



# Iowa General Assembly

## 2010 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### **UNIFORM ANATOMICAL GIFT LAW - DECEDENT'S WISHES**

Filed by the Iowa Court of Appeals

May 12, 2010

Alcor Life Extension Foundation v. Richardson

No. 0-098/09-1255

[http://www.iowacourts.gov/court\\_of\\_appeals/Recent\\_Opinions/20100512/0-098.pdf](http://www.iowacourts.gov/court_of_appeals/Recent_Opinions/20100512/0-098.pdf)

**Background Facts and Procedure.** Orville Richardson (Orville) was a long-time pharmacist in Burlington, Iowa, who died intestate on February 19, 2009. He had no children, was predeceased by his wife, and was survived by his brother David Richardson (David) and sister Darlene Broeker (Darlene).

In June 2004, Orville submitted a membership application to Alcor Life Extension Foundation, a California nonprofit organization engaged in the study and practice of cryonic suspension. On the application, Orville had chosen neurosuspension, which provides that after being declared legally dead, a person's brain or entire head is removed and cryopreserved. Orville executed a series of documents, including an anatomical donation form for the purpose of furthering cryobiological and cryonic research, and paid a lifetime membership fee of \$53,500 in December 2004. The documents authorized Alcor to take possession of his remains immediately following his legal death so that his head and brain could undergo cryonic suspension and his other remains could be cremated.

In the fall of 2007, due to the onset of dementia, Orville was no longer capable of living independently and in April 2008, David and Darlene filed a petition in district court seeking appointment as Orville's co-conservators. Darlene also filed a separate petition requesting appointment as his guardian. The petitions were granted, and David and Darlene informed Alcor of their recent appointment as co-conservators and requested Alcor to reissue uncashed checks they discovered had been issued to Orville as periodic payments for interest generated from his lifetime membership payment. Alcor sent replacement checks to David and Darlene and included contact and background information for Alcor.

The day after Orville's death, David and Darlene were named co-administrators of Orville's estate, and they had Orville embalmed and buried in Burlington.

In April 2009, David wrote to Alcor requesting a refund of the lifetime membership payment. Alcor initially responded asking why it was not notified of Orville's death in order to follow his wishes of cryonic suspension, soon after demanded Orville's remains, and when David and Darlene refused, filed a motion in probate court for an expedited hearing. Alcor argued that Orville had made an anatomical gift to Alcor under the Revised Uniform Anatomical Gift Act (RUAGA), and asked for a remedy ordering David and Darlene to obtain a permit for the disinterment of Orville's body, for which Alcor would pay the costs. David and Darlene responded that they had no knowledge of the arrangement between Orville and Alcor, that the transaction was not covered under the RUAGA, and that disinterment would be improper because it would not be for any purpose specified by law.

In its June 15, 2009, ruling, the district court denied Alcor's requests for relief. The district court found that the Final Disposition Act (Iowa Code chapter 144C) was controlling; that Alcor was not a designee under the Act because Orville's declaration to Alcor was executed prior to the effective date of the Act; and that David and Darlene had the absolute right to control Orville's remains after his death. Additionally, the court found the disinterment statute did not apply because the reason for disinterment was not for autopsy or reburial purposes and the district court did not have the authority to order David and Darlene to execute an application for a disinterment permit. Alcor appealed.

**Issues on Appeal.** The case was filed and tried in equity and the review by the Iowa Court of Appeals (Court) was de novo. There were four issues on appeal: (1) Whether Orville's arrangement with Alcor falls within Iowa's RUAGA; (2)

Whether Alcor or David and Darlene had the right to control the final disposition of Orville's remains; (3) Whether a court has authority to order David and Darlene to execute a consent to disinterment, assuming Alcor prevailed on the first two issues; and (4) If a court has the authority under the third issue, whether the district court should have exercised such authority given the facts and circumstances of this case.

### **Analysis.**

**Uniform Anatomical Gift Act.** The Court began its analysis of the issues by reviewing the statutory history of the Uniform Anatomical Gift Act (UAGA). The original UAGA, approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL), was adopted in all 50 states and the District of Columbia and was created to encourage the making of anatomical gifts by creating the right, not clearly recognized as common law, to donate organs, eyes, and tissue. NCCUSL revised the Act in 1987 and again in 2006. In 2006, one major revision was strengthening the respect given a donor's decision to make an anatomical gift by intentionally disempowering families from making or revoking anatomical gifts in contravention of the donor's wishes, while retaining the rights of families to dispose of the decedent's body after the part that was the subject of the anatomical gift had been recovered.

Iowa adopted each of the revisions of the UAGA, and the current RUAGA is codified in Iowa Code chapter 142C. Anatomical gifts may be made by a donor during the donor's life for the purposes of transplantation, therapy, research, or education, (Iowa Code §142C.3(1)). Once a donor makes an anatomical gift or amendment, a person other than the donor is prohibited from making, amending, or revoking an anatomical gift of a donor's body or part subject to certain exceptions relating to unemancipated minors and if no contraindication by the donor is shown (Iowa Code §142C.3(5)(a)). One of the entities specified to receive an anatomical gift is an "other appropriate person for research or education" (Iowa Code §142C.5(1)), and if the gift appropriately passes to such entity the rights of such entity are superior to the rights of all other persons with respect to the part (Iowa Code §142C.8(8)).

**Issue 1: Whether Orville's arrangement with Alcor falls within Iowa's RUAGA.** The Court determined that even though the latest revision to the RUAGA did not become effective in Iowa until July 1, 2007, three years after Orville had entered into the arrangement with Alcor, the statute was applicable to his arrangement. Iowa Code §142C.13 provides "this chapter applies to an anatomical gift, or amendment to, revocation of, or refusal to make an anatomical gift, whenever made." Additionally, the Court found that Alcor met the definition of an "other appropriate person for research or education," one of the specified persons to whom an anatomical gift may be made under the RUAGA. Finally, the Court analyzed whether paying an organization for the future cryonic suspension of a body or body part constitutes an anatomical "gift." The Court reviewed the requirements for making a gift: donative intent, delivery, and acceptance; and concluded that even though, in this case, the putative donor compensated the qualified donee for preserving all or part of the donated body, the transaction still fell within the scope of the RUAGA. The Court based its conclusion on the following: the documents executed by Orville characterized the arrangement as an anatomical donation; Iowa Code §142C.10, although generally prohibiting the sale or purchase of body parts, allows for reasonable payment for the preservation or disposal of a part; and when a transaction is not considered a gift, it is usually because the donor received compensation in return and not that the donee received something in addition to the gift. The Court did note that in the future, legislative clarification would be beneficial regarding the status of cryonic suspension under the RUAGA.

**Issue 2: Whether Alcor or David and Darlene had the right to control the final disposition of Orville's remains.** The Court analyzed the provisions of the Final Disposition Act relative to the RUAGA. The Court noted that Iowa had, effective July 1, 2008, adopted the Final Disposition Act, Iowa Code chapter 144C, which establishes a series of priorities in determining the disposition of a decedent's remains. A designee acting pursuant to a decedent's declaration has the highest priority, and in the absence of a designee, the next of kin has the highest priority. Even though David and Darlene argued that the effective date of the Act antedated Orville's declaration and rendered the statute inapplicable to the situation, the Court determined that the issue was which statute prevails if there is a conflict between the RUAGA and the Final Disposition Act. The Court determined that in this case, the RUAGA prevailed. The Court reasoned that RUAGA expressly provides that the rights of a person to whom a part passes under Iowa Code §142C.5 are superior to the rights of all other persons with respect to the part (Iowa Code §142C.8(8)), and the Final Disposition Act gives precedence to the RUAGA, stating in Iowa Code §144C.10(4) that the rights of a donee created by an anatomical gift pursuant to Iowa Code §142C.11 are superior to the authority of a designee under a declaration executed pursuant to this chapter. (The Court noted in a footnote that the reference to Iowa Code §142C.11 should be to Iowa Code §§142C.3 and 142C.5.) The Court concluded that the rights of Alcor as a donee of an anatomical gift under the RUAGA were superior to the dispositional rights of David and Darlene under the Final Disposition Act.

**Issue 3: Whether a court has authority to order David and Darlene to execute a consent to disinterment, assuming Alcor prevailed on the first two points.** Having determined that Alcor prevailed on the first two points, the court analyzed what an appropriate remedy might be. The Court noted that the district court had determined that even if David and Darlene did not have absolute authority to control the disposition of Orville's remains, Alcor could not compel them to seek a disinterment permit. Under Iowa Code §144.34, a person may disinter remains through two methods: a state-issued permit or a court order. A permit is only to be issued by the state registrar in accordance with adopted administrative rules and, without a court order, also requires the consent of the person authorized to control the

decedent's remains under Iowa Code §144C.5. The parameters for issuance of a court order for disinterment for the purpose of reburial are limited to a showing of substantial benefit to the public, and for the purpose of autopsy or reburial only when reasonable cause is shown that someone is criminally or civilly responsible for such death, after hearing, upon reasonable notice to the persons authorized to control the decedent's remains under Iowa Code §144C.5. Alcor conceded that the circumstances did not meet the criteria for a court-ordered disinterment, but instead argued that David and Darlene should be compelled to apply for a disinterment permit. The district court had determined that since the reasons for a disinterment permit are limited to the purposes of autopsy or reburial only, and Alcor was performing neither, the court could not compel such application. On appeal, Alcor contended that cryonic suspension of Orville's head and the cremation of the rest of his body constituted reburial for the purposes of a disinterment permit, because the administrative rules adopted for the permits, authorize the issuance of such permits for any relocation of a body above or below ground from its original site of interment (641 IAC 101.7(1)). The Court agreed that the administrative rules compelled the Court to adopt a broad construction of the term "reburial" and concluded that cryonic suspension of Orville's head and the cremation of the rest of his body constituted "reburial" within the meaning of Iowa Code §144.34. Furthermore, the Court disagreed that the district court lacked jurisdiction to order a party to execute a consent or approval for a permit, because the district court had found that any consent that is compelled is not consent. The Court instead found that a court sitting in equity can tailor a remedy as needed. Under the circumstances, where the next of kin engage in conduct for which disinterment is an appropriate remedy, Iowa Code §144.34 does not foreclose a court order compelling consent from the same next of kin.

**Issue 4: If a court has authority to compel consent to the disinterment, whether the district court should have exercised such authority and issued a mandatory injunction given the facts and circumstances of this case.**

Because the district court determined that provisions of the disinterment statute and the RUAGA barred Alcor's claim, the district court did not weigh the factors relative to mandatory injunctive relief. The Court concluded, however, that an injunction should have been granted and that because the equities strongly favor Alcor, the only effective remedy was injunctive relief. First, the Court determined that Orville clearly wanted to undergo cryonic suspension and the state historically has ranked the decedent's preferences highly, and equity lies with the party that intends to carry out Orville's wishes. Second, Alcor has no adequate remedy at law, because human remains are very special and unique and there is no substitute. Third, because David and Darlene knew of Orville's decision regarding his remains (they were advised by Orville during his lifetime, they corresponded with Alcor regarding the replacement check and received information from Alcor regarding the nature of the entity and the existence of an arrangement with Orville, and they wrote to Alcor after Orville's death requesting a refund) and Alcor had no way of knowing that Orville had died and his relatives had him buried, this tips the equities even further in Alcor's favor. Fourth, but for the relative timing of the enactment of the Final Disposition Act on July 1, 2008, which came after Orville's signing of the agreement on December 15, 2004, making the provisions inapplicable to the agreement, Alcor could have signed the permit for disinterment on its own. The Court was not persuaded that this accident of timing should allow Darlene and David to prevail. In addition the Court did not agree that the request for relief is moot due to the amount of time the remains were in the ground, making it even more speculative that Orville could be brought back to life. The Court instead determined that it was not prepared to declare the case moot based on the amount of time that had passed citing an earlier decision from the Iowa Supreme Court noting that "[t]ime limitation for requesting disinterment is a policy question for the legislature, not the courts."

**Conclusion.** The Court concluded that Alcor was entitled to the requested mandatory injunction directing David and Darlene to execute the application for a disinterment permit, with Alcor bearing the burden and expense of the disinterment. The Court noted that the outcome was dictated by two long-standing and straightforward traditions: the historic deference to the testator's wishes regarding the method and location of burial, and the ability of the courts of equity to fashion a suitable remedy when one party violates another's rights. The Court reversed and remanded for entry of an order directing David and Darlene to execute an approval of application for disinterment and for further proceedings consistent with the opinion.

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