

Neutral Citation Number: [2016] ECC New 2

IN THE CONSISTORY COURT OF THE DIOCESE OF NEWCASTLE

In the Matter of an Application to exhume the remains of Anna SHEK from the Consecrated section of Holy Cross Cemetery, Wallsend and in the Matter of a Petition by Kevin SHEK

JUDGMENT

1. This is a petition by Mr Kevin Shek to exhume the remains of his late sister, Miss Anna Shek, from the consecrated section of Holy Cross Cemetery (CON-10-321) and reinter them in another plot within the unconsecrated general section (GEN-21-59).
2. I have the written consent of both of Anna's parents and her two other siblings.
3. North Tyneside Council's Manager of Bereavement Services has written confirming that the Authority has no objection to the exhumation and reinterment albeit she notes that the ground conditions are usually damp with heavy clay soils so some deterioration of the coffin, whose composition is unknown, is likely.

The facts

4. Anna died in 1981 and was buried on 23 March 1981. I have not been told her age but I infer that she was a child as all of her siblings were of primary school age, Mr Kevin Shek being just 5 years old at the date of his sister's death. Her parents remain alive so she pre-deceased them by very many years. Her family is of Chinese origin and had emigrated from Hong Kong to live in the United Kingdom. Mr Shek and his siblings (including his late sister) were all born in the UK and so describe themselves as First Born Chinese .
5. The basis of Mr Shek's petition can shortly be stated. At the time of Anna's death, his parents were relatively new immigrants, did not speak English and had a very limited understanding of customs and practices in this country. Mr Shek senior made the decision to bury Anna on the basis of that limited understanding and was unable to communicate his true wishes and feelings. The funeral was a very quiet affair with only Mr Shek senior and one friend present, Mrs Shek being too upset to attend. At the time of the death, the local Chinese community was small and there was no identifiable burial ground for those of Chinese descent.
6. In the time that has elapsed, the family has put down firm roots and regard the North Tyneside area as their home, being fully integrated in

what is now a large Christian Chinese community. That community has established a Chinese section within General 21 and 23 of the Holy Cross Cemetery and the Shek family has already acquired graves within Section 21 and all other family members who have died have been buried, together, within it. By contrast, Anna is buried in an identified but unmarked grave site at the opposite end of the cemetery along with others with whom there is no connection. It is not possible to identify the surviving families of the others, still less to purchase outright the plot in which Anna lies. In any event, it is part of the culture from which they come that loved ones are buried whole and not cremated. There is no scope for further burials at the site of Anna's grave. It is the wish of Mr Shek, and that of his family, that the family, including Anna, be together in the same section.

7. Before me I have had the benefit of a statement from Mr Shek in support of his petition and his response to a query I raised as to evidence of specific Chinese tradition and/or practice that would apply to what otherwise appears to have been accepted as an Anglican burial. In addition to his written response, he has kindly sent me a DVD prepared by his sister Angela in which, by reference to the family grave in Hong Kong, it is sought to support the objective he seeks.

The law

8. 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.
9. 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.
10. In the circumstances of this case it is not necessary to set each one out but the following are directly relevant:

(ii) lapse of time

The Court held that the lapse of a substantial period prior to the petition was not of itself determinative but was a factor in assessing the genuineness of the petitioner's case. Thus, for example, long delay

with no credible explanation may tip the balance against the grant. In this case the delay is 34 years from burial to petition. Mr Shek explains that by reference to the extreme upset Anna's death caused most particularly the older members of the family and the difficulty the family had talking about Anna's burial. It was only on the death of their grandmother in October 2015, who herself wished for the family to be buried together, that it was possible to have a discussion about the subject. The petition was promptly issued on 22 November 2015 and thus, it seems to me, that the explanation for the delay is credible and understandable.

(vi) family grave

The Court held that the use of family graves are to be encouraged as they express family unity and are environmentally friendly in demonstrating an economical use of land for burials. As with the deceased in Blagdon Anna died young and the Court also noted that in the normal course of events parents would be expected to predecease their children and be the earlier occupiers of a family grave. So in Blagdon the sudden death of a young person was found to be one of a number of factors justifying an exception to the norm of permanence.

Decision

11. I am satisfied that there are indeed special factors in this case which make it an exception to the norm of permanence and I therefore authorise the exhumation of Anna's remains so that they may be reinterred in the family grave in Section 21.
12. In particular I find that these factors are established on the evidence:
 - (i) the death of Anna at a young age when she could not have expressed any view about where she would have liked to be buried;
 - (ii) the absence of any link between her and the community in which she was buried. Notwithstanding she is in the same Cemetery, she is at the opposite end of it and is buried separate and apart from her family and her unique community;
 - (iii) the understandable inability of Anna's father, as a recent immigrant with no English, to consult and communicate the wishes and feelings of the family at what was obviously a deeply upsetting time;
 - (iv) the importance of the family grave to members of this community. I was impressed by the family graves I was shown in Hong Kong in which large plots are obtained and maintained by the family to ensure that the family is buried together and I noted the longstanding tradition that, where families are split up, subsequent exhumation to achieve the objective of the family all being buried in the same place is common place;

(v) finally, the exhumation will make available another plot of land for use by someone else and is thus an economical use of land.

13. Accordingly the faculty is granted on the following conditions:

- (i) the coffin can be recovered sufficiently for the exhumation to be effective;
- (ii) any conditions imposed by the Environmental Health Department of North Tyneside Council are complied with.

His Honour Judge Simon Wood
Deputy Chancellor
29 January 2016