

Circuit Court for Montgomery County  
Case No. 439348V

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 090

September Term, 2018

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WILLIAM MASTERS

v.

PHILIP D. RINALDI FUNERAL SERVICE  
PA

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Nazarian,  
Reed,  
Sharer, J., Frederick  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Sharer, J.

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Filed: August 5, 2019

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In his complaint, filed in the Circuit Court for Montgomery County, appellant, William Masters, sought damages from Philip D. Rinaldi Funeral Service, PA, appellee, for (1) negligence and (2) tortious interference with the right of burial. From the order of the circuit court granting Rinaldi's motion to dismiss and denying his motion for summary judgment, Masters has noted this timely appeal.<sup>1</sup>

### **BACKGROUND**

While a resident of The Laurel Center, a facility providing intervention for victims of domestic and sexual violence, Masters' wife, Maria Semion Masters, died by her own hand. Ms. Masters had resided at The Laurel Center, located in Winchester, Virginia, from May 9, 2015, until her death on July 3, 2015. At all times relevant to this litigation, both William and Maria Masters were residents of Virginia, in Frederick County and Winchester City, respectively.

Following Ms. Masters' death, her daughter, Polina Goubanov, contacted Rinaldi, doing business in Montgomery County, Maryland, to arrange for Ms. Masters' funeral service and burial. The arrangements, made in accord with Ms. Masters' directives, called for compliance with her beliefs as a Russian Orthodox Christian, and included burial in the Rock Creek Cemetery in the District of Columbia. Masters was not advised in advance of the funeral arrangements. The record makes clear that the Masters were estranged at the time of Ms. Masters' death and that their marriage was one of considerable conflict,

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<sup>1</sup> Masters' complaint also named Polina Goubanov, a resident of Washington, D.C., as a defendant. The circuit court dismissed the complaint as to Ms. Goubanov on jurisdictional grounds. Masters does not challenge that order in his appeal.

including complaints to law enforcement authorities in Frederick County, one against the other.<sup>2</sup> Indeed, at the time of her death, she had engaged an attorney to proceed with a divorce proceeding in the Fairfax County Circuit Court.

### **The Motions Court Ruling**

Following a hearing, the circuit court entered an order of dismissal as to Polina Goubanov, finding that there were insufficient contacts between Ms. Goubanov and the State of Maryland to confer personal jurisdiction. As we have noted, Masters does not pursue that ruling in this appeal. As to Rinaldi, the court found that it acted on the information provided by Ms. Goubanov and was under no duty to undertake an independent investigation for the purpose of learning of potential disagreement between other heirs or next of kin.

## **DISCUSSION**

### **Standard of Review**

Because the circuit court was presented with, and considered, material and facts outside of the four corners of the complaint, Rinaldi's motion to dismiss was converted to a motion for summary judgment. *See* Md. Rule 2-322(c) ("If, on a motion to dismiss ..., matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment ...."). Thus, we review the court's decision to grant summary judgment *de novo* and "[w]here there is no dispute of material fact, this

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<sup>2</sup> The litigation was preceded by Masters' unsuccessful effort to have his wife's remains disinterred so that he could arrange for reburial at a site of his choosing. That relief was denied by the Superior Court of the District of Columbia.

Court’s focus is on whether the trial court’s grant of the motion was legally correct.” *Powell v. Breslin*, 195 Md. App. 340, 345–46 (2010) (citing *Laing v. Volkswagen of Am. Inc.*, 180 Md. App. 136, 152–53 (2008)), *aff’d*, 421 Md. 266 (2011). In our review, “we construe the facts properly before the court, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party[.]” *Id.* at 346 (citations omitted).

### **Masters’ Motion for Summary Judgment**

In his complaint, Masters asserts negligence and tortious interference with the right of burial based solely on Rinaldi’s alleged failure to afford him notice and priority under Maryland Code (2000, 2009 Repl. Vol.), Health-General Article (HG) § 5-509(c). On appeal, Masters makes two arguments based on his interpretation and application of that statute.

He first argues that the circuit court erred in denying his motion for partial summary judgment as to liability, based on his interpretation of HG § 5-509(c), which he treats as a strict liability statute. Relevant to the questions before us, the statute provides:

(c) Unless a person has knowledge that contrary directions have been given by the decedent, if a decedent has not executed a document under subsection (a) of this section, the following persons, in the order of priority stated, have the right to arrange for the final disposition of the body of the decedent, including by cremation under § 5-502 of this subtitle:

- (1) The surviving spouse or domestic partner of the decedent;
- (2) An adult child of the decedent; ...

HG § 5-509(c).

Masters asserts that “[t]he statute gives the spouse priority over all others, without qualification or exception.” He then applies a negligence *per se* standard for Rinaldi’s alleged violation of the statute. He contends that:

In this case, the statute is designed to protect those people who are in an order of priority to determine the disposition of a relative’s remains. The statute exists to prevent exactly the type of injury which occurred here: the deprivation of a person’s rights who has a higher priority to determine the disposition of remains. Finally, the statute does not provide for the protection of the public as a whole, but only those who find themselves in a line of priority to determine the disposition of a specific relative’s remains.

The circuit court found that:

Polina Goubanov provided all of the information to [Rinaldi], [Rinaldi] had no reason to believe or know that there was ... any dispute.

Under the statute, in Health-General Article 5-511 (b), defendant Rinaldi had no duty or responsibility to contact or undertake any independent investigation as to the existence of any next of kin or to contact any next of kin or to try and determine whether there was any dispute as to the disposition of the body, and based on that, the Court finds ... that [Rinaldi] had no duty to William Masters and, as such, could not breach a duty to ... Masters, under these circumstances....

In his complaint, Masters alleged that “[Rinaldi] owed a duty of care to [Masters] to adhere to the standards of practice accepted in its industry[,]” and that it deviated from those standards, causing him severe emotional harm.<sup>3</sup> The complaint also alleged tortious interference with the right of burial, alleging that “Rinaldi had a duty to obtain authorization from [Masters] before following any other person’s instruction concerning

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<sup>3</sup> Masters filed a formal complaint against Philip D. Rinaldi Funeral Service, P.A. and Philip Rinaldi individually with the Maryland Board of Morticians and Funeral Directors. Upon review, the Board advised that it had “investigated the complaint and the investigation resulted in the case being closed without any Public Order.”

burial.” His motion for partial summary judgment as to the tortious interference claim asserted only that Ms. Goubanov “acted with intent to deprive Masters of his right of burial.” He asserted nothing as to Rinaldi except for noting its failure to consult with Masters. As to the negligence count, he claimed that “Grinaldi [sic] is also negligent as a matter of law for violating Md Code Ann. Health General § 5-509 (c).”

Despite his asserted interpretation of HG § 5-509(c) as a strict liability statute, and the various fines and penalties provided throughout related statutes, there is no stated penalty for failing to follow the priority established by HG § 5-509(c). Further, at the time Ms. Goubanov made the arrangements, Rinaldi was not presented any information that suggested that there might have existed other parties asserting superior rights as next of kin. Rather, only Ms. Goubanov appeared, offering her explanation of status and authority, which Rinaldi was entitled to accept. *See* HG § 5-511(a).

#### **Rinaldi’s Motion to Dismiss**

Masters next argues that the court erred in granting Rinaldi’s motion to dismiss, finding that, pursuant to HG § 5-511(b), Rinaldi had no obligation to investigate or contact other potential claimants to a right to arrange burial. He posits that while “[t]he trial court’s observation as to what the statute requires is correct, ... [it’s] not relevant to these facts.” He explains that Rinaldi was already on notice of his existence, and “[o]nce Rinaldi became aware of the existence of a spouse, whose rights are paramount under § 5-509 (c)(1), it was obligated to deny Goubanov’s request or, in the alternative, consult [him] to ensure that he had no contrary wishes.”

Masters’ assertions, however, are belied by the statute, which provides, in relevant part: “A practitioner and an operator of a crematory *may rely on the representations made by an authorizing agent*<sup>4</sup> and are not guarantors of the reliability of those representations.” HG § 5-511(a) (emphasis added). The statute further provides that: “A practitioner and an operator of a crematory *have no responsibility to contact or to independently investigate the existence of any next of kin* of the decedent.” HG § 5-511(b) (emphasis added).

Ms. Goubanov, Ms. Masters’ adult daughter, was an “authorizing agent,” who was second in priority pursuant to HG § 5-509(c)(2), and who had authority and control of the decedent’s body, as approved by the Office of the Virginia State Medical Examiner. Subsection 5-509(c) also provides that, in the absence of decedent’s written instructions and when “a person has knowledge that contrary directions have been given by the decedent,” the list of persons in order of priority does not come into play. HG § 5-509(c). *See also Ederly v. Ederly*, 193 Md. App. 215, 235 (2010) (where this Court agreed “that the selection of an authorizing agent pursuant to the priorities assigned by HG § 5–509(c)(1) through (c)(7) is not to occur if a person has knowledge that contrary directions [regarding disposition] have been given by the decedent” (internal quotations omitted)). When making the funeral arrangements, Ms. Goubanov informed Rinaldi of Ms. Masters’ desire to be buried in accordance with her religious beliefs as a Russian Orthodox Christian, which Rinaldi complied with.

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<sup>4</sup> The statute defines an “authorizing agent” as “the individual who has legal authority to arrange for and make decisions regarding the final disposition of a dead human body, including by cremation.” HG § 5-508(b).

The record before the circuit court, including Masters’ own affidavit, confirm that Ms. Goubanov “confirmed to Rinaldi that [Masters was] the husband of Maria Masters ....” But, Masters asserts, she “lied to Rinaldi by falsely informing them that a protective order existed [against him].”<sup>5</sup> Regardless of whether such a protective order existed against Masters, Rinaldi was under no duty to investigate. *See* HG § 5-511(a)-(b). Furthermore, Ms. Goubanov’s proffered authority was supported by the Virginia State Medical Examiner’s reliance on Ms. Goubanov’s assertions of entitlement to assume control of Ms. Masters’ body.

Accordingly, when Rinaldi accepted Ms. Goubanov’s representations of her authority to make the funeral arrangements, as it was entitled to do under HG § 5-511(a), absent any knowledge of “contrary directions” under HG § 5-509(c), it was under no statutorily-imposed duty to consult with Masters to confirm Ms. Goubanov’s status, or to confirm the funeral arrangements with him. We are not persuaded by his assertion that the “statute gives the spouse priority over all others, *without qualification or exception.*” (Emphasis added). In fact, that provision provides two exceptions: (1) if knowledge of contrary directions by decedent, or (2) if an executed document by the decedent expressing decedent’s postmortem wishes existed. *See* HG § 5-509(c). Neither exception is relevant here.

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<sup>5</sup> The record does not support a conclusion that a protective order existed. But, Ms. Goubanov might have reasonably assumed as much, in view of the number of police responses to the Masters’ home prior to Ms. Masters’ admission to The Laurel Center. Assuming, *arguendo*, that Ms. Goubanov was deliberately untruthful in that representation, we would not find that fact dispositive.



A reasonable inference to be drawn from a reading of the related statutes is that disposition of a decedent's body should be in accordance with the decedent's directions and wishes. *See* HG § 5-509(a)(1), (c); HG § 5-511(c)(2) (allowing a non-priority person with a "closer personal affinity to the decedent," than those with priority, to petition to be the authorizing agent, and suggesting that the petitioner "should be allowed to make the arrangements); HG § 5-512(b) ("A person may not authorize cremation when a decedent has left instructions in a document that the decedent does not wish to be cremated."). *See also Radomer Russ-Pol Unterstutzung Verein of Baltimore City v. Posner*, 176 Md. 332, 338 (1939) (noting that "the opinions of courts generally regard the factors as controlling in the order of their importance to be, (1) the wishes of the deceased, when they can be ascertained, and in connection with this, the influence of his religious faith in the decision or request; (2) the wishes of the widow or widower, and next after them, the next of kin, if near enough to have their wishes respected; (3) the agreement or regulations of the body maintaining the cemetery").

Throughout his various filings, Masters maintains that *he* did not wish for the decedent to be buried in Rock Creek Cemetery. At no point does he address any contrary directions or wishes of the decedent's desired burial location.

### CONCLUSION

There is no statutory duty in Maryland requiring a funeral director to contact any potential next of kin or to investigate and confirm the veracity of representations made by a person asserting priority as next of kin. As such, the circuit court was correct in denying

Masters' motion for summary judgment and was similarly correct in granting Rinaldi's motion to dismiss.

**JUDGMENT OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
AFFIRMED; COSTS ASSESSED TO  
APPELLANT.**