

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

SMALLTHORNE: ST SAVIOUR

IN THE MATTER OF THE REMAINS OF JAMES HERBERT MARLAND

ON THE PETITION OF THE STOKE ON TRENT BURIAL AUTHORITY

JUDGMENT

- 1) On 29th May 2012 the cremated remains of James Herbert Marland were interred in the churchyard of St Saviour's, Smallthorne. That churchyard is managed by the Stoke on Trent Burial Authority (a branch of the City Council). That authority now petitions seeking a faculty for the exhumation of those remains and for their reinterment in the adjoining plot.
- 2) James Marland's remains were interred on 29th May 2012. The remains of his son, Craig Marland, are interred in the immediately adjoining plot. The papers before me do not indicate whether Craig Marland was buried before or after his father and it matters not for the purposes of this judgment.
- 3) Earlier this year James Marland's widow, Agnes Marland, died. On 1st June 2012 her cremated remains were interred in the churchyard. The intention was that those remains should be interred in her husband's grave. Unfortunately and because of an error on the part of the Burial Authority (an error which it has properly and frankly admitted) they were not interred in that grave but instead in the adjoining grave which already contained the remains of the couple's son.
- 4) The Burial Authority consulted Roseann Holleran as to her wishes for the way forward. Mrs. Holleran is the niece of Agnes Marland and is the closest surviving family member. Mrs. Holleran explains that it was the firm wish of Agnes Marland to be buried in the same grave as her husband. However, Mrs. Holleran went on to say that she believed that this result should be brought about by the exhumation of the remains of James Marland and their reinterment in the grave of Craig Marland rather than by the exhumation of the remains of Agnes Marland. Mrs. Holleran believes it is desirable for all three family members to be in the

same grave and also that the overall disruption of interments will be less if this course is adopted.

- 5) 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).
- 6) It is well-established that a mistake can be a special circumstance justifying exhumation. This was expressly stated in *Re Blagdon Cemetery* itself. The classic example of a mistake is where a burial has taken place interring a person's remains in the wrong burial plot or in a gravespace already reserved by faculty for another person. There have been repeated instances in which consistory courts have remedied such mistakes by authorising the exhumation of the remains which were mistakenly placed in the wrong plot or in the reserved gravespace. This approach been taken, for example, in *Re Streatham Park Cemetery* (Southwark 2013), *Re St John Walsall Wood* (2010) 12 Ecc L J 419 (Lichfield), *Re Jean Gardiner* (2004) 7 Ecc L J 493 (Carlisle), and *Re St Luke Holbeach Hurn* [1996] 1 WLR 16 (Lincoln). As the Court of Arches said in *Blagdon* at [36 iii] exhumations in those circumstances “*amount to correction of an error in administration rather than being an exception to the presumption of permanence which is predicated upon disposal of remains in the intended not an unintended plot or grave*”,
- 7) The normal consequence of a mistake of this kind is exhumation of the remains which were mistakenly interred. However, such a mistake can create exceptional circumstances in which the exhumation of remains other than those mistakenly interred becomes appropriate. Thus in *Re Dunchurch, St Peter* (2014) 16 Ecc L J

126 (Coventry) I permitted the exhumation of a gentleman's remains when an unrelated person was mistakenly interred in the adjoining gravespace which had been reserved for the former's widow. That mistake would have thwarted the original intention of husband and wife being buried in adjoining plots. I concluded that it was appropriate to permit the exhumation of the husband's remains and their reinterment in a plot alongside which the widow could be interred in due course rather than causing the mistakenly interred remains to be exhumed.

- 8) In cases where it is said that the mistake justifies the exhumation of remains other than those of the person mistakenly interred permission will be given less readily than in those cases where the proposal is for exhumation of the mistakenly interred remains. This is because in the former instance the proposal is for exhumation of remains to which the presumption of permanence applies whereas that presumption does not apply to mistakenly interred remains (as explained in *Blagdon*).
- 9) In the circumstances here there was no mistake in respect of the interment of James Marland. His remains were interred in the correct grave and the intention was that they should remain there. Moreover, the mistake which occurred in respect of Agnes Marland's remains could be remedied by the exhumation of those remains and their reinterment in the correct plot. I take account of those factors. Nonetheless, the Court has a wide discretion. It must at all times remain conscious of the presumption of permanence but it must look at the situation in the round avoiding artificiality and considering the circumstances which have actually arisen.
- 10) I have concluded that it is appropriate to permit the proposed exhumation and reinterment in the circumstances of this case. The interment of the remains of Agnes Marland in the wrong grave has brought about a situation which is outside the norm. The effect of the proposed exhumation and reinterment of the remains of James Marland will be that those remains will be in the same grave as those of his widow (which is what had been intended from the outset). It will also mean that the remains of both James and Agnes Marland are in the same grave as those of their son. This is an appropriate and desirable result creating as it does a family grave containing the remains of all three members of that family. An

additional factor is that the remains of James Marland are to be moved only to the adjoining plot. Any exhumation requires exceptional circumstances even if the remains are only to be moved a short distance. It is, however, relevant when considering how the consequences flowing from the mistake should be remedied that the proposed course involves the movement of James Marland's remains only a very short distance to the immediately adjoining plot in the same churchyard.

11) Accordingly, I direct that the faculty sought issue forthwith.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
2nd July 2016