

IN THE CHANCERY COURT OF PRENTISS COUNTY, MISSISSIPPI

C. DELBERT HOSEMANN Jr., *In his Official
Capacity as Secretary of State*

Petitioner

v.

Civil Action No. 2011-347(59)H

OAKLAWN MEMORIAL PARK
Highway 4 West
Booneville, Mississippi 38829

Respondents

WAYNE HIGHT, *individually*

NANCY HIGHT, *individually*

Consolidated With

IN THE CHANCERY COURT OF ALCORN COUNTY, MISSISSIPPI

C. DELBERT HOSEMANN Jr., *In his Official
Capacity as Secretary of State*

Petitioner

v.

Civil Action No. 2011-0454-02 MM

FORREST MEMORIAL PARK
740 Highway 45 South
Corinth, Mississippi 38834

Respondents

WAYNE HIGHT, *individually*

NANCY HIGHT, *individually*

ORDER OF RECEIVERSHIP

This consolidated cause came before the Court for a hearing on November 10, 2011, upon the Verified Complaint and Motion for the Appointment of a Receiver for Forrest Memorial Park and Oaklawn Memorial Park, by the Secretary of State ("Secretary"), C. Delbert Hosemann Jr., Petitioner, in his official capacity. By agreement of the parties, counsel for Petitioner made a proffer in open court on the record

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DAVID "BUBBA" POUNDS, CLERK
Lori Rogers D.C.

summarizing the testimony and documentation it intended to present in support of its Motion for the Appointment of a Receiver, to which the Respondents did not object. Therefore, based upon the proffer accepted by the Undersigned in open court, this Court finds as follows:

1. The Secretary is acting pursuant to the Secretary's responsibilities to protect consumers under the Mississippi Preneed Cemetery and Funeral Registration Act (hereafter "the Preneed Act"), Miss. Code Ann. §§ 75-63-51, *et seq.*, and under the Mississippi Perpetual Care Cemetery Act (hereinafter "the Perpetual Care Act"), Miss. Code Ann. §§ 41-43-31, *et seq.*
2. Respondents, Forrest Memorial Park, Corinth, Mississippi, and Oaklawn Memorial Park, Booneville, Mississippi, are a privately owned, for-profit perpetual care cemetery as defined by Mississippi Code Annotated Section 41-43-33. Forrest Memorial Park is located at 740 Highway 45 South, Corinth, Mississippi 38834. Oaklawn Memorial Park is located at Highway 4 West, Booneville, Mississippi 38829. The business operations for Forrest Memorial Park and Oaklawn Memorial Park are conducted at offices located within the facility known as Hight Funeral Home, 740 Highway 45 South, Corinth, Mississippi 38834, with a post office box address at P.O. Box 1044, Corinth, Mississippi 38835. Forrest Memorial Park and Oaklawn Memorial Park are either sole proprietorships owned by Wayne Hight or general partnerships owned by Wayne Hight and Nancy Hight, husband and wife.
3. This Court has jurisdiction over the matters asserted herein pursuant to Miss. Code Ann. § 75-63-69(1) and Miss. Code Ann. § 41-43-38(7). Venue is proper in this Court as the

Oaklawn Memorial Park Cemetery is located in Booneville, Mississippi (Prentiss County), and Forrest Memorial Park. Cause No. 2011-0454-02 MM. Alcorn County Chancery Court, has been consolidated with Cause No. 2011-347(59)H. Prentiss County Chancery Court.

4. Since at least 1966, perpetual care cemeteries have been required to remit fifteen percent (15%) of all interment ground burial sales to an irrevocable perpetual care trust. Miss. Code Ann. § 41-43-37(1)(a). Fifteen percent (15%) of interment sales must be set aside and safeguarded under the management of a trustee for the long term care, maintenance, and upkeep of cemetery property for current and future generations. Only income, interest, and earnings from trust principal can be accessed by the cemetery through the trustee for care and maintenance needs, and trust principal must remain inviolate. Miss. Code Ann. § 41-43-37(1).
5. Wayne Hight and Nancy Hight purchased Forrest Memorial Park in the fall of 1975. When the cemetery was purchased by the Hights in the fall of 1975, the cemetery's perpetual care trust fund acquired with the purchase contained approximately seventy thousand dollars (\$70,000.00). Further, in the years following 1975, the perpetual care trust fund principal for Forrest Memorial Park was depleted to a balance of zero, and no perpetual care trust fund exists for Forrest Memorial Park. The depletion of the Forrest Memorial Park's Perpetual Care Trust Fund is a violation of Mississippi Code Annotated Section 41-43-37.
6. Wayne Hight and Nancy Hight purchased Oaklawn Memorial Park in the fall of 1982. When the cemetery was purchased by the Hights in the fall of 1982, the cemetery's

perpetual care trust fund acquired with the purchase contained approximately five thousand dollars (\$5,000.00). Further, in the years following 1982, the perpetual care trust fund principal for Oaklawn Memorial Park was depleted to a balance of zero, and no perpetual care trust fund exists for Oaklawn Memorial Park. The depletion of the Oaklawn Memorial Park's Perpetual Care Trust Fund is a violation of Mississippi Code Annotated Section 41-43-37.

7. Following the purchase of Forrest Memorial Park in the fall of 1975, the Hights did not maintain or fund a perpetual care trust with the required fifteen percent (15%) set aside of all interment right sales. The failure to trust fifteen percent (15%) on all cemetery lot sales to the public in the past thirty-six (36) years is a violation of Mississippi Code Annotated Section 41-43-37. Furthermore, the failure to trust fifteen percent (15%) of each and every cemetery lot sale since the fall of 1975 is a separate and distinct violation of Mississippi Code Annotated Section 41-43-37(1).
8. Following the purchase of Oaklawn Memorial Park in the fall of 1982, the Hights did not maintain or fund a perpetual care trust with the required fifteen percent (15%) set aside of all interment right sales. The failure to trust fifteen percent (15%) on all cemetery lot sales to the public in the past twenty-eight (28) years is a violation of Mississippi Code Annotated Section 41-43-37. Furthermore, the failure to trust fifteen percent (15%) of each and every cemetery lot sale since the fall of 1982 is a separate and distinct violation of Mississippi Code Annotated Section 41-43-37(1).
9. The perpetual care trust fund principal deficiency for Forrest Memorial Park is Ninety-Seven Thousand, Seven Hundred Sixty Dollars and Forty-Eight Cents (\$97,760.48). This

perpetual trust principal deficiency is principal that Mr. Wayne Hight did not trust on cemetery lot sales from the fall of 1975 through July of 2010. This amount does not include the approximately Seventy Thousand Dollars (\$70,000.00) that Mr. Hight acquired as trust principal when he purchased the property in the fall of 1975. The perpetual care trust fund principal deficiency for Oaklawn Memorial Park is Eight Thousand Four Hundred Four Dollars and Thirty-Five Cents (\$8,404.35). This perpetual trust principal deficiency is principal that Mr. Wayne Hight did not trust on cemetery lot sales from the fall of 1982 through July of 2010. This amount does not include the approximately Five Thousand Dollars (\$5,000.00) that Mr. Hight acquired as trust principal when he purchased the property in the fall of 1982.

10. The complete absence of a perpetual care trust fund for Forrest Memorial Park and Oaklawn Memorial Park places the long term maintenance, upkeep, and viability of the cemetery burial grounds at serious risk for not only those who have purchased grave spaces, but also for the departed who purchased the cemetery spaces with the expectation of perpetual care. In addition to being perpetual care cemeteries as defined in Mississippi Code Annotated Section 41-43-33, Forrest Memorial Park and Oaklawn Memorial Park represented to the public that they provided, "Maintenance Fully Paid By Trust Fund." as recently as November of 2011.
11. Since at least April of 1975, the Mississippi Preneed Act has required cemetery owners to trust a required amount for all collections and sales made on the preneed purchase of cemetery merchandise and services, such as burial vaults, memorial markers, and grave opening/closing services. Miss. Code Ann. § 75-63-3 (Rev. 2000), *repealed and*

brought forward at Miss. Code Ann. § 75-63-59 (Rev. 2009). A preneed sale is any purchase of cemetery merchandise and services made by the living when the obligation for delivery and installation from the cemetery does not occur until the death of the purchaser (or the person for whom the merchandise or services were intended). Miss. Code Ann. § 75-63-53(1).

12. Cemeteries that sell preneed merchandise and services must maintain an irrevocable preneed trust managed and maintained by a trustee not associated with the cemetery business or a related business. Miss. Code Ann. § 75-63-59. The trust terms are dictated in large measure by state statute. The statute requires a percentage of all preneed sales and collections to be trusted by a time-based trust. Miss. Code Ann. § 75-63-59. Moreover, disbursements from the trust ~~back~~ to the cemetery can only be made with the cemetery providing documentation of the purchaser's death along with a letter of performance stating that the cemetery provided all of the contracted merchandise and services to the decedent (vault, memorial marker, etc.). Miss. Code Ann. § 75-63-59(5). Preneed trust funds are consumer funds trusted on their behalf. The cemetery's ownership in preneed trust funds does not mature until the cemetery provides all of the contracted goods and services following death of the client.

13. From at least April of 1975 until June 30, 2006, preneed providers were required to trust no less than fifty percent (50%) of all ~~customer collections for preneed merchandise and~~ services. Miss. Code Ann. § 75-63-3 (Rev. 2000), *repealed and brought forward effective January 1, 2002, at* Miss. Code Ann. § 75-63-59 (Rev. 2009). Effective July 1, 2006, preneed providers have been required to trust eighty-five percent (85%) of all

customer preneed payments for preneed merchandise and services sold after July 1, 2006.

Miss. Code Ann. § 75-63-59 (Rev. 2009).

14. The un-serviced preneed trust deficiencies on contracts sold by Forrest Memorial Park for burial vaults, memorial markers, grave openings/closings, and other miscellaneous preneed merchandise total Three Hundred Five Thousand Seven Hundred Sixty-One Dollars and Ninety-Nine Cents (\$305,761.00). The un-serviced preneed trust deficiencies on contracts sold by Oaklawn Memorial Park total Forty-Eight Thousand Six Hundred Eighty Dollars and Fifty-Six Cents (\$48,680.56).
15. Forrest Memorial Park and Oaklawn Memorial Park have no consumer preneed trust funds as required by Mississippi Code Annotated Section 75-63-59. As such, its owners have no consumer trust fund or consumer funds set aside to finance the purchase, delivery, and installation of presold burial vaults, memorial markers, etc.
16. Each and every failure by Wayne Hight and Nancy Hight to trust the required amount of all consumer payment for preneed merchandise and services in the past thirty-five (35) years for Forrest Memorial Park, and in the past twenty-eight (28) years for Oaklawn Memorial Park, represents a separate and distinct violation of Mississippi Code Annotated Section 75-63-59, and prior statutes requiring trusting of preneed payments.
17. For the reasons noted above, the Secretary has demonstrated serious and compelling concerns for the financial solvency of Forrest Memorial Park and Oaklawn Memorial Park and particularly their ability to deliver the contractually obligated items of cemetery merchandise and services as claims are made in the future with the passing of clients who purchased the same.

18. Pursuant to Mississippi Code Annotated Section 41-43-38(7), whenever it appears to the Secretary of State or any other interested person that a perpetual care cemetery is insolvent, about to become insolvent, or that no perpetual care trust fund exists for the cemetery, such interested person may bring an action in the chancery court in the county in which the cemetery is located to request just and equitable relief in the public interest, including the appointment of a receiver or receivers to continue or terminate the operation of the business.

19. Pursuant to Mississippi Code Annotated Section 75-63-69(1)(c), whenever it appears to the Secretary of State that any person is engaged in violations of the Mississippi Preneed Act, the Secretary may bring an action in chancery court to enjoin acts or practices and enforce compliance with the preneed laws. Upon a proper showing by the Secretary of State, a receiver may be appointed for the defendant's assets. Miss. Code Ann. § 75-63-69(1)(c).

20. The Secretary of State has demonstrated the "proper showing" for the appointment of a receiver for Forrest Memorial Park Cemetery and Oaklawn Memorial Park Cemetery, *and substantial, irreparable and inremediable injury to the public would occur not to do so.* ^{JAH}
THEREFORE, by the authority conferred in Mississippi Code Annotated Sections 41-43-

38(7); 75-63-69(1)(c); and, the court's general powers to appoint a receiver under Section 11-5-151 (Rev. 2002), this court hereby ORDERS the Receivership of Forrest Memorial Park and Oaklawn Memorial Park, perpetual care cemeteries, to conserve, operate, and maintain the businesses in the best interests of the perpetual care and preneed consumers (both living and deceased) and to place the businesses on the path of compliance with the Preneed Act, Miss.

Code Ann. §§ 75-63-51, *et seq.*, and the Perpetual Care Act, Miss. Code Ann. §§ 41-43-31, *et seq.*

THEREFORE, The Honorable John C. Ross, Jr., of Corinth, Mississippi, is appointed the Receiver of Forrest Memorial Park and Oaklawn Memorial Park, who shall serve in the position of Receiver until excused by the court.

As such, the Receiver is authorized to:

(a.) "take possession of the property or property interests involved in the action, to maintain and preserve it from loss, injury, or inextricable confusion." Griffith, MISSISSIPPI CHANCERY PRACTICE § 466, P. 275;

(b.) take the necessary steps to stabilize the business, to prevent further waste and dissipation of the Respondents' assets, and to avoid additional detriment to the public who have purchased or will purchase cemetery plots, merchandise, and services;

(c.) take possession of the banking accounts, client accounts, all other assets tangible and intangible, of whatever kind and description and wherever located, including but not limited to: monies, securities, real and personal properties, income, receivables, contracts, leases, all business books, records, client lists, client files, account statements, financial and accounting documents, computers, computer hard drives, computer disks, other informational resources and components, and the legally recognized privileges with regard to any entities of Forrest Memorial Park, Oaklawn Memorial Park, and any entities that they own or entities owned by Wayne Hight or Nancy Hight that are germane to the operations of Forrest Memorial Park and Oaklawn Memorial Park;

(d.) to make such ordinary and necessary payments, distributions, and disbursements as the Receiver deems advisable, in accordance with industry standards, for the proper maintenance or preservation of the Receivership Estate, but only to the extent that the Receiver has identified available Receivership assets from which distributions or payments can be made;

(e.) to make appropriate notification to the United States Postal Service to forward delivery of any mail addressed to the Respondents, or any company or entity under the direction and control of Respondents, to himself. Further, the Receiver is authorized to open and inspect all such mail to determine the location or identity of any assets or the existence and amounts of any assets, including, but not limited to, accounts receivable;

(f.) to become the sole authorized signatory on any accounts in the name of the Forrest Memorial Park or Oaklawn Memorial Park, and the Receiver shall have sole authorization and right to withdraw and utilize the income from any such accounts wherever the same may exist;

(g.) to provide burial plots, the opening and closing of graves, the placing of vaults, and the purchase and placement of markers for at-need contracts, and to undertake any other actions that are inherent in the day-to-day operations of the cemeteries, according to industry standards, if and only if, in the discretion of the Receiver, such services can be provided consistent with the financial ability of the business;

(h.) to make decisions in his sole discretion to determine the extent, if any, that goods and services will be furnished under preneed contracts during the receivership period, taking into account the need to continue operations and to maintain the cemeteries in a manner consistent with prudent administration of perpetual care cemeteries in receivership; such authority is conferred recognizing that the availability of funds for preneed services and merchandise is likely

to be extremely limited due to the financial situation of Forrest Memorial Park and Oaklawn Memorial Park:

(i.) to deposit all monies received by him in relation to the Receivership Estate into an operating account, and to set aside for consumer safekeeping the appropriate percentages for perpetual care and preneed merchandise and service purchases;

(j.) to hire and fire any personnel, to set any reasonable salaries for employees or independent contractors as he may deem necessary in his sole discretion, in accordance with the prudent administration of perpetual care cemeteries, in receivership, and according to industry standards;

(k.) to market any real or personal property to a solvent, credible purchaser should it be in the best interest of the Receivership Estate and the consumers of Forrest Memorial Park or Oaklawn Memorial Park to do so, recognizing, however, that any sale of real or personal property must be approved by the court;

(l.) to lease, or occupy without interruption or distraction, office space, if necessary, or to buy or sell assets, or undertake any other actions necessary and consistent with the prudent operation of perpetual care cemeteries in receivership according to industry standards;

(m.) to conduct and operate the Receivership Estate with any other authority or specific directives that the Receiver deems appropriate, proper, and just; Furthermore, the Receiver shall have the full power of an equity receiver under common law and is not required to post a bond unless otherwise directed by this court.

FURTHERMORE, the Secretary of State, Petitioner, is authorized to:

(n.) employ a Receiver as an independent contractor if determined by the Secretary and the Receiver that cash flow or income from the business is inadequate or insufficient to compensate the Receiver for his duties:

(o.) to compensate a Receiver as an independent contractor at a rate of no more than twenty-five dollars (\$25.00) per hour and to pay reasonable expenses of the Receiver to be determined by standards issued by the Mississippi Department of Finance and Administration. Such compensation and expenses shall be borne by the Office of the Secretary of State pursuant to a contract entered into by the Secretary and the Receiver:

Both the Receiver, and the Secretary of State, if receivership funds are insufficient, are authorized to:

(p.) employ personnel to determine the legal title or to give opinions as to the legal title to any real or personal property that is the subject of or potentially the subject of this Receivership Estate; the Receiver or the Secretary of State are authorized to seek reimbursement for such professional services under terms approved by the court pursuant to a court order:

(q.) to hire a competent accountant, tax professional, or a property appraiser to carry out the responsibilities of the Receivership Estate; the Receivership Estate or the Secretary may seek and obtain reimbursement for such professional services under terms approved by the court pursuant to a court order;

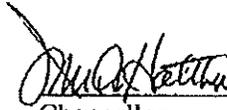
Further, the Secretary of State shall have the right to be reimbursed for all reasonable contract salaries and expenses incurred for the effective administration of the Receivership Estate from available assets of the Receivership Estate or from the proceeds of any sale of Receivership

Estate assets to third parties that might occur, including the sale of real property. Such reasonable contract salaries for which the Secretary is authorized to contract for include services provided by the Receiver and his reasonable expenses; attorneys; accountants; tax professionals; and property appraisers whose services are essential to the Receivership Estate and ultimately the distribution of property to solvent, responsible third parties. However, no reimbursement to the Secretary of State or purchase price set-off inuring to the benefit of the Secretary of State for contracted salaries or expenses will occur unless approved by the court.

IT IS ALSO ORDERED that the Respondents and their respective officers, agents, and employees, and all persons in active concert or participation with them either directly or indirectly are hereby enjoined and restrained from making any payment or expenditure of any Receivership Estate asset that is owned by Respondents or in the actual or constructive possession of any entity, directly or indirectly owned or controlled or under common control with the Receivership Estate, or from effecting any sale, gift, hypothecation, assignment, transfer, conveyance, encumbrance, disbursement, dissipation, or concealment of such assets.

FURTHERMORE, the Respondents and their respective officers, agents, and employees, and all persons in active concert or participation with them shall cooperate with the Receiver and his duly authorized agents by promptly and honestly responding to all requests for information regarding receivership assets and records and by promptly acknowledging to third parties the Receiver's authority to act on behalf of the Receivership Estate and provide such authorizations, signatures, releases, attestations, and access as the Receiver or his duly authorized agents may reasonably request.

SO ORDERED and ADJUDGED, this the 21st day of November, 2011.


Chancellor

Order Prepared By:



Counsel for Petitioner
Dave Scott, ASOS. MSB #8765
700 North Street
Jackson, MS 39202

Agreed As to Form Only:

Counsel for Respondents
Hon. Ronna D. Kinsella, MSB #101884
26 N. Second Street
Memphis, TN 38103

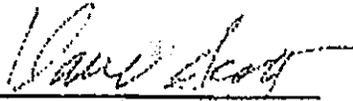


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SO ORDERED and ADJUDGED, this the _____ day of November, 2011.

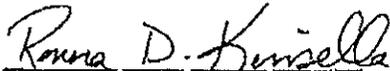
Chancellor

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Counsel for Petitioner
Dave Scott, ASOS, MSB #8765
700 North Street
Jackson, MS 39202

Agreed As to Form Only:



Counsel for Respondents
Hon. Ronna D. Kinsella, MSB #101884
26 N. Second Street
Memphis, TN 38105

