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WILLS

Disinterment and DNA Testing: Providing for Court Orders for Disinterment and DNA Testing in Certain Cases Where the Kinship of Any Party in Interest to a Decedent is in Controversy

CODE SECTIONS:	O.C.G.A. 53-2-27 (new)
BILL NUMBER:	HB 130
ACT NUMBER:	901
GEORGIA LAWS:	2002 Ga. Laws 1081
SUMMARY:	The Act attempts to clear up confusion and prevent delay in the settlement of estates that had been caused by the lack of provisions in the civil law for an order to disinter for the purposes of DNA testing. The Act explicitly grants this power to Georgia's superior courts upon motion for good cause supported by specifically enumerated affidavits. Additionally, the Act provides for the dissemination of reports of findings resulting from the DNA testing and provides that the costs of testing and the provision of reports shall be borne by the moving party.
EFFECTIVE DATE:	July 1, 2002

History

Disinterment and DNA testing are two activities that are certainly not strangers to one another. In fact, in recent months, the news has been filled with poignant stories in which the two endeavors have conspired to dramatically impact the histories of the deceased as well as the current lives of survivors. It was recently revealed that in the aftermath of the terrible tragedies of September 11 terrorist attacks on the World Trade Center, Christopher Santora, a firefighter killed in the attacks, was misidentified as one of his colleagues, Jose Guadalupe.¹ It was

1. See Larry McShane, *Dead Firefighter Misidentified; Error Led to Wrong Family Burial*, THE RECORD (Bergen County, NJ), Nov. 29, 2001, at A14.

only after Santora's parents attended the funeral for Guadalupe that DNA testing revealed that their son was actually in the casket.² A half dozen sets of remains believed to be those of U.S. soldiers missing in action since World War II and the Korean War have been recently disinterred from Hawaii's National Memorial Cemetery of the Pacific in hopes of employing DNA testing to identify the remains and offer peace to questioning families.³ To be sure, disinterment for the purposes of DNA testing is sensitive territory, but the sort of territory that many of the sponsors of HB 130 are quite familiar with.⁴ In fact, it was experience with an actual dispute over an estate in Coffee County that inspired the bill.⁵ A gentleman had passed away leaving no spouse, no children, no will, and a sizable estate.⁶ Two families, made up of alleged nephews and nieces, made claims on the estate.⁷ But in at least one case, there was a question as to whether the claimants' father had been the brother of the deceased.⁸

Whereas in the criminal law, the power to order an disinterment lies with the coroner charged with establishing the cause of death, nothing in the civil law provided for a similar order.⁹ The matter was litigated back and forth between the superior court and the probate court for an extremely long time before the superior court judge finally issued an order to disinter for the testing that would finally settle the matter.¹⁰

Unavoidably, questions involving disinterment and DNA testing often entail the additional animus that can result from disputed estates.¹¹ In fact, the prevalence of these issues in recent years,¹² has led some commentators to call for a "clarification of the instances in

2. *See id.*

3. *See WWII, Korean War Remains Disinterred in Hawaii*, M2 PRESSWIRE, Feb. 1, 2001.

4. Three of the bills sponsors (Chuck Sims, Jack West, and George DeLoach) are funeral directors when not at the Capitol. Two others (Jim Stokes and Curtis Jenkins) are practicing attorneys. *See Georgia House of Representatives, Representatives by Name*, at http://www.legis.state.ga.us/legis/2001_02/house/indn.htm (last visited Jul. 12, 2002).

5. Telephone Interview with Rep. Chuck Sims, House District No. 167 (Jul. 10, 2002) [hereinafter Sims Interview].

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. For a more complete consideration of these issues in the context of estate proceedings and suggestions for legislative reform, see Ilene Sherwyn Cooper, *Advances in DNA Techniques Present Opportunity to Amend EPTL to Permit Paternity Testing*, N.Y. ST. BAR J., Jul./Aug. 1999, at 34.

12. *See Peter C. Valente & Joann T. Palumbo, Wills, Estates And Surrogate's Practice: Posthumous DNA Testing*, N.Y.L.J., May 31, 2002, at 3, col. 1.

which DNA results are admissible into evidence and the weight they are to be given in estate proceedings."¹³ HB 130 sought to avoid the sort of delay, and unnecessary anguish, witnessed in the Coffee County case by explicitly granting authority for orders of disinterment to the superior courts.¹⁴

HB 130

Introduction

Representatives Chuck Sims of the 21st district, Jim Stokes of the 92nd district, Judy Poag of the 6th district, Jack West of the 101st district, Curtis Jenkins of the 110th district, and George DeLoach of the 119th district sponsored HB 130.¹⁵ After introduction on the House floor on January 12, 2001,¹⁶ the Speaker of the House assigned the bill to its Judiciary Committee, which favorably reported the bill, as substituted.¹⁷ The House adopted the Committee substitute and passed the bill unanimously on March 1, 2001.¹⁸ The bill was introduced on the Senate floor on March 2, 2001¹⁹, and the Senate President assigned the bill to its Judiciary Committee, which favorably reported the bill on March 14, 2001.²⁰ Having not come to a Senate vote in the 2001 session, the Senate recommitted the bill on January 14, 2002²¹ and the Judiciary Committee again favorably reported the bill on January 30, 2002.²² The Senate passed the bill unanimously on February 1, 2002.²³ The General Assembly forwarded it to Governor Roy Barnes on April

13. Surrogate Preminger, *Estate of Bonanno*, N.Y.L.J., Apr. 22, 2002, at 21, col. 1.

14. Sims Interview, *supra* note 5.

15. *See* HB 130, as introduced, 2001 Ga. Gen. Assem.

16. *See* Audio Recording of House Proceedings, Jan. 12, 2001 at <http://www.ganet.org/services/leg/audio/2001archive.html> [hereinafter House Audio]; State of Georgia Final Composite Status Sheet, HB 130, Apr. 12, 2002.

17. *See* State of Georgia Final Composite Status Sheet, HB 130, Apr. 12, 2002.

18. *See* Georgia House of Representatives Voting Record, HB 130 (Mar. 1, 2001); State of Georgia Final Composite Status Sheet, HB 130, Apr. 12, 2002.

19. *See* Audio Recording of Senate Proceedings, Mar. 2, 2001 at <http://www.ganet.org/services/leg/audio/2001archive.html> [hereinafter Senate Audio]; State of Georgia Final Composite Status Sheet, HB 130, Apr. 12, 2002.

20. *See* State of Georgia Final Composite Status Sheet, HB 130, Apr. 12, 2002.

21. *See id.*

22. *See id.*

23. *See* Georgia Senate Voting Record, HB 130 (Feb. 1, 2002); State of Georgia Final Composite Status Sheet, HB 130, Apr. 12, 2002.

15, 2002.²⁴ The Governor signed the bill into law on May 14, 2002.²⁵

Consideration by the House Judiciary Committee

Following introduction, the House assigned the bill to its Judiciary Committee.²⁶ The Committee favorably reported the bill, as substituted, on February 26, 2001.²⁷ The House Committee made two primary changes to the bill. First, as introduced, the bill required that a motion for disinterment be supported by an affidavit providing a factual basis in support or in contradiction to the proposition that the party in interest was kin to the deceased.²⁸ The House Committee substitute maintained this requirement and added a requirement for a factual basis supporting the reasonable belief that reliable DNA samples from the decedent could not be obtained from any other source.²⁹ Second, the bill as introduced included language in subsection (b)(2) that explicitly applied the provisions of O.C.G.A. § 53-2-3 in cases involving rights of a child born out of wedlock.³⁰ Code section 53-2-3 delineates a number of means, in addition to DNA testing, to provide for inheritance rights for children born out of wedlock.³¹ The House Committee substitute removed this explicit reference.³²

House Passage

The House adopted the committee substitute and unanimously passed HB 130 on March 1, 2001.³³

24. See State of Georgia Final Composite Status Sheet , HB 130, Apr. 12, 2002.
 25. See 2002 Ga. Laws 1081, § 2, at 1082.
 26. See House Audio, *supra* note 16; State of Georgia Final Composite Status Sheet , HB 130, Apr. 12, 2002.
 27. See State of Georgia Final Composite Status Sheet , HB 130, Apr. 12, 2002.
 28. See HB 130, as introduced, 2001 Ga. Gen. Assem.
 29. Compare HB 130, as introduced, 2001 Ga. Gen. Assem. with HB 130 (HCS), 2001 Ga. Gen. Assem.
 30. See HB 130, as introduced, 2001 Ga. Gen. Assem.
 31. See O.C.G.A. ' 53-2-3 (2001).
 32. Compare HB 130, as introduced, 2001 Ga. Gen. Assem. with HB 130 (HCS), 2001 Ga. Gen. Assem.
 33. See Georgia House Voting Record, HB 130 (Mar. 1, 2001); State of Georgia Final Composite Status Sheet , HB 130, Apr. 12, 2002.

Consideration by the Senate Judiciary Committee

The Senate Judiciary Committee favorably reported the House Judiciary Committee's substitute to HB 130 without modification both on March 14, 2001³⁴ and on January 30, 2002³⁵ after the Senate recommitted the bill on January 14, 2002.³⁶

Senate Passage

The Senate unanimously passed HB 130 on February 1, 2002.³⁷ The bill was forwarded to Governor Roy Barnes on April 15, 2002.³⁸ The Governor signed the bill into law on May 14, 2002.³⁹

The Act

The Act amends Article 2 of Chapter 2 of Title 53 of the Official Code of Georgia Annotated by adding a new Code Section 53-2-27⁴⁰ that avoids delay in cases of disputed kinship between any party in interest and a decedent and provides for the judicial determination of heirs and interests by explicitly vesting the power for orders to disinter for the purposes of DNA testing in Georgia's superior courts.⁴¹ According to Senator Michael Meyer von Bremen, who introduced the bill on the Senate floor, "[t]he legislation provides scientific relief to what could otherwise be a complicated procedure compounded by lengthy litigation in contests of kinship."⁴² Yet, this important clarification of Georgia law with regard to the means and manner that DNA testing plays a role in estate proceedings seems to be just a start. Representative Sims intends to introduce in the next legislative session

34. See State of Georgia Final Composite Status Sheet , HB 130, Apr. 12, 2002.

35. See *id.*

36. See *id.*

37. See Georgia Senate Voting Record, HB 130 (Feb. 1, 2002); State of Georgia Final Composite Status Sheet , HB 130, Apr. 12, 2002.

38. See State of Georgia Final Composite Status Sheet , HB 130, Apr. 12, 2002.

39. See 2002 Ga. Laws 1081, § 2, at 1082.

40. See 2002 Ga. Laws 1081, § 1, at 1081.

41. See Sims Interview, *supra* note 5; House Audio, *supra* note 16; Senate Audio, *supra* note 19.

42. Electronic Mail Interview with Sen. Michael Meyer von Bremen, Senate District No. 12 (Jul. 15, 2002).

a bill that would require a DNA sample to be taken from any body scheduled for cremation.⁴³ Because DNA is not found in ashes following cremation, such legislation will be imperative in allowing advancing technology to play its important role in settling criminal and civil issues that arise long after a decedent is laid to rest.⁴⁴

*Gregory Todd Jones*⁴⁵

43. See Sims Interview, *supra* note 5; Bill Shipp, *Inside Politics*, GA. TREND, June 1, 2002, at 13 [hereinafter Shipp, *Inside Politics*].

44. See Sims Interview, *supra* note 5; Shipp, *Inside Politics*, *supra* note 43.

45. The author expresses particular appreciation to Representative Chuck Sims for taking the time to discuss the nature of his bill.