

Neutral Citation [2022] ECC Bir 1

In the Consistory Court of Birmingham

In the matter of St Giles Church Sheldon

In the matter of Stephen Donald Homer deceased

JUDGMENT

1. By Petition dated 9 July 2021 Diane Susan Cedra seeks a faculty as the Executor of Stephen Donald Homer (“the Deceased”) authorising the removal of the headstone erected in respect of her mother, Maureen Homer, who died in 1980 and its replacement with a new headstone, with altered wording, which also commemorates the death of the deceased, her brother, Stephen, who died in 2020.

2. I should say at the outset that the proposed new headstone is consistent with the requirements of the Churchyard Memorial Regulations issued by me in the Birmingham Diocese. I have, however, had to deal with the Petition as a contested Petition because the proposed new headstone deletes part of the original wording on the existing headstone of Maureen Homer, in a way that I judge significant, but also because one of the Deceased's siblings objects to the change. Sadly, notwithstanding the best endeavours of the Reverend Lavin, the Vicar of St Giles, no agreement has been reached within the family. Initially I was requested to hold a hearing in person but, principally because of the cost, and understandably so, it has been agreed by all that I decide the matter on the written evidence before me.

3. To assist the family it is necessary that I set out the Law that I apply to this Petition. The legal position is helpfully set out in the judgment of the Chancellor of the Diocese of Oxford when he gave judgment in the Matter of the Churchyard of St Mary the Virgin, Burghfield. The salient points of his judgement are set out at Paragraph 4. Under Church Law, a grave is not owned by the deceased or by his or her relatives whether before or after the burial. Indeed, there is no right even to erect a monument over a grave without the permission of the diocesan chancellor, although this permission is usually given through an authority delegated to the incumbent. Accordingly, the interment of any ashes in a grave requires permission as does the erection of and, by extension, any alteration to any monument which includes a headstone. As Reverend Lavin, the incumbent of Saint Giles, does not have delegated authority to deal with disputed petitions, the matter falls to the Chancellor to decide.

4. The history of the matter is somewhat complex. The mother of the Petitioner, Maureen Homer, died on 28 November 1980. Her remains were buried in the churchyard at Saint Giles and the wording on the headstone was arranged by her husband Kenneth Ernest Homer. The existing wording reads "In Loving memory of Maureen Homer who died 28th of November 1980 aged 48. Devoted Mother and Precious Wife We will meet again Darling". I do not have full details of all the children that Maureen and Ernest left but I am aware of the Deceased, the Petitioner, Dawn, Lisa, Lynn and Debra. I understand that there was another sibling, Kim who died in 2004 and is buried elsewhere. When Ernest died, he was not buried with his wife but was buried elsewhere as well. When the Deceased died he left a son who is known from the documentation as "Little Steve'. Again, I have not seen the will of the Deceased but I understand that the Petitioner and Dawn are the executors.

5. The Petition seeks the removal of the original stone and its replacement with a stone which has the following inscription; "In loving memory of Maureen Homer 1934 – 1980 Beloved Wife And Precious Mother. Reunited with her Adored Son Stephen Homer 1959 – 2020. Much Loved Father and Brother. Always In Our Hearts." I should say that I have added the punctuation in the proposed inscription. The words 'We will meet again, Darling' are omitted. Whilst the Petition does not seek such a faculty, it is implicit in what is being asked for that the grave of Maureen Homer should be opened up to allow for the ashes of the Deceased to be buried with his mother.

6. I am told anecdotally that the Deceased wished to be buried with his mother. There is some dispute about this but this is certainly the wish of his Executors. The removal of the stone, the alteration of the wording and the opening of the grave is opposed by one of the siblings, Debra. It seems that the other siblings are either in support or at the very least neutral. I was touched by the email sent by Lynn who sought to be left out of the disagreement and could not believe that " it has come to this whereby a stranger has to decide". As far as she is concerned, she told my Registrar that she would feel more at ease when her brother was laid to rest regardless as to where. I understand that she may now have altered her views so as to support the Petition.

7. The letter of objection from Debra tells me that when her mother died in 1980 her father had discussed the wording of the inscription on his wife's gravestone with all the family and the words were agreed. She regards the words that her father placed to her mother as being very personal and sensitive. She told me that her father died intestate. Although she holds many very happy memories of her mother's time with the family, the small memorial stone in Saint Giles is all that she has along with her children and grandchildren to visit. She describes the stone as being very precious and a huge comfort to her. He wishes to continue the visit her

mother's grave and memorial stone as it was arranged by her father originally. She described any disturbance of her mother's grave and removal of the original stone as causing her great offence.

8. Sadly it the case that this family is divided and, notwithstanding the best attempts to bridge the divide, the views of Debra are unchanging and thus, in the words of Lynn, a stranger has to decide. In reaching a decision bearing in mind that the purpose of a memorial in a graveyard is to be a focus of remembrance of thanksgiving and above all of concord. I also must bear in mind that there is a presumption in the Faculty Jurisdiction to leave things as they are unless there is a cogent reason to change things. Any discord not only affects the members of the family related to the person commemorated on the stone but has the unfortunate effect of causing upset to other persons who visit the graveyard to see their family members and to remember them. As I have pointed out, nobody has a right to ownership of a grave and nobody has a right to inscriptions on a headstone unless the proper Authority gives consent. In this case the granting of the Petition will perpetuate the rift between siblings. The right to alter the inscription on the stone would reside with the person who was responsible for putting it there. He, alas, is now dead. In their carefully considered letter to me in support of the Petition, Dawn and Diane give me much information about the family history. In addressing Debra's objections they say as follows;

"Debra has said she does not agree to our father's original inscription being changed in any way. This is a very difficult subject for us to share as, at the time of our mother's death in November 1980, we were all, including Debra, upset with the specific wording" We will meet again Darling". It is hard to acknowledge that your parents marriage was not particularly happy or healthy, but sadly it wasn't. It didn't feel right to us that that line should be included and we all spoke about the possibility of replacing the stone in the future, including Debra. We cannot therefore understand Deborah's stance on this matter."

Whatever the true situation, it is clear that the person responsible for putting the inscription on the stone intended the words to be as he had decided them. In my judgement unless all the family agree, it could never be right to undo his decided wishes and even if the family agree I would have considerable reservations about allowing the altering of the wording merely because family members are unhappy with it.

9. In line with this reasoning, the Anglican teaching concerning graves is that they should not be a focus for discord and should not be disturbed unless there is clear reason that should happen. Where one member of the family objects and in the absence of any express, legal authority (such as a prior reservation of a grave space) the presumption is that the grave should

not be disturbed. I do not find on the evidence that I have before me that such presumption can be rebutted.

10. Accordingly, for the reasons that I have given above, I refuse to grant the faculty sought. I realise that this will cause distress to some of the family but I hope that they will realise that I have to apply the law as it relates to these particular circumstances. I should express my gratitude to all who have written to me for that clear and candid way in which they have expressed their feelings. It may be overoptimistic to hope that any feeling that there is a victory or a defeat can be put aside in favour of the remembrance of what their brother, their mother and their father meant to them all.

11. Pursuant to The Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2020 I certify that the Petitioner shall pay the Chancellor's fees of £399 being 3 hours at £133 per hour and the Registry fees of £1590 being 15 hours at £106 per hour in addition to the Petition fee already paid within 28 days of the date hereof.

Chancellor Mark Powell QC

17 April 2022