ATTORNEYS FOR APPELLANT

Crystal G. Rowe
Kightlinger & Gray, LLP
New Albany, Indiana

Erin A. Clancy
Kightlinger & Gray, LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Daniel H Pfeifer
Jeffery J. Stesiak
Ryan G. Milligan
James P. Barth
Peter D. Hamann
Pfeifer Morgan & Stesiak
South Bend, Indiana

IN THE COURT OF APPEALS OF INDIANA

Ceres Solutions Cooperative, Inc.,

Appellant-Defendant,

v.

Estate of Kathryn Bradley, et al.,

Appellees-Plaintiffs,

January 12, 2022

Court of Appeals Case No. 21A-CT-377

Appeal from the Pulaski Superior Court

The Honorable Mary C. Welker, Judge

Trial Court Cause No. 66C01-2001-CT-1

Robb, Judge.

Case Summary and Issues

[1] Ceres Solutions Cooperative, Inc. ("Ceres") refilled the propane tank at Kenneth Bradley's house but failed to check for leaks. Kathy Bradley and Eric Bradley, Bradley's wife and son, lived with Bradley and were inside the home when an explosion and resulting house fire occurred injuring Eric and killing Kathy. Bradley sued Ceres claiming, in relevant part, negligent infliction of emotional distress. Ceres filed a Motion for Partial Summary Judgment on Bradley's request for emotional distress damages as to both Eric and Kathy. The trial court granted Ceres' motion regarding Eric but denied the motion as it related to Kathy. Ceres now appeals, raising multiple issues for our review which we consolidate and restate as whether the trial court erred in denying in part Ceres' motion for summary judgment. Bradley cross appeals, raising one issue which we restate as whether the trial court erred by granting in part Ceres' motion for summary judgment.

[2] Concluding that the trial court did not err by denying Ceres' motion in regard to Kathy but did err by granting Ceres' motion in regard to Eric, we affirm in part and reverse in part and remand.

Facts and Procedural History[1]

[1] We held a traveling oral argument in this case on December 2, 2021, at Triton Central High School. We commend counsel on the quality of their oral and written advocacy, and we thank Triton Central for hosting

[3] On July 12, 2019, Ceres refilled the residential propane tank at Bradley's property but failed to properly check for leaks.[2] At approximately 2:30 a.m. the following morning, Eric turned on a lamp next to his bed causing an explosion. Eric was "surrounded in a ball of fire, and then [] everything went black[.]" Appellant's Appendix, Volume 3 at 84 (deposition page 71). When Eric came to, part of the roof had collapsed, and he could see rubble and multiple small fires around the home that he described as "little-bitty campfire[s.]" *Id.* Eric was severely burned but climbed out of the basement. He attempted to get help from the neighbors twice but was unsuccessful, so he returned to the house.

[4] John Bauman was driving when he noticed a "glow" in the area of Bradley's home and debris across the roadway. Appellant's App., Vol. 2 at 132. At 5:04 a.m., Bauman called 9-1-1, *see id.* at 127, and began walking around the residence and heard Eric "hollering" from behind the home, *id.* at 132. When Eric walked up to Bauman, Eric was shirtless and covered in burns, so Bauman gave him a sweater and long sleeve shirt.

[5] Volunteer Firefighter Tony Pesaresi and his wife Tina Pesaresi lived one-half mile east of Bradley's home. They were awakened by Tony's fire department pager and saw flames from their window. Tony drove toward the incident and Tina drove to a nearby intersection to set up a traffic roadblock. Around 5:20

---

the event, as well as the attendees for their insightful questions posed to the panel and counsel after the argument.

[2] Ceres does not dispute its negligence.

a.m., Bradley was driving home from work when he came upon Tina's roadblock located approximately three-quarters of a mile from his home. *See id.* at 78 (deposition page 60). From the roadblock, Bradley could see the flames and could tell they were coming from his home. Bradley asked Tina if she knew what was going on and whether his wife had made it out of the house. Tina responded "I have no idea. I don't know, I'm sorry." *Id.* at 211. Even though Tina was blocking traffic for the fire department, she "did not have access to a fire radio to know what was occurring at the incident . . . and no one had provided any additional information" to her. *Id.* Tina then allowed Bradley to pass through the roadblock.

[6] Bradley drove toward his home and parked 100 yards from the house, arriving at 5:24 a.m. When he arrived, the flames were "big and steady[,]" *id.* at 80 (deposition page 67), and first responders had already arrived. Bradley saw Eric on a gurney, under a blanket with his face showing. Bradley described Eric's visible injuries as not appearing "real bad then. It just looked like somebody had a real bad sunburn that peeled, and his hair was singed." *Id.* at 79 (deposition page 64). Bradley asked Eric where Kathy was, but Eric did not know. Eric was then taken to the hospital to be treated.

[7] Firefighters continued to search for Kathy in the home; however, "[t]he flames started getting bigger every time they dug, so they basically just had to wait until they could get to where they thought she was." *Id.* at 80 (deposition page 68). Eventually, firefighters located Kathy in the home and made Bradley leave the scene so they could remove her. Bradley heard the firefighters yell "[w]e

found her" but he did not ever see any part of her body in the home or while it was being removed. *Id.* at 81 (deposition page 73).

[8] On January 15, 2020, Bradley filed his amended complaint against Ceres seeking, in relevant part, emotional distress damages because he "came upon his home unaware that it had exploded at which time he could not find his wife and witnessed his son severely burned." *Id.* at 32. On September 25, 2020, Ceres filed a Motion for Partial Summary Judgment on Bradley's negligent infliction of emotion distress claims as to both Eric and Kathy. Following a hearing, the trial court granted Ceres' motion with respect to Bradley's claim for emotional distress damages related to Eric but denied Ceres' motion with respect to Bradley's claim of emotional distress damages related to Kathy.

[9] Ceres now appeals, challenging the trial court's denial of its motion as to Kathy. Bradley cross appeals, challenging the trial court's granting of Ceres' motion as to Eric.

Discussion and Decision

I. Standard of Review

[10] We review summary judgment orders de novo. *Alldredge v. Good Samaritan Home, Inc.*, 9 N.E.3d 1257, 1259 (Ind. 2014). We apply the same standard as the trial court: summary judgment is appropriate only where the moving party demonstrates there is no genuine issue of material fact and he is entitled to judgment as a matter of law. *Id.; see also* Ind. Trial Rule 56(C). If the moving

party carries his burden, the non-moving party must then demonstrate the existence of a genuine issue of material fact in order to survive summary judgment. *Id.* Just as the trial court does, we resolve all questions and view all evidence in the light most favorable to the non-moving party, so as to not improperly deny him his day in court. *Id.* Our review of a summary judgment motion is limited to those materials designated to the trial court. *Mangold ex rel. Mangold v. Ind. Dep't of Nat. Res.*, 756 N.E.2d 970, 973 (Ind. 2001). In reviewing a trial court's ruling on a motion for summary judgment, we may affirm on any grounds supported by the Indiana Trial Rule 56 materials. *Quezare v. Byrider Fin., Inc.*, 941 N.E.2d 510, 513 (Ind. Ct. App. 2011), *trans. denied.*

II. Bystander Rule

[11] Generally, to recover for negligent infliction of emotional distress, a plaintiff must "sustain[] a direct impact by the negligence of another and, by virtue of that involvement sustain[] an emotional trauma which is serious in nature and of a kind and extent normally expected to occur in a reasonable person[.]" *Shuamber v. Henderson*, 579 N.E.2d 452, 456 (Ind. 1991). This is commonly referred to as the Modified Impact Rule. *Atl. Coast Airlines v. Cook*, 857 N.E.2d 989, 996 (Ind. 2006) (stating that although an impact need not cause physical injury, "the modified impact rule maintains the requirement of a direct physical impact").

[12] However, the Bystander Rule is an exception to Indiana's Modified Impact Rule. *Id.* at 997-98. To recover under the rule, a bystander must establish "direct involvement" with the incident. *Groves v. Taylor*, 729 N.E.2d 569, 573 (Ind. 2000). In determining whether a plaintiff can recover, we consider three factors: (1) the severity of the victim's injury; (2) the relationship of the plaintiff to the victim; and (3) the circumstances surrounding the plaintiff's discovery of the victim's injury. *Smith v. Toney*, 862 N.E.2d 656, 660 (Ind. 2007). "These criteria are derived from the public policy considerations that underlie and define a claim for negligent infliction of emotional distress. They therefore are issues of law for a court to resolve." *Id*.

[13] Here, the only factor at issue is the circumstances surrounding Bradley discovering Eric's and Kathy's injuries. We have stated that the requirement regarding the bystander's proximity to the scene is both a matter of time and circumstances. *Perkins v. Stesiak*, 968 N.E.2d 319, 322 (Ind. Ct. App. 2012), *trans. denied.* Therefore, to satisfy the "circumstances surrounding the plaintiff's discovery of the victim's injury" factor of the Bystander Rule: (A) the bystander must come on the scene at or immediately following the incident; (B) the claimant must not have been informed of the incident before coming upon the scene; and (C) the scene and victim must be in essentially the same condition as immediately following the incident. *Smith*, 862 N.E.2d at 663.

A. Bystander Must Come on the Scene At or Immediately Following the Incident

[14] We begin by examining whether Bradley came to the scene at or immediately following the incident. Our supreme court has held that to recover under the Bystander Rule a plaintiff must have actually "witnessed a portion of the injury-producing event" or "c[o]me on the scene *soon* after the death or severe injury of a loved one[.]"[3] *Groves*, 729 N.E.2d at 573 (emphasis added); *see also Clifton*, 43 N.E.3d at 216 ("The temporal factor requires that the claimant be at the scene of the incident when it occurs or arrive soon after[.]").

[15] There is no dispute that the explosion occurred at approximately 2:30 a.m. and that Bradley did not arrive at the home until 5:24 a.m. Ceres argues that because Bradley "arrived on scene almost three hours after the explosion had occurred[,]" he does not satisfy this prong. Brief of Appellant at 11. Conversely, Bradley argues that the incident was on-going when he arrived. Specifically, Bradley argues that "a gas explosion is an ignition of accumulated gas that results in a fire, and the explosion and fire together constitute the same event." Brief of Appellee/Cross-Appellant at 14.

[16] Ceres contends that the injury-producing event was the 2:30 a.m. explosion alone and not the house fire; however, Eric testified that at the time of the

---

[3] *Groves* provides that the injured party must have a relationship to the plaintiff analogous to a spouse, parent, child, grandparent, grandchild, or sibling. 729 N.E.2d at 573. That relationship requirement is clearly met here.

explosion he was surrounded by "a ball of fire" and when he came to and exited the home, he could see multiple small fires in multiple rooms of the home. Appellant's App., Vol. 3 at 84. Therefore, we conclude that the explosion and the fire are a single injury-producing event. However, we must still determine whether Bradley's arrival satisfies the Bystander Rule.

[17] Our current Bystander Rule precedent is devoid of any cases, such as this one, where the injury-producing event could be considered on-going, let alone specifically an on-going house fire. Therefore, we look to other jurisdictions for guidance. In *In re Air Disaster Near Cerritos, Cal.*, cases involving fires were differentiated from other bystander cases because "the injury-producing event was not instantaneous." 967 F.2d 1421, 1424 (9th Cir. 1992). Accordingly, *In re Air Disaster Near Cerritos* determined that because the claimant "was present at the scene of the fire, she was present at the scene of the injury-producing event" and could recover even though she arrived at the scene after the fire had started. *Id.* at 1425. Similarly, *Stump v. Ashland, Inc.* held that the claimants' "presence during the preceding negligent act that caused the fire is not necessary. It is sufficient that the plaintiff is present at the fire because it is actually the fire that is the injury-producing event."[4] 499 S.E.2d 41, 50 (W.Va. 1997). We find these cases instructive.

---

[4] Ceres argues that our supreme court's characterization of *Stump* suggests that it does not believe a fire that follows an explosion is an on-going event. In *Stump*, there was an explosion and subsequent house fire and the *Stump* court determined that the claimants "were present at the scene of the injury-producing event

[18] Here, Bradley arrived well after the explosion; however, when he arrived, the flames were "big and steady[,]" and his son had yet to be removed from the scene. Appellant's App., Vol. 2 at 79-80. Further, his wife Kathy had yet to be located and although firefighters were attempting to search for Kathy when Bradley arrived, "[t]he flames started getting bigger every time they dug, so they basically just had to wait until they could get to where they thought she was." *Id.* at 80 (deposition page 68). Bradley was on the scene for approximately two hours before firefighters were able to get to Kathy's body inside the home.

[19] We conclude that the explosion and fire are not separate injury-producing events, and that the injury-producing event was on-going when Bradley arrived. Therefore, Bradley satisfies the temporal factor of the Bystander Rule.

---

because here the injury-producing event was the fire." *Stump*, 499 S.E.2d at 49. However, in examining the law of emotional distress recovery from other jurisdictions in *Clifton v. McCammack,* our supreme court stated that some courts "require that a bystander be at the location of the injury-causing event when it occurs, while other courts have permitted bystander recovery when the claimant arrives at the site after the injury-causing event occurs." 43 N.E.3d 213, 219 (Ind. 2015). The supreme court's example case for a jurisdiction allowing claimants to arrive "after the injury-causing event occurs" was *Stump.* Thus, Ceres argues that our supreme court disagreed with the *Stump* court's characterization of the fire as an on-going event because it believes *Stump* permits the bystander claimant to arrive *after* the injury causing event. *See* Reply and Cross-Appellee's Brief of Appellant at 17. We find Ceres' argument unpersuasive. We do not believe the statement and citation in *Clifton* indicates that our supreme court disagreed with *Stump*'s characterization of a fire as on-going. Our supreme court was merely highlighting that "[j]urisdictions differ when considering the immediacy of a claimant's observation of the incident" and proceeds to cite *Stump* and *Fineran v. Pickett,* 465 N.W.2d 662, 664 (Iowa 1991) (requiring "contemporaneous observance of the accident"), as examples of differing jurisdictions.

B. Claimant Must Not Have Been Informed of the Incident Before Coming Upon the Scene

[20] To recover for bystander emotional distress, "the claimant must not have been informed of the incident before coming upon the scene." *Smith*, 862 N.E.2d at 663. This requirement necessarily precludes recovery for emotional trauma that arises when a claimant learns of such an incident "through indirect means." *Id.* at 662-63. Further, we have held that plaintiffs cannot voluntarily expose themselves to the incident. *See Johnson v. Marion Cnty. Coroner's Off.*, 971 N.E.2d 151, 162 (Ind. Ct. App. 2012), *trans. denied.* A bystander must arrive to an incident unwittingly and claims where bystanders knowingly and willingly expose themselves to the scene of an accident are barred. *Clifton*, 43 N.E.3d at 222.

[21] Ceres argues that Bradley was informed of the incident prior to arriving at the scene because of his conversation with Tina at the roadblock. *See* Br. of Appellant at 12. Ceres relies on *Clifton,* where our supreme court determined as a matter of law that a claimant was "informed of the incident indirectly before his arrival" to a crash site. *Id.* at 223. In that case, while watching the news the claimant learned of a fatal motorcycle crash that occurred along a route his son frequently traveled. He was not informed that the crash involved his son. However, he voluntarily drove to the scene and learned that his son was the victim of the crash. The court in *Clifton* determined that the claimant's "emotional distress began as he was watching television–and emotional trauma triggered by a news story of an accident is distinct from sudden shock that arises

when one unwittingly comes upon a scene of an accident." *Id.* at 222-23. We find that *Clifton* is distinguishable from this case.

[22] Here, Bradley was driving home from work when he came upon Tina's roadblock located approximately three-quarters of a mile from his home. Appellant's App., Vol. 2 at 78. From the roadblock, Bradley could see the flames and could tell they were coming from his home. However, the record is clear that Bradley received no specific details from Tina. Bradley asked Tina if she knew what was going on and whether his wife had made it out of the house. Tina responded "I have no idea. I don't know, I'm sorry." *Id.* at 211. Further, Tina "did not have access to a fire radio to know what was occurring at the incident . . . and no one had provided any additional information" to her. *Id.*

[23] Because Bradley could see the fire from the roadblock, he was not "indirectly informed."[5] *See Clifton*, 43 N.E.3d at 217; *see also Perkins*, 968 N.E.2d at 322 (stating "witnessing an incident or its gruesome aftermath immediately thereafter is distinct from learning of a victim's death or injury indirectly").

[5] Bradley argues that he "was at the scene of the fire when he was stopped briefly at the roadblock." Br. of Appellee/Cross-Appellant at 17. Bradley relies solely on *Clifton*, wherein the claimant got as close as twenty or twenty-five feet from the accident. 43 N.E.3d at 215. As stated above, the roadblock was three-quarters of a mile away from Bradley's home, yet the fire was visible. However, because we have determined that Bradley was not indirectly informed of the incident, we need not determine whether a "scene" can extend such a distance.

Therefore, we conclude that Bradley was not informed of the incident before coming upon the scene.

C. Victim/Scene Must be in Essentially the Same Condition as Immediately Following the Incident

[24] A claimant satisfies the third prong of the Bystander Rule when they witness a portion of the injury-producing event. *Groves*, 729 N.E.2d at 573. In *Groves*, the claimant witnessed a portion of the event when she heard the sound of a collision and witnessed "her brother's body as it rolled off the highway after being struck." *Id.* However, *Groves* provides that a claimant may also recover when they come "on the scene soon after" the injury. *Id.* In such cases, a claimant must view a scene that is "essentially as it was at the time of the incident," with the victim "in essentially the same condition as immediately following the incident[.]"[6] *Smith*, 862 N.E.2d at 663. Unless these factors are satisfied, a claimant will not have witnessed the "gruesome aftermath[.]" *Clifton*, 43 N.E.3d at 221.

[25] "Gruesome aftermath" refers to the "uninterrupted flow of events following closely on the heels of the accident." *Id.* When a bystander witnesses this "uninterrupted flow of events," he or she is essentially subjected to a "sudden sensory observation" of the incident itself. *Id*. Without this type of observation,

---

[6] Ceres only briefly claims that the scene itself was not essentially in the same condition as it was at the time of the accident in its reply brief. *See* Reply and Cross-Appellee's Br. of Appellant at 28. However, because we conclude the fire constitutes an on-going injury-producing event, we also conclude that the scene was essentially as it was at the time of the incident.

claimants cannot establish the "direct involvement" necessary to recover for bystander emotional trauma, and "direct involvement" is the key principle that has guided the evolution of the Bystander Rule from the outset. *See id.*; *Groves*, 729 N.E.2d at 573.

1. Eric

[26] Ceres argues that Eric's body was not in essentially the same condition immediately following the explosion as when Bradley arrived. *See* Reply and Cross-Appellee's Br. of Appellant at 41-42.

[27] Ceres highlights that Eric exited the basement of the collapsed home after the explosion, attempted to get help, was wrapped in a blanket by first responders, and was being prepped to be flown out by a helicopter when Bradley arrived. Ceres also argues that *Clifton* is binding precedent that controls the resolution of this case. In *Clifton,* the court stated:

> [T]he facts reveal that both the scene and [Victim's] body were materially changed before [Claimant] arrived. Witnesses moved [Victim's] body, which was upright on his motorbike after the collision, and laid him flat on the pavement. And, after resuscitation efforts failed, emergency personnel covered the body so that *no signs of trauma were visible*. Although [Claimant] may have arrived to the scene in a fairly short amount of time after [Victim's] death, [Claimant] did not experience the "uninterrupted flow of events" following the collision, *i.e.,* before there were significant changes to both the scene and [Victim's] body.

43 N.E.3d at 222 (emphasis added).

[28] However, the facts differentiate this case from *Clifton*. Here, Eric's injuries were visible to Bradley. Based on the video from an officer's body camera, a blanket was placed over Eric; however, his face and torso were not covered so burns on his face were visible. Exhibits, Volume 3 at 4. Bradley testified that Eric's face was "all blistered and peeled." *See* Appellant's App., Vol. at 2 at 79 (deposition page 64). It is not necessary for Bradley to have been able to see all of Eric's burns.[7] Further, when Bradley arrived, the flames were "big and steady[,]" *id*. at 80 (deposition page 67), and although first responders had already arrived, they had not removed Eric from the scene. Therefore, because Bradley witnessed his son with visible burns in front of his burning home, we conclude that Bradley did experience the "gruesome aftermath" of the accident. *Clifton*, 43 N.E.3d at 222.

[29] Because we have found that all the requirements regarding Bradley's discovery of Eric's injury are satisfied, we conclude the trial court was wrong in granting summary judgment to Ceres.

2. Kathy

[30] Ceres argues that because Bradley never viewed Kathy's body, he cannot recover because of the Bystander Rule's requirement "that the claimant actually see the victim in essentially the same condition as he or she was in immediately

[7] The extent of Eric's injuries and the degree that they were visible to Bradley are factors for a jury to consider in the determination of the degree of emotional distress Bradley experienced.

following the incident." Br. of Appellant at 19 (citing *Smith*, 862 N.E.2d at 663).

[31] However, in *Smith,* our supreme court stated:

> In *Groves* the facts were such that one who arrived "soon" after the accident necessarily *viewed* "the gruesome aftermath." But we think the requirement of bystander recovery is both temporal—at or immediately following the incident—and also circumstantial. The *scene viewed* by the claimant must be essentially as it was at the time of the incident, the victim must be in essentially the same condition as immediately following the incident, and the claimant must not have been informed of the incident before coming upon the scene.

862 N.E.2d at 663 (emphasis added). *Smith* does not state that the *body* of the victim must be *viewed* in essentially the same condition.

[32] As we previously stated, when a bystander witnesses the "uninterrupted flow of events," he or she is essentially subjected to a "sudden sensory observation" of the incident itself. *Clifton*, 43 N.E.3d at 221-22. *Clifton* held that without a "sudden sensory experience," the necessary direct involvement cannot be established.[8] Therefore, we must determine whether a sudden sensory

[8] We note that *Clifton* refused to expand the current Bystander Rule from a bright-line rule to a less restrictive foreseeability approach. *See* 43 N.E.3d at 219-20. Unlike the recent Indiana Supreme Court decision in *K.G. by Next Friend Ruch v. Smith*, 2021 WL 6063878 (Ind. Dec. 22, 2021), which carved out a new exception to the Bystander Rule, our decision is not an expansion of the current rule. It is merely the application of the current rule to a situation where it would be impossible to view the victim's body and the injury-producing event is not an instantaneous event, such as a car crash, but is an on-going fire.

observation or experience can occur in cases where viewing the body of the victim is impossible.

[33] Other jurisdictions have found that viewing the body is not necessarily required. *See Fortman v. Förvaltningsbolaget Insulan AB*, 212 Cal. App. 4th 830, 840-41 (Cal. Ct. App. 2013) (permitting "recovery based on an event perceived by other senses"); *Ortiz v. John D. Pittenger Builder, Inc.*, 889 A.2d 1135, 1136 (N.J. Super. 2004) (holding a claim was still viable "without actually seeing a relative ablaze, so long as the bystander is sensorially aware of the relative burning to death"). Above, we found *Stump* instructive in our determination that the injury-producing event was on-going and we again believe it carves out an exception here that fits within our current Bystander Rule.

[34] In *Stump*, the court concluded "it is not necessary that the plaintiff actually witness the injury being inflicted to the victim by the fire, provided the plaintiff is at the scene of the fire and is *sensorially* aware, in some important way, of the fire and the necessarily inflicted injury to the victim." 499 S.E.2d at 49 (emphasis added). The *Stump* court reasoned:

> [I]n cases involving fire the flames are likely to hide the victims from the view of those present at the scene. To disallow recovery to plaintiffs in such cases merely because they did not actually view the injury being inflicted on the bodies of the victims defies reason and common sense.
>
> * * *

> Our law would be cruel and less than adequate if it did not recognize the severe degree of emotional harm certain to be suffered by those who must watch helplessly while fire is causing injury or death to a loved one.

Id. at 49-50.

[35] After locating Kathy, firefighters removed Bradley from the scene and refused to allow him to watch the removal of her burnt body from the flame engulfed home. This act – of officials preventing the viewing of a body by a loved one – implied that Kathy's remains were in such a disturbing condition that Bradley should not be subjected to the traumatizing visual. Even though Bradley was prevented from seeing his wife's charred remains, the fact that he had to be removed to prevent this trauma would have triggered the type of horrible mental images one forms upon understanding the reality of a loved one's gruesome death. We agree with the *Stump* court's reasoning and conclude that the "sudden sensory observation" necessary to establish direct involvement under *Clifton* does not preclude recovery for bystanders who do not actually view the body of the victim in cases involving fires.

[36] Ceres argues that even among jurisdictions that have adopted a non-visual sensory perception rule, the bystander claimant is required to "have a reasonable certainty of injury to the loved one." Reply and Cross-Appellee's Br. of Appellant at 33-34. Ceres contends that Bradley "did not *know* that [Kathy] was trapped inside the burning house until she was found. He *worried* that she might be inside the burning home but he did not *know* with any degree of

certainty." *Id.* at 35. However, we believe that Bradley possessed a reasonable degree of certainty that Kathy was inside the home.

[37] Bradley testified that he expected Kathy and Eric to be home. *See* Appellant's App., Vol. at 2 at 79 (deposition page 62). This is evidenced by his interaction with Tina upon his arrival at the roadblock asking "[d]id Kathy make it out?" *Id.* at 211. Bradley also asked Eric "where Kathy was" once he arrived at the house. *Id.* at 79 (deposition page 65). Further, when Bradley arrived, first responders had been unable to locate Kathy outside the home and their failure to find her could only lead to the conclusion that she was still trapped in the fire. We conclude that Kathy was in essentially the same condition immediately following the incident as when Bradley arrived. Bradley reasonably believed Kathy was in the home, and Bradley was not required to view Kathy's body. We limit our holding to cases involving serious injury or death as the result of fire.

[38] Because we have found that all the requirements regarding Bradley's discovery of Kathy's death are satisfied, we conclude the trial court was correct in denying summary judgment to Ceres.

Conclusion

[39] We conclude that the trial court did not err by denying Ceres' motion for summary judgment in regard to Kathy but did err by granting Ceres' motion for

summary judgment in regard to Eric. Accordingly, we affirm in part, reverse in part and remand for further proceedings consistent with this opinion.

[40] Affirmed in part, reversed in part, and remanded.

Weissmann, J., and Kirsch, Sr. J., concur.