

Re St Mary's Churchyard, Goring-by-Sea

Judgment

1. By a petition dated 18 October 2008, but not actively pursued on evidence until far more recently, Ms Nicola Lorraine Jordan seeks an order of this Court permitting the exhumation of the cremated remains of her late father, Cyril Gordon Ridgley. She has submitted an affidavit through her solicitors, EJ Moyle, and I am satisfied from the correspondence that she is content that I determine the matter on written representations, having made directions which were communicated to Ms Jordan in a letter from the diocesan registrar dated 12 November 2008.

The facts

2. Mr Ridgley died on 9 January 2006. His cremated remains were interred in the churchyard of St Mary's, Goring-by-Sea, in its Garden of Remembrance. Ms Jordan accepted this eventuality with reluctance, although her wish had been for her father's remains to be interred in what has been described as a 'family grave' elsewhere in the churchyard, where the remains of his mother, father and stepmother had previously been laid to rest. Ms Jordan was apparently informed via Dillistone Funeral Service, who made enquiries of the parish office, that the grave (or perhaps the churchyard) was full and that no additional remains could be interred therein. Reluctantly she accepted that advice.
3. Subsequently in 2007, Ms Jordan's uncle, Norman Ridgley died. He was Mr Ridgley's brother, and his cremated remains were interred in the 'family grave' on 22 March 2007. This surprised Ms Jordan and enquiries were made of the incumbent and the undertaker, which have led to the present petition. I have seen a letter dated 30 March 2009 from Ms Natasha Reekie of Dillistone Funeral Service.

The law on exhumation

4. 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 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.'

5. 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 CCCC 1 respectively, as approved in *Blagdon* at paragraph 34, which 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.'

6. The Court of Arches deliberately refrained from offering any prescriptive guidelines as to how chancellors should approach the test of exceptionality, mindful of the difficulties caused by an attempt so to do by the Chancery Court of York, being the parallel appellate court for the Northern Province. See *Re Christ Church Alsager* [1999] Fam 142.
7. However the Court of Arches made two general observations which may be pertinent in the situation which now presents itself. First it observed at paragraph 36(ii) that a mistake as to the location of a grave can be a ground upon which a faculty for exhumation may be granted. Faculties can in these circumstances readily be granted, because they amount to correction of an error in administration rather than being an exception to the presumption of permanence, which is predicated upon disposal of remains in the intended not an unintended plot or grave. Here the mistaken belief, so it would seem, related not to the location of the grave as such, but as to the ability (whether legally or otherwise) to inter Mr Ridgley's remains in the preferred 'family grave'.
8. The second, and perhaps more significant observation comes at paragraph 36(vi) of the *Blagdon* judgment:

The concept of a family grave is, of course, of long standing. In a less mobile society in the past, when generations of a family continued to live in the same

community, it was accepted practice for several members of a family to be buried in one grave. Headstones give a vivid picture of family relationships and there are frequent examples of one or more children predeceasing their parents due to childhood illnesses, which were incurable. Burials in double or treble depth graves continue to take place at the present time. They are to be encouraged. They express family unity and they are environmentally friendly in demonstrating an economical use of land for burials.

9. In *Blagdon*, the Court of Arches observed that ‘faculties have been granted in the past for the bringing together, or accumulation, of family members in a single grave’ (paragraph 38) but sounded a clear warning when allowing the appeal that ‘In doing so it should not be assumed that whenever the possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted’ (paragraph 40).

Applying the law in this case

10. The court must therefore scrutinize this petition with care. Of note, are (i) the swift enquiry to this court, albeit the prosecution of the petition may have lacked a little diligence. The interment was a little over some three years ago; (ii) the misapprehension (to use a neutral term) as to whether Mr Cyril Ridgley’s remains could be interred in the ‘family grave’; (iii) the factors identified by the Court of Arches in *Blagdon* which lend support to the concept of the bringing together of family members in a single grave; and (iv) the written consents of Mr Ridgley’s widow and his children which are exhibited to the petition. I observe that the petition has the support of the incumbent and PCC but remind myself, that this carries little weight in the exceptionality test. I am pleased to record, however, the support and assistance given to Ms Jordan by the Reverend Andrew Tremlett (then vicar) and by the other clergy and churchwardens in bringing the current proceedings.
11. Ms Jordan makes some criticisms of Dillistone Funeral Services, and suggests that they have offered to pay for the cost of securing the exhumation and reinterment. For my part, I can see nothing for which they can be criticized and no reason why they should bear any part of the costs of this petition nor any consequential costs arising from such order as I may make. Should they wish to come to a private arrangement with Ms Jordan, that is entirely for them. However, there is no formal application for costs or other recompense, even though Ms Jordan has been represented by solicitors. I have determined this matter on written representations and it would be unconscionable for the court to make such an order without giving Dillistones the opportunity of being heard. I would be prepared to entertain an application made on notice from Ms Jordan and would assess the matter entirely on its merits. My provisional view, however, on what I have seen to date is that an entirely understandable and innocent mistake precluded the interment of the remains of Mr Cyril Ridgley in the ‘family grave’ for which no culpability (in the legal sense) attaches either to Dillistones or to those at the parish office.
12. I therefore conclude for the reasons outlined above, that there are exceptional circumstances in this instance which justify a departure from the doctrinal principle and permit the granting of a faculty for the exhumation of the cremated remains of

Mr Cyril Ridgley from Row 9, Plot 8 and their reinterment in the 'family grave' (to be formally identified on the churchyard plan). In accordance with the practice of the consistory court, the costs of the petition are to be paid before the faculty is issued and no steps are to be taken in relation to the exhumation and reinterment in the meantime. If Ms Jordan wishes to pursue an application for financial redress against Dillistones, then she must notify the registry of her intention to do so prior to the issue of the faculty, and I commend that she takes appropriate legal advice before so doing.

The Worshipful Mark Hill QC
Chancellor

29 April 2009