

In the matter of St Peter's Foston

And in the matter of Ivy Gertrude Brisbane, deceased

JUDGEMENT

1. This is an Petition of Paul Brisbane and Ruth Richardson dated 4 July 2013 in which they apply for the exhumation of the cremated remains of their mother Ivy Gertrude Brisbane which are interred in the churchyard of St Peter's Foston. Mrs Brisbane died on 30 September 1985 and the interment took place on 18 October 1985.
2. The application is put on the basis that when Mrs Brisbane died in sudden and unexpected circumstances Mr Brisbane, the Petitioners' father, was in no fit emotional state to make a considered decision about where his wife's remains were to be interred. Mrs Brisbane's sister, Eileen, took the decision that they should be interred in their parents grave at St Peter's Foston. As time went by the Petitioners submit that Mr Brisbane felt this was not the right place for the ashes to be interred: he raised the issue with Eileen but she would not agree to the removal of the ashes. At some point Mr Brisbane moved to Norfolk to be close to his daughter. Sadly he has died in September 2012.
3. The family arranged for Mr Brisbane's ashes to be interred in a new plot at All Saints' Church, Beeston Regis, Norfolk. This is close to the family and they visit his grave. The Petitioners now wish to exhume their mother's cremated remains and inter them with their father's remains in Beeston Regis. They have the support of their sister in law and the grandchildren of Mr and Mrs Brisbane as well as two widows of Mrs Brisbane's brothers and a further 4 children from the next generation. There is clearly strong family support for this application. I am not aware of any objection.
4. The ashes were interred in an oak casket and I assume it is physically possible to exhume the ashes.
5. The Environmental Health Services at South Kesteven DC have confirmed by their letter dated 23 November 2012 they have no objection to the exhumation. Mrs Baker, the

churchwarden at Beeston Regis is content for the exhumed cremated remains to be interred with Mr Brisbane's remains. I assume that this reflects the views of the PCC. Canon Littlewood the acting rural dean sets out his views and those of the St Peter's PCC in his letter dated 9 January 2013. He does not object to the proposed exhumation on pastoral grounds albeit expressing this view with some hesitation because of a reluctance to disturb buried remains.

Principles.

6. 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.

7. 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'.

“ 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”

8. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that Mrs Brisbane was laid to rest in 1985 and her remains should not now be disturbed. What are those ‘special circumstances?’

9. 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:

9.1 **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. Mere decline in health and mobility due to advancing years could not be a reason which would displace the presumption of permanence.

Comment:

9.1.1 There is no suggestion here of the necessary serious psychiatric illness in the Petitioners linked to the location of the grave. The application is not made on those grounds.

9.2 **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.

Comment:

9.2.1 In this case almost 28 years have elapsed since Mrs Brisbane’s remains were interred. During those years no application was made by Mr Brisbane although I am told (and I accept) that as time went by he became distressed with the decision made by Eileen and approached her about moving the remains to Norfolk where he lived : she would not agree to this. I note that the Petitioners had approached Mr Brisbane on ‘numerous occasions’ about making this application but he did not do so.

9.2.2 have no doubt that the Petitioners are genuinely seeking to do the best by their late parents as they see it. However, the fact that so long has passed without an application, and that none was made by Mr Brisbane during his lifetime, weakens the strength of this application. This is not an application brought by a living partner of the deceased who seeks exhumation on pastoral grounds, a mistake having been made which causes distress. I note that the Petitioners did not arrange for Mr Brisbane's remains to be interred with Mrs Brisbane's remains in Foston in 2012 so they could be united there. It would seem that the key issue for the Petitioners is that they wish to act on their father's wishes expressed whilst he was alive, and the convenience to them in visiting the grave: Foston is further away than Beeston Regis.

9.3 **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.

Comment:

9.3.1 No mistake has been made in this case: Mrs Brisbane's remains were interred in Foston through a decision made by others when Mr Brisbane was emotionally upset, and which Mr Brisbane later came to regret.

9.4 **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.

Comment:

9.4.1 This is an important issue to weigh. Are the circumstances presented by this Petition sufficient to displace the presumption of permanence which is applied to all other interments?

9.5 **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.

Comment:

9.5.1 In this case it is proposed to exhume Mrs Brisbane's remains and inter them with Mr Brisbane. However Mrs Brisbane's remains are already interred with her parents in a family grave. So the effect of this exhumation would be to move the ashes from one family grave to another and not lead to any saving of space.

Assessment

10. I accept that this application is made in good faith by the Petitioners who are seeking to do the right thing as they see it by the wishes expressed to them by their father during his life time, as well as facilitating their visits to their parents' graves.

11. Notwithstanding this, I regret that I am unable to permit this exhumation. My reasons are as follows:

(i) almost 27 years have elapsed since the interment. During this time no application was made by Mr Brisbane notwithstanding requests by his family that he should do so.

(ii) any distress that Mr Brisbane had during his life time about the location of his late wife's ashes are no longer relevant following his death. Christian theology understands that Mr and Mrs Brisbane are now united in death within the love of God, and the location of their human remains does not affect that great reassuring truth.

(iii) although existing family members are in favour of exhumation, it would seem that Mrs Brisbane's sister remained opposed to that during her life time. She was a close family member.

(iv) a decision has been made to inter Mr Brisbane's remains in Beeston Regis when there was an opportunity to unite the ashes of both parents in Foston in a family grave. In the light of this, there will be no greater economic use of land by granting this application. Mrs Brisbane's remains are already in a family grave.

(v) an application to exhume based on seeking to achieve what a deceased partner wanted in his life, but yet took no step himself to achieve, is a significantly weaker application than one made by that partner during his life time.

(vi) convenience of existing family members in visiting a parental grave is not a reason to displace the presumption of permanence.

12. Weighing this up carefully I am not able to authorise the exhumation of Mrs Brisbane's ashes. I recognise this will be a disappointment to the Petitioners. However, I hope that they will find solace in their bereavement from the Christian truth that wherever their parents remains are located, both their parents are together commended and entrusted into the love of God forever, and that they rest in peace.

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

Mark Bishop

Chancellor

20 September 2013