turcios*, 2015 IL 117962 at ¶ 4, 32 N.E.3d at 1120.

128. *Id.* at ¶ 10, 32 N.E.3d at 1122.

129. *Id.* at ¶ 11, 32 N.E.3d at 1122.

130. *Id.* at ¶ 12, 32 N.E.3d at 1122.

131. *Id.* at ¶ 13, 32 N.E.3d at 1122.

132. *Id.* at ¶ 19, 32 N.E.3d at 1123.

133. *Id.* at ¶ 21, 32 N.E.3d at 1124.

134. *Id.* at ¶ 32, 32 N.E.3d at 1126.

135. *Id.* at ¶ 27, 32 N.E.3d at 1125.

136. *Id.* (quoting *Martin v. Heinold Commodities, Inc.*, 643 N.E.2d 734, 746-47 (Ill. 1994)).

137. *See id.* at ¶¶ 30-31, 32 N.E.3d at 1126.

138. *Id.*

As a result, a plaintiff seeking damages for wrongful death predicated on suicide, caused by an intentional tort, must assert more than facts that would show the defendant was “a cause-in-fact of the suicide.”¹³⁹ The plaintiff must plead facts that “overcome application of the general rule that suicide is deemed unforeseeable as a matter of law.”¹⁴⁰ In other words, a plaintiff must plead facts demonstrating that the suicide was foreseeable [or] a likely result of the defendant’s conduct.”¹⁴¹

The court reasoned that if liability was divorced from foreseeability, the defendant would face “open-ended and limitless liability for injury, no matter how abnormal, extraordinary, irregular, or remote the injury may be.”¹⁴² Ultimately, the court determined that because the plaintiffs in *Heinold* were unable to recover their investment losses in a securities fraud case, it follows that a plaintiff cannot recover for suicide premised on the intentional infliction of emotional distress.¹⁴³ However, the court indicated there might be “rare” situations where a suicide would not break the chain of causation, specifically if the suicide is foreseeable.¹⁴⁴

Applying this standard, the court determined that the plaintiff failed to demonstrate the decedent’s suicide was reasonably foreseeable based on the defendant’s conduct in terminating the lease and evicting the decedent from his apartment.¹⁴⁵ The court was unclear, however, about the set of facts that would make suicide foreseeable.¹⁴⁶ Nevertheless, the court reversed the appellate court’s decision and affirmed the judgment of the circuit court, dismissing the counts concerning suicide.¹⁴⁷

IV. ANALYSIS

The Illinois Supreme Court was correct to dismiss the wrongful death claim presented in *Turcios* because the defendant’s actions in evicting the decedent were not of the “extreme and outrageous” nature required to prove the underlying intentional tort.¹⁴⁸ However, the court went too far by holding, as a matter of law, a decedent’s suicide precludes an action for wrongful death.

139. *Id.* at ¶ 40, 32 N.E.3d at 1128.

140. *Id.*

141. *Id.*

142. *Id.* at ¶ 25, 32 N.E.3d at 1125.

143. *See id.* at ¶ 30, 32 N.E.3d at 1126.

144. *Id.* at ¶¶ 40-41, 32 N.E.3d at 1128.

145. *Id.* at ¶¶ 41-42, 32 N.E.3d at 1128.

146. *See id.*

147. *Id.* at ¶¶ 42-45, 32 N.E.3d at 1128–29.

148. The issue on appeal was limited to whether Illinois recognized a wrongful death claim based on suicide; however, it is unlikely the plaintiff would be able to articulate the underlying tort since the defendant’s conduct was not extreme and outrageous, as required to recover for the intentional infliction of emotional distress.

Part A of this section discusses how the *Turcios* holding is not supported by traditional tort principles and creates unjust results in other cases. Part B explains how recognizing the context in which *Heinold* was decided, and considering the closer connection other intentional torts have to suicide than fraud, leads to a better understanding of the appropriate framework to analyze wrongful death claims based on suicide. Finally, Part C demonstrates how the court's contradictory holding leaves the legal framework in an unpredictable state at a time when suicide caused by others is a prevalent issue.¹⁴⁹

A. Traditional Tort Principles Disfavor Limiting Liability for Intentional Tortfeasors

1. *The Distinction Between Negligent and Intentional Conduct*

The *Turcios* holding insulates intentional tortfeasors from liability when their victims commit suicide. By doing so, the court created a standard that fails to distinguish between intentionally injuring the decedent, thereby causing the suicide, and negligently doing so. The court's holding extends more protection to intentional tortfeasors, like Michelle Carter, discussed *supra*, and limits recovery for victims' families, like Conrad Roy's. This ruling runs contrary to the most basic tort law principles: to compensate victims and to shape human behavior by deterring future wrongful conduct.¹⁵⁰ The court undermines these basic principles by asserting that one who intentionally injures a victim and one who does so negligently are held to the same standard when determining liability for their actions. As a result, the unexpected losses will fall upon the victim when the intentional actor's conduct causes a suicide.

The inherent injustice this promotes is best illustrated by comparing a suicide resulting from negligent conduct with a suicide resulting from an intentional tortfeasor's conduct. For example, compare Michelle Carter with the case discussed *infra* involving a wrongful death claim against a negligent actor.

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149. See Sally C. Curtin & Margaret Warner, *Suicide Rates for Females and Males by Race and Ethnicity: United States, 1999 and 2014*, CTR. FOR DISEASE CONTROL PREVENTION, http://www.cdc.gov/nchs/data/hestat/suicide/rates_1999_2014.htm (last updated Apr. 22, 2016) (explaining suicide rates in the United States are 24% higher than in 1999); Mitch van Geel, et al., *Victimization, Cyberbullying, and Suicide in Children and Adolescents: A Meta-analysis*, JAMA NETWORK (Mar. 10, 2014) <http://jamanetwork.com/journals/jamapediatrics/fullarticle/1840250> (demonstrating that cyberbullying has a stronger relation to suicidal ideation compared to traditional bullying).
150. *Siemieniec v. Lutheran Gen. Hosp.*, 512 N.E.2d 691, 705 (Ill. 1987) ("Other courts have expressed concern that refusing to recognize this cause of action would frustrate the fundamental policies of tort law: to compensate the victim; to deter negligence; and to encourage due care.").

At age thirty-two, Christopher Chalhoub stole his stepfather's handgun and used it to kill himself.¹⁵¹ Christopher's stepfather kept the gun stored in his bedroom closet.¹⁵² After Christopher's suicide, the administrator of Christopher's estate brought suit against the stepfather alleging that the stepfather's negligence in handling and storing a firearm proximately caused Christopher to commit suicide.¹⁵³

Under these circumstances, adhering to the general rule that suicide is an independent intervening cause that the negligent actor cannot be expected to foresee is well reasoned. Assuming the stepfather had a duty to prevent the suicide of a thirty-two-year-old man, the consequences of imposing such a burden on a person to foresee and prevent a suicide in cases like Christopher's are boundless. As the court said, "[w]ould such a burden require the stepfather to secure all knives, razors, aspirin, and other potentially harmful items in the home? Here, Christopher used a handgun, however, he could have just as easily used a kitchen knife or overdosed on aspirin."¹⁵⁴ Where the alleged act is merely negligent, requiring the actor to foresee a suicide imposes an impractical standard of care that may not be met despite taking reasonable precautions. It is unreasonable to expect the stepfather to secure his home to prevent a suicide. It is reasonable, however, to expect the stepfather to refrain from acting in a manner which causes a suicide.

The primary difference between the stepfather's negligence and Carter's intentional conduct is that the stepfather's negligence was not a substantial factor in causing his stepson's suicide. It is illogical to argue that Christopher killed himself because his stepfather had a gun in the house. Even without the stepfather's accessible gun, Christopher likely would have found another method to commit suicide. In other words, the stepfather's negligence in storing the gun was not a necessary condition¹⁵⁵ of Christopher's suicide. While the stepfather's negligence may have made it more convenient for Christopher to commit suicide, the stepfather did not drive Christopher to the point of suicide by subjecting him to emotional distress, sexual assault, or engage in any other misconduct tending to have

151. Chalhoub v. Dixon, 788 N.E.2d 164, 165–66 (Ill. App. Ct. 2003).

152. *Id.*

153. *Id.*

154. *Id.* at 168.

155. "A necessary condition is something that has to happen for something else to happen. Being human is a necessary condition of going to college, because colleges do not admit other animals." *Greene v. Doruff*, 660 F.3d 975, 978 (7th Cir. 2011) ("In contrast, dropping a lighted match into a bucket of gasoline is a sufficient condition for starting a fire, but it is not a necessary condition, because *there are many other ways of starting a fire*, such as by rubbing two sticks together.") (emphasis added).

traumatizing effects on victims. In such cases, the negligent actor is not a substantial factor in bringing about the suicide.

On the other hand, Carter was a substantial factor in bringing about Roy's suicide. She intentionally caused Roy's suicide by capitalizing on his vulnerability and directing him every step of the way. Carter's intention to emotionally injure Roy substantially contributed to his suicide.

While *Turcios* leaves it unclear whether Roy's circumstances fall under the "rare"¹⁵⁶ exception, this is likely a situation where reasonable people could disagree whether Roy's suicide was a foreseeable consequence of Carter's actions.¹⁵⁷ For example, some may consider Carter's instigation of Roy's suicide sufficient to establish foreseeability; others, like the Illinois Supreme Court, may demand more convincing facts to make an exception to the suicide rule.

Assuming Roy's situation fits within the court's "rare" exception, consider a more likely case, involving sexual assault, that may not be considered so "rare." Audrie Pott was only fifteen-years-old when three classmates wrote vulgar remarks on her body and sexually assaulted her.¹⁵⁸ The assailants photographed the assault and distributed photos online and among her peers, where the images quickly spread.¹⁵⁹ A week later, traumatized by the experience and the subsequent treatment of her sexual assault as entertainment, Audrie committed suicide after posting on Facebook, "The whole school knows . . . My life is like ruined now."¹⁶⁰ After criminal charges left Audrie's parents "angered by what they believed to be mild sentences,"¹⁶¹ Audrie's parents brought a wrongful death lawsuit against the boys for Audrie's death.¹⁶²

In situations like Roy's and Audrie's, where an intentional tortfeasor was a substantial factor in bringing about the victims' suicide, invoking a per se rule insulating the tortfeasor from liability frustrates the purpose of

156. See *supra* note 17.

157. Michelle Carter's actions are an example of a scenario where suicide is foreseeable, considering her precise intention was to convince Conrad Roy to commit suicide. If this factual scenario is not enough to invoke the "rare" exception, it is unclear whether any scenario would, especially considering Carter is being charged with manslaughter in Massachusetts, the state where the incident occurred. See Winsor, *supra* note 12.

158. Tara Fowler, *Teens Settle with Family of 15-Year-Old Who Committed Suicide Following Sexual Assault*, PEOPLE MAG. (Apr. 7, 2015), <http://www.people.com/article/audrie-pott-wrongful-death-lawsuit-settled>.

159. *Id.*

160. Robin Abcarian, *Audrie Pott, Suicide and the Shame of Sexual Assault*, L.A. TIMES (Apr. 15, 2013), <http://articles.latimes.com/2013/apr/15/local/la-me-ln-audrie-pott-suicide-shame-20130415>.

161. Fowler, *supra* note 158. Two of the boys were sentenced to thirty days in jail, which they served on weekends so they could still attend school. *Id.* The third was sentenced to forty-five consecutive days. *Id.*

162. *Id.* The families of the two boys who admitted to sexually assaulting Audrie agreed to pay Audrie's family \$950,000 as part of a settlement in a wrongful death lawsuit. *Id.*

tort law. In such situations, given the heightened culpability, and the greater degree of control an actor has over intentional conduct, it is appropriate to impose liability for all consequences flowing from the intentional act to injure a person, even if the consequences are more severe than expected. Under such circumstances, there is no longer a concern of holding a person liable for merely failing to satisfy the required standard of care, and the enhanced degree of moral culpability compels attaching liability in hopes to deter similar uncivilized behavior.

Conversely, being lenient with the reckless or intentional actor defies tort law objectives because the loss falls on the innocent victim.¹⁶³ Such leniency is unwarranted because it is reasonable to expect intentional actors to control their deliberate behavior, rather than the careless behavior often disputed in negligence actions.

In sum, the distinction between treating negligent conduct differently than intentional conduct is a basic principle of tort law, which is heavily supported by other jurisdictions,¹⁶⁴ scholarly authority,¹⁶⁵ the restatements,¹⁶⁶ and policy considerations.¹⁶⁷ The Illinois Supreme Court should have relied on these sources to guide its decision in *Turcios* to adopt a substantial factor test when the wrongful death claim is based on suicide. This standard alleviates the injustice by declaring that an actor who intentionally engages in wrongful conduct to injure a victim assumes the risk of any consequence that can flow from his conduct. Nevertheless, the court disregarded the great weight of authority, including well-established tort law principles, by treating these two situations exactly the same.

2. *Defenses and Recovery*

Limiting intentional tortfeasors' liability to foreseeable consequences is inconsistent with other aspects of tort law. For instance, intentional tortfeasors are normally not entitled to the defense of contributory negligence.¹⁶⁸ The basis for prohibiting this defense is that an intentional tortfeasor, whose liability has arisen "entirely from the tortfeasor's own deliberate wrong," should not be afforded the equitable benefits of shifting a

163. Bauer, *supra* note 40, at 588 ("It would shock the feelings of a court to be as lenient with the intentional or even the reckless wrongdoer as with the person merely failing, perhaps by very little, to live up to the standard of care required.").

164. See cases cited *supra* note 26.

165. See Bauer, *supra* note 40, at 588.

166. See RESTATEMENT (SECOND) OF TORTS § 46 (1965) (setting forth the elements of severe emotional distress without mentioning proximate cause, intervening events, or foreseeability).

167. See *supra* note 150 and accompanying text.

168. *Burke v. 12 Rothschild's Liquor Mart, Inc.*, 593 N.E.2d 522, 527 (Ill. 1992) ("[W]hen the defendant's conduct was willful and wanton, the plaintiff's contributory negligence could not be raised as a defense to bar recovery.").

portion of that liability to another tortfeasor under principles of contribution.”¹⁶⁹ If contributory negligence were allowed, it would undermine tort policies by shifting the loss to the victim and essentially require victims to guard themselves from the intentional wrongs of others. Likewise, insulating the intentional tortfeasor from liability for unforeseeable consequences runs contrary to these same policy considerations.

Moreover, when “the conduct of the defendant was willful or intentional and done with evil motive or reckless indifference to the rights of others[,]” courts further tort policies by awarding punitive damages, to further compensate the victims and deter future misconduct.¹⁷⁰ For example, in *Heinold*, the Illinois Supreme Court expressed that punitive damages are the appropriate form of damages to award to deter future conduct when the defendant’s motive was evil.¹⁷¹ These principles show tort law embodies unequivocal tendencies to consider the degree of the defendant’s fault and has incorporated various safeguards to prevent shifting liability to innocent victims.

In order to shape behavior and further policy concerns, the Illinois Supreme Court should have followed the overwhelming weight of authority that supports adjusting causation to fit the culpability of the defendant. The flexible substantial factor test incorporates these concerns by holding intentional actors to a higher standard for purposes of liability. The court’s imposition of a rigid causation analysis, which requires recovery in all cases be limited to the natural and proximate consequences, essentially declares that the measure of relief is not dependent on the defendant’s motive. This invariable rule produces unreasonable results as shown above by comparison of situations on opposite ends of the behavioral spectrum.

As illustrated, tort law principles eliminate defenses for intentional actors and increase awards of damages when the wrong is flagrant. This deters future misconduct and prevents losses from falling on innocent victims. Extending liability to all consequences flowing from the intentional tortfeasor’s action is consistent with these basic principles. The *Turcios* holding disregards these principles by limiting an intentional tortfeasor’s conduct to foreseeable consequences. A better approach is to evaluate the impact of intentional tortfeasor’s conduct on the victim’s suicide by applying the substantial factor test.

169. *Ziarko v. Soo Line R.R.*, 641 N.E.2d 402, 404 (Ill. 1994) (quoting *KEETON ET AL*, *supra* note 33, § 50, at 336).

170. *Green v. Heller Lincoln Mercury Dodge, Inc.*, 2011 IL App (4th) 100878-U, ¶ 21 (quoting *Linhart v. Bridgeview Creek Dev., Inc.*, 909 N.E.2d 865, 875 (Ill. App. Ct. 2009)).

171. *Martin v. Heinold Commodities, Inc.*, 643 N.E.2d 734, 749-50 (Ill. 1994); *see also Linhart*, 909 N.E.2d at 875) (“The Consumer Fraud Act explicitly allows for the recovery of punitive damages where the conduct of the defendant was willful or intentional and done with evil motive or reckless indifference to the rights of others.”) (citing 815 ILL. COMP. STAT. 505/10a(a) (2006)).

B. The *Turcios* Decision Was Misguided

“In determining whether to allow a victim’s suicide to insulate a wrongdoer from liability for his actions, other jurisdictions and authorities have distinguished between defendants whose actions were merely negligent and those whose conduct was intentional.”¹⁷² In *Turcios*, the Illinois Supreme Court took an entirely different approach by relying primarily on *Heinold* to conclude actual causation is insufficient.¹⁷³ Although the *Turcios* court adopted the conclusion of *Heinold*, it failed to recognize the context in which it was decided.

1. The Court Misinterpreted the Narrow Holding of *Heinold*

In *Turcios*, the Illinois Supreme Court rejected the great weight of authority in favor of an absolute bar to wrongful death claims premised on suicide.¹⁷⁴ The distinction between *Turcios* and the trend in other jurisdictions results from the court’s refusal to acknowledge how causation is treated differently when the tortfeasor intended to harm the victim. Although numerous jurisdictions and scholarly authority provide logical instruction on how to approach such an issue, the court considered precedent involving securities fraud to be the most persuasive.¹⁷⁵ As a result, the court failed to properly acknowledge that emotional distress is closer in proximity to suicide than fraudulent misrepresentation.

The court’s logic for extending the suicide rule to limit intentional tortfeasors’ liability was misguided because it primarily relied on *Heinold* to determine the requisite causation.¹⁷⁶ In *Heinold*, the damages the plaintiffs sought to recover were a result of entering the volatile markets, not a result of the defendant’s fraud in misrepresenting a service fee, as the plaintiffs claimed.¹⁷⁷ In other words, the plaintiffs would have lost their money regardless of the defendant’s misrepresentation.¹⁷⁸

In the context of fraud, *Heinold* is both sensible and consistent with tort law principles as well as the other jurisdictions’ approach to fraud.¹⁷⁹ Allowing the plaintiffs to recover their full investment loss would have

172. Kimberlin v. DeLong, 637 N.E.2d 121, 126 (Ind. 1994).

173. *Turcios v. DeBruler Co.*, 2015 IL 117962, ¶ 30, 32 N.E.3d 1117, 1126.

174. See generally *id.* at ¶¶ 31-32, 32 N.E.3d at 1126 (“[A] cause of action for wrongful death predicated on a suicide allegedly brought about by the intentional infliction of emotional distress is subject to the general rule that suicide is unforeseeable as a matter of law.”).

175. See *id.* at ¶ 21, 32 N.E.3d at 1124 (discussing *Heinold*’s guidance in resolving the issue on appeal).

176. *Id.*

177. *Martin v. Heinold Commodities, Inc.*, 643 N.E.2d 734, 749 (Ill. 1994).

178. *Id.* at 748.

179. See cases cited *supra* notes 65–66.

resulted in a windfall because the plaintiffs had received the consideration of the transaction.¹⁸⁰ Moreover, the defendant's misrepresentation did not cause the plaintiffs' investment loss; it was their choice to invest in the risky market that caused their loss.¹⁸¹ Allowing a plaintiff to shift losses to the defendant just because of irrelevant misinformation connected to the transaction would provide an easy escape from any bargain later found unfavorable. To avoid this, the court required the plaintiffs prove loss causation.¹⁸² In effect, loss causation limits damages to those proximately caused by the defendant's misrepresentation.¹⁸³

Although the court limited the plaintiffs' recovery to the losses proximately caused by the misrepresentation, the court recognized merely putting the defendant back into his previous position prior to the fraud would not deter future misconduct of this sort.¹⁸⁴ The court found that awarding punitive damages was the most appropriate way to handle this concern and fulfill the plaintiffs' wish of absolute liability.¹⁸⁵ In effect, the court was willing to cut off the intentional fraudster's liability because there was a more appropriate form of recovery that furthered the policies of the Consumer Fraud Act and fulfilled tort law principles by discouraging future fraudulent acts.¹⁸⁶

Heinold's holding, in the context of fraud, is sound with public policy because the plaintiffs were made whole again to the extent they experienced a loss, and the punitive damages award served as a deterrent for future misconduct. However, the court's decision in *Turcios* to adopt a piecemeal construction of *Heinold*—in an entirely different context—does not fulfill these same objectives.

Unlike the court in *Heinold*, the court in *Turcios* does not consider whether plaintiffs have an alternative or more appropriate form of recovery. On the contrary, the court's holding makes it nearly impossible for plaintiffs to recover in the precise situation. Also unlike *Heinold*, which lays out exactly what type of causation must be shown in the transactional context, *Turcios* leaves unclear what type of conduct makes suicide foreseeable. While *Heinold* fulfills the important policy objectives, *Turcios's* holding runs contrary to the most fundamental tort principles. The court's extension of *Heinold*, requiring a proximate cause analysis to all intentional torts, failed to give sufficient consideration to *Heinold's* narrow holding. Similarly, the court failed to consider the reasons fraudulent

180. *Heinold*, 643 N.E.2d at 747–48.

181. *Id.*

182. *Id.* at 748.

183. *Id.*

184. *Id.* at 757.

185. *Id.* at 749–50.

186. *See id.*

misrepresentation requires a more stringent causation analysis than other intentional torts.

2. *Other Intentional Torts Have a Closer Connection to Suicide*

The court reasoned that extending *Heinold* was appropriate because there was no logical basis to treat the intentional infliction of emotional distress differently than fraud to determine the extent of a tortfeasor's liability.¹⁸⁷ This assumption discounts that suicide and emotional distress have a "closer connection."¹⁸⁸ This is supported by the elements required to prove the intentional infliction of emotional distress; "the distress inflicted must be so severe 'that no reasonable man could be expected to endure it.'"¹⁸⁹ The elements of fraudulent misrepresentation require no such proof of a personal or emotionally trying experience.¹⁹⁰ In fact, fraudulent misrepresentation is applied specifically to contrary situations.

In *Doe v. Dilling*, the Illinois Supreme Court held that a cause of action for fraudulent misrepresentation does not extend beyond its traditional application in commercial and transactional settings to "purely personal settings."¹⁹¹ There, the court discussed the historical limits of fraud,¹⁹² explaining that the origin of fraudulent misrepresentation "lies in the common law action of deceit, a very narrow tort that applied only to cases involving business or financial transactions between parties."¹⁹³ *Doe* expressed that courts have treated fraudulent misrepresentation as a purely economic tort because most of the cases involved misrepresentations made in the course of a bargaining transaction between the parties; as a consequence, "the action has been colored to a considerable extent by the

187. *Turcios v. DeBruler Co.*, 2015 IL 117962, ¶ 30, 32 N.E.3d 1117, 1126.

188. *See id.* at ¶ 41, 32 N.E.3d at 1128 ("We observe that intentional infliction of emotional distress, by its very nature, appears to have a *slightly* closer connection to suicide than other intentional torts.") (emphasis added).

189. *Id.* (quoting *Pub. Fin. Corp. v. Davis*, 360 N.E.2d 765, 767 (Ill. 1976)).

190. *Doe v. Dilling*, 888 N.E.2d 24, 35-36 (2008).

In order for a plaintiff to prevail on a claim of fraudulent misrepresentation, he or she must establish the following elements: (1) a false statement of material fact; (2) known or believed to be false by the person making it; (3) an intent to induce the plaintiff to act; (4) action by the plaintiff in justifiable reliance on the truth of the statement; and (5) damage to the plaintiff resulting from such reliance.

Id.

191. *Id.* at 45. *Dilling* presents an example of a "purely personal setting." There, the plaintiff brought suit against her late fiancé's parents after he died from acquired immune deficiency syndrome (AIDS), alleging that they intentionally and falsely stated that their son did not have AIDS when they knew that he did. *Id.* 26-27.

192. *See id.* at 36-37.

193. *Id.* at 36 (quoting *KEETON ET AL.*, *supra* note 33, § 105, at 726).

ethics of bargaining between distrustful adversaries in the course of business dealings.”¹⁹⁴

In light of the context in which fraud cases have been decided, it is unlikely the court in *Heinold* intended for such a narrow holding to apply to all intentional torts. Moreover, the purpose of damages in fraudulent misrepresentation actions are generally to compensate purely financial losses, not physical or emotional injuries.¹⁹⁵ Generally, “other [tort] actions have been sufficient to deal with non-pecuniary damage . . . where the somewhat narrower theory of deceit is not called into question.”¹⁹⁶

The narrow economic nature of fraud is difficult to reconcile with the features of other intentional torts. Unlike recovery for fraud, the recovery sought in the other intentional torts is often for physical injuries or psychological issues resulting from battery, assault, or emotional distress.¹⁹⁷ Conversely, Illinois has not allowed fraudulent misrepresentation to be a basis for recovery in purely personal settings.¹⁹⁸ Accordingly, the traditionally economic tort is very different from the more personal intentional torts.

All of the jurisdictions that allow wrongful death claims based on suicide recognize this difference between fraud and the other intentional torts.¹⁹⁹ These jurisdictions also require the same close nexus for cases involving fraudulent misrepresentation.²⁰⁰ They differentiate the standards between actions for fraud and actions for other intentional torts by requiring an intention to harm the plaintiff physically or psychologically, not economically.²⁰¹

The demanding pleading requirements and enhanced burdens of proof applicable in actions for fraud are indicative of its uniqueness.²⁰² It is logical that the courts would require “a correspondingly exacting connection between defendant’s wrongful conduct and plaintiff’s damages.”²⁰³ This is especially true in cases involving securities fraud, like *Heinold*, which required the court to look to federal securities laws on loss

194. *Id.*

195. See RESTATEMENT (SECOND) OF TORTS § 531 (AM. LAW INST. 1977).

196. *Dilling*, 888 N.E.2d at 37 (quoting *KEETON ET AL.*, *supra* note 33, § 105, at 726).

197. See, e.g., *id.* at 35 (explaining the court has found fraudulent misrepresentation applicable in cases outside of a commercial context when involving physical harm).

198. *Id.* at 39 (“We do not find these decisions to support [plaintiff’s] argument that Illinois has recognized the tort of fraudulent misrepresentation in purely personal settings.”). See *supra* note 184, for an explanation of a “purely personal setting.”

199. See cases cited *supra* notes 65–66.

200. *Id.*

201. *Id.*

202. *Bd. of Educ. of Chi. v. A, C & S, Inc.*, 546 N.E.2d 580, 593 (Ill. 1989); see also Brief for Appellees, *supra* note 65, at 17.

203. See Brief for Appellees, *supra* note 65, at 17.

causation.²⁰⁴ The intense standards are not appropriate when applied to other intentional torts that are more likely to result in physical and psychological injuries.

Due to the unique economic nature of fraudulent misrepresentation, the most guidance that can be discerned from *Heinold* is that fraud is a peculiar area of torts,²⁰⁵ which is largely a result of the context in which the cases have been decided. Accordingly, the Illinois Supreme Court's reasoning was misguided by relying upon *Heinold* to determine the outcome in *Turcios*.

The court could have upheld the same proximate connection for cases concerning fraud while adopting the substantial factor test for actions involving other torts where the tortfeasor intended to cause the victim physical or psychological harm. This result eliminates the inherent injustices by requiring the intentional actor be a substantial factor in bringing about the decedent's suicide. Nevertheless, the court rejected this approach in favor of a vague holding.

C. The Court Failed to Articulate a Clear Holding in *Turcios*

Although the court correctly dismissed the plaintiff's claim, the court's ultimate holding contradicts itself. The court concluded that as a matter of law, suicide is unforeseeable.²⁰⁶ In other words, suicide is an intervening cause that always defeats the element of proximate cause.²⁰⁷ The court also holds, however, that a plaintiff may recover for wrongful death based on suicide brought about through an intentional tort, if the plaintiff can plead facts demonstrating the suicide was foreseeable.²⁰⁸ This exception makes the court's holding contradictory. As Professor Alberto Bernabe noted:

If a plaintiff can argue that the suicide is foreseeable, then by definition, suicide is no longer unforeseeable as a matter of law. If it can be argued that in some cases it is foreseeable while it is not in others, then the court

204. See *Martin v. Heinold Commodities, Inc.*, 643 N.E.2d 734, 747 (Ill. 1994).

We find Illinois law to be similar to the analysis used by these Federal courts which require both transaction causation and loss causation in order to recover for misrepresentation in securities cases. Thus, plaintiffs here must prove what the Federal courts have termed loss causation prior to any recovery of damages.

Id.

205. Brief for Appellees, *supra* note 65, at 17.

206. *Turcios v. DeBruler Co.*, 2015 IL 117962, ¶ 31, 32 N.E.3d 1117, 1126 (“[A] cause of action for wrongful death predicated on a suicide allegedly brought about by the intentional infliction of emotional distress is subject to the general rule that suicide is unforeseeable as a matter of law.”).

207. *Id.*

208. *Id.* at ¶ 40, 32 N.E.3d at 1128.

is implying that reasonable people could disagree as to whether it is foreseeable at all, making the question one for the jury.²⁰⁹

Since reasonable people can disagree whether suicide is foreseeable, the court should have at least held that if the plaintiff can plead facts showing the defendant was a substantial factor in causing the decedent's suicide, the question of whether suicide was a foreseeable consequence of the defendant's intentional act should be left to a jury.

As it stands, *Turcios* does not articulate a clear holding and leaves room for confusion in determining when suicide is a foreseeable consequence, thus triggering the "rare" exception to the suicide rule and allowing a plaintiff to recover. While leaving the question of foreseeability to the jury eliminates the contradiction, a holding more equipped to deal with the growing issue of suicide caused by others would have eliminated the foreseeability requirement when the claim involves an intentional actor. The manner in which the court's holding contradicts itself illustrates why foreseeability should not be considered in determining an intentional tortfeasor's liability.

V. CONCLUSION

While suicide is nothing new, the prevalence of people bullying, cajoling, or pressuring others into harming themselves is rapidly increasing and is no longer considered a "rare" occurrence. The Illinois Supreme Court's decision leaves a dark shadow of doubt on the future of wrongful death claims based on suicide at a time when situations like Roy's are happening more frequently. The foreseeability requirement confuses the whole analysis and has the predominant effect of denying wrongful death claims predicated on suicide in cases worthy of justice. Furthermore, it creates an uncertain legal landscape as to these increasingly prevalent issues that are unlikely to fit within the ambiguous "rare" exception.

209. Alberto Bernabe, *Illinois Supreme Court Holds Proximate Cause Applies to Intentional Tort Claims*, TORTS BLOG (May 21, 2015, 11:11 AM), <http://bernabetorts.blogspot.com/2015/05/illinois-supreme-court-holds-proximate.html>.