

In re West Hoe Cemetery

And in re Victoria Louise Baldwin, deceased

His Honour Philip Waller CBE, Chancellor

21 December 2021

JUDGMENT

Introduction

1. By a petition dated 15 July 2021 Tania Jane Fletcher seeks the approval of the court for the exhumation of the remains of her late daughter, Victoria Louise Baldwin ('Victoria') from a private grave (Plot no. A132) in West Hoe Cemetery, Bishop's Waltham, Hampshire, and their removal to and re-interment in a private grave in consecrated ground at Fremington Cemetery, Old School Lane, Fremington, Devon.
2. Victoria tragically died on 12 May 1988 at the age of only 14 weeks from sudden infant death syndrome and she was buried at West Hoe Cemetery on 20 May 1988. The cemetery was chosen as it was close to Ms Fletcher's parents' home in Swanmore, where she had grown up. However, she and her parents have since moved from the area and subsequent events have led Ms Fletcher to seek the removal of Victoria's remains to Devon, where she now lives and where a family plot has been established.
3. Victoria's father, Leslie Baldwin, supports the petition and West Hoe Cemetery Management Committee has confirmed that it has no objection. Fremington Parish Council confirms that permission for the re-interment there would be granted, subject to obtaining the necessary authorisation.
4. Having considered the circumstances, I directed that a faculty should issue. The purpose of this judgment is to set out the reasons for my decision.

Background

5. Ms Fletcher has provided a statement in support of the petition in which she explains the background and her reasons for seeking to move Victoria's remains to a new setting. The background is not in dispute.
6. Ms Fletcher was formerly married to Leslie Baldwin. At the time of Victoria's death they lived in Southampton and Ms Fletcher was able to visit and tend Victoria's grave at West Hoe. A short time later, they moved, with their other children, to Leicester, but Ms Fletcher's parents remained at Swanmore and tended Victoria's grave and she and her family were able to visit the grave when visiting her parents. Ms Fletcher's parents later moved to North Devon and maintenance of the grave became more difficult.

7. Ms Fletcher and her husband subsequently separated and in 2002 she moved, with her then three children, to North Devon to be near her parents. Sadly another of her children, Kimberley (whose father was also Mr Baldwin) was diagnosed with cancer in 2016 and died in August 2019, aged 30 years. She was buried in Fremington Cemetery on 10 September 2019 in a double plot. Ms Fletcher and her eldest daughter have each reserved a double plot either side of Kimberley's grave and their intention is that Ms Fletcher and her children would in due course all be laid to rest alongside each other. If a faculty is granted, Ms Fletcher proposes that Victoria's remains be re-interred in the double plot which she has reserved for herself.

The principles

8. The principles underlying the exercise of the court's powers in relation to exhumation are set out in the judgment of the Court of Arches in *In re Blagdon Cemetery* [2002] Fam 299. At [35] the Dean of the Arches, delivering the judgment of the court, said:

"We consider that it should always be made clear that it is for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial, that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery, is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her."

9. While, therefore, exhumation may be permitted by way of exception to the general presumption of permanence, in each case the court must examine all the circumstances in order to determine whether exception is justified. In the reported decisions, there are examples of permission being given in a variety of circumstances, in some cases (including *Blagdon* itself) even after a significant lapse of time. Each case must turn on its own facts, but regard must be had to guidance from the reported decisions and the possible impact of a decision on other cases.

Discussion

10. I turn then to consider the particular features of the present petition. In summary, they are:
 - (i) that Ms Fletcher and her children have moved away from Hampshire and visiting and maintenance of Victoria's grave is difficult;
 - (ii) that Ms Fletcher has been settled in North Devon for almost 20 years and plainly regards it as her permanent home;
 - (iii) that Ms Fletcher and her family have established a family plot or plots in Fremington Cemetery where one of her daughters is already buried and where it is intended that she and her other children should be laid to rest in due course;
 - (iv) that Ms Fletcher, and Mr Baldwin, have lost two children to early death and the intention is that both daughters should be brought together in neighbouring plots;
 - (v) that re-interment of Victoria's remains at Fremington would enable the family to visit more regularly and to visit the graves of both daughters at the same time;
 - (vi) that a period of over 30 years has passed since Victoria was interred at West Hoe.

Location

11. In general the fact that a petitioner has moved away from the area in which a family member is buried is not sufficient to justify removal of the remains. Relocation is an everyday fact of life for many and in itself is unlikely to be regarded as a special or exceptional circumstance, even if it means that visiting or maintaining the grave is more difficult. However it may be relevant when considering the impact of other factors. The fact that Ms Fletcher is permanently settled in North Devon is relevant to her desire for Victoria's remains to be moved there, since their re-interment at Fremington is expected to be permanent.

Family graves

12. The concept of the family graves was recognised and encouraged by the Court of Arches in *Blagdon* in the following terms, at [36(vi)]:

“Burials in double or treble depth graves continue to take place at the present time. They are to be encouraged. They express family unity and they are environmentally friendly in demonstrating an economical use of land for burials. Normally the burial of family members in the family grave occurs immediately following the death of the particular member of the family, whereas in this case Steven's remains will have to be disturbed after many years in order to inter them in a new family grave.”

13. The desire of Ms Fletcher and her family for neighbouring graves in which she and her children can be laid to rest together is entirely consistent with this tradition and is, to my mind, especially understandable when two of her children have predeceased her. Having moved from Hampshire to Leicester and then to North Devon, it is natural that she should wish to establish a family plot in the place where she is now permanently settled.
14. Ms Fletcher and Mr Baldwin have not only suffered the loss of two of their children, they now see them laid to rest in separate places and in Victoria's case in a place where the family no longer has any connection. While the practical difficulty of visiting Victoria's grave might be overcome, the emotional impact of such separation must be painful for the family. If Victoria's remains were removed to Fremington, both the emotional and practical impact would be greatly eased.

Lapse of time

15. The exhumation of remains after a period of over 30 years is unusual and requires particular justification and it is necessary to consider the reasons for the lapse of time in presenting this petition. Ms Fletcher moved to North Devon almost 20 years ago and one might wonder why she had not taken steps to seek the removal of Victoria's remains before now. However, it is clear that her current request has been prompted by Kimberley's death in 2019 and her wish for her daughters' remains to be brought together. Before then she had no particular reason, other than distance, to move Victoria's remains. Any delay in that respect is entirely understandable.
16. Nothing is known the condition of the coffin in which Victoria's remains were interred and if their removal is approved, particular care will be required to avoid undue disturbance to the coffin and the remains. Otherwise there is no reason to think that their removal and re-interment would present any practical difficulties.

Summary and conclusion

17. I have considered carefully the circumstances which have led Ms Fletcher to seek the removal of Victoria's remains to Fremington Cemetery. The loss of two daughters, one as an infant and the other to cancer at an early age, is itself exceptional and has had a profound effect on the family. The current separation of their remains is a continuing source of sadness for them and causes practical difficulties. The removal of Victoria's remains to Fremington would bring them together and would be a true expression of family unity. The family's desire for that unity is entirely understandable and if possible that wish should be fulfilled. While the distance between them may not itself be sufficient to justify moving Victoria's remains, I am satisfied that the features outlined in paragraph 10, taken together, do amount to special circumstances which amply justify the exhumation and re-interment of her remains as proposed by Ms Fletcher.

18. Accordingly, I have directed that a faculty shall issue for the exhumation of the bodily remains of Victoria Louise Baldwin from their present place of interment at West Hoe Cemetery and their removal to and re-interment in Plot no. 372 at Fremington Cemetery. I hope that the resolution of this matter helps to bring some comfort to the family.