

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

244

CA 23-00089

PRESENT: WHALEN, P.J., LINDLEY, OGDEN, NOWAK, AND DELCONTE, JJ.

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IN THE MATTER OF BUFFALO CITY CEMETERY, INC.,  
ALSO KNOWN AS FOREST LAWN, PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

215 LOT OWNERS AND/OR NEXT-OF-KIN FOR DECEDENTS  
INTERRED AT ST. MATTHEW'S CEMETERY,  
RESPONDENTS-APPELLANTS.

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LIPSITZ GREEN SCIME CAMBRIA LLP, BUFFALO (JOHN A. COLLINS OF COUNSEL),  
FOR RESPONDENTS-APPELLANTS.

GOLDBERG SEGALLA LLP, BUFFALO (MEGHAN M. BROWN OF COUNSEL), FOR  
PETITIONER-RESPONDENT.

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Appeal from a decision of the Supreme Court, Erie County (Dennis E. Ward, J.), entered November 30, 2022. The decision granted the petition for approval of the relocation of graves.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: In this proceeding pursuant to Not-for-Profit Corporation Law § 1510 (e), respondents appeal from a decision granting petitioner's request for a judgment approving, nunc pro tunc, the relocation of 215 graves within its cemetery in West Seneca. It is well settled, however, that "no appeal lies from a decision" (*Gunn v Palmieri*, 86 NY2d 830, 830 [1995]; see CPLR 5512 [a]; *Garcia v Town of Tonawanda*, 194 AD3d 1479, 1479-1480 [4th Dept 2021]; *Kuhn v Kuhn*, 129 AD2d 967, 967 [4th Dept 1987]). Although respondents ask us to treat the decision as a judgment and thereby entertain their appeal, we lack discretion to do so inasmuch as the decision from which they appeal lacks the essential requirements of a judgment (see generally *Nicol v Nicol*, 179 AD3d 1472, 1473 [4th Dept 2020]). We therefore dismiss the appeal without addressing the merits of respondents' contentions.

Entered: May 3, 2024

Ann Dillon Flynn  
Clerk of the Court