

Neutral Citation Number: [2021] ECC Sal 1

Petition No 3941

In the Consistory Court of the Diocese of Salisbury

In the Matter of St Michael and All Angels, Figcheldean

In the Matter of the grave of Wally and Gwen Reed

The Reverend Philip Bromiley

Petitioner

- and -

Mrs Sandra Sims

Party Opponent

## Judgment

1. This case concerns the Reed family. Given that many of the people concerned in the matter share that surname, I will refer to them in this judgment by their given names to avoid confusion.
2. This is the determination of a Petition dated 29 October 2020 by the Reverend Philip Bromiley, the Incumbent of this parish, seeking permission for the exhumation of cremated remains which were interred in the churchyard of St Michael and All Angels, Figcheldean in the grave of Wally and Gwen Reed. The Petition states that the intention is that the remains, if exhumed, are to be immediately reinterred in another plot within the same churchyard. The daughter of Wally and Gwen – Sandra Sims – has taken party status in the proceedings and, whilst not objecting to the exhumation, she seeks custody of the remains on behalf of the family. Wally and Gwen Reed were the parents of five children: Della, Sandra, Michelle, Michael and Brian. The remains of Wally and Gwen were buried in the churchyard at Figcheldean in the early years of this century.
3. On visiting the grave on 15 October 2020, Wally and Gwen's son, Brian, found that a neat square of turf had been lifted and then replaced. Enquiries established that the church groundsman, Mr Gregg Clark, had noticed the disturbance on his daily visit to the churchyard on 13 October. Wally and Gwen's grave is near to the path and he is quite sure that it had not been disturbed when he left the churchyard at 5pm on 12 October. Upon it being brought to his attention, the Incumbent investigated by lifting the disturbed turf, discovering what appeared to be cremated

remains which had been poured directly into the ground. This information understandably caused real distress to the Reed family.

4. In light of anticipated poor weather, it was feared that the remains would dissipate quickly. When the matter was brought to the attention of the Registry, I was mindful of the need both to preserve the remains and to ensure that investigations could be made and all concerned be given the opportunity properly to be heard. In light of this I granted an interim faculty on 1 November 2020 for the seemly exhumation of the remains and their safe storage pending determination of the Petition. The exhumation took place on 2 November by the lifting of the remains within the surrounding earth to ensure their integrity. They are stored safely by the undertakers, IN Newman Ltd. I am grateful to Mr Newman for the efficiency and generosity with which he has assisted in this matter.
5. These events took place against the tragic background of the relatively recent death of Wally and Gwen's son Michael, who took his own life in August 2018, it is said in the context of the breakdown of his marriage. His remains were cremated and collected from the undertaker in December 2018 by his widow, Helen. Although there was a memorial service to celebrate Michael's life, there was no public interment or scattering of his remains. Michael's siblings are convinced that the remains interred in their parents' grave are those of their brother Michael. Helen denies any knowledge of this and says that she scattered Michael's remains in accordance with his wishes on Christmas Eve 2018 at an undisclosed location. Helen has written to the Registry giving details of her understanding of the situation, but has not been willing to take any part in the proceedings.
6. Upon the grant of the interim faculty, I gave directions for Special Notice of the Petition to be given to all immediate family of Wally and Gwen Reed and of Michael Reed. I also directed the display of Public Notices both inside and outside the church and on the grave itself.
7. There is no objection to the exhumation of the remains from Wally and Gwen's grave, but the question remains of what should happen to the remains once exhumed. The condition of the ashes, having been interred, means that they can no longer be scattered, but Mrs Sims, the Party Opponent, speaking on behalf of Michael's siblings, seeks the release of the remains into the safe custody of Michael's brother, Brian, with the intention that they will be safely stored by him until the weather and harvest mean that they can be interred in an area of farmland over-looking Figheldean to which Michael was very attached (and which he had farmed for forty years).
8. Whereas agreed re-interment within the same churchyard would likely have been a proposal acceptable to the Court regardless of the identity of the remains, a prerequisite of the release of the remains to Michael's siblings would be a finding that the remains are indeed Michael's. I would need to be satisfied of that not so that I was sure, but rather on the balance of

probabilities. I took the view that this was not a matter which I could determine without a hearing of the Consistory Court. A hearing was listed and took place by Zoom on 15 January 2021. It was attended by the parties, by Michael's twin sister, Michelle and by Michael's sister-in-law Tracey (as a representative of her husband, Brian). Helen Reed did not attend.

9. I am grateful to all who attended for the calm dignity with which the matter was conducted. It is clear to me that the family had struggled for some time, trying to come to terms with the fact that they would not know of Michael's final resting place, and that the discovery of these remains has been enormously distressing for all concerned.

### **The identity of the remains**

10. Before I can reasonably determine the outcome of the Petition, it is necessary to make a finding about whether the ashes discovered are the mortal remains of Michael, or whether they remain unidentified.
11. At the hearing I heard from the Reverend Bromiley and Mrs Sims. Mrs Sims had been chosen to give evidence and speak on behalf of the family. I am satisfied that both witnesses were clear and honest and were doing their best to assist the Court with all relevant matters. Michelle and Tracey were able to confirm their agreement with what Mrs Sims had said.
12. On the basis of the evidence provided, I am satisfied on the balance of probabilities that the remains interred in Wally and Gwen's grave are the mortal remains of their son, Michael Reed. In reaching that conclusion I have taken account of the following matters:
  - a. The Reverend Bromiley and the exhuming undertakers were all satisfied, in so far as they could be, that the appearance and volume of what was interred in the grave indicated that it was a complete set of human remains.
  - b. Public Notices were displayed at the church and on the grave in order to provide an opportunity for those who had interred the remains, or who were aware of the interment, to come forward and claim the ashes. There was no contact or enquiry made in response to those notices.
  - c. Careful checking by the Reverend Bromiley confirmed that no permission had been sought nor any enquiry made in relation to the interment of ashes in Wally and Gwen's grave.
  - d. There was no death in the family of Wally and Gwen Reed in the period preceding 12 October 2020 other than Michael's.

- e. There was no public or witnessed disposal of Michael's remains. Helen has refused to disclose the location of disposal, which she says accords with Michael's wishes.
- f. There are a number of facts which are inconsistent with Helen's written statement that she disposed of the ashes on Christmas Eve 2018. I have heard and been shown evidence, including the content of contemporaneous text messages sent by members of Helen's family, which suggests that disposal of Michael's ashes was in fact planned for 1 January 2019, with members of Helen's family invited to attend and members of Michael's family not informed. The same evidence supports the fact that that planned disposal did not take place on 1 January 2019 and that Michael's remains were still stored in the chalet/summerhouse at the bungalow which he had shared with his wife at the end of January 2019. Mrs Sims was told by a member of Helen's family who was invited to the planned disposal that they would tell her when she knew when and where the ashes were disposed of. No information was ever passed on.
- g. Evidence, including further text messages from members of Helen's family, makes clear that the bungalow in which Michael's remains were stored was sold and articles belonging to him cleared from that property on or in the days preceding 12 October 2020. This coincides directly with the date when the ashes were interred in the grave. The bungalow was unoccupied for almost two years prior to its sale in October 2020.

13. I am mindful that these ashes were interred in this particular grave, at a time when the bungalow in which they had been stored was cleared. There are no other linked remains and there is no clear evidence of the disposal of Michael's ashes. Those facts, when coupled with the failure of anyone to claim the ashes in response to the Public Notices and the contemporaneous evidence supporting the fact that the claimed disposal in December 2018 did not, in fact, take place, lead me to conclude that they are Michael's ashes.

14. I do not know how Michael's remains came to be interred in Wally and Gwen's grave and I do not need to make any findings in that respect.

### **The law**

15. The leading authority on the issue of exhumation is the decision of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. That case restates the presumption against exhumation and in favour of the permanence of Christian burial in consecrated ground. Although all concerned support the grant of a Faculty for exhumation, that is not determinative of the matter and the Court must still consider the principle of permanence.

16. Special reasons must exist before an exception to that principle can be justified. The Court of the Arches in *Blagdon* identified various factors which, whilst not exhaustive, might be relevant to whether special reasons exist. In determining a petition, the Chancellor must weigh up any relevant factors in order to decide whether special reasons have been made out.
17. Many of the factors referred to in *Blagdon* are not relevant in this case, although the question of timing is of assistance. The Court in *Blagdon* stated that a long delay in petitioning for an exhumation without explanation may militate against the award of a faculty. Here, all concerned have acted with all appropriate haste to rectify the situation.
18. The Court in *Blagdon* did indicate that a mistake might well amount to a special reason for the purposes of justifying an exhumation. The key factor in this case is that ashes were interred without permission in the grave of Wally and Gwen Reed. The interment was undertaken after 5pm on 12 October or early on 13 October 2020, quite possibly under cover of darkness given that no-one seems to have noticed the interment and sunset fell at around 6.30pm that day. The interment was not accompanied by the rites of the Church of England with the words of commendation of the departed to God and committal of the person's remains to burial in consecrated ground. Whereas it cannot be said that the interment of the ashes was a mistake in the true sense of that word, it was certainly done without reference to or the consent of either the Incumbent or the family of Wally and Gwen Reed, and therefore illegally.
19. The family of Wally and Gwen Reed are united in their view that the ashes should be exhumed from the grave. I am quite satisfied that that, coupled with the clandestine nature of the interment, amounts to a special reason justifying the exhumation of the cremated remains from this grave. The illegality should be corrected.
20. Given that I have found that special reasons exist which could justify the exhumation of the remains, I turn my mind to the question of whether I should exercise my discretion to grant the Faculty for exhumation and, if so, whether any conditions should be imposed.
21. In particular, in this case it is important to determine whether the remains should be released to Michael's family, as is sought by the Party Opponent, Mrs Sims. Had I not been able to find that the ashes concerned were Michael's remains, I would in all likelihood have imposed a condition upon the Faculty that the remains should be reinterred in a dignified and seemly manner elsewhere in the churchyard. That was the intention when the Petition was issued, given that the ashes were unidentified at that stage. Having heard the evidence and been satisfied that no-one else has come forward to claim the remains, the Reverend Bromiley is now very happy to support the release of the remains into the safe custody of Michael's siblings.

22. Michael's next-of-kin is his widow, Helen. She has been fully informed about the progress of this Petition throughout the proceedings. She maintains her position that these are not Michael's remains and that she disposed of his ashes on 24 December 2018. She has chosen not to take any part in the proceedings. Although her decision not to take part may be understood in the light of the significant hurt and high feelings to which the circumstances have clearly given rise in all parties, it is clear to me that she does not seek the return of Michael's ashes into her care.

23. When deciding whether to grant a Faculty for exhumation the Court will have regard to the intended destination for the remains, and may attach conditions to any faculty granted addressing any concerns. As Bursell Ch, stated in *Re the Royal Burial Ground, Frogmore* (Oxford Consistory Court, 24 April 2013)

“...it is entirely clear that the jurisdiction of the consistory court should not be exercised save where it is satisfied that the remains will be treated, and continue to be treated, with reverence and dignity.”

24. In this case, although the remains are not to be interred in consecrated ground, they are to be interred at a location of beauty and meaning to Michael - a location where all agree that Michael had wanted his remains to be buried. Permission from the landowner and the farmer has already been given for such an interment. I have no concern that the burial will be undertaken inappropriately or that there is any sense of wanting to 'hold on' to Michael. The evidence I heard from the family makes clear that they simply have a heartfelt wish “to honour and respect Michael's wishes” and to find “some peace and properly say goodbye”. I can be satisfied that the remains will be treated with reverence and dignity. It will be a condition of the Faculty that the remains are released into the safe custody of his brother, Brian.

25. I hope and pray that the outcome of this Petition will bring some peace to all involved in this matter. I wish to thank the Reverend Bromiley for his role in bringing the matter to a dignified conclusion. Michael was clearly a man much loved by those who knew him. I trust that this order will enable a respectful and peaceful farewell to be made, committing him into the safety of God's hands.

26. In the circumstances I direct that a faculty shall pass the seal on condition that the remains shall be released into the safe custody of Brian Reed.