

LEGAL ISSUES

- I. WERE THE DEFENDANTS ENTITLED TO SUMMARY JUDGMENT OR DISMISSAL ON THEIR MOTION TO DISMISS BASED UPON SDCL § 3-21-2?

No. The Trial Court ruled that the Defendants' Motion to Dismiss should be granted to dismiss all State claims of Plaintiffs because Plaintiffs allegedly failed to provide a written Notice to the City Defendants within 180 days following October 15, 1999.

- II. WERE DEFENDANTS ENTITLED TO SUMMARY JUDGMENT ON ALL STATE CLAIMS OF NEGLIGENCE, RECKLESS AND INTENTIONAL CONDUCT BREACH OF IMPLIED AND EXPRESS CONTRACT, BREACH OF FIDUCIARY DUTY, TRESPASS, INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, FAILURE TO ADEQUATELY TRAIN AND SUPERVISE VALLETTE AND ZIMMERMAN, AND PUNITIVE DAMAGES?

No. The Trial Court ruled that all State claims of the Plaintiffs would be dismissed because in the eyes of the Circuit Court, the failure to give the 180 day statutory notice was fatal, and that, although sympathetic, the Trial Court was not prepared to rule on the fraudulent concealment exception in this case where there was overwhelming evidence following the May 9, 2002 disinterment that Defendants had done the outrageous acts that Appellants alleged, in moving Appellants' infant son's body, casket and grave.

- III. WERE DEFENDANTS ENTITLED TO SUMMARY JUDGMENT ON ALL FEDERAL CIVIL RIGHTS CLAIMS UNDER 42 U.S.C. § 1983 AND § 1985?

No. The Trial Court concluded that all Federal civil rights claims of the Plaintiff were to be dismissed because: 1) the Appellants did not have a "property interest" in their son's body and his grave; 2) that Defendants were not deliberately indifferent in their conduct toward Appellants, and; 3) that City Defendant did not have a "pattern, practice or custom" of moving people's graves at their cemetery without lawful permit or notice to loved ones.