

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

GREAT NESS CEMETERY

RE: THE REMAINS OF LILY MAY WARNER

JUDGMENT

- 1) On 5<sup>th</sup> September 1989 the remains of Lily May Warner were interred in an oak coffin in the consecrated portion of Great Ness cemetery, a cemetery operated by Shropshire county council. The Petitioner, John Warner is the only child of the late Lily Warner. It was his desire and that of his mother and his wife that he and his wife should in due course be buried in the plot alongside that containing Lily Warner's remains in Great Ness cemetery. With that objective in mind the rights to burial in the adjoining plot were bought at the time of Mrs. Warner's interment.
  
- 2) In March 2018 the council excavated the adjoining plot with the view to effecting a burial in it. In that exercise the council had overlooked the rights to that plot which Mr. and Mrs. Warner had already acquired. The error was discovered on the morning of the proposed funeral. A representative of the council telephoned Mr. Warner; told him what had happened; and gave him the option of causing the funeral planned for later that day to be stopped and for the plot to remain unused. Mr. Warner as an act of compassion and decency decided that he could not cause a funeral to be cancelled on the very day when it was due to take place and agreed to the funeral proceeding and to there being an interment in the plot which had been reserved for him and his wife. That of course means that it is no longer possible for Mr. and Mrs. Warner to be buried in the plot next to that containing the remains of Lily Warner. It will not be possible to achieve a similar result by causing Mrs. Warner's remains to be reinterred elsewhere in the Great Ness cemetery with an adjoining plot being reserved in favour of Mr. and Mrs. Warner. That is because the council no longer provides for plots to be reserved.

- 3) In those circumstances Mr. Warner petitions for the exhumation of his mother's remains and their reinterment in a burial chamber which has been created on land owned by Mr. and Mrs. Warner. The chamber is on a site in elevated woodland. Mr. Warner has provided details of the construction of the chamber and the arrangements which will be in place to keep it secure. I am satisfied that it is soundly constructed and the remains interred in it will be safe from disturbance. I am also satisfied that Mr. Warner will take all steps necessary to obtain such further permissions as he requires in addition to a faculty from this court. Permission is also sought for the movement of the memorial currently at Lily Warner's grave and its installation at the site of the burial chamber. The intention is that the chamber should receive the remains of Mr. and Mrs. Warner in due course in addition to those of Lily Warner and that it should then be sealed.
- 4) The undertakers who are to be engaged in respect of the exhumation and reinterment if permission is granted have confirmed their belief that the coffin containing Mrs. Warner's remains will be intact and that provided care is taken it will be possible to perform the exhumation and reinterment in a seemly way.
- 5) The site of the chamber is not on consecrated land. The intention is that the reinterment should be conducted under the supervision of the vicar of Great Ness with the chamber being blessed before the interment. This will not, however, have the effect of consecration and the plot will remain outside the jurisdiction of the consistory court.

6) I concluded that it was appropriate to determine this matter on the basis of written representations and the Petitioner consented to that course. As part of that exercise detailed further information was provided in response to questions I had raised about the security of the proposed site and the arrangements for its future.

#### **The Governing Principles.**

- 7) 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. 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. Exhumation is to be exceptional 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 case in question).

- 8) It is not, however, sufficient for the court to be satisfied that exhumation is justified. Appropriate arrangements must be in place for the safe custody and protection of the remains once they have been exhumed. As I explained in *Re Tixall Road Cemetery, Stafford* (Lichfield 2014) at [7]:

“The Court is concerned not just with the permanence of interment but also with the fact that remains which have been interred in consecrated land have been committed to the protection of the Church. Exhumation can only be permitted even in exceptional circumstances if the Court can be satisfied that appropriate arrangements are in place for the continuing protection of the remains.”

- 9) That proposition set out in part my understanding of the basis for the treatment of this question in *Blagdon*. There the Court of Arches said, at [13] – [15], that the court could proceed on the assumption that such appropriate arrangements would be in place if the reinterment was to be in consecrated ground or if it was to be in a cemetery under the control of a local authority. However, at [16] the court explained the approach which was to be taken if the proposed reinterment was to be in unconsecrated land which was not part of a local authority cemetery. Thus:

“Reinterment in unconsecrated ground which is not in a local authority cemetery is a different matter. No general inference of the suitability for reinterment in such land can properly be drawn by the consistory court. Questions about proper care of the new grave in the future and the prospects for visiting access by future generations would need to be addressed by those involved in such cases, and in turn examined with care by the consistory court in deciding whether or not to exercise its discretion to grant a faculty for exhumation.”

- 10) Those concerns were among the factors which caused Hill Ch to refuse permission in the case of *Re Crigglestone Cemetery* [2017] Ecc Lee 3 where

it was proposed that cremated remains should be exhumed from the consecrated portion of a local authority cemetery and buried under a tree in the garden of the deceased's 82 year old mother's house. Similarly, in *Re St Thomas, Worting* [2018] Ecc Win 4 Ormandroyd Ch refused permission for exhumation. He explained that although he would have been satisfied that grounds for exhumation had been made out he would not permit it in the circumstances of that case because the proposal was for the cremated remains in question to be interred in the garden of the deceased's widow's home.

**Are there Exceptional Circumstances here justifying Exhumation?**

11) I am satisfied that the circumstances here are exceptional such as to justify the exhumation of Mrs. Warner's remains from the existing grave. The intention at the time of the burial of Mrs. Warner was that her only son and her daughter in law should be buried in the adjoining plot. That is no longer possible because that adjoining plot has been used in error. The fact that Mr. Warner took the compassionate course of allowing the proposed funeral to proceed and declined the option of causing it to be stopped on the morning when it was due to take place stands very much in his favour. The current state of affairs whereby the intention which Mrs. Warner had at her death and which her son and daughter in law maintained for nearly 30 years has been frustrated has been brought about by error on the part of the local authority an error to which Mr. Warner responded with compassion and understanding.

12) The situation here has close similarities to that which I addressed in the case of *St Peter, Dunchurch* (Coventry 2013). I explained there why a burial by mistake in a reserved plot adjoining that in which a family member had been buried and which thereby thwarted a longstanding intention that other family members should be buried alongside the dead family member could amount to exceptional circumstances justifying exhumation. The same reasoning applies here.

**The Proposed Arrangements for the Reinterment of Mrs. Warner's remains.**

13) I have had considerably more cause for reflection in respect of the proposed arrangements for the reinterment of Mrs. Warner's remains.

- 14) It is not possible now to create in the Great Ness cemetery arrangements whereby Mr. and Mrs. Warner can be interred alongside Lily Warner. That again is not because of any action or any failure on the part of Mr. and Mrs. Warner it is because the Council has decided not to allow the reservation of plots. It follows that if Lily Warner's remains were to be reinterred in that cemetery there would no way for Mr. and Mrs. Warner to be confident of being buried alongside her. Indeed they would only be buried alongside her if by chance the burial of the first of them to die coincided with the time to use the plot adjacent to that containing Lily Warner's remains.
- 15) It is apparent from the passage from *Blagdon* which I have cited above that it is open to the court to authorise exhumation with a view to reinterment in unconsecrated land which is not in a local authority cemetery but also that considerable caution must be exercised before doing so. Burial plots or burial chambers on private land are rare in the United Kingdom but they are by no means unknown.
- 16) I am satisfied that the physical arrangements of the proposed chamber are sound and that if interred in there Mrs. Warner's remains will be in a secure location and retained in a seemly manner. My predominant concern was as to the permanence of this arrangement and as to the provision for the future. It was against the background of such concerns that Chancellors Hill and Ormondroyd refused permission for reinterment in private gardens in the cases cited above.
- 17) Here Mr. Warner has provided a detailed explanation in response to my queries. The proposal is that he and his wife should in due course also be buried in the chamber which will then be sealed. The chamber is on land which Mr. Warner and his family have farmed for something over 40 years. Not only is Mr. Warner a farmer but his two sons are also farmers and their children are in turn engaged in or preparing for careers in farming. The intention is that the land in question will pass from Mr. Warner to his sons with the hope that in due course it will pass to their children. I am conscious that such intentions may come to naught for a variety of reasons but I am satisfied that in the circumstances here the intentions are genuine and that there is

every reasonable likelihood of them coming to pass. The reality is that the chamber is on land which is likely to remain in the hands of the Warner family for the foreseeable future. In those circumstances there is unlikely to be difficulty about the security of the site nor about arrangements for visiting by family members. The protection of Mrs. Warner's remains will not be as secure nor as enduring as it would have been if they had remained in consecrated land under the control of the consistory court but the court can have a considerable degree of assurance that the remains will be in a secure and seemly setting for the foreseeable future.

**Conclusion.**

18) In the light of those matters I am satisfied that exceptional circumstances justifying exhumation exist. I am also satisfied that on the very particular facts of this case there is sufficient basis for concluding that the remains even when interred on private land will be in a secure and seemly setting and an adequate assurance that those arrangements will continue. Accordingly, I authorise the grant of the faculty sought.

*STEPHEN EYRE*

HIS HONOUR JUDGE EYRE QC

CHANCELLOR

29<sup>th</sup> September 2019