

In the Parish of Stretton

In the Church of St Matthew

In the matter of a Faculty Petition by Christine Mary Marshall for the reservation of a grave space.

JUDGMENT

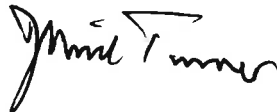
1. By a petition dated the 20th October 2014 Mrs Christine Marshall (58) seeks to reserve space, for 30 years, in burial plot 783 in the churchyard at Stretton in which, in due course, her cremated remains may be placed.
2. Her preference was, as I understand it, that full burial might have been possible, but given that there appears to be some uncertainty as to available space for two coffins in the plot in question, she has limited her request to placement of her cremated remains only.
3. Already interred in this plot are the remains of Mr David Bettles who, following an illness lasting some years, sadly died of cancer on 10th July 2013 aged 66. He was buried on 19th July 2013.
4. Mr Bettles ("the deceased") and Mrs Marshall were partners at the date of his death. They had developed a 'platonic' friendship in about 2009, had become intimate from late 2010, became 'engaged' in February 2011 and had shared a home from August 2011. They planned to marry though neither in fact became free to do so while the deceased was alive.
5. Each remained married to someone else. Each had left a long and, latterly at least, unhappy marriage. There can be little doubt that each had found comfort and love in what was, nevertheless, for both an extra- marital relationship.
6. The deceased had married Lorna Bettles in 1972. That couple had two daughters, now adult and themselves married, Katie Jane Hardie and Jill Morris.
7. Mrs Bettles and her daughters strongly oppose the petition.
8. All parties have consented to the petition being determined upon written representations.
9. It is consented to by the incumbent, churchwardens and Parochial Church Council who appeared to be of the view, contrary to a suggestion later made by Mrs Bettles, that no one else entertained expectations in respect of this plot. It appears Mrs Bettles herself may do so. That prospect, I know, distresses Mrs Marshall.
10. I have been provided with lengthy statements, supporting documents and some correspondence, all of which I have considered carefully. The strength of feeling on both sides is, perhaps unsurprisingly, considerable, though I have not considered it quite the 'cat fight on paper' Mrs Marshall fears.
11. She "begs" Mrs Bettles and the family (and by implication, the court) to grant her request.
12. The petition, she insists, is "much more than of earthly things"; it is about "love and souls" as well as "what Dave clearly wanted". She is persuaded that she would feel "a serenity and comfort for the remainder of (her) life" if she knew that "I would be where Dave had asked me to beand I wish to be".

13. She readily recognises that to "some readers" her request may seem "overdramatic". There can be no doubting her strength of feeling.
14. Equally, the deceased's family speak forcefully of the "untold distress" they will be caused should the petition be granted.
15. I have received and considered a letter from the Revd Jane Garside, who from March 2011 was the minister of St John's United Reformed Church, Warrington, where the Bettles had married and later worshipped regularly over many years. Ms Garside urged against the granting of the petition, pointing out that the couple had been married for many years, that Mrs Bettles had taken responsibility for, and funded, funeral arrangements, had chosen and paid for a suitable memorial and had negotiated acceptably 'neutral' wording in an endeavour to accommodate Mrs Marshall's feelings. St John's Church had no burial ground so burial there had simply not arisen. In any event, at the time of his death the deceased and Mrs Marshall lived in the parish and were on the Electoral Roll of St Matthew, Stretton.
16. I have also received letters supporting the petition from the deceased's sisters, Joan Burgess and Ann Heeson, each convinced "without a shadow of doubt" that their late brother would have wanted Mrs Marshall's remains placed with his.
17. At the heart of Mrs Marshall's request lies a conversation with the deceased which occurred in St Matthew's churchyard - where both have had lifelong local links and where Mrs Marshall's parents are buried - in March 2013 in which he is said to have expressed a clear wish to be buried there and to have Mrs Marshall's remains placed with his when the time came.
18. This, she reasons, reflected his heartfelt desire they should be "together forever", something she says they both wanted to occur "in life and death".
19. Mrs Hardie, the deceased's daughter, is inclined to discount this conversation (if it occurred) as "idle conversation with a contemplative man", something Mrs Marshall strongly rejects.
20. Mrs Marshall says that both were planning to divorce their spouses. She resists the term "affair" as a characterisation of their relationship, insisting that it had a quality of depth, seriousness and commitment.
21. There can be no doubt that she was heavily involved in supporting the deceased during his final months.
22. He had first commenced mediation in relation to divorce in mid-2012 and correspondence confirms a joint session with his wife in October 2012. He had also, in 2013, instructed solicitors to redraw his 1993 will to substitute Mrs Marshall as residuary beneficiary in place of his wife. That revised will was never finalised. Neither will gave any funeral or burial directions.
23. The deceased and Mrs Marshall cohabited during the twenty two months up to his death.
24. She was treated at that time (which I do not doubt was difficult and painful for all who loved the deceased) as his 'next of kin' in a number of formal contexts. After his death she achieved settlement of a legal claim (the details of which I have not considered) upon his estate. She was also heavily involved after the death with the coroner in respect of what were said to be a number of shortcomings in the defendant's clinical management.
25. She said she continues to visit the grave regularly and is much upset by the family's opposition to her (and she asserts, the deceased's,) clear wishes. Her expressions of regret at the family disharmony her petition has triggered sound to me genuine on paper. She

- believes, given time, that the deceased's daughters may come to accept the position. She believes she has the support of her own family in the current application.
26. She rejects the suggestion made by the Bettles family that she could, if she chose, have her remains interred with her own parents' remains which are in fact in the same row. That, she reasons, would not meet her or the deceased's firmly held wishes.
 27. Lorna Bettles' opposition, in which she is strongly supported by her daughters, is founded upon a sense that a two to three year relationship is hardly to be compared to a marriage of over forty years which was still extant (albeit fractured) at the time of death.
 28. Although the marital relationship had without doubt been difficult (and the papers descend to painful detail which it is unnecessary to outline here) the deceased had holidayed with his family as recently as 2010/11 and had kept in touch with his wife and his daughters until very shortly before he died. Contrary to what is said to have been an impression (wrongly) conveyed by Mrs Marshall, the revised will was never signed. No burial instructions, formal or informal, were ever given to anyone in the family.
 29. Further, Mrs Bettles was the principal beneficiary of his estate. She arranged and paid for the funeral and the memorial on the grave.
 30. She is concerned that Mrs Marshall may wish to have her (Mrs Marshall's) name added to the headstone in due course, something Mrs Marshall says is not the case. Mrs Marshall says she envisages no more than a 'memorial plaque on the ground', should the petition be granted.
 31. Mrs Bettles underlines the distress she, her family and her grandchildren are likely to be caused by the granting of this petition. For the latter she fears 'confusion and upset'.
 32. Her daughters share her views and support her opposition. It seems the father/daughter relationships had somewhat recovered after the initial pain of the realisation of the affair.
 33. Mrs Hardie has spoken of her grief as continuing to be 'raw'. She has been having counselling and 'cannot believe' that her father would wish the grant of this petition to be the 'continuing source of distress' it has the potential to be. Mrs Morris has spoken of her father's 'apology' to her shortly before he died. She too has said how distressed she feels at the petition.
 34. This is thus an unusual and difficult application to reserve a grave space. It differs from the more conventional run of such applications, where the issue is frequently about the availability of space or parochial policy.
 35. The jurisprudence is to be found in cases such as *Re West Pennard Churchyard*, [1991] 4 All ER 125; *Re St Mary, Dodleston Churchyard* [1996] 1 WLR 451. Where, as here, a parishioner has a legal right to burial – and there are no space implications of significance – applications are commonly granted. No parishioner, however, has the right to require a particular position in a churchyard. That is the problem in the present case.
 36. As in every reservation case, the court is required to exercise a discretion.
 37. There is now, I regret to say, a disproportionately painful and manifestly personal disagreement between parties who, in their different ways all loved the deceased and still cherish his memory.
 38. My decision will inevitably disappoint and distress one or other 'side'.
 39. The petitioner's intensity of feeling - that she may somehow secure continuing closeness to the deceased merely by ensuring, so far as she can, the (future) physical proximity of their

- mortal remains owes more, I fear, to subjective emotion, even sentimentality, than to Christian theology and the faith she professes. With great respect, she is mistaken.
40. The words of Jesus in Mark 12: 24 and 25 resonate in my mind, as I hope they may do in Mrs Marshall's.
 41. Reservation of a grave space remains, as I have said, essentially a discretionary remedy. That discretion must be exercised judicially. I must attempt to judge, however imperfectly, where any balance of hardship or upset may fall most heavily in a case such as this.
 42. I feel compelled to respect the objections of the deceased's wife and daughters here to what is requested.
 43. I do not doubt Mrs Marshall's sincerity in petitioning as she does but, in my discretion, I refuse her petition. I believe to grant it is likely to cause greater distress to more people over a longer period of time and that would not be right.
 44. It would, in my judgment, be wrong, in the face of opposition from members of a deceased's natural and marital family, to place pressure upon them to accept, without their agreement, into a family member's grave, the remains of another person, however close that person may have been to the deceased.
 45. It follows that the petition must be dismissed. The costs of and incidental to it shall be paid, in the usual way, by the petitioner. If appropriate, there shall be a correspondence fee to the Registrar in a sum to be agreed or as I shall determine.

David Turner



His Honour Judge David Turner QC

4th August 2015

Chancellor of the Diocese of Chester