

In the matter of St Helen's Church, Edlington with Wispington: The Hemingby Group

And in the matter of the late James Thomas Padgett

### Judgment

1. This is an application dated 6 June 2014 for a faculty to exhume a casket containing the ashes of the late James Thomas Padgett who died on 5<sup>th</sup> August 1988 and whose ashes were interred on 14th August 1988. Should exhumation be permitted it is planned to reinter in Newport Cemetery, Newport, Lincoln.
2. The applicant is Mr Padgett's daughter Jane. All the family (his siblings, other children and grandchildren) all consent to the exhumation.
3. Miss Padgett explains why she seeks the exhumation in her letter dated 25 October 2013. When her father died in 1988 her mother lived in Wispington where her roots were and her local church was St Helen's, Edlington. Miss Padgett moved back home to support her mother and eventually they sold the house in Wispington and moved to a village closer to Lincoln. Her mother died in 2007 and her ashes were placed in a cremation plot that Miss Padgett had purchased at Newport Cemetery . She states in her letter that she had purchased the plot so that 'my parents could be placed in the same plot'. She intends to be placed there when the time comes.
4. Miss Padgett now suffers from osteo-arthritis and has taken early retirement from her job. The distance from her home to Wispington is 25 miles. She does not feel that she will be able to visit her father's grave more than twice a year due to her ill health. However, if her father's ashes were exhumed from St Helen's ,Wispington and reinterred in Newport then she states she could visit the grave every week. She finds the location of her parents in separate graves difficult to deal with: they had been married for 42 years.

5. The churchwarden of St Helens has set out the Village Church Committee's views in a letter dated 31 March 2014. I would need to have a PCC resolution, but for the purposes of this judgement I am content to proceed on the basis that the PCC would agree with the conclusions reached by the VCC at their AGM. Ms Birks, the churchwarden, states that the VCC does not object to the application. However this has plainly been an issue which has given the VCC some anxiety. One member is deeply concerned that her late husband's ashes might be disturbed by the exhumation of Mr Padgett's ashes which are adjacent. Others present at the VCC AGM who had family members ashes interred did not object. Although no objection has been raised I note that Ms Birks wrote as follows:

"This sensitive issue has now taken up a lot of time at meetings, over a period of 6 months and caused a lot of distress, the VCC can empathise with Miss Jane Padgett's reasons, but still feel a person's final resting place should remain so".

#### Discussion

6. In considering this Petition it is important that the Petitioner understands the law that I must apply, which 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.

7. The presumption is that burial of human remains in consecrated ground is permanent. The sentence that I have quoted from Ms Birks letter at paragraph 5 above thus expresses succinctly this Christian understanding. 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”

8. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that James Padgett was laid to rest in 1988 and his remains should not now be disturbed.

9. 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.**

The Court made it clear that the only medical reasons which could assist a petitioner in these circumstances would be those which showed quite clearly that a serious psychiatric or psychological problem had arisen caused by the location of the grave to whom the petitioner had a special attachment. The Court made it quite clear mere decline in health and mobility due to advancing years could not be a reason which would displace the presumption of permanence.

I do not regard the difficulties of travelling the 25 miles to St Helen’s caused by osteo-arthritis as sufficient to engage this special exception. Regrettably, many people face such problems. On the facts of this case I do not find that there is a medical reason which would establish the exception.

(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 Petitioners case.

In this case there has been delay of 26 years since Mr Padgett's death and 7 years since Mrs Padgett's death and the interment of her ashes at Newport. I am not persuaded that there could be any justification for granting this application which arose out of any serious anxiety caused by the ashes of the applicant's parents being in separate places, given that a decision was made in 2007 not to inter Mrs Padgett with her husband at St Helen's in Wispington, and no application to exhume has been made until now.

(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. Of more difficulty is where there is a failure to understand or appreciate the significance of burial in consecrated ground in a municipal cemetery. In the case of In re Crawley Green Road cemetery, Luton 2001 Fam 308 the family of a humanist was permitted an exhumation on this ground: also In re Durrington Cemetery 2001 Fam 33 orthodox Jews were permitted to exhume. The Court emphasised the need for greater clarity about the significance of burial in consecrated ground in cemeteries.

There has been no mistake in the burial place here.

(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.

This is the applicant's best point. In 2007 she interred her mother's ashes in a plot at Newport cemetery and it is into that plot she now wishes her late father's ashes to be placed and her ashes too when the time comes. Thus, she would argue no doubt, this is an economic use of space and expresses family unity.

Decision

10. I have considered this matter very carefully but I cannot grant the Faculty that is sought.

11. My reasons are that any application to exhume is to be considered against the Christian understanding of burial and the presumption of permanence as I have set it out above. An application to exhume can only succeed if there are special circumstances that can outweigh that presumption.

12. An important part of the application rests upon the concern that the Applicant has that her osteo-arthritis will prevent her driving soon and this will mean that she will not be able to get to Wispington which is 25 miles away more than twice a year. I have already stated at paragraph 9 (i) above that a decline in mobility of this kind, regrettable and difficult though it is, is something that many people face, and cannot amount to a medical reason in itself for displacing the presumption of permanence.

13. Additionally, I take into account the obvious anxiety that the VCC had over the application to exhume, although in the end they raised no objection. However, I note the concerns of the widow of someone interred in a contiguous plot to Mr Padgett and the terms of the churchwarden's letter quoted at paragraph 5 of this judgement, which seems to indicate a continuing serious unease at the application to exhume. The concerns of those related to those buried/interred in the surrounding plots must be taken into account although I note that 2 persons whose relatives were interred nearby did not object.

14. I have weighed all these matters against the argument for exhumation and reinterment in a family plot in Newport. However I am not persuaded that on the facts of this case the presumption of permanence should be displaced. A decision was taken in 2007 to bury the remains separately and so the issue of a consolidated family grave cannot have been regarded then as a significant consideration. For the reasons set out at paragraph 9(ii) above, the 7 years that have elapsed since that interment without an application for exhumation until now, indicates to me that the issue of separate locations for the cremated remains of Mr and Mrs Padgett has not been regarded in the past in the way that it now is:, namely, ‘ a very difficult situation to deal with’ per Miss Padgett’s letter dated 25 October 2013.

15. Even though an exhumation would result in the availability of a new space at St Helen’s I am not satisfied that this justifies, on the facts of this case, the displacement of the presumption of permanent burial. Faced with the unease of the VCC, notwithstanding their decision that they do not object, and for the other reasons that I have enumerated, I am not prepared to permit this exhumation to proceed.

16. I recognise that this decision will come as a disappointment to Miss Padgett, and I am sorry for that. However, I am sure that she will recognise the sensitivity of applications of this kind. In the circumstances I waive my fee.

Mark Bishop

Chancellor

16 July 2014