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TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2018-CA-000999-MR

SABER MANAGEMENT-KENTUCKY, LLC

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 17-CI-00417

COMMONWEALTH OF KENTUCKY, EX REL.  
ANDY BESHEAR, ATTORNEY GENERAL

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; MAZE AND NICKELL, JUDGES.

CLAYTON, CHIEF JUDGE: Saber Management-Kentucky, LLC (“Saber”) appeals from the Franklin Circuit Court’s order granting summary judgment in favor of the Commonwealth of Kentucky on the parties’ Joint Petition for Declaration of Rights and Agreed Case (the “Petition”) concerning the sale of preneed, *i.e.*, prior to death, burial vaults in Kentucky.

Upon close review of the record and applicable statutory language, we affirm.

### BACKGROUND

Saber owns sixteen cemeteries throughout Kentucky. Saber's rules and regulations require the use of burial vaults whenever a grave space is used in one of their cemeteries. Concrete or steel burial vaults enclose a casket and support the soil above and around the casket to prevent sinking or collapse and make it less difficult to maintain the appearance of the cemetery. The weight of the earth and other cemetery equipment used to dig graves would otherwise cause occupied gravesites to collapse if a burial vault was not in place. Saber's preneed sales of burial vaults are made pursuant to a written contract, and the purchaser of the vault either pays the entire purchase price immediately or in installments over a period of time.

On April 17, 2017, the Attorney General, as the duly elected officer responsible for enforcing and administering the consumer protection laws set out in Kentucky Revised Statutes (KRS) Chapter 367, and Saber submitted the Petition to the Franklin Circuit Court. The primary issue involved whether the preneed sale of burial vaults constituted "preneed burial contracts" as defined by KRS 367.932(3), which would require the cemetery to put all of the proceeds of the sale into a trust until the individual has died and the services and merchandise have been provided

under KRS 367.934, or whether the sales constituted a “preneed cemetery merchandise contract,” which would require only 40% of the proceeds of the sale to be put into a trust or covered by a bond under KRS 367.954.

The parties filed cross-motions for summary judgment, and the trial court ruled in favor of the Commonwealth, holding that “the statutory construction only reasonably lends itself to the determination that burial vaults are Preneed Burial Contract goods and could not be Cemetery Merchandise.” In reaching its conclusion, the court determined that, with “KRS 367.932(3), the General Assembly defined a Preneed Burial Contract as a contract governing ‘personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by death of the person whose body is to be disposed of[.]’” The trial court explained that “[b]urial vaults are containers into which a casket or urn with human remains is placed. The only purpose for the vaults is to seal the vessel which holds the human remains.” After considering the definition of preneed burial contracts and the nature of burial vaults, the trial court held that “burial vaults can only be found to directly relate to the final disposition of a dead human body, which Preneed Burial Contracts control.”

In response to the circuit court’s ruling, Saber filed a motion to alter, amend, or vacate pursuant to Kentucky Rules of Civil Procedure (CR) 59.05 and a

motion to amend pursuant to CR 52.02. After briefing and oral argument, the trial court reaffirmed its prior ruling in favor of the Commonwealth. Saber then filed a motion asking the circuit court to rule on Saber's CR 52.02 motion to amend, which the court denied on June 25, 2018, for the reasons set forth in its other two opinions. This appeal followed.

### ANALYSIS

As a preliminary matter, this case involves a question of statutory construction, which presents a "question of law[.]" *Harrison v. Park Hills Bd. of Adjustment*, 330 S.W.3d 89, 94 (Ky. App. 2011) (citations omitted). "The standard of review for questions of law is de novo." *Hamilton-Smith v. Commonwealth*, 285 S.W.3d 307, 308 (Ky. App. 2009) (citation omitted).

Additionally, when ascertaining the meaning of a statute, the Kentucky Supreme Court has held that "[t]he plain meaning of the statutory language is presumed to be what the legislature intended, and if the meaning is plain, then the court cannot base its interpretation on any other method or source." *Revenue Cabinet v. O'Daniel*, 153 S.W.3d 815, 819 (Ky. 2005). "Only 'when [it] would produce an injustice or ridiculous result' should we ignore the plain meaning of a statute." *Id.* (citation omitted). Further, a court should "presume that the General Assembly intended for the statute to be construed as a whole, for all of its parts to have meaning, and for it to harmonize with related statutes."

*Shawnee Telecom Resources, Inc. v. Brown*, 354 S.W.3d 542, 551 (Ky. 2011)

(citations omitted).

Turning to the statutory language at issue, KRS 367.932(3) defines a “preneed burial contract” as:

*a contract, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by the death of the person whose body is to be disposed of; but does not mean the furnishing of a cemetery lot or mausoleum.*

(Emphasis added.) Alternatively, KRS 367.932(18) defines a “preneed cemetery merchandise contract” as:

*any agreement or contract, or any series or combination of agreements or contracts, which has for a purpose the furnishing or delivery of cemetery merchandise, which within six (6) months of the date of the contract is not attached to the realty and permanently installed or which is not stored in a bonded warehouse with the receipt of ownership issued by the manufacturer in the name of the purchaser and transmitted to the purchaser.*

(Emphasis added.) In turn, “cemetery merchandise” is defined as “urns, memorials, monuments, markers, vases, foundations, memorial bases, and other *similar* personal property commonly sold by or used in cemeteries.” KRS 367.932(17) (emphasis added).

Saber argues on appeal that burial vaults should be included in the definition of “cemetery merchandise” under the language “other similar personal property commonly sold by or used in cemeteries,” therefore bringing burial vaults under the auspices of a “preneed cemetery merchandise contract.” While Kentucky’s courts have not addressed whether burial vaults are considered “cemetery merchandise,” one Attorney General opinion in particular has interpreted the items listed in the definition of “cemetery merchandise” as adornment items. We note that, although this Court is not required to follow opinions of the Attorney General, we can “afford them great weight.” *Louisville Metro Dep’t of Corrections v. King*, 258 S.W.3d 419, 421-22 (Ky. App. 2007) (citations omitted).

In Ky. OAG 76-651, an attorney with the Kentucky Department of Banking and Securities questioned whether a fiberglass enclosure known as a “bed crypt” should be included under the definition of “cemetery merchandise.” Ky. OAG 76-651 (1976), 1976 WL 24980, at \*1. The Attorney General clarified that a bed crypt was an item used to encase human remains for burial and noted that the items listed in the definition of “cemetery merchandise” are for “adornment or decoration of the cemetery lot.” *Id.* The opinion further explained that “[t]he obvious function of the bed crypt is to contain the remains of the deceased and it would be placed under the ground . . . and would not be viewed by persons visiting

the gravesite.” *Id.* Ky. OAG 76-651 ultimately determined that bed crypts would not qualify as cemetery merchandise and were instead included in the definition of a “preneed burial contract.” *Id.*, 1976 WL 24980, at \*2.

We agree with both the Attorney General and the trial court that the products listed in KRS 367.932(17) as “cemetery merchandise” are items that embellish or decorate a gravesite, unlike a burial vault which cannot be considered a “similar” item of adornment. Alternatively, a burial vault’s only use is not for decoration but “in connection with the final disposition of a dead human body” and falls within the plain meaning of KRS 367.932(3)’s definition of a “preneed burial contract.” Further, the reasoning utilized in Ky. OAG 76-651 undoubtedly bolsters the trial court’s finding that the preneed sale of a burial vault is the sale of a preneed burial contract item and not cemetery merchandise. Similar to bed crypts, burial vaults are enclosures holding the remains of the deceased, are located underground, and are not visible to anyone visiting the gravesite.

Moreover, to read the statutory language otherwise and include burial vaults in the definition of “cemetery merchandise” would create a conflict between the definition of a “preneed burial contract” and the definition of a “preneed cemetery merchandise contract,” as well as the attendant statutory responsibilities created pursuant to both definitions. If the preneed sale of burial vaults could potentially fall under both a contract for the delivery of personal property of any

nature in connection with the final disposition of a dead human body and a contract for cemetery merchandise, such an interpretation would exacerbate the confusion over the applicable trusting requirements for burial vaults and we could not be construing the statute “as a whole,” nor allowing “for all of its parts to have meaning, and for it to harmonize with related statutes.” *Brown*, 354 S.W.3d at 551 (citations omitted).

Additionally, Saber makes various other arguments concerning the statutes at issue. Those arguments include consideration of the legislative history of the statutes. However, a court should only consider legislative history “if the statute is ambiguous or otherwise frustrates a plain reading[.]” *Id.* Here, because the statutes at issue are unambiguous, it is unnecessary to consider the legislative history, and we decline to do so.

### CONCLUSION

For the foregoing reasons, we affirm the order of the Franklin Circuit Court granting summary judgment in favor of the Commonwealth.

ALL CONCUR.



BRIEF FOR APPELLANT:

J. Bissell Roberts  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear  
Attorney General of Kentucky

John Ghaelian  
Benjamin Long  
Assistant Attorneys General  
Frankfort, Kentucky