

**“IF LIFE DOES NOT DO SO, THE UNIVERSAL
FELLOWSHIP OF DEATH SHOULD TEACH HUMILITY.”**

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	PREAMBLE	148
I.	INTRODUCTION.....	149
II.	PRIVATELY OWNED PUBLIC CEMETERIES	151
	A. <i>Cemetery Associations Under Minnesota Statutes</i>	151
	B. <i>Mortuary Cemetery Plot Sales</i>	152
III.	SUNSET MEMORIAL PARK ASSOCIATION	152
IV.	CASES ADDRESSING DISCRIMINATORY COVENANTS BEFORE RAMONA ERICKSON’S CASE.....	154
	A. <i>Precedential Cases: Free Alienation of Property Versus Integration</i>	154
	B. <i>Cemetery Cases</i>	157
	C. <i>Interim Period</i>	158
V.	THE MINNESOTA LEGISLATURE’S EFFORTS TO CURB DISCRIMINATION BEFORE RAMONA ERICKSON’S CASE.....	159
	A. <i>Public Accommodations</i>	159
	B. <i>Minnesota Statutes Sections 500.20 & 507.18</i>	163
	C. <i>Statutory Commissions</i>	164
VI.	RAMONA ERICKSON’S LAWSUIT AGAINST SUNSET MEMORIAL PARK.....	165
VII.	CONCLUSION	170

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PREAMBLE



This work¹ is near to me as Ramona Erickson's family structure and makeup is reflective of my own. I started work on this project by reading *Erickson v. Sunset Memorial Park*,² the only published case on discriminatory covenants in Minnesota.³ The case is interesting from an academic standpoint, but I personally explored the real-life background to this case so that I could write about it not only academically but also with real empathy and respect for the dead. As such, my next step in the process after reading the case was going to Sunset Memorial Park to pay my respects to the Ericksons.

Upon my arrival, the attendant marked a map of the cemetery showing the route to Erickson's memorial. It turned out that the map marking was misleading, or I am not so good with maps. I spoke to a groundskeeper who explained that there are lot markers between the stones, and I should look at those. The process of uncovering and interpreting the worn stones looking for clues of which numbered lots they denoted was not altogether unlike sifting through dated primary source materials for a research project.

I finally found the Ericksons' memorial, but I did not notice the lack of a death date for Ramona Erickson until I reviewed a picture from my camera. A representative from Sunset Memorial Park's

1. The title of this work comes from a quoted passage in a Minnesota Supreme Court case that is discussed at length below. See *Erickson v. Sunset Mem'l Park Ass'n*, 259 Minn. 532, 533, 108 N.W. 2d 434, 436 (1961) ("If life does not do so, the universal fellowship of death should teach humility" (quoting *Long v. Mountain View Cemetery Ass'n*, 278 P.2d 945, 946 (Cal. Dist. Ct. App. 1955))).

2. 259 Minn. at 535, 108 N.W.2d at 436.

3. See *infra* note 7.

office later told me that this result is very uncommon. The representative guessed that the stone was not purchased from the park, and that the family did not arrange for the date to be placed on the stone. The fact that Sunset Memorial Park has no contract for a tombstone in the Ericksons' file supports his theory.⁴ Unfortunately, the lack of a death date makes it appear that Ramona Erickson's husband predeceased her and she has yet to join him.⁵ For this reason, the story of Ramona Erickson's struggle cries out to be told, and telling this story honors her legacy. Moreover, it reminds us of the struggles with discrimination that many minoritized groups have faced and continue to face today.

I. INTRODUCTION

The bodies of Ramona Erickson, a Dakota woman, and her husband, David Erickson, a white man, are buried side by side in lot 624A of block fifteen in Sunset Memorial Park.⁶ Their shared tombstone—pictured above—is a simple flush-to-the-ground granite monument to their lives and marriage, adorned simply with a cross, scroll, their names, birth dates, and the death date of David Erickson. While Ramona Erickson's headstone may not fully honor her legacy, her struggle to rest there gave rise to the only published Minnesota case touching the issue of discriminatory covenants in land conveyances.⁷ Ramona Erickson sued Sunset Memorial Park Association because it enforced a discriminatory covenant that only allowed Caucasians to be buried there. Her case described efforts of the Minnesota Legislature to curb discrimination in the 1950s

4. See Interment Contract between Sunset Memorial Park and Ramona W. Erickson (Mar. 1, 1984) [hereinafter Interment Contract] (unpublished public document) (on file with author).

5. The other mystery surrounding the burial of the Ericksons is that David Erickson passed away in 1972 but the memorial was not purchased and placed until 1973. This gap seems to support the contention that the Ericksons did not purchase their tombstone from Sunset Memorial Park and may further explain the absence of Ramona's date of death.

6. Court documents refer to Ramona Erickson as a "full blooded Dakota." Where Author quotes the court or Sunset Memorial Park Association documents directly, the language is avoided because her exact Native American makeup is not important to the analysis or discussion.

7. Though approximately fifteen articles touch on the issue of discriminatory covenants in Minnesota, generally, none substantively examine the issue of discriminatory covenants in cemetery or mortuary use transactions.

through the Reconstruction Era Public Accommodation statute,⁸ demonstrations of the ways in which discrimination continued in spite of changes to the law, and justifications for some people's resistance to change.

This Article consists of a six-part analysis. Part II will discuss public cemeteries operating as private entities and the atypical statuses of their cemetery plot use sales.⁹ Part III will turn to Sunset Memorial Park Association as the other party to the original warranty deed. This section functions as a primer on the sale of their plots as well as the enforcement of the restrictive covenants.¹⁰ Part IV will discuss case law related to discriminatory covenants and cemeteries that led up to Ramona Erickson's case. This discussion includes the seminal United States Supreme Court case on discriminatory covenants, *Shelley v. Kraemer*,¹¹ which was cited in *Erickson* and was the motivation for adding language barring discrimination based on "race or color" to Minnesota Statutes section 507.18.¹² Part V will discuss the Minnesota Legislature's efforts to curb discrimination during the 1950s, with a particular focus on real estate transactions.¹³ Part VI will explore how these issues came together in the Minnesota Supreme Court case *Erickson v. Sunset Memorial Park*.¹⁴

An abundance of law review articles address the subject of discriminatory covenants in real estate transactions.¹⁵ However, few articles address discriminatory covenants in cemetery or burial mortuary use transactions. In fact, as of the time of this writing, only one published law review article tackles discriminatory covenants in cemetery mortuary use transactions.¹⁶ This article therefore

8. See *infra* Part V.A.

9. See *infra* Part II.

10. See *infra* Part III.

11. 334 U.S. 1, 13–19 (1948).

12. MINN. STAT. § 507.18 (1953); see *infra* Part IV.

13. See *infra* Part V.

14. 259 Minn. 532, 108 N.W.2d 434 (1961); see *infra* Part VI

15. See, e.g., Tim Iglesias, *A Place to Call Home? Affordable Housing Issues in America: Our Pluralist Housing Ethics and the Struggle for Affordability*, 42 WAKE FOREST L. REV. 511 (2007); Lior Strahilevitz, *Exclusionary Amenities in Residential Communities*, 92 VA. L. REV. 437 (2006); Keith Sealing, *Dear Landlord: Please Don't Put a Price on My Soul: Teaching Property Law Students that "Property Rights Serve Human Values,"* 5 N.Y. CITY L. REV. 36 (2002).

16. See Kitty Rogers, *Integrating the City of the Dead: The Integration of Cemeteries and the Evolution of Property Law, 1900-1969*, 56 ALA. L. REV. 1153, 1161–62 (2005) (providing an in-depth discussion of the national case law leading up to *Shelley* and turning to the history of burial discrimination through contract in Alabama).

addresses an important, deeply personal, and often overlooked form of discrimination.

II. PRIVATELY OWNED PUBLIC CEMETERIES

A. *Cemetery Associations Under Minnesota Statutes*

Under Minnesota Statutes chapter 306, privately owned public cemeteries exist in a kind of legal grey area as quasi-public entities, exempt from adverse possession claims and taxation under Minnesota Constitution, article 9, section 3.¹⁷ However, cemetery associations organized under chapter 306 file like any corporation.¹⁸ Minnesota statutes have allowed two different types of public cemeteries: public cemeteries affiliated with a religious organization and unaffiliated public cemeteries.¹⁹ Cemetery associations affiliated with religious organizations may limit burial mortuary use of their grounds to members of the same faith; in contrast, public cemeteries must sell to the general public without restriction.²⁰

Minnesota statutes also exempt public cemeteries from adverse possession claims.²¹ As early as 1913, Minnesota expressly barred adverse possession claims to public or private cemetery lands based on use or occupancy.²² Adverse possession exceptions generally applied only to government lands prior to 1913.²³ As discussed below, inconsistency between statutory language and common language usage regarding cemetery plot sales was part of the controversy between Ramona Erickson and Sunset Memorial Park.

17. See, e.g., *State v. Lakewood Cemetery Ass'n*, 93 Minn. 191, 101 N.W. 161 (1904).

18. MINN. STAT. § 306.02, subdiv. 1 (2016).

19. *Id.* § 306.02.

20. See *id.*

21. See *id.* § 541.02 (establishing that adverse possession in the state of Minnesota is limited to lands assessed for taxation). Most cemeteries in the state of Minnesota are held exempt from taxation by nonprofit organizations under Minnesota Statutes chapter 306. See *Lakewood Cemetery Ass'n*, 93 Minn. at 162, 101 N.W. at 193.

22. See MINN. STAT. § 2946 (1905) (“[L]ands and property of any such cemetery association shall be exempt from all public taxes and assessments.”). This language was adopted in 1913. See MINN. STAT. § 6286 (1913). This statute has since become Minnesota Statutes section 306.14. MINN. STAT. § 306.14 (2016). In 1913, lands exempt from taxation were exempt from adverse possession claims. MINN. STAT. § 7696 (1913). This language was not present in Minnesota law before 1913.

23. MINN. STAT. §§ 4072–73 (1905).

B. *Mortuary Cemetery Plot Sales*

Though chapter 306 expressly allowed cemetery associations to sell space in mausoleums and cemetery plots,²⁴ cemetery or mortuary plot sales are not exactly real estate sales because they do not involve the outright sale of the land.²⁵ Rather, they are conveyances “relating to or affecting real estate” under Minnesota Statutes section 507.18.²⁶ Even after the sale, cemetery associations own the grounds of their cemeteries and have a general duty of care to keep the premises in a reasonably safe condition.²⁷ This distinction was a key part of the holding of the Minnesota Supreme Court in *Erickson*.²⁸ What is sold in such an arrangement is the indefinite use or occupancy of a small portion of land platted under the name of, and wholly operated and owned by, the cemetery association.²⁹ Warranty deeds covering such uses are not recorded in the Hennepin County Office of the Recorder of Deeds, which currently considers such transactions “personal property.”³⁰ Sale of these rights in property are more akin to indefinite easements evidenced by sales contracts than warranty deed sales.³¹ However, these sales are considered as deeds both colloquially and in Minnesota Statutes chapter 306.³²

III. SUNSET MEMORIAL PARK ASSOCIATION

Since its inception, Sunset Memorial Park Association has undergone several changes. At its inception, the cemetery was not incorporated or doing business under the name Sunset Memorial Park.³³ Rather, the park was incorporated as Laurel Hill Cemetery

24. MINN. STAT. § 306.15 (2016).

25. *Id.* § 306.09 (governing public cemetery mortuary or burial use plot sales).

26. MINN. STAT. § 507.18 (1953).

27. *Hutchinson v. Hillside Cemetery Ass’n*, 212 Minn. 242, 242, 4 N.W.2d 81, 81 (1942).

28. MINN. STAT. § 507.18; *see also* *Erickson v. Sunset Mem’l Park Ass’n*, 259 Minn. 532, 546, 108 N.W. 2d 434, 443 (1961).

29. MINN. STAT. § 306.09 (2016) (controlling the sale of lots by certain cemetery associations by stating, “Every conveyance of a lot must be expressly for burial purposes and no other”).

30. *See* *Rogers*, *supra* note 16.

31. *See* MINN. STAT. § 306.09 (2016).

32. *Id.* § 507.18.

33. *See* Articles of Incorporation of Laurel Hill Cemetery & Crematory Association (Jan. 16, 1899) (unpublished filing with Minnesota Secretary of State) (on file with author).

2018] DISCRIMINATORY COVENANTS IN LAND CONVEYANCES 153

and Crematory Association, doing business under the name Hillside Cemetery Association.³⁴ Laurel Hill was incorporated in 1899 for the purpose of “procuring and holding of lands to be used exclusively for a private cemetery under the general laws of the State of Minnesota.”³⁵ This statement of corporate purpose appears in the filing of Sunset Memorial Park’s original re-plat when it changed its corporate identity on the filings from Hillside Memorial Cemetery in 1926.³⁶ That same year, Hillside Crematory Association changed its name in its articles of incorporation to Memorial Park Association and also excluded the public cemetery language from its purpose.³⁷

In 1911, the tract formerly known as Thwings Highland Addition to Minneapolis was re-platted as Hillside Memorial Cemetery and “dedicated as a public cemetery forever.”³⁸ The cemetery changed its corporate purpose from operation of a private cemetery to operation of a public cemetery; however, later filings lacked either the public or private designation.³⁹ These changes suggest the association intended to keep its corporate purpose, and thus the applicable law, ambiguous.⁴⁰

In 1926, Hillside Memorial Cemetery was re-platted as Sunset Memorial Park Cemetery, “to be occupied exclusively as a cemetery for the burial of the dead, and for purposes necessary and proper thereto.”⁴¹ Subsequent plat additions filed by Sunset Memorial Park did not include the public cemetery designation; in fact, Sunset Memorial Park’s 1961 answer to Ramona Erickson’s complaint stated that “the said cemetery of the said defendant was at all times . . . a public burying ground.”⁴² The above-referenced

34. *See id.*

35. *Id.*

36. *See* Hillside Cemetery and Crematory Association Plat (Nov. 12, 1926) (on file with author).

37. *See* Certificate of Amendment of Articles of Incorporation of Hillside Cemetery & Crematory Association (Dec. 17, 1926) (unpublished filing with Minnesota Secretary of State) (on file with author).

38. Hillside Cemetery and Crematory Association Plat (Dec. 18, 1911) (on file with author).

39. *See id.*; *see also* Certificate of Amendment, *supra* note 37.

40. *See generally* MINN. STAT. § 306.02 (1957).

41. Hillside Cemetery 1926, *supra* note 36 (noting the term “public” conspicuously missing).

42. The characterization of Sunset Memorial Park as a public burial ground, by admission of the defendant, was an important portion of the Minnesota Supreme Court’s reasoning. *See* *Erickson v. Sunset Mem’l Park Ass’n*, 259 Minn. 532, 540–41, 108 N.W. 2d 434, 439–40 (1961).

documents demonstrated that the corporation that owned the cemetery went through several changes, including changes to the purpose of the organization as a public cemetery and changes in affiliation.⁴³

From its inception in 1927, Sunset Memorial Park included discriminatory covenants or substantially similar language in all deeds and contracts for deed.⁴⁴ Later on, and prior to the Ericksons' plot purchase, Sunset Memorial Park Association adopted the rule that cremation or interments in its cemetery would be restricted to Caucasians.⁴⁵

IV. CASES ADDRESSING DISCRIMINATORY COVENANTS BEFORE RAMONA ERICKSON'S CASE.

A. *Precedential Cases: Free Alienation of Property Versus Integration*

The United States Supreme Court discussed the constitutionality of restrictive covenants in the use and occupancy of land, versus the free alienation of property, in two related cases. First, in *Buchanan v. Warley*, the Supreme Court struck down a discriminatory city ordinance prohibiting a white or African American person from occupying a home in a city block that was occupied by a majority of the other race.⁴⁶ Next, in *Corrigan v. Buckley*, the Supreme Court held that restrictive discriminatory covenants made by mutual agreement of property owners did not violate the Equal Protection Clause of the Fourteenth Amendment because the clause offered protection only against arbitrary state action.⁴⁷ Thus, while the law did not prohibit discriminatory covenants themselves, an aggrieved party could not ask the government to enforce a discriminatory covenant because enforcement would violate the Equal Protection Clause.

43. See, e.g., Certificate of Amendment, *supra* note 37.

44. See Complaint at Exhibit A, *Erickson*, 259 Minn. 532, 108 N.W. 2d 434 (No. 38091).

45. *Erickson*, 259 Minn. at 534, 108 N.W.2d at 436.

46. 245 U.S. 60, 82 (1917) (“We think this attempt to prevent the alienation of [property] to a person of color was not a legitimate exercise of the police power of the state, and is in direct violation of the . . . Fourteenth Amendment.”).

47. 271 U.S. 323, 331 (1926) (“There is no color for the contention that [the statutes] rendered the indenture void; nor was it claimed in this Court that they had, in and of themselves, any such effect.”).

2018] DISCRIMINATORY COVENANTS IN LAND CONVEYANCES 155

Both of these cases, which predate the Supreme Court's seminal decision in *Shelley*,⁴⁸ illustrate the rule of law taught in first-year property law classes. However, in several pre-*Shelley* decisions, courts weighed the strong presumption against free alienation of property versus the private interests of property owners and undesirable social consequences.⁴⁹ The Restatement (First) of Property (1944) stated that such covenants were permissible as "[t]he avoidance of unpleasant racial and social relations and the stabilization of the value of land," with these being seen as "outweighing the evils which normally result from a curtailment of the power of alienation."⁵⁰

Several cases embraced this balancing of interests, but two Michigan cases illustrated it best. *Parmalee v. Morris* held that a discriminatory covenant limiting the use or occupancy of land did not create an undue burden on the free alienation of property.⁵¹ In *Sipes v. McGhee*,⁵² which was later consolidated with *Shelley*,⁵³ the Michigan Supreme Court held that discriminatory restrictions on occupation or use of land were within the public policy of the state because property rights "should not be brushed aside in the absence of strong and cogent reasons."⁵⁴ Both *Parmalee* and *McGhee* indicated that a discriminatory covenant regarding the use or occupancy of land was more permissible than a restriction on the sale of property, the latter being in accord with a public policy favoring free alienability of property.⁵⁵

48. See *infra* Part I. *Shelley* is also discussed in more detail below.

49. See RESTATEMENT (FIRST) OF PROP.: INDEFEASIBLE POSSESSORY ESTATES IN FEE SIMPLE § 406 cmt. 1 (AM. LAW INST. 1944) ("The desirability of the exclusion of certain racial and social groups is a matter governed entirely by the circumstances of the state in which the land is located . . . on the question of the racial or social group involved living in close proximity to the racial or social groups not excluded from the land.").

50. *Id.*

51. 188 N.W. 330, 332 (Mich. 1922).

52. 25 N.W.2d 638 (Mich. 1947), *rev'd sub nom.* *Shelley v. Kraemer*, 334 U.S. 1 (1948).

53. See *Shelley v. Kraemer*, 334 U.S. 1, 1; *McGhee v. Sipes*, 331 U.S. 804 (1947).

54. *McGhee*, 25 N.W.2d at 643.

55. See *Parmalee*, 188 N.W. at 331. Citing *Los Angeles Investment Co. v. Gary*, the court explained it had "distinguished between a restriction against the sale and one against the occupancy of certain property by persons other than of the Caucasian race. The former was held invalid, as an unlawful restraint on alienation, while the latter was upheld." *Id.*; see also *McGhee*, 25 N.W. at 643 ("Restrictions against alienation are quite another matter. This court . . . [has] held that a restriction prohibiting the sale of certain lands 'to a colored person' was void.").

In *Shelley v. Kraemer*, a majority of homeowners in a Missouri neighborhood had entered into covenants in 1911 disallowing sale or use of their real property to anyone but other whites.⁵⁶ In 1945, a homeowner sold a home in the neighborhood to an African American family who lacked “actual knowledge of the restrictive agreement at the time of the purchase.”⁵⁷ When the other homeowners in the neighborhood sued for enforcement of the restriction, the lower court denied the request.⁵⁸ On appeal, the Missouri Supreme Court reversed.⁵⁹ The United States Supreme Court then reversed the Missouri Supreme Court, holding that the state could not enforce discriminatory covenants because such enforcement violated the Equal Protections Clause of the United States Constitution.⁶⁰

The reasoning of *Shelley* made civil rights guaranteed by the Equal Protection Clause of the Fourteenth Amendment central to the analysis of public policy in such cases:

The historical context in which the Fourteenth Amendment became a part of the Constitution should not be forgotten. Whatever else the framers sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the enjoyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color. . . . Upon full consideration, we have concluded that in these cases the States have acted to deny petitioners the equal protection of the laws guaranteed by the Fourteenth Amendment.⁶¹

Responding to the *Shelley* decision in 1953, the Minnesota Legislature passed an amendment to section 507.18 barring discrimination based on “race or color” in written conveyances, including land sales or dispositions.⁶² This legislative change was one of many that were initiated in the post-WWII era. As explained below, these practices began in the Reconstruction Era.

56. *Shelley*, 334 U.S. at 4.

57. *Id.* at 5.

58. *Id.* at 6.

59. *Id.*

60. *Id.* at 22–23.

61. *Id.* at 23.

62. Act of Apr. 21, 1953, ch. 480, sec. 1, § 507.18, 1953 Minn. Laws 563, 564.

B. Cemetery Cases

An early Reconstruction-era case related to cemetery and mortuary use involved a cemetery association using discriminatory language in its conveyances.⁶³ In *Forest Lawn Memorial Park Ass'n v. De Jarnette*, Forest Lawn's association entered into a contractual agreement with De Jarnette, an African American woman.⁶⁴ The agreement prohibited cemetery use by non-whites.⁶⁵ After Forest Lawn learned of De Jarnette's race, it went to court to enforce the contract's cancellation, and it deposited the purchase price.⁶⁶ Upon review, the cancellation was upheld based on a theory of mutual mistake of fact, and the court clerk was ordered to pay defendant De Jarnette the purchase price.⁶⁷ In similar cases, courts have concluded that, notwithstanding any outbreak of violence or damage to cemetery association business, changes to the law only require holdings consistent with the Fourteenth Amendment.⁶⁸ In other words, courts no longer need to weigh undesirable social consequences against a presumption of free alienation of property.⁶⁹

Factually, *De Jarnette* was quite similar to *Erickson*.⁷⁰ In each case, the seller did not know the race of the purchaser at the time the parties contracted, and the buyer claimed ignorance of the restriction despite its presence in the written contract.⁷¹ In addition, in both cases, when the seller later learned the race of the purchaser, it offered to tender the purchase price to the purchaser with cancellation.⁷² Finally, in both cases, the buyers refused the return payment and the cancellation.⁷³

63. See *Forest Lawn Mem'l Park Ass'n v. De Jarnette*, 250 P. 581, 582 (Cal. Dist. Ct. App. 1926). Case law surrounding cemetery and mortuary use dates back to Reconstruction. Roy Hardiman, *Toward the Right of Commerciality: Recognizing Property Rights in the Commercial Value of Human Tissue*, 34 UCLAL. REV. 207, 217 n.44 (1986).

64. *De Jarnette*, 250 P. at 582.

65. *Id.* (“[N]o interment of any body or the ashes of any body other than that of a human being of the Caucasian race should be permitted in the [cemetery].”).

66. *Id.*

67. See *id.*

68. See Rogers, *supra* note 16, at 1161–62.

69. See *id.*

70. Compare *De Jarnette*, 250 P. at 582, with *Erickson v. Sunset Mem'l Park Ass'n*, 259 Minn. 532, 534–35, 108 N.W.2d 434, 436 (1961).

71. *De Jarnette*, 250 P. at 582; *Erickson*, 259 Minn. at 534–35, 108 N.W.2d at 436.

72. *De Jarnette*, 250 P. at 582; *Erickson*, 259 Minn. at 534–35, 108 N.W.2d at 436.

73. *De Jarnette*, 250 P. at 582; *Erickson*, 259 Minn. at 534–35, 108 N.W.2d at 436.

De Jarnette was overruled by *Shelley*, but was not expressly abrogated until 1969.⁷⁴ In the thirteen years between *Shelley* and *Erickson*, the courts heard a number of cases important to the issue of discriminatory covenants and real estate use conveyances.⁷⁵ These cases, in addition to the above-cited *Shelley* line of cases, were cited in pleadings in the *Erickson* case and affected the Minnesota Supreme Court's reasoning in *Erickson*.⁷⁶

C. *Interim Period*

In 1955's *Rice v. Sioux City Memorial Cemetery*, Mrs. Rice entered into an agreement with a cemetery to purchase a burial or mortuary right in a plot for her non-white husband.⁷⁷ She brought a lawsuit when the burial was denied.⁷⁸ The purchase agreement, like Ramona and David Erickson's, contained a representation that the purchasers were Caucasian, and the warranty deed contained a covenant barring the burial of non-whites.⁷⁹ The Iowa Supreme Court noted that such restrictions were as old as the cemetery business itself, and that more than ninety percent of Iowa cemeteries operated under such restrictions.⁸⁰ The court further stated that such restrictions were not borne of discriminatory intent, but rather that "[p]rivate cemeteries have always had a right to be operated for a particular group, such as Jewish, Catholic, Lutheran, Negro, Chinese, etc., not because of any prejudice against any race, but because people, like animals, prefer to be with their own kind."⁸¹

Mrs. Rice was prohibited from burying her husband in the plot, and she sued for violation of the Fourteenth Amendment and breach of contract.⁸² The court held that—even though the state appreciated Mrs. Rice's plight—to intervene between contracting parties who had come to a bargained-for agreement was not

74. *Terry v. Elmwood Cemetery*, 307 F. Supp. 369, 376 (N.D. Ala. 1969).

75. *See, e.g., Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70 (1955); *Barrows v. Jackson*, 346 U.S. 249 (1953).

76. *Erickson*, 259 Minn. at 535, 108 N.W.2d. at 436–37.

77. 60 N.W.2d 110, 112 (Iowa 1953).

78. *Id.*

79. *Id.*

80. *Id.* at 114.

81. *Id.*

82. *Id.*

warranted because there was no state action within the meaning of the Civil Rights Cases.⁸³

That same year, in *Long v. Mountain View Cemetery Ass'n*, cited by the Minnesota District and Supreme Courts in *Erickson*, Clara Long sued the cemetery association for its refusal to bury her husband in a mausoleum restricted to whites only.⁸⁴ She based the action on an allegation the cemetery had violated California's public accommodations law.⁸⁵ The lower court found for the cemetery association and the plaintiff appealed.⁸⁶ The court of appeals affirmed the ruling based on its interpretation of the final section of the public accommodations statute, which applied to hotels, ice cream parlors, and "*all other places* of public accommodation and amusement."⁸⁷ The court held that cemeteries were not included in "all other places," because the language was intended to include the types of things that preceded the phrase.⁸⁸ These cases foreshadowed Sunset Memorial Park's legal argument and public accommodation arguments in *Erickson*⁸⁹ and reflect the necessity of the Minnesota Legislature's efforts at crafting public accommodation laws to address ongoing discrimination.

V. THE MINNESOTA LEGISLATURE'S EFFORTS TO CURB DISCRIMINATION BEFORE RAMONA ERICKSON'S CASE

Minnesota's Legislature sought to curb discrimination in the 1950s with a focus on section 507.18.⁹⁰ This part gives full color and historical context to the laws of the 1950s through a brief outline of the Public Accommodation Statute, showing that many excuses for resistance to change dated back to the Reconstruction Era.

A. *Public Accommodations*

After its Civil Rights Act of 1866, Minnesota passed its Public Accommodations Statute.⁹¹ The Fourteenth Amendment was then

83. *Id.* at 115.

84. 278 P.2d 945, 945 (Cal. Dist. Ct. App. 1955).

85. *Id.*

86. *Id.*

87. *Id.* at 946 (emphasis added).

88. *Id.*

89. *Id.*

90. MINN. STAT. § 507.18 (1953).

91. Kevin J. Golden, *The Independent Development of Civil Rights in Minnesota:*

adopted in 1868.⁹² The state legislative change was roughly contemporaneous with the Supreme Court's holding in the Civil Rights Cases that the Civil Rights Act of 1875 was unconstitutional, requiring state action to find a colorable violation of the new Fourteenth Amendment.⁹³ The decisions placed public accommodations discrimination policing in the hands of the states.⁹⁴ In 1885, Minnesota passed section 327.09, disallowing those who provided public accommodations from discriminating based on race.⁹⁵ The statute's preamble asserted, "[I]t is essential to just government . . . to recognize the equality of all men before the law, and . . . to mete out equal and exact justice to all, of whatever nativity, race, color, or persuasion, religious or political. . . ."⁹⁶

The Minnesota Public Accommodations statute went through several recodifications and reclassifications between 1885 and 1953.⁹⁷ The original statute read:

That all persons within the jurisdiction of the state of Minnesota shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters and places of public amusements, restaurants, and barber-shops, subject only to the conditions and limitations established by law . . . regardless of any previous condition of servitude.⁹⁸

Moreover, the original 1885 Public Accommodations Statute provided only criminal liability for violation:

[A]ny person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any

1849-1910, 17 WM MITCHELL L. REV. 449, 456-57 (1991) (discussing the Minnesota Legislature's equal rights and accommodations act).

92. See generally U.S. CONST. amend. XIV.

93. Ira Nerken, *A New Deal for the Protection of Fourteenth Amendment Rights: Challenging the Doctrinal Bases of the Civil Rights Cases and State Action Theory*, 12 HARV. C.R.-C.L. L. REV. 297, 308 n.31 (1977) ("[A]n inspection of the [Act of 1875] shows that it makes no reference whatever to any supposed or apprehended violation of the Fourteenth Amendment on the part of the States.").

94. See WILLIAM D. GREEN, *DEGREES OF FREEDOM, THE ORIGINS OF CIVIL RIGHTS IN MINNESOTA 1865-1912*, at 130 (2015)

95. *Id.*; see also Act of March 7, 1885, ch. 224, 1885 Minn. Laws 295-96.

96. Green, *supra* note 94; see also Act of March 7, 1885, ch. 224, 1885 Minn. Laws 295-96.

97. Green, *supra* note 94.

98. *Id.*; see also Act of March 7, 1885, ch. 224, sec. 1, 1885 Minn. Laws 295-96.

2018] DISCRIMINATORY COVENANTS IN LAND CONVEYANCES 161

previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than one year.⁹⁹

In the original Public Accommodations bill, discrimination was defined as being a result of slavery, which helped compel broad support from the Minnesota Legislature.¹⁰⁰ But the lofty public purpose in the preamble of the original law was met with little enthusiasm from the legal system, demonstrated by a lack of actions on violations of the Public Accommodations Statute.¹⁰¹ This is further illustrated by a failed attempt at enforcement, as well as a single published Minnesota case citing the Public Accommodations Statute.¹⁰²

In June of 1885, two African American men went to a pub on Wabasha and ordered a round of drinks.¹⁰³ When the bartender refused service, they spoke to the county attorney, who in turn spoke to the U.S. District Attorney, who determined that no provision of the Public Accommodations Law could be construed to apply to saloons.¹⁰⁴ This problem of selective enforcement was somewhat nullified by later statutory changes.¹⁰⁵ For example, in 1899, the statutory language was changed to include every person who “aids or incites another” to violate any provision of the statute, and created a civil action for monetary damages not to exceed \$500.¹⁰⁶ Saloons were also added to the list of public accommodations—possibly as a reaction to the newspaper editorials resulting from the Wabasha case.¹⁰⁷ Between 1899 and 1961, additional specific places of public

99. Green, *supra* note 94; *see also* Act of March 7, 1885, ch. 224, sec. 2, 1885 Minn. Laws 295–96.

100. Green, *supra* note 94, at 131.

101. *Id.* at 131–32.

102. *Id.*

103. *Id.* at 134.

104. *Id.* at 135.

105. *Id.* at 127–35.

106. Act of March 6, 1899, ch. 41, sec. 1, 1899 Minn. Laws 38–39.

107. *Id.*; Act of April 18, 1905, ch. 55, 1905 Minn. Laws, § 2812.

accommodation were added to the statute; however, these changes were met with resistance, as shown in the case of *Larson v. Wrigley*.¹⁰⁸

On or around April 3, 1929, roofer Martin Larson and his comrade went for lunch at a restaurant in Minneapolis.¹⁰⁹ Employees at the restaurant believed Mr. Larson and his comrade were “too dirty” to be served and told them they would “have to get out.”¹¹⁰ Mr. Larson sued the restaurant and, ultimately, the jury found for Larson in the amount of eighty-five dollars (a little over \$1,400 in 2018).¹¹¹ On appeal, the Minnesota Supreme Court held that Mr. Larson did not state a sufficient claim for either defamation or a Public Accommodations Statute violation.¹¹² However, nowhere in either the pleadings or the court documents was Mr. Larson’s race mentioned.¹¹³ This case, and the preceding a saloon controversy, highlighted how various businesses offering public accommodations consistently avoided the consequences of the statute. This was despite creation of a private civil action for its violation in 1899 and numerous additions to expressly cover public accommodations.¹¹⁴

Sunset Memorial Park took similar steps to circumvent statutory requirements, illustrating how the legislature could pass a statute based on a strong moral consensus but provide little support for its enforcement on a practical level.¹¹⁵ Sunset cited Minnesota Statutes section 327.09 for the proposition that the legislature always intended usage rights in contracts to apply by analogy to the living, not the dead.¹¹⁶ Sunset asserted that section 507.18 (1953) could not be applied to real estate transactions on mausoleum usage rights in property.¹¹⁷ This argument was analogous to those brought forth in the Reconstruction Civil Rights Cases, as well as those found promoted in *De Jarnette*.¹¹⁸ Sunset Memorial Park’s admission that it

108. 183 Minn. 28, 235 N.W. 393 (1931). During this timeframe, *Erickson* was decided in 1961. *Erickson v. Sunset Mem’l Park Ass’n*, 259 Minn. 532, 539–42, 108 N.W.2d 434, 439–40 (1961).

109. See *Larson*, 183 Minn. at 28, 235 N.W. at 393.

110. *Id.* at 28, 235 N.W. at 393.

111. *Id.* at 28, 235 N.W. at 393.

112. *Id.* at 29, 235 N.W. at 394.

113. See generally *id.*

114. Green, *supra* note 94, at 135–37.

115. See *supra* Part III.

116. *Erickson v. Sunset Mem’l Park Ass’n*, 259 Minn. 532, 539–42, 108 N.W.2d 434, 439–40 (1961).

117. *Id.* at 539–42, 108 N.W.2d 434, 439–40.

118. See *Civil Rights Cases*, 109 U.S. 3, 4 (1883); *Forest Lawn Mem’l Park Ass’n*

was a public cemetery was likely intended to frame the legal issues to exclude section 507.18, and to focus attention instead on the Public Accommodations Statute.¹¹⁹ The Minnesota Supreme Court chose not to address this portion of Sunset Memorial Park's argument, ultimately dismissing these arguments as unfounded or spurious.¹²⁰

The legislature also enacted an ancillary law that limited the length of time a restrictive covenant was effective.¹²¹ This law stood as the only protection from such practices until the holdings from *Shelley*, *Erickson*, and related cases became the law.¹²²

B. Minnesota Statutes Sections 500.20 & 507.18

In 1937, the Minnesota Legislature enacted a law declaring that all written instruments, covenants, encumbrances, or restrictions on free alienation were invalid by automatic operation of the law thirty years after they were successfully recorded.¹²³ This statute placed the first explicit limitations on free alienation restrictions, placing a statute of limitations on discriminatory covenants.¹²⁴ In 1953, the Minnesota Legislature amended section 507.18 to include race or color in the list of protected classes against whom one could not discriminate in a written instrument, including an instrument conveying real estate.¹²⁵ The court cited this statute in *Erickson* to support the proposition that restrictive covenants in mortuary cemetery property transactions were illegal.¹²⁶

The text of Minnesota Statutes section 507.18 was originally similar to the Public Accommodation statute, but later broadened its protections to written conveyances made or affecting real estate:

No written instrument hereafter made, relating to or affecting real estate, shall contain any provision against

v. De Jarnette, 250 P. 581, 582–83 (Cal. Ct. App. 1926).

119. *Erickson*, 259 Minn. at 542, 108 N.W.2d at 439.

120. *See id.* at 542, 108 N.W.2d at 439.

121. Act of April 26, 1937, ch. 487, sec. 1, 1937 Minn. Laws 851, 851–52 (codified at MINN. STAT. § 500.20 (1937)).

122. *See Shelley v. Kraemer*, 334 U.S. 1 (1948); *see also Erickson*, 259 Minn. 532, 108 N.W.2d 434.

123. Act of April 26, 1937, ch. 487, sec. 1, 1937 Minn. Laws 851, 851–52 (codified at MINN. STAT. § 500.20 (1937)).

124. *See id.*

125. Act of April 21, 1953 ch. 480, sec. 1, 1953 Minn. Laws 563, 563–64 (codified at MINN. STAT. § 507.18 (1953)).

126. *Erickson*, 259 Minn. at 532–47, 108 N.W.2d at 434–43.

conveying, mortgaging, encumbering, or leasing any real estate to any person of a specified religious faith, creed, race or color, nor shall any such written instrument contain any provision of any kind or character discriminating against any class of persons because of their religious faith, creed, *race or color*. In every such provision any form of expression or description which is commonly understood as designating or describing a religious faith, creed, race or color shall have the same effect as if its ordinary name were used therein.¹²⁷

Any discriminatory portion of an agreement would be void, but the rest of the instrument would stand under the statute.¹²⁸

C. *Statutory Commissions*

Illustrative of its interest in lessening discrimination on a broader scale, the Minnesota Legislature created several commissions in the 1950s to address fair employment practices and discrimination. For example, the Council for Fair Employment on Merit (MCFEM) was created in 1951.¹²⁹ The legislature then created the Minnesota Council for Fair Employment Practices in 1954.¹³⁰ In 1955, the Minnesota Legislature created the Fair Employment Practices Commission (FEPC).¹³¹ This legislation declared the state of Minnesota's public policy would be to "foster the employment of all individuals in th[e] state in accordance with their fullest capacities, regardless of race, color, creed, religion, or national origin. . . . Such discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy."¹³²

In 1957, the legislature created the Legislative Interim Commission on Housing Discrimination and Segregation Practices

127. MINN. STAT. § 507.18 (2016) (emphasis added). This statute has not been changed since the 1953 amendment, including the \$500 civil action it created.

128. *Id.*

129. See ANTHONY S. CHEN, *THE FIFTH FREEDOM: JOBS, POLITICS, AND CIVIL RIGHTS IN THE UNITED STATES, 1941–1972*, at 120 (2009).

130. See generally STATE COMM'N AGAINST DISCRIMINATION, MINNESOTA HUMAN RIGHTS DEP'T, AN INVENTORY OF ITS RECORDS (last visited June 20, 2018), <http://www2.mnhs.org/library/findaids/hrts004.pdf> [<https://perma.cc/25ND-QGXB>] (last visited June 20, 2018).

131. Act of April 19, 1955, ch. 516, sec. 6, 1955 Minn. Laws 802, 805–06.

132. *Id.* at 802–03.

2018] DISCRIMINATORY COVENANTS IN LAND CONVEYANCES 165

(LICHDSP).¹³³ The legislation directed the commission “to investigate and study discrimination because of race . . . in the sale, lease, use or occupancy . . . of property . . . and providing for cooperation with other government agencies.”¹³⁴ Through the creation of LICHDSP, the legislature stated that race or color discrimination “menaces and undermines the institutions and foundations of a democratic state” and places many persons in living conditions that are “inimical to the general welfare and contrary to our way of life.”¹³⁵

Until 1961, these commissions worked together loosely under the Human Rights Commission toward separate but related goals.¹³⁶ In 1961, Governor Anderson created a Commission Against Discrimination (GCDA).¹³⁷ The GCDA served as an umbrella organization for all the discrimination commissions that predated it, giving each commission a stated common purpose and annual conference where the commissions presented new studies to the public and to other commissions.¹³⁸ These commissions and the legislation they recommended for passage later became the bulk of the Minnesota Human Rights Act.¹³⁹

VI. RAMONA ERICKSON’S LAWSUIT AGAINST SUNSET MEMORIAL PARK

In *Erickson*, the Minnesota Supreme Court affirmed the Hennepin County District Court’s ruling based upon a violation of section 507.18.¹⁴⁰ Although the holding did not reach the Fourteenth Amendment or Public Accommodations Statute, Ramona Erickson’s struggle brought up these issues along with Reconstruction Era arguments on reluctance or recalcitrance of private businesses to follow the law.¹⁴¹

133. Act of April 29, 1957, ch. 953, 1957 Minn. Laws 1708, 1708 (creating a commission to study discrimination and segregation in property and housing accommodations).

134. *Id.* at 1708.

135. *Id.*

136. *See* STATE COMM’N AGAINST DISCRIMINATION, *supra* note 130.

137. Act of April 17, 1961, ch. 428, 1961 Minn. Laws 641, 641–652.

138. *See id.* at 648.

139. *See* MINN. STAT. § 363A (2016).

140. *Erickson v. Sunset Mem’l Park Ass’n*, 259 Minn. 532, 547, 108 N.W.2d 434, 447 (1961).

141. *Id.* at 539 n.2, 108 N.W.2d at 438 n.2.

The facts of the *Erickson* case start on or around August 26, 1955, when David and Ramona Erickson entered into an agreement with Sunset Memorial Park for the purchase of two adjoining burial plots for \$365.¹⁴² The agreement to purchase burial space contained a condition that the purchaser “covenants and agrees that said property hereby conveyed shall be used only for the interment or burial of deceased persons of the Caucasian race.”¹⁴³ Sunset Memorial Park, through its Assistant Vice President, issued the subsequent warranty deed with a similar covenant: “[t]he party of the second part covenants and agrees that said property hereby conveyed shall be used only for interment or burial of deceased members of the Caucasian race.”¹⁴⁴

Sunset Memorial Park later argued that its agent would not have entered into this agreement had it known that Ramona Erickson was a Dakota woman, as it had exclusively interred only Caucasian persons from its inception.¹⁴⁵ This mistake of fact was a key portion of Sunset Memorial Park’s argument that both the parties entered into the contract freely knowing its terms with the Ericksons materially misleading Sunset in the process.¹⁴⁶

In a letter dated March 13, 1958, Ramona Erickson notified Sunset Memorial Park Association that she was a Dakota woman.¹⁴⁷ Sunset Memorial Park Association then replied, stating: “Because of its charter conditions, it is impossible for Sunset Memorial Park Association to permit interment of anyone not of the Caucasian

142. See Complaint at Exhibit A, *Erickson*, 259 Minn. 532, 108 N.W. 2d 434 (No. 38091). The lot is referred to as either 624A, 624, or Block 15, as it is a double “shared” lot. Interment Contract, *supra* note 4.

143. Complaint at Exhibit A, *Erickson*, 259 Minn. 532, 108 N.W. 2d 434 (No. 38091).

144. *Id.* Author’s research indicated the executed warranty deed was either not subsequently filed in the Hennepin County Office of the Recorder of Deeds or has since been destroyed. The Hennepin County Office of the Recorder of Deeds considers burial plots as personal property not rising to the level of a property interest and thus not subject to filing requirements. Compare *Erickson*, 259 Minn. at 541–42, 108 N.W.2d at 440 (“[A] purchaser of a cemetery lot may not acquire the fee simple title to the property. . . .”), with MINN. STAT. § 508.04 (1953) (outlining that “[n]o lesser estate than a fee simple” may be registered).

145. See *Erickson*, 259 Minn. at 533, 108 N.W.2d at 435 (stating Sunset Memorial Park denied burial to a non-Caucasian).

146. *Id.*

147. See Complaint at Exhibit B, *Erickson*, 259 Minn. at 532, 108 N.W. 2d at 434 (No. 38091) (containing the letter from Sunset Memorial Park addressed to “Mrs. D. Erickson” and dated April 18, 1958).

2018] DISCRIMINATORY COVENANTS IN LAND CONVEYANCES 167

White Race. I believe you said that you are of Indian decent [sic]. This obviously would make it impossible for you to be interred in Sunset.”¹⁴⁸ The letter went on to offer Ramona a few options or alternatives to interment beside her husband.¹⁴⁹ First, she could keep the property and not be interred in it. Second, she could sell the property herself.¹⁵⁰ Third, she could sell the property back to the association for \$180.¹⁵¹ Fourth, she could have the Sunset resale department sell the property at a forty percent commission.¹⁵² Sunset Memorial Park’s action came nearly ten years after the Supreme Court’s decision in *Shelley*, which forbade judicial enforcement of discriminatory covenants.¹⁵³

Instead of selling the plot at a significant loss, or keeping it and not using it, Ramona Erickson went to Hennepin County District Court for declaratory relief that the discriminatory covenant was void as being against public policy.¹⁵⁴ In the opinion granting relief, the judge quoted Justice Dooling’s concurrence in *Long v. Mountain View Cemetery Association*:

I cannot believe that a man’s mortal remains will disintegrate any less peaceably because of the close proximity of the body of a member of another race, and in that inevitable disintegration I am sure that the pigmentation of the skin cannot long endure. It strikes me that the carrying of racial discrimination into the burial grounds is a particularly stupid form of human arrogance and intolerance. If life does not do so, the universal fellowship of death should teach humility. The good people who insist on the racial segregation of what is mortal in man may be shocked to learn when their own lives end that God has reserved no racially exclusive position for them in the hereafter.¹⁵⁵

148. *See id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

153. *Shelley v. Kraemer*, 334 U.S. 1, 20–21 (1947).

154. *Erickson v. Sunset Mem’l Park Ass’n*, 259 Minn. 532, 533, 108 N.W. 2d 434, 435 (1961).

155. *Id.* at 535, 108 N.W.2d at 436 (quoting *Long v. Mountain View Cemetery Ass’n*, 278 P.2d 945, 946 (Cal. Dist. Ct. App. 1955)).

Sunset Memorial Park Association appealed the decision to the Minnesota Supreme Court.¹⁵⁶ The court held that discriminatory covenants were void as against public policy and that such covenants violated Minnesota Statutes section 507.18 prohibiting discrimination based on religion or race in real estate transactions.¹⁵⁷ The court also affirmed based on a discussion of the *Shelley* line of cases and, to a lesser extent, the Civil Rights Cases.¹⁵⁸ Within the discussion, the Minnesota Supreme Court addressed the bulk of arguments presented by Sunset Memorial Park Association, which had its roots in Reconstruction Era recalcitrance against the Minnesota Public Accommodation statute.¹⁵⁹

Sunset Memorial Park's corporate and plat filings indicated that its intention to operate as a private cemetery under chapter 306 changed over time.¹⁶⁰ The reader will recall that in 1899, Sunset Memorial Park's corporate purpose had been to operate perpetually as a private cemetery.¹⁶¹ Later, Sunset Memorial Park changed its corporate purpose to the operation of a public cemetery.¹⁶² By the time Ramona Erickson was denied burial use, Sunset Memorial Park made neither distinction in its corporate or plat filings.¹⁶³

This failure to make a distinction between public and private may have been an effort to avoid the requirements of a public cemetery not affiliated with a religious group under chapter 306.

156. *Id.* at 535, 108 N.W.2d at 436. In 1958, there was no intermediate appellate court in Minnesota. *Minnesota Court of Appeals*, MINN. JUDICIAL BRANCH, <http://www.mncourts.gov/CourtOfAppeals.aspx> [<https://perma.cc/HRP7-LWSR>] (stating that the Minnesota Court of Appeals began on November 1, 1983).

157. *Erickson*, 259 Minn. at 545, 108 N.W.2d at 442.

158. *Id.* at 546, 108 N.W.2d at 443.

159. *Id.* at 546, 108 N.W.2d at 443.

160. *See supra* Part II. Minnesota Statutes chapter 306 allowed private organizations to own and operate both public and private cemeteries. *See* Minn. Stat. § 306.02 (1957) (“A corporation or association may be formed for the purpose of procuring and holding or selling lands or lots exclusively for the purpose of a public cemetery.”). However, it allowed private cemeteries to exclude use based on membership in a religious affiliated group, while no such exclusion was allowed for public cemeteries organized under the chapter. *See id.* (“Any such cemetery association so affiliated with a religious corporation by such a provision in its articles may also provide for the acquisition of other cemetery properties within the state wherein bodies of persons of the same religious faith, *exclusively*, are to be buried.” (emphasis added)).

161. *See supra* Part III.

162. *Id.*

163. *Id.*

2018] DISCRIMINATORY COVENANTS IN LAND CONVEYANCES 169

One of Sunset Memorial Park's arguments before the Minnesota Supreme Court was that it should be allowed to discriminate because doing so limited burial use to members of its religious affiliated group.¹⁶⁴ The court addressed this contention by pointing out that Sunset Memorial Park was, and had always been, a public cemetery not affiliated with a religious group, and that chapter 306 did not conflate those with public cemeteries not so affiliated.¹⁶⁵ Therefore, Sunset Memorial Park could not discriminate based on membership in a religious affiliated group.¹⁶⁶

The Minnesota Public Accommodation statute was directly cited in *Erickson*.¹⁶⁷ One of Sunset Memorial Park's arguments was that the Public Accommodation statute and section 507.18 were related and only applied to the living.¹⁶⁸ After all, a St. Paul saloon owner denying service to two African American men had made a similar, successful argument that the Public Accommodations statute did not apply because the 1885 iteration did not expressly list saloons.¹⁶⁹

The court in *Erickson* dismissed this argument with little discussion because the rights involved were those of living persons and real property.¹⁷⁰ The Minnesota Supreme Court agreed with the trial court which summarized that "the short answer is that both Mr. and Mrs. Erickson are living persons, and the contention of defendant, if sustained, would discriminate against them and affects their ownership or use of an interest in real estate."¹⁷¹ However, Sunset Memorial Park argued that the deed between itself and

164. See *Erickson*, 259 Minn. at 542, 108 N.W.2d at 440. Sunset Memorial Park also forwarded arguments that closely tracked the *Civil Rights Cases* and the *Shelley v. Kraemer* line of cases. *Id.* at 538, 108 N.W.2d at 438 (describing Defendant's reliance on *Rice v. Sioux City Mem'l Park Cemetery*, 60 N.W.2d 110, 118 (Iowa 1953)).

165. *Id.* at 542, 108 N.W.2d at 440.

166. See *id.* at 542, 108 N.W.2d at 440.

167. *Id.* at 541–45, 108 N.W.2d at 439–41; see also MINN. STAT. § 507.18 (1957) (prohibiting discriminatory restrictions on real property based on "religious faith, creed, race or color"); *Id.* § 645.21 ("No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature.").

168. *Erickson*, 259 Minn. at 543, 108 N.W.2d at 441. See generally MINN. STAT. § 327.09 (1957) ("No person shall be excluded, on account of race, color, national origin, or religion from full and equal enjoyment of any accommodation, advantage, or privilege furnished by public conveyances, theaters, or other public places of amusement, or by hotels, barber shops, saloons, restaurants, or other places of refreshments, entertainment, or accommodations."); *Id.* § 507.18 (1957).

169. See *supra* Part V.A.

170. *Erickson*, 259 Minn. at 541, 108 N.W.2d at 439–40.

171. *Id.* at 541, 108 N.W.2d at 439–40.

Ramona Erickson was not a disposition of property, and therefore section 507.18, disallowing discrimination in instruments concerning real estate, did not apply.¹⁷² The court disagreed, interpreting the interest involved in the transaction as one conferring an interest in real property, so the statute applied.¹⁷³ The existence of a statute disallowing discrimination in instruments conveying interests in real estate was a key difference between *Erickson*, *Long*, and *Rice v. Sioux City Memorial*.¹⁷⁴

Both *Long* and *Rice* were essentially state interpretations of the issues addressed by *Shelley*.¹⁷⁵ Both cases limited the application of *Shelley* in Minnesota, allowing discriminatory covenants in cemetery use transactions.¹⁷⁶ There was no state statute barring discrimination in real estate transactions when the cases were decided.¹⁷⁷ This distinction was critical to the new outcome in *Erickson*: it demonstrated how the United States Supreme Court left it to the states to decide how zealously they wished to enforce the ruling in *Shelley*.¹⁷⁸ States' choices could be seen in the slow rate of public accommodations statutes adoption in the aftermath of the *Civil Rights Cases*.¹⁷⁹

VII. CONCLUSION

David E. Erickson died on January 9, 1972, at the age of 81.¹⁸⁰ Mr. Erickson was interred, as planned, in lot 625 of Block 15 at Sunset Memorial Park.¹⁸¹ The simple headstone described earlier in

172. *Id.* at 541, 108 N.W.2d at 440.

173. *Id.* at 541, 108 N.W.2d at 440.

174. *See supra* Part IV.C.

175. *See Long v. Mountain View Cemetery Ass'n*, 278 P.2d 945, 946 (Cal. Dist. Ct. App. 1955) (showing that three concurring justices refused to extend state public accommodation statute to burial plots); *Rice v. Sioux City Mem'l Park Cemetery*, 60 N.W.2d 110, 155 (Iowa 1953) ("This theory [extending the *Shelley* holding] the district court would not adopt and we think properly declined to do so.").

176. *Long*, 278 P.2d at 945–46; *Rice*, 60 N.W.2d at 116.

177. *Long*, 278 P.2d at 945–46; *Rice*, 60 N.W.2d at 116.

178. *See Erickson*, 259 Minn. at 543, 108 N.W.2d at 441 (implying Minnesota Statutes section 507.18 yields a different result than that of *Long* and *Rice*).

179. *See supra* Part V.A.

180. *See David & Ramona Erickson Sunset Memorial Park Burial Plot Information Document* (unpublished public document) (on file with author) [hereinafter *Burial Plot Information Document*].

181. *Id.*

2018] DISCRIMINATORY COVENANTS IN LAND CONVEYANCES 171

this Article was not installed until 1973.¹⁸² Ramona Erickson died on February 26, 1984, at the age of 83 and was interred next to her husband David Erickson on March 1, 1984.¹⁸³ The absence of Ramona Erickson's death date on the headstone gives the impression that she has yet to join her husband or did not win the right to do so. This is both sad and puzzling considering that she fought all the way to the Minnesota Supreme Court to be buried next to her husband. For this reason, her story cries out to be told.

Moreover, Ramona Erickson's case against Sunset Memorial Park Association helped solidify efforts to curb discrimination in Minnesota. The Minnesota Legislature initially responded to *Shelley* and the earlier Public Accommodation counterparts with efforts to curb discrimination in the 1950s. These efforts clashed with private entities, such as Sunset Memorial Park, which used arguments dating back to the Reconstruction era.

Retelling the story of Ramona Erickson's struggle not only honors her legacy where her tombstone does not, but also reminds us of those who struggled against discrimination before her and the struggles that many minoritized groups continue to face today.

182. Interview with Kara Kelley-Thorpe, Family Service Counselor, Sunset Memorial Park Ass'n, in Minneapolis, Minn. (Sept. 16, 2015) [hereinafter Interview with Kara Kelley-Thorpe].

183. Burial Plot Information Document, *supra note* 180.