

DIOCESE OF SHEFFIELD
In the Consistory Court

Her Honour Judge Sarah Singleton QC
Chancellor

In the Matter of
ST LEONARD THRYBERGH
JOSEPH HENRY ROBERTS MEMORIAL

Judgment

Introduction and Petition

1. By their petition of 20th of January 2020 the churchwardens of St Leonard's, Thrybergh seek approval as follows:-

On the advice of Area Dean/Chancellor we have been instructed to apply for the removal of headstone in cemetery that was placed on grave after permission was refused by Area Dean.

2. On 10th of March 2020 the DAC considered the petition and recommended that the works be approved. It should be noted, as has been acknowledged by the Petitioners, that although discussions about the correct process took place with the then Diocesan Registrar, neither I nor the Deputy Chancellor had been involved or consulted at all until the matter fell to be considered on the online system
3. The Petitioners displayed a public notice of the proposed works on a noticeboard outside the church between 16th of March and 15 April 2020. The matter was considered via the online system and directions were given on 18th June 2020. In response to those directions position statements have been received from the Petitioners and from Mr Nicholas Roberts who is responsible for the installation of the memorial in question. The parties agree to a paper determination; the petitioners have said so expressly and Mr Roberts who wishes to become a party opponent to these proceedings does so impliedly. Although there are most unfortunate conflicts of factual account in this matter, the incontrovertible facts permit the outcome I have determined. It is therefore possible for me to deal with the matter on paper without a hearing, particularly in the context of the Covid 19 pandemic and the need to proceed as safely as possible.

The Facts

4. St Leonard's church is medieval and Grade II* listed. The listed status of the church is not relevant to the dispute which this judgment addresses.
5. Mr Joseph Henry Roberts was the father of Nicholas Roberts. Mr Joseph Roberts passed away on 9th July 2018 and was buried in the churchyard at Thrybergh St Leonard on 31st July 2018. Mr Nicholas Roberts is a monumental mason and proprietor of Roberts Memorials Ltd. He is the only child of Mr Joseph Roberts. He has advised that his mother is seriously unwell with Dementia and Alzheimer's. She has been admitted to a nursing home since the death of her husband. Mr Nicholas Roberts has been the

point of contact for the family of the deceased in this matter both on his own and on his mother's behalf.

6. An application on a standard form was submitted by Mr Nicholas Roberts on 13th April 2019 for permission to install a memorial at the site of his father's burial. Mr Nicholas Roberts also signed the form on behalf of the monumental masons Roberts Memorials Ltd. By an endorsement on that form dated 30th April 2019, the then Area Dean, the Reverend Peter Hughes, refused permission for the memorial in these terms:-

*I regret that kerbstones are no longer permitted in Thrybergh Churchyard.
I am therefore unable to approve this application*

7. The Reverend Hughes' refusal of the application should have been communicated to Mr Nicholas Roberts shortly after 30th April 2019. However, by his position statement dated 12th July 2020, Mr Nicholas Roberts says he received no communication from the "Parish Council". Nevertheless, he installed the memorial on 28th June 2020 without receiving permission to do so. I infer from his position statement that Mr Roberts has interpreted the taking of a fee on 1st May 2020, which had been submitted with his application by cheque as an implied permission. He admits that a refusal of permission was communicated to him but says that was not until 4th July 2020 and in different terms from the endorsement of the Reverend Hughes.
8. The memorial installed is of very dark polished granite. The photographs suggest it is black, but it may be a very dark grey. It consists of both a headstone and a flat stone covering the burial site which is described in the documents as a ledger stone.
9. At some point after 30th April 2019 the Reverend Lyn Wortley became acting Area Dean and she attempted to solve the problems presented by the events of the previous paragraphs with Mr Roberts. As I understand it, he was invited to put things right himself. The routes open to him doing so included: -
 - a) Him filing a petition to this Court for permission to install the memorial (for an after the event approval of its installation); or
 - b) Him filing a petition to this Court for permission to remove the memorial wrongly installed in order to reinstall one which the acting Area Dean did approve in accordance with the Chancellor's Rules.
10. The documents explain that Mr Robert's response to the Reverend Wortley's intervention was a forceful communication of his intention to do nothing to put things right and to ignore what the acting Area Dean had said. He appeared to believe, as a stonemason, that there was nothing that could be done to enforce the position. It is further my understanding that a hostile social media campaign against the church and the Reverend Wortley in particular was started and that other bereaved families with memorials in the churchyard were wrongly informed that their memorials were at risk of removal. A great deal of stress and distress was caused.
11. The Parochial Church Council met in November 2019. They resolved to file this petition. They had received advice from the acting Area Dean who had, in turn, discussed the matter with the Diocesan Registrar.

12. When the matter came before me as an online application it was clear that a combination of circumstances (including the national lockdown) had unfortunately resulted in Mr Nicholas Roberts being unaware of the petition. Although the public notice was displayed on a noticeboard outside the church, in this matter, I think it would have been sensible and fair for Mr Roberts to have been given specific and personal notice of the proceedings, given the direct impact of the proposals upon him and his mother.

The directions that I gave therefore provided for the key documents to be sent to Mr Roberts and for the Petitioners and Mr Roberts to each file position statements respectively setting out:-

The Petitioners:-

- a. Whether their Petition should be read to include a proposal to remove the kerbs/ledger stone as well as the headstone.*
- b. Whether there are other memorials marking graves in the churchyard which include kerbs or ledger stones.*
- c. Whether the presence of this memorial including the kerbs/ledger stone prevents proper maintenance of the churchyard.*
- d. Whether they would wish any determination of the issues in this case to be undertaken by the Court on paper or at a hearing of the Court*

Mr Nicholas Roberts:-

- a. Whether he objects to the Court making an order to provide for the removal of the headstone and/or kerbs/ledger stone;*
- b. Whether he wishes to become a party opponent within the proceedings;*
- c. Whether he objects to the Court making him a party to the proceedings pursuant to Rule 19.4 of the Faculty Jurisdiction Rules 2015;*
- d. Whether he agrees that the memorial was installed unlawfully;*
- e. Why, if he disagreed with the decision of the Area Dean to refuse approval for the memorial, he did not himself petition the Court for permission to install it;*
- f. Whether there are other memorials marking graves in the churchyard which include kerbs or ledger stones;*
- g. Whether the presence of this memorial including the kerbs/ledger stone prevents proper maintenance of the churchyard;*
- h. What his proposals are for the removal and retention of the memorial should the Court direct such removal;*
- i. What his proposals, if any, are for the payment of the costs of this matter;*

j. Whether he would wish any determination of the issues in this case to be undertaken by the Court on paper or at a hearing of the Court.

13. The Petitioners and Mr Roberts duly filed position statements: -

- a. The Petitioners confirm that the petition should have been for removal of the kerbs and ledger stone as well as the headstone, that there are a small number of memorials including kerbs in the area where the Roberts' grave is and one in a different area including a ledger stone in respect of which the Area Dean is in discussions with the stonemason, they confirm that the memorial does not prevent proper maintenance of the churchyard. They would want any determination of the issues to be undertaken on paper. They would wish responsibility for any removal and the costs incurred to fall upon Mr Roberts.
- b. Mr Roberts opposes removal of the memorial to his father. He wishes to become a party in the proceedings and/or does not object to being made a party. I have treated him as a party. He denies that the memorial was installed unlawfully. His account of how it came to be installed has already been set out in previous paragraphs. Mr Roberts lists numbers of other memorials in the churchyard which he has observed breach the Chancellor's Rules which he refers to as the "Diocese regulations". He goes so far as to suggest that strict observance and retrospective enforcement of those regulations would result in the removal of 300 to 400 memorials. He asserts that there are numbers of other memorials including kerbstones or ledger stones. He asserts (and it is not in dispute) that the memorial he has installed does not impede proper maintenance of the churchyard. He confirms that he would remove the memorial and be responsible for the cost if I decide that it should be removed. He confirms that I may proceed to determine this matter in whichever way is safe for the Court and himself. I have interpreted this as consent to determination on paper. Finally, he sets out, in my view which is also explained above, some justified concerns about the public notices in this matter.

14. The Law and discussion about how it is applied generally

Churchyards are consecrated and fall under the authority of the Bishop. That authority is exercised by the Chancellor of the Diocese. The Chancellor is the ecclesiastical judge of the Diocese and is ultimately responsible for all decisions affecting churchyards.

Incumbents (the priests in charge) of each church are the custodians of the church buildings and churchyards. Responsibility for the appearance, care and maintenance of the churchyard lies with the Parochial Church Council. (Mr Roberts will note that the parochial church council is not the same as a parish council which, where they exist, are an arm of local government)

It is neither practical or necessary for every decision concerning a churchyard to be made by the Chancellor via a legal or Court process and Chancellors delegate their authority to incumbents. Where a church is without an incumbent the authority to make decisions within the rules rests with the Area Dean for the church.

The Chancellor's Rules set out the limits for incumbents or area deans for the exercise of their delegated authority with respect to memorials. An incumbent or Area Dean **is not permitted** to permit the installation of **any** memorial which is outside the rules.

The purpose of the rules is to ensure that churchyards are places that promote and exude respect for those who have died and comfort to those whose loved ones are buried and commemorated in that place. They should be an oasis for their communities, provide a sense of history and be a proper setting for the church and the memorials. They should be places where people can come to pray, to remember and, wherever possible, to find beauty, quiet and peace.

If the bereaved wish to install a memorial which falls outside the applicable rules they can petition (apply) for a Faculty from the Consistory Court of the Diocese. Sometimes, where an incumbent or the Area Dean is unsure about how to apply the Chancellor's Rules to a particular case, they seek guidance from the Diocesan Registrar who may, in turn, seek guidance on a particular matter from the Chancellor. Problems are often resolved informally by that route. In my experience the Diocesan legal team does not seek to oppress people by regulation but generally tries to enable lawful and correct process and decisions to be made from the outset.

Bereaved people who wish to arrange a burial in a Church of England churchyard should be informed, sensitively and tactfully, that they do not have an unfettered choice to install any memorial they wish into the churchyard. Memorials must be within the Chancellor's Rules or permitted by a decision of the Chancellor. Memorials installed without express permission are unlawful and may be removed by order of the Court.

Monumental masons **must** be able to explain how the system works to bereaved families who are entitled to a professional service in this regard. Unnecessary distress is caused when there are shortcomings in the standards of professionals dealing with bereaved families.

15. The Sheffield Rules and their application in this case

The Churchyard Rules applied by incumbents and Area Deans in the Diocese of Sheffield were drawn by my respected predecessor McLean Ch. in 2012. A revision is in preparation but the 2012 rules are still in operation and were applied in this case in 2019. There is no express reference to "ledger stones" in the 2012 rules. As to kerbstones, which are usually used to delineate burial plots like the stone slab installed in this case the 2012 rules say:-

Kerbstones are not normally allowed. They may exceptionally be permitted in parts of churchyards where both the following conditions are met: (a) that kerbstones are already common in that area; and (b) that the introduction of the proposed kerbstones would have no adverse effect on the maintenance of the churchyard.

The usual prohibition on kerbs is explained on the ground that they can prevent churchyard maintenance.

I consider that the Reverend Peter Hughes was quite correct to view this memorial as an equivalent to an installation of kerbs and to view it as outside his authority to authorise. However, had I been approached informally or asked to determine a petition to authorise the proposed memorial at the time, it is likely that I would have agreed to it having regard for the fact that churchyard maintenance is not affected by the installation and the presence of other similar memorials.

16. Conclusion

Mr Roberts' installation of the memorial to his father was undertaken by him in the absence of express permission. I consider and find that he could and should have known that this was not acceptable or lawful. If the 30th April 2019 endorsement on the standard form declining his plans was not passed on to him in a timely way, then the course he should have pursued was to press the Area Dean or churchwardens for a response. It was not lawful or proper for him to press on regardless. Once he was informed that his standard application had been declined it was for him to seek an explanation or revision of that decision. It was for him, if necessary, to file a petition to authorise the installation after the event.

17. Mr Roberts is a bereaved son left alone to manage his father's death and the deterioration in his mother's health. In any other circumstances I would deprecate the conduct of the memorial mason who had failed to guide him away from an unauthorised and therefore unlawful installation. In this case he **is** the memorial mason and the responsibility to act lawfully rests on him and him alone. As a memorial mason, he must have known that payment of a fee by him to install a memorial by no means entitled him to assume that his plans had been authorised without express permission. I am satisfied he knew that he did not have such express permission, regardless of what had happened with his cheque.
18. When I survey those facts which Mr Roberts agrees or asserts himself, in conjunction with what is known from documents, I am able to conclude that he deliberately undertook an installation that he knew had not been authorised. He ignored approaches by the Reverend Wortley which asked him to rectify the situation by petitioning himself for authorisation or removal. Instead, as he concedes, he started a "petition for the bereaved families of Thrybergh Churchyard for a joint faculty". This is, I infer, a concession that he undertook social media activity which has caused distress to numbers of people and hostility to local clergy decision makers.
19. I have pondered whether the only proper response to this most unfortunate history is to order the removal of Mr Roberts' father's memorial and to oblige him to renew an application or to file a petition. I have however decided, considering that had he gone about things correctly I would have authorised the memorial, I should dismiss the petition for removal, thereby authorising it to remain in the churchyard. However, having regard for the facts I have found and explained in this judgment, all the costs of these proceedings are to be paid by Mr Roberts within 28 days of the date of his receipt of this judgment and my directions, in the total sum of £687.44 in accordance with the schedule annexed to this judgment prepared in the Registry.

Sarah L Singleton QC
Chancellor of the Diocese of Sheffield
13 November 2020

