

IN THE CHANCERY COURT FOR WASHINGTON COUNTY, TENNESSEE

AT JONESBOROUGH

CRAIG TIMOTHY MILBURN and wife,
KIMBERLY ANN MILBURN,

PLAINTIFFS/PETITIONERS,

VS.

UNKNOWN HEIRS OF TARLTON A. MIDDLETON,

and

HAROLD FOISTER, JAN BARNETT and TERESA
STEVENS (as the nearest living relatives by
consanguinity of JOHN and ELLEN FOISTER)

and

UNKNOWN HEIRS OF ANY UNKNOWN
DECEDENTS buried in the "Middleton Cemetery"
or the "Foister Family Cemetery"

DEFENDANTS/RESPONDENTS,

CIVIL ACTION NO. 22-CV-0011



Sarah Lawson, Clerk and Master of the Chancery Court,
Washington County Tennessee, hereby certify that this is

a true and exact copy of the original Petition, motion
filed in this cause. affidavit

This the 11 day of January, 20 22

Sarah Lawson, Clerk and Master

By: Sarah Lawson

PETITION FOR TERMINATING USE OF LAND AS BURIAL GROUND AND FOR
DISINTERMENT AND REINTERMENT OF THE REMAINS OF TARLTON A. MIDDLETON,
JOHN FOISTER AND WIFE ELLEN FOISTER, AND ANY UNKNOWN DECEDENTS

Comes now Craig Timothy Milburn and wife, Kimberly Ann Milburn, hereinafter referred to as "Petitioners", as the fee simple owners of real property located in Washington County, Tennessee which contains three (3) marked and abandoned gravesites thereon and respectfully petitions this Honorable Court, pursuant to Tenn. Code Annotated § 46-4-101 et seq., to authorize and approve the disinterment and relocation of the gravesites and remains therein pursuant to the specifications set forth herein. In support of this Petition, the Petitioners would state as follows:

1. On July 22, 2020, the Petitioners purchased the real property at issue which has a physical address of 151 Leonard Drive, Jonesborough, Tennessee 37659, is identified as Map

FILED

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at 3:36 p.m.

Control Map 067, Parcel 191.00 in the office of the Assessor of Property for Washington County, Tennessee, and is described in instrument of record at Roll 1023, image 3251 in the Register's office for Washington County, Tennessee (hereinafter referred to as "the property").

2. The property is improved by a single family dwelling and consists of approximately 9.23 acres, although it adjoins an additional vacant parcel owned by the Petitioners consisting of approximately 4.26 acres. The majority of Petitioners' property is utilized as pasture for grazing cattle.

3. There are a total three (3) marked gravesites on the property, hereinafter referred to as "graves", which are believed to contain the remains of Tarlton A. Middleton (DOD 1879), John Foister (DOD 1912) and wife, Ellen Foister (DOD 1916). The graves all have headstones, and are located approximately in the center of Petitioners' property with no developed access by road. (See pictures attached as "Collective Exhibit A").

4. Although no cemetery or burial ground was ever formally set aside or reserved in any instrument recorded in the Petitioners' chain of title, online genealogical research indicates the location of the gravesites is informally referred to as the "Middleton Cemetery" or the "Foister Family Cemetery". The exact coordinates of the burial site is latitude 36°15.510N, longitude 82°29.964W, and due to the reported date of death of Tarlton Middleton the site is believed to be approximately 142 years old.

5. Tenn. Code Annotated § 46-4-101 applies to: Any burial ground in the State of Tennessee.....which the court to which jurisdiction is given by this chapter finds, for any of the reasons hereinafter stated, is unsuitable for its use as such and as a resting place for the dead whose remains are buried therein, or the further use of which for such purposes the court finds, for any such reasons, is inconsistent with due and proper reverence or respect for the memory of the dead or otherwise unsuitable for such purposes, the reasons being: (1)The burial ground has been abandoned; or (2) The burial grounds is in a neglected or an abandoned condition; or (3) The existence of any conditions or activities about or near the burial ground which the court finds render

render the further use of same for the purposes aforementioned inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for such purposes.

6. Petitioners would allege that the burial ground is in fact abandoned as it is not easily accessible from any public road, has not been maintained or beautified in any way by anyone other than Petitioners since their ownership, and is never visited by any descendants or relatives of those buried there. Furthermore, the gravesites are in neglected condition and would be overtaken by vegetation if not for the actions of the Petitioners, and the headstone of Tarlton Middleton is broken and the inscription thereon unreadable. Finally, due to the Petitioners' current use of the land livestock routinely graze on and around the gravesites. For all of these reasons the current location of the graves/remains is unsuitable and the continued use of the property as a burial ground is inconsistent with the due and proper reverence or respect for the memory of the dead whose remains are buried there.

7. The Petitioners propose to remove and relocate the three (3) marked graves and interred remains, and any discovered unknown remains, in accordance with all the applicable laws and regulations.

8. This Court has jurisdiction to rule on this matter under Tenn. Code Annotated § 41-4-102, due to the graves being located in Washington County, Tennessee.

9. Tenn. Code Annotated § 46-4-103(b) provides "In any such suit, all interested persons who are not complainants shall be made defendants....."

10. Per Tenn. Code Annotated § 46-4-103 "interested persons" are "any and all persons who have any right or easement or other right in, or incident or appurtenant to, a burial ground as such, including the surviving spouse and children, or if no surviving spouse or children, the nearest relative or relatives by consanguinity of any one (1) or more deceased persons whose remains are buried in any burial ground."

11. The Petitioners have not been able to locate any living descendants of Tarlton A. Middleton.

12. The Petitioners have located the three living great grandchildren of John and Ellen Foister who are the decedents' nearest living relatives by consanguinity. The Petitioners have made said individuals Defendants/Respondents in this action and thereby provided notice of their proposed plans to relocate the graves of their ancestors. Said individuals may be served with process as follows:

- a. Harold Foister, 601 Cherokee Mountain Road, Jonesborough, TN 37659.
- b. Jan Barnett, 1901 Roundtree Drive, Johnson City, TN 37604.
- c. Teresa Stevens, P.O. Box 355, Mountain City, TN 37683.

13. Petitioners will seek to notify any and all unknown heirs of Tarlton A. Middleton, and any unknown heirs of unknown decedents who may be interred in the "Middleton Cemetery" or the "Foister Family Cemetery" of their proposed plans to relocate the graves by placing a public notice in the appropriate newspaper pursuant to an order of Publication to be requested in this Court.

14. The Petitioners will also cause notice, along with a copy of this Petition, to be filed with the Tennessee Historical Commission in compliance with Tenn. Code Annotated § 46-4-103(c) at least thirty days prior to a hearing in this matter.

15. The Petitioners, upon obtaining the necessary authorization from this Court, intend to relocate the graves/remains to Fairview UMC Cemetery, in Jonesborough, Tennessee. This process will include the relocation of the graves under the direction of Dillow-Taylor Funeral Home and providing a new headstone for Tarlton A. Middleton due to the headstone at the gravesite being unreadable.

16. The Petitioners have contacted Dillow-Taylor Funeral Home and Fairview UMC Cemetery and procured estimated costs and will make all appropriate arrangements under Tenn. Code Annotated § 46-4-104 prior to any disinterment or relocation taking place.

17. The Petitioners shall follow all public health rules and regulations set forth under Tenn. Code Annotated § 64-4-110 regarding the disinterment of the decedents.

18. The Petitioners shall cover any and all costs related to the disinterment, removal, and relocation of the graves and interred remains.

BASED ON THE FOREGOING, the Petitioners respectfully request that this Honorable Court grant the following relief:

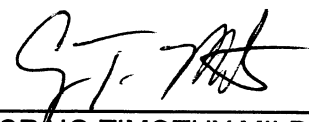
1. That the Court permit Petitioners to obtain service on all unknown heirs of Tarlton A. Middleton, and any unknown heirs of unknown decedents who may be interred in the "Middleton Cemetery" or the "Foister Family Cemetery" by placing a public notice in the appropriate newspaper pursuant to an order of Publication.

2. That the Court find the termination of the use of Petitioners' property as a burial site and the disinterment and relocation of the remains and graves of Tarlton A. Middleton, John Foister and wife, Ellen Foister and any discovered unknown remains on the property is appropriate under Tenn. Code Annotated § 46-4-101 et sq. for the reasons stated herein.

3. That this Court approve the disinterment, removal and relocation of the graves and the remains therein pursuant to Tenn. Code Annotated § 46-4-101 et seq. and authorize the Petitioners to take all necessary actions to complete the same.

4. For such other relief as the Court deems the Petitioners to be justly entitled.

Respectfully Submitted,


CRAIG TIMOTHY MILBURN


KIMBERLY ANN MILBURN

Joshua A. Hardin
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STATE OF TENNESSEE
COUNTY OF CARTER

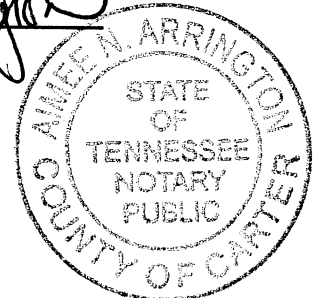
Personally appeared before me, the undersigned authority, a Notary Public, in and for said State and County, the within named bargainer, CRAIG TIMOTHY MILBURN, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who acknowledged that his averments as set forth in the foregoing Petition are true and correct to the best of his knowledge, information and belief.

Witness my hand and official seal on this the 22nd day of December, 2021.

Ameen N. Arrington
NOTARY PUBLIC

My Commission Expires:

5/28/24



STATE OF TENNESSEE
COUNTY OF CARTER

Personally appeared before me, the undersigned authority, a Notary Public, in and for said State and County, the within named bargainer, KIMBERLY ANN MILBURN, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who acknowledged that his averments as set forth in the foregoing Petition are true and correct to the best of her knowledge, information and belief.

Witness my hand and official seal on this the 22nd day of December, 2021.

Ameen N. Arrington
NOTARY PUBLIC

My Commission Expires:

5/28/24

