

Neutral Citation Number: [2022] ECC New 1

IN THE CONSISTORY COURT OF THE DIOCESE OF NEWCASTLE

His Honour Judge Simon Wood, Chancellor

In the Matter of an Application to exhume the cremated remains of Barbara GARDNER from the Consecrated section of Heaton Cemetery and in the Matter of a Petition by Graeme GARDNER

JUDGMENT

1. This is a petition by Mr Graeme Gardner, brought with the consent of Mr Mark Lamb, the Bereavement Services manager of Newcastle City Council, the burial authority, seeking permission move the cremated remains of his late mother, Mrs Barbara Gardner, from the consecrated section of Heaton Cemetery (CK-27) and re-inter them nearby in another plot within the consecrated section (Lawn E-331).

The facts

2. Barbara Gardner died on 17 February 2019. It was her wish that her ashes be buried in Heaton Cemetery, a wish her widower, Mr Raymond Gardner, was anxious to honour. Pursuant to that request, her remains were buried in plot CK-27, which the petitioner emphasises was not pre-selected by Mrs Gardner or her family, on the afternoon of 4 March 2019. Subsequently, a headstone was erected and border kerbs installed. The deed holder of the plot is Mr Graeme Gardner, the son of Raymond and Barbara.
3. Raymond Gardner has been a regular and faithful attender at his wife's grave. Sadly, this has become an increasingly distressing experience because, owing to the grave's proximity to the location where skips are placed in order to accommodate waste and rubbish from the cemetery, the area of the grave has itself become the subject of fly tipping. He describes being confronted with a 'disgusting' mess which the burial authority has been unable to control. The photographs provided show that the condition of the area has, if anything, been understated: it is, frankly, a wholly disrespectful and disgraceful state of affairs. Had he appreciated this at the time of burial, he reports that he would have sought another location for her burial plot.
4. Mr Lamb acknowledges the problem faced by the authority. It has attempted, without success, to address it by increasing the frequency of collections of waste and taking steps to tidy the area but he reports that the regular use of vehicles associated with collecting rubbish,

particularly in inclement weather, has just exacerbated the problem caused by the illegal dumping of waste. Whilst his letter reports that the authority continues to seek solutions, none is immediately to hand and, such is the distress that Mr Lamb accepts is being caused to Raymond Gardner, he supports the application for Mrs Gardner's remains, together with the headstone and border kerbs to be moved to another location.

5. The situation described has caused Mrs Gardner's family considerable and entirely understandable distress.

The law

6. The law is well established and definitively set out in the judgment of the Court of Arches *In re Blagdon Cemetery* [2002] Fam 299. The presumption of permanence is explained, arising, as it does, from the Christian theology of burial which emphasises, by reference to the Bishop of Stafford's *Theology of Burial*, that the permanent burial of the physical body is to be seen as a symbol of the entrusting the person to God for resurrection, a concept that does not sit easily with the concept of "portable remains". Hence the reluctance of the Consistory Court to grant faculties for exhumation is well supported by Christian theology.
7. Nevertheless, recognising that it was essentially a matter of discretion with each case turning on its own facts, the Court indicated the necessity of the petitioner satisfying the Consistory Court that there are special circumstances justifying the making of an exception from the norm that Christian burial is final. In so stating the Court went on to identify various factors which may indeed support such a petition. It is fair to say that the circumstances which have given rise to this petition were not expressly within the contemplation of the court
8. Whilst lapse of time is always a relevant factor it is not determinative.

Decision

9. It is disappointing that the burial authority has been unable to find a solution to the problem described which doubtless affects other graves quite apart from the one with which the Court is concerned. It is clear that attempts have been made to address the issue which nevertheless persists. Furthermore, if the Court were to decline to grant a faculty, it is inevitable that the distress already identified and the uncertainty of a satisfactory resolution short of exhumation will persist for a further indefinite period.
10. There has been no delay in seeking to bring this before the court: the family has reasonably engaged with the burial authority in the hope that a less drastic solution could be found. There has been full compliance with all other formalities, including the provision of family

consents, necessary information being provided by the undertaker and the consent of the burial authority. The petition confirms that 'the exhumation and re-interment would be completed by the [Local authority's] Bereavement Services team, something the Registrar believed Mr Lamb confirmed in a telephone conversation.

11. Simple decency dictates that the family's distress be relieved sooner rather than later and, despite the presumption of permanence, expediency demands that the petitioner be granted the relief sought.
12. This has all come at a cost. The family has paid for the petition. The Registrar agrees to waive the Registry's costs. On further enquiry of the Bereavement Services team, it transpires that, 'as a gesture of goodwill', it is only prepared to meet 50% of the costs of the exhumation but none of the cost associated with moving the memorial or the making this application. It is accepted that it selected the plot at a time when there were only a handful of plots available (more have subsequently become available including the one that Mr Gardner senior has selected) but it is maintained that all that reasonably could do to manage a problem not of its making.
13. Whilst the offer to meet some of the cost of exhumation is doubtless welcome, it is disappointing that the authority feels unable to accept the whole sum given that, in supporting the petition, it acknowledges that it cannot provide a permanent solution in a timely manner for Mr Gardner.
14. Nevertheless, the faculty will issue forthwith as sought on the following conditions:
 - (a) the exhumation from CK-27 be carried out with due care and regard for decency, early in the morning with the plot screened from public view;
 - (b) the re-interment in Lawn E-331 be forthwith;
 - (c) any terms imposed by the Environmental Health Department of Newcastle City Council are complied with;
 - (d) No order as to costs.

Simon Wood
Chancellor
15 March 2022