

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

ST JOHN THE EVANGELIST: LAWLEY

ON THE PETITION OF ALAN PALIN AND OTHERS

JUDGMENT

- 1) Doris Palin died on 22nd April 2021 aged 90 and leaving eight children (one of her daughters having died in 2014). Her remains were interred on 10th May 2021 in the plot in the churchyard of St John the Evangelist, Lawley which already contained the remains of her late husband, Alan Palin senior and which was near the plot containing the remains of her daughter, Lynda.
- 2) It is apparent that relations between Mrs Palin's children were not good during her lifetime. Matters got worse after Mrs Palin's death when it was discovered that Mrs Palin had made a will in March 2016 leaving her entire estate to Jeremy and Christina Ray and appointing Mr and Mrs Ray her executors. Mrs Ray is one of Mrs Palin's daughters. It was only after Mrs Palin's death that her other children learnt that Mrs Palin had bought her home from the local authority and that she had left a will in those terms. At one point there was a dispute as to the validity of that will. It appears that the challenge to the will is no longer being pursued (such a challenge would, of course, not be a matter for this court in any event) and probate was granted to Mr and Mrs Ray on 9th January 2022.
- 3) A memorial was erected on the plot in the terms I will describe below. The decision as to its installation had been preceded by dispute between the siblings as to the conduct of Mrs Palin's estate and in particular a dispute as to whether Alan Palin junior, one of her sons, was entitled to any involvement in those matters.
- 4) Sadly the dispute had caused the eight siblings to divide into two camps.
- 5) Revd Jassica Castillo-Burley is the Interim Minister with responsibility for St John the Evangelist. Miss Castillo-Burley had two meetings: one with members of each camp. Miss Castillo-Burley offered to mediate and sought without success to achieve a reconciliation or at least an agreement on the way forward. In those circumstances of continuing disagreement Mr and Mrs Ray sought permission to install a memorial the wording of which was not agreed by all the siblings and as to which not all of them had been consulted. Mrs Ray says that she felt driven to take this course because of what she characterised as a threat from Alan Palin unilaterally to take control of matters. Alan Palin accepts that he wrote a letter saying that he had "taken charge of [the] situation" and that he had told the memorial masons that he

was to be the “principal point of contact”. He says that he felt someone had to take a lead; that he did so as the oldest surviving child; and that he acted in that way in an attempt to achieve a consensus amongst the siblings.

- 6) Miss Castillo-Burley approved the installation of the memorial under the power delegated her by the Churchyard Regulations. She took the view that such approval was appropriate because the wording of the inscription was of a kind which she was permitted to approve and because the application was being made by Mrs Palin’s executors.
- 7) The memorial already bore an inscription commemorating Alan Palin senior on the reader’s left side. That was headed “Treasured memories of” and bore Mr Palin’s name followed by the words “a dear husband, father, and grandfather”. There then followed the dates of Mr Palin’s birth and death and the words:

“Gone are the days
We used to share
But in our hearts
You are always there”

- 8) The inscription commemorating Mrs Palin was added to the reader’s right side of that memorial together with the words “together forever” which were added to the base. The memorial to Mrs Palin mirrors that to her husband. Mrs Palin’s memorial also bears the heading “Treasured memories of” followed by Mrs Palin’s name; the words “a loving wife, mother, and grandmother” and the dates of Mrs Palin’s birth and death. This verse then appears;

“A loving mother
Thoughtful and kind
Beautiful memories
You leave behind”

- 9) It appears that the only contentious part of the memorial is that verse.

The Petition.

- 10) Four of the siblings petition for the following relief. First, they ask the court to “require” Mrs Ray to “engage with the surviving children [of Doris Palin] in agreeing the four line epitaph”. Second, they seek an order that if Mrs Ray declines to engage with her siblings or if agreement is not reached then the epitaph should be removed. Finally, they ask that the court set out a time limit within which such agreement or removal is to be achieved.

The Procedural History.

- 11) Alan Palin has acted as lead petitioner and is supported by two of his sisters, Deborah Higgins and Karan Pascall, and by one brother, Michael Palin. The Petition is opposed by Mr and Mrs Ray; by Susan Fortune – the other

daughter of Mrs Palin; and by her other remaining sons Richard and Timothy Palin.

- 12) Each of those objecting to the petition has chosen to become a party opponent.
- 13) Each side has made complaint about the procedural adequacy of the steps taken by the other side. I need not address the details of those complaints because I am satisfied that neither side has been prejudiced by the failings, if such they were, and that it is appropriate for me to take account of all matters raised by each of the siblings. To the extent that it is necessary for me to do so I grant all extensions of time and permissions needed for me to consider all the points raised.
- 14) I am satisfied that this is a case which it is expedient to determine on the basis of written representations. The parties were all content with that course and I have received detailed submissions from those supporting and those opposing the petition.

The Parties' Submissions.

- 15) It will have become apparent by now that sadly there is considerable ill-feeling between the children of Mrs Palin. The submissions before me contained a number of allegations and counter-allegations as to the siblings' conduct towards each other and towards Mrs Palin. Some of the allegations relate to conduct going back over a number of years. I am not going to rehearse those allegations in this judgment. That is for two reasons. The first is that it would not be possible to resolve the truth of what is being said without hearing oral evidence and giving opportunity for cross-examination. That course is not necessary for the second reason which is that the matters raised by way of criticism of the conduct of the various siblings are not material to the questions I have to address. I will proceed on the footing that there is a sad division between the siblings and that the difficulties existed before Mrs Palin's death but have been heightened by events since then. Each side alleges bad faith on the part of the other. The ill feeling has been compounded by, on one side, the distress and suspicion generated by learning of a will leaving the entire estate to Mr and Mrs Ray and, on the other side, by the concern that an attempt is being made to thwart Mrs Palin's wishes. However, I have no reason to reach any conclusion other than all involved believe that they are acting properly and with a desire to ensure there is a fitting memorial to Doris Palin and that sadly the ill-feeling between the siblings has coloured the perceptions on each side of the motivation of the other side.
- 16) The Petitioners' prime argument is that the wording of the memorial to Doris Palin should have been a matter for discussion and agreement between her surviving children. They say that the actions of Alan Palin were not an attempt unilaterally to take control of matters but an attempt to move the situation

forward. They say that it was wrong that they were excluded from the decision as to the wording of the inscription on the memorial. The Petitioners characterise the bringing of the petition as a last resort in circumstances where their other attempts at achieving agreement have failed and that it is to be seen as a way of bringing about an agreement. They do not raise any particular objection to the wording used on the memorial other than the fact that it was not the result of an agreement. Sadly the situation has caused such distress to Deborah Higgins and Karan Pascall that they have felt unable to visit their parents' grave. As I understand matters this is not a result of any reaction to the wording itself but to the fact that the inscription was the result of a decision from which they were excluded.

17) The Parties Opponent make the following points.

18) First, Mr and Mrs Ray explain that they were chosen by Mrs Palin as her executors and have sought to carry out what they believe to have been her wishes. They did not wish to act without agreement but felt that they had no choice in the light of Alan Palin's actions. In fact they did consult at least some of their siblings. The wording of the contentious verse was chosen by Timothy Palin who was the youngest child of Doris Palin. Mr and Mrs Ray emphasise that the memorial is now in place and its removal or the removal of part of the inscription would cause distress.

19) Timothy Palin has said in short terms that he would be distressed by removal of the memorial.

20) Richard Palin expresses his "deep regret and sadness" at the family feud. He explains that he was consulted by his sister as to the wording for the memorial and that he agreed that the words chosen by Timothy Palin should be used. He urges that the memorial remain in its current form so that his mother can rest in peace.

21) Susan Fortune explains that she understands the feelings of hurt felt by the Petitioners. She feels that "there has been an injustice within the family" and that she herself had no input into the choice of the wording for the memorial. She feels strongly that it was wrong that she was excluded from participating in that decision. However, she says that the issue now "is about respect for my mother's memory". Mrs Fortune believes that it would be disrespectful to her mother's memory for the memorial to be altered or removed and in the light of that she supports leaving the current headstone in place in the hope of bringing closure to the matter.

The Approach to be Taken.

22) The owner of a memorial is the person who erected the memorial and after that person's death the heir at law of the person commemorated (see the analysis by McClean Ch in *St Thomas Kilnhurst Churchyard* Sheffield 2012 at [16] – [20]). However, the court can order the removal or alteration of a

memorial notwithstanding the wishes of the owner of the memorial. Moreover, as McClean Ch explained (at [21]) although the views of the owner of the memorial carry weight it is not only in exceptional circumstances that the court will order alteration or removal against those wishes.

- 23) In *St Thomas Kilnhurst Churchyard* a headstone had been removed without a faculty and a different headstone installed. That was another sad case where there was a family feud and where there was disagreement about the wording to go on a memorial combined with mistrust between members of the wider family. In those circumstances McClean Ch ordered removal of the second headstone and authorised the owner of the first headstone to install a replica of that. However, the chancellor imposed as a condition of the faculty a requirement that the owner endeavour to secure agreement as to the inscription from other family members and that he was to seek the court's approval of the wording proposed after that exercise informing the court of the steps which had been taken to obtain agreement.
- 24) In *St Augustine, Droitwich Spa* [2016] Ecc Wor 2 Mynors Ch was also concerned with circumstances of a disagreement between relatives as to the wording of a memorial. There the deceased's son had erected a memorial without the agreement of his father's partner and she petitioned for a faculty to remove that memorial and to replace it with a different one.
- 25) In those circumstances Mynors Ch noted, at [14], that there was "no particularly obvious way of deciding fairly between the claims of the various parties" but that it would be wrong if a deceased person were to be left without a memorial "merely because family members and friends could not agree on the form it should take". It was in the light of that difficulty that Mynors Ch invited the archdeacon to submit a further petition for a memorial bearing only the deceased person's name and his dates of birth and death.
- 26) At [43] and following Mynors Ch considered the general law in respect of the rights and duties of executors. The chancellor concluded that although the duty on executors to dispose of the body of the deceased person meant that they had the right to decide on the manner of disposal and the place of burial that right did not extend to determining the manner in which the person should be commemorated. At [59] Mynors Ch explained "there is no overriding legal principle to determine who should have the power to decide as to the manner in which a deceased person should be commemorated – if at all". At [70] Mynors Ch explained that "it may be better that there should be no memorial at all rather than one being erected that is bitterly opposed by some of those who were closely connected with the deceased".
- 27) It was in the light of that assessment that Mynors Ch set out guidance at [71] – [76]. The guidance was primarily intended for incumbents faced with circumstances of family conflict and envisaged an approach of refusing permission other than for a memorial bearing the bare details of a name and

dates of birth and death in the absence of agreement between family members on any more extensive wording. Moreover, in the absence of agreement Mynors Ch contemplated an existing contentious memorial being removed and being replaced by one in the more limited terms I have mentioned. However, it is to be noted that the threat of such a limited memorial was seen as being a way of inducing compromise on the part of disputing family members and to cause them to agree on the wording of a memorial. In the case before Mynors Ch the pressure from the court was successful and agreement was reached on the terms of a new memorial.

- 28) The course contemplated by Mynors Ch is not the only possible one and in the event of disagreement the court is not confined to approving a memorial bearing only the name and dates of birth and death of a deceased person. There are numerous instances where a consistory court has determined which of two competing forms of words put forward by different family members is preferable – *St Peter & St Paul, Hambledon* [2022] Ecc Por 1 being a recent example of such a choice being made.
- 29) My understanding of the position as shown by the authorities is that the court has a discretion and can override the wishes of the owner of a memorial. It can do so even to the extent of directing the removal of an existing memorial, even if that memorial was lawfully installed and ordering its replacement by a new memorial in a different form and/or with different wording. The court's discretion is a wide one and the following considerations are amongst those which will be relevant in the case of disputes between family members as to the wording of an inscription or the terms of a memorial. This is by no means a comprehensive listing of all the potentially relevant factors. The many and varied matters which can arise in family disputes mean that in other cases other factors may well be relevant.
- 30) The court will be cautious before ordering the removal of a memorial which has been lawfully installed and which is in otherwise unexceptionable terms. That caution stems not just from the presumption in favour of maintaining the status quo but also from considerations of seemliness and expense. It is not seemly that a lawfully installed memorial should be removed in the absence of good reason. Moreover, the removal and replacement of a memorial is not a cost-free exercise. Indeed, substantial expense can be involved which is to be avoided if possible. Nonetheless, if there is good reason an existing lawfully installed memorial can be removed and a faculty granted for a replacement in a different form and with different wording.
- 31) Where there is a dispute as to the wording which should be on a memorial the court can decline to choose between competing versions and can say that in the absence of agreement the memorial will bear only a record of a deceased's name and dates of birth and death. The court is not, however, confined to that course and can make a determination in favour of one or other of competing proposed inscriptions. That choice will readily be made

where one or other of the competing versions can be shown to be factually inaccurate or for some other reason inappropriate for a churchyard. Greater caution will be needed where the choice is between competing inscriptions each of which, viewed in isolation, would be appropriate. However, even then the court is not confined to authorising a memorial with bare details and it can choose in favour of one or other of such competing inscriptions.

- 32) The executors of the person being commemorated have no overriding right to determine the form of a memorial or the wording of an inscription. Mynors Ch was right to make that point in *St Augustine, Droitwich Spa*. However, I disagree with Mynors Ch to the extent that his judgment involved a suggestion that no account is to be taken of the position of a person as an executor. In my judgement the court is to have regard in exercising its discretion to the fact that the executors will have been appointed by the deceased person to administer his or her estate. Such an appointment by the deceased is to be seen as an indication of the persons whom he or she wished to be in charge of the arrangements for his or her burial. The legal rights of the executors do not extend to determining the form of a memorial but there is an element of artificiality in distinguishing between the power to control the manner and place of interment and the decision as to the form of a memorial. Putting it at the lowest that is a distinction which is unlikely to be in the forefront of the minds of those making wills. I am satisfied that most persons who make wills and who appoint executors anticipate their executors determining not only where and how their remains will be interred but also the form of memorial to be erected. A testator will rarely have given thought to the form of memorial but the views of the executors are to be seen as the views of the persons whom the deceased anticipated dealing with such matters. Where there has been family conflict before death the choice of executors may be seen as an indication of where the testator saw the truth as lying or at least of those whom the testator was choosing to act in the context of that conflict. The presumed views of the deceased in that regard are by no means conclusive but they do require careful consideration to be given to the views of the executors. These considerations do not apply in cases of intestacy.
- 33) Just as it is not seemly that a memorial be removed without good reason so it is not seemly that the terms of an inscription be a source of conflict or distress. Putting matters at the very lowest it is not appropriate that the terms of a memorial in a churchyard should be the cause of distress to family members nor that they should be productive of conflict. Such conflict and distress are inconsistent with the purpose of a churchyard as the place of repose for the remains of the departed and as a place of comfort for the bereaved. They are, moreover, inconsistent with the seemly commemoration of the departed. The court will not approve words which are likely to be productive of distress or conflict and will strive to encourage compromise. Where that is not possible a bare memorial with only a name and the dates of birth and death may be appropriate.

34) However, the court must also be conscious of the real prospect that compromise might not be achieved and that it might not be possible to avoid distress to some members of a divided family. The approach envisaged by Mynors Ch of imposing a memorial stating only bare personal details was intended to act as an incentive to the parties to compromise and to agree on more extensive wording. However, there will be cases where compromise cannot be achieved: the court cannot compel disputing parties to agree with each other. The imposition of a bare form of memorial may itself be a source of distress and may be seen by one or other side in a family feud as an indication of victory or defeat.

The Application of that Approach.

- 35) The Petitioners seek an order requiring Mrs Ray to engage with her siblings to agree a new form of words. Such an order is not appropriate. It is highly doubtful whether the court has power to make such an order (as opposed to imposing such a requirement as a condition on the granting of a faculty). However, I need not engage in an academic analysis of the extent of the court's power because I am satisfied that even if there is such a power it would not be right to exercise it here in the terms sought. It would be necessary to spell out in some detail the form the engagement was to take and potentially futile because the court cannot compel agreement where the parties choose not to agree.
- 36) The question then becomes one of whether the wording of the contentious verse should be removed as a way of inducing an agreement as to a replacement. I am satisfied that it would not be appropriate to do that and that the Petitioners have not shown a good reason sufficient to justify that course. I have done so for the following reasons.
- 37) The most potent factor in favour of the Petitioners is that the inscription is a source of distress to some of the late Doris Palin's children. The distress is in the context of a family falling out where the inscription was chosen without the agreement of all of Mrs Palin's children and with a failure to consult all of those children. The conflict, hurt, and distrust are real. The court cannot pretend that they do not exist but nor can it pretend that they will readily be resolved. It is of note that the wording of the inscription is not the sole or even the major cause of the conflict rather it is a symptom of the underlying and pre-existing difficulties.
- 38) It is significant that the wording of the verse is not in itself capable of criticism. Others would have chosen different wording but there is no question but that Mrs Palin was a loving mother who was thoughtful and kind and of whom all her children have beautiful memories. A related matter is that the wording was chosen by Timothy Palin. The Petitioners do not challenge Timothy's good faith. They say that he was led or influenced by Mr and Mrs Ray and that advantage was taken of Timothy's personal difficulties but they do not suggest

that Timothy was motivated by any consideration other than a desire to choose a fitting memorial for his mother.

- 39) I am also satisfied that in acting as they did and in installing the memorial without full consultation of their siblings Mr and Mrs Ray believed that they were acting appropriately as executors. Seen with hindsight a more cautious or conciliatory course might have been better but there is no basis for a finding that Mr and Mrs Ray were motivated by spite or malice nor that the choice of the inscription was intended as some form of gesture against the other family members.
- 40) The form of the memorial is of note. As I have explained above it mirrors the memorial to Alan Palin senior which is on the other half of the gravestone. That memorial bears not just Mr Palin's name and dates of birth and death but a description of his position as husband, father, and grandfather and a verse referencing the family's loss. It is right that the memorial to Mrs Palin should follow a similar pattern. The proposed removal of the contentious verse would create an imbalance on the memorial.
- 41) The memorial was lawfully installed by Mrs Palin's executors and is in unexceptionable terms and so a good reason is needed for its removal. If I could be confident that the removal would end the family conflict or lead to agreement on a replacement then that would be a good reason for the removal. Sadly I cannot be confident of that and the prospects for resolution appear poor. I have already explained that the memorial is a symptom of the underlying conflict and not its cause and the attempts made to date to reach agreement have failed. The memorial in its current form is an element in the distress felt by the Petitioners but I am satisfied that the removal of the contentious verse would cause distress to other family members.
- 42) I have found the views expressed by Richard Palin and Susan Fortune most persuasive. Richard Palin has expressed his regret at the family feud; explained that he was content for Timothy to choose the wording of the verse; and says that he believes that respect for his mother requires a line to be drawn under the dispute. A similar point is made even more tellingly by Mrs Fortune. She was not consulted about the wording and does not hide the hurt caused by her exclusion. Nonetheless she says that the issue now is respect for her mother's memory and that this requires the memorial to be left unaltered.
- 43) The points made by Richard Palin and Susan Fortune can be expressed in more formal and legalistic terms. If the memorial is now in appropriate terms do the way in which the inscription was chosen and the absence of advance agreement by all the siblings to the wording mean that the wording should be removed and the exercise of seeking agreement on a suitable inscription start afresh? In the light of the factors I have already rehearsed I am satisfied that they do not and that right course is for the memorial to remain in place in its

current form notwithstanding that not all of Mrs Palin's children were consulted about the wording and notwithstanding that some of them would have chosen different wording.

44) In those circumstances the petition is dismissed.

STEPHEN EYRE
Sir Stephen Eyre
Chancellor
1st May 2022