

Title

Is a human corpse property that can be made the subject of a trust?

Summary

While a pet may be put into a trust, its human owner may not be. Nor under traditional principles of property and trust law may the corpse of a deceased human being be made the subject of a trust. Charles E. Rounds, Jr., co-author of *Loring and Rounds: A Trustee's Handbook*, explains.

Text

A live non-human domesticated animal, even someone's pet, is merely an item of property. From Fido's perspective, however, there is a silver lining to his lowly status: He may well be better off once his master has departed if title to him is transferred to a trustee than if he is merely made the "beneficiary" of a UTC pet trust. *See generally* Charles E. Rounds, Jr. & Charles E. Rounds, III, *Loring and Rounds: A Trustee's Handbook* §9.9.5 [pages 1477-1478 of the 2014 Edition].

What about the master, himself, while the master is alive? Can the master effectively transfer title to himself to another, such as to a trustee? The answer is no. A trust is a fiduciary relationship with respect to property and a live human being today in the U.S. is not an item of property, at least not an item of property that is susceptible of ownership by another. What about after the master has passed away? Can title to the master's remains be effectively transferred to a trustee? Absent a specific statute or some principle of equity that somehow alters the logic, it would seem to depend upon whether a human corpse is property susceptible of ownership.

A Florida court recently had occasion to consider this very question. *See Wilson v. Wilson*, 138 So.3d 1176 (2014). On May 21, 2014, the court rendered its decision: "We are presented with an issue of first impression, for no Florida court has answered the precise issue posed. And so, we start by traveling back in history to reflect on how deceased bodies and ashes have been viewed over time. In 1753, Sir William Blackstone commented:

Pews in the church are somewhat of the same nature, which may descend by custom immemorial (without any ecclesiastical concurrence) from the ancestor to the heir. But though the heir has a **property** in the monuments and escutcheons of his ancestors, **yet he has none in their bodies or ashes**; nor can he *1178 bring any civil action against such as indecently at least, if not impiously, violate and disturb their remains, when dead and buried.¹

¹ 1 Sir William Blackstone, *Commentaries on the Laws of England in Four Books* 429 (Philadelphia, J.B. Lippencott Co. 1893).

The Florida court goes on: “This non-property interest was again expressed in *Regina v. Sharpe*, (1857) 169 Eng. Rep. 959 (Crown) 960; Dears. & Bell 159, 161...The historical basis for this thinking was derived in part from the English view that “the secular tribunals would protect the monument, the winding-sheet, the grave-clothes, even down to the ribbon (now extant) which tied the *queue*; but the Church would guard the skull and bones.” *In re Widening of Beekman Street*, 4 Bradf. 503, 522 app. (1856)...”

The Florida court concludes its history lesson by “fast forwarding” to today: “Our probate code defines “property” as “both real and personal property or any interest in it and anything that may be the subject of ownership.” § 731.201(32), Fla. Stat. (2012)...Yet, as our supreme court has articulated, “[a]ll authorities generally agree that the next of kin have **no property right** in the remains of a decedent.” *State v. Powell*, 497 So.2d 1188, 1191 (Fla.1986) (emphasis added)... The supreme court clarified its position in *Kirksey v. Jernigan* “to be consistent with the majority view that the right [to the remains] is limited to ‘possession of the body ... for the purpose of burial, sepulture or other lawful disposition’ ” *Id.* at 1191–92 (citing *Kirksey v. Jernigan*, 45 So.2d 188, 189 (Fla. 1950))...It reiterated its position again in 2001 in *Crocker v. Pleasant*, 778 So.2d 978, 988 (Fla.2001), acknowledging that “there is a legitimate claim of entitlement by the next of kin to possession of the remains of a decedent for burial or other lawful disposition.” But a claim of entitlement is not a property right, nor does it make the remains “property.”... Common law, our supreme court, and this Court have always held that a decedent's remains are not property...”