

Neutral Citation Number: [2026] ECC Chd 1

IN THE CONSISTORY COURT OF THE DIOCESE OF CHELMSFORD

IN THE MATTER OF TOLLESHUNT KNIGHTS CEMETERY

PETITION NO. 3659

JUDGMENT

1. The Petitioner, Natalie McCain, seeks a Faculty authorising the erection of a memorial in Tolleshunt Knights Burial Ground for her late father, Barry McCain.
2. A Faculty was sought originally because the shape of the proposed gravestone differs slightly from those permitted by the Churchyard Handbook, which sets out the Churchyard Regulations in this Diocese. This was not something that the Petitioner appreciated when she and her brother, Mr Tom McCain, who were their late father's executors under his will, made arrangements for his gravestone to be manufactured. They did not seek the approval of the Incumbent for the proposed gravestone, as they ought to have done. And the stonemason, who ought to have known better, did not alert the Petitioner to the need to consult the incumbent, and to the fact that the proposed gravestone did not comply with the Churchyard Handbook.
3. The gravestone has therefore already been made, and a Faculty is being sought belatedly. The inscription on the stone reads (the forward slashes denote new lines in the text), *"In Loving Memory/ of/ BARRY CARL McCAIN/10 April 1949 – 12 January 2023/ A Dear Husband,/ Proud Dad and Grandad/ A true character/ Missed every day"*.
4. The PCC supports the Petition. The DAC recommends the proposed memorial. So did the Incumbent (who has now moved to a new post outside the Diocese).
5. I do not consider that the shape of the gravestone is seriously problematic. Had that been the only issue, I would simply have granted a Faculty without further comment.
6. However, during the period when Public Notices were displayed, an objection to the wording on the gravestone was received from Mrs Terena McCain, the late Mr McCain's widow. Her objection is to the phrase, "A dear husband". She says that Mr McCain would

never have used the term “dear” as a term in relation to a family member, so it does not, she says, fit with the rest of the memorial. She would prefer the word “loving” instead.

7. Mrs McCain has indicated that she does not wish to become a Party Opponent, but that she would like me to take her objection into account.
8. The Petitioner has indicated that she has taken legal advice, and has been told that she and her brother have the “right”, as their father’s executors, to decide on the inscription on his gravestone. She therefore invites the Court to disregard Mrs McCain’s objection. But in fact executors have no such right. When burial has taken place in consecrated ground in a churchyard, there is no right to erection of a memorial, other than with the permission of the Consistory Court. That permission is granted either by the incumbent or priest-in-charge under delegated authority, or by the issue of a Faculty by the Court: see Re St. Augustine’s, Droitwich Spa [2016] ECC Wor. 2 (Mynors, Ch.), at [33]. And, as explained in Droitwich Spa, “there is no overriding legal principle to determine who should have the power to decide as to the manner in which a deceased person should be commemorated – if at all” (ibid., [59]).
9. It is to be regretted that no agreement had been reached between the late Mr McCain’s family members on the wording of the headstone before matters got to this stage. It also appears that the Incumbent was not made aware of any wider family disagreement (and it is not possible to say what her position would have been, had she been made so aware).
10. It is evident from the materials that have been placed before me that, unfortunately, there is ill-feeling between Mrs McCain and the late Mr McCain’s children. I do not know the reasons for that ill-feeling, but it appears that the present dispute is symptomatic of wider issues, rather than being the cause of them.
11. Be that as it may, I have now to determine what is to happen, as a matter of my discretion and in view of the circumstances that have arisen. In reaching the conclusions that I have, I have been greatly assisted by the judgment of Eyre, Ch. in Re St. John the Evangelist, Layley [2022] ECC Lic. 2, which was also a case where there was a family dispute in relation to the wording of a memorial (though in that case the memorial had already been erected).
12. It would be possible for me to direct that there be no memorial at all, or a memorial that only records Mr McCain’s name and dates of birth and death, unless and until the McCain family is able to reach agreement on wording. (Such a course was followed in Droitwich

Spa.) But such agreement seems, in view of the entrenched positions of the family members, unlikely; and all involved are, at least, agreed that Mr McCain should be commemorated.

13. That being so, it seems to me that the possibilities are twofold: to allow the gravestone that has been manufactured to be erected, or to require a new gravestone to be produced with different wording that satisfies Mrs McCain (but possibly not the Petitioner).
14. Neither solution is wholly satisfactory, and I recognise that in coming to the conclusion that I have, it will necessarily cause the “losing” party some distress. However, it seems to me that distress, one way or the other, is unavoidable.
15. After careful consideration, I have come to the conclusion that the Petition should be allowed, meaning that the gravestone that has been manufactured already can be placed on the grave. I have taken into account, and acknowledge, that the gravestone was chosen without consulting Mrs McCain, that the form of words is not what she would have chosen, and that the present situation is far from ideal. However, and set against that, are the following matters:

- (i) Whilst, as I have said, the position of the Petitioner and her brother as executors does not give them any right to dictate the wording of Mr. McCain’s memorial, it is, nonetheless, a matter which I am entitled to take into account. In that regard, I agree with what was said by Eyre, Ch. in Lawley (at [32]):

“In my judgement the court is to have regard in exercising its discretion to the fact that the executors will have been appointed by the deceased person to administer his or her estate. Such an appointment by the deceased is to be seen as an indication of the persons whom he or she wished to be in charge of the arrangements for his or her burial. The legal rights of the executors do not extend to determining the form of a memorial but there is an element of artificiality in distinguishing between the power to control the manner and place of interment [which is a matter for the executors] and the decision as to the form of a memorial... Where there has been family conflict before death the choice of executors may be seen as an indication of where the testator saw the truth as lying or at least of those whom the testator was choosing to act in the context of that conflict. The presumed views of the deceased in that regard are by no means conclusive but they do require careful consideration to be given to the views of the executors.”

- (ii) I am satisfied that the Petitioner and her brother, on the material that is before me, thought that they were acting appropriately as executors in selecting the gravestone which they did and without full consultation with Mrs McCain. Indeed, they believed

(wrongly) that they had a right to act as they did. There is no basis for any finding that they were acting through spite or malice in choosing the inscription.

- (iii) The wording of the gravestone which has been chosen is not unseemly, or otherwise intrinsically objectionable. It may indeed be that the late Mr. McCain would not, as Mrs McCain suggests, have used the word “dear” in relation to a family member (though the Petitioner strongly disputes this). But the inscription does not suggest that he did. Rather, it states that he *was* dear to those around him – as I am sure was the case. What is more, the inscription describes his position as husband, father and grandfather, and thus acknowledges that he loved and was loved by all his family, including Mrs McCain.
- (iv) Finally, there is the fact that the headstone has already been manufactured. As I have noted above, this was the result of a misunderstanding on the part of the Petitioner and, in part, of inaccurate advice received from the stonemason. That is not, of course, to condone what occurred – those seeking to erect a memorial over a grave have a responsibility to ensure that the proper procedures are followed, and having caused a gravestone to be made, in circumstances where approval for it has not been sought, should not be regarded as a trump card. However, it is undeniable that it would now be wasteful and expensive for a new headstone to be manufactured. That is far from being the only consideration; but it is a matter which I can and do take into account in considering where the balance lies.

16. For all these reasons, I find and hold that a Faculty should issue in relation to this Petition.

Philippa Hopkins K.C.
Chancellor
5 February 2026