

## **DIOCESE OF SHEFFIELD**

### **In the Consistory Court**

Her Honour Judge Sarah Singleton QC

Chancellor

### **In the matter of David Ernest Newton deceased**

#### **Judgment**

##### **1. The facts**

The Petitioner in this matter is the son of Mr David Ernest Newton and his widow Mrs Lesley Joyce Newton. He is Dr Christopher Newton and he brings this Petition with the support and agreement of his sister Mrs Hilary Tibbles. They are the only children of the Newtons. They are his only and closest surviving relatives. His half sister died in 2002 and her remains are buried in Leicestershire where she had lived with her family for thirty five years. Her daughter has been consulted about this Petition and raises no objection to what is proposed. In the circumstances and given the delicacy and sensitivity of this matter I dispense with the need for public notices.

Mr Newton died in May 2002 at the age of 73. His cremated remains were buried in the churchyard of St Lawrence Tinsley in Sheffield in April 2004. Mrs Newton died on 12<sup>th</sup> October 2017 aged 85. The couple were married in July 1954 and had therefore been married for nearly 48 years at the date of Mr Newton's death.

Mr Newton had been brought up until the age of eleven in the parish of St Lawrence Tinsley but had spent all the rest of his life including all his years of marriage to Mrs Newton living in Rotherham. Indeed the couple had lived for the last 45 years of his life in the same house which overlooks the woods and hills of Herringthorpe, incidentally including a view of the Rotherham Crematorium at East Herringthorpe. Mrs Newton remained living in that house until her death. She and her husband had enjoyed the local landscape together.

Mr and Mrs Newton went to the funerals and were aware of the burial of a several of their friends and neighbours at the Rotherham Crematorium. Nevertheless after his death Mrs Newton decided that Mr Newton's remains should be buried in the churchyard of his boyhood parish although his funeral took place, as later did hers, at the Rotherham Crematorium. This decision she came to regret, no doubt profoundly, and before her own death in the Autumn of last year she asked her children to try to arrange for her husband's remains to be exhumed in order that

they could be buried together with hers after her death in the Rotherham Crematorium at East Herringthorpe overlooking where they had spent so many years together. Mr Newton was not a religious man. This petition seeks to move his remains from a consecrated location to a secular one.

In reading and writing this history it is hard to resist the conclusion that Mrs Newton made a serious mistake in her selection of a location for the burial of her husband's remains; it is obvious that his real connections and the best place for those bereaved of him to mourn him lay in the venue now proposed. Unfortunately Mrs Newton is not around for me to ask why that was the case but I assume it reasonable to infer and find that she was overwhelmed by her loss and made this decision when still confused by grief.

Dr Newton and Mrs Tibbles have identified a plot at the Rotherham Crematorium where they would like to be able to bury their parents' remains together. They wish to leave the memorial stone to their father where it is at St Lawrence, Tinsley and to add their mother's details to it. The Rotherham crematorium will accept Mr Newton's remains if this Petition is allowed. The funeral directors have consulted their records and confirm that the cremated remains of Mr Newton were buried in a "polytainer". I infer from this, therefore, that any exhumation can be undertaken decently and with dignity. The funeral directors concerned are willing to undertake the task either solely or with the nominated grave digger from the churchyard. The incumbent at St Lawrence has been consulted and has raised no objection to the request.

## 2. The Law

2.1 There are a number of reported decisions by my fellow chancellors on the topic of exhumation generally and as to exhumation for reburial in a family grave plot particularly. The key important principles are set out in two cases of the higher ecclesiastical courts. The case of *Re Christ Church Alsager* [1998] 3 WLR 1394 is a decision of the Chancery Court of York where the Court dismissed an appeal against the refusal of the Chancellor to permit an exhumation and reburial within the same churchyard in order that a married couple's remains could be buried together. The case of *Re Blagdon Cemetery* [2002] 3 WLR 603 is a decision of the Court of Arches which overturned a first instance decision to refuse permission for exhumation apparently on the grounds of the passage of time alone.

2.2 In the Consistory Courts, depending on the nature or location of a dispute there are three alternative appeal courts exercising a parallel but distinct reviewing jurisdiction. The resulting complexities of the principles and application of precedent in the Consistory Courts have recently been considered by the Reverend and Worshipful Rupert Bursell QC Chancellor of the Diocese of Durham in the matter of *St Chad Bensham and the Petition of Sam Tai Chan* [2016] Ecc Dur 2. By coincidence that case concerns a proposed exhumation. Bursell Ch. permitted the exhumation on

the usual terms after applying the Alsager test. He also had in mind and referred to the Blagdon test.

As Bursell Ch made clear in his Sam Tai Chan decision that, although Blagdon is an important and influential decision, the binding authority for the Province of York (including the Diocese of Sheffield) remains *Re Christ Church Alsager* [1998] 3 WLR 1394.

The test to be derived from Alsager is as follows:-

*Is there a good and proper reason for exhumation, that reason being likely to be regarded as acceptable by right thinking members of the Church at large?*

[1401 D to E]

The crucial reasoning of the *Re Blagdon* decision can be found at paragraphs 33 and 34 and reads as follows:-

*33. We have concluded that there is much to be said for reverting to the straightforward principle that a faculty for exhumation will only be exceptionally granted. Exceptional means “forming an exception” (Concise Oxford Dictionary (8<sup>th</sup> Edition, 1990)) and guidelines can assist in identifying various categories of exception. 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.*

*34. The variety of wording that has been used in judgments demonstrates the difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion. We consider that it should always be made clear that it is 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. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her.*

One source of the Court’s “norm” was the work of the Right Reverend Christopher Hill, then the Bishop of Stafford:- *The Theology of Burial* which was referred to in the judgment. The work makes clear that burial is symbolic of entrusting the person to God and commending, saying farewell and entrusting them to rest in peace. These concepts, the work explains, are inconsistent with an idea that human remains can be portable. The principles found in *The Theology of Burial* are repeated in later Church guidance. In addition to the Anglican Christian sources of these principles it is right to say that there is a similar presumption of permanence to be found in English secular civil law.

2.3 One of the Blagdon categories of possible exception is exhumation in order to place a deceased person’s remains within a family grave. The question of what does and

does not constitute a justifiable family grave case has been exhaustively considered in a number of cases by my fellow chancellors. I derive from them the need to avoid permitting an approach which renders the remains of deceased persons “portable” and therefore offending against both the theological concept of a burial representing a final entrustment of the deceased to God and equally against the secular assumption of permanence. It is also clear from the decisions of my colleagues that in this difficult and sensitive area the facts of each case must be carefully considered and that apart from the broad principles to be gleaned from Blagdon there are not any easily gleaned rules about particular situations.

### 3 My conclusions in this case

I have decided that this Petition should succeed. I consider that the reasons for granting it satisfy the Blagdon test of being exceptional and the Alsager test of there being a good and proper reason such that most right thinking members of the church would agree. I have cautioned myself against importing or introducing a concept of the remains of a deceased person being generally portable.

In this case I conclude that an elderly bereaved woman made an understandable but clear mistake in selecting St Lawrence’s churchyard in Tinsley as the proper place for her husband’s cremated remains to be laid to rest. Although that location had most connection to her husband’s childhood home up to the age of 10, all his life thereafter was rooted in the Rotherham area and in particular the area where the Rotherham Crematorium is located. Mr Newton lived with his wife during their near half century of marriage there. His house for more than 45 years was there. Their friends were there. He walked and enjoyed the countryside there. His friends’ funerals were there and, indeed, his own funeral was there. I am satisfied that had he expressed any wish it would have been for his remains to be laid to rest in what was undoubtedly his home area. It is also highly significant and important that, as she approached the end of her own life, Mrs Newton herself realised the mistake perhaps contemplating her own wishes both to be laid to rest with him and to be laid to rest in the place where they had lived their lives together.

I note that the Petitioner wishes to leave the memorial stone in place in the Churchyard at St Lawrence Tinsley and indeed to amend it to include his mother’s details. I do not wish this part of the case to delay the essential decision in favour of exhumation but consider that I do need to understand the reasons for such a request and the specific response of the incumbent at St Lawrence, Tinsley to it before exercising my discretion as to this part of the request. My directions reflect this.

As I set out above and for the reasons I explain I dispense with the need for public notices in this matter pursuant to Rule 6.6 (3).

Sarah L Singleton QC

Chancellor of the Diocese of Sheffield

16<sup>th</sup> January 2018