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| DISTRICT COURT, EL PASO COUNTY, COLORADO | | |
| Court Address: 270 S. TEJON, COLORADO SPRINGS, CO, 80903 | | |
| Plaintiff(s) MAKAYLA PITHAN TRUMBO et al. | | DATE FILED |
| v. | | March 25, 2026 11:32 AM |
| Defendant(s) HALLFORDHOMES LLC et al. | | CASE NUMBER: 2023CV32110 |
| | | △ COURT USE ONLY △ |
| | | Case Number: 2023CV32110 |
| | | Division: 14 Courtroom: |
| Order re: Defendant Wilbert Funeral Services, Inc.'s Motion to Dismiss the Second Amended Complaint Under C.R.C.P. 12(b)(1) & 12(b)(5) and Defendant Roselawn Cemetery Association's Motion to Dismiss Plaintiffs' Second Amended Complaint | | |

THIS MATTER is before the Court on Defendant Wilbert Funeral Services, Inc.'s Motion to Dismiss the Second Amended Complaint Under C.R.C.P. 12(b)(1) & 12(b)(5) and Defendant Roselawn Cemetery Association's Motion to Dismiss Plaintiffs' Second Amended Complaint. The Motion seeks dismissal, pursuant to C.R.C.P. 12(b)(1) and 12(b)(5), of Plaintiffs' Complaint. After review of the Motions, Plaintiffs' Consolidated Response, Replies, the file, and the applicable law, and otherwise being fully advised in the premises and the Complaint, the Court enters the following ORDER:

C.R.C.P. 12(b)(1) LEGAL STANDARD

In order for a court to have jurisdiction over a dispute, the plaintiff must have standing to bring the case. *Ainscough v. Owens*, 90 P.3d 851, 855 (Colo. 2004). Standing is a threshold issue that must be satisfied in order to decide a case on the merits. *Id.*

The first prong of Colorado's test for standing requires a "concrete adverseness which sharpens the presentation of issues that parties argue to the courts." *Ainscough*, supra at 856 (quoting *Wimberly v. Ettenberg*, 570 P.2d 535, 539 (Colo. 1977)). Standing is conveyed by neither the remote possibility of a future injury nor an injury that is overly "indirect and incidental" to the defendant's action. *Id.* The injury may be tangible, such as physical damage or economic harm; however, it may also be intangible, such as aesthetic issues or the deprivation of civil liberties. *Id.*

The second prong of Colorado's standing test requires that the plaintiff have a legal interest protecting against the alleged injury. *Id.* This is a question of whether the plaintiff has a claim for relief under the constitution, the common law, a statute, or a rule or regulation. *Id.*

Under C.R.C.P. 12(b)(1), the plaintiff bears the burden of proving jurisdiction, and the trial court is authorized to make appropriate factual findings. *Medina v. State*, 35 P.3d 443, 452 (Colo. 2001). When there is no evidentiary dispute, the Court may rule without a hearing. *Tidwell ex rel. Tidwell v. City & County of Denver*, 83 P.3d 75, 86 (Colo. 2003).

C.R.C.P. 12(b)(5) LEGAL STANDARD

When considering a motion to dismiss for failure to state a claim, Colorado courts previously applied the "no set of facts" standard, dismissing a complaint only if it appeared beyond a doubt that the plaintiff could prove no set of facts that would entitle him or her to relief. In 2016, the Colorado Supreme Court modified that standard by adding the requirement that the complaint state a "plausible" claim for relief. *Warne v. Hall*, 373 P.3d 588, 591, 595-97 (Colo. 2016).

Under the *Warne* standard, the trial court still accepts all allegations in the complaint as true and views them in the light most favorable to the plaintiff. *Norton v. Rocky Mountain Planned Parenthood, Inc.*, 409 P.3d 331, 334 (Colo. 2018). However, facts pleaded as legal conclusions (i.e., boilerplate or conclusory allegations, such as those that merely repeat the statutory language) are no longer entitled to the presumption that they are true; they must be supported by specific factual allegations sufficient to raise the right to relief "above the speculative level." *Warne*, 373 P.3d at 591; and see *Scott v. Scott*, 2018 COA 25, ¶¶ 18-19 (Colo. App. Feb. 22, 2018); *Ruybalid v. Bd. of Cty. Commissioners*, 2017 COA 113, ¶ 21 (Colo. App. Aug. 24, 2017) ("[s]imply asserting a legal conclusion-bereft of any supporting factual allegations-does not state a plausible claim for relief").

ANALYSIS

Plaintiffs have sufficiently asserted the existence of an injury-in-fact to a legally protected interest. Plaintiffs have demonstrated that they are suffering from physical and emotional manifestations related to the wrongful handling of their loved ones' remains. Here, the question raised by Defendants is one of proximate cause, which is usually an issue for the jury to decide. *Garcia v. Colorado Cab Company, LLC*, 538 P.3d 328, 332 (Colo. 2023). Only in the clearest of cases, where reasonable minds can draw but one inference from the evidence, does the question [of proximate cause] become one of law to be determined by the court. *Id.* Further, Plaintiffs' argument that certain provisions of the Mortuary Science Code and industry regulations that govern Defendants' obligations when performing crematory services support the basis for their claims does establish the possibility of grounds for relief.

At this stage of the proceeding, the existence of an indemnification clause and the interpretation of such does not bear on the question whether standing exists. As stated above, Plaintiffs have asserted a legal interest protecting against their alleged injuries and, therefore, standing exists to bring claims against Wilbert and Roselawn.

Reviewing the allegations of fact in Plaintiffs' Second Amended Complaint, viewing them as true and in the light most favorable to the Plaintiff, the Court finds that Plaintiff's purported Claims III, V, VI, VII, VIII, and X do state plausible claims for relief under the *Warne* standard.

Claim I - Intentional Infliction of Emotional Distress requires a showing that Defendants acted recklessly or with specific intent to cause Plaintiffs severe emotional distress. The allegations by Plaintiffs are devoid of any claim that Defendants knew Plaintiffs. In fact, Plaintiffs agree that they did not have any direct contact with Defendants Wilbert or Roselawn. As to Claim I, the allegations are insufficient to state a plausible claim for relief.

Claim IV - Gross Negligence requires willful and wanton conduct, which is action committed recklessly and with conscious disregard for the safety of others. *Hamill v. Cheley Colorado Camps, Inc.*, 262 P.3d 945, 954 (Colo. 2011). There is no claim that plausible alleges Defendants Wilbert or Roselawn acted with conscious disregard to the safety of others. There is no allegation that the safety of anyone was ever in jeopardy by their actions. Thus, as to Claim IV, the allegations are insufficient to establish plausible claims for relief.

Finally, based on the concession of Plaintiffs, Count II - Negligent Infliction of Emotional Distress and Count IX - Interference With a Corpse are hereby DISMISSED.

WHEREFORE, based on the foregoing, Defendant Wilbert Funeral Services, Inc.'s Motion to Dismiss the Second Amended Complaint Under C.R.C.P. 12(b)(1) & 12(b)(5) and Defendant Roselawn Cemetery Association's Motion to Dismiss Plaintiffs' Second Amended Complaint are hereby DENIED IN PART. Counts I, II, IV, and IX are hereby DISMISSED. Defendants are directed to file their Answer as to the remaining claims within 21 days.

SO ORDERED

Issue Date: 3/25/2026



HILARY GURNEY
District Court Judge