

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 19, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP1998

Cir. Ct. No. 2008CV860

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN RE THE ESTATE OF TOM GREENBLATT:

FLORENCE GREENBLATT AND ERWIN P. GREENBLATT, JR.,

PETITIONERS-APPELLANTS,

v.

DONNA GURDA,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Waukesha County:
MICHAEL O. BOHREN, Judge. *Affirmed.*

Before Neubauer, P.J., Anderson and Snyder, JJ.

¶1 ANDERSON, J. This is an appeal from an order of the circuit court denying Florence Greenblatt's and Erwin Greenblatt's petition for a court order

authorizing the disinterment and relocation of the remains of Tom Greenblatt (a/k/a Tom Green). This court affirms the decision of the circuit court.¹

¶2 Tom Greenblatt (hereinafter Green) was a well-known Elvis impersonator and vocal performer in Wisconsin.² On March 1, 2007, he passed away after a long battle with cancer.³ He was survived by his girlfriend of nineteen years, Donna Gurda, his sister, Florence Greenblatt, and his brother, Erwin Greenblatt. Gurda, through Green's last will and testament, was appointed the personal representative of Green's estate, and was his sole beneficiary.⁴

¶3 After Green's passing, on March 2, 2007, Gurda began to arrange for Green's burial at Wisconsin Memorial Park. Florence, upon invitation by Gurda, participated in making the arrangements. Florence participated fully in the arrangement process: she attended two meetings with Gurda and a representative of Wisconsin Memorial Park, she ultimately decided in which casket Green would be placed, that the casket would be placed in an outdoor crypt, and where the funeral would be held. Gurda testified that throughout the arrangement process,

¹ The Greenblatts failed to include in their appendix the trial court's reasoning and written findings and facts and conclusions of law in violation of WIS. STAT. RULE 809.19(2) (2005-06) (All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.). The Greenblatts also filed a false certification that all essential items were contained in the appendix in violation of SCR 20:3.3(a) (2007). The Greenblatts will be sanctioned and directed to pay \$150 to the clerk of this court within thirty days of the release of this opinion, as "[f]ailure to comply with a requirement of the 'rules is grounds for ... imposition of a penalty or costs on a party or counsel, or other action as the court considers appropriate.' WIS. STAT. § 809.83(2)." See *State v. Bons*, 2007 WI App 124, ¶¶21-25, 301 Wis. 2d 227, 731 N.W.2d 367.

² <http://www.jsonline.com/news/obituaries/29287569.html> (last visited July 30, 2009).

³ <http://www.jsonline.com/news/obituaries/29287569.html> (last visited July 30, 2009).

⁴ Gurda also had power of attorney over making health care decisions for Green as he appointed her his health care agent while in the hospital.

Florence did not express a desire to have her brother's place of final disposition at Pine Lawn Cemetery.

¶4 In November 2007, Florence sought and received a permit for disinterment of Green's remains from the Waukesha county medical examiner. The Greenblatts wanted to disinter the remains of their brother and, in what the Greenblatts claim is in accordance with his wishes, place him at Pine Lawn Cemetery alongside his mother. After receiving the disinterment permit, Wisconsin Memorial Park officials informed Florence that she would need a court order before Wisconsin Memorial Park would disinter Green's remains. On March 6, 2008, Florence, along with her brother Erwin, filed a petition with the Waukesha county circuit court seeking a court order to support the disinterment permit. According to the Greenblatts, the circuit court required that they notify all interested parties about their intention to disinter Green.

¶5 On March 14, 2008, Gurda filed a response, objecting to the disinterment order sought by the Greenblatts. Gurda, as personal representative of the estate of Green, objected to the disinterment, because she believed that the disinterment and removal of Green from Wisconsin Memorial Park and reinterment at Pine Lawn Cemetery would be contrary Green's wishes.

¶6 Gurda testified that she had spoken with Green several times about his final disposition wishes in the hospital before he passed away. Gurda testified that as Green dictated his wishes for his final disposition and funeral, she recorded those wishes by entering them into her laptop computer. Gurda claims that Green wanted to be laid to rest next to her, above ground, not next to his mother at Pine Lawn Cemetery.

¶7 The circuit court made the following findings of fact: (1) Green clearly intended that he be buried above ground; (2) Gurda was placed in charge of his burial arrangements; and (3) Florence, through her participation in funeral and burial arrangements, had actual notice of contrary intentions by Green.

¶8 The first issue in this case is the proper construction of WIS. STAT. § 69.18(4). The proper construction and application of a statute presents a question of law and is generally reviewed de novo. *Kamps v. DOR*, 2003 WI App 106, ¶11, 264 Wis. 2d 794, 663 N.W.2d 306. This is also an issue of first impression.

¶9 The second issue in this case is whether the circuit court erroneously exercised its discretion in allowing into evidence the list of Green’s burial intentions Gurda had entered in her laptop computer. The circuit court admitted this evidence under WIS. STAT. § 908.03(3). Upon review of evidentiary issues, “the question on appeal is not whether this court, ruling initially on the admissibility of the evidence, would have permitted it to come in, but whether the trial court exercised its discretion in accordance with accepted legal standards and in accordance with the facts of record.” *State v. Pharr*, 115 Wis. 2d 334, 342, 340 N.W.2d 498 (1983) (citing *State v. Wollman*, 86 Wis. 2d 459, 464, 273 N.W.2d 225 (1979)).

DISCUSSION

¶10 The Greenblatts contend that, according to WIS. STAT. § 69.18(4), the circuit court should have automatically issued them an order for disinterment because they were issued a permit for the disinterment of Green from the Waukesha county medical examiner. We cannot agree. “[T]he purpose of statutory interpretation is to determine what the statute means so that it may be

given its full, proper, and intended effect.” *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶44, 271 Wis.2d 633, 681 N.W.2d 110. If the language of the statute is clear, the court will stop its inquiry and give effect to the language’s meaning. *Id.*, ¶¶45-46.

¶11 WISCONSIN STAT. § 69.18(4)⁵ states:

(4) AUTHORIZATION FOR DISINTERMENT AND REINTERMENT. (a) Subject to s. 157.111, the coroner or medical examiner of the county in which a decedent’s corpse is interred shall issue an authorization for disinterment and reinterment upon receipt of an order of a court of competent jurisdiction or upon receipt of a written application for disinterment and reinterment signed by the person in charge of the disinterment and by any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of application, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class:

....

4. An adult brother or sister of the decedent.

....

6. Any other person authorized or under obligation to dispose of the decedent’s corpse.⁶

¶12 According to WIS. STAT. § 69.18(4), there are two ways in which the medical examiner shall issue an authorization for disinterment:

[1] upon receipt of an order of a court of competent jurisdiction *or* [2] upon receipt of a written application for disinterment and reinterment signed by [(a)] the person in

⁵ This statute does not reflect the amendments that took effect on March 19, 2008.

⁶ Only the two relevant classes to this case of the six possible classes have been listed.

charge of the disinterment *and* [(b)] by ... a member [of one of the listed classes].

Sec. 69.18(4) (emphasis added).⁷

¶13 In this case, the Greenblatts filled out a written application for disinterment. The application was signed by Florence as a member of class four, an adult brother or sister of the decedent, and submitted to the medical examiner. However, the application was missing a signature from the person in charge of disinterment.⁸ The application should also have been signed by a representative of Wisconsin Memorial Park as the person in charge of disinterment; therefore, the application to the Waukesha medical examiner was incomplete, and the Greenblatts should not have been issued a permit for disinterment. Because the permit was not valid, Wisconsin Memorial Park was within its right to deny disinterment until the Greenblatts received an order from a court of competent jurisdiction.

⁷ The person in charge of disinterment is the cemetery official charged with approving disinterment. WISCONSIN STAT. § 157.111 states:

If a grave, mausoleum space or other place used ... for the burial of human remains is located in a cemetery owned or operated by a cemetery authority, only the cemetery authority or a person designated by the cemetery authority may open ... the grave, mausoleum space or other place used ... for the burial of human remains.

⁸ Upon the court's review of the Greenblatts' disinterment application, the court notes that the application did not contain an area where the cemetery approving official could have signed. We note that an application containing a signature line for the cemetery approving authority's signature is located at <http://www.waukeshacounty.gov/uploadedFiles/Disinterment%20permit%20request.doc> (last visited July 30, 2009).

¶14 In addition, even had the Greenblatts received a valid permit for disinterment from the Waukesha Medical Examiner, WIS. STAT. § 69.18(4) goes on to say that the permit will be granted only “in the absence of actual notice of contrary indications by the decedent.” In this case, the circuit court found that the Greenblatts did have actual notice of contrary intentions of Green. Before his death, Green dictated to Gurda, as his personal representative in charge of burial, his intentions for final disposition. Gurda asked Florence to participate in making arrangements for Green’s final resting place. Florence was present for and participated in the selection of the burial site and funeral arrangements and was consulted regarding many decisions related to the burial.

¶15 Furthermore, the Greenblatts admit that they were aware of their brother’s dislike of water and desire to be buried above ground. They also knew of Green’s dislike of the burial plot where his parents are currently resting and his dislike of Pine Lawn Cemetery in general. At the time the Greenblatts were issued the permit for disinterment, an alternative resting place for Green had not been selected.

¶16 Moreover, Gurda contends, and we agree, that because the Greenblatts participated in arranging Green’s burial, the doctrine of laches prohibits the Greenblatts from disinterring Green’s remains. There are three elements to the doctrine of laches: (1) unreasonable delay by the party seeking relief, (2) lack of knowledge or acquiescence by the party asserting laches that a claim for relief was forthcoming, and (3) prejudice to the party asserting laches caused by the delay. *Zizzo v. Lakeside Steel & Mfg. Co.*, 2008 WI App 69, ¶7, 312 Wis. 2d 463, 752 N.W.2d 889 (citing *State ex rel. Coleman v. McCaughtry*, 2006 WI 49, ¶¶27-29, 290 Wis. 2d 352, 714 N.W.2d 900).

¶17 Gurda's claim meets each of these elements. First, after Florence participated in Green's burial, she waited almost eight months before seeking to have Green removed to Pine Lawn Cemetery where she claims he wanted to be buried. Second, Florence did not object to Green's burial in Wisconsin Memorial Park while preparations for his burial were taking place. In fact, Florence participated in the burial preparations without ever making known to Gurda a desire to instead bury Green at Pine Lawn Cemetery next to his mother.

¶18 Finally, Gurda would be prejudiced financially by the disinterment of the remains. Gurda paid for the burial plot for Green and herself so that, in accordance with Green's wishes, the two of them could be laid to rest together. Allowing disinterment of Green would cause Gurda financial losses that could have been avoided had Florence announced her contrary intentions while arrangements for Green's final disposition were being made. Thus, even if the Greenblatts had persuaded us with their appellate arguments, which they have not, laches applies and the Greenblatts have lost their right to assert the claim for disinterment and reinterment at Pine Lawn Cemetery.

¶19 In determining the intentions of Green, the circuit court admitted Gurda's printed notes from her laptop computer as the intentions were dictated to her by Green at his bedside in the hospital. The Greenblatts' claim that the circuit court abused its discretion when it admitted these notes under WIS. STAT. § 908.03(3). This court will not find an erroneous exercise of discretion if there is a reasonable basis for the trial court's determination. *Pharr*, 115 Wis. 2d at 342 (citing *Boodry v. Byrne*, 22 Wis. 2d 585, 589, 126 N.W.2d 503 (1964)).

¶20 The circuit court did not abuse its discretion in admitting Gurda's notes of Green's intentions under WIS. STAT. § 908.03(3). Section 908.03(3)

allows “[a] statement of the declarant’s *then* existing state of mind ... such as intent, plan ... but not including a statement of memory or belief to prove the fact remembered or believed” (Emphasis added.) Gurda’s notes represent Green’s intentions as to his future burial not, as the Greenblatts contend, a declaration of memory, pointing to the past.

¶21 The Greenblatts also contend that Gurda’s notes are irrelevant. We again disagree, as Gurda’s notes establish Green’s contrary intentions to being buried beside his mother. Furthermore, the Greenblatts contend that the circuit court erroneously exercised its discretion because the notes (1) were not prepared by the deceased, (2) were not signed by the deceased, and (3) were modified after the deceased’s death. The Greenblatts fail to cite any case law or point this court to any statutory provision that establishes these criteria under WIS. STAT. § 908.03(3). This court refuses to consider any argument unsupported by legal authority. See *Kruczek v. DWD*, 2005 WI App 12, ¶32, 278 Wis. 2d 563, 692 N.W.2d 286.

¶22 Finally, the Greenblatts contend that Gurda has no standing to challenge their petition for disinterment. Standing will be found where a party has a personal stake in the outcome of the controversy. *City of Madison v. Town of Fitchburg*, 112 Wis. 2d 224, 228, 332 N.W.2d 782 (1983). The Greenblatts claim because they are members of class four, while Gurda is a member of class six, Gurda cannot object to the petition. First, the Greenblatts again fail to cite any legal authority. See *Kruczek*, 278 Wis. 2d 563, ¶32. Second, Gurda was Green’s personal representative and in charge of his burial arrangements and, as the person in charge of Green’s burial, she was responsible for introducing evidence of

Green's contrary intentions.⁹ This is enough to make her an interested party and provide her with standing.

¶23 For the reasons stated above, the Greenblatts' petition to disinter Green from Wisconsin Memorial Park was properly denied.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.

⁹ We note that WIS. STAT. § 69.18(4) was amended on March 19, 2008. The updated statute recognized individuals who may not be a spouse or blood relation handling the remains of a loved one. *See* 2007 Wis. Act 58, § 2.

