

Re St Andrew (Old Church), Hove

Judgment

1. By a petition dated 23 July 2004, Valerie Doreen Alvarez and Terrence Anthony Barson Guy seek a faculty from this court permitting the exhumation of the cremated remains of their late father, Reginald Stewart Guy. The remains lie buried in the churchyard of St Andrew (Old Church) where they were interred on 6 October 1976 following Mr Guy's death on 30 September. The petitioner siblings wish for the cremated remains to be reburied in Hove Cemetery.
2. The petition, as originally submitted, was conspicuous by its lack of specificity. Accordingly I issued directions on 3 September 2004 drawing attention to the recent case law on the principles governing exhumation from consecrated ground, and indicating that additional information would be required before full consideration could be given to this petition. This was supplied under cover of an undated letter received at the diocesan registry on 22 June 2005. It was sent by Hanningtons, funeral directors, who continue to correspond on behalf of the petitioners.
3. The reasons advanced in support of the petition may be summarised as follows:
  - i. that the churchyard has deteriorated and the presence of vagrants under the influence of drink or drugs make it unsafe to visit the grave;
  - ii. that, in consequence, dignity and respect for the remains is lacking;
  - iii. since St Andrew's churchyard has been closed for burials it was impossible for the petitioners' mother to be buried alongside the remains of her late husband and therefore she was buried in Hove Cemetery. They would be reunited if the faculty were granted.
4. In an unsigned document submitted by Hanningtons in the name of the first petitioner, something of the background to the petition was explained. The late Mr Guy had died in 1976 after forty-four years of marriage. His death was sudden and his widow was inconsolable. She used to visit her late husband's grave on a daily basis until, at an unspecified date, she sustained a fall and moved to be near her sister in Watford. At the age of 85 she returned to Hove and recommenced visiting her late husband's grave.

5. Mrs Guy was mugged at the George Street entrance to the churchyard and required hospital treatment for a broken arm, bruising and shock. She continued visiting the grave but was nervous. There was a decline in the condition of the churchyard; the lack of maintenance allowed vagrants to gather. Litter accumulated, fences and paving stones were broken, and there were no facilities for flowers. A supermarket was constructed on a contiguous site. A bundle of photographs are illustrative of the state of the churchyard.
6. Apparently Mrs Guy always wished to be laid to rest with her husband. Her family, however, did not wish her to be buried in St Andrew's churchyard. Accordingly, following her death in November 2001 her remains were buried in Hove Cemetery. The wish of the petitioners is that the remains of their parents be united in a single grave, and in an environment which younger family members will find less unpleasant and upsetting to visit.
7. The team vicar of St Andrew (Old Church), Fr Henry Pryse, has been consulted on the matter. He readily concedes that the churchyard has appeared untidy and that persons have congregated there whom an elderly lady might have perceived as threatening. However, he indicates that since the photographs were taken, the fence has been replaced and much of the undergrowth cleared, which has greatly improved matters. Acknowledging that for whatever reason the late Mr and Mrs Guy are interred in different places, he raises no objection to the relief sought by the petitioners.
8. Against this background I turn to the law which I am required to apply in cases of this type. Any disturbance of human remains in consecrated places of burial requires the authority of a faculty. See the judgment of Wills J in *The Queen v Dr Tristram* [1898] 2 QB 371. The principles which govern the grant or refusal of any such faculty were explored in the recent decision of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299; [2002] 3 WLR 603. At paragraph 20 it is summarised thus:

'Lawful permission can be given for exhumation from consecrated ground as we have already explained. However, that permission is not, and has never been, given on demand by the consistory court. The disturbance of remains which have been placed at rest in consecrated land has only been allowed as an exception to the general presumption of permanence arising from the initial act of interment.'

Reference is made to a paper entitled 'Theology of Burial' of September 2001 which was prepared by the Rt Revd Christopher Hill, Bishop of Stafford and extracts from which are quoted in the judgment including the following at

paragraph 23:

'The permanent burial of the physical body/the burial of cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their 'journey'), entrusting them in peace for their ultimate destination, with us, the heavenly Jerusalem.'

9. A full copy of Bishop Hill's statement contains a concluding paragraph, not reproduced in *Blagdon*, which reads:

'In cases of Christian burial according to Anglican rites, prescinding from cases where there has been a mistake as to the faith of the deceased, I would argue that the intention of the rite is to say 'farewell' to the deceased for their 'journey'; to commend them to the mercy and love of God in Christ; to pray that they may be in a place of refreshment, light and peace till the transformation of resurrection. Exhumation for sentiment, convenience, or to 'hang on' to the remains of life, would deny this Christian intention.'

10. The Court of Arches in *Blagdon* stated at paragraph 33:

'We have concluded that there is much to be said for reverting to the straightforward principle that a faculty for exhumation will only be exceptionally granted'.

This general test has been variously articulated, not least by my distinguished predecessor, Chancellor Quentin Edwards QC, as 'good reason' and 'special and exceptional grounds'. See *In Re Church Norton Churchyard* [1989] Fam 37, and *In Re St Mary the Virgin, Lyminster* (1990) 9 CCC 1 respectively, as approved in *Blagdon* at paragraph 34. The Court of Arches in *Blagdon* continued at paragraph 35:

'The variety of wording which has been used in judgments demonstrates the difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion. We consider that it should always be made clear that it is for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial, that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery, is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her.'

11. I have considered with care the facts and matters put before me on behalf of the petitioners. I can find in them nothing which might legitimately be

classified as a special circumstance such as to justify a departure from the principle of Christian doctrine as to the permanency of burial. It is a regrettable fact that many churchyards are not kept in as good order as one would wish. There are many competing claims on parochial finances and where liability for upkeep of a churchyard has passed to a local authority, the standard of maintenance is not consistent. I am gratified to note that there have been improvements to the churchyard. However, if the state of a churchyard, or the clientele it attracted, were a special circumstance, then the concept of portable remains would gain considerable currency and the permanence of Christian burial would be compromised.

12. Here, there are several matters which militate against the grant of a faculty: the passage of time since 1976 when Mr Guy was buried; and the fact that the proposed place of re-interment is not consecrated ground (see Hanningtons' letter). Whilst neither of these factors taken singly ought properly to be regarded as determinative, they are weighty matters to which this court must give proper regard. It seems to me that the theology of Christian burial demands that particular scrutiny be given to petitions, the ultimate effect of which would be the transfer of remains from consecrated to unconsecrated ground.
13. Conversely, there is the fact that all relatives consent (and for these purposes I assume that Elsie Guy is in agreement); that the petition has the support of the parish priest; and that the effect of the proposal would lead to the creation of a family grave in circumstances where land for burials is scarce. However, as the careful judgment of the Court of Arches in *Blagdon* makes plain these matters are far from determinative, whether individually or cumulatively.
14. As I understand the position, the petitioners were aware of their mother's wish for her remains to be laid to rest with those of her husband but they nonetheless chose to inter them otherwise than in the churchyard of St Andrew (Old Church), not because it was full but because of their assessment of the state of the churchyard itself. That was a conscious decision, which may have been predicated upon an assumption that their father's remains could in due course be moved. There is nothing to suggest that this understanding was brought about by misleading advice or by a mistake on their part.
15. It is possible that the two sets of remains can be united by moving those of Mrs Guy from Hove Cemetery to the plot where Mr Guy's remains are interred at St Andrew (Old Church). This would eliminate the concerns of the petitioners, particularly if the condition of the churchyard has improved as the

team vicar suggests. However, even if this possibility is not open to the petitioners, there is still no evidence of a special circumstance in the papers which have been placed before me. Exercising my discretion in accordance with the legal parameters articulated in *Blagdon*, I am compelled to dismiss this petition. The costs, to include a correspondence fee for the registrar, must be borne by the petitioners.

The Worshipful Mark Hill  
Chancellor

14 July 2005