



DIOCESE of
WINCHESTER

Neutral citation: [2018] ECC Win 4

IN THE CONSISTORY COURT OF THE
DIOCESE OF WINCHESTER

29 August 2018

Before:

THE WORSHIPFUL MATTHEW CAIN ORMONDROYD,
CHANCELLOR

In the matter of:
Proposed Exhumation from St Thomas Worting
On the petition of:
1) Mrs Linda Ann Feeney

Petition determined on consideration of written representations

JUDGMENT

1. By this petition Mrs Linda Feeney seeks the exhumation of the ashes of her husband, Mr Sidney Feeney. These ashes were interred in the churchyard of St Thomas church, Worting as recently as 5 February 2018. Mrs Feeney initially sought exhumation so that her husband's ashes could be brought home and kept in an urn; by a letter of 16 July 2018 she explains that she plans to have the ashes re-interred in her garden. The petition is supported by her son and daughter, Mr Dean Feeney and Mrs Jane Nother. There are no other close relatives living and I have dispensed with the requirement for public notice accordingly.
2. As I understand the position from Mrs Feeney's letters, her husband wished to be buried "in Worting". There is no suggestion that the decision to bury his ashes in the churchyard was a mistake, or that it was intended as anything other than a permanent place of rest for his remains.
3. The relevant legal principles are set out in the judgment of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. The starting point is a presumption of permanence arising from the Christian theology of burial. In order for exhumation to be permitted, exceptional circumstances must be shown. The wishes of the family are clearly a very important factor, but those wishes alone are unlikely to provide sufficient grounds for exhumation – remains which have been buried are not a possession which can be disposed of at will, nor can they be moved for sentimental reasons or for the convenience of the family.
4. Mrs Feeney has written two very eloquent letters setting out her case as to why exceptional circumstances exist. She explains that she is going through horrendous grief and distress following the death of her husband. I do not doubt that for a moment, but in itself it is not a reason to permit an exhumation.
5. Mrs Feeney also explains that she has had a series of problems with the vicar; for example, she says that he said he would place a flower pot at the plot but never did so. As a result of these various disappointments she says that she now 'dreads' going to visit her husband's ashes as she never knows what she might find. It is not possible, or helpful, for me to investigate the rights and wrongs of these various complaints about the vicar. For the purposes of deciding this application for a faculty, I simply take the account at face value and assume that it is correct. What is more relevant, and appears to be indisputable, is that there has been a breakdown in the relationship between her and the vicar which now makes it painful and upsetting for her to visit her husband's ashes.
6. As I indicated to Mrs Feeney in correspondence from the registrar, I might be prepared to treat such a pastoral breakdown as evidence of exceptional circumstances which would permit exhumation and reinternment of the ashes elsewhere (although I

would be somewhat reluctant to do so). However, I will not take that course where there is no proposal to re-inter the ashes in consecrated ground or even a local authority cemetery. To do so would remove the ashes from a situation where they are subject to the protection of this court and the presumption of permanence in Christian burial, to a situation where they are not. This would be to undermine the permanence of Christian burial which I am required to protect.

7. Mrs Feeney also makes reference to her health, and explains in her second letter in particular that this is making it increasingly difficult to visit the ashes where they are currently interred. I do not doubt that Mrs Feeney suffers from poor health (I refrain from setting out the details in this public document) and can understand that it is making life difficult. I have a letter from her doctor to that effect. However, the Court of Arches in *Blagdon* explained that deteriorating health and consequent difficulty in visiting the grave were not sufficient reasons for permitting an exhumation (at pp307-308):

“If advancing years and deteriorating health, and change of place of residence due to this, were to be accepted as a reason for permitting exhumation then it would encourage applications on this basis... Such a practice would make unacceptable inroads into the principle of permanence of Christian burial and needs to be firmly resisted.”

8. There is no suggestion in this case of anything approaching “serious psychiatric or psychological problems where medical evidence demonstrates a link between that medical condition and the question of location of the grave”. That being so, I am afraid that I do not see the health issues referred to as amounting to exceptional circumstances.
9. I therefore refuse the faculty requested. I appreciate that this decision may be difficult for the family, and particularly for Mrs Feeney, but ultimately I must decide this petition in accordance with the law and with due respect for the permanence of Christian burial.

Matthew Cain Ormondroyd
Chancellor
Diocese of Winchester