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Stouffer v. Daywalt

JEFFERY A. STOUFFER, Plaintiff, v. EMMA G. DAYWALT, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action — Law, No. 2010–39

Dead bodies; Burial; In general. Dead bodies; Burial; Removal from Place of Former Burial; Factors

1. With regard to reinterment in a different place, the same rules should apply but with a presumption against removal growing stronger with the remoteness of connection with the decedent, and reserving always the right of the court to require reasonable cause to be shown for it.
2. Whether reasonable cause for reinterment has been shown will depend upon the respective weight, or persuasiveness, of these factors as they are all considered together
3. Under Novelli, the Court must consider seven (7) factors: 1) The degree of relationship that the party seeking reinterment bears to the decedent; 2) The degree of relationship that the party seeking to prevent reinterment bears to the decedent; 3) The desire of the decedent; 4) The conduct of the person seeking reinterment, especially as it may relate to the circumstances of the original interment; 5) The conduct of the person seeking to prevent reinterment; 6) The length of time that has elapsed since the original interment; 7) The strength of the reasons offered both in favor of and in opposition to reinterment.
4. In determining who may choose the location or disposition of a decedent's remains if there is no surviving husband or wife, the right is in the next of kin in the order of their relation to the decedent, as children of proper age, parents, brothers and sisters, or more distant kin, modified it may be, by circumstances of special intimacy or association with the decedent.
5. The Defendant, as the decedent's mother, is next of kin pursuant to 20 Pa. C.S.A. §305 when there is no surviving spouse.
6. There is a general presumption that decedent would not wish his remains to be disturbed. This presumption grows stronger with the remoteness of petitioner's connection to decedent.
7. A party's failure to contest the location at the time of the burial does not constitute a waiver, especially in view of the fact that she was upset when the arrangements were made.
8. The Defendant relied on the Plaintiff, and the Plaintiff protected the Defendant during this time because of her frail mental state caused by the untimely death of her youngest son. When the decedent died, the Defendant testified that she was "thrown for a loop" and a self-described "basket case" requiring psychiatric medication. At the funeral, she collapsed at the casket. The Defendant's failure to contest the burial location does not constitute a waiver based on these facts.
9. Generally speaking, the sooner the request for reinterment is made after the original burial, the better the chance of obtaining reinterment. The passage of twenty (20) years did not constitute a waiver by the Defendant.
10. The Defendant presented three (3) compelling reasons to justify denying the Plaintiff's Emergency Motion to Restrain Disinterment. First, she wants to be buried with her son and wants to know who is going to be buried next to her. Second, she wants to be able visit and put flowers on his grave. Third, she wishes to be free of the alleged harassment from Stouffer, and "wants to be able to visit the grave and not be called 'the b-word.'"

Appearances:

Neil W. Yahn, Esq., *Attorney for Plaintiff*

STimothy W. Misner, Esq., *Attorney for Defendant*

OPINION

Krom, J., November 9, 2010

Before the Court is the Plaintiff's Emergency Motion to Restrain Disinterment in which the Plaintiff seeks to prevent the disinterment of his younger brother's remains by his Mother, the Defendant. The Court convened an evidentiary hearing on the Motion on August 27, 2010 and again on October 4, 2010^[1] in which both parties were present and represented by counsel. Upon consideration of all evidence of record, as well as the written arguments of counsel and the law, the Court enters the following findings of fact and conclusions law.

Findings of Fact

1. The Plaintiff, Jeffery A. Stouffer, (hereinafter "Stouffer") is an adult individual with a mailing address of P.O. Box 222, South Mountain, Franklin County, Pa 17261.
2. The Defendant, Emma G. Daywalt, (hereinafter "Daywalt") is an adult individual with a mailing address of P.O. Box 182, South Mountain, Franklin County, Pa 17261.
3. The Decedent, Daniel H. Stouffer, (hereinafter "the decedent") committed suicide by hanging on February 22, 1990. The decedent was only twenty (20) years old at the time of his death.
4. Stouffer was the decedent's older brother. Daywalt was the decedent's natural mother.
5. At the time of the decedent's death, he did not express any desire as to where he wanted to be buried.
6. Following the decedent's death, Daywalt was a self-described "basket case."
7. Stouffer and Daywalt agreed to bury the decedent in Lot 278 in Strang's Cemetery located on Baltimore Road, South Mountain, Franklin County, Pa 17261. While the decedent's natural father, Stanley Stouffer, was present when the arrangements were made, he did not actively participate in discussions regarding his son's burial. Stanley Stouffer is now deceased.
8. The deed to Lot 278 is in the Stouffer's name. See Petitioner's Ex. 1. The deeds to Lots 291 and 292, which are adjacent to Lot 278, are also in Stouffer's name. See Petitioner's Exs. 4A and 4B.^[2] The deeds to Lot 278 and 292 are dated April 19, 1990. The deed to lot 291 is dated November 3, 1990.
9. The proceeds from the decedent's life insurance policy paid for, at least, Lot 278 at Strang's Cemetery. ^[3] It is not necessary to resolve who paid for lots 291 and 292, as the deeds are clearly in Stouffer's name.
10. Following the decedent's death, Daywalt visited Lot 278 nearly every day to place flowers and other monuments at the grave site. Likewise, Stouffer visited the grave nearly daily.
11. In 1999 Daywalt purchased a Ford Escort. Daywalt titled the vehicle in both her name and Stouffer's to prevent her then-husband from taking the vehicle in the divorce she was going through at the time.
12. Between 2000 and 2002 the relationship between the parties became strained when Stouffer received letters from the bank that payments on the vehicle were not being made and Daywalt was driving the vehicle without insurance. Stouffer, upon receiving this information, went to Daywalt's workplace and "repossessed" the vehicle.
13. On May 6, 2002, Stouffer sent Daywalt a certified letter stating, "To Emma G. Daywalt this letter is advising you to stay clear of lots 278/291/292 at Strang's Cemetery located on the New Baltimore road South Mountain Pa. 17261. If you are found to be trespassing on these lots 278/291/292 or putting arrangements on, you well [sic] be prosecuted to the fullest extent of the law." Def.'s Ex. 1. The letter was "signed by owner," Jeffrey A. Stouffer. Stouffer testified that he sent the letter "because that man's body don't [sic] need dug up over a signature," referencing the dispute over the Ford Escort.
14. Stouffer was advised by Mark "Lynn" Carbaugh (hereinafter "Carbaugh"), President of Strang's Cemetery, that the

cemetery is a public place and Stouffer could not prevent his mother from visiting the grave. Also, despite the letter, Daywalt visited her son's grave at nighttime.

15. Beginning in approximately 2001, Daywalt began having discussions with Carbaugh and James Bowersox (hereinafter "Bowersox")^[4] about moving the decedent's body. Daywalt did not move forward with disinterment until 2009 because of financial constraints.

16. On December 30, 2009 Daywalt gave Bowersox written permission to disinter the decedent. See Petitioner's Ex. 3.

17. On December 31, 2009, Bowersox requested and was granted a Disinterment/Reinterment Permit, as required by 28 Pa. Code §1.25(a). See Petitioner's Ex. 2. Bowersox did not give Daywalt an exact date of the disinterment because of the heavy toll the decedent's death had already taken on Daywalt. Stouffer was not notified of the disinterment.

18. As Bowersox and Carbaugh began to disinter the decedent, Stouffer's wife and daughter witnessed the disinterment and called Stouffer, who was working at the time. Stouffer immediately left work and went to the cemetery. Upon arriving at the cemetery Stouffer went to the burial plot "raging, roaring, and hollering" at Bowersox and Carbaugh. Stouffer then called the Pennsylvania State Police.

19. The Pennsylvania State Police stopped the disinterment because of a perceived need for judicial approval^[5] for disinterment.

Conclusions of Law

The leading case on the subject of the disinterment/reinterment of human remains appears to be Pettigrew v. Pettigrew, 56 A. 878 (Pa. 1904) a case in which the Pennsylvania Supreme Court opined, after embarking on an examination of prior case law, "The result of a full examination of the subject is that there is no universal rule applicable alike to all cases, but each must be considered in equity on its own merits, having due regard to the interests of the public, the wishes of the decedent, and the rights and feelings of those entitled to be heard by reason of relationship or association." Pettigrew, 56 A. at 880. The court noted, "With regard to reinterment in a different place, the same rules should apply but with a presumption against removal growing stronger with the remoteness of connection with the decedent, and reserving always the right of the court to require reasonable cause to be shown for it." Id.

Since Pettigrew, the Pennsylvania Superior Court in Novelli v. Carroll, 420 A.2d 469 (Pa.Super. 1980), has interpreted the Supreme Court's directives, creating a frame work for how cases of this nature should be analyzed. "[W]hether reasonable cause for reinterment has been shown will depend upon the respective weight, or persuasiveness, of these factors as they are all considered together...." Novelli, 420 A.2d at 472. Specifically, the Novelli Court identified seven (7) factors which a court must consider in determining if reasonable cause as required by Pettigrew exists for reinterment. "This consideration will identify the distinctive features of the particular case before the court, and will enable it to decide the case in equity on its own merits." Id. (internal quotations omitted). The factors as identified by Novelli are: 1) The degree of relationship that the party seeking reinterment bears to the decedent; 2) The degree of relationship that the party seeking to prevent reinterment bears to the decedent; 3) The desire of the decedent; 4) The conduct of the person seeking reinterment, especially as it may relate to the circumstances of the original interment; 5) The conduct of the person seeking to prevent reinterment; 6) The length of time that has elapsed since the original interment; 7) The strength of the reasons offered both in favor of and in opposition to reinterment. Novelli, 420 A.2d at 472-474. This Court shall now consider each factor in turn.

The degree of relationship that the party seeking reinterment bears to the decedent

In determining who may choose the location or disposition of a decedent's remains, the court in Pettigrew held, "if there is no surviving husband or wife, the right is in the next of kin in the order of their relation to the decedent, as children of proper age, parents, brothers and sisters, or more distant kin, modified it may be, by circumstances of special intimacy or association with the decedent." Pettigrew, 56 A. at 880; See also Kulp v. Kulp, 920 A.2d 867, 873 (Pa. Super. 2007) ("the rights and feelings of the next of kin are paramount, where there is no surviving spouse, in determining the disposition of a decedent's remains."). Further, "[t]here is a general presumption that decedent would not wish his remains to be disturbed. This presumption grows stronger with the remoteness of petitioner's connection to decedent." DiObilda v. St. Cecilia's Cemetery, 45 Pa. D. & C.3d 430, 432 (Pa.Com.Pl. 1987).

In the present case, neither party disputes that Daywalt, as the decedent's mother, is next of kin pursuant to 20 Pa. C.S.A. §305. See Pl.'s Post-Hearing Br. in Supp. of the Mot. to Restrain Disinterment, 5; Br. on Behalf of Emma G. Daywalt. Further, there is no evidence that the relationship between mother and son was strained in anyway. Accordingly,

this factor strongly favors Daywalt.

The degree of relationship that the party seeking to prevent reinterment bears to the decedent

In Novelli the court noted, a “contest between a surviving spouse and a child differs from a contest between that same spouse and someone less closely related, or a stranger.” Novelli, 420 A.2d at 473. In the present case, Stouffer and the decedent were brothers; Stouffer was nearly seven (7) years older than the decedent. Although Daywalt testified that Stouffer pushed the decedent around a bit, and that the relationship between the brothers was not close because of the age difference, Daywalt admitted that Stouffer “in his own way cared about [the decedent].” Clearly, the evidence shows that the relationship between Stouffer and the decedent was sufficiently close to warrant this Court’s careful consideration of the Stouffer’s claims.

The desire of the decedent

With the exception of the general presumption that a decedent would not want his remains to be disturbed, consideration of this factor offers little to the Court. Sadly, the decedent committed suicide at the young age of twenty (20). There is no evidence to suggest that the decedent ever expressed any desires about his burial.

The conduct of the person seeking reinterment, especially as it may relate to the circumstances of the original interment

In describing this factor, Novelli, *supra.*, suggests there may be circumstances under which the party seeking reinterment has waived the right to seek said relief. Various cases have interpreted the idea of waiver. In Zale v. Koons, 38 Pa. D. & C.2d 583, 586-87 (Pa.Com.Pl. 1965), the Luzerne County Court held that the approval and acquiescence by the widow of her husband’s interment for over five years constituted not only her approval and consent of her husband’s interment, but also a waiver of her right to any reinterment. Id. However, in DiObilda, 45 Pa. D. & C. 3d. at 434 the Chester County Court held, “Petitioner’s failure to contest the location at the time of the burial does not constitute a waiver, especially in view of the fact that she was upset when the arrangements were made.” Id.

Suffice it to say that the facts of the particular case must be considered in resolving whether the party seeking reinterment has, by their action or inaction, waived the right to do so. “[I]f the consent to the original site was based upon the understanding that the site would be maintained so that the surviving spouse could also be buried there, and later events make it impractical to carry out that understanding, the consent to the original site may be vitiated.” Novelli, 420 A.2d at 473.

In the present case, the evidence shows that Daywalt and Stouffer actively participated in the selection of a burial plot for the decedent. At the time, Daywalt relied heavily on Stouffer. Likewise, Stouffer was protective of the Daywalt because of her frail mental state caused by the untimely death of her youngest son. When the decedent died, Daywalt testified that she was “thrown for a loop” and a self-described “basket case” requiring psychiatric medication. At the funeral, she collapsed at the casket.

At the time the lots were purchased, no one pressured Daywalt into purchasing the lots; rather, she consented to the purchase, testifying that the lots were purchased with the intent that they become a family plot. Daywalt directed that the deeds be put in Stouffer’s name because Daywalt believed that Stouffer, as her surviving son, would be the person responsible for her burial. At the time the lots were purchased she believed that she would be buried in the family plot next to her son, Daniel.

Daywalt testified that it was natural for them to pick Strang’s Cemetery because of its location in South Mountain. South Mountain was their home and they had other family members buried in the cemetery. Daywalt’s testimony as to the purchase of the cemetery lots is bolstered by the fact that the decedent’s life insurance proceeds were used to purchase the burial lot. Daywalt had control over the decedent’s life insurance proceeds.

The relationship between the parties was strong from at least the time of burial until 2000 when the relationship began to deteriorate. By 2002, the relationship between mother and son was in a shambles. It was around that time when Daywalt began having discussions with Bowersox about the possibility of disinterring the decedent and moving his remains.^[6]

However, due to financial constraints,^[7] the Defendant was unable to disinter the decedent until 2009 when she received insurance proceeds from the death of her mother.

Further, as time went on it became more and more clear that the parties original understanding that the plots purchased at the time of the decedent’s death would be a family plot and that Daywalt would be buried next to her son, began to be questioned. Because the parties’ relationship has steadily continued to worsen over the years, albeit in part because of

the issues presented by this very case, this Court cannot find that the passage of twenty (20) years is fatal to Daywalt's cause or that Daywalt has waived her right to seek reinterment of the decedent's remains.

The conduct of the person seeking to prevent reinterment

In the present case, there was significant testimony from both sides as to Stouffer's alleged interference with Daywalt's ability to visit the decedent's gravesite peacefully.^[8] Said allegations were not proven sufficiently by either side to warrant this Court's consideration thereof.

However, there was credible, uncontested evidence of Stouffer's interference with Daywalt's ability to visit her son's grave in peace: 1) the May 6, 2002 letter in which Stouffer demanded Daywalt stay off of the cemetery lots (See Def.'s Ex. 1); and 2) the testimony of Carbaugh. Each will be discussed.

The May 6, 2002 letter is strong evidence that Stouffer attempted to restrict Daywalt's access to her son's gravesite. Stouffer has attempted to downplay this letter by averring that Daywalt was still able to access the burial plot. However, the letter is indicative of Stouffer's attempts to prevent the Defendant from visiting her son's final resting place peacefully, without constant fear of harassment from Stouffer or his family. Stouffer sent the letter via regular and certified mail to Daywalt, previous counsel and Strang's Cemetery Association. The letter simply cannot be ignored and is viewed by this Court as evidence of the great lengths to which Stouffer has gone and will go in order to keep his own mother from visiting his younger brother's grave.^[9] Perhaps of most concern to the Court is not the fact that the letter was sent, but the fact that this Court does not find that Stouffer had sufficient legal basis to prohibit his mother from being on the gravesite.^[10] Therefore, the letter amounted to little more than a tool to harass and inflict further pain on a still-grieving mother.

Carbaugh credibly testified that he cannot do anything at the cemetery without the Stouffers yelling or complaining. He further suggested that the Stouffers have checked on them [cemetery workers/caretakers] every day since 2002. Carbaugh also testified, "Jeff doesn't listen to anyone." Finally, Carbaugh acknowledged the May 2002 letter discussed above. He testified that he had received a copy of the letter and that he was asked by Stouffer to keep Daywalt off of Stouffer's lots. Carbaugh refused, asserting that he does not believe that he or anyone else can keep Daywalt off of Stouffer's lots.

The length of time that has elapsed since the original interment

Generally speaking, the sooner the request for reinterment is made after the original burial, the better the chance of obtaining reinterment. See Novelli, at 474. In Moore v. Sheaffer, 127 A. 784 (Pa. 1925) the court allowed a spouse to move a decedent where the decedent had been buried for twenty-eight (28) years. Contrast, Zale, 38 Pa. D. & C.2d at 587, in which the court concluded, "[t]he approval and acquiescence by the widow of her husband's interment for over five years constituted a waiver of her right to any reinterment." Zale differs from the case at bar in that the party seeking disinterment was not next of kin^[11] and the decedent had expressed his wishes prior to burial. Id.

In the present case, the decedent has been buried for over twenty (20) years and although this fact would normally weigh heavily in favor of prohibiting reinterment, the Court finds the existence of mitigating circumstances (as fully discussed above) which operate to excuse the lengthy delay by Daywalt in seeking reinterment.

The strength of the reasons offered both in favor of and in opposition to reinterment

In the present case, Daywalt presents three (3) reasons for wanting to move the decedent. First, she wants to be buried with her son and wants to know who is going to be buried next to her. Second, she wants to be able visit and put flowers on his grave. Third, she wishes to be free of the alleged harassment from Stouffer, and "wants to be able to visit the grave and not be called 'the b-word.'"

The Court finds Daywalt's reasons compelling. Many people take comfort in knowing that their final arrangements have been made and their final wishes will be carried out. Further, it is not inappropriate for a still-grieving mother to want to maintain her bond with her now-deceased son through the simple acts of visiting his grave and placing flowers on it. Wanting to pay her respects to her beloved son in peace is not an unreasonable desire.

Stouffer argues less drastic measures can accomplish Daywalt's wishes. Stouffer avers, "Plaintiff has already agreed that he will not interfere with Plaintiff's [sic] visitation of Daniel at his current resting place and will confine himself only to polite language." Pl.'s Post-Hr'g Br. in Supp. of the Mot. to Restrain Disinterment, 10. The Court is not unsympathetic to Stouffer's strong desire to allow his younger brother's remains to stay right where they are. Clearly, Stouffer, too, has an

interest in finality. However, the parties have been unable to amicably resolve the issue in over eight (8) years. Further, based on the heated nature of the hearing, Daywalt's articulated reasons appear to be well-founded in fact.¹ Stouffer's letter to his own mother is indicative of the type of harassment that Daywalt has endured. Further, the testimony from Carbaugh shows the type of relentless emotional and mental harassment Daywalt has been forced to endure at the hands of her son.

Accordingly, the Court is convinced that absent formal intervention, the parties will continue as they have been for the past eight (8) years, or conceivably, worsen. In order to achieve equity and fairness, as well as to attempt to mitigate further pain and suffering by the parties, the Court will permit Daywalt to reinter her son's remains on a burial lot purchased in Strang's Cemetery. For these reasons the Court is constrained to deny the Plaintiff's Motion.

November 9, 2010, upon consideration of the Plaintiff's Emergency Motion to Restrain Disinterment, the Defendant's Response thereto, the evidence of record, the written arguments of counsel, and the law, it is hereby ordered that the Plaintiff's Emergency Motion to Restrain Disinterment is denied for the reasons set forth in the preceding Opinion. It is further ordered that the Defendant, Emma G. Daywalt is hereby granted leave to disinter and reinter the remains of the Decedent, Daniel H. Stouffer in the cemetery plot that she owns in Strang's Cemetery, South Mountain, Franklin County, Pennsylvania, provided the requirements of 28 Pa. Code §1.25(a) have been met.

[1] As the Court's August 27, 2010 Order indicates, the matter was continued to October 4, 2010 because the time allotted on August 27, 2010 was insufficient to hear all of the testimony that day.

[2] The relevant language in each deed is the same, "...Strang's Cemetery Trustees, does grant unto the said Jeff Stouffer and his or her heirs forever for the purpose of burial alone of such persons as he, she or they may choose to admit, provided that such admission be free of charge, and upon conditions that no transfer of burial lot or lost or right in interment shall be made without the consent of the said trustees or successors as per their agreement with said Strang's Heirs, and upon the further conditions that the said lot or lots shall at all times hereafter be held subject to the rules and regulations and by laws now in force or hereafter made by the said trustees or their successors." See Petitioner's Exs. 1, 4a, and 4b.

[3] The decedent worked at Martin's Pastries and Daywalt received about \$16,000 from the decedent's life insurance policy.

[4] Bowersox is the funeral director at Grove-Bowersox Funeral Home, which is the funeral home that arranged for the decedent's burial in 1990.

[5] 28 Pa. Code §1.25(a) establishes that a dead human body may not be disinterred absent a permit from a local registrar. In the present case, the Defendant obtained a valid Disinterment/Reinterment Permit from the local registrar. See Petitioner's Ex. 2.

[6] As the Defendant correctly points out, "there was no reason for Emma to pursue disinterment while her relationship with Jeffery was good." Br. on Behalf of Emma G. Daywalt, at 10.

[7] The Defendant has had credit problems since her divorce in 1998.

[8] Much of the testimony related to allegations by Daywalt that Stouffer disturbed her while visiting the gravesite. For example, Daywalt testified that Stouffer called her "a bitch" "no good" and "any kind of name you could think of." Daywalt testified that Stouffer told her that he was "going to throw her [Daywalt's] ashes in the backyard." Further, there was extensive testimony about Stouffer's alleged removal of memorials, especially flowers placed on the grave by Daywalt. However, Daywalt testified that she never witnessed Stouffer or his family removing memorials. Lynn Carbaugh testified that some memorials blow over into the woods and, after a few weeks, employees of the cemetery have to clean up the memorials.

[9] Again, the Court reiterates the fact that this evidence is the only uncontradicted evidence. The Court believes that both sides have inflated their stories, either purposefully, or more likely, because of the overwhelming emotion involved in this case. The Court further believes it is quite possible that the Plaintiff has committed more egregious acts. However, the Defendant has not proven these allegations to a sufficient degree of certainty for the Court to reach that conclusion as a matter of law.

[10] “According to the rule prevailing in nearly all jurisdictions, one who purchases and has conveyed to him or her a lot in a public cemetery does not acquire the fee to the soil but only has a right of burial therein which has been variously designated as an easement or as a license or privilege.” 14 Am.Jur. 2d Cemeteries §28.

[11] The daughter of the decedent was seeking to have the body disinterred when the decedent’s widow participated in burial decisions.