

## NEWS

### Ground Control: In a Texas First, Nonprofits Vie to Become Guardians of Historic Houston Cemetery

By Brenda Sapino Jeffreys  
Texas Lawyer  
December 01, 2008

Margott Williams visited the historic Olivewood Cemetery in Houston for the first time in 1999, because she wanted to have her grandmother, who had just passed away, buried next to her grandfather.

But Williams was shocked at the condition of the neglected and overgrown cemetery, which is the oldest African-American cemetery in Houston, and she had her grandmother, Libbie Nelson, buried elsewhere.

"You couldn't even tell it was a cemetery," Williams recalls of that first visit to the cemetery, which is located near downtown Houston in the Fourth Ward. So in 2005, Williams, who has spent many hours at the cemetery over the past nine years helping clean it up, formed the nonprofit Descendants of Olivewood. Like Williams, many of the group's members are descendants of people buried in the cemetery, which the Texas Historical Commission designated as a state historical cemetery two years ago.

But in 2007, Project R.E.S.P.E.C.T. Inc., a Hockley-based group that is restoring other historic cemeteries, filed a petition seeking a court order under Chapter 715 of the Texas Health and Safety Code to gain control of the long-neglected cemetery, but Descendants of Olivewood intervened.

On Nov. 24, Descendants of Olivewood won a court ruling in *In Re: Olivewood Cemetery* that gives the group authority and responsibility to restore and maintain the cemetery. Gregory Crinion, a lawyer for Descendants of Olivewood, says the court order gives his client what can be described as a guardianship of the cemetery.

While Chapter 715 has been on the books for a dozen years, the suit for control of Olivewood



From left to right: Isaac Villarreal, Gregory Crinion, Margott Williams and Charles Cook  
Image: John Everett



11th District Judge Mark Davidson, Houston  
Image: John Everett

Cemetery in 11th District Judge Mark Davidson's Houston courtroom marked the first-ever contested suit for control of a historic cemetery in Texas.

Crinion and Martina Cartwright, a lawyer for Project R.E.S.P.E.C.T., say each group had their own strong ideas about the best way to clean up and manage the cemetery.

"Both groups have the best interest of the cemetery at heart. For Descendants of Olivewood as well as Project R.E.S.P.E.C.T. it will be a labor of love, but they probably have different ways that they will go about preserving Olivewood," says Cartwright, an instructor at the Civil Law Clinic at Thurgood Marshall School of Law at Texas Southern University in Houston.

The clinic represented Project R.E.S.P.E.C.T. pro bono. Cartwright says the group was referred to the clinic by TSU's Earl Carl Institute for Legal & Social Policy Inc., which she characterizes as a think tank.

Descendents of Olivewood was represented pro bono by Kimberley Mickelson, a solo practitioner in Houston who helped the group get its nonprofit designation, and Crinion and his firm's associate Isaac Villarreal, who together handled the trial. Williams says a board member at the Texas Historical Commission referred her to Mickelson, and Crinion says he got involved at Mickelson's request because she needed trial lawyers. Crinion says he lives in Friendswood, and met Mickelson when she was the city attorney there.

Cartwright says Project R.E.S.P.E.C.T. will file a motion seeking findings of fact and conclusions of law, and may appeal Davidson's ruling. She says the group's board meets in December.

"We are keeping our options open," Cartwright says, adding that the findings of fact and conclusions of law may give her client insight on why Davidson didn't select it to have control and responsibility for the cemetery.

"My clients are very disappointed, but at the end of the day, I think there is resolution in the respect that someone has responsibility now, and something has to be done," Cartwright says.

In a letter to the parties, Davidson wrote that he chose the Descendents of Olivewood's plan because Project R.E.S.P.E.C.T.'s plan was "too ambitious, and is more dependent on performance by a fewer number of people than that of the intervenor."

Cartwright says her client proposed a "very aggressive management plan with the idea of making the cemetery self-sustaining." According to the plan submitted to Davidson, Project R.E.S.P.E.C.T. hoped to raise \$8 million over three years to restore the cemetery and build a fund to sustain it over time because it's such a large property.

In his order, Davidson ruled that the "highest priority" is completing a boundary survey of the approximately 8-acre cemetery, which is located on White Oak Bayou near I-10. He ruled that if any adjacent property owner has encroached on the boundaries of the cemetery, the Descendents of Olivewood should "address and remedy" any encroachment.

Davidson also ordered Descendents of Olivewood to install a wrought-iron fence around the perimeter of the cemetery once the boundary is determined, and ordered that no lots within the cemetery should be sold without a court order.

Under Chapter 715 of the Texas Health and Safety Code, the court will retain continuing jurisdiction to ensure the group complies with the court order authorizing it to "restore, operate and maintain" the cemetery.

#### The Plans

Project R.E.S.P.E.C.T. leader Woodrow W. Jones, who has volunteered time cleaning up the cemetery, filed the petition seeking guardianship of Olivewood Cemetery. On its Web site, Project R.E.S.P.E.C.T. says it is dedicated to "research, document, recover, restore, and protect" the country's African-American, Hispanic and Native American abandoned cemeteries. The group says more than 3,000 are located in Texas.

According to the group's first amended petition, Olivewood is thought to be the oldest platted and recorded African-American cemetery in Houston, and it was "consecrated" on May 5, 1871.

Jones says his group filed the suit because it wanted to make sure the cleanup and restoration of Olivewood Cemetery was done properly and in an organized fashion. He is also concerned about the history of the cemetery. "What really needs to be done there is a monumental task in terms of documenting the history. . . . It has more historical interest in the black community than anyone will ever know," Jones says.

Cartwright also notes that Project R.E.S.P.E.C.T. was concerned that some of the graves located near White Oak Bayou could be disrupted by flooding, and "from a public health standpoint, that makes me shudder."

Williams says Descendants of Olivewood also is concerned about erosion, and will do what it takes to remedy the damage and prevent future problems.

Williams and Charles Cook, secretary of the Descendants of Olivewood, say their group intervened in the litigation, because it had been working hard to clean up the cemetery for years and wanted to continue its work. Williams says she found out about Project R.E.S.P.E.C.T.'s suit when a reporter called her for comment.

Crinion, who represents Descendants of Olivewood, says Davidson held an informal mediated settlement conference in the fall of 2007 in an effort to get the groups to work together, but it was unsuccessful.

"Both groups had strong wishes and desires," Crinion notes.

Williams says, "We'd like to start restoration, working on the headstones, getting them restored, and providing security for" the cemetery.

Mickelson, the attorney who helped organize the Descendants of Olivewood as a nonprofit, says she's pleased with Davidson's ruling. "They have such interests of the cemetery at heart. They've worked really hard at it, and they are ready to get at it."

Cook, who spent years researching the cemetery and the people buried there, says the group will seek donations and apply for grant money to fund the project. Davidson held that half of any gross revenue the group raises should go into a trust account that will be spent on maintenance of the property. Williams says the group's work at the cemetery over the past few years has been all volunteer labor.

According to the plan attached to Davidson's order as an exhibit, the restoration project will cost at least \$40,000, but the cost of some of the activities is not specified.

Joe Thrash, an assistant attorney general who represented the Texas Historical Commission in *In Re: Olivewood Cemetery*, says he has worked on about six similar suits since the Texas

Legislature passed Chapter 715 in 1995, but never in an instance when two groups were competing to restore and maintain a cemetery.

"We are happy to see somebody in charge now," Thrash says.

Thrash says the commission did not take a position on which group had the better plan for the cemetery. He says the commission's role under the law is simply to make sure certain statutory standards are met by the plans proposed by groups that seek a court order to manage a historic cemetery.

Having the suit assigned to Davidson's court was serendipitous, since Davidson is a history buff. "This case is central casting Davidson," the judge says.

Davidson lost his bid for re-election on Nov. 4, and will leave the 11th District bench on Jan. 1, but he says he will continue to follow the restoration progress at the cemetery. After he leaves the bench, Davidson says he's considering several options to return to private practice if he doesn't continue in his role as the judge overseeing the state's multidistrict litigation asbestos docket.

Because it involves a historic site, Davidson says *In Re: Olivewood Cemetery* definitely makes the list of his Top 10 suits of his 20 years on the bench.