

Neutral Citation Number [2022] ECC Liv 1

IN THE CONSISTORY COURT

of the DIOCESE OF LIVERPOOL

In the matter of St Margaret's and All Hallows Orford

And in the matter of the exhumation of John (Jack) Greaves deceased

Judgment on faculty application for exhumation

Introduction

1. Mr John (Jack) Greaves passed away almost 22 years ago on 28th December 2000. His body was cremated and the ashes were interred on 23 January 2001 in the churchyard at St Margaret's and all Hallows in Orford near Warrington. His wife (Mary Greaves) had predeceased him by approximately 18 months, although the date is not specified. She had been cremated, and her ashes were interred in Warrington cemetery.

2. Approximately 16 years after the passing of her parents Mrs Benita Hardman, their daughter petitioned for a faculty seeking the exhumation of her late father's ashes, and the re-interment in Warrington cemetery. The reasons were given in these terms:

"When John Greaves (Jack) passed away he wasn't Catholic, so as a family we thought he wouldn't be able to go in the family grave at Warrington cemetery. We have had a talk as a family and we all feel that John should be in the family grave with the rest of his family."

3. It is this application which I am required to address.

Background

4. It is apparent that the family grave referred to was purchased by Sarah Hardman. I am assuming that she is one of the daughters of Benita or associated by marriage with one of her sons because she does not otherwise appear in the family tree within the papers. Be that as it may, it is clear to me from the correspondence that Sarah has been the driving force behind this application and has sought to elicit the support of all the relevant family members. There are several letters which have been signed by the grandchildren (Jake Hardman, Andrea Hardman, Simon Hardman and Nigel Hardman) of together with a letter from a great-grandson, (Thomas Hardman) expressing their agreement with the proposal for exhumation.

4. Whilst the petition refers to the written consent of the area dean of Warrington, the Rev Canon Paul Wilson, this has not in fact been forthcoming. On the contrary it is said that he expresses his opposition, and in a letter dated 24th May 2017 the churchwardens of St Margaret's wrote to the Registry indicating similar opposition. It was said that no mistake had been made when the late Mr Greaves was interred in consecrated ground in the graveyard. At the time the parish was in an interregnum.

5. On 22nd May 2017 Sarah Hardman wrote to my predecessor as Chancellor with a fuller explanation of the reasons for the application. (This is to be taken as a comprehensive written representation, and no indication has been given that a hearing is required, or that the family is not content for this matter to be dealt with on the basis of the papers in accordance with rule 14(1) of the Faculty Jurisdiction Rules 2015 (as amended).

6. In her letter, Mrs Hardman gave some background to the family relationship and the marriage of her grandparents, Mary and Jack, who were together for 50 years. Mary, she said, had been a Catholic, and when her grandfather passed away some 18 months after her, because he was Anglican, it was considered that he could not be buried in the cemetery (it is not stated that this was consecrated Catholic burial ground) but that he should be buried in a Church of England graveyard. She explained that her mother, Benita, wanted to be laid to rest in the family grave, and was upset that she could not be with her parents together.

7. She said this in her letter:

“When Mary who passed away first and was very much loved and idolised by Jack and all of the family, was a very upsetting time for all and especially her husband Jack, who every day until he passed away 18 months later would every day be very emotional about his wife and just wanted to be with her (sic).

Please be aware that we have no issues with St Margaret’s just with ourselves and putting all our minds at rest that this loving couple can lay side-by-side as it should have been from the start and also my grandmother will also have peace of mind when her time comes to join them and her sons and daughter and grandchildren will be at peace knowing the family are where they were when her life started together. (sic)”

8. She finished her letter by referring to a mistake which she hopes to rectify.

10. Finally, it is to be noted that Warrington Borough Council, responsible for the cemetery, have no objection to the re-interment of the remains of Jack Greaves.

Recent History

11. This is the background to the application. As indicated, I decide the matter without a hearing. I am also conscious of the delay in providing a decision which has been caused by a number of reasons and regret any inconvenience to the petitioner or the family.

12. In responding to this application, both the registrar, Mr Dellar and his clerk, Dr Roberts, have explained the factors which the Consistory Court will take into account when considering whether or not to grant a faculty for an exhumation of cremated remains. It is correct that a faculty is only permitted in exceptional circumstances in this situation, and the onus is on the petitioner (that is the party applying, taken here to be Mrs Hardman and the family) to satisfy the court that such circumstances exist to justify making of an exception from the established norm that Christian burial is final. Reference has already been made to the authoritative decision of **Re Blagdon Cemetery [2002] 4 All ER 482**, which applied the earlier principles in **Re Christ**

Church Alsager [1999] Fam.142. Both these cases involved decisions delivered by the highest level of ecclesiastical judiciary.

13. Reasons which are capable of justifying an exceptional approach can arise from medical causes, a mistake (but usually administrative error leading to burial in the wrong grave), strong local support or compelling pastoral matters. Even then, there is a high threshold which has to be crossed, and one of the considerations for the court will be the promptness with which the application is made. This is not simply because of the difficulty of carrying out exhumations many years after the initial burial, but because family relationships can change significantly with the passage of time. Where there has been a change of mind, or a situation has arisen where a relative has subsequently been buried elsewhere and the remaining family members are desirous of a collective or family grave, this is usually not considered to be a compelling reason.

14. More recently the Consistory Court in the Diocese of Derby has considered the relevant factors in a similar case where the family had been hopeful of uniting the remains of deceased parents. (**Re St George, New Mills, [2021] ECC Der 2**, [Clarke Ch.]) In that case it was emphasised that special reasons were particularly important if there was to be a departure from the general rule that Christian burial is final and where some years after the initial burial there had been a desire for a family grave.

15. In the circumstances of this case, in my judgment no special, good or proper reason has been put forward by the petitioner. In fact there are several features which suggest that it would be inappropriate for there to be any disturbance of the remains of the late Mr Greaves. In the first place, his death post-dated that of his wife, and the fact that there may have been some confusion at the time as to whether his ashes could be interred with his wife, the time to investigate that issue would have been upon his death. Second, between the time of the death of the deceased, and the issuing of this petition a number of years have passed. If there had been a mistake upon which reliance is to be placed because of a misunderstanding of denomination, again the time to investigate possible exhumation would have been shortly after the interment of the ashes. Third, there is a complete absence of any support whether from a practical or pastoral point of view from the parish who have identified the absence of any justification for disturbing the burial.

16. I entirely understand how relatives of deceased family members become sensitive to end-of-life issues, particularly as they get older and approach the prospect of their own passing, and seek comfort from the thought of being “reunited” in terms of physical remains in family plots. However, if arrangements have not been put in place prior to death with a family plot, the consistory court cannot indulge the moving of remains which have been interred through Christian burial in consecrated ground simply on the basis of strongly expressed family wishes, however genuine or sincere. Accordingly, I regret that I cannot grant this faculty.

His Honour Judge Graham Wood QC

Chancellor of the Diocese of Liverpool

29th December 2021