

Limbo

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board or organization caring for the burial ground at the time. These individuals signed the petition confirming this notion.

According to State Code, if it is determined that if no such group exists, five or more people with relatives buried at the privately-owned West Side cemetery — which these five individuals attested to — could be named through the circuit court as the board of trustees.

Neil Jay Hamilton represented the individuals in this case, which was heard by Marion County Circuit Judge Fred L. Fox. At the close of the hearing, in which Decker and Edgell both testified against the petition, Fox ruled in favor of the petitioners and granted the responsibilities of the cemetery to them as the new board of trustees.

Later that month, a motion was filed by Decker asking the judge to reconsider his ruling, which Fox denied on Jan. 18, 2007. This led to Gregory Schillace, a lawyer hired by Edgell and Decker to represent their case, filing an appeal with the State Supreme Court in an effort to reverse the original decision.

That case was heard in March and today both parties involved are awaiting the final ruling. And until that order is received, the condition of the cemetery, which is in desperate need of care and maintenance, cannot really be

improved.

"We have spent a year and a half waiting," said Hutchinson, who serves as president of the board of trustees. "(The board of directors) has its valid reasons for pursuing this, but what is suffering is the cemetery itself."

Hamilton said there are three possible scenarios that could happen in the Supreme Court ruling: one, Fox's original decision will be affirmed and the cemetery's care will be put back into the hands of the board of trustees; two, Fox's decision will be reversed and the grounds will go back to the board of directors; or three, the court will remand the decision for further proceedings and both sides will be asked to present more evidence.

Hamilton said if the court rules to remand for further proceedings the case will be pending for even longer, which will in turn cause the cemetery to keep suffering.

Decker, who testified as the president of the board of directors, said he had put much of his own money as well as donated hours of labor to maintain and care for the cemetery from the time he was elected to the board in 1996.

He said this included digging graves, performing grave side services, donating money, selling monuments and vaults, and collecting donations.

"Every month we had money coming in and money going out," Decker said.

And when Decker was in charge, he and several family members of those interred at Woodlawn said the grounds were in much better condition than they are now.

Today, not only are there high grass and weeds blocking the headstones and monuments as well as potholes all along the roads, the new office building at the site, which has yet to be finished, is waning away because no work has been done to it since these legal issues came up.

Edgell said she and Decker had donated appliances to be put inside of the building, which was slated to be used for board meetings and storage of equipment and maps when complete. Neither Edgell nor Decker have access to the building anymore.

Edgell added that she has been waiting since Fox's first ruling to be given back a \$5,000 check she donated in her father's name to be used toward the completion of the building, and she said that grant money had been obtained from former Gov. Bob Wise to help construct the roof.

But when the board of trustees took over, the board of directors no longer had any jurisdiction over the building or the care of the grounds. And although Fox's ruling states that the court recognizes the work that Decker has done at the cemetery and suggests that maybe an agreement could be

reached between him and the board of trustees for the future maintenance duties, Decker said he is not interested in working with them.

Decker and Edgell both said that it has been since the board of trustees took over that the cemetery started looking the way it does now, and while they want to see the cemetery improve and get back its historic beauty, they are not happy with what has happened and do not want to work with the people who they believe caused all of the problems.

"I have no desire to go back when these people are here," Decker said.

Decker added that he believes that some of the members of the board of trustees committed perjury by signing the petition stating that they were not aware of the existence of the board of directors. He said that he plans to pursue this issue once the Supreme Court decision comes in, especially if the ruling is in favor of Fox's original ruling.

According to court documents, Fox's original decision was based in part on the board of directors' failure to make adequate deposits to Woodlawn's perpetual-care fund. Under State law, \$10 or 10 percent of gross sales of burial plots, whichever is more, is required to be placed into this fund, which is set up at WesBanco Bank Inc. and

currently has around \$35,000 in it.

Only the interest from this fund, which Hutchinson explained is in place so there is always money to maintain and upkeep the grounds, can be accessed by the caretakers on a quarterly basis. But because the fund is not very stacked, the interest level is very low and the money received is very minimal.

"There used to be a big principal there, but it's not there anymore, and I don't know why," Hutchinson said. "The money coming in from the perpetual-care fund is very nominal."

When the board of directors was in charge, Decker said he was not depositing any money into the perpetual-care fund. He said that he instead used all of the money he received from the sale of burial plots toward the maintenance and upkeep of the cemetery, which he considered more important.

Edgell added that the group members had tried to take the money out of the WesBanco account so it would generate more interest, but were denied the request.

Hamilton said that the main reason he believes the petition was filed by the board of trustees in the first place was because the money from the plots was not being dispersed legally into the perpetual-care fund by the board of directors.

The court documents made no mention of anyone claim-

ing there was inadequate upkeep of the grounds at the time when Decker was in charge of the maintenance. Fox's ruling actually stated that the board of directors had "somewhat effectively managed the upkeep of Woodlawn Cemetery," but that they had "not fulfilled the requirements of a board of trustees as required by state law."

And one of these requirements, according to Fox's ruling, was the fact that there was no evidence presented that Decker had been named to the board of directors in 1996 like he had claimed. The judge asked for documentation that the appointment had occurred, but said in his final ruling that he did not receive it in the amount of time he legally needed to. And without this proof, the board of directors appeared to have too few members following the deaths and resignations of other members to fulfill the legal requirements for the board.

Edgell said, however, that she did bring a copy of the minutes from a September 1997 meeting of the Woodlawn Cemetery Co. documenting the naming of Decker as the board president following the resignation of then-president Mark Trach the morning after the first hearing to Judge Fox. Decker was listed on that document as vice president of the board.

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