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The Law Behind Court Ruling on Case Involving 750-Pound Woman

Many of you, like me, may have recently read an article in the Indianapolis Star entitled *Court rules 750-pound woman's family can sue coroner over treatment of her dead body* and wondered what exactly the case was about. The story in the Star is an eye-catching title that was read by many. However, it did not provide any discussion about the details of the legal aspects in the case. Since I am a lawyer, when I see an interesting story with a published opinion I cannot help but pull up the decision and read it for myself. Having just read the decision, I decided to provide a breakdown of the legal aspects of the case – *D.J. v. Marion County Coroner's Office* – in this week's post.

The basic facts are that the deceased woman, Teresa Smith, lived in an apartment with her son and the son's biological father – Teresa and the boy's father were never married. On May 19, 2009, the father, David Johnson, Sr., discovered that Teresa was not breathing and had the 13 year-old son, D.J., call 911. After IMPD and paramedics arrived it was apparent that Teresa had passed away. While in most cases the next step would be a call to the coroner's office and then placement of the woman's remains onto a stretcher for removal from the home, in this case the usual approach was not available. Teresa was an obese woman

weighing approximately 750-pounds at the time of her passing.

After trying to figure out how to handle the situation, the Coroner's Office determined that the company that is usually used to remove remains was not equipped to do so. Thus, the Coroner's Office opted to take extreme measures and contacted a tow truck service to remove the body from the premises. The personnel on the scene dragged the body on a mattress to the courtyard of the apartment complex covered in a sheet – as the Coroner's Office had no body bags large enough for Miss Smith. The body was then lashed to the truck and a filthy carpet was tossed over Miss Smith's remains. Interestingly, later in the day, the Coroner's Office received a call from Digger Mortuary Services – its usual service provider – informing the Office that Digger Mortuary was, in fact, equipped to handle such a situation making the use of the tow truck unnecessary.

On March 2, 2010 D.J. and his father filed a complaint in the Marion County Superior Court XIII seeking damages for both Negligent Infliction of Emotional Distress (NIED) and Intentional Infliction of Emotional Distress (IIED). On October 28, 2011 the trial court granted the Coroner's Office's motion for summary judgment and dismissed the case. D.J., but not his father, appealed the order to the Indiana Court of Appeals.

The Court of Appeals had three legal issues to consider: (1) is the Marion County Coroner's Office immune from suit under the Indiana Tort Claims Act; (2) does D.J. have a viable claim for NIED; and (3) does D.J. have a viable claim for IIED.

The first issue is whether the Coroner's Office can even be sued for injuries caused by the mishandling of a body. The Coroner's Office argued, and successfully so to the trial court, that under the Indiana Tort Claims Act, it is immune from suit. The Indiana Tort Claims Act provides the circumstances under which a person can bring a lawsuit against a governmental entity. Included in the Act is Section 3(8) which grants *carte blanche* immunity for law enforcement personnel working within the scope of their employment for any action that does not constitute false arrest or false imprisonment. So, the issue in this case was whether this protection extends to the Coroner's Office's investigation and removal of a deceased person in conjunction with law enforcement. After a lengthy review of Indiana case law, the court held that the act at issue was the transportation of a body and that action "was not compelling enforcement of the law against another person, [but] was merely following the law to enable a more detailed investigation." Thus, the Indiana Tort Claims Act did not grant immunity to the Coroner's Office.

Having overcome the first hurdle, that D.J. could bring a suit against the

Coroner's Office, the next hurdle was to determine whether the claims he brought were viable under the facts of the case. Recall from our previous post discussing NIED claims that under Indiana law there are two bases for bringing an NIED claim. The first is the impact rule, requiring the person suffering the emotional harm to have suffered some physical impact from the event causing the harm. The other is the bystander rule that requires a person to arrive on the scene shortly after the death or severe injury to a loved one – such as a spouse, parent, or child. D.J. suffered no physical impact and thus could not state a claim under that approach. As to the bystander test, his claim failed because he did not fully perceive what was happening at the moment his mother's remains were loaded onto the truck. One major requirement of the relative bystander test is that the bystander be fully aware and perceive what is occurring. It was not until later that day while watching CNN that D.J. realized that his suspicions that she had been taken on a flatbed truck were correct. The court held that this distinction was dispositive and found that D.J. did not have a viable claim for NIED.

Though D.J. could not support a claim for NIED, the court found that he could proceed on a claim for IIED. Unlike NIED, which is not itself a standalone cause of action in Indiana, at least under current case law, IIED is an independent cause of action. In order to bring a claim for IIED a plaintiff must show “that the defendant (1) engage[d] in extreme and outrageous conduct (2) which intentionally or recklessly (3) cause[d] (4) severe emotional distress to” the plaintiff. The difficulty in bringing an IIED claim is always that what constitutes “extreme and outrageous conduct” must be so egregious that it is generally an extremely high burden to overcome. This tort does have one of the most memorable explanations in the history of American Jurisprudence. Under the Restatement (Second) of Torts – a very important authoritative source – the commentators described the kind of conduct necessary to support a claim as being one where, “Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, ‘Outrageous!’” In finding for D.J. on his IIED claim, the Court of Appeals did not find that D.J.'s claim should succeed; the court only held that it could proceed past the summary judgment stage and progress to be decided by a jury at trial.

In summation, the Court of Appeals held that the Coroner's Office is not immune under the Indiana Tort Claims Act from claims arising from the transportation of a deceased body; that because D.J. was neither physically impacted or completely aware of the situation with his mother's body he could not sustain an NIED claim; and that the actions taken by the Coroner's Office may be found by a jury to be so extreme and outrageous that D.J. may be able to recover for his damages against the Coroner's Office. Though, it is important to realize that the

Court of Appeals has not adjudicated the merits of the issues in the case. All that has been decided is that D.J. can have his day in court to prove his IIED claim.

Join us again next week.

Sources

- *D.J. v. Marion County Coroner's Office*, 971 N.E.2d 151 (Ind. Ct. App. 2012), *trans. denied*.
- Indiana Tort Claims Act – codified at Ind. Code Chapter 34-13-3.

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