

In the Consistory Court of the Diocese of Norwich NR157/15

Re St Peter, Gunton

Judgment

1. Three of the children of Mr Henry William Ellis (Mr Ellis) petition for the exhumation of his cremated remains from the churchyard of St Peter, Gunton for their reburial in the nearby Kirkley Cemetery with the cremated remains of his widow (Mrs Ellis). They are supported in their petition by their three siblings.
2. Mr Ellis' remains were buried in Gunton churchyard near to his family home in March 1994. At that time it was intended that Mrs Ellis' remains would join those of her husband when her time came. Mrs Ellis died in March 2015 and her remains were in fact interred in a family grave with the remains of her parents in Kirkley Cemetery in May in accordance with the wishes expressed in her Will. There is a distance of less than two miles between Kirkley Cemetery and Gunton churchyard.
3. It is clear from the papers before me that the catalyst for the petition to exhume Mr Ellis' remains was the burial of his wife's remains at Kirkley Cemetery in 2015. Prior to her death it was the understanding of the petitioners that it had been Mrs Ellis' longstanding wish and intention that her remains should be interred together with those of her late husband. As well as being blind, Mrs Ellis suffered from dementia in the later years of her life and during that period she spoke constantly of her then deceased husband and consistently stated that she wanted to be with him. It therefore came as a surprise to discover that, during the period of her illness, Mrs Ellis had amended her Will to ask that her remains should be buried in the family grave in Kirkley Cemetery. There is some suggestion that certain members of her family may have manipulated Mrs Ellis into making that decision, but I have seen no evidence about this and can make no findings about how the change in the Will came about. The petitioners are adamant that Mrs Ellis' wish had always been to be buried with her husband.
4. After the death of Mrs Ellis, her family seem to have mistakenly believed that they were obliged to comply with the wishes expressed in her Will as to her place of burial. On that basis, an agreement was reached within the family that Mrs Ellis' remains would be buried at

Kirkley Cemetery in her family grave and that an application would be made to move the remains of Mr Ellis to join those of his wife there.

5. It is clear that all close relatives of Mr Ellis support the petition for an exhumation of his remains for their reburial with those of his wife. The incumbent does not object to the exhumation, but expresses concern about the setting of a precedent.
6. The leading authority on the issue of exhumation is the decision of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. That case restates the presumption against exhumation and in favour of the permanence of Christian burial in consecrated ground. This presumption arises from the Christian theology of burial reflected in a paper from the then Bishop of Stafford which the Court in *Blagdon* considered. The Bishop of Stafford 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. Special reasons must exist before an exception to the principle of permanence can be justified. The Court of the Arches in *Blagdon* identified various factors which, whilst not exhaustive, might be relevant to whether special reasons exist. In determining a petition the Chancellor must weigh up any relevant factors in order to decide whether special reasons have been made out. Not all of the factors referred to in *Blagdon* are relevant in this case, but one which is relevant is the question of whether a mistake was made at the time of burial.
8. This is not a case where the petitioners seek to correct an ordinary administrative mistake, such as in those cases where remains have mistakenly been buried in a plot reserved for someone else. There was

clearly no mistake at all made at the time of Mr Ellis' interment. His family chose to inter his remains in the churchyard at Gunton as that was close to his family home and on the understanding that Mrs Ellis' remains would join his in the fullness of time. It is nevertheless clear to me that a mistake was made in burying Mrs Ellis in Kirkley Cemetery in March of last year, in that the family were clearly operating under the mistaken belief that they were obliged to comply with the terms of Mrs Ellis' Will, whatever their own understanding of her actual wishes. This caused concern and upset at the time and led to the making of an application for exhumation within about three months of the interment, which must be seen to be prompt in the circumstances.

9. I must, therefore, ask myself whether a mistake in relation to the interment of *Mrs Ellis* can assist in establishing special reasons which might justify the exhumation of *Mr Ellis*. I am satisfied that the mistake in relation to the burial of Mrs Ellis' remains is a factor which can be taken into account in deciding whether special reasons exist to justify the exhumation of Mr Ellis' remains. I am mindful of the decision of Chancellor Eyre in *Re St Peter, Dunchurch* (Coventry Consistory Court, 31 July 2013) where he held that it was legitimate to characterize a mistake in relation to the burial of someone else's remains in a neighbouring grave reserved for the deceased's wife as a mistake affecting the deceased's grave. Here, as there, the mistake has made it impossible to carry out the original intentions in relation to that plot, namely that the deceased should be buried with (or in that case, alongside) his wife.
10. The lapse of time between the burial and the petition for exhumation is also a relevant factor in determining whether a faculty should be granted. Although time is not determinative, the passage of a substantial period without explanation will militate against the grant of a faculty. I have already indicated that I consider that the family have acted promptly after the mistaken burial of Mrs Ellis' remains in Kirkley Cemetery. Although just over twenty years have passed since Mr Ellis' burial, the reason why the application was not made sooner is manifest from the circumstances. There is no unexplained delay and as such the passage of time does not weigh heavily against the grant of a faculty.
11. Nevertheless, given the length of time for which Mr Ellis' remains have been buried, I have queried why, in the circumstances, the application was not, instead, made to exhume the remains of Mrs Ellis for their reinterment in Gunton churchyard as had originally been intended. I am told that, as well as there being a concern not to break up the family grave where Mrs Ellis' remains are buried, those remains were also buried in a cardboard box and as such there is some concern about how easily they could be exhumed. By contrast, Mr Ellis' remains were buried in a casket and therefore his remains, despite having been interred for a significantly longer period, should be much easier to exhume and move safely and with due dignity.

12. The remaining factor which must be considered in deciding whether the petitioners have shown that an exception can be made to the permanence of Christian burial is the intention that Mr and Mrs Ellis' remains should be buried together in Kirkley Cemetery in an already established family grave. The Court of Arches made clear in *Blagdon* that family graves are to be encouraged as expressive of family unity and an environmentally friendly and economical use of the land for burials. The creation or use of a family grave will not, alone, amount to a special reason justifying an exception to the presumption of permanence, but it may be a factor to be weighed by the Chancellor in deciding whether such special reasons exist (see the decision of Chancellor Petchey in *Re Plumstead Cemetery* (Southwark Consistory Court, 12 May 2012)).

13. So I must weigh the above factors and decide whether special reasons have been shown such that a faculty should be granted in this case. Exhumation can only exceptionally be granted. The use of a family grave would not, without more, have provided grounds for exhumation. Nevertheless, I am satisfied that an exception to the norm of permanence should be made in this case. Mrs Ellis was buried in Kirkley Cemetery as a result of a mistake by her family about the effect of the expression of wishes in her Will. The existence of a family grave and practical considerations arising from the method of burial mean that that mistake is best remedied by the exhumation of Mr Ellis' remains for their reinterment with those of his wife in Kirkley Cemetery. Unless the mistake is remedied the original intentions in relation to Mr Ellis' grave (namely that the remains of his wife should join his) cannot take place. These unique circumstances should not be taken as a precedent indicating that exhumation will readily be granted. Exhumation is exceptional and each case must be decided on its own facts.

14. In the circumstances I direct that a faculty shall pass the seal in this case.



Ruth Arlow
Diocesan Chancellor

1 March 2016