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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1384**

Donna Childers,  
Respondent,

vs.

Gordon Paul Brelje,  
Appellant,

Catholic Cemeteries d/b/a Resurrection Cemetery,  
Respondent.

**Filed June 4, 2012  
Affirmed  
Wright, Judge**

Dakota County District Court  
File No. 19HA-CV-10-4096

John Westrick, Westrick & McDowall-Nix, St. Paul, Minnesota (for respondent Childers)

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Considered and decided by Wright, Presiding Judge; Hudson, Judge; and Collins,  
Judge.\*

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**WRIGHT**, Judge

Appellant challenges the district court's decision to permit respondent to disinter the parties' deceased son and reinter him within the same cemetery, arguing that the district court failed to apply controlling statutory law. Appellant also argues that an award of costs and fees is proper because respondent's complaint includes a frivolous allegation. We affirm.

### FACTS

At age five, Trent David Brelje, the son of appellant Gordon Paul Brelje and respondent Donna Childers, was diagnosed with a rare form of cancer. Approximately two years after the diagnosis, in December 2007, Trent received a terminal prognosis. Although Brelje and Childers were no longer romantically involved, they jointly began to make arrangements for their son's funeral and burial. They chose a burial plot located between Brelje's deceased mother and brother, in respondent Resurrection Cemetery (the cemetery). Trent passed away on February 26, 2008, and the parties buried him in the selected plot.

Childers subsequently designed a flat marker for Trent's gravesite.<sup>1</sup> Her proposal displayed Trent's name as "Trent David Brelje Childers." Brelje objected to the inclusion of "Childers" in Trent's name on the marker because Childers had never been part of Trent's name. The parties failed to resolve this dispute.

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<sup>1</sup> Upright grave markers are not permitted in the section of the cemetery where Trent is currently buried.

Childers filed a complaint in district court on June 30, 2010. Because she wishes to be buried next to Trent and to place an upright marker over his gravesite, Childers sought to disinter Trent's remains and reinter them in a different location within the cemetery.<sup>2</sup> Following a May 2011 hearing, in which Brelje objected to Trent's disinterment, the district court issued an order permitting Childers to disinter Trent and reinter him within the same cemetery. The district court's ruling addressed additional contested issues and ordered Trent's name to be displayed on his grave marker as Trent David Brelje. These issues, however, are not contested before this court. The district court denied Brelje's motion to amend the findings and to stay entry of the judgment. This appeal followed.

## D E C I S I O N

### I.

Arguing that this case is governed by Minn. Stat. § 149A.96, Brelje contends that the district court erred by failing to apply this statute's presumption against disinterment.

### A.

The parties urge us to analyze this case under two discrete statutes, Minn. Stat. § 149A.80 and Minn. Stat. § 149A.96. The interpretation of a statute presents a question of law, which we review *de novo*. *Halvorson v. Cnty. of Anoka*, 780 N.W.2d 385, 389 (Minn. App. 2010). When interpreting a statute, we must "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2010). In doing so, we first determine

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<sup>2</sup> Childers testified that she now owns two burial plots 60 yards away from Trent's current burial site in a section where upright grave markers are permitted.

whether the statute's language, on its face, is ambiguous. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). A statute's language is ambiguous only when it is subject to more than one reasonable interpretation. *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). We construe words and phrases according to their plain and ordinary meaning. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980); *see also* Minn. Stat. § 645.08(1) (2010) (providing that words are construed according to their common usage). When the legislature's intent is clearly discernible from a statute's plain and unambiguous language, we interpret the language according to its plain meaning without resorting to other principles of statutory construction. *State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004).

Section 149A.80 establishes who has the right to control the final disposition of a "dead human body." Minn. Stat. § 149A.80, subd. 2 (2010). "Final disposition" is defined as "the acts leading to and the entombment, burial in a cemetery, or cremation of a dead human body." Minn. Stat. § 149A.02, subd. 16 (2010). Section 149A.96 addresses disinterment and reinterment. Minn. Stat. § 149A.96 (2010). "Interment" is the final disposition by burial or entombment. *Id.*, subd. 2.

Childers argues that, because section 149A.80 establishes the parties' equal authority to control Trent's body, this case is properly analyzed under the dispute-resolution provision of this section. *See* Minn. Stat. § 149A.80, subs. 2(4), 5 (2010). But the parties disagree over whether to disinter and reinter Trent's body, a situation expressly addressed in section 149A.96. *See* Minn. Stat. § 149A.96, subs. 4-5. When we construe a statutory scheme "that contains both specific and general provisions,

canons of statutory construction dictate that the specific provisions prevail over general provisions.” *In re Welfare of J.M.*, 574 N.W.2d 717, 721 (Minn. 1998). Moreover, section 149A.96 expressly incorporates the parties’ equal authority under section 149A.80. *See* Minn. Stat. § 149A.96, subd. 3. We conclude that because this disagreement arises from a question of disinterment and reinterment *after* the parties mutually agreed on the decisions surrounding Trent’s initial interment, the issues presented in this case are governed by section 149A.96.<sup>3</sup>

## B.

Having determined that section 149A.96 is the governing statutory provision, we next consider whether the district court properly applied this statute.

To disinter and reinter a body or remains within the same dedicated cemetery, the cemetery must receive “the written and notarized authorization of the person or persons with the right to control the disposition.” *Id.* If, as here, disinterment is opposed, Minnesota law establishes a presumption against disinterment. *Id.*, subd. 5. To overcome this presumption, the person seeking disinterment must demonstrate reasonable cause for disinterment. *Id.* The district court considers the following factors to determine whether reasonable cause exists:

- (1) the degree of relationship that the party seeking disinterment bears to the body or remains;

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<sup>3</sup> Childers initiated this lawsuit under a theory of Brelje’s estrangement from Trent. Although she concedes that the facts established through discovery do not support this theory, we observe that, even under a theory of estrangement, section 149A.80 is not germane because Childers and Brelje have the same degree of relationship to Trent. *See* Minn. Stat. § 149A.80, subd. 3 (2010) (estrangement affects the right to control a dead human body when “there is only one person in a degree of relationship to the decedent”).

- (2) the degree of relationship that the party seeking to prevent disinterment bears to the body or remains;
- (3) if applicable, the expressed wishes of the decedent;
- (4) the conduct of the party requesting disinterment, especially as it may relate to the circumstances of the original interment;
- (5) the conduct of the party opposing disinterment, especially as it may relate to the circumstances of the original interment;
- (6) the length of time that has elapsed since the original interment;
- (7) the strength of the reasons offered both in favor of and in opposition to disinterment; and
- (8) the integrity and capacity of the party seeking disinterment to provide a secure and comparable resting place for the body or remains.

*Id.*

Here, the district court made findings regarding each of these eight factors, albeit without expressly attributing the findings to each enumerated factor. This manner of analysis, however, does not impair our ability to review the district court's findings as to each applicable factor. When the district court weighs statutory criteria in light of basic or underlying facts, we review the underlying findings of fact for clear error and the "ultimate facts" and "mixed questions of law and fact" for an abuse of discretion. *In re Welfare of Children of J.R.B.*, 805 N.W.2d 895, 900 (Minn. App. 2011), *review denied* (Minn. Jan. 6, 2012).

As to the first two factors, the district court found that Brelje and Childers are Trent's parents and that "under the law [they] are equals in deciding whether disinterment should be granted or denied." These findings neutralize one another. Regarding the third factor, the district court found that "Trent expressed no wish about his place of burial."

Therefore, this factor is not applicable. Addressing the fourth and fifth factors, the district court found that “[a]t the time of Trent’s death both Childers and Brelje were happy about and grateful for [the burial plot] and in complete agreement over funeral and burial details.” These findings indicate that, during a period of bereavement, the parties agreed on Trent’s final disposition. Regarding the sixth factor, the district court found that Trent passed away on February 26, 2008. Therefore, a relatively short period of time has elapsed since Trent’s original interment. As to the seventh factor, the district court found strong reasons in favor of disinterment, including that Childers would like to be buried next to Trent and her “pain at not being able to . . . is palpable.” The district court found a dearth of reasons in opposition to disinterment, concluding that Brelje “has no particular attachment to Trent’s current burial site” and the proposed plot for Trent’s reinterment would “not cause Brelje to incur any additional travel or time expenditures when he desires to visit Trent’s burial plot.” Finally, as to the eighth factor, the district court found that Childers has purchased two side-by-side burial sites within the cemetery and that her “financial condition has improved to the extent that she is willing to be responsible for all costs of disinterment and re-burial.” This finding weighs in favor of disinterment.

After a thorough analysis of the record, we conclude that the district court’s findings on these underlying facts are supported by the record and, therefore, are not clearly erroneous. Accordingly, the district court did not abuse its discretion when it determined that reasonable cause for disinterment exists. Brelje is not entitled to relief on this ground.

## II.

Brelje next argues that the district court erred when it denied his motion for costs and fees without any findings on the matter. We will not reverse a district court's denial of attorney fees absent an abuse of discretion. *Becker v. Alloy Hardfacing & Eng'g Co.*, 401 N.W.2d 655, 661 (Minn. 1987). When denying a request for attorney fees, the district court should state the rationale for its ruling. *Id.* at 661. Failure to do so, however, is not necessarily reversible error. *See State Fund Mut. Ins. Co. v. Mead*, 691 N.W.2d 495, 502-03 (Minn. App. 2005).

Brelje argues that, because Childers frivolously alleged in her complaint that he and Trent were estranged at the time of Trent's death, he is entitled to costs and fees pursuant to both Minnesota's Uniform Declaratory Judgments Act and rule 11.02 of the Minnesota Rules of Civil Procedure. We address each in turn.

### A.

Generally, a party may not recover attorney fees without specific statutory or contractual authorization. *Barr/Nelson, Inc. v. Tonto's, Inc.*, 336 N.W.2d 46, 53 (Minn. 1983). In any proceeding brought under Minnesota's Uniform Declaratory Judgments Act, the district court may make an award of costs that is equitable and just. Minn. Stat. § 555.10 (2010). Childers sought a declaratory judgment against the cemetery as to one of its bylaws. But she did not seek a declaratory judgment against Brelje. Brelje, therefore, is not entitled to relief on this ground.

## **B.**

Rule 11.02 of the Minnesota Rules of Civil Procedure requires allegations presented to the district court to “have evidentiary support or, if specifically so identified, [to be] likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.” Minn. R. Civ. P. 11.02(c). The district court may impose a sanction if, “after notice and a reasonable opportunity to respond, the [district] court determines that Rule 11.02 has been violated.” Minn. R. Civ. P. 11.03. A party seeking sanctions under this rule must follow the specified procedure, which includes filing a separate motion describing the specific conduct alleged to violate rule 11.02 and permitting the opposing party an opportunity to correct the conduct within 21 days before the motion is filed in the district court. Minn. R. Civ. P. 11.03(a)(1). If the moving party does not comply with the procedure set forth in rule 11.03(a)(1), “the motion for sanctions must be rejected.” *Gibson v. Coldwell Banker Burnet*, 659 N.W.2d 782, 789 (Minn. App. 2003). Because Brelje failed to follow the requisite procedure in rule 11.03(a)(1), the district court did not abuse its discretion by denying Brelje’s motion for sanctions.

**Affirmed.**