

In the Consistory Court of the Diocese of Norwich

Re St Peter, Gunton

Judgment

1. I have received two petitions for the exhumation of the cremated remains of two family members from the churchyard of St Peter's church, Gunton and their reinterment in a different location approximately six feet away within the same churchyard. Mrs Florence Kippin petitions for the exhumation of the remains of her late husband, Mr Arthur George Richard Kippin. Mrs Marjorie Wood ('Mrs Wood') petitions for the exhumation of the remains of her late mother, Mrs Emma Alice Wood ('Mrs Wood senior'). They are supported in their wishes by all close family members. The two sets of remains are interred close by each other in an area of the churchyard given over to the interment of cremated remains. The grounds for the applications are set out in the petition forms and in two moving and eloquent letters from the petitioners. The incumbent of the parish, the Revd Trevor Riess has also written in support of Mrs Kippin and Mrs Wood.

Background

2. The cremated remains of Mr Kippin and Mrs Wood senior were buried in 2000 and 2002 respectively. I have seen a number of helpful photographs which show clearly how the remains were buried at the back of an area dedicated to the interment of cremated remains and close up against the churchyard boundary fence, which at this location is a green plastic coated wire mesh fence. A stone memorial plaque and vase has been placed over each grave.
3. Over the years since interment Mrs Kippin and Mrs Wood have taken pride and comfort from the visiting and tending of the graves and have done so, until recently, without apparent upset or concern. More recently Mrs Kippin and Mrs Wood have experienced increasing difficulty in tending and placing flowers at the graves. Mrs Kippin and Mrs Wood are respectively 88 and 84 years of age and Mrs Kippin walks with a stick. As a result of the proximity of the graves to the fence they have found it awkward and dangerous to attempt to tend the graves as they have to hold onto the rather wobbly fence whilst bending down as there is no clear pathway to the graves. They have been stung and scratched by foliage growing through the fence and have stumbled because of the lack of space around the graves.

4. The graves must always have been close to the boundary fence, but it would appear that the churchyard has, until recently, been carefully tended and well looked after. The petitioners describe in their letters how this has changed in recent months. The local authority has assumed responsibility for the upkeep of the churchyard and as a result the grass is cut less frequently and the churchyard tended less well. The graves become, at times, overgrown and harder to access.
5. Revd Reiss has written in support of the petitioners and confirms that there is space at the front of the existing cremation area where the remains of Mr Kippin and Mrs Wood senior could be reinterred. This would involve moving the remains a distance of about six feet from where they currently lie. Revd Reiss has also discussed with the petitioners the possibility of moving only the memorial plaques to the new location, leaving the remains undisturbed, but allowing easy and safe access to the plaques and vases for the future tending of the graves.

The law

6. The law on exhumation is most authoritatively and recently stated in 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. This presumption arises from the Christian theology of burial reflected in a paper from the then Bishop of Stafford which the Court in *Blagdon* considered. The Bishop of Stafford 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. Special reasons must exist before an exception to the principle of permanence can be justified. The Court of the Arches in *Blagdon* identified various factors which, whilst not exhaustive, might give rise to a finding that special circumstances exist which may permit the exhumation of the deceased's remains. These factors are:

- a. Medical reasons. The Court of Arches stated that any medical reasons would have to be very powerful indeed to create an exception to the norm of permanence. It expressly stated that the advancing years and deteriorating health of petitioners, as experienced by Mrs Kippin and Mrs Wood, would not amount to a special reason to depart from the norm of permanence.
- b. 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. In this case, 13 and 11 years respectively have passed since the interment of Mr Kippin and Mrs Wood senior. I do not question the genuineness of the petitioners application and I am told that the reason for the delay relates to the changing circumstances arising from poor care of the churchyard in recent times. I have regard to the decision of Chancellor Tattersall in the Manchester Consistory Court in *Re Southern Cemetery, Manchester* (unreported, July 2012). In that case the fact that the cemetery had been poorly maintained did not amount to a special reason to depart from the norm of permanence. In addition, I was concerned about the practical logistics of exhuming cremated remains which may have been poured into the ground 11 and 13 years ago. I sought confirmation from the petitioners about the circumstances of the burial of the deceaseds' remains. I am told that, unfortunately, the funeral directors responsible for the burial have since gone out of business and that their records are no longer available. As a result I do not know whether the remains of Mr Kippin and Mrs Wood senior were buried in a casket or poured into the ground. I do not know whether their remains would be physically capable of exhumation. Nevertheless, I am prepared to assume for present purposes that such exhumation would be possible, until such time as the contrary is shown.
- c. 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. It cannot be said that a relevant mistake was made at the time of burial in this case. The only possible mistake may have been the proximity between the graves and the boundary fence, which must have

been manifest at the time of burial and has not given rise to a need for exhumation before now.

- d. Local support. The Court held that although the views of close family members are very significant in determining whether special circumstances exist, the support or otherwise of the local clergy and PCC will normally be irrelevant. Here the petition is supported by family members and clergy alike.
 - e. Precedent. The Court in *Blagdon* enjoins chancellors to have regard to precedent and the need to secure the equality of treatment as between petitioners. I have such regard.
 - f. Family grave. The Court held that the use of family graves is to be encouraged. They are both expressive of family unity and environmentally friendly in demonstrating an economical use of the land for burials. It is the intention of Mrs Kippin and Mrs Wood that their cremated remains should be buried in the graves with which we are concerned. Whereas this would amount to the establishment of a family grave, I cannot see that the grant or refusal of these petitions would affect the possibility of establishing a family grave in the way intended.
8. In addition to the considerations set down the *Blagdon* I have considered whether the fact that the remains are only to be moved a very short distance within the same burial ground should affect my determination of whether special reasons exist in this case. I have had regard to the decision of Deputy Chancellor Petchey in the Southwark Consistory Court in *Re St Bartholomew, Horley* (unreported, February 2010). In that case unfortunate circumstances had meant that a husband and wife who had intended to be buried together had been buried about 90 yards apart. The chancellor granted a faculty for the exhumation of the husband's remains and their reinterment in his wife's grave, considering that the fact that they had been buried so close together and yet separately might be particularly upsetting to the family. I find that that case is entirely distinguishable from this. Given that the reason for the norm of permanence arises from the Christian theology that we are entrusting the deceased's soul into God's care and that mortal remains should rest undisturbed, I find that the short distance over which the remains are to be moved does not assist in establishing a 'special reason'. The disturbance comes principally from the exhumation itself, regardless of how far the remains are then to be moved before reinterment.

Determination

9. I have considered all of the above circumstances in deciding whether special reasons exist to rebut the presumption of permanence of Christian burial in this case. I recognise the distress of the petitioners

in being unable to tend the graves as they would like. However, I cannot find that special circumstances exist to justify the exhumations in this case. I would encourage Mrs Kippin and Mrs Wood to consider carefully the suggestion of Revd Reiss to move the memorial plaques and vases to the suggested more accessible location such that they would be able to tend the memorials of their loved ones as they wish, knowing that their mortal remains rest safely very close by. When the time comes, it may be that Mrs Kippin and Mrs Wood choose for their own cremated remains to be interred either in the graves of their loved ones or beneath the newly moved memorials.

10. I know that Mrs Kippin and Mrs Wood will be disappointed by this decision. I hope that they will find some comfort in the confidence that Mr Kippin and Mrs Wood senior have been trusted into the safety of God's hands in the hope of future resurrection.

Ruth Arlow
Chancellor

26 October 2013