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Division I
State of Washington

No. 72948-9

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I**

In re the Reinterment of the Remains of Kyril Faenov

MARINA BRAUN

Appellant,

v.

LAUREN SELIG, MARTIN SELIG, and TEMPLE DE HIRSCH SINAI,

Respondents.

**BRIEF OF RESPONDENTS
LAUREN SELIG and MARTIN SELIG**

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I. INTRODUCTION

The late-Kyril Faenov (“Kyril”) was laid to rest more than three years ago. Kyril’s surviving spouse, Respondent Lauren Selig, selected the Hills of Eternity Cemetery in Seattle, Washington, for his burial. Under RCW 68.50.160, Ms. Selig had the exclusive right to control the disposition of Kyril’s remains.

Petitioner Marina Braun was Kyril’s mother. She was informed of and attended Kyril’s burial, where she participated in the laying of earth on his casket. Shortly thereafter, she disappeared from Ms. Selig’s life and the lives of Ms. Selig’s young daughters. Ms. Braun’s first contact with Ms. Selig after two years of silence was the filing of a petition to reinter Kyril’s remains in Portland, Oregon.

Ms. Braun’s Petition for Reinterment was supported by three detailed declarations. The Petition was served on Ms. Selig with an Order to Show Cause requiring Ms. Selig, Martin Selig (who purchased Kyril’s burial plot), and the Hills of Eternity Cemetery (which owns the cemetery) to appear on August 15, 2014 to “*show cause, if any, why reinterment should not be granted as required in the June 26, 2014 Petition for Reinterment and related Motion to Show Cause.*” Ms. Braun represented that the trial court could, and should, immediately decide her Petition on the factual record she had submitted.

The show cause hearing did not take place as scheduled. On August 6, 2014, the Seligs filed a motion to dismiss the Petition and for

sanctions. The Seligs argued that the trial court was prohibited from ordering reinterment because such an order would violate the terms of the Interment Agreement between the Cemetery and Mr. Selig. The plain language of RCW 68.50.200 prohibits such an outcome.

Over the next three months, the parties briefed the issue of whether Ms. Braun's Petition was legally permissible under RCW 68.50.200. In the process, the trial court converted the Seligs' motion to dismiss into a de facto motion for summary judgment under Civil Rule 56. The trial court invited the parties to submit any affidavits necessary to decide whether Ms. Braun's Petition should be allowed or dismissed. Ms. Braun supplemented the record with three additional fact declarations and an expert declaration.

On November 21, 2014, the trial court heard oral argument on whether the Petition should be dismissed. Despite the plain language of RCW 68.50.200, the trial court ruled that it had equitable authority to decide whether a compelling basis for reinterment had been shown by Ms. Braun. The trial court then proceeded to make the exact type of ruling that Ms. Braun had requested three months earlier – a decision on the merits. The Court dismissed the Petition, stating: “[H]ere is an equitable matter, and based on the facts and the circumstances that I see in the record, *I don't see a sufficient reason, I don't see a necessity or a compelling equitable reason to disturb the decision of Lauren Selig, the surviving spouse, as its been implemented in the interment agreement that her father signed.*”

Ms. Braun now appeals the trial court's exercise of its equitable authority to decide that Kyril's remains should not be disturbed two years after his burial. She claims that the trial court's decision on the merits came as a "surprise" and that she should have been allowed to conduct invasive discovery on subjects that the Court found to be irrelevant. Ms. Braun's appeal ignores her own plea that the trial court decide the equities of her Petition at a show cause hearing on August 15, 2014. The appeal also ignores the trial court's express finding that the additional discovery Ms. Braun requested at the November 21, 2015 hearing would not change the outcome of this case.

Kyril's death was a tragedy and Ms. Braun's Petition for Reinterment was a travesty. In the trial court, Ms. Braun made her best case for disturbing Kyril's remains two years after his death. The trial court was not convinced. The Court should affirm the trial court's dismissal of the Petition both because RCW 68.50.200 does not allow reinterment under these circumstances and because there was no equitable basis for disturbing Kyril's remains.

II. ISSUE ON APPEAL

1. Whether the trial court's dismissal of the Petition is supported by the substantial evidentiary record submitted by Marina Braun?
2. Whether the trial court abused its discretion by denying Ms. Braun's request to conduct irrelevant, invasive discovery?

3. Whether the trial court's dismissal of the Petition should be affirmed under RCW 68.50.200 because the trial court was prohibited from allowing reinterment because it violated the written Interment Agreement between Martin Selig and the Hills of Eternity Cemetery?

III. STATEMENT OF THE CASE

A. Kyril Faenov and Lauren Selig Lived in Seattle for More Than a Decade.

Kyril Faenov grew up in Russia. (Clerk's Papers ["CP"] 132.) He studied physics and mathematics, and he moved to Portland, Oregon after graduating from high school. (*Id.*) In 1998, Kyril moved from Portland to Seattle when Microsoft acquired Valence Research, an Internet company Kyril had co-founded. (*Id.*)

In 2000, Lauren Selig was studying law and business at Northwestern University in Chicago, Illinois. (CP 133.) That summer, she worked in Seattle at Play Networks and Microsoft. (*Id.*) It was during a weekend trip to Seattle in early-2000 that Ms. Selig met Kyril. (*Id.*) They dated from 2000 until 2002, at which time they got engaged. (*Id.* 133) Ms. Selig moved to Seattle and they bought a house in Madison Park. (*Id.*)

Ms. Selig and Kyril were married in the summer of 2003 at the Scimatar Ridge Ranch in Anacortes. (CP 133.) Their wedding was presided over by Rabbi Chaim Levine. (*Id.*)

After their wedding, Kyril and Ms. Selig settled into their lives in Seattle. (CP 133.) Ms. Selig worked for her father's real estate company, Martin Selig Real Estate, and Kyril continued to work for Microsoft. (*Id.*)

They also started building a family. (*Id.*) Their daughters were born in 2005 and 2009, which immediately connected them to their community and the girls' schools. (*Id.*) Kyril and Ms. Selig never discussed moving away from Seattle except a brief conversation when Kyril considered, but declined, taking a new Microsoft job in China. (*Id.*) Kyril never expressed any emotional or familial desire to move back to Portland. (*Id.*)

B. Kyril Faenov Succumbed to His Mental Illness on May 25, 2012.

Kyril had a brilliant mind but he also suffered from mental illness, which resulted in many visits and long stays in psychiatric facilities. (CP 133.) Throughout their marriage Ms. Selig was devoted to Kyril and she supported him unconditionally through several difficult years. (*Id.*) On May 25, 2012, Kyril committed suicide. (*Id.*)

The period following Kyril's death was the hardest and most painful Ms. Selig had ever experienced. (CP 133.) There was so much sadness and grief. (*Id.*) Shortly after she learned that Kyril had died, Ms. Selig contacted Kyril's mother, Marina Braun. (*Id.*) They both understood the requirement in the Jewish tradition that Kyril's body be buried without delay. (*Id.*) Ms. Selig informed Ms. Braun that her father, Martin Selig, Rabbi Chaim Levine, and she had decided that the burial should occur at the Hills of Eternity Cemetery in the Queen Anne neighborhood in Seattle. (*Id.*) Ms. Braun did not object to the location of the burial. (*Id.*) She only asked that they delay the funeral to allow Kyril's father to travel from Japan, which they did. (*Id.*) Ms. Braun attended the

funeral with her daughter, who traveled from Israel. (*Id.* 134.) Ms. Braun participated in the funeral by placing earth on Kyril's coffin. (*Id.*)

On behalf of his daughter and their family, Martin Selig entered into an Internment Agreement with Temple De Hirsch Sinai to obtain "the right of perpetual interment ... for Kyril Faenov in the Hills of Eternity Cemetery." (CP 136-137; *see also* CP 139-140.) Mr. Selig paid \$13,200 as consideration for the decedent's burial plot. (*Id.*)

After the funeral, Ms. Selig recalls only having a single communication with Ms. Braun. (CP 134.) Before he died, Kyril had maintained a website, Faenov.com, where he hosted his resume and a handful of email accounts for certain family members, not including Ms. Selig. (*Id.*) Ms. Braun asked what would happen with the website and Ms. Selig responded that she was welcome to continue hosting it. (*Id.*) Aside from this one communication, Ms. Selig does not recall Ms. Braun contacting her or her granddaughters again. (*Id.*) This lawsuit was the first contact from Ms. Braun in more than two years. (*Id.*)

C. Lauren Selig Relocated Her Family to Los Angeles a Year After Kyril Died.

Life in Seattle became very difficult for Ms. Selig and her daughters after Kyril died. (CP 134.) So many places that they loved as a family, like the Arboretum and the park near their home, were painful to see or visit because of their memories of Kyril. (*Id.*) As a widow, Ms. Selig could not leave her house without neighbors and friends constantly asking how she and her daughters were coping. (*Id.*) The

outpouring of support was always appreciated, but it became difficult to start the healing process. (*Id.*)

After Kyril died, Ms. Selig's daughters asked whether they could change their last names from "Faenov" to "Selig." (CP 135.) Ms. Selig and her family spent considerable time discussing the girls' feelings and she became genuinely convinced they wished to have the same last name as their only parent. (*Id.*) The daughters' name changes were finalized in July 2012.

During the year after Kyril died, Ms. Selig decided to move her family to Los Angeles. (CP 134.) She made every effort to make it a smooth transition for her family, including allowing her daughters to finish the school year and enjoy their summer vacations. (*Id.*) During this time, Ms. Selig and her daughters visited Kyril's grave as often as was appropriate for their family. (*Id.*)

In Los Angeles, Ms. Selig launched a film production company and she enrolled her daughters in a wonderful school. (CP 134.) She and her daughters have made several trips back to Seattle to visit family and friends, and on every occasion they have visited Kyril's grave. (*Id.*) One of Ms. Selig's daughters attends summer camp in Seattle every year. (*Id.*)

D. The Selig Family Placed a Permanent Headstone for Kyril Faenov's Grave.

In Ms. Selig's Jewish tradition, a headstone is not added to the gravesite for the first year after death. (CP 135.) At the time the Petition was filed, Ms. Selig's daughters were now approaching the age where they

can help design a headstone to remember their father, which is what they agreed to do as a family. (*Id.*) As Kyril's surviving spouse, this is Ms. Selig's decision to make. (*Id.*) Also at the time of the Petition, an interim headstone had been installed while the Selig family finishes designing their own. (*Id.*) A permanent headstone has since been installed at Kyril's grave site.

IV. PROCEDURAL HISTORY

A. Marina Braun Petitioned to Reinter Kyril Faenov's Remains.

Marina Braun filed her Petition for Reinterment on June 26, 2014. (CP at 1-9, 101.) On July 3, 2014, without providing notice to the Seligs, Ms. Braun filed a Motion for Order to Show Cause Why Plaintiff's Petition for Reinterment Should Not Be Granted. (*Id.* at 80-81.) The motion was granted that same day and the show cause hearing was scheduled for August 15, 2014. (*Id.*) Ms. Braun did not give notice to the Seligs of the Show Cause hearing until July 16, 2013 – 20 days after the Petition was filed and two weeks after the Show Cause Hearing was ordered. (*Id.* at 101.)

From July 24, 2014 through August 6, 2015, the Seligs' counsel explained in a series of letters to Ms. Braun's counsel why the Petition was subject to dismissal and why sanctions are warranted under Civil Rule 11 and RCW 4.84.185. (CP 101-120.) On August 6, 2015, the Seligs filed and served a Motion to Dismiss, which was scheduled for hearing on September 12. Ms. Braun received 37 days' notice of the original hearing. (*Id.* 84-98.)

On August 13, 2014, Ms. Braun filed a motion to continue the hearing on the Motion to Dismiss until October or November. (CP141-147.) At the same time, Ms. Braun issued written discovery to Martin Selig and Lauren Selig. (*Id.* 166-190.) The interrogatories read:

INTERROGATORY NO. 2: Please identify each and every person known to you who has any knowledge of facts relevant in any way to the choice of Hills of Eternity Cemetery as the burial place for Kyril Faenov; the agreement that was signed by you for the interment of Mr. Faenov's remains at Hills of Eternity Cemetery; and/or the providing, installing, unveiling, and/or removing the gravestone(s) for Mr. Faenov at Hill of Eternity Cemetery, and for each person summarize his or her knowledge.

INTERROGATORY NO. 3: Are the remains of any of your relatives and/or other members of the Selig family interred at the Hills of Eternity Cemetery? If so please identify the relatives or family members, the approximate dates they were interred there, and the contract or agreement that relates to that interment.

INTERROGATORY NO. 4: Have you or any of your relatives and/or other members of the Selig family signed any contracts, made any plans, and/or made any "preneed" purchases to have bodily remains interred at the Hills of Eternity Cemetery sometime in the future? If so please identify the family members who have done so and the plan, contract, and/or "pre-need" agreement they entered into.

INTERROGATORY NO. 5: Are the remains of any of your immediate relatives and/or members of the Selig family interred at a cemetery other than Hills of Eternity Cemetery? If so please identify the immediate relatives or family members, the cemetery, the dates they were interred there, and the contract or agreement that relates to that interment.

INTERROGATORY NO. 6: Have you or any of your immediate relatives and/or members of the Selig family signed any contracts or agreements, made any plans, and/or made any “pre-need” purchases to have your bodily remains interred at a cemetery other than the Hills of Eternity Cemetery sometime in the future? If so please identify the immediate relatives or family members who have done so, the cemetery involved, and the plan, contract, and/or “pre-need” agreement they entered into.

(*Id.*) The document demands seek the records associated with the foregoing interrogatories. (*Id.*) Ms. Braun also noted Mr. Selig’s deposition for August 29, 2014. (*Id.* 250-251.)

On August 25, 2014, the trial court granted Ms. Braun’s Motion to Continue Hearing on Motion to Dismiss. (CP at 283-287.)

On September 5, 2014, the trial court granted the Seligs’ Motion to Stay Discovery. (CP 354-358.) The trial court also converted the motion to dismiss into a motion for summary judgment under Civil Rule 56. (*Id.*) Finally, the Court directed the parties to submit supplemental briefing on the following questions:

1. Can the Agreement of Interment (“Agreement”) between Temple De Hirsch Sinai (“Temple”) and Martin Selig be breached if there is no act or omission by the Temple or by Mr. Selig that constitutes a breach of the contract?
2. Can an act or omission by a person who is not a party to the Agreement be legally deemed to constitute a “breach” of the Agreement?
3. Assuming that every person who is buried in the Temple’s cemetery has been interred pursuant to a written agreement with terms that are basically identical to the

terms of the Agreement, would every disinterment necessarily be a breach of such an agreement? If so, when, if ever, would any Court be permitted to exercise the statutory discretion conferred on the Court under RCW 68.50.200 to allow disinterment?

4. Did the Petitioner waive her right to object to the interment of Mr. Faenov's remains at the Hills of Eternity Cemetery in 2012?

(CP 354-358.)

On September 29, 2015, the Court clarified that Ms. Braun could submit any additional declarations or affidavits needed to defend the Petition. (CP 365-366.)

On October 24, 2015, the Seligs submitted their Supplemental Brief in support of the Motion to Dismiss (CP 368-374.)

On November 10, 2014 – four and a half months after the Motion to Dismiss was originally filed – Ms. Braun filed her Opposition. (CP 385-404.) Ms. Braun also submitted a purported expert witness declaration on reinterment issues (*Id.* 406-422); her own 36-page declaration (*Id.* at 462-498); the declaration of Kyril's father, Anatoly Faenov (*Id.* at 499-508); and another declaration from her counsel, Matthew Menzer (*Id.* 510-533). There was no limitation on the argument or evidence Ms. Braun introduced into the record to defend her Petition.

On November 10, 2014, Ms. Braun also responded to the supplemental briefing submitted by the Seligs and Temple de Hirsch Sinai. (CP 531-547.)

On November 14, 2015, the Seligs filed their Reply in Support of Motion to Dismiss Petition. (CP 562-567.) The Seligs filed their Reply in Support of their Supplemental Briefing. (*Id.* 568-571.)

On November 21, 2014, the trial court heard oral argument on whether the Petition should be allowed or dismissed. The trial court determined that it had equitable authority to decide whether the Reinterment Petition should be granted, notwithstanding the language of RCW 68.50.200. (Report of Proceedings [“RP”] 47:20-23.) Based on the extensive factual record introduced by the parties, the trial court dismissed the Petition. (*Id.* 50:14-18.)

On December 1, 2014, Ms. Braun filed a Motion for Reconsideration, which the trial court denied.

V. ARGUMENT

A. **Legal Standard Governing Review of Summary Judgment.**

This Court reviews a motion for summary judgment *de novo*, construing all facts and reasonable inferences from those facts in the light most favorable to the non-moving party. *See Simpson Tacoma Kraft Co. v. Dep’t of Ecology*, 119 Wn.2d 640, 646, 835 P.2d 1030 (1992); *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 794, 64 P.3d 22 (2003). Summary judgment will be affirmed if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). The Court may affirm summary judgment on any grounds

supported by the record. *See Allstot v. Edwards*, 116 Wn. App. 424, 430, 65 P.3d 696 (2003).

B. The Trial Court’s Dismissal of the Petition for Reinterment is Fully Supported by the Record.

Ms. Braun appeals the trial court’s dismissal of her Petition on the basis that the trial court did not properly evaluate the equitable merits of the Petition for Reinterment. She claims that the factual record was incomplete. The extensive court record considered by the trial court does not support Ms. Braun’s claim. As the record before the trial court fully supports the dismissal of the Reinterment Petition, the decision should be affirmed.

To the extent the trial court had authority to order reinterment (which Ms. Selig disputed under RCW 68.50.200), the trial court was required to balance a variety of equitable factors. *See Wood v. E.R. Butterworth & Sons*, 65 Wn. 344, 347-3481, 18 P. 212 (1911). “No general rule [identifying these equities] applied absolutely in all cases can be laid down upon the subject, for what is fit and proper to be done in each case must depend upon the special circumstances of the case.” *Id.* at 347-348. One court listed the following factors to be considered in reinterment cases: (1) the degree of the relationship that the party seeking reinterment bears to the decedent, (2) the degree of the relationship that the party seeking to prevent reinterment bears to the decedent, (3) the desire of the decedent, (4) the conduct of the person seeking reinterment, especially as it may relate to the circumstances of the original interment, (5) the conduct

of the person seeking to prevent reinterment, (6) the length of time that has elapsed since the original interment, and (7) the strength of the reasons offered both in favor of and in opposition to reinterment. See *In re Disinterment of Frobose*, 163 Ohio App. 3d 739, 743, 840 N.E.2d 249 (2005).

Ms. Braun claims that she was not able to brief these equitable issues or submit the relevant evidence and testimony in the trial court. First, this claim is inconsistent with Ms. Braun’s effort to have the trial court determine whether reinterment should be ordered at a show cause hearing on August 15, 2014 based on her Petition and the supporting declarations. Second, during the intervening four months from the filing of the Petition until the final hearing, Ms. Braun introduced three additional fact declarations and one expert declaration. As a result, the record before the trial court contained substantial evidence on each of the above-referenced equitable factors:

Factor	Evidence Considered by the Trial Court
Degree of relationship of the parties to the decedent	<ul style="list-style-type: none"> • Ms. Selig was Kyril’s wife of 10 years and the mother of his two daughters. (CP 133.) • Ms. Braun was Kyril’s mother. (CP 53).
Desire of the decedent	<ul style="list-style-type: none"> • Kyril’s will did not include burial instructions. (CP 133.) • Kyril moved to Seattle in 1998 and never expressed any emotional or familial desire to move back to Portland. (CP 132-133.)

Factor	Evidence Considered by the Trial Court
Conduct of the parties, especially as it may relate to the circumstances of the original interment	<ul style="list-style-type: none"> • Ms. Selig consulted with Rabbi Chaim Levine about where Kyril should be buried. (CP 133.) • Ms. Selig informed Ms. Braun that Kyril would be buried in the Hills of Eternity and Ms. Braun did not object. (CP 133.) • Ms. Selig’s father paid \$13,200 for a burial plot in the Hills of Eternity Cemetery on Lauren and Kyril’s behalf. (CP 136.) • Ms. Braun attended and participated in the funeral. (CP 134.)
Length of time since the original interment	<ul style="list-style-type: none"> • Kyril was laid to rest in May 2012. (CP 133.)
Strength of the reasons offered both in favor of and in opposition to reinterment	<ul style="list-style-type: none"> • Seattle was Kyril’s home for 14 years. (CP 132.) • Kyril had a career in Seattle, met Ms. Selig in Seattle, got married in the greater Seattle area, began raising his family there, and expressed no intention of leaving. (CP 132-33.) • Kyril was laid to rest in May 2012. (CP 133.) • Kyril’s parents have burial plots in Oregon. (CP 54.) • Ms. Braun objected to the timing of the placement of a headstone on Kyril’s grave. (CP 72.)

The record before the trial court was fully developed. When Ms. Braun’s counsel protested that he should be allowed to conduct additional discovery before the Petition was dismissed, the trial court responded: “I do think that I have everything that both sides could provide factually in – with respect to the circumstances of this case.” RP 50:14-18. The trial court was satisfied that no facts had been introduced or could be introduced that would justify reinterment. As the grounds supporting the trial court’s decision are clearly set forth in the record, the Court should affirm the dismissal of the Petition. *See Allstot*, 116 Wn. App. at 430.

C. The Trial Court’s Denial of Marina Braun’s Request for Additional Discovery Was Not an Abuse of Discretion.

Ms. Braun also appeals the trial court’s denial of her request for additional discovery. Denial of a motion under Civil Rule 56(f) will be reviewed under the abuse of discretion standard. *Gross v. Sunding*, 139 Wn. App. 54, 67-68, 161 P.3d 380 (2007). Such discretion is not abused if (1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact. *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474 (1989). In addition, the trial court’s determinations regarding the scope of discovery are also reviewed under the abuse of discretion standard. *John Doe v. Puget Sound Blood Center*, 117 Wn.2d 772, 777, 819 P.2d 370 (1991).

The trial court did not blindly deny Ms. Braun’s request for additional discovery. Ms. Braun’s counsel outlined in a Civil Rule 56(f) declaration the areas of discovery that he believed should be covered before the Court decides the motion. (CP 511.) The discovery focused on the circumstances surrounding Ms. Selig’s signing of the Internment Agreement, where other members of the Selig family were or would be buried, the number and frequency of reinterments at the cemetery, and other matters that have no bearing on the equities of the case. (*Id.*) The trial court rejected Ms. Braun’s request for additional discovery, stating: “I have everything that both sides could provide factually in – with respect to

the circumstances of this case. I don't see a need to look at years of records from the cemetery or other additional facts or testimony besides what's been presented." RP 50:14-18. The discovery proffered by Ms. Braun would not impact the trial court's decision, so denying the additional discovery was an appropriate exercise of the trial court's discretion. The decision should be affirmed.

D. The Court Should Affirm the Dismissal of the Petition Because Reinterment is Prohibited under the Circumstances of this Case.

1. Lauren Selig Had the Right to Control the Disposition of Her Late-Husband's Remains.

Kyril Faenov did not leave instructions on how his remains should be disposed. (CP 133.) As a result, RCW 68.50.160(3) dictates that Ms. Selig, as Kyril's surviving spouse, had "the right to control the disposition" of Kyril's remains. Only if Ms. Selig was unavailable, and then only if Kyril did not have surviving adult children, would control over Kyril's remains have vested in Marina Braun, as a surviving parent. RCW 68.50.160(3); *see also Whitney v. Cervantes*, 328 P.3d 957, 960 (Wash. Ct. App. 2014) ("The right to the next of kin to control and direct the burial of a corpse and arrange for its preservation is not only a natural right, embracing a high order of sentiment, but has become to be well recognized as a legal right."); *Woods v. Woods*, 48 Wn. App. 767, 769,

740 P.2d 379 (1987) (holding that control over human remains is governed by the hierarchy set forth in RCW 68.50.160(3)).

Ms. Selig exercised her right to control where Kyril would be buried. (CP 133.) She consulted with her father, Martin Selig, and Rabbi Chaim Levine. (*Id.*) They decided to bury Kyril in the Hills of Eternity Cemetery in Seattle. (*Id.*) Based on Ms. Selig's decision, Martin Selig entered into the Interment Agreement with Temple De Hirsch Sinai to obtain "the right of perpetual interment ... for Kyril Faenov in the Hills of Eternity Cemetery." (*Id.* at 136-140.) Mr. Selig paid \$13,200 for the burial plot. (*Id.*) Only extreme circumstances would justify overruling Ms. Selig's decision and the trial court properly ruled that such circumstances are not present here.

2. Reinterment is Prohibited Because it Would Violate the Terms of the Interment Agreement.

The trial court rejected the Seligs' argument that RCW 68.50.200 prohibits reinterment because it would violate the written Interment Agreement between Martin Selig and the cemetery. Respectfully, the trial court erred in its reading of application of RCW 68.50.200, which states:

Human remains may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one of the following in the order named:

- (1) The surviving spouse or state registered domestic partner.
- (2) The surviving children of the decedent.

- (3) The surviving parents of the decedent.
- (4) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the superior court of the county where the cemetery is situated is sufficient: PROVIDED, ***That the permission shall not violate the terms of a written contract or the rules and regulations of the cemetery authority.***

RCW 68.50.200 (emphasis added). The Interment Agreement is a written contract made between Martin Selig and Temple De Hirsh Sinai. (*Id.* 136-140.) In exchange for Mr. Selig’s payment of \$13,200, the Interment Agreement provides for “the right of perpetual interment ... for Kyril Faenov in the Hills of Eternity Cemetery.” (*Id.*) The Interment Agreement will be violated if the Court grants Ms. Braun permission to disturb Kyril’s grave and reinter his remains in Oregon.

In the trial court, Ms. Braun incorrectly claimed that the Legislature did not intend to prohibit reinterment when a contract like the Interment Agreement is at issue. (CP 395-397.) Courts primarily determine legislative intent from the statutory language. *State Dep’t of Ecology v. City of Spokane Valley*, 167 Wn. App. 952, 962, 275 P.3d 367 review denied, 175 Wn.2d 1015, 287 P.3d 10 (2012). In the absence of ambiguity, courts give effect to the plain meaning of the statutory language. *In re Marriage of Schneider*, 173 Wn.2d 353, 363, 268 P.3d 215 (2011). In determining whether a statute conveys a plain meaning, “that meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in

question.” *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002).

RCW 68.50.200, formerly identified as RCW 68.08.200, was enacted in 1943 as Section 33 of the General Cemetery Act. (CP 122-126.) Aside from certain grammatical refinements made in 2005, the statute has not changed over the last 71 years, and it has always included the limitation “[t]hat the permission [granted by the Superior Court] shall not violate the terms of a written contract or the rules and regulations of the cemetery authority.” (*Id.*) The Legislature has not assigned any specific or unusual meaning to the phrase “written contract,” and the words only appear together in one place in Title 68 – RCW 68.50.200.

On appeal, the Court should apply the common and ordinary meaning of “written contract,” which means “a legally enforceable promise or set of promises.” 6A Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 301.01 (6th ed.) The Interment Agreement is a legally enforceable set of promises that will be violated if the Petition is granted. This is impermissible under RCW 68.50.200. For this independent reason, the Court should affirm the trial court’s dismissal of the Reinterment Petition.

3. The Trial Court’s Decision Should Be Affirmed on Public Policy Grounds.

The trial court’s dismissal of Ms. Braun’s Petition should also be affirmed for public policy reasons. Ms. Braun sought to disturb Kyril’s

remains more than two years after his burial, but public policy condemns the disturbance of human remains:

“The disturbance of the remains of the dead except for lawful necessary purposes, is not encouraged. With due regard to the sentiment on that subject as well as public policy, courts have enjoined disinterments and even denied the enforcement of a mortgage upon burial grounds.... *To disturb the mortal remains of those endeared to us in life sometimes becomes the sad duty of the living. But except in cases of necessity, or for laudable purposes, the sanctity of the grave should be maintained, and the preventive aid of the courts may be invoked for that object.*”

21 A.L.R.2d 472 (emphasis added) (*citing Choppin v. Labranche*, 48 La. Ann. 1217, 1218, 20 So. 681 (1896)); *see also King v. Frame*, 204 Iowa 1074, 216 N.W. 630, 633 (1927) (“[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.”); *Datz v. Dougherty*, 41 Pa. D. & C. 505, 507 (Com. Pl. 1941) (“There must be sanctity as well as solemnity connected with laying away the dead in their last resting place to await the resurrection day and this deserved peaceful sleep is not to be disturbed by the whim of relatives who if encouraged might change cemeteries as they do styles.”) The trial court recognized the seriousness of reinterment and ruled that Ms. Braun had not and could not make a case for disturbing Kryil’s remains. The Court should affirm the trial court’s ruling.

VI. CONCLUSION

There were no limits on Ms. Braun's ability to present evidence in favor of reinterment. The trial court heard the evidence she presented, including six fact declarations and one expert declaration, and made the right decision not to disturb Kyril's remains. The Court should affirm the trial court's dismissal of the Petition for Reinterment both because RCW 68.50.200 does not allow reinterment under these circumstances and because there was no equitable basis for disturbing Kyril's remains.

RESPECTFULLY SUBMITTED this 7th day of August, 2015.

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PROOF OF SERVICE

I, Colleen Hickman, state that I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of twenty one years, I am not a party to this action, and I am competent to be a witness herein. I declare that I caused to be served in the manner noted copies of the following upon designated counsel:

1. Brief of Respondents Lauren Selig And Martin Selig; and
2. This Proof of Service.

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I DECLARE under penalty of perjury under the laws of the State
of Washington that the foregoing is true and correct.

DATED this 7th day of August, 2015.

A handwritten signature in cursive script that reads "Colleen Hickman".

Colleen Hickman