

Neutral Citation Number: [2023] ECC New 3

IN THE CONSISTORY COURT OF THE DIOCESE OF NEWCASTLE

His Honour Judge Simon Wood, Chancellor

In the Matter of an Application to exhume and re-inter the remains of Michael James DUNN from the Consecrated section of Chevington Cemetery and in the Matter of a Petition by Joyce BUDDLE

JUDGMENT

1. This is a petition by Mrs Joyce Buddle to exhume the remains of Michael James Dunn and re-inter them within the same consecrated section of Chevington Cemetery in Northumberland.
2. The basis for the petition is that, owing to an error on the part of Northumberland County Council, which owns and manages this municipal cemetery, the remains were wrongly interred in a space reserved by her for her own burial under a deed of Exclusive Right of Burial granted as recently as 13 December 2022.
3. The County Council acknowledges its error, has apologised to the families concerned and implicitly agrees to the petition, the cost of which it has underwritten.

The facts

4. William Henry Buddle, the petitioner's husband, died on 19 November 2022. As part of the arrangements made following his death, the petitioner sought and a grant of exclusive right of burial in Chevington Cemetery which must have been agreed in principle ahead of the deed being engrossed on 22 December because Mr Buddle's remains were interred in plot CA 13 on 2 December.
5. Being desirous of being interred alongside her husband in due course, the petitioner obtained a similar grant in respect of the neighbouring plot, CA12.
6. On 3 February 2023, a relative of the late Mr Buddle, Michael James Dunn, died. He, or his family, had made like arrangements to the petitioner in respect of plots CA10 and CA11, the intention being to inter Mr Dunn's remains in plot CA11.
7. On 27 February, Mr Dunn's remains were erroneously interred in plot CA 12, that already reserved for the exclusive occupation of the petitioner.
8. Mr Greg Gavin, the Council's Head of Neighbourhood Services, in a letter addressed directly to the Chancellor, acknowledged the mistake made which he attributed to "human error" for which the Council accepts full responsibility.

The positions of the families

9. Understandably, this error is one that has caused a great deal of unhappiness for each of the Buddle and Dunn families, families who are still grieving the recent loss of much loved close family members.
10. So far as the petitioner and her family are concerned, they seek the restoration of the position prior to the interment of Mr Dunn to enable the petitioner, in due course, to be interred alongside her husband.
11. Mr Gavin has made contact with the family of Mr Dunn, specifically his widow, Mrs Lillian Dunn, and his son, Mr Stuart Dunn. They respect the position of the Buddle family and, as such, would not oppose the exhumation of Mr Dunn and his re-interment in CA11 as intended. The only specific request they make is, if at all possible, for the grave wall between CA11 and CA12 to be removed so that Mr Dunn's coffin can be moved to the adjacent plot without being raised above ground level.
12. Although he does not say so in terms, it is inherent within M Gavin's letter to the court that the Council does not seek to oppose the petition.

The law

13. The law is well established and definitively set out in the judgment of the Court of Arches In re Blagdon Cemetery [2002] Fam 299. The presumption of permanence is explained, arising, as it does, from the Christian theology of burial which emphasises, by reference to the Bishop of Stafford's *Theology of Burial*, that the permanent burial of the physical body is to be seen as a symbol of the entrusting the person to God for resurrection, a concept that does not sit easily with the concept of "portable remains". Hence the reluctance of the Consistory Court to grant faculties for exhumation is well supported by Christian theology.
14. Nevertheless, recognising that it was essentially a matter of discretion, the Court indicated the necessity of the petitioner satisfying the Consistory Court that there are special circumstances justifying the making of an exception from the norm that Christian burial is final. In so stating the Court went on to identify various factors which may indeed support such a petition.
15. In the circumstances of this case it is not necessary to look beyond the Court's ruling that a simple error in administration, such as burial in the wrong grave, the exact circumstances here, can form a ground upon which a faculty for exhumation can be granted. The Court advised that in such circumstances it may be for those responsible for the cemetery to apply for exhumation: that has not occurred here but in underwriting the cost of petitioning the outcome is the same. It went on to say:

“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 remain in the intended not an unintended plot or grave.”

16. Whilst lapse of time is always a relevant factor it is not determinative.

Decision

17. I am satisfied that there was a mistake in this case arising from the unfortunate mistake in Mr Dunn being laid to rest in a plot already reserved by the petitioner, a plot whose location was of singular significance being immediately adjacent to that of her late husband.

18. There has been no delay in seeking to right this mistake, the petition being issued within a week of the burial.

19. Although I have no statement from the undertaker advising as to the likely condition of the coffin or any soil condition likely to be of relevance, the interment was so recent, the court is satisfied that no such evidence is necessary.

20. The evidence proves conclusively that Michael Dunn’s remains were interred in the wrong grave by mistake. The Court is wholly satisfied that the petitioner be granted the relief sought.

21. The court has no evidence as to whether the Dunn family’s specific request can readily be met. In so far as it is practicable to do so, the court considers it should be honoured. The court acknowledges that the Council has worked closely with both families to manage the issues that have so unfortunately arisen and is confident that it can continue to do so over this and any other practical issue arising.

22. Accordingly, the faculty is granted on the following conditions, namely that any terms imposed by the Environmental Health Department of Northumberland County Council are complied with and that the costs arising from and incidental to the exhumation and re-interment are met by the Council.

Simon Wood
Chancellor
10 March 2023