

Neutral Citation Number: [2024] ECC Lin 4

IN THE CONSISTORY COURT AT LINCOLN

In the matter of the exhumation of the remains of Siu Lam Wong deceased

And in the matter of the consecrated part of Canwick Cemetery, Lincoln

Judgment

1. The applicant Mrs Wing Ling Wong Dolata seeks the exhumation of her late husband Siu Lam Wong's remains which are interred at Canwick cemetery in a consecrated plot. Mr Wong died on 30 October 1992 – over 30 years ago. She seeks a faculty to permit the exhumation and cremation of the remains, and then their transport to a cemetery in Shenzhen in China. Mrs Wong has produced documents from a cemetery in Shenzhen dated 31 December 2013 which provide that 'Mr Zhang Yongling' has paid HKD 1000 for a grave (No 4 section 701) for the burial of a coffin, skeleton or ashes 'managed by Mr Zhang Yongling'. It has been explained that Mrs Wong's sister in China facilitated the payment for the grave in Shenzhen and that 'Zhang Yongling' was Mrs Wong's maiden name before marriage. Li Heng, who has been assisting Mrs Wong in this process, states that (i) the Chinese writing on Mrs Wong's Chinese ID card confirm this and (ii) the reason that the certificate was issued to 'Mr' Zhang Yongling was because the authorities would have assumed that it was a male who would be engaged in making the reservation of the plot.
2. The history of this application is as follows: Mr Wong died suddenly in 1992 when Mrs Wong was 46 with 2 young children. At that time there had been no burial plot in China obtained and so the decision made at the time was that the burial of her husband would take place in the UK. It would have been out of the question to transport the body back to China at that time.
3. In 2013 (so now 21 years after Mr Wong's death) Mrs Wong had funds to buy a burial plot 'adjacent to her deceased parents, grandmother and step-mother'. I assume that this is the plot in Shenzhen obtained on 31 December 2013. The reason that she made that purchase was so that her husband's remains could be

eventually interred in Shenzhen near her relatives. This is what Mr and Mrs Wong wanted during Mr Wong's life. The reason for the delay in purchasing the plot between 1992-2013 was lack of funds, problems with her son's autism, and the hope that her younger son would move back to UK from Dubai (this did not occur).

4. In 2023 (so now 32 years after Mr Wong's death and 10 years after the Shenzhen burial plot had been obtained) Mrs Wong now had the funds for the exhumation and to transport her husband's remains back to Shenzhen. She has made arrangements with her younger son that when she dies her ashes will also go to Shenzhen to be interred there too. She is concerned that the Burial Certificate from Canwick cemetery allows the memorial to her husband only to remain in place for 50 years from the grant of the certificate (i.e. until 30/10/2042). However, I note that this is subject to the final clause 'unless the Certificate of Grant is renewed within 6 months of the expiry date shown as above'. This is 18 years away and Mrs Wong is now 78, and so any renewal to permit the memorial to remain would need to be done by her son (who lacks capacity) or other family in the 6 months before expiry. I note that Mrs Wong is concerned about the risk of the loss of the memorial to her husband after 50 years.
5. Mr Preece has been assisting Mrs Wong and, in his email, 16/5/24 he explains how eagerly she looks forward to her husband's remains being interred alongside other relatives in Shenzhen which is an important part of Chinese culture.
6. I have not seen anything from the incumbent but the application states that 'verbal authority has been given' and this seems to be confirmed by the undertakers undated typed note (from Vicki Swain of Lincolnshire Co-op funeral services) referring to the 'Revd Lorna' saying that she did not need to give permission. I read that as meaning that she had no objection to the application.
7. The undertaker has confirmed that although there may be some practical difficulties given the passage of time, they would need to source a larger coffin to contain the old coffin. However, it is clear that the instructions they have received from Mrs Wong (as is confirmed by paragraph 3 of the Petition) are that

once the remains have been exhumed, they are then to be cremated before being taken to Shenzhen.

8. At the conclusion of Mr Preece's email dated 16 May 2024 he explains that Mrs Wong is now 78 with arthritis and other health problems. She is caring for her eldest son who has autism. She would want her husband's remains, and hers too when the time comes, to be interred in Shenzhen near to her family.
9. Mr Wong's younger son has given consent to the proposed exhumation and his elder son lacks capacity to give any consent. I therefore approach the case on the basis that there is no dissent in the family to the proposed exhumation and reinterment in Shenzhen.

Discussion

10. The principles by which an exhumation from consecrated ground is permitted are well known and set out in the case of In Re Blagdon Cemetery 2002 Fam p299.
11. The presumption is that burial of human remains in consecrated ground is permanent. This presumption arises from the Christian theology of burial which was set out at para 23 of the judgement in Blagdon in the quotation from The Bishop of Stafford's paper on the 'Theology of Burial'. He wrote

"The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for their life; to commend them to God the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another."

He went on to explain:

"The permanent burial of the physical body/ the burial of the cremated remains should be seen as a symbol 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 their ultimate destination, with us, to the heavenly Jerusalem. The commending, entrusting, resting in peace does not sit easily with 'portable remains' which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the 'symbol' of human life rather than a giving back to God."

12. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that Mr Wong was laid to rest in 1992 and his remains should not now be disturbed.
13. The Court of the Arches in Blagdon identified various factors which may support a submission that special circumstances have arisen which permit the remains to be exhumed. These factors are:

- (i) medical reasons.

The Court made it clear that the only medical reasons which could assist a petitioner in these circumstances would be those which showed quite clearly that a serious psychiatric or psychological problem had arisen caused by the location of the grave to whom the petitioner had a special attachment. The Court made it clear mere decline in health and mobility due to advancing years could not be a reason which would displace the presumption of permanence.

- (ii) lapse of time.

The Court held that the passage of a substantial period of time before an application for exhumation was made could not be determinative of the application in itself. However, it would be a factor in assessing the genuineness of the Petitioner's case.

- (iii) mistake.

Where there has been a simple error in administration, such as burial in the wrong grave, the Court held that faculties for exhumations could readily be granted. Of more difficulty is where there is a failure to understand or appreciate the significance of burial in consecrated ground in a municipal cemetery. There has been no mistake in the burial place here.

- (iv) precedent.

The Court held that consideration of the effect of precedent by the grant of the application is properly made because of the desirability of securing equality of treatment, so far as circumstances permit between Petitioners. I take this issue into account.

- (v) family grave

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

14. Considering each of these issues:

- (i) Medical reasons: there is nothing in the papers before me to indicate any psychological or other medical reason for the application. I understand and entirely accept that Mrs Wong has health difficulties of her own, but I do not understand that this application is based on any health issues of hers in visiting the grave, or a psychological disorder connected to the current location of the grave.
- (ii) Mistake: it is not suggested that there has been any mistake about the location of the grave
- (iii) Precedent: I take that into account.
- (iv) Lapse of time: I am concerned about the significant lapse of time before this application has been made, and in particular the lapse between obtaining the burial plot on Shenzhen in 2013 and the application in 2023. The relevance of this issue is in my assessment of the genuineness of the reasons set out in the Petitioner's application in wanting her late husband's remains returned to Shenzhen. I am satisfied that the explanations that are given for the delay do not rule out this application. I understand that as Mrs Wong has got older and frailer the issue of where her late husband's remains should be located, and hers when the time comes, have become more focussed in her mind. This is entirely natural. I note that she has the care of a disabled elder son (who did not have capacity to give any consent to the application), and her younger son lives in Dubai.
- (v) Family grave: this is the real justification for this application. Mrs Wong wishes her late husband's remains, and her own when the time comes, to be united together in a family grave next to her other family in Shenzhen. I accept that these wishes are entirely genuine. I take into account her particular family circumstances including the young age of her husband when he died and the difficulty of achieving burial in China at that time. I

must take into account what I am told were Mr Wong's wishes when alive about burial in China and these remain Mrs Wong's wishes too. In those circumstances it is to be regretted that no one fully explained the significance of permanence of Christian burial at the time of Mr Wong's death and burial in the consecrated part of this cemetery, but I allow for the difficulties of language (which have been a problem in understanding the factual background to this application), and the very difficult circumstances which must have arisen when Mr Wong died.

Decision.

15. It is always exceptional to grant an exhumation, however I am satisfied that exceptional reasons do exist in this case for an exhumation to be permitted. The interment in a family plot in Shenzhen will be an expression of family unity. I take into account that this is where Mrs Wong wishes her own remains to be interred eventually.
16. I note that Mrs Wong wants the remains to be cremated in UK and then the ashes interred. I am content for this to be done given that the undertakers have confirmed that this is practical with a larger new casket. The ashes can then be taken to Shenzhen and interred there.
17. The exhumation must be carried out discreetly with appropriate screening so as not to alarm those visiting the cemetery and at a time when there will be minimal risk of visitors being aware of the exhumation. Notice must be given to the environmental health department of the relevant District Council. The reinterment in Shenzhen must take place within 3 months of the exhumation. I do not want the ashes to be kept awaiting much later interment. Mr Wong's remains should be restored to their rest no later than 3 months from exhumation. I express the form of the Order I make as:

“Upon the representation by the Petitioner that she is the person who holds an entitlement to the burial of a coffin, skeleton or ashes in Grave No 4 Section 701 at Dapengwan Cemetery, Shenzhuan Special Economic Zone let this FACULTY BE ISSUED for the exhumation of the bodily remains of Siu Lan Wong from Grave space 2 in section 'O' of the consecrated part of Canwick Cemetery, Lincoln on the following conditions

- (i) the exhumed remains may be cremated and then the ashes reinterred in Grave No 4 Section 701 Dapengwan Cemetery, Shenzhuan Special Economic Zone within 3 months of the exhumation
- (ii) the exhumation must be carried out discreetly with appropriate screening as required at a suitable time to avoid distress to visitors to the cemetery
- (iii) notification to the environmental health department of the local council shall be given before the exhumation and any instructions they may give shall be followed”.

18. In the circumstances I waive my fee. This judgment has required careful consideration but has been delayed for which I apologise to Mrs Wong .

HH Judge Mark Bishop
Chancellor
28th November 2024