

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

WOLSELEY ROAD CEMETERY, RUGELEY

PETITION OF CHRISTINA BROWN

JUDGMENT

- 1) On 20th September 1978 an oak casket containing the cremated remains of Sadie Thompson was interred in consecrated land at Wolseley Road Cemetery in Rugeley.
- 2) From 1956 onwards Mrs. Thompson and her husband had lived in a house adjacent to an area of open land known as Stile Cop. Since Mrs. Thompson's death a cemetery (including a consecrated portion) has been created on that land. Mr. Thompson died in October 2012 having expressed a wish for his remains to be interred in the Stile Cop cemetery. Mr. Thompson's remains have not yet been interred. Christina Brown is the daughter of Mr. and Mrs. Thompson. She petitions for a faculty to allow the exhumation of Mrs. Thompson's remains and their re-interment in the Stile Cop cemetery in the same plot as Mr. Thompson. The petition is supported by Mrs. Brown's brother and sister.
- 3) The cemeteries at Wolseley Road and Stile Cop are both under the control of Cannock Chase District Council and that council has confirmed its consent to the proposed move.
- 4) Mrs. Thompson's remains were interred in an oak casket. Co-operative Funeral Care has written saying that as the Wolseley Road site is a dry area and given that the remains were in an oak casket "*it is possible that the casket will still be in good condition*". They go on to say that they could attend with "*an oversized cremated remains casket*" for the purpose of exhumation to deal with the situation if the casket does not remain in good condition.
- 5) Mrs. Brown has consented to this matter being dealt on the basis of written representations and I am satisfied that is an appropriate course. For the

reasons set out below I have concluded that this is not a case where exhumation can be permitted and so the petition must be refused.

The Principles governing Exhumation.

- 6) 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.
- 7) 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.
- 8) It must always be exceptional for exhumation to be allowed 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).
- 9) In my judgment the kernel of the approach laid down in *Re Blagdon Cemetery* is found at paragraph 35 where the Court of Arches said:
- 10) "... 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 ... is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her."
- 11) The application of that approach to a particular case requires what is essentially a two-stage process addressing the factors being put forward as justifying exhumation. At each stage the Consistory Court must have regard to "the straightforward principle that a faculty for exhumation will only be exceptionally granted" (see paragraph 33 of *Re Blagdon Cemetery*).
- 12) First, the Consistory Court must consider whether the matters raised are capable in law of amounting to special circumstances. In doing so the Consistory Court must take account of the guidance of the Court of Arches in

identifying certain matters which can and others which cannot of themselves amount to such circumstances. When the factors relied upon are included in the categories considered by the Court of Arches in *Re Blagdon Cemetery* that will often be a relatively straightforward exercise. However, the list of potentially relevant factors considered in that case was not exhaustive. When addressing a factor other than those considered there the Consistory Court has to assess it in the light of the approach laid down therein. Thus the Consistory Court has to determine whether it is a matter which is something sufficiently out of the ordinary so as to be capable in appropriate circumstances of justifying the Court in taking the exceptional course of ordering exhumation. This first stage in the process derives from the ruling in *Re Blagdon Cemetery* that there are categories of factors which can be identified as being either capable or incapable of justifying exhumation.

13) However, the mere presence of a factor which is capable of being a special circumstance for these purposes does not necessarily mean that exhumation should be ordered in any particular case. The Court has a discretion and the second stage of the process requires the Court to consider whether exhumation is justified in the light of all the circumstances of the particular case and in the context of the presumption in favour of the permanence of interment. This stage derives from the existence of the Court's discretion and from the knowledge that the presence of a factor which is of a kind which can justify exhumation does not necessarily mean that exhumation is justified in the actual circumstances of a particular case.

14) I have set out in my judgments in the cases of *Re Kenilworth Cemetery* (Coventry Consistory Court June 2012) and *Re Trentham: St Mary* (in this Court in June 2012) my understanding of the application of that general approach to cases where exhumation is proposed for the purpose of the removal of remains to a family grave. The position, in short, is that the creation of a family grave is capable of itself of being a special circumstance potentially justifying exhumation. However, the presence of that potential special circumstance is not conclusive. In each case the Court must consider the circumstances of the particular case to determine whether the exceptional

course of exhumation is justified always bearing in mind the strong presumption in favour of the permanence of interment.

The Application of those Principles to the Current Case.

15) On the facts here the creation of a cemetery at Stile Cop at a time after Mrs. Thompson's remains were interred at the Wolseley Road Cemetery is not something which is capable of amounting to a special circumstance for these purposes. What has happened is that a site which was not available for interment at the time of the actual interment has become available since. That is not something sufficiently out of the ordinary to be capable of justifying exhumation even when combined with the strong emotional attachment of the Thompson family to Stile Cop and the significance which it has for them. It means that if the circumstances now obtaining had obtained at the time of Mrs. Thompson's interment then the family would have acted differently at that stage. However, such change of circumstances is not uncommon and is not of itself a special circumstance for these purposes. Of course it can be a factor forming part of all the circumstances of the case to be considered whether a special circumstance in fact justifies exhumation in the particular case.

16) The potential special circumstance in this case is the creation of a family grave namely a single plot containing the remains of both Mr. and Mrs. Thompson. Does that justify exhumation in the particular circumstances of this case when viewed in the light of the presumption that interment is to permanent?

17) The prospect of the remains of Mr. and Mrs. Thompson being interred together in a location which was significant to them and to their family is a factor in favour of exhumation. However, I note that Mrs. Thompson's remains have been at Wolseley Road Cemetery for nearly thirty-five years. In that regard it is significant that there is a question mark over the condition of the casket in which she was interred. I note that Co-operative Funeral Care was not prepared to commit itself to the casket remaining in good condition simply saying that it is possible that it is in that condition. There is at least a prospect that it will not be possible for there to be a seemly and effective exhumation. It

is also of note that Mr. Thompson expressed a wish to be interred in Stile Cop even though he knew that his wife's remains were in the Wolseley Road Cemetery. It is those wishes which operate against an interment of Mr. Thompson's remains in the same plot or at least the same cemetery of those of his wife. This is not a case where there is an existing family grave to which it is proposed to transfer Mrs. Thompson's remains rather it is one where at most what is proposed is the exhumation of those remains to create a new family grave elsewhere.

18) None of those factors either in favour of exhumation or against it is conclusive of itself. Mrs. Brown's desire for the remains of her father and mother to be together in Stile Cop is understandable. Although there is a potential special circumstance here it has to be seen in context. In that context I have concluded that this is not a case where the strong presumption in favour of the permanence of interment has been overcome. It follows that the Petition must be refused.



STEPHEN EYRE
28th July 2013