

SUPREME COURT OF TENNESSEE

Linda F. Seals v. H & F, Inc. et al.

301 S.W.3d 237 (Tenn. 2010) · No. M2009-00330-SC-R23-CQ · Decided January 15, 2010

SUMMARY

The Tennessee Supreme Court answered three certified questions concerning the disposition of a decedent's remains and liability for an allegedly wrongful cremation. It held that, absent a decedent's pre-mortem direction, a surviving parent has priority over a fiancée or minor child; a minor may qualify as an heir under the crematory-operator safe harbor, but reliance on the minor's instructions may be wanton or reckless; and a funeral home that merely arranges a cremation is not a crematory-facility operator under the statute.

CASE DETAILS

COURT	Supreme Court of Tennessee
WRITING FOR THE COURT	Gary R. Wade; Janice M. Holder; Cornelia A. Clark; Sharon G. Lee; William C. Koch, Jr.
JURISDICTION	Tennessee
DECIDED	January 15, 2010
DOCKET	M2009-00330-SC-R23-CQ
DISPOSITION	other
PROCEDURAL POSTURE	The Tennessee Supreme Court answered three certified questions of Tennessee law submitted by the United States District Court for the Middle District of Tennessee under Tennessee Supreme Court Rule 23.
STANDARD OF REVIEW	Questions of law, including statutory-construction issues, are reviewed de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Linda F. Seals v. H & F, Inc., Sellars Cremation Service, Inc.

TOPICS

torts statutory interpretation appellate procedure standard of review

PRACTICE AREAS

torts funeral and cremation law statutory interpretation appellate procedure

QUESTIONS PRESENTED

1. Who has the legal right to control disposition of a decedent's remains when the decedent left no direction and there is no surviving spouse, particularly as between a surviving parent, a fiancée, and a minor child?
2. Does the term heir in Tennessee Code Annotated section 62-5-511 include a minor child, and can reliance on a minor heir's instructions constitute wanton or reckless conduct that defeats the statutory safe harbor?
3. Is a funeral home that merely arranges for a cremation performed by another company an operator of a crematory facility under Tennessee Code Annotated section 62-5-511?

HOLDINGS

1. When a decedent has not made a pre-mortem election or designated another person to make the decision, the right to direct disposition descends in this order: the spouse; adult children; parents; adult siblings; adult grandchildren; grandparents; and an adult who exhibited special care and concern. Accordingly, a surviving parent has priority over a fiancée and a minor child.
2. The term heir in Tennessee Code Annotated section 62-5-511 includes minors.
3. Although a minor may qualify as an heir under section 62-5-511, reliance on a minor's instructions may constitute wanton or reckless conduct and thereby defeat the statutory safe harbor when the operator knows or should recognize that the minor lacks the right to direct disposition. Whether the conduct was reckless is a question of fact.
4. A funeral home that merely arranges for a cremation to be performed by another company is not the operator of a crematory facility and cannot rely on the section 62-5-511 safe harbor on that basis.

KEY QUOTATIONS

“Until our General Assembly provides more explicit guidance on the subject, we adopt the following order of priority as to the right to dispose of a dead body:” (301 S.W.3d at 246)

“Section 62-5-511 does not empower anyone to direct the method of disposal of a body. It is purely a limitation on the liability of operators of crematory facilities.” (301 S.W.3d at 249)

“We conclude that the word “heir,” as used in section 62-5-511, retains its ordinary meaning and, therefore, includes minors.” (301 S.W.3d at 251)

“Read together, these provisions establish that the operator of a crematory facility is the party actually responsible for the cremation.” (301 S.W.3d at 253)

FACTUAL BACKGROUND

Rodney Leon Boling died on October 28, 2007. At the joint request of his fiancée and fourteen-year-old son, H & F, a funeral home, arranged for the cremation through Sellars Cremation Service, which performed the cremation; both businesses were owned by the same individual. Boling's mother, his sole surviving parent,

alleged that she had the superior right to control disposition of his remains and asserted tort claims based on the cremation.

PROCEDURAL HISTORY

Linda F. Seals filed a diversity action in the United States District Court for the Middle District of Tennessee after the defendants cremated her son's body at the request of his fiancée and fourteen-year-old son. The federal district court found determinative unsettled questions of Tennessee law and certified three questions concerning the priority to control disposition of remains, the meaning of heir under the crematory safe-harbor statute, and whether a funeral home that arranges but does not perform a cremation is a crematory-facility operator.

DISPOSITION

other

REMAND INSTRUCTIONS

The federal district court was instructed to apply the answers to the certified questions to the facts. In particular, whether reliance on the minor child's instructions was reckless was left for factual determination. The court could not definitively resolve the third question on the limited record, but supplied the governing legal rule.

CASES CITED

- *Haley v. University of Tennessee-Knoxville*, 188 S.W.3d 518, 521-23 (Tenn. 2006)
- *Akers v. Buckner-Rush Enterprises, Inc.*, 270 S.W.3d 67, 69, 73 (Tenn. Ct. App. 2007)
- *Hill v. Travelers' Insurance Co.*, 294 S.W. 1097, 1098-99 (Tenn. 1927)
- *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 836 (Tenn. 2008)
- *Perrin v. Gaylord Entertainment Co.*, 120 S.W.3d 823, 826 (Tenn. 2003)
- *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997)
- *S. Constructors, Inc. v. Loudon County Board of Education*, 58 S.W.3d 706, 710 (Tenn. 2001)
- *Hayes v. Gibson County*, 288 S.W.3d 334, 337 (Tenn. 2009)
- *Eastman Chemical Co. v. Johnson*, 151 S.W.3d 503, 507 (Tenn. 2004)
- *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005)
- *Waldschmidt v. Reassure America Life Insurance Co.*, 271 S.W.3d 173, 176 (Tenn. 2008)
- *Houghton v. Aramark Educational Resources, Inc.*, 90 S.W.3d 676, 678 (Tenn. 2002)
- *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995)
- *Tudor v. South Trust Co.*, 246 S.W.2d 33, 34 (Tenn. 1952)
- *Pettigrew v. Pettigrew*, 56 A. 878, 879 (Pa. 1904)
- *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509, 516 (Tenn. 2005)
- *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000)
- *Doe 1 ex rel. Doe 1 v. Roman Catholic Diocese of Nashville*, 154 S.W.3d 22, 38 (Tenn. 2005)
- *Shorts v. Bartholomew*, 278 S.W.3d 268, 280 n.13 (Tenn. 2008)

- Whaley v. County of Tuscola, 58 F.3d 1111, 1116 (6th Cir. 1995)
- Brotherton v. Cleveland, 923 F.2d 477, 482 (6th Cir. 1991)
- Estes v. Woodlawn Memorial Park, Inc., 780 S.W.2d 759 (Tenn. Ct. App. 1989)

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