

IN THE SUPREME COURT OF MISSISSIPPI

No. 2007-CA-00267

CARMEN D. HASTINGS

APPELLANT

versus

JOEL SCOTT SPIERS

APPELLEE

APPEAL FROM THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI

BRIEF OF THE APPELLEE

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have (or may have) an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Carmen D. Hastings, Petitioner-Appellant
2. Joel Scott Spiers, Respondent-Appellee
3. Edwin Woods, Jr., Appellant's Counsel
4. James M. Priest, Jr. and Gill, Ladner & Priest, PLLC, Appellee's Counsel and his law firm
5. Jimmy and Vicki Spiers, Victoria Spiers' paternal grandparents
6. Estella Spiers, Appellee's wife and Victoria Spiers' stepmother

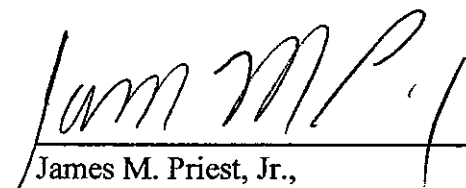

James M. Priest, Jr.,
Attorney of Record for Appellee
Joel Scott Spiers

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STATEMENT OF ISSUE

The Circuit Court did not abuse its discretion in finding that no compelling reason existed to order the exhumation of the body of Victoria Ranae Spiers and thus denying Appellant's Amended Petition.

STATEMENT OF THE CASE

Nature of the Case, Course of Proceedings, and Its Disposition in the Court Below

The Appellee agrees with the Appellant's description of the procedural history of the case. However, the Appellant points out that this matter originally arose upon the application of the Adams County Coroner to the circuit court for instructions on the disposition of Victoria Ranae Spiers' remains. The circuit court's original order in this matter directed the coroner to release the remains to Appellee. (R. at 1).

Facts Relevant to the Issues Presented for Review

Victoria Ranae Spiers ("Tori") died in a plane crash in Adams County, Mississippi on July 30, 2005. Tori's mother is the Appellant Carmen Hastings and her father is the Appellee Joel Scott Spiers.¹ Carmen and Joel were never married, and they never lived together during Tori's lifetime. (Tr. at 8). Carmen and Joel did live together briefly in Mississippi when Carmen first learned she was pregnant with Tori. (Tr. at 52-53). However, Carmen chose to move to Texas before Tori's birth. (Tr. at 53). At the time of Tori's birth, Carmen was living with another man in Texas and gave Tori his last name, Blevens, when she was born. (Tr. 50-51). Tori was born in Wichita Falls, Texas on January 4, 1995. (Tr. at 7).

Joel initiated proceedings to establish Tori's paternity in 1995. (Tr. at 11). By its Final Decree in Paternity Suit entered on or about May 23, 1997, the County Court at Law of Wichita County, Texas adjudicated Joel Tori's natural father and named him Tori's Joint Managing Conservator with Carmen. (Tr. at 14 and Ex. 1).

At the time of Tori's death, Carmen was a resident of Wichita Falls and Joel was a

¹For clarity's sake, the parties are sometimes referred to herein as simply Carmen and Joel.

resident of Amite County, Mississippi. (Tr. at 6, 8). At the time of her death, Tori's primary residence was in Wichita Falls, Texas with Carmen. (Tr. at 7).

Over the course of her life, Tori bonded closely with Joel and a loving paternal relationship existed between Tori and Joel. (Tr. at 41). Although the fact that they lived in different states made regular visitation between Joel and Tori difficult, Tori enjoyed extended holiday and summer visitation periods with her father and his family in Mississippi. (Tr. at 16-17, 27). During her lifetime, Victoria developed strong bonds with her extended paternal family, in particular with her paternal grandparents Jimmy and Vicki Spiers who are residents of Franklin County, Mississippi. (R. at 30-37; Tr. at 41).

On July 30, 2005, Carmen accompanied the pilot and the pilot's granddaughter on the flight of a small private plane from Wichita Falls to the Natchez-Adams County Airport. (Tr. at 29-30). On that day, Tori was ending her summer visitation with Joel in Mississippi and was to return with her mother to Wichita Falls in order to begin the new school year. (Tr. at 27-28).

Tragically, the plane crashed during takeoff for the return flight. (Tr. at 33). Tori, the pilot and the pilot's granddaughter died. *Id.* Carmen was critically injured and was transported to the University of Mississippi Medical Center in Jackson. (R. at 3-6; Tr. at 33).

Shortly after the crash, a dispute arose between Joel and Carmen's husband Brian Hastings (Tori's stepfather) as to Victoria's burial arrangements. (R. at 1; Tr. at 4). As a result of the dispute, Adams County Coroner James Lee applied to the circuit court for guidance. (R. at 1; Tr. at 4). By its order of August 1, 2005, the court found that Ms. Hastings was wholly unable due to her injuries to make decisions as to Victoria's burial. (R. at 1-2). Accordingly, the court authorized and directed Mr. Lee to release Victoria's body to Mr. Spiers for burial. *Id.* Before Tori's funeral and burial, Carmen (through counsel) filed her petition seeking to prevent Tori's

interment in Amite County. (R. at 3-6). Attached to the petition was a statement purporting to express Carmen's wishes that Tori be buried in Wichita Falls. The statement bore an illegible signature. (R. at 6). The circuit court conducted a telephonic hearing upon Carmen's petition and found that "due to her very serious injuries suffered in the crash, she was not in any position to participate in the decision making process about the interment of the child." (Tr. at 5).

Accordingly, Joel arranged for Tori's funeral and burial in Bethel Baptist Church cemetery in Amite County. The funeral and burial took place on August 3, 2005. (R. at 8; Tr. at 36).

Tori is buried in the Spiers family plot in the church cemetery. (Tr. at 52). Tori's paternal grandparents Jimmy and Vicki Spiers already have headstones at the plot, where they too will be buried. *Id.* Tori is buried near her biological uncle, Jim Spiers (Joel's brother). *Id.*

Tori has no biological relatives buried in Wichita Falls. (Tr. at 51-52). She has no particular concentration of biological relatives in Wichita Falls. (Tr. at 45-50). In the circuit court, Carmen testified that no one has disturbed her or interfered with her in any way when she visited Tori's grave. (Tr. at 40).

SUMMARY OF THE ARGUMENT

A court may permit the disinterment of a body only when the party seeking disinterment presents a compelling reason. The Court in *Hood v. Spratt*, 357 So. 2d 135, 137 (Miss. 1978), articulated the factors to be considered in matters of disinterment. In this case, the circuit court properly considered these factors in finding that no compelling reason existed to order disinterment of Victoria Spiers' remains. The circuit court's determination was based upon substantial credible evidence, was not manifestly wrong, and was well within the discretion afforded it in such matters. Therefore, this Court should affirm the judgment of the circuit court.

ARGUMENT

The circuit court properly denied the extraordinary relief sought by the Appellant, namely an order allowing the exhumation of Tori Spiers' body from its grave in Amite County and the transport of the body to Texas. For a court to order disinterment, a party must demonstrate a compelling reason. After hearing testimony and otherwise receiving evidence, the circuit court found that the Appellant had failed to show a compelling reason justifying the disinterment of Tori's remains. The circuit court's ruling was based upon substantial evidence and was well within its discretion. This Court, therefore, should not disturb the circuit court's ruling on appeal.

I. A court may order exhumation only upon demonstration of a compelling reason.

"There is no rigid rule for either permitting or refusing removal of a body once interred" under Mississippi law. *Hood v. Spratt*, 357 So. 2d 135, 137 (Miss. 1978). Rather, "each case must be determined on its own merits with due regard to public welfare, the wishes of the decedent and the rights and feelings of those entitled to be heard by reason of relationship or association." *Hood*, 357 So. 2d at 137. The Court should consider the following factors in determining whether to permit or prohibit disinterment:

- Public interest
- Wishes of the decedent
- Rights and feelings of those entitled to be heard by reason of relationship
- Rights and principles of religious bodies or other organizations which granted interment in the first burial site, and
- Whether consent was given to interment in the first burial site by the one claiming

the right of removal.

Id.; accord *Langham v. Herrington*, 449 So. 2d 228, 229 (Miss. 1984).

Although rigid rules regarding disinterment do not exist, “the sound and well-established policy of the law” is that “a person, once buried, should not be exhumed except for *the most compelling* of reasons.” *Smart v. Moyer*, 577 P.2d 108, 110-111 (Utah 1978) (emphasis added).

Indeed this Court itself has recognized “removal and reinterment of a body is allowable where there are *compelling reasons*.” *Hood*, 357 So. 2d at 137 (emphasis added). A party seeking exhumation and transfer of a body faces an extraordinarily heavy burden: “a due respect for the memory of the dead and for the feelings of the living friends and relatives requires that, when a body is once interred, it shall so remain unless *extreme necessity* demands its disinterment.” *King v. Frame*, 216 N.W.2d 630, 633 (Iowa 1927) (emphasis added); see also *Mallen v. Mallen*, 520 S.W.2d 736, 737 (Tenn. 1974) (“While the right to have a body remain undisturbed is not absolute, the courts do not ordinarily permit disinterment unless there is a showing that it is necessary and that the interests of justice require it.”).

Appellant asks the Court to afford her the the “paramount” right to determine a place of burial which the Court has arguably extended to a surviving spouse. *Hood*, 357 So. 2d at 137. This argument is misplaced for two reasons. First, it is based upon a weak analogy. When a spouse dies, the surviving spouse is necessarily the nearest relative. In this case, Joel and Carmen stood in the same degree of kinship to Victoria. *See Hood*, 357 So. 2d at 137 (“in the absence of a surviving spouse, the right of selection of a burial site was in the next of kin in order of their relation to the decedent). Moreover, Carmen was not Victoria’s sole custodian. Joel and Carmen had joint custody and were Victoria’s joint managing conservators under the decrees of the Texas family court. Second, the Court of Appeals has specifically rejected any argument

from *Hood v. Spratt* that a surviving spouse is automatically entitled to an order of disinterment upon the showing of a compelling reason. *Davis v. True*, 963 So.2d 1271, 1273 (Miss. Ct. App. 2007).

II. The circuit court's ruling was based upon substantial credible evidence and was not manifestly wrong.

The Court has recognized that “a court of equity can best determine the rights of relatives and friends respecting the care and control of the remains of their dead and decide upon each set of circumstances what is the proper course of action.” *Hood*, 357 So. 2d at 138. In this case, the circuit court was essentially sitting as a court of equity. In matters regarding disinterment, an appellate court will not disturb the findings of a court sitting in equity “when supported by substantial credible evidence unless the chancellor [or circuit judge in this case] abused his or her discretion, was manifestly wrong, clearly erroneous, or an erroneous legal standard was applied.” *Davis*, 963 So. 2d at 1274. The trial judge, “by [his/] her presence in the courtroom, is best equipped to listen to the witnesses, observe their demeanor, and determine the credibility of the witnesses and what weight ought to be ascribed to the evidence given by those witnesses.” *Id.* (citing *Howard v. Fulcher*, 806 So. 2d 328, 332 (Miss. Ct. App. 2002)).

The circuit court correctly applied the *Hood v. Spratt* factors to the facts in this case and was not manifestly wrong in finding that those facts failed to provide a compelling basis for ordering disinterment. The facts recited above (and established by the evidence presented in the circuit court) clearly establish that Tori had a strong connection to Amite County during her lifetime so that it is an appropriate final resting place. Moreover, despite the Appellant's attempt to downplay it during her testimony, the evidence presented to the circuit court also established that Tori had a strong bond with her father and his family so that Joel's role in determining Tori's

final resting place was eminently appropriate.²

In sum, the circuit court applied the correct legal standard from *Hood v. Spratt*, based its findings on substantial credible evidence, and otherwise was not manifestly wrong in its ruling. As the circuit judge did not abuse its discretion, this Court should not disturb its findings or ruling.

²The Appellant makes much of the fact that the Appellee did not appear at the hearing in the circuit court. As pointed out to the circuit court (and as will be obvious to this Court upon the review of the transcript), an extremely contentious relationship existed between Joel and Carmen (and between their families) even before Tori's death. In this light, Appellant chose not to appear at the hearing (R. at 50). Regardless, Appellee's counsel elicited substantial evidence weighing against disinterment by way of cross examination of the Appellant. (Tr. at 40-53). Also, Appellee presented evidence regarding his and his family's bond with Tori by way of his parents' affidavits. (R. at 30-37).



CONCLUSION

The Appellee respectfully requests that the Court bear in mind the radical nature of the relief sought by the Appellant. Fortunately, such situations are exceedingly rare. The circuit court was placed in an extremely difficult position in determining whether to allow Tori's remains to be exhumed and removed to Texas. (See Tr. at 53-57). Its ultimate finding that such relief should be denied was based upon credible evidence and was not manifestly wrong. As the trial judge did not abuse his discretion in denying an order allowing disinterment, this Court should affirm the judgment of the Circuit Court of Adams County.

Respectfully submitted,

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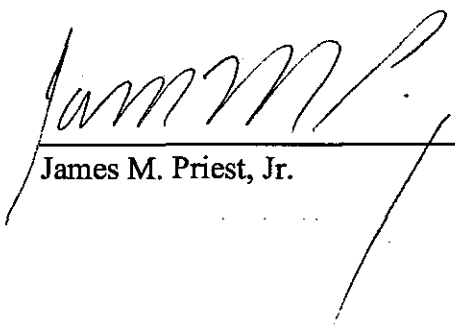
CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing via first class U.S. Mail, postage prepaid, upon:

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This 16th day of February, 2008.


James M. Priest, Jr.