

Stillborn Fetus: Hospital Unable To Account For Remains, Court Says Parents Can Sue.

Delivery was induced at the hospital after the fetus had died *in utero*. The fetus was 6 1/2 inches long, weighed two ounces and had ten fingers and toes.

Hospital staff wrapped the fetus in a blanket and placed him in a small basket. The parents were encouraged to hold the fetus, name him and keep him in their hospital room overnight so that they could bond with him.

Then the parents were given three options: a private funeral, cremation, or the fetus could be kept in the hospital morgue until spring when it would be possible for a local funeral home to bury the fetus in a shared casket with other fetal remains. The parents chose the shared-casket option.

The fetal remains were taken to the morgue, placed in a plastic container and labeled for identification and then taken to the pathology department.

In the spring when the parents asked the funeral home about the shared-casket burial observance, the funeral home said it never got the remains. Eventually the hospital chaplain determined, and so informed the parents, that the remains were most likely transported from the pathology department for incineration along with medical waste and surgical byproducts.

Lawsuit Upheld

Interference With A Dead Body

The Court of Appeals of Minnesota made note of an 1891 case precedent, as well as more current legal commentaries, that support the right of the next of kin to sue over mishandling of a relative's dead body, if the way the body was mishandled was willful or wanton, that is, more serious than ordinary negligence.

The court ruled the parents had the right to sue. However, the jury's verdict of \$150,000 was excessive, the jury having been unduly influenced by prejudicial remarks from the parents' lawyer, necessitating a new trial of the case. Gooch v. North Country Regional Hosp., 2006 WL 771384 (Minn. App., March 28, 2006).

Both sides agree the fetus was, by law, a person.

The hospital's procedure for this situation was to place the fetus in a quart-sized plastic container and put the container in the refrigerator in the pathology department for pick-up by the funeral home.

It is not perfectly clear what happened to the remains.

However, it is clear that the hospital never followed through to have the remains picked up or taken to the funeral home according to the parents' wishes.

This amounts to reckless disregard by someone on the hospital staff for the parents' right to a proper and dignified burial for the fetus.

The legal case precedents start with an 1891 case which gave the widow the right to sue the hospital which dissected her deceased husband's body without her permission.

The right of possession of a dead body for preservation and burial belongs to the deceased's surviving spouse or next of kin, and the law protects that right.

COURT OF APPEALS OF MINNESOTA
March 28, 2006