

In the Consistory Court of the Diocese of Chichester

No 1226

In the matter of St Mary, West Chiltington
And in the matter of the grave of Michael John Fitzgerald, deceased

Between

Malcolm Seamus Dexter Fitzgerald

Petitioner

and

(1) The Reverend Stephen Merriman
(2) The Parochial Church Council of St Mary, West Chiltington

Additional Parties

Judgment

1. By a petition dated 3 August 2020, the Petitioner, Mr Malcolm Fitzgerald, seeks a confirmatory faculty to permit the retention of certain kerbs and slate chippings which were introduced at the grave of his late father without the prior authority of a faculty.
2. Petitions such as this are not uncommon but this is somewhat unusual in that the Petitioner has corresponded with the registry far more than would generally be expected. This has led to the Court making a series of directions on 7 August 2020, 17 August 2020, and 29 September 2020.
3. The Petitioner does not appear to appreciate the nature of the proceedings he has commenced whereby the burden of proof lies on him to satisfy the Court that a faculty should be granted. His emails to the Court are over the e-footer of Green Wright Chalton Annis, Solicitors, where the Petitioner is a partner, although that firm has not come on the record as acting for him. The Petitioner does not appear to have taken earlier advice to consult an ecclesiastical law specialist.
4. In an earlier set of directions, I observed that “the tone of the petitioner’s covering letter to the Court is somewhat intemperate”. This appears to have been interpreted by the Petitioner as a personal insult – although nothing of the sort was stated or intended – and he has raised the issue of bias. I invited him to make an application that I recuse myself and appoint a Deputy Chancellor to act in my place but he has not done so.
5. The Petitioner has made a series of demands of the Diocesan Registrar, without apparently realising that the registrar is in effect the clerk to the Court and not a party to the proceedings. The Petitioner was invited to make an application for discovery of documents against the Additional Parties, but he has not done so.
6. Witness statements have been served by the Petitioner and the Additional Parties in compliance with the Court’s earlier directions. The case is trial ready.

7. In May 2020, the Petitioner emailed H D Tribe, a local firm of stonemasons, requesting the firm to lay a stone border around his father's grave and add granite shrapnel. Mrs Alison Campbell, of H D Tribe, replied promptly in the following terms:

Although I agree this would tidy the grave for you, unfortunately this is not allowed under the rules and regulations from the diocese of Chichester ... you could apply to Church House for a faculty, through the vicar ... Again we are unable to help you with applying for a faculty as this is arranged through the church.

8. Notwithstanding the clarity and accuracy of that advice, kerbs and chippings appeared at the grave sometime later. The evidence filed by the Petitioner does not disclose the circumstances in which they were added, nor by whom. There is no explanation as to why Mrs Campbell's advice was not followed.
9. The issues for trial would have been whether the kerbs and chippings should be permitted to remain in the light of the fact that similar items are present on other graves and that the Churchyard Regulations were being unevenly applied by those in the parish. These are arguments that have hitherto held sway in some cases in this diocese and elsewhere in the Church of England. The arguments may have prevailed in this case. In which case a confirmatory faculty would have been granted.
10. However, there is not now to be a trial. By letter dated 19 October 2020, the Petitioner wrote to the Registry stating "You may treat this letter as formal withdrawal of my petition". The Court will not now be able to investigate each of the matters which the Petitioner has raised. It will not be able to grant the faculty which he had sought.
11. The corollary of the withdrawal of the petition is that the Court cannot give retrospective authorisation for the kerbs and chippings to remain. In consequence, they must be removed. The Court therefore grants a faculty to the incumbent and churchwardens to remove them. The kerbs and chippings are to be placed in a secure place from which the Petitioner may take them if he so wishes. If they have not been removed after six weeks, they may be disposed of as the incumbent and churchwardens deem fit. This consequence was foreshadowed in paragraph 1 of the Court's directions of 7 August 2020.
12. The Petitioner's letter concludes with the following:

... for the avoidance of doubt, I do not consent to the church desecrating my father's grave by the removal of the stones and granite. If this arises, it will be reported to the local press which will no doubt provide further adverse publicity to the Church of England following the Independent Inquiry into Child Sexual Abuse and, in particular, the Chichester Diocese which features heavily in these heinous crimes.

13. The removal of the kerbs and chippings is the inevitable consequence of the Petitioner withdrawing his petition seeking a faculty authorising their retention. No threat of adverse press coverage can change that reality. The Petitioner has prevented the Court from ruling in his favour. My principal concern is for the Petitioner's mother who has

now lost the opportunity of obtaining permission for the retention of the kerbs and chippings which it seems her deceased husband had wanted. The withdrawal of the Petition renders the Court powerless to grant the faculty and this will obviously cause the Petitioner's mother considerable distress, particularly as the matter had been prepared for a hearing. However, the Court cannot compel the Petitioner to proceed with a petition against his will.

14. Therefore, and with considerable hesitation and reluctance, the Court grants the Petitioner leave to withdraw his petition.
15. The petition having been withdrawn, the Petitioner is to pay the court costs of and occasioned by the petition.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

22 October 2020