

In the Lincoln Consistory Court

In the matter of Ronald Carr deceased.

Judgement

1. By a Petition dated 2 March 2014 Mrs Lynda Baker applies for a Faculty for the exhumation of the cremated remains of her late husband Ronald Carr deceased who died on 6 March 2007 and whose remains were interred in the churchyard of the parish church at Aby on 28 June 2007. She seeks to have them reinterred in consecrated ground in a cemetery at Horncastle.

2. The reason that she seeks this Faculty is set out in her letter to me dated 16 December 2013. The reasons are :

(i) the access to the churchyard is over a field which is inaccessible particularly after rain. The terrain is uneven and she has difficulty walking over it because of her slipped disc back condition.

(ii) rabbits are in the churchyard and have made the ground un-walkable in places. She notes that they have burrowed under her husband's plot.

(iii) Mrs Baker has now remarried and moved to Horncastle. There is a cemetery that is closer to her which she finds peaceful and would prefer it to the churchyard at Aby for Mr Carr's ashes. The exhumation would make it easier for her and her family to visit the grave. The family live in York.

(iv) Mrs Baker feels that her late husband is alone where he is. She states that even though he is departed and she is remarried this does not mean that the departed are forgotten and cease to play a part in her life.

3. Mr Carr had been married twice before he married the Applicant. He had 3 children from his first marriage and 2 children from the second marriage. He and the Applicant did not have any children together. 2 of Mr Carr's daughters support the application as does a granddaughter, Natasha (as does her mother Amanda who is the daughter in law of Mr Carr). The Applicant has lost contact with the 2 other living children of Mr Carr who are

(i) Stephen who is the father of Natasha and ex -husband of Amanda, and

(ii) Jacqueline .

The Applicant has also lost contact with Mr Carr's sister who lives in York. There are therefore a significant number of close relations of Mr Carr whose opinion about this application are unknown.

4. The Revd Lorraine Turner states that she has no objection to the application but recognises the complexities of the process. I do not have a resolution from a PCC but for the purposes of the application I am prepared to assume that they would agree with Revd Turner. The Environmental Health Manager at ELDC has no objection. The burial authority at Boston Road Cemetery, Horncastle have no objection either and have allocated a plot.

The Law

5. It is important that the Applicant understands the law of Christian burial that I must apply. It is founded upon a Christian understanding of what burial of the body or the cremated remains, signify. The principles by which an exhumation from consecrated ground is permitted are well known and set out in the case of In Re Blagdon Cemetery 2002 Fam p299.

6. The presumption is that burial of human remains in consecrated ground is permanent. This presumption arises from the Christian theology of burial which was set out at para 23 of the judgement in Blagdon in the quotation from The Bishop of Stafford's paper on the 'Theology of Burial'. He wrote

“ The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for their life; to commend them to God the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another.”

He went on to explain:

“ The permanent burial of the physical body/ the burial of the cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their ' journey'), entrusting them in peace for their ultimate destination, with us, to the heavenly Jerusalem. The commending, entrusting, resting in peace does not sit easily with 'portable remains' which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the 'symbol' of human life rather than a giving back to God”

7. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that Ronald Carr was laid to rest in 2007 and his remains should not now be disturbed.

8. The Court of the Arches in Blagdon identified various factors which may support a submission that special circumstances have arisen which permit the remains to be exhumed. These factors are:

(i) medical reasons.

There is no suggestion here of the Applicant suffering from any serious psychiatric illness linked to the location of the grave. I have noted the Applicant's back condition which I accept must make walking across the field and within the churchyard difficult for her. However this is not the type of medical reason which the Court of Arches had in mind: there is no suggestion here of a psychiatric condition linked to the location of the ashes.

(ii) lapse of time.

The Court held that the passage of a substantial period of time before an application for exhumation was made could not be determinative of the application in itself. However, it would be a factor in assessing the genuineness of the applicant's case.

In this case there has been delay of 7 years since Mr Carr's death. The particulars were dated January and the Petition is dated in March 2014. There has been significant delay in making this application since the interment. I have not been told when the Applicant moved to Horncastle. No doubt when the move occurred this contributed to what she feels about the location of the ashes as set out in the application. I have no doubts about the genuineness of the Applicant's submissions to me.

(iii) mistake.

Where there has been a simple error in administration, such as burial in the wrong grave, the Court held that faculties for exhumations could readily be granted.

There is no suggestion in this case that there has been an error in administration in burying the Applicant in the wrong plot. The case is that the Applicant now regrets her decision about the location of the ashes made in 2007.

(iv) precedent.

The Court held that consideration of the effect of precedent by the grant of the application is properly made because of the desirability of securing equality of treatment, so far as circumstances permit, between petitioners.

I take this issue in to account.

(v) family grave

The Court held that the use of family graves are to be encouraged because they both express family unity and they are environmentally friendly in demonstrating an economical use of the land for burials.

There is no suggestion of such a grave in this case.

Decision.

13. Having set out the legal framework that I must apply and applied it to the application before me, I am unable to grant this application. There is no basis in law that would permit me to find exceptional reasons that could set aside the rule that Christian burial is permanent, and that once buried the remains must be left to lie in peace. The reasons for an exhumation advanced by the Applicant are insufficient to establish that this is an exceptional situation where exhumation could be permitted.

14. I must also record that the absence of any knowledge of the views of 2 children of the deceased and his sister, would make any decision to exhume very difficult to contemplate without further enquiries of them and their views. However, even if they were located and expressed total support for the application, it would make no difference to the decision that I have reached which is that there is an insufficient basis for an exceptional order for exhumation.

15. The Applicant's back condition and the difficulty she has in gaining access to the grave is not a reason for which I can order exhumation. There has been no mistake in burying the remains in the wrong plot, although I recognise that the Applicant regrets now her decision to inter the remains at Aby. The presence of rabbits in the churchyard does not justify the exhumation of the ashes. I have also had regard to questions of precedent and fairness to others in similar situations.

16. I recognise that this decision will be disappointing and perhaps also upsetting to the Applicant, which I regret. I would like to emphasise that I accept the genuineness of what she has set out in her application to me – but that is not sufficient to allow me to take the exceptional course of ordering exhumation. I would, however, like to comment on the terms in which the Applicant refers to Mr Carr being in some way separated from his family by his ashes being located in Aby and that separation would be ended or diminished if his ashes came to Horncastle. There is reference by the Applicant to Mr Carr now being 'on his own' in Aby and that just because she has remarried does not mean that she has forgotten her departed husband.

17. As the Bishop of Stafford explains, the Christian understanding is that Mr Carr is now entrusted within the life of God wherever his ashes are interred, and that life within the love of God, is something towards which we all journey through our lives - supported as we are by God's love for us in our lives. For that reason Christian teaching is that the interment of ashes should generally be permanent,

because the soul of the departed now rests in peace within God to whom we have entrusted and commended the departed at his funeral service: and that commendation of our departed loved one to God goes on throughout our lives as we continue to remember them. Mr Carr is not therefore 'alone': he rests in peace within God's love, wherever his ashes are located.

18. I wish the Applicant well for the future and I am grateful to the Revd Turner for her offer of pastoral support for Mrs Baker as may be required.

Mark Bishop

Chancellor

30 April 2014