

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

STATE OF TENNESSEE, )  
*ex rel.* HODGEN MAINDA, solely in his )  
official capacity as Commissioner of )  
Commerce & Insurance, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GALILEE MEMORIAL GARDENS, )  
JM&M SERVICES, INC., )  
LAMBERT MEMORIAL CO., aka )  
LAMBERT MEMORIALS, INC. )  
LAMBERT & SONS, INC. )  
JEMAR LAMBERT, MARJE LAMBERT, )  
and MARY H. LAMBERT, and ALL )  
PERSONS ACTING IN CONCERT )  
WITH THEM, )  
 )  
Defendants. )

No. 14-102-III

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COMMISSIONER’S MEMORANDUM OF LAW ADDRESSING PURPORTED  
ESCHEATMENT OF GALILEE MEMORIAL GARDENS  
AND RELATED MATTERS

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Hodgen Mainda, Commissioner of the Department of Commerce & Insurance (“Commissioner”), as Receiver for Galilee Memorial Gardens (the “Cemetery” or “Galilee”), through his appointed Special Deputy Receiver, Receivership Management, Inc., submits the following Memorandum of Law addressing the issues outlined in the Court’s Order entered on March 16, 2020 (the “March 16 Order”).

In its March 16 Order, the Court instructed the Office of the Tennessee Attorney General to file a brief on “the issue ... of ownership of the Cemetery now that ownership has been divested

out of the private companies and individuals who were operating the Cemetery.” Specifically, the Court directed the “Attorney General ... [to] address the position of Shelby County that the Cemetery property shall escheat to the State of Tennessee such that the State shall own the Cemetery and be responsible for maintenance.”

Contrary to Shelby County’s position, the Cemetery will not escheat to the State of Tennessee upon termination of the Receivership. Further, the question of who specifically holds legal title to Galilee after the Receivership is terminated and the Commissioner is discharged as Receiver is not an issue that should be decided by the Court in this proceeding.

### **ANALYSIS AND ARGUMENT**

#### **I. GALILEE WILL NOT ESCHEAT TO THE STATE OF TENNESSEE UPON TERMINATION OF THE RECEIVERSHIP.**

In its response to the Commissioner’s Motion to Terminate the Galilee Receivership, Shelby County asserted that the Cemetery will automatically escheat to the State of Tennessee upon termination of the Receivership as a consequence of the Court’s divestiture of the ownership rights of the previous operators of the Cemetery through its June 12, 2019 Order. Shelby County’s Response, P. 2-3. In support of its position, the County has cited two Tennessee case decisions, decided in 1852 and 1904, respectively, that discuss the escheatment of real property to the State when there are no heirs to inherit the property under the laws of descent/intestacy. The cited cases, however, do not address escheatment of cemeteries and were decided decades before the enactment of statutes that govern the modern escheatment process in Tennessee. Moreover, Shelby County’s position is directly at odds with existing Tennessee law. As discussed in greater detail below, Galilee will not escheat to the State of Tennessee after the Receivership is terminated.

**A. Tennessee’s Cemetery Statutes Do Not Authorize Escheatment of Cemeteries to the State.**

Title 46 of the Tennessee Code, which governs the regulation, management and operation of cemeteries located in the State, does not authorize the escheatment of entire cemeteries to the State or any other governmental authority. The only statute in Title 46 that deals with escheatment is Tenn. Code Ann. § 46-2-103, which provides for the escheatment of “all vacant cemetery lots and grave spaces” owned by deceased persons that are not inherited through the laws of testacy and intestacy. Instead of escheating to the State of Tennessee, all such lots/spaces “escheat to the municipalities, corporations, associations or other owners” of the cemeteries where the lots/spaces are located. Tenn. Code Ann. § 46-2-103. Accordingly, Shelby County’s argument that Galilee will escheat to the State of Tennessee is not supported by Title 46 of the Tennessee Code.

**B. Tennessee’s Escheatment Laws Do Not Apply to Galilee.**

Even if Tennessee’s general escheatment laws apply to cemeteries, those laws do not authorize the escheatment of Galilee to the State of Tennessee.

In Tennessee, the escheatment of real property to the State is authorized in certain limited situations. Generally, escheatment of real property located in the State occurs when an owner dies with no living heirs (Tenn. Code Ann. §§ 31-6-101, -102, and -107) or when a devisee/distributee entitled to receive real property cannot be located by the administrator or fiduciary administering a trust or estate (Tenn. Code Ann. §§ 30-2-702 and 31-6-107). Further, Tennessee’s Uniform Unclaimed Property Act (codified at Tenn. Code Ann. §§ 66-29-101 to -184) authorizes the escheatment of abandoned and unclaimed “property.” Pursuant to Tenn. Code Ann. §66-29-102(24), the Act’s definition of “property,” which includes both “tangible” and “intangible” property but does not specifically mention real property, is limited to those items of “tangible property described in” Tenn. Code Ann. §§ 66-29-109 (escheatment of contents of safety deposit

boxes), 30-2-702 (escheatment when devisee/distributee of property cannot be located by estate fiduciary), and 31-6-107 (escheatment of property from a decedent's estate). Thus, even if real property can be considered to be a form of "tangible property" under Tennessee's Unclaimed Property Act, the Act still does not apply to Galilee since the Cemetery does not fall within the Act's limited definition of "tangible property" that can escheat under the Act. Accordingly, none of the escheatment statutes cited above apply to Galilee,<sup>1</sup> and there is no legal authority supporting Shelby County's escheatment argument.<sup>2</sup>

**II. IN LIEU OF ANY INTEREST FROM ANY PUBLIC OR PRIVATE SOURCES WILLING TO TAKE OWNERSHIP AND RESPONSIBILITY FOR THE CEMETERY, THE INCOME GENERATED FROM GALILEE'S IMPROVEMENT CARE TRUST FUND IS AVAILABLE TO PROVIDE POST-RECEIVERSHIP MAINTENANCE OF THE CEMETERY, AND RED AND BLUE LLC HAS PROPOSED TO PROVIDE SUCH MAINTENANCE PAID FOR FROM TRUST INCOME.**

In its June 12, 2019 Order, the Court determined that (1) the Cemetery has no available assets that can be used for maintaining the cemetery and (2) no assets are recoverable from the former operators of the Cemetery for such purposes. (June 12, 2019 Order, p. 62, ¶ L24). And despite the existing financial deficiencies of Galilee's Improvement Care Trust Fund ("ICTF")

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<sup>1</sup> Tenn. Code Ann. § 29-35-117 provides for the escheatment of corporate property following judicial dissolution of a corporation when a corporation and/or its owners and owners have "intentionally impaired or depreciated its assets or property," but the conditions that must be satisfied (and the judicial findings that must be made) for escheatment to occur under the statute do not exist in the present case.

<sup>2</sup> Even when real property escheats to the State of Tennessee, the State may decline to accept the property. Under Tennessee's Uniform Unclaimed Property Act, the State of Tennessee, acting through the State Treasurer, has wide discretion in accepting and/or rejecting any property that would otherwise escheat to the State. Specifically, pursuant to Tenn. Code Ann. § 66-29-138(a)(1), the Treasurer may decline to accept property that "has a value less than the estimated expenses of notice and sale of the property..." Further, Tenn. Code Ann. § 66-29-139 authorizes the Treasurer to refuse or return any property that "has no substantial commercial value or that the cost of disposing of the property will exceed the value of the property..." Also, under Tennessee's Disclaimer of Property Interests Act, codified at Tenn. Code Ann. §§ 31-7-101 to -112, the State of Tennessee may disclaim any interest in real property it may receive by operation of law, conveyance, or other means. *See* Tenn. Code Ann. § 31-7-103 (Act applies to "disclaimers of any interest in property, whenever created."); Tenn. Code Ann. § 31-7-105(a) (any "**person** may disclaim, in whole or in part, any interest in or power over property..."); and Tenn. Code Ann. § 31-7-102(6) (the Act's definition of "**person**" includes a "government, governmental subdivision, agency, or instrumentality...")

(June 12, 2019 Order, p. 49, ¶ 109; p. 60, ¶ L20), no local government has provided (or committed to provide) financial assistance to the Cemetery pursuant to Tenn. Code Ann. § 46-2-107.<sup>3</sup> Although one major tenet of Shelby County’s escheatment argument is that the State of Tennessee will be legally responsible for the maintenance of the Cemetery after escheatment, escheatment is not possible under Tennessee law (as discussed in **Section I** above). Fortunately, income from the ICTF is adequate to pay for maintenance as discussed in the Commissioner’s Motion to Terminate Receivership and supporting Memorandum of Law, which requested the appointment of Red and Blue LLC as a responsible party to provide maintenance. Tenn. Code Ann. § 46-1-204(e)(2) and (3) authorize the expenditure of earnings generated by the ICTF to pay for “improvement care” at the Cemetery when no operator exists. Therefore, the Cemetery’s ICTF will shoulder the financial burden of providing improvement care services for the cemetery grounds in the future pursuant to Tenn. Code Ann. § 46-1-204.

**III. THE ISSUES (I), (J) AND (K)<sup>4</sup> CONTAINED IN THE COURT’S SCHEDULING ORDER OF DECEMBER 5, 2019 AND THE SUPPLEMENTAL STATEMENT OF NOVEMBER 8, 2019 ARE RESOLVED AND ADDRESSED BY THE PRIOR ORDERS OF THE COURT AND POST-RECEIVERSHIP MAINTENANCE OF THE CEMETERY BY RED AND BLUE LLC.**

Currently, the Commissioner holds the Cemetery *in custodia legis* in his capacity as Receiver of the Cemetery, which means in custody or keeping of the law. *Butcher v. Howard*, 715

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<sup>3</sup> During the hearing conducted by the Court on March 10, 2020, counsel for Shelby County made it clear that legislative action by the Shelby County government authorizing financial assistance to the Cemetery is highly unlikely.

<sup>4</sup> As stated in the Scheduling Order of December 5, 2019, Issues I, J and K listed in the Supplemental Statement of November 8, 2019, concerned the potential arrangements for future ownership and responsibility for maintenance and oversight of the Cemetery, after the end of this receivership. The Issues to be decided were:

I) Since at this time no group or entity has been identified to accept ownership or responsibility of maintenance and oversight of the Cemetery, absent such a group or entity being identified, an Order reflecting that fact be entered.

J) If an appropriate group or entity is willing to accept ownership or the responsibility of the maintenance and oversight of the Cemetery prior to the termination of the receivership, an Order containing the terms providing for transfer of ownership or responsibility for maintenance and oversight of the Cemetery and such other provisions as are necessary.

K) If an appropriate group or entity cannot be found to accept responsibility of upkeep of Galilee Memorial Gardens, an Order ending the Receivership and defining the status of the cemetery grounds.

S.W.2d 601,604 (Tenn. Ct. App. 1986) (citing *Tradesman Publ'g Co. v. Car Wheel Co.*, 95 Tenn. 634, 32 S.W. 1097 (1895)). Divesting title from the Lambert entities and their related individuals was for the benefit of the Cemetery itself and for all the interests of lot owners and next of kin of decedents in the Cemetery that the statute expresses as the scope of this Court's concern given that the "cemetery company" has been liquidated. Those lot owner/next of kin interests have been clearly identified in Tenn. Code Ann. § 46-1-312 whereby the Court is authorized to approve a plan of transformation of the Cemetery that is "in the judgment of the court, fair and equitable to all parties concerned, taking into consideration the overall operation of the cemetery, and the interests of the lot owners, next of kin of lot owners, and descendants of lot owners and the general public." Tenn. Code Ann. § 46-1-312(a)(9). Consistent with those interests was also the intention at the commencement to convey title to an owner who would assume the responsibility of ownership of the Cemetery. As the Court is aware, efforts to attract interest in ownership have been unsuccessful. In this case, the Commissioner has shown, and this Court has ordered that the Cemetery must be closed and cease all commercial operations. Further, to prevent any future activity by the Lambert entities or their related individuals related to the Cemetery and the ICTF the Court has issued an injunction which is now permanent. (June 12, 2019 Order, Order directives, ¶ 4, pp. 77-76.) This circumstance is the logical outcome of the Cemetery being full and having no future business or economic value, like many other cemeteries in Tennessee, requiring use of ICTF earnings for permanent maintenance of the grounds. The statute looks to *local governments* should maintenance be found wanting. Tenn. Code Ann. § 46-1-207 gives them the express power to voluntarily assume this role in future. In fact, counsel for Shelby County acknowledged the County provides maintenance for four (4) abandoned cemeteries in the County.

(Shelby County Motion to Intervene, ¶ 8, p. 2; also TR 11-15-2019 Status Conference, p. 20, lines 7-13).

The Commissioner has accomplished all that the law requires of this receivership proceeding. The Cemetery's grounds are "abandoned" only with respect to the Commissioner's interests in the Cemetery as Receiver. The law provides access to the burial ground and gravesites to families of the decedents for visitation and potentially individual upkeep of their loved ones' graves, and the overall parcel remains dedicated to those interests. Maintenance by Red and Blue LLC will provide a threshold of upkeep that will allow for these purposes.

Under Tenn. Code Ann. § 46-1-312(d), the Court is specifically authorized to order the sale of a cemetery when necessary to correct a deficiency in the cemetery's improvement care trust fund. As determined by the Court in its June 12, 2019 Order, a deficiency currently exists in the Cemetery's ICTF which cannot be remedied due to a lack of available assets, but, unfortunately, the sale of Galilee to a third party is currently not feasible. Consequently, in his pending Motion to Terminate the Receivership, the Commissioner proposes a plan to fund improvement care services for the Cemetery solely from the income generated by Galilee's ICTF, and a sale of Galilee is not requested (or contemplated).

Although legal questions may arise in the future after termination of the Receivership regarding who is the actual title owner of the Cemetery, such questions have no bearing on matters germane to the Commissioner's requested termination of the Receivership because the termination does not involve a sale of Galilee pursuant to Tenn. Code Ann. § 46-1-312(d). Moreover, since escheatment to the State is not legally permissible and with no financial resources available to be recovered from the prior owners/operators of the Cemetery, a decision on the ownership question

at this time will provide no practical benefit to the Cemetery.<sup>5</sup> Accordingly, it is not necessary for the Court to decide the question who holds legal title to the Cemetery after the Receivership is terminated and the Commissioner, in his role as Receiver, is divested of all interests in Galilee. While most often a new owner comes forward to accept responsibility of ownership, at least one case with which the Court is familiar also was concluded without a new owner.<sup>6</sup>

### CONCLUSION

For the reasons stated above, the Court should grant the Commissioner's Motion to Terminate the Galilee Receivership. Further, the Court should grant the relief requested in this Memorandum of Law.

Respectfully submitted,

**HERBERT H. SLATERY III**

Attorney General and Reporter  
State of Tennessee

/s/Sarah Ann Hiestand

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<sup>5</sup> If future circumstances justify pursuing a judicial decision on the ownership issue, an interested party could institute legal proceedings in a court of appropriate jurisdiction.

<sup>6</sup>*McPeak etc. v. Bookwalter Cemetery*, Davidson Ch. No. 10-1426-III, Final Order 6-20-2013: The cemetery had been titled in the name of the cemetery itself and only burial rights were determined through the receivership action. Although the case was in a much different procedural posture from Galilee, it does provide some guidance that the final resolution of the title to the cemetery grounds is not a prerequisite to closing out the receivership.



**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing Memorandum of Law has been transmitted via email to the following interested parties and attorneys requesting notice, or mailed First Class Postage prepaid where indicated, this 9th day of April, 2020:

Robert E. Moore, Jr.  
President, Receivership Management, Inc.  
510 Hospital Drive, Suite 490  
Madison, TN 37115  
Via email to [rmoore@receivermgmt.com](mailto:rmoore@receivermgmt.com)  
Special Deputy Receiver of Galilee Memorial Gardens

Jef Feibelman  
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Attorneys for Intervenor, Shelby County, Tennessee

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Trustee of Trusts for Galilee Memorial Gardens

Douglas Berry  
Miller & Martin  
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615 744-8620; via email to [Doug.Berry@millermartin.com](mailto:Doug.Berry@millermartin.com)  
For City of Bartlett, requesting notice of proceedings

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Individual Defendants in Receivership case, pro se

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Counsel for Lamberts in Shelby County cases

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Defense Liaison for Funeral Homes in Shelby County Class cases

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Brent M. Hays, Esq.

VIA MAIL

MerrittWebb

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Person requesting notice of proceedings.

/s/Sarah Ann Hiestand

IN THE CHANCERY COURT  
FOR DAVIDSON COUNTY, TENNESSEE

RECEIVED  
MAY 31 2013

Davidson Co. Chancery Court

JULIE MIX MCPEAK, COMMISSIONER )  
of the TENNESSEE DEPARTMENT of )  
COMMERCE & INSURANCE, )

Plaintiff, )

vs. )

BOOKWALTER CEMETERY, )  
a/k/a the NEW BOOKWALTER CEMETERY, )  
and CHARLES LAIRD SMITH, )

Defendants. )

NF  
Case No. 10-1426-III

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DAVIDSON CO. CHANCERY CT.  
D.C. & M.

FINAL ORDER

On October 6, 2010, the Court entered an Order Appointing Receiver pursuant to Tenn. Code Ann. § 46-1-312 as a result of a petition filed by the plaintiff, Commissioner of Commerce & Insurance.<sup>1</sup> The Court found that the defendant, Bookwalter Cemetery, was impaired because it had never registered with the Department of Commerce & Insurance as required by Tenn. Code Ann. § 46-1-103; had not maintained an improvement care trust fund to provide for maintenance of the Cemetery as required by Tenn. Code Ann. §§ 46-1-203 and -204; and had not maintained adequate books and records indicating the location of burial lots and gravesites as required by Tenn. Code Ann. § 46-1-111. The Court appointed the Commissioner as receiver for Bookwalter Cemetery for the limited purpose of establishing burial rights at the Cemetery. The Court also authorized the Commissioner to appoint one or more special deputies to assist in this

<sup>1</sup> At the time of the petition, the Honorable Leslie Newman served as Commissioner of Commerce & Insurance. Commissioner Newman was succeeded by the Honorable Julie Mix McPeak on January 21, 2011.

matter who shall have the statutory powers of a receiver, and the Commissioner subsequently appointed Receivership Management, Inc. of Brentwood, Tennessee to act as her Special Deputy Receiver.

The Bookwalter Cemetery was platted in or around 1922 from land titled to the R.K. Hutsell family. A corporate charter in the name of the New Bookwalter Cemetery Company was filed with the Office of the Knox County Register of Deeds, consistent with state law at that time. No record of a charter being filed with the Tennessee Secretary of State has been located, and no ownership identity for the Cemetery has existed for many years. A search of the records of the Office of the Knox County Register of Deeds and the Office of the Knox County Tax Assessor revealed that title to the Bookwalter Cemetery is simply in the name of the Cemetery itself. Defendant Charles Laird Smith was identified as a possible heir to the Cemetery, but Mr. Smith has renounced any interest in the Cemetery and claims no ownership rights to it. Mr. John King, and after his death his son Mr. Johnny King, were caretakers of the Cemetery grounds for many years and, upon request, opened and closed graves at the Cemetery in exchange for a fee. Mr. Johnny King, however, claims no ownership interest in the Cemetery. After turning over all the Cemetery's books and records to representatives of the Department of Commerce & Insurance, Mr. King was dismissed from this action pursuant to an Agreed Order entered on October 6, 2010. Given Mr. King's disclaimer of any ownership interest in the Cemetery, Mr. King's dismissal was conditioned on his not selling any burial lots on behalf of Bookwalter Cemetery.

The Receiver, acting through her Special Deputy Receiver, caused a review of the books, records, papers, and property of the Bookwalter Cemetery. The review revealed that no reliable record existed so as to determine the inventory of sold versus unsold grave spaces. Further, there

was no reliable record as to which particular grave spaces were occupied versus unoccupied. The Special Deputy Receiver conducted an on-site inspection of each grave space, aided by the original plat map of the Cemetery, as surveyed by Holt Brothers Engineers in 1922 and recorded in the Office of the Knox County Register of Deeds at Map Book 8, Page 64. The inspection revealed that of the 6,067 grave spaces in the Cemetery, 2,054 grave spaces were vacant and their ownership status was in question. The inspection also revealed that the boundary line sign of the adjacent church cemetery belonging to the Bookwalter United Methodist Church had encroached onto the property of the Bookwalter Cemetery.

In order to clarify ownership of the 2,054 vacant grave spaces, a proof of ownership process, patterned on a similar procedure for proofs of claims, was initiated. Because the Cemetery's records were excessively out-of-date and unreliable, a contact list of persons with potential ownership and burial rights in the vacant grave spaces was created through posting signs at the Cemetery approximately a week before Easter Sunday, 2011; by publishing notices in the Sunday edition of the Knoxville News-Sentinel in July and August 2011; and by announcements and community meetings held at the Bookwalter United Methodist Church located adjacent to the Bookwalter Cemetery. The proof of ownership process consisted of an affidavit, as well as instructions for its completion, to be submitted to the Special Deputy Receiver by September 15, 2011.<sup>2</sup> Evidence of ownership usually consisted of bills of sale issued by John King or Johnny King or warranty deeds issued by the New Bookwalter Cemetery Company and signed by its president, R.K. Hutsell. Other evidence included proof of

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<sup>2</sup> Many affidavits were received after the deadline; however, it was determined not to refuse an affidavit simply for its late-filed status while the processing of affidavits continued. The processing of affidavits was completed on December 11, 2011.

relationship to a deceased buried near the claimed grave space, certified copies of death certificates, and copies of wills. All proof was submitted as an attachment to a sworn affidavit.

Three categories of disputed claims to vacant grave spaces were encountered during the proof of ownership process: (1) ownership was impaired by unauthorized use of a grave space; (2) duplicative bills of sale or deeds were issued for the same grave space to two or more parties; and (3) the condition of a claimed grave space rendered it unusable or the grave space as labeled did not exist on the Cemetery's plat map. On January 5, 2012, the Court entered an Order Approving the Receiver's Summary Report Regarding the Current Status of the Receivership and Approving Recommended Procedures Regarding Disputed Grave Space Claims. In accordance with that Order, the Special Deputy Receiver resolved the disputed claims by assigning certain claimants alternative grave spaces and by issuing notices to all claimants of the Special Deputy Receiver's preliminary grave space determinations. Any unsatisfied claimant had 30 days after issuance of the notice to request reconsideration of the Special Deputy Receiver's preliminary determination of his or her claim, and the Special Deputy Receiver had 15 days to review and respond to any such reconsideration request. A claimant who disagreed with the Special Deputy Receiver's determination after such reconsideration had a right to appeal to the Court for final consideration and determination of the grave space claim.

In order to secure enough vacant grave spaces to resolve the disputed claims, it became necessary to address the boundary question between the Bookwalter Cemetery and the adjacent church cemetery belonging to the Bookwalter United Methodist Church. Based on measurements made by the Special Deputy Receiver congruent with the original plat map of the Cemetery recorded in the Office of the Knox County Register of Deeds at Map Book 8, Page 64, representatives of the Bookwalter United Methodist Church agreed to move the boundary line

sign between the two cemeteries to align with the accurate boundary as reflected on the plat map, which is marked by a large tree stump, thereby making enough vacant grave spaces in the Cemetery to resolve all disputed grave space claims.<sup>3</sup>

The Special Deputy Receiver completed the proof of ownership process and filed a status report on February 27, 2013, that included a recommendation for a final grave space listing. Claimants who participated in the proof of ownership process are listed in Exhibit A, attached hereto. A total of 741 grave spaces were claimed through this process without any appeals to the Court. On March 22, 2013, after the proof of ownership process had concluded, Ima Jean Cox filed an objection to the grave space claim of Roy and Juanita Smith. The Court heard the objection on April 17, 2013, and on April 29, 2013, the Court entered its Order Resolving Objection of Ima Jean Cox to the Grave Space Claim of Roy and Juanita Smith. All known disputed grave space claims have been resolved.

After this receivership action was initiated, Mr. Johnny King withdrew as caretaker of the Cemetery. The Court acknowledges and appreciates Mr. King's efforts to provide for the upkeep of the Cemetery grounds for many years. Upon Mr. King's withdrawal, the Special Deputy Receiver requested the Knox County Sherriff's Office to maintain the Cemetery grounds through use of inmate labor. Sheriff J.J. Jones kindly agreed to do so while this action was pending, and the Court expresses its gratitude to Sheriff Jones and his officers for their efforts to maintain the Cemetery grounds during these proceedings.

With respect to future maintenance, the Special Deputy Receiver and representatives of the Department of Commerce & Insurance met with Knox County Mayor Tim Burchett and

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<sup>3</sup> An on-site inspection by the Special Deputy Receiver on May 1, 2013, confirmed that the sign marking the border between the two cemeteries has been moved to the correct location.



Knox County Sheriff J.J. Jones on February 14, 2013. In that meeting, issues regarding the Cemetery's operation and maintenance were discussed. Mayor Burchett and Sheriff Jones both expressed concerns for the community and the families with relatives buried at the Cemetery. They both indicated the need to maintain the Cemetery grounds due to its unique location as an island in the center of a residential district. To address those concerns, Mayor Burchett and Sheriff Jones made oral commitments to keep the non-church portion of the Bookwalter Cemetery maintained by keeping it mowed and trimmed. The Court recognizes and commends Mayor Burchett and Sheriff Jones for their leadership and assistance in providing for the future upkeep of the Cemetery grounds, which might not otherwise be possible without their efforts.

Now before the Court is the Receiver's submission and recommendation for approval of the Final Listing of Burial Rights and Grave Space Ownership for Bookwalter Cemetery, attached hereto as Exhibit B, and the accompanying Cemetery plat sheets, attached hereto as collective Exhibit C. The Court conducted a status conference on this matter on April 17, 2013. Based on the report of the Special Deputy Receiver and representations of counsel for the Receiver, as well as the record in its entirety, the Court finds and concludes as follows:

A. This receivership action was instituted for the limited purpose of determining burial rights at the Bookwalter Cemetery. The purpose of the receivership has been accomplished. The Receiver and the Special Deputy Receiver have completed their plan to identify owners of grave spaces and burial rights at the Bookwalter Cemetery through a proof of ownership process that afforded all claimants of record a fair opportunity to be heard in this proceeding.

B. The Bookwalter Cemetery has no ownership identity and no resources to provide for maintenance of the Cemetery grounds. The General Assembly has authorized county

legislative bodies to maintain dilapidated or abandoned cemeteries like Bookwalter Cemetery, a cemetery whose lack of an improvement care trust fund, as well as its lack of an owner to oversee it, might cause the cemetery to deteriorate into a dilapidated condition. *See* Tenn. Code Ann. § 46-2-107. The issue of maintenance of the Cemetery has presently been resolved due to the generous commitments of Mayor Burchett and Sheriff Jones to keep the Cemetery grounds mowed and trimmed. The local remedies contemplated by the statute, however, are available should the Cemetery become dilapidated at some future point in time.

C. The duties, responsibilities, and obligations of the Receiver have otherwise been fully performed and the grounds for the receivership no longer exist.

Accordingly, it is HEREBY ORDERED THAT:

1. The Final Listing of Burial Rights and Grave Space Ownership for Bookwalter Cemetery, attached hereto as Exhibit B, and the accompanying Cemetery plat sheets, attached hereto as collective Exhibit C, are adopted and approved;
2. The Receiver shall cause the Final Listing of Burial Rights and Grave Space Ownership and the accompanying Cemetery plat sheets to be recorded in the Office of the Knox County Register of Deeds and filed with funeral homes and establishments operating in the Knoxville area, the Bookwalter United Methodist Church, the Tennessee Board of Funeral Directors and Embalmers, the Tennessee Funeral Directors Association, and the Office of the Commissioner of Commerce & Insurance;
3. The Receiver shall cause statements of final grave space determinations to be issued to all claimants, consistent with the Final Listing of Burial Rights and Grave Space Ownership and accompanying Cemetery plat sheets;

4. The boundary line between Bookwalter Cemetery and the adjacent church cemetery belonging to the Bookwalter United Methodist Church shall be the boundary line recognized and agreed upon by representatives of the Bookwalter United Methodist Church and the Special Deputy Receiver in this receivership proceeding, which boundary line is marked by a large tree stump and is consistent with the boundary line reflected on the original plat map of Bookwalter Cemetery recorded in the Office of the Knox County Register of Deeds at Map Book 8, Page 64;

5. The Bookwalter Cemetery is declared to be fully sold and all future sales of existing unclaimed and unoccupied grave spaces are prohibited, provided however that the current owners of vacant grave spaces are not prohibited from selling or transferring their grave spaces and attendant burial rights to subsequent purchasers or transferees;

6. The Special Deputy Receiver shall return the books and records of the Bookwalter Cemetery to the Department of Commerce & Insurance for safekeeping;

7. The receivership imposed by this Court is terminated;

8. This action shall be closed upon the Receiver's filing of a notice of recording the Final Listing of Burial Rights and Grave Space Ownership and accompanying Cemetery plat sheets as provided in paragraph 2, above, and issuance of statements of final grave space determinations as provided in paragraph 3, above; and

9. Upon the filing of the notice ordered in paragraph 8, above, the Receiver and Special Deputy Receiver shall be deemed discharged without further action or order of the Court.

I HEREBY CERTIFY THAT THIS IS A TRUE COPY  
OF ORIGINAL INSTRUMENT FILED IN MY OFFICE.

THIS 16 DAY OF July 2013


CRISTI SCOTT, CLERK & MASTER

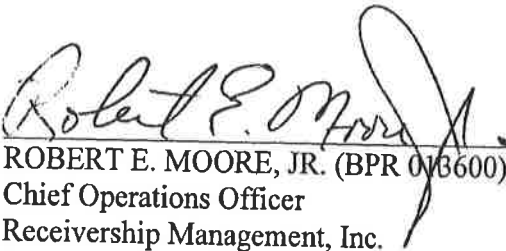
BY Dicki Bailey


DEPUTY

Ellen Hobbs Lyle  
ELLEN HOBBS LYLE, CHANCELLOR

Submitted for Entry:

  
JOE SHIRLEY (BPR 022287)  
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P.O. Box 20207  
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Receivership Management, Inc.  
Special Deputy Receiver  
Bookwalter Cemetery  
783 Old Hickory Blvd., Suite 255  
Brentwood, TN 37027  
(615) 370-0051 (phone)  
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**Certificate of Service**

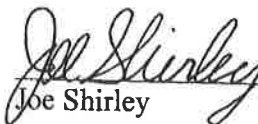
I certify that a true and correct copy of the foregoing proposed Final Order was served by first-class U.S. Mail, postage prepaid, upon:

Bookwalter Cemetery  
c/o Johnny King  
5129 Rockcrest Road  
Knoxville, TN 37918

Bookwalter United Methodist Church  
c/o Dr. David A. Lord, Pastor  
4218 Central Avenue Pike  
Knoxville, TN 37912

Charles Laird Smith  
4223 Dunbar Road  
Crossville, TN 38572

This 31<sup>st</sup> day of May, 2013.

  
Joe Shirley