

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

FAZELEY: ST PAUL

IN THE MATTER OF THE REMAINS OF ANTHONY ROY WILSON

ON THE PETITION OF ROSEMARIE LEAKE

JUDGMENT

- 1) On 14th March 2016 a casket containing the cremated remains of Anthony Wilson was interred in the churchyard of St Paul's, Fazeley. The interment was into a grave which already contained the remains of Anthony Wilson's parents, James and Kathleen Wilson. The interment had been arranged by Amanda Hughes, the daughter of Anthony Wilson. Rosemarie Leake petitions for a faculty for the exhumation of the remains of Anthony Wilson and their reinterment in a nearby plot in the churchyard. Mrs. Leake is a sister of Anthony Wilson and her petition is supported by his other six siblings. Amanda Hughes and her brother have consented to the grant of the proposed faculty.
- 2) I have concluded that it is expedient to determine this matter on the basis of written representations. Mrs. Leake has consented to that course and has confirmed that she is content for the correspondence already submitted to stand as her representations.

The Circumstances of the Interment.

- 3) The interment was conducted by Maureen Casson, a reader licensed to St. Paul's. The arrangements were made by Carol Graham, the parish administrator. Both those ladies have helpfully written letters setting out their involvement.
- 4) Mrs. Graham was approached by undertakers after the cremation had taken place. The undertakers were acting on behalf of Amanda Hughes. Mrs. Graham says that she "*carried out the normal questions that I ask*" and that having received answers she contacted Mrs. Casson who took matters forward. The request was for the interment of Anthony Wilson's remains in his parents' grave. This was said to have been his wish and I have no doubt that it was, indeed, his wish.

- 5) Mrs. Casson explains that Amanda Hughes declined a visit from her before the interment. Mrs. Hughes explained that the cremation had already taken place and that she saw no need for involvement from the ministers of St. Paul's other than the interment itself. She and Mrs. Casson only met at the time of the interment. Mrs. Hughes resisted the suggestion of a bible reading at the time of interment. There was a very short service of prayers and of committal and blessing at the graveside.

The Family Circumstances.

- 6) Neither Mrs. Hughes nor the undertakers acting on her behalf had told Mrs. Graham or Mrs. Casson that Anthony Wilson had seven surviving siblings. I do not know whether Mrs. Graham's "*usual questions*" included questions about that matter. Those siblings had not been consulted by Mrs. Hughes about her intention to inter her father's remains in the grave of the siblings' parents. As Mrs. Graham was unaware of the siblings she did not consult them. I am satisfied that Amanda Hughes was not in any way acting in bad faith (and this is not suggested by the Petitioner or any other family member). She was acting at a time of bereavement and was seeking to carry out her late father's wishes. The fact remains that she did not consult her uncles and aunts about her proposal for their parents' grave and her failure to inform Mrs. Graham of these people she meant that there was no consultation from the parish office.
- 7) The Petitioner is a sister of Anthony Wilson. She learnt of the interment by chance on visiting her parents' grave. In her written representations Mrs. Leake says that the discovery "*caused great upset amongst the family.*" They felt that their parents' "*resting place had been disturbed*" and Mrs. Leake says "*we feel that the privacy and wishes of our loving parents have been invaded and the feelings of the remaining sons and daughters ... have not been considered.*" She concludes by saying that she and a number of family members had been in the habit of visiting their parents' grave but "*there is now a feeling of unrest as family members feel they can no longer visit the grave for moments of quiet reflection with my parents as the ashes of my brother are now also buried in the grave.*" I am satisfied that those feelings of distress are real and that concerns are genuine even though they do appear to equate the location of the resting place of the

mortal remains of James and Kathleen Wilson with a place of their continuing personal presence.

- 8) The impression which I have formed on considering the correspondence is that there had been no particular falling out between Anthony Wilson and his brothers and sisters but that they were not close. The upset felt by the surviving siblings comes from the disturbance of the grave and the effect that has on the scope for quiet reflection. It is not motivated by any animosity towards Anthony Wilson.
- 9) Mrs. Hughes and her brother regret the distress which their actions have caused. They believed that they were carrying out their father's wishes and regret the fact that exhumation will thwart those wishes. Nonetheless, they have consented to the petition to avoid further family conflict. As explained above it is intended that Anthony Wilson's remains should be reinterred in a further plot in the churchyard of St. Paul's close to the current location and so close to his parents' grave.

The Relevant Legal Principles.

- 10) The approach which I am to take in considering this Petition was laid down by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. I have a discretion but the starting point in exercising that discretion is the presumption of the permanence of Christian burial. That presumption flows from the theological understanding that burial (or the interment of cremated remains) is to be seen as the act of committing the mortal remains of the departed into the hands of God as represented by His Holy Church. Exhumation is to be exceptional and the Consistory Court must determine whether there are special circumstances justifying the taking of that exceptional course in the particular case (the burden of establishing the existence of such circumstances being on the petitioner in the case in question).
- 11) I have previously explained that in rare cases circumstances of conflict at the graveside can be an exceptional circumstance justifying exhumation: see *Re St Mary, Haseley* (Coventry 2009). Similarly, feelings of distress arising out of the interment of particular remains in a particular grave containing other remains can be an exceptional circumstance for these purposes: see the decision of Tattersall Ch in *Re St Mark, Worley* (Manchester) (2007) 9 Ecc L J 147. Nonetheless, the Court must remember the force of presumption of permanence and must not

lightly regard considerations of distress as being exceptional circumstances for these purposes.

Application of the Principles to this Case.

12) This is not a case of an error of administration in the classic sense of a burial in the wrong grave. However, it is a case where appropriate steps were not taken before the interment. Consultation with the surviving children of James and Kathleen Wilson in advance of the interment was not required as a matter of law but it was highly desirable as a matter of courtesy and good practice. It did not happen here. I have already said that Mrs. Hughes was not acting in bad faith but in concentrating on carrying out her father's wishes she failed to take account of the potential distress to his siblings. Similarly, the answers to the questions which Mrs. Graham asked did not reveal the complexity of the family situation. It does not matter for present purposes whether that was because the questions were insufficiently detailed or because the undertakers (again probably through ignorance) failed to give correct answers.

13) The consequence is that real distress has been caused and is continuing to be felt by the family of James and Kathleen Wilson. The grave of Mr. and Mrs. Wilson has become a focus of disquiet and grievance amongst the family members with a real degree of distress to some. I am satisfied that this aspect together with the history of the lack of consultation before the interment and with the scope for the reinterment of Anthony Wilson's remains in a plot close to his parents' grave means that there are exceptional circumstances justifying exhumation in this unusual and particular case.

14) Accordingly, the faculty sought shall be granted.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
12th July 2016