

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
*JUDGE*

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

March 21, 2011

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\_\_\_\_\_ **RE: Jean Vareha, et. al. v. Beebe Medical Center, Inc., et. al.**  
**C.A. S10C-04-021-ESB**  
**Letter Opinion**

Date Submitted: November 8, 2010

Dear Counsel:

This is my decision on the Plaintiffs' Motion for Reargument of my decision granting Defendant Richard N. Palmer, M.D.'s Motion for Judgment on the Pleadings in this medical negligence case. John S. Vareha was admitted to Beebe Medical Center complaining of chest pain and shortness of breath on June 4, 2008. He died at Beebe Medical Center on June 12, 2008. Jean Vareha, Vareha's wife, authorized Beebe Medical Center to perform an autopsy on Vareha to determine the cause of his death and to remove and retain certain tissues and bodily fluids for further examination and analysis. Dr. Palmer is a pathologist. He performed the autopsy on Vareha. Dr. Palmer concluded that Vareha died from a pulmonary embolism and myocardial infarction.

Jean Vareha and her children filed a lawsuit against Beebe Medical Center, Dr. Palmer and several other medical professionals that cared for Vareha. The Plaintiffs alleged that Dr. Palmer did not remove and retain enough of certain tissues and bodily

fluids for further examination and analysis, making it impossible for them to properly determine the cause of Vareha's death. Dr. Palmer filed a Motion for Judgment on the Pleadings, arguing that pursuant to 16 *Del.C.* § 2707 he was not liable to the Plaintiffs for their claim for damages arising out of any action he took during his autopsy of Vareha. Section 2707 deals with postmortem examinations. It states, in part, that "the licensed physician conducting the postmortem examination shall not be liable in damages for any action taken in making such postmortem examination." I granted Dr. Palmer's Motion for Judgment on the Pleadings, reasoning that the unambiguous language of Section 2707 made Dr. Palmer immune from the Plaintiffs' claim for damages.

### **STANDARD OF REVIEW**

The standard of review for a motion for reargument is that it "will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."<sup>1</sup> A motion for reargument is not intended to rehash the arguments already decided by the Court.<sup>2</sup>

### **DISCUSSION**

Title 16, Chapter 27 is titled "Anatomical Gifts and Studies." It is divided into three subchapters. Subchapter I is titled "Anatomical Studies." Subchapter II is titled "Uniform Anatomical Gift Act." Subchapter III, is titled "Request for Consent to an Anatomical Gift and Establishment of Organ and Tissue Donation Awareness Fund." Subchapter I

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<sup>1</sup> *Board of Managers of the Delaware Criminal Justice Information System v. Gannett Co.*, 2003 WL 1579170, at \*1 (Del.Super. Jan 17, 2003).

<sup>2</sup> *McElroy v. Shell Petroleum, Inc.*, 618 A.2d 91 (Del. 1992) (TABLE).

consists of seven sections and deals with anatomical studies and postmortem examinations. Sections 2701-2706 were enacted on May 8, 1964 and deal exclusively with anatomical studies. They set forth a process by which institutions and individuals may obtain unclaimed dead bodies for the purpose of performing anatomical studies on them. Section 2707 was enacted over four years later on August 1, 1968 and deals exclusively with postmortem examinations.

### **Anatomical Studies**

Section 2701 provides for the registration with the Board of Medical Licensure and Discipline of any nonprofit hospital, accredited university, research institution, teacher, student, research worker and technician that desires to obtain dead bodies for the purpose of performing anatomical studies on them. This section further provides that such an institution shall be known as an “approved institution,” and that such a teacher, student, research worker, or technician shall be known as an “approved person.”

Section 2702 imposes the obligation upon certain public officers of this State, and any agency, county or political subdivision thereof, who have custody of an unclaimed dead body that shall require burial at public expense to notify the Medical Council<sup>3</sup> of the existence and location of the unclaimed dead body.

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<sup>3</sup> The Medical Council has gone through many changes since 1964. The government reorganization of 1969 created the Department of Health and Social Services. Both the Medical Council and Board of Medical Examiners were placed within the Division of Physical Health. (57 D.L., ch. 301). By 1976 the Board of Medical Examiners, along with any residual duties of the Medical Council, ceased to exist and was replaced with the Board of Medical Practice (60 D.L., ch. 462)(RG 1509). The Board of Medical Practice was removed from Department of Health and Social Services in 1979 and placed within the Bureau of Professional Regulation, an agency of the Department of Administrative Services (RG 1340)(62 D.L., ch. 86).

Section 2703 provides that the Medical Council shall, upon receipt of notice of the existence, location and identification of an unclaimed dead body pursuant to Section 2702, designate one of the “approved institutions” to receive the dead body for the purpose of performing an anatomical study on the dead body. This section also deals with the delivery of the dead body to the approved institution and sets forth certain requirements for the handling of the dead body.

Section 2704 provides that the approved institution shall provide for the burial or cremation of the dead body after it is no longer needed for anatomical study.

Section 2705 authorizes the Medical Council to (1) establish regulations, (2) maintain records, (3) maintain a registry of approved institutions and persons pursuant to Section 2701, and (4) allocate unclaimed dead bodies to approved institutions based on the number of approved persons at the approved institution and the character of anatomical studies conducted at the approved institution.

Section 2706 provides that the Attorney General, in consultation with the Medical Council, shall appoint an Inspector of Anatomy to (1) inspect the approved institutions, (2) report to the Medical Council and Attorney General any unsatisfactory conditions relating to the use of dead bodies at the approved institutions, and (3) investigate the alleged misconduct of any person with access to dead bodies.

### **Postmortem Examinations**

The title and text of Section 2707 are set forth as follows:

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**Section 2707. Postmortem examination only by physicians; liability; consent.**

- (a) No postmortem examination of the body of a deceased person shall be conducted by any person other than a duly licensed doctor of medicine or osteopathy. Written or telegraphic consent for a doctor of medicine or osteopathy to conduct a postmortem examination of the body of the deceased person shall be deemed sufficient when given by whichever 1 of the following assumes custody of the body for the purpose of burial: Father, mother, husband, wife, child, guardian, next of kin or, in absence of any of the foregoing, a person who assumes the duty of legal disposal of the body. If 2 or more such persons assume custody of the body, consent of 1 of them who is legally considered as the next of kin shall be deemed sufficient.
- (b) The licensed physician conducting the postmortem examination shall not be liable in damages for any action taken in making such postmortem examination.

Section 2707 addresses three matters regarding postmortem examinations. One, it provides that postmortem examinations may only be performed by a licensed doctor of medicine or osteopathy. Two, it identifies those persons who may give consent for the postmortem examination. Three, it provides that the doctor who conducts the postmortem examination shall not be liable in damages for any action taken in conducting the postmortem examination.

**Issue**

The issue is whether Section 2707's immunity provision applies to Dr. Palmer. The Plaintiffs argue that it applies only to those approved institutions and persons conducting anatomical studies on dead persons, reasoning that the inclusion of Section 2707 in a subchapter that sets up a process by which approved institutions and individuals may obtain dead bodies for the purpose of performing anatomical studies on them would only apply to those approved institutions and persons. Thus, according to the Plaintiffs' line of

reasoning, Dr. Palmer is not entitled to immunity because he was not an approved person performing an anatomical study on Vareha. Dr. Palmer argues that the language of Section 2707 is clear and unambiguous and that he, as a licensed medical doctor who performed the postmortem examination on Vareha, is not liable to the Plaintiffs for any damages arising out of any action that he took in conducting the postmortem examination on Vareha.

### **Statutory Construction**

“The goal of statutory construction is to determine and give effect to legislative intent.”<sup>4</sup> If the statute is unambiguous, “there is no need for judicial interpretation, and the plain meaning of the statutory language controls.”<sup>5</sup> With an ambiguous statute “the Court must rely upon its methods of statutory interpretation and construction to arrive at what the legislature meant.”<sup>6</sup> A statute is ambiguous if it is “reasonably susceptible of different conclusions or interpretations.”<sup>7</sup> In the case of ambiguity, “[u]ndefined words in a statute must be given their ordinary, common, meaning,”<sup>8</sup> and “[t]he established preference of our

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<sup>4</sup> *LeVan v. Independence Mall, Inc.*, 940 A.2d 929, 932 (Del. 2007) (quoting *Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999)).

<sup>5</sup> *Lawhorn v. New Castle County*, 2006 WL 1174009, at \*2 (Del. Super. May 1, 2006 (citing *Eliason*, 733 A.2d at 946)).

<sup>6</sup> *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1246 (Del. 1985).

<sup>7</sup> *Newtowne Vill. Serv. Corp. v. Newtowne Rd.*, 772 A.2d 172, 175 (Del. 2001).

<sup>8</sup> *Dewey Beach Enterprises, Inc. v. Bd. of Adjustment*, 2010 WL 2977928, at \*2 (Del. July 30, 2010).

law is of course to give to statutory language a literal reading, if that is possible.”<sup>9</sup> Because the Court must “presum[e] that the Legislature did not intend an unreasonable, absurd or unworkable result,”<sup>10</sup> ambiguity may exist “where a literal interpretation of the words of the statute would lead to such unreasonable or absurd consequences as to compel a conviction that they could not have been intended by the legislature.”<sup>11</sup> After making such a determination, “the statute must be construed to avoid ‘mischievous or absurd results’”<sup>12</sup> For that reason, “[t]he golden rule of statutory interpretation...is that unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result.”<sup>13</sup> Thus, the Court will reject any statutory construction incompatible with the intent of the General Assembly.<sup>14</sup> The Court must then construe the statute “in a way that will promote its apparent purpose and harmonize it with other statutes within the statutory scheme.”<sup>15</sup>

### **Conclusion**

I have concluded that Section 2707's immunity provision applies to Dr. Palmer. The

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<sup>9</sup> *Hoschett v. TSI Int'l Software, Ltd.*, 683 A.2d 43, 46 (Del.Ch. 1996).

<sup>10</sup> *E.I. DuPont De Nemours & Co. v. Clark*, 88 A.2d 436, 438 (Del. 1952).

<sup>11</sup> *In re Kent County Adequate Pub. Facilities Ordinances Litig.*, 2009 WL 445611, at \*6 (Del.Ch. Feb. 11, 2009)(internal quotation and alteration omitted).

<sup>12</sup> *Del. Bay Surgical Servs., P.A. v. Swier*, 900 A.2d 646, 652 (Del. 2006).

<sup>13</sup> *Coastal Barge Corp.*, 492 A.2d at 1247.

<sup>14</sup> *Dambro v. Meyer*, 974 A.2d 121, 130 (Del. 2009).

<sup>15</sup> *LeVan*, 940 A.2d at 933 (quoting *Eliason*, 733 A.2d at 946).

language of Section 2707 is clear and unambiguous. Moreover, Section 2707 is unrelated to and disconnected from Sections 2701 - 2706 in a number of meaningful ways. This makes it impossible for me to give Section 2707 the interpretation and application sought by the Plaintiffs.

### **1. Section 2707's Clear and Unambiguous Language**

The language of Section 2707 is clear and unambiguous. It states, in applicable part, that (1) only a duly licensed doctor of medicine or osteopathy shall perform a postmortem examination of a deceased person, and (2) the licensed doctor conducting the postmortem examination shall not be liable in damages for any action taken in making such examination. Dr. Palmer falls squarely within this section. He is a duly licensed medical doctor who performed a postmortem examination on a deceased person. Therefore, he is entitled to the immunity from damages provided by Section 2707. If Section 2707 means what the Plaintiffs argue that it does, then it would have addressed approved institutions and individuals interested in obtaining unclaimed dead bodies for the purpose of conducting anatomical studies on them. It clearly does not. For example, if the Plaintiffs are correct, then I would have expected Section 2707 to state that “approved institutions and persons who perform anatomical studies shall not be liable in damages for any action taken in making such anatomical studies.” Section 2707 does not use any language remotely similar to this. The fact that it does not strongly suggests that it does not mean what the Plaintiffs argue that it means. Quite simply, to read Section 2707 in the manner in which the Plaintiffs argue that it should be read, I would have to ignore its clear and unambiguous language. I can not do that.

## **2. The Substantive Differences Between Section 2707 and Sections 2701 - 2706**

Section 2707 is wholly unrelated to Sections 2701 - 2706 in a number of meaningful ways, leading me to conclude that it stands alone and separate from those sections. Sections 2701 - 2706 deal with approved institutions and persons interested in obtaining unclaimed dead bodies for the purpose of performing anatomical studies on them. Section 2707 deals with licensed doctors who perform postmortem examinations on dead persons who are not unclaimed. There are many meaningful differences that arise from this.

### **a. Purpose**

Each has a different purpose. Sections 2701 - 2706 deal exclusively with anatomical studies and nothing else. Section 2707 deals exclusively with postmortem examinations and nothing else. There is a substantial difference between anatomical studies and postmortem examinations. Anatomical study is synonymous with the term anatomy. Anatomy has a Greek origin that means to “cut up” or “dissect.” The definition of contemporary human anatomy is the “study of structure and its relation to function in the human body.” As such, it often involves the dissection of human bodies. A postmortem examination, which is also known as an autopsy, is a highly specialized surgical procedure that consists of a thorough examination of a corpse to determine the cause and manner of death and to evaluate any disease or injury that may be present. Autopsies are usually performed by pathologists and are done for either legal or medical purposes or both. Thus, the purpose of Sections 2701 - 2706 is broad and not specific to a particular person, while the purpose of Section 2707 is narrow and specific to a particular person. There is simply no shared or common purpose between Sections 2701 - 2706 and Section 2707.

### **b. Persons**

Each deals with different institutions and persons. Sections 2701 - 2706 deal with hospitals, universities, research institutions, teachers, students, research workers and technicians. Section 2707 deals only with licensed doctors of medicine or osteopathy. While there may be some overlap between these groups, Section 2707 deals with a much more specific and narrower group of medical practitioners.

### **c. Deceased Persons**

Each deals with a different kind of deceased person. Sections 2701 - 2706 deal with unclaimed deceased persons. Section 2707 deals with claimed deceased persons.

### **d. Procedure**

Each involves a very different procedure. Sections 2701 - 2706 set up an elaborate framework authorizing the Board of Medical Licensure and Discipline and Medical Council to (1) approve certain institutions and persons who wish to perform anatomical studies on unclaimed dead bodies, (2) identify, transfer and allocate unclaimed dead bodies to the approved institutions, (3) handle the disposition of the unclaimed dead bodies after they have been studied, and (4) ensure that the unclaimed dead bodies have been properly handled. Section 2707 has no role for the Board of Medical Licensure and Discipline and Medical Council and no elaborate framework for the identification, transfer, allocation and disposal of claimed dead bodies.

### **e. Time of Enactment**

Each was enacted at a different time. Sections 2701 - 2706 were enacted on May

8, 1964.<sup>16</sup> Section 2707 was enacted over four years later on August 1, 1968.<sup>17</sup> This shows that Sections 2701 - 2706 and Section 2707 are unrelated in time, as well as purpose.

I have concluded, given the unambiguous language of Section 2707 and the meaningful differences between it and Sections 2701 - 2706, that the Legislature first enacted Sections 2701 - 2706 to deal only with anatomical studies and then later enacted Section 2707 to deal only with postmortem examinations and that there is no interrelationship between Section 2707 and Sections 2701 - 2706. Even though Section 2707 is a part of a subchapter titled "Anatomical Studies," and that the title of a subchapter and the inclusion of a section as part of that subchapter can be helpful in interpreting the

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<sup>16</sup> On May 8, 1964, 54 Del. Laws, c. 281 was approved. This act amended chapter 17, title 24, of the Delaware Code, which related to the disposition of unclaimed dead bodies, the use thereof by approved institutions or persons in connection with anatomical studies, and the powers and duties of the Medical Council and the Attorney General of Delaware with regard thereto. At the time, this sub-chapter consisted of §§ 1771-1776.

<sup>17</sup> On August 1, 1968, 56 Del. Laws, c. 430 was approved. This act related to the disposal of dead bodies. It created a new sub-chapter for the disposition of bodies for medical science. Sub-chapter VII added §§ 1780-1788. Chapter 17, title 24, was also amended to add in § 1777 as a new section. This is the current section at issue.

On February 19, 1981, 63 Del. Laws, c. 4 was approved. This act amended title 24, chapter 17, §1771 of the Delaware Code, which dealt with the accreditation of approved institutions or persons for anatomical studies.

On July 9, 1986, 65 Del. Laws, c. 487, was approved by the General Assembly, re-designating chapter 17, title 24 as chapter 27, title 16. Sub-chapter VII §§1771-1777 became the new sub-chapter I, §§ 2701-2707. This is the current sub-chapter that deals with anatomical studies. Sub-chapter VIII §§1780-1789 became the new sub-chapter II, consisting of §§ 2710-2719. This is the current sub-chapter that deals with the Uniform Anatomical Gift Act.

meaning of an ambiguous section,<sup>18</sup> they are of absolutely no consequence here because Section 2707's language is clear and unambiguous. Section 2707 clearly and unambiguously makes Dr. Palmer immune from the Plaintiffs' claim for damages against him for any action he took during his autopsy of Vareha. In reaching this conclusion previously I did not misapprehend the law or facts. Therefore, I have denied the Plaintiffs' Motion for Reargument.

**IT IS SO ORDERED.**

Very truly yours,

/S/ E. Scott Bradley

E. Scott Bradley

oc: Prothonotary's Office  
cc: Dennis D. Ferri, Esquire  
Jeffery M. Austin, Esquire  
Bradley J. Goewert, Esquire  
Lorenza A. Wolhar, Esquire

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<sup>18</sup> Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 45:5, at 35 (7<sup>th</sup> ed. 2007).