

The Suicide Rule—*Cotten v. Wilson*: Tennessee’s Incremental Progress Away from a Stubborn Exculpatory Tradition

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I. INTRODUCTION

How much weight should be given to a person’s “choice” to take his own life when balanced against the negligent acts of another? In a country that has placed a premium on individual liberty—roughly defined as the freedom to live and act according to one’s own choices—American jurisprudence has historically viewed suicide as an absolute expression of free will. In wrongful death actions involving a decedent who took his own life, courts have typically applied the “suicide rule,” treating the act of suicide as a superseding intervening cause that negates the element of proximate causation and cuts off any third-party’s liability for the person’s death. Only in the last fifty years have the

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courts of individual states, including Tennessee, begun to roll back this traditionally rigid rejection of third-party liability in suicide cases. In doing so, courts have started to take a more holistic view of suicide and its possible causes. This trend has been relatively circumscribed in Tennessee, however, as courts remain reticent to hold third parties liable for negligent actions that precede the competent choice of a decedent to take his own life, finding liability only in cases that meet a narrow test of foreseeability.

The Tennessee Supreme Court in *Cotten v. Wilson* affirmed the gradual but widespread trend of chipping away at the suicide rule.¹ In *Cotten*, the ex-husband of a woman who died by suicide brought a wrongful death action against the decedent's boyfriend alleging that the defendant boyfriend caused her death by his negligent maintenance and storage of the firearm she used to kill herself.² The Supreme Court reversed the appellate court's denial of the defendant's motion for summary judgment and affirmed the trial court's original disposition granting the motion.³ The Court *held* the defendant's actions were not the proximate cause of the decedent's suicide because, based on her conduct and demeanor at the time the defendant left her alone in the house with the gun, it was not reasonably foreseeable that she would use the gun to take her own life. *Cotten v. Wilson*, 576 S.W.3d 626, 653 (Tenn. 2019).

The *Cotten* decision was largely consistent with Tennessee precedent in this area, which treated the foreseeability of a given suicide as determinative of whether the decedent's choice to take her life was a superseding intervening act negating proximate causation. However, the Court's approach to the question of foreseeability was prohibitively narrow, missing an opportunity to take a more holistic view encompassing the decedent's history and mental health rather than simply applying the somewhat rigid and uninventive "conduct and demeanor" test from a prior Tennessee appellate court case.⁴

Part II of this Comment will review the case law history, primarily in Tennessee, of suicide as a supervening intervening cause

1. See *Cotten v. Wilson*, 576 S.W.3d 626, 642–46 (Tenn. 2019) (building on recent Tennessee cases that declined to strictly follow the rule).

2. *Id.* at 632–34.

3. *Id.* at 653.

4. *Id.* at 652; *Rains v. Bend of the River*, 124 S.W.3d 580, 594 (Tenn. Ct. App. 2003).

cutting off a defendant's liability in negligence actions for wrongful death. Part III will examine *Cotten* in more detail, including the Court's holding and supporting reasoning. Part IV will consider how *Cotten* impacts the legal landscape in this area, and Part V will reflect on how the Court might have decided the case more constructively. Part VI will conclude this comment.

II. THE HISTORY OF RELEVANT CASE LAW

In tort actions for wrongful death, the traditional view was that a decedent's suicide functioned as a superseding intervening cause cutting off liability. This limitation was based on the theory that someone's choice to take her own life "is an abnormal thing" and that no reasonable person could foresee that a rational person would intentionally choose to commit suicide.⁵ The 1965 case *Lancaster v. Montesi* exemplified this traditional view.⁶ In *Lancaster*, the Tennessee Supreme Court applied the suicide rule rigidly, declining to hold the defendant liable for driving the decedent to take her own life through years of abuse simply because she retained the capacity to make that choice on her own.⁷

5. *Cotten*, 576 S.W.3d at 639–40 (quoting *Lancaster v. Montesi*, 390 S.W.2d 217, 222 (Tenn. 1965)); see also *id.* at 640 (citing *Jones v. Stewart*, 191 S.W.2d 439, 440–41 (Tenn. 1946)). See *id.* at 640 n.18, for a list of other state court cases affirming the so-called suicide rule. Courts determine whether the defendant in a wrongful death action was the proximate cause of the decedent's death by applying a three-pronged test wherein the third prong examines whether the harm suffered was reasonably foreseeable "by a person of ordinary intelligence and prudence." *Id.* at 638 (quoting *McClenahan v. Cooley*, 806 S.W.2d 767, 775 (Tenn. 1991)). Under this analysis, an intervening event in the chain of causation is considered supervening sufficient to cut off liability if it is not a "normal response created by [the negligent behavior in question]," which would render the intervening event reasonably foreseeable. *White v. Lawrence*, 975 S.W.2d 525, 529 (Tenn. 1998) (quoting *McClenahan*, 806 S.W.2d at 775). Therefore, the foreseeability of the decedent's decision to commit suicide is the central issue in *Cotten* because this question determines whether the decedent's suicide was a superseding intervening event and thus whether the court can consider the defendant's actions the proximate cause of her death. See *Cotten*, 576 S.W.3d at 638.

6. 390 S.W.2d 217 (Tenn. 1965).

7. *Id.* at 222; see also *Jones*, 191 S.W.2d at 440–41 (concluding that the choice of the defendant's teenage son to commit suicide was the "sole proximate cause" of his death rather than the father's negligence). This approach places such emphasis on the decedent's power of choice, leading courts to decline to hold defendants responsible. This is often true even where the defendant subjected the decedent to such torturous conditions as to make the decedent wish to kill herself, reasoning

In an attempt to mitigate the harshness of the suicide rule demonstrated by *Lancaster*, courts have carved out a few key exceptions, all of which hinge on the question of foreseeability.⁸ The foreseeability of the defendant's suicide is evaluated in each instance, along with the other elements of the exception, to determine whether the act of suicide should be considered a superseding intervening cause shielding the defendant from liability.⁹ An intervening act is considered a superseding cause sufficient to break the chain of legal causation when the event "(1) was sufficient by itself to cause the injury, (2) was not reasonably foreseeable to the negligent actor, and (3) was not a normal response to the negligent actor's conduct."¹⁰ Thus, the established exceptions include instances where the defendant's conduct foreseeably causes a mental condition inducing the decedent's act of self-harm;¹¹ where the defendant has custody of the decedent and the suicide was the foreseeable harm defining the defendant's duty;¹² where the defendant has a special relationship with the decedent and the suicide is

that the choice to take one's own life was so significant—and so morally repugnant, even under extreme conditions—that it necessarily constituted a superseding intervening cause cutting off the defendant's liability. *See, e.g., Salsedo v. Palmer*, 278 F. 92, 99 (2d Cir. 1921) (declining to consider the plaintiff's argument that the defendant's alleged wrongful acts of torture and imprisonment caused the decedent to take his own life by so degrading his mental capacity). *See Alex B. Long, Abolishing the Suicide Rule*, 113 NW. U. L. REV. 767, 773, 824 (2019), for a discussion of how society's views on the morality of suicide have shaped the development of tort law.

8. *Rains*, 124 S.W.3d at 593.

9. *Id.* (citing *Waste Mgmt., Inc. v. S. Cent. Bell Tel. Co.*, 15 S.W.3d 425 (Tenn. Ct. App. 1997)).

10. *Id.*

11. *See Johnson v. Wal-Mart Stores, Inc.*, 588 F.3d 439, 442–43 (7th Cir. 2009) (noting this exception but declining to follow it where the defendant's actions were negligent but did not cause the mental condition of the decedent), *cited with approval in Cotten v. Wilson*, 576 S.W.3d 626, 643 (Tenn. 2019); *cf. Scheffer v. R.R. Co.*, 105 U.S. 249, 252 (1881) (finding that defendant company was not liable for decedent's suicide resulting from a state of insanity caused by the defendant's negligent injury because the insanity was not a foreseeable result of the injury).

12. *See, e.g., Kane v. State*, App. No. 89-75-II, 1989 WL 136963, at *2–3 (Tenn. Ct. App. Nov. 15, 1989) (demonstrating the custodial exception in the context of incarceration).

reasonably foreseeable;¹³ or where the defendant facilitates the suicide by providing the means by which the decedent takes her own life.¹⁴

Many courts, including those of Tennessee, eventually began to apply the foreseeability test for proximate causation to suicide cases more broadly than the exceptions delineated above. As the *Cotten* Court recognized,¹⁵ an important example of this development was the 2017 Tennessee Appellate Court case *Ramsey v. Cocke County*.¹⁶ In *Ramsey*, the plaintiff called 9-1-1 after her daughter threatened to take her own life.¹⁷ The dispatcher refused to respond by sending an officer to help because their policy was not to get involved with “domestic family issues.”¹⁸ After two unsuccessful calls, the mother drove to the police station looking for someone to help her deal with the situation.¹⁹ When she returned, her daughter had taken her own life.²⁰ The mother filed a wrongful death action against the county, the police department, and the county emergency communications district alleging that they caused her daughter’s death by failing to respond to her repeated requests for help even after she warned them of her daughter’s risk of suicide.²¹

While the old version of the suicide rule treated a rational person’s decision to take her own life as inherently unforeseeable no matter the circumstances,²² the *Ramsey* court acknowledged that a defendant’s negligence may be the proximate cause of a decedent’s suicide if it was reasonably foreseeable that the negligent acts or omissions would lead to such an outcome, even in the absence of an explicitly established exception.²³ The *Ramsey* court accordingly denied the

13. See, e.g., *White v. Lawrence*, 975 S.W.2d 525, 530 (Tenn. 1998) (considering the special relationship exception in a medical care context).

14. See, e.g., *Rains*, 124 S.W.3d at 594.

15. See *Cotten v. Wilson*, 576 S.W.3d 626, 646–47 (Tenn. 2019).

16. *Ramsey v. Cocke Cty.*, No. E2016-02145-COA-R3-CV, 2017 WL 2713213 (Tenn. Ct. App. June 23, 2017).

17. *Id.* at *1–2.

18. *Id.* at *1.

19. *Id.* at *1–2.

20. *Id.*

21. *Id.*

22. See *Lancaster v. Montesi*, 390 S.W.2d 217, 222 (Tenn. 1965) (holding that the act of suicide is “an abnormal thing, which supersedes defendant’s liability”).

23. *Ramsey*, 2017 WL 2713213, at *6 n.5 (relying in part on *Rains* to justify the departure from absolute adherence to the list of exceptions to the suicide rule’s preclusion of liability).

defendant's motion for summary judgment,²⁴ holding that the determinative question was whether the decedent's suicide was reasonably foreseeable at the time of the negligent conduct, which presented a factual question for the jury.²⁵ While the *Ramsey* court's broader foreseeability approach to proximate causation represents a departure from strict adherence to the suicide rule and its established exceptions, the case is best understood as a continuation of an observable trend toward increased emphasis on the overall foreseeability of a decedent's suicide.²⁶

III. *COTTEN V. WILSON*

The 2019 Tennessee Supreme Court case *Cotten v. Wilson* was a wrongful death action arising from the November 2014 suicide of the decedent (Christina). Christina died by suicide using a handgun that belonged to the defendant (Wilson), who left it unsecured in his house while Christina was staying there alone.²⁷ Some nine months prior to the fatal incident, Christina attempted suicide by ingesting an excessive amount of benzodiazepines and alcohol.²⁸ After an affair with Wilson, Christina divorced her ex-husband (Benjamin) and began fighting him for primary custody of their son.²⁹ The mental toll of her

24. *See id.* at *1–2. The trial court granted the defendant's motion for summary judgment after finding that the decedent's suicide "constituted an intervening, superseding cause." *Id.* The appellate court reversed and denied the motion, finding that the decedent's suicide was reasonably foreseeable when viewed in the light most favorable to the plaintiff. *Id.* at *2–3.

25. *Id.* at *3; *see also* *Smith v. Pfizer Inc.*, 688 F. Supp. 2d 735, 749 (M.D. Tenn. 2010) (denying the defendant's motion for summary judgment because the foreseeability of the decedent's suicide presented a disputed factual question).

26. *Ramsey*, 2017 WL 2713213, at *6; *see also* *White v. Lawrence*, 975 S.W.2d 525, 531–32 (Tenn. 1998) (rejecting as dispositive the decedent's ability to make rational decisions in favor of the reasonable foreseeability of his suicide); *King v. Anderson Cnty.*, 419 S.W.3d 232, 248 (Tenn. 2013) (clarifying that a decedent's decision to commit suicide may only break the chain of proximate causation if it was not reasonably foreseeable); *Kane v. State*, App. No. 89-75-II, 1989 WL 136963, at *2 (Tenn. Ct. App. Nov. 15, 1989) ("Reasonably foreseeable acts . . . cannot be independent, intervening acts.").

27. *Cotten v. Wilson*, 576 S.W.3d 626, 629 (Tenn. 2019).

28. *Id.* at 630.

29. *Id.* at 629–30.

divorce and subsequent custody battle manifested in frequent crying spells and was compounded by employment and housing difficulties.³⁰

Christina was admitted to a state-funded psychiatric hospital following her suicide attempt in January 2014. She was released after Wilson, a board-certified psychiatrist himself, assured the hospital that Christina would follow up with her outpatient psychiatrist within seven days.³¹ Christina then moved in with Wilson, and in April 2014, Benjamin’s petition for majority parenting time with their son was granted.³² This development had an obvious negative impact on Christina’s mental health, leading to further distress and crying.³³ Wilson then broke off their relationship in August 2014, at which time Christina moved out but continued an intermittent relationship with Wilson, occasionally staying at his house.³⁴

In October 2014, while Christina was at Wilson’s house with her son, Wilson showed them a handgun he had recently been given, allowing Christina to handle it before returning it to its unlocked drawer.³⁵ A week later, Christina lost her living arrangement, and Wilson allowed her to stay at his house, although he was out of town at the time.³⁶ Wilson then returned and spent one night at his house with Christina before leaving to stay with his parents for the weekend.³⁷ When he returned home on Sunday, he found Christina lying in bed with a self-inflicted gunshot wound to the chest, having used his handgun to commit suicide.³⁸

30. *Id.* Christina had also seen a psychiatrist for anxiety and depression in mid-2013 and was taking Prozac and Klonopin, all of which was known to the defendant in late 2013. *Id.*

31. *Id.* at 630. While both the fact that Christina was going home with Wilson and Wilson’s assurance that Christina would follow up with her outpatient psychiatrist within the week had a “huge bearing” on the hospital psychiatrist’s decision to authorize Christina’s release, Christina did not tell her outpatient psychiatrist about her suicide attempt, and she, in fact, did not see him again until June of 2014, five months after her suicide attempt and a year after her last visit. *Id.*

32. *Id.* at 631.

33. *Id.*

34. *Id.* Christina saw her outpatient psychiatrist again at the end of August. *Id.*

35. *Id.* at 631–32. Wilson kept the gun unloaded, with the ammo in another drawer. *Id.* Later that evening, Wilson told Christina he was interested in another woman, prompting her to storm out. *Id.* at 632.

36. *Id.* at 633.

37. *Id.*

38. *Id.*

Benjamin brought a wrongful death action against Wilson on behalf of Christina's estate. Benjamin alleged Wilson caused her death through his negligent maintenance and storage of a firearm by showing Christina his gun and even allowing her to handle it before leaving her alone in the house with the gun eleven days later.³⁹ The trial court granted Wilson's motion for summary judgment, relying on the cases cited above for the established exceptions to conclude, in part, that Wilson was not the proximate cause of Christina's death.⁴⁰ The court reached this conclusion because Christina's suicide did not fit any of the exceptions and, according to the court, was therefore not reasonably foreseeable at the time of the allegedly negligent conduct.⁴¹ However, the appellate court reversed the trial court's order and denied the motion for summary judgment.⁴² Looking to the then-recent *Ramsey* decision, the appellate court held that, although the case did not fit an established exception to the suicide rule, the controlling question was whether the suicide was reasonably foreseeable.⁴³ The appellate court concluded that the facts in the record were sufficient to present a factual question to the jury on the foreseeability of Christina's suicide and the issue of proximate causation.⁴⁴

The Tennessee Supreme Court in *Cotten* signaled its approval of the gradual trend away from the traditional suicide rule. The *Cotten* Court affirmed the approach to proximate causation adopted by the *Ramsey* court and agreed with the appellate court that the "touchstone is foreseeability, not whether a given case fits into a previously carved out exception."⁴⁵ However, the Court explicitly declined to abolish the suicide rule altogether, content with mitigating the rule's impact by

39. *Id.* at 633–34. The estate also advanced arguments concerning Wilson's duty to Christina as a homeowner and Wilson sought to escape liability through the defense of comparative fault; however, this Comment focuses on the particular issue of foreseeability as it relates to proximate causation since this is the issue the Supreme Court chose to discuss in depth and on which *Cotten* turned. *Id.*

40. *Id.* at 635.

41. *Id.* Again, the trial court's analysis was not confined to proximate causation.

42. *Id.*; *In re Estate of Cotten*, No. M2016-02401-COA-R3-CV, 2017 WL 4083645 (Tenn. Ct. App. Sept. 15, 2017).

43. *Cotten*, 576 S.W.3d at 635.

44. *Id.* at 635 (citing *Estate of Cotten*, 2017 WL 4083645).

45. *Id.* at 648 (quoting *Ramsey v. Cocke Cty.*, No. E2016-02145-COA-R3-CV, 2017 WL 2713213, at *2 (Tenn. Ct. App. June 23, 2017)).

expanding the test for proximate causation beyond the specifically delineated exceptions followed by previous cases.⁴⁶

Even after adopting this updated framework for its proximate causation analysis, the Court held that the trial court's grant of summary judgment in favor of the defendant was appropriate because the undisputed facts could not support a finding that Christina's suicide was reasonably foreseeable at the time of the defendant's alleged negligence.⁴⁷ The Court adopted the language of the *Rains* court concerning foreseeability and asked whether the "conduct and demeanor" of Christina, the decedent, at the time of the defendant's alleged negligent conduct indicated that Christina was suicidal.⁴⁸ In doing so, the Court rejected arguments from the estate relying on the facts of Christina's situation and testimony from the two psychiatrists who had treated Christina in an attempt to establish her "fragile mental state" at the time of the suicide.⁴⁹ The Court therefore concluded that the proper measure of the foreseeability of her suicide was Christina's conduct and demeanor at the time of the alleged negligence, and that there was nothing in her demeanor to indicate a suicidal intent at that particular point in time.⁵⁰ This rendered her suicide unforeseeable and therefore a superseding intervening event cutting off the defendant's liability.⁵¹

IV. THE PRESENT AND FUTURE IMPACT OF *COTTEN*

After *Cotten*, the question of foreseeability in Tennessee is determinative of proximate causation in wrongful death actions involving suicide, and the foreseeability of the decedent's suicide is informed by, rather than confined to, the exceptions to the suicide rule established in previous cases. Courts are no longer bound to follow the wooden

46. *Id.* at 647–48, 647 n.23 (citing Long, *supra* note 7 at 771, 784, which acknowledges the virtual ubiquity of the rule in the United States). The *Cotten* dissent cites this very article in support of its argument for doing away with the suicide rule altogether. *Id.* at 661 (Lee, J., dissenting).

47. *Cotten*, 576 S.W.3d at 651–52.

48. *Id.* at 652 (quoting *Rains v. Bend of the River*, 124 S.W.3d 580, 594 (Tenn. Ct. App. 2003)).

49. *Id.*

50. *Id.*; see also *King v. Anderson Cnty.*, 419 S.W.3d 232, 248 (Tenn. 2013) ("Foreseeability must be determined as of the time of the acts or omissions claimed to be negligent.").

51. *Cotten*, 576 S.W.3d at 653.

confines of the suicide rule and its few exceptions,⁵² but neither are they free to hold all defendants liable for negligent conduct that constitutes the cause-in-fact of a decedent's suicide.⁵³ Proximate causation, guided by the touchstone of foreseeability, remains an important hurdle for plaintiffs seeking to recover in wrongful death actions involving suicide.⁵⁴

The *Cotten* Court's rationale for maintaining the suicide rule hinges on the issue of foreseeability. While the present form of the rule is far more permissive than traditional cases, such as *Lancaster*,⁵⁵ the rule still considers a person's decision to kill herself inherently less foreseeable than any other consequences of an actor's negligence.⁵⁶ Tennessee courts are still obligated to account for the significant role of the decedent's free will in ending her own life, setting a high bar for plaintiffs seeking to hold a defendant accountable for negligent actions that lead to a person's suicide.⁵⁷

The Court's adoption of the *Rains* "conduct and demeanor" test to determine the foreseeability of a suicide is less explicit than its adoption of the *Ramsey* court's expansion of the test for proximate causation. The use of the *Rains* test, moreover, sets a precedent for subsequent cases that is likely to restrict liability to only the most obviously foreseeable suicides.⁵⁸ Indeed, the facts of *Cotten* are illustrative of this restriction. Wilson, the defendant, knew Christina well as they had worked together and dated, even living together for a time.⁵⁹ He knew she was emotionally distraught because of her divorce and the loss of primary custody of her son.⁶⁰ He knew she was taking multiple

52. *Id.* at 647 (rejecting the defendant's argument that his conduct cannot be the proximate cause of Christina's death unless it fits "precisely" into one of the previously enumerated exceptions from previous cases).

53. *Id.* at 647–48 (reiterating the necessity of the proximate causation analysis even after an actor's negligent conduct has been established).

54. *Id.* at 648.

55. *Id.* at 640; *Lancaster v. Montesi*, 390 S.W.2d 217 (Tenn. 1965).

56. *Cotten*, 576 S.W.3d at 647–48 (quoting *Rains v. Bend of the River*, 124 S.W.3d 580, 593 (Tenn. Ct. App. 2003)) ("[A] negligent actor 'has much less reason to anticipate intentional misconduct than negligence . . .").

57. *Id.* at 647–48 (citing *Rains*, 124 S.W.3d at 593).

58. *Id.* at 652 (citing *Rains*, 124 S.W.3d at 594).

59. *Id.* at 629.

60. *Id.*

prescription medications for anxiety and depression.⁶¹ Most importantly, Wilson knew Christina had attempted to take her own life earlier that same year.⁶² Even in light of these facts, the Court concluded that Christina’s suicide was not reasonably foreseeable based solely on her conduct and demeanor at the specific moments that Wilson showed her his gun and later left her alone in the house with it.⁶³

V. IMPROVING UPON *COTTEN*

The *Cotten* Court’s departure from strict adherence to the suicide rule’s exceptions constitutes an important step away from the “harsh results” of the traditional suicide rule.⁶⁴ But the rule’s checkered history of harsh applications, including its dubious implications for decedents’ moral culpability, remains problematic. Even in its proscribed form, the rule’s tendency to refuse to hold negligent actors liable remains in tension with the animating principle of the suicide rule—the high regard for individual free will that permeates American jurisprudence.

While calls to abolish the rule are typically guided by a desire to approach the issue of suicide more compassionately, such considerations may more appropriately lead to thoughtful alterations of the rule rather than its wholesale rejection.⁶⁵ This is because the abolition of the suicide rule would implicitly relegate the potency of individual agency to the level of any other event in the chain of causation. The judicial instinct to treat the competent choice of a decedent with a higher degree of respect—even reverence—than any other event is not misplaced. In fact, it stands at the foundation of our system of civil liability and criminal culpability, and without it there would be no rationale for holding parties accountable for their actions.

That being said, *Cotten*’s efforts to blunt the effects of the traditional rule were significantly muted by the Court’s application of the

61. *Id.* at 630.

62. *Id.* at 630–31.

63. *Id.* at 632–33. More accurately, the Court’s decision to grant summary judgment was based upon the available evidence of Christina’s conduct and demeanor at the time, which only one adult was present to witness—Wilson, the defendant. *Id.*

64. *Id.* at 642, 647.

65. *See id.* at 647–48, 647 n.23 (noting that no state has yet moved to abolish the suicide rule completely); *cf.* Long, *supra* note 7, at 771, 784.

narrow “conduct and demeanor” test of foreseeability.⁶⁶ This test may have been appropriate in the context of *Rains*, where the defendant did not know the decedent or have any contact with him beyond the moment of the negligent acts.⁶⁷ But the test is unrealistic and inadequate in a context such as *Cotten*, where the parties had an extensive relationship and the defendant knew of the decedent’s history of mental illness and even her recent suicide attempt.⁶⁸ *Cotten* therefore sets a restrictive precedent for future courts seeking to determine the foreseeability of a decedent’s suicide because of other indicia, such as the decedent’s history of mental illness or recent statement of intent to end her life.⁶⁹ Such fact patterns should present common-sense questions of foreseeability for a jury but might fail the test applied by the *Cotten* Court if there is no evidence of the decedent exhibiting outward suicidal tendencies at the exact moment of the defendant’s negligence.⁷⁰ This may lead future courts to follow *Cotten* in granting motions for summary judgment in wrongful death cases involving suicide—even in the face of ample evidence of foreseeability—if the facts do not fit the confines of the conduct and demeanor test from *Rains*.

The facts of *Cotten*, and the Court’s decision to grant summary judgment in that case, inform this prediction.⁷¹ In light of Christina’s history of mental illness, current extreme emotional turmoil, and recent

66. *Cotten*, 576 S.W.3d at 652 (quoting *Rains v. Bend of the River*, 124 S.W.3d 580, 594 (Tenn. Ct. App. 2003)).

67. *Rains*, 124 S.W.3d at 594.

68. *Cotten*, 576 S.W.3d at 652, 631.

69. *Risk of Suicide*, NAT’L ALL. ON MENTAL ILLNESS (Aug. 2019), <https://www.nami.org/About-Mental-Illness/Common-with-Mental-Illness/Risk-of-Suicide>. Some relevant factors that correlate with higher risk of suicide include substance abuse, access to firearms, and recent tragedy or loss. *Id.* There is no indication that the presence of any of these factors must manifest in particular conduct or demeanor at any given moment. *Id.*

70. While the evidentiary standard involved here is beyond the scope of this Comment, the “conduct and demeanor” test also presents a steep evidentiary burden. Under this test, a plaintiff is required to establish the foreseeability of a decedent’s suicide based on evidence of her behavior and appearance at the time of the alleged negligent conduct. In a case such as *Cotten*, the defendant may be the only witness who can speak to these facts, and a judge or jury tasked with determining foreseeability will rarely have access to the evidence that should form the basis of their decision—an accurate firsthand account of the decedent’s conduct and demeanor.

71. See *supra* notes 54–59 and accompanying text.

suicide attempt, a reasonable person might have foreseen the risk of suicide that might follow from such negligent actions as showing her and allowing her to handle a firearm and then leaving the gun in an accessible, unlocked location. Under a more holistic test encompassing Wilson's knowledge of Christina's mental state, her recent suicide attempt, and her recent experience of tragedy, a reasonable person could conclude that Wilson should have anticipated the risk of suicide because of his actions.

VI. CONCLUSION

Cotten represents an important step away from traditionally harsh applications of the suicide rule by expanding proximate causation beyond the few previously established exceptions. Although the *Cotten* Court reaffirmed the relevance of the suicide rule itself, it acknowledged the need for the rule to evolve in a way that allows accountability for negligent conduct that leads to a reasonably foreseeable suicide. After *Cotten*, a defendant may be held liable for negligent conduct that causes a decedent's suicide for one reason—the conduct and demeanor of the decedent at the time of the alleged negligence made it reasonably foreseeable that the defendant's actions would cause or facilitate her decision to take her own life. In adopting this narrow “conduct and demeanor” test, the *Cotten* Court missed an opportunity to define foreseeability more holistically and incorporate factors like the defendant's knowledge of the decedent's mental health and recent suicide attempts. *Cotten* will therefore have the mixed effects of expanding the possibility of recovery in future wrongful death actions beyond what was permitted by the traditional suicide rule while continuing to reject liability in some meritorious cases that do not meet the Court's narrow test of foreseeability.