

<https://www.law.com/nationallawjournal/2024/09/06/graveyard-desecration-md-supreme-court-gives-descendants-of-enslaved-persons-partial-victory-in-property-row/>



Westwood Tower Apartments in Bethesda, Maryland. (Credit: Google)

ANALYSIS

'Graveyard Desecration'?: Md. Supreme Court Gives Descendants of Enslaved Persons Partial Victory in Property Row

“The record suggests that, rather than respectfully disinterring and moving the remains of the deceased, the developers disturbed the ground, removed human remains haphazardly and inconsistently, destroyed grave markers, and ultimately paved a portion of the land into a parking lot,” Justice Jonathan Biran wrote in his majority opinion for the Maryland Supreme Court ruling the plaintiffs can seek equitable relief on remand.

September 06, 2024 at 11:00 AM

5 minute read

Civil Appeals

Sulaiman Abdur-Rahman [→](#)

What You Need to Know

- The Maryland Supreme ruled the Bethesda African Cemetery Coalition can seek equitable relief on remand concerning allegations of graveyard desecration.
- Rothwell, Figg, Ernst & Manbeck represents the BACC social justice group pro bono.
- Justice Jonathan Biran wrote the 4-3 majority opinion in a case generating strong dissenting opinions.

The Maryland Supreme Court has revived a lawsuit seeking to prevent a quasi-government entity from selling land containing the buried remains of former enslaved persons to a private developer.

A split 4-3 high court ruling will allow the Bethesda African Cemetery Coalition to amend its complaint against the Housing Opportunities Commission of Montgomery County with claims demanding “equitable relief” for alleged desecration of historic burial grounds.

“We are confident with this ruling we are going to achieve justice for the individuals buried under the parking lot,” Rothwell, Figg, Ernst & Manbeck member Steven Lieberman, who represents the plaintiffs pro bono, said Wednesday. “We would much rather have won on the statute, but this is an important building block to ultimate victory for our clients.”

Justice Jonathan Biran wrote the majority opinion for the Maryland Supreme Court affirming part of the Maryland Appellate Court’s judgment concerning the interpretation of a state law or business regulation known as Section 5-505, while reviving the plaintiffs’ lawsuit on other grounds.



Justice Jonathan Biran, Supreme Court of Maryland. (Credit: Maryland GovPics via Wikimedia Commons)

“HOC has no duty” under Section 5-505 to file an action in state court requesting permission to sell its Westbard Avenue property in Bethesda containing the former Moses African Cemetery burial place, Biran wrote in his 80-page majority opinion filed Aug. 30. “This case shall be remanded to the circuit court, at which time the Coalition shall be permitted to seek leave to amend its complaint.”

Chief Justice Matthew J. Fader, along with Justices Steven B. Gould and Angela M. Eaves, joined Biran’s opinion giving Rothwell Figg an opportunity to “state a claim for equitable relief to remedy an alleged violation of a specific right or rights protected under the common law of burial places.”

Justices Shirley M. Watts and Michele D. Hotten each issued dissenting opinions in the case, while Justice Brynja M. Booth filed a concurring and dissenting opinion.

“The majority opinion is like a Trojan horse; it seems more benign than it actually is,” Watts wrote in her dissenting opinion. “The majority opinion creates an appearance of reasonableness but reaches a harsh result.”

The majority opinion “leaves unclear what relief would consist of on remand” and “unnecessarily gives the Commission a blueprint for its position in future litigation,” Watts wrote in her dissent.

Montgomery County Circuit Court Judge Karla N. Smith “correctly determined” Section 5-505 “serves as a mandatory provision for the sale of burial grounds” in Maryland, Hotten wrote in her dissenting opinion. “Regarding irreparable harm, Judge Smith correctly concluded that Petitioners would suffer irreparable harm if HOC did not adhere to [Section 5-505] once the sale is finalized.”

Booth in her concurring and dissenting opinion wrote Biran’s opinion for the high court “ventures farther than I am comfortable” with, but she agrees the BACC social justice group “may have remedies available under other recognized causes of action or claims.”

Douglas & Boykin partner Frederick A. Douglas represented HOC, a quasi-governmental entity that owns the parcel of land containing the former Moses African Cemetery. Douglas and an HOC spokesperson did not respond to requests for comment on this article.

According to the Maryland Supreme Court’s decision, private developers transformed the historic Moses African Cemetery into an apartment complex and parking lot in the 1960s before the HOC had acquired the property years later.

“The record suggests that, rather than respectfully disinterring and moving the remains of the deceased, the developers disturbed the ground, removed human remains haphazardly and inconsistently, destroyed grave markers, and ultimately paved a portion of the land into a parking lot,” Biran wrote in his

majority opinion. “It appears likely that human remains are still interred in the land today, which is currently part of a property known as the Westwood Tower Apartments.”

Rothwell Figg attorneys Lieberman, Jenny Colgate and Kristen Logan represent the BACC and may file an amended complaint in the near future seeking equitable relief.

“We intend to use this ruling to bring claims against HOC,” Lieberman said Wednesday in an interview with the National Law Journal, referring to Biran’s majority opinion. “A buyer would have to be the very opposite of risk-averse and willing to take the property, knowing we or other people could file suit to stop them from using the parking lot.”

Having human remains buried under an active parking lot represents an “ongoing desecration” of historic graves belonging to former slaves and their descendants, Lieberman added. The Maryland Supreme Court “created a roadmap for these kind of claims.”

The high court ruling affirmed part of the Maryland Appellate Court’s judgment, reversed part of it and remanded the case to trial court for further proceedings. The state Supreme Court rendered its decision in *Bethesda African Cemetery Coalition v. Housing Opportunities Commission of Montgomery County*, No. 18, September Term, 2023.

NOT FOR REPRINT

© 2024 ALM Global, LLC, All Rights Reserved. Request academic re-use from www.copyright.com. All other uses, submit a request to asset-and-logo-licensing@alm.com. For more information visit [Asset & Logo Licensing](#).