

IN THE CONSISTORY COURT OF THE
DIOCESE OF ELY

IN THE MATTER OF A FACULTY PETITION FOR A GRAVE RESERVATION IN
THE CHURCHYARD OF ST ANDREW'S CHURCH WITCHFORD

THE HEARING

1. I gave judgment on 24th October 2015 at the end of the hearing. I did so because the parties had waited a great deal of time for the resolution of this issue. I said that I would give an expanded judgment in writing at a later date.
2. This hearing has been delayed, firstly to allow for a mediated resolution largely conducted by Revd Canon Fiona Brampton, but which was not successful, and because it has been exceptionally difficult to find a date on which all parties could be present.

THE PETITION

3. Jennifer Buckley applied for a Faculty to reserve a gravespace in the Churchyard at St Andrew's Church Witchford. Because she is not in the best of health, it is pursued by her son, Rod Buckley. Jennifer Buckley wants to be buried in a plot in which the human remains of Nathan Buckley rest. It is a double depth grave. The petition is dated 28th July 2014. In a letter from Rod Buckley which followed shortly afterwards he explained that his mother, who is not in the best of health, wishes to be laid to rest with her husband/partner, and the thought that she will not be terrifies her.
4. The Party Opponent, Olive Boswell, is the next of kin of Nathan Buckley. That Jennifer Buckley assumed the role of next of kin at the time of Nathan Buckley's death as recorded on various documents does not alter the position in law, that Olive Boswell is the next of kin. She is the eldest surviving child from Nathan Buckley's first partner, Violet Buckley. She is supported by her three sisters and other members of that branch of the family.

5. On 27th June 2013 Canon Brampton made an entry in the burial book that, after lengthy discussions with the Registry, "...Mr Nathan Buckley's grave will not be available for further burials and there will be no additional inscriptions on the headstone". I can appreciate why Olive Boswell believed, and still believes, that was an end of the matter. However Jennifer Buckley was entitled to apply for a Faculty to reserve the gravespace despite the clear terms in which Canon Brampton had dealt with the issue.
6. Without meaning any disrespect to any members of the family, for the sake of accuracy I shall refer throughout this judgment to both Violet Buckley and to Jennifer Buckley as the partners of Nathan Buckley even though both women would have considered themselves to have been, and were in all but law, married to him.

History and the Relationship between the parties

7. Nathan Buckley was born on 3rd March 1920. His first partner was Violet Buckley. They had six children, the eldest of whom is Olive Boswell, the named Party Opponent. Violet Buckley died in 1957. She was buried in a double depth grave in the churchyard at St Andrew's. One of their children died at the age of 20 and was buried with her. A second son died at the same age of 20 and was buried next to her in the same grave as his uncle.
8. Nathan Buckley's second partner was Jennifer Buckley. They began their life together in 1961, when he was 40 and Jennifer Buckley was aged 17, and had six children, the eldest of whom is Rod Buckley. Nathan Buckley died in 1986. He was buried in a double depth grave (D9 in the Churchyard register) in an available space in the Churchyard at St Andrew's which was some rows away from Violet Buckley. The space was not reserved by way of a Faculty. His headstone was erected by, and paid for by, Jennifer Buckley.

9. No instructions were given by Nathan Buckley before he died as to his burial or other arrangements. This is by no means uncommon within the traveller community. Nathan Buckley was a traveller.
10. The two sides of the family are at odds, not only in respect to this issue, but more generally. They do not mix, despite living in close proximity with each other on land inherited from Nathan Buckley. It is much to the credit of both sides of the family that in the meetings they had with Canon Brampton and at the Consistory Court hearing they displayed respect and consideration for the deeply held views expressed by both sides.
11. I add that I am in no doubt that each of Nathan Buckley's partners in turn loved him and cared for him as well as any partner could.

THE ARGUMENTS FOR EACH SIDE

12. The Petitioner states that his mother, Jennifer Buckley, spent 25 happy years with Nathan Buckley and has held him in love and devotion for the 28 years or more since he died. She visits his grave every week. She wants, when the time comes, to be laid to rest with him.
13. He described in his evidence how Nathan Buckley's first family turned their back on his mother, Jennifer, and how, at the time that Nathan Buckley was ill and then died, they turned their back on him. It was his mother who cared for Nathan Buckley.
14. Rod Buckley suggested that Nathan Buckley over-compensated his children by Violet Buckley for the loss of their mother and their two brothers. Although that was understandable, it led to resentment when Jennifer came on the scene who they considered as a rival for their father's affection. They tried to come between them and are doing so again by trying to prevent his mother being buried with Nathan Buckley.

15. He suggested that they are denying his mother her rightful place in the same grave as her husband, Nathan Buckley. He suggested that there is evidence in the statements in support of the Party Opponent that they are seeking to discriminate against Jennifer because she is not a traveller. Rod Buckley observes that there are members of the family of the Party Opponent who also are not travellers.
16. I allowed the Petition for a Faculty to be read as representing the views of Jennifer Buckley. In addition, in his closing remarks, Rod Buckley read a statement from his mother.
17. The Party Opponent's position is that it would be disrespectful to their mother were Jennifer Buckley to be buried in the same grave as their father because they believe that their parents were reunited when he died in 1986. It is out of respect for their mother that they have opposed this Petition for a Faculty.
18. When their mother died at only 32 years of age, it was their father's intention to be buried with her. However that intention changed on the death of her brother, also called Nathan.
19. Further, in keeping with their traditions and culture, visiting the grave of a relative to show remembrance and respect is important to them. Nathan and Violet Buckley's extended family would be uncomfortable visiting Nathan Buckley's grave knowing that Jennifer Buckley was buried there as well. According to the family of the Party Opponent she has caused untold rifts and misery within the family. Olive Boswell states that visiting her father's grave, were Jennifer Buckley to be buried there as well, would amount to betrayal of their mother.
20. Frank Buckley gave evidence to a similar effect. He and the family have no objection to Jennifer being buried in the Churchyard, only to her being buried in the same grave. He sees it as logical and appropriate that neither partner is buried with Nathan Buckley, but that they are both buried in the same churchyard. It respects everyone if

they are buried separately. He denied that there was any prejudice against the Petitioner.

21. I allowed the statements of Sandra Lloyd and Kathleen Boswell to be read in support of the case for the Party Opponent.

THE POSITION IN LAW

22. The gravespace does not belong to the family but is vested in the Incumbent of the Parish. The Priest-in-Charge has the final say as to who is buried in the churchyard where the deceased has a right to burial in that Churchyard, and a discretion as to where within the churchyard they are buried, subject to the Faculty jurisdiction.
23. Property in the headstone is vested in the person who erected and paid for it, that is Jennifer Buckley and on her death to the eldest surviving child as her heir-in-law.
24. Where there is no written instruction as to the wishes of the deceased before or at the time of burial, then it is his personal representative whose wishes should be put first in respect of the grave.
25. The reservation of a gravespace by way of a Petition for a Faculty is a discretionary relief.

DECISION

26. It is no part of my duty to reach any decision as to where the rights and wrongs lie in the division which has arisen between the two families, nor do I need to do so in order to reach my decision.
27. There is no consensus as to whether Jennifer Buckley should be buried in the same gravespace as Nathan Buckley, and there never will be. I have considered all the

views expressed orally and in writing at the hearing and I have given due weight to the views of Olive Boswell as next-of-kin.

28. Because reservation of a gravespace is a discretionary relief I judge that I should not exercise my power to grant a Faculty to reserve Plot D9 for Jennifer Buckley. In my judgment the dispute between the parties weighs in favour of non-intervention.
29. The Priest-in-Charge's discretion as to burial within the Churchyard at St Andrew's remains. Whilst she will wish to have regard to the fact that I have refused a Faculty for Jennifer Buckley to be buried with Nathan Buckley, there is no reason at all why she should not permit Jennifer Buckley to be buried in the same Churchyard as Nathan Buckley.
30. I have not addressed the question of any inscription that could at some time be added to the headstone because it is not relevant to my judgment. I remind everyone that no inscription could be added to the headstone without the agreement of the Priest-in-Charge. She has already made her views clear in the entry made in the Burials Book.
31. In reaching the decision that I have, I have at all times been fully aware of the pain and anguish Jennifer Buckley will suffer from an adverse finding and she has the sympathy of the court. However, in a case where there are high emotions on both sides, it is paramount that I allow the legal considerations to lead me to what I judge is the correct decision.
32. Before moving on to the issue of costs, I would like to commend Canon Brampton for her careful handling of a very tricky pastoral issue which has gone on for about two and a half years. At all times she has followed the guidance provided by the Registry and has tried to apply it to the all too human position that confronted the two sides of the family who came to her for help. That both sides have been willing to meet with her and discuss these issues in the way they have is a tribute to her handling of the issue.

COSTS

33. The parties were warned well in advance of this hearing of the likely consequences in terms of costs on the unsuccessful party. In order to underline that, I ordered both parties to make a payment into court on account of costs of £700. Rod Buckley did so and his cheque is held by the Registry. The Party Opponent claimed that she was in no position to make such a payment on financial grounds and without seeking loans from members of her family. I decided not to enforce the order against the Party Opponent, being certain that they were at least on notice of the issue of costs.
34. Further, every effort was made to identify the issues involved and the likely outcome. In a note I wrote to all parties dated 15th January 2015 I set out the principles I would have in mind when approaching this issue subject to any realistic and supportable arguments to the contrary. Every attempt has been made through mediation to try to reach a solution which would obviate the need for this hearing.
35. I also note that in his letter dated 6th August 2014 Rod Buckley requested an oral hearing with the Chancellor for his mother and for him to discuss these matters in person. It follows that from the time his mother applied for a Faculty he was anxious to have a hearing.
36. The total costs come to £2,673.64 Of that figure the court fees, which are fixed subject to a prescribed scale of statutory tariffs and cannot be negotiated downwards, amount to £793.00. I do not judge that any other party should pay towards the costs.
37. The balance of the figure for costs, £1,880.34, is made up of disbursements of £120.00 (no VAT) and the "correspondence" fee (the fee for preparatory and ancillary work and correspondence in relation to petition for faculty) of £1760.64 (inclusive of VAT) which has been calculated taking into account the hourly rates for fee-earners applied by Lee Bolton Monier-Williams, the Registrar's firm, less a 20% discount because it relates to ecclesiastical work. I will give the Petitioner 21 days to make any written representations in respect of the amount charged as the correspondence fee.

38. I direct that the Registry sends to the Petitioner a schedule explaining how the correspondence fee has been arrived at. The 21 days will run from the next working day after the date on the letter sent to the Petitioner enclosing the schedule



His Honour Judge Leonard QC

Chancellor of the Diocese of Ely

30th October 2015



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