

IN THE CHANCERY COURT
 FOR DAVIDSON COUNTY, TENNESSEE
 AT NASHVILLE

FILED
 2015 SEP 27 PM 1:12

CLERK & MASTER
 DAVIDSON CO. CHANCERY CL.
 D.C. & M.

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.)

Case No. 10-1426-III

**RECEIVER'S SUBMISSION AND RECOMMENDATION FOR APPROVAL OF THE
 FINAL GRAVE SPACE LISTING FOR THE BOOKWALTER CEMETERY**

Pursuant to the Order entered October 6, 2010, Julie Mix McPeak, Commissioner of the Department of Commerce & Insurance, Receiver for Bookwalter Cemetery (the "Cemetery"), through her appointed Special Deputy Receiver, Receivership Management Inc., causes to be filed this Summary Report regarding the status of the receivership and recommended procedures regarding disputed grave space claims.

Report

1. On October 6, 2010, this Court entered an Order of Receivership pursuant to T.C.A. Section 46-1-312 as a result of a petition filed by the Commissioner of Commerce and Insurance.¹ Subsequently, the Commissioner appointed Receivership Management Inc. of Brentwood, Tennessee to act as her Special Deputy Receiver.

2. Pursuant to the Court's Order, the Receiver, acting through her Special Deputy, caused a review of books, records, papers, and property. The review of records and property

¹ At the time of the petition, The Honorable Leslie Newman served as Commissioner of Commerce and Insurance. Commissioner Newman was succeeded by the Honorable Julie Mix McPeak on January 21, 2011.

revealed that no reliable record existed so as to determine the inventory of sold versus unsold graves. Further, there was no reliable record as to which particular grave spaces were occupied versus unoccupied. To that end, it was determined that an on-site inspection of each grave space be made. To aid this endeavor, the plat map, as recorded in the Knox County Registrar's Office, and original plat sheets, as surveyed and platted by Holt Brothers Engineers in 1921 were utilized.

3. The Grave Space Audit of the Bookwalter Cemetery (aka The New Bookwalter Cemetery) attached as Exhibit 1 to the Summary Report and Recommendation reported 6,348 grave spaces in the Bookwalter Cemetery. After re-examination and follow up, some grave spaces on the original database were reported twice. The number of grave spaces now number 6,067.

4. Since the filing of the Summary Report, the Special Deputy Receiver issued the notices as indicated and has resolved all disputed categories of grave space claims through on-site meetings with 21 individuals and re-assignment of grave spaces. This effort necessitated a visit to the disputed grave site, measurements, a visit to the alternative grave site, measurement and acceptance in almost all cases. In some disputed instances, numbering, location, and contact either on site or by telephone occurred to resolve the disputes. In addition, the Special Deputy Receiver, as directed by the Court's Order adopting the Special Deputy Receiver's Summary Report and Recommendations, met with representatives of the Bookwalter Church Cemetery who eventually agreed, based on measurements made by the Special Deputy Receiver congruent with the Holt Brothers engineering plat, that the Church Cemetery boundary line had encroached onto the Bookwalter Cemetery. The Church Cemetery representatives immediately moved their boundary sign to align with the accurate front boundary, which is marked by a large tree stump. With these front area grave spaces now available, the Special Deputy Receiver was able to resolve all 46 disputed grave space claims as reported in the Summary Report and Recommendation.²

² Even though new spaces were added, many of the front row spaces were not useable because some showed signs of occupation; however many of the second row grave spaces in the front section were useable and were used to resolve disputed grave spaces.

5. Attached hereto as Exhibit One is a listing of the Affidavits Filed in the Proof of Ownership Process, with the final assigned grave space.

6. Attached hereto as Exhibit Two is the Master Grave Space Listing for the Bookwalter Cemetery. This Master Grave Space Listing is intended to reflect current burial rights in the Bookwalter Cemetery, report conditions of the listed grave spaces (occupied, vacant, occupied not marked). To the left is the listed owners name and address. This information came from a combination of the affidavits, on-site inspections, ownership cards, and writings by Mr. Hutsell and Mr. King on the original plat sheets. Names listed in ALL CAPITAL letters were those persons who participated in the Grave Space Ownership Project of the Special Deputy Receiver.³ In situations where two owners were listed but did not participate in the grave space project and the dispute could not be resolved through research, both names were left on the space. Only two grave spaces are so affected. Where there is no name listed on the left side of the grave space and the lot is listed as vacant, there is no assurance that those lots have not already been sold and the owners not known to the Bookwalter Cemetery Company. Therefore the actual number of remaining unsold vacant lots cannot be determined to a point of finality. It would be the Special Deputy Receiver's recommendation that when the estate or family of a person not appearing on the list claims a burial right in the cemetery, the estate or family member should produce to the funeral director in charge evidence sufficient that establishes a right to a vacant unclaimed burial space prior to the burial of that person in the Bookwalter Cemetery. In situations involving a registered owner, the funeral director in charge would still need to confirm ownership against the Final Grave Space Listing attached as Exhibit 2. Otherwise, it is possible that duplicative burial rights would occur again. It is for this reason the Court may wish to declare the cemetery fully sold.⁴

7. The Special Deputy has completed its plan to identify owners of burial rights in the Bookwalter Cemetery. The issue of future maintenance and upkeep has for the time being been resolved. This report was delayed so as to engage in discussions with the Department of

³ In the final tally, 741 grave spaces were claimed through the Proof of Ownership Project.

⁴ This declaration would not prevent current owners from selling their lots. The subsequent purchaser's family would need only to show the registered owner from whom they purchased the lot.

Commerce and Insurance, interested members of the Knox County Delegation, and Knox County elected officials. The Special Deputy Receiver has discussed this situation with the leadership of the Bookwalter United Methodist Church, claimants in the proof of ownership project, and Mr. Roger Wilson of the Knox County Sheriff's Office. The Special Deputy discussed this issue at the Community Meeting with over 300 people in attendance. No one expressing an interest in forming a charitable trust pursuant to Tenn. Code Ann. Title 46, Chapter 7 or in partaking in any other form of continued maintenance of the cemetery has of this date been identified.

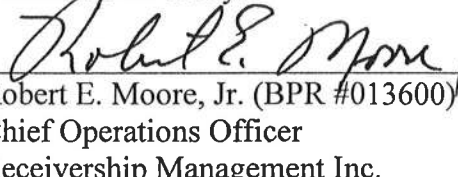
8. On February 14, 2013, the Special Deputy Receiver, Counsel for the Commissioner Wayne Pugh, and Legislative Officer Denise Lawrence met with Knox County Mayor Tim Burchett and Knox County Sheriff J.J. Jones. In that meeting issues regarding the cemetery's operation and future maintenance were discussed. 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 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 owned portion of the Bookwalter Cemetery maintained by keeping the cemetery mowed and trimmed. Sheriff Jones and his officers should be recognized by this Court for the efforts they have already made during this proceeding to maintain the cemetery. Countless neighbors and families have contacted the Special Deputy Receiver's office to express their gratitude regarding the maintenance of the cemetery. Mayor Burchett and his office have provided the needed assistance to help bring solutions to this cemetery's troubled operation. The Commissioner and Special Deputy Receiver are especially grateful to these two community leaders for their commitments.

9. It does appear the General Assembly has granted authority to County legislative bodies to address cemeteries like Bookwalter Cemetery, a cemetery whose lack of an improvement care fund or a charitable trust, much less its lack of a private company to oversee it, might result in a dilapidated condition. It also grants to the Counties of this State and affected persons, as defined under the provisions of Tenn. Code Anno. Title 46, Chapter 4, the means to prevent further use of cemeteries determined to be abandoned or neglected. To the extent that Knox County continues to provide mowing and trimming, it would not appear that Bookwalter

Cemetery will become dilapidated; however, should Knox County discontinue its efforts, the provisions of Tenn. Code Anno. Title 46, Chapter 4 remains available in the future to those contemplated by the statute to petition the Court in the County in which the cemetery is located to grant relief pursuant to the statute.

8. As stated in the Special Deputy Receiver's Summary Report and Recommendation, as adopted by the Court, the Special Deputy Receiver submits herewith Exhibits One and Two constituting the Final Listing of Affidavits and the Master Grave Space List for the Bookwalter Cemetery. Notice of this filing is being given to all persons by postcard and directed to the Special Deputy's website. The Special Deputy Receiver recommends the adoption of these exhibits as reflecting the burial rights and grave space ownership of the Bookwalter Cemetery of Knoxville, Tennessee. If the Court approves, the Special Deputy will proceed to file and record the listings with the Knox County Registrar's Office, funeral homes 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 and Insurance.

Submitted for Entry:


Robert E. Moore, Jr. (BPR #013600)
Chief Operations Officer
Receivership Management Inc.
Special Deputy Receiver
Bookwalter Cemetery
783 Old Hickory Blvd., Suite 255
Brentwood, TN 37027
(615) 370-0051 (phone)
(615) 373-4336 (fax)

Certificate of Service

I certify that a true and correct copy of the foregoing report was served by first-class U.S.

Mail, postage prepaid, upon:

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

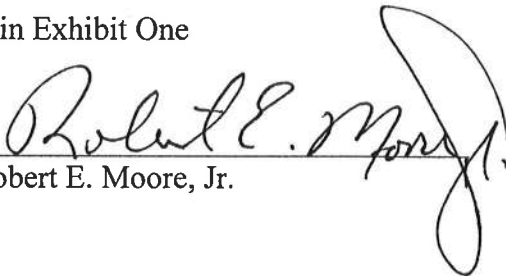
Charles Laird Smith
4223 Dunbar Road
Crossville, TN 38572

J. Wayne Pugh
Deputy General Counsel, Regulatory Boards
Department of Commerce & Insurance
500 James Robertson Parkway
Nashville, Tennessee 37243

Joe Shirley
Assistant Attorney General
State of Tennessee
Office of the Attorney General
and Reporter
Financial Division
P.O. Box 20207
Nashville, TN 37202

Notification by post card was sent to all persons listed in Exhibit One

This 27th day of February, 2013


Robert E. Moore, Jr.