

NOT TO BE PUBLISHED WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

JACQUELINE CRANE

Plaintiff,

v.

MICHAEL CRANE,

Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
BERGEN COUNTY

DOCKET NO. BER-C-174-20

FILED

MAY 28 2021

James J. DeLuca, J.S.C.

DECISION AFTER TRIAL

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Introduction

The court conducted a bench trial in this action and heard testimony from nine (9) witnesses, namely, Jacqueline Crane (“Jacqueline”), Ronald Marchand, Michael Crane (“Michael”), Bernard Hernando, Sharon Troth, Ashley Bland, Samson Freundlich, Anthony Talarico, Esq., and Rabbi Elchonon Zohn. In accordance with

R. 1:7-4 of the Rules Governing the Courts of the State of New Jersey, this decision constitutes the court's findings of fact and conclusions of law.

Background

Joyce Crane ("Joyce") died on October 9, 2020. Joyce was the mother of Jacqueline and Michael. Prior to her death, Joyce resided at 2 Horizon Road, Apartment G20, Fort Lee, New Jersey (the "Fort Lee Property"). On or about September 23, 2020, Jacqueline initiated this action by filing a Verified Complaint and Order to Show Cause. The action sought, among other things, to enjoin Michael from removing Joyce or her remains from New York Presbyterian-Weill Cornell Medical Center ("NYP), where she was a patient. On or about September 28, 2020, the court scheduled a hearing for September 30, 2020 in connection with Jacqueline's request for the issuance of a TRO. On September 29, 2020, David M. Repetto, Esq. ("Mr. Repetto") was appointed Guardian *ad Litem* for Joyce. On September 30, 2020, oral argument was held in connection with Jacqueline's request for the issuance of a TRO. After hearing argument, the court, among other things, enjoined Michael from removing Joyce or her remains from NYP without the express permission of Jacqueline and Mr. Repetto.

On or about September 29, 2020, prior to the hearing on the issuance of the TRO by this court, Michael filed an application with the Supreme Court of New York, New York County, in the matter encaptioned Michael Crane v. New York Presbyterian Weill Cornell Medical Center and Jacqueline Crane, Index No.

158024/2020 (the “New York Action”), seeking to allow Michael to control Joyce and the disposition of Joyce’s remains and upon her death bury Joyce in Israel.

Joyce died at NYP on October 9, 2020. On October 9, 2020, the New York court declined to exercise jurisdiction over the matter and deferred to this court with respect to disposition of Joyce’s remains. The New York Action was voluntarily dismissed after Joyce’s death.

Michael filed an answer with counterclaims in the instant action. On October 19, 2020, this court entered an order directing, among other things, that Joyce be interred at Mt. Carmel Cemetery in Queens, New York (“Mt. Carmel”), pending an adjudication by this court as to Joyce’s wishes as to her final burial location.

Trial Testimony of Jacqueline

According to Jacqueline, Joyce was born on January 19, 1947, in New York City to her parents, Morris and Mollie Crane. Joyce had two siblings, Rhoda and Daniel, who both predeceased her. Jacqueline is a domiciliary of New Jersey, while Michael is a domiciliary of Israel. Joyce was the grandmother to Jacqueline’s two children, Joseph and Jonathan, and Michael’s two sons, Daniel, who resides in Israel, and Samuel, who resides with Michael’s ex-wife in England.

Jacqueline testified that she and Joyce maintained a close mother-daughter relationship and worked together at A-1 Healthcare Services in Hackensack, New Jersey. Additionally, Jacqueline testified that her children, Joseph and Jonathan, saw Joyce nearly every day before they began studying at university and that Joyce would regularly attend their after-school activities and sporting events.

Jacqueline testified that Joyce was first diagnosed with non-Hodgkin's lymphoma in 2003. After several years of remission, Joyce was again diagnosed with lymphoma in December 2019. On February 2, 2020, Joyce and Rhoda returned from Mexico after a month of non-conventional treatments for lymphoma. Upon her return from Mexico, Joyce went to live with Rhoda at Rhoda's residence in Englewood, NJ.

In February 2020, Jacqueline requested that Michael come to the United States because of Joyce's illness. Michael traveled from Israel to the United States a couple of days later. Jacqueline testified that Joyce was admitted to NYP in mid-February before Michael arrived in the United States. Upon Joyce's admittance to NYP, Jacqueline completed paperwork which named Jacqueline as Joyce's primary healthcare proxy, with Michael named as secondary proxy. Jacqueline testified that while Joyce was at NYP in February 2020, Jacqueline and Michael had no discussions regarding Joyce's burial wishes.

Joyce remained at NYP until her discharge on March 28, 2020. Joyce was readmitted to NYP on April 14, 2020, at which time she was diagnosed with COVID-19. Joyce remained at NYP until her discharge on May 17, 2020 to Kessler Institute for Rehabilitation ("Kessler") in Saddle Brook, New Jersey. Joyce remained at Kessler until the first week of June 2020.

Upon her discharge from Kessler, Joyce returned to the Fort Lee Property with the assistance of home health aides. Jacqueline provided care for Joyce by assisting her with cooking, cleaning and doing her laundry. According to Jacqueline, Michael began to exclude Jacqueline and her sons from visiting Joyce at the Fort Lee Property.

According to Jacqueline, she and her children visited with Joyce on a daily basis prior to Michael's exclusionary activities.

Joyce was again admitted to NYP on June 30, 2020 and discharged on July 6, 2020. Joyce was then hospitalized at NYP on August 19, 2020 and had died and was resuscitated on August 23, 2020. On September 4, 2020, Jacqueline testified that she visited Joyce at NYP and observed her on a ventilator in a vegetative state.

Jacqueline testified that sometime in the 1970s Joyce's father, Morris, purchased a burial plot at Mt. Carmel consisting of eight (8) to ten (10) burial places for members of the Crane family. According to Jacqueline, Joyce's parents, siblings, aunts, uncles, grandparents, and other family members of Joyce are buried at Mt. Carmel.

Jacqueline testified that whenever she and Joyce would visit their deceased relatives at Mt. Carmel, Joyce would state that Mt. Carmel was to be "her resting place" and that she wanted a specific song played at her funeral. Jacqueline testified that the topic of Joyce's burial wishes was not a frequent subject of discussion. Jacqueline testified that she never agreed with Michael that Joyce should be buried in Israel and never discussed Joyce's funeral plans with Michael.

Jacqueline testified that Joyce was not an observant Jew. According to Jacqueline, Joyce was ordained as a Protestant minister¹ in or about the early 2000s

¹ Michael acknowledged that Joyce was ordained a minister but that she was not a Protestant Minister. Rather, Michael asserted that Joyce was an "interfaith" minister and was involved in that ministry with a Rabbi Gellerman.

and did not keep a Kosher household. Moreover, Jacqueline testified that Joyce did not raise Jacqueline or Michael in a traditionally Jewish manner and that their celebrations of the High Holidays would be a simple family dinner.

Jacqueline testified that she was unable to recollect the last time Joyce hosted a Passover dinner, but that Joyce, Rhoda, Jacqueline, Jacqueline's children, and a family friend, Michael Steiner, were present. Jacqueline testified that Michael, an Orthodox Jew, did not approve of Joyce's religious views.

Joyce had been married to Ira Berry, and the couple divorced in 1990. Jacqueline testified that nearly two (2) decades after Joyce's divorce, Michael facilitated Joyce receiving a Get.² Jacqueline testified that Joyce went to Israel three (3) times to visit Michael and Jacqueline's son, who was attending a summer program, but that Joyce never expressed a desire to live in Israel. Jacqueline further testified that Michael has lived outside of the United States since 2006, including Canada, England and Israel. Jacqueline testified that Michael would visit Joyce and family members in the United States anywhere from two (2) to four (4) times per year while he was in the United States on business. Jacqueline testified that Michael had arranged for "religious" people to attend Joyce's funeral at Schwartz-Jeffrey Brothers Funeral Home in Glendale, New York, which had previously been used for Rhoda's funeral, as well as for Mollie's funeral. Jacqueline acknowledged that Joyce had never explicitly stated that she wanted to be buried with Rhoda or her family and

² A "Get" or "Gett" is a document in Jewish religious law which effectuates a divorce between a Jewish couple.

that Joyce had not prepared any documents communicating where she wanted to be buried.

Joyce executed a healthcare proxy in 1999 (the "1999 Proxy") naming Michael as her healthcare proxy in the event Rhoda was unable to serve (**Exhibit D-4**), as well as a general durable power of attorney on October 9, 2003, which appointed Michael as Joyce's attorney in fact (the "2003 POA"). **Exhibit D-5**. Jacqueline testified that prior to this action, she was unaware that Joyce had executed either the 1999 Proxy or 2003 POA and that Joyce had never discussed same with Jacqueline. Further, Jacqueline testified that, prior to the initiation of this action, she was unaware of any document allegedly signed by Joyce which designated Michael to control the disposition of Joyce's remains, and she and Joyce had never discussed such document. Jacqueline testified that pursuant to her Last Will and Testament dated September 24, 1998 (the "1998 Will"), Joyce appointed Rhoda to be the executor of her estate and that if Rhoda was not available, then Jacqueline and Michael were to serve as co-executors. **Exhibit D-1**.

Trial Testimony of Michael

According to Michael, he purchased a home in Montvale, New Jersey, in 1998 and would see Joyce frequently before moving to Canada in 2007. In 2011, Michael moved to Israel. Michael testified that he moved to Israel as a result of his Judaism but would speak to Joyce nearly every day by telephone. Further, Michael testified that Joyce would travel to Israel yearly and would visit with Michael's son, Daniel, in London. Michael testified that, although he was named as a co-successor executor

in Joyce's 1998 Will, he was not named as co-successor executor in Joyce's 1999 Will because he was undergoing a contentious divorce and wanted to limit his potential liability in his divorce proceeding. Exhibits D-1 and D-2. However, Michael was named as co-successor trustee in Joyce's 1999 Trust. Exhibit D-3.

Michael testified that in 2003, he and Joyce executed reciprocal powers of attorney prepared by Talarico in which each designated the other as his/her agent. Exhibit D-5. Michael testified that Joyce wanted to execute the 2003 POA because she and Michael were travelling more frequently and it would be simpler if they had reciprocal powers of attorney to conduct business on the other's behalf. Section 2(f) of the 2003 POA authorized Michael to "make advance arrangements for [Joyce's] funeral and burial, including the purchase of a burial plot and marker, and such other related arrangements as [Michael] shall deem appropriate." Michael testified that he reviewed §2(f) of the 2003 POA with Joyce before she signed it. Exhibit D-5.

According to Michael, on October 10, 2003, Joyce signed a document entitled "Appointment of Agent to Control Disposition of Remains" (the "Designation"), which appointed Michael as agent to control the disposition of Joyce's remains upon her death and advising that her remains were not to be cremated in accordance with Jewish law. Exhibit D-7. The Designation further stated that Joyce had not "entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law."

Michael testified that a format for the Designation was given to him by a friend, who is a New York attorney, after Joyce executed the 2003 POA and that

Michael drafted the Designation for Joyce's signature. Michael was unable to identify the individual who provided him with the format for the Designation. Michael testified that (i) Joyce signed the Designation at Michael's office in Rutherford, New Jersey, on October 10, 2003 and (ii) the witnesses who signed the Designation were acquaintances of Michael who worked in Michael's Rutherford office building. Michael testified that the individual who provided the format for the Designation advised that the Designation should be executed to supplement the 2003 POA. The Designation was not notarized and was not signed by Michael. Additionally, Michael testified that prior to its execution, he discussed the Designation with Joyce, who agreed to sign it. Michael testified that he does not have an original of the Designation and he does not know where the Designation was saved on his computer system.

Michael testified that although Joyce expressed an interest in other faith systems, she remained proud of and connected to her Jewish heritage and re-discovered her Judaism by lighting Shabbat candles and keeping Kosher after Michael became more devout in his own faith. Further, Michael testified that Joyce agreed to get a divorce according to Jewish law because she believed that her previous failure to do so was impacting Michael's personal life.

Michael testified that, on several occasions, Joyce expressed a desire to live with Michael in Israel and that she wanted to be buried near Michael in Israel. Moreover, Michael testified that Joyce wanted a religious funeral and that Jacqueline

gave Michael permission to take Joyce to Israel during a conversation with Michael and Rabbi Zohn at Rhoda's funeral in July of 2020 and again in August of 2020.

Michael testified that in August of 2020, Joyce was in-and-out of the hospital and he was unable to bring Joyce to Israel because she was too weak. Michael further testified that Joyce said she wanted to "be close to my maker and my homeland [Israel]" and that she expressed her desire to Michael to be buried in Israel during the last two-and-a-half (2½) years of her life, including during her hospitalizations after Michael returned to the United States. Michael testified that Joyce became more "acquainted" with Israel since Michael had been living there and that the inter-faith studies she had pursued were no longer fulfilling her spiritual needs. Michael testified that Joyce had wanted to live in Israel during her lifetime and that Joyce pleaded with Michael not to leave her behind.

Michael purchased the burial plot for Joyce in Israel on September 30, 2020 using Joyce's funds. Exhibit D-19. Michael testified that he did not purchase the burial plot until September 30 because he had hoped Joyce would recover from her illness. The burial plot is located in the city of Safed, Israel, because Joyce supported a religious school there.

Michael testified that Joyce was not assigned a specific grave in the family burial plot in Mt. Carmel and that there are no documents which state that Joyce intended to be buried in one of the plots in Mt. Carmel. Michael further testified that Joyce never expressed a desire to be buried with her family at Mt. Carmel.

Other Testimony

Ronald Marchand (“Marchand”) testified that he had known Joyce for over twenty (20) years. Marchand testified that he last saw Joyce in October/November of 2019 at Rhoda’s house. Marchand testified that at that time Joyce stated that she wanted to be buried next to her brother in Queens, along with Rhoda. Marchand further testified that when Rhoda and Joyce came to his office on one occasion and were late for their appointment with Marchand, they said that were “at their future home,” namely Mt. Carmel cemetery. Marchand testified that based upon his observations, Joyce and Rhoda wanted to be buried together with their family at Mt. Carmel.

Bernie Hernando (“Hernando”) is a close personal friend of Michael and has known Michael for approximately twenty (20) years. Hernando testified that he first met Joyce at a Shabbat dinner in the early 2000s, and Joyce arranged for Hernando to receive medical treatment after he became ill in 2011. Hernando testified that after he discussed a tradition among people from Spain, who bring their deceased relatives from New Jersey back to Spain, Joyce stated that she intended to be buried in Israel. Hernando further testified that after he was released from the hospital in approximately 2011, he stayed with Joyce and the subject of her wish to be buried in Israel came up again as “a joke” between them, in that Joyce would say that she was going to Israel to see Michael whether she was “dead or alive.” Hernando testified that the only time Joyce specifically said she wanted to be buried in Israel was when she was visiting Hernando in the hospital and that she would continue to “joke” about

going to Israel to see Michael. Hernando testified that he did not know whether Joyce was Kosher but that whenever he ate with Joyce and Michael, the meal would be Kosher because of Michael.

Sharon Troth ("Troth") testified that she was a close friend of Joyce, who worked with Joyce as a health aide. Troth testified that when she went to Joyce's home in July of 2020, Joyce was sometimes incoherent and that, on many mornings, she could not understand what Joyce was saying.

Troth testified that she believed Joyce wanted Michael to be the one to arrange for Joyce's burial because Joyce was closer to Michael and he helped her with finances. Troth further testified that Joyce told her several times that she wanted to be buried in Israel because she was dedicated to Michael. Troth testified that at the last dinner she shared with Joyce, the meal was not Kosher.

Ashley Bland ("Bland"), a nurse's aide who worked as Joyce's caretaker, testified that she interviewed with Michael in early June of 2020 and was hired to care for Joyce at the end of July of 2020. Bland further testified that she was with Joyce at the Fort Lee Property on the day she was admitted to NYP the final time and alerted Michael that there was "something wrong with Joyce." However, Bland testified that she was with Joyce at the Fort Lee Property in October 2020 before Joyce was admitted to NYP. The evidence is uncontroverted that Joyce was admitted to NYP for the last time in mid-August of 2020 and remained there until she died on October 9, 2020.

Bland testified that Joyce told her “four or five times” that she wanted to be buried in Israel and that Joyce often mentioned the Kaddish, a Jewish prayer, and that she wanted to die, but not in New Jersey. Further, Bland testified that she overheard conversations between Joyce and Michael that Joyce wanted to be buried in Israel after Michael brought up the subject.

Samson Freundlich (“Freundlich”), an attorney from Nassau County, New York, who has known Michael since 2004, testified that he stayed with Joyce in January and February of 2015 in the midst of his divorce. Freundlich testified that he had several conversations with Joyce, while staying at her residence, during which the topic of Joyce’s burial wishes came up in the context of discussing some items in her home being from Israel and her fondness for Israel. Freundlich further testified that Joyce kept a “semi-Kosher” house and that she did not mention that she only observed Shabbat dinners when Michael was present.

Freundlich testified that Michael had discussions with him regarding documentation which gave Michael the authority to make burial arrangements for Joyce after Joyce had passed; but Michael did not show any such document to Freundlich or ask Freundlich for advice.

Anthony Talarico, Esq. (“Talarico”) is a New Jersey attorney who represented Joyce on a number of legal matters, including drafting the 2003 POA and a 2004 POA³, Exhibits D-5 and D-8. Talarico testified that when Joyce came to his office

³ Pursuant to the 2004 POA, Michael was appointed attorney in fact for Joyce to effectuate the sale of Joyce’s real property in Teaneck, New Jersey.

to review and ultimately execute the 2003 POA, Michael accompanied her. Talarico testified that based upon his observations, Joyce was not pressured into signing the 2003 POA and she had the capacity to do so. Talarico further testified that neither he nor Joyce placed any emphasis on §2(f) of the 2003 POA and Talarico never discussed §2(f) regarding funeral or burial arrangements with either Joyce or Michael. Finally, Talarico testified that he had no discussions with either Joyce or Michael regarding the appointment of an agent to control disposition of Joyce's remains and that he is not familiar with such a document.

Rabbi Elchonon Zohn ("Rabbi Zohn") is the director of the Burial Society of the Vaad Harabonim of Queens, an organization which provides services to families who are seeking to have a traditional Jewish burial. Rabbi Zohn's testimony confused members of the Crane family, in that Rabbi Zohn believed that Rhoda (Joyce's sister) was Michael's mother and that Joyce was Michael's sister. Rabbi Zohn testified that (i) he met "Michael's sister" at Rhoda's burial in June/July 2020 at Mt. Carmel and discussed transporting Rhoda to Israel for permanent interment and (ii) "Michael's sister" was listening to this conversation but did not say very much.

Additionally, Rabbi Zohn testified that he advised Michael how to move his mother (Rhoda) to Israel for burial and after they discussed the traditional casket that Michael wanted to use to inter Rhoda, Rabbi Zohn came to the funeral. Rabbi Zohn testified that he does not remember going to any other Crane family funeral in 2020. Rabbi Zohn testified that the funeral he attended in July of 2020 "might have

been” Michael’s aunt and Michael was discussing making future burial arrangements for his mother.

Discussion

In his post-trial brief, Michael asserts that Joyce wanted Michael to control Joyce’s funeral arrangements and the disposition of Joyce’s remains, as evidenced by the Designation and the 2003 POA. Michael asserts that both under New Jersey and New York law, the Designation and the 2003 POA control. On the other hand, Jacqueline asserts that (i) the authenticity of the Designation is suspect, at best and (ii) the 2003 POA does not deal in any manner with Joyce’s burial location or wishes.

In New Jersey, the disposition of human remains is governed by N.J.S.A. 45:27-22 (“Control of funeral, disposition of remains; priority classes”), which is part of the New Jersey Cemetery Act (the “Cemetery Act”). The Cemetery Act, which was adopted in January 2004 and became effective on April 13, 2004,⁴ permitted a decedent in a will to appoint a person to control the funeral and disposition of human remains as follows:

If a decedent, in a will as defined in N.J.S.3B:1-2, appoints a person to control the funeral and disposition of the human remains, the funeral disposition shall be in accordance with the instructions of the person so appointed. A person so appointed shall not have to be executor of the will. The funeral and disposition may occur prior to probate of the will, in accordance with section 40 of P.L.2003, c.261 (C.3B:10-21.1).

⁴ The Cemetery Act enacted in 2004 repealed N.J.S.A. 8A:5-1 through N.J.S.A. 8A:5-24, including N.J.S.A. 8A:5-18 which read in pertinent part as follows: “the right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent or by a court of competent jurisdiction, shall be in the following order: (a) surviving spouse....” Bruning v. Eckman Funeral Home, 300 N.J. Super. 424, 428 (App. Div. 1997).

[N.J.S.A. 45:27-22(a).]

N.J.S.A. 45:27-22(a) was amended effective September 17, 2019 to permit a decedent, in a writing which is not a will, to appoint a person to control the funeral and disposition of human remains by adding the following provision:

... a decedent may appoint a person to control the funeral and disposition of the human remains in writing, and if a decedent so appoints a person it shall be in the presence of no less than two witnesses, on a form approved by the board. The written form appointing a person to control the funeral and disposition shall include the signatures of the decedent and witnesses, and shall be notarized. Nothing in this section shall be construed as prohibiting a decedent from appointing a person to control the funeral and disposition on the form approved by the board who is also named as the executor of the decedent's will.

[2019, c. 187, § 1, eff. Sept. 17, 2019.]

New York has also adopted legislation that governs the disposition of a decedent's remains. New York Public Health Law §4201 (Disposition of Remains: responsibility therefor) (the "New York Health Law") was first enacted in 1953 and amended thereafter in 1960 and 1964. Prior to its repeal in 1970, §4201 stated: "A person has the right to direct the manner in which his body shall be disposed of after his death." In discussing the prior version of §4201, New York courts have concluded that by repealing §4201 in 1970 the legislature did not intend to abrogate an individual's right to direct the disposition of their remains. Instead, the New York Legislature repealed §4201 because of its obsolescence in light of the enactment of the Uniform Anatomical Gift Act of 1968. Stewart v. Schwartz Brothers-Jeffer Memorial Chapel, 159 Misc. 2d 884, 888 (1993),

An updated version of §4201 was enacted on February 3, 2006 and became law on August 2, 2006⁵. The updated New York Health Law at §4201(2) provides that a person “designated in a written instrument” has first priority in controlling the disposition of the remains of a decedent. Section 4201 (2)(c) provides:

The person in control of disposition, pursuant to this section, shall faithfully carry out the directions of the decedent to the extent lawful and practicable, including consideration of the financial capacity of the decedent’s estate and other resources made available for disposition of the remains. The person in control of disposition shall also dispose of the decedent in a manner appropriate to the moral and individual beliefs and wishes of the decedent provided that such beliefs and wishes do not conflict with the directions of the decedent...

Section 4201(3) of the updated New York Health Law prescribes the terms of the written instrument which may be used and provides that the instrument must be signed and dated by the decedent and the agent and properly witnessed by two (2) disinterested third-parties. The decedent, in the written instrument, is also required to disclose whether he/she has “entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law for funeral merchandise or service in advance of need.” Section 4201(3) specifically states

The written instrument ... may be in substantially the following form, and must be signed and dated by the decedent and the agent and properly witnessed:

APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I, _____

(Your name and address)

⁵ New York Health Law §4201 was amended in 2006, 2009 and 2012. None of the amendments altered the statute’s core provisions regarding disposition of remains.

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by _____.

(name of agent)

With respect to that subject only, I hereby appoint such person as my agent with respect to the disposition of my remains.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent as well as any instructions or wishes desired to be followed in the disposition of my remains:

Indicate below if you have entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law for funeral merchandise or service in advance of need:

No, I have not entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law.

Yes, I have entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law.

(Name of funeral firm with which you entered into a pre-funded pre-need funeral agreement to provide merchandise and/or services)

AGENT:

Name: _____

Address: _____

Telephone Number: _____

SUCCESSORS:

If my agent dies, resigns, or is unable to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent to control the disposition of my remains as authorized by this document:

1. First Successor

Name: _____

Address: _____

Telephone Number: _____

2. Second Successor

Name: _____

Address: _____

Telephone Number: _____

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENT REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

Signed this _____ day of _____, _____.

(Signature of person making the appointment)

Statement by witness (must be 18 or older)

I declare that the person who executed this document is personally known to me and appears to be of sound mind and acting of his or her free will. He or she signed (or asked another to sign for him or her) this document in my presence.

Witness 1: _____

(signature)

Address: _____

Witness 2: _____

(signature)

Address: _____

ACCEPTANCE AND ASSUMPTION BY AGENT:

1. I have no reason to believe there has been a revocation of this appointment to control disposition of remains.

2. I hereby accept this appointment.

Signed this _____ day of _____, _____.

(Signature of Agent)

While this court finds that the New Jersey Cemetery Act and not the updated New York Health Law governs the dispute between Jacqueline and Michael, there is no doubt that the Designation relied upon by Michael is based upon the updated New York Health Law. That is significant because the Designation (Exhibit D-7) relied upon by Michael at trial to assert that he controls the disposition and burial of Joyce's remains was purportedly executed on October 10, 2003. However, updated §4201, including the proposed format of the Designation, was not enacted into law until February 2006 and did not become law until August 2, 2006.

As such, the genuineness of the Designation is in serious question. In considering the genuineness of the Designation, the court notes that the original Designation was not produced by Michael at trial. Second, the Designation was not even referred to by Michael at the time of the initial hearing before this court in September 2020 on the issuance of the TRO. Rather, the Designation was not produced until the trial of this action more than six (6) months after Joyce died. Michael provided no explanation as to why the Designation was not previously produced to this court, particularly since Michael purportedly prepared the Designation and arranged for its execution in 2003. Further, at trial, Michael could not or did not (i) account for the original Designation, (ii) explain what happened to the original Designation or (iii) explain where he maintained the Designation on his computer system.

Additionally, it is mystifying how the Designation, which was allegedly executed three (3) years prior to enactment of §4201(3) of the updated New York

Health Law, so closely tracks the language set forth in the updated statute, including references to §453 of the New York General Business Law regarding prepaid funeral arrangements. It is inconceivable and defies logic that Michael, on October 9, 2003, had the foresight to prepare a Designation that so closely tracks the language of the New York designation form adopted by the New York Legislature in 2006.

Michael's testimony regarding the Designation is simply not credible and this court concludes that the Designation could not have been prepared in October 2003 as asserted by Michael. In light of the court's conclusion that Michael has attempted to mislead the court regarding the Designation, this court has determined to reject all of Michael's testimony at the trial regarding Joyce's intentions as to her burial location and disposition of her remains.⁶

In short, all the facts and circumstances regarding the Designation lead this court to the conclusion that the Designation is a manufactured document which reveals nothing about Joyce's intentions as to the place of her burial or who should be in charge of disposing of her remains. Rather, the purported Designation simply reveals the lengths to which Michael will go to pursue his own misguided narrative in an effort to subvert the court's determination of Joyce's intentions.

In addition to the Designation, Michael relies upon the terms of the 2003 POA, prepared by Talarico. **Exhibit D-5**. However, while the 2003 POA references funeral

⁶ Such determination is more than justified by Michael's efforts to improperly influence this court as the trier of fact and to unfairly hamper the presentation of the opposing party's presentation as to Joyce's intent with respect to her burial. Triffin v. Automatic Data Processing, Inc., 411 N.J. Super. 292, 298 (App. Div. 2011).

arrangements and burial plans, it does not specifically state that Michael may take control of and dispose of Joyce's remains. Further, the 2003 POA sheds no light on where Joyce wanted to be buried. Talarico testified that when the 2003 POA was prepared, §2(f) was simply a "boilerplate" provision which Talarico never discussed with either Joyce or Michael. Further, Talarico never discussed any intention by Joyce to designate Michael to control disposition of her remains or her burial location. Indeed, Talarico testified that he was not familiar with such concept. Additionally, to the extent Joyce and/or Michael were of the view that the 2003 POA gave Michael the authority to control the disposition of Joyce's remains, the Designation was unnecessary. Accordingly, this court finds that the 2003 POA, by itself, is insufficient to allow this court to conclude that Joyce intended to appoint Michael to be her agent for the disposition of her remains or to bury her in Israel. This is particularly true in light of the court's determination regarding the genuineness of the Designation and Michael's efforts to mislead this court and Jacqueline regarding Joyce's intentions.

Having concluded that neither the Designation nor the 2003 POA provide sufficient evidence to determine Joyce's probable intent as to the disposition of her remains or her burial wishes, the court is faced with a situation in which Jacqueline and Michael, who have equal statutory standing under the Cemetery Act, must determine Joyce's wishes. In Matter of the Estate of Travers, 457 N.J. Super 477 (Ch. 2017) the court was faced with a dispute between the divorced parents of John E. Travers, who died at age twenty-two, without a will or other writing as to his burial wishes. The court in Travers concluded that the Cemetery Act intended that the

funerals and disposition of remains shall be in accord with the wishes and desires of the decedent. Id. at 483-484. New Jersey courts have determined that a decedent's direction as to what to do with his or her remains may be expressed orally or in writing. Bruning v. Eckman Funeral Home, 330 N.J. Super. at 431⁷. The court in Travers recognized "[a] court's duty in probate matters [is]. . . 'to ascertain and give effect to the probable intention of the testator.'" Travers, 457 N.J. Super. at 483-484 citing In re Probate & Codicil of Macool, 416 N.J. Super. 298, 307 (App. Div. 2010) (quoting Fidelity Union Trust v. Robert, 36 N.J. 561, 564, (1962)) and In re Estate of Ehrlich, 427 N.J. Super. 64, 72 (App. Div. 2012).

In determining a decedent's probable intent, the court should consider any evidence of communications, written or otherwise, between decedent and others that express the decedent's wishes, desires and expectations for funeral arrangements and/or disposition of remains. In Travers, the court set forth the various factors that a court should consider, namely, (i) the wishes of the decedent and who would abide by same, (ii) the nature of the relationship between the petitioners and the decedent; (iii) the religious beliefs and/or cultural practices and (iv) the best interests of the Estate. Travers, 457 N.J. Super. at 484-485.

⁷ The court in Bruning concluded that such directions are not necessarily controlling since N.J.S.A. 8A:5-18 authorized a court of competent jurisdiction to ultimately decide the disposition of a decedent's remains. The Bruning court recognized that the decedent's wishes were entitled to great weight (citing Guerin v. Cassidy, 38 N.J. Super. 454, 458 (Ch. Div. 1955)). Travers recognized the court's continuing role in the disposition of remains pursuant to N.J.S.A. 45:27-22(a)

Wishes of the Decedent, Joyce Crane.

Joyce did not express an intent with respect to her burial wishes in either her 1998 or 1999 Wills. The 2003 POA does not specifically detail Joyce's burial wishes. There is conflicting testimony regarding Joyce's burial wishes, and the court must therefore scrutinize each witness' testimony to determine credibility and Joyce's intent.

Jacqueline credibly testified that whenever she and Joyce visited deceased relatives at Mt. Carmel to pay their respects, Joyce would say that Mt. Carmel was her "resting place." Moreover, Joyce's father purchased a burial plot in the late 1970's at Mt. Carmel with 8-10 burial places and that Joyce's immediate family, namely, her father, mother, brother, sister, and aunts, uncles and cousins, are buried at Mt. Carmel. Jacqueline testified that she never agreed with Michael that Joyce should be buried in Israel, as Joyce had never expressed such wish to Jacqueline. Ronald Marchand credibly testified that both Joyce and Rhoda said that the cemetery near his office in Queens, New York (Mt. Carmel), was their "future home" and that he believed Joyce and Rhoda were very close.

On the other hand, Michael testified that Joyce repeatedly told him "not to leave me behind" and that Joyce stated she wanted to live in Israel near Michael. Additionally, Michael testified he purchased the burial plot for Joyce in Israel in late September 2020 using Joyce's funds. Michael did not indicate whether Joyce was aware of the purchase, consented to it, or requested it. Michael testified he purchased

the plot in a cemetery near a Jewish school that Joyce and Rhoda had financially supported. As noted above, the court rejects all of Michael's testimony.

Other witnesses called by Michael recounted similar stories about Joyce allegedly indicating a desire to be buried in Israel at different times over the last decade or so. Hernando testified that he and Joyce used to "joke" about her wanting to be buried in Israel. Hernando's testimony revealed that she would joke that she wanted to be close to Michael "whether dead or alive." The court discounts Hernando's testimony as not indicative of Joyce seriously expressing an intent to be permanently interred in Israel.

Troth testified that Joyce told her several times that she wished to be buried near Michael because of her close relationship to Michael. However, Troth testified that such expressions were made by Joyce during her illness and that there were times that she could not understand what Joyce was saying due to her illness.

Bland's testimony lacks sufficient credibility to add weight to Michael's case. Bland could not remember when she began working for Joyce, when Joyce was last hospitalized, or when Joyce died. Further, Bland testified that Joyce would bring up the subject of Israel only after Michael first raised the subject. The court finds that Bland's testimony lacks credibility and consistency.

Freundlich testified that, on several occasions while he stayed with Joyce in 2015 for approximately two (2) months, Joyce expressed a desire to live and be buried in Israel after Freundlich noted that Joyce displayed several artifacts from Israel in her home. However, it is not credible that Joyce would raise the subject of her burial

wishes with a friend of Michael as many times as Freundlich alleged she did over the course of six (6) weeks in January and February of 2015, nearly four (4) years *before* Joyce became ill. As such, the court discounts Freundlich's testimony on the issue. Moreover, Freundlich testified that after Joyce's death, Michael approached him with an inquiry as to documentation as to Michael's authority to make burial arrangements for Joyce. Freundlich testified that although Michael advised that he had a document which gave him such authority, Michael did not show said document to Freundlich.

Finally, the testimony of both Talarico and Rabbi Zohn added little with regard to Joyce's burial wishes. Talarico testified that the subject of the burial place or the disposition of remains never came up in his discussions with Joyce and/or Michael and that the provision of the 2003 POA regarding funeral arrangements was not discussed by either Joyce or Michael before the 2003 POA was executed. Furthermore, Rabbi Zohn never met Joyce, did not know Joyce and believed that, when he was at Rhoda's funeral, he was attending Joyce's funeral, and that Joyce was Michael's sister.

It is apparent that Michael wanted Joyce to live in Israel and would frequently raise or initiate the subject with her. The court does not find credible that the topic of Joyce's burial was raised with non-family members as often as the witnesses would have this court believe, since the testimony also reveals that Joyce was a private person. Indeed, the court believes Jacqueline's testimony that Joyce would rarely raise the subject except when visiting Mt. Carmel and that Joyce "loved living." As

such, the court finds the testimony that Joyce repeatedly expressed a desire to be buried in Israel not to be credible.

Further, most of Joyce's family are buried at Mt. Carmel. Joyce's father purchased the burial plot in the late 1970's, and both Mollie and Rhoda were buried there recently. Jacqueline convincingly testified that Joyce and her sister were close and that the two sisters were involved in several business ventures together and travelled together to Mexico twice per year for alternative medical treatments. Joyce resided in New York and New Jersey her entire life, and although she visited Michael in Israel on several occasions, Joyce never resided there or owned real property there. The court concludes that Joyce did not express an intent to be buried in Israel, and the facts and circumstances indicate that Joyce wished to be buried with her family at Mt. Carmel. Additionally, this court concludes that Jacqueline would abide by Joyce's wishes regarding the burial location of her remains.

Nature of the Relationship Between the Petitioners and Decedent.

In Toppin v. Moriarty, 59 N.J. Eq. 115 (Ch. 1899), the court regarded the primacy and nearness of relationships in cases involving decisions regarding burial and concluded that a court should consider the closeness of the relationships between next-of-kin of equal standing and the decedent to inform its decision on the appointment of control under the Statute.

Based upon the testimony at trial, the court concludes that (i) Jacqueline maintained a closer relationship with Joyce and (ii) Jacqueline is in a better position to know Joyce's desires and expectations upon Joyce's death. It is undisputed that

Jacqueline and Joyce lived approximately fifteen (15) minutes from each other for at least the last fifteen (15) years and that Jacqueline and her sons would visit Joyce nearly every day. Additionally, Joyce attended Jacqueline's sons' extracurricular events on a weekly basis and Jacqueline saw Joyce nearly every day after Joyce became ill. Further, Jacqueline arranged for Joyce to see Rhoda and that Joyce stayed with Rhoda after returning from Mexico in January of 2020.

On the other hand, Michael has lived outside of the United States since at least 2006, residing in Canada, the United Kingdom and, presently, Israel. Michael would visit Joyce when he was travelling to the United States for business approximately two (2) to four (4) times per year, and Joyce would visit Michael's son David in the United Kingdom on occasion. Considering these circumstances, this court concludes that as between Jacqueline and Michael, Jacqueline had a closer relationship to Joyce at the time of her death and in the preceding years. Consequently, Jacqueline is in a better position to know Joyce's wishes and desires for disposition of remains.

Religious Beliefs and Cultural Practices.

In Toppin, 59 N.J. Eq. at 116-18, the court, citing English common law, recognized the importance of ecclesiastical law in the disposition of remains. The Cemetery Act focuses on the desires of the decedent, the decedent's religious beliefs and/or cultural practices, to the extent that funeral arrangements and/or disposal of remains are addressed by such beliefs and practices, may inform the court as to the decedent's reasonable expectations upon death. To the extent the court finds that religious beliefs and/or culture practices are relevant to the matter, consideration

should be given as to whether the evidence presented to the court conforms with the decedent's religious beliefs and whether either of the requests made by next-of-kin would give effect to such beliefs and traditions.

The parties are in sharp dispute as to Joyce's religious practices. Based on the evidence presented, the court concludes that Joyce observed some Jewish traditions. For example, Joyce would gather with family for the Jewish High Holidays but did not celebrate all Jewish holy days and did not regularly attend synagogue, keep a Kosher home or observe Kosher tradition at mealtimes. Moreover, Joyce did not raise Jacqueline and Michael in a particularly religious household and Michael had become more religious in recent years on his own initiative. Further, the Torah scroll that Joyce and Rhoda jointly paid for to benefit a Jewish school in Safed, Israel, was not symbolic of religious expression but of their commitment to supporting Jewish education. Additionally, it is undisputed that Joyce served as an inter-faith minister. Michael concedes Joyce expressed an interest in other faith systems and that Joyce only obtained her Get after Michael arranged for same nearly two (2) decades after her divorce.

In light of all the evidence, this court concludes that while Joyce was raised Jewish and was mindful of Jewish traditions, she was not deeply observant and, based upon her religious beliefs, she would not have sought to be buried in Israel.

Best interests of the Estate.

In addition, considerations relating to the administration of the estate should be taken into account. New Jersey law recognizes obligations of administrators of

estates. N.J.S.A. 3B:10-23 provides that personal representatives have a duty to settle an estate of the decedent as “consistent with the best interests of the estate.” See also Fitzgerald v. Linnus, 336 N.J. Super. 458, 468 (App. Div. 2001) (*quoting* Barner v. Sheldon, 292 N.J. Super. 258, 265 (Law Div. 1995)). Such analysis may assist in resolving a dispute between next-of-kin of equal standing, as the cost of a funeral and/or disposition of remains sought by a party may or may not be affordable to the estate. Here, no one has taken any action to probate Joyce’s estate. Therefore, this factor plays no role in the court’s determination.

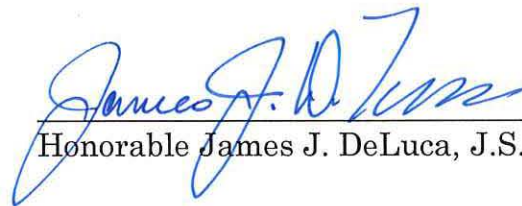
Other Equitable Considerations

The Cemetery Act authorizes “a court of competent jurisdiction” to decide the disposition of a decedent’s remains. N.J.S.A. 45:27-22. In so doing, this court may utilize its inherent broad equitable powers including the conduct of the parties since “he who comes into equity comes with clean hands.” The Designation relied upon by Michael calls into question whether Michael comes to this court with “clean hands.” The “clean hands” doctrine applies to conduct both prior to the proceeding and during the proceeding. A. Hollander & Sons, Inc. v. Imperial Fur Blending Company, 2 N.J. 235, 246 (1949). Here, Michael seeks this court’s assistance in allowing him to disinter Joyce and bury her remains in Israel. However, Michael’s own misguided efforts to provide supposed evidence of Joyce’s wishes causes this court to conclude he does not have “clean hands.” As such, the court will not grant the relief requested by Michael.

Conclusion

For all of the reasons set forth above, the court concludes Joyce did not designate any individual, including Michael, to determine her burial location or to dispose of her remains. Further, the court finds that Joyce intended to be buried at Mt. Carmel Cemetery in Queens, New York. A judgment consistent with this Decision is being entered simultaneously herewith.

Dated: May 28, 2021


Honorable James J. DeLuca, J.S.C.