

IN THE CONSISTORY COURT OF THE DIOCESE OF LEICESTER

RE: THRINGSTONE, ST ANDREW'S CHURCHYARD

RE: STEWART DICKSON DECEASED and DAVID GARRETT DECEASED

TUESDAY THE 3RD SEPTEMBER 2013

CHANCELLOR BLACKETT-ORD

B E T W E E N:

THE REV A. J. BURGESS

Petitioner

and

- (1) MRS JULIE GARRETT
- (2) MR RYAN GARRETT
- (3) MR CHARLES ARTHUR DICKSON
- (4) MRS ROSE DICKSON

Respondents

Hearing on Wednesday 14 August 2013

Judgment delivered on 3 September 2013

J U D G M E N T

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1. This is a reserved judgment delivered after the conclusion of an oral hearing held in St Andrew's Church, Thringstone on 14 August 2013.
2. The Petitioner is Reverend A. J. Burgess, Vicar of St Andrew's.
3. The late Stewart Dickson was the youngest of four children of Mr and Mrs C. Dickson who are parishioners of Thringstone. He died aged only 27 on 30 July 2011.
4. His premature death was of great sorrow to his parents and remaining siblings.
5. His body was laid to rest in St Andrew's churchyard in a grave near the churchyard boundary fence.
6. By this time his parents, Mr and Mrs Dickson, had applied for a faculty for the reservation of a double grave space immediately beside Stewart's grave. Their application was in proper form and when it came before me as Chancellor on 6 September 2011 I allowed it. I shall call the plot thus reserved, "the reserved plot". I should remark that there was no other plot immediately adjoining Stewart's grave that was vacant or available for Mr and Mrs Dickson.
7. The Faculty is dated 7 September 2011 and had these conditions:

- (1) This Faculty shall endure for not more than 25 years or until further Order.
 - (2) The right reserved is marked and endorsed on an up-to-date churchyard plan.
 - (3) The space reserved is physically marked on the ground in some small and discreet way.
8. On 10 March 2013 another parishioner, David Garrett, died aged 53. He had no connection with the Dicksons. He left a widow, Julie, and a son Ryan. His service of burial was held in St Andrew's on 22 March 2013 with the Church full to capacity with his family and friends, and he was buried in the graveyard.
 9. The plot in which he was to be buried was marked out by Mr Burgess on the ground before the funeral service. Mr Burgess remembers doing it; there was snow on the ground.
 10. Unfortunately Mr Burgess marked the very plot that had been specifically reserved for Mr and Mrs Dickson, and it was there that Mr Garrett was buried..
 11. When it came to the attention of the Dickson family that the plot the reserved had been occupied by another, they were angry and upset. They suggested, with reason, that it was wrong for Mr Garrett to have been buried there.
 12. The first that the Garretts knew that anything was wrong was well after Mr Garrett had been laid to rest. They had every reason to be upset when it was

suggested to them that his body might actually have to be moved because the plot had been reserved for the Dicksons.

13. What is absolutely clear is that neither the Dicksons nor the Garretts were in any way responsible for the mistake which was causing the difficulty.
14. After Mr Burgess had learnt of the problem, he spoke to each family. Unfortunately
 - (a) neither family felt he was sufficiently apologetic;
 - (b) he appears to have told Mrs Dickson that it was the Dicksons' fault for not marking their plot, which he suggested had been their responsibility;
 - (c) after a period of inactivity by Mr Burgess, Yvonne McIlwraith, the Dicksons' daughter, felt that nothing was happening, and so she sought the assistance of the local press. The subsequent publicity was deeply offensive to the Garrett family.
15. In their witness statements, each family expresses sincere sympathy with the other. In the Garretts' Particulars of Objection dated 5 June 2013, they state

""The Garretts" and the "Dicksons" are both victims in this genuine mistake that has happened and we can sympathise with "the Dicksons" the anguish and disappointment that this has happened...".
16. Mrs Yvonne McIlwraith, the daughter of Mr and Mrs Dickson, in a statement given on behalf of the Dicksons, states:

“As much as it hurts deep inside I feel for Mrs Garrett immensely because one now faces the worst thing ever and that the body of her beloved husband to be exhumed...”.

17. Notwithstanding these statements of genuine sympathy, the Dicksons felt that they were entitled to the reserved plot beside their beloved son. The Garretts held to the orthodox Christian belief that once a person is buried in consecrated ground that should be his final resting place.
18. Each of these contentions has much force in it both legally and morally. Each family has held to its own position throughout the proceedings.
19. During the hearing I questioned Mr Burgess as to how the mistake had been made. He told me that a copy of the faculty reserving the plot to the Dicksons had been given to both the Dicksons and to the parish, meaning himself; that he did indeed believe that it was for the Dicksons to mark the plot on the ground, but it was for the churchwardens to keep a churchyard plan which should have shown where the reserved plot was; this evidently had not been done; but this hardly mattered because he had anyway not asked to see the plan before he marked out the proposed grave in the snow. The fact that the plot that he was marking out might have been reserved, or had been reserved, was a fact that had simply slipped his mind.
20. I feel that I need to say very little about the legal position. In Re Blagdon Cemetery (2002) Fam 229, the Court of Arches gave guidance in a disinterment case and in Re Alsager, Christ Church (1999) 1 AER 117 the Chancery Court of York (which is the court of appeal from Consistory Courts in the Northern

Province) laid down similar guidance. For convenience I quote from the latter judgment:

- “(1) Once a body or ashes have been interred in consecrated ground, whether in a churchyard or consecrated section of a municipal cemetery, there should be no disturbance of the remains save for good and proper reason.
- (2) Where a mistake has been made in effecting the burial, for example, a burial in the wrong grave, the court is likely to find that a good reason exists, especially where the petition is presented promptly after the discovery of the facts”.

- 21. What is unusual in the present case, of course, is that it is not (as is more usual) the family of the person to be moved who seek the disinterment. Indeed they positively oppose it. It is the Dicksons, not the Garretts, who wish to see the remains of Mr Garrett removed.
- 22. It is a serious matter to order the disinterment of a body in the face of opposition by the family. On the other hand, it seems to me to be an equally serious matter that a family who have been granted by faculty the reserved use of a burial space beside a beloved family member, should lose any right to that space if another person is wrongly buried there.
- 23. I will not embark upon a discussion which of these two conflicting principles is the stronger. It seems to me that my task is to exercise my jurisdiction in a manner which creates the least injustice.
- 24. The Petition (or rather the letter from Mr Burgess which I have ordered should be treated as the petition) adopts the logical position that an order should be made either revoking the original faculty and providing alternative grave spaces

to Mr and Mrs Dickson, or exhuming the body of David Garrett for reinterment in an alternative grave space. No-one during the hearing proposed any other compromise or alternative remedy, although some alternatives might be imagined.

25. I must say something about the position of Mr Burgess. In his Petition he admits frankly enough:

“Unfortunately in this instance, neither the Petitioners nor Mr Burgess or churchwardens caused the reserved grave space to be marked”.

Mr Burgess did apologise to the families at the hearing. When I asked him what course he suggested that I should take, he said that I should pray to be granted the wisdom of Solomon.

26. I agreed.

27. The due process of funeral and burial are matters with which the Church of England is rightly very concerned. If, here, a mistake is made which causes grief to one or more grieving families, it is a very serious matter. The mistake should not have been made. No doubt Mr Burgess made an honest mistake, but that does not excuse it.

28. The fact that the mistake in question was the fault of Mr Burgess and not of either of the families, gives me no assistance in deciding the question whether or not the remains of the late Mr Garrett should continue to lie in the grave which has been reserved for Mr and Mrs Dickson.

29. In those circumstances I believe that justice requires that the rights over the grave space in question should remain those of the family who reserved the grave space, rather than those of the family who inadvertently but mistakenly took possession of it as a burial place for Mr Garrett.
30. Accordingly the remains of Mr Garrett must be removed and reinterred within the churchyard. I am glad to learn that the grave space immediately adjoining him has been kept vacant by the churchwardens for this eventuality.
31. I must make clear that no new funeral service is required. Mr Garrett has already been committed to the earth for rest. What is being done is that his resting place is to be moved a short distance.
32. The operation must of course be performed by experienced funeral directors, and a priest should be present. It would be better if Mr Burgess takes no part. I suggest that the Area Dean is asked to officiate and that she is asked to liaise with the family about the arrangements. If there is any question about any aspect of the arrangements, the Diocesan Registrar should be consulted, and he can consult me further if needs be.
33. The final order that I am making will reflect the above.
34. In general, if there are any lessons to be learned, they are these:
 - (a) the standard faculty order reserving a grave space should in future cases state clearly that the obligation to mark a reserved plot is an obligation on

the PCC or on the incumbent and churchwardens and not on the petitioners;

(b) no interment in any graveyard should take place unless the officiating priest has satisfied himself or herself that the proposed grave space is not a reserved plot.

35. I asked Mr Burgess, the Dicksons and the Garretts for their submissions on costs. Mr Burgess, with characteristic decency, accepted that he had been the cause of the mistake which led to the present petition being necessary. That must be reflected in an order for costs being made against him.

36. I order accordingly.

Mark Blackett-Ord
Chancellor
3 September 2013