



Supreme Court of Georgia

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CASES DUE FOR ORAL ARGUMENT

Summaries of Facts and Issues

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Tuesday, September 13, 2016

10:00 A.M. Session

CHANDLER TELECOM, LLC ET AL. V. BURDETTE (S16G0595)

A company that supports the denial of Workers' Compensation benefits to one of its technicians, who was injured after rappelling down a cell-phone tower in violation of company policy, is appealing a Georgia Court of Appeals decision that restored the man's benefits.

FACTS: In September 2012, Adrian Burdette began working for Chandler Telecom, LLC as a cell-tower technician. He was there three weeks before he took a five-week leave of absence while, unknown to his employer, he was incarcerated. Burdette was terminated during his leave of absence due to a miscommunication with his supervisor, but the company rehired him Nov. 2, 2012. During his leave of absence, Chandler had required all of its cell-tower technicians to become ComTrain certified. ComTrain is a third-party company that instructs cell-tower technicians to climb and descend cell-phone towers. Specifically, it trains technicians how to use "controlled descent," which is similar to rappelling, when descending the towers. According to a Chandler representative, the company only uses controlled descent when rescuing someone, and Chandler technicians are "always supposed to climb down." Upon his return to work, Burdette was asked if he was ComTrain certified, and he lied and said that he was. On Nov. 5, 2012, Burdette's first day back at work, he was assigned to work on the top of a cell tower with Brian Prejean, who was the "lead tower hand" of the crew. Prior to their shift, the

supervisor of the six-man crew instructed them to climb down the towers and not to use controlled descent. Prejean and Burdette worked together that day on the same cell tower from 8 a.m. until about 3:30 p.m. Before leaving, Prejean instructed Burdette to climb down the tower, but Burdette said he would use controlled descent instead. “I told him, no man, just climb down,” Prejean later recounted. “I was like, dude they’re going to be mad if you do it.” Prejean told Burdette they didn’t have a safety rope he could grab if necessary, and that he “might not have a job,” if he proceeded to rappel down the tower. But Burdette prepared his equipment and began a controlled descent. Right after he began rappelling, he fell a significant distance and landed on an “ice bridge,” which caused serious injuries to his ankle, leg and hip. Burdette later had no memory of his fall or of his conversation with Prejean.

Following the accident, Burdette filed a claim for workers’ compensation due to his injuries, and a hearing was held before an administrative law judge. The judge denied his claim for benefits, finding they were barred due to Burdette’s “willful misconduct” for defying his supervisor’s direction to climb down the tower instead of rappelling down. Georgia’s Workers’ Compensation Act states in § 34-9-17 (a): “No compensation shall be allowed for an injury or death due to the employee’s willful misconduct, including intentionally self-inflicted injury, or growing out of his or her attempt to injure another, or for the willful failure or refusal to use a safety appliance or perform a duty required by statute.” Burdette appealed the judge’s award to the State Board of Workers’ Compensation which upheld the denial of benefits. Burdette appealed to the **Putnam County** Superior Court but the court did not hold a hearing or issue a ruling on the matter and the Board’s decision was therefore affirmed 60 days later. Burdette then appealed to the Court of Appeals, which reversed the Board’s and judge’s decision, finding that Burdette’s actions did not constitute “willful misconduct.” Chandler now appeals to the state Supreme Court. At issue in this case is the definition of “willful misconduct.”

ARGUMENTS: Chandler’s attorney argues the Supreme Court should reverse the appellate court’s decision. “Employee was told that rappelling was expressly prohibited by Employer,” the attorney argues in briefs. “He proceeded anyway. Employee was warned that the equipment he had was insufficient to perform the prohibited action safely. He proceeded anyway. Employee was warned that termination was possible if he went forward with the dangerous, prohibited action. He proceeded anyway.” The legislature provided that injuries that occur as a result of an employee’s intentional disobedience cannot be compensated, but the Court of Appeals has improperly added an element of proof to the willful misconduct defense – that the behavior be “quasi-criminal.” The appellate court improperly relies on the Georgia Supreme Court’s 1929 decision in *Aetna Life Insurance Company v. Carroll*, which states that willful misconduct involves conduct of a “criminal or quasi-criminal nature.” “Mere violation of rules, when not willful or intentional, is not willful misconduct, within the meaning of the laws upon the subject of workmen’s compensation,” the *Aetna* decision says. Rather, willful misconduct “involves conduct of a *quasi-criminal nature*, the intentional doing of something, either with the knowledge that it is likely to result in serious injury, or with a wanton and reckless disregard of its probable consequences.” But “nowhere in the statute itself is there a requirement that behavior be quasi-criminal in order to qualify as willful misconduct,” the attorney contends. And subsequent court decisions “have made it clear that the criminality of an action is irrelevant to whether it qualifies as willful misconduct.” Other jurisdictions with similar statutes barring benefits for injuries caused by willful misconduct do not include the requirement of quasi-

criminal conduct to establish willful misconduct, Chandler’s attorney argues. Doing so “imposes an additional burden on the employer not contemplated by the Worker’s Compensation Act” and is “inconsistent with other areas of Georgia law.” This is not about an employee who was “absent-minded or forgetting a rule,” the attorney argues. “Employee’s behavior clearly rises to the level of willfulness contemplated by the statute.”

Burdette’s attorneys argue the Court of Appeals correctly ruled that Burdette is entitled to compensation for his injuries, and its decision should be affirmed because Burdette’s conduct did not rise to the level of “willful misconduct.” A fundamental tenet of workers’ compensation is that if the employee was injured while in the course of his employment, even if it was his fault, he is entitled to compensation. “The law requires more than deliberate disregard of a rule for benefits to be denied,” they argue in briefs. To disqualify an employee from receiving the benefits, “the employer must show a reckless disregard for the *consequences* of his decision and a knowledge that his actions are likely to result in injury.” Burdette did not consider controlled descent as a dangerous activity likely to result in his injury; the “undisputed evidence is that Burdette was trained to do it just that way.” “Chandler had allowed him to use controlled descents in the past and provided him the equipment to do so. Only on the day of the accident, for the first time, did his employer tell him not to. There is no evidence Burdette’s actions were wanton or reckless, or that he knew they were likely to cause injury.” There is no need to overrule *Aetna Life Insurance Company v. Carroll*, which has been the law for 86 years and “is good law,” the attorneys contend. While Chandler argues that by requiring “criminal or quasi-criminal behavior” to make a finding of willful misconduct has expanded its meaning under the statute, Chandler “overstates and misconstrues the effect and meaning of ‘quasi-criminal’ conduct in the workers’ compensation context,” Burdette’s attorneys argue.

Attorney for Appellants (Chandler): Andrew Daugherty

Attorneys for Appellee (Burdette): Daniel Greenfield, Jack Witcher

WOLFE V. REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA ET AL.
(S16A1201)

A tenured professor who was fired by the president of Georgia Southern University for sexually harassing a female graduate student is appealing a **Fulton County** court ruling upholding his termination.

FACTS: Lorne Wolfe was a tenured professor of biology at Georgia Southern University from 2005 until his termination May 9, 2014. Because Wolfe had an employment contract with the Georgia Board of Regents, which oversees the public colleges and universities that make up the state’s University System, he could only be terminated for cause, including for violations of policies of the university or the Board of Regents. On Oct. 16, 2013, graduate student Erica Johnson spilled a cup of coffee on herself in a break room in the Biological Sciences building on campus. While she was attempting to dry off her shirt, Wolfe said to her, “It’s okay; you can dry your breasts off in front of me.” Johnson looked at Wolfe, conveying she did not appreciate his comment. He apparently understood, responding, “Well, f--- you then.” Wolfe then turned to a male student in the room and began speaking with him loudly enough so Johnson could hear. “Who are you scoring with?” Wolfe asked the young man. “Undergrad? Grad?” He went on, asking the student if he was “scoring” with Johnson. “She’s loose,” Wolfe said. “She’s hot...Now her breasts are hot.” Johnson filed a sexual harassment complaint against Wolfe,

stating she could not complete her work that day “because I was distraught about the incident.” “I have never been so offended in such a short amount of time,” she stated, adding that the incident “created a hostile and intimidating environment.”

Georgia Southern has a published policy against sexual harassment, which is defined as “unwelcome conduct of a sexual nature.” The policy states that the university will take any “appropriate action” to prohibit sexual harassment, “up to and including termination or dismissal.” Two days after the encounter, Wolfe emailed Gary Gawels, the university’s Title IX coordinator. Title IX is a federal statute that prohibits sex discrimination in the educational system and guarantees girls and women the same opportunities as boys and men. In his email, Wolfe wrote, “I realize that once again I have said inappropriate things. . . . If I am going to be reprimanded or fired I would rather know now. . . . It is very difficult to deal with. . . this new situation that I have put myself in.” Gawels investigated Johnson’s complaint, finding that “considering the past complaints against Dr. Wolfe, it appears that a hostile environment was created for Ms. Johnson by Dr. Wolfe in violation of University policy.” The matter proceeded to Jean Bartels, the university’s Vice President for Academic Affairs, who accepted Gawel’s findings, initiated disciplinary proceedings, and placed Wolfe on administrative leave, providing him a “Notice of Removal Proceedings.” The notice stated that “an internal investigation was recently conducted regarding serious charges that you have created a hostile environment based on gender” and informing Wolfe that “the university must take steps to protect the community from further instances of harassment.” Under university policy, the matter was referred to a faculty committee. Following a two-day hearing, the faculty panel submitted its findings and recommendations to university President Brooks A. Keel. The panel stated it did “not find that the one incident on Oct. 16, 2013 constitutes creation of a hostile environment,” and while the committee found that Wolfe had engaged in a “lack of collegiality and lack of professionalism,” he had not committed a “dismissible offense.” A Board of Regents policy states that the “president may or may not follow the recommendations of the committee,” and if he disagrees, he should put his reasons in writing. Keel disagreed with the panel, and wrote that he planned to proceed with Wolfe’s termination. “Regardless of whether a hostile environment was created or whether training was received, the record reflects that Dr. Wolfe admits to engaging in repeated behavior that he knew to be inappropriate.” Keel concluded that Wolfe had engaged in unwanted conduct of a sexual nature in violation of the university’s policy against sexual harassment and that he had therefore violated the Board of Regents policy against disruptions of “teaching, research, administrative, disciplinary, public service or other authorized activity.” Keel told Wolfe he was terminating him. Wolfe then appealed Keel’s decision to the Board of Regents, which declined to consider the matter, upholding the termination. In September 2014, Wolfe sued Keel and the Board of Regents in Fulton County Superior Court, alleging breach of his employment contract with the Board of Regents and seeking a “writ of mandamus” against Keel, forcing him to reinstate him as professor. Both sides filed motions seeking “summary judgment,” which a judge grants after deciding that a jury trial is unnecessary because the facts are undisputed and the law falls squarely on the side of one of the parties. Following a hearing, the trial court ruled in favor of the Board of Regents, finding that it had not breached Wolfe’s employment contract and that Keel had not abused his discretion in firing Wolfe. Wolfe now appeals to the Georgia Supreme Court.

ARGUMENTS: As to the procedural issue this Court has asked the parties to address, Wolfe’s attorneys argue he was entitled to a “direct,” or automatic appeal, and was not required first to apply to appeal. “Wolfe is entitled to a direct appeal because he did not seek review of any agency decision and the trial court conducted no such review,” his attorneys argue in briefs. And under state law, an “order granting summary judgment on any issue or as to any party shall be subject to review by appeal.” The trial court erred in upholding Wolfe’s termination because “one cannot be terminated for an offense with which he was not charged or investigated, much less one he was never found to have committed.” Wolfe was not charged with any dismissible offense other than “hostile environment sexual harassment” under the university’s policy. The faculty committee found he did not create a hostile environment, and Keel did not expressly disagree, stating, “Regardless of whether a hostile environment was created. . . .” The university and its administrators “undeniably applied the incorrect legal standard when they found Wolfe responsible for creating a hostile environment based on sexual harassment,” the attorneys argue. Under the “meaningless standards” used by Keel, Bartels and Gawels, “Wolfe had no way of knowing that a single encounter with a graduate student could constitute the type of sufficiently severe conduct to create a hostile environment justifying termination.” The university is prohibited from taking corrective action against a tenured professor unless his behavior is so offensive that it makes the university liable under Title IX or Title VII. Finally, the trial court erred in failing to grant mandamus relief to reinstate Wolfe to his former position.

The Attorney General’s office, representing the Board of Regents and President Keel, argues that Wolfe’s appeal should be dismissed because he failed to follow proper appeals procedures. Wolfe was not entitled to a direct appeal, but rather he was required to file an application to appeal as part of the discretionary appeals process. “Because he seeks to challenge the superior court’s decision reviewing the decision of a state agency, Wolfe was required to apply for discretionary appeal,” the state attorneys argue. Regarding the merits of Wolfe’s claims, “By the plain language of his employment contract, Wolfe was lawfully terminated for creating a disruption of authorized activities by violating Georgia Southern University’s policy against sexual harassment,” the attorneys argue. “That is, Wolfe was terminated because he engaged in unwanted conduct of a sexual nature, a charge he has never denied. His claim rests on arguments that he simply did not engage in *enough* unwanted conduct of a sexual nature.” But that argument fails. The attorneys ask the state Supreme Court to dismiss Wolfe’s case, but if it does not, they request that the high court affirm the lower court’s ruling and find that the Board of Regents did not breach Wolfe’s contract and that Wolfe is not entitled to mandamus relief.

Attorneys for Appellant (Wolfe): Andrew Coffman, David Weisz

Attorneys for Appellee (Regents): Samuel Olens, Attorney General, Dennis Dunn, Dep. A.G., Annette Cowart, Sr. Asst. A.G., Bryan Webb, Sr. Asst. A.G., Courtney Poole, Asst. A.G.

DANIELLE ROLLINS v. GLEN ROLLINS (S16A1449)

In this contentious, high-profile divorce, a woman is appealing a **Fulton County** judge’s order finding her in contempt and fining her hundreds of thousands of dollars for taking furniture and vandalizing property that the court had awarded to her husband.

FACTS: This widely publicized case stems from the divorce of Danielle and Glen Rollins, who is the former president and grandson of the founder of the multibillion-dollar Orkin pest-control company. (Glen Rollins has also had appeals in this Court involving the lawsuit he

and three siblings brought against their father and uncle regarding the division of the family trusts.) The couple divorced in 2013, and Danielle was awarded more than \$15 million plus \$15,000 a month in child support while Glen was awarded the couple's multi-million dollar estate on Habersham Road in Buckhead. As part of the settlement, the parties agreed to submit to an arbitrator how to divide the furnishings and personal property located in the home. In August 2014, Glen claimed that Danielle had stolen numerous pieces of furniture, furnishings and personal property that had been awarded to him. He also claimed she had vandalized the residence and property. A slew of post-divorce legal actions ensued regarding the division of property that have resulted in various court orders. In November 2015, the trial court entered an order granting Glen's motion for contempt and attorney's fees. In the order, the judge found that Danielle Rollins had been ordered in 2014 to return to Glen Rollins "all items of furniture, furnishings and personal property that were awarded to him by the Arbitrated Award of Furniture and Personalty and specifically identified by the arbitrator as being located in the Habersham home." Danielle did not do that, the judge stated in the order, fining her \$301,512.51 for the items Danielle had not yet delivered to Glen. In addition, "This court finds that Ms. Rollins purposefully and with malice vandalized the home and property of Mr. Rollins on Habersham Road." The court stated she was "hereby ORDERED to immediately pay Mr. Rollins the sum of \$79,446.91" for damages due to her vandalism. In addition, the trial court found "that Ms. Rollins and her legal counsel have engaged in a deliberate, concerted practice of abusive litigation as warrants an award to Mr. Rollins of his attorney's fees and expenses of litigation..." "Ms. Rollins' litigation tactic has been driven by one objective, and that is to delay and frustrate the ability of the court to enforce its orders," the judge stated in her order. As a result, "Ms. Rollins is hereby ORDERED to immediately pay to Mr. Rollins the sum of \$163,758.58 for his attorney's fees and expenses," the trial court's order says. "Furthermore, this court finds that Ms. Rollins' abusive litigation tactics and efforts at delay and harassment have been facilitated by her legal counsel, Christopher Corbett." The court ordered Corbett to "jointly" – with Danielle – pay Glen Rollins the \$163,759.58 in legal fees. Finally, the court fined Danielle Rollins \$1,000 per contemptuous act, finding she had committed 34 "acts of willful contempt" for a total of \$34,000 that she was immediately to pay Glen Rollins. "A separate show cause order will be entered directing Ms. Rollins to appear and show cause as to why she should not be incarcerated," the order concluded. Danielle now appeals the November 2015 order to the state Supreme Court.

ARGUMENTS: Danielle's attorney, Chris Corbett, argues that the trial court lacked the authority or "jurisdiction" to enter the November 2015 contempt order because one of her related appeals was still pending in the Georgia Supreme Court. The attorney cites a 1992 case from this Court, *Chambers v. State*, to explain that the trial court lacks "jurisdiction to take any action in a case prior to receiving the remittitur from the appellate court." (The "remittitur" is the official transfer of the appellate court's ruling to the trial court and the return of jurisdiction over the case from the appellate court to the trial court.) Therefore, no further orders should have been entered in the case until the appeal had fully run its course. Her attorney also argues that the trial court improperly awarded attorney's fees to Glen. "This Court has uniformly held that 'attorney's fees incurred in connection with appellate proceedings are not recoverable,'" under Georgia Code Section 9-15-14, the attorney writes in briefs, citing the this Court's 2006 decision in *McGahee v. Rogers*, and its 1994 decision in *Fairburn Banking Co. v. Gafford*. For these reasons, this Court should reverse the trial court's final contempt order, Danielle's attorney argues.

Glen's attorney argues that the trial court did, in fact, have the authority to act on Glen's motion asking the court to hold Danielle in contempt. He argues that the Georgia Supreme Court had already denied her application to appeal prior to the trial court's order. Once this Court rejected her application, she had no right to pursue a direct appeal. He cites an order from this Court dated July 6, 2015, admonishing Danielle that because the underlying case is a domestic relations case, "any appeal would be required to come by application." The fact that her application had already been dealt with gave the trial court the authority to enter the contempt order in question here because her case was no longer pending in the Supreme Court. Danielle was "intentionally and repeatedly filing frivolous Notices of Appeal," Glen's attorney contends. "She engaged in this practice for the sole purpose of creating delay and frustrating the ability of the trial court to enforce its orders and judgments." Glen's attorney urges the state Supreme Court to sanction both Danielle and her attorney. Additionally, the attorney argues the trial court was within its discretion to order the attorney's fees award, as the continued litigation here is a result of Danielle and her attorney's actions in violating the divorce settlement. Glen "would not have incurred any attorney's fees if Appellant [i.e. Danielle] had not stolen and vandalized his property, and this was the finding made by the trial court."

Attorney for Appellant (Danielle): Christopher Corbett

Attorneys for Appellees (Glen): Randall Berryman

COON V. THE MEDICAL CENTER, INC. (S16G0695)

A woman is appealing two lower court rulings in favor of a Columbus hospital she sued for emotional distress after it misplaced the remains of her stillborn child, resulting in a funeral for, and burial of, the wrong baby. At issue is whether Georgia law or Alabama law applies.

FACTS: Amanda Rae Coon lives in Opelika, Alabama. On Feb. 8, 2011, Coon, who was 37-weeks pregnant, went for a routine prenatal examination at her obstetrician-gynecologist's office in **Muscogee County**. There Coon learned that her baby did not have a heartbeat. The next day, Coon was admitted to The Medical Center in Columbus, GA where labor was induced and she delivered a stillborn baby girl. After the delivery, Coon's father informed the hospital's bereavement coordinator that the baby's remains were to be released to a funeral home in Opelika. The coordinator placed Coon's baby in a separate holding room until someone could take the baby to the hospital morgue. In addition to Coon's baby, there was a smaller stillborn baby boy, who was less than 20 weeks in gestation, already in the holding room. A nurse volunteered to transport both babies from the holding room to the morgue. Under a new hospital policy, she filled out the identification tags that were to be placed on the arm and leg of the stillborn babies, as well as on the outside of the cadaver bags. A security guard who was to escort the nurse to the morgue offered to help put the tags on the bodies and the bags. In doing so, they mixed up the identification tags so that Coon's baby was tagged with the smaller baby's identification tags and vice versa. As a result, the hospital mistakenly released the wrong baby to the Opelika funeral home. On Feb. 12, 2011, Coon, her husband and other family members held a funeral at an Opelika cemetery for the baby they believed was Coon's. Transportation costs from the hospital to the funeral home had been paid by Coon's husband through the military, and Coon's aunts paid for the funeral service and donated the burial plot.

About two weeks later, the hospital discovered it had released the wrong baby to the Opelika funeral home. Later that day, the hospital's chief executive officer contacted Coon

by telephone and told her what had happened. The following day, the baby who had been mistakenly released to the funeral home was exhumed from the Opelika cemetery. The funeral home director then traveled to Columbus to deliver the exhumed baby to a different funeral home and to retrieve Coon's baby from the hospital. In another mix-up at the hospital however, the funeral director retrieved a cadaver bag that was tagged as the Coon's baby only to discover back in Opelika that the bag contained nothing but a blanket. He returned to Columbus and eventually retrieved the decomposing remains of the Coon's baby. The hospital paid the costs associated with the exhumation of the misidentified baby and the subsequent burial of the correct remains. Coon did not attend the second burial because she "could not handle having to go through that all over again."

In March 2011, Coon sued the hospital, seeking damages for emotional distress. The hospital filed a motion for "summary judgment," which a judge grants only after determining that a trial is unnecessary because the facts of the case are undisputed and the law clearly falls on the side of one party or the other. The hospital argued that Coon had no claim for emotional distress under Georgia's "impact rule," which requires that in a claim involving negligent conduct, recovery for emotional distress is allowed only where the person suffered a physical injury or monetary loss. Coon suffered no physical injury or pecuniary loss, and the conduct of the hospital was not "intentional, reckless, extreme, or outrageous." In response, Coon argued that Alabama law, not Georgia law, governs here because she suffered the emotional distress in Opelika, where she learned of the hospital's mistake and where the funeral service and burial had occurred. Coon further argued that under Alabama law, she was not required to prove physical injury, pecuniary loss, or intentional or reckless misconduct by the hospital to support her emotional distress claim because Alabama does not impose an "impact rule" on such cases. The trial court initially denied the hospital's motion for summary judgment after concluding that Alabama governs in this case under the "lex loci delicti" rule, which says that the law of the state where the wrong was committed will apply. Later, however, the trial judge concluded that application of Alabama law would violate Georgia's "public policy," because Alabama does not impose an "impact rule" on plaintiffs seeking damages for emotional distress arising from the negligent mishandling of human remains. ("Public policy" refers to the broad principles and standards regarded by the legislature as fundamental to the State and society.) The trial court then ruled in favor of the hospital and granted its motion for summary judgment, concluding that Coon's emotional distress claims failed because she could not show physical injury, monetary loss, or outrageous misconduct by the hospital. On appeal, a split Court of Appeals upheld the Muscogee County ruling, and Coon now appeals to the Georgia Supreme Court.

ARGUMENTS: Coon's attorneys argue the Court of Appeals erred by concluding that Georgia law, rather than Alabama's, applies. Under "lex loci delicti," a civil lawsuit such as this is governed by the law of the state where the "tort" or wrongdoing was committed. "Lex loci delicti has guided the resolution of conflict of issues in tort actions in Georgia for over 100 years," the attorneys argue in briefs. "This Court previously has declined to depart from the lex loci delicti doctrine in favor of alternative approaches, recognizing lex loci delicti as a rule that fulfills 'an essential function of concrete justice.'" Had the Court of Appeals majority undertaken the proper analysis, it would have determined that Coon's injuries occurred in Alabama. But the majority of the appellate court "completely failed" to address that question before concluding that the public policy exception to the rule required Georgia law to apply in this case. However,

the public policy exception to the *lex loci delicti* rule does not apply here because application of Alabama law to the facts of this case “will not result in a flood of litigation or fraudulent claims,” Coon’s attorneys argue. “If, however, the Supreme Court finds that Georgia law applies, the Court of Appeals’ decision should still be reversed because the absence of public policy concerns and the closeness of the parent-child relationship combine to merit an exception to the impact rule.”

The hospital’s attorneys argue that the Court of Appeals did not err by concluding that Georgia rather than Alabama law applies. “Since the inception of this case, the hospital has never been insensitive to Coon’s loss or the hospital’s mistake of releasing the wrong stillborn infant for burial,” the attorneys argue in briefs. However, the “hospital has taken the position that the law does not provide a remedy for the causes of action submitted by Coon.” The rule of *lex loci delicti* should not be applied when Alabama law is “radically dissimilar to Georgia law and thus contrary to Georgia’s public policy,” the attorneys argue. “Coon seeks to abandon over 100 years of Georgia law and create a new tort [i.e. wrongdoing or wrongful act] for the negligent infliction of emotional distress in a mishandling of a corpse case absent a physical impact or a pecuniary loss.” Under its 2000 decision in *Lee v. State Farm Mutual Insurance Co.*, the Georgia Supreme Court refused to adopt any rule creating a separate tort allowing recovery of damages for the negligent infliction of emotion distress,” the attorneys argue. In its 2005 decision in *Dowis et al. v. Mud Slingers, Inc.*, the Georgia Supreme Court stated: “The place of the wrong, the *locus delicti*, is the place where the injury was suffered rather than the place where the act was committed, or as it is sometimes more generally put, it is the place where the last event necessary to make the actor liable for the alleged tort takes place.” Coon argued that the telephone call she received from the hospital, as well as her baby’s funeral and other things, made Alabama the locus delicti. However, given that Alabama does not apply the impact rule, Alabama’s law is radically dissimilar to Georgia law and therefore contrary to Georgia’s public policy, the attorneys argue. Furthermore, this case involves a woman who gave birth to a stillborn child, and as a result, she was already suffering from emotional injury when she received the phone call notifying her of the hospital’s mistake. “The only concrete way to decide the locus delicti in this case would be to look at where the events took place that led to the mistaken release of the infant’s body,” and that was at a hospital in Georgia. The Court of Appeals correctly held that although there may be compelling emotional considerations in this case, Georgia’s impact rule means that Coon is barred from any recovery “where she suffered no impact and no pecuniary loss,” the hospital’s attorneys contend.

Attorneys for Appellant (Coon): Archie Grubb, II, F. Houser Pugh

Attorneys for Appellee (Hospital): W. Scott Henwood, Mark Wortham, Paul Ivey, Jr., Lauren Dimitri