

IN THE CONSISTORY COURT
OF THE DIOCESE OF WINCHESTER

[2017] ECC Win 1

Re.: St. JOHN THE BAPTIST, BOLDRE

And

THE REMAINS OF THE LATE
Mrs MYRA ELSIE GLADYS BAXENDINE

JUDGEMENT

1. The Petitioner, Mrs Trina Newbold, is the daughter and only child of the late Mrs Myra Elsie Gladys Baxendine (the Deceased). The Deceased was buried in a grave in the churchyard of St. John the Baptist, Boldre on 13 February 2017. The Petitioner seeks the exhumation of the Deceased's body and its immediate re-interment in a new grave which will be dug next to the grave of her father, the Deceased's husband, the late Robert Frederick Baxendine. The PCC had no objection to the Petition.

BACKGROUND:

2. The late Robert Frederick Baxendine was buried in the churchyard in January 2014. The Deceased had requested that a double depth grave was dug so that in due course, she could be buried with her late husband. A double headstone book was placed on the grave, with a space for inscription at the appropriate time for the Deceased's name.
3. However, although a double depth grave was requested, it was not dug as the ground was too wet to allow a double depth grave to be dug. As a consequence, the Deceased only paid for a single depth grave to be dug. Furthermore, at the time, it was agreed between the churchwarden, funeral director, grave digger and the Petitioner, that the Deceased would be buried in a space next to her late father in due course. There was no formal reservation of a grave space. It would seem that the Deceased was not made aware that a double grave had not been dug.

4. When the Deceased died, the Petitioner and the funeral director had forgotten that the grave was not a double depth grave. The Petitioner directed that her mother's remains be buried in the presumed double depth grave of her father. However, the grave digger inevitably discovered that the grave was a single depth grave and informed the Petitioner and the funeral director. They then recalled what had taken place in 2014 and the arrangement concerning burial of the Deceased next to her father's grave. The Petitioner then asked for the Deceased to be buried in the space next to her father's grave but was told that this was not possible because it would harm the roots of a nearby tree, those roots being clearly visible in the opened up grave of her father. Due to the timing of the imminent funeral, it was not possible to challenge the concerns over harming the tree. As a consequence, the Deceased was buried in a new grave elsewhere in the churchyard.
5. Since the funeral, the Petitioner has sought expert opinion from the Local Planning Authority and from an arboriculturalist, Josephine Hedger. Both appear to be in agreement that the roots from the tree near her father's grave are not significant and could be cut in order for a new grave to be dug next to his grave. Therefore, the original objection to the burial of the Deceased in accordance with the wishes of the Petitioner next to the Deceased's late husband no longer exists.
6. The Petitioner has written a powerful letter explaining the importance to her of her parents being buried close together and the sadness that the current situation has caused her.

THE LAW:

7. The Court of Arches carefully examined in Re Blagdon Cemetery [2002] Fam 299 the significance of Christian burial and the principles that should be considered when considering a Petition for exhumation:

*'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.'*¹

¹ Re Blagdon Cemetery [2002] Fam 299 at paragraph 20

*'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.'*²

*'Sometimes genuine mistakes do occur, for example, a burial may take place in the wrong burial plot in a cemetery or in a space reserved for someone else in a churchyard. In such cases it may be those responsible for the cemetery or churchyard who apply for a faculty to exhume the remains from the wrong burial plot or grave. Faculties can in these circumstances readily be granted, because they amount to correction of an error in administration rather than being an exception to the presumption of permanence, which is predicated upon disposal of remains in the intended not an unintended plot or grave.'*³

DECISION:

8. Accordingly, I find that there have been a series of mistakes that have led to the necessity for this Petition. There is no suggestion on the face of the papers that the funeral director and the churchwarden in 2014 counselled the Petitioner to seek a reservation for a grave space. Had a reservation been sought and allowed, then this unhappy situation would not have arisen. The Petitioner cannot be held responsible for her lack of knowledge of the correct procedure. However, it is a salutary lesson for all responsible for managing burials in churchyards as to the unhappiness that can be caused when the correct procedure is not recommended and adopted. I find that there was a clear intention in 2014 by the Petitioner to reserve a grave space in the intended location of the new grave.
9. In addition, it is unfortunate that a decision on tree roots could not have been resolved more swiftly. As it is, any exhumation has to await the permission of the Local Planning Authority. Again, the Petitioner cannot be held responsible for this lengthy process and for seeking to have her mother buried in a timely manner shortly after her death.
10. I find that the facts in this case do amount to an exception to the presumption of permanence. I note that the proposal is for reburial in the same churchyard within a period of a few weeks from the original burial.

² Re Blagdon Cemetery [2002] Fam 299 at paragraph 35

³ Re Blagdon Cemetery [2002] Fam 299 at paragraph 36

Accordingly, the distress of the exhumation process (both legal and ceremonial) upon the Petitioner will be outweighed by the satisfaction of having achieved the proper burial for the Deceased that was her original objective.

11. Accordingly, I grant the Petition for exhumation and reburial. The exhumation may only take place once the relevant permission concerning severing tree roots has been granted by the Local Planning Authority. The exhumation should take place within a month of that permission and certainly before 1 July 2017.



MARK B. RUFFELL B.D. (A.K.C.)
(DEPUTY CHANCELLOR)

5 March 2017