[Cite as *Turner & Son Funeral Home v. Hillsboro*, 2015-Ohio-1138.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

TURNER & SON FUNERAL HOME,	:	
Plaintiff-Appellee,	:	Case No. 14CA16
v.	:	DECISION AND
CITY OF HILLSBORO,	:	JUDGMENT ENTRY
Defendant-Appellant.	:	RELEASED 03/23/2015

APPEARANCES:

Fred J. Beery, Hillsboro, Ohio, for Appellant.

T. Scott Gilligan, Gilligan Law Offices, Cincinnati, Ohio, for Appellee.

Hoover, P.J.

{¶ 1} The City of Hillsboro ("Hillsboro" or "city") appeals the Hillsboro Municipal Court's judgment entry granting Turner and Son Funeral Home ("Turner") summary judgment on its claims against the city and denying summary judgment to Hillsboro in defense of such claims. Turner provided "direct cremation services" to four deceased indigent residents of Hillsboro and contends that it is entitled to judgment against Hillsboro for the unpaid services under R.C. 9.15. Hillsboro, on the other hand, contends that Liberty Township is liable for the cremation expenses under the statutory language of R.C. 9.15 since the city is encompassed by the township, or alternatively, that Ordinance No. 2013-6 precludes or limits its liability under R.C. 9.15. Hillsboro also contends that genuine issues of material fact make summary judgment improper. For the following reasons, we conclude that the General Assembly intended that R.C. 9.15 require the municipal corporation, rather than the township, to pay for the burial or

cremation expenses of unclaimed deceased persons who were dual residents of the municipal corporation and township. We also find, as reasoned below, that Hillsboro's Ordinance No. 2013-6 does not operate to preclude or limit liability under R.C. 9.15, and that no genuine issues of material fact remain unresolved. Accordingly, we affirm the trial court's judgment.

I. FACTS & PROCEDURAL HISTORY

{¶ 2} Between December 28, 2012 and May 4, 2013, Turner provided direct cremation services for four deceased indigent residents of Hillsboro at a total cost of $4,670.[1] Invoices for each cremation were sent to Hillsboro for payment, but no amount for the cremation services has ever been paid by the city. On August 16, 2013, the city auditor informed Turner, via letter correspondence, that no payments would be made for the cremation charges due to the enactment of Ordinance No. 2013-6, which was approved by the Hillsboro City Council on August 12, 2013.

{¶ 3} On December 3, 2013, Turner filed a complaint for declaratory relief and money judgment against Hillsboro. Turner alleged that it was entitled to $4,670 from Hillsboro under R.C. 9.15 for the unpaid cremation services. Turner also requested that the trial court declare Hillsboro Ordinance No. 2013-6 to be unlawful and to further grant permanent injunction against the enforcement of the ordinance. Turner also sought recovery of its costs and reasonable attorney's fees.

{¶ 4} Hillsboro filed an answer admitting that it is a municipality located in Highland County, Ohio, and fully contained in Liberty Township, Ohio, but denying each and every other allegation of the complaint. Thereafter, Turner filed a motion for summary judgment. Turner's motion for summary judgment was supported by the affidavit of Kevin L. Brown, a licensed funeral director and embalmer employed by Turner. Hillsboro filed a response in opposition to

[1] The amounts billed were $1,195 each, except for the first cremation that was billed at $1,085.

the motion for summary judgment along with its own motion for summary judgment seeking judgment in its favor. Turner filed a reply to Hillsboro's opposition memorandum. Ultimately, the trial court denied Hillsboro's motion and granted summary judgment in favor of Turner in the amount of $4,670.[2] This appeal followed.

II. ASSIGNMENTS OF ERROR

{¶ 5} Hillsboro assigns two errors for our review:

First Assignment of Error

> The trial court erred in granting summary judgment to Appellee Turner Funeral Home, Inc.

Second Assignment of Error

> The trial court erred in failing to granting [sic] summary judgment to Appellant City of Hillsboro.

III. STANDARD OF REVIEW

{¶ 6} We review the trial court's decision on a motion for summary judgment de novo. *Smith v. McBride*, 130 Ohio St.3d 51, 2011-Ohio-4674, 955 N.E.2d 954, ¶ 12. Accordingly, we afford no deference to the trial court's decision and independently review the record and the inferences that can be drawn from it to determine whether summary judgment is appropriate. *Harter v. Chillicothe Long-Term Care, Inc.*, 4th Dist. Ross No. 11CA3277, 2012-Ohio-2464, ¶ 12; *Grimes v. Grimes*, 4th Dist. Washington No. 08CA35, 2009-Ohio-3126, ¶ 16.

{¶ 7} Summary judgment is appropriate only when the following have been established: (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to only one conclusion, and that conclusion is adverse to the nonmoving party. Civ.R. 56(C); *DIRECTV, Inc. v. Levin*, 128 Ohio St.3d 68, 2010-Ohio-6279, 941 N.E.2d 1187, ¶ 15. In ruling on a motion for summary

[2] The trial court's final judgment entry did not make any determination as to the validity of Ordinance No. 2013-6. The trial court did, however, expressly decline to award attorney's fees.

judgment, the court must construe the record and all inferences therefrom in the nonmoving party's favor. Civ.R. 56(C). The party moving for summary judgment "bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996). To meet its burden, the moving party must specifically refer to "the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action," that affirmatively demonstrate that the nonmoving party has no evidence to support the nonmoving party's claims. Civ.R. 56(C); *Dresher* at 293. Moreover, the trial court may consider evidence not expressly mentioned in Civ.R. 56(C) if such evidence is incorporated by reference in a properly framed affidavit pursuant to Civ.R. 56(E). *Discover Bank v. Combs*, 4th Dist. Pickaway No. 11 CA25, 2012–Ohio–3150, ¶ 17; *Wagner v. Young*, 4th Dist. Athens No. CA1435, 1990 WL 119247, *4 (Aug. 8, 1990). "If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied." *Dresher* at 293. However, once the initial burden is met, the nonmoving party then has a reciprocal burden to set forth specific facts to show that there is a genuine issue for trial. *Id.;* Civ.R. 56(E).

IV. LAW & ANALYSIS

A. Jurisdiction

{¶ 8} As an initial matter, we sua sponte raise the issue of whether the journal entry appealed from is a final appealable order, thus granting us jurisdiction to decide this appeal. "[T]he existence of a final appealable order is a jurisdictional question that this Court can, and

must when necessary, raise sua sponte." *Savage v. Cody-Ziegler, Inc.*, 4th Dist. Athens No. 06CA5, 2006-Ohio-2760, ¶ 31.

{¶ 9} It is well established that an order must be final before it can be reviewed by an appellate court. *See* Article IV, Section 3(B)(2), Ohio Constitution; *see also DiCorpo v. Kelley*, 8th Dist. Cuyahoga No. 84609, 2005-Ohio-1863, ¶ 4, citing R.C. 2505.02. If an order is not final and appealable, then an appellate court has no jurisdiction to review the matter and must dismiss the appeal. *Lisath v. Cochran*, 4th Dist. Lawrence No. 92CA05, 1993 WL 120627, *2 (Apr. 15, 1993); *In re Christian*, 4th Dist. Athens No. 1507, 1992 WL 174718, *2 (July 23, 1992). Here, when Turner filed its complaint, it alleged two claims against Hillsboro: one for money judgment and one seeking the trial court to declare Ordinance No. 2013-6 to be unlawful. The trial court granted summary judgment in Turner's favor on the claim for monetary relief, but did not expressly rule on the claim for declaratory relief. The final judgment entry also does not contain Civ.R. 54(B) language.

{¶ 10} An order must meet the requirements of R.C. 2505.02 to constitute a final, appealable order. *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86, 88, 541 N.E.2d 64 (1989). Under R.C. 2505.02(B)(1), an order is a final appealable order if it "affects a substantial right in an action that in effect determines the action and prevents a judgment[.]" To determine the action and prevent a judgment, the order "must dispose of the whole merits of the cause or some separate and distinct branch thereof and leave nothing for the determination of the court." *Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities v. Professionals Guild of Ohio*, 46 Ohio St.3d 147, 153, 545 N.E.2d 1260 (1989).

{¶ 11} Additionally, if the case involves multiple parties or multiple claims, the court's order must meet the requirements of Civ.R.54(B) to qualify as a final, appealable order. *See Chef*

Italiano Corp. at 88. Under Civ.R. 54(B), "[w]hen more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay." Absent the mandatory language that "there is no just reason for delay," an order that does not dispose of all claims or that does not determine the rights and liabilities of all the parties involved, is subject to modification and is not final and appealable. *Noble v. Colwell*, 44 Ohio St.3d 92, 96, 540 N.E.2d 1381 (1989); Civ.R. 54(B). The purpose of Civ.R. 54(B) is " 'to make a reasonable accommodation of the policy against piecemeal appeals with the possible injustice sometimes created by the delay of appeals[,]' * * *as well as to insure that parties to such actions may know when an order or decree has become final for purposes of appeal * * *." *Pokorny v. Tilby Dev. Co.*, 52 Ohio St.2d 183, 186, 370 N.E.2d 738 (1977), quoting *Alexander v. Buckeye Pipe Line Co.*, 49 Ohio St.2d 158, 160, 359 N.E.2d 702 (1977).

{¶ 12} We conclude that the trial court's decision to render summary judgment in favor of Turner on its claim for monetary relief implicitly resolves the claim for declaratory relief, because the judgment was implicitly premised upon a conclusion that Ordinance No. 2013-6 did not operate to limit or preclude relief under R.C. 9.15. *See Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 21, 540 N.E.2d 266 (1989), citing *Wise v. Gursky*, 66 Ohio St.2d 241, 421 N.E.2d 150 (1981) (Even if "all the claims or parties are not expressly adjudicated by the trial court, if the effect of the judgment as to some of the claims is to render moot the remaining claims or parties, then compliance with Civ.R.54(B) is not required to make the judgment final and appealable."). Thus, the judgment rendered by the trial court was directed to all pending

claims and was a final, appealable order; and we have jurisdiction to address the merits of Hillsboro's assignments of error.

B. Merits of Hillsboro's appeal

{¶ 13} R.C. 9.15 states as follows:

> When the body of a dead person is found in a township or municipal corporation, and such person was not an inmate of a correctional, benevolent, or charitable institution of this state, and the body is not claimed by any person for private interment or cremation at the person's own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with section 1713.34 of the Revised Code, it shall be disposed of as follows:
>
> (A) If the person was a legal resident of the county, the proper officers of the township or municipal corporation in which the person's body was found shall cause it to be buried or cremated at the expense of the township or municipal corporation in which the person had a legal residence at the time of death.
>
> (B) If the person had a legal residence in any other county of the state at the time of death, the superintendent of the county home of the county in which such body was found shall cause it to be buried or cremated at the expense of the township or municipal corporation in which the person had a legal residence at the time of death.
>
> (C) If the person was an inmate of a correctional institution of the county or a patient or resident of a benevolent institution of the county, the person had no legal residence in the state, or the person's legal residence is unknown, the superintendent shall cause the person to be buried or cremated at the expense of

the county.

Such officials shall provide, at the grave of the person or, if the person's cremated remains are buried, at the grave of the person's cremated remains, a metal, stone, or concrete marker on which the person's name and age, if known, and date of death shall be inscribed.

A political subdivision is not relieved of its duty to bury or cremate a person at its expense under this section when the body is claimed by an indigent person. As used in this section, "indigent person" means a person whose income does not exceed one hundred fifty per cent of the federal poverty line, as revised annually by the United States department of health and human services in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended, for a family size equal to the size of the person's family.

{¶ 14} Hillsboro's Ordinance No. 2013-6 attempts to interpret R.C. 9.15 and concludes that if an indigent person dies as a resident of both a township and a city, then the township is responsible for the burial or cremation costs of the indigent person instead of the city. Alternatively, if Hillsboro is adjudged liable for costs under R.C. 9.15, Section Two of the ordinance places limitations on those costs, as well as other limitations on Hillsboro's exposure to liability for disposition of indigent decedents. Specifically, Ordinance No. 2013-6 states as follows:

ORDINANCE NO. 2013-6

AN ORDINANCE TO ESTABLISH A POLICY FOR DISPOSITION OF HUMAN REMAINS

Be it ORDAINED by the Council of the City of Hillsboro, State of Ohio, that

SECTION ONE:

The City interprets Section 9.15 of the Ohio Revised Code as specifying the Township as primarily responsible for burial of indigent persons found deceased within the corporation limits of the City for the reason that any other interpretation would place an unfair burden upon citizens of the City to pay the proportional costs of the township burials for decedents found outside the corporation limits of the City as well as the entire costs of burials of decedents found within the corporation limits of the City. Further, the statute specifies "township or municipality" without distinguishing where the decedent is found and the City being a political subdivision of the township, all decedents found within the city would be likewise found in the township, however, not all decedents found in the township would be found in the City. Further, Section 9.15 of the Revised Code, to the extent it mandates municipalities provide indigent decedent funeral dispositions violates Article XVIII Section 3 of the Ohio Constitution. To the extent permitted by law, the City of Hillsboro hereby opts out of providing funeral, burial, interment, cremation, transport or other services in connection with deceased persons.

SECTION TWO:

In the event the City is adjudged by a court of competent jurisdiction to be liable to provide disposition of a decedent found within the City, the following policy is hereby adopted and shall be followed:

POLICY FOR DISPOSITION OF HUMAN REMAINS

The City of Hillsboro, without surrendering its defenses and objections to providing funding for the disposition for human remains, does hereby establish this policy for compliance with Revised Code Sec. 9.15.

1. No disposition by the City shall be made upon any deceased person who is not "found" within the City of Hillsboro Corporation limits. Decedents moved into the City from another location outside of the City shall not be considered "found" within the City.

2. No disposition by the City shall be made upon any deceased person who is not a resident of Highland County, Ohio.

3. The Hillsboro City Auditor, upon information supplied upon a form devised by the Auditor's Office for that purpose that an indigent resident of Highland County found deceased within the corporation limits of the City, shall immediately inquire of the funeral homes in the Southwest Ohio area as to the cost and availability of services to make disposition of human remains and shall provide up to $750 toward the entire cost of the disposition determining the lowest responsive, responsible proposal, as in the Auditor's opinion best serves the needs of the City.

4. Any costs advanced by the City for the disposition of the human remains shall be certified to the City [L]aw Director for collection who is authorized and directed to sue any person legally responsible for costs, and to begin probate proceedings as a creditor to determine the assets of the decedent available to pay the costs and to collect the estate assets and reimburse the City for costs and legal fees as authorized by the probate court.

> 5. The Auditor may summon witness and administer oaths in order to determine the indigent status of a decedent, the actual costs necessary for the disposition of human remains, and the location where the decedent was found and decedent's residence. Witness fees and court reporter costs shall be paid from the city treasury in addition to the disposition costs.
>
> 6. Any payment made under this policy is subject to recovery in the event it appears the deceased person was not entitled to have disposition made at the expense of the City if discovered at any time within two years of payment, and the City retains a lien for that period of time upon the property and accounts of the payee for that period of time to collect any judgment for recovery of payments.
>
> SECTION THREE:
>
> This ORDINANCE is declared to be an emergency measure necessary for the preservation of the public health, safety and welfare of the citizens of the City and for the reason immediate action is needed to insure proper disposition [of] human remains is available to the City, therefore this ORDINANCE shall become effective upon passage by 2/3rds of the members of Council.
>
> Passed: 8-12-2013[.]

{¶ 15} We address Hillsboro's two assignments of error together because they assert that the trial court erred in granting summary judgment in favor of Turner rather than the city.

{¶ 16} First, Hillsboro contends that the trial court erred in granting Turner summary judgment because genuine issues of material fact remain in dispute. Specifically, Hillsboro argues that the Brown Affidavit did not sufficiently prove that: 1) the four decedents were

indigent; 2) the decedents were residents of Hillsboro; 3) the relatives of the decedents did not claim their remains for disposition; 4) the decedents were not inmates of a correctional, benevolent, or charitable institution; or 5) the remains of the decedents were not donated for medical or surgical study.

{¶ 17} Here, we need not address the sufficiency of the Brown affidavit and factual allegations because Hillsboro raised this argument objecting to the affidavit and factual allegations for the first time in its appellate brief. In fact, not only did Hillsboro fail to raise this issue in the trial court by its memorandum contra summary judgment, but it also invited any potential error by filing its own motion for summary judgment based upon the same facts as alleged in Turner's motion.[3] In other words, Hillsboro effectively endorsed the factual averments set forth in the affidavit at the trial level and has waived such argument for appellate purposes. *See Ogle v. Hocking Cty.*, 4th Dist. Hocking No. 14CA3, 2014-Ohio-5422, ¶ 33 ("under the invited error doctrine parties cannot take advantage of errors they invite or induce the trial court to make"); *Ogg v. Penn*, 4th Dist. Scioto No. 14CA3606, 2014-Ohio-5481, ¶ 21 (party waives issue on appeal that could have been raised at trial court level); *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207, 210, 436 N.E.2d 1001 (1982) (appellate court will not consider error not raised in trial court). Based on the foregoing, we find that Hillsboro has failed to demonstrate that a genuine issue of material fact exists regarding the qualifying status of the four decedents whose cremations are at issue in this case.

{¶ 18} Next, Hillsboro contends that summary judgment should have been denied, or alternatively, granted in its favor because Liberty Township is responsible for the cremation expenses. Specifically, Hillsboro argues that R.C. 9.15 requires townships to pay for burial or

[3] Hillsboro's memorandum contra and motion for summary judgment were filed jointly. The filing was not supported by any affidavit or other appropriate summary judgment evidence and presented a purely legal argument.

cremation services of qualifying residents of a municipality when the municipality is totally encompassed by the township. Hillsboro asserts that to hold otherwise would upset the "fundamental fairness of apportioning costs associated with disposition of indigent decedents among the political subdivisions of Ohio." [Reply Brief at 3.] Turner agrees that Hillsboro is completely located within the boundaries of Liberty Township and that the statutory language is ambiguous as to which political subdivision is responsible for the cremation expenses. However, Turner contends that the Ohio Attorney General's Office has previously addressed this issue and has long held that the municipality is responsible for the burial or cremation expenses of qualifying residents even when it is encompassed by a township. *See* 1996 Ohio Op. Atty. Gen. 2-90 (1996), 1996 WL 218618. Turner implores that we follow and adopt the opinion of the Ohio Attorney General's Office.

{¶ 19} The parties' dispute concerning which entity, Hillsboro or Liberty Township, is responsible for the cremation expenses under R.C. 9.15 centers on statutory interpretation. "The primary goal of statutory construction is to ascertain and give effect to the legislature's intent in enacting the statute." *State v. Lowe,* 112 Ohio St.3d 507, 2007-Ohio-606, 861 N.E.2d 512, ¶ 9. "If the meaning of a statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary." *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.,* 74 Ohio St.3d 543, 545, 660 N.E.2d 463 (1996). But if a statute is ambiguous, "further interpretation is necessary." *State v. Chappell,* 127 Ohio St.3d 376, 2010-Ohio-5991, 939 N.E.2d 1234, ¶ 16. A statute is ambiguous if its language is susceptible to more than one reasonable interpretation. *See State ex rel. Toledo Edison Co. v. Clyde,* 76 Ohio St.3d 508, 513, 668 N.E.2d 498 (1996).

{¶ 20} Here, the phrase "at the expense of the township or municipal corporation in which the person had a legal residence at the time of death" found in R.C. 9.15(A)&(B) is ambiguous. As pointed out by the parties, the phrase is susceptible to more than one reasonable interpretation where, as here, the decedent was a resident of a municipality whose boundaries are located within a township – thus making the decedent a resident of both the municipality and the township and creating ambiguity as to which political subdivision is responsible for the costs of burial or cremation.

{¶ 21} Because the statute is ambiguous, we must interpret it. R.C. 1.49 provides that if a statute is ambiguous, in determining the intention of the legislature, we "may consider among other matters: (A) The object sought to be attained; (B) The circumstances under which the statute was enacted; (C) The legislative history; (D) The common law or former statutory provisions, including laws upon the same or similar subjects; (E) The consequences of a particular construction; (F) The administrative construction of the statute." Under R.C. 1.42, we must read words and phrases in context and construe them according to the rules of grammar and common usage unless they have acquired a technical or particular meaning. In addition, R.C. 1.47(B) provides that: "In enacting a statute, it is presumed that * * * [t]he entire statute is intended to be effective[.]" In other words, we must presume the legislature intended that every word in a statute have some legal effect. *See State ex rel. McQueen v. Court of Common Pleas of Cuyahoga Cty.*, 135 Ohio St.3d 291, 2013-Ohio-65, 986 N.E.2d 925, ¶ 12, quoting *State ex rel. Carna v. Teays Valley Local School Dist. Bd. of Edn.*, 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶ 18 (" 'Venerable principles of statutory construction require that in construing statutes, we must give effect to every word and clause in the statute.' ")

{¶ 22} Reading the statute in context, we do not believe that the General Assembly intended to place liability for the burial of an unclaimed dead body on a township when the decedent was a dual resident of the township and a municipality located within the township. Rather, we believe that the legislature intended to place liability on municipalities where the decedent was a resident of the municipality, and on townships, when the decedent was a resident of an unincorporated township or portion of the township that is unincorporated. This interpretation is also consistent with the rules of construction requiring us to give the statute a "plain language" interpretation and to ensure that all words in the statute have meaning. If we were to construe the statute as Hillsboro contends, then we would be applying a hyper-technical approach to construction, which is not favored by the law.

{¶ 23} We further note that our view of the statutory obligation is supported by the Ohio Attorney General opinion on this very dispute. *See* 1996 Ohio Op. Atty. Gen. 2-90 (1996), 1996 WL 218618. In this opinion, the Honorable Alan R. Mayberry, Wood County Prosecuting Attorney, asked then Ohio Attorney General Betty D. Montgomery, the following: "Does a township have any responsibility to pay burial expenses where an indigent establishes residency with a relative in a village in that township?" *Id*. at *1.

{¶ 24} Attorney General Montgomery, in addressing the inquiry, noted that in order to resolve the matter she would need to construe R.C. 5101.521 (the predecessor statute to R.C. 9.15[4]). *Id*. at *2. Attorney General Montgomery then stated:

> If the factors set forth in R.C. 5101.521 are present with respect to a particular deceased person and the deceased person was a resident of a village located within a township, then the obligation to pay for the burial of the body rests with

[4] We note that there is no significant differences between R.C. 5101.521 relied upon by Attorney General Montgomery, and R.C. 9.15 at issue in the case sub judice.

> the "township or municipal corporation in which [the deceased] had a legal residence at the time of his death." R.C. 5101.521(A),(B). This language does not specify, as between a township and a municipal corporation located within the township, which should bear the cost. The statutory provision has long been construed, however, to mean that, if the deceased person was a legal resident of a municipal corporation within a township, the body should be buried at the expense of the municipal corporation, rather than the township. *See* 1921 Op. Att'y Gen. No. 2018, vol. I, p. 332. This construction was adopted because it provides a workable reading of the statute and a clear statement of duty, *id*. at 334, and I concur in this construction. *Id*.

The attorney general concluded that: "Under R.C. 5101.521, the obligation to pay burial expenses for the resident of a municipal corporation located within a township rests with the municipal corporation, rather than the township." *Id*. at paragraph one of the syllabus.

{¶ 25} We understand that the opinions of the Ohio Attorney General have no precedential effect and are not binding on this court. However, they are considered persuasive authority. *State ex rel. Van Dyke v. Pub. Emp. Retirement Bd.*, 99 Ohio St.3d 430, 2003-Ohio-4123, 793 N.E.2d 438, ¶ 40. Thus, the Ohio Attorney General opinion lends further support to our construction of R.C. 9.15.

{¶ 26} In sum, in applying the rules of construction and considering the administrative interpretation of the statute, we find that under R.C. 9.15 the General Assembly intended that the obligation to pay the burial or cremation expenses for qualifying deceased residents of a municipal corporation located within a township rest solely with the municipal corporation.

Accordingly, Hillsboro's argument that Liberty Township is responsible for the cremation expenses is without merit.

{¶ 27} Finally, Hillsboro contends that summary judgment was improper because its enactment of Ordinance No. 2013-6 precludes liability under R.C. 9.15, or at the very least, limits liability to $750 per cremation. In support of this argument, Hillsboro relies upon its power of self-government and home rule authority.

{¶ 28} "Ohio is a municipal home rule state where cities can adopt their own laws to meet local circumstances[.]" *Jackson v. Stacey*, 96 Ohio App.3d 169, 170, 644 N.E.2d 1032 (4th Dist.1994). In *Geauga Cty. Bd. of Commrs. v. Munn Rd. Sand & Gravel*, 67 Ohio St.3d 579, 582, 621 N.E.2d 696 (1993), the Supreme Court of Ohio described the home rule doctrine:

> Municipalities, pursuant to the powers granted by Section 3, Article XVIII of the Ohio Constitution (the so-called Home Rule Amendment), "have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Before 1912, the time of the adoption of the Home Rule Amendment, municipalities could exercise only those powers delegated by statute. The adoption of Section 3, Article XVIII of the Constitution worked a fundamental change upon the powers of municipalities. See *Perrysburg v. Ridgway* (1923), 108 Ohio St. 245, 255, 140 N.E. 595, 598. In *Struthers v. Sokol* (1923), 108 Ohio St. 263, 140 N.E. 519, paragraph one of the syllabus, the court held: "Municipalities in Ohio are authorized to adopt local police, sanitary and other similar regulations by virtue of Section 3, Article XVIII, of the Ohio Constitution, and derive no authority from, and are subject to no limitations of,

the General Assembly, except that such ordinances shall not be in conflict with general laws."

{¶ 29} Hillsboro's home rule argument is misplaced. R.C. 9.15 was enacted by the General Assembly to protect the health and safety of its citizens as a reasonable exercise of the state's general police power, and is thus a general law. *See W. Jefferson v. Robinson*, 1 Ohio St.2d 113, 205 N.E.2d 382 (1965), paragraph three of the syllabus ("The words 'general laws' as set forth in Section 3 of Article XVIII of the Ohio Constitution means statutes setting forth police, sanitary or similar regulations * * *."). Being a "general law", Hillsboro cannot opt out of or limit the requirements imposed by the statute notwithstanding the provisions of Section 3, Article XVIII of the Ohio Constitution. *See Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 49, 442 N.E.2d 1278 (1982) ("It is clear, under the prior interpretations of this court, that the exercise by the state of its police powers where contained in "general laws" takes precedence over ordinances enacted pursuant to home rule granted to municipalities pursuant to Section 3, Article XVIII of the Ohio Constitution."); *see also Canton v. Whitman*, 44 Ohio St.2d 62, 337 N.E.2d 766 (1975), paragraph two of the syllabus ("Police and similar regulations adopted under the powers of local self-government established by the Constitution of Ohio must yield to general laws of statewide scope and application, and statutory enactments representing the general exercise of police power by the state prevail over police and similar regulations of a municipality adopted in the exercise of its powers of local self-government."). We note further that R.C. 9.15 regulates a subject matter affecting the general public of the state as a whole, not merely the residents of Hillsboro. *See State ex rel. Evans v. Moore*, 69 Ohio St.2d 88, 90, 431 N.E.2d 311 (1982), quoting *Cleveland Elec. Illum. Co. v. Painesville*, 15 Ohio St.2d 125, 129, 239 N.E.2d 75 (1968) (" 'Thus, even if there is a matter of

local concern involved, if the regulation of the subject matter affects the general public of the state as a whole more than it does the local inhabitants the matter passes from what was a matter for local government to a matter of general state interest.' ").

{¶ 30} Here, R.C. 9.15 is a general law of the state aimed at regulating the disposal of dead bodies unclaimed for private interment and takes precedence over the conflicting provisions of Ordinance No. 2013-6. Accordingly, Hillsboro's home rule argument is without merit and the trial court did not err in granting Turner summary judgment or in failing to limit its judgment to $750 per cremation.

V. CONCLUSION

{¶ 31} Based on the foregoing, we conclude that no genuine issues of material fact exist and that Turner is entitled to judgment as a matter of law. Accordingly, we overrule Hillsboro's assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Hillsboro Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J.: Concurs in Judgment and Opinion.
McFarland, A.J.: Concurs in Judgment Only.

For the Court

By:_____
Marie Hoover, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.