

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 20th day of December, 2018.

Present: All The Justices

Wallace A. Terry, Jr., Appellant,

against Record No. 171410
Circuit Court No. 2015-283

Karen Terry Rickett, Executrix of the Estate of Wallace A. Terry, Sr., Deceased, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Hampton.

Wallace A. Terry, Jr. (“Junior”) appeals from the judgment of the circuit court confirming the commissioner’s report of debts and demands against the estate of Wallace A. Terry, Sr. (“Wallace”), wherein the commissioner determined that interment rights owned by Wallace were properly allocated by Karen Terry Rickett, executrix of the estate, as part of her share of Wallace’s residuary estate.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that the judgment of the circuit court should be reversed.

I.

In 1972, Wallace executed a sales agreement with Peninsula Memorial Park (“PMP”) for the purchase of designated cemetery lots. The sales agreement provided that upon completion of all payments, Wallace would receive a deed of ownership of the lots “subject to all the By-Laws, Rules and Regulations of the Seller now or hereafter adopted, and to the Laws of the Commonwealth of Virginia and subdivisions thereof now or hereafter in force.” The agreement was made “binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.”

Rule 24 of the May 1994 revision of the “Rules and Regulations” of PMP provided, in pertinent part, that if an owner of interment rights dies without having transferred unused interment rights “either by a specific devise in the Owner’s will or by a written direction furnished to the Cemetery,” the unused interment rights “descend to the heirs at law of the Owner in accordance with the laws of descent and distribution of the state in which the Cemetery is located, subject to the Interment Rights of the deceased and his or her surviving spouse.” Rule 23 provided that “[u]pon receipt of an Order of Distribution by a court having jurisdiction over the estate of a deceased Owner, the Cemetery shall revise its records to reflect ownership of Interment Rights in accordance with such Order.”¹

In 1976, Wallace received a deed from PMP in which he was granted interment rights in the cemetery lots designated in the sales agreement. The deed provided that use of the lots “shall be subject to the By-Laws, Rules and Regulations now or hereafter adopted by and for [PMP], and to the laws of the Commonwealth of Virginia, the ordinances of the City of Newport News, Virginia, now or hereafter in force.”

II.

Wallace died testate on June 13, 2002, survived by his three children: Junior, Karen, and Johnie S. Terry. In Wallace’s will, he bequeathed to Junior “any vehicle I own” stating he “made no further provisions” for Junior since he designated Junior as beneficiary of his \$5,000 insurance policy. Wallace bequeathed the residue of his estate to Karen and Johnie and nominated Karen as the executrix of his estate. Wallace did not bequeath his unused interment rights “either by a specific devise in the Owner’s will or by a written direction furnished to the Cemetery,” as provided for by the PMP’s rules and regulations.

When Karen initially qualified as executrix in 2002, her inventory of the estate listed interment rights in two cemetery lots located in PMP valued at \$5,990. In Karen’s first and final account for the estate, which was approved by the commissioner of accounts in 2005, she allocated the interment rights to herself as part of her share of the residuary estate.

In 2016, Karen again qualified as executrix of Wallace’s estate and filed an inventory listing the interment rights in the two cemetery lots as the sole asset of the estate. She requested

¹ Rules 23 and 24 are now designated as Rules 24 and 25 under the current version of PMP’s Rules and Regulations, dated January 2013.

a hearing limited to the determination of disposition of the interment rights. Following the hearing, the commissioner filed a report concluding that Karen properly allocated the interment rights as part of her share of the residuary estate and recommending that the circuit court enter an order of distribution giving effect to her action.

After Junior filed exceptions to the commissioner's report, the circuit court conducted a hearing at which Walter Melvin, manager of PMP, testified that "pursuant to Rule 24, the cemetery does *not* honor transfers of interment rights via residual clause[s] of a will, but that the cemetery would honor an Order of Distribution from a court of competent jurisdiction, pursuant to Rule 23." The circuit court entered an order confirming the commissioner's report and a subsequent order in which it "re-confirmed" the commissioner's report upon consideration of Junior's motion for reconsideration.

III.

On appeal, Junior asserts that the circuit court erred in overruling his exceptions to the commissioner's report and contends that, pursuant to PMP's Rules and Regulations, Wallace's interment rights descended to his heirs at law. We agree.

Wallace purchased the cemetery lots subject to the Rules and Regulations of PMP, and, therefore, his power to transfer the interment rights was contractually limited by those provisions. As we have recognized, the purchaser of a cemetery lot "acquires no absolute interest in or dominion over such lot, but merely a qualified and usufructuary right for the purposes to which the lots are devoted and for which they are set apart by the company." *Roanoke Cemetery Co. v. Goodwin*, 101 Va. 605, 610 (1903). We have characterized title to cemetery lots as being "in the nature of an easement, with the exclusive right to bury in the lots, subject to the general proprietorship and control of the association, in whom the legal title is lodged." *Id.* "All purchasers from such companies are affected with notice of the limitations placed upon their holdings by the law of the land, and the charter, constitution, and by-laws of the company made in pursuance thereof." *Id.*

Specifically, pursuant to Rule 24 of PMP's Rules and Regulations, if a cemetery lot owner dies without having transferred unused interment rights "either by a specific devise" in the owner's will or "by a written direction furnished to [PMP]," the unused interment rights "descend to the heirs at law of the Owner in accordance with the laws of descent and

distribution.” Therefore, under Rule 24, while Wallace could transfer ownership of his interment rights by a specific devise in his will or by written direction furnished to PMP, he could not transfer his interment rights by a residuary clause in his will. *Compare Jimenez v. Corr*, 288 Va. 395, 412-13 (2014) (recognizing that a testator may enter into a contract limiting the testator’s ability to dispose of certain property by will). Because Wallace did not transfer ownership of his interment rights by a specific devise in his will or by written direction furnished to PMP, his interment rights descended to his heirs at law pursuant to the Rules and Regulations of PMP.²

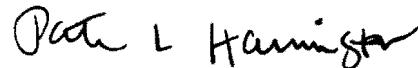
IV.

For these reasons, we conclude the circuit court erred in overruling the exceptions to the commissioner’s report and confirming the commissioner’s determination that the interment rights were properly allocated by Karen as part of her share of the residuary estate. We, therefore, reverse the judgment of the circuit court and enter final judgment ruling that the interment rights descended to the heirs at law of Wallace A. Terry, Sr., to wit: Wallace A. Terry, Jr., Karen Terry Rickett, and Johnie S. Terry.

This order shall be certified to the said circuit court.

A Copy,

Teste:



Clerk

² Rule 23, stating that PMP shall revise its records to reflect ownership in accordance with an order of distribution from a court having jurisdiction over the estate of a deceased owner, does not allow for an alternative method of transfer of ownership of interment rights, but rather effectuates Rule 24 by providing for notification to PMP of the transfer of interment rights pursuant to the terms of Rule 24.