

Neutral Citation Number: [2021] ECC S&N 1

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWELL AND NOTTINGHAM

Before: the Chancellor

IN THE MATTER OF ST MARY'S CHURCHYARD EAST LEAKE

and

IN THE MATTER OF THE PETITION OF KEVIN THOMAS MADDISON

JUDGMENT

1. Thomas Swan Maddison died in 1980. His ashes were interred in a municipal cemetery in Loughborough and in 1985 were exhumed for burial in East Leake Churchyard.
2. The Petitioner, his son Kevin Thomas Maddison, now seeks a second exhumation, proposing that his father's ashes be reburied in a consecrated part of the East Leake Cemetery together with those of his mother, who has now also died. The Petition is supported by Thomas Maddison's two surviving sisters (the Petitioner's aunts).
3. This Petition appears to me to be suitable for determination without a hearing. Following my directions the parties have consented to that procedure, and have made submissions in writing.
4. I do not need to set out in full the law, derived from the custom of the church and the theology of burial, in full: for details, reference can be made to the judgment of this court in Re Bingham Cemetery [2018] ECC S&N 1. The starting-point is that Christian burial is to be seen as permanent, because it is the act of committing the remains or the ashes of the departed into the hands of God by their burial. There is therefore a presumption against exhumation. It follows that where there has been a burial in consecrated ground, accompanied as it will have been by the rites of the Church with the words of commendation of the departed to God and committal of the person's remains to burial or cremation, permission for exhumation is not given by the Court on demand, even when there is no expressed opposition. It is for the Chancellor to decide whether an exhumation should be permitted. The Chancellor will make that decision by considering whether it is right to make an exception to the presumption of permanence.
5. The reasons given for the Petition are as follows. First, the Petitioner wants his parents' ashes buried together (following their own wishes); secondly, there is a tree and a seat near the place where his father's ashes are buried; thirdly, he is becoming disabled (and his disability is likely to increase) and so will be less able to visit his father's grave. It is also suggested by the Petitioner and by the incumbent that in 1985 there may have been some sort of mistake either as to the consequences of a burial in consecrated ground or as to the arrangements for any subsequent burial of the ashes of the Petitioner's mother.
6. In a careful letter the PCC has indicated that in 1985, when the churchyard was nearly full, the then incumbent appears to have made arrangements for burials on a rather haphazard basis in the little space available, with the aim of providing accommodation where he could. The PCC also indicates that at the time of writing there were imminent plans for improving

access to the churchyard. The PCC is understandably cautious about supporting the present Petition because of the possibility of creating a precedent. It recognises the principles involved and is content not to stand against the petitioner if I consider that the circumstances merit exhumation.

7. The present incumbent, the Revd Tim Parker, supports this nuanced approach as is indicated by his signature on the letter; but he has also written giving unreserved support for the Petition on the basis that 'it would seem better' to exhume the ashes. As regards the history, he adds (and I am careful to cite him exactly) 'I suspect the vicar simply did his best to accommodate the pastoral need as he saw it and didn't explain to the family the implication of burial in consecrated ground'.
8. The obvious way of respecting the preference for husband and wife to be buried together would be by interring the Petitioner's mother's ashes in the same plot as his father's. The churchyard was closed by Order in Council on 18 July 2001 (surprisingly late if it was nearly full in 1985) but with an exception for the interment of family members in existing graves. As it is, the ashes of the Petitioner's mother await burial, and I note from the materials before me that the possibility of interring them in the grave under discussion has not been ruled out.
9. I have heard no more about the plans for the churchyard, the execution of which would be, because of the closure, a matter for the Local Authority, and which have no doubt been overtaken by events. The Petitioner seeks resolution of his Petition and I do not think it would be right to wait for a further period, which might be lengthy, before any alterations or improvements to the churchyard are made.
10. I referred above to the seat near the grave. The Petitioner says that it is used by people who leave rubbish, but there is no evidence of 'disrespectful behaviour' beyond the Petitioner's assertions.
11. So far as concerns the other features of this case, the Petitioner's disability merits the greatest sympathy but would not of itself be a good reason for exhumation, and the increasing immobility of relatives of a deceased person is not exceptional or even unusual, even if it is the result of illness or accident rather than merely age. I am wholly unpersuaded that there might have been any misunderstanding about the implications of Christian burial: there is no evidence of that, and it is inherently unlikely in view of the fact that the ashes were exhumed from their existing location in order to be reburied in the churchyard.
12. What does stand out in this case, however, is not the history, nor the Petitioner's wishes, nor his present circumstances, but the physical situation of the grave itself. I have not visited the churchyard, but I have examined the plan and photographs submitted with the Petition. The grave is by itself, away from the area generally used for cremated remains. No other recent graves with memorials are visible near it in the photographs. It is now well under the canopy of a spreading cypress tree, leaving a headroom of something less than one metre for access. The ground around it is, unlike the rest of the churchyard, not mown: it is undergrowth, not grassy, and cannot be reached properly for tidying or maintenance. The seat is not in front of the grave, but its position nearby increases the sense that the grave is in a wholly unsuitable place, and further restricts access.
13. No doubt in 1985 the tree was much smaller, and the seat perhaps was not there. The position now is that the grave is barely accessible, is likely to be affected by the roots of the tree, and can be seen as isolated from the arrangements made for burial in the rest of the churchyard for no apparent (or good) reason.
14. These exceptional factors justify the grant of the Petition in this case. There will be a Faculty for the exhumation of the remains of Thomas Swan Maddison subject to the following

conditions: (1) the small memorial on the grave must at the same time be removed; (2) Mr Maddison's remains must be immediately re-interred in consecrated ground in East Leake Cemetery.

The Worshipful C M G Ockelton MA BD

Chancellor

24 February 2021