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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2018

2170288

Barbara Martin, individually and as personal representative of the Estate of Mattie Anthony, deceased; Shirley Wilbanks; and Rose Anthony, as personal representative of the Estate of Jimmy Anthony, deceased

v.

Comfort Touch Transport, Inc.; Comfort Touch Transport Service, LLC; Jonathan Mellette; Greg Coffey; S.E. Combined Service of Alabama d/b/a Valhalla Funeral Home; and SCI Alabama Funeral Services, LLC

Appeal from Madison Circuit Court
(CV-14-902383)

DONALDSON, Judge.

Barbara Martin, individually and as personal representative of the estate of Mattie Anthony, deceased;

Shirley Wilbanks; and Rose Anthony, as personal representative of the estate of Jimmy Anthony, deceased (hereinafter referred to collectively as "the plaintiffs"), appeal from a summary judgment entered by the Madison Circuit Court ("the trial court") in favor of Comfort Touch Transport, Inc., and Comfort Touch Transport Service, LLC (hereinafter referred to collectively as "Comfort Touch"); Jonathan Mellette and Greg Coffey (Comfort Touch, Mellette, and Coffey are hereinafter referred to collectively as "the Comfort Touch defendants"); and S.E. Combined Service of Alabama d/b/a Valhalla Funeral Home ("Valhalla") and SCI Alabama Funeral Services, LLC (hereinafter referred to collectively as "the Valhalla defendants"). For the reasons discussed herein, we reverse the judgment insofar as it pertains to the negligence claim asserted against the Comfort Touch defendants and affirm the judgment insofar as it pertains to remaining claims asserted against the Comfort Touch defendants and the claims asserted against the Valhalla defendants.

Facts and Procedural History

This case arises from claims based on alleged postmortem injuries to the body of Mattie Anthony ("the decedent"), which

included a puncture wound and abrasions on the decedent's head. Martin, Wilbanks, and Jimmy Anthony are the decedent's children; Jimmy died during the pendency of the proceedings below. On November 26, 2014, some of the plaintiffs commenced an action in the trial court against the Comfort Touch defendants and the Valhalla defendants, asserting claims of negligence, wantonness, the tort of outrage, fraud and suppression, trespass, negligent infliction of emotional distress, and breach of contract.[1]

The Valhalla defendants and the Comfort Touch defendants separately moved for a summary judgment. In support of their motion, the Valhalla defendants presented deposition testimony of Valhalla employees, Comfort Touch employees, the plaintiffs, the plaintiffs' expert witness, and a medical examiner. The Comfort Touch defendants, in support of their summary-judgment motion, submitted deposition testimony of Comfort Touch employees, Barbara Martin, a medical examiner, the decedent's family physician, and the plaintiffs' expert witness. The plaintiffs responded in opposition and also filed

[1]The complaint was later amended on three occasions to add plaintiffs and to redesignate defendants.

a motion for a partial summary judgment on the issue of liability, asserting that the doctrine of res ipsa loquitur applied with respect to their negligence claim, to which they attached deposition testimony of Comfort Touch employees, a Valhalla employee, a medical examiner, and Barbara Martin, and also photographs of the decedent.

The materials submitted in support of and in opposition to the motions for a summary judgment show that on July 12, 2014, the decedent died at the home of her daughter, Barbara Martin. The decedent had entered into a contract for postmortem services with Valhalla, which is owned by SCI Alabama Funeral Services, LLC. Comfort Touch is an organization that provides postmortem transportation services. Valhalla was notified of the decedent's death. In response, Jonathan Mellette and Greg Coffey of Comfort Touch arrived at the decedent's home to transport her body to the Valhalla funeral home.

Mellette, the Comfort Touch employee who transported the decedent's body, testified that Comfort Touch provides transport services for multiple funeral homes in a specific geographic area and also transfers bodies from local funeral

homes to out-of-state funeral homes. He testified that he began working for Comfort Touch in 2013 and that he received on-the-job training by accompanying other Comfort Touch employees for approximately one week. Mellette stated that Comfort Touch supplied him with a minivan, a cot, gloves, and various supplies, and that Comfort Touch paid for the gas used for transport services. Mellette added that the minivan used to transport bodies does not have any markings or insignia indicating the nature of the services provided. Mellette further testified that Dignity Memorial, Inc., a nationwide organization that had owned Valhalla at some point, had provided a training seminar that demonstrated how to properly fill out the paperwork for the funeral homes owned by Dignity Memorial, Inc.

Mellette testified that, when he arrived at the decedent's home, Coffey was discussing an informational packet from Valhalla with the family. Mellette introduced himself, said he was from Valhalla, and went over the forms the family had to sign.

Mellette testified that he retrieved a cot, which is adjustable and on wheels, to transport the decedent's body to

the minivan. Mellette stated that he did not inspect the decedent's body and that he did not know whether she had any marks or bruises on her body at the time. Mellette testified that he and Coffey tied a sheet around the decedent's body, lifted her, placed her on the cot, covered her body with a quilt, and wheeled the cot out of the house without incident. Mellette also testified that he rolled the cot into the minivan and that the legs of the cot automatically retract so that the cot rolls straight into the minivan. According to Mellette, the minivan is equipped with "divets" in the floor that serve as a locking mechanism for the cot.

Mellette testified that he delivered the decedent's body directly to the Valhalla funeral home and that he did not encounter any accidents, bumps, hard turns, or anything out of the ordinary while transporting the body. When Mellette arrived at the Valhalla funeral home, he opened the garage door, opened the embalming area, removed the cot from the minivan, and rolled the cot into the embalming area. Mellette then transferred the decedent's body from the cot to the embalming table and signed a document indicating that delivery of the body had been made. Mellette testified that no Valhalla

employees were present when he delivered the decedent's body to the funeral home.

Mellette testified that, upon arriving at the Valhalla funeral home, he noticed a "small amount of blood or something on the sheet" covering the decedent, but he could not recall if there was blood on the quilt. Materials submitted to the trial court showed that, in a previous statement to law-enforcement officers, Mellette had stated that there was blood on the quilt when he delivered the body. The record shows that, at the funeral home, the decedent's body had a small, puncture-type wound on the right temple and a small abrasion injury on the forehead.

Coffey, the other Comfort Touch employee who had helped remove the decedent's body from her house, testified that he did not notice any marks or bruising on the decedent's face before her body was moved. Coffey stated that nothing occurred to the body while he was with the decedent's body at the home. Coffey did not transport the body to the Valhalla funeral home. Coffey testified that, although he had no idea how the body could have been injured during the transport process, he could speculate that "a number of things could have happened."

Coffey also testified that bodies can shift during the transportation process, even when secured properly, due to the natural decomposition of a body after death.

Jeff Huggins, the Valhalla embalmer, testified that, when he first encountered the decedent's body, he noticed a "large amount" of blood on the sheet covering the body. Huggins testified that the blood was "saturated" on the sheet around the decedent's head and was approximately the size of a basketball. Huggins discovered that the decedent had a small, puncture-type wound on the right temple and a small abrasion injury on her forehead. When he began the embalming, blood continued to come out of the puncture wound. Materials submitted to the trial court indicate that Huggins told law-enforcement officers that he suspected that the decedent had been involved in a motor-vehicle accident due to the amount of blood on the sheets.

Barbara Martin, the decedent's daughter, testified that she had provided care for the decedent as her health declined over the last four to five years of her life and that she was with the decedent when she died. Martin testified that a hospice nurse notified Valhalla after the decedent died, and

Martin believed that Mellette and Coffey were Valhalla employees. Martin testified that, before Mellette and Coffey arrived, the decedent's body had no bruising or injuries. Martin testified that Mellette and Coffey told her they were in a hurry because they had another body to transport. Martin also testified that Mellette and Coffey placed a dirty blanket over the decedent's body. Martin stated that, when Coffey and Mellette brought the body out of the house on the cot, "you could see her [body] moving" on the cot, and Martin said that she told them to be careful with the decedent's body. Martin testified that Mellette and Coffey "shoved [the body] in" the minivan and that the shove "was so rough that my sister and I turned and looked at each other like what are you doing?" Martin testified that Mellette was driving fast when he drove away from the home in the minivan with the body and that he "slung a lot of gravel."

Martin was informed by Mellette or Coffey that Valhalla would contact her the following day (Sunday) to schedule a time for the family to come to the Valhalla funeral home to make the final funeral arrangements. According to Martin, she telephoned Valhalla at 2:00 p.m. on Sunday and was told that

all the employees were busy and that it would be Monday before she could come to the funeral home to make arrangements.

On Monday, July 14, 2014, Martin, the other plaintiffs, and other family members attended an "arrangements" conference at the Valhalla funeral home. According to Martin, she asked to see the decedent's body and Valhalla employees tried to dissuade her from viewing the body. When asked whether she requested to view the decedent's body when she called on Sunday, Martin testified: "I was requesting to come out and -- I mean, I was -- I can't remember if I said I want to view the body, but I knew when I went out there I was going to." When asked what damage or injury she suffered during the 24-hour period between Sunday and Monday when she had to wait to view the decedent's body, Martin testified that it was "just the anticipation of having to wait" and it was "irritating."

Martin testified that, when she and other plaintiffs saw the decedent's body on Monday, the decedent's head "was cracked open and bruised all down the side and scratches and all the way down her arm and -- her hand even looked like it was broken." According to Martin, Valhalla employees told her that the decedent's body was in that condition upon arrival at

the funeral home. Valhalla employee Beverly Burch provided an affidavit stating that this was the first occasion that the Valhalla defendants learned that the decedent's body was not in the same condition as it had been when it was retrieved from Martin's residence.

Martin asserted that Valhalla should have called the family upon seeing the decedent in that condition and knowing that she had been transported from her home. Martin testified that Valhalla employees also told Martin that "things happen" to the body during the embalming process. Martin claimed that the person described as the manager of Valhalla told Martin and the family that "he could make things right."

Martin testified that, after viewing the decedent's body, she and other family members contacted a local law-enforcement agency and the agency began an investigation. The law-enforcement agency contacted Dr. Valerie Green, a physician and medical examiner, who viewed the body and advised that she would need to perform an autopsy to obtain more information about the body. The plaintiffs declined to permit an autopsy to be conducted on the body.

Martin testified that she continues to experience anger and depression, that she is no longer able to provide for her family by cooking or "taking care of things," that she has nightmares, and that she feels "like it just has destroyed [her] way of life."

Dr. Stacy Ikard, who met with the plaintiffs on two occasions to evaluate their mental states, opined that the grief issues suffered by the plaintiffs were more than what would be typical for a person experiencing the loss of his or her mother. Ikard testified, however, that she could not say for certain how the plaintiffs would have grieved if the trauma of seeing the decedent's injured body with the head wounds had not occurred, but, she said, the trauma of witnessing the decedent's body in that condition "complicate[s] their grief moving forward."

Dr. Green, the physician and medical examiner, testified that she was asked to view the areas of concern on the decedent's head at the request of a local law-enforcement agency. Dr. Green observed a puncture wound and an abrasion on the decedent's forehead area. Dr. Green testified that she could not conclusively determine what had caused the abrasion

on the decedent's head, but she suspected that the abrasion could have come from the decedent's head rubbing on the bar on the cot during the transportation process. Dr. Green opined that the puncture wound required something to have "hit up against her head to actually make a hole in her skin."

Dr. Green testified that the decedent had been diagnosed with cirrhosis, which causes the liver to release enzymes that thin a person's blood and skin, and, as a result, she said, a person with cirrhosis could bruise easily. Dr. Green explained, however, that cirrhosis would not cause the injuries she observed on the decedent's head.

Dr. Green testified that bodies do not typically "get bruising after death, because you [no] longer have the pumping of the heart pushing blood into the tissues to create that bruise." Dr. Green explained, however, that there are instances in which bruising occurs postmortem:

> "If it's an injury that occurs very close to the time of death where a person dies and then they are struck with something, the blood in those vessels in that area will just leak out into the tissue. There won't be the whole pushing effect of creating, like, a very large area of bruising, but there may be some bruising around the injury itself."

Dr. Green opined that the abrasion on the decedent's forehead appeared to have occurred postmortem because of its yellow appearance. She explained that the yellow coloring results because "it's just an area that's void of the blood now." Dr. Green also opined that an abrasion on the decedent's hand appeared to have occurred postmortem as well. Dr. Green could not express an opinion as to when the puncture wound on the decedent's head occurred. Dr. Green agreed that, if the sheets on the decedent's body were clean when she was retrieved from her home, but were bloody when the body was delivered to the Valhalla funeral home, the bleeding would have occurred postmortem.

Jeffrey Brown, who owns a funeral home and had worked in the funeral industry for many years, was retained by the plaintiffs to provide expert testimony. Brown testified that he did not know anything about what happened at the house or how the body was transported. Brown viewed pictures from the law-enforcement investigation, which included pictures of the puncture wound and abrasions, and thought "maybe the body had been mishandled." Brown opined that, because there was no bruising when the decedent was at her house, but there was

bruising when the body arrived at the funeral home, "[t]here is no other way for [the bruises] to get there except for" the body having been mishandled. Brown testified: "Bodies don't normally bruise ... just laying on a cot." Brown stated, however, that it is possible that a body could be dropped or damaged without the person handling the body having done anything wrong.

Brown testified that the injuries to the decedent's forehead were consistent with a failure to properly secure the body on a cot. Brown explained that a body could shift forward and hit the metal railing on the cot and that he had seen "scraping" on bodies occur when the bodies were not properly secured during transport. Brown also testified that cots can flip over during transport. To prevent that from occurring, Brown places an additional, empty cot inside his van to stabilize the cot holding the body.

Brown opined that if Valhalla refused to allow the family to see the decedent's body on Sunday, the refusal would fall below industry standards. Otherwise, Brown could not describe any industry standards that the Comfort Touch defendants or the Valhalla defendants violated. Brown testified that he uses

both a hearse and a van to transport bodies. Brown stated that his van does not have a mechanism to secure the cots. Brown also testified that a funeral home has a duty to notify the family of the condition of the body only if it believes that the condition changed from when the body was picked up.

On October 26, 2017, the trial court entered a judgment denying the plaintiffs' motion for a partial summary judgment and granting the Valhalla defendants' and the Comfort Touch defendants' motions for a summary judgment on all claims of the plaintiffs.

On November 16, 2017, the plaintiffs timely filed a notice of appeal to the supreme court; the appeal was transferred to this court pursuant to § 12-2-7(6), Ala. Code 1975.

Standard of Review

> "This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to

> the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce 'substantial evidence' as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12. '[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989)."

Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004).

Discussion

On appeal, the plaintiffs argue that the trial court erred in denying their motion for a partial summary judgment on the issue of liability, based on their assertion that the doctrine of res ispa loquitur applies with respect to their negligence claims and in entering a summary judgment in favor of the Valhalla defendants and the Comfort Touch defendants on all of their claims.

The Valhalla defendants argued in their motion for a summary judgment, as they do on appeal, that the plaintiffs did not present sufficient evidence that the Valhalla defendants did anything wrong in handling the decedent's body

and that the undisputed evidence demonstrated that the injuries to the decedent's body were present before the Valhalla defendants took control of her body. The Valhalla defendants argue that the Comfort Touch defendants are not their agents. The Comfort Touch defendants argued in their motion for a summary judgment, as they do on appeal, that the plaintiffs did not produce sufficient evidence demonstrating that Comfort Touch employees did anything to cause the marks on the decedent's head. All the defendants argue that the doctrine of res ipsa loquitur does not apply to these facts.

I. Negligence and Res Ipsa Loquitur

The plaintiffs assert that the doctrine of res ipsa loquitur precluded a summary judgment in favor of the defendants on their negligence claims. In their complaint, the plaintiffs alleged that the Valhalla defendants and the Comfort Touch defendants acted negligently in their handling and transportation of the decedent's body and that they failed to properly communicate with the family.

"The elements of a negligence claim are a duty, a breach of that duty, causation, and damage." Armstrong Bus. Servs., Inc. v. AmSouth Bank, 817 So. 2d 665, 679 (Ala. 2001). The

doctrine of res ipsa loquitur can be applied in certain circumstances to establish negligence. "Res ipsa loquitur means '"the thing speaks for itself," [and the doctrine] essentially allows a party to prove negligence by using circumstantial evidence.' Carrio v. Denson, 689 So. 2d 121, 123 (Ala. Civ. App. 1996)." Edosomwan v. A.B.C. Daycare & Kindergarten, Inc., 32 So. 3d 591, 593-94 (Ala. Civ. App. 2009).

> "Briefly stated, res ipsa loquitur is: When a thing which causes injury, without fault of the injured person, is shown to be under the exclusive control of the defendant, and the injury is such as, in the ordinary course of things, does not occur if the one having such control uses proper care, then the injury arose from the defendant's want of care. San Juan Light & Transit Co. v. Requena, 224 U.S. 89, 32 S.Ct. 399, 56 L.Ed. 680 [(1912)].
>
> "For the doctrine to apply, there are at least three essentials: (1) the defendant must have had full management and control of the instrumentality which caused the injury; (2) the circumstances must be such that according to common knowledge and the experience of mankind the accident could not have happened if those having control of the management had not been negligent; (3) the plaintiff's injury must have resulted from the accident. Lawson v. Mobile Electric Co., 204 Ala. 318, 85 So. 257 [(1920)]; 9 Wigmore on Evidence, 3d Ed., § 2509, pp. 380 et seq.; Shain, Res Ipsa Loquitur, 280-281; Law of Negligence, Shearman & Redfield, Vol. 1, § 56, pp. 150 et seq.; 29 C.J.S., Electricity, § 66, pp. 626 et seq.; 38 Am. Jur., § 295, pp. 989 et seq., §§ 299, 300, pp. 995-996.

> "The function of the doctrine is to supply a fact which must have existed in the causal chain stretching from the act or omission of the defendant to the injury suffered by the plaintiff, but which the plaintiff, because of circumstances surrounding the causal chain, cannot know and cannot prove to have actually existed. The missing fact is that the defendant was negligent. The rationale of the theory, in part, is that [the] defendant in charge of the instrumentality which caused the injury is possessed of superior knowledge and by reason thereof is better advantaged than [the] plaintiff to know the true cause and therefore, negligence is presumed and the burden is upon the defendant to adduce proof to overcome the presumption."

Alabama Power Co. v. Berry, 254 Ala. 228, 236, 48 So. 2d 231, 238 (1950).

The Comfort Touch defendants argue that Mellette and Coffey testified without contradiction that the transport of the decedent's body occurred without incident and that it cannot be established that "whatever occurred to the decedent occurred at any particular point in time, whether while the decedent was in Comfort Touch's possession or otherwise." The Comfort Touch defendants also assert that the plaintiffs cannot satisfy any of the elements of res ipsa loquitur -- specifically, they assert, the plaintiffs cannot establish what caused the marks on the decedent's head, that an injury actually occurred to the decedent, or that Comfort Touch was

in possession of an instrumentality that caused an injury.

Our supreme court has explained, however, that "a plaintiff is not required in every case to show a specific instrumentality that caused the injury." Ward v. Forrester Day Care, Inc., 547 So. 2d 410, 414 (Ala. 1989). A plaintiff can also connect negligence to a defendant "by showing that ... 'all reasonably probable causes were under the exclusive control of the defendant.'" Ward, 547 So. 2d at 414 (quoting Restatement (Second) of Torts § 328D (1965)).

The evidence indicated that, when the decedent's body was retrieved from her home, neither the plaintiffs nor the Comfort Touch employees noticed any abrasions or a puncture wound on the decedent's head. When Mellette arrived at the Valhalla funeral home with the decedent's body, he noticed blood on the sheet covering her body. When the embalmer later arrived, he noted a large amount of blood on the portion of the sheet covering the decedent's head, he noted a puncture wound, and he noted abrasions on the decedent's head. The plaintiffs presented evidence indicating that the decedent's body was not in that condition when it left her residence. The evidence, therefore, indicates that the injuries to the

decedent's body had to have occurred during Comfort Touch's transportation of the body.

Dr. Green, the medical examiner, testified that she had witnessed similar abrasions to other decedents' heads that were caused by contact with the bar on the stretchers used to transport the bodies. Coffey testified that bodies can shift during the transportation process even when secured properly. Jeffery Brown, the plaintiffs' expert, also testified that the abrasion injuries to the decedent could be consistent with the failure to properly secure the body on a cot, but he was unable to point to any action of the Comfort Touch defendants in securing the decedent's body that fell below the standard of care. Brown also testified that a body could be damaged without wrongful conduct. Therefore, as to the abrasion injuries, the doctrine of res ipsa loquitur would not apply because the evidence indicates that those injuries could have occurred without the negligence of any defendant. Alabama Power Co. v. Berry, 254 Ala. at 236, 48 So. 2d at 238. Because the abrasions could have occurred in the absence of negligence, the plaintiffs were required to present evidence demonstrating that the defendants' negligence caused the

abrasions, i.e., that Mellette or Coffey did something or failed to do something that a reasonably prudent person would have done or refrained from doing.

The puncture wound on the decedent's head, however, is different. If the decedent's head was not punctured when her body left Martin's home, but was punctured and bleeding when it arrived at the funeral home, "the circumstances [are] such that according to common knowledge and the experience of mankind the accident could not have happened if those having control of the management had not been negligent." Alabama Power Co. v. Berry, 254 Ala. at 236, 48 So. 2d at 238. Based on the foregoing, it would appear that an issue of material fact exists as to whether the Comfort Touch defendants had "full management and control of the instrumentality which caused" the puncture wound, whether the circumstances were "such that according to common knowledge and the experience of mankind the accident could not have happened if [the Comfort Touch defendants] had not been negligent," and whether those actions resulted in the puncture wound to the decedent's body. Berry, 254 Ala. at 236, 48 So. 2d at 238. Accordingly, a summary judgment was not properly entered in favor of the

Comfort Touch defendants on the plaintiffs' negligence claim as it relates to the puncture wound. Although it is unknown at this point what exactly occurred to cause the puncture wound to the decedent's head, whether the doctrine of res ipsa loquitur applies so as to demonstrate that the Comfort Touch defendants were negligent is an issue to be decided by the trier of fact.

With regard to the Valhalla defendants, however, because the undisputed evidence indicated that any injuries to the decedent's body occurred before the Valhalla defendants took control of the body, the trial court properly determined that the Valhalla defendants were not liable on the plaintiffs' negligence claim based on any acts or omissions by the Valhalla defendants regarding the handling of the decedent's body.

The plaintiffs also assert, however, that the Valhalla defendants are vicariously liable for acts or omissions of the Comfort Touch defendants based on an agency relationship. "The test for determining whether a person is an agent or employee of another, rather than an independent contractor with that other person, is whether that other person has reserved the

right of control over the means and method by which the person's work will be performed, whether or not the right of control is actually exercised." Martin v. Goodies Distrib., 695 So. 2d 1175, 1177 (Ala. 1997) (citing Alabama Power Co. v. Beam, 472 So. 2d 619 (Ala. 1985)). "Furthermore, 'when a defendant's liability is based on the theory of agency, agency may not be presumed, and ... to [support a finding of liability] the plaintiff must present substantial evidence of an agency relationship.'" Ex parte Wild Wild West Soc. Club, Inc., 806 So. 2d 1235, 1242 (Ala. 2001) (quoting Battles v. Ford Motor Credit Co., 597 So. 2d 688, 689 (Ala. 1992), citing in turn Carlton v. Alabama Dairy Queen, Inc., 529 So. 2d 921 (Ala. 1988)). "The test for determining whether an agency existed by 'estoppel' or by 'apparent authority' is based upon the potential principal's holding the potential agent out to third parties as having the authority to act." Malmberg v. American Honda Motor Co., 644 So. 2d 888, 891 (Ala. 1994).

In their motion for a summary judgment, the Valhalla defendants presented substantial evidence demonstrating that Comfort Touch was an independent contractor and provided a copy of a contract between Valhalla and Comfort Touch. In

support of the motion, the Valhalla defendants provided evidence indicating that Comfort Touch hired its own employees, provided the necessary equipment for transporting bodies, and provided training regarding how to properly transport bodies. There was no evidence indicating that the Valhalla defendants exercised or reserved any right of control over the manner in which the body of the decedent was prepared for transport and transported to the Valhalla funeral home. The burden of proving an agency relationship then shifted to the plaintiffs, "the part[ies] asserting the existence of an agency relationship, to present substantial evidence of the existence of a genuine issue of material fact regarding the alleged agency." Bain v. Colbert Cty. Nw. Alabama Health Care Auth., 233 So. 3d 945, 955 (Ala. 2017).

The plaintiffs presented evidence indicating that the Valhalla defendants directed the Comfort Touch employees where to go to retrieve the decedent's body, that the Comfort Touch employees had attended a training seminar regarding paperwork completion conducted by the Valhalla defendants, that Mellette worked with Martin on filling out paperwork for the Valhalla funeral home, and that Martin believed that Valhalla employees

had transported the decedent's body. With respect to the transport of the body, we cannot say that the plaintiffs presented substantial evidence demonstrating the existence of an agency relationship between the Valhalla defendants and the Comfort Touch defendants sufficient to impose liability on the Valhalla defendants for the actions of the Comfort Touch defendants.

II. Wantonness

The plaintiffs also assert that a factual dispute exists regarding the manner in which Mellette secured the cot in the back of the minivan before transporting the decedent's body, and, therefore, they assert, a summary judgment was improper on their wantonness claim.

> "'"Wantonness is not merely a higher degree of culpability than negligence. Negligence and wantonness, plainly and simply, are qualitatively different tort concepts of actionable culpability. Implicit in wanton, willful, or reckless misconduct is an acting, with knowledge of danger, or with consciousness, that the doing or not doing of some act will likely result in injury...."'"

George v. Champion Ins. Co., 591 So. 2d 852, 854 (Ala. 1991) (quoting Central Alabama Elec. Coop. v. Tapley, 546 So. 2d 371, 379 (Ala. 1989), quoting in turn Lynn Strickland Sales &

Serv., Inc. v. Aero-Lane Fabricators, Inc., 510 So. 2d 142, 145 (Ala. 1987)).

In support of their argument, the plaintiffs cite Payne v. Alabama Cemetery Association, Inc., 413 So. 2d 1067 (Ala. 1982). In Payne, a daughter appealed from a summary judgment in favor of the defendants in an action alleging trespass and negligent or wanton destruction of her mother's bodily remains. Our supreme court reversed the trial court's summary judgment, finding that issues of material fact existed on questions of agency, that the daughter was the proper party to bring the action, and that the statute of limitations had not expired. 413 So. 2d at 1071-73. Payne does not contain a similar factual scenario and does not demonstrate a basis for reversal on this point.

In this case, the Comfort Touch defendants submitted evidence indicating that the Comfort Touch employees wrapped the decedent's body in a sheet, placed the body on a cot, secured the body to the cot, and placed the cot in the minivan in order to transport the body to the funeral home. Once the Comfort Touch defendants presented evidence indicating the absence of a genuine issue of material fact related to wanton

conduct, the burden shifted to the plaintiffs to present substantial evidence in support of their wantonness claim. The plaintiffs presented evidence from Martin indicating that she believed Mellette was in a hurry, that he shoved the cot into the minivan, and that he drove away quickly. The plaintiffs did not produce any evidence indicating that the Comfort Touch employees acted "'"with knowledge of danger, or with consciousness, that the doing or not doing of some act will likely result in injury."'" Champion, 591 So. 2d at 854 (emphasis omitted).

The plaintiffs also assert that the Valhalla defendants' failure to notify the plaintiffs of the condition of the decedent's body and their failure to allow the family to see the decedent's body when the family requested to see the body supports a claim for wantonness. The plaintiffs cite Jefferson County Burial Society v. Scott, 218 Ala. 354, 118 So. 644 (1928), asserting that "[u]nwarranted withholding of the body will provide a cause of action." Scott, however, involved the unwarranted withholding of a body from burial based on a nonpayment of fees. In this case, the evidence established that the Valhalla defendants were unaware that the condition

of the decedent's body was different from when she was retrieved from the residence. The evidence also indicated that the plaintiffs were permitted to view the decedent's body after their request at the arrangements conference. The plaintiffs did not present substantial evidence demonstrating that the Valhalla defendants acted wantonly in delaying the plaintiffs' viewing the decedent's body or in not informing the plaintiffs of the condition of the decedent's body. Accordingly, a summary judgment in favor of the Valhalla defendants was proper on the plaintiffs' wantonness claim.

III. Tort of Outrage

The plaintiffs contend that they presented facts sufficient to withstand a summary judgment on their tort-of-outrage claim.

The conduct giving rise to a claim for the tort of outrage is intentional or reckless conduct that is "so outrageous in character, and so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized society," and the resulting emotional distress must be "so severe that no reasonable person could be expected to endure it." National

Sec. Fire & Cas. Co. v. Bowen, 447 So. 2d 133, 141 (Ala. 1983) (citing American Road Serv. Co. v. Inmon, 394 So. 2d 361 (Ala. 1981)).

In support of their contention, the plaintiffs cite Whitt v. Hulsey, 519 So. 2d 901 (Ala. 1987), Cates v. Taylor, 428 So. 2d 637 (Ala. 1983), and Gray Brown-Service Mortuary, Inc. v. Lloyd, 729 So. 2d 280 (Ala. 1999). Whitt involved "the desecration and destruction of a portion of a family burial ground." 519 So. 2d at 906. Our supreme court held that, "at the very least" the defendant in that case had acted recklessly and that, "[u]nder the particular facts of th[at] case, and in view of the deep human feelings involved," the evidence was sufficient to support a claim for the tort of outrage. Id.

In Cates, a relative disrupted a funeral 30 minutes before scheduled graveside services for a decedent by threatening legal action if the decedent was buried in a particular lot. The relative's threats were apparently based, in part, on the fact that her "feelings were hurt" because she had not been notified of the decedent's death. 428 So. 2d at 638. Our supreme court held that the trial court improperly

entered a summary judgment in that case because the facts, if true, stated a cause of action for the tort of outrage. Id. at 640.

In Lloyd, funeral-home employees had opened a decedent's casket, poured a caustic chemical on her remains, and, later, placed most of her remains in a body bag and buried the remains in another location. 729 So. 2d at 285–86. Our supreme court held that there was "ample evidence to support the jury's award" on the tort-of-outrage claim. Id. at 286.

The three cases relied upon by the plaintiffs involve evidence of intentional or reckless conduct on the part of the defendants. There is no evidence of reckless or intentional conduct on the part of any of the defendants involved in this case. In the absence of an essential element of the plaintiffs' cause of action, i.e., reckless conduct, a summary judgment in favor of the Valhalla defendants and the Comfort Touch defendants was proper on the plaintiffs' tort-of-outrage claim. See, e.g., Calvert v. Casualty Reciprocal Exch. Ins. Co., 523 So. 2d 361, 364 (Ala. 1988) (explaining that a summary judgment was proper because "[a]n essential element of the cause of action ... was missing").

IV. Negligent Infliction of Emotional Distress, Breach of Contract, Fraud and Suppression, and Trespass

The plaintiffs assert that questions of material fact were presented on their claims of negligent infliction of emotional distress, breach of contract, fraud and suppression, and trespass. We are not directed to which alleged conduct of the defendants serves as substantial evidence of the existence of a genuine issue of material fact on these claims or relevant supporting authority that would demonstrate a basis for reversal. Therefore, no grounds for reversal are established on these claims. See Rule 28(a)(10), Ala. R. App. P. Accordingly, the summary judgment on the plaintiffs' claims of negligent infliction of emotional distress, breach of contract,[2] fraud and suppression, and trespass is due to be affirmed.

[2]Comfort Touch argues that the proper plaintiff for the breach-of-contract claim is the decedent herself, not Martin, as personal representative of the decedent's estate, and that, because the decedent's estate was never added as a party, the trial court lacked subject-matter jurisdiction of the claim and the claim fails. Rule 17(a), Ala. R. Civ. P., however, expressly permits an executor or administrator to "sue in that person's own name without joining the party for whose benefit the action is brought." Comfort Touch has not directed this court to any authority that requires adding a decedent's estate as a party to an action or otherwise demonstrated that the trial court lacked subject-matter jurisdiction as to this claim.

Conclusion

The summary judgment, insofar as it pertains to the application of the doctrine of res ipsa loquitur to the negligence claims asserted against the Comfort Touch defendants, is reversed. The trial court's summary judgment is affirmed in all other respects.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Thompson, P.J., and Pittman, Thomas, and Moore, JJ., concur.