

Re St Mary Magdalene, Rusper

Judgment

1. By a petition dated 14 June 2010, Emma Doyle, Anthony Hewlett, Simon Hewlett and Jamie Hewlett seek a faculty for the erection of a memorial in the churchyard of St Mary Magdalene, Rusper where Anita Hewlett was buried in February 2009. The proposed memorial, to the detail of which I shall return later in this judgment, does not comply with the terms of the Churchyards Regulations, which are to be found at Appendix D of the *Chancellor's General Directions Concerning Churches and Churchyards* (Issue 2, Easter 2007). Accordingly, the incumbent had no delegated authority to permit its introduction, and the Reverend Nick Flint entirely properly communicated this to the petitioners, informing them that they might nonetheless petition this court for a faculty.
2. At a meeting of the PCC on 28 June 2010, the following resolution was passed, with 8 votes in favour and 1 against (no abstentions):

‘That the PCC support and approve the introduction of a memorial in the churchyard commemorating the late Mrs Anita Hewlett and commend acceptance of the request to the DAC.’

This resolution is unsatisfactory in two respects: first it is directed to the DAC which is an advisory body and not the consistory court where the decision lies. Secondly it deals (on its face at least) with the general principle of a memorial and not with the specificity of the particular memorial proposed.
3. The proposal was referred to the DAC which considered the matter at its meeting on 8 July 2010 and it put its response in a letter of 15 July 2010. The DAC has a wealth of experience in aesthetic, artistic, architectural and archaeological matters which is why the consistory court has a statutory duty of consultation. The letter raised a number of difficulties:
 - i. the irregular nature of the cut stone and its belief that Horsham stone does not retain lettering well;
 - ii. the lack of any informative text to speak of the ‘talents and interests’ of Mrs Hewlett;
 - iii. that a dream catcher is not a Christian symbol;
 - iv. that the wording says nothing about Christianity or faith;
 - v. that the expression ‘Ktelo x’ is meaningless without explanation.
4. Regrettably the views of the DAC were not passed on to the petitioners nor to the incumbent until the latter part of August 2010. This was an inexcusable delay at the registry and can only have added to the anxiety and distress of the petitioners. I wish to add my personal apology to that of the registry.
5. The papers were posted to me on 13 September 2010 and, mindful of the time which had been lost over the summer, I issued directions on 16 September 2010. Those

directions sought the consent of the petitioners to the determination of the matter on written representations under r 26 of the Faculty Jurisdiction Rules 2000 and raised the possibility of the archdeacon intervening to explore a compromise proposal.

6. By letter dated 21 September 2010 from Mr Simon Hewlett on behalf of the petitioners, agreement was forthcoming for the matter to proceed by way of written representations. In consequence the papers were returned to me under cover of a letter dated 30 September 2010 and mindful of the need to resolve this matter with expedition, I have promoted the drafting of this judgment above other professional commitments.
7. In addition to the written observations of the DAC to which I have made reference, I have had regard to the following material:
 - the content of the petition itself, which seems to be in the hand of Emma Doyle
 - an undated note from Anthony Hewlett, husband of the late Anita Hewlett, directed to members of the PCC
 - a typed note from Emma Doyle dated April 2010 addressed to the Chancellor
 - a typed note, undated, from Simon Hewlett addressed to Sir or Madam
 - a typed note, also undated, from Jamie Hewlett addressed to the Chancellor
 - a series of points contained in an undated note from the Reverend Nick Flint
 - a letter to the diocesan registrar from Mr Anthony Hewlett dated 3 September
 - the letter from Mr Hewlett dated 21 September 2010, to which I have already made reference
8. I hope I do no disservice to the petitioners if I summarise their application as follows. Mrs Hewlett was an accomplished artist whose work included embroidered tapestries inspired by the Canterbury Tales. Another of her passions was Native Americans, and she gained a degree in that subject in later life. She continued to pursue this interest despite the onset of Parkinson's disease, which she fought, and never gave up her dreams.
9. The design of the proposed memorial is that of Jamie Hewlett and the letter-cutter which the family has in mind is Andrew Swinley of Fontwell. The original design included a dream catcher. The proposal has been modified in the course of the exchange of correspondence to which I have already made reference. In particular I note Anthony Hewlett's response dated 3 September to the letter of the DAC and Simon Hewlett's letter of 21 September, which indicates that the family are now prepared to forgo their request for the inclusion of a dream catcher in the hope of a swift resolution of what has been a lengthy and traumatic process. In addition, the family has now proposed that the text be modified so as to include some additional information about the late Mrs Hewlett and a translation of the term 'Ktelo'. These changes are timely and graciously made and go a long way to meet the concerns legitimately expressed by the DAC.
10. The general approach of the consistory court is set out in the Churchyard Regulations:

Incumbents and priests-in-charge are temporary custodians not merely of the church building but, where there is one, of its burial ground. Responsibility for its care and maintenance rests with the PCC. Churchyards are an important feature of both rural and urban communities: an historic record of successive generations, a home for funerary

monuments of architectural and aesthetic excellence, a setting for the church itself (many of which are listed buildings), and a place for reflection and prayer. It should be borne in mind that churchyards are different in their nature from municipal cemeteries. In addition, the upkeep of a churchyard is a considerable burden upon the limited resources of PCC funds.

Residents of parishes, and certain others, have a legal right of burial in the parochial burial ground. This right is not restricted to the baptised nor to members of the worshipping community. Thus the clergy are brought into direct contact with relatives of deceased parishioners in circumstances of extreme distress and often in a highly charged environment. Whilst this provides a valuable opportunity for ministry and outreach it can also create pastoral difficulties.

It is essential that the bereaved understand the meaning and consequences of burial in consecrated ground. Two particular features arise:

First, the nature of the rite of burial is to say 'farewell' to the deceased and to commend them to the mercy and love of God in Christ to await the transformation of resurrection. There is accordingly a theological finality to the burial of all interments, including those of cremated remains, in ground consecrated according to the rites of the Church of England. The prospect of exhumation at some future date and the relocation of remains must be ruled out.

Secondly, the bereaved must understand that by seeking a burial in consecrated ground, they are submitting to the jurisdiction of the consistory court which regulates the type of headstone or other marker which may be erected. This jurisdiction exists for reasons which are in part theological and in part aesthetic, since what may be unobjectionable in a municipal cemetery might be considered inappropriate (or even offensive) in an historic churchyard. It is the responsibility of the clergy to bring these matters to the attention of the bereaved at the earliest opportunity, and to inform them of these Regulations, so that their decision to seek an interment in consecrated ground must be fully informed. A failure to do so, however traumatic the pastoral situation, is a dereliction of duty and may prove more damaging in the long term. Many parishes find it helpful to provide a handout containing this information which can be taken away and read by the bereaved, and the chancellor commends this practice.

These Regulations are designed to encourage best practice and to eliminate bad practice. It is unlawful for a monument to be introduced into a churchyard without permission. Generally such permission derives from the chancellor in the form of a faculty. However, for administrative convenience and to minimise expense, the chancellor delegates to the incumbent the authority to permit the introduction of a monument provided it is of a type which complies with the detailed provisions contained in these Regulations. The written application which accompanies these Regulations should be used in all cases (see Appendix E). During any vacancy, and in the absence of a priest-in-charge, the authority is exercised by the rural dean.

Applications for memorials should generally not be made until six months have passed since the interment. Not merely does this allow the ground to settle, but the passage of time permits a more reflective decision to be made than is often the case in the naturally emotional state of the early stages of grief. All close family members need to be consulted and a consensus achieved. The incumbent can offer help at this time in making suggestions to the bereaved of the types of memorial which might be introduced by reference to photographs or by pointing out examples in the churchyard itself. If this conversation precedes a visit to the stonemason it should avoid the difficulty and disappointment engendered by the selection of an inappropriate design from a catalogue. Although the grave itself is the property of the incumbent, any memorial will belong to the heir-at-law of the person commemorated and that person carries the duty to maintain it and the legal liability for its safety.

A headstone is a public statement about the person who is being commemorated. Making the right choice of stone, design and inscription is important not only to the relatives or

friends who are going to provide the memorial, but also to the wider community because of the effect which the headstone may have upon the appearance of the churchyard. Attractive, well conceived designs by skilled and imaginative craftsmen should be encouraged. In the search for a wider range of designs than those usually seen, reference should be made to the *Churchyards Handbook*, the booklet *Memorials by Artists* and other resources which can be made available by the DAC. Sculpture or other statuary is not discouraged but must be authorised by faculty.

Also to be encouraged are fulsome inscriptions which give a flavour of the life of the person commemorated rather than blandly recording a name and dates. Epitaphs should honour the dead, comfort the living and inform posterity. They will be read long after the bereaved have themselves passed away. A memorial stone is not the right place for a statement about how members of the family feel about the deceased nor how they would address him or her were they still alive. Passages of scripture, which have a timeless quality, are to be preferred.

11. It is unfortunate that the family of Anita Hewlett may not have been aware when they chose for her a place of burial in consecrated ground that they were submitting themselves to certain restrictions as to any memorial which might be erected. This case is a reminder to the diocese as a whole of the importance of making clear to relatives that different considerations apply in churchyards from those which pertain in municipal cemeteries.
12. In the light of the concessions made by the petitioners, the matters which I am called upon to decide fall into two categories: the material of the stone and the inscription to be etched onto it. The use of Horsham stone in this churchyard will be unusual though not unique. Equally the fact that it is rough hewn will be exceptional. Despite the reservations of the DAC, I am persuaded by the petitioners who have the support of the incumbent and the PCC that an exception might be made provided that the inscription was otherwise appropriate for a Christian burial ground. Indeed, in many ways, this highly personal stone might be seen as a welcome addition to what might otherwise be a rather monochrome series of 'catalogue' headstones which have become commonplace in more recent years.
13. The inscription which is now proposed – as I understand the content of the more recent correspondence will be as follows:

Anita Cecilia Elizabeth Hewlett
2 March 1937 – 7 February 2009
Beloved wife, loving mother,
artist and dreamer

*The determination of the human spirit
is most humble and joyous to behold*

Ktelo x
'Until I See You'

In these particular circumstances I would be prepared to authorize the foregoing inscription on condition that the proposed dream catcher design is excluded; should the petitioners wish to include an etching of a single horizontal feather on the bottom of the stone (as appears on the sketch) I would regard this as unobjectionable. In my judgment, this wording accommodates much of what was wanted by the family to remember a much loved relative, whilst at the same time retaining the reverence and

dignity of the Christian burial ground. If, on reflection, the petitioners wish to propose some minor modifications to the inscription I have set out above, they should refer their proposals to me for approval before the stone is cut. This adjudication does not set any form of precedent. Future applications will be considered on their individual merit.

14. I should like to express my thanks for the gracious and dignified manner in which the petitioners have presented their case, and for the appropriate concessions which they have made. I should also like to record my gratitude to the Reverend Nick Flint for his pastoral and sensitive involvement in the matter. I trust that my decision now brings this matter to a close, and that the memorial may be fabricated and erected which honours the life of a remarkable individual. In the circumstances of this case, I propose waiving my fee for preparing this judgment.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

5 October 2010