

Neutral Citation Number: [2016] ECC New 3

IN THE CONSISTORY COURT OF THE DIOCESE OF NEWCASTLE

In the Matter of an Application to exhume the remains of Mrs Mary Ellen
WRIGHT from the Consecrated section of Preston Cemetery, North Shields; and

In the Matter of a Petition by Mrs Anne KING

JUDGMENT

1. This is a petition by Mrs Anne Wright to exhume the cremated remains of her late mother, Mrs Mary Ellen Wright, from the consecrated section of Preston Cemetery (Plot K, No.12995/F) and reinter them in another plot within the consecrated section (Plot K, No. 12989/H).

The facts

2. Mrs Wright died on 14 October 2010 and her cremated remains were buried on 29 October 2010.
3. The basis of Mrs King's petition can shortly be stated. In 2007 she purchased a grave space for her mother who had outlived her father who had died on 20 May 2006 and was buried in Plot K, No. 12989/H.

Concerned that spaces were being used up rapidly, Mrs King felt that it would be wise to plan ahead, hence her purchase of the plot 12995/F. However, it later became known to her that her mother wished her remains to be buried with her late husband. When her mother died, the separate grave space had already been acquired and, as she put it, Mrs King felt that "it was too late to do anything about it".

4. In the time that has elapsed since 2010, Mrs King describes feeling "tormented" by her failure to honour the wish of her mother and, in mid 2015, on the sudden and unexpected death of her brother, to whom she was very close, she found it not only difficult to come to terms with that loss but has found it has aggravated her sense of guilt about the failure to bury her mother's ashes with those of her father.

5. I have had the advantage of a statement from Mrs King in support of his petition and the written consent of her husband, Mrs Wright's surviving son in law. I am indebted to Mrs King for answering in writing questions which I raised seeking clarification of a number of issues. I also have a letter from Julie Evans, the Manager of North Tyneside Council's Bereavement Services, indicating that the Authority, which is responsible for Preston Cemetery, has no objection to the proposed exhumation and re-interment.

The law

6. The law is well established and definitively set out in the judgment of the Court of Arches In re Blagdon Cemetery [2002] Fam 299. The presumption of permanence is explained, arising, as it does, from the Christian theology of burial which emphasises, by reference to the Bishop of Stafford's *Theology of Burial*, that the permanent burial of the physical body is to be seen as a symbol of the entrusting the person to God for resurrection, a concept that does not sit easily with the notion of "portable remains". Hence the Consistory Court's reluctance to grant faculties for exhumation is well supported by Christian theology.

7. Nevertheless, recognising that it was essentially a matter of discretion, the Court indicated the necessity of the petitioner satisfying the Consistory Court of special circumstances which justify the making of an exception from the norm that Christian burial is final. In so stating the Court went on to identify various factors which may support such a petition.

8. In the circumstances of this case it is not necessary to set each one out but the following are directly relevant:

(i) advancing years, deteriorating health

These are not themselves adequate reasons to permit exhumation. Any medical reason relied on by a petitioner has to be very powerful indeed to create an exception, such as serious psychiatric or

psychological problems where medical evidence established a link between the condition and the location of the grave of a deceased person to whom (s)he had a special attachment;

(ii) lapse of time

The Court held that the elapse of a substantial period prior to the petition was not of itself determinative but was a factor in assessing the genuineness of the petitioner's case. Thus, for example, long delay with no credible explanation may tip the balance against the grant. In this case the delay is 5 years from burial to petition. As I have indicated, Mrs King seeks to explain that by reference to the guilt she has felt since her mother's ashes were buried in 2010 and the trigger of her brother's sudden death in mid 2015. The petition was issued on 7 January 2016 and thus reasonably promptly following the death of her brother albeit I have found the delay since the death of her mother, in the circumstances, somewhat surprising.

(iii) mistake

The Court said that a mistake as to the location of a grave could be a ground upon which a faculty such as that sought might be granted. However, it went on to say:

"We also agree that a change of mind as to the place of burial on the part of relatives or others responsible in the first place for the interment

should not be treated as an acceptable ground for authorising exhumation."

(vi) family grave

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

Decision

9. I am not satisfied that there are special factors in this case making it an exception to the norm of permanence already explained.

10. In particular I find that these facts are established on the evidence:
 - (i) Mrs Wright was 88 years old when she died. This is not a case, like Blagdon, of a young person who died long before their time and who had not had the opportunity to express a view as to where she wished to be buried. She had in fact expressed a view to her daughter, namely that she wished to be buried with her husband, which it appears was overridden by the decision already taken to acquire a plot some 3 years before she died.
 - (ii) Mr Wright's wishes were, apparently, limited to a desire to be cremated. There was no discussion as to what would thereafter happen to his ashes and certainly no discussion about what would happen if, as occurred, his wife outlived him.

It would therefore seem that he had not anticipated that they would be buried together or, if he had, did not express a view either way.

- (iii) Even though Mrs King says that the decision in 2007 to purchase a separate plot was made in ignorance of the fact that her parents could have been buried together, she accepts that before her mother died she was well aware of her mother's wishes. Yet she appears to have taken no steps to find out if, and how, they could be honoured.
- (iv) Mrs King says that she did not discuss the 2007 purchase of the plot with her mother as she did not think it was appropriate to discuss such a sensitive matter with her whilst her mother was fit and well. She said that, in any event, at the time of purchase, she did not appreciate that her parents could have been buried together. Whilst I accept what she says about that, it was a surprising belief to hold as any cursory glance at other gravestones in the cemetery would have confounded it. However Mrs King did discuss it with her mother eventually, about a year after her father died, when she said that she felt "awful" on being told that she would have liked to be buried with her husband.
- (v) In seeking an explanation as to why she overrode her mother's wishes, Mrs King said that she did not make any enquiries about the possibility of her mother being buried with her father because she was grieving and it did not enter her head to

make such an enquiry, despite being aware of her mother's express wishes. Further, having bought the plot three years earlier, it did not occur to her that she could have done anything about it.

11. Whilst I have considerable sympathy for Mrs King's predicament, it is difficult to see why, if there had been an intention to honour her express wishes, the fact that another plot had already been purchased should have prevented those wishes from being acted upon. The plot could presumably have been retained for another family member (Mrs King suggests herself and her husband) or returned to the cemetery Authority.

12. Whilst Mrs King's desire now to honour her mother's wish is understood, it is difficult to characterise it as anything other than a change of mind on her part as, seemingly, the person who had been, in part if not in whole, responsible for the decision as to the location of her mother's interment. It seems to me that this is exactly what the Court in Blagdon was seeking to prevent by reference to the theology of burial and the need to establish exceptional circumstances before permission is granted to disturb the remains of a dead person.

13. Whilst family graves are to be encouraged, the Court in Blagdon made it clear that the mere possibility of moving remains to a family grave does not give rise to an automatic entitlement to an exhumation

saying that it would be expected that a husband and wife would make provision in advance if they wished to be buried together.

14. Whilst the subsequent death of her brother has undoubtedly been a source of considerable and understandable grief for Mrs King, for which this court has considerable sympathy, it does not seem to me that it amounts either to a type of "serious psychiatric or psychological" problem or to any other recognised exception to the well established principle reinforced by the Court of Arches in Blagdon however much it may have been the trigger for Mrs King's application at this stage.

15. Accordingly, whilst the Court regrets the distress suffered by Mrs King, and wishes her well, she has not been able to satisfy the Court, on the balance of probabilities, that there are special circumstances constituting good and proper reason to make an exception to the norm that Christian burial is final. In those circumstances the faculty is refused

His Honour Judge Simon Wood

Deputy Chancellor

26 March 2016