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IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, STATE OF FLORIDA

JOSEPH PETITO and
NICHOLE SCHMIDT,

Plaintiffs,

v.

CASE NO. 2022 CA 1128 SC
DIVISION: H CIRCUIT

CHRISTOPHER LAUNDRIE and
ROBERTA LAUNDRIE,

Defendants.
_____/

DEFENDANTS' MOTION TO DISMISS COMPLAINT

COMES NOW, the Defendants, CHRISTOPHER LAUNDRIE and ROBERTA LAUNDRIE ("the Laundries"), by and through undesigned counsel, and hereby move to dismiss the Complaint pursuant to Florida Rule of Civil Procedure Rule 1.140(b) for failing to state a cause of action for intentional infliction of emotional distress. For the reasons set forth below, there are no facts that could support this cause of action and the Court should dismiss the Complaint with prejudice.

I. BACKGROUND

The facts surrounding this case have received widespread media attention and the Court is likely at least generally aware of the events that preceded the filing of this lawsuit. The Complaint alleges that the Plaintiffs' daughter, Gabrielle Petito, and the Defendants' son, Brian Laundrie, were engaged to be married. (Complaint ¶ 7). Ms. Petito and Mr. Laundrie were traveling the western United States in the summer of 2021. (Complaint ¶ 8). At some point during the trip Ms. Petito went missing and

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there was a search for her whereabouts. Shortly thereafter law enforcement commenced an investigation which included Brian Laundrie and the Defendants. The Complaint does not allege when Ms. Petito was reported missing or when the law enforcement investigation of the Laundries began, but news reports indicate Ms. Schmidt reported Ms. Petito missing to the Suffolk County (New York) Police Department on September 11, 2021. Ms. Petito was found deceased in Wyoming on September 19, 2021. (Complaint ¶ 22). Brian Laundrie was found deceased in Florida on October 20, 2021, of suspected suicide.

II. MEMORANDUM OF LAW

The Complaint should be dismissed with prejudice and the Plaintiffs should not be granted leave to amend. Although leave of court to amend a pleading shall be given freely when justice so requires, Fla. R. Civ. P. 1.190(a), leave to amend need not be given where the amendment would be futile. *Tuten v. Fariborzian*, 84 So. 3d 1063, 1069 (Fla. 1st DCA 2012). A proposed amendment is futile if it is insufficiently pled or is insufficient as a matter of law. *Armiger v. Associated Outdoor Clubs, Inc.*, 48 So. 3d 864, 871 (Fla. 2d DCA 2010)(citations omitted). The Complaint is insufficient and deficient as a matter of law for many reasons and those deficiencies cannot be cured by an amended Complaint. The gravamen of the claimed wrongdoing is that the Laundries exercised their constitutional rights and essentially made no statements to Plaintiffs or law enforcement. As a matter of law the Laundries' silence (conduct) could not form the basis of a claim for intentional infliction of emotional distress. The Laundries' constitutional rights and the elements necessary for such a cause of action

would not change with an amendment of the Complaint. Furthermore, the time period at issue occurred several months ago and the foundation of the Plaintiffs claimed distress, wanting to find their daughter, has been resolved. There are no more facts that could emerge that would bolster the Plaintiffs' claim. The Plaintiffs' failure to state a cause of action in the Complaint provides ample basis to conclude that the Plaintiffs would not be able to add the missing—but required—information if provided with another opportunity to bolster their allegations. As an amendment to the Complaint would be futile the Complaint should be dismissed with prejudice.

A. General Pleading Deficiencies

The Plaintiffs' allegations attempt to set forth a cause of action for intentional infliction of emotional distress. As an initial matter, the Complaint's ambiguity and lack of separate statements and counts as to each Plaintiff and Defendant pursuant to Fla. R. Civ. P. § 1.110(f) independently warrants dismissal for re-pleading. The allegations must be sufficient to inform the defendant of the nature of the cause against him. *Dawson v. Blue Cross Ass'n*, 293 So. 2d 90, 92 (Fla. 1st DCA 1974). The Defendants assume the cause of action is one for intentional infliction of emotional distress because words relevant to the elements of that cause of action appear in the Complaint. However, the phrase "intentional infliction of emotional distress" appears nowhere in the Complaint. It is also possible that Plaintiffs might be trying to allege a cause of action for tortious interference with a dead body, but it is not at all clear.[1] Florida Rule

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[1] Invoking the terms "malice" and "great indifference to the rights" appears to be drawn from the Florida Supreme Court's recognition of the tort of interference with a dead body in *Kirksey*

of Civil Procedure 1.110(b) requires that a complaint "must state a cause of action" and if a complaint is so vague, indefinite and ambiguous as to wholly fail to state a cause of action, it is subject to dismissal. *Frisch v. Kelly*, 137 So. 2d 252, 253 (Fla. 1st DCA 1962). Plaintiffs' Complaint ambiguously draws language from two unidentified causes of action and does not identify either as the cause of action upon which it relies. That deficiency requires dismissal.

The Complaint is further deficient because it names two Plaintiffs and two Defendants without attempting to distinguish between them. The Complaint offers no theory that would impute the conduct of one Defendant against another so any cause of action against them must be separate. The same is true of the Plaintiffs' individual causes of action. "Commingling various claims against all defendants together may 'warrant dismissal of a complaint.'" *Taubenfeld v. Lasko*, 324 So. 3d 529, 541 (Fla. 4th DCA 2021) (citing *Collado v. Baroukh*, 226 So. 3d 924, 927 (Fla. 4th DCA 2017)). Similarly, each distinct plaintiff must maintain its own action to recover for

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v. Jernigan, 45 So. 2d 188 (Fla. 1950): "[W]here the wrongful act is such as to reasonably imply malice, or where, from the entire want of care of attention to duty, or great indifference to the persons, property, or rights of others, such malice will be imputed as would justify the assessment of exemplary or punitive damages." *Id.* at 189. But, this is not the mental state that would satisfy a claim for intentional infliction of emotional distress. In any event, if the Plaintiffs intention was to allege a tort of interference with a dead body, this theory would fail because there are no allegations of any such conduct in the Complaint. *See Williams v. City of Minneola*, 575 So. 2d 683, 688–89 (Fla. 5th DCA 1991) (citing Restatement (Second) of Torts § 868; *Kirksey v. Jernigan*, 45 So.2d 188 (Fla. 1950); *Dunahoo v. Bess*, 146 Fla. 182, 200 So. 541 (1941); *Halpin v. Kraeer Funeral Homes, Inc.*, 547 So.2d 973 (Fla. 4th DCA 1989), *rev. den.*, 557 So.2d 35 (Fla. 1990); *Smith v. Telophase National Cremation Society, Inc.*, 471 So.2d 163 (Fla. 2d DCA 1985); *Sherer v. Rubin Memorial Chapel, Ltd.*, 444 So.2d 1176 and 452 So.2d 574 (Fla. 4th DCA 1984)).

its own loss. *Unijax, Inc. v. Factory Ins. Ass'n*, 328 So. 2d 448, 453 (Fla. 1st DCA 1976). While these two pleading deficiencies require dismissal and could potentially be corrected by amendment, Plaintiffs' legal theories are fatally flawed and could never be remedied by amendment thereby requiring dismissal of the Complaint with prejudice.

B. THE COMPLAINT FAILS TO MEET FACTUAL PLEADING REQUIREMENTS

"[P]leadings must be something more than an ingenious academic exercise in the conceivable." *United States v. Students Challenging Regulatory Ag. Proc.*, 412 U.S. 669, 688 (1973). Florida is a fact-pleading jurisdiction. *Horowitz v. Laske,* 855 So.2d 169, 172 (Fla. 5th DCA 2003). To withstand dismissal, a plaintiff must allege more than a "naked legal conclusion." *K.R. Exch. Servs., Inc. v. Fuerst, Humphrey, Ittleman, PL*, 48 So. 3d 889, 892 (Fla. 3d DCA 2010). It is insufficient to plead opinions, theories, legal conclusions or argument. *Barrett v. City of Margate*, 743 So. 2d 1160, 1163 (Fla. 4th DCA 1999). "The quality of pleading that is acceptable in federal court and which will routinely survive a motion to dismiss for failure to state a claim upon which relief may be granted will commonly not approach the minimum pleading threshold required in our state courts." *Cont'l Baking Co. v. Vincent*, 634 So. 2d 242, 244 (Fla. 5th DCA 1994).[2]

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[2] In *Davis v. Bay Cty. Jail*, 155 So. 3d 1173, 1177 (Fla. 1st DCA 2014), Judge Makar, in an opinion concurring in part and dissenting in part, noted that the pleading principles more recently announced by the U.S. Supreme Court in *Ashcroft v. Iqbal,* 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly,* 550 U.S. 544 (2007) are similar to the fact pleading standards applied by Florida courts. Of significance, Judge Makar pointed out that if legal conclusions are

Florida officially recognized the tort of intentional infliction of emotional distress in *Metropolitan Life Insurance Co. v. McCarson*, 467 So.2d 277, 278 (Fla.1985), which adopted section 46, Restatement (Second) of Torts (1965). To state a cause of action, a complaint must allege four elements: (1) deliberate or reckless infliction of mental suffering; (2) outrageous conduct; (3) the conduct caused the emotional distress; and (4) the distress was severe. *Liberty Mut. Ins. Co. v. Steadman*, 968 So. 2d 592, 594 (Fla. 2d DCA 2007)(citing *Dependable Life Ins. Co. v. Harris*, 510 So.2d 985, 986 (Fla. 5th DCA 1987)). Behavior claimed to constitute the intentional infliction of emotional distress must be "'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency.'" *Id.* (quoting *Ponton v. Scarfone*, 468 So.2d 1009, 1011 (Fla. 2d DCA 1985) (quoting *Metropolitan*, 467 So.2d at 278)).

In applying that standard, the subjective response of the person who is the target of the actor's conduct does not control the question of whether the tort of intentional infliction of emotional distress occurred. *Id.* at 595. Rather, the court must evaluate the conduct as objectively as possible to determine whether it is "'atrocious, and utterly intolerable in a civilized community.'" *Id.* (quoting *Metropolitan*, 467 So.2d at 278).

Even if a complaint alleges facts, those facts "if proved" must "establish a cause of action for which relief may be granted." *See Maiden v. Carter*, 234 So.2d 168, 170 (Fla. 1st DCA 1970). While the Plaintiffs allege some facts, those facts could never

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alleged, they are *not* deemed true for purposes of a motion to dismiss. *Id.* (citing *Papasan v. Allain,* 478 U.S. 265, 286 (1986) (emphasis in original).

establish a claim for intentional infliction of emotional distress because the Laundries' "actions" were legally permissible, constitutionally protected, not outrageous, and do not give rise to any cause of action.

1. THE LAUNDRIES' INACTION WAS NOT OUTRAGEOUS BUT LEGALLY PERMISSIBLE AND CONSTITUTIONALLY PROTECTED.

Outrageousness is the threshold test for recovery in an intentional infliction of emotional distress claim. *Ponton v. Scarfone,* 468 So.2d 1009 (Fla. 2d DCA), *rev. denied,* 478 So.2d 54 (Fla. 1985). Whether conduct is outrageous enough to support such a claim is a question of law, not a question of fact. *Liberty Mut. Ins. Co.*, 968 So. 2d at 595 (citing *Gandy,* 787 So.2d at 119; *Ponton,* 468 So.2d at 1011).

Importantly, "[t]he standard for 'outrageous conduct' is particularly high in Florida." *Patterson v. Downtown Med. & Diagnostic Ctr., Inc.*, 866 F. Supp. 1379, 1383 (M.D. Fla. 1994) (citing *Golden v. Complete Holdings, Inc.*, 818 F. Supp. 1495 (M.D. Fla. 1993)). It is not enough that the defendant acted with an intent which is tortious or even criminal, or that the defendant intended to inflict emotional distress, or even that the defendant's conduct can be characterized by "malice," or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. *E. Airlines, Inc. v. King*, 557 So. 2d 574, 576 (Fla. 1990) (citing section 46, Restatement (Second) of Torts, comments (d) and (i) (1965)). Rather, liability is established only where the alleged conduct 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 community. *Id.* Generally, the case is one in which the

recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!" *Id.*

The law is clear that a pleading is insufficient if it contains merely conclusions as opposed to ultimate facts supporting each element of the cause of action. *See id.* (citing *Price v. Morgan,* 436 So.2d 1116 (Fla. 5th DCA 1983)). Although the Complaint alleges the Laundries' conduct was "outrageous," the Complaint's failure to provide factual support rising to the level of outrageous conduct makes that allegation nothing more than a legal conclusion. The essential allegations against the Defendants are nowhere close to meeting the necessary standard. Those allegations are: Without providing any factual support the Complaint states "[i]t is believed" that Brian Laundrie told his parents that he murdered Gabrielle Petito (Complaint ¶ 18); Christopher and Roberta Laundrie spoke to and hired an attorney on September 2, 2021 (Complaint ¶ 18); after September 1, 2021, there was no contact between the Laundries and Joseph Petito and Nichole Schmidt (Complaint ¶ 21); the Laundries went on vacation to Fort Desoto Park from September 6-7, 2021 (Complaint ¶ 23); Roberta Laundrie blocked Nichole Schmidt on her cellphone and Facebook on September 10, 2021 (Complaint ¶ 24); the Laundries' attorney made a statement on September 14, 2021 (Complaint ¶ 25); the attorney for Joseph Petito and Nichole Schmidt issued a letter to the Laundries on September 16, 2021 (Complaint ¶ 26); the Laundries did not respond to Joseph Petito, Nichole Schmidt, or law enforcement (Complaint ¶ 27); the Laundries instructed that all contacts be made through their attorney who did not comment (Complaint ¶ 28); the Laundries' did not provide the

whereabouts of Brian Laundrie followed by the unsupported allegation that the Laundries' were making arrangements for Brian Laundrie to leave the country (which is contradicted by the undisputed fact that Brian Laundrie was deceased) (Complaint ¶ 29); and the Laundries could have alleviated the mental suffering of the Plaintiffs by disclosing what they knew about Gabrielle Petito's location (Complaint ¶ 30). Although the Complaint makes several accusations about Brian Laundrie's conduct, he is not a defendant in this case, nor is there any legal theory that would impute his conduct to his parents.

None of the allegations recited above, either alone or together, describe outrageous conduct. In fact, the Complaint fails to allege conduct at all. Basically, the Complaint alleges that the Laundries failed to have any contact with the Plaintiffs when the Plaintiffs wanted them to speak. That allegation falls so far below the "particularly high" standard for outrageous conduct that the Complaint should never have been filed. The only affirmative statements alleged in the Complaint were made by the attorney for the Laundries which is entirely appropriate under the circumstances.

Conduct claimed to cause severe emotional distress must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency." *Ponton,* 468 So.2d at 1011. The Laundries' decision to exercise their constitutional rights to silence, privacy, and counsel and to have their attorney speak for them under such trying circumstances and media pressure could not be further from conduct that is extreme or goes beyond all bounds of decency. It is what most people

would and should do in such a situation and in a civilized community. The letter by the Plaintiffs' attorney referenced in the Complaint even acknowledges the complicated conditions faced by the Laundries: "We understand you are going through a difficult time and your instinct to protect your son is strong." (Complaint ¶ 26). The Plaintiffs cannot express sympathy and understanding for the Laundries' unenviable position and then claim the Laundries caused them emotional distress by not responding in the way Plaintiffs desired. If the Laundries' "act" of doing nothing, other than maintaining their privacy and silence, is enough to subject them to this supposed cause of action then there would be virtually no limitations on the tort of intentional infliction of emotional distress and the fundamental right to remain silent under any circumstances would be obliterated.

Labeling the Laundries' silence as "outrageous" is particularly incongruous with the context of the attempt to contact the Laundries discussed in the Complaint. The only attempt at contact alleged is that the attorney for the Plaintiffs issued a letter to Christopher and Roberta Laundrie asking for their help in locating Ms. Petito. (Complaint ¶ 26). Because it would be a violation of Rule 4-4.2 of the Rules Regulating the Florida Bar for the Plaintiffs' attorney to contact the Laundries knowing the Laundries were represented by an attorney at the time, the Plaintiffs' attorney presumably did not send that letter directly to the Laundries. The Complaint is not specific about how the letter was "issued," whether through the mail or some other means. The Complaint says nothing about whether the Laundries actually received that letter so their lack of response is a far cry from "outrageous" conduct that "goes

beyond all bounds of decency." Furthermore, that the Laundries would not respond to a communication that may or may not have violated rules of professional conduct is hardly outrageous.

Furthermore, the intent element alleged is insufficient as a matter of law. The Complaint accuses the Laundries of acting "with malice or great indifference to the rights of [Plaintiffs]." (Complaint ¶ 30). However, Florida law is clear that acting with malice or indifference is not enough. *E. Airlines*, 557 So. 2d at 576. Outrageous conduct is what is required, and the Plaintiffs have not alleged it.

Even if this Court were to have reservations as to whether the Laundries' silence was outrageous, to permit this claim to move forward would trample the Laundries' constitutional rights. As discussed below, the Laundries' conduct was legally protected and cannot form the basis for an intentional infliction of emotional distress claim.

2. THE LAUNDRIES ARE ENTITLED TO EXERCISE THEIR LEGAL RIGHTS.

At its core, the Complaint is critical of the Laundries for "refus[ing] to respond to either Joseph Petito and Nichole Schmidt, or law enforcement." (Complaint ¶ 27). However, compelling individuals to respond to inquiries by private citizens or law enforcement through a civil action like this would turn our entire constitutional system and the freedom afforded individuals in this country on its head. The Plaintiffs' suit, founded on their thoughts or position on what they wanted the Laundries to do, infringes on too many fundamental rights to all be discussed in this motion, but the

exercise of even one right is sufficient to defeat a claim for intentional infliction of emotional distress.

From the first recognition of the tort of intentional infliction of emotion distress, the Florida Supreme Court has emphasized that "[t]he conduct, although it would otherwise be extreme and outrageous, may be privileged under the circumstances. *Metropolitan Life Ins. Co. v. McCarson*, 467 So. 2d 277, 279 (Fla. 1985) (citing Restatement (Second) of Torts § 46 (1965)). "The actor is never liable, for example, where he has done no more than to insist upon his legal rights in a permissible way, even though he is well aware that such insistence is certain to cause emotional distress." *Id.* (finding, as a matter of law, that alleged facts were not outrageous where defendant did no more than assert legal rights in a legally permissible way). This principle has been upheld many times since. *See Southland Corporation v. Bartsch,* 522 So.2d 1053, 1056 (Fla. 5th DCA), *rev. dismissed,* 531 So.2d 167 (Fla. 1988) (a convenience store called the police to have a 6 year old shoplifter arrested, an act the court found to be "clearly within [the store's] legal rights"); *Associated Indus. of Fla. Prop. & Cas. Tr. v. Smith*, 633 So. 2d 543, 546 (Fla. 5th DCA 1994)("If the complaint is supposed to establish 'outrage' based on the carrier's insistence that the employee conduct a job search, any allegations showing that the carrier's conduct was extortionate, unprivileged, unlawful or fraudulent are wholly missing."); *Food Lion, Inc. v. Clifford*, 629 So. 2d 201, 203 (Fla. 5th DCA 1993); *State Farm Mut. Auto. Ins. Co. v. Novotny*, 657 So. 2d 1210, 1212 (Fla. 5th DCA 1995).

The Laundries had a legal right to do, or not do, everything described in the Complaint. The Laundries are entitled to the right of freedom of thought protected by the First Amendment against which includes both the right to speak freely and the right to refrain from speaking at all. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). The right to speak and the right to refrain from speaking are complementary components of the broader concept of "individual freedom of mind." *Id.* (citations omitted); *see also Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 256 (1974) ("The clear implication has been that any such compulsion to publish that which reason tells them should not be published is unconstitutional.").

The Laundries have a general constitutional right to not speak on any topic and a more specific constitutional right not to speak in the face of a criminal investigation. There was unquestionably a law enforcement investigation of the Laundries regarding the disappearance of Ms. Petito and the Laundries had, and still have, an "absolute right to remain silent." *Escobedo v. State of Ill.*, 378 U.S. 478, 485 (1964). For the Laundries to exercise their constitutional right to refrain from speaking, and to instead hire an attorney to speak for them, is not only common practice in a civilized community, but it embodies the exercise of fundamental rights under the United States and Florida Constitutions.

Both the United States Constitution and the Florida Constitution indisputably permit retention of an attorney and on occasion they require the Government to provide the services of an attorney. *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 332 (1985). "The citizen's right to consult an independent lawyer and to retain

that lawyer to speak on his or her behalf is an aspect of liberty that is priceless." *Id.* at 371 (Brennan, J., dissenting). Florida provides an even broader right to counsel than is provided by the Sixth Amendment. *Plank v. State*, 190 So. 3d 594, 601 (Fla. 2016). The right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section 16 of the Florida Constitution, is among those "immutable principles of justice which inhere in the very idea of free government." *Parks v. State*, 319 So. 3d 102, 106 (Fla. 3d DCA 2021), *reh'g denied* (Apr. 8, 2021) (citing *Powell v. Alabama*, 287 U.S. 45, 68, 53 S. Ct. 55, 64, 77 L. Ed. 158 (1932)).

In addition to the federal Sixth Amendment right to counsel there is also a long-recognized First Amendment right to hire and consult an attorney. *Eng v. Cooley*, 552 F.3d 1062, 1069 (9th Cir. 2009) (citing *Mothershed v. Justices of the Supreme Court,* 410 F.3d 602, 611 (9th Cir.2005) ("[W]e recognize ... the 'right to hire and consult an attorney is protected by the First Amendment's guarantee of freedom of speech, association and petition.'" (quoting *Denius v. Dunlap,* 209 F.3d 944, 953 (7th Cir.2000))); *DeLoach v. Bevers,* 922 F.2d 618, 620 (10th Cir.1990) ("The right to retain and consult an attorney ... implicates ... clearly established First Amendment rights of association and free speech.")).

Along with the protection afforded by the First, Fifth, and Sixth Amendments to the United States Constitution, and similar provisions in the Florida Constitution regarding speech and legal representation, the Laundries also have federal and state constitutionally protected privacy rights. The Due Process Clause of the Fourteenth

Amendment protects individuals from state intrusion on fundamental aspects of personal privacy. *Nilson v. Layton City*, 45 F.3d 369, 371 (10th Cir. 1995) (citing *Roe v. Wade,* 410 U.S. 113, 152 (1973)). Article 1, Section 23 of the Florida Constitution carries an even more powerful express right to privacy. *State v. Dean*, 639 So. 2d 1009, 1011 (Fla. 4th DCA 1994) (Florida's "express constitutional right to privacy covers more privacy interests and provides more protection for those interests than the federal constitution.").

Put simply, the Laundries have fundamental constitutional rights to silence, privacy, and representation by counsel, but the Laundrie's exercise of these rights is what the Plaintiffs claim caused their emotional distress. The Laundries' rights are inalienable and the Laundries can never be liable for exercising their legal rights in a permissible way. *Metropolitan*, 467 So. 2d at 279. Thus, as a matter of law, the Plaintiffs have not alleged any act or conduct on the part of the Laundries that would impose liability upon them which would survive a constitutional challenge.

3. THE PLAINTIFFS MUST BE PRESENT

The Complaint suffers from another fatal flaw that is further evidence as to why there is no cause of action for this factual scenario. For conduct to be actionable as an intentional infliction of emotional distress the conduct must be directed at the plaintiff and in his or her presence. *Dunkel v. Hedman*, 2016 WL 4870502, at *10 (M.D. Fla. Aug. 17, 2016), *report and recommendation adopted*, 2016 WL 4765739 (M.D. Fla. Sept. 13, 2016); *see also Baker v. Fitzgerald*, 573 So. 2d 873 (Fla. 3d DCA 1990)(appellant's claim for intentional infliction of emotional distress fails because there was no showing

of outrageous conduct directed at appellant herself); *M.M. v. M.P.S.*, 556 So. 2d 1140, 1141 (Fla. 3d DCA 1989)("we are unable to conclude that learning the awful truth from M.P.S. afforded appellants grounds for recovery for their own distress"); *Habelow v. Travelers Ins. Co.,* 389 So.2d 218, 220 (Fla. 5th DCA 1980)("In all cases we have found in Florida recognizing the tort of intentional infliction of emotional distress, the plaintiff was the recipient of the insult or abuse."); *Crenshaw v. Sarasota County Pub. Hosp. Bd.*, 466 So.2d 427 (Fla. 2d DCA 1985); *Harrington v. Pages,* 440 So.2d 521 (Fla. 4th DCA 1983) (father and children may not recover when alleged extreme and outrageous conduct was directed only at spouse/mother).

As set forth in the Complaint, there was no contact between the Laundries and the Plaintiffs after September 1, 2021. (Complaint ¶ 21). If there was no contact then the Laundries certainly could not have committed any act in the presence of the Plaintiffs that would support a cause of action for intentional infliction of emotional distress.

What happened to Ms. Petito is certainly unfortunate. However, as the Third District Court of Appeal reasoned:

> "If courts were to allow relatives of tort victims compensation for the distress they suffer when they receive bad news about family members when there is no attendant intentional or reckless conduct directed toward them, an avalanche of litigation would ensue. Compensation is available for actual harm to the victim; only in carefully prescribed circumstances is compensation permitted for relatives who suffer emotional distress. It is not lack of compassion, but necessity, that restricts relief to the immediate victim. *M.M.*, 556 So. 2d at 1141."

4. CAUSATION AND SEVERITY

The last two elements necessary to state a claim for intentional infliction of emotional distress require factually supported allegations that a defendant's "outrageous" conduct *caused* the victim emotional distress that is *severe*. *Kim v. Jung Hyun Chang*, 249 So. 3d 1300, 1305 (Fla. 2d DCA 2018) (emphasis added). The Plaintiffs all but concede in the Complaint that the Laundries did not cause the Plaintiffs' grief. The Complaint alleges that the Laundries "knew of the mental suffering and anguish of [Plaintiffs] and knew they could alleviate, at least in part, such mental suffering and anguish by disclosing what they knew about the well-being and the location of the remains of Gabrielle Petito…" By setting forth that allegation the Plaintiffs acknowledge that their mental suffering and anguish existed prior to, and independent of, the Laundries' "conduct" of remaining silent.

Rather than alleging that the Laundries were the "sole and proximate cause" of Plaintiffs' distress, in essence, the Plaintiffs allege that the Laundries' silence failed to "alleviate, at least in part, such mental suffering and anguish…" (Complaint ¶ 30). Since alleviation can only come after the suffering is already being experienced, the Laundries alleged failure to "alleviate" is not the sole and proximate, or legal cause, of the Plaintiffs' alleged injury.

Stated differently, the Complaint's own allegations contradict the theory that the Laundries' caused the Plaintiffs' mental suffering and anguish. The Complaint alleges that the Laundries were the direct and proximate cause of Plaintiffs' injury and also alleges that Plaintiffs' grief was caused by something other than the Laundries'

silence. Which means, as both a matter of law and of fact, the Complaint fails to allege that the Laundries were the legal cause of the Plaintiffs' grief and the Complaint should be dismissed. "The pleader is bound by his own allegations in the complaint," *Reid v. Bradshaw*, 302 So. 2d 180, 183 (Fla. 1st DCA 1974), and courts are "not [] bound by bare allegations which are unsupported or unsupportable." *Other Place of Miami, Inc. v. City of Hialeah Gardens*, 353 So. 2d 861, 862 (Fla. 3d DCA 1977).

In addition to the lack of support for the causation element, the Complaint does not allege, let alone factually support, that the emotional distress was "severe." The Complaint spends most of its paragraphs discussing the Laundries and provides nothing beyond the conclusory allegation of "mental suffering and anguish" by the Plaintiffs. The term "severe" does not appear as a description of the Plaintiffs' alleged injury. "Where the elements of a cause of action are not pled, they may not be inferred from the context of the allegations." *Myers v. Myers*, 652 So. 2d 1214, 1215-16 (Fla. 5th DCA 1995).

While the Complaint alleges the Plaintiffs were "were extremely distraught" and "desperately searching for information concerning their daughter," the Complaint does not specifically discuss how the Plaintiffs' mental suffering meets the severity element nor does it describe their distress as severe. (Complaint ¶ 22, 29). "The fact remains, however, that significant feelings of fright, shame, worry, and humiliation—and others besides—occasioned by the acts of others are, even if regrettable, an unavoidable part of living in society." *Kim*, 249 So. 3d at 1306. "Thus, courts that have tackled this issue have recognized that a high standard for determining what kind

of emotional distress is remediable in a claim for intentional infliction is necessary to prevent the tort from becoming a venue for litigation over every emotional injury." *Id.* (citations omitted).

In sum, the Plaintiffs have failed to satisfy the elements of causation and severity. The Plaintiffs were understandably fearful about what happened to their daughter and they would have been upset about their daughter regardless of anything the Laundries could have said. But that fear or sadness was not caused by the Laundries - it was an unfortunate, unavoidable part of the entire circumstances surrounding Brian Laundrie and Gabby Petito.

III. CONCLUSION

The Plaintiffs have not and cannot set forth factual assertions that can be supported by evidence which gives rise to legal liability. *See Barrett v. City of Margate*, 743 So. 2d 1160, 1162-63 (Fla. 4th DCA 1999). As such, this action for intentional infliction of emotional distress against the parents of Brian Laundrie, however in-artfully drafted, is not legally sustainable and the Complaint should be dismissed with prejudice and without leave to amend for all of the reasons set forth above.

WHEREFORE, Defendants Christopher Laundrie and Roberta Laundrie respectfully request the Court dismiss the Complaint with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 30, 2022, I electronically filed the foregoing through the Florida Courts E-Filing Portal System, thereby serving all registered parties, and served via email upon the following:

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