

In the consistory court at Lincoln

And in the matter of Boston Cemetery and the late Rita Ann Hubbert deceased

Judgement

1. By a Petition dated 22 February 2012 the Petitioner who was the husband of the deceased, seeks a faculty to exhume the cremated remain of his late wife who died on 25 June 2010. She was interred in July 2010 in a family grave in Boston cemetery. She was buried in a family grave which contained the cremated remains of Annie Beck and a coffin in which is contained the remains of George Beck who died in March 2003 and July 1952 respectively. Annie and George Beck were the parents of Rita Hubbert. Also buried in the same grave are the cremated remains of Stanley Conroy (interred 31 March 2011) and Christine Beck (interred 6 May 2011). Both of these people were married to a daughter and son of Annie and George Beck.
2. The problem that has arisen is that when Rita's remains were interred in 2010 the Petitioner notified the other members of the family that he would be placing his wife's ashes with her parents in the family grave. No one objected and no one said that they wanted to be buried there too (with their spouses). It was the intention of the Petitioner that he would have his cremated remains interred in the same family grave with his wife when the time came. He had not thought about the question of space because no one at that time, he tells me, had said they wanted to be buried with Annie and George, too. When Rita's ashes were interred no other ashes had been placed with the remains of Annie and George.
3. Since Rita died in 2010, Stanley Conroy and Christine Beck (a son in law and a daughter in law of Annie and George) have died and their remains have been placed in the grave. Their respective spouses have indicated that when the time comes they wish to be buried in the family grave too. Annie and George had 7 children (of whom only one, Rita, has died). This means that if all the children want their remains with their parents there will have to be 6 more interments of ashes of Annie and George's children, together with 4 other interments of

their spouses (I assume that the divorced wife of Dennis Beck would not want to be interred in this family grave).

4. The Petitioner's concern is that there may not be room for him when the time comes, and he would rather exhume his wife's ashes now so that she can be re-interred elsewhere and he will be able to join her when the time comes.

5. I have received consents to this arrangement either personally or via an attorney from 5 children of Annie and George. I am told that Vera, a daughter, is unwell and no power of attorney has been granted so I do not know her attitude to this application. All grandchildren of Annie and George have consented save for those with whom the family is no longer in touch (Graham Conroy, Sally Wright, Mark Beck, Donna Hoffman and Nicholas Beck).

6. Boston Cemetery is under the supervision of municipal authorities but the burial is in a consecrated part of the cemetery and therefore within the jurisdiction of this Court.

7. In considering this Petition it is important that the Petitioner understands the law that I must apply, which is founded upon a Christian understanding of what burial of the body or the cremated remains, signify. The principles by which an exhumation from consecrated ground is permitted are well known and set out in the case of In Re Blagdon Cemetery 2002 Fam p299.

8. The presumption is that burial of human remains in consecrated ground is permanent. This presumption arises from the Christian theology of burial which was set out at para 23 of the judgement in Blagdon in the quotation from The Bishop of Stafford's paper on the 'Theology of Burial'. He wrote

“ The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for their life; to commend them to God the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another.”

He went on to explain:

“ The permanent burial of the physical body/ the burial of the cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their ' journey'), entrusting them in peace for their ultimate destination,

with us, to the heavenly Jerusalem. The commending, entrusting, resting in peace does not sit easily with 'portable remains' which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the 'symbol' of human life rather than a giving back to God"

9. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that Rita Hubbert was laid to rest in 2010 and her remains should not now be disturbed.

10. The Court of the Arches in Blagdon identified various factors which may support a submission that special circumstances have arisen which permit the remains to be exhumed. These factors are:

(i) medical reasons.

The Court made it clear that the only medical reasons which could assist a petitioner in these circumstances would be those which showed quite clearly that a serious psychiatric or psychological problem had arisen caused by the location of the grave to whom the petitioner had a special attachment. The Court made it quite clear mere decline in health and mobility due to advancing years could not be a reason which would displace the presumption of permanence.

There is no suggestion here of the necessary serious psychiatric illness linked to the location of the grave.

(ii) lapse of time.

The Court held that the passage of a substantial period of time before an application for exhumation was made could not be determinative of the application in itself. However, it would be a factor in assessing the genuineness of the Petitioners case.

In this case there has been delay of only 2 years. It would seem that as soon as the brother and sister in law of the Petitioner were interred, this issue was raised. There has been no delay

- (iii) mistake.

Where there has been a simple error in administration, such as burial in the wrong grave, the Court held that faculties for exhumations could readily be granted. Of more difficulty is where there is a failure to understand or appreciate the significance of burial in consecrated ground in a municipal cemetery. In the case of In re Crawley Green Road cemetery, Luton 2001 Fam 308 the family of a humanist was permitted an exhumation on this ground: also In re Durrington Cemetery 2001 Fam 33 orthodox Jews were permitted to exhume. The Court emphasised the need for greater clarity about the significance of burial in consecrated ground in cemeteries.

There has been no mistake in the burial place here.

- (iv) precedent.

The Court held that consideration of the effect of precedent by the grant of the application is properly made because of the desirability of securing equality of treatment, so far as circumstances permit between petitioners.

I take this issue in to account.

- (v) family grave

The Court held that the use of family graves are to be encouraged because they both express family unity and they are environmentally friendly in demonstrating an economical use of the land for burials.

11. What is sought here is the reversal of a 'family grave' application. Here the Petitioner wants to remove his wife's remains from the family grave so that they can be together when the time comes in a different plot. I note that no one has objected to this course of action (subject to the wishes of Vera being sought), but what the Petitioner seeks is the reversal of the presumption of permanence so that another smaller family grave can be started. If I granted this application, the very opposite of family unity would be demonstrated. By permitting the removal of the remains, all those problems raised by the Bishop of Stafford would be manifested:

“The commending, entrusting, resting in peace does not sit easily with ‘portable remains’ which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the ‘symbol’ of human life rather than a giving back to God”.

12. Exhumation is permitted in very specific circumstances as I have set out above. I am afraid that the circumstances that have arisen here do not allow me to make the exception from the presumption of permanence. The application is refused.

13. In the light of my decision, I waive my fee.



Mark Bishop

18 June 2012

