

Neutral Citation Number: [2024] ECC Lin 6

IN THE CONSISTORY COURT AT LINCOLN

In the matter of St Oswald, Crowle

And the Petition for the exhumation of the mortal remains of Mr Gerard Kitching

Judgment

1. By a Petition dated 16/5/24 Mrs Sykes seeks a Faculty to exhume the ashes of her late father Gerald Kitching who died on 29 April 1991, from St Oswald's churchyard in Crowle. She seeks to reinter those ashes in the consecrated part of Crowle Cemetery where Mrs Sykes's mother will also have her ashes interred. She has recently died.
2. Mr Kitching's ashes were interred with his father's ashes (Sidney Basil Whitwood) in the churchyard of St Oswald, Crowle. They were placed in a plastic urn within that plot and the undertakers are confident that it can be easily recovered.
3. Mrs Sykes wants to purchase a plot at Crowle Cemetery: by the letter dated 16 May 2024 from the Crowle and Ealand Town Council this has yet to be done but this may have been obtained by now. Mrs Sykes explains that when her father died in 1991, Crowle Cemetery did not have a section for cremated remains, but now they have such a section, she would want her father and mother's ashes to be interred together there. From her letter dated 11 April Mrs Sykes seems to be saying that there would be a problem in the Crowle Churchyard plot for a further memorial stone recording Mrs Sykes's mother if she was interred there – but this is not clear from the letter.
4. I note that Revd Zammit the Priest in Charge has no objection to this request. Both Annette Langford and Ian Kitching who are children of Mr and Mrs Kitching both consent to this Petition.

Discussion

5. 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.
6. 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".

7. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that Mr Kitching was laid to rest in 1991 and his remains should not now be disturbed.
8. 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.

Decision.

9. It is clear that the only basis for taking the exceptional step of exhumation of the ashes of Mr Kitching would be if to do so would promote a sense of family unity by establishing a new family grave. In this case the exhumation would mean that the ashes of Mr Kitching deceased would be leaving one family grave (with his father) and being put into another (with his wife recently deceased). However, it is clear all the family want the father and mother's ashes to be together in one place and I well understand that this would promote a strong sense of family unity particularly for the children of Mr and Mrs Kitching. I take into account that there will be no net 'saving' of burial land: 2 plots are still required wherever Mr Kitching's remains are interred.

10. There is some suggestion that the plastic urn was buried where it was in 1991 with the thought that it could be easily recovered and reinterred with Mrs Kitching when her time came. If this was what happened it is to be regretted that no one at that time explained to the family the significance of Christian burial and its permanence for the reasons set out above. The church does not believe in 'portable remains'.
11. I have considered the lapse of time since Mr Kitching's interment in 1991. However, this issue only goes to inform my assessment of the genuineness of the Petitioner's reasons for seeking the exhumation: I am quite satisfied that with the death of her mother the issue of where her parents' ashes are to be interred has come sharply into focus. Her reasons for this Petition are entirely as she has stated them to be. So even with the passage of time since 1991, that does not mean that the Petition fails.
12. 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 Crowle Cemetery will be an expression of family unity.
13. 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 Crowle Cemetery must take place within one month of the exhumation. I do not want the ashes to be kept awaiting later interment. Mr Kitching's remains should be restored to their rest no later than one month from exhumation.
14. In the circumstances I waive my fee. This judgment has been delayed for which I apologise to Mrs Sykes.

HH Judge Mark Bishop

Chancellor

28th November 2024