GUILBEAU v. DURANT H.M.A.

2023 OK 80
Case Number: 119901
Decided: 06/20/2023
THE SUPREME COURT OF THE STATE OF OKLAHOMA

Cite as: 2023 OK 80, __ P.3d __

CRYSTAL GUILBEAU, Plaintiff/Appellant,
v.
DURANT H.M.A., LLC, d/b/a MEDICAL CENTER OF SOUTHEASTERN OKLAHOMA, a/k/a ALLIANCEHEALTH DURANT, and
LAUREN ARMOR, Defendants/Appellees.

CERTIORARI TO THE COURT OF CIVIL APPEALS, DIVISION III

¶0 After Appellant suffered a miscarriage, Hospital employees photographed the child's remains and presented the images to her as part of Hospital's bereavement program. Appellant sued Hospital and unnamed employees on theories of negligence and intentional infliction of emotional distress (IIED). The trial court dismissed the negligence claims. Appellant later dismissed the remaining IIED claim without prejudice, and without appealing the trial court's dismissal of her negligence claims. In a subsequent lawsuit, Appellant re-alleged all of her original claims, added a new claim of invasion of privacy, and added Armor, a Hospital employee, as a defendant. The trial court granted Defendants' partial motions to dismiss. The Court of Civil Appeals affirmed, finding that (1) Appellant was precluded from re-asserting her negligence claims in the second lawsuit, because she never sought review of the trial court's dismissal of those claims in the first lawsuit; (2) Appellant's addition of an invasion-of-privacy claim in the second lawsuit was not time-barred; however, (3) the invasion-of-privacy claim was properly dismissed because Appellant had no personal cause of action on these facts; and finally, (4) the addition of Armor as a defendant in the second lawsuit was barred by the statute of limitations.

COURT OF CIVIL APPEALS' OPINION VACATED;
TRIAL COURT AFFIRMED IN PART AND REVERSED IN PART;
CASE REMANDED FOR FURTHER PROCEEDINGS

Donald E. Smolen II, Tulsa, Oklahoma, for Plaintiff/Appellant.

John David Lackey, Tulsa, Oklahoma, for Defendants/Appellees.

KUEHN, J.

¶1 In this case we are asked to determine matters of civil procedure, as well as the contours of the substantive right to privacy under Oklahoma law. We find the Court of Civil Appeals correctly decided the procedural claims, but erred in concluding that, as a matter of law, no claim for invasion of privacy could lie on the available facts.

FACTS AND PROCEDURAL HISTORY

¶2 In the summer of 2016, Plaintiff/Appellant Crystal Guilbeau, several months pregnant, presented to Defendant Durant HMA (Hospital) complaining of abdominal pain. She ultimately experienced a miscarriage there. A few days after her release, Guilbeau was asked to return to Hospital, where she was presented with photographs of her deceased child. Guilbeau did not view the photos until she returned home. Guilbeau claims the photographs show the child's body in various poses and with props (*e.g.* angel wings). The child's limbs and mouth had allegedly been manipulated, for the apparent purpose (in the words of the petition) of making the child "look alive and well." In September 2016, Guilbeau sued Hospital and unknown employees who participated in creating the photos. She claims -- and no one can deny -- that the miscarriage itself was a traumatic experience for her. She also claims the photos were shocking to her and only compounded her trauma. The parties dispute whether Guilbeau consented to the taking of these photos, described in the pleadings as the product of Hospital's "bereavement program."

¶3 Guilbeau's first lawsuit, against Hospital and two "Jane Doe" defendants, alleged claims of intentional infliction of emotional distress (IIED) and negligence.[1] Specifically, Guilbeau claimed that unnamed Hospital employees, acting within the scope of their employment, intentionally or negligently caused her "mental, emotional, and physical pain and suffering," and that Hospital also breached its duty to responsibly "hire, train, and supervise" these employees. Guilbeau's petition sought actual and punitive damages. In November 2016, the trial court granted Hospital's motion to dismiss the negligence claims. In October 2018, Hospital moved for summary judgment on the IIED claim, which the trial court denied.

¶4 In August 2019, Guilbeau filed a document entitled "Notice of Claims." Guilbeau was apparently confused about whether the trial court's dismissal of her negligence claim in 2016 applied only to her claim of simple negligence, or included her allegation of negligent hiring, training, and supervision. While she described these as "separate and distinct legal theories of liability," she made both allegations under a single heading of "Negligence" in her petition.[2] In September 2019, the trial court ruled that the only surviving claim was the IIED claim -- clarifying that its dismissal included both negligence theories. The trial court granted Guilbeau's request to certify that ruling for interlocutory review -- *i.e.*, it allowed her to seek appellate review of its dismissals of the negligence claims before final resolution of the rest of the case. *See* 12 O.S. § 952(b)(3). However, Guilbeau did not seek interlocutory review. Instead, in March 2020, she chose to dismiss the sole surviving IIED claim "without prejudice," reserving the option to refile her lawsuit at a later date, consistent with 12 O.S. § 683.

¶5 In December 2020, Guilbeau filed her second lawsuit.[3] This new petition (1) re-alleged a claim for IIED; (2) re-alleged a single negligence claim that (again) referenced both general negligence as well as a "duty to train and supervise" under one heading; (3) alleged an entirely new claim of "Invasion of Privacy -- Intrusion Upon Seclusion"; and (4) for the first time, named Armor as Hospital's only co-defendant. This petition again sought both actual and punitive damages. Both Defendants filed motions to dismiss, claiming (1) Guilbeau's re-assertion of her negligence claims was barred by the doctrine of claim preclusion; (2) Guilbeau's invasion-of-privacy theory was time-barred, and did not state a claim on which relief could be granted; and (3) the addition of Armor as a defendant was barred by the statute of limitations. In May 2021, the trial court granted these motions.[4]

¶6 Guilbeau then dismissed her second lawsuit without prejudice, and timely appealed the trial court's adverse rulings. We assigned the appeal to the Court of Civil Appeals (COCA). The COCA agreed that Guilbeau's negligence claims were barred by the doctrine of claim preclusion, and that the addition of Armor as a defendant was barred by the statute of limitations. Although the COCA found Guilbeau's new invasion-of-privacy claim was not time-barred, it nevertheless affirmed its dismissal, concluding that Guilbeau had no actionable claim. We granted *certiorari*.

STANDARD OF REVIEW

¶7 A trial court may dismiss a civil action if it fails to state a claim on which relief can be granted -- *i.e.,* when it appears beyond doubt that the plaintiff cannot prove any set of facts which would entitle her to relief under the law. 12 O.S. § 2012(B)(6); *Gens v. Casady School*, 2008 OK 5, ¶ 8, 177 P.3d 565, 568-69. Such dismissals are generally disfavored. *Id*. We review them *de novo*, with no deference to the trial court's interpretation of the law, since the function of a motion to dismiss is to test the law supporting the claims, not to weigh facts. *See id*. "Dismissal is appropriate only for lack of any cognizable legal theory to support the claim or for insufficient facts under a cognizable theory." *Id*. We also employ *de novo* review to a trial court's interpretation of doctrines developed by case law, such as issue preclusion and collateral estoppel. *Wilson v. City of Tulsa*,

2004 OK CIV APP 44, ¶ 8, 91 P.3d 673, 677 (citing *Cities Serv. Co. v. Gulf Oil Corp.*, 1999 OK 14, ¶ 12, 980 P.2d 116, 124). The extent of the common-law right to privacy under Oklahoma law involves questions of legal duty which we also review *de novo*. *State ex rel. Oklahoma Department of Public Safety v. Gurich*, 2010 OK 56, ¶ 6, 238 P.3d 1, 3; *Delbrel v. Doenges Bros. Ford, Inc.*, 1996 OK 36, ¶ 7, 913 P.2d 1318, 1320-21.

ANALYSIS

¶8 Guilbeau's petition for *certiorari* raises three challenges to the COCA's decision.[5] We address the first two claims together, as our resolution of the first claim renders the second claim moot.

A. The negligence claims are barred by the claim-preclusion doctrine.

¶9 We first consider whether Guilbeau was barred from re-asserting her negligence claims in the second lawsuit, after she failed to appeal the trial court's dismissal of those claims in the first lawsuit. Guilbeau's first lawsuit alleged *inter alia* that Hospital was negligent in its handling of her deceased child's remains, and how it hired, trained, and supervised its employees. The trial court dismissed the negligence claim in November 2016. After extensive discovery, Guilbeau indicated in a pleading that she understood the court's order as only dismissing her general negligence theory, not her negligent-hiring theory. In September 2019, the trial court clarified that its dismissal applied to all negligence theories in Guilbeau's petition. At Guilbeau's request, the trial court agreed to certify that dismissal for interlocutory appellate review. But instead of seeking that review, Guilbeau chose to dismiss what remained of her lawsuit (the single IIED claim) with the option to refile later. When Guilbeau filed her second lawsuit, she included the negligence theories which the trial court had dismissed during the first lawsuit. Defendants moved for dismissal of these claims, because they had been rejected by the trial court in the first lawsuit, and Guilbeau did not seek appellate review of that ruling.

¶10 The doctrine of claim preclusion is an important restriction on a party's ability to re-litigate claims that have previously been rejected or abandoned. It aims for judicial economy, efficiency, and fairness. It seeks to deter litigants from advancing the same arguments over and over in hopes that a better-honed presentation, or a different judge, will yield a different result. Claim preclusion bars relitigation by parties (or their privies) of issues which either were, or could have been, litigated in a prior action which resulted in a prior judgment on the merits. *State ex rel. Tal v. City of Oklahoma City*, 2002 OK 97, ¶ 20, 61 P.3d 234, 245.[6]

¶11 Lawsuits can be complicated things. They often involve several claims, numerous parties, or both, and there are several points at which claims or parties may be dispatched from the lawsuit before a final judgment brings the entire case to a conclusion. What kinds of rulings may be appealed, and when, is a matter of constant concern to lawyers. Generally speaking, when a trial court dismisses some but not all claims or parties before trial, such rulings are not immediately appealable. 12 O.S. § 994; *Tinker Inv. & Mortg. Corp. v. City of Midwest City*, 1994 OK 41, ¶ 7, 873 P.2d 1029, 1034-35.

¶12 On the other hand, Oklahoma law allows a plaintiff, without the court's permission, to dismiss her lawsuit "without prejudice," *i.e.* with the option to refile the lawsuit in the future, so long as she acts "before the final submission of the case to the jury, or to the court, where the trial is by the court." 12 O.S. § 683(1). "The statutory provisions [] have been construed many times by this court. Plaintiff ha[s] a right to dismiss without prejudice before final submission of the case, but not thereafter." *Tiffany v. Tiffany*, 1948 OK 52, ¶ 14, 199 P.2d 606, 672 (collecting cases).

¶13 Among the strategic reasons for dismissing one's lawsuit without prejudice is the ability to seek appellate review of adverse rulings that would not otherwise be immediately appealable. It is now common practice for plaintiffs, aggrieved by an interlocutory ruling, to use the dismissal-without-prejudice option to force appellate review of that ruling without having to wait until the conclusion of the entire case at the trial level. *See e.g. Vance v. Federal Nat'l Mortg. Ass'n*, 1999 OK 73, ¶ 5, 988 P.2d 1275, 1278 ("After the trial court refused to certify the summary-judgment order as immediately appealable, Mr. Vance dismissed his remaining claims so as to impart finality to the otherwise interlocutory order").[7]

¶14 Guilbeau does not contest that this tactic was available to her when she dismissed her first lawsuit (to seek review of the trial court's rejection of her negligence claims). Indeed, she used that very same procedure here, to force appellate review of the trial court's adverse rulings in the *second* lawsuit. The issue is whether, with regard to the negligence claims, she was too late -- whether her failure to seek review of those rulings upon dismissal of the first lawsuit foreclosed her ability to re-allege those claims at a later time. It did.

¶15 "A submission is final, within the rule prohibiting a dismissal or nonsuit after final submission of the cause, where nothing remains to be done to render it complete." *Tiffany,* 1948 OK 52, ¶ 9, 199 P.2d at 607 (quoting 27 C.J.S., Dismissal and Nonsuit, § 20b). A trial court's pretrial termination of a claim, such as a grant of summary judgment in favor of the defendant, constitutes a "final submission" under 12 O.S. § 683(1), and forecloses the plaintiff's unilateral right to dismiss that particular claim without prejudice. *Brandt v. Joseph F. Gordon Architect, Inc.*, 1999 OK 67, ¶ 26, 998 P.2d 587, 592. A plaintiff's dismissal of the remaining claims transforms adverse interlocutory rulings into final, appealable orders. *Vance*, 1999 OK 73 at ¶ 5, 988 P.2d at 1278; *Bivins v. State ex rel. Oklahoma Memorial Hosp.*, 1996 OK 5, ¶ 5 n. 15, 917 P.2d 456, 460 n. 15.

¶16 In *Brandt*, the plaintiffs filed a multi-claim, multi-defendant tort action. The trial court granted partial summary judgment in favor of one of the defendants, Gordon. The plaintiffs dismissed their suit without prejudice after the court made its summary-judgment ruling from the bench, but before the court formalized the ruling with a written order. *Brandt*, 1999 OK 67, ¶ 6, 998 P.2d at 589. When the court memorialized its ruling, the plaintiffs claimed it had no jurisdiction to do so. *Id*. at ¶ 7, 998 P.2d at 589. The central question was whether the trial court had authority to formalize its ruling after an appeal had been initiated. *Id*. The plaintiffs argued that their dismissal "mooted any pending matters," *including* the bench ruling that let Gordon out of the case. *Id*. ¶ 8, 998 P.2d at 589. The plaintiffs' position was that their unilateral dismissal without prejudice 'wiped the slate clean' of any adverse rulings that had not yet been reduced to writing. We disagreed, noting this tactic is barred by 12 O.S. § 683(1). A plaintiff may unilaterally dismiss her suit without prejudice to refiling, *except* for any claims which had been finally submitted to the trial court. Citing *Tiffany*, we explained that "[f]inal submission of the case marks the end of plaintiff's dismissal by right...." *Brandt*, 1999 OK 67, ¶ 12, 998 P.2d at 590.

> With regard to Plaintiffs' cause of action against Gordon, Plaintiffs were no longer at liberty to dismiss without leave of the court, after the court rendered a bench ruling in Defendant's favor on the summary judgment motions. As a result, Plaintiffs' dismissal was not effective with regard to their claims against Gordon.

Id. at ¶ 10, 998 P.2d at 589-590. Regardless of whether the trial court in *Brandt* had memorialized its ruling, it had extinguished one of the plaintiffs' claims. The plaintiffs could not nullify that ruling by racing to the courthouse and dismissing their entire case before the ruling was reduced to writing. The plaintiffs' unilateral dismissal of their case, without prejudice to refiling, locked in the adverse ruling and made it ripe for appellate review.

¶17 The same is true here. In the first lawsuit, the trial court extinguished Guilbeau's negligence claims on a motion to dismiss. When she dismissed what remained of that lawsuit, without the permission of the court, she was obligated to appeal the court's rejection of her negligence claims *at that time* if she wished to preserve them. Section 683 of the Civil Procedure Code barred Guilbeau from unilaterally dismissing the case and refiling claims which had been finally submitted to the court *before* the dismissal. Guilbeau's second lawsuit sought a second bite at the apple on the negligence claims. This is the sort of conduct that the claim preclusion doctrine seeks to prevent. A plaintiff cannot use unilateral dismissal without prejudice to launder adverse rulings out of her case and hope to obtain a different result from the trial court the next time around.

¶18 We conclude, as the COCA did, that Guilbeau's attempt to revive her negligence claims in the second lawsuit was barred under the doctrine of claim preclusion. Because the negligence claims are barred, we need not address Guilbeau's second point on *certiorari* (the merits of those claims).

B. A claim for invasion of privacy could lie on the facts in this case.

¶19 The remaining issue on *certiorari* centers on the tort of "invasion of privacy" in Oklahoma law. Guilbeau's second lawsuit added a new claim of invasion of privacy. She alleged: "By forcing the body of Plaintiff's deceased child into disrespectful and disturbing positions, posing him with props, and taking numerous photos of Plaintiff's child, Defendants intentionally intruded upon Plaintiff's privacy and the privacy of Plaintiff's deceased child." There seems to be no dispute that as part of the Hospital's "bereavement program," actions beyond simple disposal were taken with the remains of Guilbeau's miscarriage, and that photographs were prepared for her. Guilbeau claims she never consented to this project, that the photographs would have been highly offensive to any reasonable person, and that she personally suffered emotional trauma on seeing them.

¶20 In moving to dismiss this claim, Hospital argued that Guilbeau had no cause of action because the photographs were not taken in a place where she had a reasonable expectation of privacy, and because the photographs were not of Guilbeau's own body. Hospital also asserted that because this claim was raised for the first time in the second lawsuit, it was time-barred.

The trial court granted Hospital's motion to dismiss, but did not elaborate on the basis for its ruling. [8]

¶21 On appeal, the COCA found that the invasion-of-privacy claim was not time-barred. That ruling is not challenged by Hospital on *certiorari*. However, the COCA concluded that the claim still failed. In assessing the merits of the claim, the COCA concluded that any right to privacy in this case belonged only to Guilbeau's child, quoting with approval Hospital's assertion that "[N]othing that [Hospital] did to someone else while somewhere else can legally constitute invasion of privacy to Plaintiff" (emphasis by Hospital). In the COCA's estimation, Guilbeau's *only* route to relief would be through a "relational" right to privacy, but the COCA concluded that no such right exists under our law. We disagree with the COCA's analysis. [9]

¶22 The tort of "invasion of privacy" covers at least four different concepts. *See generally McCormack v. Oklahoma Pub. Co.*, 1980 OK 98, ¶ 3, 613 P.2d 737, 739; Restatement (Second) of Torts § 652A. One variant is "intrusion upon seclusion," which the Restatement defines as follows:

> One who intentionally intrudes, physically or otherwise, upon the solicitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

Restatement (Second) of Torts § 652B (1977). We have recognized the "intrusion upon seclusion" theory as part of our law in several cases. *Munley v. ISC Financial House, Inc.*, 1978 OK 123, ¶¶ 13-17, 584 P.2d 1336, 1339-40; *Chandler v. Denton*, 1987 OK 38, ¶ 15 n. 21, 741 P.2d 855, 864 n. 21; *Hadnot v. Shaw*, 1992 OK 21, ¶ 19, 826 P.2d 978, 985-86; and *Gilmore v. Enogex, Inc.,* 1994 OK 76, ¶¶ 15-16, 878 P.2d 360, 366. The claim has two elements: (1) a nonconsensual intrusion (2) which would be highly offensive to a reasonable person. *Gilmore, id*. at ¶ 16, 878 P.2d at 366.

¶23 Hospital's framing of the issue was flawed in two ways. First, the fact that the conduct took place in a hospital setting does not bar Guilbeau from claiming an unlawful intrusion into her personal affairs. While the phrase "intrusion upon seclusion" may conjure images of the Peeping Tom -- someone spying into another's home -- the concept is clearly broader than that. It extends to the acquisition of any information to which the general public is not entitled:

> It may be by some other form of investigation or examination into [a person's] private concerns, as by opening his private and personal mail, searching his safe or his wallet, examining his private bank account, or compelling him by a forged court order to permit an inspection of his personal documents. . . .

Restatement (Second) of Torts § 652B, comment b (quoted with approval in *Hadnot*, 1992 OK 21, ¶ 19 n.33, 826 P.2d at 986 n.33). The physical setting of the conduct, and the particulars of the interactions between Guilbeau and hospital staff leading up to it, may well be relevant to an essential element of Guilbeau's claim: whether she consented to the project as Hospital alleges. But the right to privacy is concerned with people, not places. *See e.g. Berthiaume's Estate v. Pratt*, 365 A.2d 792 (Me. 1976) (physician's unauthorized taking of photographs of hospital patient who was near death invaded patient's legally protected right to privacy). In any event, the COCA did not base its decision on this part of Hospital's argument, and we need not consider it further.

¶24 Second, Hospital argued that Guilbeau could not state a claim for injury based on conduct involving the remains of someone else. This was the focus of the COCA's analysis, as it discussed the so-called relational right to privacy, and declined to find such a right in Oklahoma law. We believe that analysis is off the mark.

¶25 The idea that a family member may have a cause of action for emotional distress over the handling of a loved one's remains is not new. *See Larson v. Chase*, 50 N.W. 238 (Minn. 1891) (wife had cause of action for mental distress caused by unlawful mutilation and dissection of her deceased husband's body). In *McPosey v. Sisters of the Sorrowful Mother*, 1936 OK 346, 57 P.2d 617, the plaintiff's wife died in a hospital after an illness. He sued the hospital and others for (among other things) mental anguish, pain, and grief occasioned by the fact that an autopsy was performed on his wife's body without his consent. The trial court granted the defendants' demurrers, and the plaintiff appealed. We reversed and remanded for further proceedings. We held the unauthorized mutilation of a corpse gave rise to a cause of action for the deceased's husband. We observed that under our law (*see now* 21 O.S. § 1158), the husband had a right to control the disposition of his wife's remains. [10] But we also recognized that the controversy was not reducible to a simple property right:

> What we have said already would be sufficient to cause us to remand the matter to the trial court if it were not for the fact that from a reading of the records and briefs of the parties we are convinced that the principal point argued and decided was the attempt to recover damages for mental anguish, pain, and grief because of the mutilation of the corpse of the wife.

McPosey, 1936 OK 346, ¶ 9, 57 P.2d at 618. We concluded that a cause of action existed in tort for the plaintiff's mental anguish over the way his wife's body was treated. *Id*. at ¶ 13, 57 P.2d at 619. While the analysis in *McPosey* was not framed in terms of "invasion of privacy," we believe the case offers guidance here. *McPosey* stands for the basic proposition that one may have a cause of action in tort for the improper handling of human remains.

¶26 In rejecting Guilbeau's invasion-of-privacy claim, the COCA focused on the *child's* "right not to be photographed," even though the child did not survive birth. In *Bazemore v. Savannah Hospital*, 155 S.E. 194 (Ga. 1930), the plaintiffs' severely malformed child died shortly after birth. The hospital permitted someone to photograph the child's body. The plaintiffs' invasion-of-privacy claim against the hospital was dismissed on a general demurrer. The Georgia Supreme Court reversed, holding that a cause of action for invasion of privacy existed. In so holding, the court observed:

> The suit is not based on injury to the deceased child. According to the allegations, the wrongs done by the defendants were committed after the death of the child. Therefore in this case there is no question of the survival of a right of action. The right, if it ever existed or now exists, began after the death of the child, and is a right of action on the part of the plaintiffs.

Id. at 196.

¶27 We find *Bazemore* persuasive on this point. In fact, the instant case is more straightforward than either *McPosey* or *Bazemore*. This case is not concerned simply with Guilbeau's right to control the handling of a loved one's body, but with the handling of the remains from her own miscarriage.[11] While her petition could have been more artfully drafted, Guilbeau did allege an invasion of *her own* right to privacy. That Hospital's conduct was occasioned by an unsuccessful attempt to bring another human life into the world only underscores that the primary focus should be on Guilbeau. No other person's right to privacy *could* have been invaded, as the child did not survive birth. The miscarriage was more personal to Guilbeau than to anyone else in the world.

¶28 What is more, the photographs that were taken did not simply record what might have been viewed, say, by a funeral attendee, or in a morgue, or even by hospital staff. According to Guilbeau's petition, the images did something more: they documented the handiwork of someone who intentionally manipulated the remains. The right to control how the remains were handled belonged to Guilbeau.

¶29 To summarize, on these facts we find it unnecessary to consider what might constitute a "relational" right to privacy and whether that right exists in Oklahoma. It was Guilbeau herself who experienced the miscarriage, and she was presented with photographs directly related to her experience and the handling of the remains. We express no opinion on whether Guilbeau can establish that the Hospital's bereavement project was either (1) done without her consent or (2) highly offensive to a reasonable person. We simply hold that she has stated a claim on which relief could be granted under existing Oklahoma law.

CONCLUSION

¶30 The Court of Civil Appeals was correct when it held that Guilbeau could not re-assert her negligence claims in her second lawsuit. However, the Court of Civil Appeals erred in finding that Guilbeau's invasion-of-privacy theory failed to state a claim on which relief could be granted. The remainder of the Court of Civil Appeals' opinion remains undisturbed.

COURT OF CIVIL APPEALS' OPINION VACATED;
TRIAL COURT AFFIRMED IN PART AND REVERSED IN PART;
CASE REMANDED FOR FURTHER PROCEEDINGS

CONCUR: KANE, C.J., ROWE, V.C.J., and KAUGER, EDMONDSON, COMBS, GURICH and KUEHN, JJ.

DISSENT: WINCHESTER and DARBY, JJ.

FOOTNOTES

KUEHN, J.

[1] Bryan County District Court Case No. CJ-2016-142.

[2] The petition in the first lawsuit alleged a single "Negligence" cause of action. Under that heading, after alleging a breach of a basic duty of care to handle the child's body in a respectful manner and Hospital's vicarious liability, this section of the petition states: "Additionally, [Hospital] owed a direct duty to Plaintiff to hire, train and supervise its employees such that its employees/agents would not cause injury or harm...," and that this failure caused Guilbeau harm.

[3] Bryan County District Court Case No. CJ-2020-239.

[4] Hospital and Armor (represented by the same counsel) filed separate motions to dismiss. Hospital's partial motion to dismiss sought to extinguish all claims against it *except* for IIED, alleging that both negligence claims were barred, that the invasion-of-privacy claim was untimely, and that all three failed to state a claim as a matter of law. Armor's motion to dismiss echoed Hospital's, and added that she should be dismissed as a defendant altogether because the statute of limitations for naming her as a party had run. Guilbeau amended her petition a week later, setting out a "Negligent Training, Hiring, and Supervision" claim separately from the "Negligence" claim. After Guilbeau amended her petition, Defendants renewed their motions to dismiss.

[5] While the COCA also concluded that the addition of Armor as a defendant in the re-filed suit was time-barred, Guilbeau does not challenge that ruling in her petition for *certiorari*, so we do not consider it. Oklahoma Supreme Court Rule 1.180(b), 12 O.S., App. 1; *Robey v. Long Beach Mtg. Corp.*, 2005 OK 64, ¶ 1 n. 1, 124 P.3d 221, 222 n. 1. Guilbeau obviously does not challenge the COCA's conclusion that her invasion-of-privacy claim was timely, and Hospital has not asked us to review that ruling on *certiorari*.

[6] The concept goes by various names in various contexts, but the overarching concerns are basically the same.

> Claim preclusion, or *res judicata* at common law, prevents a party in a second suit between the same parties, or their privies, from relitigating an adjudicated claim as well as issues of fact or law necessary to the previous final judgment on the merits, or relitigating those issues which could have been decided in the previous suit. . . . Issue preclusion, or collateral estoppel at common law, prevents relitigation of an issue in a second suit on a different claim. . . .

Farley v. City of Claremore, 2020 OK 30, ¶ 24 n. 54, 465 P.3d 1213, 1227 n. 54. Here we use the term "claim preclusion," because we are dealing with legal theories of recovery, extinguished as a matter of law by the trial court in one lawsuit, which were then re-presented to the same court in a successor lawsuit.

[7] *See also Hollingshead v. Elias*, 2016 OK CIV APP 46, ¶¶ 15-16, 376 P.3d 936, 940-41; *Waits v. Viersen Oil & Gas Co.*, 2015 OK CIV APP 95, ¶ 10, 361 P.3d 562, 564; *Schoenhals v. PSR Investors, Inc.*, 2013 OK CIV APP 27, ¶ 10, 299 P.3d 874, 877 ("So, where the trial court adversely adjudicates fewer than all of a plaintiff's claims, and the plaintiff subsequently voluntarily dismisses the remainder of his or her unadjudicated claims, the prior order adversely adjudicating some but not all of plaintiff's claims is then final and subject to appeal"); *Patel v. Tulsa Pain Consultants, Inc., PC*, 2015 OK CIV APP 45, ¶¶ 18--25, 348 P.3d 1117, 1122-23; *Raven Resources, L.L.C. v. Legacy Bank*, 2009 OK CIV APP 101, ¶¶ 8-15, 229 P.3d 1273, 1277-1280.

[8] Defendant Armor made similar challenges to the invasion-of-privacy claim, along with an argument that Guilbeau waited too long to name her as a party defendant. The trial court agreed with the latter argument as well; the COCA affirmed. That part of the COCA's decision concerned with the untimely joinder of Armor as a defendant is not presented for our review.

[9] In their summaries of the proceedings below, both parties indicate the trial court ruled only that the invasion-of-privacy claim was time-barred, and did not reach the substance of the claim. Hence, while we have the COCA's analysis of why the claim itself is groundless, we have no indication of the trial court's opinion on the matter.

[10] The idea that one may have a cause of action for emotional distress over the improper handling of a family member's remains appears to have been based, originally, on the theory that the remains were considered to be the property of a specified relative. This theory is now viewed as antiquated, a "technical right [that] has served as a mere peg upon which to hang damages for the mental distress inflicted upon the survivor... ." Restatement (Second) of Torts § 868, comment a.

[11] To the extent Oklahoma law on the right to control disposition of human remains guides our analysis, we note that Guilbeau had the right to control the disposition of *both* the remains of a deceased child, *as well as* any part of her *own* body. *See* 21 O.S. § 1158(5) (including a "surviving parent" in list of those with the right to control the disposition of remains); 21 O.S. § 1157 ("All provisions of this article ... punishing interference with or injuries to a dead body, applying [sic] equally to any dead limb or member of a human body, separated therefrom during lifetime").

Cite	Name	Level
1948 OK 52, 199 P.2d 606, 200 Okla. 670,	TIFFANY v. TIFFANY	Discussed
1999 OK 14, 980 P.2d 116, 70 OBJ 762,	Cities Service Co. v. Gulf Oil Corp.	Discussed
1999 OK 67, 998 P.2d 587, 70 OBJ 2178,	Brandt v. Joseph F. Gordon Architect, Inc.	Discussed at Length
1999 OK 73, 988 P.2d 1275, 70 OBJ 2674,	Vance v. Federal National Mortgage Assn.	Discussed at Length

Title 12. Civil Procedure

Cite	Name	Level
12 O.S. 683,	Dismissal without Prejudice	Discussed at Length
12 O.S. 952,	Jurisdiction of Supreme Court	Cited
12 O.S. 994,	Procedure When There is More Than One Claim or Party - Final Judgment	Cited
12 O.S. 2012,	Defenses and Objections - When and How Presented - By Pleading or Motion	Cited

Title 21. Crimes and Punishments

Cite	Name	Level
21 O.S. 1157,	Burial of Dead Limbs	Cited
21 O.S. 1158,	Right to Control Disposition of Remains - Persons in Whom Vested	Discussed