

State Trial Courts

VERDICT: Defense, negligent embalming, emotional distress.

A 12-0 Billings jury found no negligence by Dahl Funeral Chapel in connection with negligent embalming claims by Basillia Cuellar's 9 children and grandchildren.

Plaintiffs asked Michelotti-Sawyers to perform funeral services for Cuellar. Michelotti completed the embalming, but allegedly during phone conversations with family members made offensive and discriminatory comments, including that since it was a welfare funeral the family would have to wait in line at the welfare office to obtain benefits for the funeral and would receive only partial services. Michelotti denied making such comments. The family was so offended that it moved the funeral to Dahl. On the night of a private viewing 3 children noticed a stain on the clothes which had come from a surgical incision which was leaking embalming fluid. Dahl repaired the site, placed clean clothes on the body, and cleaned the coffin, and the rest of the funeral proceeded as planned. The family contended that Michelotti was negligent in not closing the incision and that Dahl should have detected and corrected the mistake. It further contended that Dahl should have replaced the soiled coffin. Dahl testified that the coffin had been restored.

Plaintiffs claimed severe emotional distress. Dr. Widdison testified that they suffered from pathological grief and Dr. Tranel testified that they suffered from depressive disorder, dysthymic disorder, and PTSD.

Plaintiffs settled with Michelotti in 1995 for an undisclosed amount. Dahl then asserted a non-party defense. Michelotti was not represented at trial. Although the jury never reached the issue of apportioning fault, Judge Colberg ruled that pursuant to §27-1-703 and Dahl's non-party defense the jury would be allowed to apportion liability between Dahl and Michelotti.

Judge Speare had previously granted summary judgment for Defendants. The Supreme Court reversed, holding that *Sacco* emotional distress principles apply in a case of alleged mishandling of a corpse and that close family members for whom the funeral was intended have standing to sue (MLW 6/3/95:1).

Plaintiffs' experts: Edward Johnson, Chicago (funeral services & embalming); Harold Widdison, Flagstaff (bereavement); psychologist Ned Tranel, Billings.

Defendant's expert: Bernard Dahl, Billings (funeral home services).

Demand, \$300,000; offer, \$12,500. Jury request, \$500,000-\$1 million.

Jury deliberated 2 hours 5th day.

Contreras et al v. Michelotti-Sawyers & Nordquist Mortuary and Dahl Funeral Chapels, Yellowstone DV 93-576, 5/24/96.

Scott Green & James Patten (West, Patten, Bekkedahl & Green), Billings, for Plaintiffs; James Halverson (Herndon, Sweeney & Halverson), Billings, for Dahl (National Farmers Union Ins. Companies); Guy Rogers (Brown, Gerbase, Cebull, Fulton, Harman & Ross), Billings, for Michelotti.