

IN THE CONSISTORY COURT OF THE DIOCESE OF MANCHESTER

Re BEVERLEY ANNE ROBERTS DECEASED

-and-

Re AN APPLICATION FOR A FACULTY BY GEORGE ROBERTS

JUDGMENT

Delivered on 29 November 2012

Introduction

1. By his Petition dated 6 September 2012 George Roberts [‘the Petitioner’] applies for a faculty authorising the exhumation of the remains of Beverley Anne Roberts [‘the Deceased’], his daughter, who died on 10 July 1960 from a grave numbered 1868 in row D of Middleton New Cemetery in which they were interred on 13 July 1960 and that such remains be re-interred in grave 001 in section I of the churchyard of St Matthew and St Luke Chadderton.

2. The Deceased was the infant daughter of the Petitioner and his wife, Patricia Roberts. Tragically, she died at the age of only 2 months. Mrs Roberts has consented to the application.

3. The grounds in support of such application are expressed thus :

‘The family are unhappy with the condition of the cemetery and have also moved house since the remains were buried, meaning that they would be happier if the remains were closer to them in the churchyard of the church they attend regularly.’

4. It will thus be observed that there were two grounds to the application : [a] the condition of the cemetery and [b] the proximity of the Deceased’s grave to the parents’ new home.

5. The Deceased was thus interred in Middleton New Cemetery over 50 years ago.

6. By letter dated 26 September 2012 the Diocesan Registrar informed the Petitioner that I considered it expedient to determine this application upon consideration of written representations but advised the Petitioner that I could only do so if he consented and

invited the Petitioner to identify any further matters relied upon in support of the application and in particular why the application had not been made sooner.

7. In his reply dated 3 October 2012 the Petitioner gave his consent to my dealing with the application upon consideration of written representations, confirmed that there were no other interments in grave 1868 and stated :

‘Granted the application has taken a long time but these sort of decisions are not taken lightly and surely no time limit is imposed.

There has been a gradual decline in the surrounding areas of the grave location, occurring slowly over the last 10-15 years and causing concern and sadness, to the point where a visit to the grave distresses my wife.

Approximately 3 years ago we did have a meeting with the cemetery manager to discuss this and were reassured that the situation would revert hopefully to nearer how we have always remembered it. However this has not proved to be the case. Hence my application.’

8. It will be observed that such matters relate solely to the condition of the cemetery.

9. In fairness to the Petitioner I ought to record that I have seen a file note of a telephone conversation between him and Mrs Donna Myers at the Diocesan Registry to the effect that Mrs Roberts found it very difficult to visit their daughter’s grave due to the state of the cemetery and that reference was made to the fact that models of public houses, football shirts and scarves had been left on graves which the Petitioner believed was inappropriate.

10. Being satisfied that it is expedient to determine this application upon consideration of written representations under Rule 26 of the Faculty Jurisdiction Rules 2000 and the Petitioner having consented to such a procedure, I thus determine this Petition on the basis of written representations.

The legal principles to be applied

11. There can be no doubt that I have a discretion as to whether I should grant a faculty.

12. The starting point for the exercise of such discretion was conveniently explained by Steel Ch in *Re Matheson (Decd)* [1958] 1 WLR 246, at 248, when he stated :

‘From the earliest times it has been the natural desire of most men that after death their bodies shall be decently and reverently interred and should remain undisturbed. Burial in consecrated ground secured this natural desire, because no body so buried could lawfully be disturbed except in accordance with a faculty obtained from the church court. As all sorts of circumstances which cannot be foreseen may arise which make it desirable or imperative that a body should be

disinterred, I feel that the court should always be slow to place any fetter on its discretionary power or to hold that such fetter already exists. In my view there is no such fetter, each case must be considered on its merits and the chancellor must decide, as a matter of judicial discretion, whether a particular application should be granted or refused.`

13. However, there is a presumption against exhumation : this derives from the Christian theology of burial that the disposal of the dead, whether by way of burial or cremation, has an aura of permanence about it. So in *Theology of Burial`* the then Bishop of Stafford, the Right Revd Christopher Hill, wrote :

`The permanent burial of the physical body / the burial of cremated remains should be seen as symbolic 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 the ultimate destination, with us, in the heavenly Jerusalem. This commending, entrusting, resting in peace does not sit easily with `portable remains`, which suggests the opposite : reclaiming, possession, and restlessness ; a holding on to the `symbol` of a human life rather than a giving back to God. ... In general, therefore, the reluctance to agree to faculties for exhumation is well grounded in Christian theology and eschatology. It is also right generally from the point of view of the mourner, who must learn to let go for their psychological and spiritual health`.

This passage was cited in *In Re Blagdon Cemetery* [2002] 3 WLR 603, at 609 : the revised text is at 7 Ecc LJ 447.

14. A similar approach appears in the *Guidance for best practice for treatment of human remains excavated from Christian burial grounds in England* [English Heritage / Church of England 2005] which states :

`In summary, it is central to Christian theology that, after death, the human body ceases to have any significance for the ongoing resurrected spiritual life of the individual. However, following death, the physical remains should be treated with respect and reverence, even though ultimately it is the fate of the soul, rather than of the physical remains, which matters.`

15. Such presumption also exists in English secular law which provides that there is no ownership of human remains, that it is a criminal offence to disturb human remains without lawful permission and that there is no legal right to exhume human remains. Such reflects a secular culture in which the norm is that the remains of a deceased person should not be disturbed once they have undergone the initial act of interment.

16. The question thus arises : in what circumstances should a court allow the disturbance of remains as an exception to such presumption of permanence.

17. In *Re Christ Church Alsager* [1999] 1 All ER 117 the Chancery Court of York concluded, at 122, that when determining an application to grant a faculty for an exhumation the critical question for a Chancellor is -

‘Is there a good and proper reason for exhumation that reason being likely to be regarded as acceptable by right thinking members of the Church at large ? If there is he should grant faculty. If not, he should not.’

18. In *In Re Blagdon Cemetery* the Arches Court of Canterbury observed that there were practical difficulties associated with the test formulated in *Re Christ Church Alsager* and, at 610, concluded thus :

‘33. We have concluded that there is much to be said for reverting to the straightforward principle that a faculty for exhumation will only be exceptionally granted. Exceptional means ‘forming an exception’ (Concise Oxford Dictionary (8th edn, 1990)) and guidelines can assist in identifying various categories of exception. Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the chancellor to determine on the balance of probabilities.

...

35. The variety of wording that has been used in judgments demonstrates the difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion. We consider that it should always be made clear that it is for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial (that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery) is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her’.

19. The court went on to consider various factors which may be argued in support of an exhumation, including medical reasons, lapse of time and mistake. I do not think that any of those factors are relied upon here. On any view the Deceased’s parents were for many years content with the location of her burial and it is only in the last 10-15 years that they have become concerned about the condition of the cemetery.

20. The guidance set out in *Re Blagdon Cemetery* was confirmed In *In Re St Nicholas Sevenoaks* [2005] 1 WLR 1011

My determination

21. Applying the test in *In Re Blagdon Cemetery* I turn to the facts of this case.

22. To grant a faculty I must be satisfied that it is established by the Petitioner, on a balance of probabilities, that the facts here justify an exception to the general presumption of the permanence of Christian burial.

23. On the facts here I am not persuaded that sufficient special circumstances exist to justify my making an exception from the norm that Christian burial is final. My reasons - which essentially are three-fold - may be summarised thus.

24. Firstly, it is now over 50 years since the Deceased died and was buried. It is not suggested that Middleton New Cemetery was not an appropriate place for the burial of the Deceased in 1960 or that it is a place which the Deceased's parents are not able to visit thereafter with such frequency as they thought appropriate or that the matters referred to by the Petitioner have in fact dissuaded them from visiting her grave.

25. Secondly, for over 50 years no contemplation has been given to the possibility of the Deceased being exhumed. Although I appreciate the Petitioner's observation that 'these sort of decisions are not taken lightly' and I can confirm that there is no time limit for the making of such an application, I am satisfied that I am entitled to take into account the period of delay in the exercise of my discretion against granting the application.

26. Thirdly, whilst I readily understand that what seems to motivate this application is the deteriorating condition of Middleton New Cemetery, I do not believe that what I am told about the condition of the cemetery could in fact justify this application to exhume the remains of the Deceased.

27. Accordingly, with some regret because I appreciate that my decision will cause distress to the Deceased's parents, I dismiss the application.

28. In accordance with the practice of the court, the Petitioner must pay the court fees incurred in relation to the Petition.

GEOFFREY TATTERSALL QC
Chancellor of the Diocese of Manchester

29 November 2012