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APPENDIX A

**GA SUPREME COURT DENIAL OF PETITION
FOR WRIT**

SUPREME COURT OF GEORGIA
Case No. S25C0964 August 12, 2025

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

BONNIE MICHELLE SMITH v. SHIRLEY SMITH.

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Court of Appeals Case No. A25A1009
SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa S. Barnes, Clerk

APPENDIX B

**RECONSIDERATION DENIED- COURT OF
APPEALS**

**COURT OF APPEALS
OF THE STATE OF GEORGIA**

Clerk's Office, Atlanta, March 27, 2025.

**Court of Appeals
of the State of Georgia**

ATLANTA, March 27, 2025

The Court of Appeals hereby passes the
following order

**A25A1009. BONNIE MICHELLE SMITH v.
SHIRLEY SMITH.**

Upon consideration of the APPELLANT'S
Motion for Reconsideration in the above styled case,
it is ordered that the motion is hereby DENIED.

I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court
hereto affixed the day and year last above written.

Christy Cooley Smith, Clerk.

APPENDIX C

Court of Appeals of the State of Georgia ATLANTA,

March 7, 2025

The Court of Appeals hereby passes the following order:

**A25A1009. BONNIE MICHELLE SMITH v.
SHIRLEY SMITH.**

After James A. Smith, Jr., died, his daughter Bonnie Michelle Smith filed a petition in the Probate Court of Sumter County for right of disposition of the decedent's remains. The probate court denied the petition and found in favor of the decedent's surviving spouse, Shirley Smith. Bonnie Michelle Smith filed a petition of review to the superior court, and the superior court also denied the petition.

Bonnie Michelle Smith then filed a notice of appeal to this Court. We lack jurisdiction. Appeals from decisions of the superior courts reviewing decisions of lower courts must come by discretionary application. See OCGA § 5-6-35 (a) (1).¹

Accordingly, Bonnie Michelle Smith was required to file an application for discretionary appeal in this Court. See OCGA § 5-6-35 (a) (1).

Because she failed to do so, we lack jurisdiction over this appeal, which is hereby DISMISSED.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta, 3/7/2025*

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia. Witness my signature and the seal of said court hereto affixed the day and year last above written.

Christina Cooley Smith, Clerk.

APPENDIX D

APPEAL- SUPERIOR COURT DENIAL OF PETITION

IN THE SUPERIOR COURT OF SUMTER COUNTY STATE OF GEORGIA

IN RE: JAMES A. SMITH, JR., DECEASED

CASE NO. 23CV 00337(S)

ORDER DENYING PETITION

Petitioner, Bonnie Michelle Smith seeks an order granting her the right to control the disposition of the remains of the body of the Deceased, James A. Smith, Jr. For the reasons set out herein, the court DENIES said petition.

I. PROCEDURAL HISTORY/POSTURE

This is an appeal of the decision of the Probate Court of Sumter County denying the petition of Bonnie Michelle Smith (Petitioner) for right of disposition of the remains of her father, James A Smith, Jr. (Decedent). The petition was opposed by the surviving spouse of Decedent, Shirley Smith (Respondent). The Probate Court denied the petition in an order dated October 6, 2023. Petitioner filed a Petition for Review on October 12, 2024. The case was placed on the civil docket, but to the court's knowledge, neither party requested a hearing. The court was notified by law

enforcement in November of 2024 that Decedent's remains were housed in the morgue pending a hearing on the petition for review. The court, on its own motion, scheduled a hearing for December 10, 2024. The court heard evidence and argument on said date, and received briefings by the parties thereafter.

The court is to consider "only matters raised in the record" in the Probate Court.

O.C.G.A. § 5-3-S(a)(1). As this matter turns on an issue of law, i.e. which party has the right to control disposition of Decedent's remains, the review is "de novo." O.C.G.A. § 5-3-5(a)(5).

II. FACTUAL FINDINGS

Petitioner is the daughter of Decedent. Decedent granted Petitioner the right to control the disposition of his remains in a health care directive dated March 5, 2005. Petitioner married Respondent on March 9, 2018. Decedent passed away on September 28, 2023.

A few months prior to Decedent's death, Petitioner obtained a "Statement of Funeral Goods and Services Selected" from a funeral home in Macon, Georgia. The affidavit of the records custodian of the funeral home indicates that the records were "created as preplanning the funeral arrangements" of Decedent "on or about June 8, 2023." The documents are unsigned and there is no indication a deposit or escrow was created. Subsequent to the hearing in this matter, Petitioner filed an affidavit indicating that

she made the arrangements with the funeral home at the direction of Decedent. Petitioner also indicates that she acted under the authority of the medical health directive executed in 2005.

III. LEGAL AUTHORITY AND ARGUMENT

Petitioner's claim fails because her authority to direct her father's healthcare, and make arrangements for disposition of his remains is predicated upon the 2005 medical directive, which was revoked as a matter of law upon Decedent's marriage to Respondent. The Probate Court determined that Petitioner's authority to direct Decedent's remains was revoked by his marriage to Respondent. The Probate Court incorrectly cited O.C.G.A. § 31-32-6(b) which provides that "such marriage shall revoke the designation of a person other than the declarant's spouse as the declarant's health care agent..." This provision of Georgia law, however, is applicable to health care directives executed after July 1, 2007, as mandated by the "savings clause" enacted in O.C.G.A. § 31-32-3.

Hence, Petitioner is correct that the validity of the health care directive she relies upon is governed by the law as it existed prior to July 1, 2007. Former O.C.G.A. § 31-36-3(3) gave the following definition of health care agency or agency:

'Health care agency' or 'agency' means an agency governing any type of health care, anatomical gift, autopsy, or disposition of remains for and on behalf of a patient and refers to the power of attorney or other written

instrument defining the agency, or the agency itself, as appropriate to the context.

The health care directive ("Power of Attorney for Health Care Decisions") granted to Petitioner in 2005 certainly falls within the definition of "health care agency" as provided under the former law. However, Petitioner fails to acknowledge that the prior law also contains provisions which invalidated her authority when Decedent remarried. Regarding the revocation of health care agency, former O.C.G.A. § 31-36-6(b) stated:

Unless the health care agency expressly provides otherwise, if, after executing a health care agency, the principal marries, such marriage shall revoke the designation of a person other than the principal's spouse as the principal's agent to make health care decisions for the principal; and if, after executing a health care agency, the principal's marriage is dissolved or annulled, such dissolution or annulment shall revoke the principal's former spouse as the principal's agent to make health care decisions for the principal.

Hence, it appears the old law was virtually the same as the new law in regards to the effect of marriage by one granting a healthcare directive. Petitioner's authority to direct the disposition of Decedent's remains was lost upon his marriage to Respondent.

The court must look to O.C.G.A. § 31-21-7 to

determine who has the right of disposition with regard to Decedent's remains. Absent a valid designation as decedent's "health care agent" as provided O.C.G.A. § 31-21-7(b)(1), and lacking an affidavit from Decedent as provided in O.C.G.A. § 31-21-7(b)(2), Petitioner cannot claim authority over Decedent's remains. Instead, as provided in O.C.G.A. § 31-21-7(b)(3), Respondent is the person lawfully designated with such authority.

Petitioner also urges that the documents from the Macon funeral home constitute a binding preneed contract which cannot be revoked by Respondent. O.C.G.A. § 31-21-7(a) states:

A person who is 18 years of age or older and of sound mind, by entering into a preneed contract, as defined in paragraph (30) of Code Section 10-14-3, may direct the location, manner, and conditions of the disposition of the person's remains and the arrangements for funeral goods and services to be provided upon the person's death. The disposition directions and funeral prearrangements that are contained in a preneed contract shall not be subject to cancellation or substantial revision unless the cancellation or substantial revision has been ordered by a person the decedent has appointed in the preneed contract as the person authorized to cancel or revise the terms of the preneed contract or unless any resources set aside to fund the preneed contract are insufficient under the terms of the preneed contract to carry out the disposition directions and funeral

prearrangements contained therein.

O.C.G.A. § 10-14-3(30) defines a preneed contract as "any arrangement or method, of which the provider of burial or funeral merchandise or services has actual knowledge, whereby any person agrees to furnish burial or funeral merchandise or services in the future." Presumably, Petitioner claims that the documents provided constitute such an agreement. However, there is no evidence that Decedent entered into such a contract. Petitioner's affidavit was offered after the evidence was presented, and even then, there is no evidence Decedent directed that his burial be conducted as provided in the unsigned documents. Because Petitioner's authority to direct the disposition of Decedent's remains was evoked by his marriage, Petitioner had no authority to enter into such a contract. It appears to the court that these documents, at most, indicate an offer to provide the services. The court finds no evidence that an agreement was actually reached, and it is clear no signed contract as contemplated by O.C.G.A. § 10-14-18 was prepared or executed, nor was any money exchanged. Moreover, any such agreement would not give Petitioner the right to have control over Decedent's remains.

In sum, as a matter of law, Respondent is the only person vested with the right to direct the disposition of Decedent's remains. The Probate Court made the legally correct decision.¹

¹ Petitioner makes an impassioned plea in her briefing as to many factual allegations she believes justify her receiving the right to control her father's remains, and even direct the investigation into the circumstances of his death. The court

IV. ORDER OF THE COURT

The court hereby DENIES the petition of Bonnie Michelle Smith for the right of control over disposition of the remains of Decedent, James A. Smith, Jr. The rights to control the disposition of the remains of Decedent, James A. Smith, are hereby declared to be vested in his surviving spouse, Shirley Smith, pursuant to O.C.G.A. § 31-21-7(b)(3).

This 26th day of December, 2024.

W. James Sizemore, Jr.
Superior Court Judge
Sumter County Superior Court.

did not receive any such testimony, and while the court is sympathetic to the nature of these proceedings and the emotions that arise for both parties from these proceedings, these are matters beyond the purview of this court's review of the petition. This case turns on what person has the right under the law to make decisions as to Decedent's remains. It seems very clear that the law favors the surviving spouse in this regard.

APPENDIX E

INITIAL PROBATE COURT ORDER DENIAL

**IN THE PROBATE COURT OF
SUMTER COUNTY
STATE OF GEORGIA**

IN RE: JAMES A. SMITH, JR., DECEASED

ESTATE NO. P2023-4700

PETITION FOR DETERMINATION OF RIGHT OF
DISPOSITION OF REMAINS OF A DECEDENT

DENIAL ORDER

Upon the filing of a Petition for Determination of Right of Disposition of Remains of a Decedent on September 29, 2023 by Michelle Smith, a timely hearing was scheduled by the Court and service was attempted on all parties. The Court after hearing testimony and evidence on October 5, 2023 makes this its finding of facts and decision:

No evidence was provided to the Court contrary to Shirley Smith's testimony that she is currently the legal spouse of James A. Smith, Jr.; therefore, according to O.C.G.A. 31-32-6(b) Unless an advance directive for health care expressly provides otherwise, if after executing an advance directive for health care, the declarant marries, such marriage shall revoke the designation of a

person other than the declarant's spouse as the declarant's health care agent.

And, though the Petitioner submitted into evidence a Business Records Affidavit affirmed by the custodian of records attesting to a Preneed Contract titled Funeral Prearrangements Contract #PN324 created on or about June 8, 2023, related to funeral prearrangements for James A. Smith, Jr. from Fairhaven Funeral Home and Cremation Services, it is the Court's opinion the Power of Attorney for Health Care (Medical Directive) dated March 5, 2005 submitted with the above-mentioned Petition on September 29, 2023 was, according to O.C.G.A. 31-32-6(b), revoked upon the declarant's marriage prior to this Contract's execution.

Therefore, it is ORDERED the aforesaid petition should be and is HEREBY DENIED. The Clerk is instructed to mail a copy of this Order to both the Petitioner and Respondent(s).

Therefore, it is ORDERED the aforesaid petition should be and is hereby DENIED.

The Clerk is instructed to mail a copy of this Order to both Petitioner and Respondent.

This 6th day of October 2023.

Stephanie Bennett, Judge
Probate Court of Sumter County

APPENDIX F

GA SUPREME COURT RECONSIDERATION

SUPREME COURT OF GEORGIA

Case No. S25C0964
September 16, 2025

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

BONNIE MICHELLE SMITH v. SHIRLEY SMITH.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied. All the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa S. Barnes, Clerk

CONCLUSION

For all the foregoing reasons, petitioner respectfully requests that the Supreme Court grant review of the matter.

Respectfully submitted,

Bonnie Michelle Smith

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SUPREME COURT, U.S.