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

JOSEPH PETITO,
NICHOLE SCHMIDT,
Plaintiff,

v.

CHRISTOPHER LAUNDRIE,
ROBERTA LAUNDRIE,
Defendant.
_____

CASE NO. 2022 CA 001128 SC
DIVISION H CIRCUIT

ORDER DENYING DEFENDANTS' MOTION TO DISMISS

BEFORE THE COURT is Defendants' Motion to Dismiss the Amended Complaint [DIN 33]. The Plaintiffs filed a response in opposition [DIN 38], and the Defendants filed a reply [DIN 39]. The Court conducted oral argument.

Today's ruling does not determine what happened to Gabby Petito. Instead, today's ruling is technical in nature. It determines only whether Gabby Petito's parents (the Plaintiffs) stated a valid claim against Brian Laundrie's parents (the Defendants).

Because the Laundries' statement by their attorney in the context of the unique facts of this case is objectively outrageous, the Court concludes that Plaintiffs have stated causes of action for intentional infliction of emotional distress against the Laundries. The Court denies the Laundries' motion to dismiss.

The Amended Complaint and its Allegations of Fact

The operative complaint is the Amended Complaint [DIN 32], and each of the four counts purport to state a cause of action for intentional infliction of emotional distress based on the same allegations of fact. The Plaintiffs are Joseph Petito and Nichole Schmidt, the parents of Gabrielle "Gabby" Petito, who is deceased. The Defendants are Christopher Laundrie and Roberta Laundrie, the parents of Brian Laundrie, who is deceased. Each Plaintiff sued each Defendant. To avoid confusion, the Court refers to the individuals by their first name instead of their last name.

Under Florida law, the Court must assume all well-pled facts are true when ruling on a motion to dismiss. E.g., Ellerson v. Moriarty, 331 So. 3d 767, 769-770 (Fla. 2d DCA 2021). That is because a motion to dismiss tests whether the allegations in the Amended Complaint state one or more legal causes of action against the Defendants. Id. Another rule the Court must follow in deciding this motion is the Court may only consider the facts alleged in the Amended Complaint, and nothing else, as this motion is not a substitute for summary judgment. Id. The reader is

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cautioned that the allegations of fact the Court will discuss below are simply that—*allegations*, not proven *fact*.

In July 2020, Brian and Gabby became engaged to each other. The following year, in July 2021, Brian and Gabby left New York in Gabby's van headed west for a "van life" trip that was to last several months. Gabby intended on documenting her trip and publishing her journey on various social media sites to establish herself as a travel influencer.

Gabby regularly called her family while on the trip. Gabby's last communication with her father occurred on August 21, 2021. Gabby's last communication with her mother occurred on August 27, 2021.

Brian murdered Gabby on August 27, 2021. Brian then texted between his and Gabby's telephone to hide the fact that Gabby was dead. Brian would continue to send texts from Gabby's phone until at least August 30, 2021, in which Brian disguised as Gabby texted Gabby's mother stating there was no service in Yosemite Park. Brian did this to suggest that Gabby was still alive. Gabby was 22 years old at the time of her death.

On August 28, 2021, Brian told his parents that he murdered Gabby. (The Court must assume this to be true for this motion.) That same day, Christopher and Roberta spoke with an attorney, and they would send the attorney a money retainer several days later.

On September 1, 2021, Brian returned to his parents' home in North Port, Florida, driving Gabby's van. Brian and his parents then vacationed together at Fort DeSoto Park on September 6-7, 2021. They took this vacation each knowing that Gabby was dead and that her parents were frantically looking for her.

On or about September 10, 2021, Roberta blocked Nichole on Roberta's cellphone and on Facebook.

On September 14, 2021—and fully knowing that Gabby was dead and knowing the general whereabouts of Gabby's body—the Laundries' attorney released the following statement:

> It is our understanding that a search has been organized for Miss Petito in or near Grand Teton National Park in Wyoming. On behalf of the Laundrie family it is our hope that the search for Miss Petito is successful and that Miss Petito is reunited with her family.

On September 16, 2021, the attorney for Gabby's family issued a letter to Christopher and Roberta, which provided:

> We are writing this letter to ask you to help find our beautiful daughter. We understand you are going through a difficult time and your instinct to protect your son is strong.

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We ask you to put yourselves in our shoes. We haven't been able to sleep or eat and our lives are falling apart.

We believe you know the location of where Brian left Gabby. We beg you to tell us. As a parent, how could you let us go through this pain and not help us? As a parent, how can you put Gabby's younger brothers and sisters through this?

Gabby lived with you for over a year. She was going to be your daughter in law. How can you keep her location hidden? You were both at Jim and Nichole's house. You were both so happy that Brian and Gabby got engaged and were planning to spend their lives together. Please, if you or your family have any decency left, please tell us where Gabby is located. Tell us if we are even looking in the right place.

All we want is Gabby to come home. Please help us make that happen.

Christopher and Roberta declined to respond to either Joseph or Nichole, instructing all communications be made through their attorney. The attorney would issue "no comment" when asked about Gabby. They did this knowing of Joseph and Nichole's mental suffering and, by advising where Gabby was, they "could prevent such additional mental suffering and anguish of [Joseph] and [Nichole] by disclosing what they knew about the well-being and location of the remains of [Gabby], yet they repeated refused to do so." Am. Cmplt. ¶31. Continuing, Joseph and Nichole further allege that Christopher and Roberta "acted with malice or great indifference to the rights of [Joseph] and [Nichole]."

Analysis

Plaintiffs sued the Laundries for intentional infliction of emotional distress. Florida recognizes that tort. Liberty Mut. Ins. Co. v. Steadman, 968 So. 2d 592, 594–95 (Fla. 2d DCA 2007) (internal quotations, citations, and footnote omitted).

The question for today is whether Plaintiffs stated causes of action for that tort.

1. A note about legal duty.

Laying aside for the moment the statement the Laundries made through their attorney, the other conduct Plaintiffs complain of mostly involves the Laundries *failing* to act. Specifically, Plaintiffs seek to fault the Laundries for not telling the Plaintiffs that Gabby was dead or where her body was located.

The Laundries frame their "silence" in constitutional terms, arguing that their silence was constitutionally permissible under the First, Fifth, and Sixth Amendments to the U.S. Constitution and the related Florida Constitution provisions. The Court does not believe it is necessary or appropriate in this case to resolve these constitutional claims on a motion to dismiss—the contours of the facts are not sufficiently distilled to apply those important

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guarantees. Those claims are more appropriately addressed, if at all, at the summary judgment stage.

Plaintiffs during oral argument candidly conceded they "struggled" with the legal duty owed by the Laundries to them that would have required the Laundries to break their silence. Plaintiffs appear to conflate morality with legal duty. Plaintiffs have not identified, and the Court is unaware, of any legal duty the Laundries would have owed *to Plaintiffs* to tell the Plaintiffs that Gabby was dead or the location of her body. Further, the Plaintiffs point to no duty that the Laundries were under to accept text or social media messages from the Plaintiffs or refrain from taking a vacation while the Plaintiffs searched for Gabby.

If the facts of this case truly were about silence with no affirmative act by the Laundries, the Court would have resolved this case in the Laundries' favor on the concept of legal duty, or more precisely, the lack of any legal duty for the Laundries to act. Had the Laundries truly stayed silent, the Court would have granted the motion to dismiss in the Laundries' favor.

But they did not stay silent.

2. The Laundries spoke.

The Laundries' attorney released a statement that Plaintiffs argue was outrageous under the facts of this case. Plaintiffs sufficiently alleged that the Laundries spoke: "Christopher Laundrie and Roberta Laundrie through their lawyer issued the following statement[.]" Am. Cmplt. ¶25 [DIN 32, p.4]. At oral argument, the Laundries contended that there was no allegation in the Amended Complaint that *their attorney* knew that Gabby was dead or the whereabouts of her body when he released the Laundries' statement. That position is meritless for at least three reasons. *First*, "[g]enerally, an attorney serves as agent for his client; the attorney's acts are the acts of the principal, the client." Andrew H. Boros, P.A., v. Arnold P. Carter, M.D., P.A., 537 So. 2d 1134, 1135 (Fla. 3d DCA 1989). *Second*, all facts and reasonable inferences are construed in favor of the non-movant, here the Plaintiffs. A reasonable inference is that the attorney knew the same information the Laundries knew. *Third*, the words used in the statement indicated the Laundries agreed to it. It provided "our understanding" and "On behalf of the Laundrie family it is our hope. . . ." Certainly, there is no allegation in the Amended Complaint that the Laundries' disavowed the statement.

For purposes of the motion to dismiss, the Court must assume that the Laundries are responsible for authoring the September 14, 2021, statement issued by their attorney.

3. The statement.

The Laundries contend that their statement is not outrageous as a matter of law. At oral argument they suggested it merely was a plain statement. Plaintiffs, in contrast, countered during oral argument that the statement knowingly was false, designed to create false hope, and issued by the Laundries who knew Gabby was dead and where her body was located.

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The elements of the intentional infliction of emotional distress tort and the contours of that tort have been described by the Second District Court of Appeal as follows:

> To state a cause of action for intentional infliction of emotional distress, 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. 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. 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. Rather, the court must evaluate the conduct as objectively as is possible to determine whether it is atrocious, and utterly intolerable in a civilized community. Whether conduct is outrageous enough to support a claim of intentional infliction of emotional distress is a question of law, not a question of fact.

Steadman, 968 So. 2d at 594–95 (internal quotations, citations, and footnote omitted).

The Court focuses on the second element, outrageous conduct. Both sides presented several cases that the Court has reviewed suggesting the conduct alleged in this case either was or was not outrageous. Reviewing those cases were helpful to calibrate whether the alleged conduct was outrageous enough to state a cause of action, as that determination is an issue of law for the Court in the first instance. Id. at 595.

An important lesson from the cases cited by the parties is that context matters. Conduct viewed in isolation as being insufficient to state a cause of action, when considered with other conduct, may be sufficient to state a cause of action. Steadman, 968 So. 2d at 595.

In Steadman, the Second District concluded that an insurance company's delay in approving a double lung transplant after being ordered to do so by a judge of compensation claims, by itself, did not rise to outrageous conduct. When "paired" with other conduct—such as knowledge that the delay would speed up the demise of the insured—the delay in approval rose to the level of outrageousness to state a cause of action for intentional infliction of emotional distress. Id. at 596.

The Florida Supreme Court in recognizing the tort of intentional infliction of emotional distress suggested that the comments to Section 46, Restatement (Second) of Torts (1965), may cabin the contours of the tort. SeeMetropolitian Life Ins. Co. v. McCarson, 467 So. 2d 277, 278 (Fla. 1985) ("The Fourth District joined with the First and Fifth in adopting Section 46, Restatement (Second of Torts) (1965) as the appropriate definition of the tort. Nonetheless, the Fourth District did not conform its findings to the comments explained the application of this definition[.]"). Regardless of whether the conduct must fall under one of the comments to be considered outrageous, the Laundries' conduct alleged here does find support under comment f, and to a lesser extent, comment e.

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Comment f provides:

> The extreme and outrageous character of the conduct may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity. The conduct may become heartless, flagrant, and outrageous when the actor proceeds in the face of such knowledge, where it would not be so if [the actor] did not know. It must be emphasized again, however, that major outrage is essential to the tort; and the mere fact that the act knows that the other will regard the conduct as insulting, or will have [the other's] feelings hurt, is not enough.

Restatement (Second) of Torts, §46, cmt. f (1965).

The words used by the Laundries on the surface initially do not suggest outrage: "On behalf of the Laundrie family it is our hope that the search for Miss Petito is successful and that Miss Petito is reunited with her family." When juxtaposed with the other conduct in the case, though, the outrageous threshold is surpassed.

As alleged by the Plaintiffs, the Laundries made their statement knowing that Gabby was dead, knowing the location of her body, and knowing that her parents were frantically looking for her. If this is true, then the Laundries' statement was particularly callous and cruel, and it is sufficiently outrageous to state claims for intentional infliction of emotional distress.

The Court identifies two additional cases that support the Court's decision, although neither were necessary for the Court to conclude the Amended Complaint stated causes of action. Consistent with comment f, the Court notes that Florida law recognizes that family members are particularly susceptible to emotional distress around the time of a loved one's death. Malicious conduct during that timeframe can rise to the level of outrage.

In Thomas v. Hospital Board of Directors of Lee County, 41 So. 3d 246 (Fla. 2d DCA 2010), medical personnel agreed to tell the family of a decedent that the decedent died from "stress of surgery" and not by a negligent overdose of a drug during surgery. During the funeral, the medical examiner learned of the coverup, prompting the medical examiner to demand the return of the body for a more complete autopsy. The Second District concluded that the defendants' "action of providing false information" to family members under those circumstances met the standard for a claim of outrage. Id. at 256. The Second District specifically cited to comment f during this discussion. Id.

In Williams v. City of Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991), police officers took photographs and a video during an autopsy and then displayed those images to non-department personnel at a party. The family members of the decedent were not present. The Fifth District concluded that even though those images were public record, the manner of display without a public record request—even when the family members were not present—was sufficient to state a cause of action for intentional infliction of emotional distress. The Fifth District also cited to comment f in its reasoning. Williams, 575 So. 2d at 693.

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These cases confirm the Court's conclusion that Plaintiffs' Amended Complaint stated causes of action against the Laundries.

4. There will be no avalanche of litigation.

The Laundries argue that denying their motion to dismiss will result in an "avalanche of litigation" for situations where relatives of tort victims receive bad news about family members. They base their argument on M.M. v. M.P.S., 556 So. 2d 1140 (Fla. 3d DCA 1989). The Laundries' argument misses the mark.

In M.M., the tortfeasor told the parents of the victim that the tortfeasor had sexually abused their daughter and the tortfeasor's wife had supplied illegal drugs to their daughter. The parents sued the tortfeasor based solely on their distress from the tortfeasor's disclosure to them. The daughter separately sued the tortfeasor based on the tortfeasor's sexual abuse. The Third District held the parents had no cause of action under those facts. That court remarked that receiving bad news about family members was insufficient for a claim "where there is no attendant intentional or reckless conduct directed toward them[.]" 556 So. 2d at 1141.

The Court has no quarrel with that holding. And, in fact, it is consistent with the Court's decision today. The facts of M.M. simply are distinguishable because thee were no facts in M.M. suggesting the tortfeasor directed any conduct towards the parents. Here, Plaintiffs alleged that the Laundries issued a public statement of false hope knowing Gabby was dead and the location of her body while Gabby's parents frantically were searching for her under mysterious circumstances. The two factual scenarios are readily distinguishable. There will be no avalanche of litigation based on denying the Laundries' motion to dismiss.

5. A parting thought.

The Court is aware the Laundries have made additional arguments in their filings and at oral argument to support their motion. The Court need not detail those except to say none are sufficient to preclude the Court at the motion to dismiss stage from concluding that the Amended Complaint states causes of action for intentional infliction of emotional distress.

The Laundries' motion to dismiss is due to be denied.

IT IS THEREFORE ORDERED:

1. Defendants' Motion to Dismiss the Amended Complaint [DIN 33] is denied.

2. Defendant Christopher Laundrie and Defendant Roberta Laundrie shall answer the Amended Complaint on or before July 15, 2022.

DONE AND ORDERED in Venice, Sarasota County, Florida on 6/30/2022.

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HUNTER W CARROLL , CIRCUIT JUDGE

SERVICE CERTIFICATE

On 06/30/2022, the Court caused the foregoing document to be served via the Clerk of Court's case management system, which served the following individuals via email (where indicated). On the same date, the Court also served a copy of the foregoing document via First Class U.S. Mail on the individuals who do not have an email address on file with the Clerk of Court:

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