In the Consistory Court of the Diocese of Chichester CH 057/12

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

Judgment and Directions on Application to Withdraw Petition

1. By letter dated 23 August 2012 the petitioners expressed a desire to withdraw their petition for a faculty seeking a retrospective faculty in respect of a headstone which had been unlawfully introduced into the churchyard of St Mary, Pulborough at the grave of Shirley Katherine Jones (Doe) deceased.

2. The application to withdraw comes at a very late stage and in very regrettable circumstances. Indeed the matter is currently part-heard before me, a hearing having been convened in the church on 14 August 2012 at which evidence from all the parties was heard. The hearing was adjourned to allow an investigation as to the views of the deceased's daughters on the headstone. The petition had omitted any reference to the existence of the daughters. An interim order was made on 14 August 2012 requiring the second respondent (Mr Anton Matthews) to remove the headstone and to retain it at his premises until the petition had been determined. The deadline for the removal of the headstone was 4.00 pm on Friday 17 August 2012. I subsequently supplied written reasons for the interim order.

3. In order that the Court might fairly deal with the application to withdraw the petition and make consequential directions, not least on the considerable court costs involved, I required each of the parties to put submissions in writing. Mr Ben Doe requested an extension of time for compliance, which was acceded to. I have now had an opportunity of considering written submissions from all the parties; in the case of the petitioners they have come in the form of a letter dated 6 September 2012 from Messrs Dakers, solicitors, albeit that they declined to come onto the court record.

4. The picture which emerges from the submissions makes very unhappy reading. The interim order provided for the removal and safe retention of the disputed headstone pending a final decision after the views of the deceased's three daughters had been sought. One outcome which was left open was the reintroduction of the headstone unaltered. That is no longer possible because Mr Mark Doe took the deliberate and calculated act to destroy it. I use the term calculated because it is apparent that Mr Doe gathered together representatives of the local press to photograph and report on this unnecessary and upsetting act of sacrilege. The highly partial and largely inaccurate press coverage of the event has been brought to my attention. Furthermore, the erection in the churchyard of notices likening an alleged requirement to destroy the headstone to Nazi persecution of the Romany people is wholly misleading. This court expressly provided for the safe retention of the headstone intact. It was Mr Mark Doe, entirely of his own volition, who took it upon himself to take a sledge hammer to his mother's headstone. There was no order of the court which required him to do so. On the contrary the court wished the headstone to be preserved pending completion of the hearing and a final determination.

5. Messrs Dakers offer no apology for Mr Doe's conduct. On the contrary the letter seeks to justify it. First it states that Mr Doe removed the headstone and destroyed it. This seems to be factually incorrect as all the other evidence points to the fact that he brutally destroyed it first whilst it was in situ at his mother's grave and in proximity to many other graves in the sacred churchyard. The shattered pieces were only later removed. Secondly, the letter says "This is in line with travellers' beliefs, namely that only the family is able to remove a gravestone once erected". I find this assertion difficult – if not impossible – to accept. Both Mr Mark Doe and Mr Ben Doe addressed me at some length when the temporary removal of the headstone was being considered prior to the interim order being made requiring Mr Matthews to remove the headstone. Neither suggested that it would be problematic for Mr Matthews to do so either at this stage, or when the order was circulated, even though it was abundantly plain that the responsibility was to be Mr Matthews. Even if they only became aware of this alleged conflict with this alleged travellers' belief at a later stage, they could have applied to the court for a variation to the order but did not do so. They are forceful and articulate individuals. They have no problem in expressing themselves, as is apparent from Mr Ben Doe's application to extend time for submitting written representations.

6. However, the letter from Messrs Dakers, whilst it is somewhat disingenuous as to the manner in which the headstone came to be removed, makes the obvious point that now it is no longer present, there is no practical utility in seeking a retrospective faculty for its retention and that the proper course is for the petition to be withdrawn. Messrs Dakers implicitly recognise the invariable practice of the consistory courts that upon the withdrawal of a

petition, the court costs fall to be paid by the petitioners. They were made aware by the registry that the costs have been estimated at £2,600 and make an open offer on behalf of their clients to make a contribution of £1,000 towards these costs.

7. This offer of settlement is inappropriate. This is not an inter-partes costs order which can be subject to negotiation and agreement so as to obviate a detailed assessment. The court fees are fixed subject to a prescribed scale of statutory tariffs. The figure cannot be negotiated downwards by the parties. The primary submission made by Messrs Dakers, therefore, is that another party should pay a proportion of the costs. They maintain that the whole situation is the fault of the Second Respondent, Mr Matthews, and in consequence he should pay something in excess of £1,600 towards the court costs while his clients contribute £1,000.

8. The reason for this submission, Dakers maintain, is that Mr Matthews is to blame and, they say, he has admitted as much in his written submissions to the court. Mr Matthews, to his credit, has candidly admitted that he erected the headstone without the requisite permissions but he describes this as an honest mistake. It is, of course, a mistake in which both petitioners are similarly complicit. However the court costs – the bulk of them at least – have arisen not from this honest mistake but from the petitioners desire to seek a retrospective faculty for the retention of a headstone which was unlawfully introduced. Those costs increased as the matter came on for hearing due to a number of factors for none of which Mr Matthews was responsible.

9. Mr Matthews was not to blame for the false declarations on the petition which sought to shield from the court the existence of the deceased's three daughters. Nor is it likely that Mr Matthews knew that Mr Ben Doe was facing criminal charges of rape, indecent assault and incest relating to the daughters. It was these factors which have been causative of the increase in costs. Arguably, the honest mistake on the part of Mr Matthews would have led to a petition being issued for the removal of the headstone which had been introduced without appropriate authority. This would have attracted a statutory fee and a modest further correspondence fee on the part of the registry. Mr Ben Doe would then have been free to choose a headstone which was in compliance with the Churchyard Regulations.

10. Where, however, legitimate criticism can be made of Mr Matthews concerns his conduct after the interim order was made. It was he who was required to remove the headstone by 4.00 pm on Friday 17 August. The fact that, on his own admission, he was drinking coffee with both Mr Ben Doe and Mr Mark Doe at a nearby hotel at 3.15 pm is concerning since he had told me in evidence at the hearing that it would take about an hour to uplift the stone. With only 45 minutes remaining he clearly had no intention of complying with the court order. His apparent reason for doing so was that sometime

after 3.00 pm he had been paid by Mr Mark Doe for the supply of the stone and considered that thereafter Mr Doe owned it. However, the order was not dependent upon any transfer of title, as the jurisdiction of the court persists whoever owns the stone. Mr Matthews was not relieved of his personal responsibility under the order. He could have applied to the court for a variation of the order or asked to be discharged from his duty of compliance but he did neither. His letter gives the unfortunate impression that he was more concerned with his firm's debt recovery than with complying with the court's order. The fact that he may have felt intimidated by Mr Mark Doe explains, though does not excuse, his contempt of court.

11. I must therefore deal with the appropriate order of costs in this unusual situation. I accept that some very limited costs may have arisen due to the honest mistake of Mr Matthews as discussed above. With this in mind I order that Mr Matthews makes a contribution of £250.00 towards the court costs. The remaining balance is to be paid jointly and severally by Mr Ben Doe and Mr Mark Doe. Payments are to be made on or before 4.00 pm on 9 October 2012. The total costs may have risen a little beyond the estimated £2,600 in the light of the representations made by Messrs Dakers and others which had to be considered in this judgment.

12. I have considered remitting this matter to the High Court for consideration of whether Mr Matthews is to be punished for his self-evident contempt of court. He was ill-advised to allow the matter to get so close to the deadline of 4.00 pm without taking steps to remove and store the headstone as required. And his decision to ignore the order simply because he had been paid is based upon a woeful misunderstanding of the law, but I have some sympathy for the situation in which he found himself and consider that in the circumstances it would be inappropriate to refer the matter for consideration by a High Court Judge. However, I am concerned at the level of understanding of Mr Matthews as to the practice and procedure of the ecclesiastical courts and as to the strict guidelines which apply in consecrated churchyards. I therefore propose making it a condition of the withdrawal of this petition that Mr Matthews and his firm are disbarred for a period of twelve months from undertaking works in consecrated ground within the diocese of Chichester. Should he already be contracted to perform any such work, he should notify the registrar immediately and consideration will be given to allowing him to honour such contracts. Equally should he consider that being disbarred would cause him or his firm undue hardship, then he is at liberty to request the court to vary or amend the terms of the condition.

13. Subject to the condition relating to Mr Matthews and upon discharge of the orders for costs made herein, this petition will stand withdrawn.

The Worshipful Mark Hill QC

Chancellor 17 September 2012