

Neutral Citation Number: [2020] ECC Her 2

In the Consistory Court of the Diocese of Hereford

**In the Matter of St George's Church, Woolhope
And in the Matter of Ledbury Cemetery**

Petition No. F2018/89

Between:

Joe Smith

Petitioners

And

(1) Mrs Julie Nobes
(2) Mrs Lisa Bramley

Respondents

Petitions No. F2019/107(1) and F2019/107(2)

Between:

Mrs Julie Nobes

Petitioner

And

(1) Joe Smith
(2) Mrs Jean Johnson
(3) Mr Shaun Smith

Respondents

APPROVED JUDGMENT

The Petitions

1. There are before the court three petitions.
2. The first (in time) is a petition by a Mr Joe Smith (F2018/89) dated 30 July 2018. This originally sought exhumation of the cremated remains of Amelia Smith (the Deceased) from a grave in the churchyard of St George's, Woolhope, and their reinterment in Ledbury Cemetery in a plot now owned by Mr Smith. This petition was later amended on 17 July 2020 in circumstances outlined below to seek a faculty that such of the cremated remains of the Deceased as were presently in the grave at St George's and those that were in the plot in Ledbury Cemetery should remain in their respective places of interment, i.e. the *status quo* should be preserved. Mr Smith is supported in his petition by Mrs Jean Johnson and Mr Shaun Smith. He is represented by a firm of solicitors, Red Kite Law LLP.

3. The second and third petitions (F2019/107) both dated 24 October 2019 sought exhumation of such of the cremated remains of the Deceased as were in Ledbury Cemetery and their reinterment in St George's, Woolhope in the existing grave containing and together with the Deceased's other remains. The difference between the second and third petitions was simply that one was presented in respect of Ledbury Cemetery (exhumation) and the other in respect of St George's Woolhope (reinterment). Mrs Nobes's petitions were supported by her sister, Mrs Lisa Bramley, but by a letter dated 17 May 2020 the latter indicated she no longer wished to take part in the proceedings. Mrs Nobes is unrepresented and has presented her own evidence and representations.
4. Each side has objected to the other's petition.
5. By directions given on 22 June 2020 I directed under the amended Faculty Jurisdiction Rules 2015, rule 14 (as substituted by the Faculty Jurisdiction (Amendment) Rules 2019 that the matter should be determined on written representations but gave the parties an opportunity to object or suggest a different course. The grounds for doing so were having regard to the current pandemic circumstances and in the interests of saving time and expense. I have received no objection to this course.
6. I have statements from all members of the family and written representations in the form of letters or statements including a written statement from Mr Smith's solicitors. I am grateful to them all.
7. Accordingly, this is my judgment on the basis of the evidence and material presented to me by all parties.
8. The following facts are based on the material before me.

The Facts

9. These petitions disclose a sad and sorry state of affairs involving a dispute over the burial of the Deceased's remains. The relevant facts may be briefly stated as follows.
10. The Deceased lived with Mr Smith for over 40 years as man and wife (they were not formally married, but nothing turns on that).
11. There were four children of the relationship, three daughters, Mrs Jean Johnson, Mrs Julie Nobes, and Mrs Lisa Bramley and one son, Mr Shaun Smith.
12. For many years the relationship between Mr Smith and two of his daughters, Mrs Nobes and Mrs Bramley, has been estranged.
13. The Deceased died on 3 January 2009 after a long battle with cancer. She left no will. According to Mr Smith she expressly left the decision about her burial to him. According to Mrs Nobes she wanted to be buried with her mother, Miame Paine, in St

George's Churchyard and this was where she and her sister, Mrs Bramley, also wanted their mother's ashes interred.

14. The Deceased's body was cremated at Cheltenham Cemetery. Her ashes were retained by Mr Smith. He apparently knew of the wishes of Mrs Nobes and her sister because at an interment ceremony held at St George's on 14 February 2009 her ashes were apparently interred in a casket in her mother's grave. This ceremony was attended by all the members of the family plus the vicar of St George's and the funeral director.
15. Unbeknown to Mrs Nobes and Mrs Bramley, however, only a portion of the Deceased's ashes were thus interred. The remainder continued to be retained by Mr Smith without their knowledge. He wanted his remains to be buried with those of the Deceased, but he did not wish to be buried in St George's. In 2018 or 2019 he set about acquiring (and duly acquired) a plot in a consecrated portion of Ledbury Cemetery for his intended burial plot and those of the remaining remains of the Deceased. These remains were, in about March 2019 placed in a casket and, without ceremony (but with the assistance of undertakers and attended by Mr Smith and his son), interred in the newly acquired (or the then about to be acquired) plot.
16. Mr Smith had not discussed his intentions with his two estranged daughters who were thus, shortly after Mr Smith's interment of his wife's remaining ashes, shocked to learn that their mother's remains had been interred in Ledbury Cemetery. They at first thought that her remains had been unlawfully removed from St George's (see for example, s 25 Burial Act, 1857). The police became involved and, although the evidence is controverted, they could find no clear evidence that the grave in St George's had been disturbed and resolved to take no further action.
17. The upshot, however, was to result in the present petitions with Mr Smith initially seeking to remove the Deceased remains from St George's to Ledbury but now seeking preservation of the *status quo*.

What is to be done?

18. There are sincere and undoubted strong feelings on both sides. Whatever course is adopted is bound to result in upset, but some finality of this dispute must be achieved.
19. The governing principles are those set out in *Re Christ Church Alsager* [1999] Fam 142 and *Re Blagdon Cemetery* [2002] Fam 299. The presumption is that burial in consecrated ground is to be final and permanent and faculties for exhumation are to be granted only in exceptional circumstances.
20. Neither side now seeks exhumation of the remains in St George's Churchyard. The only question is should the remains in Ledbury Cemetery be allowed to remain where they are? Mr Smith and his supporting family members say the *status quo* should be preserved, Mrs Nobes (and formerly Mrs Bramley) wish to exhume the remains from Ledbury and have them reinterred in St George's.

21. Both sides say they are doing their sincere best to reflect the wishes of the Deceased. Mr Smith has done himself no credit by not being open and honest with his estranged daughters. However, as the partner of the Deceased for over 40 years although he attempted to present the court and his estranged daughters with a *fait accompli*, in my judgment he was trying in some measure to reflect the wishes of all – his partner's and estranged daughters by burying some of her remains with her mother, his own and those supporting him by burying the other remains in a plot in which he eventually intends to be interred.
22. Moreover, having regard to the principle of permanence (above) in my judgment the *status quo*, however unsatisfactorily achieved, should, in the circumstances, be preserved and the remains of the Deceased should now rest where they lie. In the circumstances, although unusual to say the least, the sufficient degree of exceptionality is not made out in this case.
23. In the result it is not necessary to order any faculty on Mr Smith's petition nor on Mrs Nobes's two petitions. The order of the Court will be as indicated.
24. There will however be one condition. When the Deceased's remains were interred in Ledbury Cemetery it was done without the knowledge of Mrs Nobes and Mrs Bramley and without ceremony. I therefore direct that within one month so long as public health circumstances permit there should be an appropriate committal ceremony or service of dedication supervised by a clerk in Holy Orders at Ledbury Cemetery at a time and date settled by the supervising minister at which all family members may (but do not have to) attend.

Costs

25. There remains the question of costs upon which I invited representations. Mr Smith's solicitors submitted that as I preserved the *status quo* I should order Mrs Nobes to pay the costs.
26. In my judgment there are, however, two important considerations: first, Mr Smith has not succeeded on his petition as originally framed: to exhume the Deceased's remains from St George's. Indeed, his amendment came about only because he sought leave to withdraw his petition which in view of the petitions of Mrs Nobes, to which he objected, I refused leading to his amendment.
27. Second, this whole sorry affair might never had arisen had Mr Smith been open and honest about what he had done with the Deceased's ashes and about his intentions and conduct in that regard. It may well be said he should not benefit from his own lack of honesty and openness.
28. In these circumstances in my judgment the just result is that each side should bear their own costs.

HH Roger Kaye QC, Ch
29 September 2020