

District Court of El Paso/Teller County, Colorado Court Address: 105 E. Vermijo, Suite 120 Colorado Springs, CO 80903 (719) 448-7552 Mailing Address: PO Box 2980 Colorado Spring, CO 80901	FILED IN THE DISTRICT AND COUNTY COURTS OF EL PASO COUNTY, COLORADO MAR - 1 2010 M.V. PERRY CLERK OF COURT COURT USE ONLY Case Number: 2010PR149 Division W Courtroom
IN THE MATTER OF THE ESTATE OF: <p style="text-align: center;">Mary D. Robbins, a/k/a Mary Robbins, deceased.</p>	
ORDER	

THIS MATTER came before the Court for hearing on February 26, 2010. The parameters of the hearing were limited by the Court's Order of February 25, 2010. Petitioner/Movant Alcor Life Extension Foundation Inc.'s ("Alcor") was represented by Holme, Roberts & Owen, LLP, through Eric Bentley, Esquire and Norvell Brasch, Esquire. Objector and Cross-movant Darlene Robbins, Interested Person ("Interested Person"), was represented by Robert Scranton, Esquire and Gerald Blixt, Esquire. The Court having reviewed the file in this matter, having considered the evidence and being fully advised in the premises FINDS and ORDERS as follows:

1. Procedural Posture (summary): In its Order of February 25, 2010, the Court Granted, in part, Alcor's Motion for Summary Judgment under C.R.S. 15-19-101 *et seq.*, the Disposition of Last Remains Act ("Last Remains Act"). The Court found, as a matter of law, no revocation of the Declaration as to disposition of last remains by Mary D. Robbins ("Mary") under C.R.S. 15-19-107 (3) with the exception that the Court found a genuine issue of material fact existed whether Mary revoked her Declaration by "writing" or "canceling". The Court also reserved, until hearing, the question of the applicability of the Colorado Uniform Anatomical Gift Act ("Anatomical Gift Act"), including, specifically, whether the revocation provisions under C.R.S. 12-34-101 applied. In its February 25, 2010 Order, the Court considered the Alcor Last Will and Testament for Human Remains and Authorization of Anatomical Donation ("Testament for Human Remains") and two other documents, incorporated by reference, the Alcor Cryonic Suspension Agreement ("Cryonic Agreement") and the Alcor Consent for Cryonic Suspensions ("Consent").
2. The Court treated Interested Persons' Response with affidavits in support as a Cross-Motion for Summary Judgment on the issue of revocation of a declaration by Mary under the Anatomical Gift Act. As such, at the inception of the hearing on February 26, 2010, Court heard oral argument as to the applicability of the Anatomical Gift Act, most acutely the revocation provision therein, to the case at bar. The Court declined to grant Interested Person summary judgment on that issue. Further, the Court found, *inter alia*, that under the rules of statutory construction, the Remains Act more specific to this case and hence controlling as it addressed the disposition of last remains by a declaration. Moreover, the Court declined to apply the revocation provisions under the Anatomical Gift Act, C.R.S. 12-34-101 finding the Anatomical Gift Act's minimal threshold requirements for anatomical gifting (including drivers license and identification card), its' general societal donative intent and its broader revocation provisions inapplicable under the facts. Finally, the Court found that the Testament for Human Remains, Cryonic Agreement and Consent were specific and

personal to Mary in purpose: to preserve her remains by cryogenic treatment known as cryonic suspension.

3. Given the time sensitive nature of proceedings as to disposition of Mary's last remains, counsel and the Court proceeded on an expedited procedural track. During the course of the hearing on February 26, 2010 documentation not previously known to Alcor (nor the Court), in the possession of the Interested Person, was revealed and admitted into evidence as Alcor Exhibits "6" and "7". Alcor Exhibit "6" is a document titled "Instructions for the Disposition of My Body and My Funeral or Memorial Service, signed by Mary on August 3, 2006. Alcor Exhibit "7" is a document titled "Declaration As to Medical or Surgical Treatment of Mary Robbins" signed by Mary on August 3, 2006.
4. At hearing, Alcor shifted its contention as to the legal denotation of 'declaration' under the Last Remains Act arguing that Mary's "declaration" as to the disposition of her last remains under the Last Remains Act was the Medical Durable Power of Attorney of Mary D. Robbins executed by Mary on August 3, 2006 (Alcor Exhibit "5") and the Instructions for Disposition of My Body and My Funeral or Memorial Service executed by Mary on August 3, 2006 (Alcor Exhibit "6"). Alcor contended that the declaration was not revoked and that Mary's interest in cryonic suspension of her last remains endured. Contrarily, Interested Person admitted an array of documents asserted executed by Mary and/or contended to be reflective of Mary's intent to revoke her request for preservation of her last remains by cryonic suspension. Interested Person's evidence included a change of beneficiary form for the AXA Equitable Annuity signed by Mary on February 7, 2010 which changed the beneficiary of the annuity from Alcor to Interested Person (and a daughter of Mary) Darlene Robbins as well as to Mary's two other daughters Jeanette Beaubian and Lisa Clayton (Interested Person Exhibit "A").
5. *Mary Robbins*: Mary was a resident of Colorado Springs, Colorado. Mary was a nurse by profession and was described by several witnesses as a strong-willed individual who loved learning, especially science. Mary had a long-standing intention to dispose of her last remains by the cryogenic treatment known as cryonic suspension. Mary Robbins executed several documents with Alcor in 2006 to effectuate that intent. After becoming a "member" of Alcor, Mary wore an "Alcor necklace" with the Alcor organization name and phone number imprinted on it. Mary wore the necklace for approximately three years. Helen Nyquist, Mary's sister, also lived in Colorado Springs and described her relationship with Mary as "close". Nyquist testified that Mary had told her a few years ago that "she [Mary] was going to have her head taken for Cryonics". Mary Mead, a friend of Mary's for approximately seven years, testified that Mary "wanted cryopreservation" and relayed to Meade that she had "put an annuity in force" in that regard. Teslow, Mary's estate planning attorney, described Mary as "very clear" and "serious" in Mary's intention to have her body preserved by cryonic suspension. Daughter Darlene Robbins lives in Pueblo, Colorado. . Darlene Robbins described her relationship with Mary as "very close". Darlene Robbins testified that Mary "talked about cryopreservation for years" and over those years repeatedly asked Darlene "to promise to call Alcor when she [Mary] was dying." Tragically, on December 9, 2009, Mary was diagnosed with cervical cancer. Mary had several radiation treatments followed by treatment in clinical trials at a university. Mary entered the clinical trials on February 1, 2010 but could not complete the trials and returned home on February 5, 2010. On February 7, 2010 at her home Mary signed a change of beneficiary form changing the beneficiary of an AXA Annuity from Alcor to her three daughters. Due to substantial pain, Mary was admitted to hospice on February 7, 2010 for palliative care. Mary Robbins died on February 9, 2010.

6. *Legal Analysis*: The issue before the Court is whether, under the Last Remains Act, Mary revoked her request for cryonic suspension of her last remains “in writing” or by “canceling” a declaration with the intent to revoke the declaration as contemplated by C.R.S. 15-19-107 (3). “Declaration” is defined as “a written instrument directing the lawful disposition of the declarant’s last remains and the ceremonies planned after a declarant’s death, in accordance with this article.” C.R.S. 15-19-103 (3).
7. On July 20, 2006 Joan Teslow, Attorney, testified that Mary came to her office and signed an Alcor Consent form, Alcor Emergency Stand-by Provisions and the Alcor Last Will and Testament for Human Remains and Authorization of Anatomical Donation. Teslow did not recall if she observed Mary sign, but Teslow was in the room when the witnesses came to witness Mary’s signature. Teslow notarized Mary’s Last Will and Testament for Human Remains and Authorization of Anatomical Donation. Teslow reviewed the Alcor cryonic suspension documents but did not draft the Alcor cryonic suspension documents.
8. On August 3, 2006 Mary again came to Teslow’s office to execute various estate planning documents. Teslow testified that “Mary wanted her estate planning documents to conform to the Alcor documents”. Mary then executed various estate planning documents drafted by Teslow. The documents executed by Mary on August 3, 2006 were Mary’s Last Will and Testament, Medical Power of Attorney, General Durable (financial) Power of Attorney, Instructions for Disposition of My Body and My Funeral, Declaration as to Medical or Surgical Treatment and a Memorandum as to Personal Property. In fostering conformance of Mary’s estate documents with Mary’s wishes for cryonic suspension of her remains by Alcor, Teslow was particularly concerned about including the Alcor cryonic suspension documents in Mary’s Medical Power of Attorney document given the primacy of the document if Mary became incapacitated. See: Medical Power of Attorney, Article 2, 2.6. (Exhibit “5”).
9. *Declaration*: The Court finds that Mary executed a document titled “Instructions for the Disposition of My Body and My Funeral or Memorial Service” on August 3, 2006 (hereinafter referred to as “Instructions for Disposition”). The Instructions for Disposition document was signed by Mary but not notarized. However, the statute makes clear that the statute’s sample form is “not exclusive, and a person may use another form of declaration if the wording of the form complies substantially with subsection (1) of this section, the form is properly completed, and the form is in writing, dated, signed by the declarant.” C.R.S. 15-19-107 (2). A declaration may be witnessed or notarized by at least one person who attests that he or she was present when the document was signed by the declarant. *Id.* The Instructions for the Disposition document executed by Mary on August 3, 2006 substantially conforms to the form titled “Declaration of Disposition of Last Remains” under C.R.S. 15-19-107 (1). Further, the Instructions for Disposition document is signed by Mary and dated. Therefore, the Court finds that the Instructions for Disposition document executed by Mary constitutes a “declaration” as defined under C.R.S. 15-19-103 (3).
10. Under paragraph one (1) of the Instruction for Disposition document, under the section titled “Disposition of My Body” Mary marked an “X” by the word “Other”. Next to the word “Other” is typed written language which states in pertinent part: “I direct that my body be disposed of as follows: I donate my human remains to the ALCOR LIFE EXTENSION FOUNDATION, INC. (ALCOR) ...in accordance with my Last Will and Testament for Human Remains and Authorization of Anatomical Donation, the Consent for Cryonic Suspension and the Cryonic Suspension Agreement executed by me on July 20, 2006 and as may be amended at a later date.”

11. *Revocation*: In the case at bar, various pre-death, testamentary as well as disposition of last remains documents executed by Mary were admitted into evidence. These myriad documents have distinct statutory requirements for revocation with the respective revocation requirements varying in stringency. Mary's directive to Teslow was to conform the various estate planning documents to be consistent with the Alcor documents. The Court declines to apply revocation provisions under C.R.S. 15-18-109 ("Medical Treatment Decisions Act"), nor under the revocation provisions of C.R.S. 15-11-507 (1) ("Wills and Will Contracts and Custody and Deposit of Wills") nor under the revocation provisions of C.R.S. 12-34-101 ("Revised Uniform Anatomical Gift Act") finding those revocation provisions inapplicable under the facts notwithstanding asserted cross-references among Mary's documents. To hold otherwise would permit elections from a menu of statutory revocation options (such as predicated on incorporation of documents by reference as contended here by the Interested Person) resulting in default to the least onerous statutory revocation provision thus abrogating various prophylactic evidentiary and statutory provisions specific to each document. Based upon the evidence *in toto* the Court finds that all of Mary's estate planning and Alcor cryonic suspension documents are consistent across documents in reflecting Mary's overarching and enduring intent to have her last remains preserved by Alcor through cryonic suspension.
12. *Cancellation*: A declaration may be revoked by "canceling" the declaration with the intent to revoke the declaration. For revocation by "canceling" the statute requires both an act of revocation with an intent to revoke the declaration. The Court finds no "canceling" of Mary's declaration. In its February 25, 2010 Order Granting partial Summary Judgment the Court was concerned whether the cancellation provisions in the Alcor documents were overly prescriptive contravening revocation provisions under C.R.S. 15-19-107 (2). However, at hearing the Instructions for Disposition document was, for the first time, disclosed and admitted into evidence. The Court finds that prior to her death Mary was in possession of her estate planning documents including the Instructions for Disposition. Mary was also in possession of copies of her Alcor cryonic suspension documents prior to her death. Aware of her December 9, 2009 diagnosis of cervical cancer and despite opportunity Mary did not write "cancel" or equivalent language on the Instructions for Disposition nor on any of the Alcor copies. Mary also did not obliterate, tear, burn or destroy the Instructions for Disposition nor any of the copies of the Alcor cryonic suspension documents. Importantly, on January 4, 2010, subsequent to the diagnosis of cancer, Mary contacted Aaron Drake, the Transport Coordinator for Alcor. Drake testified that Mary telephoned Alcor on January 4, 2010. On that date Mary advised Drake that she had "Stage 4 Cervical Cancer" was "entering clinical trials" and desired to "move to Phoenix, Arizona" to be "close to Alcor." In short, the Court finds no revocation by "canceling".
13. *Writing*: Under C.R.S. 15-19-107 (3), a declaration may be revoked by the declarant in writing. The parties stipulated at hearing that the sole source of funding for the Alcor cryonic suspension was the AXA Annuity. Though modification of the beneficiary of the AXA Annuity could result in cancellation by Alcor, the Court declines to find the change of beneficiary form constitutes a revocation by Mary. The February 7, 2010 AXA Annuity change of beneficiary form makes no reference to the Instructions for Disposition nor any of the Alcor documents. Further, to permit revocation by virtue of change in beneficiary form for the AXA Annuity contract would render the Instructions for Disposition superfluous in contravention C.R.S. 15-19-103 and 15-19-104. Further, the Court finds the circumstances surrounding the February 7, 2010 execution of the modification of beneficiary form important here.

14. In analyzing the revocation issue, the Court considered the circumstances surround the execution of the February 7, 2010 AXA Annuity change in beneficiary form asserted by the Interested Party as evidence of Mary's revocation of her declaration as to last remains. The Court notes that as a result of the change of beneficiary form, Darlene Robbins became one of the beneficiaries of the AXA annuity. As such consistent with C.R.S. 13-90-102 ("Dead Man's Statute"), the Court excluded testimony by Darlene Robbins as it related to alleged oral statements of revocation made by Mary.
15. The Court finds that Darlene Robbins was aware of Mary's Alcor necklace engraved with Alcor contact information for at least three years prior to Mary's death.
16. Darlene Robbins testified at hearing that she saw copies of Mary's Alcor documents and the powers of attorney on Mary's sewing desk on February 4, 2010. Darlene Robbins testified that the Alcor documents were "next to" Mary's estate planning documents.
17. Darlene Robbins was not only one of Mary's daughters but she was also the agent under Mary's Medical Power of Attorney. The Court finds Darlene Robbins and Mary Robbins were in a confidential relationship. Mary's Medical Power of Attorney, under Article 2, section 2.6 states: "If I become unconscious or incompetent in a state or a hospital or other care facility where my Cryonic Suspension Agreement, Consent for Cryonic Suspension and my Last Will and Testament for Human Remains and Authorization of Anatomical Donation will not be honored, I direct my agent to transport me or arrange for my transportation to a jurisdiction or care facility where these three documents will be enforceable."
18. The Court finds the Alcor witnesses credible that the only contact to Alcor by Darlene Robbins was an emergency text message sent on February 5, 2010. The Court finds Alcor credible that they attempted to contact Darlene Robbins to gain more information about Mary's health status without success. Darlene Robbins failed to reveal to Jennifer Chapman, President and Executive Director of Alcor, in a conference call on February 8, 2010 of the change in beneficiary for the AXA annuity done the day before. On February 10, 2010 after a telephone call initiated by Alcor's Dr. Wowk Darlene Robbins advised Alcor of the change in beneficiary on the AXA annuity. In that conversation Darlene failed to identify herself to Alcor as the agent under the Medical Power of Attorney and that "someone else with legal authority" had changed the beneficiary. On disputed evidence, the Court does not find Darlene Robbins credible as to the frequency and content of her contacts with Alcor.
19. The Court also finds that Darlene Robbins provided selective explanations of the various Alcor "options" for preparation of Mary's remains for cryonic suspension. The Court finds hospice staff, Meade, Nyquist and, most acutely, Mary's own knowledge of Alcor's options was derivative of Darlene's: all predicated upon the erroneous belief that Alcor protocols for cryonic suspension could not be made manifest if Mary was in hospice. At hearing Darlene Robbins characterized some of her representations during this period as "not intentional" deceit. In short, the Court finds Darlene Robbins exercised dominion and control of Mary's access to information.
20. The Court also finds that Darlene Robbins alone contacted the annuity company and requested the change of beneficiary form.
21. Darlene Robbins testified that on February 7, 2010 Darlene "held back some pain meds" in order to "explain" to Mary that Alcor's protocols could not be done at the hospice facility. However


Mead, a witness to the change of beneficiary document executed by Mary on February 7, 2010, testified that Mary “was medicated” and “was just in pain.” Mead testified that Mary no longer wished to go to Alcor and requested “that piece of paper”. The Court finds the only “piece of paper” provided to Mary on February 7, 2010 was the change of beneficiary form. Both Mead and Nyquist testified that Mary was in so much pain that Nyquist had to “steady” Mary’s hand to sign the change of beneficiary form. No witness testified that Mary actually read the change of beneficiary document. The Court finds the change of beneficiary document for the AXA Annuity was executed just two days before Mary’s death when Mary was in substantial pain and on medication. The Court finds no revocation by Mary of her declaration as to disposition of last remains by “writing” or “canceling”.

22. The Court finds that the evidence clearly shows Mary’s decision in 2006 for Alcor to preserve her last remains by cryonic suspension was an informed and resolute one. Mary published her cryonic suspension intention to friends and family. Mary engaged in acts to effectuate that intent including execution of Alcor documents and execution of estate planning documents in conformance with that intent. Though subscription to Mary’s manner of disposition of her last remains may not have been embraced by all, the governing task for the Court is to discover and make manifest Mary’s intent which was for cryonic suspension of her last remains and that wish shall not be put asunder.
23. Finding no revocation by Mary Robbins, Alcor shall have custody of Mary’s last remains at issue in this case in accordance with Mary’s declaration as to her disposition of last remains.

The order of judgment was issued with consent, and any appeal must be taken pursuant to Rule 7(b), Colorado Rules for Magistrates.

DONE THIS 25th DAY OF FEBRUARY, 2010:

BY THE COURT:


Magistrate Barbara L. Hughes

Certificate of Service

I certify that on March 1, 2010, a copy of ORDER was served on each of the following at the indicated address by Lexis Nexis File & Serve.

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