

IN THE CONSISTORY COURT OF THE DIOCESE OF CARLISLE

RE WETHERAL CEMETERY

**IN THE MATTER OF A PETITION REQUESTING A FACULTY FOR THE EXHUMATION OF WILLIAM
JAMES STUDHOLME, DECEASED**

JUDGMENT

Delivered on 19 June 2020

Introduction

1. By a petition dated 6th March 2020 Mrs. Diana Bainbridge seeks a faculty for the exhumation of the remains of Mr. William James Studholme from Plot C71, Ashgate Lane Cemetery, Wetheral, Cumbria (“the Cemetery”). As I shall go on to explain, the distressing circumstances in which Mrs. Bainbridge and Mr. Studholme’s family find themselves are the result of an error for which Wetheral Parish Council, the body that administers the Cemetery, is responsible.

Facts

2. The relevant history of this matter is not in dispute and is as follows.
3. Mr Studholme died on 11th May 2018 and his remains were interred on 21st May 2018 in Plot C71 at the Cemetery. This plot is in a consecrated part of the Cemetery.
4. Mr. Studholme had arranged his own funeral, and for that purpose had reserved a grave space. In fact, the plot he had reserved was plot C77. It appears that when Mr. Studholme’s burial was being arranged the Council’s manuscript record reading C77 was misread as C71.
5. Plot C71 had been purchased by Mrs. Bainbridge many years earlier. As long ago as 1983 Mrs. Bainbridge had purchased the exclusive rights of burial in plots B72 and B74 at the Cemetery. Her daughter, Lorna, who died as a young child, was buried in plot B72 in 1983. In section 15 of

her Petition Mrs. Bainbridge explains that she bought adjacent plots so that in due course she could be buried next to Lorna.

6. Subsequently Mrs. Bainbridge's plans changed when, in December 1989, her family member, Geoffrey Bainbridge, died in a car accident, aged 33. Mrs. Bainbridge arranged for him to be buried in plot B74, beside Lorna.
7. Shortly after this, in 1990, Mrs. Bainbridge purchased plots C71 and C73 at the Cemetery. These two plots are opposite B72 and B74 and separated from them by a path. The orientation of the plots is, therefore, as shown on this diagram:

C77 <i>Plot owned by Mr. Studholme</i>	C75	C73 <i>Vacant - owned by Mrs. Bainbridge</i>	C71 <i>James Studholme</i>
Path	Path	Path	Path
B78 <i>Vacant - substitute offered</i>	B76 <i>Vacant - substitute offered</i>	B74 <i>Geoffrey Bainbridge</i>	B72 <i>Lorna Bainbridge</i>

8. In her Petition Mrs. Bainbridge explains *"I was able to ensure that I would be laid to rest with them by buying plot 71 opposite Lorna and plot 73 opposite Geoffrey – this was done promptly in 1990 [so] as to protect my wishes and ensure that nobody else bought the plots which would have prevented me from being buried with my loved ones."*
9. The Parish Council has admitted¹ that it is responsible for the mistake that was made when Mr. Studholme was buried in plot C71. It has sincerely apologised to Mrs. Bainbridge for that error. That can only have been right: because the mistake has plainly caused a great deal of distress both to Mrs. Bainbridge and to Mr. Studholme's family.
10. The Parish Council has proposed to Mrs. Bainbridge that it should transfer to her plots B76 and B78 at the Cemetery and do so free of charge. The position of those plots is shown on the plan at paragraph 7, above. A further offer² to Mrs. Bainbridge is that she could be buried in plot B72,

¹ For example, in its letter to Mrs. Bainbridge dated 20th March 2019 and Burnetts Solicitors' letter to the Diocesan Registry dated 13th March 2020.

² Burnetts' email to Arnison Heelis dated 12th March 2020 (14:32).

together with Lorna. The Council has also offered³ to refund to Mrs. Bainbridge the price she paid for plot C71 and C73 (if she no longer wishes to retain it).

11. When I gave directions in this matter on 14th April 2020 I directed the Council to confirm whether it was prepared to make an open offer of an alternative burial plot or plots to Mrs. Bainbridge that would remain open for acceptance until after the final resolution of these proceedings or further order.
12. In response the Council's solicitors, Burnetts, confirmed that its offer remained that set out in paragraph 10, above.
13. The Parish Council's stance on this Petition is⁴ that while it accepts it made an error, and is deeply apologetic for the upset caused to Mrs. Bainbridge, it is unwilling to support her petition: given the wishes of Mr. Studholme's family.
14. Mrs. Bainbridge has responded to the Parish Council's offer in the following way. She writes *"The options offered by Wetheral Parish Council do not provide me with any conciliation. Neither plot will enable me to be buried with my daughter. It has brought me comfort for the last 37 years knowing that one day I will be laid to rest with Lorna. I bought the first two plots [so] as to guarantee I would be buried next to Lorna. Upon burying Geoffrey in plot 74, I promptly bought plots 71 and 73 with the intention of us all being buried together when I passed away."*
15. Mrs. Bainbridge expresses a great deal of sympathy for Mr. Studholme's family in the difficult circumstances that have arisen because of the Parish Council's error. Nonetheless, her stance is that she wishes to keep to her long-held plans, and to be buried, in due course, in plot C71. It is for this reason that she has sought the exhumation of Mr. Studholme's remains from that plot.
16. I now turn to the wishes of Mr. Studholme's family. They are set out in two letters from his daughter, Mrs. Susan Patterson: the first being the handwritten letter addressed to Burnetts Solicitors and date-stamped 17th January 2020, and the other dated 11th May 2020 and sent to the Diocesan Registrar.
17. Mrs. Patterson explains that Mr. Studholme's family strongly oppose the proposed exhumation. She describes how her father purchased a plot at the Cemetery in August 2008 as part of the

³ Letter to Mrs. Bainbridge dated 20th March 2020.

⁴ See the Parish Council's letters of 12th September 2019 and 16th December 2019, and Burnetts' letter of 13th March 2020)

plans he himself made for his funeral and burial. He wanted to be buried at the Cemetery because his mother and grandmother, to whom he was very close, are buried there.

18. Mrs. Patterson writes that *"My Father was a deeply religious man and practised his faith, he would have wanted to stay in his final resting place where he was laid to rest by his priest with family and friends present"*.
19. Just as Mrs. Bainbridge expresses sympathy for the difficult position in which Mr. Studholme's family finds itself, in the same way Mrs. Patterson makes plain that her family have a great deal of sympathy for Mrs. Bainbridge.
20. Nonetheless, Mrs. Patterson argues that it would be *"morally wrong for [her] father to be exhumed and moved to another plot"*. She points to the fact that it is now 2 years since burial and that it has still not been possible to put up a headstone or memorial to her late father. She adds that her children and grandchildren have all been distraught at the thought of their grandfather/great-grandfather's remains being exhumed.

Procedural History

21. Mrs. Bainbridge's petition is dated 6th March 2020. I gave directions on 14th April 2020.
22. The upshot of the working through of those directions is that neither the Parish Council nor Mrs. Patterson wished to become a party opponent. All parties have confirmed that they are content for me to reach my decision on the basis of the written representations they have submitted.
23. For my part, and having regard to the overriding objective, I have concluded that it is expedient to determine this matter on consideration of those written representations rather than by holding a hearing.

Law

24. The relevant legal principles are set out the judgment of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. From that decision it is clear that the starting point in every case where exhumation is sought is (paragraph [33]) *"...the straightforward principle that a faculty for exhumation will only be exceptionally granted."*
25. While the Court of Arches identified various categories of exception it stated [33] that *"Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the chancellor to determine on the balance of probabilities"*.

26. This is essentially a matter of discretion, and it is always (paragraph [35]) “...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.”
27. One of the factors that may weigh in favour of exhumation is where there has been a genuine mistake.
28. Thus, in *Re Blagdon Cemetery* at paragraph [36] the Court of Arches decided that “...a mistake as to the location of a grave can be a ground upon which a faculty for exhumation may be granted. ... Sometimes genuine mistakes do occur, for example, a burial may take place in the wrong burial plot in a cemetery or in a space reserved for someone else in a churchyard. In such cases it may be those responsible for the cemetery or churchyard who apply for a faculty to exhume the remains from the wrong burial plot or grave. 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.”
29. Another relevant matter is the views of the relatives of the deceased in question. The Court of Arches (paragraph [36(iv)]) made it clear that the views of close relatives are “very significant”.
30. I have also taken into account two other, more recent, decisions.
31. The first is the decision of McGregor Ch. in the matter of *In re Fairmile Cemetery, Lower Assendon* [2017] ECC Oxf 2; [2017] Fam. 349. The facts of that case bear some similarity to those with which I am concerned.
32. In the *Re Fairmile Cemetery* case members of the Leventis family obtained grants of exclusive rights of burial in adjacent plots. Their aim was for members of the family to be buried together in a square configuration. Unfortunately, through the error of those managing the cemetery, the body of one Mr. Miller was buried in one of those reserved plots.
33. In April 2016 Mr. Alexis Leventis petitioned for the exhumation of Mr. Miller’s body. This was around a year after Mr. Miller had been buried; and Mr. Leventis had been aware of the mistake for most of that year. Mr. Miller’s family objected to the petition.

34. McGregor Ch. considered the law stated at paragraph 36 of the decision in *Re Blagdon Cemetery*⁵. Mr. Leventis contended that the mistaken burial of Mr. Miller in a plot that had been reserved by someone else engaged that law and indicated that exhumation was appropriate. Mr. Miller's family argued that a mistake of this type merely triggered the consistory court's discretion: it did not lead inevitably to the grant of a faculty for exhumation.
35. In his analysis of the law McGregor Ch. decided (paragraph 48) that "*... where a body is buried in the place where those concerned with the arrangements for the burial intended it should be buried, the burial is presumed to be permanent and a petitioner must overcome that presumption of permanence if he is to be granted a faculty to exhume the body*".
36. For that reason (paragraph 50) McGregor Ch. decided that the case was not one "*...where the presumption of permanence does not apply because the burial was in an unintended rather than an intended grave. It is not the sort of case identified by the Court of Arches as being one where faculties can readily be granted.*"
37. Furthermore, McGregor Ch. held (paragraph 51) that "*... where the Court of Arches addresses cases of mistake it is concerned with cases where exhumation is carried out at the behest – or at least with the support – of the family of the deceased; not with cases where it is proposed by someone else to exhume a body in the face of opposition from the family of the deceased.*"
38. On the facts of that case, and taking into account the opposition of Mr. Miller's family and the delay in starting proceedings, McGregor Ch. refused the faculty sought.
39. The other decision I have considered is *In the Matter of South Stoneham Cemetery* [2018] ECC Win 2. In that case the petitioner, Mr. Mark Edwards, sought the exhumation of the remains of Mrs. Patricia Sutton, from a space in which he maintained that he had the exclusive right of burial. The petition was opposed both by the Council with statutory responsibility for the cemetery and by Mrs. Sutton's family.
40. On the facts of that case Ormondroyd Ch. decided (paragraph 56) that since Mrs. Sutton's remains had been interred in a plot reserved for someone else there had been a mistake sufficient to amount to exceptional circumstances. He respectfully differed from the analysis of McGregor Ch. in the *Fairmile Cemetery* decision, as I have summarised it, above. He focussed on the question of whether Mrs. Sutton's family and the Council (if they had known about the exclusive right of burial) would have wanted Mrs. Sutton's remains to be buried in a plot over

⁵ See paragraph 28, above.

which Mr. Edwards had that right. The Chancellor had no doubt that they would not: so that the decision to bury her in that place was an operative mistake for the purposes of the *Blagdon* decision.

41. In any event, Ormondroyd Ch. considered that burial contrary to an exclusive right amounted to a powerful factor in favour of exhumation.
42. Even so, having regard to the strong objections of the Sutton family, he did not grant the faculty sought.

Analysis

43. Having stated the law, I now come to its application to the facts of this case.
44. In the first place, I must make clear that I have very considerable sympathy both for Mrs. Bainbridge and for Mrs. Patterson and her family. The burial of Mr. Studholme in plot C71 has, understandably, led to great upset for all concerned. It is regrettable, but I am afraid unavoidable, that one or other family will feel continued distress whether this faculty is granted or not.
45. The starting point is that a faculty for exhumation will only exceptionally be granted. The burden of proof lies on Mrs. Bainbridge, as petitioner, to satisfy me on the balance of probabilities that an exceptional course ought to be followed.
46. I have already recited the full arguments made by Mrs. Bainbridge. In summary, the factors that she emphasises are her long-held wish to be buried close to her daughter, Lorna and her relation, Geoffrey. She stresses that she purchased the exclusive rights in plot C71 many years ago. She argues that Mr. Studholme's burial in that plot not only infringes those rights but does so by reason of a mistake in which she had no part.
47. For these reasons I take Mrs. Bainbridge's case to be that these factors bring the matter within the exception stated in *Re Blagdon Cemetery* at paragraph [36] in the case of a mistake.
48. She might also, on the strength of the *South Stoneham Cemetery* decision, have referred to what, hypothetically, Mr. Studholme's family's wishes might have been if they had been fully informed of all the facts prior to the burial. After all, he had reserved plot C77 at the Cemetery and Mrs. Patterson has written that her father insisted the funeral arrangements he had made "*be followed to the letter*". As it happens, it might be argued that they were not: because of the mistaken burial in plot C71 not C77.

49. The factors against allowing the faculty may be summarised in this way. There is a presumption that burial is permanent. Mrs. Patterson describes her late father as being a “*deeply religious man*” who “*would have wanted to stay in his final resting place where he was laid to rest by his priest with family and friends present*”. I have no reason to doubt that evidence: which is unchallenged.
50. Mrs. Patterson’s representations therefore speak of the intended permanence of Christian burial. They are consistent with the authorities. Furthermore, she has made plain, in the terms that I have described, her family’s strong opposition to exhumation, and their objections to the delay they say there has been in seeking it.
51. Having considered these rival arguments my decision is that I am not satisfied, on balance, that an order for exhumation ought to be made in this case.
52. I take as my starting point the presumed finality of Christian burial, and that exhumation is an exceptional course.
53. I have taken into account the fact that the burial of Mr. Studholme’s remains in plot C71 was contrary to Mrs. Bainbridge’s rights. It was also against the arrangements Mr. Studholme himself had made, to be buried in plot C77. In both these senses, therefore, the burial may be said to have been mistaken. Even so, the fact of this mistake is insufficient of itself to lead to an order for exhumation. The matter remains one of my discretion in all the relevant circumstances.
54. The question I ask myself is whether, given the nature of the mistake made when burying Mr. Studholme, the consequences of that act for all concerned, and all the other relevant circumstances, I ought to take the exceptional course of directing exhumation.
55. In answering that question I consider that the views of Mr. Studholme’s family are a significant matter. If they had supported this petition then the outcome might have been quite different. As it happens, they strongly oppose it. That is a factor weighing powerfully in the exercise of my discretion against granting the faculty sought. The views of close relatives are very important in connection with petitions such as this⁶.
56. I also take into account that there was some delay on Mrs. Bainbridge’s part between discovering the error that had been made and presenting her petition. Mr. Studholme was buried in May 2018. Mrs. Bainbridge was aware he had been buried in plot C71 by no later than

⁶ See the *Blagdon* case at paragraph 36(iv) and paragraph 29, above. See also *Fairmile Cemetery* at paragraphs 51 (see paragraph 37, above) and 72.

when she received the Parish Council's letter to her dated 20th March 2019. Thereafter around a year passed before she signed her petition on 6th March 2020.

57. I do not find that this delay is a decisive matter, taken alone. There are reported cases showing that exhumation petitions may be allowed after fairly appreciable delay. Even so, I consider that in an opposed case such as this, the passage of nearly two years between burial and petition, and of one year between knowledge and petition, are relevant matters. They combine with the other matters I mention as reasons why I do not allow exhumation.
58. Finally, I attach weight to the fact that the Council has made a number of proposals for alternative burial arrangements. I have described them in paragraph 10, above.
59. In reaching his decision in the *Fairmile Cemetery* case (paragraph 71) McGregor Ch. took into account that the Council was prepared to make available vacant plots that would enable the members of the Leventis family to be buried together, albeit in a different configuration to that which they had first intended.
60. In the present case, similarly, the Council's offer to Mrs. Bainbridge of alternative burial arrangements is a further factor that has led me to decide that exhumation is inappropriate. The upshot of those proposed alternatives is that it will be possible, in due course, for Mrs. Bainbridge to be buried diagonally opposite Lorna (i.e. in plot C73); or alongside Geoffrey (i.e. in plot B76); or else together with Lorna (in plot B72). In that way it will still be possible to allow for Mrs. Bainbridge's long-held wishes to be buried near both Lorna and Geoffrey.
61. I trust that the Council will leave open its offer to Mrs. Bainbridge until after she has had plenty of opportunity to consider this Judgment. I have no reason to suppose that it would do otherwise. The Council has always, very properly, accepted that it is responsible for the serious error that was made.
62. Nonetheless, and for the avoidance of doubt, should the Council wish to withdraw or modify that offer before 1st January 2021 then I express my firm expectation that it will first write both to Mrs. Bainbridge and the Diocesan Registrar with a detailed explanation of why it might consider that course of action to be appropriate.

Conclusion

63. In all these circumstances I have concluded that I should exercise my discretion by not granting the faculty sought by Mrs. Bainbridge.

Costs

64. I have read in the correspondence between Burnetts Solicitors, for the Council, and Arnison Heelis Solicitors, for Mrs. Bainbridge, that an understanding has already been reached concerning Mrs. Bainbridge's costs of this petition.
65. If Mrs. Bainbridge wishes me to consider making any order for costs against the Council that goes beyond that agreement then I direct that she should make an appropriate application within 28 days of the date of this Judgment, and give notice to the Council when doing so. If such an application is made then it is to be referred to me. I will then consider whether a special citation ought to be issued to join the Council as a party.

Order

66. The order will therefore be that:
- a) The petition is dismissed; and
 - b) Should Mrs. Bainbridge wish to pursue any application for her costs against Wetheral Parish Council then she should make her application for that purpose within 28 days of the date of this Judgment and do so on written notice to the Council.



JAMES FRYER-SPEDDING

Deputy Chancellor of the Diocese of Carlisle