

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CAROLYN ECHEVERRIA et al.,

Plaintiffs and Appellants,

v.

COUNTY OF LOS ANGELES,

Defendant and Respondent.

B275637

(Los Angeles County  
Super. Ct. No. BC569594)

APPEAL from a judgment of the Superior Court of Los Angeles County, William Fahey, Judge. Affirmed.

Dermot Givens for Plaintiffs and Appellants.

Law Offices of David J. Weiss, David J. Weiss and Sigalit V. Noureal; Greines, Martin, Stein & Richland, Alison M. Turner and Jonathan H. Eisenman, for Defendant and Respondent.

---

Appellants Carolyn Echeverria, the widow of deceased veteran Frederick Echeverria, and his children, Margot Frotton, Myraya Echeverria, and Frederick Echeverria, Jr.,<sup>1</sup> brought a case arising out of his delayed burial. The appeal is from a summary judgment in favor of respondent County of Los Angeles. We conclude that appellants have not shown error on appeal and affirm the judgment.

### **FACTUAL AND PROCEDURAL SUMMARY**

Respondent has a program for the burial of indigent veterans at Riverside National Cemetery (the cemetery). The program includes veterans whose family cannot afford the cost of cremation or burial. The program is administrated by the County of Los Angeles Department of Military and Veterans Affairs (MVA) and the Decedent Affairs Office (DAO), which operates the county morgue.

Decedent, a veteran, passed away on April 13, 2013, at Citrus Valley Medical Center. That day, his widow signed a “Consent for County Cremation of Decedent Remains.” She declared she was indigent and without sufficient funds to arrange for a private disposition of the remains; therefore, she consented to the release of the remains to respondent for cremation. (Health & Saf. Code, § 7100.) The form stated that “[v]eterans are buried at a veteran’s cemetery unless private funeral arrangements are made.” The widow checked the option of claiming the cremated remains within the next two years, even

---

<sup>1</sup> When necessary for brevity and clarity, we refer to appellants by their first names.

though she intended that the government bury decedent.<sup>2</sup>

Decedent's remains were first taken to Custer Christiansen Mortuary and then, on June 13, 2013, to the county morgue, with a report stating his family had represented it could not afford the services of a mortuary, but had signed paperwork that it wanted the remains back. Decedent's remains were kept at the morgue until May 20, 2014 and were accounted for in daily inventory. The remains were tagged and placed in a refrigerated crypt, where they nevertheless were subject to the natural process of decomposition.

Respondent's practice was not to cremate the remains of indigent veterans, but to use the services of Rose Hills Memorial Park and Mortuary (Rose Hills) to casket and transport them to the cemetery since neither the MVA nor the DAO had the means to casket and transport remains. In its paperwork, the DAO represented that decedent was without sufficient resources to cover burial expenses and without any next of kin claiming his body. The MVA accepted decedent's case on that representation and released the remains to Rose Hills on a form signed by "a burial coordinator" as decedent's next of kin.

Unbeknownst to respondent, Rose Hills had narrowed its definition of "indigent veteran" and rejected decedent's case,

---

<sup>2</sup> Decedent's daughter Myraya testified at her deposition that at the time of decedent's death, the family had fallen "into a financial hole" and that at the hospital she filled out paperwork on her parents' behalf that would allow decedent to be cremated and then buried by respondent. Frederick Jr. testified finances played a role in the decision to have the county bury decedent. Nevertheless, during discovery, appellants proffered identical declarations, stating they were financially able and willing to bear the cost of burial.

along with other cases of veterans who had next of kin in California. Specifically, decedent's case was rejected because the widow had authorized cremation and had indicated she wished to claim the cremated remains. Despite numerous communications with Rose Hills, respondent was not notified of this policy change until May 2014. On May 20, 2014, respondent's board of supervisors ordered that the remains of all indigent veterans whose burials had been delayed be transferred to the coroner's office for transportation to the cemetery. The coroner's office confirmed decedent's identity according to its policy, had the remains cremated, and had the ashes interred at the cemetery.

In the year after decedent's death, his daughters made repeated phone calls to inquire about the status of his remains.<sup>3</sup> His daughter Myraya called first the hospital, then the morgue. A month or two after her father's death, she was told by the hospital that "the county had picked him up." She began calling the morgue in late June 2013 and was told by unidentified personnel that her father was not "in their system," or that "they didn't know where he was at the moment but to call back." By August 2013, Myraya believed her father's remains had been lost, rather than buried or cremated, because she had been told repeatedly that "he could have been lost in the system." At her deposition, she testified she did not believe the individuals she talked to were intentionally misleading her, but she thought that if her father was "not in the system," even though his body was at the morgue, that was "their mistake." Because of her family's

---

<sup>3</sup> Despite its practice of documenting next-of-kin calls, the morgue has no record of these phone calls. Neither do appellants. Appellants have not identified the individuals who spoke to them on the phone.

financial constraints, Myraya did not tell the morgue that they wanted to have a private cremation. None of appellants asked to claim the remains and bury them.

Decedent's other daughter, Margot, began calling the morgue four months after his death, and about that time began suspecting that respondent was either neglecting or had lost her father's remains. She was variously told that she should know where her father was, that the cemetery already had picked him up (which Margot did not believe and the cemetery denied), or that the morgue did not know where he was because it had no record of him. Her impression was that the individuals to whom she spoke "didn't know anything from the beginning."

Decedent's widow recalled being told that her husband's remains would not be taken to the cemetery until a certain number of bodies had been collected for shipping. The widow believed decedent's remains were at the morgue waiting to be picked up, but she also suspected they had been misplaced based on what her daughter Myraya told her. Decedent's son, Frederick Jr., had conversations with one of his sisters "over a couple of months" regarding the morgue's stated lack of knowledge of decedent's whereabouts; then, three months later, around October 2013, she said the morgue had told her decedent's body had been taken to the cemetery, but the cemetery had denied that the morgue had brought the body there.

In May 2014, the coroner's office notified the family that it had found decedent's remains and offered to cremate them. A week later, the *Los Angeles Times* ran an article about the delay in transporting the remains of 56 veterans, including those of decedent, for burial due to Rose Hills' change in policy.

In August 2014, appellants submitted claims for damages

to respondent under the Government Tort Claims Act (Gov. Code, § 810 et seq.). The claims were for emotional distress based on the morgue's failure to "properly care" for decedent's remains. In September 2014, appellants submitted a class action claim on behalf of "other veterans similarly situated." The claims were denied as untimely as to events that occurred more than six months before the claims were presented. They were rejected as to more recent events.

In January 2015, appellants filed a class action complaint against respondent on behalf of the heirs of veterans whose remains were found at the morgue. The complaint purported to state three causes of action: (1) negligence, (2) fraud, and (3) intentional infliction of emotional distress. As to the negligence claim, appellants alleged that respondent failed to provide a timely veteran's burial or allow burial by the family, held the remains "in a manner of disrespect and indignity," allowed them to decompose beyond recognition, and gave strangers access to the remains. The fraud claim was based on allegations that respondent falsely informed appellants it did not possess the remains when it knew or should have known that it did. The claim for intentional infliction of emotional distress was based on the same conduct alleged as to the other two claims. Appellants sought damages, including punitive damages.

Respondent moved for summary judgment or summary adjudication. Preliminarily, it argued that the claims were untimely (Gov. Code, § 911.2), but it also challenged each claim on the merits. Specifically, as to the negligence claim, respondent argued that appellants could not establish a breach of a statutory duty because they had falsely represented that appellant was indigent for purposes of Military and Veterans

Code section 942, which imposes a duty on respondent to “decently inter[]” the bodies of indigent veterans. Respondent argued further that it was immune from liability for its discretionary decisions in arranging the disposition of veterans’ remains. (Gov. Code, § 820.2.) Respondent contended that the fraud claim failed because appellants could not show the unidentified individuals to whom they spoke intentionally made false representations of fact or that appellants detrimentally relied on those representations. Respondent also claimed to be immune to allegations of fraud because any misrepresentation affected appellants’ financial interest. (Gov. Code, § 818.8.) As to the claim for intentional infliction of emotional distress, respondent argued that appellants could not establish there was intentional conduct directed at them or occurring in their presence, citing *Christensen v. Superior Court* (1991) 54 Cal.3d 868, 903–904. Respondent also argued that it is not subject to punitive damages. (Gov. Code, § 818.)

In opposition, appellants argued that their claims against respondent accrued only when respondent acknowledged it had custody of decedent’s remains in May 2014. Appellants agreed that Military and Veterans Code section 942 did not apply because decedent was not indigent. Nevertheless, they contended that respondent had a duty to locate decedent’s closest next of kin, citing to a statute that requires the coroner to “make a reasonable attempt to locate the family” when it “takes custody of a dead body.” (Gov. Code, § 27471, subd. (a).) They also argued that respondent had a duty to obtain the widow’s consent to the disposition of decedent’s remains, that she had not given her consent to holding his remains for a year, and that the coroner cremated the remains on the oral consent of Frederick, Jr., who

was not decedent's next of kin. (Health & Saf. Code, § 7100 [giving widow precedence over children as next of kin].) Appellants argued, too, that respondent had a "statutory duty to act with reasonable care in handling" decedent's remains, citing Government Code section 815.2, which imposes vicarious liability on public entities for the acts and omissions of their employees, so long as the employees are not immune.

As to the fraud claim, appellants contended that they had sufficiently "alleged" fraud based on misrepresentations made by respondent regarding the whereabouts of decedent's remains, their reliance on the misrepresentations in not taking legal action against respondent, and the emotional distress they suffered. Appellants contested respondent's claim of immunity for fraud on the ground that the mishandling of human remains affects more than finances. They argued that the intentional infliction of emotional distress claims were based on misrepresentations that became intentional due to repetition. Appellants claimed to seek punitive damages from unidentified individuals, rather than from respondent.

The only evidence appellants offered in opposition was their attorney's declaration, which stated that respondent had not relied on representations by decedent's next of kin, or verified his indigent status; that appellants made no misrepresentation regarding their finances as they stated they could afford a private burial; that the widow was decedent's next of kin; that appellants were denied an opportunity to identify the remains; and that they had no confidence the correct remains were cremated and buried under decedent's name.<sup>4</sup> Appellants purported to dispute facts in

---

<sup>4</sup> Respondent filed evidentiary objections to the declaration of appellant's attorney, upon which the court did not rule.



respondent's separate statement of undisputed facts by either citing to the attorney's declaration or objecting to respondent's evidence. However, they did not file separate evidentiary objections, or ask the court to rule on any objection listed in the separate statement.

In its reply, respondent continued to argue the claims were untimely because appellants had reasons to suspect respondent had either lost or neglected decedent's remains as early as August 2013. Referencing its statement of undisputed facts, respondent claimed that the widow consented to the release of the remains and to their cremation by respondent, that appellants did not request the remains at any time, and that the widow and her son consented to the coroner's cremation of the remains. Respondent argued that appellants offered no evidence to support their fraud claim, and that the deposition testimony of decedent's daughters supported an inference that the individuals to whom they spoke on the phone made suppositions rather than intentional misrepresentations. Respondent argued appellants could not state a claim for fraud without identifying the individuals to whom they spoke on the phone, that the delay in filing the lawsuit did not establish detrimental reliance, and that emotional distress is not an element of fraud, citing *Channell v. Anthony* (1976) 58 Cal.App.3d 290, 315, a case of fraud in a real-estate transaction. As to the claim for intentional infliction of emotional distress, respondent contended there was no evidence of extreme and outrageous conduct directed at appellants, and as to punitive damages, respondent noted that appellants had not named any individual defendants.

Appellant's counsel did not appear at the hearing on the

---

motion, and the court granted summary judgment, stating that “[t]he sparse declaration of plaintiffs[] counsel fails to raise triable issues of fact. The court finds that there are no declarations by the plaintiffs, and what we are left with [is] mere argument.” Judgment was entered in May 2016. This appeal followed.<sup>5</sup>

## DISCUSSION

A defendant moving for summary judgment must make a prima facie showing that one or more elements of a cause of action cannot be established, or that the cause of action is subject to a complete defense. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) If the defendant meets its burden, then the plaintiff must make a prima facie showing that a triable issue of material fact exists. (*Id.* at p. 850.)

We review the trial court’s decision on a motion for summary judgment de novo, “considering all the evidence set forth in the moving and opposition papers except that to which objections were made and sustained. [Citations.]” (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65–66.) We view the evidence and all reasonable inferences drawn from it in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Co., supra*, 25 Cal.4th at p. 843.) We may affirm the judgment on any ground supported by the record. (*McClain v. Octagon Plaza, LLC* (2008) 159 Cal.App.4th 784, 802.)

---

<sup>5</sup> By separate order, the court granted respondent’s motion to strike the class allegations. Appellants do not challenge that order.

## I

Respondent argues the complaint is barred because appellants did not present their claims in a timely manner.

Under the Government Tort Claims Act, a public entity may not be sued for personal injury unless a written claim is presented to the entity within six months of the accrual of the cause of action, and the entity denies the claim. (*S.M. v. Los Angeles Unified School Dist.* (2010) 184 Cal.App.4th 712, 717, citing Gov. Code, §§ 911.2, 945.4.) The accrual date for such a claim is determined by the rules governing accrual for statute of limitation purposes. (*S.M.* at p. 717, citing § 901.) Under the “last element” accrual rule, the statute of limitations runs from the occurrence of the last element essential to the cause of action. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.)

This last element rule is subject to a number of exceptions. The discovery rule “postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action. [Citations.]” (*Aryeh v. Canon Business Solutions, Inc.*, *supra*, 55 Cal.4th at p. 1192.) The continuing violation doctrine “aggregates a series of wrongs or injuries for purposes of the statute of limitations, treating the limitations period as accruing for all of them upon commission or sufferance of the last of them. [Citations.]” (*Ibid.*) Under the theory of continuous accrual, “a series of wrongs or injuries may be viewed as each triggering its own limitations period, such that a suit for relief may be partially time-barred as to older events but timely as to those within the applicable limitations period. [Citation.]” (*Ibid.*)

The parties focus exclusively on the discovery rule. We agree with respondent that between August and October 2013,

appellants knew or should have known that they had suffered a wrong, even though they may not have known the “specific “facts” necessary to establish” any particular cause of action. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397–398.) That was when they began to suspect decedent’s remains had not been buried and may have been lost or neglected by the morgue. That also was when they realized that the individuals to whom decedent’s daughters spoke on the phone had made misleading statements about the whereabouts of decedent’s remains.

However, the discovery rule was not the basis for respondent’s denial of appellants’ claims. Rather, the claims were denied as untimely solely as to events that occurred over six months before the claim presentation, suggesting that respondent applied the theory of continuous accrual. Under that theory, any alleged repeated wrongdoing that occurred between February and May 2014 would still be actionable because it occurred in the six-month period preceding the presentation of the claims in August 2014. (See *Aryeh v. Canon Business Solutions, Inc.*, *supra*, 55 Cal.4th at p. 1201.) The continuing violation doctrine may justify treating the alleged continuing delay in burying decedent and the repeated misstatements that accompanied the delay “as an indivisible course of conduct actionable in its entirety, notwithstanding that the conduct occurred partially outside and partially inside the limitations period. [Citations.]” (*Id.* at p. 1198.)

We decline to affirm the summary judgment on the ground that appellants’ claims were untimely as a whole.

## II

On appeal, the judgment is presumed correct, “and the appellant has the burden to prove otherwise by presenting legal authority on each point made and factual analysis, supported by appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited. [Citations.] [¶] It is the appellant’s responsibility to support claims of error with citation and authority; this court is not obligated to perform that function on the appellant’s behalf. [Citation.]” (*Keyes v. Bowen* (2010) 189 Cal.App.4th 647, 655–656.) As respondent points out, appellants have failed to carry their burden to show error because their briefs fail to conform to fundamental legal principles governing appeals.

In the trial court the parties advanced various legal arguments, citing statutes and case authority in support of their claims and defenses. Yet, on appeal, appellants cite no legal authority to support their claims of negligence, fraud and intentional infliction of emotional distress, and except for the timeliness of the claims, address no arguments raised by respondent. Their factual analysis also is flawed. Appellants summarily cite to a list of undisputed and disputed facts, identified solely by their numbers, and claim without any analysis that those facts either raise triable issues, or are insufficient to shift the burden of production to them. Appellants also cursorily refer to discovery in another case that was not proffered to the trial court in relation to the summary judgment motion.

The proper procedure for seeking to avoid the harsh effect of summary judgment when discovery is ongoing is to file declarations in the trial court, showing the need for additional time. (See *Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 253–

254, citing Code Civ. Proc., § 437c, subd. (h).) That was not done here. Since on appeal our review is limited to the evidence presented in the trial court in relation to the summary judgment motion (*Paslay v. State Farm General Ins. Co.* (2016) 248 Cal.App.4th 639, 644–645), appellants may not rely on insinuations of outstanding discovery and new evidence developed in another case.

The proper procedure for raising evidentiary objections is either to file written objections separately from the other papers filed in relation to the motion for summary judgment (Cal. Rules of Court, Rule 3.1354(b)), or to make objections orally at the hearing. (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 531.) When the court fails to rule on properly presented evidentiary objections, they are presumed overruled and preserved on appeal. (*Id.* at p. 534.) However, if a party fails to challenge the evidentiary rulings on appeal, any claim of error as to them is forfeited. (See *Frittelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35, 41.) Appellants may not argue they have properly disputed respondent’s evidence when they neither properly raised evidentiary objections in the trial court, nor challenged the presumed overruling of any objections on appeal.

Appellants argue there are five triable issues of material fact that were not addressed in respondent’s motion; yet, they present no legal argument supported by authority as to why these facts are material to the causes of action alleged in the complaint, whether they sufficiently establish the elements respondent’s motion challenged, or whether they overcome respondent’s defenses. Since we do not construct appellants’ arguments for them, we consider the arguments forfeited.

*(Cahill v. San Diego Gas & Elec. Co. (2011) 194 Cal.App.4th 939, 956.)*

On the briefs before us, appellants have not met their burden of showing error on appeal.

**DISPOSITION**

The judgment is affirmed. Respondent is entitled to its costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.