

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 13, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**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.

**No. 99-3321-FT**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**JUNE REMICK, JERALD WROSCH, AND CORA F. WROSCH,**

**PLAINTIFFS-APPELLANTS,**

**V.**

**JAMES D. CADY,**

**DEFENDANT-RESPONDENT.**

---

APPEAL from a judgment of the circuit court for Waupaca County:  
PHILIP M. KIRK, Judge. *Reversed and cause remanded with directions.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. June Remick, Jerald Wrosch, and Cora Wrosch (the next of kin) appeal from a judgment declaring James Cady to be the custodian of the cremated remains of James Wrosch (Wrosch or the decedent). The next of kin claim the trial court erred when it determined they could not rescind their authorizations to have Cady dispose of the decedent's remains after the decedent

had been cremated. We agree, and reverse the judgment of the trial court with directions that the trial court enter a judgment providing that the decedent's ashes are to be turned over to his next of kin.<sup>1</sup>

## **BACKGROUND**

¶2 In May of 1997, Wrosch signed a document entitled "Memorial Directions," which indicated that he had contacted the Voie Funeral Home to request cremation services, and had asked Cady to handle the necessary arrangements for his cremation and the disposal of his ashes. In August of 1997, Wrosch's mother, brother, and sister, as next of kin, each signed forms entitled "Authorization to Transfer Possession of the Remains of the Decedent," which was required by the Voie Funeral Home. The forms represented that the family members had the legal right to direct the disposition of the decedent's remains and directed and authorized the funeral home to transfer the authority over the final disposition of the decedent to Cady, as an agent for the next of kin. The forms also stated that the family members had agreed to indemnify and hold the funeral home harmless for disposing of the deceased's remains at Cady's direction.

¶3 After Wrosch died in 1999, Cady arranged for his cremation at the Voie Funeral Home. However, while the ashes were still in the possession of the funeral home, the next of kin notified Cady that they wished to rescind the authorization and have the decedent's sister pick up the ashes from the funeral home and take them to the decedent's mother. Cady opposed the family's request

---

<sup>1</sup> This is an expedited appeal under WIS. STAT. RULE 809.17 (1997-98). All further references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

and the funeral home refused to release the ashes to any of the parties without a court order.

¶4 The next of kin filed suit seeking a declaratory judgment that they had the legal right to the ashes. The trial court determined that the authorization for Cady to act had “vested” when the decedent was cremated, and that it was thereafter too late for the family members to rescind their permission to allow Cady to dispose of the remains. It therefore ruled that the ashes were to be turned over to Cady, but stayed its decision pending appeal.

### STANDARD OF REVIEW

¶5 Because the relevant facts are undisputed, we will consider the legal effect of the signed form, on the cremated remains of the decedent, as a question of law to be reviewed *de novo*. See ***Scheideler v. Smith & Assocs., Inc.***, 206 Wis. 2d 480, 487-88, 557 N.W.2d 445 (Ct. App. 1996).

### ANALYSIS

¶6 The parties agree that the Memorial Directions were not binding and that, in the absence of the signed forms, the next of kin would have a common law right to direct the disposition of the decedent’s final remains. See ***Holsen v. Heritage Mut. Ins. Co.***, 165 Wis. 2d 641, 645, 478 N.W.2d 59 (Ct. App. 1991) (recognizing claims for interference with children’s right to bury father and emotional harm resulting from negligent handling of a corpse). It is also undisputed that this common law right would allow the decedent’s next of kin to claim his ashes following his cremation.

¶7 Cady cites 22A AM. JUR. 2D *Dead Bodies* § 26 (1988) for the proposition that the right of the next of kin to have custody of a dead body or to

control its burial may be waived by “clear and satisfactory evidence of conduct indicative of a free and voluntary intent and purpose to that end.” We note, however, that 22A AM. JUR. 2D *Dead Bodies* § 36 further explains that a valid waiver “will effectively preclude liability for wrongful acts interfering with [custody and burial] rights in a suit brought by a person who has effected the waiver.” We are satisfied that the forms signed by the next of kin in this case were intended, and acted, simply to limit any civil liability on the part of the funeral home to the next of kin for acting at Cady’s direction in cremating Wrosch. In other words, the next of kin have waived the right to sue the funeral home under an interference-with-common-law-burial-rights theory for actions the funeral home took at Cady’s direction while the authorizations were in effect.

¶8 It does not follow, however, that the next of kin have irrevocably surrendered or transferred to Cady all of their common law rights to direct the disposition of the decedent’s remains. There is nothing in the forms which would compel such a result. Rather, the signed forms permitted the Voie Funeral Home to rely on Cady as the “agent for final disposition” of Wrosch’s remains. They do not create any obligation to use the Voie Funeral Home to dispose of Wrosch’s remains; they do not give Cady authority to direct anyone other than the Voie Funeral Home as to the disposition of Wrosch’s remains; and they do not in any way waive or transfer the next of kin’s right to direct the location of the remains after they leave the funeral home’s custody. We therefore agree with the next of kin that the signed forms constituted a limited agency designation, and were revocable.

¶9 Cady argues that, even if the authorizations could have been revoked before Wrosch died, they could not be revoked after the cremation occurred. While we agree with the premise that the next of kin could not retroactively

revoke Cady's authorization after it had been fully carried out, that is not the situation here. Because the Voie Funeral Home still has possession of the ashes, it is not too late for the next of kin to revoke Cady's agency and assert their own right to direct the final disposition of the decedent's ashes. We therefore reverse the judgment of the trial court, and remand with directions that the court enter a judgment directing that Wrosch's ashes be given to his next of kin.

*By the Court.*—Judgment reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

