

**IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT  
IN AND FOR JACKSON COUNTY, FLORIDA**

**IN RE: Exhumation of Unidentified  
Human Remains Buried at the  
Dozier School for Boys**

**Case No.: 13-239 CA**

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**ORDER DENYING PETITION**

**THIS CAUSE** is before the Court for consideration of the Petition to Exhume Human Bodies/Remains filed by the Office of the Attorney General on behalf of Dr. Michael Hunter, District Medical Examiner for the Fourteenth Judicial Circuit, the Interim Report prepared by the University of South Florida regarding its investigation of the Dozier School property, and the Attorney General's supporting Memorandum. Having considered the same, the Court finds as follows:

The Petition seeks a court order approving exhumation of human remains from any gravesites which may be discovered or located on the Dozier School property. The stated purpose is to locate and identify any unidentified graves and human remains, and to allow the District Medical Examiner to complete autopsies and a medical investigation into the causes of death. The University of South Florida has conducted a partial investigation of possible gravesites and recommends further excavation and the examination of any remains that may be found. If any bodies are identified and next of kin are located, the remains will be provided to the family for re-interment if the family so wishes. Otherwise, any remains will be re-interred either at the original burial site or elsewhere. The State of Florida owns the Dozier School property and intends to sell the property after the investigation of possible gravesites is completed.

However, the Court finds that counsel for the Petitioner has failed to meet the threshold for an order granting exhumation in a civil case, if one is needed under the circumstances, because the Interim Report prepared by the University of South Florida does not provide any information or opinion regarding what physical evidence is likely to be found that will lead to the identification of the remains or a determination of the causes of death. Any further excavation by USF will be with State permission on State property. The Medical Examiner does not need a court order to carry out his statutory duties if human remains are found. An order granting the Petition will not protect the Medical Examiner from claims by persons with standing who have not been joined or afforded the due process rights of notice and the opportunity to be heard. The denial of the Petition is without prejudice to pursue other remedies.

On the one hand, counsel for the Petitioner asserts that the Medical Examiner has the statutory authority to conduct an investigation into the number of human remains and cause of death of each, and the statutory obligation to control the progression of the excavation and investigation of any unmarked human remains discovered during an archeological excavation. The Petition states that the Medical Examiner's authority to exhume the remains is clear. Counsel asserts that even though the laws granting this authority were passed years after the burials on the Dozier School property, the laws apply retroactively to those deaths. On the other hand, Petitioner's counsel states in the Memorandum that he is uncertain whether the Medical Examiner has the authority to direct exhumation, and asserts that the Court's permission is desirable to protect the Medical Examiner from criminal or civil liability.

The Petition states that consent for the relief requested has been obtained from the Department of State, Division of Historical Resources, the Florida Department of Law Enforcement and the Attorney General, and there are no objections from Jackson County, the

State Attorney, or the Sheriff. Counsel is unaware of any objections by family members or any other source to the potential exhumation of the remains, but family members have not been identified or located for most of the persons buried on the Dozier School property.

Just as the University of South Florida's investigation to date was pursuant to a permit issued by the Division of Historical Resources, permission for any further investigation by USF must be given by the State of Florida, which does not require a court order. The results of USF's archaeological and historical investigation are detailed in the Interim Report. USF has used ground penetrating radar, metal detectors and soil analysis to detect subsurface anomalies, and excavated test trenches to allow further analysis. USF has determined that unidentified and unmarked graves may exist on the property. USF recommends further excavations and the exhumation, skeletal autopsy and DNA testing of any remains recovered.

USF's Interim Report does not offer any information or opinion regarding what physical evidence is likely to be found that will lead to the identification of the human remains or a determination of the causes of death. The last known burial was in 1952, more than sixty years ago. There is correspondence indicating that some bodies may have been buried without a casket, and there is no indication that any of the bodies were embalmed. According to the Petition, between 85 and 98 boys died at the school between 1900 and 1952. Over the years, several state and federal investigations were conducted to explore allegations of harsh punishment and poor supervision. The Petition states that the records relied upon during previous investigations provided little information regarding the causes of death, and even less regarding the disposition and location of the human remains. Autopsies were not conducted in many cases. Thirty-one bodies were returned to their families for burial, but most were buried on Dozier School property at unknown locations in unmarked graves, according to the Petition.

The State Attorney has not pursued any court order for the exhumation or autopsy of human remains on the Dozier School property. Florida case law allows disinterment in criminal cases where the cause of death is the primary issue before the court. *Gottlieb v. Samiian*, 999 So. 2d 678, 682 (Fla. 1<sup>st</sup> DCA 2008). If it is necessary to determine whether or not a death was the result of a crime, a state attorney has the authority under Florida Statutes §925.09 to have an autopsy performed, before or after interment. Op. Att’y Gen. Fla. 68-27 (1968). A state attorney may also petition the county court for an inquest of the dead pursuant to Chapter 936. An inquest is an evidentiary proceeding to determine whether probable cause exists to believe that a death was the result of a criminal act, criminal negligence, or foul play, and to determine the identity of the persons believed to be responsible for the death, if reasonably known.

The statute of limitations would bar prosecution of any crimes other than homicide. Although Petitioner’s counsel speculates that burials may have occurred after 1952, he concedes that a criminal homicide investigation is unlikely. It is not expected that USF will find evidence which would support prosecution for homicide and the Interim Report does not indicate what evidence is likely to be found.

Florida Statutes §872.05 contains specific provisions for treatment of unmarked human remains, and again there is no requirement for a court order. If the remains have been buried less than 75 years, or are possibly involved in a criminal investigation, the Medical Examiner has jurisdiction. If the remains have been buried more than 75 years and are not involved in a criminal investigation, the State Archeologist has jurisdiction. Procedures are already in place for proper consultation and coordination with family and determination of final disposition of the remains. Although there are criminal penalties for committing offenses against unmarked human burials, those provisions do not apply to the Division of Historical Resources or to any person

otherwise authorized by law to disturb, destroy, or remove an unmarked human burial. See, *Abandoned Cemeteries Guide for Law Enforcement Officers, Medical Examiners and Medical Examiner Investigators*, <http://www.flheritage.com/archaeology/cemeteries/index.cfm>.

A district medical examiner is directed by Florida Statutes §406.11 to determine the cause of death when a person dies under certain circumstances, many of which are possible with respect to the deaths at the Dozier School, according to the Interim Report. In such cases, the district medical examiner has the statutory authority to perform whatever examinations, investigations, and autopsies as he or she deems necessary and in the public interest to determine the identification of or cause or manner of death of the deceased or to obtain evidence necessary for forensic examination. While Florida recognizes a family's limited right to possession of a body for burial or other appropriate disposition, that interest is subject to the State's right to perform an autopsy when one is mandated by law. See, *Crocker v. Pleasant*, 778 So. 2d 978, 987, n.10 (Fla. 2001).

While the Memorandum expresses uncertainty regarding whether the Medical Examiner's authority includes excavation and exhumation, it appears that any further excavation will be undertaken by USF pursuant to a permit issued by the State of Florida. If any human remains are located, the Medical Examiner has statutory jurisdiction over the human remains.

Florida does not have a disinterment statute. *Gottlieb v. Samiian*, 999 So. 2d 678, 680 (Fla. 1<sup>st</sup> DCA 2008). In civil cases, a party may seek an order for exhumation and autopsy, but an order will not be issued unless the party has shown good cause for seeking the examination and that the results of the autopsy would be relevant to an issue in the case. For example, disinterment may be proper to determine the cause of death in a wrongful death case or to

determine the heirs in a probate case. To meet the threshold for exhumation, there must be more than a suggestion that an autopsy might be probative. Rather, the evidence must tend to show that an autopsy would likely provide relevant information, or indicate a good possibility that an autopsy would be revealing as to the cause of death. See, *Id.* at 681-682. It is important to note that in a civil case, all parties who may have an interest in the outcome of the discovery request have a due process right to be given notice and the opportunity to appear and be heard. See, *Wicky v. Oxonian*, 24 So. 3d 571, 574 (Fla. 2<sup>nd</sup> DCA 2010). This includes the relatives of the decedents. See, *Crocker v. Pleasant*, 778 So. 2d at 987. In this case, the Interim Report does not meet the threshold for an order allowing exhumation or autopsy in a civil case because it does not indicate what physical evidence is reasonably expected to be found or how it may prove the cause of death or the identity of the remains, and the family members have not been afforded due process because many of those persons have not been identified or contacted.

There is no indication that the Medical Examiner will face criminal charges for assuming jurisdiction of any human remains which might be discovered as a result of USF's archaeological excavation of the Dozier School property. If there is a possibility of tort liability or a violation of 42 U.S.C. Section 1983, an order from the Court granting the Petition will not protect the Medical Examiner from claims by persons with standing who have not been made parties to this action or who have not been afforded the due process rights of notice and opportunity to be heard. See, *Crocker v. Pleasant*, 778 So. 2d 978 (Fla. 2001); *State v. Powell*, 497 So. 2d 1188 (Fla. 1986); *Chase v. Turner*, 560 So. 2d 1317 (Fla. 1<sup>st</sup> DCA 1990); *Alger v. Peters*, 88 So. 2d 903 (Fla. 1956); *Black's Law Dictionary* 575 (9<sup>th</sup> ed. 2009).

If the State is seeking to remove human remains from the Dozier School property so that the land can be sold, Florida Statutes §497.270 addresses the steps to be taken, which include

removal of all previously interred human remains, publication of the notice of sale and approval of the Department of Financial Services. Further, Florida Statutes §497.384 allows the moving of buried human remains by a licensed funeral director with a valid burial transit permit, which may require a court order. See, Abandoned Cemeteries Guide for Law Enforcement Officers, Statutes and Rules Related to Historic and Abandoned Cemeteries, and to Unmarked Human Remains, <http://www.flheritage.com/archaeology/cemeteries/index.cfm>.

### SUMMARY


The Petition to Exhume Human Bodies/Remains is denied because if an order is required, there has been no threshold showing of the anticipated evidence necessary in a civil case. The Medical Examiner has statutory authority to conduct investigations, and the State Attorney has the authority to pursue autopsies when necessary. There are current Florida laws in place on handling unmarked graves and moving buried human remains. Regardless of the authority to continue this investigation, Florida officials should proceed with caution and pay heed to *Currier v. Woodlawn Cemetery*, 300 N.Y. 162, 90 N.E.2d 18 (1949):

*“The quiet of the grave, the repose of the dead, are not lightly to be disturbed. Good and substantial reasons must be shown before disinterment is to be sanctioned.”*

It is so **ORDERED** this 24<sup>th</sup> day of May, 2013.

  
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**HONORABLE WILLIAM L. WRIGHT**  
**CIRCUIT JUDGE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail to Nicholas B. Cox, Esq., Special Assistant Attorney General, Office of the Attorney General, Counsel for Petitioner, 3507 E. Frontage Road, Suite 325, Tampa, Florida 33607; and Frank A. Baker, Esq., Counsel for Jackson County, 4431 Lafayette Street, Marianna, Florida 32446, this 24<sup>th</sup> day of May, 2013.

  
Debbie Burch, Judicial Assistant