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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

MICHAEL L. FELL, a/k/a MICHAEL

LAWRENCE FELL, late of Masontown, Fayette County, PA (3) Personal Representative: Michael S. Fell c/o Watson Mundorff, LLP 720 Vanderbilt Road Connellsville, PA 15425 Attorney: Robert A. Gordon

SCOTT JOHN, a/k/a SCOTT H. JOHN, late

of South Union Township, Fayette County, PA Administratrix: Penny John (3) c/o Higinbotham Law Offices 68 South Beeson Boulevard Uniontown, PA 15401 Attorney: James E. Higinbotham, Jr.

SHIRLEY A. KOKESH, a/k/a SHIRLEY A.

KOKES, late of Masontown, Fayette County, PA ⁽³⁾ *Executrix*: Deborah A. Park

c/o Webster & Webster 51 East South Street Uniontown, PA 15401 *Attorney*: Webster & Webster

MARY LOUISE KONETSCO, late of Dunbar

Township, Fayette County, PA (3) Personal Representative: Mary Jo Griffiths c/o 208 South Arch Street, Suite 2 Connellsville, PA 15425 Attorney: Richard Husband

DEVONNA MAUST, a/k/a DEVONNA L.

MAUST, late of North Union Township, Fayette County, PA (3) Administratrix: Kristian Lee Maust c/o Kopas Law Office 556 Morgantown Road Uniontown, PA 15401 Attorney: John Kopas

Second Publication

ROSE MARIE ADAMSKY, late of Dunbar,

Fayette County, PA (2) *Executrix*: Judith Lynn Chappel 136 Rinehart Lane Waynesburg, PA 15370 c/o 54 South Washington Street Waynesburg, PA 15370 *Attorney*: David Pollock

CAROLYN CICIRETTI, a/k/a CAROLYN J. CICIRETTI, late of Dunbar Township, Fayette

County, PA (2)

Executrix: Jeananne M. Collins 791 Homestead Avenue Scottdale, PA 15683 c/o Tremba Kinney Greiner & Kerr 1310 Morrell Avenue, Suite C Connellsville, PA 15425 *Attorney:* John Greiner

JANET I. DANIELS, late of Ohiopyle, Fayette

County, PA (2) *Co-Executrixes*: Brenda L. Lear and Vicki Hayden c/o 45 East Main Street, Suite 400 Uniontown, PA 15401 *Attorney*: Charles C. Gentile

KRISTEN GEEHRING, late of South

Connellsville, Fayette County, PA (2) Administrator: Travis C. Scanner 10369 Madison Avenue Irwin, PA 15342 c/o Lupetin & Unatin, LLC Grant Building 310 Grant Street, Suite 3204 Pittsburgh, PA 15219 Attorney: Gregory Unatin

ANNA BARBARA KELLY, late of German

Township, Fayette County, PA (2) Administratrix: Barbara Ann Gibel c/o Monaghan & Monaghan 57 East Main Street Uniontown, PA 15401 Attorney: Gary D. Monaghan

DAVID MATTHEWS, late of Uniontown,

Fayette County, PA (2) Administrator: Zachary Matthews 262 Weavers Road Greensburg, PA 15601

MARVIN MCCORMICK, a/k/a MARVIN

MCCORMICK, late of South Union Township, Fayette County, PA (2) *Executor*: Tammy Yekel c/o 9 Court Street Uniontown, PA 15401 *Attorney*: Vincent J. Roskovensky, II

First Publication

MARILYN BULLOCK, a/k/a MARILYN

FRANCES BULLOCK, late of Silver Spring, Montogomery County, Maryland (1) *Executrix*: Cynthia J. Conte 4623 Warrington Drive Orlando, Florida 32826 c/o 4 West Manilla Avenue, Suite 10 Pittsburgh, PA 15220 *Attorney*: Joan Shinavski

GERALDINE M. GEBADLO, late of Dunbar

Township, Fayette County, PA (1) Personal Representative: Timothy J. King c/o Watson Mundorff, LLP 720 Vanderbilt Road Connellsville, PA 15425 Attorney: Timothy J. Witt

VINCENT LOUIS GRLOVICH, a/k/a VINCENT L. GRLOVICH, late of Redstone

Township, Fayette County, PA (1) *Executrix*: Mary Ann Grlovich, a/k/a Mary Ann Plisko-Grlovich 495 Twin Hills Road Grindstone, PA 15442 c/o 96 East Main Street Uniontown, PA 15401 *Attorney*: Anne N. John

PHILLIP JOHN MICHAEL, late of South

Union Township, Fayette County, PA (1) Administratrix: Tricia Carbonara-Michael c/o Proden & O'Brien 99 East Main Street Uniontown, PA 15401 Attorney: Wendy L. O'Brien

JOEL C. REBOVICH, late of Perryopolis

Borough, Fayette County, PA (1) *Executrix*: Dana J. Rebovich 536 Liberty Street Perryopolis, PA 15473 c/o Bassi, Vreeland & Associates, P.C. P.O. Box 144 111 Fallowfield Avenue Charleroi, PA 15022 *Attorney*: Bradley M. Bassi

YVONNE J. URBAN, late of Perryopolis

Borough, Fayette County, PA (1) *Executor*: Kenneth R. Urban 232 Todd Farm Road Belle Vernon, PA 15012 c/o Moore Becker Smarto & Acosta, P.C. 121 West Second Street Greensburg, PA 15601 *Attorney*: Elizabeth A. Becker

ANNA P. WHITE, a/k/a ANNA PEARL

WHITE, late of Dunbar Township, Fayette County, PA (1) Executor: Duane L King P.O. Box 732 Vanderbilt, PA 15486 c/o Lederach Law 201 North Chestnut Street P.O. Box 342 Scottdale, PA 15683 Attorney: James S. Lederach

CHARLES W. WATSON, late of Dunbar

Township, Fayette County, PA (1) Personal Representative: Aaron C. Watson c/o Watson Mundorff, LLP 720 Vanderbilt Road Connellsville, PA 15425 Attorney: Timothy J. Witt

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA CIVIL COURT DIVISION Civil Docket No. 843 of 2024

THHP PROPERTIES, LLC PLAINTIFF v. VIOLA PIRL, ROBERT W. MARKLE, KENNETH R. MARKLE, KAY L. NICHOLSON, GERRY L. MARKLE, KENNETH J. PIRL, and their respective Personal Representatives, heirs, Successors and assigns.

DEFENDANTS

NOTICE of LEGAL ACTION AND NOTICE to DEFEND

To: Defendants -- You have been sued in court to quiet title and to extinguish all of your right, title and interest in and to the real estate located at 315 Campbell Ave., Connellsville Township, Fayette County, Pennsylvania, Tax Parcel No. 06-11-0016, Record Book 405, Page 164, and declare that the Plaintiff is the true and lawful owner of the said real estate. If you wish to defend against the claims set forth in the Complaint filed at the above docket number, you must take action within twenty (20) days, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

IF YOU CANNOT AFFORD A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ON AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE. PENNSYLVANIA LAWYER REFERRAL SERVICE PENNSYLVANIA BAR ASSOCIATION 100 SOUTH ST. P.O. BOX 186 HARRISBURG, PA 17108 PHONE: 1-800-692-7375

Sepic Law 892 Vanderbilt Rd. Connellsville, PA 15425 Counsel for Plaintiff

NOTICE OF REVOCABLE TRUST PURSUANT TO 20 PA C.S. SECTION 7755(c)

NOTICE is hereby given of the administration of The Joseph and Mary Louise Trust dated September 30, 1997. Mary Louise Konetsco, Settlor of the Trust of Dunbar Township, Fayette County, Pennsylvania, died on December 8, 2022. All persons having claims against Mary Louise Konetsco, or the Joseph and Mary Louise Trust are requested to make known the same to the Attorney named below. All persons indebted to Mary Louise Trust are requested to make payment without delay to the Attorney named below.

Richard A. Husband, Esquire 208 South Arch Street, Suite 2 Connellsville, PA 15425

(3 of 3)

NOTICE

NOTICE IS HEREBY GIVEN that Marshall's Monuments, Inc., a Pennsylvania corporation, having its registered office located at 50 East Fayette Street, Uniontown, PA 15401, has filed Articles of Dissolution with the Department of State of the Commonwealth of Pennsylvania, and that the said corporation is winding up its affairs in the manner prescribed by said law, so that its corporate existence shall cease.

Ewing D. Newcomer, Esquire 4 North Beeson Boulevard Uniontown, PA 15401

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

johnfranciswarman@gmail.com

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JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUN1Y, PENNSYLVANIA CIVIL DIVSION

ROBERT ALLEN KARWATSKE, II,	:	
Plaintiff,	:	
VS.	:	
GEORGE PECK, EDWARD PECK,	:	
DAVID S. BROOKS, individually and	:	
BROOKS FUNERAL HOME, INC.,	:	No. 958 of 2022, G.D.
Defendants.	:	Honorable Nancy D. Vernon

OPINION AND ORDER

VERNON, J.

July 23, 2024

Before the Court are Preliminary Objections filed by Defendants George Peck, Edward Peck, David S. Brooks, individually, and Brooks Funeral Home, Inc., to the Complaint of Robert Allen Karwatske, II.

Plaintiff Robert Allen Karwatske, II ("Karwatske") and Michele Karwatske were married in 2012. In November 2021, Michele Karwatske filed a Complaint in Divorce against Plaintiff Robert Karwatske. In early April 2022, Michele Karwatske was admitted to the hospital and her brothers, George Peck and Edward Peck (the "Pecks"), presented a Power of Attorney on her behalf. According to the Complaint, the Pecks had Karwatske removed from the hospital and Michele Karwatske ("Decedent") died on April 18, 2022 without Karwatske present.

Karwatske alleges that on April 21, 2022, he discovered that Decedent's body had been delivered to Defendant Brooks Funeral Home, Inc. ("Funeral Home") at the direction of the Pecks and that cremation had already occurred. According to Karwatske, Defendant David S. Brooks ("Brooks") stated that the Funeral Home was "in a mess" over this and acknowledged that he knew Karwatske and Decedent were married. Karwatske, through counsel, sent demand to Brooks and the Funeral Home demanding Decedent's remains be maintained until he authorized the release, informing them of the right to disposition of remains pursuant to 20 Pa.C.S. § 305, and requesting a litigation hold be placed on any documents or evidence. Despite this letter, Karwatske alleged that Brooks and the Funeral Home released Decedent's remains to the Pecks.

Karwatske filed a four count Complaint. At Count I, Karwatske requested Injunctive Relief against the Pecks directing them to disclose the whereabouts of the Decedent's ashes and to turn them over to him. At Count III, he alleged Intentional Infliction of Emotional Distress against the Pecks. As to Brooks and the Funeral Home, Karwatske alleged Negligence (Count II) and Negligent Infliction of Emotional Distress (Count IV). Karwatske seeks compensatory damages, punitive damages, and attorneys fees.

STANDARD OF REVIEW

A preliminary objection in the nature of a demurrer is properly granted where the contested pleading is legally insufficient. Cardenas v. Schober, 783 A.2d 317, 321 (Pa.Super.2001) citing Pa.R.C.P. 1028(a)(4). A demurrer admits every well-pleaded material fact set forth in the pleadings to which it is addressed as well as all inferences reasonably deducible therefrom, but not conclusions of law. Gekas v. Shapp, 364 A.2d 691 (Pa. 1976). "Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer." Cardenas at 321-22. "[C]onclusions of law, unwarranted inferences from the facts, argumentative allegations or expressions of opinion" need not be accepted as true. Myers v. Ridge, 712 A.2d 791, 794 (Pa.Commw. 1998). "Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt." League of Women Voters of Pennsylvania v. Commonwealth, 692 A.2d 263, 267 (Pa.Commw. 1997). In order to sustain the demurrer, it is essential that the plaintiff's complaint indicate on its face that his claim cannot be sustained, and the law will not permit recovery. Id.

DISCUSSION

Initially, Karwatske requests an injunction requiring the Pecks to disclose the whereabouts of the Decedent's ashes and to turn them over to him, or in the alternative, enjoining the Pecks from disposing, encumbering, or otherwise destroying the remains. Section 305(b) of the Probate, Estates and Fiduciaries Code - "Right to dispose of a decedent's remains - Disposition of the remains of a deceased spouse" provides, "Absent an allegation of enduring estrangement, incompetence, contrary intent or waiver and agreement which is proven by clear and convincing evidence, a surviving spouse shall have the sole authority in all matters pertaining to the disposition of the remains of the decedent." 20 Pa.C.S.A. § 305(b). The Code defines "enduring estrangement" as "[a] physical and emotional separation from the deceased at the time of death of the person authorized by this section to determine the final disposition of the decedent's remains, which has existed for a period of time that clearly demonstrates an absence of due affection, trust and regard for the deceased." 20 Pa.C.S.A. § 305(e). The right to dispose of a decedent's remains is not a property right, but rather an "authority" to dispose of the remains. Kulp v. Kulp, 920 A.2d 867, 872 (Pa.Super. 2007).

When reviewing preliminary objections in the nature of a demurrer to a petition for injunctive relief, the objection may be sustained only where the underlying petition is insufficient to establish a right to relief. P.J.S. v. Pennsylvania State Ethics Commission, 669 A.2d 1105 (Pa.Cmwlth.1996). Any doubt must be resolved in favor of the party seeking the injunction. Id. A party requesting injunctive relief must prove that the activity the petitioner seeks to restrain is actionable, the right to relief is clear, and success on the merits is likely. Lee Publ'ns, Inc. v. Dickinson Sch. of Law, 848 A.2d 178, 189 (Pa.Cmwlth. 2004).

Here, Karwatske had sole authority to make disposition of the Decedent's remains as her surviving spouse pursuant to 20 Pa.C.S.A. § 305(b). The pending divorce action filed by Decedent against Karwatske, coupled with the other unverified facts alleged by the Pecks in these preliminary objections if proven, could have constituted "enduring estrangement" between the Decedent and Karwatske such that Karwatske would have lost the authority to dispose of her remains. However, enduring estrangement must be proven by clear and convincing evidence upon petition to this Court. 20 Pa.C.S.A. § 305 (e). No petition was filed by the Pecks to seek the right to dispose of the Decedent's remains. By prior Order of Court, Karwatske's preliminary injunction was granted pending resolution of this case directing the Pecks to keep the Decedent's remains in a safe place and to not dispose of the remains.

The Pecks' preliminary objection to Karwatske's injunction must be OVERRULED as the Probate, Estates and Fiduciaries Code provided Karwatske, as surviving spouse, authority to dispose of the Decedent's remains and he is permitted to proceed with his request for injunctive relief.

Turning to the claim for intentional infliction of emotional distress against the Pecks at Count III of Karwatske's Amended Complaint, the Superior Court has stated:

This tort requires, inter alia, intentional extreme and outrageous conduct on the part of the tortfeasor, which causes severe emotional distress to the plaintiff. See, e.g., Hoy v. Angelone, 554 Pa. 134, 720 A.2d 745, 754 (1998). 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., 562 Pa. 176, 754 A.2d 650, 652 (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 IIED. Id. at 652.

Weiley v. Albert Einstein Med. Ctr., 51 A.3d 202, 216 (Pa. 2012).

In Weiley, without the consent of the plaintiff son, the defendant hospital sent the deceased body of the plaintiff's father, via a funeral home, to a medical school for holding. After several days of contacting the school to find his father's body, the son went to the medical school to retrieve his father's body for cremation and discovered that postmortem procedures had been performed on his father's body. As result, the son sued the hospital for, among other causes of action, intentional infliction of emotional distress. The Superior Court concluded "that Weiley has not pled a claim for IIED against any of the defendants because he was not present when the allegedly tortious conduct that caused his serious mental distress occurred." Id.

Based on the allegations of the Amended Complaint, Karwatske was not present when any of the supposedly tortious conduct occurred. Specifically, he admits to having been removed from the hospital prior to the Decedent's death and that the Decedent's remains were cremated without his knowledge. Because he is a third party alleging emotional distress, and he was not present, the claim for intentional infliction of emotional distress is not viable. Given that the presence requirement is narrowly construed and the complete absence of any allegation to suggest that he personally observed any of the allegedly tortious conduct, the Amended Complaint fails to state a claim for intentional infliction of emotional distress. The preliminary objection is SUSTAINED and Count III - Intentional Infliction of Emotional Distress is DISMISSED.

Karwatske's remaining claims, Count II - Negligence and Count IV - Negligent Infliction of Emotional Distress, are directed to Brooks and the Funeral Home.

A plaintiff must establish four elements to prevail on a claim for negligence: "(1) a duty or obligation recognized by law; (2) a breach of that duty; (3) a causal connection between the conduct and the resulting injury; and (4) actual damages." Grove v. Port Auth. of Allegheny Cnty., 218 A.3d 877, 889 (Pa. 2019).

A claim of negligent infliction of emotional distress requires a plaintiff to demonstrate that the "[d]efendant owed a duty of care to the plaintiff, the defendant breached that duty of care, the breach resulted in injury to the plaintiff, and the plaintiff suffered an actual loss or damage." Weiley, 51 A.3d at 217; see also Phillips v. Cricket Lighters, 841 A.2d 1000, 1008 (Pa. 2003). The plaintiff must suffer compensable emotional harm as a result of the breach of duty by the defendant. Toney v. Chester County Hospital, 961 A.2d 192 (Pa.Super. 2008). That is, the breach of duty must result in severe emotional distress to the plaintiff. Id. The Pennsylvania Supreme Court has defined this harm as harm that is "likely to be experienced as a visceral and devastating assault on the self such that it resemble[s] physical agony in its brutality." Id.

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, supra, citing Toney v. Chester County Hospital, 961 A.2d 192, 198 (Pa.Super. 2008).

We begin the negligence analysis by examining whether Brooks or the Funeral Home owed a duty to Karwatske. The Court has found a non-precedential decision of the Superior Court of Pennsylvania, Smith-McConnell v. Todd T. Thompson Funeral Home, Inc., 262 A.3d 556 (Pa.Super. 2021), to be instructive. In Smith-McConnell, the plaintiff was the son of a decedent who filed a complaint alleging negligence and negligent infliction of emotional distress against a funeral home and its funeral director. The plaintiff alleged that his mother died intestate, that he and his sister were the sole heirs and next of kin, that neither his sister nor the funeral home notified him of his mother's death, and that the funeral home allowed his sister to make all funeral arrangements for their mother despite being aware of plaintiff's existence and relationship to the decedent. In upholding the trial court's dismissal of the action, the Superior Court stated:

The trial court properly declined to create-and impose upon the Funeral Home –a common law duty to notify. Pennsylvania law burdens a plaintiff on a negligence claim to successfully establish the proverbial four elements: "(1) a duty or obligation recognized by law; (2) a breach of that duty; (3) a causal connection between the conduct and the resulting injury; and (4) actual damages." Estate of Swift by Swift v. Northeastern Hosp., 690 A.2d 719, 722 (Pa. Super. 1997), appeal denied, 701 A.2d 577 (Pa. 1997). "The burden of proving the existence of negligence rests upon the party who has asserted it." Schmoyer by Schmoyer v. Mexico Forge, Inc., 649 A.2d 705, 707 (Pa. Super. 1994). "The mere fact that an accident has occurred does not entitle the injured person to a verdict. A plaintiff must show that the defendant owed a duty of care, and that this duty was breached." Rauch v. Mike-Mayer, 783 A.2d 815, 824 n.8 (Pa. Super. 2001) (internal citations omitted), appeal denied, 793 A.2d 909 (Pa. 2002).

To impose a previously unarticulated common law duty, a court must analyze the factors set forth in Althaus ex rel. Althaus v. Cohen, 756 A.2d 1166, 1169 (Pa. 2000). In Althaus, the Court observed:

The determination of whether a duty exists in a particular case involves the weighing of several discrete factors which include: (1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution.

Althaus, 756 A.2d at 1169. "No one of these five factors is dispositive. Rather, a duty will be found to exist where the balance of these factors weighs in favor of placing such a burden on a defendant." Phillips v. Cricket Lighters, 841 A.2d 1000, 1009 (Pa. 2003).

The trial court correctly analyzed the Althaus factors. In so doing, the court found:

(1) the relationship between the parties: [Plaintiff] is the son of the decedent and "next of kin" to the decedent. [His sister] engaged in a professional relationship with the [Funeral Home] to provide funeral and burial services. There was no relationship between [Plaintiff] and the [Funeral Home].

(2) the social utility of the actor's conduct: [the Funeral Home], as do other funeral homes and funeral directors, provides a great social utility by virtue of the funeral and burial services they render to a family who is mourning the loss of a loved one.

(3) the nature of the risk imposed and the foreseeability of the harm incurred: A funeral home and a funeral director provide funeral and burial services to a family. They are under no duty to provide legal advice. There is nothing set forth in 49 Pa. Code § 13.201 that imposes any duty upon a licensed funeral director to advise or mandate to an heir who alleges estrangement to file a petition with the court under 20 Pa.C.S.A. § 305(d). [Plaintiff] has not presented any controlling authority to the court that imposes such a duty upon [the Funeral Home].

(4) the consequences of imposing a duty upon the actor: To impose a duty upon a licensed funeral director to mandate that every heir alleging estrangement regarding next of kin on equal footing first file a petition under [Section 305 (d)] before rendering any funeral or burial services would result in such funeral director and funeral home being brought into the middle of any such family's disharmony and conflict. In addition, such would result in a delay in the rendering of services until after a petition is filed, a hearing is held and a court

decision rendered. Such delay could potentially take weeks, if not months. Further, there exists any number of potential factual scenarios that would make it unduly burdensome to impose such a duty upon a funeral director, some of which were mentioned above.

(5) the overall public interest in the proposed solution: we cannot imagine there is any public interest in embroiling a funeral home and funeral director in the middle of family strife and disharmony. Such could even be potentially dangerous in situations wherein family members may have violent propensities.

There is already a procedure available to heirs to seek court intervention when estrangement is alleged. The duty to file a petition under [Section 305(d)] rests where it should, i.e., upon the next of kin, and not the funeral director.

Trial Court Opinion, 9/4/20, at 18-20. Based on the foregoing, the trial court determined that the Funeral Home did not owe any common law duty to [Plaintiff]. Id. at 18-20.

Separately, the trial court determined that there was no statutory duty imposed upon the Funeral Home under Section 305 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S.A. § 305, to notify [Plaintiff] of his mother's passing

[...]

As mentioned, the court correctly noted that Section 305 has no application to funeral homes or funeral directors. Id. Insofar as any duty exists under Section 305, it is a duty imposed upon the next of kin, here [Plaintiff's] sister, to petition a court alleging estrangement. As the trial court reasoned:

[I]t was [his sister's] failure to file such a petition and notify [Plaintiff] of the passing of [their mother] that has placed the parties in their current situation. As next of kin on equal footing with [Plaintiff] and full knowledge of his existence and rights, it was incumbent upon [his sister] to file a petition alleging estrangement under Section 305 if she did not want him to be included in the selection and implementation of funeral and burial services.

Id. at 17-18.

The trial court in Smith-McConnell similarly found that the Professional and Vocational Standards for the State Board of Funeral Directors at 49 Pa. Code § 13.201 enumerates the responsibility and duties of licensed funeral directors in connection with a funeral. The statute sets forth the duties imposed upon a funeral director by law to include:

(1) Providing full and factual representation concerning aspects of the services rendered or the funeral furnishings provided.

(2) Counseling the family in the selection of services and furnishings taking into consideration both the wishes of the family and their financial limitations.

(3) Maintaining confidentiality of information received during the rendering of service to a family.

(4) Acquainting oneself with the religious practices or customs of families the funeral director serves and adjusting services to conform with their belief.

(5) Releasing the remains to the funeral director chosen by the family, if any, in the most expeditious manner if called upon to remove the remains from an accident or comparable situation, before the family has been contacted.

(6) Providing proper disposal of human remains in accordance with the following:

(i) Human remains held 24 hours beyond death shall be embalmed or sealed in a container that will not allow fumes or odors to escape or kept under refrigeration, if this does not conflict with a religious belief or medical examination.

(ii) Human remains kept under refrigeration over 24 hours beyond death shall be maintained at a temperature level between 35° and 40°F. The remains shall be buried, cremated or entombed within 5 hours following removal from refrigeration.

(iii) Under normal circumstances, the public should not view an unembalmed body which has been kept in refrigeration longer than 36 hours.

(7) Obtaining and maintaining written authorization from the family of a deceased who is to be cremated.

49 Pa. Code § 13.201.

The subsequent section, 49 Pa. Code § 13.202, provides sixteen categories of "Unprofessional Conduct" for a funeral director. None of the enumerated types of conduct apply here.

In the Amended Complaint, Karwatske alleges that Brooks and the Funeral Home negligently destroyed the body of Decedent through cremation at the direction of the Pecks and that they negligently released the cremated remains to the Pecks when they knew or should have known that he was the only person with the legal authority to dispose of possess the Decedent's remains. Amended Complaint at ¶39-40. The legal authority that Karwatske cites is the right to dispose of a decedent's remains governed by 20 Pa.C.S.A. § 305. However, the Superior Court has held, "Section 305 has no application to funeral homes or funeral directors. [...] Insofar as any duty exists under Section 305, it is a duty imposed upon the next of kin [...] to petition a court alleging estrangement."

Karwatske has failed to allege a recognizable duty owed to him by Brooks or the Funeral Home that would allow his claims to proceed. Without establishing a duty, the preliminary objections of Brooks and the Funeral Home must be SUSTAINED. Karwatske's claims at Count II - Negligence and Count IV - Negligent Infliction of Emotional Distress are DISMISSED.

ORDER

AND NOW, this 23rd day of July, 2024, upon consideration of the Preliminary Objections filed by Defendants George Peck, Edward Peck, David S. Brooks, individually, and Brooks Funeral Home, Inc., to the Complaint of Robert Allen Karwatske, II, the record, and in accordance with the foregoing Opinion, it is hereby ORDERED and DECREED that:

(1) the preliminary objection of George Peck and Edward Peck to Count I - Injunctive Relief is OVERRULED; (2) the preliminary objection of George Peck and Edward Peck to Count III - Intentional Infliction of Emotional Distress is SUSTAINED;

(3) the preliminary objection of David S. Brooks, individually, and Brooks Funeral Home, Inc. as to Count II - Negligence is SUSTAINED;

(4) the preliminary objection of David S. Brooks, individually, and Brooks Funeral Home, Inc. as to Count IV - Negligent Infliction of Emotional Distress is SUSTAINED.

It is further ORDERED and DECREED that Count II - Negligence, Count III - Intentional Infliction of Emotional Distress, and Count IV - Negligent Infliction of Emotional Distress are DISMISSED.

It is still further ORDERED and DECREED that the preliminary injunction shall remain in place and the remains of Decedent, Michelle Karwatske, shall be kept in safe keeping by George Peck and Edward Peck and shall not be disposed of in any manner pending resolution of the permanent injunction.

> BY THE COURT: NANCY D. VERNON, JUDGE

ATTEST: Prothonotary

Professional Office Space for Lease

Newly remodeled professional office space for lease in Uniontown, PA. 750 sq ft of office space with 400 sq ft common area. Only 3 blocks from the courthouse, perfect for an attorney. Would also be ideal for an accountant, real estate agent, mortgage broker, insurance agent, etc. Street parking in front and parking lot in back. All utilities are included except electric. Equipped with Cat 5 Ethernet cable. \$950/mo plus security deposit. Long term lease available with option to expand to more office space in the future.

Contact: Benjamin Haines

724-984-5204

benhaines@zoominternet.net

Location: 11 West Church Street, Uniontown, PA 15425







LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: Wednesday, August 21st from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom TBD of the Fayette County Courthouse
- Discussion topics: Changes to the Child Custody Statute under Kayden's Law
- Presenters: Stacey Papa, Esquire and Dianne Zerega, Esquire

CLE Credit

1.5 hours of Substantive CLE credit for the program. The fees are as follows:

Members of the FCBA

- \$5 fee for attendance without CLE Credit
- \$15 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2019

• \$5 fee for attendance with CLE Credit

Non-members of the FCBA

- \$15 fee for attendance without CLE Credit
- \$40 fee for attendance with CLE Credit

** All fees to be paid at the door ** A light lunch will be provided.

RSVP

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or email to cindy@fcbar.org on or before Monday, August 19th.

KENTUCK KNOB SUMMER EVENING INVITATION

Please join your colleagues of the Fayette County Bar Association for a **Summer Evening at Frank Lloyd Wright's Kentuck Knob**

Thursday, August 22nd

Private House Tour 4:00 p.m. No Charge for FCBA Members \$25 Tour Fee for Guests Check-In at the Visitor Center at 3:45 p.m.

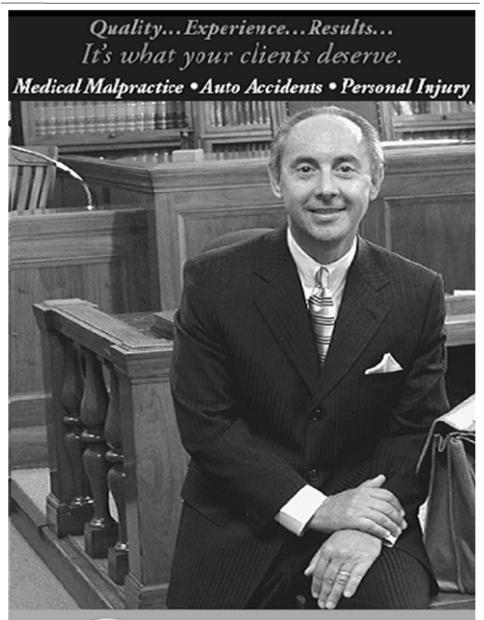
Cocktails & Heavy Hors d'oeuvres on the Patio Stone House Catering

5:00-7:00 p.m. No Charge for FCBA Members & Guests

> Entertainment by Chuck Cantalamessa

RSVP required by Thursday August 8th by reply email to cindy@fcbar.org or 724-437-7994







& ASSOCIATES



www.gislaw.com

700 Grant Bldg., 310 Grant St., Pgh., PA 15219