

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>J. A. K.,</b>	<b>: NO. 41-19-0717</b>
<b>Petitioner</b>	<b>:</b>
	<b>:</b>
<b>vs</b>	<b>:</b>
	<b>:</b>
<b>S. H.,</b>	<b>: IN RE: M. E. K.,</b>
<b>Respondent</b>	<b>: Deceased</b>

**OPINION AND ORDER**

**AND NOW**, this 3<sup>rd</sup> day of February, 2020, after a hearing and argument held on January 22, 2020 on the Petitioner’s Petition to Dispose of Remains of M. E. K., the Court issues the following Opinion and Order.

On December 27, 2019, the Petitioner, J.A. K., filed a Petition to Dispose of Decedent’s (M. E. K.) Remains pursuant to 20 PA.CSA §305 and named S. H. as the Respondent. The Decedent was the mother of the Petitioner, Respondent and a deceased son. The parties stipulated that the Decedent’s Will is silent on the disposal of her remains. At the time scheduled for the initial hearing on the Petition, the parties stipulated to having the Decedent’s remains cremated and held in storage by the Knight-Confer Funeral Home. The Court issued an Order directing the Knight-Confer Funeral Home to proceed with the cremation of the Decedent’s remains and to maintain possession of them until further Court Order.

In the Petition, the Petitioner alleged that the Decedent made an explicit expression of her desire to have her remains cremated and spread with her deceased husband’s ashes. At the hearing, the Petitioner further testified that the Decedent’s desire was for her and her late husband’s (H. K.) ashes to be spread together at the campground the family frequently visited on the Indian River in the State of Delaware.<sup>1</sup> Petitioner submitted testimony that the

---

<sup>1</sup> The Petitioner also offered testimony concerning the desire to have the remains of her deceased brother spread with the ashes of the Decedent and the Decedent’s late husband. It was unclear to the Court, whether the desire to have the deceased brother’s remains speared with those of his parents were the desire of the deceased brother, his next of kin and/or those of the Petitioner. The Court finds it unnecessary to resolve this ambiguity as the desire related to the remains of the deceased brother are not determinative in this matter as it has not been asserted that the disposal of his remains with the Decedent’s remains was the Decedent’s expressed desire.

Decedent maintained H.K.'s ashes in her apartment for the last several years for the purpose of being spread together. St. H., son of the Respondent and grandson of the Decedent, testified that he recalled an occasion in which H. K. and the Decedent made statements regarding the disposal of their remains. It was alleged that H. K., in response to funeral services on television, made a remark to not wanting a big show for his funeral services and just wanting his ashes spread at Indian River. St. H. testified that the Decedent rolled her eyes and stated "I am with you" in response to her husband's comments. This conversation took place sometime between the years of 2001 and 2007.

The Respondent countered the Petitioner's allegations with claims that the Decedent, in the days leading up to her death, discussed the disposition of her remains with the Respondent. The Respondent claims that she and the Decedent discussed the existence of a burial plot owned by the Decedent in a Williamsport cemetery. The Respondent claims that the Decedent stated that there may be a spot open within the plot and that Respondent could have it for her own burial along with the ashes of the Decedent, H. K. and the Respondent's deceased brother. In support of these claims, the Respondent presented Exhibit R2. Exhibit R2 contained a list of items and has the words "moms Items for S. H." at the top of it. R2 was signed by the Decedent on December 11, 2019. Included within the 33 lines of items was "Mom's & Dad's Boxes with Ashes/URNS and Dad's pictures". The Respondent claims that this list reflects the Decedent's desire to give the Respondent her and H.K.'s ashes for burial, in line with her conversation with the Decedent about the burial plot. The Respondent acknowledged that she wrote the list and read it to the Decedent because the Decedent's eyesight prevented her from being able to read it on her own. Only the Respondent and the Decedent were present when the list was read to the Decedent.

Pursuant to 20 Pa.CSA § 305, if there is no surviving spouse, the next of kin shall have the sole authority, except for the situations addressed below, in all matters for the disposition of the remains of a decedent. See subsection (c). In this case, the next of kin are the Petitioner and Respondent. Pursuant to subsection (d)(2) of the statute, if two persons with equal standing as next of kin disagree on the disposition of the remains, preference is to be given to the one with the closest relationship with the decedent. Thus, the first evaluation that the Court must conduct is that of the relationships the Petitioner and Respondent each had with the Decedent.

The Court is not convinced that the Decedent had a closer relationship with one party in comparison to the other party. To the contrary, the testimony reflects a mother that loved two daughters, who themselves, at least in recent times, have gone different directions in life. The fact the two sisters do not see eye to eye did not require the Decedent to choose one over the other. The list presented by the Respondent indicates a fondness and relationship between the Decedent and Respondent. Similarly, the uncontested testimony that the Petitioner and Decedent spent every Tuesday and Thursday together for the last 8 years reflects a close relationship. The Court holds that neither the Petitioner nor Respondent has proved a closer relationship to the Decedent than the other party.

In situations where two persons with equal standing as next of kin cannot reach an agreement on the disposal of the decedent's remains, the Court is required to make a final determination on the disposition of the remains. Prior to the Court making a final determination, the Court must address the exceptions to the procedure just set forth by the Court. As alluded to above, the statute contains an exception to the next of kin controlling the disposition of remains if there is an "enduring estrangement, incompetence, contrary intent or waiver and agreement which is proven by clear and convincing evidence". 20 PA.CSA §305 (d). Neither party alleged an enduring estrangement, incompetence, or waiver and agreement. However, the Petitioner alleged the Decedent had expressed an intent for disposal that is contrary to the one expressed by the Respondent. The Petitioner claims the Decedent's expressed intent was to have her ashes spread with her late husband at Indian River and this would be contrary to the Respondent's desire to either have the Decedent's ashes entirely buried in the cemetery plot in Williamsport or split between the cemetery plot and Indian River. The Respondent testified to a contradicting intent of the Decedent. As stated above, the Respondent claims she spoke to the Decedent in the days just prior to her death and that the Decedent expressed a desire to have her ashes spread with her late husband and deceased son in a burial plot in Williamsport. The Court holds there is no clear and convincing evidence to support the Decedent's intent was to have her ashes spread at Indian River versus being buried in a cemetery plot in Williamsport.

While there is no clear testimony regarding whether the Decedent preferred her ashes be spread with her late husband in Indian River versus being buried with her late husband in a cemetery plot in Williamsport, Pennsylvania, it is clear that Decedent desired to have her

remains spread with those of her late husband. Although this Court does not have direct authority over the final disposition of the ashes of the late H. K., the Court hereby Orders the ashes of the Decedent be disposed of with the ashes of her late husband. Until H. K.'s ashes are disposed of (either by spreading and/or burial or otherwise), the ashes of the Decedent shall be maintained by the Estate of the Decedent.<sup>2</sup> The Decedent's Estate shall take steps to ensure the Decedent's ashes are disposed of with the ashes of H. K. The Knight-Confer Funeral Home shall turn over the Decedent's ashes to the Executor of the Decedent's Estate.

BY THE COURT,

---

Ryan M. Tira, Judge

Cc: Robert A. Hoffa, Esquire  
Brian L. Kerstetter, Esquire – 3948 Westbranch Hwy, Lewisburg, PA 17837  
Knight-Confer Funeral Home – 1914 Memorial Ave, Williamsport, PA 17701  
Gary L. Weber, Esquire, Lycoming Reporter

---

<sup>2</sup> The parties should keep in mind, while determining the disposal of the late H. K.'s ashes, along with the ashes of the Decedent, the apparent intent of the Decedent was to please both her daughters with the manner in which to handle her Estate. The Decedent may have left this important piece open for the purpose of discussion and consensus among her daughters.