

IN THE MATTER OF ST. MARY THE VIRGIN STANSTED
AND IN THE MATTER OF DANIEL ROSS, DECEASED

JUDGMENT

1. This is a Petition dated 26 June 2013, by Mrs Denise Ross, Mr Terry Moss and Mr Matthew Ross, the parents and brother respectively of Daniel Ross, who tragically died on 9 September 2001, aged 19 years, from injuries received in a road traffic accident. Daniel Ross was buried on 20 September 2001 in the churchyard of St. Mary the Virgin Stansted, Kent, which is, of course, consecrated ground.
2. The Petitioner seeks the permission of the Consistory Court to exhume the mortal remains of Daniel Ross and to reinter them in the Churchyard of All Saints Church, Dulverton, Somerset, which, for the avoidance of doubt, also consists of consecrated ground.
3. The Petition sets out, in detail, the grounds relied upon in support of the application made. Because of the particular circumstances of the case, I propose to rehearse them at some length:
 - (i) both Mrs Ross and her surviving son, Matthew Ross, have suffered "severe psychiatric and psychological problems" from the death of Daniel Ross, and these problems are compounded by the

fact that the mortal remains of Daniel Ross are interred in the Churchyard of St Mary the Virgin Stansted;

- (ii) the family members, because of the death of Daniel Ross, have left Stansted where they were living at the time of his death, and have moved to live in Dulverton, Somerset;
- (iii) the reason for the move was an inability for the family to continue living so close to where Daniel Ross had been killed;
- (iv) Matthew Ross, because of anxiety attacks, has been unable to visit his brother's grave since the day of the funeral. His problems are exacerbated by the fact that the Churchyard is in the road on which his brother died;
- (v) Both Mrs Ross and Matthew Ross have required psychiatric and psychological treatment to cope with their conditions;
- (vi) Mr and Mrs Ross find visiting the grave of their son a very painful experience. They have "to drive into the road where Daniel died, and see the spot where we last saw him alive";
- (vii) When visiting the grave of their son, Mr and Mrs Ross are always fearful of seeing the family of the man responsible for their son's death, who live in the road where the Churchyard is situated;

- (viii) The family are settled in Dulverton. They have thought long and hard about the issue, and dearly want to have the mortal remains of Daniel Ross reinterred in a churchyard near them, and where they can visit his grave in peace and tranquillity, and without experiencing flashbacks and the like, and without the fear of encountering the family of the man who was driving the car at the time of the road traffic accident in which their son was killed.
4. I do not have before me details of the relevant road traffic accident. I am told in the Petition that the driver of the car concerned was given a four year custodial sentence. For such a sentence to have been imposed he must have been guilty of particularly serious dangerous driving.
5. The Petition is supported by the Rector of St. Mary the Virgin Stansted, the Revd. Christopher Noble, whose letter dated 20 May 2013 is before me.
6. The Rector of All Saints Dulverton, the Revd. Prebendary John Thorogood, has by letter dated 21 June 2013, confirmed that he consents to the mortal remains of Daniel Ross being reinterred in the churchyard of his church.
7. Viner & Sons Ltd., Funeral Directors, have written an undated letter to say that they are aware of the implications of, and sensitivities surrounding, an exhumation and re-interment, having themselves carried out a number in the past. They write to say that they do not expect their

actions in the proposed exhumation would impact or intrude on any of the surrounding graves in any way.

8. On 3 July 2013, I gave directions, and granted permission to the Petitioners to obtain medical evidence in support of the application. This they have done. I now have before me a report dated 29 August 2013 from Dr Freda Gardner, a consultant clinical psychologist.
9. Dr Gardner describes how both Mrs Ross and Matthew have continued to experience profound difficulty, and have needed psychiatric treatment, even after their move to Somerset. She states that Matthew Ross has: "required psychiatric and psychological assessment and medical and therapeutic intervention," plus "specialist intervention (EMDR), specifically to address anxiety and post-traumatic stress disorder".
10. As for Mrs Ross, Dr Gardner says that her mental health has not improved from that which was diagnosed as a post-traumatic stress reaction.
11. Tellingly, Dr Gardner states:

"The profound emotional difficulties.. associated with being unable to visit the grave of a lost child and sibling, are ... associated with profound difficulties in proceeding with the normal process of grief ..."

and goes on:

".. it is my professional opinion that their mental health would very significantly, and I, believe very swiftly, improve, if Daniel's body could be exhumed from the place associated with such trauma and re-interred in the churchyard near their current home".

She then concludes:

"Although this family has made very significant psychiatric efforts in their attempt to recover from the tragic loss of Daniel, they continue to suffer profound mental health symptoms. It is my view that in spite of their great efforts and significant emotional strength, it will not be possible for them to achieve recovery because they are unable to visit Daniel's grave because of the very genuine risk of re-trauma.

In view of the profound impact on the mental health of all family members, it is my opinion that the request that this family has made is entirely appropriate".

12. I find the evidence of Dr Gardner to be well argued and compelling.
13. The principles to be applied for allowing an exhumation from consecrated ground (whether of a body or of ashes) are set out in the case of Re Blagdon Cemetery [2002] Fam 299.
14. In Blagdon the Arches Court of Canterbury stressed that whilst lawful permission can be given for exhumation from consecrated ground: "that permission is not, and has never been, given on demand by the Consistory Court. The disturbance of remains which have been placed at rest in consecrated land has only been

allowed as an exception to the general presumption of permanence arising from the initial act of interment” (para. 20).

15. In paragraph 23 of the judgment in Blagdon, the Court went on to deal with the theology of burial, quoting from a paper delivered on the subject, in September 2001, by the then Bishop of Stafford, where he stated:

“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 more generally that:

“the permanent burial of the physical body/the burial of 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, the heavenly Jerusalem. This 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 a human life rather than a giving back to God”.

16. The Bishop of Stafford concluded, in the light of the above, that: “a reluctance by the Consistory Court to grant faculties for exhumation is well grounded in Christian theology”.
17. Thus, as is made clear in Blagdon: “the norm is permanence in relation to Christian burial”, and the norm can only be departed

from, if there are exceptional circumstances made out so as to justify departure from it.

18. The burden of proof is on the Petitioner(s) to establish, on the balance of probabilities, exceptional circumstances.
19. The Court of Arches in Blagdon identified and considered a number of factors which might assist to establish appropriate exceptional circumstances. The list is neither mandatory nor exhaustive, but provides authoritative guidance. I propose to deal with the factors in which they are set out in the Blagdon judgment:

(i) Medical reasons

I have already referred to the evidence of Dr Gardner, which is to the point and persuasive. It is a highly important and relevant factor in support of the Petition.

(ii) Lapse of time

The lapse of time since the burial of Daniel Ross, being some 12 years, is lengthy, but, in my judgement, not so lengthy as to be determinative against the Petition. Moreover, it is clear that some time, quite properly and understandably, has been taken up whilst the family have tried to cope with and come to terms with their grief; have moved to Somerset and settled there; and have then gone on to consider their position.

(iii) Mistake

The issue of mistake, which can be a ground upon which a faculty for exhumation may be granted, does not arise here.

(iv) Local support

Local support i.e. from clergy and the parish, are, to all intents and purposes, irrelevant, save that it provides the Court with some comfort that there is no opposition to what is proposed. However, the views of the immediate family are of importance. It is clear that they all support the Petition.

(v) Precedent

The Court must also take account of the impact its decision is likely to have on similar petitions. I am wholly satisfied that the facts of this case are quite exceptional, and that no precedent can be said to have been set by a decision in favour of granting a faculty.

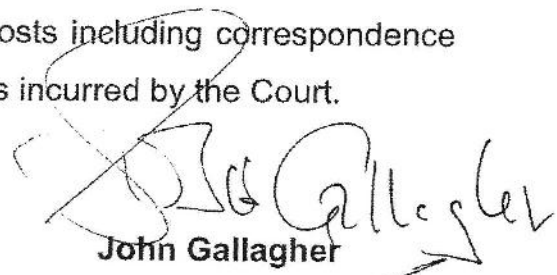
(vi) Family grave

The Court should encourage family graves as expressing family unity, and as being environmentally friendly in demonstrating an economical use of land for burials. The question of a family grave has not arisen here.

20. The fact that it is proposed to reinter the mortal remains of Daniel Ross in consecrated ground, and that permission for such has already been obtained, is important and relevant, though not, of itself, decisive.

21. I have no hesitation in accepting the sincerity of the Petitioners, and of the truth of the content of the Petition.

22. I find that the Petitioners have established special circumstances, so as to enable me "to make an exception to the norm", namely that the Christian burial is final.
23. Accordingly, I direct that a faculty be issued, on the usual terms, for the exhumation of the mortal remains of Daniel Ross, from the Churchyard of St. Mary the Virgin Stansted, Kent and for their transportation to and re-interment in the churchyard of All Saints Church, Dulverton, with the additional conditions that:
- (i) no mechanical digger is to be used or involved in the exhumation;
 - (ii) the exhumation must be carried out reverently, and with the utmost care, so as not to damage or upset any other graves;
 - (iii) the headstone at the grave of Daniel Ross in the Churchyard of St. Mary the Virgin Church Stansted, is to be removed and destroyed by Viner & Sons Ltd., Funeral Directors.
24. The Petitioners do pay the Court costs including correspondence fees for the Registrar, and expenses incurred by the Court.


John Gallagher
Chancellor
Diocese of Rochester

17 October 2013