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SCOTT TYSON

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

In re:

Disinterment of the Ashes of
LINDSAY HELEN TYSON,

Deceased.

Civil No. 24-cv-466

COMPLAINT FOR AN ORDER
AUTHORIZING DISINTERMENT OF
THE ASHES OF LINDSAY HELEN
TYSON FROM A NATIONAL
CEMETERY

**COMPLAINT FOR AN ORDER AUTHORIZING DISINTERMENT
OF THE ASHES OF LINDSAY HELEN TYSON
FROM A NATIONAL CEMETERY**

Plaintiff SCOTT TYSON, by and through his counsel, Goodsill Anderson
Quinn & Stifel, a Limited Liability Law Partnership LLP, files this Complaint
seeking entry of an Order of Disinterment of the ashes of Decedent LINDSAY
HELEN TYSON from the National Memorial Cemetery of the Pacific in
Honolulu, Hawaii, and respectfully states as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 1331. This is a federal question case pursuant to 38 U.S.C. § 2404(a), 38 C.F.R. § 38.621 and 36 C.F.R. § 12.6.

2. Venue is proper in this District because the Decedent is interred in a United States National Cemetery and United States National Park located in Honolulu, Hawaii.

II. PARTIES

3. Decedent LINDSAY HELEN TYSON's ashes are currently interred in Section CT2-D, Row 400, Site 414 at the National Memorial Cemetery of the Pacific, 2177 Pouwiana Drive, Honolulu, Hawaii 96813.

4. Plaintiff SCOTT TYSON is the older brother of the Decedent LINDSAY HELEN TYSON and is a resident of the Commonwealth of Pennsylvania.

5. Interested Party DANE TYSON is the older brother of the Decedent LINDSAY HELEN TYSON and Petitioner SCOTT TYSON. Interested Party DANE TYSON is a resident of the State of Illinois. Interested Party DANE TYSON is being served with a copy of this Complaint.

6. Interested Party ROBERT WAGNER is the former spouse of LINDSAY HELEN TYSON and, therefore, is considered to be an "immediate family member" of Decedent under 38 C.F.R. § 38.621(a)(2)(ii). However,

ROBERT WAGNER is the person who murdered Decedent LINDSAY HELEN TYSON on October 30, 1985. His whereabouts are currently unknown as is whether or not he even is alive.

7. Interested Party JIM HORTON is the Director of the Punchbowl National Memorial Cemetery of the Pacific. Interested Party JIM HORTON is being served with a copy of this Complaint.

III. STATEMENT OF FACTS

7. The Decedent LINDSAY HELEN TYSON (“Lindsay”) was born on April 17, 1957 to Dr. Robert Glenn Tyson and Lesley Tyson (formerly Cotter) in Pittsburgh, Pennsylvania.

8. Lindsay enlisted in the United States Air Force and achieved the rank of Captain.

9. On or about October 30, 1985, while stationed at the Ramstein Air Force base in Ramstein, Germany, Lindsay was brutally murdered by her husband Robert Wagner.

10. At the time of her death, Lindsay’s parents Dr. Robert and Lesley Tyson resided in Honolulu, Hawaii, and requested that her ashes be interred in a mausoleum the National Memorial Cemetery of the Pacific in Honolulu, Hawaii.

11. Since then, to Plaintiff's knowledge, Lindsay's ashes have been inurned in Section CT2-D, Row 400, Site 414 at the National Memorial Cemetery of the Pacific, 2177 Pouwiana Drive, Honolulu, Hawaii 96813.

12. At the time of her death, Lindsay was survived by her parents and two older brothers:

- i. Robert Glenn Tyson, father, Date of Birth – July 24, 1922, Date of Death – May 26, 2009 in Oahu, Hawaii;
- ii. Lesley Tyson (nee Cotter), mother, Date of Birth – March 9, 1926 in Bedford, Massachusetts, Date of Death – March 4, 2010 in Oahu, Hawaii;
- iii. Dane Tyson, brother, Date of Birth – February 13, 1951 in Pittsburgh, Pennsylvania, currently residing in Chicago, Illinois; and
- iv. Plaintiff SCOTT TYSON, brother, Date of Birth – April 2, 1954 in Pittsburgh, Pennsylvania, currently residing in Pittsburgh, Pennsylvania.

13. Lindsay did not have any other siblings.

14. Lindsay did not have any children.

15. Lindsay was brutally murdered by her husband, Robert Wagner. It is unknown if Mr. Wagner is still alive and, if so, whether he is incarcerated or not. If still alive, Mr. Wagner is estimated to be in his eighties.

IV. ARGUMENTS AND AUTHORITIES

16. On information and belief, Lindsay’s ashes are currently interred at the National Cemetery of the Pacific in Honolulu, Hawaii, also known as the Punchbowl Cemetery. The Punchbowl Cemetery is a United States National Cemetery inside a United States National Park. Therefore, requests for disinterment are covered by both Title 36 (Parks, Forests, and Public Property) and Title 38 (Pensions, Bonuses, and Veterans' Relief) of the Code of Federal Regulations.

17. Section 38.621(a) of Title 38 of the CFR provides that “[i]nterments of eligible decedents in national cemeteries are considered permanent and final [and] [d]isinterment will be permitted only for cogent reasons[.]” 38 C.F.R. § 38.621. Similarly, Section 12.6(a) of Title 36 of the CFR provides that “[i]nterment of an eligible person's remains is considered permanent [and] [d]isinterment and removal of remains are allowed only for the most compelling of reasons[.]” 36 C.F.R. § 12.6.

18. 38 C.F.R. § 38.621(a), provides that the Department of Veteran Affairs will only approve a disinterment from a national cemetery when:

(1) A court order or State instrumentality of competent jurisdiction directs the disinterment; or

(2) All living immediate family members of the decedent, and the individual who initiated the interment (whether or not the individual is a member of the immediate family), give their written consent.

(i) If the individual who initiated the interment does not consent, or is not alive to provide consent, or all living immediate family members are not in agreement, anyone seeking disinterment of an eligible decedent must provide VA with an **order from a court or State instrumentality of competent jurisdiction to direct the disinterment** as provided in paragraph (a)(1) of this section.

(ii) For purposes of this section, “immediate family members” are defined as surviving spouse, whether or not he or she is or was remarried; all adult children of the decedent; the appointed guardian(s) of minor children; and the appointed guardian(s) of the surviving spouse or of the adult child(ren) of the decedent. If the surviving spouse and all of the children of the decedent are deceased, the decedent's parents will be considered “immediate family members.”

38 C.F.R. § 38.621(a).

19. In the matter at hand, the individuals who initiated the interment of Lindsay Tyson at Punchbowl Cemetery, her parents Dr. Robert and Lesley Tyson, are deceased. Under 38 C.F.R. § 38.621(a)(2)(ii), Lindsay Tyson’s former spouse, Robert Wagner, is considered an “immediate family member”, even though he murdered Lindsay. As such, Petitioners cannot merely request the Department of Veteran Affairs to approve the disinterment of Lindsay’s ashes. Per the applicable regulations, they must still proceed with this additional step of petitioning this Court for an order authorizing disinterment of Lindsay’s ashes from Punchbowl Cemetery, which will then allow them to obtain approval from the VA for the disinterment.

A. Reasons for Disinterment and New Location of Lindsay's Ashes

20. Lindsay's ashes were interred in the Punchbowl Cemetery because her parents resided in Honolulu at the time of her death. Dr. Robert and Lesley Tyson passed away several years ago and Plaintiff would like to return Lindsay's ashes to Pittsburgh, Pennsylvania, where all 3 children were born and raised. It will also allow Plaintiff to visit their sister's remains without having to travel to Honolulu. Both Plaintiff Scott Tyson and his brother, Dane Tyson, agree that Lindsay's ashes should be kept by Plaintiff at his home in Pittsburgh.

B. Costs of Disinterment and Transport of Lindsay's Ashes

21. Both 38 C.F.R. § 38.621 and 36 C.F.R. § 12.6 provide that, any approved disinterment shall be accomplished without expense to the Government. Plaintiff understands this requirement and agrees to cover all expenses incurred in the disinterment of Lindsay's ashes.

V. RELIEF REQUESTED

22. Pursuant to 38 C.F.R. § 38.621 and 36 C.F.R. § 12.6, Plaintiff SCOTT TYSON seeks an Order of Disinterment of the ashes of the Decedent LINDSAY HELEN TYSON from the National Memorial Cemetery of the Pacific in Honolulu, Hawaii.

VI. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff SCOTT TYSON respectfully requests that the Court enter an order permitting the disinterment of the remains of Decedent LINDSAY HELEN TYSON from Section CT2-D, Row 400, Site 414 at the National Memorial Cemetery of the Pacific, 2177 Pouwiana Drive, Honolulu, Hawaii 96813.

DATED: Honolulu, Hawaii, October 30, 2024.

/s/ Johnathan C. Bolton
JOHNATHAN C. BOLTON

Attorneys for Plaintiff
SCOTT TYSON