



Iowa General Assembly

2013 Legal Updates

Legislative Services Agency – Legal Services Division

<https://www.legis.iowa.gov/index.aspx>

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.*

IOWA'S FINAL DISPOSITION ACT

Filed by the Iowa Supreme Court

February 22, 2013

In the Matter of the Estate of Mary Florence Whalen, Deceased.

Michael Whalen, Appellant.

No. 12-1927, 827 N.W.2d 184 (Iowa 2013)

http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20130222/12-1927.pdf

Rehearing denied March 8, 2013

Factual Background. Decedent Mary Florence Whalen (Flo) and appellant Michael Whalen (Michael) were married in 1952 and moved from Anamosa, Iowa, to Montana, where they lived together for 43 years and raised 10 children. In 1996, Michael and Flo separated, and Michael moved back to Anamosa, Iowa. Michael and Flo never divorced or legally separated. In 2004, Flo moved to Santa Fe, New Mexico, where one of her daughters lived.

In 2009, Flo lawfully executed her last will and testament in New Mexico, naming her sister Mary Ann as her personal representative and executor, and providing specific instructions for her funeral and the burial of her remains in Montana. She purchased a burial plot there and a casket and expressed her desire to be buried in Montana in conversations and correspondence with her children, sister, and husband.

In December 2011, while visiting in Iowa, Flo became ill and was unable to return to New Mexico. She lived with Michael at his house in Anamosa until her death six months later. While living in Iowa, Flo wrote a letter to Michael, Mary Ann, and all of her children reiterating her desire to be buried in Montana.

After Flo's death, Mary Ann asked the funeral director to have Flo's remains transported to Montana. Michael directed that her remains be buried in Anamosa. The funeral director agreed to keep Flo's remains in Anamosa, pending a final court order.

Procedural Background.

District Probate Court. In June 2012, the Jones County probate court admitted Flo's will to probate and appointed Mary Ann as executor of the estate. Mary Ann moved for an order directing that Flo's remains be transported to Billings, Montana, as provided in her will. Michael opposed Mary Ann's motion and requested a ruling that he, as Flo's surviving spouse, had the right to control the final disposition of Flo's remains under the plain language of Iowa Code §144C.5 of Iowa's Final Disposition Act.

The probate court held an evidentiary hearing and on October 30, 2012, ruled against Michael, concluding that the right to control disposition of a decedent's physical remains "devolves upon" a person delineated in Iowa Code §144C.5 only if the decision has not been made by the decedent. In this case the evidence "convincingly" establishes that Flo made the decision to be buried in Montana and did not intend for anyone else to make that decision for her. The probate court ordered that Flo's remains be transported to Montana in accordance with the directions given in her will.

Iowa Supreme Court—Issues on Appeal.

1. Whether Iowa's Final Disposition Act (Act) allows a surviving spouse to disregard the decedent's last will and testament directing disposition of her bodily remains or leaves intact a decedent's common law right to decide where to be buried.
2. Whether, even if the Act preempts the common law, Flo's last will and testament effectively serves as a declaration under the Act designating her sister to decide her burial location.

Analysis and Holding.

Iowa's Final Disposition Act Preempts Common Law. In a 5-2 decision, the Iowa Supreme Court (Court) held that under the express terms of Iowa Code §144C.5, Michael, as the surviving spouse, had the right to control disposition of the decedent's remains in the absence of a declaration designating someone else. The Court concluded that it does not need to decide Flo's rights under common law because Iowa Code chapter 144C preempts any conflicting common law.

The Court observed that Iowa Code §144C.3 provides that a declaration "shall name a designee who shall have the sole responsibility and discretion for making decisions concerning the final disposition of the declarant's remains" but "shall not include directives for final disposition of the declarant's remains" or "arrangements for ceremonies planned after the declarant's death".

The Court considered the history of the Act, which was effective on July 1, 2008, and applies to all deaths occurring and to declarations executed, on or after that date. The Court observed that the Act is comprehensive and detailed and is cross-referenced in other statutes regulating the handling of human remains. Specifically, Iowa Code §523I.309 of the Iowa Cemetery Act was amended to eliminate a provision that previously allowed a person like Flo to provide written directions for the interment of her remains in a written instrument such as a will and required a surviving spouse to carry out such directions.

The Court found that the drafting history of the Act, including a comparison of the bill originally introduced with that of the legislation enacted, also shows that the Legislature decided against requiring survivors to follow the written instructions of the decedent beyond the choice of a designee. The Court concluded that the Legislature made a deliberate policy choice to favor clarity and certainty over the ability of persons to control the final disposition of their own bodies. The Court held that the Act displaces any common law right requiring a surviving spouse to follow the decedent's instructions upon burial.

The Decedent's Will is not an Effective Declaration of a Designee under the Act. The Court found that even though the decedent's last will and testament satisfies the formal execution requirements for a declaration of a designee, the will does not comply with the written form required by the Act and was not attached to a durable power of attorney for health care under Iowa Code chapter 144B, also required by the Act. The Court stated that it cannot eliminate the requirements of the law or ignore the fact that the will includes burial instructions a statutory declaration is forbidden to contain.

Holding. For the above reasons, the Court held that the probate court erred in concluding that the decedent's wishes overcame her surviving husband's right to control disposition of her remains under the Act. The probate court order was reversed and the case remanded for an order allowing Michael to direct burial of Flo's remains.

Dissent. The dissent would uphold the decision of the probate court. The dissent opined that the Legislature intended the Act to designate and empower a line of authority to make decisions pertaining to arrangements for a funeral and final disposition of the remains of a person who has died, but did not intend to replace the "timeless and fundamental ability of people to otherwise make these decisions for themselves and preserve them in their last will and testament." The Court stated that the Act is independent of the autonomy of a person to make such decisions prior to death and that the intent of the Act is only to resolve disputes that occur when a decedent leaves no directions behind, not to deprive decedents of the right to make such decisions.

The dissent opined that the Legislature did not intend to deprive a testator of the right of self-determination by requiring testators to designate a person to make these personal determinations after death without the ability to provide any direction. The dissent expressed confidence that the Legislature did not intend the result espoused by the majority of rendering "future generations of Iowans powerless to direct for themselves their funeral arrangements and final disposition of their remains."

LSA Monitor: Ann Ver Heul, Legal Services, (515) 281-3837.