

In the
Supreme Court of Illinois

DONNA COCHRAN,

Plaintiff-Appellee,

v.

SECURITAS SECURITY SERVICES USA, INC.,

Defendant-Appellant.

On Appeal from the Appellate Court of Illinois,
Fourth Judicial District, No. 4-15-0791.
There Heard on Appeal from the Circuit Court of the Seventh Judicial Circuit,
Sangamon County, Illinois, County Department, Law Division, No. 2012 L 245.
The Honorable Peter C. Cavanagh, Judge Presiding.

BRIEF OF DEFENDANT-APPELLANT

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**SUPREME COURT
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NATURE OF THE CASE

This case arises out of a misidentification of two deceased bodies at the Memorial Medical Center Morgue ("Memorial") in Springfield, Illinois. As a result, the body of Plaintiff's deceased adult son was mistakenly released from Memorial to Butler Funeral Home. Butler Funeral Home then cremated the body without Plaintiff's authorization before the mistake was realized later the same day.

Plaintiff initially brought an action for interference with the right to possession of a corpse against Memorial, Butler Funeral Home, and Securitas Security Services, USA, Inc. ("Securitas"). Securitas provided contract security services for Memorial and assisted in the receipt and release of bodies from the Memorial Morgue. (R. C2-26) (A. 20-38). As next of kin, Plaintiff sought to recover for her emotional distress over the fact that an autopsy to determine the cause of her son's death was never conducted and that she was deprived of the right to possession of the body and to determine its appropriate disposition. (R. C605-07) (A. 44-46).

Memorial and Butler Funeral Home subsequently settled with the Plaintiff. (R. C661). Plaintiff thereafter filed a Third Amended Complaint solely against Securitas. (R. C600-09) (A. 39-46). Securitas in turn moved to dismiss the Third Amended Complaint under 735 ILCS 5/2-615 and 5/2-619. (R. C616-58). Relying on 100 years of Illinois precedent, Securitas' 2-615 motion urged *inter alia* that in order to recover for interference with the right to possess a corpse,

Plaintiff had to allege facts showing that Securitas breached a duty to refrain from willful and wanton conduct, and that the Third Amended Complaint failed to allege facts sufficient to establish any willful and wanton conduct by Securitas. On September 23, 2015, the Circuit Court of Sangamon County (Honorable Peter C. Cavanagh) granted Securitas' motion to dismiss under both 735 ILCS 5/2-615 and 5/2-619. (R. C723-24) (A. 17-18).

The Fourth District Appellate Court reversed, *Cochran v. Securitas Security Services USA, Inc.*, 2016 IL App (4th) 150791 (A. 1-16), holding for the first time in Illinois that a cause of action for interference with the right to possession of a corpse could proceed solely on allegations of mere negligence.

Given that the Fourth District Appellate Court's decision created an express conflict with decisions of the First, Second and Third Appellate Districts requiring willful and wanton conduct, this Court granted Securitas' Petition for Leave to Appeal on November 23, 2016.

ISSUE PRESENTED FOR REVIEW

Should the requirement of willful and wanton conduct be eliminated in an Illinois action for interference with the right to possession of a corpse?

JURISDICTION

This Court has jurisdiction under Illinois Supreme Court Rule 315(a). The Appellate Court's decision was rendered on August 3, 2016. (A. 1-16). This Court granted Securitas' Petition for Leave to Appeal on November 23, 2016. The Appellate Court had jurisdiction under Illinois Supreme Court Rules 301 and 303

governing appeals from final judgments. The Circuit Court of Sangamon County entered a final order dismissing Plaintiff's Third Amended Complaint on September 23, 2015. R. C723-24) (A. 17-18). Plaintiff filed a timely Notice of Appeal from that final order. S.R. C725 (A. 19).

STATEMENT OF FACTS

The Third Amended Complaint alleges the following facts:

Death of Plaintiff's Son Walter Cochran and the Parties Involved With Handling His Body

Walter Andrew Cochran, age 39, son of Plaintiff Donna Cochran, died in his Moultrie County home on September 12, 2010. (R. C600) (A. 39). His body was found two days later, on September 14, 2010. (R. C600) (A. 26). Mr. Cochran's body was first taken to the Moultrie County Morgue where the Moultrie County Coroner was unable to determine the cause of death. (R. C601) (A. 40). The Moultrie County Coroner then transferred Mr. Cochran's body to Memorial in Springfield, Illinois for an autopsy. (R. C601) (A. 40). Securitas performed various manpower security services for Memorial pursuant to a contractual agreement. (R. C601-02) (A. 40-41). Such services included assisting in the receipt and release of bodies at Memorial's Morgue. (R. C601-02) (A. 40-41).

Mr. Cochran's Body Mistakenly Released to Butler Funeral Home

On the morning of September 16, 2010, a representative of Butler Funeral Home and Cremation Tribute Center, P.C., d/b/a Butler Funeral Home, arrived at Memorial to pick up the body of a Mr. William Carroll. (R. C601) (A. 40). The

Memorial Morgue logbook recorded that Mr. Carroll's body was contained in the Ziegler case, a closed container used to store bodies that have decomposed. (R. C602-03) (A. 41-42).¹ Relying on the logbook entry that Mr. Carroll's body was in the Ziegler case, Securitas employees assisted in the release of the Ziegler case to Butler Funeral Home. (R. C603-06) (A. 42-45).

Memorial subsequently discovered that the body of Mr. Cochran, not Mr. Carroll, was in the Ziegler case that was released to Butler Funeral Home that morning. (R. C602-05) (A. 41-44). Before the mistake was realized by Memorial, Butler Funeral Home cremated the body of Mr. Cochran without Plaintiff's authorization to do so in violation of Illinois law. (R. C602, C605) (A. 41, 44). See 410 ILCS 18/1 *et seq.*

Lawsuit Filed

Plaintiff Donna Cochran sued Memorial, Butler Funeral Home and Securitas for the mishandling of Mr. Cochran's corpse. (R. 2-26) (A. 20-38). She alleged interference with the right to possess her son's corpse and sought to recover for her emotional distress over the fact that an autopsy was never conducted and that she was deprived of the right to possess Mr. Cochran's body and determine its appropriate disposition. (R. C6) (A. 24). Plaintiff's complaint against Butler Funeral Home included a count for violation of the Crematory Regulation Act, 410 ILCS 18/1 *et seq.* (R. C8-10) (A. 26-28, 47-49).

¹ See generally, www.ogr.org/assets/docs/ebloa%20ziegler%20case%20%20biovu%20bag.pdf (last visited 2/1/17).

**Circuit Court Dismisses Third Amended Complaint Against
Securitas – No Willful and Wanton Conduct Alleged**

Plaintiff ultimately settled with Memorial and Butler Funeral Home. (R. C661). Thus, Plaintiff's Third Amended Complaint was solely against Securitas, and contained only one count alleging interference with the right to possession of Mr. Cochran's body. (R. C600-07) (A. 39-46). Securitas filed a combined Motion to Dismiss under 735 ILCS 5/2-615 and 5/2-619, urging *inter alia* that Plaintiff failed to plead sufficient facts to establish a breach of the duty to refrain from willful and wanton conduct, which is necessary under Illinois law to recover for interference with the right to possess a corpse. (R. C616-58). On September 23, 2015, the Sangamon County Circuit Court (Honorable Peter C. Cavanagh) dismissed the Third Amended Complaint on the grounds that Plaintiff "failed to plead sufficient facts to support the allegation of a duty" (2-615 motion) and "that there is no set of facts by which the plaintiff may demonstrate a duty owed by Securitas" (2-619 Motion). (R. C723-24) (A. 17-18).

**Appellate Court Reverses Circuit Court –
Holds Willful and Wanton Conduct Unnecessary**

The Fourth District Appellate Court first determined that the circuit court erred in granting Securitas' 2-619 Motion because the materials relied upon to support the motion were not accompanied by an appropriate affidavit and that the 2-619 Motion was essentially duplicative of the 2-615 Motion because it challenged the sufficiency of the Third Amended Complaint, rather than relying on affirmative matter to defeat Plaintiff's claim. (Opinion, ¶¶ 22-27) (A. 7-8).

With respect to Securitas' Motion to Dismiss under 2-615, the Appellate Court did not agree with Plaintiff's assertion that the factual allegations of the Third Amended Complaint were sufficient to establish willful and wanton conduct by Securitas. (Opinion, ¶ 34) (A. 9). The Appellate Court also acknowledged that the circuit court's order granting the 2-615 motion was in accordance with prior Illinois appellate court decisions of the First, Second and Third Appellate Districts (Opinion, ¶ 37) (A. 9). These decisions hold that in an action for interference with the right to possess a corpse, the only duty owed is the duty to refrain from willful and wanton interference.

Nevertheless, the Fourth District decided not to follow this established 100 plus years of Illinois law, which it acknowledged as consistent with the requirement of "wanton" conduct in Restatement (First) of Torts §868. (Opinion, ¶ 48) (A. 11). Instead, looking to other states and to the Restatement (Second) of Torts § 868, which it acknowledged had never been adopted by this Court or any other Illinois appellate court (Opinion, ¶¶ 49-53) (A. 12-13), the Fourth District held for the first time in Illinois that a cause of action merely alleging *negligent* interference with the possession of a corpse could proceed, stating:

Accordingly, we find a cause of action exists for *negligent* interference with the right to possession of a decedent's body by the next of kin, *without circumstances of aggravation, i.e., allegations establishing willful and wanton conduct by the defendant.* (Emphasis added). (Opinion, ¶ 53) (A. 13).

The Appellate Court also found support for its decision in what it believed was this Court's expansion of the law pertaining to a direct victim's action for

negligent infliction of emotional distress, stating its view that under Illinois law “a plaintiff who is a direct victim of a defendant’s negligence may bring a cause of action for negligent infliction of emotional distress without the additional requirement of demonstrating a physical injury or impact.” (Opinion, ¶ 45) (A. 11).

ARGUMENT

I. This Court Should Not Eliminate The Requirement Of Willful And Wanton Conduct In An Illinois Action For Interference With The Right To Possession Of A Corpse.

A. Introduction.

Securitas respectfully urges this Court to hold that under Illinois law willful and wanton conduct remains a requirement in an action for interference with the right to possession of a corpse. While some states have eliminated the willful and wanton requirement, a significant number of other states in soundly reasoned decisions have refused to do so. Just as this Court recently refused to eliminate the physical impact requirement in direct actions for negligent infliction of emotional distress, despite contrary decisions in other states, *Schweihs v. Chase Home Finance, LLC*, 2016 IL 120041, ¶ 38, this Court should refuse to eliminate the willful and wanton requirement here for the reasons set forth below.

B. Standard of Review.

An order dismissing a complaint under 735 ILCS 5/2-615 and 5/2-619 is reviewed *de novo*. *Schweihs v. Chase Home Finance, LLC*, 2016 IL 120041, ¶ 27. Likewise, the question of duty, *i.e.*, whether the duty to refrain from willful and

wanton conduct in cases alleging interference with the right to possess a corpse should be expanded to include a duty to refrain from negligent conduct, is a question of law that is reviewed *de novo*. *Vesey v. Chicago Housing Auth.*, 145 Ill. 2d 404, 411 (1991); *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 22.

C. The Willful and Wanton Requirement is Well-Enscinded in Illinois Law.

Early English law as well as early American law did not recognize a cause of action for interference with the right to possess a corpse. Rather, issues pertaining to the right of possession, disposition and protection of the dead rested with the church. *See Hovis v. City of Burns*, 415 P.2d 29, 31 (Ore. 1966). Gradually, as this Court recognized in *Leno v. St. Joseph Hosp.*, 55 Ill. 2d 114, 117 (1973), the law changed and while it is still held that “in the ordinary sense there is no property right in a dead body,” the deceased’s next of kin are recognized as having “a right of possession of a decedent’s remains . . . and to make appropriate disposition thereof by burial or otherwise.” *Id.*

However, in over 100 years of Illinois jurisprudence, our courts have held that in order to recover for interference with the right to possess a corpse, the interference must result from the defendant’s willful and wanton conduct: *Mensing v. O’Hara*, 189 Ill. App. 48, 56 (1st Dist. 1914) (right of action confined “to cases in which a willful and wanton act is alleged and proved”); *Drakeford v. University of Chicago Hospitals*, 2013 IL App (1st) 111366, ¶ 14

(“to state a cause of action based on the right of the next-of-kin to possession and preservation of the body of a decedent, plaintiffs must demonstrate by specific facts that a defendant’s conduct was willful and wanton”); *Kelso v. Watson*, 204 Ill. App. 3d 727, 731 (3d Dist. 1990) (same); *Rekosh v. Park*, 316 Ill. App. 3d 58, 68 (2d Dist. 2000) (same); *Hearon v. City of Chicago*, 157 Ill. App. 3d 633, 637 (1st Dist. 1987) (“in order to state a cause of action, a plaintiff must demonstrate that the defendant’s conduct was willful and wanton”); *Courtney v. St. Joseph Hosp.*, 149 Ill. App. 3d 397, 398 (1st Dist. 1986) (refusing to recognize a cause of action for emotional distress “arising from the negligent mishandling of a corpse”). These cases are consistent with the Restatement (First) of Torts § 868, including Comment a, recognizing the liability of a person “who *wantonly* mistreats the body of a dead person,” but that “*there is no right to maintain an action for mere negligence* in dealing with the body.” (emphasis added) (A. 50).²

D. The Better Reasoned Cases from Other States Have Refused to Expand Liability to Mere Negligent Conduct.

There are a number of states cited in the Appellate Court’s opinion that have expanded liability for interference with the right to possess a corpse to causes of action alleging mere negligent conduct. (Opinion, ¶ 51) (A. 12). The Restatement (Second) of Torts § 868 does the same (A. 51-54).³

² Restatement (First) of Torts § 868 and accompanying Comments are reproduced in the Appendix hereto. (A. 50).

³ Restatement (Second) of Torts § 868 and Comments are also reproduced in the Appendix hereto. (A. 51-54).

However, a good number of other states have refused to eliminate the requirement of willful and wanton conduct in an action for interference with the right to possess a corpse. *See, e.g., Burgess v. Perdue*, 721 P.2d 239, 245 (Kan. 1986) (declining to adopt § 868 of Restatement (Second) and following the “majority rule . . . that, for an individual to be liable for emotional distress for interfering with a dead body, the act must be intentional or malicious, as opposed to negligent”); *Chisum v. Behrens*, 283 N.W. 2d 235, 239 (S.D. 1979) (concluding that § 868 of the Restatement (Second) represents the minority view “which we are not inclined to follow”). *Accord, Gonzalez v. Metropolitan Dade Cty. Public Health Trust*, 651 So.2d 673, 676 (Fla. 1995); *LaLoup v. U.S.*, 29 F. Supp. 3d 530, 538-39 (E.D. Pa. 2014); *Weiley v. Albert Einstein Med. Ctr.*, 51 A.3d 202, 209 (Pa. Super. 2012); *Mellette v. Trinity Memorial Cemetery, Inc.*, 95 So.3d 1043, 1046 (Fla. 2d DCA 2012); *Whitney v. Cervantes*, 328 P.3d 957, 961 (Wash. App. 2014); *Justice v. SCI Georgia Funeral Services, Inc.*, 765 S.E.2d 778, 781-82 (Ga. App. 2014).

The Florida Supreme Court’s opinion in *Gonzalez*, 651 So. 2d 673, is reflective of the sound reasoning of these decisions, essentially setting forth the following three distinct reasons not to extend liability to mere negligent conduct:

1. The Court reasoned that because Florida still maintains a physical injury requirement in negligent infliction of emotional distress cases, expanding liability in interference with a corpse cases to include mere negligent conduct “would be applying a very lenient standard

to an emotional distress claim arising from injury to a corpse while requiring proof of either physical impact or physical injury for claims involving injury to a living relative.” *Gonzalez*, 651 So. 2d at 676.

2. The Court found that “[t]here is no accurate method of separating the natural grief resulting from the death of a loved one from the additional grief suffered as a result of mishandling of the body.” *Id.*
3. The Court concluded that “[t]he consequences of such an exception are too far reaching in a modern society where it is recognized that not all wrongs can be compensated through litigation or the courts.” *Id.*

Each of these reasons, found persuasive by the Florida Supreme Court under Florida law, should be equally persuasive to this Court under Illinois law, and lead it to reject the expansion of liability set forth in the Fourth District Appellate Court’s Opinion.

1. **Expanding liability to include negligent interference with the right to possess a corpse would give plaintiffs in such cases a broader right of emotional distress recovery than exists under Illinois law for conduct directly involving a live person.**

Similar to Florida law and contrary to the Appellate Court’s Opinion in this case (Opinion, ¶¶ 42-45) (A. 10-11), Illinois law has always required a contemporaneous physical injury or physical impact in a direct victim’s action for negligent infliction of emotional distress. Indeed, in *Schweihl v. Chase Home*

Finance, LLC, 2016 IL 120041, ¶ 44, this Court removed any ambiguity on this issue and expressly held that “the *pleading requirements* for a direct victim’s recovery for negligently inflicted emotional distress *include an allegation of contemporaneous physical injury or impact.*” (emphasis added). Accordingly, the *Schweihl* Court held that plaintiff’s negligent infliction of emotional distress count was properly dismissed for failure to include any allegation of a contemporaneous physical injury or physical impact. *Id.*⁴

Here, Plaintiff did not suffer any contemporaneous physical injury or physical impact as a result of Securitas’ alleged negligence in the handling of Mr. Cochran’s body. Thus, if liability for interference with the right to possess a corpse were to include mere negligent conduct, then Illinois too would be applying a more “lenient standard to an emotional distress claim arising from injury to a corpse” than to a direct-victim emotional distress claim by a living person. *Gonzalez*, 651 So. 2d at 676.

2. Delineating between recoverable and non-recoverable emotional distress in such cases would be extremely difficult.

Illinois courts would have no more “accurate method of separating the natural grief resulting from the death of a loved one from the additional grief suffered as a result of mishandling of the body” than Florida courts do. *Gonzalez*,

⁴ Where defendant’s conduct goes beyond mere negligence and consists of outrageous conduct sufficient to support an action for intentional infliction of emotional distress, no contemporaneous physical injury or impact is required. *Knierim v. Izzo*, 22 Ill. 2d 73, 84-87 (1961); *Public Finance Corp. v. Davis*, 66 Ill. 2d 85, 94 (1977).

651 So. 2d at 676. Here, Plaintiff's son died unexpectedly and was not found for two days, resulting in the need to put his body in the Ziegler case, a container used for severely decomposed bodies. (R. C602) (A. 41). Asking the jury to separate out Plaintiff's grief arising from her son's death, the delay in discovering the death, and the decomposed state of his body from the grief allegedly arising from the misidentification that led to his cremation would be a herculean, if not an impossible task for any judge or juror.

3. Expanding liability to negligent interference cases would open Illinois courts to a proliferation of emotional distress claims.

Allowing an Illinois action for interference with the right to possess a corpse to proceed on allegations of mere negligence would, as the Florida court concluded, be "too far reaching in a modern society" and potentially give rise to uncabined emotional distress claims for a myriad of perceived slights and wrongs with respect to the handling of corpses. *Gonzalez*, 651 So. 2d at 676.

Indeed, the Restatement (Second) of Torts § 868 sets forth a slew of examples of the kinds of claims that can arise under a mere negligence standard, including autopsy issues, disinterment matters, communication errors or delays concerning the death or funeral arrangements, unsatisfactory embalming results, transportation mistakes or delays, burial plot errors and even collisions with a hearse. (A. 52-53). Potential defendants include *inter alia* embalmers, pathologists, coroners, doctors, undertakers, medical examiners, funeral directors, shipping clerks, communication and transportation companies, hospitals and

hospital personnel, hearse drivers, other vehicle drivers, grave preparers, morgue attendants and, as here, security personnel. (A. 52-53).

A more in-depth review of the cases – some allowing recovery and some not – further shows the “far reaching” types of negligence claims that might be pursued. *E.g.*, *Johnson v. State of New York*, 334 N.E. 2d 590, 591-92 (N.Y. 1975) (mistaken death announcement); *Contreras v. Michelotti-Sawyers, and Nordquist Mortuary, Inc.*, 896 P.2d 1118 (Mont. 1995) (small leak of embalming fluid into casket); *Justice v. SCI Georgia Funeral Services, Inc.*, 765 S.E. 2d 778 (Ga. App. 2014) (inadvertent delay in delivering urn containing decedent’s ashes); *Brown v. Bayview Crematory, LLC*, 945 N.E. 2d 990 (Mass. App. 2011) (mislabeling of ashes urn); *Courtney v. St. Joseph Hospital*, 149 Ill. App. 3d 397 (1986) (failure of hospital morgue’s refrigeration unit); *Chisum v. Behrens*, 283 N.W. 2d 235 (S. D. 1979) (wet spot on embalmed body); *Del Core v. Mohican Historic Housing Associates*, 81 Conn. App. 120, 837 A.2d 902 (Conn. App. 2004) (delay in death notice).

This Court has found such a potential “flood” of previously non-existent litigation to be a sound reason to limit the expansion of duty in other analogous contexts. *See, e.g.*, *Karas v. Strevell*, 227 Ill. 2d 440, 453 (2008) (refusing to extend the willful and wanton contact sport liability exception to negligent conduct, noting the “surfeit of lawsuits” that could follow); *Wakulich v. Mraz*, 203 Ill. 2d 223, 235 (2003) (refusing to impose social host liability for alcohol related accidents and injuries that would “open up a ‘Pandora’s box’ of unlimited

liability”); *Kirk v. Michael Reese Hosp. and Med. Ctr.*, 117 Ill. 2d 507, 532 (1987) (refusing to expand a physician’s duty to include non-patients). *See also*, *University of Chicago Hospitals v. United Parcel Service*, 231 Ill. App. 3d 602, 606 (1st Dist. 1992) (refusing to recognize an action for negligent misrepresentation); *Waugh v. Morgan Stanley and Co., Inc.*, 2012 IL App (1st) 102653, ¶¶ 40-41 (refusing to recognize a claim for educational malpractice); *Ross v. Creighton University*, 957 F.2d 410, 414-15 (7th Cir. 1992) (same).

In *Brogan v. Mitchell International, Inc.*, 181 Ill. 2d 178, 184-85 (1998), this Court expressed similar concerns in the context of a claim for emotional distress allegedly arising from the separate tort of negligent misrepresentation. The *Brogan* Court refused to recognize a duty to avoid negligent misrepresentations that cause only emotional harm, noting the potential adverse societal effect of that type of litigation. *Id.* at 185.

E. The Illinois Legislature Has Provided a Remedy in Cases Like This.

The Fourth District’s holding, setting aside over 100 years of Illinois precedent, was not necessary to afford the Plaintiff a recovery in this case. Even absent willful and wanton conduct, the Illinois legislature has provided a remedy in cremation cases by enacting the Crematory Regulation Act, 410 ILCS 18/1 *et seq.* Under this Act, no person’s remains may be cremated until the crematorium complies with various requirements to determine that the remains are properly

identified and that the cremation is properly authorized. 410 ILCS 18/20. (A. 47-49).

In *Rekosh v. Parks*, 316 Ill. App. 3d 58 (2d Dist. 2000), the appellate court held that even though the defendant cemetery cremated the decedent's body relying on an incomplete and deficient cremation authorization form, its conduct did not equate to willful and wanton conduct; therefore the cemetery could not be liable for interference with the plaintiff's right to possess the decedent's body. *Id.* at 777. Nevertheless, the *Rekosh* Court held that the cemetery could be held liable for plaintiff's emotional distress under the Crematory Regulation Act because that Act "clearly and unambiguously creates a private right of action" without any requirement of willful and wanton conduct. *Id.* at 778.

Thus, by enacting the Crematory Regulation Act, the Illinois legislature has determined the appropriate exception to the willful and wanton requirement in cases like this. Plaintiff appropriately sued Butler Funeral Home for a violation of the Act (R. C8-10) (A. 26-28). Butler Funeral Home ultimately settled the statutory claim. (R. C661). Accordingly, there is no need for this Court to create a further exception and allow mere negligence claims against other entities, such as Securitas, which had no knowledge of or involvement in Butler Funeral Home's decision to cremate Mr. Cochran's body.

In short, the instant Plaintiff successfully pursued the remedy that the legislature provided. There is no compelling need or reason to expand the law in this area any further than the legislature has already done. *See Wakulich*, 203 Ill.

2d at 236-37, noting that the members of the General Assembly were “best able” to determine the extent of the civil liability at issue in that case. Likewise, the General Assembly has determined that absent willful and wanton conduct, liability for a negligent cremation should properly fall on the entity that cremated the body without proper authority to do so. That result has been achieved here.

F. Given that the Circuit Court Properly Dismissed Plaintiff’s Third Amended Complaint Under 2-615, There is No Need for This Court to Consider Securitas’ 2-619 Motion to Dismiss.

Plaintiff’s motion to dismiss was a combined 2-615 and 2-619 motion expressly permitted by 735 ILCS 5/2-619.1. (R. C616-58). The Circuit Court granted both motions (R. C723-24) (A. 17-18). The Appellate Court held that the 2-619 motion should have been denied because the materials filed in support of the motion were not accompanied by an appropriate affidavit as required by Supreme Court Rule 191(a) and that the 2-619 motion was essentially duplicative of the 2-615 motion because it challenged the sufficiency of the Third Amended Complaint. (Opinion, ¶¶ 22-24) (A. 7-8).

The Appellate Court noted that Plaintiff had made no objection below to the absence of a Rule 191(a) supporting affidavit, but chose to ignore the forfeiture “in the interest of maintaining a uniform body of precedent.” (Opinion, ¶ 22) (A. 7). Ironically, the “body of precedent,” particularly in the Fourth District, is that, absent compelling circumstances, a failure to object to a moving party’s non-compliance with Rule 191(a) is binding and cannot be raised subsequently even in a motion to reconsider in the circuit court. *Vantage Hospitality Group, Inc. v. Q*

Ill Development, LLC, 2016 IL App (4th) 160271, ¶¶ 38-58 and cases cited therein.

In any event, because the circuit court's order dismissing the Third Amended Complaint under 2-615 can and should be affirmed on the ground that the Third Amended Complaint failed to allege willful and wanton conduct on the part of Securitas, a failure which the Appellate Court recognized, (Opinion, ¶ 34) (A. 9), there is no need for this Court to address the 2-619 motion. *Northern Trust Co. v. VIII South Michigan Associates*, 276 Ill. App. 3d 355, 369 (1st Dist. 1995); *Pechan v. Dynapro, Inc.*, 251 Ill. App. 3d 1072, 1086 (2d Dist. 1993). If the 2-619 motion is considered together with the materials submitted in support thereof in accordance with the Fourth District's decision in *Vantage Hospitality Group*, the circuit court's order dismissing the Third Amended Complaint under 2-619 should be affirmed as well.

CONCLUSION

For the reasons stated herein, Securitas respectfully requests that this Court reverse the Appellate Court's judgment and affirm the Circuit Court's order dismissing the Third Amended Complaint against Securitas.

Respectfully submitted,

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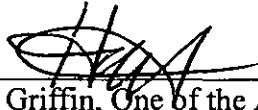
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Supreme Court Rule 341 (c) Certification of Compliance

Pursuant to Supreme Court Rule 341(c), I certify that this Brief conforms to the requirements of Rules 341(a) and (b). The length of this Brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and the matters contained in the Appendix is 19 pages.

Respectfully submitted,

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APPENDIX

APPENDIX

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Reversed and remanded.

KeyCite Yellow Flag - Negative Treatment
Appeal Allowed by Cochran v. Securitas Security Services USA, Inc.,
Ill., November 23, 2016

2016 IL App (4th) 150791
Appellate Court of Illinois,
Fourth District.

Donna COCHRAN, Plaintiff–Appellant,
v.
SECURITAS SECURITY SERVICES
USA, INC., Defendant–Appellee.

No. 4–15–0791.

Aug. 3, 2016.

Synopsis

Background: Decedent's mother filed amended complaint against provider of security services for morgue for wrongful interference with mother's right to possession of decedent's body. The Circuit Court, Sangamon County, Peter C. Cavanaugh, J., granted provider's motion to dismiss, and mother appealed.

Holdings: The Appellate Court, Harris, J., held that:

[1] documents attached to motion to dismiss based upon certain defects or defenses were not properly before court;

[2] rule governing motion to dismiss complaint when motion admitted legal sufficiency of plaintiff's complaint and required assertion of affirmative defense did not apply to provider's motion;

[3] tort of negligent interference with rights of decedent's next of kin to possession of decedent's body for disposition, by burial or otherwise, did not require proof of willful and wanton conduct;

[4] mother's allegations stated claim for wrongful interference with her right to possession of decedent's body; and

[5] mother's adequately alleged that provider's negligence was proximate cause of mother's injuries.

West Headnotes (21)

[1] Appeal and Error

⚡ Sufficiency and scope of motion

Decedent's mother waived claim on appeal from dismissal of complaint for wrongful interference with her right to possession of decedent's remains that motion to dismiss filed by morgue's provider of security services was not supported by affidavits, where she did not raise claim before trial court. S.H.A. 735 ILCS 5/2–619(a); Sup.Ct.Rules, Rule 191(a).

Cases that cite this headnote

[2] Pretrial Procedure

⚡ Affidavits or other showing of merit

Documents attached to motion to dismiss based upon certain defects or defenses filed by provider of security services for morgue were not properly before court, in action against morgue for wrongful interference with mother's right to possession of son's remains, where no affirmative matter warranting dismissal of mother's claim was asserted in complaint, and motion was not supported by any affidavits. S.H.A. 735 ILCS 5/2–619(a); Sup.Ct.Rules, Rule 191(a).

Cases that cite this headnote

[3] Pretrial Procedure

⚡ Affidavits or other showing of merit

Strict compliance with the rule setting forth the requirements for affidavits submitted in connection with a motion to dismiss based upon certain defects or defenses is required to insure the trial court is presented with valid evidentiary facts on which to base a decision. S.H.A. 735 ILCS 5/2–619(a); Sup.Ct.Rules, Rule 191(a).

Cases that cite this headnote

- [4] **Evidence**
 ↔ Necessity in General
Basic rules of evidence require a party to lay the proper foundation for the introduction of documentary evidence, including its authenticity.

Cases that cite this headnote
- [5] **Pretrial Procedure**
 ↔ Affirmative Defenses, Raising by Motion to Dismiss
Pretrial Procedure
 ↔ Particular admissions
Rule governing motion to dismiss complaint when motion admitted legal sufficiency of plaintiff's complaint and required assertion of affirmative defense did not apply to motion to dismiss complaint against provider of security services for morgue for wrongful interference with mother's right to possession of her son's remains, where provider did not identify any affirmative matter that would defeat mother's claim, and provider argued that underlying facts were insufficient to state claim. S.H.A. 735 ILCS 5/2-619(a).

Cases that cite this headnote
- [6] **Negligence**
 ↔ Willful or wanton conduct
Negligence
 ↔ Heightened degrees and intentional acts
No separate and independent tort of willful and wanton conduct exists in Illinois, and, instead, it is viewed as an aggravated form of negligence; thus, on a claim based on willful and wanton conduct, in addition to alleging facts establishing willful and wanton conduct, a plaintiff must also plead and prove the basic elements of a negligence claim, (1) defendant owed a duty to the plaintiff, (2) defendant breached the duty, and (3) the breach was the proximate cause of the plaintiff's injury.

Cases that cite this headnote
- [7] **Negligence**
 ↔ Heightened degrees of negligence
A plaintiff's failure to set forth factual allegations of willful and wanton conduct when required to do so is fatal to his or her complaint.

Cases that cite this headnote
- [8] **Appeal and Error**
 ↔ Rulings on pleadings
The appellate court may affirm the trial court's dismissal of a plaintiff's complaint on any basis supported by the record.

Cases that cite this headnote
- [9] **Dead Bodies**
 ↔ Right of possession and disposition in general
Dead Bodies
 ↔ Burial
Illinois common law recognizes a right by a decedent's next of kin to possession of the decedent's body to make appropriate disposition thereof, whether by burial or otherwise.

Cases that cite this headnote
- [10] **Dead Bodies**
 ↔ Civil liabilities
Interference with the right of a decedent's next of kin to make appropriate disposition of the decedent's remains, whether by burial or otherwise, is an actionable wrong, and the plaintiff in such a case is entitled to recover damages for mental suffering that is proximately caused by the defendant's conduct.

Cases that cite this headnote
- [11] **Damages**
 ↔ Negligent Infliction of Emotional Distress

Damages

☞ Physical illness, impact, or injury; zone of danger

A plaintiff who is a direct victim of a defendant's negligence may bring a cause of action for negligent infliction of emotional distress without the added requirement of demonstrating a physical injury or impact.

Cases that cite this headnote

[12] Dead Bodies

☞ Civil liabilities

Tort of negligent interference with rights of decedent's next of kin to possession of decedent's body for disposition, by burial or otherwise, did not require proof of willful and wanton conduct by defendant.

Cases that cite this headnote

[13] Courts

☞ Previous Decisions as Controlling or as Precedents

Generally, a Restatement provides guidance to a court but does not become binding authority unless specifically adopted by the Illinois Supreme Court.

Cases that cite this headnote

[14] Dead Bodies

☞ Civil liabilities

Decedent's mother stated a claim against provider of security services for morgue for wrongful interference with her right to possession of decedent's remains, where she alleged that provider's employees were responsible for receiving bodies delivered to morgue, for ensuring security tag was visible on bodies when they arrived and were released from morgue, for maintaining log book to document body's location, and for releasing bodies to funeral homes, that provider failed to follow hospital policy and ensure that decedent's body had visible identification when received or released, or that its location was correctly identified in morgue log book,

and that, as result, provider misidentified decedent's body and mistakenly released it to another family who had decedent's body cremated.

Cases that cite this headnote

[15] Dead Bodies

☞ Civil liabilities

Decedent's mother adequately alleged that negligence of provider of security services for morgue was proximate cause of mother's injuries from decedent's body being released to wrong family, who had body cremated, as required to state claim against provider for wrongful interference with mother's right to possession of decedent's body, where mother alleged that provider's employees violated security policies by failing to ensure that identification tag was visible on decedent's body when it was received and released and by failing to accurately record location of decedent's body in morgue log book, and that provider's noncompliance with security policies caused decedent's body to be misidentified and released to wrong family, resulting in mother's damages.

Cases that cite this headnote

[16] Negligence

☞ Necessity of and relation between factual and legal causation

The term "proximate cause" encompasses two distinct requirements: cause in fact and legal cause.

Cases that cite this headnote

[17] Negligence

☞ Requisites, Definitions and Distinctions

Negligence

☞ In general; degrees of proof

"Cause in fact," as a necessary element of proximate cause, is present when there is a reasonable certainty that a defendant's acts caused the injury or damage.

Cases that cite this headnote

[18] Negligence

↪ Substantial factor

When there are multiple factors that may have combined to cause the plaintiff's injury, in determining whether the defendant's conduct was the "cause in fact" of the plaintiff's injury, as an element of proximate cause, the court asks whether defendant's conduct was a material element and a substantial factor in bringing about the injury.

Cases that cite this headnote

[19] Negligence

↪ Proximity and relation in general

The second requirement of proximate cause, "legal cause," is established only if the defendant's conduct is so closely tied to the plaintiff's injury that he should be held legally responsible for it.

Cases that cite this headnote

[20] Negligence

↪ Foreseeability

The proper inquiry regarding legal cause of a plaintiff's injury, as required to establish proximate cause, involves an assessment of foreseeability, in which the court asks whether the injury is of a type that a reasonable person would see as a likely result of his conduct.

Cases that cite this headnote

[21] Negligence

↪ Proximate Cause

Although proximate cause of a plaintiff's injury is generally a question of fact, the lack of proximate cause may be determined by the court as a matter of law where the facts alleged do not sufficiently demonstrate both cause in fact and legal cause.

Cases that cite this headnote

Attorneys and Law Firms

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Anthony Rutkowski (argued), of Rutkowski Law Group, P.C., Chicago, for appellee.

OPINION

Justice HARRIS delivered the judgment of the court, with opinion.

**944 ¶ 1 Plaintiff, Donna Cochran, brought a cause of action against defendant, Securitas Security Services USA, Inc., alleging interference with her right to possession of the remains of her deceased son, Walter Andrew Cochran (decedent). The trial court granted defendant's motion to dismiss plaintiff's complaint, and she appeals. We reverse and remand for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 The following facts are undisputed. In September 2010, the decedent, then age 39, died at his home in Moultrie County, Illinois. On September 14, 2010, his body was transported to the Moultrie County morgue and then to Memorial Medical Center (Memorial) in Springfield, Illinois, for an autopsy. On September 16, 2010, representatives of Butler Funeral Home (Butler) arrived at Memorial's morgue to obtain the remains of an individual named William Carroll. However, rather than obtaining Carroll's remains, Butler was mistakenly provided with decedent's remains. Decedent's body was then cremated by Butler.

¶ 4 In September 2013, plaintiff, individually and as the independent administrator of decedent's estate, filed a complaint against Memorial, Butler, and defendant—an entity that contracted with Memorial to provide certain security services to the hospital. Plaintiff raised various claims related to the wrongful cremation of decedent, including an "interference with right to possession of

decedent" claim against defendant. In June 2015, plaintiff settled her claims with Memorial and Butler.

¶ 5 Also in June 2015, plaintiff filed a third amended complaint against defendant only. Again, she alleged defendant wrongfully interfered with her right to possession of the decedent's remains. Plaintiff alleged she was decedent's mother and next of kin, and she had the right to possession of her son's body to make an appropriate disposition "by burial or otherwise." She asserted defendant "had a duty not to interfere" with her right to **945 *238 possession of her son's body but violated that duty by failing to follow Memorial's rules and policies regarding the care and handling of deceased individuals.

¶ 6 Specifically, plaintiff alleged defendant's employees "were responsible for receiving, tracking, and releasing bodies processed by [Memorial's] morgue" and had to "conform their conduct with written documents, entitled 'Security Policies.'" She identified the relevant policies as follows:

"12. At all relevant times, Security Policies # 1014 and # 1014-2, titled 'Receiving/Releasing Deceased Persons' were in effect and required that 'The Security officer must also make sure that an identification tag is left visible with/on the body.'

* * *

19. At all relevant times, Paragraph 5 of Security Policy # 1014-2 state[d] that 'A Coroner's Case cannot be released to a funeral home until verbal confirmation to do so has been received from the Memorial Pathologists and the Coroner's office.'

* * *

21. At all relevant times, Paragraph 5 of Security Policy # 1014 state[d] that 'Upon release of a deceased person to a funeral home a Security officer must be present, or must verify the deceased person with the funeral home and with the Nursing Service Print-out before removal from Memorial can take place. Also, before removal the Nursing Service Print-out must be signed by both the Security officer and the funeral home representative. The time and date of pick-up must also be recorded.' "

Plaintiff also alleged defendant's employees "were responsible for maintaining a log book identifying the bodies in the morgue and their location."

¶ 7 According to plaintiff, defendant's employees received decedent's body from the Moultrie County Coroner's office on September 14, 2010, and placed his body in Memorial's morgue. She alleged defendant's employees "did not place an identification tag on [decedent's] body to ensure that a tag was left visible with/on the body when it was received at [Memorial]." Decedent's body was then placed within a Ziegler case, a case used for severely decomposed bodies. Plaintiff alleged defendant's employees failed to place an identification tag on either the Ziegler case containing decedent's body or on the body of decedent. Additionally, she asserted defendant's employees "did not accurately record the location of [decedent's] body in the morgue log book and instead recorded that the body of decedent William Carroll was located in the Ziegler case."

¶ 8 Plaintiff also alleged that on September 16, 2010, defendant's employee's mistakenly transferred possession of decedent's body to Butler and told Butler's representatives that the body transferred was that of William Carroll. She asserted defendant's employees (1) did not have verbal confirmation to release decedent's body to a funeral home; (2) did not verify the identity of the deceased person with Butler or on the "Nursing Service Print-out," sign the "Nursing Service Print-out," or obtain the signature of a Butler representative on the "Nursing Service Print-out"; (3) relied on an erroneous morgue log book entry to determine the identity of the body in the Ziegler case and did not confirm the identity by checking for an identification tag on the body prior to releasing the body to Butler; and (4) did not attempt to make a visual identification of the body in the Ziegler case to ensure that it matched the description of William Carroll.

*239 **946 ¶ 9 Plaintiff alleged defendant breached its duty not to interfere with her possession of decedent's body through the following acts or omissions:

"a. Failed to conform with the provisions of written security policies established by Memorial * * * designed to prevent misidentification of bodies in its morgue;

- b. Failed to keep an accurate morgue log book that correctly stated the location and identity of bodies in the Memorial * * * morgue;
- c. Violated both hospital policy and industry standards by releasing the incorrect body to representatives of a funeral home.
- d. Violated both hospital policy and industry standards by releasing a body that lacked an identification tag to a funeral home;
- e. Released a body to representatives of a funeral home when it knew or should have known the body in its possession did not match the description of the body to be transported;
- f. Relied entirely on an erroneous log book entry to confirm the identity of a body in the morgue in contradiction with security policies and industry standards.
- g. Was otherwise careless and/or reckless in its care and handling of [d]ecedent * * *."

Additionally, plaintiff asserted that as a proximate result of defendant's "wrongful acts and/or omissions" she experienced severe emotional distress and mental suffering, suffered embarrassment and humiliation, and suffered financial loss.

¶ 10 In July 2015, defendant filed a combined motion to dismiss plaintiff's third amended complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2014)), seeking dismissal of the complaint pursuant to both section 2-615 and section 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2014)). It argued dismissal was warranted under section 2-615 because plaintiff (1) failed to allege sufficient facts to show a duty owed by defendant; (2) was required, but failed, to plead sufficient facts to demonstrate willful and wanton conduct by defendant; (3) failed to plead sufficient facts to show that defendant's conduct was a proximate cause of her claimed damages; and (4) failed to plead sufficient facts to support a claim for emotional damages.

¶ 11 Defendant argued dismissal of plaintiff's third amended complaint was warranted under section 2-619 because plaintiff "ignore[d] both the facts known to her and her counsel at the time of the filing of her pleading

in violation of Illinois Supreme Court Rule 137 [(eff. July 1, 2013)] and the pleading requirements of a cause of action for interference with the right to possession of the body of a decedent under Illinois law." It maintained that, as a result, plaintiff "failed to plead a cause of action for interference with the right to possess the body of the [d]ecedent" and "[t]he facts plead [s/c] and the facts known to * * * [p]laintiff at the time of pleading demonstrate that * * * [p]laintiff cannot successfully plead a cause of action against [defendant] for interference with the right to possess the body of the decedent."

¶ 12 In September 2015, the trial court granted defendant's motion to dismiss on the basis that plaintiff failed to, and could not, allege sufficient facts to establish a duty owed by defendant to plaintiff. The court's order stated as follows:

"The Defendant's Motion to Dismiss pursuant to [section 2-615 of the Code (735 ILCS 5/2-615 (West 2014))] is hereby granted with prejudice, this **947 *240 court having found that the Plaintiff has failed to plead sufficient facts to support the allegation of a duty allegedly owed by the Defendant * * * to the Plaintiff * * *."

The Defendant's Motion to Dismiss pursuant to [section 2-619 of the Code (735 ILCS 5/2-619 (West 2014))] is also hereby granted with prejudice, this court having found that there * * * is no set of facts by which the Plaintiff may demonstrate a duty owed on the part of the Defendant * * * to the Plaintiff * * *."

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 A. Motions To Dismiss

¶ 16 On appeal, plaintiff argues the trial court erred in granting defendant's motion to dismiss her third amended complaint. As stated, defendant's motion was filed pursuant to section 2-619.1 of the Code (735 ILCS 5/2-619.1 (West 2014)), which allowed it to seek dismissal of plaintiff's complaint under both section 2-615 and section 2-619 of the Code (735 ILCS 5/2-615, 2-619 (West 2014)).

¶ 17 "A section 2-615 motion to dismiss [citation] challenges the legal sufficiency of a complaint based on defects apparent on its face." *Marshall v. Burger King Corp.*, 222 Ill.2d 422, 429, 305 Ill.Dec. 897, 856 N.E.2d 1048, 1053 (2006). On review, we consider "whether the allegations of the complaint, construed in the light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Henderson Square Condominium Ass'n v. LAB Townhomes, LLC*, 2015 IL 118139, ¶ 61, 399 Ill.Dec. 387, 46 N.E.3d 706. Further, we must take as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Iseberg v. Gross*, 227 Ill.2d 78, 86, 316 Ill.Dec. 211, 879 N.E.2d 278, 284 (2007). "While the plaintiff is not required to set forth evidence in the complaint [citation], the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action [citation], not simply conclusions [citation]." *Marshall*, 222 Ill.2d at 429-30, 305 Ill.Dec. 897, 856 N.E.2d at 1053. "A complaint should be dismissed under section 2-615 only if it is clearly apparent from the pleadings that no set of facts can be proven that would entitle the plaintiff to recover." *In re Estate of Powell*, 2014 IL 115997, ¶ 12, 382 Ill.Dec. 14, 12 N.E.3d 14.

¶ 18 "A section 2-619 motion to dismiss admits the legal sufficiency of the complaint but asserts an affirmative defense or other matter defeating the plaintiff's claim." *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 14, 390 Ill.Dec. 94, 28 N.E.3d 747. "Section 2-619(a)'s purpose is to provide litigants with a method of disposing of issues of law and easily proved issues of fact relating to the affirmative matter early in the litigation." *Hascall v. Williams*, 2013 IL App (4th) 121131, ¶ 16, 375 Ill.Dec. 112, 996 N.E.2d 1168. The supreme court has defined the term "affirmative matter" as follows:

" '[A] type of defense that either negates an alleged cause of action completely or refutes crucial conclusions of law or conclusion of material fact unsupported by allegations of specific fact contained [in] or inferred from the complaint * * * [not] merely evidence upon which defendant expects to contest an ultimate fact stated in the complaint.' " *Smith v. Waukegan Park District*, 231 Ill.2d 111, 121, 324 Ill.Dec. 446, 896 N.E.2d 232, 238 (2008) (quoting 4 Richard A. Michael, Illinois Practice § 41.7, at 332 (1989)).

¶ 19 When ruling on a section 2-619 motion, "a court must interpret the pleadings **948 *241 and supporting

documents in the light most favorable to the nonmoving party." *Henderson*, 2015 IL 118139, ¶ 34, 399 Ill.Dec. 387, 46 N.E.3d 706. "The motion should be granted only if the plaintiff can prove no set of facts that would support a cause of action." *In re Estate of Boyar*, 2013 IL 113655, ¶ 27, 369 Ill.Dec. 534, 986 N.E.2d 1170.

¶ 20 Further, a dismissal pursuant to either section 2-615 or section 2-619 is subject to *de novo* review. *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 29, 390 Ill.Dec. 74, 28 N.E.3d 727. On review, "this court may affirm the trial court's judgment on any basis that is supported by the record." *Stoll v. United Way of Champaign County, Illinois, Inc.*, 378 Ill.App.3d 1048, 1051, 318 Ill.Dec. 344, 883 N.E.2d 575, 578 (2008).

¶ 21 B. Defendant's Attachments

[1] [2] ¶ 22 As a preliminary matter, plaintiff raises an issue with respect to the attachments to defendant's motion to dismiss. She argues that, under section 2-619, defendant was required, but failed, to support its motion with affidavits. Plaintiff also contends that the documents defendant did attach to its motion were not properly before the trial court. As defendant points out, plaintiff forfeited this issue by failing to raise it with the trial court. *Kostopoulos v. Poladian*, 257 Ill.App.3d 95, 97, 195 Ill.Dec. 164, 628 N.E.2d 628, 630 (1993) (stating "a challenge for failure to support a motion to dismiss with affidavits as required by section 2-619 will be deemed waived where the issue is not raised below"). Nevertheless, despite this forfeiture, we will address plaintiff's contention in the interest of maintaining a uniform body of precedent. *Ballinger v. City of Danville*, 2012 IL App (4th) 110637, ¶ 13, 359 Ill.Dec. 273, 966 N.E.2d 594 (noting "the forfeiture rule is an admonition to the parties and does not affect this court's jurisdiction").

[3] [4] ¶ 23 Section 2-619(a) of the Code (735 ILCS 5/2-619(a) (West 2014)) provides that when the alleged grounds for dismissal "do not appear on the face of the pleading attacked the motion shall be supported by affidavit." (We note that Illinois Supreme Court Rule 212(a)(4) (eff. Jan. 1, 2011) allows for the use of a properly taken discovery deposition "for any purpose for which an affidavit may be used," and our discussion herein of affidavits and their use in relation to motions to dismiss applies equally to discovery depositions taken pursuant

to the rules.) Additionally, Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013) sets forth the requirements for affidavits submitted in connection with a section 2-619 motion to dismiss. It requires facts in the affidavit to be set forth with "particularity," and "sworn or certified copies of all documents upon which the affiant relies" must be attached to the affidavit. *Id.* "Strict compliance with Rule 191(a) is required to insure the trial court is presented with valid evidentiary facts on which to base a decision." *Clemons v. Nissan North America, Inc.*, 2013 IL App (4th) 120943, ¶ 36, 375 Ill.Dec. 304, 997 N.E.2d 307. Further, "[b]asic rules of evidence require a party to lay the proper foundation for the introduction of documentary evidence, including its authenticity." *Id.*

¶ 24 Here, defendant filed a motion to dismiss pursuant to section 2-619 without any accompanying affidavits. Where, as here, no affirmative matter warranting dismissal of plaintiff's action appeared on the face of her complaint, defendant was required to support its motion with affidavits. Instead, defendant attached to its motion to dismiss and its reply to plaintiff's response multiple documents, including a security services agreement, documents **949 *242 labeled "Security Policy # 1014" and "Security Policy # 1014-2," computer printouts with the heading "Memorial Health System Security," and forms with handwritten entries regarding decedent and other deceased individuals. None of the aforementioned documents were properly before the trial court. Given defendant's failure to attach any affidavits to its motion to dismiss, we must decline to consider these documents as, even if we were to find them relevant to the pleading issues, they lack the requisite indicia of authenticity.

¶ 25 C. Section 2-619 Dismissal

[5] ¶ 26 In this case, the trial court granted defendant's motion to dismiss under both sections 2-615 and 2-619. Plaintiff argues the court's dismissal under section 2-619 was "duplicative of [its] order pursuant to section 2-615." She points out that the court granted defendant's 2-619 motion on the basis that there was no set of facts by which she could demonstrate a duty owed by defendant and contends "that the consideration of whether [she] stated a claim upon which relief may be granted should be limited to the provisions set forth in [s]ection 2-615." We agree with plaintiff.

¶ 27 As discussed, a section 2-619 motion admits the legal sufficiency of a complaint and requires a defendant to assert some affirmative matter to defeat a plaintiff's claim. Here, not only did defendant's section 2-619 motion improperly challenge the sufficiency of plaintiff's pleadings, the record reflects it failed to identify any affirmative matter that would defeat plaintiff's claim. In its motion, defendant failed to designate the section 2-619 subsection under which it sought dismissal of plaintiff's complaint. Also, aside from improperly challenging the legal sufficiency of plaintiff's third amended complaint, defendant essentially argued that the underlying facts were *insufficient* to support plaintiff's cause of action. Such is not an appropriate basis for dismissal under section 2-619. See *Reynolds v. Jimmy John's Enterprises, LLC*, 2013 IL App (4th) 120139, ¶ 34, 370 Ill.Dec. 628, 988 N.E.2d 984 ("Where a defendant seeks to address the complaint's factual allegations, a summary judgment motion * * * is the proper vehicle."). The trial court's order similarly failed to identify an affirmative matter that defeated plaintiff's claim. Given these circumstances, we find the court erred in dismissing plaintiff's third amended complaint pursuant to section 2-619.

¶ 28 D. Section 2-615 Dismissal

¶ 29 1. Plaintiff's Cause of Action and the Requisite Degree of Care

¶ 30 Next, we address the trial court's dismissal of plaintiff's complaint pursuant to section 2-615 of the Code. Plaintiff contends the trial court erred in finding that she failed to allege sufficient facts to establish a duty owed by defendant. She maintains Illinois law recognizes a right to possession of a decedent's remains by his or her nearest living relatives for burial purposes and, as a result, "a general duty is placed on all individuals not to interfere with this right."

¶ 31 In response, defendant asserts the duty pertaining to a claim arising out of the right to possession of a decedent's remains is the duty to refrain from any willful and wanton interference with that right. Thus, it maintains plaintiff was required to plead more than ordinary negligence and, instead, allege specific facts demonstrating that it acted willfully and wantonly. Defendant argues plaintiff's third amended complaint failed to set forth such facts and, as

a result, was insufficient to state a cause of action and correctly dismissed by the trial court.

*243 [6] **950 ¶ 32 “No separate and independent tort of willful and wanton conduct exists in Illinois,” and, “[i]nstead, it is viewed as an aggravated form of negligence.” *Brooks v. McLean County Unit District No. 5*, 2014 IL App (4th) 130503, ¶ 20, 380 Ill.Dec. 661, 8 N.E.3d 1203. Thus, in addition to alleging facts establishing willful and wanton conduct, a plaintiff must also “plead and prove the basic elements of a negligence claim, *i.e.*, (1) defendant owed a duty to the plaintiff, (2) defendant breached the duty, and (3) the breach was the proximate cause of the plaintiff’s injury.” *Id.*

[7] [8] ¶ 33 A plaintiff’s failure to set forth factual allegations of willful and wanton conduct when required to do so is fatal to his or her complaint. Although, as plaintiff points out, the record fails to reflect that the trial court addressed the requirement of willful and wanton conduct when granting defendant’s motion to dismiss, as stated, this court may affirm the trial court’s dismissal of plaintiff’s third amended complaint on any basis supported by the record. *Stoll*, 378 Ill.App.3d at 1051, 318 Ill.Dec. 344, 883 N.E.2d at 578. Therefore, we consider defendant’s argument that plaintiff was required, but failed, to plead willful and wanton conduct by defendant in connection with her claim for interference with the right to possession of a decedent’s remains.

¶ 34 In responding to defendant’s argument on appeal, plaintiff contends she was not required to plead willful and wanton conduct and, instead, could base her cause of action on alleged negligent conduct by defendant. She asserts that in the context of a violation of her right to possession of her son’s body “the willful and wanton standard is a legal anachronism that is no longer consistent with the current state of the law.” Alternatively, she maintains the factual allegations in her third amended complaint were sufficient to establish willful and wanton conduct by defendant. We agree with plaintiff’s initial contention.

¶ 35 a. Early Common-Law Recognition of the Tort of Interference With the Next of Kin’s Right to Possession of a Decedent’s Remains

[9] [10] ¶ 36 Illinois common law recognizes a right by a decedent’s next of kin to possession of the decedent’s body “to make appropriate disposition thereof, whether by burial or otherwise.” *Leno v. St. Joseph Hospital*, 55 Ill.2d 114, 117, 302 N.E.2d 58, 59–60 (1973). Interference with this right is “an actionable wrong” and the plaintiff in such a case is entitled to recover damages for mental suffering that is proximately caused by the defendant’s conduct. *Mensing v. O’Hara*, 189 Ill.App. 48, 55 (1914) (quoting *Larson v. Chase*, 47 Minn. 307, 50 N.W. 238, 239 (1891)). “That mental suffering and injury to the feelings would be ordinarily the natural and proximate result of knowledge that the remains of a deceased [relative] had been mutilated is too plain to admit of argument.” *Larson*, 50 N.W. at 240. In fact, “[w]ithout the element of mental distress, the action would be impotent of results and of no significance or value as a remedy for the tortious violation of the legal right of possession and preservation.” *Beaulieu v. Great Northern Ry. Co.*, 103 Minn. 47, 114 N.W. 353, 355 (1907). This cause of action has its roots in the early recognition of a quasi-property right in a decedent’s body by his next of kin. *Mensing*, 189 Ill.App. at 53–54; but see Prosser and Keeton on the Law of Torts § 12, at 63 (W. Page Keeton et al. eds., 5th ed. 1984) (“It seems reasonably obvious that such ‘property’ is something evolved out of thin air to meet the occasion, and that in reality the personal feelings of the survivors are being protected, under a fiction likely to deceive no one but a lawyer.”).

*244 **951 ¶ 37 Illinois cases addressing claims arising out of the right to possession of a decedent’s remains have routinely stated that, to successfully state a cause of action, a plaintiff must demonstrate by specific facts that the defendant’s interference was willful and wanton. See *Drakeford v. University of Chicago Hospitals*, 2013 IL App (1st) 111366, ¶ 14, 373 Ill.Dec. 634, 994 N.E.2d 119; *Rekosh v. Parks*, 316 Ill.App.3d 58, 68, 249 Ill.Dec. 161, 735 N.E.2d 765, 774 (2000); *Kelso v. Watson*, 204 Ill.App.3d 727, 731, 150 Ill.Dec. 172, 562 N.E.2d 975, 978 (1990); *Hearon v. City of Chicago*, 157 Ill.App.3d 633, 637, 110 Ill.Dec. 161, 510 N.E.2d 1192, 1195 (1987); *Courtney v. St. Joseph Hospital*, 149 Ill.App.3d 397, 398, 102 Ill.Dec. 810, 500 N.E.2d 703, 704 (1986). Each of the cases stating this proposition refers either directly or indirectly to *Mensing*, 189 Ill.App. 48—a First District case decided in 1914—which defendant contends bars plaintiff from maintaining a cause of action for interference with the right to possession of the decedent’s remains based upon an act of ordinary negligence.

¶ 38 In *Mensing*, the plaintiff brought an action against undertakers who were charged with preparing his deceased wife's remains for burial. *Id.* at 49. He alleged the defendants had " 'wrongfully and unlawfully' " removed his wife's hair, rendering her body " 'unfit to be viewed by the plaintiff and his relatives and friends,' " and, as a result, he " 'suffered greatly, both in mind and in body.' " *Id.* at 49-50. The circuit court dismissed the plaintiff's complaint, and he appealed. *Id.* at 49. In reversing the circuit court, the First District held as follows:

"The decided weight of authority in this country supports the proposition that while a dead body is not considered as property, in the ordinary, technical sense in which that word is usually employed, yet the law does recognize a right, somewhat akin, perhaps, to a property right, arising out of the duty of the nearest relatives of the deceased to bury their dead, which authorizes and requires them to take possession and control of the dead body for the purpose of giving it a decent burial." *Id.* at 53-54.

¶ 39 Examining similar cases from other jurisdictions, the First District in *Mensing* also found that "[t]he greater weight of authority" permitted a cause of action for solely mental suffering based on "any wilful or wanton infringement" of that legal right. *Id.* at 54. It noted that, in several of the cases it relied upon, "doubt [was] expressed as to whether a recovery may be had for mental suffering, alone, in the absence of any allegation or proof of wilful or wanton misconduct," *i.e.*, when only ordinary negligence is alleged. *Id.* at 54-55.

¶ 40 b. Development of the Separate Tort of Negligent Infliction of Emotional Distress

¶ 41 At the time *Mensing* was decided and for many years thereafter, the general rule in Illinois was "that there can be no recovery for negligent infliction of mental distress in the absence of some contemporaneous physical impact." *Carlinville National Bank v. Rhoads*, 63 Ill.App.3d 502, 503, 20 Ill.Dec. 386, 380 N.E.2d 63, 65 (1978) (citing *Braun v. Craven*, 175 Ill. 401, 420, 51 N.E. 657, 664 (1898)). The physical impact limitation was a product of a general reluctance by courts "to allow recovery for purely mental or emotional distress" due to concerns "that the door would be opened for fraudulent claims, that

damages would be difficult to ascertain and measure, that emotional injuries are hardly foreseeable and that frivolous litigation would be encouraged." *Rickey v. *952 *245 Chicago Transit Authority*, 98 Ill.2d 546, 555, 75 Ill.Dec. 211, 457 N.E.2d 1, 5 (1983).

¶ 42 However, the legal landscape has slowly changed, and the law in this state relating to negligent infliction of emotional distress claims has enlarged rather than restricted the circumstances amenable to the filing of such a claim. In 1983, the supreme court issued its decision in *Rickey*, which found a bystander could recover for negligent infliction of emotional distress if he was in the "zone of physical danger" and reasonably feared for his own safety, even in the absence of a contemporaneous physical impact. *Id.* The court noted as follows: "The impact rule was at one time followed in the majority of jurisdictions. Today it is clear that most jurisdictions no longer require contemporaneous physical impact or injury for a cause of action for emotional distress." *Id.* at 553, 75 Ill.Dec. 211, 457 N.E.2d at 4. However, the court in *Rickey* stated a bystander must still "show physical injury or illness as a result of the emotional distress caused by the defendant's negligence." *Id.* at 555, 75 Ill.Dec. 211, 457 N.E.2d at 5.

¶ 43 Several years later, in *Corgan v. Muehling*, 143 Ill.2d 296, 304, 158 Ill.Dec. 489, 574 N.E.2d 602, 605 (1991), the supreme court addressed the *Rickey* "zone-of-physical-danger rule" and pleading requirements in a case involving a direct victim's negligence claim. In that case, the plaintiff brought an action for negligent infliction of emotional distress against her psychologist, alleging he engaged in sexual relations with her during her treatment. *Id.* at 300, 158 Ill.Dec. 489, 574 N.E.2d at 603-04. In finding *Rickey* did not apply to the claim before it, the court noted it had "yet to determine the pleading requirements for a plaintiff who has directly suffered emotional distress due to a [defendant's] negligence." *Id.* at 306, 158 Ill.Dec. 489, 574 N.E.2d at 606.

¶ 44 The supreme court found that the plaintiff was not required to allege physical symptoms of her emotional distress. *Id.* at 312, 158 Ill.Dec. 489, 574 N.E.2d at 609. It relied on its previous holding in *Knerim v. Izzo*, 22 Ill.2d 73, 174 N.E.2d 157 (1961), an intentional infliction of emotional distress case in which it held "a plaintiff need not allege physical injury to recover." *Corgan*, 143 Ill.2d at 311, 158 Ill.Dec. 489, 574 N.E.2d at 609. The court

noted that particular holding was based on the following rationale:

"The stronger emotions when sufficiently aroused do produce symptoms that are visible to the professional eye and we can expect much more help from the men of science in the future. [Citation.] In addition, jurors from their own experience will be able to determine whether * * * conduct results in severe emotional disturbance.'"
 " *Id.* at 311-12, 158 Ill.Dec. 489, 574 N.E.2d at 609 (quoting *Knierim*, 22 Ill.2d at 85, 174 N.E.2d at 164).

The court reasoned that in the 30 years since *Knierim*, it had "not lost its faith in the ability of jurors to fairly determine what is, and is not, emotional distress" and additionally noted that "the women and men of the mental health care field ha[d] made significant improvements in the diagnosis, description and treatment of emotional distress." *Id.* at 312, 158 Ill.Dec. 489, 574 N.E.2d at 609.

[11] ¶ 45 Thus, pursuant to *Corgan*, a plaintiff who is a direct victim of a defendant's negligence may bring a cause of action for negligent infliction of emotional distress without the added requirement of demonstrating a physical injury or impact. See *Pasquale v. Speed Products Engineering*, 166 Ill.2d 337, 346, 211 Ill.Dec. 314, 654 N.E.2d 1365, 1371 (1995) (stating *Corgan* "eliminated the contemporaneous injury or impact requirement for a direct victim's *953 *246 recovery for emotional distress on a theory of negligence").

¶ 46 c. Evolution of the Tort of Interference
 With the Next of Kin's Right to
 Possession of a Decedent's Remains

[12] ¶ 47 The law concerning the specific tort at issue here—interference with the next of kin's right to possession of a decedent's remains—has similarly evolved in the years since *Mensing*. The authors of the 1984 edition of Prosser and Keeton on the Law of Torts (Prosser and Keeton the Law of Torts § 54, at 361-62 (W. Page Keeton et al. eds., 5th ed. 1984)) addressed claims of mental distress caused by a defendant's negligence, stating as follows:

"Where the defendant's negligence causes only mental disturbance, without accompanying physical injury, illness or other physical consequences, and in the absence of some other independent basis for tort

liability, the great majority of courts still hold that in the ordinary case there can be no recovery. * * *

In two special groups of cases, however, there has been some movement to break away from the settled rule and allow recovery for mental disturbance alone. * * * [One] group of cases has involved the negligent mishandling of corpses. Here the traditional rule has denied recovery for mere negligence, without circumstances of aggravation. There are by now, however, a series of cases allowing recovery for negligent embalming, negligent shipment, running over the body, and the like, without such circumstances of aggravation. What all of these cases appear to have in common is an especial likelihood of genuine and serious mental distress, arising from the special circumstances, which serves as a guarantee that the claim is not spurious. * * * Where the guarantee can be found, and the mental distress is undoubtedly real and serious, there may be no good reason to deny recovery."

¶ 48 The evolution of this cause of action is further reflected in the Restatement of Torts. A claim based on the interference with the next of kin's right to possession of a decedent's remains was initially recognized in section 868 of the first Restatement of Torts, which provided: "A person who wantonly mistreats the body of a dead person or who without privilege intentionally removes, withholds or operates upon the dead body is liable to the member of the family of such person who is entitled to the disposition of the body." Restatement of Torts § 868 (1939). The comments to that section reflect that the first Restatement precluded a cause of action based on ordinary negligence:

"A member of the family [citation] of a deceased person who is entitled to the disposition of the body has an action of tort against one who wantonly maltreats or improperly deals with the body of such person. This right exists although there has been no harm except such harm to the feelings as is inseparable from the knowledge of the defendant's conduct. The right to maintain an action for intentional interference with the body exists although there was no intent to do a tortious act, as where a body is misdelivered by the railroad or where a surgeon performs an autopsy mistakenly believing that he is privileged to do so. On the other hand, *there is no right to maintain an action for mere negligence in dealing with the body.* For unintentional harms to the body there is liability only if wantonly

caused.” (Emphasis added.) Restatement of Torts § 868 cmt. a (1939).

¶ 49 Section 868, however, was expanded in the second Restatement, which states as follows:

***247 **954** “One who intentionally, recklessly or negligently removes, withholds, mutilates or operates upon the body of a dead person or prevents its proper interment or cremation is subject to liability to a member of the family of the deceased who is entitled to the disposition of the body.” (Emphases added.) Restatement (Second) of Torts § 868 (1979).

Comment d to that section provides:

“The rule stated in [section 868] applies not only to an intentional interference with the body itself or with its proper burial or cremation, but also to an interference that is reckless or merely negligent. Thus an undertaker who negligently embalms the body, a carrier that negligently transports it or an automobile driver who negligently collides with the hearse and dumps the corpse out into the highway will be subject to liability, if the result is harm to the body or prevention of its proper burial or cremation.” Restatement (Second) of Torts § 868 cmt. d (1979).

[13] ¶ 50 Generally, a Restatement provides guidance to a court but does not become binding authority unless specifically adopted by our supreme court. *In re Estate of Lieberman*, 391 Ill.App.3d 882, 890, 330 Ill.Dec. 893, 909 N.E.2d 915, 922 (2009); see also *Tilschiner v. Spangler*, 409 Ill.App.3d 988, 990, 350 Ill.Dec. 896, 949 N.E.2d 688, 691 (2011). Here, section 868 of the Restatement (Second) of Torts has not been adopted by the supreme court. Nevertheless, it provides persuasive authority for the position asserted by plaintiff—that she may maintain an action based on allegations of negligent interference with her right to possession of her son's body without circumstances of aggravation.

¶ 51 Additionally, we note many other states now permit recovery in cases involving the alleged negligent mishandling of a decedent's body without circumstances of aggravation. See *Hovis v. City of Burns*, 243 Or. 607, 415 P.2d 29, 31 (1966) (*en banc*) (finding an action for mental suffering from an unauthorized infringement of the right to have a decedent's remains undisturbed exists and does not require circumstances of aggravation);

Golston v. Lincoln Cemetery, Inc., 573 S.W.2d 700, 704 (Mo.Ct.App.1978) (Missouri court noting the trend of modern authority was not to apply the physical injury restriction when negligent interference with rights involving dead human bodies is claimed); *Allen v. Jones*, 104 Cal.App.3d 207, 163 Cal.Rptr. 445, 450 (1980) (concluding “damages are recoverable for mental distress without physical injury for negligent mishandling of a corpse by a mortuary”); *Whitehair v. Highland Memory Gardens, Inc.*, 174 W.Va. 458, 327 S.E.2d 438, 443 (1985) (“A cause of action for negligent or intentional mishandling of a dead body does not require a showing of physical injury or pecuniary loss.”); *Carney v. Knollwood Cemetery Ass'n*, 33 Ohio App.3d 31, 514 N.E.2d 430, 433 (1986) (recognizing a cause of action for negligent interference with a dead body without an accompanying physical injury); *Tomasits v. Cochise Memory Gardens, Inc.*, 150 Ariz. 39, 721 P.2d 1166, 1167 (Ct.App.1986) (electing to follow section 868 of the Restatement (Second) of Torts); *Strachan v. John F. Kennedy Memorial Hospital*, 109 N.J. 523, 538 A.2d 346, 353 (1988) (finding the plaintiffs did not have to prove physical injury to recover for emotional distress due to the “the long-recognized exception for negligent handling of a corpse” cases); *Wilson v. Ferguson*, 747 S.W.2d 499, 503 (Tex.App.1988) (Texas court stating that “in cases resulting from the mishandling of a corpse, proof of a physical injury or manifestation is not required”); *Quesada **955 *248 v. Oak Hill Improvement Co.*, 213 Cal.App.3d 596, 261 Cal.Rptr. 769, 777 (1989) (finding close family members of a decedent could recover for the negligent handling of a corpse); *Brown v. Matthews Mortuary, Inc.*, 118 Idaho 830, 801 P.2d 37, 44 (1990) (holding “that an exception to the general rule involving damages for mental distress * * * exists in Idaho for cases involving mishandling of decedents' bodies and remains” and “[a] plaintiff entitled to recover need not manifest any accompanying physical injuries in order to recover for emotional distress in this particular type of case”); *Moresi v. State of Louisiana ex rel. Department of Wildlife & Fisheries*, 567 So.2d 1081, 1095-96 (La.1990) (stating Louisiana has permitted deviations from the general rule against emotional damages for merely negligent conduct in cases involving the mishandling of a corpse); *Contreras v. Michelotti-Savvyers*, 271 Mont. 300, 896 P.2d 1118, 1120-21 (1995) (recognizing the right to damages for negligent infliction of emotional distress resulting from the mishandling of a corpse where serious or severe emotional distress to the plaintiff was the reasonably foreseeable

consequence of the defendant's negligent act or omission); *Lauer v. City of New York*, 95 N.Y.2d 95, 711 N.Y.S.2d 112, 733 N.E.2d 184, 197 (2000) (recognizing that claims involving the negligent mishandling of a corpse are an exception to the rule that requires physical manifestations of negligently caused psychological trauma); *Guth v. Freeland*, 96 Hawai'i 147, 28 P.3d 982, 988 (2001) (holding plaintiffs who have not suffered physical injury may recover damages for emotional distress that arises from the negligent mishandling of a corpse); *Kelly v. Brigham & Women's Hospital*, 51 Mass.App.Ct. 297, 745 N.E.2d 969, 978 (2001) (holding the plaintiff's allegation of emotional distress in a wrongful autopsy case "was sufficient to withstand the motion for summary judgment, notwithstanding her limited evidence of accompanying physical harm and the absence of corroborative evidence"); *Blackwell v. Dykes Funeral Homes, Inc.*, 771 N.E.2d 692, 697 (Ind.Ct.App.2002) (Indiana court holding the plaintiffs could proceed on a claim for negligent infliction of emotional distress based on allegations that the defendant lost their deceased loved one's remains, despite no physical impact); *Del Core v. Mohican Historic Housing Associates*, 81 81 Conn.App. 120, 837 A.2d 902, 905 (C2004) (recognizing "a claim for negligent interference with the right of a family member to control the proper burial of a deceased"); *Crawford v. J. Avery Bryan Funeral Home, Inc.*, 253 S.W.3d 149, 159–60 (Tenn.Ct.App.2007) (stating that, "in Tennessee, any tort claims for negligent, reckless or intentional interference with a dead body and the like can be brought only by the person or persons who have the right to control disposition of the body"); *Vasquez v. State*, 220 Ariz. 304, 206 P.3d 753, 765 n. 10 (Ct.App.2008) (noting the requirement of bodily injury did not apply to the plaintiff's claim for wrongful handling of a dead body under section 868 of the Restatement (Second) of Torts); *Boorman v. Nevada Memorial Cremation Society, Inc.*, 126 Nev. 301, 236 P.3d 4, 8 (2010) (stating a plaintiff alleging emotional distress from the negligent mishandling of a decedent's remains does "not need to observe or perceive the negligent conduct, or demonstrate any physical manifestation of emotional distress"); *Brown v. Bayview Crematory, LLC*, 79 Mass.App.Ct. 337, 945 N.E.2d 990, 994 (2011) (holding "Massachusetts law permits recovery for emotional distress or psychological harm as a result of negligence where there is 'enough objective evidence of harm to convince a judge that their claims present a sufficient likelihood of genuineness to go to trial' ");

****956 *249** *Keaton v. G.C. Williams Funeral Home,*

Inc., 436 S.W.3d 538, 543 (Ky.Ct.App.2013) (noting the Kentucky supreme court abandoned the "impact rule" and cases involving the wrongful mishandling of a corpse "should be analyzed and decided under general negligence principles").

¶ 52 We find that, although courts have traditionally been reluctant to allow negligence actions where only emotional damages are claimed, the more modern view supports the position taken by plaintiff in the instant case and recognizes an ordinary negligence cause of action arising out of the next of kin's right to possession of a decedent's remains. As noted, there are several Illinois appellate court cases that set forth willful and wanton conduct as a required element of such a claim (*Drakeford, Rekosh, Kelso, Hearon, and Courtney*); however, each of those cases relies either directly or indirectly on *Mensing* when stating that proposition. Thus, they do not take into account the evolution of the law in this area and fail to persuade us to accept defendant's argument that circumstances of aggravation are necessary.

¶ 53 In this case, plaintiff's request that we recognize a negligence cause of action is amply supported by the authorities cited above. The cases cited by defendant provide no logical basis for rejecting that request. Accordingly, we find a cause of action exists for negligent interference with the right to possession of a decedent's body by the next of kin, without circumstances of aggravation, *i.e.*, allegations establishing willful and wanton conduct by the defendant.

¶ 54 d. Plaintiff's Allegations

[14] ¶ 55 In her third amended complaint, plaintiff alleged facts showing that defendant's employees were responsible for receiving bodies delivered to Memorial's morgue, ensuring a security tag was visible on bodies when they arrived and were released from the morgue, maintaining a log book to document each body's location, and releasing bodies to funeral homes. Plaintiff alleged defendant failed to follow hospital policy and ensure that decedent's body had visible identification when received or released, or that its location was correctly identified in Memorial's morgue log book. She alleged that, as a result, defendant's employees misidentified decedent's body and mistakenly released it to Butler. Accepting the factual allegations of

the third amended complaint as true, we find plaintiff sufficiently alleged negligent conduct by defendant.

¶ 56 2. *Proximate Cause*

[15] [16] [17] [18] ¶ 57 Finally, on appeal, defendant also argues plaintiff failed to sufficiently plead proximate cause. "The term 'proximate cause' encompasses two distinct requirements: cause in fact and legal cause." *Young v. Bryco Arms*, 213 Ill.2d 433, 446, 290 Ill.Dec. 504, 821 N.E.2d 1078, 1085 (2004). "The first requirement, cause in fact, is present 'when there is a reasonable certainty that a defendant's acts caused the injury or damage.'" *Id.* (quoting *Lee v. Chicago Transit Authority*, 152 Ill.2d 432, 455, 178 Ill.Dec. 699, 605 N.E.2d 493, 502 (1992)). "[W]hen * * * there are multiple factors that may have combined to cause the injury, we ask whether defendant's conduct was a material element and a substantial factor in bringing about the injury." *Id.* at 446, 290 Ill.Dec. 504, 821 N.E.2d at 1086.

[19] [20] [21] ¶ 58 "The second requirement, legal cause, is established only if the defendant's conduct is 'so closely tied to the plaintiff's injury that he should be held legally responsible for it.'" [Citation.] *Id.* "The proper inquiry regarding legal cause involves an assessment of foreseeability, in which we ask whether the injury is of a type that a reasonable person would see as a likely result of his conduct." *250 **957 *Id.* at 446-47, 290 Ill.Dec. 504, 821 N.E.2d at 1086. "Although proximate cause is generally a question of fact [citation], the lack of proximate cause may be determined by the court as a matter of law where the facts alleged do not sufficiently demonstrate both cause in fact and legal cause." *Id.* at 447, 290 Ill.Dec. 504, 821 N.E.2d at 1086.

¶ 59 Again, in this case, plaintiff alleged defendant's employees were responsible for receiving, tracking, and releasing bodies at Memorial's morgue. She asserted defendant's employees had to follow security policies that required them to ensure that a security tag was visible on a body when it was received and released. Plaintiff further alleged defendant was required to maintain a log book showing a body's location in the morgue. According to plaintiff, defendant's employees received decedent's body, placed decedent's body in Memorial's morgue, and mistakenly released decedent's body to Butler. She alleged defendant's employees violated security policies by failing

to ensure an identification tag was visible on decedent's body when it was received and released and they failed to accurately record the location of decedent's body in the morgue log book. Plaintiff asserted defendant's employees released the wrong body to Butler and she suffered damages that were a proximate result of defendant's actions.

¶ 60 Taking all well-pleaded facts and reasonable inferences to be drawn from those facts as true and viewing them in a light most favorable to plaintiff, we find plaintiff's complaint alleged sufficient facts to demonstrate proximate cause. First, her factual allegations were sufficient to show that defendant's failure to follow security policies played a substantial role in the release of decedent's body to Butler, as they indicated defendant's actions caused decedent's body to be misidentified. Second, under the facts alleged, it was foreseeable that the failure to follow security procedures regarding the handling of deceased individuals in Memorial's morgue could result in the misidentification of a decedent's remains and, in turn, the wrongful disposition of those remains and emotional harm to a decedent's next of kin.

¶ 61 In this case, we find plaintiff alleged sufficient facts in her third amended complaint to state a cause of action against defendant for interference with her right to possession of her deceased son's remains. As a result, the trial court erred in granting defendant's motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Code.

¶ 62 III. CONCLUSION

¶ 63 For the reasons stated, we reverse the trial court's judgment and remand for further proceedings.

¶ 64 Reversed and remanded.

Justices HOLDER WHITE and APPLETON concurred in the judgment and opinion.

All Citations

2016 IL App (4th) 150791, 59 N.E.3d 234, 405 Ill.Dec. 941

End of Document

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Negative Treatment

Negative Direct History

The KeyCited document has been negatively impacted in the following ways by events or decisions in the same litigation or proceedings:

1. Cochran v. Securitas Sec. Services USA, Inc. **KEYCITED**

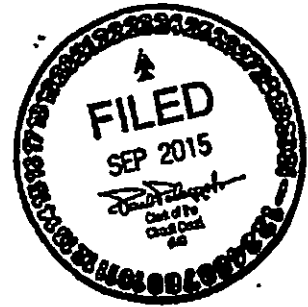
2016 IL App (4th) 150,791 , Ill.App. 4 Dist. , Aug. 03, 2016

Appeal Allowed by

2. Cochran v. Securitas Security Services USA, Inc. **MOST NEGATIVE**

65 N.E.3d 840 , Ill. , Nov. 23, 2016

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SANGAMON



DONNA COCHRAN, and
DONNA COCHRAN, as Independent
Administrator of the Estate of
WALTER ANDREW COCHRAN,

Plaintiffs,

v.

SECURITAS SECURITY SERVICES
USA, INC.

Defendant

Case No. 2012 L 000245

ORDER

This matter coming to be heard on the Defendant, Securitas Security Services USA, Inc.'s Motion to Dismiss the Plaintiff's Third Amended Complaint pursuant to 735 ILCS 5/2-619.1, due notice having been given and the court having entertained oral argument from the parties, it is hereby ordered:

The Defendant's Motion to Dismiss pursuant to 735 ILCS 5/2-615 is hereby granted with prejudice, this court having found that the Plaintiff has failed to plead sufficient facts to support the allegation of a duty allegedly owed by the Defendant, Securitas Security Services USA, Inc. to the Plaintiff, Donna Cochran.

The Defendant's Motion to Dismiss pursuant to 735 ILCS 5/2-619 is also hereby granted with prejudice, this court having found that there are no set of facts by which the Plaintiff may demonstrate a duty owed on the part of the Defendant, Securitas Security Services USA, Inc. to the Plaintiff, Donna Cochran.

Based upon the foregoing, this matter is hereby dismissed with prejudice and without costs to either party, each party to bear their own costs. This court also finds that this is a final and appealable order and that there is no just reason to delay the enforcement of this order.



Circuit Judge Peter C. Cavanagh

9-23-15

Entered

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT OF ILLINOIS
SANGAMON COUNTY

FILED

DONNA COCHRAN,

Plaintiff-Appellant,


v.

SECURITAS SECURITY SERVICES
USA, INC.,

Defendant-Appellee.

OCT 07 2015

20

Case No. 2012 - L - 000248  Clerk of the
Circuit Court

Honorable Peter C. Cavanaugh,
Judge Presiding

NOTICE OF APPEAL

Plaintiff DONNA COCHRAN, by her attorneys, and pursuant to Supreme Court Rules 301 and 303, appeals to the Appellate Court of the State of Illinois, Fourth Judicial District, from the trial court order entered against her on September 23, 2015, granting Defendant's Motion to Dismiss pursuant to 735 ILCS 5/2-615 and 619.

By this appeal the plaintiff will ask the appellate court to vacate the order entered by the trial court and to remand this matter back to the trial court for further proceedings.

DATE: October 5, 2015

DONNA COCHRAN,
Plaintiff-Appellate

By: 

David V. Dorris

By: 

Amelia S. Buragas

David V. Dorris, #06624289
Dorris Law Firm, P.C.
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Bloomington, IL 61701
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(11/26/15) C: 00725

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SANGAMON

FILED

SEP 13 2012 CIV.-1

Anthony P. Kelly Clerk of the
Circuit Court

DONNA COCHRAN, and
DONNA COCHRAN, as Independent
Administrator of the ESTATE OF
WALTER ANDREW COCHRAN,

Plaintiffs,

v.

Case No. 12-L-_____

SECURITAS SECURITY SERVICES
USA, INC., BUTLER FUNERAL
HOMES & CREMATION TRIBUTE
CENTER, P.C., d/b/a BUTLER FUNERAL
HOME, and MEMORIAL MEDICAL
CENTER,

Defendants.

2012L 000245

COMPLAINT

COUNT I

**Defendant SECURITAS SECURITY SERVICES USA, INC.
(Interference with Right to Possession of Decedent)**

Plaintiff DONNA COCHRAN, through her attorneys Dorris Law Firm, P.C., complains
against Defendant SECURITAS SECURITY SERVICES USA, INC. as follows:

1. Decedent WALTER ANDREW COCHRAN was born on September 3, 1971.
2. On or about September 12, 2010, Decedent WALTER ANDREW COCHRAN
died in his home in Moultrie County, Illinois, at the age of 39.
3. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's
body was discovered by family members.

4. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to MEMORIAL MEDICAL CENTER located in Springfield, Illinois, for an autopsy.

5. On or about September 16, 2010, Defendant SECURITAS SECURITY SERVICES USA, INC. was hired to handle and transport a body at and from MEMORIAL MEDICAL CENTER to BUTLER FUNERAL HOME for cremation.

6. Upon information and belief, the body to be transported to BUTLER FUNERAL HOME for cremation was the severely decomposed body of an 80-year-old man.

7. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN's body was transported by agents and/or employees of Defendant SECURITAS SECURITY SERVICES USA, INC. to Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.

8. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN's body was cremated by Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.

9. At all relevant times, Plaintiff DONNA COCHRAN was the mother and next of kin of Decedent WALTER ANDREW COCHRAN.

10. At all relevant times, Plaintiff DONNA COCHRAN desired that an autopsy be performed on Decedent WALTER ANDREW COCHRAN to determine his cause of death.

11. Because the body of Decedent WALTER ANDREW COCHRAN was cremated on or about September 16, 2010, no autopsy was performed on the body and his cause of death was not determined.

12. Plaintiff DONNA COCHRAN did not authorize the cremation of the body of Decedent WALTER ANDREW COCHRAN.

13. At all relevant times, Plaintiff DONNA COCHRAN had a right of possession of Decedent WALTER ANDREW COCHRAN's body in order to make appropriate disposition thereof, whether by burial or otherwise.

14. At all relevant times, Defendant SECURITAS SECURITY SERVICES USA, INC., had a duty not to interfere with Plaintiff DONNA COCHRAN's right to possession of Decedent WALTER ANDREW COCHRAN's body.

15. Notwithstanding this duty, Defendant SECURITAS SECURITY SERVICES USA, INC., by and through its employees, agents and/or apparent agents, violated this duty through the following willful and wanton acts and/or omissions:

- a. Wrongfully transported the body of Decedent WALTER ANDREW COCHRAN to BUTLER FUNERAL HOME for cremation without authority to do so;
- b. Failed to verify the identity of the body it transported to BUTLER FUNERAL HOME for cremation;
- c. Failed to inspect the body to insure that the physical characteristics of the body matched the description of the body to be transported to BUTLER FUNERAL HOME for cremation;
- d. Was otherwise negligent in its care and handling of Decedent WALTER ANDREW COCHRAN.

16. As a proximate result of the negligent acts of Defendant SECURITAS SECURITY SERVICES USA, INC., Plaintiff DONNA COCHRAN has experienced severe emotional distress and mental suffering and will continue to experience severe emotional distress and mental suffering in the future, has suffered financial loss, and has suffered embarrassment and humiliation and will continue to suffer embarrassment and humiliation in the future.

17. Defendant SECURITAS SECURITY SERVICES USA, INC. knew or should have known that its negligence would cause severe emotional distress, mental suffering and financial loss to the next of kin of Decedent WALTER ANDREW COCHRAN.

WHEREFORE, Plaintiff DONNA COCHRAN requests damages against Defendant SECURITAS SECURITY SERVICES USA, INC. in a sum greater than \$50,000 and costs of suit, and demands a trial by jury.

COUNT II

**Defendant BUTLER FUNERAL HOMES & CREMATION
TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME
(Interference with Right to Possession of Decedent)**

Plaintiff DONNA COCHRAN, through her attorneys Dorris Law Firm, P.C. complains against Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME as follows:

18. Decedent WALTER ANDREW COCHRAN was born on September 3, 1971.
19. On or about September 12, 2010, Decedent WALTER ANDREW COCHRAN died in his home in Moultrie County, Illinois at the age of 39.
20. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was discovered by family members.
21. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to MEMORIAL MEDICAL CENTER located in Springfield, Illinois, for an autopsy.
22. On or about September 16, 2010, Defendant SECURITAS SECURITY SERVICES USA, INC. was hired to handle and transport a body at and from MEMORIAL MEDICAL CENTER to BUTLER FUNERAL HOME for cremation.

23. On or about September 16, 2010, Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME, was to receive a body from MEMORIAL MEDICAL CENTER for cremation.

24. Upon information and belief, the body to be transported to BUTLER FUNERAL HOME for cremation was the severely decomposed body of an 80-year-old man.

25. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.

26. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN'S body was cremated by Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.

27. At all relevant times, Plaintiff DONNA COCHRAN was the mother and next of kin of Decedent WALTER ANDREW COCHRAN.

28. At all relevant times, Plaintiff DONNA COCHRAN desired that an autopsy be performed on Decedent WALTER ANDREW COCHRAN to determine his cause of death.

29. Because the body of Decedent WALTER ANDREW COCHRAN was cremated on or about September 16, 2010, no autopsy was performed on the body and his cause of death was not determined.

30. Plaintiff DONNA COCHRAN did not authorize the cremation of the body of Decedent WALTER ANDREW COCHRAN.

31. At all relevant times, Plaintiff DONNA COCHRAN had a right of possession of Decedent WALTER ANDREW COCHRAN's body in order to make appropriate disposition thereof, whether by burial or otherwise.

32. At all relevant times, Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME, had a duty not to interfere with Plaintiff DONNA COCHRAN's right to possession of Decedent WALTER ANDREW COCHRAN's body.

33. Notwithstanding this duty, Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME, by and through its employees, agents and/or apparent agents, committed the following willful and wanton acts or omissions:

- a. Wrongfully received the body of Decedent WALTER ANDREW COCHRAN to BUTLER FUNERAL HOME for cremation without authority to do so;
- b. Failed to verify the identity of the body it received for cremation;
- c. Failed to inspect the body to insure that the physical characteristics of the body in its possession matched the description of the body to be cremated;
- d. Failed to obtain the permission of Decedent WALTER ANDREW COCHRAN's next of kin to cremate the Decedent's body;
- e. Failed to comply with the requirements set forth in the Crematory Regulatory Act, 410 ILCS 18/20, which requires a full and complete cremation authorization form prior to cremation of human remains.

34. As a proximate result of the negligent acts of Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME, Plaintiff DONNA COCHRAN has experienced severe emotional distress and mental suffering and will continue to experience severe emotional distress and mental suffering in the future, has suffered financial loss, has suffered embarrassment and humiliation and will continue to suffer embarrassment and humiliation in the future.

35. Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME, knew or should have known that its negligence would cause severe emotional distress, mental suffering and financial loss to the next of kin of Decedent WALTER ANDREW COCHRAN.

WHEREFORE, Plaintiff DONNA COCHRAN requests damages against Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME, in a sum greater than \$50,000 and costs of suit, and demands a trial by jury.

COUNT III
Defendant BUTLER FUNERAL HOMES & CREMATION
TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME
(Violation of Crematory Act)

Plaintiff DONNA COCHRAN, through her attorneys Dorris Law Firm, P.C. complains against Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME as follows:

36. Decedent WALTER ANDREW COCHRAN was born on September 3, 1971.

37. On or about September 12, 2010, Decedent WALTER ANDREW COCHRAN died in his home in Moultrie County, Illinois at the age of 39.

38. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was discovered by family members.

39. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to MEMORIAL MEDICAL CENTER located in Springfield, Illinois, for an autopsy.

40. On or about September 16, 2010, Defendant SECURITAS SECURITY SERVICES USA, INC. was hired to handle and transport a body at and from MEMORIAL MEDICAL CENTER to BUTLER FUNERAL HOME for cremation.

41. Upon information and belief, the body to be transported to BUTLER FUNERAL HOME for cremation was the severely decomposed body of an 80-year-old man.

42. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN's body was transported by agents and/or employees of Defendant SECURITAS SECURITY SERVICES USA, INC. to Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.

43. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN'S body was cremated by Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.

44. At all relevant times, Plaintiff DONNA COCHRAN was the mother and next of kin of Decedent WALTER ANDREW COCHRAN.

45. At all relevant times, Plaintiff DONNA COCHRAN desired that an autopsy be performed on Decedent WALTER ANDREW COCHRAN to determine his cause of death.

46. Because the body of Decedent WALTER ANDREW COCHRAN was cremated on or about September 16, 2010, no autopsy was performed on the body and his cause of death was not determined.

47. Plaintiff DONNA COCHRAN did not authorize the cremation of the body of Decedent WALTER ANDREW COCHRAN.

48. At all relevant times, Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME, had a duty to conform to the provisions of the Crematory Regulation Act, 410 ILCS 18/1, et. seq.

49. Notwithstanding this duty, Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME, by and through its

employees, agents and/or apparent agents, committed gross negligence through the following willful and wanton acts or omissions:

- a. Cremated the body of Decedent WALTER ANDREW COCHRAN without a full and complete crematory authorization;
- b. Cremated the body of Decedent WALTER ANDREW COCHRAN without verifying that the identity of the human remains detailed in the crematory authorization matched the body of the decedent;
- c. Cremated the body of Decedent WALTER ANDREW COCHRAN without valid representation by an authorizing agent;
- d. Otherwise failed to comply with the requirements set forth in the Crematory Regulatory Act, 410 ILCS 18/20.

50. As a proximate result of the negligent acts of Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME, Plaintiff DONNA COCHRAN has experienced severe emotional distress and mental suffering and will continue to experience severe emotional distress and mental suffering in the future, has suffered financial loss, has suffered embarrassment and humiliation, and will continue to suffer embarrassment and humiliation in the future.

51. Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME, knew or should have known that its negligence would cause severe emotional distress, mental suffering and financial loss to the next of kin of Decedent WALTER ANDREW COCHRAN.

WHEREFORE, Plaintiff DONNA COCHRAN requests damages against Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME, in a sum greater than \$50,000 and costs of suit, and demands a trial by jury.

COUNT IV
Defendant MEMORIAL MEDICAL CENTER
(Interference with Right to Possession of Decedent)

Plaintiff DONNA COCHRAN, through her attorneys Dorris Law Firm, P.C., complains against Defendant MEMORIAL MEDICAL CENTER as follows:

52. Decedent WALTER ANDREW COCHRAN was born on September 3, 1971:
53. On or about September 12, 2010, Decedent WALTER ANDREW COCHRAN died in his home in Moultrie County, Illinois at the age of 39.
54. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was discovered by family members.
55. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to MEMORIAL MEDICAL CENTER located in Springfield, Illinois, for an autopsy.
56. On or about September 16, 2010, Defendant SECURITAS SECURITY SERVICES USA, INC. was hired to handle and transport a body at and from MEMORIAL MEDICAL CENTER to BUTLER FUNERAL HOME for cremation.
57. Upon information and belief, the body to be transported to BUTLER FUNERAL HOME for cremation was the severely decomposed body of an 80-year-old man.
58. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.
59. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN'S body was cremated by Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.
60. At all relevant times, Plaintiff DONNA COCHRAN was the mother and next of kin of Decedent WALTER ANDREW COCHRAN.

61. At all relevant times, Plaintiff DONNA COCHRAN desired that an autopsy be performed on Decedent WALTER ANDREW COCHRAN to determine his cause of death.

62. Because the body of Decedent WALTER ANDREW COCHRAN was cremated on or about September 16, 2010, no autopsy was performed on the body and his cause of death was not determined.

63. Plaintiff DONNA COCHRAN did not authorize the cremation of the body of Decedent WALTER ANDREW COCHRAN.

64. At all relevant times, Plaintiff DONNA COCHRAN had a right of possession of Decedent WALTER ANDREW COCHRAN's body in order to make appropriate disposition thereof, whether by burial or otherwise.

65. At all relevant times, Defendant MEMORIAL MEDICAL CENTER had a duty not to interfere with Plaintiff DONNA COCHRAN's right to possession of Decedent WALTER ANDREW COCHRAN's body.

66. Notwithstanding this duty, Defendant MEMORIAL MEDICAL CENTER, by and through its employees, agents and/or apparent agents, committed the following willful and wanton acts or omissions:

- a. Failed to follow hospital policies and procedures to prevent the misidentification of bodies in its morgue;
- b. Failed to institute hospital policies and/or procedures to prevent the misidentification of bodies in its morgue;
- c. Failed to clearly and accurately label the identity of the bodies within its morgue;
- d. Allowed a body that was scheduled for an autopsy to to be removed from its morgue prior to completion of the autopsy; and
- e. Failed to oversee the removal of bodies from its morgue to insure that bodies were not wrongfully removed.

67. As a proximate result of the negligent acts of Defendant MEMORIAL MEDICAL CENTER Plaintiff DONNA COCHRAN has experienced severe emotional distress and mental suffering and will continue to experience severe emotional distress and mental suffering in the future, has suffered financial loss, has suffered embarrassment and humiliation and will continue to suffer embarrassment and humiliation in the future.

68. Defendant MEMORIAL MEDICAL CENTER knew or should have known that its negligence would cause severe emotional distress and mental suffering to the next of kin of Decedent WALTER ANDREW COCHRAN.

WHEREFORE, Plaintiff DONNA COCHRAN requests damages against Defendant MEMORIAL MEDICAL CENTER in a sum greater than \$50,000 and costs of suit, and demands a trial by jury.

COUNT V
Defendant SECURITAS SECURITY SERVICES USA, INC.
(Negligence/Spoliation of Evidence)

Plaintiff DONNA COCHRAN, as Independent Administrator of the ESTATE OF WALTER ANDREW COCHRAN, deceased, through her attorneys Dorris Law Firm, P.C., complains against Defendant SECURITAS SECURITY SERVICES USA, INC. as follows:

69. Decedent WALTER ANDREW COCHRAN was born on September 3, 1971.

70. On or about September 12, 2010, Decedent WALTER ANDREW COCHRAN died in his home in Moultrie County, Illinois at the age of 39.

71. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was discovered by family members.

72. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to MEMORIAL MEDICAL CENTER located in Springfield, Illinois, for an autopsy.

73. On or about September 16, 2010, Defendant SECURITAS SECURITY SERVICES USA, INC. was hired to handle and transport a body at and from MEMORIAL MEDICAL CENTER to BUTLER FUNERAL HOME for cremation.

74. Upon information and belief, the body to be transported to BUTLER FUNERAL HOME for cremation was the severely decomposed body of an 80-year-old man.

75. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.

76. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN'S body was cremated by Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.

77. At all relevant times, Plaintiff DONNA COCHRAN desired that an autopsy be performed on Decedent WALTER ANDREW COCHRAN to determine his cause of death and to determine whether he was a victim of medical malpractice.

78. At all relevant times, Defendant SECURITAS SECURITY SERVICES USA, INC., knew or should have foreseen that human remains were material to a potential civil action.

79. At all relevant times, Defendant SECURITAS SECURITY SERVICES USA, INC., assumed a duty of reasonable care through agreement and/or contract, or through its affirmative conduct in undertaking to transport human remains from a hospital to a funeral home.

80. Notwithstanding this duty, Defendant SECURITAS SECURITY SERVICES USA, INC., by and through its employees, agents and/or apparent agents, committed the following negligent acts and/or omissions:

- a. Wrongfully transported the body of Decedent WALTER ANDREW COCHRAN to BUTLER FUNERAL HOME for cremation without authority to do so;
- b. Failed to verify the identity of the body it transported to BUTLER FUNERAL HOME for cremation;
- c. Failed to inspect the body to insure that the physical characteristics of the body matched the description of the body to be transported to BUTLER FUNERAL HOME for cremation;
- d. Was otherwise negligent in its care and handling of Decedent WALTER ANDREW COCHRAN.

81. As a proximate result of the negligent acts of Defendant SECURITAS SECURITY SERVICES USA, INC., Plaintiff DONNA COCHRAN, as Independent Administrator of the ESTATE OF WALTER ANDREW COCHRAN, deceased, has experienced severe emotional distress and mental suffering and will continue to experience severe emotional distress and mental suffering in the future, has suffered financial loss, has suffered embarrassment and humiliation and will continue to suffer embarrassment and humiliation in the future.

WHEREFORE, Plaintiff (ESTATE) requests damages against Defendant SECURITAS SECURITY SERVICES USA, INC. in a sum greater than \$50,000 and costs of suit, and demands a trial by jury.

COUNT VI
Defendant BUTLER FUNERAL HOMES & CREMATION
TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME
(Negligence/Spoliation of Evidence)

Plaintiff DONNA COCHRAN, as Independent Administrator of the ESTATE OF WALTER ANDREW COCHRAN, deceased, through her attorneys Dorris Law Firm, P.C., complains against Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME as follows:

82. Decedent WALTER ANDREW COCHRAN was born on September 3, 1971.

83. On or about September 12, 2010, Decedent WALTER ANDREW COCHRAN died in his home in Moultrie County, Illinois, at the age of 39.

84. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was discovered by family members.

85. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to MEMORIAL MEDICAL CENTER located in Springfield, Illinois, for an autopsy.

86. On or about September 16, 2010, Defendant SECURITAS SECURITY SERVICES USA, INC. was hired to handle and transport a body at and from MEMORIAL MEDICAL CENTER to BUTLER FUNERAL HOME for cremation.

87. Upon information and belief, the body to be transported to BUTLER FUNERAL HOME for cremation was the severely decomposed body of an 80-year-old man.

88. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.

89. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN'S body was cremated by Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.

90. At all relevant times, Plaintiff DONNA COCHRAN desired that an autopsy be performed on Decedent WALTER ANDREW COCHRAN to determine his cause of death and to determine whether he was a victim of medical malpractice.

91. At all relevant times, Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME knew or should have foreseen that human remains were material to a potential civil action.

92. At all relevant times, Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME assumed a duty of reasonable care through agreement and/or contract, or through its affirmative conduct in undertaking to transport human remains from a hospital to a funeral home.

93. Notwithstanding this duty, Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME by and through its employees, agents and/or apparent agents, committed the following negligent acts and/or omissions:

- a. Wrongfully received the body of Decedent WALTER ANDREW COCHRAN for cremation without authority to do so;
- b. Failed to verify the identity of the body it received for cremation;
- c. Failed to inspect the body to insure the physical characteristics of the body in its possession matched the description of the body to be cremated;
- d. Failed to obtain the permission of Decedent WALTER ANDREW COCHRAN's next of kin to cremate the Decedent's body;
- e. Failed to comply with the requirements set forth in the Crematory Regulatory Act, 410 ILCS 18/20.

94. As a proximate result of the negligent acts of Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME

Plaintiff DONNA COCHRAN, as Independent Administrator of the ESTATE OF WALTER ANDREW COCHRAN, deceased, has experienced severe emotional distress and mental suffering and will continue to experience severe emotional distress and mental suffering in the future, has suffered financial loss, has suffered embarrassment and humiliation and will continue to suffer embarrassment and humiliation in the future.

WHEREFORE, Plaintiff (ESTATE) requests damages against Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME in a sum greater than \$50,000 and costs of suit, and demands a trial by jury.

COUNT VII
Defendant MEMORIAL MEDICAL CENTER
(Negligence/Spoliation of Evidence)

Plaintiff DONNA COCHRAN, as Independent Administrator of the ESTATE OF WALTER ANDREW COCHRAN, deceased, through her attorneys Dorris Law Firm, P.C., complains against Defendant MEMORIAL MEDICAL CENTER as follows:

95. Decedent WALTER ANDREW COCHRAN was born on September 3, 1971.
96. On or about September 12, 2010, Decedent WALTER ANDREW COCHRAN died in his home in Moultrie County, Illinois, at the age of 39.
97. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was discovered by family members.
98. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to MEMORIAL MEDICAL CENTER located in Springfield, Illinois, for an autopsy.

99. On or about September 16, 2010, Defendant SECURITAS SECURITY SERVICES USA, INC. was hired to handle and transport a body at and from MEMORIAL MEDICAL CENTER to BUTLER FUNERAL HOME for cremation.

100. Upon information and belief, the body to be transported to BUTLER FUNERAL HOME for cremation was the severely decomposed body of an 80-year-old man.

101. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.

102. On or about September 16, 2010, Decedent WALTER ANDREW COCHRAN's body was cremated by Defendant BUTLER FUNERAL HOMES & CREMATION TRIBUTE CENTER, P.C., d/b/a BUTLER FUNERAL HOME.

103. At all relevant times, Plaintiff DONNA COCHRAN desired that an autopsy be performed on Decedent WALTER ANDREW COCHRAN to determine his cause of death and to determine whether he was a victim of medical malpractice.

104. At all relevant times, Defendant MEMORIAL MEDICAL CENTER knew or should have foreseen that human remains were material to a potential civil action.

105. At all relevant times, Defendant MEMORIAL MEDICAL CENTER assumed a duty of reasonable care through agreement and/or contract, or through its affirmative conduct in undertaking to transport human remains from a hospital to a funeral home.

106. Notwithstanding this duty, Defendant MEMORIAL MEDICAL CENTER by and through its employees, agents and/or apparent agents, committed the following negligent acts and/or omissions:

- a. Failed to follow hospital policies and procedures to prevent the misidentification of bodies in its morgue;

- b. Failed to institute hospital policies and procedures to prevent the misidentification of bodies in its morgue;
- c. Failed to clearly and accurately label the identity of the bodies within its morgue;
- d. Allowed a body that was scheduled for an autopsy to be removed from its morgue prior to completion of the autopsy;
- e. Failed to oversee the removal of bodies from its morgue to insure that bodies were not wrongfully removed.

107. As a proximate result of the negligent acts of Defendant MEMORIAL MEDICAL CENTER, Plaintiff DONNA COCHRAN, as Independent Administrator of the ESTATE OF WALTER ANDREW COCHRAN, deceased, has experienced severe emotional distress and mental suffering and will continue to experience severe emotional distress and mental suffering in the future, has suffered financial loss, has suffered embarrassment and humiliation and will continue to suffer embarrassment and humiliation in the future.

WHEREFORE, Plaintiff (ESTATE) requests damages against Defendant MEMORIAL MEDICAL CENTER in a sum greater than \$50,000 and costs of suit, and demands a trial by jury.

DONNA COCHRAN, Plaintiff

By: 
Attorney for Plaintiff

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STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SANGAMON

DONNA COCHRAN,

Plaintiffs,

v.

SECURITAS SECURITY SERVICES
USA, INC., BUTLER FUNERAL
HOMES & CREMATION TRIBUTE
CENTER, P.C., d/b/a BUTLER FUNERAL
HOME, and MEMORIAL MEDICAL
CENTER,

Defendants.

Case No. 12-L-245

FILED

JUN 15 2015

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David D. [Signature] Clerk of the
Circuit Court

THIRD AMENDED COMPLAINT

COUNT I

**Defendant SECURITAS SECURITY SERVICES USA, INC.
(Interference with Right to Possession of Decedent)**

Plaintiff DONNA COCHRAN, through her attorneys Dorris Law Firm, P.C., complains
against Defendant SECURITAS SECURITY SERVICES USA, INC. as follows:

1. On or about September 12, 2010, Decedent WALTER ANDREW COCHRAN
died in his home in Moultrie County, Illinois, at the age of 39.
2. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN'S
body was discovered by family members.

3. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was transported to the Moultrie County morgue where the Moultrie County Coroner was unable to determine his cause of death.

4. On or about September 14, 2010, Decedent WALTER ANDREW COCHRAN's body was transported by the Moultrie County Coroner to MEMORIAL MEDICAL CENTER located in Springfield, Illinois, for an autopsy pursuant to a coroner's investigation to determine cause of death.

5. At all relevant times, MEMORIAL MEDICAL CENTER and Defendant SECURITAS SECURITY SERVICES USA, INC. were in a contractual relationship wherein Defendant SECURITAS SECURITY SERVICES USA, INC., provided security services to MEMORIAL MEDICAL CENTER.

6. At all relevant times, employees of Defendant SECURITAS SECURITY SERVICES USA, INC. were responsible for receiving, tracking, and releasing bodies processed by the MEMORIAL MEDICAL CENTER morgue.

7. On or about September 14, 2010, employees of Defendant SECURITAS SECURITY SERVICES USA, INC. received the body of Decedent Walter Andrew Cochran from the Moultrie County Coroner's office and placed it in the MEMORIAL MEDICAL CENTER morgue.

8. On or about September 16, 2010, representatives of Defendant BUTLER FUNERAL HOME presented themselves to the MEMORIAL MEDICAL CENTER morgue to obtain possession of the body of a man named William Carroll.

9. On or about September 16, 2010, representatives of the Defendant SECURITAS SECURITY SERVICES USA, INC. transferred the possession of the body of decedent Walter Andrew Cochran to BUTLER FUNERAL HOME and told representatives of the funeral home that the body was that of decedent William Carroll.

10. On or about September 16, 2010, the body of Decedent Walter Andrew Cochran was transferred to BUTLER FUNERAL HOME where it was cremated.

11. At all relevant times, Defendant SECURITAS SECURITY SERVICES USA, INC. employees were required to conform their conduct with written documents entitled, "Security Policies."

12. At all relevant times, Security Policies #1014 and #1014-2, titled "Receiving/Releasing Deceased Persons" were in effect and required that "The Security officer must also make sure that an identification tag is left visible with/on the body."

13. Defendant SECURITAS SECURITY SERVICES, USA's employees did not place an identification tag on Walter Andrew Cochran's body to ensure that a tag was left visible with/on the body when it was received at MEMORIAL MEDICAL CENTER.

14. At all relevant times, MEMORIAL MEDICAL CENTER had a Ziegler Case to be used for severely decomposed bodies.

15. On or about September 14, 2010, the body of Walter Andrew Cochran was placed in the Ziegler case.

16. Defendant SECURITAS SECURITY SERVICES, USA INC.'s employees did not place an identification tag on the Ziegler case containing Walter Andrew Cochran's body or on the body of decedent Walter Andrew Cochran.

17. At all relevant times, Defendant SECURITAS SECURITY SERVICES USA, INC.'s employees were responsible for maintaining a log book identifying the bodies in the morgue and their location, including whether the body was stored in a Ziegler case.

18. Defendant SECURITAS SECURITY SERVICES USA, INC.'s employees did not accurately record the location of Walter Andrew Cochran's body in the morgue log book and instead recorded that the body of decedent William Carroll was located in the Ziegler case.

19. At all relevant times, Paragraph 5 of Security Policy #1014-2 states that "A Coroner's Case cannot be released to a funeral home until verbal confirmation to do so has been received from the Memorial Pathologist and the Coroner's office."

20. Defendant SECURITAS SECURITY SERVICES USA, INC.'s employees did not have verbal confirmation to release the body of Walter Andrew Cochran to a funeral home.

21. At all relevant times, Paragraph 5 of Security Policy #1014 states that "Upon release of a deceased person to a funeral home a Security officer must be present, or must verify the deceased person with the funeral home and with the Nursing Service Print-out before removal from Memorial can take place. Also, before removal the Nursing Service Print-out must be signed by both the Security officer and the funeral home representative. The time and date of pick-up must also be recorded."

22. Prior to release of the body of Walter Andrew Cochran employees of Defendant SECURITAS SECURITY SERVICES USA, INC., did not verify the identify of the deceased person with the funeral home and/or Nursing Service Print-out, did not sign the Nursing Service Print-out, and did not obtain the signature of the funeral home representative on the Nursing Service Print-out.

23. Upon information and belief, employees of Defendant SECURITAS SECURITY SERVICES USA, INC., relied entirely upon the erroneous morgue log book to determine the identity of body in the Ziegler case and did not confirm identity by checking for an identification tag with or on the body prior to release the body to BUTLER FUNERAL HOME.

24. Upon information and belief, employees of Defendant SECURITAS SECURITY SERVICES USA, INC., relied entirely upon the erroneous morgue log book to determine the identity of body in the Ziegler case and did not attempt to make a visual identification of the body in the Ziegler case to ensure that it matched the physical description of William Carroll prior to releasing the body to BUTLER FUNERAL HOME.

25. Upon information and belief, after placing the body of decedent Walter Andrew Cochran in the Ziegler case, employees of Defendant SECURITAS SECURITY SERVICES USA, INC. did not properly record the location of decedent Walter Andrew Cochran in the morgue log book, did not place an identification tag on the Ziegler case, and did not place an identification tag on the body of decedent Walter Andrew Cochran.

26. At all relevant times, employees of Defendant SECURITAS SECURITY SERVICES USA, INC., failed to follow industry standards as well as hospital rules and

regulations, including written security policies, in its care and handling of the body of decedent Walter Andrew Cochran.

27. At all relevant times, employees of Decedent SECURITAS SECURITY SERVICES USA, INC., knew or should have known that the body they released to BUTLER FUNERAL HOMES was not William Carroll, but that of decedent Walter Andrew Cochran.

28. At all relevant times, Plaintiff DONNA COCHRAN was the mother and next of kin of Decedent WALTER ANDREW COCHRAN.

29. At all relevant times, Plaintiff DONNA COCHRAN had a right of possession of Decedent WALTER ANDREW COCHRAN'S body in order to make appropriate disposition, whether by burial or otherwise.

30. At all relevant times, Plaintiff DONNA COCHRAN desired that an autopsy be performed on Decedent WALTER ANDREW COCHRAN to determine his cause of death.

31. Because the body of Decedent WALTER ANDREW COCHRAN was cremated on or about September 16, 2010, no autopsy was performed on the body and his cause of death was not determined.

32. Plaintiff DONNA COCHRAN did not authorize the cremation of the body of Decedent WALTER ANDREW COCHRAN.

33. Plaintiff DONNA COCHRAN did not authorize the transport of the body of Decedent WALTER ANDREW COCHRAN from MEMORIAL MEDICAL CENTER to BUTLER FUNERAL HOME.

34. At all relevant times, Defendant SECURITAS SECURITY SERVICES USA, INC., had a duty not to interfere with Plaintiff DONNA COCHRAN'S right to possession of Decedent WALTER ANDREW COCHRAN'S body.

35. Defendant SECURITAS SECURITY SERVICES USA, INC., by and through its employees, agents and/or apparent agents, violated this duty through the following acts and/or omissions:

- a. Failed to conform with the provisions of written security policies established by Memorial Medical Center designed to prevent misidentification of bodies in its morgue;
- b. Failed to keep an accurate morgue log book that correctly stated the location and identity of bodies in the Memorial Medical Center morgue;
- c. Violated both hospital policy and industry standards by releasing the incorrect body to representatives of a funeral home;
- d. Violated both hospital policy and industry standards by releasing a body that lacked an identification tag to a funeral home;
- e. Released a body to representatives of a funeral home when it knew or should have known the body in its possession did not match the description of the body to be transported;
- f. Relied entirely on an erroneous log book entry to confirm the identity of a body in the morgue in contradiction with security policies and industry standards.
- g. Was otherwise careless and/or reckless in its care and handling of Decedent Walter Andrew Cochran.

36. As a proximate result of the wrongful acts and/or omissions of Defendant SECURITAS SECURITY SERVICES USA, INC., Plaintiff DONNA COCHRAN has experienced severe emotional distress and mental suffering and will continue to experience

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severe emotional distress and mental suffering in the future, has suffered financial loss, and has suffered embarrassment and humiliation and will continue to suffer embarrassment and humiliation in the future.

37. Defendant SECURITAS SECURITY SERVICES USA, INC. knew or should have known that its wrongful acts and/or omissions would cause severe emotional distress, mental suffering and financial loss to the next of kin of Decedent WALTER ANDREW COCHRAN.

WHEREFORE, Plaintiff DONNA COCHRAN requests damages against Defendant SECURITAS SECURITY SERVICES USA, INC. in a sum greater than \$50,000 and costs of suit, and demands a trial by jury.

DONNA COCHRAN, Plaintiff

By: 

Attorney for Plaintiff

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West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 410. Public Health
General
Act 18. Crematory Regulation Act (Refs & Annos)

410 ILCS 18/20

18/20. Authorization to cremate

Effective: March 1, 2012

Currentness

§ 20. Authorization to cremate.

(a) A crematory authority shall not cremate human remains until it has received all of the following:

(1) A cremation authorization form signed by an authorizing agent. The cremation authorization form shall be provided by the crematory authority and shall contain, at a minimum, the following information:

(A) The identity of the human remains and the time and date of death.

(B) The name of the funeral director and funeral establishment, if applicable, that obtained the cremation authorization.

(C) Notification as to whether the death occurred from a disease declared by the Department of Health to be infectious, contagious, communicable, or dangerous to the public health.

(D) The name of the authorizing agent and the relationship between the authorizing agent and the decedent.

(E) A representation that the authorizing agent does in fact have the right to authorize the cremation of the decedent, and that the authorizing agent is not aware of any living person who has a superior priority right to that of the authorizing agent, as set forth in Section 15. In the event there is another living person who has a superior priority right to that of the authorizing agent, the form shall contain a representation that the authorizing agent has made all reasonable efforts to contact that person, has been unable to do so, and has no reason to believe that the person would object to the cremation of the decedent.

(F) Authorization for the crematory authority to cremate the human remains.

(G) A representation that the human remains do not contain a pacemaker or any other material or implant that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation.

(H) The name of the person authorized to receive the cremated remains from the crematory authority.

(I) The manner in which final disposition of the cremated remains is to take place, if known. If the cremation authorization form does not specify final disposition in a grave, crypt, niche, or scattering area, then the form may indicate that the cremated remains will be held by the crematory authority for 30 days before they are released, unless they are picked up from the crematory authority prior to that time, in person, by the authorizing agent. At the end of the 30 days the crematory authority may return the cremated remains to the authorizing agent if no final disposition arrangements are made; or at the end of 60 days the crematory authority may dispose of the cremated remains in accordance with subsection (d) of Section 40.

(J) A listing of any items of value to be delivered to the crematory authority along with the human remains, and instructions as to how the items should be handled.

(K) A specific statement as to whether the authorizing agent has made arrangements for any type of viewing of the decedent before cremation, or for a service with the decedent present before cremation in connection with the cremation, and if so, the date and time of the viewing or service and whether the crematory authority is authorized to proceed with the cremation upon receipt of the human remains.

(L) The signature of the authorizing agent, attesting to the accuracy of all representations contained on the cremation authorization form, except as set forth in paragraph (M) of this subsection.

(M) If a cremation authorization form is being executed on a pre-need basis, the cremation authorization form shall contain the disclosure required by subsection (b) of Section 140.

(N) The cremation authorization form, other than pre-need cremation forms, shall also be signed by a funeral director or other representative of the funeral establishment that obtained the cremation authorization. That individual shall merely execute the cremation authorization form as a witness and shall not be responsible for any of the representations made by the authorizing agent, unless the individual has actual knowledge to the contrary. The information requested by items (A), (B), (C) and (G) of this subsection, however, shall be considered to be representations of the authorizing agent. In addition, the funeral director or funeral establishment shall warrant to the crematory that the human remains delivered to the crematory authority are the human remains identified on the cremation authorization form.

(2) A completed and executed burial transit permit indicating that the human remains are to be cremated.

(3) Any other documentation required by this State.

(b) If an authorizing agent is not available to execute a cremation authorization form in person, that person may delegate that authority to another person in writing, or by sending the crematory authority a facsimile transmission that contains the name, address, and relationship of the sender to the decedent and the name and address of the individual to whom authority is delegated. Upon receipt of the written document, or facsimile transmission, telegram, or other electronic telecommunications transmission which specifies the individual to whom authority has been delegated, the crematory

authority shall allow this individual to serve as the authorizing agent and to execute the cremation authorization form. The crematory authority shall be entitled to rely upon the cremation authorization form without liability.

(c) An authorizing agent who signs a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on the cremation authorization form, including that person's authority to order the cremation; except for the information required by items (C) and (G) of paragraph (1) of subsection (a) of this Section, unless the authorizing agent has actual knowledge to the contrary. An authorizing agent signing a cremation authorization form shall be personally and individually liable for all damages occasioned by and resulting from authorizing the cremation.

(d) A crematory authority shall have authority to cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent. There shall be no liability for a crematory authority that cremates human remains according to an authorization, or that releases or disposes of the cremated remains according to an authorization, except for a crematory authority's gross negligence, provided that the crematory authority performs its functions in compliance with this Act.

(e) After an authorizing agent has executed a cremation authorization form, the authorizing agent may revoke the authorization and instruct the crematory authority to cancel the cremation and to release or deliver the human remains to another crematory authority or funeral establishment. The instructions shall be provided to the crematory authority in writing. A crematory authority shall honor any instructions given to it by an authorizing agent under this Section if it receives the instructions prior to beginning the cremation of the human remains.

Credits

P.A. 87-1187, § 20, eff. Jan. 1, 1993. Amended by P.A. 96-863, § 90-25, eff. March 1, 2012; P.A. 97-679, § 30, eff. Feb. 6, 2012.

Notes of Decisions (4)

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410 I.L.C.S. 18/20, IL ST CH 410 § 18/20

Current through P.A. 99-830 of the 2016 Reg. Sess.

End of Document

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Restatement (First) of Torts § 868 (1939)

Restatement of the Law - Torts
October 2016 Update
Restatement (First) of Torts
Division Eleven. Miscellaneous Rules
Chapter 42. Interference with Various
Protected Interests

§ 868 Interference with Dead Bodies

Comment:

Case Citations - by Jurisdiction

A person who wantonly mistreats the body of a dead person or who without privilege intentionally removes, withholds or operates upon the dead body is liable to the member of the family of such person who is entitled to the disposition of the body.

Comment:

a. A member of the family (see § 58, vol. 1) of a deceased person who is entitled to the disposition of the body has an action of tort against one who wantonly maltreats or improperly deals with the body of such person. This right exists although there has been no harm except such harm to the feelings as is inseparable from the knowledge of the defendant's conduct. The right to maintain an action for intentional interference with the body exists although there was no intent to do a tortious act, as where a body is misdelivered by the railroad or where a surgeon performs an autopsy mistakenly believing that he is privileged to do so. On the other hand, there is no right to maintain an action for mere negligence in dealing with the body. For unintentional harms to the body there is liability only if wantonly caused.

It is not within the Scope of the Restatement of this Subject to state who is entitled to the disposition of a dead body.

b. The cause of action is primarily for mental suffering caused by the improper dealing with the body. It includes also the right to recover damages for physical harm resulting from such mental suffering.

Caveat:

The Institute expresses no opinion whether members of the immediate family not entitled to the disposition of the body may not recover damages for emotional disturbances caused by its mistreatment or removal if the one entitled to the disposition of the body has not recovered judgment.

Case Citations - by Jurisdiction

E.D.Pa.

Restatement (Second) of Torts § 868 (1979)

Restatement of the Law - Torts
October 2016 Update
Restatement (Second) of Torts
Division Eleven. Miscellaneous Rules
Chapter 42. Interference with Various
Protected Interests

§ 868 Interference with Dead Bodies

Comment:
Reporter's Note
Case Citations - by Jurisdiction

One who intentionally, recklessly or negligently removes, withholds, mutilates or operates upon the body of a dead person or prevents its proper interment or cremation is subject to liability to a member of the family of the deceased who is entitled to the disposition of the body.

Caveat:

The Institute takes no position on liability to persons other than family members who have an interest in the body.

Comment:

a. One who is entitled to the disposition of the body of a deceased person has a cause of action in tort against one who intentionally, recklessly or negligently mistreats or improperly deals with the body, or prevents its proper burial or cremation. The technical basis of the cause of action is the interference with the exclusive right of control of the body, which frequently has been called by the courts a "property" or a "quasi-property" right. This does not, however, fit very well into the category of property, since the body ordinarily cannot be sold or transferred, has no utility and can be used only for the one purpose of interment or cremation. In practice the technical right has served as a mere peg upon which to hang damages for the mental distress inflicted upon the survivor; and in reality the cause of action has been exclusively one for the mental distress. The rule stated in this Section has thus a great deal in common with the rules stated in §§ 46, 312 and 313. There is no need to show physical consequences of the mental distress.

b. It is not within the scope of this Restatement to attempt to state who is entitled to the disposition of a dead body. The matter is governed by the statutes or common law rules of the various jurisdictions, to which reference must be made. Normally the right of disposition is in the surviving spouse, if any; or if none, then in the next of kin in order of succession. It may, however, be in the executor or administrator of the deceased.

c. If the deceased leaves instructions for the disposition of his body or any of his body organs that are legally valid and binding on the person bringing the suit, the interference with the body by one who is authorized to do so is a privileged action and there is no liability. The phrase, "subject to liability," permits the showing of a privilege in defense. (See § 5). Other privileges, such as that of performing a post mortem on the body, may also arise.

d. The rule stated in this Section applies not only to an intentional interference with the body itself or with its proper burial or cremation, but also to an interference that is reckless or merely negligent. Thus an undertaker who negligently embalms the body, a carrier that negligently transports it or an automobile driver who negligently collides with the hearse and dumps the corpse out into the highway will be subject to liability, if the result is harm to the body or prevention of its proper burial or cremation.

e. "Removes" includes disinterment.

f. The damages recoverable include not only the mental distress suffered by the one entitled to disposition of the body but also physical harm resulting from the mental distress.

Comment on Caveat:

g. The decisions in which recovery has been allowed for interference with a dead body have thus far been those in which the plaintiff has been the person entitled to disposition of the body or one of a group, such as children of the deceased, who have equal right of disposition. In the absence of decisions, the Institute expresses no opinion on whether one who is not entitled to the disposition may not, under some circumstances, have a cause of action for his own mental distress under the principle stated in this Section. Under the rule stated in § 46 one who by extreme and outrageous conduct intentionally or recklessly inflicts severe emotional distress upon another is subject to liability for the emotional distress. The outrageous mistreatment of a dead body in the presence of surviving relatives would appear to be a proper case for liability under that Section. But even when the conduct of the defendant is merely negligent, it is difficult to conclude that a widow who has the technical right of disposition of the body but is not present on the scene should be entitled to recover, while a daughter who is present, but has no such right should not.

Reporter's Note

This Section has been changed by broadening it to include negligent and reckless conduct, as well as intentional conduct; by adding "or prevents its proper interment or cremation"; and by removing the limitation of recovery to members of the family.

The Section is supported by the following:

Intentional interference: Mutilation of the body, including unauthorized autopsies: *Alderman v. Ford*, 146 Kan. 698, 72 P.2d 981 (1937); *French v. Ochsner Clinic*, 200 So.2d 371 (La.1967); *Burney v. Children's Hospital*, 169 Mass. 57, 47 N.E. 401 (1897); *Larson v. Chase*, 47 Minn. 307, 50 N.W. 238 (1891); *Crenshaw v. O'Connell*, 235 Mo.App. 1085, 150 S.W.2d 489 (1941); *Hendriksen v. Roosevelt-Hosp.*, 297 F.Supp. 1142 (S.D.N.Y.1969); *Hill v. Travelers' Ins. Co.*, 154 Tenn. 295, 294 S.W. 1097 (1927); *Koerber v. Patek*, 123 Wis. 453, 102 N.W. 40 (1905). Cf. *Dean v. Chapman*, 556 P.2d 257 (Okla.1976).

Disinterment: *Spomer v. City of Grand Junction*, 144 Colo. 207, 355 P.2d 960 (1960); *Louisville Cemetery Ass'n v. Downs*, 241 Ky. 773, 45 S.W.2d 5 (1932); *Gostkowski v. Roman Catholic Church*, 262 N.Y. 320, 186 N.E. 798 (1933), mod'f, 237 App.Div. 640, 262 N.Y.S. 104 (1933); *Hovis v. City of Burns*, 243 Or. 607, 415 P.2d 29 (1966); *Nixon v. Collins*, 421 S.W.2d 682 (Tex.Civ.App.1967); *England v. Central Pocahontas Coal Co.*, 86 W.Va. 575, 104 S.E. 46 (1920).

Prevention of proper burial: *Kirksey v. Jernigan*, 45 So.2d 188 (Fla.1950) (holding unburied); *Morgan v. Richmond*, 336 So.2d 342 (La.App.1976) (refusal to release body without pay); *Spiegel v. Evergreen Cemetery*, 117 N.J.L. 90, 186

A. 585 (1936) (in absence of relatives); *Finley v. Atlantic Transport Co.*, 220 N.Y. 249, 115 N.E. 715 (1917) (burial at sea); *Sanford v. Ware*, 191 Va. 43, 60 S.E.2d 10 (1950) (wrong place); *Gadbury v. Bleitz*, 133 Wash. 134, 233 P. 299 (1925) (holding unburied).

Other intentional interference: *Southern Life & Health Ins. Co. v. Morgan*, 21 Ala.App. 5, 105 So. 161 (1925), cert. denied, 213 Ala. 413, 105 So. 168 (1925) (withholding death certificate); *Sworski v. Simons*, 208 Minn. 201, 293 N.W. 309 (1940) (unauthorized embalming); *Wilson v. St. Louis & S.F.R. Co.*, 160 Mo.App. 649, 142 S.W. 775 (1912) (mishandling); *Schmidt v. Schmidt*, 49 Misc.2d 498, 267 N.Y.S.2d 645 (1966) (withholding ashes); *Brownlee v. Pratt*, 77 Ohio App. 533, 68 N.E.2d 798 (1946) (burial of intruder in lot); *Johnson v. Women's Hosp.*, 527 S.W.2d 133 (Tenn.App.1975) (displaying body of premature infant in bottle of formaldehyde). Cf. *Parker v. Quinn-McGowen Co.*, 262 N.C. 560, 138 S.E.2d 214 (1964) (unauthorized embalming). See Note, 1958, 19 Ohio St.L.J. 455.

Reckless interference: See *Boyle v. Chandler*, 33 Del. 323, 138 A. 273 (1927); *Lindh v. Great Northern R. Co.*, 99 Minn. 408, 109 N.W. 823 (1906).

Negligent interference: The older rule was that there was no liability for mere negligence, as distinguished from intentional or "wanton" interference. *Hall v. Jackson*, 24 Colo.App. 225, 134 P. 151 (1913); *Dunahoo v. Bess*, 146 Fla. 182, 200 So. 541 (1941); *Hockenhammer v. Lexington & E.R. Co.*, 24 Ky.L.Rep. 2383, 74 S.W. 222 (1903); *Beaulieu v. Great Northern R. Co.*, 103 Minn. 47, 114 N.W. 353 (1907); *Nail v. McCullough & Lee*, 88 Okl. 243, 212 P. 981 (1923); *Phillips v. Newport*, 28 Tenn.App. 187, 187 S.W. 965 (1945) (dictum, no liability for negligent embalming); *Nichols v. Central Vermont R. Co.*, 94 Vt. 14, 109 A. 905 (1919); *Kneass v. Cremation Society*, 103 Wash. 521, 175 P. 172 (1918).

A majority of the more recent cases have allowed recovery for negligence resulting in the type of interference with the body that justifies liability for intentional interference. See the following:

Negligent embalming: *Brown Funeral Homes & Ins. Co. v. Baughn*, 226 Ala. 661, 148 So. 154 (1933); *Chelini v. Nieri*, 32 Cal.2d 480, 196 P.2d 915 (1948); *Carey v. Lima, Salmon & Tully Mortuary*, 168 Cal.App.2d 42, 335 P.2d 181 (1959); *Parker v. Quinn-McGowen Co.*, 262 N.C. 560, 138 S.E.2d 214 (1969). Cf. *Lamm v. Shingleton*, 231 N.C. 10, 55 S.E.2d 810 (1949) (leaky casket).

Negligent shipment: *Birmingham Transfer & Traffic Co. v. Still*, 7 Ala.App. 556, 61 So. 611 (1913) (coffin mishandled in transit); *Louisville & N.R. Co. v. Wilson*, 123 Ga. 62, 51 S.E. 24 (1905) (same); *Clemm v. Atchison, T. & S.F.R. Co.*, 126 Kan. 181, 268 P. 103 (1928) (failure to transship); *Louisville & N.R. Co. v. Hull*, 113 Ky. 561, 68 S.W. 433 (1902) (delay in transit); *Hale v. Bonner*, 82 Tex. 33, 17 S.W. 605 (1891) (same); *Missouri, K. & T.R. Co. v. Hawkins*, 50 Tex.Civ.App. 128, 109 S.W. 221 (1908), error refused (handling in transit).

Physical damage to body: *Owens v. Liverpool Corp.*, [1939] 1 K.B. 394 (collision with hearse); *St. Louis S.W.R. Co. v. White*, 192 Ark. 350, 91 S.W.2d 277 (1936) (running over on railroad track); *Pollard v. Phelps*, 56 Ga.App. 408, 193 S.E. 102 (1936) (same); *Morrow v. Southern R. Co.*, 213 N.C. 127, 195 S.E. 383 (1938) (same).

Other interference: *Western Union Tel. Co. v. McMorris*, 158 Ala. 563, 48 So. 349 (1908) (negligent transmission of telegram interfering with funeral arrangements); *Renihan v. Wright*, 125 Ind. 536, 25 N.E. 822 (1890) (undertaker negligently allowing removal of corpse by another); *Cumberland Tel. & Tel. Co. v. Quigley*, 129 Ky. 788, 112 S.W. 897 (1908) (failure to transmit money to prepare for burial); *Blanchard v. Brawley*, 75 So.2d 891 (La.App.1954) (burning body trying to cut it out of wreck); *Torres v. State*, 34 Misc.2d 488, 228 N.Y.S.2d 1005 (Ct.Cl.1962) (autopsy and unauthorized burial); *Lott v. State*, 32 Misc.2d 296, 225 N.Y.S.2d 434 (Ct.Cl.1962) (Jewish body to Catholic survivors and vice versa); *Finn's Estate v. City of New York*, 76 Misc.2d 388, 350 N.Y.S.2d 552 (1973) (failure to notify wife); *Lyles v. Western Union Tel. Co.*, 77 S.C. 174, 57 S.E. 725 (1907) (delay in telegram, interfering with funeral arrangements); *Clark v. Smith*, 494 S.W.2d 192 (Tex.Civ.App.1971), refused n.r.e. (undertaker's failure to notify relatives that he would

not act to preserve body); cf. *Przybyszewski v. Metropolitan Dade County*, 363 So.2d 388 (Fla.App.1978) (negligent identification of body); *Corso v. Crawford Dog & Cat Hosp.*, 97 Misc.2d 530 (N.Y. City Ct.1979) (casket purporting to hold body of plaintiff's deceased dog held body of dead cat—recovery).

See P. Jackson, *The Law of Cadavers* ch. 6 (2d ed.1950); Note, 1960 Duke L.J. 135.

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