

Lawyer seeking class action suit against DeMotte funeral home, former director

Second lawsuit pending in Jasper County courts over improper funeral handling

By MELISSA WIDNER
STAFF WRITER

RENSSELAER — For the second time in a year, Family Service Funeral Home of DeMotte is facing a lawsuit over the alleged actions of former funeral director Dale Miller.

Based on testimony from a former employee of the funeral home, the family of Timothy Gray is suing Miller and the funeral home for an unspecified amount of actual and punitive damages on charges of breach of contract, fraud, emotional distress and outrage.

The charges also include racketeering, based on the employee's allegation that Miller engaged in an ongoing pattern of illegal behavior at the funeral home between June, 1998 and September, 1999.

Gray was prepared for burial by the funeral home in April, 1999. The suit alleges his organs were cremated with those of another person without the family's permission, and his body cavity was instead stuffed with soiled sheets from the funeral home.

In September, 2001, the funeral home settled out of court for \$182,319 in a suit filed by the family of Harry Dean Allen.

Acting on a tip from the same employee, Andrew Kalcic, the Jasper County Board of Health found Allen's decomposing organs in a trash can behind the funeral home Nov. 5, 1999. Allen had died and was prepared for burial by the funeral home in September, 1999.

In both cases, autopsies were required to certify cause of death, a process that requires a person's organs be removed. By law they are to be returned to at least the coffin of the deceased, if not the body cavity, following the autopsy, or disposed of with the family's permission.

Attorney Jason Reese, who also handled the Allen case, was in Jasper County Superior Court Wednesday to respond to a motion to dismiss the charges in the Gray case due to an expired statute of limitations.

Judge J. Philip McGraw ruled in favor of Reese that while more than two years had elapsed since Gray was buried, two years had not elapsed since Kalcic allegedly first informed the family of possible impropriety in Gray's handling in April, 2000.

"We're arguing because they concealed the evidence — literally, figuratively buried it — the statute of limitations has not run out," Reese said.

Although McGraw did not shut the door on defense attorney Steven Paul's request that a statute of limitations defense could be brought in the future if the defense could prove the family knew earlier, McGraw said some of the charges hold longer than a two-year statute of limitations.

But McGraw also warned Reese that since his case relies on the testimony of Kalcic, Kalcic must be present to testify in person at the trial or the taped testimony Kalcic has already given would be barred.

Paul told McGraw he has been unable to verify Kalcic's testimony because he has been unable to find him.

"He has moved around quite a bit, a pattern that has kept us from being able to contact him prior to this date."

Paul said his firm had hired a skip tracer to locate Kalcic with no results to date.

"You can't try a case on hearsay," McGraw told Reese, adding — over Paul's objections — he would allow findings of an exhumation of Gray's body.

"Presumably (if the allegations are false) the remaining organs will be in that coffin somewhere," he said.

McGraw also said he would be reluctant to pursue the racketeering charges without substantial proof.

"I'm not real thrilled to litigate this under the RICO (Racketeering Influence Corruption Organization) statute. It's in the margins and I'm going to leave it in, but this is something that could disappear without a whole lot of evidence."

Counsel asked for a one-year window for discovery and preparation and a trial date was set for April 22, 2003.

Reese said he viewed the ruling as a victory and plans to use the discovery period to contact families of those handled by the funeral home

See Class Action on page A-10

CLASS ACTION

continued from A-1

between June, 1998 and September, 1999. Kalcic has also alleged 95 bodies were mishandled by Miller at the funeral home during that time.

"They were just one of the 95," Reese said of Allen and Gray. "We know there is one older woman out there this happened to also. Her body remains were cremated with Timothy's.

"We're not just suing for this family. One of the family's main goals is to expose other people he's done this to. We needed a victory today. We want to bring a class action suit for the other families.

"A case like this you don't do for the money; a case like this you do to expose an abuse of the public trust.

"I'm confident we're going to expose several other instances of misconduct by this funeral home."

Reese also defended his choice to rely on Kalcic, who has claimed he also engaged in illegal activity during his employment and may be implicated in the investigation.

"We're very supportive of Mr. Kalcic. He has been consistent from the very beginning. He's already gone on the record in front of the state's administrative board. We have every reason to believe he's going to remain consistent."

Paul, who traveled from South Bend on behalf of the funeral home, was extremely reserved following the hearing, but argued the aggressive nature of the charges in court.

"There was no financial gain to be had by cremating Mr. Grays body parts with another woman," Paul said. "I think what they're trying to do is build something out of nothing. What they're alleging is sloppy funeral services provided by my client.

"Any improprieties involving Mr. Gray are allegations my client would hotly contest and are to be argued another day," he added.

Members of Gray's family were present in the court room for the hearing, and sat gravely through the proceedings. Miller did not attend.

"What they did to him was... when I found out I fell apart," said Deborah Stone, Gray's sister. "We're still in shock."

Stone choked back tears as she described Miller's behavior at the time of the funeral, which she saw as "cold and angry.

"I'm hoping this will bring closure. I want it to bring closure to myself and my family. I don't want this to happen to anybody else. That's why we're bringing this to light. It can't happen to anybody else."