

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MARY PENELOPE LAKOSKEY and
AMOS LOVETT,

Plaintiffs,

v.

Case No. 3:18-cv-1421-J-39JRK

BONIFACIO T. FLORO, Individually;
Dr., HEATHER WALSH-HANEY,
Individually, MARGARITA ARRUZA,
Individually: Dr., VALERIE J. RAO,
Individually: Dr., and OFFICE OF THE
MEDICAL EXAMINER FOR DISTRICT
FOUR,

Defendants.

ORDER

THIS CAUSE is before the Court on Defendants' Bonifacio Floro, Margarita Arruza, Valerie Rao, and the Office of the Medical Examiner for District Four Motion to Dismiss (Doc. 3; First Motion to Dismiss), Plaintiffs' Response thereto (Doc. 4; First Opposition), Defendant's Heather Walsh-Haney Motion to Dismiss (Doc. 12; Second Motion to Dismiss), Plaintiffs' Response thereto (Doc. 16; Second Opposition), and Defendant's Walsh-Haney Reply (Doc. 21; Reply).

Plaintiffs Mary Penelope Lakoskey and Amos Lovett initiated this action by filing the nine-count Complaint (Doc. 2) in state court against Defendants Arruza, Floro, Rao, Walsh-Haney, and the Office of the Medical Examiner for District Four. The Complaint claims that Defendants violated 42 U.S.C. § 1983 and Florida law by depriving Plaintiffs of a property interest in decedent's, Tina Lovett, remains without due process of law

(Counts I–V) and causing outrageous infliction of emotional distress (Counts VI–IX). See Compl. ¶¶ 63-118.

I. Background¹

On April 21, 1984, seventeen-year-old Tina Lovett went missing from her home where she lived with her mother, Ms. Lakoskey, and her brother, Mr. Lovett. Compl. ¶¶ 4-5, 11, 13. On May 8, 1984, officers with the Jacksonville Sheriff's Office ("JSO") found Ms. Lovett naked lying face down at the end of an unnamed dirt road in Jacksonville, Florida in an area used as a dumping ground for dead animals, junked cars, and other refuse. Id. ¶ 12. Ms. Lovett's body was in a highly decomposed state. Id. When Ms. Lakoskey learned of her daughter's death, she suffered a mental breakdown and required hospitalization. Id. ¶ 14.

The nature of Ms. Lovett's death caused the officers to transfer her remains to the Office of the Medical Examiner for District Four. Id. ¶ 15. Between May 1984 and January 1992, Bonifacio Floro served as the Medical Examiner for the Office and took possession of Ms. Lovett's remains. Id. ¶¶ 6, 16. Dr. Floro concluded that Ms. Lovett's death resulted from a homicide but was unable to determine the exact cause of death due to the decomposed state of her remains. Id. ¶ 17. On May 11, 1984, Ms. Lakoskey signed a release form authorizing Dr. Floro to release Ms. Lovett's remains to a funeral home upon the conclusion of Dr. Floro's duties with respect to the body. See id. ¶ 18. Dr. Floro released to the funeral home some of Mr. Lovett's remains, including the bones in Ms.

¹ The facts stated herein are taken from Plaintiffs' Complaint (Doc. 2). For purposes of the Motions to Dismiss (Docs. 3 and 12), the Court accepts as true the factual allegations in the Complaint and construes them in the light most favorable to Plaintiffs. Rivell v. Private Health Care Sys., Inc., 520 F.3d 1308, 1309 (11th Cir. 2008).

Lovett's legs and feet. Id. ¶ 19. Dr. Floro retained at the Office the majority of Ms. Lovett's remains, including the bones of Ms. Lovett's ribcage, femur, and skull. Id. ¶ 20. Neither Dr. Floro nor anyone else in the Office informed Plaintiffs that the Office retained a portion of Ms. Lovett's remains, nor did the Office obtain permission from Plaintiffs to do so. See id. ¶ 21.

On May 14, 1984, Ms. Lovett's family held a funeral in her honor and interred what they believed to be all of Ms. Lovett's remains. Id. ¶ 22. Meanwhile, JSO was investigating the homicide and identified a vehicle belonging to Thomas Dixon at the scene. See id. ¶ 23. Mr. Dixon was arrested and charged with the murder of Mr. Lovett. Id. ¶ 24. On May 15, 1984, the state court dismissed the charges against Mr. Dixon for a lack of evidence. Id. ¶ 25.

From May 11, 1984 until January 10, 1992, Dr. Floro retained possession of Ms. Lovett's uninterred remains at the Office. See id. ¶ 28. On January 10, 1992, Dr. Floro released the remains to the C.A. Pound Laboratory at the University of Florida. Id. ¶ 29. On March 6, 1992, Dr. William Maples, on behalf of UF, submitted a report of osteological examination to Dr. Floro based on Dr. Maples examination of Ms. Lovett's remains. See id. ¶ 32. From March 6, 1992 through May 12, 2000, Ms. Lovett's remains were retained at UF without notice to or permission from Ms. Lovett's family. See id. ¶¶ 34-35.

On May 12, 2000, Dr. Walsh-Haney, who at the time was working at UF, transferred Ms. Lovett's remains back to the Office. See id. ¶ 36. At the time, Dr. Arruza was serving as the Medical Examiner for the Office in place of Dr. Floro. See id. ¶¶ 8, 37. The Office retained Ms. Lovett's remains from May 12, 2000, through August 4, 2005, without notice to or permission from Ms. Lovett's family. Id. ¶¶ 38-39. Again without notice

or permission, on August 4, 2005, Dr. Arruza transferred Ms. Lovett's remains back to Dr. Walsh-Haney, who was then working at Florida Gulf Coast University ("FGCU"). See id. ¶¶ 39-41. From August 4, 2005, through July 20, 2016, Dr. Walsh-Haney retained Ms. Lovett's remains at FGCU or the Medical Examiner's Office in Naples, Florida. See id. ¶ 43 n.2.

In October 2007, two graduate students at FGCU assisted Dr. Walsh-Haney identify remains for shipment to another university for DNA testing. Id. ¶ 44. The students discovered a box of identified remains of two homicide victims from Jacksonville—Frankie DeAngelo Dennard and Jeffrey Ivan Gwyn, Jr. Id. ¶ 44. The students reported to FGCU concerns about the identified remains in Dr. Walsh-Haney's private collection, which prompted a Florida Department of Law Enforcement investigation against Dr. Walsh-Haney. See id. ¶¶ 45-50.

On July 20, 2016, Dr. Walsh-Haney returned Ms. Lovett's remains to the Medical Examiner's Office in Jacksonville where Dr. Rao was then serving as the Medical Examiner. Id. ¶¶ 52-53. From July 20, 2016, through July 19, 2017, Dr. Rao retained Ms. Lovett's remains at the Office without notice to or permission from Ms. Lovett's family. Id. ¶ 54. On July 19, 2017, Dr. Rao sent Plaintiffs a letter regarding Ms. Lovett's uninterred remains. See id. ¶ 55. The letter was the first time that Plaintiffs or anyone from Ms. Lovett's family were informed that the Office retained some of Ms. Lovett's remains. See id. ¶ 56. Dr. Rao released Ms. Lovett's remains to a funeral home in Jacksonville, Florida. See id. ¶ 57.

On August 31, 2018, Plaintiffs observed the funeral home staff disinter Ms. Lovett's remains from her grave, bring the aged casket to the funeral home, remove from the

casket Ms. Lovett's partial remains and a white stuffed animal cat, and place the partial remains and the uninterred remains in a new casket. See id. ¶¶ 58-59. Plaintiffs and their family held a second funeral for Ms. Lovett and interred the new casket. See id. ¶¶ 61-62.

II. Standard of Review

Pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure ("Rule(s)"), a district court may dismiss a complaint for "failure to state a claim upon which relief can be granted." When reviewing a motion to dismiss, the Court must take the complaint's allegations as true and construe them in the light most favorable to the plaintiff. Rivell v. Private Health Care Sys., Inc., 520 F.3d 1308, 1309 (11th Cir. 2008). While the Court is required to accept well-pleaded facts as true at this stage, it is not required to accept a plaintiff's legal conclusions. Chandler v. Sec'y of Fla. Dep't of Transp., 695 F.3d 1194, 1199 (11th Cir. 2012). It is insufficient for a plaintiff's complaint to put forth merely labels, conclusions, and a formulaic recitation of the elements of the cause of action. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). While a complaint's factual allegations need not be detailed, the complaint must still allege sufficient facts to render the claim plausible on its face. Id. at 570. "The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully." Moore v. Grady Mem'l Hosp. Corp., 834 F.3d 1168, 1171 (11th Cir. 2016) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.

III. Discussion

a. Federal claims pursuant to Section 1983

In pertinent part, Section 1983 provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured

42 U.S.C. § 1983. Section 1983 creates a private right of action for deprivations of federal rights by persons acting under color of state law. See Boles v. Riva, 565 F. App'x 845 (11th Cir. 2014) (unpublished). To prevail on a Section 1983 claim, the Eleventh Circuit stated that a plaintiff must show that “(1) the defendant deprived her of a right secured under the Constitution or federal law and (2) that such a deprivation occurred under color of state law.” Arrington v. Cobb Cnty., 139 F.3d 865, 872 (11th Cir. 1998).

Qualified immunity under Section 1983 “offers complete protection for government officials sued in their individual capacities if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Cruz v. Green, 352 F. Supp. 3d 1213, 1218 (S.D. Fla. 2019) (citing Vinyard v. Wilson, 311 F.3d 1340, 1346 (11th Cir. 2002)). To be entitled to qualified immunity, the public official must first establish that he or she was engaged in a “discretionary duty.” Cruz, 352 F. Supp. 3d at 1218 (citing Mercado v. City of Orlando, 407 F.3d 1152, 1156 (11th Cir. 2005)). A discretionary duty is “conduct that furthers an official obligation and falls within the scope of an official's authority.” Montanez v. Celaya, 49 F. Supp. 3d 1010, 1015 (M.D. Fla. 2014) (citing Harbert Int'l, Inc. v. James, 157 F.3d 1271, 1282 (11th Cir. 1998)).

To determine whether an act was within the official's discretionary duty, "a court must ask whether the act complained of, if done for a proper purpose, would be within, or reasonably related to, the outer perimeter of an official's discretionary duties." Harbert Int'l, Inc., 157 F.3d at 1271 (internal citations and quotations omitted). Courts consider whether the official "was (a) performing a legitimate job-related function (that is, pursuing a job-related goal), (b) through means that were within his power to utilize." Holloman ex rel. Holloman v. Harland, 370 F.3d 1252, 1265 (11th Cir. 2004) (internal citation omitted). For example, in a police officer transportation action involving allegations of unconstitutional conditions, the court considered whether the officers' duties included transporting and delivering prisoners rather than whether the officers could place the plaintiff into unconstitutional conditions or improperly transfer him. See Jordan v. Doe, 38 F.3d 1559, 1566 (11th Cir. 1994).

Once it has been established that the official was engaged in a discretionary duty, the burden shifts to the plaintiff to establish "both that the defendant committed a constitutional violation and that the law governing the circumstances was already clearly established at the time of the violation." Youmans v. Gagnon, 626 F.3d 557, 562 (11th Cir. 2010) (citing Pearson v. Callahan, 555 U.S. 223, 231 (2009)). This two-pronged test may be done in whatever order deemed most appropriate. Pearson, 555 U.S. at 242.

"This objective–reasonableness test provides qualified immunity protection to all but the plainly incompetent or those who knowingly violate the law." Soto v. City of North Miami, No. 17-22090-Civ-Scola, 2017 WL 4685301, *5 (S.D. Fla. Oct. 17, 2017) (quoting Kirkland v. Mosaic Fertilizer, LLC, No. 8:14-CV-1715-T-24TGW, 2015 WL 4042100, at *2 (M.D. Fla. July 1, 2015)). Qualified immunity "applies regardless of whether the

government official's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.” Pearson, 555 U.S. at 231 (internal quotation omitted). A defendant pleading qualified immunity is entitled to dismissal “unless the plaintiff’s allegations state a claim of violation of clearly established law” Cottone v. Jenne, 326 F.3d 1352, 1357 (11th Cir. 2003) (internal citation and quotation omitted). Generally, courts are urged to apply the affirmative defense of qualified immunity at the earliest possible stage in litigation—including on a motion to dismiss. See Andrade v. Miami Dade Cty., No. 09-23220-CIV, 2010 WL 4069128, at *4 (S.D. Fla. Sept. 30, 2010)

i. Counts I, III, and IV against Drs. Floro, Arruza, and Rao

Counts I, III, and IV are claims against Drs. Floro, Arruza, and Rao, respectively, for the deprivation of Plaintiffs’ property without due process of law pursuant to Section 1983. Compl. ¶¶ 63-68, 75-86. Drs. Floro, Arruza, and Rao argue that they are entitled to qualified immunity because the allegations in the Complaint fail to allege that they were acting outside their scope of their discretionary authority as medical examiners. See First Motion at 5-6. The medical examiners argue that they did not violate a clearly established constitutional right because there was no constitutionally protected right to a decedent’s remains until 2001. See id. 6-7 (citing Crocker v. Pleasant, 778 So. 2d 978, 988 (Fla. 2001) (“[I]n Florida there is a legitimate claim of entitlement by the next of kin to possession of the remains of a decedent for burial or other lawful disposition.”)). The medical examiners also argue that the Court may not retroactively apply the Medical Examiner’s Act’s notice requirements. See id. at 7 (citing Smiley v. State, 966 So. 2d 330, 336 (Fla. 2007)).

Plaintiffs argue that the medical examiners are not entitled to qualified immunity because their actions were non-discretionary. See First Opp. at 4-6. Plaintiffs argue that they allege that the medical examiners retained Ms. Lovett's remains without a lawful purpose and thus outside of a legitimate job-related function. See First Opp. at 4 (citing Compl. ¶¶ 66, 78, 84). Plaintiffs also argue that even if the medical examiners' actions were discretionary, they violated clearly established law and constitutionally protected rights to a decedent's remains that were in place as early as 1950. See id. at 6-9 (citing Kirksey v. Jernigan, 45 So. 2d 188, 189-90 (Fla. 1950) ("It is well settled that . . . a surviving spouse or next of kin has the right to the possession of the body of a deceased person for the purpose of burial, sepulture or other lawful disposition which they may see fit.")).

The Court must first consider whether the medical examiners were acting outside their scope of discretionary duties. On May 28, 1998, the Florida Legislature amended the Medical Examiner's Act to add the following language:

A medical examiner may not retain or furnish any body part of the deceased for research or any other purpose which is not in conjunction with a determination of the identification of or cause or manner of death of the deceased or the presence of disease or which is not otherwise authorized by this chapter, part V of chapter 765, or chapter 873, without notification of and approval by the next of kin.

Fla. Stat. § 406.11(b); see also Public Health—Medical Examiner, 1998 Fla. Sess. Law Serv. Ch. 98-253 (C.S.H.B. 1329) (annotating the amendments). Plaintiffs argue that they allege in the Complaint that there was no lawful purpose to retain Ms. Lovett's remains because (1) Ms. Lovett's body was already identified; (2) charges against the only suspect—Mr. Dixon—were dropped and future criminal charges were time-barred; and (3) the Medical Examiner's Act prohibited transferring remains to universities, colleges,

and other institutions for purposes other than medical education and research. See First Opp. at 4-6; see also Compl. ¶¶ 15-20, 23-31 (alleging facts surrounding the Medical Examiner's Act, the homicide, and the charges against Mr. Dixon).

In the Complaint, Plaintiffs allege that in May 1984, Dr. Floro "ruled Ms. Lovett's death a homicide, but he was unable to determine the exact cause of death due to the decomposed state of [Ms. Lovett's] remains." Compl. ¶¶ 17-20. Construing the allegations as true and in the light most favorable to Plaintiffs, the medical examiners were acting within their scope of discretionary authority in retaining a portion of Ms. Lovett's remains. Not only did the nature of Ms. Lovett's death require the medical examiners to take possession of the remains, but the medical examiners were also required to determine the cause of death and had the authority to perform, or have performed, whatever autopsies or laboratory examinations the medical examiners deemed necessary in the public interest. See Fla. Stat. § 406.11(1).²

² Section 406.11, Florida Statutes, prior to the 1998 amendments provided the following:

(1) In any of the following circumstances involving the death of a human being, the medical examiner of the district in which the death occurred or the body was found shall determine the cause of death and shall make or have performed such examinations, investigations, and autopsies as he or she shall deem necessary or as shall be requested by the state attorney:

(a) When any person dies in the state:

1. Of criminal violence.
2. By accident.
3. By suicide.
4. Suddenly, when in apparent good health.
5. Unattended by a practicing physician or other recognized practitioner.
6. In any prison or penal institution.
7. In police custody.
8. In any suspicious or unusual circumstance.
9. By criminal abortion.
10. By poison.
11. By disease constituting a threat to public health.
12. By disease, injury, or toxic agent resulting from employment.

The burden then shifts to Plaintiffs to establish that the medical examiners committed a constitutional violation and that the law governing the circumstances was clearly established at the time of the violation. Plaintiffs failed to meet their burden on both grounds. The Complaint fails to establish that the medical examiners committed a federal constitutional violation. As the Peterson Court explained,

[i]n a due process claim, property interests are not created by the Constitution. Instead, they are created by an independent source such as state law. Federal constitutional law determines whether the state-created property interest rises to the level of a "legitimate claim of entitlement" protected by the Due Process Clause. So, initially, the question . . . turns to whether Florida law recognizes a property right to the deceased's body. In Crocker v. Pleasant, 778 So.2d 978, 988 (Fla. 2001), the Florida Supreme Court recognized a "legitimate claim of entitlement" that the next of kin have in their dead relatives' bodies. However, coupled with the legitimate claim of entitlement is the requirement that the deprivation occurred without due process of law.

Peterson v. Scott, No. 2:14-CV-420-FTM-38CM, 2015 WL 3935376, at *3 (M.D. Fla. June 26, 2015) (internal citations omitted). While there is a legitimate claim of entitlement to a decedent's remains under Florida law, the Complaint fails to state a claim that Plaintiffs' deprivation of a portion of Ms. Lovett's remains occurred without due process of law.

(b) When a dead body is brought into the state without proper medical certification.

(c) When a body is to be cremated, dissected, or buried at sea.

(2)(a) The district medical examiner shall have the authority in any case coming under any of the above categories to perform, or have performed, whatever autopsies or laboratory examinations he or she deems necessary in the public interest.

(b) The Medical Examiners Commission shall promulgate rules, pursuant to chapter 120, providing for the notification of the next of kin that an investigation by the medical examiner's office is being conducted.

Even if Plaintiffs alleged that the medical examiners committed a federal constitutional violation, Plaintiffs failed to establish that a right to a decedent's remains was clearly established at the time of the violation. Dr. Floro retained Ms. Lovett's remains in May 1984 before the amendment to the Medical Examiner's Act requiring notice to the next of kin. The medical examiners concede that in 2001, there was a clearly established right to possess a decedent's remains. See First Motion at 7. Plaintiffs argue that this right was clearly established in 1950 through the Kirksey case. See First Opp. at 7-9. For a right to be clearly established to defeat qualified immunity,

the contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent.

Anderson v. Creighton, 483 U.S. 635, 640 (1987) (internal citations omitted). Indeed, "[a] single case does not establish the law in a sufficiently concrete context so as to defeat the qualified immunity defense." Blanco v. City of Clearwater, Fla., 9 F. Supp. 2d 1316, 1319 (M.D. Fla. 1998). The Complaint's allegations of the remains retention during the course of the several medical examiners' duties were not such a violation of clearly established law that every reasonable medical examiner acting in their positions would recognize it as such. There is also no basis to support applying retroactively the notice requirement in the Medical Examiner's Act. See Metro. Dade Cty. v. Chase Fed. Hous. Corp., 737 So. 2d 494, 499 (Fla. 1999) ("The general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively." (internal citations omitted)). The First Motion is due to be granted and Counts I, III, and IV against Drs. Floro, Arruza, and Rao dismissed.

ii. Count II against Dr. Walsh-Haney

Count II is a claim against Dr. Walsh-Haney for the deprivation of Plaintiffs' property without due process of law pursuant to Section 1983. Compl. ¶¶ 69-74. Dr. Walsh-Haney argues that Plaintiffs fail to state a claim against her because she was not a medical examiner and thus had no obligation under the Medical Examiner's Act to notify Plaintiffs that she possessed a portion of Ms. Lovett's remains. See Second Motion at 2-3. Dr. Walsh-Haney also argues that she was not an employee at UF in 1984 when Dr. Floro initially transferred Ms. Lovett's remains. See id. at 3. Moreover, Dr. Walsh-Haney contends that she is entitled to qualified immunity. See id. at 3-5; see also Reply at 4-6 ("Plaintiffs have failed to show any clearly established law that Walsh-Haney violated in the performance of her discretionary duties.").

Plaintiffs argue that their right to Ms. Lovett's remains does not derive only from the Medical Examiner's Act but also from Florida's longstanding precedent recognizing a property interest in a decedent's remains. See Second Opp. at 5-5 (citing Crocker, 778 So. 2d at 980; Kirksey, 45 So. 2d at 189-90). Plaintiffs also argue that Dr. Walsh-Haney is not entitled to qualified immunity as her actions were not discretionary duties and violated clearly established law. See Second Opp. at 7-10.

Taking the allegations as true and in favor of Plaintiffs, the Court finds that Plaintiffs failed to state a claim against Dr. Walsh-Haney. As the Court previously explained, there is no clearly established federal constitutional right to a decedent's remains for which Dr. Walsh-Haney could have deprived Plaintiffs of their due process rights. Additionally, there is no rational conclusion from the Medical Examiner's Act that the later enacted notice requirement imposed only on the medical examiners may also be applied to Dr. Walsh-

Haney who was not serving as a medical examiner. Plaintiffs allege that on May 12, 2000, Dr. Walsh-Haney released Ms. Lovett's remains back to the Office. Compl. ¶ 36. On August 4, 2005, the Office transferred the remains back to Dr. Walsh-Haney while she worked at FGCU. Id. ¶ 40. On July 20, 2016, Dr. Walsh-Haney again transferred the remains back to the Office. Id. ¶ 52. The Complaint establishes that Dr. Walsh-Haney was not serving as a medical examiner during any of the transfers and thus could not be held liable under the Medical Examiners Act for failing to notify Plaintiffs. See Compl. ¶¶ 36, 40-43, 52, 62.

Moreover, to the extent that Dr. Walsh-Haney was acting as a state actor on behalf of UF as a graduate student and laboratory manager, and FGCU as an associate professor when she possessed a portion of Ms. Lovett's remains, Dr. Walsh-Haney is entitled to qualified immunity.³ Dr. Walsh-Haney was acting within her discretionary duties as a university employee with she accepted, retained, and transferred a portion of Ms. Lovett's remains. See Compl. ¶¶ 7, 29, 36, 40, 41, 43. As the Court explained regarding the claims against the medical examiners, while there is a legitimate claim of entitlement to a decedent's remains under Florida law, the Complaint fails to state a claim that Plaintiffs' deprivation of a portion of Ms. Lovett's remains occurred without due process of law.

Even if Plaintiffs alleged that Dr. Walsh-Haney committed a federal constitutional violation, Plaintiffs failed to establish that a right to a decedent's remains was clearly established at the time of the violation on May 12, 2000, when Dr. Walsh-Haney first

³ For purposes of this Order addressing the parties' arguments with regard to qualified immunity, the Court accepts the parties' arguments that Dr. Walsh-Haney was a state actor on behalf of the universities.

transferred the remains from UF back to the Office, or anytime thereafter. The Complaint's allegations of the remains retention during the course of Dr. Walsh-Haney's duties were not such a violation of clearly established law that every reasonable university employee acting in her position would recognize it as such. The Second Motion is therefore due to be granted and Count II against Dr. Walsh-Haney dismissed.

iii. Count V against the Office

Count V is a claim against the Office for the deprivation of Plaintiffs' property without due process of law pursuant to Section 1983. Compl. ¶¶ 87-94. The Office argues that Plaintiffs improperly joined it because the Office is a statutorily created district, not a legal entity, and thus cannot be sued. See First Motion at 8. Even if the Office is a properly joined party, the Office argues that it is entitled to Eleventh Amendment immunity as a state agency. See id. at 8-9. Additionally, the Office argues that Plaintiffs failed to state a cause of action under Section 1983 pursuant to Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658 (1978) because the Complaint is devoid of allegations that Defendants violated the Office's policies or customs. See First Motion at 10.

Plaintiffs argue that the Office is an arm of Duval County. See First Opp. at 9-11; see also Kirker v. Orange County, 519 So.2d 682, 683 (Fla. 5th DCA 1988) ("The Medical Examiner's office is an agency of defendant Orange County."). Even if the Office is not an arm of County but rather an arm of the State of Florida, Plaintiffs argue that the Office waived its Eleventh Amendment Immunity by removing the action from state court to this Court. See First Opp. at 10-11.

Under Monell, "a municipality cannot be held liable solely because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a

respondeat superior theory.” Monell, 436 U.S. at 691. To impose liability on a municipality, “a plaintiff must show: (1) that his constitutional rights were violated; (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation.” McDowell v. Brown, 392 F.3d 1283, 1289 (11th Cir. 2004) (internal citation omitted).

Considering the Office an arm of the County and thus susceptible to municipal liability, the Complaint is devoid of allegations that Defendants violated policies or customs of the Office. The Complaint also establishes that the individual medical examiners did not violate a constitutionally protected right that was clearly established. The First Motion is due to be granted and Count V against the Office dismissed.

iv. Counts I–V: Section 1983 Claims Precluded

Additionally, Defendants argue that state law remedies preclude Plaintiffs’ Section 1983 claims in Counts I through V. See First Motion at 10-11. “The United States Supreme Court has held that as long as some adequate post-deprivation remedy is available to a plaintiff, no procedural due process violation has occurred.” Peterson v. Scott, No. 2:14-CV-420-FTM-38CM, 2015 WL 3935376, at *3 (M.D. Fla. June 26, 2015) (citing Hudson v. Palmer, 468 U.S. 517, 533 (1984) (holding “that an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available.”)); see also Arnaud v. Odom, 870 F.2d 304, 309 (5th Cir. 1989) (finding no procedural due process violation stemming from the state’s unauthorized autopsy of the plaintiff’s infant child).

In light of the allegations in the Complaint, the Section 1983 claims against Defendants are also due to be dismissed because at least some adequate post-deprivation remedy is available to Plaintiffs and thus no procedural due process violation has occurred.. See e.g., Peterson, 2015 WL 3935376 at *3 (granting a motion dismiss on the plaintiff's Section 1983 claims and state law claims involving the decedent's cremation and holding that "Florida law provides an adequate remedy . . . because plaintiff could pursue a common law tort cause of action for tortious interference with a dead body . . . or a claim of replevin to the extent the decedent's property has not been returned to her." (citing Kirksey, 45 So.2d at 188; Britt v. Mascara, 830 So. 2d 221 (Fla. 4th DCA 2002)).

b. Counts VI–IX: claims of outrageous infliction of emotional distress against Drs. Floro, Arruza, Rao, and Walsh-Haney

As all of Plaintiffs' federal law claims are being dismissed, the Court will exercise its discretion to deny supplemental jurisdiction over Plaintiffs' state law claims for outrageous infliction of emotional distress in Counts VI–IX. See 28 U.S.C. § 1367(c)(3); see also Raney v. Allstate Ins. Co., 370 F.3d 1086, 1089 (11th Cir. 2004) (noting that the Eleventh Circuit has "encouraged district courts to dismiss any remaining state claims when . . . the federal claims have been dismissed prior to trial." (citing L.A. Draper & Son v. Wheelabrator-Frye, Inc., 735 F.2d 414, 428 (11th Cir. 1984))). Plaintiffs' state law claims are due to be remanded to the Circuit Court for the Fourth Judicial Circuit in and for Duval County, Florida.

Accordingly, after due consideration, it is

ORDERED:

1. Defendants' Arruza, Floro, Rao, and the Office of the Medical Examiner for District Four Motion to Dismiss (Doc. 3) is **GRANTED** to the extent stated herein.

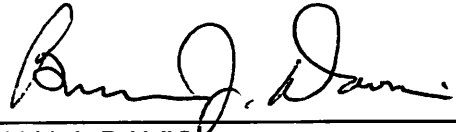
2. Defendant's Walsh-Haney Motion to Dismiss (Doc. 12) is **GRANTED** to the extent stated herein.

3. Plaintiffs' federal claims in Counts I–V of the Complaint (Doc. 2) are **DISMISSED with prejudice**.

4. Plaintiffs' remaining state claims in Counts VI–IX of the Complaint (Doc. 2) are **REMANDED** to the Circuit Court for the Fourth Judicial Circuit in and for Duval County, Florida.

5. The Clerk of the Court is **DIRECTED** to terminate any pending motions and deadlines, remand the remaining state claims to the Circuit Court for the Fourth Judicial Circuit in and for Duval County, Florida, enter judgment accordingly, and close the file.

DONE and ORDERED in Jacksonville, Florida this 30th day of May, 2019.



BRIAN J. DAVIS
United States District Judge

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Copies furnished to:

Counsel of Record