

In the matter of St Mary, Pulborough
And in the matter of Shirley Katherine Jones/Doe (deceased)

Between:

(1) Ben Doe
(2) Mark Doe

Petitioners

and

(1) The Reverend Paul Welch
(2) Anton Matthews

Respondents

Written Reasons for Order Made on 14 August 2012

1. On 14 August 2012, the hearing of this petition was adjourned after the evidence of the parties had been heard. An interim order was made requiring the removal of a headstone which had been introduced over the grave of Shirley Katherine Jones (Doe) without lawful authority. These are the written reasons for that order, a copy of which is attached. The petitioners are the late partner and son (respectively) of the deceased. The first respondent is the parish priest. The second respondent is a stone mason who was joined as a party to the proceedings shortly before the hearing.
2. No headstone may be introduced into any Church of England churchyard without lawful authority. Such authority takes the form of a faculty issued out of the consistory court for the diocese. However, parish priests have a discretion (but not an obligation) to permit the introduction of certain types of headstone under the delegated authority given to them by the diocesan chancellor provided that the proposed headstone comes within certain detailed types and categories prescribed in the Churchyard Regulations (Appendix D to the Chancellor's General Directions, 2007).
3. By a petition dated 19 March 2012, the petitioners Mr Ben Doe and Mr Mark Doe seek a retrospective faculty for the erection of a headstone over the deceased's grave. The stone was erected on or about 23 December 2011. The erection of the headstone was unlawful. No faculty had been issued permitting its erection; and although an application had been made to the parish priest, written consent had not been given. The application seems to have been signed on 27 June 2011 by Mr Ben Doe and on 12 December 2011 by Mr Anton Matthews, the stone mason.
4. There is a difference of recollection as to what was said in a number of conversations involving Mr Ben Doe, Fr Paul Welch (the parish priest) and Mr Matthews. The court's findings on this disputed evidence will be addressed in due course when the full judgment is written. It suffices, for present purposes, to note that the headstone

does not comply with the Churchyard Regulations. There may be many reasons for this, but one which is obvious and uncontested is that it is of a polished (and not matt) appearance. Mr Matthews was well aware of this. He said in evidence that he was disconcerted to notice that when he unwrapped the headstone it did not comply with what he had ordered. However, rather than return it to the manufacturer (as he said he could have done) he decided to erect it nonetheless.

5. It is unfortunate and regrettable that both Mr Ben Doe and Mr Matthews signed the application form which claimed that the parish priest had jurisdiction to permit the introduction of the stone when, as it now transpires, he clearly did not. It follows that even if Fr Paul Welch had in some way intimated that the proposed headstone was acceptable, such would have been a nullity and of no effect as it was not within the scope of his delegated authority. Again, these are matters for exposition in the full judgment which will be delivered after further evidence and submissions.
6. Of more immediate and pressing concern, however, is the following. The final page of the petition whereby Mr Ben Doe and Mr Mark Doe seek a retrospective faculty includes the following:

“Please state ... the names and addresses of all known close relatives of the deceased and whether, to the knowledge of the petitioner(s) each of the names is aware of and in support of the petition.”

7. In the space provided for the answer to this question was inserted Mr Ben Doe's name and address with the description “partner of 40 years” and Mr Mark Doe's name and address and the description “son”. Both were said to support the petition. At the foot of the petition, immediately after the space for the insertion of the above information a statement of truth was signed by both Mr Ben Doe and Mr Mark Doe. The statement reads as follows:

“The statements in this petition and the answers to the questions above are true to the best of the knowledge and belief of each of us.”

8. In the course of the oral evidence before me (which I did not require to be taken on oath) it transpired that information was, at best, incomplete and, at worst, deliberately misleading. The statement of truth had been falsely signed by both petitioners. The falsity was highly significant and relevant. Far from the petitioners being the only close relatives of the deceased, she had three daughters. This had been hinted at in paragraph 19 of the witness statement of Fr Paul Welch which mentioned that the deceased's daughters had found it impossible to visit their mother's grave in recent months.
9. There was no adequate explanation from Mr Ben Doe or Mr Mark Doe as to why they had made such a false statement, which they conceded had the effect of misleading the court, whether intentionally or otherwise. I was not convinced by their assertion that they did not understand the question. It is clear and unambiguous.

10. Mr Ben Doe told me in evidence, however, that he had been entered into bail in relation to pending criminal proceedings and it was a condition of his bail that he had no contact with the three daughters of the deceased. He informed me that he was facing charges of sexual assault and incest which were to be tried later in the year.
11. It was obvious to the court that the matter could not proceed to a final determination until the views of the daughters had been ascertained. The case therefore had to be adjourned. The issue for the court, therefore, was whether the headstone should remain in situ pending the resumed hearing or be removed. After hearing submissions from all the parties, I concluded that the appropriate course was to secure the removal of the headstone. I did so for the following reasons:
 - i. That it was important that the views of the deceased's daughters were obtained;
 - ii. That consultation needed to be genuine and open and that it should not be predicated upon a *status quo* which had been brought about by unlawful activity;
 - iii. That the family situation was highly charged and that there would be significant pastoral consequences;
 - iv. That I took a dim view of the attempt to mislead the court by omitting all reference in the petition to the three daughters and signing a false and misleading declaration of truth;
 - v. That Mr Matthews indicated that the stone could be removed relatively easily in less than an hour (leaving the base in situ) and that he could house it at his premises without charge until the petition was determined;
 - vi. That Fr Paul Welch believed that he could speak with the daughters and establish their views in the hope of finding some degree of common ground.
12. I therefore required Mr Matthews to remove the headstone by or before 4.00 pm on Friday 17 August 2012. I indicated that were the daughters to signify their consent to its retention (whether permanently or on a short term basis) I would reconsider the matter. Following the hearing, Fr Paul Welch contacted the registry indicating that Mr Ben Doe would like the time for compliance with the order extended to allow further opportunity to negotiate with the daughters but I declined to make such an order.
13. A copy of the order dated 14 August 2012 is attached to these Written Reasons. Mr Matthews should be reminded that a failure to comply with an order of the consistory court may amount to a contempt which can be referred to the High Court for the imposition of penalty.
14. I shall make further directions to bring this matter to a conclusion once the views of the daughters have been established.

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(2) Mark Doe

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(1) The Reverend Paul Welch
(2) Anton Matthews

Respondents

Order

BEFORE The Worshipful Mark Hill QC sitting in the parish church of St Mary, Pulborough
on Tuesday 14 August 2012

UPON Mr Anton Matthews having been joined as a party to the proceedings

AND UPON hearing oral evidence and submissions from each and all of the parties to the proceedings and reading the contents of the hearing bundle

AND UPON Mr Anton Matthews consenting to store the disputed headstone at his premises until such time as this petition is determined

IT IS ORDERED AND DIRECTED

- (1) That the hearing be adjourned part heard so that the three daughters of the deceased may be consulted in connection with the matters raised in the petition;
- (2) That by or before **4.00 pm on Friday 17 August 2012** Mr Anton Matthews remove the headstone which was erected in December 2011 at the grave of Shirley Katherine Jones/Doe (deceased) and retain the same in safe custody until further order of this Court;
- (3) That the matter be referred back to Chancellor for further directions as to how the petition is to be resolved following:
 - i. Consultation with the three daughters of the deceased;
 - ii. Further discussion between the parties and also the three daughters of the deceased to be facilitated by the Reverend Paul Welch.
- (4) That the costs of today's adjourned hearing be dealt with at the conclusion of the resumed hearing or upon determination of the petition following written representations in accordance with the Chancellor's further directions.

The Worshipful Mark Hill QC
Chancellor

14 August 2012