

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

HEDNESFORD: ST PETER

ON THE PETITION OF NIGEL DAVID JAMES

**IN THE MATTER OF THE CREMATED REMAINS OF RONALD CHARLES
JAMES**

JUDGMENT

- 1) Nigel James petitions seeking a faculty for the exhumation of the cremated remains of his late father, Ronald James. It is proposed that those remains be moved from plot 9.22 in the churchyard of St Peter's Hednesford and reinterred in that plot in the same churchyard now occupied by the remains of Margaret James, the Petitioner's mother and the widow of Ronald James. I have already directed that the faculty be issued and this judgment sets out my reasons for having done so.
- 2) The Petition is supported by Craig James and Stanley James. They are respectively the only other child of Ronald and Margaret James and the only surviving sibling of Ronald James. The Petition is also supported by Revd Paul Kelly, the vicar of Hednesford, and by the Parochial Church Council.
- 3) The Petitioner has consented to the determination of this matter on the basis of written representations and I have concluded that such determination is expedient.

The History.

- 4) The remains of Ronald James were interred on 8th May 2000 in the portion of the churchyard used for the interment of cremated remains. That interment was arranged by Margaret James.
- 5) The Petitioner contends that his mother had always after her husband's death intended that she and her husband should be buried together but had also intended that her remains should be buried rather than cremated. I am entirely satisfied that this is a correct account of the wishes of Margaret James. I have

been provided with an undated letter of wishes in which Mrs. James set out her wishes in respect of funeral arrangements and other matters. The letter is an impressive document. It is clearly the result of careful and prayerful reflection and it demonstrates a firm faith. The letter expresses Mrs. James's wish to be buried and adds "*your Dad's ashes to be transferred to my grave at St. Peter's church.*" The document demonstrates that at some point before her death Mrs. James was expressing the twin desire for burial for herself and the moving of her husband's remains to her grave. I accept the Petitioner's contention that this had been his mother's intention from the time of his father's death. I also accept his contention that Mrs. James did not realise and had not been told that there might be any difficulty in such a transfer of the remains of Ronald James.

- 6) Margaret James died on 3rd February 2016 and was buried in the churchyard of St. Peter's on 15th February 2016. Her remains could have been interred in the same plot as those of her husband if she had been cremated. Understandably her sons did not take this course but instead arranged a burial as she had wished. The position of Ronald James's remains in the area for the interment of cremated remains meant that the body of Margaret James could not be interred in the same plot. It follows that if the remains of husband and wife are to be in the same plot there must be movement of the remains of Ronald James.

The Applicable Principles.

- 7) The approach which I am to take in considering this Petition was laid down by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299.
- 8) I have a discretion but the starting point in exercising that discretion is the presumption of the permanence of Christian burial. That presumption flows from the theological understanding that burial (or the interment of cremated remains) is to be seen as the act of committing the mortal remains of the departed into the hands of God as represented by His Church.
- 9) It must always be exceptional for exhumation to be allowed and the Consistory Court must determine whether there are special circumstances justifying the taking of that exceptional course in the particular case (the burden of establishing the existence of such circumstances being on the petitioner in the case under

consideration). In *Blagdon* the Court of Arches identified circumstances which are and others which are not capable of a matter of law of being a special circumstance justifying exhumation. However, the mere presence of a factor which is capable of being a special circumstance for these purposes does not necessarily mean that exhumation should be ordered in any particular case. The Court has a discretion and has to consider whether exhumation is justified in the light of all the circumstances of the particular case and in the context of the presumption in favour of the permanence of interment.

The Application of the Principles to this Case.

10) I have already explained that I am satisfied that at the time of the interment of her husband's remains Margaret James did not realise that there might be difficulty in respect of a subsequent transfer of those remains. That should have been explained at the time. If that had been explained then Mrs. James might well have made other arrangements before interring her husband's remains. She might have arranged for him to be buried rather than cremated or for his cremated remains to be interred in a part of the churchyard where burials were also possible. However, in this regard it is relevant to note that even though she wished that her and her husband's remains should be together in the fullness of time Mrs. James still acted properly in arranging for the interment of her husband's remains. She did not adopt the undesirable but not uncommon course of retaining the remains uninterred until there could be a joint burial. If exhumation were to be refused in this case it might be thought that those who bring remains to the Church for interment in circumstances such as this are being disadvantaged as against those who retain such remains. That consideration cannot amount to a special circumstance but it is, in my judgment, relevant to the exercise of my discretion if there are special circumstances.

11) I am satisfied that there are special circumstances in this case and that exhumation is justified. The proposed course will create a family grave occupied by the remains of both Ronald and Margaret James. It was established in *Blagdon* that the creation of a family grave can be a special circumstance (see my judgment in *Re Trentham: St Mary* in this Court in June 2012). However, the mere fact that a family grave will be created does not automatically and

necessarily mean that exhumation is justified or appropriate. The Court must still consider the circumstances of the particular case to see whether that is appropriate in the light of the force of the presumption in favour of permanence.

12) There are a number of factors which have combined to cause me to conclude that the proposed exhumation and reinterment are appropriate in the particular circumstances of this case. They are:

- a) The proposed course will reunite the remains of husband and wife.
- b) The reason why the remains of Margaret James cannot be interred in the plot occupied by those of her husband is that her sons entirely properly chose to comply with her preference for burial.
- c) Mrs. James had intended this course from the time of the interment of her husband's remains and had not been told that there would potentially be difficulty in achieving this.
- d) This is not a case where the family grave is being created as a device to justify an exhumation which is in reality being sought for other reasons. Mrs. James had intended throughout that her remains and those of and her husband should be in the same plot.
- e) The plot to which the remains of Mr. James are to be moved is in the same churchyard as that where they are currently.
- f) I am satisfied that there is no intention on the part of the Petitioner to detract from the principle that the interment of remains is the permanent committing of those remains into the hands of God. I am also satisfied that Mrs. James had no such intention. Her letter of wishes demonstrates a firm faith and a lively Resurrection hope. I am satisfied that in expressing the wish for her husband's remains to be moved to be in her grave Mrs. James was not asserting some form of continuing right of control over those remains. Rather it was part of her action in properly making arrangements for the seemly disposal of his remains and hers. It was of a piece with her actions in setting out detailed wishes for her funeral service. The making of advance

arrangements for funerals and interments is an entirely proper course. The difficulty in this case has come about because Mrs. James did not realise the problems which would flow from the principle of permanence and from the fact that Mr. James's remains were interred in a part of the churchyard where there could be the interment of cremated remains but not the burial of bodies.

g) It is also relevant that the Petitioner has acted promptly. Within days of his mother's death he had approached the vicar of Hednesford and the Registry for advice on how to implement his mother's wishes.

13) It follows that in this case not only is there the special circumstance of the creation of a family grave but the case seen in the round is one where it is appropriate for me to exercise my discretion to allow exhumation in the light of that special circumstance.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
22nd July 2016