

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

CYNTHIA K. MCGEE	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
	:	
TERRY BOWSER, FORD CITY	:	No. 838 WDA 2023
CEMETERY ASSOCIATION, ROBERT	:	
J. BELLAS, SNYDER-CRISSMAN	:	
FUNERAL HOME, INC.	:	

Appeal from the Order Entered June 20, 2023
In the Court of Common Pleas of Armstrong County Civil Division at
No(s): 2022-00896

BEFORE: OLSON, J., SULLIVAN, J., and BENDER, P.J.E.

MEMORANDUM BY OLSON, J.:

FILED: December 30, 2024

Appellant, Cynthia K. McGee, appeals from the order entered on June 20, 2023. We affirm in part, vacate in part, and remand.

Appellant filed a complaint against Terry Bowser, Ford City Cemetery Association, Robert J. Bellas, and Snyder-Crissman Funeral Home, Inc. (hereinafter, collectively, "the Defendants"). Essentially, Appellant claimed that the Defendants intentionally and tortiously disinterred, moved, and reinterred the body of Appellant's deceased husband, Walter E. McGee ("the Decedent"), without a court order and without Appellant's consent or knowledge.

As averred in the complaint, the Decedent was buried on December 10, 2020, in a particular burial lot at the Ford City Cemetery ("Defendant

Cemetery”). Appellant’s Complaint, 7/8/22, at ¶ 9. On December 12, 2021, Appellant learned that “the grave where [the Decedent] had been buried had been dug up and that [the Decedent] had apparently been moved to another location.” ***Id.*** at ¶ 11. Appellant telephoned the president of the Defendant Cemetery, Terry Bowser (“Defendant Bowser”), who informed Appellant that the Decedent “had originally been buried in a lot that was [] owned by another person or family, and that [the Decedent’s] remains had been moved to a different location a few days earlier.” ***Id.*** at ¶ 12. Defendant Bowser also told Appellant that “he had been unable to locate any of [the Decedent’s] family members to advise [Appellant] and her family of this error and that he proceeded to move the Decedent’s remains on or about December 9, 2021.”

Id.

Further investigation revealed that the Defendant Cemetery purportedly obtained a Disinterment/Reinterment Permit (“the Permit”),¹ which was

¹ Permits for the disinterment of dead human bodies are governed by 28 Pa.Code § 1.25(a). This subsection declares:

(a) *Permit*. No dead human body shall be removed from its place of interment unless a disinterment permit is first secured from a local registrar who is authorized to issue a disinterment permit, according to the following requirements:

(1) The funeral director or cemetery official making the application shall present to the local registrar the correct name, date of death and cause of death of the body to be disinterred and written consent of next of kin, or appropriate order from a court of competent jurisdiction.

(Footnote Continued Next Page)

signed by Defendant Bowser as well as Robert J. Bellas ("Defendant Bellas"), the owner/director of the Snyder-Crissman Funeral Home, Inc. ("Defendant Snyder-Crissman Funeral Home"). Appellant averred that none of the Defendants "had any authority from [Appellant] or any members of [Appellant's] family to sign the Permit or to request the issuance of a disinterment/reinterment permit;" moreover, the Defendants did not obtain a court order to acquire the Permit. ***Id.*** at ¶¶ 15-17. Appellant additionally alleged that the Defendants all knew that they "did not have the knowledge, consent or authority of [Appellant] as required by law to request issuance of the Permit" and that the Defendants conspired to "obtain issuance of the [Permit] and to disinter, move and reinter [the Decedent's] casket/remains, without the consent, knowledge, [or] authorization of [Appellant]." ***Id.*** at ¶¶ 69-72.

(2) No disinterred body shall be reinterred either in the same cemetery or another cemetery located in this Commonwealth unless a burial or removal permit is obtained.

(3) Disinterment permits shall be void after the expiration of 72 hours from the date of issue and no disinterment may be made between sunset and sunrise.

(4) Disinterment permits shall be delivered to the sexton or other person in charge of burial grounds in which the disinterments are to be made and shall be returned by him to the local registrar of the district where the body is reinterred within 30 days from the date the permit was issued.

28 Pa.Code § 1.25(a).

Appellant's complaint raised the following claims: 1) tortious interference with a dead body (against all of the Defendants), claiming that the Defendants wrongfully "caused the disinterment of [the Decedent's] casket/remains and moved it to another location in the Cemetery without the knowledge or consent of [Appellant];" 2) intentional infliction of emotional distress (against all of the Defendants), claiming that the Defendants' conduct was outrageous, was done intentionally and/or recklessly, and caused her severe emotional distress; 3) negligent infliction of emotional distress (against Defendants Bowser and Cemetery), claiming that the defendants breached their duties to Appellant by "moving [the Decedent's] body to another grave without the knowledge or consent of [Appellant];" and, 4) civil conspiracy (against all of the Defendants), claiming that the Defendants "conspired to obtain issuance of the requisite permit and to disinter, move and reinter [the Decedent's] casket/remains, without the consent, knowledge, [and] authorization of [Appellant]." *Id.* at ¶¶ 22-72. Further, in each count, Appellant requested punitive damages. *See id.*

The Defendants all filed preliminary objections to Appellant's complaint. Within the preliminary objections filed by Defendants Bowser and Cemetery, the defendants first asserted a preliminary objection in the nature of a demurrer as to all counts asserted against Defendant Bowser. Specifically, the defendants alleged, the complaint attempted to state claims against Defendant Bowser in his individual capacity, when all of his actions were done in his capacity as an agent of the Defendant Cemetery. The defendants thus

requested that the trial court dismiss all claims “which [sought] to impose liability on [Defendant Bowser] in his individual capacity,” for failure to state a claim. Defendants Bowser and Cemetery’s Preliminary Objections, 8/4/22, at 2-3.

Defendants Bowser and Cemetery also filed a preliminary objection in the nature of a demurrer to Appellant’s claims of negligent infliction of emotional distress. According to the defendants, “there can be no recovery for negligent infliction of emotional distress for the alleged mistreatment of a deceased person where the claimant did not observe the conduct complained of;” and, since Appellant did not aver that she witnessed the alleged mistreatment, Appellant’s claims failed as a matter of law. ***Id.*** at 3.

Defendant Bellas filed preliminary objections in the nature of a demurrer as to all claims asserted against him. He argued: Appellant’s claim for tortious interference with a dead body failed as a matter of law because “the complaint does not allege intentional, outrageous or wanton conduct necessary to maintain a cause of action for tortious interference with a dead body;” Appellant’s claim for intentional infliction of emotional distress failed as a matter of law because “the allegations against Defendant Bellas aver no more than negligence;” Appellant’s claim for civil conspiracy failed as a matter of law because Appellant’s underlying, predicate claims fail; and, Appellant’s claims for punitive damages failed as a matter of law because “there are no factual averments made against [Defendant Bellas] that would be sufficient to

warrant punitive damages.” Defendant Bellas’ Preliminary Objections, 9/19/22, at 1-4.

Finally, Defendant Snyder-Crissman Funeral Home filed preliminary objections in the nature of a demurrer to Appellant’s complaint, where it contended: Appellant’s tortious interference with a dead body and intentional infliction of emotional distress claims failed as a matter of law because Appellant did not “allege[] the intentional, outrageous or wanton conduct necessary to maintain [these] causes of action;” Appellant’s claims against it failed as a matter of law because Defendant Bellas’ “act of signing the permit . . . was outside the scope of [his] employment;” Appellant’s civil conspiracy claim failed as a matter of law for lack of a predicate claim; and, Appellant’s claims for punitive damages failed because Appellant’s complaint does not allege “malicious, wanton, reckless, willful, or oppressive” conduct. Defendant Snyder-Crissman Funeral Home’s Preliminary Objections, 9/19/22, at 1-4.

On March 23, 2023, the trial court sustained many of the Defendants’ preliminary objections and dismissed almost all of the claims in this case. First, the trial court ruled Appellant’s claims for tortious interference with a dead body failed as a matter of law because:

[t]aking the material facts in the complaint as true, it appears that the [Defendants] made an error in burying the body in the wrong plot and then failed to comply with all of the procedural requirements in correcting their mistake. [Appellant] can make out at best a case for the negligent mishandling of a dead body, which is not a recognized cause of action under Pennsylvania law.

Trial Court Opinion, 3/23/23, at 3.

Next, the trial court concluded that Appellant's claims for intentional infliction of emotional distress and negligent infliction of emotional distress failed because Appellant "did not witness any of the alleged tortious acts committed by the [Defendants]." ***Id.*** at 3-4. Third, the trial court held that the civil conspiracy claims failed because it dismissed the underlying, predicate claims and because the complaint does not allege "that the Defendants acted in a malicious way or intended to injure" Appellant. ***Id.*** at 5. Finally, the trial court struck the claims for punitive damages because the underlying claims were dismissed and because "[t]he facts pled by [Appellant] support at best [] an inference of negligent behavior and do not amount to wanton, intentional, or outrageous conduct." ***Id.*** at 6. The trial court thus dismissed all counts in Appellant's complaint, with the exception of counts four and five – which Appellant filed against Defendant Cemetery and to which Defendant Cemetery did not file preliminary objections. ***See*** Trial Court Order, 3/23/23, at 1-2.

On April 14, 2023, Appellant filed an "Application for Determination of Finality Pursuant to Pa.R.A.P. 341(c) and/or Application for Amendment of an Interlocutory Order Pursuant to 42 Pa.C.S.A. § 702(b) and Pa.R.A.P. 1311(b)" ("Appellant's Application for Determination of Finality" or "Appellant's Application"). On April 24, 2023, the trial court entered a scheduling order in the matter, and scheduled oral argument on Appellant's Application for June 20, 2023. Trial Court Order, 4/24/23, at 1.

On June 20, 2023, the trial court entered a consent order in the matter, which amended the March 23, 2023 order to declare:

This court is of the opinion that this order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this order may materially advance the ultimate termination of the matter, and would facilitate resolution of the entire case.

Trial Court Order, 6/20/23, at 1 (some capitalization omitted).

Appellant then filed a notice of appeal on July 5, 2023. On appeal, Appellant raises the following claims:

[1.] Did the trial court err in concluding that Appellant's complaint was legally insufficient to state a viable cause of action for tortious interference with a dead body against all of the Defendants?

[2.] Did the trial court err in finding that Appellant's complaint was legally insufficient to state a viable cause of action for intentional infliction of emotional distress against all of the Defendants?

[3.] Did the trial court err in finding that Appellant's complaint was legally insufficient to state a viable cause of action for negligent infliction of emotional distress against [Defendant Bowser and Defendant Cemetery]?

[4.] Did the trial court err in finding that Appellant's complaint was legally insufficient to state a viable cause of action for civil conspiracy against all of the Defendants?

[5.] Did the trial court err in dismissing Appellant's claims for punitive damages against all of the Defendants?

Appellant's Brief at 6-7 (some capitalization omitted).

Prior to reaching the merits of any appeal, this Court must "first ascertain whether the [order appealed from] is properly appealable."

Commonwealth v. Borrero, 692 A.2d 158, 159 (Pa. Super. 1997). Indeed, since “the question of appealability implicates the jurisdiction of this Court[, the issue] may be raised by [this] Court *sua sponte*.” **Commonwealth v. Baio**, 898 A.2d 1095, 1098 (Pa. Super. 2006).

Generally, “this Court has jurisdiction only over appeals taken from final orders.” **Angelichio v. Myers**, 110 A.3d 1046, 1048 (Pa. Super. 2015) (citation omitted). As is relevant to the current appeal, Pennsylvania Rule of Appellate Procedure 341(b) defines a final order as an order that: “disposes of all claims and of all parties” or “is entered as a final order pursuant to” Rule 341(c).

The trial court’s March 23, 2023 order was not a final order, as two claims against the Defendant Cemetery remained outstanding following the order. **See** Trial Court Order, 3/23/23, at 1-2; **see also supra** at *6. Nevertheless, on April 14, 2023, Appellant filed a timely Application for Determination of Finality under Rule 341(c). Rule 341(c) provides:

(c) Determination of Finality. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the trial court or other government unit may enter a final order as to one or more but fewer than all of the claims and parties only upon an express determination that an immediate appeal would facilitate resolution of the entire case. Such an order becomes appealable when entered. In the absence of such a determination and entry of a final order, any order or other form of decision that adjudicates fewer than all the claims and parties shall not constitute a final order. In addition, the following conditions shall apply:

(1) An application for a determination of finality under subdivision (c) must be filed within 30 days of entry of the order. During the time an application for a determination of finality is pending, the action is stayed.

(2) Unless the trial court or other government unit acts on the application within 30 days after it is filed, the trial court or other government unit shall no longer consider the application and it shall be deemed denied.

(3) A notice of appeal may be filed within 30 days after entry of an order as amended unless a shorter time period is provided in Pa.R.A.P. 903(c). Any denial of such an application is reviewable only through a petition for permission to appeal under Pa.R.A.P. 1311.

Pa.R.A.P. 341(c).

Here, Appellant filed her Application for Determination of Finality on April 14, 2023. This was timely under Rule 341(c), as it was filed within 30 days of the trial court's interlocutory, March 23, 2023 order. **See** Pa.R.A.P. 341(c)(1). The trial court then "act[ed] on" Appellant's Application in a timely fashion because, on April 24, 2023 (within 30 days of the filing of Appellant's Application), the trial court entered a scheduling order for argument on Appellant's Application.² **See** Pa.R.A.P. 341(c)(2). Further, on June 20, 2023,

² Notably, Rule 341(c)(2) does not require that the trial court "decide" or "dispose of" an application for determination of finality within 30 days. The rule merely requires that the trial court "act[] on" the application within 30 days of its filing. **See** Pa.R.A.P. 341(c)(2). Here, the trial court "act[ed] on" Appellant's Application by entering a scheduling order for argument on the Application within the 30-day timeframe. **C.f.** Pa.R.Crim.P. 720(B)(2) (in the context of criminal, post-sentence motion practice, Rule 720(B)(2) declares that the term "trial court action" includes "schedul[ing] a date certain for the submission of briefs or memoranda of law" and "schedul[ing] a date or dates certain for" a hearing or oral argument).

the trial court amended its March 23, 2023 order to provide an “express determination that an immediate appeal would facilitate resolution of the entire case.” **See** Trial Court Order, 6/20/23, at 1; **see also** Pa.R.A.P. 341(c). Since Appellant filed her notice of appeal within 30 days of the June 20, 2023 final order, we have jurisdiction over the current appeal and, thus, we will proceed to analyze the merits of this appeal. **See** Pa.R.A.P. 341(c)(3).³

All of Appellant's claims challenge the trial court's order, which sustained the Defendants’ preliminary objections in the nature of a demurrer. We apply the following principles in conducting our review:

As a trial court's decision to [sustain or overrule] a demurrer involves a matter of law, our standard for reviewing that decision is plenary. Preliminary objections in the nature of demurrers are proper when the law is clear that a plaintiff is not entitled to recovery based on the facts alleged in the complaint. Moreover, when considering a motion for a

³ The trial court’s order of June 20, 2023 is not the model of clarity. Although the trial court’s order contains the appropriate and necessary language from Rule 341(c) that an immediate appeal “would facilitate resolution of the entire case”, the order also contains language applicable to seeking permission to appeal an interlocutory order under 42 Pa.C.S. § 702(b). **See** Pa.R.A.P. 1311(a)(1); 42 Pa.C.S. § 702(b) (“When a court . . . in making an interlocutory order . . . shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order. The appellate court may thereupon, in its discretion, permit an appeal to be taken from such interlocutory order.”) An appropriate order containing the necessary language under Pa.R.A.P. 341(c) is a final order. On the other hand, an order containing the necessary language under 42 Pa.C.S. § 702(b) is an interlocutory order for which a party must seek permission to appeal from the appellate court. The trial court has conflated the two. However, as the June 20, 2023 order meets the requirements of Pa.R.A.P. 341(c), we will treat it as a final order.

demurrer, the trial court must accept as true all well-pleaded material facts set forth in the complaint and all inferences fairly deducible from those facts.

Yocca v. Pittsburgh Steelers Sports, Inc., 854 A.2d 425, 436 (Pa. 2004)

(quotation marks and citations omitted). Further,

Our standard of review of an order of the trial court overruling or [sustaining] preliminary objections is to determine whether the trial court committed an error of law. When considering the appropriateness of a ruling on preliminary objections, the appellate court must apply the same standard as the trial court.

Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint[.] Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.

Bargo v. Kuhns, 98 A.3d 686, 689 (Pa. Super. 2014) (quotation marks and citations omitted).

First, Appellant claims the trial court erred when it concluded that her complaint was “legally insufficient to state a viable cause of action for tortious interference with a dead body against all of the Defendants.” Appellant’s Brief at 6 (some capitalization omitted). We agree.

In ***Papieves v. Lawrence***, 263 A.2d 118 (Pa. 1970), the Pennsylvania Supreme Court expressly adopted Section 868 of the Restatement (First) of Torts. This section provides:

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 (First) of Torts § 868 (1939).

The comments to Section 868 declare:

a. A member of the family . . . 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.

. . .

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.

Restatement (First) of Torts § 868 cmt. *a* & *b*.

As we explained in ***Weiley v. Albert Einstein Medical Center***, 51 A.3d 202 (Pa. Super. 2012):

A plain reading of section 868 reveals that a party can plead that the defendant acted with a wanton state of mind in the mistreatment of a body, as per the first portion of section 868, or that the defendant acted intentionally, without privilege, to remove, withhold or operate on the dead body, as per the second portion of section 868, or that the defendant acted with both states of mind.

Weiley v. Albert Einstein Med. Ctr., 51 A.3d 202, 209 (Pa. Super. 2012).

Regarding the “privilege” to remove a dead body, Pennsylvania law declares:

No dead human body shall be removed from its place of interment unless a disinterment permit is first secured from a local registrar who is authorized to issue a disinterment permit, according to the following requirements:

(1) The funeral director or cemetery official making the application shall present to the local registrar the correct name, date of death and cause of death of the body to be disinterred and written consent of next of kin, or appropriate order from a court of competent jurisdiction.

28 Pa.Code § 1.25(a).

Finally, we note that Appellant’s tortious interference with a dead body claims against Defendants Bellas and Snyder-Crissman Funeral Home are based upon the allegation that these two defendants conspired with Defendants Cemetery and Bowser to tortiously remove the Decedent from his place of interment. We have explained:

In order to state a cause of action for civil conspiracy, a plaintiff is required to allege (1) a combination of two or more persons acting with a common purpose to do an illegal act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage.

Estate of Werner ex rel. Werner v. Werner, 781 A.2d 188, 191 (Pa. Super. 2001) (quotation marks and citations omitted). “Proof of malice, *i.e.*, an intent to injure, is essential in proof of a conspiracy.” ***Skipworth by Williams v. Lead Indus. Ass’n, Inc.***, 690 A.2d 169, 174 (Pa. 1997). “The mere fact that two or more persons, each with the right to do a thing, happen to do that

thing at the same time is not by itself an actionable conspiracy.” **Fiedler v. Spencer**, 231 A.3d 831, 838 (Pa. Super. 2020) (quotation marks and citations omitted).

Moreover, and importantly:

All co-conspirators who, in pursuance of a common plan or design to commit a tortious act, actively take part in it, or further it by cooperation or request, or who lend aid or encouragement to the wrongdoer, or ratify and adopt his acts done for their benefit, are equally liable with him. Although a cause of action, a civil conspiracy is not a tort unto itself. Essentially, it is a theory of vicarious liability that renders each participant in the wrongful act responsible as a joint tortfeasor for all damages ensuing from the wrong, irrespective of whether the co-conspirator was a direct actor and regardless of the degree of his or her activity. The acts of any one co-conspirator are deemed the acts of all.

Bert Co. v. Turk, 257 A.3d 93, 115 (Pa. Super. 2021) (quotation marks, citations, brackets, and emphasis omitted).

“[A]ccept[ing] as true all well-pleaded material facts set forth in [Appellant’s] complaint and all inferences fairly deducible from those facts,” Appellant has clearly pleaded a viable claim for tortious interference with a dead body against all of the Defendants. **See Yocca**, 854 A.2d at 436 (quotation marks and citations omitted). To be sure, Appellant pleaded that Defendants Cemetery and Bowser intentionally and tortiously removed the Decedent from his place of interment, without privilege – *i.e.* without obtaining a disinterment permit that was authorized by “written consent of [the Decedent’s] next of kin, or appropriate order from a court.” Appellant’s Complaint, 7/8/22, at ¶¶ 9-50; **see also** Restatement (First) of Torts § 868

and 28 Pa.Code § 1.25(a). Further, Appellant averred that Defendant Bellas (acting as an agent for Defendant Snyder-Crissman Funeral Home) conspired with Defendants Cemetery and Bowser to tortiously remove the Decedent from his place of interment by signing the Permit, all the while knowing that they “did not have the knowledge, consent or authority of [Appellant] as required by law to request issuance of the Permit.” Appellant’s Complaint, 7/8/22, at ¶¶ 51-72. Appellant also averred that the Defendants acted with the intent to injure her, as she averred that the Defendants did these actions purposely, knowing that “the moving of [the Decedent’s] body to another grave without the knowledge or consent of [Appellant], leaving it to [Appellant] to discover this disinterment, removal and reinterment of her husband’s body on her own . . . would result in extreme mental and emotional distress to her.” **See id.** at ¶ 40; **see also Commonwealth v. Rife**, 312 A.2d 406, 410 (Pa. 1973) (“malice in the legal sense imports (1) The absence of all elements of justification, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and willful doing of an act with knowledge of circumstances indicating awareness of a plain and strong likelihood that such harm may result”) (quotation marks and footnotes omitted).

From the above, it is clear Appellant averred that the Defendants conspired to intentionally and tortiously remove the Decedent from his place of interment, without privilege – *i.e.* without obtaining a disinterment permit

that was authorized by “written consent of [the Decedent’s] next of kin, or appropriate order from a court.” **See** Restatement (First) of Torts § 868; 28 Pa.Code § 1.25(a). These averments satisfy the requirements of Section 868 of the Restatement (First) of Torts and the trial court thus erred when it dismissed Appellant’s tortious interference with a dead body claims against the Defendants.

Second, Appellant contends that the trial court erred when it dismissed her intentional infliction of emotional distress claims against the Defendants. Our holding in **Weiley** demands we conclude that Appellant’s claim fails.

In **Weiley**, the father died while being treated at a hospital. Unbeknownst to the son, the hospital transferred the father’s body to a medical school, where the body was operated upon. The son brought a number of claims against the hospital, including intentional infliction of emotional distress. However, the trial court dismissed the son’s complaint at the preliminary objection stage, for failure to state a claim. The son then appealed to this Court. **Weiley**, 51 A.3d at 207-208.

Although we held that the trial court erred in dismissing some of the son’s claims (including the son’s claim for tortious interference with a dead body), we concluded that the trial court properly dismissed his intentional infliction of emotional distress claim. We reasoned:

[The tort of intentional infliction of emotional distress] requires, *inter alia*, intentional extreme and outrageous conduct on the part of the tortfeasor, which causes severe emotional distress to the plaintiff. However, “where such conduct is directed at a third person” the person claiming the

emotional distress must also establish that he is a member of the victim's immediate family and that he or she was "present at the time" of the tortious conduct. Restatement (Second) Torts § 46(2); **Taylor v. Albert Einstein Med. Ctr.**, 754 A.2d 650, 652 (Pa. 2000). In **Taylor**, a 16-year-old patient died during a medical procedure while her mother was in another room of the hospital. Since the mother was not present when the procedure that resulted in the patient's death was performed, and did not observe the conduct, she could not recover for [intentional infliction of emotional distress]. Similarly, we conclude that [the son] has not pled a claim for [intentional infliction of emotional distress] against any of the defendants because he was not present when the allegedly tortious conduct that caused his serious mental distress occurred.

Id. at 216 (footnotes and some citations omitted).

In accordance with **Weiley**, Appellant's argument that the trial court erred in dismissing her intentional infliction of emotional distress claims must fail. Here, the tortious conduct against Appellant was the disinterring, moving, and reintering of the Decedent's body. Since Appellant "was not present when [this] allegedly tortious conduct" occurred, Appellant's intentional infliction of emotional distress claims fail as a matter of law. **See Weiley**, 51 A.3d at 216.

Third, Appellant claims that the trial court erred when it dismissed her claim for negligent infliction of emotional distress against Defendants Bowser and Cemetery. We agree.

We have held:

the cause of action for negligent infliction of emotional distress is restricted to four factual scenarios: (1) situations where the defendant had a contractual or fiduciary duty toward the plaintiff; (2) the plaintiff was subjected to a physical impact; (3) the plaintiff was in a zone of danger,

thereby reasonably experiencing a fear of impending physical injury; or (4) the plaintiff observed a tortious injury to a close relative.

Weiley, 51 A.3d at 217 (quotation marks and citations omitted).

Defendants Bowser and Cemetery filed preliminary objections in the nature of a demurrer and argued that Appellant failed to state a claim for negligent infliction of emotional distress because Appellant “did not observe the [tortious] conduct complained of.” Defendants Bowser and Cemetery’s Preliminary Objections, 8/4/22, at 3. The trial court then sustained this preliminary objection based upon Appellant’s lack of contemporaneous observation. **See** Trial Court Opinion, 3/23/23, at 3-4.

However, in this case, Appellant’s negligent infliction of emotional distress claim was based upon the fact that: she and the Decedent had a contractual relationship with Defendants Bowser and Cemetery; the defendants breached their duties to her under the contract; and, this breach caused Appellant severe emotional distress and physical harm. **See** Appellant’s Complaint, 7/8/22, at ¶¶ 9-50. To be sure, the contract between the parties declared:

[Defendant Cemetery], in consideration of the sum of \$3500.00 . . . does hereby grant, transfer and convey to [Appellant and the Decedent] . . . , their heirs and assigns, the following Land in the [Defendant Cemetery] . . . :

The Lots delineated and laid down on the Map or Plan of the said cemetery, in the possession of [Defendant Cemetery], and therein designated in Section D, Lot 46, spaces 3 & 4 containing 4 x 10 superficial feet per space.

See Appellant’s Complaint, 7/8/22, at Exhibit A.

Appellant's negligent infliction of emotional distress claim was thus not based upon the fourth factual scenario listed above ("the plaintiff observed a tortious injury to a close relative") but rather upon the first scenario: "situations where the defendant had a contractual or fiduciary duty toward the plaintiff." **See Weiley**, 51 A.3d at 217. As we have held, this scenario does not contain a "contemporaneous observation" requirement because "[e]ven though the plaintiff did not witness the tortious conduct, by virtue of th[e] [contractual or] fiduciary relationship, the defendant could foresee that his negligence would cause [the plaintiff] serious emotional distress." **Weiley**, 51 A.3d at 218.

Since Appellant's negligent infliction of emotional distress claim was based upon the breach of a contractual duty, the trial court erred when it concluded that the claim failed because Appellant did not contemporaneously observe the alleged tortious conduct. Further, since Defendants Bowser and Cemetery's preliminary objection to Appellant's negligent infliction of emotional distress claim was limited to this one ground, we must vacate the portion of the trial court's order that dismissed Appellant's negligent infliction of emotional distress claims against Defendants Bowser and Cemetery.

Appellant next argues that the trial court erred when it dismissed her civil conspiracy claim. Above, we concluded Appellant properly pleaded that the Defendants conspired to intentionally and tortiously remove the Decedent from his place of interment, without privilege. **See supra** at **12-16. Thus,

the trial court erred when it dismissed Appellant's civil conspiracy claim at the preliminary objection stage.

Finally, Appellant argues that the trial court erred when it dismissed her demand for punitive damages.

As our Supreme Court has explained:

Punitive damages are damages, other than compensation or nominal damages, awarded against a person to punish him for his outrageous conduct. . . . [P]unitive damages are awarded only for outrageous conduct, that is, for acts done with a bad motive or with a reckless indifference to the interests of others. In ***Hughes v. Babcock***, 37 A.2d 551 (Pa. 1944), [the Supreme Court] said that exemplary damages must be based on malicious, wanton, reckless, willful, or oppressive conduct on the part of defendant. In determining whether punitive damages should be awarded, the act itself together with all the circumstances including the motive of the wrongdoer and the relations between the parties should be considered.

Chambers v. Montgomery, 192 A.2d 355 (Pa. 1963) (quotation marks and some citations omitted).

Further, we echo the Fifth District Court of Appeal of Florida, where it stated:

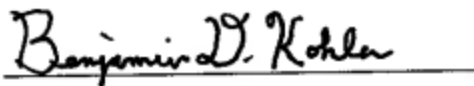
As for what is outrageous or reckless and what is not, we emphasize that our society . . . shows a particular solicitude for the emotional vulnerability of survivors regarding improper behavior toward the dead body of a loved one, and the special deference paid by courts to family feelings where rights involving dead bodies are concerned is central to our decision. This area is unique, and once it is entered, behavior which in other circumstances might be merely insulting, frivolous, or careless becomes indecent, outrageous and intolerable.

Williams v. City of Minneola, 575 So.2d 683, 691 (Fla. 5th DCA 1991) (footnote omitted).

In **Weiley**, we concluded that the trial court erred when it dismissed the son's demand for punitive damages in a case that, as explained above, was factually and legally similar to the case at bar. **See Weiley**, 51 A.3d at 219. Thus, in following **Weiley**, we also conclude that the trial court erred when it dismissed Appellant's demand for punitive damages in relation to her surviving claims. **See id.**; **see also Hutchison ex rel. Hutchison v. Luddy**, 870 A.2d 766, 772-773 (Pa. 2005) ("there [is nothing] in law or logic to prevent the plaintiff in a case sounding in negligence from undertaking the additional burden of attempting to prove, as a matter of damages, that the defendant's conduct not only was negligent but that the conduct was also outrageous, and warrants a response in the form of punitive damages").

Order vacated in part and affirmed in part. Case remanded. Jurisdiction relinquished. Petition for Permission to Appeal is denied as moot.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

12/30/2024

