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Consider a Client's Burial Wishes

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As estate planners, we routinely prepare health care directives. But how many of us have detailed discussions with clients about their burial wishes? Perhaps we should.

A recent New Jersey Appellate Division case involving a conflict over a decedent's remains highlights the importance of clearly expressed burial wishes. The case – *In the Matter of Peggy Z. Puder* (unpublished opinion, decided 1/14/2011) – involved Peggy Puder, of Greek Orthodox descent, who married Arthur Puder in a Jewish wedding ceremony in 1982. In 1989, Peggy and Arthur executed reciprocal Wills. Peggy's Will left everything to Arthur and named him as executor. Peggy also specifically excluded her mother and twin brother from her Will.

In 2006, Peggy was diagnosed with terminal cancer and she died in May, 2007. Her remains were interred in a mausoleum in the Greek Orthodox section of a Paramus, New Jersey cemetery, with the apparent consent of her husband and brother. However, in September, 2007, shortly after being named executor of Peggy's estate, Arthur authorized the disinterment of the remains and their reinterment in a marital burial plot in the Jewish section of the cemetery.

Peggy's mother filed suit, seeking to prevent Arthur's action. The trial court thus had to interpret the provisions of New Jersey's disinterment statute. The court found that the husband/executor had the sole authority over the handling of his wife's remains and the decedent's mother had no standing. The Appellate Division affirmed.

The situation in the *Puder* case is an unfortunate example of how bad blood among family members may turn into a court battle. It clearly could have been avoided if the decedent had expressed her burial wishes in a writing such as an advance directive.

If a client wishes to be an organ donor, be cremated, have a “green burial” (ie, a burial with minimal environmental impact, for example, by not using embalming fluid or metal), if available, or have some other unique treatment or disposition of his or her remains, then these wishes should be included in the client’s health care directive. These wishes should not be included in a Will which may not be found or read in time. Such planning will not be captured in ordinary health care directive forms, but can be handled by a competent estate planning attorney, and may very well prevent a post-mortem family feud.

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