

Re St Andrew's Chinnor [2019] ECC Oxf 4

In the Consistory Court of the Diocese of Oxford
Before the Reverend Christopher Rogers, Deputy Chancellor

In the matter of St Andrew's Chinnor

Judgment

Introduction

1. This is an application by Mrs Ann Bragger for a ledger stone for her late husband, Mr Roy Bragger. It was necessary for the application to come to me due to the type of ledger stone proposed, a desk tablet, being outside the diocesan churchyard regulations, which state that ledger stones should be flush with the ground. The application is dated 15th February 2019.
2. The petitioner refers to a near-identical ledger stone being approved by the Rector, and includes photographs of that stone, along with a number of other similar ones.
3. The Rector stated by e-mail that she '*would object*', having turned down similar applications, but that given that she was leaving the diocese she would leave it to the churchwardens to deal with.
4. The churchwarden, Mr Chris McGuire, was given clear warning by letter from the Registry of the costs consequences of becoming a party opponent (pursuant to Rule 10.3 of the Faculty Jurisdiction Rules 2015), but still chose to do so.

Grounds of Objection

5. Mr McGuire's stated Grounds of Objection are as follows:

(1) Previously applied for and rejected by Rector.

(2) The Rector was applying the Rules.

(3) I was at a meeting when the Archdeacon instructed Maggie Thorne [the Rector] to apply the churchyard rules, witnessed by Pat Haywood, churchwarden.

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6. These grounds were dated 10th June 2019, after receipt of the Rule 10.3 letter, as directed by me.
7. Also further to my directions, Mrs Bragger sent an e-mail by way of Reply dated 27th June 2019. In this Reply she stated that a new desk-style ledger stone had appeared next to her mother's plot after the Rector, Ms Thorne, had turned down her own application. The Rector is said to have denied any knowledge of it, whereas the family of that person stated that Ms Thorne granted permission for it. A copy of the application for the same was attached, showing Ms Thorne's signature, dated 26th September 2018, purporting to authorise the ledger stone. That would not however be within the jurisdiction of the incumbent, due to the stone being outside of the diocesan churchyard regulations (and therefore only authorizable by the Chancellor or me).
8. In the light of the Reply I indicated to Mr McGuire that I was minded to grant the requested faculty on a summary basis, and invited reasons to dissuade me from that course within 14 days. The Registry received the following statement in response, from both churchwardens (in addition to confirmation that public notice of the petition had been displayed as per my directions):

We are disappointed however and will in 'any case' have difficulty applying the churchyard rules as indicated by your careful letter, that outlines the procedures.

Judgment

Basis for summary judgment

9. Where a petition is disputed, as in this case, it would normally proceed to a full hearing, save that the parties can agree for it to be dealt with on the basis of written representations. In the present case however, the Grounds of Objection do not in my view disclose grounds which would have any real prospect of success were the matter to proceed, for the reasons set out below.
10. The Faculty Jurisdiction Rules 2015 (**'the Rules'**) do not include a section equivalent to Part 24 of the Civil Procedure Rules (**'the CPR'**), allowing for

applications for summary judgment. Nor do they include a rule dealing with striking out a statement of case or part thereof. Rule 1.4(1) does however provide that the court '*must further the overriding objective by actively managing cases.*' Rule 1.4(2)(c) goes on to provide that includes '*deciding promptly which issues (if any) need full investigation and a hearing in court and accordingly disposing of others summarily or on consideration of written representations.*' [emphasis added]

11. In the circumstances I have a duty to consider in a case such as the present one whether the issues raised need full investigation, or whether they should be dealt with summarily. The overriding objective is defined at Rule 1.1(1) as being '*to enable the court to deal with cases justly,*' which Rule 1.1(2) states as including a concern for saving expense, dealing with the case in a way which is proportionate to the importance of the case and the complexity of the issues, and ensuring that it is dealt with expeditiously and fairly.
12. The Rules do not however provide for any test to be applied when deciding whether to dispose of cases summarily. I therefore take note of the test under Part 24.2 of the Civil Procedure Rules, that summary judgment may be given if a party has no real prospect of succeeding in either bringing or defending a claim, or on a particular issue. This seems reasonable given the similarity of the overriding objective in the CPR and in the Rules, and the absence of any other criteria or rule dealing with the same. Furthermore, as dealt with below, I do not consider the Grounds of Objection to have any prospect of success, and this petition would not therefore depend on the precise formulation of the test.

The merits

13. The first of the Grounds, that a previous application had been made and refused by the Rector, is irrelevant. Furthermore, because the proposed ledger stone is outside the diocesan churchyard regulations it was not within the Rector's power to grant such a faculty; only the Chancellor or I as his deputy can grant such a faculty.

14. The second of the grounds, that the Rector was applying the rules, is similarly irrelevant. For the reason given above, the Rector's jurisdiction under the diocesan churchyard regulations is limited, whereas I am able to grant permission for a ledger stone which does not fall within those regulations. As stated by Chancellor Tattersall in **Re St Saviour, Ringley** (19 October 2018, neutral citation [2018] ECC MAN 3), '*The correct test when deciding whether a memorial which fell outside the regulations should be approved was whether the petitioners had shown a good and substantial reason why it should be so approved.*'
15. The third ground, that the archdeacon instructed the Rector to apply the diocesan churchyard regulations is similarly irrelevant. As already stated, it is for the Rector to apply the regulations, but that does not affect my jurisdiction.
16. The Grounds of Objection do not therefore disclose any, or any real, prospect of successfully opposing the petition. In furtherance of the overriding objective, I further consider that to allow these Grounds of Objection to be considered at a hearing, or even on further written representations (having given the party objector the opportunity to make representations at this stage) to be grossly disproportionate to the subject matter. This leaves me with the question of whether the petition ought to be granted on its own merits. As stated above, the test for that is whether there is a good and substantial reason as to why the ledger stone should be so approved.
17. There have been a number of decisions by chancellors making clear that the simple existence of other ledger stones in breach of churchyard regulations is not a reason to allow further breaches: such ledger stones do not set a precedent. That is clearly the law.
18. In the present case there is firstly nothing offensive about the desk-style ledger stones which populate this area of the churchyard, though they are generally forbidden due to the increased difficulty in mowing the grass around them and potential tripping hazards. The sheer number of such pre-existing stones in this case must however make the hurdle for any such further memorials lower than were it to be the first, given that the detrimental effect of such a new memorial

will therefore also be lower. Such reasoning would not extend to other parts of the churchyard, and the churchwardens are correct that the regulations should be generally be upheld.

19. A further factor is relevant in addition in this case, and that is the reputation of the church. Given the apparent authorisation of a number of other desk-style ledger stones in this area of St Andrew's churchyard, including one very recently, and apparently authorised by the same incumbent who seems also to have refused the present application, I am concerned that the church should not be seen to be acting inconsistently; or worse, to be giving preferential treatment to certain people over others. It is a central principle of the rule of law that all should be treated equally, and one important reason for the faculty jurisdiction is the upholding of this principle. Even were I not convinced that the present faculty should be granted as a result of the preponderance of other desk-style ledger stones in this part of the churchyard, I would grant the faculty so as to ensure that the petitioner is treated in the same way as others seem to have been treated by the church in this parish.
20. In the circumstances I order that the faculty requested be granted.

Costs

21. Having reserved costs when giving directions, I have considered ordering the party opponent, Mr McGuire, to pay the costs of my earlier directions, and of this judgment. I will however order that there is no order as to these costs, and that the petitioner pay only the standard costs of making the application. My reasons for not ordering Mr McGuire to pay costs are twofold:
 - (1) I am aware of the burdens involved in being a churchwarden during an interregnum, and while I do consider his actions in opposing this petition without good grounds to have been unreasonable, he was trying in good faith to uphold the diocesan churchyard regulations, and his objections arose from a failure to understand the law; and
 - (2) The apparent inconsistency in the application of the diocesan churchyard regulations within the parish is a matter for the incumbent prior to the interregnum rather than Mr McGuire.

CHRISTOPHER ROGERS