

Who Owns the Dead Body? Not You...



IN A PUBLISHED OPINION THE SECOND DISTRICT COURT OF APPEALS IN LOS ANGELES HELD THAT PROPERTY RIGHTS DO NOT APPLY TO A DEAD BODY. IGNORING A FEDERAL CASE THAT SEEMED TO HOLD OTHERWISE, THE COURT UNANIMOUSLY REFUSED TO ALLOW SUIT BY THE FAMILY OF A DRIVE-BY VICTIM WHO COMPLAINED ABOUT THE STATE OF THE BODY ONCE THE CORONER WAS DONE WITH ITS WORK. THE COURT REFUSED THEM ANY RELIEF.

THE FACTS:

The sixty six year old victim of the drive by shooting was removed to the coroner's office as part of the standard crime investigation and the coroner's office left his remains unembalmed and unrefrigerated for a week. The family, upon being called to retrieve the body, were shocked at the state of decomposition, suffering emotional shock and outrage and filed suit against the county, claiming damages for the coroner's neglect in retaining the body in such an uncared for condition and not releasing it to the family for proper burial.

There was no dispute that the coroner had acted in such a manner and had refused access to the body for the family. The coroner simply responded that under the law it had no duty to deliver the body to them in good condition.

THE LAW:

The Court in Perryman v County of Los Angeles, 07 DCOS 9058 flatly rejected the family's claims indicating that it had no "property rights" to the deceased body and that the State had the right and duty to conduct its investigation. Since there were no property rights in a "dead body" the State owed them no duty to retain said property in any particular condition and no cause of action applied.

The family's attorney argued that the coroner did have a mandatory duty to preserve the remains under two sections of the State Health and Safety Code. The first

established an orderly process to insure human remains are properly disposed of. The second authorizes the coroner to take possession of unclaimed dead bodies.



The justices found both statutes did not apply to the instant situation. Judge Boren wrote that the Health and Safety Code sets out some mandatory duties, such as tracking down family members for them to dispose of crime victims' bodies, etc. but the code establishes no requirement that the coroner preserve a body with embalming fluids or in any other way.

The family's lawyer also cited the Federal Case of Newman v Sathavaglswaran, 287 F.3d, 786. In that case in 2002 the Ninth Circuit opinion sided with parents who had sued a county coroner in California for removing their dead children's corneas-which state law allows for purposes like transplants-without parental consent. But the State court rejected that approach, indicating that, "...it is well settled that there is no property in a dead body in California" and that the Federal case violated more than one hundred years of state court precedent. While the Federal courts may recognize such a right, California does not.

The family is appealing the decision.

THOUGHTS:

Underlying the seemingly heartless decision is the continuing effort of the Courts to give some protection to the various state agencies and the law enforcement community. To open up this question of the duty of aesthetic care for the crime victim would be to allow any family to object to any action of the coroner during the investigation and could have a chilling effect on the police work.



While this particular circumstance seems remarkably callous, and while one can sympathize with the family, the fact remains that the coroner is not a funeral parlor. They have the body for the crime prevention aspect and to discover the culprit. The courts clearly feel that all other considerations are secondary.

The Federal case may be distinguished in that crime investigation was not the motivating factor for the "infringement" on the body. There, efforts to obtain organs for third party uses was the goal and the Federal Court clearly felt that such goals did not warrant the State ignoring the demands of the family.