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IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
20TH JUDICIAL DISTRICT
AT NASHVILLE
PART III

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NOV 24 2014

DAV. CO. CHANCERY COURT

STATE OF TENNESSEE,)
ex rel. JULIE MIX MCPEAK,)
solely in her official capacity as)
Commissioner of)
Commerce & Insurance,)
Plaintiff,)

v.)

No. 14-1642-III

VICKIE L. RINGLEY, individually)
and d/b/a Hawkins County)
Memorial Gardens,)
Defendant.)

FILED
2014 DEC -2 AM 10:26
DAVIDSON COUNTY CHANCERY C
DCRM

ORDER APPOINTING COMMISSIONER AS RECEIVER FOR
HAWKINS COUNTY MEMORIAL GARDENS CEMETERY
AND GRANTING INJUNCTIVE RELIEF

This cause came to be heard, on the Verified Petition of the State of Tennessee, on the relation of Julie Mix McPeak, solely in her official capacity as Commissioner of the Tennessee Department of Commerce & Insurance ("Commissioner"), for her appointment, as receiver of Hawkins County Memorial Gardens (also referred to herein as the "Cemetery"), pursuant to Tenn. Code Ann. § 46-1-312, and for injunctive relief pursuant to Tenn. Code Ann. § 46-1-301(c). Based upon the Verified Petition,

evidence filed in support, statements of counsel, and the entire record, the Court finds that the Commissioner's Verified Petition is well taken and ought to be granted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court makes the following Findings of Fact and Conclusions of Law in connection with the entry of this Order:

1. Plaintiff Julie Mix McPeak is the duly appointed Commissioner of the Department of Commerce & Insurance of the State of Tennessee. She brings this action solely in her official capacity.

2. The operation of cemeteries in Tennessee is primarily governed by the Cemetery Act of 2006, Tenn. Code Ann. Title 46, chapters 1 and 2 ("Cemetery Act"). The duty and authority to administer and enforce the Cemetery Act rests with the Commissioner. Tenn. Code Ann. § 46-1-301(a).

3. Under the Cemetery Act, a valid certificate of registration is required before a person may lawfully operate a cemetery. Tenn. Code Ann. § 46-1-103. Additionally, persons who operate cemeteries must also establish and properly fund a pre-need merchandise and services trust fund for the benefit and protection of customers. Tenn. Code Ann. §§ 46-1-206(b)(1), – 207(b)(1)(B) and – 207(b)(2).

4. This Court has jurisdiction over the subject matter of this action pursuant to Tenn. Code Ann. § 46-1-301 and 46-1-312. Venue properly lies in Davidson County under Tenn. Code Ann. § 46-1-312(a)(2).

5. Defendant Vickie L. Ringley owns and operates, as a sole proprietorship, Hawkins County Memorial Gardens, a cemetery that is located at 536 Carters Valley

Loop, Rogersville, Tennessee. Until December 31, 2013, Vickie Ringley, doing business as Hawkins County Memorial Gardens, operated under a certificate of registration issued by the Commissioner. The certificate of registration that was issued for the operation of the Cemetery expired on December 31, 2013.

6. The Cemetery is now impaired and insolvent on account of having no money for operations and having no pre-need merchandise and services trust fund to satisfy customer obligations as they come due, now and in the future.

7. The Cemetery will not be able to meet its current and future contractual obligations on account of having no money for operations and having no pre-need merchandise and services trust fund to satisfy customer obligations as they come due, now and in the future.

8. Ms. Ringley has never established a pre-need merchandise and services trust fund for the Cemetery pursuant to Tenn. Code Ann. § 46-1-207(b)(2). During Ms. Ringley's operation of the Cemetery, customers paid Ms. Ringley for certain merchandise and services on numerous occasions, and Ms. Ringley inexcusably failed to deliver the merchandise and services within 120 days of payment. However, Ms. Ringley never deposited these monies into the pre-need merchandise and services trust fund for the benefit and protection of these customers as required by law.

9. Ms. Ringley has taken monies that were required to be trusted in accordance with Tenn. Code Ann. §§ 46-1-206(b)(1) and instead deposited them in her personal checking account and commingled them with personal funds, thus misappropriating and misapplying trust funds.

10. Ms. Ringley has allowed the Cemetery's registration to lapse.

11. Based on the evidence before the Court, good grounds exist under Tenn. Code Ann. § 46-1-312 for the appointment of the Commissioner as receiver of Hawkins County Memorial Gardens to ascertain and determine the Cemetery's true financial and operational condition, whether it can be reformed and rehabilitated, and whether any other remedial action may be necessary and appropriate.

ORDER

Now therefore, in view of the foregoing, it is hereby ORDERED that the Commissioner be and hereby is appointed, in her official capacity, and with her successors in office, as Receiver for Hawkins County Memorial Gardens, and of all entities doing business as Hawkins County Memorial Gardens, under Tenn. Code Ann. § 46-1-312(a), and that she shall have all of the powers and authority granted therein to enable her to take such actions as are necessary and appropriate to determine whether the Cemetery can be reformed or restored to enable it to continue to operate as a viable ongoing concern or if some other course of action is required. Further, in accordance with Tenn. Code Ann. §§ 46-1-312 and 46-1-301(c), this Court grants the Commissioner such other injunctive and equitable relief as provided herein, as such are required by the nature of the case, to promote the efficacy of receivership and serve the public interest in the Cemetery. Specifically, it is ORDERED:

A. **APPOINTMENT OF COMMISSIONER AS RECEIVER.** Julie Mix McPeak, Commissioner of the Tennessee Department of Commerce and Insurance, is

hereby appointed in her official capacity, and with her successors in office, as statutory Receiver of Hawkins County Memorial Gardens, as authorized by Tenn. Code Ann. § 46-1-312(a), and that the Commissioner, as Receiver, is granted all the power and authority conferred by Tenn. Code Ann. § 46-1-312 and by law to receivers. The Commissioner, as Receiver, is directed forthwith to take exclusive custody, control, and possession of all bank accounts, goods, chattels, causes of action, credits, monies, investments, stocks, shares, effects, books and records of account, other papers and property, and all interests, whether real or personal, tangible or intangible, of whatever type, kind or nature owned or held by or on behalf of Cemetery, with full power to sue for, collect, receive, and take possession of such properties and assets and to conserve and administer them under the general supervision of the Court.

B. SPECIAL DEPUTY RECEIVERS AND COMPENSATION. The Commissioner, as Receiver, is authorized under Tenn. Code Ann. § 46-1-312(a) to appoint one or more special deputy receivers to assist in this matter who shall have the statutory powers of a receiver and all powers of the Commissioner as Receiver, and is authorized to employ such counsel, accountants, appraisers, managers, clerks, assistants, experts, and other persons as deemed necessary to properly execute the duties that have been conferred under this Order. The compensation of the special deputies, counsel, accountants, appraisers, managers, clerks, assistants, and other persons and all expenses of taking possession of the Cemetery and of conducting the proceeding shall be paid out of the funds or assets of the Cemetery, or if Cemetery

funds are not immediately available, such other funds as may be available to the Commissioner to furnish for those purposes. The persons appointed under this section shall serve at the pleasure of the Commissioner.

C. SECURING OF ACCOUNTS. The Commissioner, as Receiver, shall forthwith contact all financial, agency, trust or depository institutions maintaining accounts that were used or maintained by the Cemetery and Vickie L. Ringley in connection with the operation and/or management of the Cemetery without regard to the name on such account. The Receiver shall employ whatever lawful means necessary to secure the funds in these, and any other accounts, for the receivership and on behalf of the Cemetery, and amend the signature cards so that only those persons approved by the Commissioner, as Receiver, shall be permitted to withdraw upon such accounts on behalf of or in the name of the Cemetery.

D. INFORMATION FROM FINANCIAL INSTITUTIONS. The Commissioner, as Receiver, shall secure from any financial institution where Vickie L. Ringley or the Cemetery maintains property or accounts, including but not limited to bank accounts, all financial information required by the Receiver and said financial institutions shall provide this information to the Receiver.

E. INJUNCTION. All persons, firms, corporations, and associations, including but not limited to Vickie L. Ringley and Hawkins County Memorial Gardens, and their officers, directors, stockholders, members, subscribers, agents and all other persons in active concert or participation with them, are prohibited and enjoined:

1) from the interference with or transaction of further business of the Cemetery;

2) from the waste, transfer or disposition of property of the Cemetery, including but not limited to all assets that are held, or supposed to be held, in trust to meet the obligations under pre-need cemetery merchandise and services contracts and all other contracts, and maintenance, improvement, and care of its property;

3) from doing any act or thing whatsoever to interfere with the taking control, possession and administration by the Receiver of the receivership properties or to in any way interfere with the Receiver, or to harass or interfere with the Receiver, or to interfere in any manner with the exclusive jurisdiction of this Court over the receivership properties;

4) from the institution or further prosecution of any actions or proceedings, except within this receivership itself;

5) from the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the Cemetery;

6) from the withholding from the Receiver of books, accounts, documents, or the records relating to the business of the Cemetery;

7) from any other threatened or contemplated action that might lessen the value of the Cemetery's assets or prejudice the rights of investors, creditors, or any proceeding under the receivership;

8) from obtaining preferences, judgments, attachments, or other liens, or the making of any levy against the Cemetery or against its assets or any party thereof or from enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, any receivership property or attempting to foreclose, forfeit, alter, or terminate any interests of the Cemetery, in any property, whether such acts are part of a judicial proceeding or otherwise, until further order of this Court; and

9) from accelerating the due date of any obligation or claimed obligation.

This Court further authorizes the Receiver to apply outside of Tennessee for the relief above described if need arises to protect the Cemetery or the efficacy of this receivership.

F. COOPERATION WITH RECEIVERS. All officers, managers, directors, trustees, owners, employees, or agents of Vickie L. Ringley or the Cemetery, and any other persons with authority over or in charge of any portion of the Cemetery's affairs and persons in control of assets, books, and records of the Cemetery, or its physical locations, including but not limited to any offices of the Cemetery, are required to cooperate with the Receiver in the carrying out of the receivership. The term "person" shall include any person who exercises control directly or indirectly over activities of the Cemetery, individually or through any other entity, intermediary, holding company, or other affiliate of the Cemetery. "To cooperate" shall include, but shall not be limited to, the following:

1) to reply promptly in writing to any inquiry from the Receiver requesting such a reply; and

2) to make available to the Receiver any books, bank, and investment accounts, documents or other records or information or property of or pertaining to the Cemetery and/or in possession, custody or control of Vickie L. Ringley or the Cemetery.

No person shall obstruct or interfere with the Receiver in the conduct of this receivership. To the extent that any governmental or criminal investigative authority may have custody or control of such records or assets, the Receiver is directed to work with that governmental agency or appear in such Court as may have jurisdiction to obtain access to these records or assets for the Cemetery, and may enter into such agreements as may be required with the governmental agency.

G. REHABILITATION OF THE CEMETERY. In accordance with powers granted under Tenn. Code Ann. § 46-1-312(a) and (b), the Commissioner, as Receiver, may take such action as she deems necessary or appropriate to reform and revitalize the Cemetery, and the Receiver has power to pursue legal remedies on behalf of the Cemetery. The Receiver has all the powers of the owners and directors, except as they are re-delegated by the Receiver. The Receiver has full power to direct and manage, to hire and discharge any employees subject to any contractual rights they may have, and to deal with the property and business of the Cemetery. She shall have power to make such payments and disbursements from the receivership properties and incur such expenses as may be necessary and advisable in discharging

her duties as Receiver, or for the proper conduct of any usual and lawful business of the Cemetery. The Receiver may consult and cooperate with other state and federal authorities who may have jurisdiction over any parts of the property and business of the Cemetery. In addition, the Receiver shall have any other powers given her by state law.

H. **CONVERSION OR SALE OF THE CEMETERY.** The Receiver is fully authorized to reorganize, consolidate, convert, merge, sell, or otherwise transform the Cemetery, subject to the Court's approval.

I. **CLAIMS AGAINST THE CEMETERY.** There shall be no complaint, counter-complaint, or similar action initiated or continued against the Cemetery, the property of the receivership, the Receiver or those of the Receiver's agents, in connection with this receivership otherwise than by appearing in this cause and with the permission of this Court.

J. **IMMUNITY TO PERSONAL LIABILITY.** There shall be no liability on the part of, and no cause of action of any nature shall arise against, the Commissioner or any special deputy receivers that the Commissioner may appoint, or anyone acting as an agent thereof, for any action taken by them or at their direction in the performance of their powers and duties under this Order. Moreover, the Commissioner and any special deputy receivers that the Commissioner may appoint under this Order, and anyone acting as an agent thereof, are entitled to and reserve all other applicable immunities conferred by law, and nothing in this Order is intended to limit any such immunities.

K. **BOND.** No bond shall be required of the Commissioner as Receiver, per Tenn. Code Ann. § 20-13-101, and per Tenn. Code Ann. § 46-1-301(c) for the injunctions contained herein.

L. **MODIFICATIONS AND CLARIFICATIONS.** Any modifications or clarifications of the Receiver's duties be filed with this Court on motion. EHC

M. **REPORTING.** *The Court shall issue a separate supplemental order stating the terms and timing of reports the Receiver shall file in this matter.* ~~The Receiver shall report to Court as soon as feasible and thereafter on a periodic basis as directed by the Court to account for all funds and property that come into her possession and to obtain instructions from the Court with respect to any claims procedures or other authority deemed necessary.~~

N. **COSTS.** Costs of this action are taxed to Defendant Vickie L. Ringley and the Cemetery property. This Court retains jurisdiction for all matters, and all matters not set forth herein are reserved.

IT IS SO ORDERED:

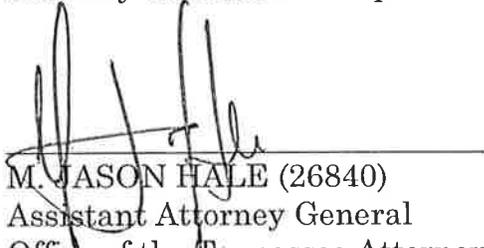
Wm Hobbs Lyle

CHANCELLOR

I HEREBY CERTIFY THAT THIS IS A TRUE COPY
OF ORIGINAL INSTRUMENT FILED IN MY OFFICE.
THIS 2nd DAY OF December 2017
CRISTI SCOTT, CLERK & MASTER
BY *[Signature]*
DEPUTY

APPROVED FOR ENTRY:

HERBERT H. SLATERY III (9077)
Attorney General and Reporter



M. JASON HALE (26840)
Assistant Attorney General
Office of the Tennessee Attorney General
Financial Division
P.O. Box 20207
Nashville, TN 37202
(615) 532-8812; fax 532-8223

CERTIFICATE OF SERVICE

The undersigned certifies that this Pleading will be served on the below listed Defendant at the same time and in the same manner as the Summons and the Verified Petition for Appointment of Commissioner as Receiver for Hawkins County Memorial Gardens and for Extraordinary Relief that has been filed in this cause on the 24th day of November, 2014.

Vickie L. Ringley
536 Carters Valley Loop
Rogersville, TN 37857

Independence Trust Co.
P.O. Box 682188
Franklin, TN 37068



M. Jason Hale