

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

BROWNSOVER: ST MICHAEL AND ALL ANGELS

PETITION OF JOSEPHINE WALLER

RE: THE CREMATED REMAINS OF SIDNEY AND GRACE WALLER

JUDGMENT

- 1) Josephine Waller petitions to exhume the cremated remains of her late parents in law, Sidney and Grace Waller. For the reasons set out below that petition is dismissed.
- 2) Grace Waller died in 1978 shortly after she and Sidney Waller had moved to Rugby. Mrs. Waller's body was cremated in January 1979 but her remains were not interred until after the death of her husband in November 1986. On 2nd December 1986 the remains of both Mr. and Mrs. Waller were interred in a grave in the churchyard of St Michael and All Angels in Brownsover. Mr. Waller had expressly said that he wanted his remains to be interred in that churchyard describing it (in the words of the Petitioner) as "a lovely well-tended graveyard just a short distance from where he lived."
- 3) After that interment Edwin Waller, the son of Sidney and Grace and the husband of the Petitioner, visited the grave at least once a year and tidied up the area around it. Edwin Waller last did this in December 2014. Shortly thereafter he became unwell and sadly he has now died. Mrs. Waller explains that during his lifetime her husband had wished to have his parents' remains exhumed and brought to a location nearer to where he was living. The Petitioner is now seeking to carry out those wishes. She seeks a faculty for the exhumation of the remains and their re-interment in the churchyard of St Mary Swinbrook. That is the churchyard where Edwin Waller's remains are. Subject to my grant of a faculty the vicar of St. Mary's has consented to the interment of the remains in that churchyard.

- 4) I concluded that it would be expedient to determine this matter on the basis of written representations. Mrs. Waller consented to that course and has made two sets of submissions both of which I have considered.

The Condition of the Churchyard and the Petitioner's Submissions.

- 5) In her submissions Mrs. Waller said that the churchyard was in an unkempt and overgrown condition. She explained that on her last visit there it had been necessary to clear undergrowth of brambles and elder from on and around the grave in order to see the memorial stone which marked the grave. Mrs. Waller said that the extent of the undergrowth was such that if she had not already known the location of the grave she would not have been able to find it. It was Mrs. Waller's view that if her late father in law had known how overgrown the churchyard would become he would not have wished his remains to be placed there.
- 6) I undertook an unaccompanied site visit to the church. I found that although the path leading to the church itself and a strip (I would estimate at about 1 yard wide) immediately around the church building were cut and well-maintained the bulk of the churchyard was indeed very overgrown. There were a large number of brambles and nettles together with other vegetation such that many memorials were largely hidden by the undergrowth.
- 7) Following my site visit I caused further enquiries to be made by the Register. Those enquiries established that:
 - a) The church was closed on 6th January 1987 and responsibility for the maintenance of the church passed to the body which is now the Churches Conservation Trust. That body has responsibility for maintaining the paths around the church but not the churchyard more generally.
 - b) At that time the Parochial Church Council remained responsible for the maintenance of the churchyard.
 - c) The churchyard was closed by Order in Council on 27th July 2004. Responsibility for maintaining the churchyard then passed to Rugby Borough Council.

- 8) I also received information from the Parochial Church Council to the effect that the Borough Council had carried out some maintenance of the churchyard in November 2016 at the request of the Parochial Church Council. In addition some maintenance has been undertaken by a local conservation group and by the Churches Conservation Trust both acting voluntarily. The Parochial Church Council said that if Mrs. Waller were to indicate the area of the churchyard which she wished to access then that Council would arrange for it to be cleared (presumably by causing the Borough Council to do this or by arranging some ad hoc clearing work).
- 9) I gave Mrs. Waller an opportunity to make further representations in the light of this material. Mrs. Waller graciously expressed thanks for the work which had been done but persisted in her request for a faculty for exhumation. She made the point that if Mr. Waller had known that the church was to be closed within a month or so of his interment then he may well not have expressed the wish to be buried there. In addition Mrs. Waller says that there is a difference between a churchyard which is generally well-maintained and one in which only parts are maintained and those parts as the result of particular requests.

The Approach to be taken.

- 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.
- 11) 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.
- 12) 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 particular case).

13) I addressed the circumstances in which a change in the physical condition of a churchyard might be regarded as an exceptional circumstance in my decision in the case of *Re Kenilworth Cemetery* (Coventry 2012) referring back to my decision in the case of *St. Nicholas, Radford* (Coventry 2011) and saying, at [15]:

“In my decision of 29th December 2011 concerning the exhumation of the remains of the late Rev. Edward Taylor from the church of St. Nicholas, Radford I explained that deterioration in the physical surroundings of the grave could be a circumstance justifying exhumation. However, that will only be so in very rare cases. As I explained there some degree of change in the location is likely to happen in respect of most burial places and so change of itself will not be exceptional. Thus the mere facts that a particular churchyard had become less tidy or less well- maintained or in some other way less attractive than it had been formerly or that the character of the neighbourhood surrounding the churchyard has changed would not, without more, be capable of being a special circumstance justifying exhumation. What would be necessary would be a radical change in the nature of the location such that it can properly be said that the location is no longer a fitting or appropriate place for the interment of the remains in question.”

14) I remain of the view that the approach set out there is a correct application of the relevant principles. Accordingly, a change in the physical condition of a churchyard can be an exceptional circumstance justifying exhumation but it will only be so in a rare case where the location is no longer a fitting place for the interment of the remains in question.

The Application of that Approach.

15) The position here is that the churchyard has become overgrown. At the time of my site visit it was in a state of neglect with many memorials not visible and others encumbered by brambles and nettles. However, there is a public body which has responsibility for the maintenance of the churchyard namely Rugby Borough Council. Moreover, the Parochial Church Council and the Churches Conservation Trust have an interest in the site and have caused maintenance to be undertaken in the past.

16) I can well understand that the maintenance of this churchyard may not be at the top of the local Council's priorities at a time of financial stringency. Nonetheless, I have concluded that I must proceed on the basis that the Council will fulfil its responsibilities to maintain the churchyard (perhaps after prompting and reminder). I also note that the Parochial Church Council and the Churches

Conservation Trust remain alert to the need to keep the churchyard in good repair and that they have undertaken some work in that regard although they have no legal responsibility to do so. I do not overlook the fact that at the time of my site visit and at the time of Mrs. Waller's visit the churchyard was very overgrown. However, I cannot conclude that is a permanent or enduring state of affairs and in that regard I note that the Parochial Church Council responded to Mrs. Waller's concerns by offering to take action.

- 17) In my judgment I must approach this matter on the footing that for the future although the churchyard may not be maintained to the high standard which Mrs. Waller might desire it will be adequately maintained. I will approach the matter on the footing that there will be regular clearing of the vegetation albeit that this might well happen at greater intervals than would ideally be desirable. Exhumation is only to be ordered in exceptional circumstances. I have concluded that the circumstances here are not exceptional. In particular I cannot be satisfied, given that a public body has responsibility for maintenance of the churchyard, that the physical condition of the churchyard will become such that the churchyard is no longer an appropriate resting place for the remains of Mr. and Mrs. Waller. It follows that the petition must be dismissed.
- 18) I direct that a copy of this judgment be provided to the Archdeacon Pastor, to the Area Dean of the Rugby deanery, and to the Vicar of Brownsover. Although I cannot make any order in this regard I do suggest that it would be appropriate for the Brownsover Parochial Church Council to receive an annual report on the condition of the churchyard of St. Michael and All Angels with a view to making representations to Rugby Borough Council if further maintenance is needed.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
7th October 2017