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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3174-20**

JACQUELINE CRANE,

Plaintiff-Respondent,

v.

MICHAEL CRANE,

Defendant-Appellant.

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Submitted November 10, 2022 – Decided December 29, 2022

Before Judges Accurso and Firko.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Bergen County, Docket No. C-  
000174-20.

Greenbaum, Rowe, Smith & Davis LLP, attorneys for  
appellant (Darren C. Barreiro, of counsel and on the  
briefs; Olivier Salvagno and Jade W. Sobh, on the  
briefs).

Rozin Golinder Law LLC, attorneys for respondent  
(Thomas R. McConnell, on the brief).

PER CURIAM

Defendant Michael Crane appeals from the Chancery judge's May 28, 2021 order, determining his mother, the late Joyce Crane,<sup>1</sup> did not designate him or anyone else to determine her burial location or to dispose of her remains. The judge ordered that Joyce's remains shall continue to be interred at Mt. Carmel Cemetery (Mt. Carmel) in Queens, New York. We affirm.

I.

Joyce died at the age of seventy-three at a hospital in October 2020. She was unmarried when she died and is survived by her two children, plaintiff Jacqueline Crane and defendant. Joyce was born in New York and was a resident of Fort Lee at the time of her death. She was a nurse, an ordained Protestant minister, and a member of the family business. Joyce had two siblings, Rhoda and Danny, who predeceased her and are buried with the rest of Joyce's immediate family at Mt. Carmel.

Joyce executed two wills—one in 1998, and another in 1999. The 1998 will named Rhoda as sole executor and plaintiff and defendant as co-substitute executors. In Paragraph 6(a) of the 1998 will, Joyce named Rhoda, plaintiff, and defendant as co-trustees. Paragraph 8(b) of the 1998 will authorized the

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<sup>1</sup> We refer to the family members by their first names for clarity and to avoid any confusion by their common last name.

executor and trustee to "[p]ay all debts and funeral and burial expenses as soon as the convenience of my estate will permit and without regard to any limitation in applicable law as to the amount of such expenses." The 1999 will named Rhoda as sole executor and plaintiff as substitute executor. Paragraph 4(b) of the 1999 will authorized the executor to "[p]ay all debts and funeral and burial expenses as soon as the convenience of my estate will permit and without regard to any limitation in applicable law as to the amount of such expenses."

At trial, defendant testified he told Joyce to remove him as a co-substitute executor in the 1999 will because he was going through a divorce and wanted "to limit any possible liability" as "[t]hey were going after [his] finances" and he "thought it was irresponsible . . . to do the taking out as the executor of the estate in case they could possibly go after [him] for that."

In June 1999, Joyce also signed a Health Care Proxy, naming defendant as her health care agent in the event Rhoda was "unable, unwilling or unavailable" to serve, and a Trust Agreement, naming the parties as co-successor trustees to Rhoda. In 2003, Joyce was diagnosed with non-Hodgkin's lymphoma. She went into remission but was re-diagnosed in 2019. On October 9, 2003, Joyce executed a durable power of attorney (2003 POA), designating defendant as her agent and authorizing him to, in relevant part, "make advance

arrangements for [her] funeral and burial, including the purchase of a burial plot and marker, and such other related arrangements as [her] Agent shall deem appropriate." Joyce's attorney, Anthony Talarico, Esq., prepared, witnessed, and notarized the document.

At trial, plaintiff testified she was also "very close" with her mother, whom she saw "almost every day," as they lived no more than "a [fifteen] minute drive" apart and worked together at A-1 Healthcare Services, Inc. in Hackensack. Plaintiff testified Joyce was very involved with her sons' extracurricular activities.

Defendant also testified he "was close" with Joyce. When he lived in Montvale, he had lunch with Joyce and visited her frequently. After moving to Toronto, defendant testified he came to New Jersey once a month for a week on business and stayed with Joyce at her home. He claimed Joyce entrusted him with selling her home in Teaneck. After moving to Israel, "[he] was in contact on almost a daily basis with [his] mother and aunt" by telephone. In addition, he stated he saw Joyce "approximately once a year in Israel" and "on [a] monthly basis in London," where his son lived.

Defendant further testified Joyce "[came] to [him] regularly . . . to help with managing her financial and other affairs." Due to defendant's appointment

as Joyce's agent, her estate planning documents "were consistent with" their relationship because they "relied on each other." Defendant also testified Joyce "trusted [his] judgment impeccably, financially and otherwise." When she was admitted to the hospital in 2020, he "never left the hospital" and was there "24/7," until the COVID-19 pandemic lockdown.

The parties dispute Joyce's observance of Judaism. Plaintiff testified Joyce was not an observant or a religious Jew. Plaintiff explained Joyce did not keep a Kosher household or celebrate Shabbat at the house. For the high holidays, they usually had a simple family dinner. Plaintiff mentioned she was not brought up religiously, but she was aware of a Torah scroll dedicated to the Crane family in Israel that was paid for by Joyce and Rhoda. Plaintiff also testified that when Joyce divorced the parties' father decades ago, she did not obtain a "Get." Defendant obtained one for her many years later.

In contrast, defendant testified Joyce was not Protestant, but became ordained as an interfaith minister. He testified the ministry "was based on Kabbalah and the Jewish faith." Defendant testified Joyce sent him to Solomon Schechter Day School because she wanted him to have a Judaic education, and "was very proud of" the rabbinical program he started. He also testified: "[D]uring the last ten years, my mom became very much acquainted with Israel

and Judaism and realized that the interfaith studies that she was involved in isn't really where her heart is."

A. Joyce's Burial Wishes

At trial, plaintiff testified she and Joyce would visit Mt. Carmel "several times a year," and Joyce always mentioned that it was going to be her resting place. Plaintiff added Joyce "loved life" and her burial wishes "[were] never a topic of conversation." According to plaintiff, she never discussed or agreed to bury Joyce in Israel, although the topic "might have been brought up at some point when [Joyce] was very ill and sick" after suffering a stroke.

On the other hand, defendant testified that Joyce instructed him to bury her in Israel, and she wanted a "Kosher funeral." Defendant further testified Joyce did not want to be buried at Mt. Carmel with her family.

B. The Designation

At trial, defendant's counsel moved into evidence a copy of a document entitled, "The Appointment of Agent to Control Disposition of Remains" (Designation), dated October 10, 2003. The Designation provides:

I, Joyce T. Crane, presently residing at 1069 Wilson Avenue, Teaneck, New Jersey, and being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by Michael E. Crane (my "agent") residing at: 1069 Wilson Avenue, Teaneck, New Jersey. With respect to that subject only, I hereby make the

foregoing appointment of my agent with respect to the disposition of my remains.

**SPECIAL DIRECTIONS:** In accordance with Jewish tradition and law, I direct that my remains NOT be cremated.

I have NOT entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law.

**PRIOR APPOINTMENT REVOKED:** I hereby revoke any prior appointment of any person to control the disposition of my remains.

**RELIANCE:** Any person or organization, including without limitation any cemetery, funeral home or other establishment in any manner involved with funerals or disposition of remains may rely on this document. No third party shall be liable because of reliance on a copy of this document.

The Designation is purportedly signed by Joyce and was witnessed and signed by two witnesses listing an address in Rutherford where defendant maintained an office. Defendant testified the Designation "authorizes [him] to be responsible for [his] mom," and that he saw her sign it. Defendant explained he drafted the Designation based on a sample document given to him by his attorney friend from New York. The trial judge then asked defendant why he gave the Designation to Joyce to sign. Defendant responded:

The way it came about was, I hadn't done any estate planning before, so signing the POA, it was the first time I had done it. I have a lot of friends who are attorneys. I had discussed it with someone in the city. I don't remember exactly who. They said, you know,

we have this document as well. Did your attorney discuss this with you? I said no. He goes, just to make sure it's complete, you really should have this signed as well. Have your mom sign it. It doesn't have to be notarized. So just have it witnessed and signed and then put it away and, hopefully, you'll never have to use it.

When the trial judge asked defendant what he understood the purpose of the Designation to be, he answered: (1) it prevents Joyce's cremation, which is contrary to the Jewish faith; and (2) it makes "abundantly clear" that he is responsible for Joyce's burial arrangements. Defendant testified he explained these objectives to Joyce, who ostensibly agreed but "thought it was unnecessary" because they had already signed the POA the day before.

On cross-examination, when asked why the Designation was not included in the POA signed the day before, defendant stated, "I don't know." Defendant testified that when he obtained the Designation form, "the thing was filled out" with other people's names, so he "wrote a new one that wasn't filled out for [Joyce] to sign." Defendant clarified he typed in Joyce's name on the Designation.

Ronald Eugene Marchand, a long-time friend of Joyce and Rhoda, testified on behalf of plaintiff that Joyce said she wanted to be buried next to her brother in Queens. Bernardo Hernando, Sharon Troth, Ashley Bland, Samson

Freundlich, Anthony Talarico, Esq., and Rabbi Elchonon Zohn testified on behalf of defendant. Hernando testified defendant was his former banking client who became a close personal friend and knew Joyce. Troth testified she and Joyce were "very close" friends and they used to work together. Troth stated she took care of Joyce before she died but had difficulty understanding Joyce because of the stroke. Bland was Joyce's caretaker prior to her death. Freundlich, a New York attorney, testified he was defendant's friend and spoke to Joyce about her burial wishes. Talarico prepared the POAs, and he testified Joyce never spoke to him about burial plans. Rabbi Zohn testified about defendant's inquiries about burying someone in Israel.

At the close of trial, the judge requested post-trial submissions to address the applicability of the New Jersey Cemetery Act, N.J.S.A. 45:27-22 (the Cemetery Act), any prior iterations of the statute, and the applicability of the current and any prior versions of New York Public Health Law (NYPHL), § 4201.

In his decision, the judge concluded Joyce did not designate anyone to determine her burial location or the disposition of her remains. The judge highlighted that "neither the Designation nor the 2003 POA provide[s] sufficient evidence to determine Joyce's probable intent" on those issues. Relying on

NYPHL, § 4201(3), the judge concluded the Designation "could not have been prepared in October 2003" and instead is "a manufactured document" evidencing defendant's efforts to defraud the court. Contrary to defendant's testimony, the judge found the Designation is based on "updated New York Health Law" enacted nearly three years after the Designation was purportedly executed by Joyce. In analyzing the evidence, the judge noted:

§ 4201(3) provides:

APPOINTMENT OF AGENT TO CONTROL  
DISPOSITION OF REMAINS

I, \_\_\_\_\_ (Your name and address), 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.

. . .

**PRIOR APPOINTMENT REVOKED:**

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

. . . .

After comparing the Designation and Section 4201(3), the judge explained:

[I]t is mystifying how the Designation, which was allegedly executed . . . three years prior to enactment of § 4201(3) of the updated [NYPHL], 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 [defendant], 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.

The judge then noted defendant's failure to: (1) produce the Designation until trial, more than six months after Joyce's death; (2) explain why he had not

produced it earlier; and (3) account for the original Designation. Consequently, the judge rejected all of defendant's testimony relative to the Designation and Joyce's burial wishes.

Next, the judge found the 2003 POA "by itself, is insufficient to allow [the] court to conclude that Joyce intended to appoint [defendant] to be her agent for the disposition of her remains or to bury her in Israel," which "is particularly true in light of the court's determination regarding the genuineness of the Designation and [defendant's] efforts to mislead [the] court and [plaintiff] regarding Joyce's intentions." While the 2003 POA "references funeral arrangements and burial plans," the judge emphasized it does not explicitly authorize defendant to dispose of her remains, and, therefore, "sheds no light on where Joyce wanted to be buried."

The trial court credited Talarico's testimony that the "funeral arrangements" provision was "boilerplate;" he never discussed this provision with Joyce or defendant; and "never discussed any intention by Joyce to designate [defendant] to control disposition of her remains or her burial location." The judge also noted the Designation would be unnecessary if the 2003 POA had given defendant such authority. The judge concluded Joyce intended to be buried at Mt. Carmel; that the parties have equal statutory

standing as co-siblings under the Cemetery Act; and he applied the Travers test<sup>2</sup> to determine Joyce's probable intent.

As to factor one of the Travers test, the judge concluded "Joyce did not express an intent to be buried in Israel;" "the facts and circumstances indicate Joyce wished to be buried with her family at Mt. Carmel;" and "[plaintiff] would abide by Joyce's wishes regarding the burial location of her remains." The judge found "Joyce did not express an intent with respect to her burial wishes in either her 1998 or 1999 [w]ills," the "2003 POA does not specifically detail Joyce's burial wishes," and "[t]here is conflicting testimony regarding Joyce's burial wishes." The judge found plaintiff credible when she 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'".

The evidence showed "Joyce's father purchased a burial plot [there] in the late 1970s . . . with [eight-to-ten] burial places" where "Joyce's immediate family, namely, her father, mother, brother, sister, and aunts, uncles and cousins,

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<sup>2</sup> In re Est. of Travers, 457 N.J. Super. 477, 484-85 (Ch. Div. 2017), held that in disputes over which next-of-kin with equal statutory standing has control over the disposition of the decedent's remains, the court should consider (i) the wishes of the decedent and who would abide by same; (ii) the nature of the relationship between the decedent and petitioners; (iii) the decedent's religious beliefs and/or cultural practices; and (iv) the best interests of the decedent's estate.

are buried." The judge also credited plaintiff's testimony "she never agreed with [defendant] that Joyce should be buried in Israel, as Joyce never expressed such [a] wish to [plaintiff]." Likewise, the judge credited the testimony of Marchand "that both Joyce and Rhoda said that the cemetery near his office in Queens . . . was their 'future home.'"

In his consideration of this matter, the judge emphasized Joyce lived in New York and New Jersey her entire life and never lived or owned real property in Israel. The judge found plaintiff had a "closer relationship" with Joyce, who "is in a better position to know [her mother's] desires and expectations" upon her death. In contrast, the judge found defendant lived outside of the United States since 2006 and visited Joyce "two to four times a year." The judge also determined Joyce only visited defendant's son in London "occasionally."

As to her faith, the judge concluded Joyce "was not deeply observant" of Jewish traditions and would not want to be buried in Israel. Joyce did not raise her children in a religious household, and the Torah scroll dedicated by the family "was not symbolic of religious expression" but a commitment to supporting Jewish education. The judge noted Joyce was an interfaith minister with an interest in other faith systems, and she obtained a Jewish divorce only after defendant raised the subject two decades after her civil divorce was

granted. The judge denied defendant's request to bury Joyce in Israel because he did not have "clean hands." A memorializing order was entered.

Defendant presents the following arguments for our consideration:

POINT I

THE TRIAL COURT'S MAY 28, 2021 ORDER SHOULD BE REVERSED, BECAUSE THE DECISION WAS PREDICATED UPON ITS OWN POST-TRIAL INVESTIGATION OF CERTAIN EVIDENCE, AND ITS CONCLUSION STEMMING THEREFROM WAS PLAINLY ERRONEOUS AND CONSTITUTED REVERSIBLE ERROR. (Raised below.)

POINT II

THE TRIAL COURT'S MAY 28, 2021 ORDER SHOULD BE REVERSED, BECAUSE THE COURT MISAPPLIED THE DOCTRINE OF PROBABLE INTENT. PROPER APPLICATION OF THE DOCTRINE IN THIS MATTER WOULD HAVE LED TO THE CONCLUSION THAT JOYCE INTENDED TO BE INTERRED IN ISRAEL. (Raised below.)

POINT III

THE TRIAL COURT'S MAY 28, 2021 ORDER SHOULD BE REVERSED, BECAUSE THE SCANT EVIDENCE PUT IN BY PLAINTIFF COULD NOT POSSIBLY SUSTAIN HER BURDEN OF PROOF TO DEMONSTRATE THAT HER MOTHER INTENDED TO BE BURIED IN MT. CARMEL . . . . (Raised below.)

## II.

### A.

Our review of a decision in a non-jury case is limited. The findings of the trial judge are considered binding on appeal when supported by adequate, substantial and credible evidence. Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974). These findings "should not be disturbed unless 'they are so wholly insupportable as to result in a denial of justice.'" Ibid. (quoting Greenfield v. Dusseault, 60 N.J. Super. 436, 444 (App. Div. 1960)). "[T]he appellate court should exercise its original fact finding jurisdiction sparingly and in none but a clear case where there is no doubt about the matter." Id. at 484.

The same is true of the trial court's credibility determinations. See N.J. Div. of Youth & Fam. Servs. v. T.G., 414 N.J. Super. 423, 433 (App. Div. 2010) ("[W]e are obliged to accord deference to the trial judge's credibility determinations and the judge's 'feel of the case' based upon the opportunity of the judge to see and hear the witnesses."). However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

B.

With these guiding principles in mind, we turn first to defendant's argument on appeal that the trial judge relied upon his own post-trial investigation and erred in relying on evidence outside of the record. Specifically, defendant asserts the judge incorrectly analyzed the law and legislative history behind NYPHL § 4201(3) leading to a deprivation of his due process rights by not informing him or his counsel about the court's concerns regarding the Designation.

Suffice it to say, the judge's findings were substantially supported by his credibility determinations. Defendant could not explain who gave him the Designation form, why it was not included in the POA executed the day before, why he hadn't disclosed the document prior to trial, or where the original was. Moreover, the record shows the trial judge considered the arguments in the parties' post-trial submissions simply to better understand the proffered evidence at issue. This was not a decision based on facts ascertained from a personal inspection, which it is not violative of the exclusiveness-of-the-record principle in bench trials. See e.g., Morris Cnty. Land Improvement Co. v. Parsippany-Troy Hills, 40 N.J. 539, 549 (1963).

What became NYPHL § 4201 was introduced as a bill in the New York Senate with the goal of establishing a procedure for individuals to designate a person to "take responsibility for disposition of their remains after death." The Designation at issue is dated twenty-one months before the bill was introduced. Notably, § 4201 was not enacted until three years later in 2006. Therefore, § 4201 did not exist at the time the Designation was prepared and purportedly executed. Moreover, the Designation is defective under § 4201 because it was not signed and dated by Joyce or defendant, nor properly witnessed.<sup>3</sup>

We also reject defendant's claim that he was unable to present witnesses at trial or respond to plaintiff's argument about the validity of the Designation because she raised it for the first time in her post-trial submission. Defendant had ample opportunity to call witnesses to testify about the Designation and chose not to even after he was closely cross-examined on the issue, and the judge queried him about the document. We conclude the judge did not abuse his discretion in not re-opening the record on this issue, and we have no reason to disturb the result based on the judge's findings.

Next, defendant argues the Designation borrows its language, not from § 4201(3) of the updated NYPHL, as the trial judge concluded, but from two

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<sup>3</sup> This requirement took effect on November 24, 2012.

antecedent bills, 4221B and A3129, which he argues are "substantially similar" in language and form. Defendant contends the existence of these bills "seriously undermines" the judge's finding that defendant lacked the forethought to include such similar language. Defendant further argues "practitioners in wills, trusts, and estates practice groups could, and likely did, possess the form and the language, in anticipation of [the bills'] passage," and his attorney friend who gave him the Designation "could very well have given him the form in (correct) anticipation of the [b]ill's ultimate passage."

Here, the Designation and these bills contain similar language. In all three documents, the "Prior Appointment Revoked" language is identical. And, each contains a similarly phrased introductory provision:

I, Joyce Crane, presently residing at 1069 Wilson Avenue, Teaneck, New Jersey, and being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by Michael E. Crane (my "agent") residing at: 1069 Wilson Avenue, Teaneck, New Jersey. With respect to that subject only, I hereby make the foregoing appointment of my agent with respect to the disposition of my remains.

[(Designation)].

I, \_\_\_\_\_ (Your name and address), 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) in accordance with [§] 4201 of the Public Health Law and, with respect to that subject only, I

hereby appoint such person as my agent with respect to the disposition of my remains, including cremation.

[(4221B)].

I, \_\_\_\_\_ (Your name and address), 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, including cremation.

[(A3129)].

However, neither 4221B nor A3129 contain any reference to § 453 of New York's General Business Law, the specific provision the trial judge highlighted. Moreover, defendant has not explained the source of that specific provision, or why he chose to keep it in the Designation—a substantially reduced version of these forms. Because the judge's decision was based upon substantial credible evidence in the record, we see no reason to disturb it.

### III.

Finally, we reach a similar conclusion as to defendant's contention that the judge misapplied the doctrine of probable intent. According to defendant, the trial judge erred by not considering Joyce's intentions reflected in the notarized, unchallenged POA, which authorized defendant to make advance arrangements for Joyce's funeral and burial, "including purchase of a burial plot

and marker." Defendant also asserts the judge failed to consider "the surrounding facts and circumstances," pointing to his designations as Joyce's agent in two POAs, healthcare proxies, and naming him as a co-successor trustee in a Trust Agreement. We disagree.

The Cemetery Act, which was enacted in 2004, governs the disposition of human remains. Under the Cemetery Act, a decedent may "appoint a person to control the funeral and disposition of the human remains" in a will or other writing, but where the decedent "has not appointed a person to control the funeral and disposition of the remains," such control goes to the "priority class, unless other directions have been given by a court of competent jurisdiction." N.J.S.A. 45:27-22.

In Bruning, we considered whether a decedent's signed directive constituted "other directions" under N.J.S.A. 8A:5-18, the Cemetery Act's predecessor statute. Bruning v. Eckman Funeral Home, 300 N.J. Super. 424, 426 (App. Div. 1997). We held that a "decedent's directions 'are entitled to respectful consideration and are allowed great weight'" despite the plain statutory language authorizing the court to "ultimately decide the disposition of a decedent's remains." Id. at 431-32 (quoting Guerin v. Cassidy, 38 N.J. Super.

454, 458 (Ch. Div. 1955)). But, we noted that those "directions are not necessarily controlling." Id. at 431.

In Marino v. Marino, 200 N.J. 315, 334 (2009), our Supreme Court considered "what role, if any, a decedent's intent should play" when the parties disputed the decedent's disinterment under the Cemetery Act. The Court held that "[i]n exercising its equitable powers, the Chancery Division was entitled to strike the balance in favor of giving voice to decedent's clear preference." Id. at 336. In other words, "when viewed in accordance with the disinterment statute, the court was entitled to weigh the views of decedent along with those of all the survivors." Ibid.

Subsequently, the Chancery Division in Travers considered how the court should resolve a dispute between next-of-kin with equal statutory standing under the Cemetery Act. See Travers, 457 N.J. Super. at 483. The Travers court echoed the Supreme Court's holding in Marino that "'the court is empowered to, and may, act to resolve disputes' among next-of-kin under the Statute." Id. at 482-83 (quoting Marino at 332). In Travers, the court held a trial court "should carefully consider which next-of-kin of equal standing . . . will likely control the funeral and/or disposition of remains in a manner that most closely reflects the wishes, desires and expectations of the decedent," taking into account "any

evidence of communications, written or otherwise, between [the] decedent and others which express the decedent's wishes, desires, and expectations for funeral arrangements and/or disposition of remains." Id. at 484. Travers put forth a four-factor test for selecting which next-of-kin, with equal statutory standing, is in control under the statute:

(1) [w]hich next-of-kin of equal standing is more likely to abide by the wishes and desires of the decedent as expressed through communications with another, to the extent the decedent made those communications; (2) [w]hich next-of-kin of equal standing established a closer relationship to the decedent; (3) [w]hich next-of-kin or equal standing is more likely to adhere to the religious beliefs and/or cultural practices of the decedent; and (4) [w]hich next-of kin of equal standing will ultimately be designated administrator(s) of the estate and act in the best interests of the estate.

[Id. at 486-87.]

The Travers test incorporates a search for the probable intent of the testator, which is the arm of the court. In re Est. of Payne, 186 N.J. 324, 335 (2006). Our Supreme Court has adopted the "doctrine of probable intent," which recognizes courts should give "primary emphasis" to the testator's "dominant plan and purpose as it appears when read and considered in . . . light of the [will's] surrounding facts and circumstances." Ibid. (quoting Fid. Union Tr. Co. v. Robert, 36 N.J. 561, 564-65 (1962)).

Here, the trial judge found that "while the 2003 POA references funeral arrangements and burial plans, it does not specifically state that [defendant] may take control of and dispose of Joyce's remains." Based on plaintiff's credible testimony, the court found it clear Joyce described Mt. Carmel as her "resting place." The judge especially focused on the close relationship between Joyce and Rhoda, and Marchand's testimony that they called Mt. Carmel their "future home." The judge discounted Hernando's testimony that Joyce wanted to be in Israel "dead or alive" to be close to defendant as an insincere expression of intent. Troth's testimony was rejected by the judge because she did not always understand what Joyce was saying. Rabbi Zohn never met Joyce, and he mistook her for Rhoda at Rhoda's funeral, causing the judge to discredit his testimony. Defendant's other witnesses were described by the judge as lacking credibility and being inconsistent in their testimony.

There was nothing in the evidence, direct or extrinsic, that supported defendant's contention Joyce wanted to be buried in Israel. Under these circumstances, we find no error in the judge's application of the doctrine of probable intent. Giving deference to the judge's factual findings, plaintiff "is more likely to abide by" Joyce's wishes. See Id. at 486.

Defendant's remaining arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION