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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JEANETTE SALOMON,

Plaintiff and Appellant,

v.

HALLEY-OLSEN-MURPHY
FUNERALS & CREMATIONS
et al.,

Defendants and
Respondents.

B281408

(Los Angeles County
Super. Ct. No. MC024391)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Brian C. Yep, Judge. Affirmed.

Bowman & Kind and Warner Kind for Plaintiff and
Appellant.

Gurney Mason & Forestiere and Toby M. Magarian for
Defendant and Respondent Halley-Olsen-Murphy Funerals &
Cremations.

Charlton Weeks and Bradley T. Weeks for Defendants and Respondents Halley-Olsen-Murphy Funerals & Cremations and William J. Moore, Jr.

Jeanette Salomon appeals from the judgment entered after the trial court granted summary judgment in favor of Halley-Olsen-Murphy Funerals & Cremation (HOM) in Salomon's action for negligence, negligent infliction of emotional distress and intentional infliction of emotional distress based on HOM's failure to obtain her approval before final disposition of her late father's remains. Because HOM is protected from any liability in this case under the safe harbor provisions of Health and Safety Code sections 7100, subdivision (f), and 7111,¹ we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The Death of William J. Moore, Sr.

William J. Moore, Sr., died on February 23, 2013. At the time of his death Salomon and her brother, William J. Moore, Jr. (Moore), were identified as co-executors of their father's estate and successor cotrustees of his living trust, dated June 6, 1995.

Salomon was notified of her father's death by Sheila Riddle, her father's live-in girlfriend, on the day he died. Salomon had not spoken to her father in the preceding year and did not know he had been ill.

2. Arrangements for Cremation and Interment

Upon learning of her father's death, Salomon drove from her home in Bakersfield to her father's home in Lancaster. The

¹ Statutory references are to the Health and Safety Code unless otherwise stated.

coroner arrived shortly after Salomon to pick up the body and deliver it to the funeral home. Salomon did not know until two or three days later that her father's body had been taken to HOM in Lancaster.

After the body was removed, Salomon and her brother went to lunch, where they discussed funeral arrangements. The siblings agreed their father would be cremated and his ashes interred next to their mother at Greenlawn Mortuary and Cemetery in Bakersfield. Salomon also understood that she and Moore had agreed that Moore and Riddle would make arrangements for a funeral service or memorial for their father in Boron, California, and Salomon would handle the cemetery services in Bakersfield. At no time did Salomon advise Moore that she wanted to be involved with the disposition of their father's remains at HOM.

During lunch Moore told Salomon their father had amended his will and/or trust prior to his death. Although Salomon demanded the name of the attorney who had prepared the amendments, Moore did not provide the information. Within a few days Moore and Salomon were no longer speaking to each other.

On February 26, 2013 Moore and Riddle provided HOM a Declaration for Disposition of Cremated Remains, which stated Moore and Riddle had the legal right to control disposition of William J. Moore, Sr.'s remains and recited he was to be cremated and the remains delivered to Greenlawn Cemetery. On the same day Moore and Riddle also signed and provided HOM an Authority to Cremate and Order for Disposition, authorizing HOM to arrange for cremation at Antelope Valley Cremation Service and directing the cremated remains to be returned to

HOM with three quarters of the cremated remains then released to Greenlawn Cemetery and one quarter to Riddle. This form identified Moore and Salomon as William J. Moore, Sr.'s children, but included Moore's certification that he was authorized to have charge of the remains and that he possessed the full right to arrange for cremation and disposition of the remains.²

On March 1, 2013, after being told by her daughter that the body had been taken to HOM, Salomon called the funeral home and spoke to Stacy, an HOM employee. After Salomon identified herself, she and Stacy talked about "how the whole process went" and was told her father would be cremated in five to 10 days. Salomon also inquired as to how she could obtain death certificates. The next day Salomon visited Greenlawn Cemetery to discuss the family's agreed-upon plan for her father's remains to be interred next to her mother's.

On March 6, 2013 Salomon again called HOM, spoke to Stacy and asked if the cremation had been completed and whether she could pick up her father's remains. Stacy told Salomon her father's body had been cremated within the last couple of days and explained Salomon could not pick up the ashes because she had not paid for the services. After being pressed, Stacy said Moore had arranged for Riddle to pick up the ashes and also told Salomon the ashes had been divided. Salomon

² The printed form included the following language: "If the legal survivors at law, or if all persons of the same degree of kinship having equal priority rights to authorize cremation, are not signing below, a written explanation must be completed by the person(s) signing below as Authorizing Agent(s)." Moore did not submit a written explanation with the form.

responded that she did not think it was fair that she could not pick up the ashes. Riddle picked up the ashes the following day.³

On March 11, 2013 Salomon returned to Greenlawn Cemetery and agreed to purchase a plot next to her mother and a headstone for her father. On March 16, 2013 she attended the funeral for her father in Boron, organized by her brother. Salomon did not see the ashes at the service, but did not ask where they were.

On March 25, 2013, nine days after the funeral, Salomon contacted HOM to determine the location of her father's ashes. Salomon alleges an HOM employee named Elaine told her, because she had not called within seven days of HOM's receipt of her father's body, her brother was able to make unilateral decisions regarding the remains. At the request of Salomon, HOM sent her all the forms that had been executed by Moore and Riddle: the Authority to Cremate and Order for Disposition, the Declaration for Disposition of Cremated Remains, and a Receipt for Cremated Remains and Release and Indemnity.

3. Salomon's Lawsuit

On February 21, 2014 Salomon sued HOM for negligence, intentional infliction of emotional distress and negligent infliction of emotional distress. Her complaint alleges HOM breached its duty to provide appropriate and dignified services by allowing Riddle to direct the disposition of William J. Moore, Sr.'s remains or, alternatively, by allowing her brother to unilaterally direct the disposition of the remains. As a result of HOM's breach, Salomon alleges, she did not receive her father's remains, does

³ A Receipt for Cremated Remains and Release of Liability and Indemnity, dated March 7, 2013, was signed by Riddle and by Stacy Premo on behalf of HOM.

not know their location and has been forced to expend time and resources in an attempt to locate them. HOM's misconduct, she further alleges, has caused her to suffer severe emotional distress requiring both doctor visits and medication.

HOM answered the complaint and filed a cross-complaint against Moore for contractual indemnity, indemnity, contribution and declaratory relief.

4. The Motion for Summary Judgment

On May 5, 2016 HOM moved for summary judgment or, in the alternative, summary adjudication as to each cause of action in Salomon's complaint.⁴ HOM asserted Salomon had agreed to allow Moore to handle all aspects of the cremation and disposition of their father's remains and, even if she had withdrawn her consent, Salomon never made her objection known to HOM as required by section 7105, subdivision (a). HOM argued, based on these undisputed facts, it was protected from any liability to Salomon by the safe harbor provisions of sections 7100, subdivision (f), and 7111. In opposition Salomon argued HOM had been negligent in not including her in the process for deciding the disposition of her father's remains and had shown reckless disregard in excluding her from that process, knowing that it would cause her emotional distress.

The court granted the motion and entered judgment in favor of HOM. HOM's cross-complaint against Moore was dismissed with prejudice by stipulation.

⁴ Although Moore had not been named a defendant in Salomon's complaint and was a party to the action solely as a result of HOM's cross-complaint for indemnity, he joined HOM's motion.

DISCUSSION

1. *Standard of Review*

A motion for summary judgment is properly granted only when “all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c).) We review a grant of summary judgment de novo and decide independently whether the facts not subject to triable dispute warrant judgment for the moving party as a matter of law. (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 347; *Schachter v. Citigroup, Inc.* (2009) 47 Cal.4th 610, 618.) The evidence is viewed in the light most favorable to the nonmoving party. (*Ennabe v. Manosa* (2014) 58 Cal.4th 697, 703; *Schachter*, at p. 618.)

2. *Governing Law*

a. *The right to control disposition of remains*

Section 7100.1 authorizes an individual to direct, in writing, the disposition of his or her remains and to specify the funeral services to be provided. If no written directions have been given by the decedent, section 7100, subdivision (a), specifies the order in which various individuals have the right to control the disposition of the remains of a deceased person, the location and conditions of interment and the arrangements for funeral services. After the decedent’s agent with a power of attorney for health care (§ 7100, subd. (a)(1)) and his or her competent surviving spouse (§ 7100, subd. (a)(2)), section 7100, subdivision (a)(3), specifies, “The sole surviving competent adult child of the decedent or, if there is more than one competent adult child of the decedent, the majority of the surviving competent adult children” must be vested with such right.

Section 7100, subdivision (a)(3), also provides, “[L]ess than the majority of the surviving competent adult children shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving competent adult children of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult children.”

Section 7105, subdivision (a), provides in part, if a person listed in section 7100, subdivision (a)(3), “who would otherwise have the right to control the disposition and arrange for funeral goods and services fails to act . . . within seven days of the date when the right and duty devolves upon the person or persons . . . , the right to control the disposition and arrange for funeral goods and services shall be relinquished and passed on to the person or persons of the next degree of kinship in accordance with subdivision (a) of Section 7100.”⁵

The right to control the disposition of remains, although “not in the full proprietary sense “owning” the body of the deceased, [are] property rights in the body which will be protected.” (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 890.)

b. *Safe harbor protections for funeral directors and cemetery authorities*

In addition to identifying the individuals vested with the authority to control the disposition of the remains of a decedent,

⁵ The same seven-day forfeiture provision applies to an agent with a health care power of attorney and all relatives identified in section 7100, subdivision (a), except a surviving spouse, who has 10 days to act or to delegate his or her authority to control the disposition and arrange for funeral services.

section 7100 protects funeral directors and cemetery authorities from potential liability for carrying out the instructions of authorized individuals: “A funeral director or cemetery authority shall not be liable to any person or persons for carrying out the instructions of the decedent or the person entitled to control the disposition.” (§ 7100, subd. (f).)

Similarly, section 7111 protects from liability a cemetery authority or crematory acting under the direction of a person authorized by section 7100, subdivision (a), to control disposition of the remains of a decedent: “A cemetery authority or crematory may make an interment or cremation of any remains upon the receipt of a written authorization of a person representing himself or herself to be a person having the right to control the disposition of the remains pursuant to Section 7100. [¶] A cemetery authority or crematory is not liable for cremating, making an interment, or for other disposition of remains permitted by law, pursuant to that authorization, unless it has actual notice that the representation is untrue.”

3. HOM’s Actions Were Protected by the Safe Harbor Provisions of Sections 7100, Subdivision (f), and 7111

Mishandling of human remains may provide the basis for tort claims against a provider of funeral-related services who has acted improperly, whether through negligence or intentional misconduct. (See *Christensen v. Superior Court*, *supra*, 54 Cal.3d at pp. 887-888 [“[o]nce a mortuary . . . undertakes to accept the care, custody and control of the remains, a duty of care must be found running to the members of decedent’s bereaved family”]; *id.* at p. 898 [there is a duty imposed “on providers of funeral-related services . . . to respect, the expectations of both decedents and their survivors that the remains will be accorded dignified

and appropriate treatment”]; *Wilson v. Houston Funeral Home* (1996) 42 Cal.App.4th 1124, 1133 [“there is implied in every contract for funeral services a covenant the services will be conducted with dignity and respect toward the family members for whose benefit the services are performed”].)

In this case Salomon does not contend HOM actually mishandled her father’s remains. Indeed, there is no dispute the instructions given to HOM were carried out exactly as Moore and Riddle directed. Rather, because she had been identified as Moore’s sister on the February 26, 2013 form authorizing cremation of her father’s body, Salomon argues HOM necessarily knew she had an equal right to control disposition of her father’s remains under section 7100, subdivision (a)(3), yet never made any effort to contact her to obtain her consent to the plan created by Moore and Riddle for distribution of the cremated remains.

Salomon’s tort causes of action based on HOM’s failure to involve her in the decisionmaking regarding disposition of her father’s cremated remains are precluded by the safe harbor provisions of sections 7100, subdivision (f), and 7111. As discussed, under section 7100, subdivision (a)(3), Moore was authorized to act unilaterally to control the disposition of his father’s remains if he made reasonable efforts to notify Salomon of his decisions and was not aware of any opposition by her. After disclosing that Salomon was his sister on the cremation authorization form, Moore certified to HOM he possessed the full right to arrange for disposition of the remains.⁶

⁶ The authorization form stated in part, “I/we have charge of the human remains of the Decedent and possess the full right, power and authority according to the laws of the State of CA to execute this document and to arrange, control and authorize the

Nothing in section 7100 imposed a duty on HOM to look behind Moore's representation to verify that he was, in fact, authorized to make that decision without formal participation by his sister in order to be protected by section 7100, subdivision (f), from any liability for carrying out Moore's instructions.⁷ To the contrary, under section 7111 there can be no liability for making any disposition of cremated remains authorized by law based upon "the receipt of a written authorization of a person representing himself or herself to be a person having the right to control the disposition of the remains pursuant to Section 7100" unless the cemetery authority or crematory "has actual notice that such representation is untrue." (See *Sinai Temple v. Kaplan* (1976) 54 Cal.App.3d 1103, 1109-1110 [although decedent's father signed contract with funeral home, "[a]ppellant is correct in her contention that the child, Alisa, had the paramount right to control disposition of decedent's body. This does not impose liability upon Sinai under the circumstances here present. Section 7111 of the Health and Safety Code expressly exempts from liability a cemetery which relies upon the written authorization of a person representing himself to be ' . . . a

cremation and [disposition of] the remains of the Decedent. I am/we are not aware of any person with a superior or equal priority right to arrange, control or [authorize] the cremation and disposition of the remains of the Decedent. In addition, I am/we are aware of no objection to the cremation by [any] person, including any spouse, child, parent or sibling specified above."

⁷ That Riddle, a nonfamily member, also signed the authorization forms is immaterial to the issue whether HOM was entitled to rely on Moore's certification that he was entitled to instruct HOM regarding the disposition of his father's remains.

surviving child or parent’ . . . without actual notice that such representation is untrue”], fn. & italics omitted.)

At least implicitly conceding the broad protection afforded by these safe harbor provisions, Salomon nonetheless argues summary judgment was improper because there was a triable issue of fact whether her March 1, 2013 telephone call gave HOM actual notice that Moore did not have the right to act by himself to control disposition of their father’s remains.⁸ However, none of the 16 deposition excerpts included in Salomon’s opposition papers supports her claim she told HOM during that call that she objected to Moore acting unilaterally with respect to the disposition of their father’s remains or indicated in any way her desire to be included in the decisionmaking process. Rather, according to Salomon, the March 1, 2013 conversation with Stacy was limited to a discussion of “how the whole process went,” when the cremation would occur and how Salomon could obtain copies of the death certificate. Similarly, in her declaration submitted with the opposition papers, Salomon simply stated during the March 1, 2013 telephone call she was told her father would be cremated in five to 10 days. No other details of the March 1, 2013 call were provided.

Viewed most favorably to Salomon, the evidence in the record indicates Salomon first suggested to HOM that she did not concur in Moore’s decision regarding disposition of the cremated remains on March 6, 2013 when she asked Stacy if she could pick up the remains. Because the March 6 call took place more than seven days after HOM had received the body, however, under

⁸ Salomon admitted at her deposition she never told Moore she wanted to be involved with the disposition of their father’s remains.

section 7105, subdivision (a), Salomon had already relinquished her right to act, with Moore to control disposition of the remains. Accordingly, even if Salomon's brief exchange with Stacy on that date constituted notice to HOM that Salomon disagreed with Moore's instructions, it did not negate HOM's right to rely on Moore's authorization to release the remains to Riddle the following day.

There is similarly no merit to Salomon's argument that HOM improperly released the remains to Riddle, who is not a family member and purportedly had no right to receive them. Under section 7054.6, subdivision (a), "cremated remains may be removed in a durable container from the place of cremation or interment and kept in or on the real property owned or occupied by a person described in Section 7100 or any other person, with the permission of the person with the right to disposition" Here, Moore expressly "direct[ed] and authorize[d] the release/delivery or shipment of said cremated remains . . . to Sheila Riddle."

4. *HOM's Alleged Violations of the Cemetery and Funeral Act Are Irrelevant*

Business and Professions Code section 7712.6, part of the Cemetery and Funeral Act (Bus. & Prof. Code, § 7600 et seq.), prohibits a crematory licensee from conducting cremations "[u]nless the licensee has a written contract with the person or persons entitled to custody of the remains clearly stating the location, manner, and time of disposition to be made of the remains" Business and Professions Code section 7706 authorizes disciplinary action against a licensee for "[r]efusing to surrender promptly the custody of human remains . . . upon the

express order of the person lawfully entitled to custody of the human remains”

Although claiming HOM “likely breached” these two provisions because she, along with Moore, was a person entitled to custody of her father’s remains, Salomon concedes their enforcement is the sole responsibility of the Cemetery and Funeral Bureau. (See Bus. & Prof. Code, § 7610.1.) Indeed, Salomon did not allege any violations of the Cemetery and Funeral Act in her complaint, nor did she cite to the Business and Professions Code in her opposition to the motion for summary judgment. Nonetheless, Salomon argues the violations are relevant “to the extent they reflect upon a pattern of indifferent and unlawful conduct.” She is mistaken.

As discussed, by failing to timely act, Salomon forfeited any right she had to participate in the decisions regarding her father’s cremation and disposition of his cremated remains. Moreover, whatever rights or claims Salomon might have had against her brother (see, e.g., § 7105, subd. (c) [authorizing a petition in superior court to resolve disputes among parties with equal rights to control arrangements for funeral services and disposition of remains]), absent actual notice that Moore was not authorized to instruct HOM as to the disposition of the remains, HOM was entitled to rely on Moore’s certification of his authority and is fully protected from any liability for doing so. In addition, Salomon admitted she did not give HOM any instructions on how the remains should be handled.

DISPOSITION

The judgment is affirmed. Halley-Olsen-Murphy Funerals & Cremations is to recover its costs on appeal.

PERLUSS, P. J.

We concur:

SEGAL, J.

STONE, J. *

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.