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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
November 15, 2022 Session¹

**KAREN MATHES v. N.J. FORD AND SONS FUNERAL HOME, INC. ET
AL.**

**Appeal from the Chancery Court for Shelby County
No. CH-18-0413 Jim Kyle, Chancellor**

No. W2021-00368-COA-R3-CV

This appeal involves an action filed against a funeral home and a cemetery for alleged mishandling of a dead human body. The trial court granted summary judgment in favor of the funeral home as to the claims against the funeral home only. The plaintiff appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and JEFFREY USMAN, J., joined.

James E. Blount IV, Cordova, Tennessee, for the appellant, Karen Mathes.

Jessica B. Shannon, Memphis, Tennessee, for the appellee, N.J. Ford and Sons Funeral Home, Inc.

Effie V. Bean Cozart, Brentwood, Tennessee, for the appellees, Lakewood/Hamilton Cemetery, LLC and Lakewood/Hamilton Cemetery Subsidiary, Inc., individually and d/b/a Forest Hill Funeral Home/Memorial Park – Midtown, and/or Forest Hill Funeral Homes and Memorial Park, and/or Forest Hill Funeral Homes, and/or Tennessee Cemeteries, Inc.²

OPINION

I. FACTS & PROCEDURAL HISTORY

¹ Oral argument for this case was heard at the University of Tennessee at Martin.

² Lakewood/Hamilton Cemetery, LLC and Lakewood/Hamilton Cemetery Subsidiary, Inc. did not have a position regarding the appeal and elected not to file an appellate brief.

This case involves allegations of the mishandling of a dead human body by the following defendants: (1) the N.J. Ford and Sons Funeral Home, Inc. (“The Funeral Home”); and (2) Lakewood/Hamilton Cemetery, LLC and Lakewood/Hamilton Cemetery Subsidiary, Inc., individually and d/b/a Forest Hill Funeral Home/Memorial Park – Midtown, and/or Forest Hill Funeral Homes and Memorial Park, and/or Forest Hill Funeral Homes, and/or Tennessee Cemeteries, Inc. (“the Cemetery”). Given that this appeal is from a final judgment as to the Funeral Home only, we primarily focus on the facts and procedural history related to the Funeral Home.

In 1993, Ms. Karen Mathes submitted a signed Purchase Agreement to the Cemetery for the purchase of a pre-selected burial plot at one of its cemeteries. The Purchase Agreement provided exclusive interment rights including installation and maintenance of the memorial and “one opening and closing” of the grave. Pursuant to this Purchase Agreement, the Cemetery later conveyed the plot to Ms. Mathes, which is demonstrated by an Interment Deed identifying the location of the pre-selected burial plot. The Interment Deed provided, among other things, that “[a]ll maintenance and improvements of any kind on the above described property, all interments and disinterments, and installations of Memorials shall be made only by [the Cemetery] unless otherwise approved by cemetery company.” The Funeral Home was not privy to either the Purchase Agreement or the Interment Deed.

In August 2016, Ms. Mathes’s son died. Following her son’s death, she contacted the Funeral Home for funeral goods and services for her son and signed a Statement of Funeral Goods and Services Selected. Under the heading for “Services, Facilities & Transportation,” the document indicates that she selected and agreed to pay for the following: (1) basic services of funeral director and staff; (2) embalming; (3) other preparation of body; (4) the use of facilities and staff for viewing/visitation; (5) the transfer of remains to funeral home; and (6) a hearse. Under the headings for “Merchandise” and “Cash Advances,” the document indicates that she also selected and agreed to pay for a casket, acknowledgement cards, a register book, certified copies of death certificates, and two escorts to the cemetery.

Ms. Mathes also executed an Interment/Entombment Authorization and Indemnification document with the Cemetery authorizing it to bury her son’s remains at her pre-selected burial plot. The document provided that Ms. Mathes had “the full legal authority to direct the Interment, Entombment, or Inurnment of the remains of the deceased” and that she authorized the Cemetery “to make disposition of the remains of the deceased as indicated.” Ms. Mathes admitted that no one from the Funeral Home was present when she discussed the burial of her son’s remains with the Cemetery. Prior to the burial, she traveled to the cemetery to view the area where her son’s remains would be buried. She accompanied an employee of the Cemetery to the area where her son’s remains would be buried, and the employee marked the area by planting a flag in the ground.

Ms. Mathes then attended her son's funeral and graveside services. However, she did not observe her son's casket being lowered into the ground. Months later, in March 2017, she attempted to visit her son's grave at the cemetery. She proceeded to the location where she recalled the flag had been planted in the ground and where she believed that he had been buried.³ Unable to locate her son's grave, she contacted the Cemetery. An employee of the Cemetery then showed Ms. Mathes where in the cemetery the employee believed her son's remains were buried by referring to a piece of paper, which was presumably a map of the cemetery. The location identified by the employee was "up the hill" from the location where Ms. Mathes recalled the flag had been planted in the ground. Thus, Ms. Mathes stated that the location identified by the employee was not where her son's remains were supposed to be buried.

In March 2018, Ms. Mathes filed a complaint for damages and equitable relief against the Funeral Home and the Cemetery. The Funeral Home filed an answer to the complaint. In May 2019, the Funeral Home filed a motion to dismiss arguing that Ms. Mathes's complaint failed to state a cause of action upon which relief can be granted because the agreement between them lacked any material term that placed a duty upon the Funeral Home regarding the burial of her son's remains. Additionally, the Funeral Home argued that her claims were barred by the one-year statute of limitations. The record does not contain an order addressing this motion to dismiss.

During her deposition, Ms. Mathes could not recall observing an open grave beneath the casket, a covered mound of dirt, or any sign that there had been an open grave dug at the time of the graveside service. She also contended that her son's remains should be at the location where the employee planted the flag and that her son's remains were not buried at that location. However, she could not confirm that her son's remains were not buried in her pre-selected burial plot. She admitted that she did not know where in the cemetery her pre-selected burial plot was located. She believed that her son's remains were buried somewhere in the cemetery, but she did not know exactly where.⁴

In July 2020, the Funeral Home then filed a motion for summary judgment. It argued the only dispute that existed in this litigation was whether the remains of Ms. Mathes's son were buried in what she considered to be the proper location within the cemetery. The Funeral Home argued that Ms. Mathes did not contract with the Funeral Home for the burial of her son's remains nor did the Funeral Home have any legal obligation or duty to ensure the burial of her son's remains. The trial court ultimately entered an order in March 2021 granting the Funeral Home's motion for summary

³ It is not clear from the record whether the graveside service was conducted at the location where the flag had been planted.

⁴ A picture later submitted by the Cemetery demonstrates that there is a grave marker for Ms. Mathes's son at the cemetery.

judgment. The trial court addressed each of the causes of action against the Funeral Home: (1) breach of contract; (2) equitable relief; (3) breach of fiduciary duty; (4) reckless and negligent handling of remains; (5) negligence and negligent infliction of emotional distress; (6) unjust enrichment; (7) punitive damages; and (8) violation of the Tennessee Consumer Protection Act (“TCPA”). For the majority of the causes of action, the court essentially concluded that the Funeral Home was not responsible for ensuring the remains of Ms. Mathes’s son were buried in the proper location. For negligent infliction of emotional distress, however, the court concluded that the cause of action was time-barred.

Thereafter, Ms. Mathes timely filed an appeal. Following her filing of this appeal, she filed a motion for stay pending appeal, which the trial court granted. The parties subsequently filed a joint motion to amend the trial court’s order granting the Funeral Home’s motion for summary judgment to include the language comports with Tennessee Rule of Civil Procedure 54.02. The trial court then amended its order granting the Funeral Home’s motion for summary judgment to include the appropriate language from Rule 54.02.⁵ Therefore, as previously stated, this appeal only concerns the final judgment as to the Funeral Home, i.e., the trial court’s grant of summary judgment in favor of the Funeral Home.

II. ISSUES PRESENTED

Ms. Mathes presents the following issues for review on appeal, which we have slightly restated:

1. Whether Tennessee law imposes a nondelegable duty upon a licensed funeral director to personally direct or supervise the burial and disposition of a dead human body; and
2. If a licensed funeral director in Tennessee fails to personally direct or supervise the burial and disposition of a dead human body, is this failure a breach of the funeral director’s “Statement of Funeral Goods and Services Selected.”

The Funeral Home presents the following issues for review on appeal, which we have slightly restated:

1. Whether the trial court correctly concluded that there was no statutory nondelegable duty of funeral directors to direct and supervise the final disposition of a dead human body;
2. Whether the trial court correctly concluded that, in Tennessee, there is no common

⁵ When more than one claim for relief is present in an action or when multiple parties are involved, “the Court . . . may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” Tenn. R. Civ. P. 54.02(1).

law duty of funeral directors to direct and supervise the final disposition of a dead human body;

3. Whether the trial court correctly concluded that the contract entered into between Ms. Mathes and the Funeral Home did not include the provision of burial and cemetery services; and
4. Whether the trial court correctly granted summary judgment in favor of the Funeral Home.

For the following reasons, we affirm the decision of the trial court.

III. STANDARD OF REVIEW

We review a trial court’s ruling on a motion for summary judgment *de novo* with no presumption of correctness. *Lemon v. Williamson Cnty. Schs.*, 618 S.W.3d 1, 12 (Tenn. 2021) (citing *Tatham v. Bridgestone Ams. Holding, Inc.*, 473 S.W.3d 734, 748 (Tenn. 2015)). “Summary judgment is proper where ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Id.* (quoting Tenn. R. Civ. P. 56.04). This standard of review requires “a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied.” *Id.* (quoting *Rye v. Women’s Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 250 (Tenn. 2015)).

IV. DISCUSSION⁶

A. Waiver

As a threshold matter, we address the issue of waiver. The Funeral Home argues that Ms. Mathes has waived her ability to raise her arguments and issues on appeal. It argues that Ms. Mathes failed to object to or dispute its motion for summary judgment on each individual theory of recovery asserted against it in the trial court. Instead, it states that Ms. Mathes restricted her response to the motion by arguing the following: “[W]hether . . . Tennessee imposes a non-delegable, statutory duty on funeral directors in this [S]tate

⁶ We note that it is unclear from the record whether the remains of Ms. Mathes’s son were even buried in the wrong burial plot. She could not confirm that her son’s remains were not buried in her pre-selected burial plot, admitting that she did not know where in the cemetery her pre-selected burial plot was located. She believed that her son’s remains were buried somewhere in the cemetery; she just did not know exactly where. Yet, there is a picture in the record of her son’s grave marker at the cemetery, which confirms that her son’s remains are at least supposed to be buried under that grave marker in the cemetery. At oral argument, counsel for Ms. Mathes conceded that Ms. Mathes’s son may very well be buried in the pre-selected burial plot purchased from the Cemetery. Regardless of this digression, we consider the issues presented in this appeal.

to direct and supervise the burial of the dead.” Additionally, Ms. Mathes argued in her response that “[s]ince a funeral director from [the Funeral Home] did not oversee and/or supervise the burial, the next question is whether this failure is a violation of Tennessee statutory requirements. If so, then [the Funeral Home] must have also breached its contract with [Ms. Mathes].” As such, the Funeral Home contends that Ms. Mathes never addressed the arguments it made concerning her claims of equitable (injunctive and/or declaratory) relief, breach of fiduciary duty, reckless and negligent mishandling of remains, negligence and reckless and negligent infliction of emotional distress, unjust enrichment, punitive damages, and violation of the TCPA.

As for whether Ms. Mathes has waived the issues regarding the various claims above, she provided arguments for each but did not present them as issues in her statement of the issues for appellate review. She has only presented issues concerning whether the Funeral Home had a duty and whether the Funeral Home breached its Statement of Funeral Goods and Services Selected. “Appellate review is generally limited to the issues that have been presented for review.” *Hodge v. Craig*, 382 S.W.3d 325, 334 (Tenn. 2012) (citing Tenn. R. App. P. 13(b); *State v. Bledsoe*, 226 S.W.3d 349, 353 (Tenn. 2007)). As such, we conclude that Ms. Mathes has waived any review of her claim of negligent infliction of emotional distress because the trial court granted summary judgment as to that specific claim finding it was time-barred. Our review as to all other claims is limited to the issues she has specifically presented for review in her statement of the issues, which focuses on the question of whether the Funeral Home had a duty.

B. Statutory Duty

For her first issue, Ms. Mathes argues that Tennessee law imposes a statutory duty upon a licensed funeral director to personally direct or supervise the burial and disposition of a dead human body.⁷ She asserts that this particular duty imposed upon a funeral director only ends by “inhumation.” Conversely, the Funeral Home argues that Tennessee law does not impose a duty on funeral directors to direct and supervise the final disposition of a dead human body. The Funeral Home contends that the plain language of Tennessee Code Annotated section 62-5-101 does not support Ms. Mathes’s construction of the term “funeral directing.” Accordingly, this is an issue of statutory interpretation, which is a question of law reviewed de novo without a presumption of correctness. *Coffee Cnty. Bd. of Educ. v. City of Tullahoma*, 574 S.W.3d 832, 839 (Tenn. 2019) (citing *Beard v. Branson*, 528 S.W.3d 487, 494-95 (Tenn. 2017)). “The cardinal rule of statutory construction is to effectuate legislative intent, with all rules of construction being aides [sic] to that end.” *Id.* (quoting *Spires v. Simpson*, 539 S.W.3d 134, 143 (Tenn. 2017)). “The text of the statute is of primary importance, and the words must be given their natural and ordinary meaning in the context which they appear and in light of the statute’s general purpose.” *Id.* (quoting

⁷ We use the term “dead human body” in this case not to be insensitive, but because it is the term consistently used in the relevant statutory provisions.

Mills v. Fulmarque, Inc., 360 S.W.3d 362, 368 (Tenn. 2012)).

The Tennessee Funeral Directors and Embalmers Act (“the FDEA”), Tennessee Code Annotated section 62-5-101, *et seq.*, and its implementing rules and regulations, Tennessee Compilation of Rules and Regulations 0660-1-.01, *et seq.*, regulate the funeral and embalming industry in Tennessee. *Craigmiles v. Giles*, 110 F. Supp. 2d 658, 660 (E.D. Tenn. 2000). The FDEA requires that a person engaged in funeral directing, embalming, and operating of a funeral establishment in Tennessee must be licensed by the Board of Funeral Directors and Embalmers to do so. Tenn. Code Ann. § 62-5-303(a)(2). According to the FDEA, the purpose of this licensing requirement is to safeguard life and health, to prevent the spread of contagious diseases, and to improve sanitary conditions and public health generally. Tenn. Code Ann. § 62-5-303(a)(1). The terms “funeral directing” and “funeral establishment” are of particular importance in this case. The FDEA defines “funeral directing” as the:

- (i) Practice of directing or supervising funerals or the practice of preparing dead human bodies for burial by any means, other than by embalming, or the disposition of dead human bodies;
- (ii) Making of arrangements to provide for funeral services or the making of financial arrangements for the rendering of funeral services;
- (iii) Provision or maintenance of a place for the preparation for disposition or for the care or disposition of dead human bodies;
- (iv) Use of the word or term “funeral director,” “undertaker,” “mortician,” “funeral parlor,” “funeral chapel” or any other word or term from which can be implied the practice of funeral directing; or
- (v) Holding out to the public that one is a funeral director or engaged in a practice described in this subdivision (6);

Tenn. Code Ann. § 62-5-101(6)(A). There are exemptions to the definition of “funeral directing,” such as “[t]he opening and closing of a grave . . . and the provision of the necessary grave . . . equipment required for the final interment . . . of casketed human bodies” Tenn. Code Ann. § 62-5-101(6)(B)(iii). Additionally, the FDEA defines “funeral establishment” as follows:

[A]ny business, whether a proprietorship, partnership, firm, association or corporation, engaged in arranging, directing or supervising funerals for profit or other benefit, the preparing of dead human bodies for burial, the disposition of dead human bodies, the provision or maintenance of place for the preparation for disposition, or for the care or disposition of human bodies;

Tenn. Code Ann. § 62-5-101(7). We note that section 62-5-101 merely defines the terms “funeral directing” and “funeral establishment.” It does not create or define any duties or

responsibilities for funeral directors or funeral establishments.⁸ See *Harlan v. G.C. Williams Funeral Home, Inc.*, No. 2007-CA-001266-MR, 2008 WL 3165733, at *3 (Ky. App. Aug. 8, 2008) (analyzing the definition of “funeral director” contained in Kentucky’s statutes). However, we use these definitions as guidance in our determination of whether the Funeral Home had a duty in this case.

As the Funeral Home points out in its appellate brief, the definitions for the terms “funeral directing” and “funeral establishment” repeatedly use the word “or” indicating that those terms do not have to encompass all of the activities identified therein. See Tenn. Code Ann. § 62-5-101(6)(A) and (7). The Tennessee Supreme Court has explained that, generally, “the word ‘or,’ as used in a statute, is a disjunctive article indicating that the various members of the sentence are to be taken separately.” *Leab v. S & H Mining Co.*, 76 S.W.3d 344, 349 (Tenn. 2002) (quoting 73 Am. Jur. 2d Statutes § 241 (1974)). In *Leab*, the Court was unpersuaded by the defendant’s assertion that the words “and” and “or” “are interchangeable in the construction of statutes when necessary to carry out the legislative intent.” *Id.* (quoting *Knoxville v. Gervin*, 89 S.W.2d 348, 352 (Tenn. 1963)) (footnote omitted). However, the Court noted that such an interpretation may be necessary in exceptional cases. *Id.* at 349-50.

This Court has answered a question before regarding the scope of the practice of funeral directing, i.e., whether the practice of funeral directing included the operation of a crematory. We explained that “[i]t is undisputed that the function of a crematory is to dispose of dead human bodies.” *BMC Enters., Inc. v. City of Mt. Juliet*, 273 S.W.3d 619, 625 (Tenn. Ct. App. 2008). “Thus, the General Assembly envisioned that a funeral establishment could include a funeral home and/or crematory.” *Id.* As such, we concluded that the practice of funeral directing included the operation of a crematory. *Id.* at 626; see *State ex rel. Cunningham v. Fezell*, 400 S.W.2d 716, 721 (Tenn. 1966) (concluding that the term “funeral directing” contained in Tennessee Code Annotated section 62-501, the predecessor statute, included the operation of a crematory). In a subsequent case, however, the Tennessee Supreme Court explained that “[g]enerally, . . . a funeral home that does not perform cremations, but merely makes arrangements for cremations to be carried out by another company, is not itself the operator of a crematory facility” *Seals v. H & F, Inc.*, 301 S.W.3d 237, 252 (Tenn. 2010). Therefore, our Supreme Court held that “the operator of a crematory facility is the party actually responsible for the cremation.” *Id.* at 253. The reasoning in *Seals* is instructive in this case. It follows that if a funeral home does not perform a burial, but merely prepares and transports a dead human body for the burial to be carried out by a cemetery, then the funeral home is not the party responsible for the burial.

⁸ The Court of Criminal Appeals has recognized that a statute, Tennessee Code Annotated section 40-1-106, “merely define[d] which officials are magistrates” and did not address the applicability of the term “magistrates,” specifically a magistrate’s jurisdiction to issue a search warrant. *State v. Frazier*, No. M2016-02134-CCA-R9-CD, 2017 WL 4251118, at *6 (Tenn. Crim. App. Sept. 25, 2017).

Here, we note that Ms. Mathes’s framing of this issue suggests the terms “burial” and “disposition” are not exactly synonymous. Indeed, one court has held that the “disposal of the remains” is an ambiguous term and may or may not be read to require burial. *Keaton v. G.C. Williams Funeral Home, Inc.*, 436 S.W.3d 538, 547 (Ky. App. 2013). Notably, the Funeral Home frames their version of this issue to include the term “final disposition.” Although these three terms—“burial,” “disposition,” and “final disposition”—are used quite often in the FDEA, they are not defined.⁹ However, the FDEA indicates that the terms “burial,” “entombment,” or “cremation” are methods of final disposition of a dead human body. One section provides the particular requirements for “receptacles and containers used *for burial, entombment or other final disposition* of a dead human body or the remains of a dead human body” Tenn. Code Ann. § 62-5-104(a) (emphasis added). Another section defines “commemorative services” as “any ceremony for the dead *prior to burial, cremation, or any other legal form of final disposition.*” Tenn. Code Ann. § 62-5-313(f) (emphasis added). Elsewhere, the FDEA contains sections covering the final disposition of cremated remains.¹⁰ *See* Tenn. Code Ann. §§ 62-5-508 and -509. Under certain circumstances, if cremated remains go unclaimed for a period of 180 days, the remains “may be *interred, entombed, or inurned* by the operator of the crematory facility. . . .” Tenn. Code Ann. § 62-5-508(c) (emphasis added). Furthermore, the crematory facility is required to keep a record of each cremation and a separate record of the cremated remains of each decedent containing, among other things, the manner of final disposition of the remains. Tenn. Code Ann. § 62-5-509(e). The term “final disposition” is used in other sections of the FDEA as well. *See* Tenn. Code Ann. §§ 62-5-403, -703, -705, and -706.

From our reading of the FDEA, we conclude that the use, or lack thereof, of the term “final disposition” is significant because the burial of a dead human body is a method of final disposition.¹¹ The definitions for “funeral directing” and “funeral establishment” use the term “burial” but never specifically use the term “final disposition.” *See* Tenn. Code Ann. § 62-5-101(6)(A)(i) and (7). The definition for “funeral directing” includes in part “the practice of preparing dead human bodies for *burial* by any means, other than embalming” Tenn. Code Ann. § 62-5-101(6)(A)(i) (emphasis added). This is the only time the term “burial” is used in the definition for “funeral directing.” We reiterate, however, that “[t]he opening and closing of a grave . . . and the provision of the necessary

⁹ The term “right of disposition,” however, is defined in the FDEA as “the right to determine the disposition of the remains of a decedent, including the location, manner, and conditions of disposition and arrangements for funeral goods and services.” Tenn. Code Ann. § 62-5-701(3).

¹⁰ The FDEA contains similar sections covering the final disposition of resomated remains, which became effective on April 13, 2021. *See* Tenn. Code Ann. §§ 62-5-804(c) and 62-5-805(e).

¹¹ Our conclusion is bolstered by the definition of the term “final disposition” in the Vital Records Act (“the VRA”). Although the use of the definition is limited to the VRA, we note that “final disposition” is defined as “the burial, interment, cremation, removal, from the state or other authorized disposition of a dead body or fetus[.]” Tenn. Code Ann. § 68-3-102(7).

grave . . . equipment required for the final interment . . . of casketed human bodies . . .” is exempted from this definition. Tenn. Code Ann. § 62-5-101(6)(B)(iii). The General Assembly clearly did not intend for the practice of funeral directing to include the opening and closing of a grave—necessary steps in the final disposition of a dead human body by burial. The definition for “funeral establishment” includes in part “the preparing of dead human bodies for *burial*” Tenn. Code Ann. § 62-5-101(7) (emphasis added). Like the definition for “funeral directing,” this is the only time the term “burial” is used in the definition for “funeral establishment.” The phrase “preparing for” precedes both uses of the term “burial” in those definitions. *See* Tenn. Code Ann. § 62-5-101(6)(A)(i) and (7). Thus, this particular language of the FDEA only addresses the preparation of a dead human body for burial and not the actual burial.

We reiterate that section 62-5-101 merely defines the terms “funeral directing” and “funeral establishment.” It does not create or define any duties or responsibilities for funeral directors or funeral establishments. Nowhere in the FDEA does it specifically state that a funeral director must direct or supervise the burial and disposition of a dead human body. The FDEA only states that funeral directing includes the “[p]ractice of directing or supervising funerals . . .” and that a funeral establishment includes a business “engaged in the arranging, directing or supervising for funerals for profit or other benefit” Tenn. Code Ann. § 62-5-101(6)(A)(i) and (7). Yet, the definitions for “funeral directing” and “funeral establishment” also use the term “disposition” included in the phrase “the disposition of dead human bodies.” *See id.* This language suggests that in some cases a funeral home may very well be responsible for the burial or other final disposition of a dead human body. However, as previously stated, the definitions for the terms “funeral directing” and “funeral establishment” repeatedly use the word “or” indicating that those terms do not have to encompass all of the activities identified in the definitions. *See id.* The use of the word “or” in a statute “is a disjunctive article indicating that the various members of the sentence are to be taken separately.” *Leab*, 76 S.W.3d at 349 (quoting 73 Am. Jur. 2d Statutes § 241 (1974)). Therefore, funeral directing or the operation of a funeral establishment could encompass either the preparation of a dead human body for burial or the disposition of a dead human body, or both. Yet, in some cases it may involve neither of those tasks.

It is clear that the General Assembly envisioned that funeral directors may direct or supervise the burial and disposition of a dead human body in some cases. From our examination of the definitions in the FDEA, we conclude that it did not intend for funeral directors to blanketly possess such a duty in all cases. Finding such a broad duty would assume that in every case the method of disposition is always burial and that a funeral home is always the party performing that disposition. As clearly recognized in the statutory provisions, different parties may be involved in the process of the disposition of a dead human body, such as a funeral home, a crematory, and/or a cemetery. Additionally, there are different methods of final disposition of a dead human body, such as burial, entombment, or cremation. For instance, a funeral home sometimes only prepares and

transports the body for burial and does not perform the final disposition by burial, such as in this case. Given that the Funeral Home only engaged in preparing and transporting the body for burial in this case, we conclude that the Funeral Home did not have a statutory duty to direct or supervise the burial and disposition of the remains of Ms. Mathes's son.¹² In concluding so, we limit our holding to the circumstances of this case.

C. Common Law Duty

In addition to her argument that the Funeral Home had a statutory duty, Ms. Mathes also contends that the Funeral Home breached its common law duty. The Funeral Home contends that there is not a common law duty imposed on funeral directors to direct or supervise burials. "While duty was not part of the early English common law jurisprudence of tort liability, it has since become an essential element in negligence cases." *Steinbrunner v. Turner Funeral Home, Inc.*, No. E2001-00014-COA-R3-CV, 2002 WL 14088, at *7 (Tenn. Ct. App. Jan. 2, 2002) (quoting *Bradshaw v. Daniel*, 854 S.W.2d 865, 869 (Tenn. 1993)). "The existence or nonexistence of a duty owed to the plaintiff by the defendant is entirely a question of law for the court." *Id.* (*Bradshaw*, 854 S.W.2d at 869).

In the *Steinbrunner* case, which was a funeral home case, this Court explained that generally "a defendant owes a plaintiff a duty of 'reasonable care under all of the circumstances.'" *Id.* (quoting *Doe v. Linder Constr. Co.*, 845 S.W.2d 173, 177 (Tenn. 1992)). We further explained that "[r]easonable care must be defined in the context of the particular circumstances of the parties." *Id.* (*Doe*, 845 S.W.2d at 178). As such, based on the relationship between the parties, we held that the funeral home in the case owed the plaintiff "a duty to conform to a reasonable person standard of care under all of the circumstances." *Id.* at *8. We ultimately concluded that the funeral home satisfied that duty. *Id.* Following the *Steinbrunner* case, we analyze whether the Funeral Home conformed to a reasonable person standard of care under all of the circumstances and whether that standard placed a duty upon the Funeral Home to direct or supervise the burial and disposition of Ms. Mathes's son.

The relevant circumstances in this case were that there was only one document that Ms. Mathes signed with the Funeral Home, which was the Statement of Funeral Goods and Services Selected. The document indicates that she selected and agreed to pay for various services, goods, and merchandise. Nowhere in this document did it indicate that the

¹² It is necessary to note the *Wofford v. M.J. Edwards & Sons Funeral Home Inc.*, 528 S.W.3d 524, 529 (Tenn. Ct. App. 2017) case, which contains the following statement: "It is clear that, at the beginning of the process, pursuant to Tenn. Code Ann. § 62-5-101(6)(A), the funeral home takes possession of the remains, and then, at some point in time, the duty to provide a proper burial shifts to the cemetery." This statement made in *Wofford* was from the language of the trial court's order, and therefore we have disregarded it. Still, it was noted in *Wofford* that the central issue common to all parties was "whether a funeral home has a duty beyond dropping off human remains at the cemetery." *Id.* at 543. We did not comment any further on such a duty.

Funeral Home was responsible for directing and supervising the burial of Ms. Mathes's son. According to the document, the only responsibility placed upon the Funeral Home related to the burial was preparing and transporting the body of Ms. Mathes's son by hearse to the cemetery for the burial, which it did. In regard to the Cemetery, there were three documents that Ms. Mathes either signed or received. First, the Purchase Agreement with the Cemetery provided exclusive interment rights including installation and maintenance of the memorial and "one opening and closing" of the grave. Second, the Interment Deed provided by the Cemetery stated, among other things, that "[a]ll maintenance and improvements of any kind on the above described property, all interments and disinterments, and installations of Memorials shall be made only by Grantor unless otherwise approved by the cemetery company." Third, the Interment/Entombment Authorization and Indemnification document authorized the Cemetery to bury the remains of Ms. Mathes's son at her pre-selected burial plot. The document stated, "The undersigned hereby certifies they have the full legal authority to direct the Interment, Entombment, or Inurnment of the remains of the deceased, and hereby authorize the cemetery to make disposition of the remains of the deceased as indicated." We reiterate that Ms. Mathes admitted that no one from the Funeral Home was present when she discussed the burial of her son's remains with the Cemetery.

Under these circumstances, we conclude that the Funeral Home had no common law duty to direct or supervise the burial and disposition of Ms. Mathes's son. The documents above demonstrate that the Funeral Home did not undertake to direct or supervise the burial; instead, the Cemetery was the party responsible for ensuring that the remains of Ms. Mathes's son were properly buried. The allegations in this case involve the mishandling of a dead human body. Specifically, Ms. Mathes alleges that her son was buried in the wrong burial plot. There are no allegations of misconduct or mishandling prior to the burial. Therefore, we also conclude that the Funeral Home conformed to the reasonable person standard of care under all of the circumstances.

D. Breach of Statement of Funeral Goods and Services Selected¹³

Ms. Mathes's second issue is whether a licensed funeral director's failure to personally direct or supervise the burial and disposition of a dead human body is a breach of the Statement of Funeral Goods and Services Selected. We have already found, under the circumstances of this case, that the Funeral Home had no statutory or common law duty to direct or supervise the burial and disposition of the remains of Ms. Mathes's son. As stated previously, nowhere in the Statement of Funeral Goods and Services Selected did it indicate that the Funeral Home was responsible for directing or supervising the burial and

¹³ Although Ms. Mathes presents this issue as one in her statement of the issues presented for review, it appears she combines her argument for this issue with her argument that there was a common law duty. Therefore, we address this issue separately so we do not confuse the argument that there was a contractual duty with the argument that there was a common law duty.

disposition of Ms. Mathes's son. It is also clear then, to the extent Ms. Mathes argues that the Funeral Home had a contractual duty to do so, that the Funeral Home had no contractual duty to direct or supervise the burial and disposition of the remains of Ms. Mathes's son. As such, we conclude that there was no breach of the Funeral Home's Statement of Funeral Goods and Services Selected.

Given that we have concluded that the Funeral Home had no duty to direct or supervise the burial and disposition of the remains of Ms. Mathes's son, we also conclude that the trial court properly granted summary judgment in favor of the Funeral Home.

V. CONCLUSION

For the aforementioned reasons, we affirm the decision of the trial court. Costs of this appeal are taxed to the appellant, Karen Mathes, for which execution may issue if necessary.

CARMA DENNIS MCGEE, JUDGE