

[BUSINESS]

By Gabriel Ngo

LEGAL CHECK

Legal Case
Study #7



Scenario: Oren Gibson is a fourth-generation owner-operator of Orville H. Gibson Funeral Home & Cremation Services in Sevierville, Tennessee. The business has been serving their community for over 100 years and is deeply and successfully entrenched in Sevierville with a sterling reputation. One Tuesday morning, Oren completed a routine monthly meeting with his entire staff and had just sat down at his desk to approve some invoices, when he received a call from the receptionist. A lady named Missy was there to see him, and she had an urn in-hand. He peeked at his calendar and saw that there was not anything that had been scheduled, and the name “Missy” did not ring any bells. He had one funeral director on maternity leave and his other funeral director was off. Oren got up and braced himself for either what could be a family complaint or someone wanting to purchase keepsake urns to match the original urn.

As Oren entered the front foyer of the funeral home, he saw a young lady in her late 20s or early 30s who did not look familiar to him. He introduced himself as the owner and funeral director and extended his hand. She introduced herself as Melissa Jones adding that everyone called her “Missy.” Missy said she was April Breedlove’s sister, and the urn contained the cremated remains of her nephew, Phillip.

Oren now recalled that this was a service and cremation the funeral home had done for the 16-year-old who had a head-on collision with a semi-truck a little over two years ago.

Oren asked how he could help. Missy said she was there to purchase a keepsake urn for her nephew and would like for some of his remains to be transferred to the keepsake so that he could be buried with his mother.

A little surprised, Oren offered his condolences and asked how Mrs. Breedlove passed. Missy stated that her sister, April, had had stage IV lung cancer and had passed away in Houston where she had been receiving chemotherapy. Missy added that while their side of the family was from just north of Knoxville, she currently resides in Pasadena, Texas, and her sister had been staying with her during her chemotherapy sessions. April’s remains had been shipped

to a funeral home in Knoxville and were awaiting interment at Sevier County Cemetery. Since the funeral home in Knoxville told Missy that they did not have access to that exact keepsake matching Phillip’s urn, they suggested that she inquire at the funeral home that had done Phillip’s service.

Thoughts had already been racing through Oren’s mind when he asked Missy, “Where is Mr. Breedlove? Layne? Or was it Lawrence?” “Yes, Larry,” replied Missy. She explained that on the day that Phillip died in the accident, they had just picked up a used car for Phillip, and that Larry had been following Phillip on the drive home. Missy stated that witnessing

the fatal accident firsthand became too much for Larry, and he had turned to alcohol and drugs. Eventually Larry and her sister separated, and about six or seven months ago, Larry committed armed robbery in Pigeon Forge and was serving time in the state penitentiary.

Oren was skeptical that Knoxville funeral home did not have this particular keepsake urn, making him doubt her story.

“Ma’am, I am not certain that I can do what you are asking. Phillip’s next of kin is still his father, and I would need his permission,” he explained.

Oren told her he would like to speak with some attorneys to ensure that Gibson Funeral Home would be compliant with the law. Missy told him that that would be alright since she was in state to handle her sister’s final wishes and was staying with family in Knoxville for a few weeks. She handed Phillip’s urn to Oren along with her phone number written on a Gibson Funeral Home business card, thanked him, and promptly left.

Oren brought the urn back to his office and immediately called his attorney, Theodore McCarty. As he explained the whole situation to Theodore, Oren found Phillip’s file. In it was the funeral contract signed by both Larry and April Breedlove as well as the cremation authorization signed by both parents. McCarty told Oren that while he was not 100% certain, he believed that Oren should not – and did not think that Oren could – divide Phillip’s cremains to be interred with April as Missy had requested.

Oren then made every effort over the next week to contact Larry and was finally able to reach him. Larry plainly expressed that he did not agree with what Missy was asking and denied the request. Furthermore, Larry asked for Oren to “hold onto” Phillip’s urn and that Larry would “come get his son” within the next few years once he was free. Oren then sighed deeply before calling Missy at the phone number she had left him. He kept it short and simple as he explained that his funeral home was not able to fulfill her request because they legally could not comply with the request. Oren also explained that because Phillip’s father had requested that the funeral home keep Phillip’s urn until Larry could come and get him that he was obliged to do so. Missy promptly responded with an “I see,” and immediately hung up the phone.

SHOULD THIS SCENARIO HAVE GONE ANY DIFFERENTLY?

The situation could have gone in any number of directions. However, it should not have gone differently. While Oren could have sent Missy back to the funeral home in Knoxville without receiving Phillip’s urn – thus, possibly steering clear of any liability, Oren would reasonably still not be liable for handling the situation the way that he had.

SO, WHAT WERE THE THINGS THAT OREN DID PROPERLY?

- Oren did not commit or over-commit to something he could not do when he was not certain. Additionally, he was very up-front about this in his communication to Missy.

- Oren was able to find supporting documentation by quickly locating the decedent’s file.

- Upon ascertaining his answer, he immediately called Missy to inform her of his findings, keeping his explanation short and simple with just enough detail to support why he could not fulfill her request.

Sure, Missy (and any surviving family on Phillip’s mother’s side) might be upset at Oren. However, he demonstrated the very best practices to keep the scenario from becoming worse, legally. He recalled just enough about Tennessee next-of-kin laws to know that an aunt (or uncle) was not near the top of the next of kin list. In fact, the order goes:

- 1) Surviving spouse,
- 2) Children,
- 3) Parents,
- 4) Siblings,
- 5) Nieces/nephews,
- 6) Grandparents, and
- 7) Aunts/uncles.

Furthermore, Oren was not afraid to ask legal experts for advice. The lawyers pointed out that signed agreements (such as the funeral contract and authorization for cremation) were supporting information to the next-of-kin rules found in the Tennessee Code. In this case study, we can learn from what was done properly as opposed to mistakes that occurred in other case studies. •



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