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Law 017 Legal Writing

May 22, 2016

Mortuary Law

Introduction

Thesis statement

As someone who works in the funeral industry, I have decided to write about mortuary law. I feel I know just about everything there is to know from personal experiences and that learning more will benefit me greatly.

Funeral homes should be careful not to make mistakes because lawsuits are expensive, negative publicity could cost us our jobs, and most importantly, out of respect to the decedents and their loved ones. However, it is difficult for a family to win a lawsuit against a funeral home because a dead body can not be injured and emotional distress must be caused willfully or maliciously, and mistakes such as accidentally cremating a body that was supposed to be buried and dropping or losing a body are unintentional.

Scope of the Paper

This paper will discuss just how difficult it is for a family to win a lawsuit against

a funeral home. Since starting this class, I have been promoted from mortuary transport/crematory operator to funeral arranger/assistant director/logistics manager. My employer also gave me 10% of the company. I started this paper with an entirely different thesis. I have learned so much from both my new job and my research on this paper. I had always been told to be careful with certain things so we don't get sued, but now I know that none of those things I had been told to be careful not to do would not be enough to lose a lawsuit. The reason we do not want to get sued is not because we are afraid we would lose, but because we do not want the negative publicity, not to mention how we would not want to do that to a family.

Cremation Without Autopsy

Emotional Distress

In the case of *Culpepper v. Pearl Street Bldg., Inc.*¹, the parents of the decedent sued the funeral home for emotional distress for mistakenly cremating their son's body before an autopsy was performed. The case was dismissed because there was no evidence that the funeral home had acted to intentionally cause emotional distress. Their conduct was not willful and wanton and there was no cause of action for negligent infliction of emotional distress

¹ *Culpepper v. Pearl Street Bldg., Inc.*, 877 P. 2d 877 - Colo: Supreme Court 1994

resulting from mishandling of a dead body.

Destruction of Evidence

In the case of *People v. Vick*², the court stated, "There is a clear distinction between examination of physical evidence such as handwriting exemplars, fingerprints, written statements, and the body of a human being. The former are susceptible of examination without the likelihood of outrage to the emotional feelings of the living. As reflected in our laws, our society extends more respect to a dead body than to other physical evidence."

In the case of *Walsh v. Caidin*³, the doctor sued the spouse of the decedent for authorizing the cremation of the decedent's body despite the doctor's request for an autopsy, depriving him of evidence of the cause of death. The doctor lost the case because "The surviving spouse had sole authority over disposition of the remains. Appellants had no legal right to an autopsy for civil discovery purposes. Respondents owed no duty to appellants to preserve "evidence," because the law does not treat a human dead body as merely another form of physical evidence."

Wrongful Burial

² *People v. Vick*, 11 Cal. App. 3d 1058 - Cal: Court of Appeal, 4th Appellate Dist., 2nd Div. 1970

³ *Walsh v. Caidin*, 232 Cal. App. 3d 159 - Cal: Court of Appeal, 2nd Appellate Dist., 5th Div. 1991

Emotional Distress

In the case of *Gonzalez v. METRO. DADE CTY. HEALTH TRUST*⁴, the family was notified that the child funeralized and buried two months prior was not their child, whose body was still at the morgue. The case was dismissed because the family sustained no physical injury and the funeral home did not act maliciously.

In the case of *Hill v. City of Fort Valley*⁵, it is stated that "To sustain a claim for intentional infliction of emotional distress, the plaintiffs must prove the following four elements: (1) The conduct must be intentional or reckless; (2) The conduct must be extreme and outrageous; (3) There must be a causal connection between the wrongful conduct and the emotional distress; and (4) The emotional distress must be severe. Whether a claim rises to the requisite level of outrageousness and egregiousness to sustain a claim for intentional infliction of emotional distress is a question of law."

Negligence

In the case of *Roberts v. Public Cemetery of Cullman*⁶, the wife of the decedent sued the cemetery for burring her husband in the wrong grave and failing to maintain the grave site after burial. She lost the case because she

⁴ Gonzalez v. METRO. DADE CTY. HEALTH TRUST, 626 So. 2d 1030 - Fla: Dist. Court of Appeals, 3rd Dist. 1993

⁵ Hill v. City of Fort Valley, 554 SE 2d 783 - Ga: Court of Appeals 2001

⁶ Roberts v. Public Cemetery of Cullman, 569 So. 2d 369 - Ala: Supreme Court 1990

suffered no monetary damages and all lots in the cemetery were suffering the same effects due to a drought.

Conclusion

Although funeral homes can seemingly get away with just about anything, they should still be careful. Just because they do not lose the case does not mean that they will not have their businesses affected. There would be a lot of negative publicity to deal with and they would have to pay an attorney, which would affect their profits.

Works Cited

1. Culpepper v. Pearl Street Bldg., Inc., 877 P. 2d 877 - Colo: Supreme Court 1994
2. People v. Vick, 11 Cal. App. 3d 1058 - Cal: Court of Appeal, 4th Appellate Dist., 2nd Div. 1970
3. Walsh v. Caidin, 232 Cal. App. 3d 159 - Cal: Court of Appeal, 2nd Appellate Dist., 5th Div. 1991
4. Gonzalez v. METRO. DADE CTY. HEALTH TRUST, 626 So. 2d 1030 - Fla: Dist. Court of Appeals, 3rd Dist. 1993
5. Hill v. City of Fort Valley, 554 SE 2d 783 - Ga: Court of Appeals 2001
6. Roberts v. Public Cemetery of Cullman, 569 So. 2d 369 - Ala: Supreme Court 1990