

LAW REVIEW

Published in the Sierra Sun
September 11, 2009

By: Jim Porter

IS CEMETARY LIABLE FOR BURYING WRONG PERSON IN FAMILY PLOT?

If a cemetery buries someone else in a burial plot reserved for you, are you entitled to damages for your emotional distress?

RESERVED BURIAL BLOT

Kenneth Binns' mom purchased a burial plot for herself, her husband and Kenneth. Kenneth's mom and dad died and were buried in the family plot at Westminster Memorial Park.

Nineteen years later Kenneth visited his parent's graves and discovered a stranger, Maria Vallejo, was buried in the plot adjacent to his mother which had been reserved for him. He brought that to the attention of Westminster and Vallejo was promptly reinterred in another location.

Is that the end of it? Of course not, or we wouldn't be writing about *Binns v. Westminster Memorial Park*.

EMOTIONAL DISTRESS

Kenneth sued for breach of contract and negligent infliction of emotional distress. The trial court awarded him \$4,440 for emotional distress. My guess is his attorney fees were at least ten or twenty times that.

As one treatise notes: "The sentiment of all civilized peoples regards the resting place of the dead as hallowed ground and requires that in some respects

it be not treated as subject to the laws of ordinary property... property used for the burial of the dead is 'sacred.' "

LEGAL PRECEDENT

The Court of Appeal discussed the leading mortuary case, *Christianson*, where the California Supreme Court found that the mishandling of human remains generally causes serious emotional distress to members of the decedent's immediate family given the special relationship with the mortuary.

Westminster argued there was a substantial difference between mishandling a decedent's remains and mishandling a burial plot – "mishandling real estate."

RULING

Kenneth Binns testified he was "horrified" and that he had been "spiritually violated" by the temporary burial of Vallejo in his reserved plot. His employer confirmed his changed emotional state.

The Court of Appeal ultimately wrote, "Although the issue is close, we conclude it is foreseeable a person could suffer severe emotional distress upon discovery a stranger had been buried in their family gravesite... Although many people would not suffer seriously emotional distress from seeing a stranger interred into their burial plot, we cannot say that plaintiff's response was so abnormal as to forbid recovery."

DISSENT

I agree this a close case, but I tend toward the dissent: "I doubt that someone selling land – even a burial plot – promises the emotional security

offered by a mortician handling the remains of a loved one. I am confident that someone buying a burial plot long before it is needed (the case here) is not as emotionally vulnerable as the relatives of one who had just died. And it seems to me quite questionable whether one is likely to suffer extreme emotional distress where, as here, a mistakenly buried body is removed four days after the mistake.”

Jim Porter is an attorney with Porter Simon, with offices in Truckee, South Lake Tahoe, Incline Village and Reno and a licensed California Real Estate Broker. He was the Governor's appointee to the Bipartisan McPherson Commission on political ethics and the California Fair Political Practices Commission. He may be reached at porter@portersimon.com or at the firm's web site www.portersimon.com.

© 2009