

IN THE CHANCERY COURT
FOR DAVIDSON COUNTY, TENNESSEE

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MAY 31 2013

Davidson County Chancery Court

JULIE MIX MCPEAK, COMMISSIONER)
of the TENNESSEE DEPARTMENT of)
COMMERCE & INSURANCE,)

Plaintiff,)

vs.)

BOOKWALTER CEMETERY,)
a/k/a the NEW BOOKWALTER CEMETERY,)
and CHARLES LAIRD SMITH,)

Defendants.)

NF
Case No. 10-1426-III

CLERK OF CHANCERY
DAVIDSON CO. CHANCERY CT.
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FILED

FINAL ORDER

On October 6, 2010, the Court entered an Order Appointing Receiver pursuant to Tenn. Code Ann. § 46-1-312 as a result of a petition filed by the plaintiff, Commissioner of Commerce & Insurance.¹ The Court found that the defendant, Bookwalter Cemetery, was impaired because it had never registered with the Department of Commerce & Insurance as required by Tenn. Code Ann. § 46-1-103; had not maintained an improvement care trust fund to provide for maintenance of the Cemetery as required by Tenn. Code Ann. §§ 46-1-203 and -204; and had not maintained adequate books and records indicating the location of burial lots and gravesites as required by Tenn. Code Ann. § 46-1-111. The Court appointed the Commissioner as receiver for Bookwalter Cemetery for the limited purpose of establishing burial rights at the Cemetery. The Court also authorized the Commissioner to appoint one or more special deputies to assist in this

¹ At the time of the petition, the Honorable Leslie Newman served as Commissioner of Commerce & Insurance. Commissioner Newman was succeeded by the Honorable Julie Mix McPeak on January 21, 2011.

matter who shall have the statutory powers of a receiver, and the Commissioner subsequently appointed Receivership Management, Inc. of Brentwood, Tennessee to act as her Special Deputy Receiver.

The Bookwalter Cemetery was platted in or around 1922 from land titled to the R.K. Hutsell family. A corporate charter in the name of the New Bookwalter Cemetery Company was filed with the Office of the Knox County Register of Deeds, consistent with state law at that time. No record of a charter being filed with the Tennessee Secretary of State has been located, and no ownership identity for the Cemetery has existed for many years. A search of the records of the Office of the Knox County Register of Deeds and the Office of the Knox County Tax Assessor revealed that title to the Bookwalter Cemetery is simply in the name of the Cemetery itself. Defendant Charles Laird Smith was identified as a possible heir to the Cemetery, but Mr. Smith has renounced any interest in the Cemetery and claims no ownership rights to it. Mr. John King, and after his death his son Mr. Johnny King, were caretakers of the Cemetery grounds for many years and, upon request, opened and closed graves at the Cemetery in exchange for a fee. Mr. Johnny King, however, claims no ownership interest in the Cemetery. After turning over all the Cemetery's books and records to representatives of the Department of Commerce & Insurance, Mr. King was dismissed from this action pursuant to an Agreed Order entered on October 6, 2010. Given Mr. King's disclaimer of any ownership interest in the Cemetery, Mr. King's dismissal was conditioned on his not selling any burial lots on behalf of Bookwalter Cemetery.

The Receiver, acting through her Special Deputy Receiver, caused a review of the books, records, papers, and property of the Bookwalter Cemetery. The review revealed that no reliable record existed so as to determine the inventory of sold versus unsold grave spaces. Further, there

was no reliable record as to which particular grave spaces were occupied versus unoccupied. The Special Deputy Receiver conducted an on-site inspection of each grave space, aided by the original plat map of the Cemetery, as surveyed by Holt Brothers Engineers in 1922 and recorded in the Office of the Knox County Register of Deeds at Map Book 8, Page 64. The inspection revealed that of the 6,067 grave spaces in the Cemetery, 2,054 grave spaces were vacant and their ownership status was in question. The inspection also revealed that the boundary line sign of the adjacent church cemetery belonging to the Bookwalter United Methodist Church had encroached onto the property of the Bookwalter Cemetery.

In order to clarify ownership of the 2,054 vacant grave spaces, a proof of ownership process, patterned on a similar procedure for proofs of claims, was initiated. Because the Cemetery's records were excessively out-of-date and unreliable, a contact list of persons with potential ownership and burial rights in the vacant grave spaces was created through posting signs at the Cemetery approximately a week before Easter Sunday, 2011; by publishing notices in the Sunday edition of the Knoxville News-Sentinel in July and August 2011; and by announcements and community meetings held at the Bookwalter United Methodist Church located adjacent to the Bookwalter Cemetery. The proof of ownership process consisted of an affidavit, as well as instructions for its completion, to be submitted to the Special Deputy Receiver by September 15, 2011.² Evidence of ownership usually consisted of bills of sale issued by John King or Johnny King or warranty deeds issued by the New Bookwalter Cemetery Company and signed by its president, R.K. Hutsell. Other evidence included proof of

² Many affidavits were received after the deadline; however, it was determined not to refuse an affidavit simply for its late-filed status while the processing of affidavits continued. The processing of affidavits was completed on December 11, 2011.

relationship to a deceased buried near the claimed grave space, certified copies of death certificates, and copies of wills. All proof was submitted as an attachment to a sworn affidavit.

Three categories of disputed claims to vacant grave spaces were encountered during the proof of ownership process: (1) ownership was impaired by unauthorized use of a grave space; (2) duplicative bills of sale or deeds were issued for the same grave space to two or more parties; and (3) the condition of a claimed grave space rendered it unusable or the grave space as labeled did not exist on the Cemetery's plat map. On January 5, 2012, the Court entered an Order Approving the Receiver's Summary Report Regarding the Current Status of the Receivership and Approving Recommended Procedures Regarding Disputed Grave Space Claims. In accordance with that Order, the Special Deputy Receiver resolved the disputed claims by assigning certain claimants alternative grave spaces and by issuing notices to all claimants of the Special Deputy Receiver's preliminary grave space determinations. Any unsatisfied claimant had 30 days after issuance of the notice to request reconsideration of the Special Deputy Receiver's preliminary determination of his or her claim, and the Special Deputy Receiver had 15 days to review and respond to any such reconsideration request. A claimant who disagreed with the Special Deputy Receiver's determination after such reconsideration had a right to appeal to the Court for final consideration and determination of the grave space claim.

In order to secure enough vacant grave spaces to resolve the disputed claims, it became necessary to address the boundary question between the Bookwalter Cemetery and the adjacent church cemetery belonging to the Bookwalter United Methodist Church. Based on measurements made by the Special Deputy Receiver congruent with the original plat map of the Cemetery recorded in the Office of the Knox County Register of Deeds at Map Book 8, Page 64, representatives of the Bookwalter United Methodist Church agreed to move the boundary line

sign between the two cemeteries to align with the accurate boundary as reflected on the plat map, which is marked by a large tree stump, thereby making enough vacant grave spaces in the Cemetery to resolve all disputed grave space claims.³

The Special Deputy Receiver completed the proof of ownership process and filed a status report on February 27, 2013, that included a recommendation for a final grave space listing. Claimants who participated in the proof of ownership process are listed in Exhibit A, attached hereto. A total of 741 grave spaces were claimed through this process without any appeals to the Court. On March 22, 2013, after the proof of ownership process had concluded, Ima Jean Cox filed an objection to the grave space claim of Roy and Juanita Smith. The Court heard the objection on April 17, 2013, and on April 29, 2013, the Court entered its Order Resolving Objection of Ima Jean Cox to the Grave Space Claim of Roy and Juanita Smith. All known disputed grave space claims have been resolved.

After this receivership action was initiated, Mr. Johnny King withdrew as caretaker of the Cemetery. The Court acknowledges and appreciates Mr. King's efforts to provide for the upkeep of the Cemetery grounds for many years. Upon Mr. King's withdrawal, the Special Deputy Receiver requested the Knox County Sherriff's Office to maintain the Cemetery grounds through use of inmate labor. Sheriff J.J. Jones kindly agreed to do so while this action was pending, and the Court expresses its gratitude to Sheriff Jones and his officers for their efforts to maintain the Cemetery grounds during these proceedings.

With respect to future maintenance, the Special Deputy Receiver and representatives of the Department of Commerce & Insurance met with Knox County Mayor Tim Burchett and

³ An on-site inspection by the Special Deputy Receiver on May 1, 2013, confirmed that the sign marking the border between the two cemeteries has been moved to the correct location.

Knox County Sheriff J.J. Jones on February 14, 2013. In that meeting, issues regarding the Cemetery's operation and maintenance were discussed. Mayor Burchett and Sheriff Jones both expressed concerns for the community and the families with relatives buried at the Cemetery. They both indicated the need to maintain the Cemetery grounds due to its unique location as an island in the center of a residential district. To address those concerns, Mayor Burchett and Sheriff Jones made oral commitments to keep the non-church portion of the Bookwalter Cemetery maintained by keeping it mowed and trimmed. The Court recognizes and commends Mayor Burchett and Sheriff Jones for their leadership and assistance in providing for the future upkeep of the Cemetery grounds, which might not otherwise be possible without their efforts.

Now before the Court is the Receiver's submission and recommendation for approval of the Final Listing of Burial Rights and Grave Space Ownership for Bookwalter Cemetery, attached hereto as Exhibit B, and the accompanying Cemetery plat sheets, attached hereto as collective Exhibit C. The Court conducted a status conference on this matter on April 17, 2013. Based on the report of the Special Deputy Receiver and representations of counsel for the Receiver, as well as the record in its entirety, the Court finds and concludes as follows:

A. This receivership action was instituted for the limited purpose of determining burial rights at the Bookwalter Cemetery. The purpose of the receivership has been accomplished. The Receiver and the Special Deputy Receiver have completed their plan to identify owners of grave spaces and burial rights at the Bookwalter Cemetery through a proof of ownership process that afforded all claimants of record a fair opportunity to be heard in this proceeding.

B. The Bookwalter Cemetery has no ownership identity and no resources to provide for maintenance of the Cemetery grounds. The General Assembly has authorized county

legislative bodies to maintain dilapidated or abandoned cemeteries like Bookwalter Cemetery, a cemetery whose lack of an improvement care trust fund, as well as its lack of an owner to oversee it, might cause the cemetery to deteriorate into a dilapidated condition. *See* Tenn. Code Ann. § 46-2-107. The issue of maintenance of the Cemetery has presently been resolved due to the generous commitments of Mayor Burchett and Sheriff Jones to keep the Cemetery grounds mowed and trimmed. The local remedies contemplated by the statute, however, are available should the Cemetery become dilapidated at some future point in time.

C. The duties, responsibilities, and obligations of the Receiver have otherwise been fully performed and the grounds for the receivership no longer exist.

Accordingly, it is HEREBY ORDERED THAT:

1. The Final Listing of Burial Rights and Grave Space Ownership for Bookwalter Cemetery, attached hereto as Exhibit B, and the accompanying Cemetery plat sheets, attached hereto as collective Exhibit C, are adopted and approved;
2. The Receiver shall cause the Final Listing of Burial Rights and Grave Space Ownership and the accompanying Cemetery plat sheets to be recorded in the Office of the Knox County Register of Deeds and filed with funeral homes and establishments operating in the Knoxville area, the Bookwalter United Methodist Church, the Tennessee Board of Funeral Directors and Embalmers, the Tennessee Funeral Directors Association, and the Office of the Commissioner of Commerce & Insurance;
3. The Receiver shall cause statements of final grave space determinations to be issued to all claimants, consistent with the Final Listing of Burial Rights and Grave Space Ownership and accompanying Cemetery plat sheets;

4. The boundary line between Bookwalter Cemetery and the adjacent church cemetery belonging to the Bookwalter United Methodist Church shall be the boundary line recognized and agreed upon by representatives of the Bookwalter United Methodist Church and the Special Deputy Receiver in this receivership proceeding, which boundary line is marked by a large tree stump and is consistent with the boundary line reflected on the original plat map of Bookwalter Cemetery recorded in the Office of the Knox County Register of Deeds at Map Book 8, Page 64;

5. The Bookwalter Cemetery is declared to be fully sold and all future sales of existing unclaimed and unoccupied grave spaces are prohibited, provided however that the current owners of vacant grave spaces are not prohibited from selling or transferring their grave spaces and attendant burial rights to subsequent purchasers or transferees;

6. The Special Deputy Receiver shall return the books and records of the Bookwalter Cemetery to the Department of Commerce & Insurance for safekeeping;

7. The receivership imposed by this Court is terminated;

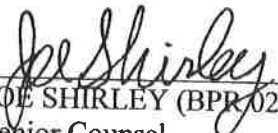
8. This action shall be closed upon the Receiver's filing of a notice of recording the Final Listing of Burial Rights and Grave Space Ownership and accompanying Cemetery plat sheets as provided in paragraph 2, above, and issuance of statements of final grave space determinations as provided in paragraph 3, above; and

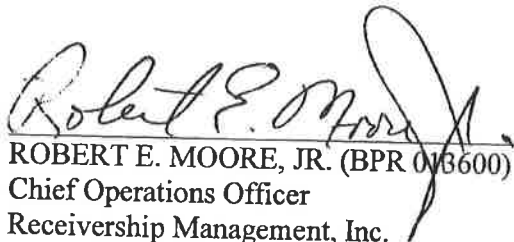
9. Upon the filing of the notice ordered in paragraph 8, above, the Receiver and Special Deputy Receiver shall be deemed discharged without further action or order of the Court.




ELLEN HOBBS LYLE, CHANCELLOR

Submitted for Entry:


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Certificate of Service

I certify that a true and correct copy of the foregoing proposed Final Order was served by first-class U.S. Mail, postage prepaid, upon:

Bookwalter Cemetery
c/o Johnny King
5129 Rockcrest Road
Knoxville, TN 37918

Bookwalter United Methodist Church
c/o Dr. David A. Lord, Pastor
4218 Central Avenue Pike
Knoxville, TN 37912

Charles Laird Smith
4223 Dunbar Road
Crossville, TN 38572

This 31st day of May, 2013.


Joe Shirley