



CHICORA FOUNDATION, INC.

PRESERVING THE PAST FOR THE FUTURE

P.O. BOX 8664
861 ARBUTUS DRIVE
COLUMBIA, S.C. 29202
803-787-6910
WWW.CHICORA.ORG

Common Law Relating to the Public's Right to Cemetery Access

South Carolina

The most affirmative statement of the right to access graves is provided by the Court in the case of *East Cooper River Civic Club et al. v. Remley Point Development, LLC et al.* (SC Court of Common Pleas for the Ninth Judicial Circuit, Case No. 2001-CP-10-4359):

There is no question that there exists a private right to access, visit and maintain graves. See, e.g. *Mingledorff v. Crum*, 338 So.2d 632 (Fla. Dist. Ct. App. I 980)(listing various rights in private cemetery); *Walker v. Ga. Power Co.*, 339 S.E. 2d 728 (Ga. Ct. App. 1986) (holding that descendants hold an easement "to enter, care for and maintain the burial plots, of freedom from damage or disturbance, and to use and enjoy the property."

The right of access also seems implied by decisions such as *Kelly v. Tiner* (74 S.E. 30) where the South Carolina Supreme Court quoted *Davidson v. Reed*, 53 Am. Rep. 613, "that if one had been permitted to bury his dead in a cemetery by the express or implied consent of those in proper control of it, he acquires such possession in the spot of ground in which the bodies are buried, as will entitle him to maintain an action of *tres quare clasum fregit* against the owners of the free or strangers, who without his consent, negligently or wantonly disturb it."

Florida

Mingledorff v. Crum, 338 So.2d 632 (Fla. Dist. Ct. App. 1980) specifies a variety of rights of descendants, including access to burial, maintain, erect markers, map the cemetery, etc.

Discussing Florida's laws, Michael T. Olexa and his colleagues (11 Drake J. Agric. L. 51) state that relatives of the deceased "have the right of visitation and the right of egress and ingress from the cemetery," citing on point *Mallock v. S. Mem'l Park, Inc.*, 561 So.

2d 330, 332 (Fla. Dist. Ct. App. 1990) (“The relatives and descendants . . . shall have an easement for ingress and egress. . .”) (citing Fla., Stat. Ann. §704.08 (West 1987)).

704.08 Cemeteries; right of ingress and egress for visiting or maintenance.--The relatives and descendants of any person buried in a cemetery shall have an easement for ingress and egress for the purpose of visiting the cemetery at reasonable times and in a reasonable manner. The owner of the land may designate the easement. If the cemetery is abandoned or otherwise not being maintained, such relatives and descendants may request the owner to provide for reasonable maintenance of the cemetery, and, if the owner refuses or fails to maintain the cemetery, the relatives and descendants shall have the right to maintain the cemetery.

Tennessee

In Hines v. State, 126 Ten. 1. 149 S.W. 1058, 42 L.R.A. (N.S.) 1138, the Court stated that relatives of individuals buried in burial ground “have a right to visit it for the purpose of repairing, beautifying, and protecting the graves and grounds, and for these purposes a right of ingress and egress from the nearest public road, to be exercised at reasonable times and in a reasonable manner” was granted.

Georgia

The Court in Walker v. Ga. Power Co., 339 S.E. 2d 728 (Ga. Ct. App. 1986) held that the descendants “own an easement to enter, care for and maintain the burial plots, of freedom from damage or disturbance, and to use and enjoy the property”

In Haslerig v. Watson et al., 54 S.E. 2d 413 (Ga. Sup. Ct. 1949) the Court found that the defendant could not block access to a public cemetery or “interfere with its use by the public for the purposes for which it was dedicated.”

Texas

The Texas case of Gibson v. Barry Cemetery Association, 250 S.W. 2d 600 (Tex. Civ. App. 1952) established that relatives have the right of “visitation, ornamentation, and the protection of the graves of such relatives as are buried thereon from desecration.”

Louisiana

Although Louisiana law is based on French civil law, the case of Vidrine v. Vidrine, 225 So. 2d 691 (La. Ct. App. 1969) found that when a cemetery was dedicated to the public the owner could not bar relatives from visiting or maintaining graves.

Summary

It appears that there is clear common law, in South Carolina and in adjoining states, providing descendents with a right to access and care for their ancestors' graves. The proposed legislation of H. 3446 would do nothing more than establish a statute to affirm common law in South Carolina, similar to what Florida has also done.