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Kevin E. Bry

GENUINELY DISTRESSING: ILLINOIS' FAILURE TO ALLOW A CAUSE OF ACTION FOR EMOTIONAL INJURIES CAUSED BY NEGLIGENT MISHANDLING OF A CORPSE

KEVIN E. BRY*

INTRODUCTION

A family contracts with a funeral home to have a deceased family member cremated. To help overcome its grief, the family plans a trip to distribute the ashes in the Gulf of Mexico. The funeral home delivers the ashes; the family makes the trip and carries out the seaside ceremony. The family later finds to its dismay that the funeral home negligently delivered someone other than their loved one's ashes.[1]

A family contracts with a funeral home for the wake and funeral of a deceased family member. At the wake, to the family's horror, fluid begins to ooze from the decedent's mouth. The mortician arrives and attempts to correct the problem with the corpse. When the wake resumes, however, the decedent has a grimace on his face, and the decedent's arms begin to free-float above his body.[2]

In Illinois, neither of these grieving families have a cause of action for emotional distress based upon the funeral home's or mortician's negligent mishandling of their loved one's corpse. The purpose of this article is to argue that Illinois courts should allow such a cause of action. After a brief history of the tort of negligently inflicted emotional distress,[3] this article will review this tort's development in Illinois.[4] This article will then examine case law[5] and policy

* J.D., The John Marshall Law School; Judicial clerk to the Honorable Thomas E. Hoffman, Judge of the Circuit Court of Cook County.

1. The facts from this example are taken from a case reported in a Florida newspaper. Palm Beach Post, Dec. 7, 1988, at 4a, col. 1.

2. The facts of this example are taken from the case of Doe v. Lamb, No. 88 L 16692 (1st Dist. Ill. filed September 8, 1988).

3. *See infra* notes 8-25 and accompanying text (historical perspective ranging from denial of recovery for emotional injuries to the recognition of the "impact rule," and the evolution of the foreseeability test).

4. *See infra* notes 26-43 and accompanying text (tracing Illinois' law in its parallel to the historical perspective, but which falls short of the foreseeability test).

5. *See infra* notes 44-64 and accompanying text (tracing case law on tortious

considerations.[6] Finally, the article will propose that Illinois make an exception to its existing rules of recovery in an action for negligently inflicted emotional distress and allow actions in the area of corpse mishandling.[7]

Historical Development of the Tort

Initially, American courts agreed that damages could not be awarded for emotional injuries resulting from negligent acts.[8] One nineteenth century case reasoned that injury could be feigned too easily in such a case.[9] Another nineteenth century case reasoned that damages were too remote and "metaphysical" in such a case.[10] An early Illinois case warned "dangerous use might be made of such a claim."[11]

At the same time, however, courts began allowing claims for emotional injuries where the tort involved appeared to be an intentional tort. For example, in an influential British case, the court allowed damages where a practical joker told a woman that her husband was injured in a serous accident.[12] In other cases, courts fashioned liability for emotional damages based on more traditional liability, such as battery, false imprisonment and trespass to land.[13] Allowing recovery for emotional damages where the conduct was

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mishandling of a corpse).

6. *See infra* notes 65-76 and accompanying text (policy arguments ranging from avoiding a flood of litigation to inability to prove injury).

7. There are a number of other situations where, due to special circumstances, one might argue that Illinois should make exceptions to general rules of recovery in this area. For instance, a similar argument can be made where there is negligent notification of death or harm by telegraph or otherwise. However, as change in this area of the law has come slowly in Illinois, it is advocated here that a first exception be made in the area of corpse mismanagement alone. Other exceptions may eventually be made, and Illinois may in the end adopt a foreseeability proposal. *See infra* notes 22-25, 66 and accompanying text (further discussion of these ideas).

8. American courts' early positions on the subject are illustrated by this passage:

> The body, reputation, and property of the citizen are not to be involved without responsibility in damages to the sufferer. But outside these protected spheres, the law does not yet attempt to guard the peace of mind. . . .The law leaves feeling to be helped and indicated by the tremendous force of sympathy.

Chapman v. Western Union Tel. Co., 88 Ga. 763, 772, 15 S.E. 901, 903 (1892) (plaintiff could not recover for emotional distress where telegraph company did not deliver message of plaintiff's brother's illness prior to brother's death).

9. Mitchell v. Rochester Ry., 151 N.Y. 107, 45 N.E. 354 (1896), *overruled* Williams v. New York, 308 N.Y. 558, 127 N.E.2d 545 (1955)(finding it possible to recover from injury "occasioned by fright").

10. Connell v. Western Union Tel. Co., 116 Mo. 34, 22 S.W. 345 (1893).

11. Braun v. Craven, 175 Ill. 401, 420, 51 N.E. 657, 664 (1898).

12. Wilkinson v. Downton, 2 Q.B.D. 57 (1887).

13. Engle v. Simmons, 148 Ala. 92, 41 So. 1023 (1906) (trespass to land); De May v. Roberts, 46 Mich. 160, 9 N.W. 146 (1881) (battery); Salisbury v. Poulson, 51 Utah 552, 172 P. 315 (1918) (false imprisonment).

outrageous or involved an independent intentional tort, served a punitive function aimed at deterring undesirable conduct.[14]

The major breakthrough in the tort of negligent infliction of emotional distress occurred when American courts, following an English case,[15] adopted the "impact rule." Under this rule, recovery of damages for negligently inflicted emotional distress is available where the event causing the distress involved contemporaneous physical impact to the plaintiff.[16] Dissatisfaction with this rule soon developed, however, when courts began allowing causes of action where the impact involved was very minor.[17]

Many jurisdictions then switched to a new test, the "zone of danger" test. Under this test, a plaintiff could recover if she witnessed a tort committed upon another, exhibited manifestations of injury, and feared for her own safety.[18] However, critics argued that this test was arbitrary[19] and too difficult to satisfy.[20] Further, the test led to unjust results, such as where recovery was denied to a mother who witnessed a truck strike her infant child.[21]

In the 1968 case of *Dillon v. Legg*,[22] the California Supreme Court abandoned the zone of danger test. In *Dillon*, a negligent driver struck and killed a minor. The child's mother and sister witnessed the accident, but only the sister was in the zone of danger, and hence the mother could not recover.[23] The *Dillon* court reasoned that the focus in such a case should not be on whether the plaintiff was in a zone of danger, but rather on whether the defendant could reasonably foresee that defendant's negligence would

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14. *See* G. WHITE, TORT LAW IN AMERICA, XVI, 155, 164, 181, 231, 237-39 (1980).

15. *See* Victorial Rys. Comm'rs v. Coultas, 13 App. Cas. 222 (1883).

16. There were two American cases which adopted the impact rule very early. *See* Mitchell v. Rochester Ry., 151 N.Y. 107, 45 N.E. 354 (1896) *overruled* Battalia v. New York, 10 N.Y.2d 237, 176 N.E.2d 729 (1961) (deciding there could be "recovery for injuries, physical or mental, incurred by fright negligently induced); Spade v. Lynn & B.R.R., 168 Mass. 285, 47 N.E. 88 (1897).

For a good discussion of the early years of the law of negligent infliction of emotional distress, see Morris v. Lackawanna & *West Virginia* R.R., 228 Pa. 198, 77 A. 445 (1910)(impact rule recognized as settled law).

17. *See, e.g.*, Christy Bros. Circus v. Turange, 38 Ga. App. 581, 144 S.E. 680 (1928)(horse defecated in plaintiff's lap); Morton v. Stock, 122 Ohio 115, 170 N.E. 869 (1930) (speck of dust in plaintiff's eye).

18. The leading American case is Waube v. Warrington, 216 Wis. 603, 258 N.W. 497 (1935)(mother saw negligent driver drive into and fatally injure daughter).

19. For a discussion of arbitrary rules, see Pearson, *Liability to Bystanders for Negligently Inflicted Emotional Harm - Comment on the Nature of Arbitrary Rules*, 34 U. FLA. L. REV. 477 (1982).

20. *See* W. PROSSER & W. KEETON, THE LAW OF TORTS 54 (5th ed. 1984).

21. Amaya v. Home Ice, Fuel & Supply Co. 59 Cal. 2d 295, 379 P. 2d 513, 29 Cal. Reptr. 33 (1963).

22. 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968).

23. *Id.* at 732, 441 P.2d at 951, 69 Cal. Rptr. at 75.

cause plaintiff emotional distress.[24] The court formulated the following guidelines to determine whether a bystander's emotional distress is foreseeable: 1) whether the plaintiff was near the scene of the accident; 2) whether the shock resulted from direct emotional impact upon the plaintiff from observance of the accident; and 3) whether the plaintiff and the victim were closely related.[25] Since *Dillon*, many jurisdictions have switched to a foreseeability test, although the zone of danger test is still the majority rule.

Illinois Law on Emotional Distress

In the early years of Illinois history, whether a court could allow emotional distress damages was unclear. In an 1858 decision, the Illinois Supreme Court stated that recovery for negligently caused emotional distress would be allowed where there was pain and suffering parasitic to contemporaneous physical injury.[26] In 1870, however, the court announced that mental suffering was not a recognizable element of damages.[27] Two years later, the Illinois Supreme Court returned to the position that pain and suffering damages could be recovered.[28]

In the 1898 case of *Brown v. Craven*,[29] Illinois formally adopted the impact rule. The court in *Brown* ruled that a plaintiff could not recover for physical injury that developed because of emotional distress unless the plaintiff received either physical injury or some impact to plaintiff's person at the occurrence of the tort.[30] The court thus joined what was by then the majority position, stating that it did so "on the ground of public policy alone."[31]

Illinois courts continued to apply the impact rule for over eighty years, until 1983, when it adopted the new majority rule: the zone of danger test as an exception to the requirement of physical impact. In the case of *Rickey v. Chicago Transit Authority*,[32] a boy witnessed his brother strangled to the point of coma when the brother's scarf became caught in a subway escalator.[33] The plaintiff alleged that witnessing this injury caused him severe emotional distress, and the Illinois Supreme Court agreed that the complaint stated a cause of action even in the absence of allegation of physical impact. The

24. *Id.* at 738, 441 P.2d at 920-21, 69 Cal. Rptr. at 80-81.
25. *Id.* at 739, 441 P.2d at 920-21, 69 Cal. Rptr. at 80-81.
26. Peoria Bridge Ass'n v. Loomis, 20 Ill. 235 (1858).
27. Illinois Central R.R. Co. v. Sutton, 53 Ill. 397 (1870).
28. Indianapolis & St. Louis R.R. Co. v. Stables, 62 Ill. 313 (1872).
29. 175 Ill. 401, 51 N.E. 657 (1898).
30. *Id.* at 413, 51 N.E. at 661-62.
31. *Id.* at 420, 51 N.E. at 664.
32. 98 Ill. 2d 546, 457 N.E.2d 1 (1983).
33. *Id.* at 549, 457 N.E.2d at 2.

court, restricting its holding to cases involving bystanders witnessing injury to a close relative, ruled that a plaintiff must be in "such proximity to the accident. . .that there was a high risk to him of physical impact."[34] Additionally, the bystander plaintiff "must show physical injury or illness as a result of the emotional distress caused by the defendant's negligence."[35]

Illinois courts have strictly construed the *Rickey* zone of danger test. For instance, in *Villamil v. Elmhurst Memorial Hospital*, where death resulted when a new-born infant fell to the floor immediately after delivery, the mother was denied recovery.[36] Villamil failed the *Rickey* requirement of high risk to the complaining individual.[37] The court in *Gihring v. Butcher* denied plaintiff's recovery on the same point in the *Rickey* test.[38] The *Gihring* case involved the suicide of a man undergoing treatment for depression.[39] When he took his life by carbon monoxide poisoning, the wife filed suit, asking the court to find an exception to *Rickey* for malpractice.[40] The court held that the wife was not within the zone of danger required by *Rickey*.[41]

In addition to those applications of *Rickey*, Illinois courts have held that the zone of danger test applies equally to a bystander plaintiff and a direct victim of negligence.[42] The reason for this change in the vernacular was a recognition by the court that the recovery really lies with victims of negligence, not mere bystanders.[43] Thus, Illinois law on emotional distress is a strict application of the *Rickey* test.

The Case for a Cause of Action Based on Corpse Mishandling

The fact that Illinois does not allow a cause of action for emotional distress based on the negligent mishandling of a corpse does not necessarily preclude recovery in this scenario. As long ago as 1914, in *Mensinger v. O'Hara*,[44] Illinois allowed recovery for psychic injury when the deceased's husband sued undertakers for cutting off the deceased's hair without plaintiff's knowledge, thereby rendering

34. *Id.* at 555, 457 N.E.2d at 5.
35. *Id.*
36. Villamil v. Elmhurst Memorial Hospital, 175 Ill. App. 3d 668, 529 N.E.2d 1181 (1988).
37. *Id.*
38. Gihring v. Butcher, 138 Ill. App. 3d 976, 487 N.E.2d 75 (1985).
39. *Id.* at 978, 487 N.E.2d at 76.
40. *Id.* at 979, 487 N.E.2d at 77.
41. *Id.*
42. Robbins v. Kass, 163 Ill. App. 3d 927, 516 N.E.2d 1023 (1987).
43. *Id.* at 930, 516 N.E.2d at 1025, (citing Courtney v. St. Joseph Hosp., 149 Ill. App. 3d 397, 500 N.E.2d 703 (1986)).
44. 189 Ill. App. 48 (1914).

the body unfit for viewing. The *Mensinger* court observed that the law recognized an exclusive right of the next of kin to possession of the remains absent contrary testamentary disposition.[45] The court held that "any wilful or wanton infringement of this recognized legal right, by the intentional mutilation of the body of the deceased, will subject the wrongdoer to an action on the case for [emotional distress] damages. . . ."[46] As precedent, however, *Mensinger* applies only to cases of intentional infliction of emotional distress, where recovery is more difficult to obtain.[47]

In the corpse mismanagement setting, a plaintiff may also recovery under a breach of contract theory. In the 1948 case of *Chelini v. Nieri*,[48] recovery under a breach of contract theory was obtained when the defendant mortician promised that the decedent's body would keep "almost forever," but in fact the body disintegrated.[49] In the cases referred to in the introduction to this article, misdelivery of ashes and negligent embalming, breach of contract actions were allowed. However, although emotional distress damages can be obtained in contract actions, contract damages may not be sufficient restitution for the psychic injury received in the corpse mismanagement setting.[50]

A number of jurisdictions have already recognized a cause of action for infliction of emotional distress due to negligent mishandling of a corpse. In *Gammon v. Osteopathic Hospital of Maine*,[51]

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45. *Id.* at 53-54.

46. *Id.* at 54.

47. See McGrath v. Fahey, 126 Ill. 2d 78, 533 N.E.2d 806 (1988) (conduct must be truly extreme and outrageous, defendant must intend to cause severe emotional distress or know of a high probability the conduct would cause severe emotional distress, and the conduct does in fact cause emotional distress).

For an example of the type of extreme and outrageous conduct that has led to recovery of emotional damages for intentionally inflicted emotional distress in the corpse mismanagement setting, see Meyer v. Nottger, 241 N.W.2d 911 (Iowa 1976) (defendant mortician falsely advised deceased's family member that a more expensive casket need be purchased due to offensive odor of deceased and that deceased body was too gruesome for viewing, and mortician failed to comply with cemetery procession instructions).

48. 32 Cal. 2d 480, 196 P.2d 915 (1948).

49. *Id.* at 484, 196 P.2d at 919.

50. In Illinois, damages for breach of contract causing emotional injury will only be awarded where the breach was wanton or reckless and caused bodily harm or where defendant had reason to know at the time of contracting that the breach would cause mental suffering for non-pecuniary reason. Maere v. Churchill, 116 Ill. App. 3d 939, 944, 452 N.E.2d 694, 697 (1983).

In the case of Von Seggren v. Smith, 151 Ill. App. 3d 813, 503 N.E.2d 573 (1987), emotional damages were awarded where a funeral home delivered the wrong person's cremated ashes to the plaintiff.

See also Doe v. Lamb, No. 88 L. 16692 (1st Dist. Ill. September 8, 1988) (though the claim for negligent infliction of emotional distress was dismissed, a breach of contract claim was allowed).

51. 534 A.2d 1282 (Me. 1987).

the plaintiff sued for emotional injury damages when, due to a hospital and funeral home's negligence, a pathological specimen (a severed leg) was delivered to plaintiff with plaintiff's deceased father's personal effects. The Supreme Judicial Court of Maine held that defendants were liable in negligence because they reasonably should have foreseen that their negligence would cause plaintiff emotional distress.[52] In a New York case, *Thompson v. Duncan Bros. Funeral Home*,[53] plaintiff's son's body was displayed to plaintiff and her family. Due to negligent embalming, the remains were decomposed, leaking fluid and were odiferous.[54] The New York court held that the next of kin had a cause of action for mental anguish damages resulting from the negligent preparation of the body for burial.[55] In *Whitehair v. Highland Memory Gardens*,[56] a West Virginia court held that the defendant was liable for negligently or intentionally losing the remains of plaintiff's deceased family members, and mental anguish alone was a sufficient basis for recovery.[57]

Other authority than case law exists for the proposition that a cause of action should be recognized for emotional distress damages caused by the negligent mishandling of a corpse. The *Restatement (Second) of Torts* provides that "[o]ne who intentionally, recklessly or negligently removes, withholds, mutilates or operates on the body of a dead person or prevents its proper interment or cremation is subject to liability to a member of the family of the deceased who is entitled to the disposition of the body."[58] Also, a learned treatise argues for a cause of action in negligence in this setting.[59]

In the 1986 case of *Courtney v. Saint Joseph Hospital*,[60] an Illinois Appellate court faced the issue whether to allow a cause of action for emotional distress damages resulting from the negligent mishandling of a corpse. In *Courtney*, a widow sued the hospital when the hospital morgue's refrigeration unit malfunctioned, thus leaving plaintiff's deceased husband's body in an unsuitable condition for an open casket wake and funeral.[61]

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52. *Id.* at 1285.
53. 455 N.Y.S. 2d 324, 116 Misc. 2d 227 (1982).
54. *Id.* at 325, 116 Misc. 2d at 229.
55. *Id.* at 326, 116 Misc. 2d at 230.
56. 327 S.E.2d 438 (W. Va. 1985).
57. *Id.* at 443. *See also* Carney v. Knollwood Cemetery Ass'n, 33 Ohio App. 3d 31, 514 N.E.2d 430 (1986)(negligent infliction of emotional distress allowed). *But see* District of Columbia v. Smith, 436 A.2d 1294 (D.C. App. 1981)(no negligence action allowed if no physical injury).
58. RESTATEMENT (SECOND) OF TORTS § 868 (1979). The official commentary notes that in reality, such a cause of action "has been exclusively one for the mental distress" and that "[t]here is no need to show physical consequences of the mental distress." *Id.*
59. *See* W. PROSSER AND W. KEATON, *supra* note 20, at 54.
60. 149 Ill. App. 3d 397, 500 N.E.2d 703 (1986).
61. *Id.* at 397, 500 N.E.2d at 703.

The court found that no Illinois cases allowing such a cause of action existed.[62] The *Courtney* court observed that Illinois courts had strictly construed the *Rickey* zone of danger test, and because the plaintiff in *Courtney* did not allege that she was in a zone of danger and feared for her own safety, the *Rickey* rules foreclosed her cause of action in negligence.[63] The court in *Courtney*, however, reviewed the authority which supports a cause of action in these situations. The court confessed that "[w]ere we writing on a clean slate, we would be inclined to permit the complaint in this case to stand."[64]

The *Courtney* court's reluctance to deny recovery was well-founded. The area of emotional distress in tort law has been described as "rife with disorder, inconsistency, and complexity."[65] The trend in this area of the law has clearly been to expand liability for negligent conduct which causes emotional distress. An examination of relevant policy issues suggests that Illinois courts should follow the lead of other jurisdictions and facilitate recovery for negligently caused emotional distress in corpse mismanagement settings.[66]

A number of courts have hesitated to expand liability for emotional injury due to medical science's assumed inability to prove causation between the negligent conduct and the emotional injuries sustained.[67] Relatedly, courts have also expressed concern that the damages sustained in these types of cases are too speculative.[68] With respect to other areas of psychic injury, however, such as pain and suffering, the law has abandoned these concerns. Moreover, a number of courts have noted that medical science has become increasingly sophisticated in evaluating emotional injuries and their effects.[69] An Illinois court, in recognizing the tort of intentional infliction of emotional distress, observed that the argument that medical science could not prove emotional injury was "losing its ef-

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62. *Id.* at 399, 500 N.E.2d at 704.

63. *Id.* at 403, 500 N.E.2d at 707.

64. *Id.* at 401, 500 N.E.2d at 705.

65. Twiford, *Emotional Distress in Tort Law*, 3 BEHAV. SCI. & THE LAW 121, 121 (1985).

66. If Illinois should adopt a test based on foreseeability of emotional harm, of course, recovery in the corpse mismanagement situation, as well as many other settings of negligently caused emotional distress, would be facilitated. For an argument that Illinois should adopt a foreseeability test, see McCarthy, *Illinois Law in Distress: The "Zone of Danger" and "Physical Injury" Rules in Emotional Distress Litigation*, 19 J. MARSHALL L. REV. 17 (1985).

67. *See generally* Leubsdorf, *Remedies for Uncertainty*, 61 B.U.L. REV. 132 (1982).

68. *See generally* Liebson, *Recovery of Damages for Emotional Distress Caused by Physical Injury to Another*, 15 J. FAM. L. 163 (1976-77).

69. *See, e.g.*, Dillon v. Legg, 68 Cal. 2d 728, 441 P.2d 912, 69 Cal. Rptr. 72 (1968); D'Ambra v. United States, 114 R.I. 643, 338 A.2d 524 (1975) (physical and psychological injury are inextricably intertwined).

fectiveness."[70] Consistency demands that this argument should not deter Illinois from allowing recovery where the defendant causes emotional distress negligently, as opposed to intentionally.

Courts have also voiced concern that allowing damages for negligently caused emotional distress would result in a "flood-tide" of litigation.[71] This oft-used argument to deny a cause of action completely fails to address the merits of a cause of action, and runs counter to settled tort principles of restitution for injury wrongly caused. Further, no flood of litigation has occurred since emotional distress damages have been recoverable in tort law,[72] and it can hardly be maintained that corpse mismanagement is so pervasive in Illinois that suits arising therefrom will burden the Illinois court system.

Another reason courts have hesitated to expand liability for emotional injuries is the fear that the liability courts impose on defendants will be excessive. Importantly, in the area of emotional distress damages, this concern has been discredited.[73] Judges and juries should be trusted to define reasonable liability on a case-by-case basis, with assistance from experts if necessary.[74]

Underlying these numerous concerns is a fear that plaintiffs will initiate fraudulent claims.[75] In settings of corpse-mismanagement, however, this fear is unfounded. Where a loved one has passed away, the next of kin undoubtedly experiences an emotionally difficult time. The "especial likelihood of genuine and serious emotional distress, arising from the special circumstances, [serves] as a guarantee that the claim is not spurious."[76]

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70. Knierim v. Izzo, 22 Ill. 2d 73, 85, 174 N.E.2d 157, 164 (1961)(Illinois recognized the tort of intentional infliction of emotional distress).

71. See Ewing v. Pittsburgh, C. & St. L.R.R. Co. 147 Pa. 40, 23 A. 340 (1892) (if fright without physical bodily injury is an allowed cause of action, "accident cases" scope will become greater).

72. As one judge stated: "Ever since MacPherson v. Buick Motor Co. (217 N.Y. 382) was decided more than half a century ago, there has been expanding recognition that the argument concerning unlimited liability is of no merit, yet the aberrations persist." Tobin v. Grossman, 24 N.Y.2d 609, 249 N.E.2d 419, 301 N.Y.S.2d 534 (1969) (Keating, J., dissenting).

73. *See* Finkelstein, Pickrel & Glasser, *The Death of Children: A Nonparametric Statistical Analysis of Compensation of Anguish*, 74 COLUM. L. REV. 884 (1974).

74. Twiford, *supra* note 65, at 127.

75. A number of courts, however, have observed that fear of fraudulent litigation is not a proper basis to deny recovery of damages as an initial matter for concern. *See, e.g.*, Schultz v. Barberton Glass Co., 4 Ohio St. 3d 131, 134, 447 N.E.2d 109, 112 (1983) (problem is one of adequate proof, and judicial system and evidentiary safeguards are sufficient to address this); Sinn v. Burd, 486 Pa. 146, 161, 404 A.2d 672, 680 (1979) ("factual, legal, and medical charlatans are unlikely to emerge from a trial unmasked").

76. W. PROSSER AND W. KEETON, *supra* note 20, at 362.

CONCLUSION

Since its inception in the law, the tort of negligent infliction of emotional distress has undergone a great many changes. Illinois has been slow to follow national trends of expanding liability in this area. Illinois' zone of danger rule effectively precludes an action for negligently caused emotional distress arising from the mishandling of a corpse. Because the family of a negligently mishandled decedent is likely to suffer genuine emotional injury, Illinois courts should make an exception to the zone of danger rule, and allow plaintiffs in this setting to state a cause of action where traditional requirements of tort liability are present.