

Re All Saints Beckley

Judgment

1. By a petition dated 15 November 2006 which has been faxed to my chambers as a matter of urgency, the Archdeacon of Lewes and Hastings seeks a faculty from this court for the exhumation of the cremated remains of Christopher Robin Bell, deceased. The need for expedition will be apparent from the facts which I shall briefly relate. They have been set out in a letter from the Archdeacon together with supporting documentation.
2. Mr John Blakeborough Bell, the father of Christopher Bell, died in 1996. He was buried in Beckley churchyard in a double depth grave. It was intended that Mrs Margaret Ella Bell, his widow and Christopher's mother, be buried in the same plot. She was predeceased by her son Christopher who was cremated and whose ashes were interred in the plot following his death in 1999.
3. Mrs Bell died on 1 November 2006 and her burial was scheduled for 13 November 2006 following a funeral service. It was envisaged that her coffin would be laid to rest above that of her late husband in the double depth grave where it has always been intended that they would lie together. This intention, however, stood to be thwarted by the presence of the cremated remains of Christopher, the disturbance of which would have been necessitated in digging the grave for Mrs Bell.
4. Since the disturbance and/or minor displacement of Christopher's remains would have amounted to a 'technical exhumation', the permission of this court in the form of a faculty was required. Since no faculty had been obtained, the Archdeacon directed that no interment should take place pending directions from this court. Accordingly the funeral took place on Monday but not the burial, Mrs Bell's coffin being returned to the chapel of rest at the undertakers.
5. I understand that during the course of the day on Monday, the grave digger in fact moved Christopher's remains whilst preparing the plot to receive Mrs Bell's coffin. This is regrettable and I do not condone such behaviour. However this is a highly unusual circumstance and events were moving with some rapidity. I import no improper or disrespectful intent.
6. The Archdeacon now seeks a retrospective faculty to regularise what has taken place, and to authorize the relocation of Christopher's ashes to the extent necessary to permit the interment of Mrs Bell's coffin.
7. I am satisfied that in these circumstances the Archdeacon has locus to bring these proceedings. By virtue of the pastoral and disciplinary functions which he exercises in the diocese as an officer of the bishop and in his own right, he acted entirely properly in intervening in the matter and bringing the matter before the court. I note

that he has been in contact with the family of the late Mrs Bell and discussed the matter at length with them. The family have signified their consent to the proposed faculty in signed correspondence and I am again satisfied that the Archdeacon acts with their authority and out of a pastoral concern for their well being at this time of bereavement.

8. Orders for exhumation are sparingly granted by the consistory court. The onus of proof in a petition of this type is on the petitioner. 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 the approach 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 is reproduced as 'A Note on the Theology of Burial in Relation to Some Contemporary Questions' in (2004) 7 Ecc LJ 447. Its concluding paragraph, not reproduced in *Blagdon*, 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 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 CCCC 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.’

The decision in *Blagdon* followed an earlier ruling in *Re Christ Church, Alsager* [1999] Fam 142, [1999] 1 All ER 117, reproduced in Hill, *Ecclesiastical Law* (Second edition, Oxford University Press, 2001) at page 712.

11. The thrust of the recent jurisprudence is to the effect that the chancellor has an unfettered discretion as to the circumstances when an exhumation may be ordered but in the light of the Church of England’s doctrinal position, such faculties should only be granted when exceptional grounds can be shown.
12. I am entirely satisfied in the facts as related in the evidence before me amount to exceptional circumstances. Of the relevant factors set out in paragraph 36 of the judgment in *Blagdon*, several are deserving of specific mention. First, lapse of time: although seven years have elapsed since Christopher died, this application was made with promptitude once the problem this caused had been identified. Secondly, mistake: here it seems to me incontrovertible that had those responsible for the interment of Christopher’s ashes considered the matter they would certainly have placed the ashes in such a position as would have permitted the later interpolation of Mrs Bell’s coffin without the need for disturbance of Christopher’s remains. Only through human error or oversight were they misplaced at the time. Thirdly, local support: although the entire family supports the application (including Christopher’s widow who has written a separate letter) and it is urged upon me by the Archdeacon, I should record that this is not a determinative factor because applications of this nature are determined on their individual merits as a matter of principle and not upon the wishes or desires of family, friends or clergy. Fourthly, precedent: the exceptional nature of this case means it is unlikely to form any sort of precedent and this judgment should not be read as signifying a departure from Christian doctrine. Fifthly, family grave: expressions of unity signified by multiple burials in family graves are actively encouraged by the Court of Arches for both pastoral and environmental reasons. The effect of the grant of a retrospective faculty would be to bring together in a single plot the remains of mother, father and son.
13. The factors in *Blagdon* are not exhaustive. Each case falls to be considered on its own facts. However, I am of the opinion that all the *Blagdon* factors militate in favour of the grant of a faculty as does the application of compassionate common seal underscored by sound doctrine. This is a truly exceptional case. I therefore order that a faculty pass the seal so as to permit the exhumation of the ashes of Christopher Robin Bell and their re-burial in a seemly and reverent manner as proximate as possible to their original position where their presence will not impede the interment of the coffin of Mrs Bell. I do not consider that a Home Office licence is required in

this instance. The reburial is in consecrated ground and the displacement is minor. I am mindful that many people travelled a considerable distance for the funeral of Mrs Bell and that, if possible, the burial should proceed with immediate effect, and I so order. I waive any requirement of consultation with the incumbent and the PCC and such other procedural irregularity (if any) as may have come about due to the speed with which this petition has been determined. I am grateful to the Archdeacon for dealing with this most regrettable hiatus swiftly and sensitively and I extend my condolences to the family of the late Mrs Bell: may she rest in peace and rise in glory.

The Worshipful Mark Hill
Chancellor

15 November 2006