

RIGHTS TO DECEDENT'S REMAINS IN PENNSYLVANIA

By: James G. Keenan, Esquire

The rights to the decedent's remains and the choice as to the treatment of those remains has caused a number of disputes between interested parties in the Commonwealth of Pennsylvania. The disputes generally arise between the decedent's blood relatives as against other non-blood related loved ones. There has been considerable concern about how to treat the remains, but also funeral services. These issues typically arise when the decedent failed to make proper plans. The parties to this type of litigation/dispute can be found in the areas of matrimonial law, as well as estate planning.

There was a recent case decided by the Pennsylvania Superior Court namely *Kulp v. Kulp*, which can be read by referencing Volume 920 A.2d at p. 867. This was a 2007 case decided by the Pennsylvania Superior Court. In the *Kulp* case, the person who passed away was the child involved in a divorce. The issue arose as to how to treat the cremated remains of the deceased child. The parents could not decide how best to do that and litigation ensued on the family law side of the Court of Common Pleas in Schuylkill County. After hearing testimony and receiving other evidence concerning this particular matter, the Judge directed that the child's cremated remains be divided into two separate urns and each party be allowed to place his or her urn at a sight of his or her choice. The surviving father of this child did not appreciate the decision reached by the Judge and filed an appeal. On appeal the Pennsylvania Superior Court decided that the Judge abused his discretion in using its equitable powers to override the desires of one of the next of kin as to the division of the child's remains and in ordering that the child's remains be divided between husband and wife, who were the surviving parents of the decedent. Unfortunately, for mother and father in this case, the Court of Common Pleas, Family Law division does not have jurisdiction to entertain such matters; and therefore, the case was remanded from the Pennsylvania Superior Court back to the trial court for further disposition.

The correct body of law applicable to these types of disputes is referred to as the Probate, Estates and Fiduciary's Code. This particular body of law and the Commonwealth of Pennsylvania set forth various sequences for persons interested in the remains of a decedent in order to pursue their rights. PEF Code Section 305 deals with the right of a person to dispose of a decedent's remains. If there is a valid Will which was executed by the decedent setting forth a particular manner of disposition of the remains then the Will will be generally followed by the executor of the estate. Choices are burial, donation of the remains as an anatomical gift, or cremation and subsequent disposition of the cremated remains/ashes.

When a married person dies without any direction as to his or her remains, then the surviving spouse shall have the sole authority in all matters pertaining to the disposition of the remains. That authority of the surviving spouse may be forfeited if there is no surviving spouse, then the next of kin shall have the sole authority in all matters pertaining to the disposition of the remains of the decedent unless there are disqualifying events. If there are any disqualifying events defined by the law, then the Court must have a hearing.

In its effort to review the factors set forth in the *Kulp* case to decide what should be done, the Pennsylvania Superior Court relied upon a case which was over 100 years old referred to as *Pettigrew v. Pettigrew*, which can be found at Volume 56 of the A.2d reporters at p. 878. This is a 1904 case. Even though the *Pettigrew* case involved issues surrounding a re-interment situation, the issues of that case and the interpretation of the Probate, Estates and Fiduciary Code remain in effect.

If you should be faced with these tough decisions, we would recommend that you confer with a probate and estates attorney. Our office provides such services and that area of our practice is chaired by William F. Hoffmeyer, Esquire.