

Cherokee Nation Code Annotated

Title 21: Crimes and Punishments

Part IV. Crimes Against Decency and Morality

Chapter 47: Violation Sepulture and the Remains of the Dead

§ 1158a. Court authority to award the right of disposition of body of decedent

Cite as: 21 CNCA § 1158a

The district court may award the right of disposition to the person determined by the court to be the most fit and appropriate to carry out the right of disposition, and may make decisions regarding the remains of the decedent if those sharing the right of disposition cannot agree. The following provisions shall apply to the determination of the court under this section:

1. If the persons holding the right of disposition are two or more persons with the same relationship to the decedent and cannot, by majority vote, make a decision regarding the disposition of the remains of the decedent, any of the persons or a funeral director with custody of the remains may file a petition asking the district court to make a determination in the matter;
2. In making a determination under this section, the district court shall consider the following:
 - a. the reasonableness and practicality of the proposed funeral arrangements and disposition,
 - b. the degree of the personal relationship between the decedent and each person claiming the right of disposition,
 - c. the desires of the person or persons who are ready, willing and able to pay the cost of the funeral arrangements and disposition,
 - d. the convenience and needs of other families and friends wishing to pay respects,
 - e. the desires of the decedent, and
 - f. the degree to which the funeral arrangements would allow maximum participation by all wishing to pay respect;
3. In the event of a dispute regarding the right of disposition, a funeral director shall not be liable for refusing to accept the remains or to inter or otherwise dispose of the remains of the decedent or complete the arrangements for the final disposition of the remains until the funeral director receives a court order or other written agreement signed by the parties in the disagreement that decides the final disposition of the remains. If the funeral director

retains the remains for final disposition while the parties are in disagreement, the funeral director may embalm, refrigerate, or shelter the body in order to preserve it while awaiting the final decision of the district court and may add the cost of embalming, refrigeration or sheltering to the final disposition costs. If a funeral director brings an action under this section, the funeral director may add the legal fees and court costs associated with a petition under this section to the cost of final disposition. This section shall not be construed to require or to impose a duty on a funeral director to bring an action under this section. A funeral director shall not be held criminally or civilly liable for choosing not to bring an action under this section; and

4. Except to the degree it may be considered by the district court under subparagraph c of paragraph 2 of this section, the fact that a person has paid or agreed to pay for all or part of the funeral arrangements and final disposition does not give that person a greater right to the right of disposition than the person would otherwise have. The personal representative of the estate of the decedent does not, by virtue of being the personal representative, have a greater claim to the right of disposition than the person would otherwise have.

Historical Data

LA 07-21, eff. February 22, 2021.