

Neutral citation number: [2019] ECC Man 1

IN THE CONSISTORY COURT OF THE DIOCESE OF MANCHESTER

IN THE MATTER OF A PETITION FOR A FACULTY BY JULIE MORTON

-and-

IN THE MATTER OF GEORGE HENRY HUMPHREYS DECEASED

JUDGMENT

delivered on 4 August 2019

Introduction

1. George Henry Humphreys [‘the Deceased’] died on 21 February 2007 aged 77 years and on 11 March 2007 his cremated remains were interred in an oak casket in the inner row on the south side of the Garden of Remembrance at St Mary the Virgin Deane, Bolton. The place of interment is marked by a stone marker stating:

George Henry Humphreys 1930-2007
Dearly Loved. Sadly Missed.

The Deceased was then survived by his wife Mrs Audrey Humphreys and their three children Paul, Kevin and Julie.

2. Mrs Audrey Humphreys [‘Mrs Humphreys’] died on 16 December 2018. I understand that her cremated remains have not yet been interred.

3. By a petition dated 31 May 2019 Julie Morton, the daughter of the Deceased and Mrs Humphreys, [‘the Petitioner’] seeks an order that the Deceased’s cremated remains be exhumed and re-interred in consecrated ground at St Werburgh’s Old Church in Warburton. Although the Petitioner states that such cremated remains, together with those of Mrs Humphreys can be interred in a new family plot or in an existing grave containing Mrs Humphreys’ parents, sister and brother, in his letter dated 26 May 2019 Revd Canon Edwin Burgess, the Rector of Warburton, confirms that they may be interred in such existing grave or in the area designated for cremated remains in the churchyard.

4. The petition has the consent of the Petitioner's brothers Paul and Kevin and of Mrs Humphreys' sister Edith Rose who recite that such would be 'in accordance with the wishes of Mrs Audrey Humphreys and our promises made to her, that she be re-united with her late husband Mr George Henry Humphreys in the place where they started life together as a married couple and wish to end their lives together, and their souls may be at peace and rest together for all infinity.'

5. The reasons for the application may be summarised thus:

5.1. Deane Church was chosen as the place to inter the Deceased's cremated remains as it was very close to the Petitioner's parents' home on Ladybridge, Bolton and allowed her to walk to visit the Deceased's grave.

5.2. Mrs Humphreys and her family were not told at the time that Deane Church was expected to be the Deceased's final resting place. Had they known that at the time, the Deceased's cremated remains would have been interred at Overdale cemetery. However, if such had been interred in the church of England consecrated part of such cemetery, I would have jurisdiction to decide whether to allow an exhumation from such cemetery.

5.3. In recent years, the area immediately adjoining the churchyard at Deane has declined with the Church Hall in a derelict state and often dubious and 'unsavoury characters hanging around possibly drug dealing'.

5.4. This greatly upset Mrs Humphreys and the family promised her that her final resting place would be in Warburton where she and the Deceased were married.

5.5. When her brother tried to visit the Deceased's grave on 13 May 2019 'he could not pay his respects to him or get near because a group of people were playing rounders on grass fronting the graveside'.

5.6. They had informed the Church but 'can only see matters becoming even worse, we do not want to witness these indiscretions any longer, we are very concerned as to the lack of empathy let alone security'.

5.7. To deny Mrs Humphreys 'this final wish will be unjustifiable and will break those promises we made to her'.

5.8. Although the Deceased and Mrs Humphreys lived in Bolton for many years, originally the Deceased was from Lymm and Mrs Humphreys was from nearby Warburton. The Petitioner's brothers and herself were born and raised in Lymm. Mrs Rose and the Deceased's sister are still in the Lymm area with other family members. Mrs Humphreys' parents, two brothers and a sister are interred at Warburton Old Church.

5.9. If the Deceased's cremated remains together with those of Mrs Humphreys were interred at Warburton this would also mean 'our wider family would be able to easily visit'.

5.10. The Petitioner's brother Kevin is looking to move back to the Warburton area and wishes in due course his cremated remains to be interred at Warburton.

6. It is significant that at no time prior to Mrs Humphreys' death was there any desire to exhume the Deceased's cremated remains and re-inter them in Warburton.

7. Revd Terry Clark, the Team Rector of Deane Parish Church, sets out his views in a letter to the Petitioner dated 1 May 2019.

7.1. His overriding position is that there is a 'presumption that once someone is laid to rest in consecrated ground that is permanent', but beyond that overriding assumption he confirmed that he had no objection to the Deceased's cremated remains being exhumed 'if permission is granted under faculty'.

7.2. He attached a photograph of the location of the cremated remains in the Garden of Remembrance and observes that 'it is clear from the stone that the plot was dug for two people, presumably with the intention of your Mother's ashes also being interred in the same plot'.

7.3. As to the Church Hall, it was no longer owned or rented by the Church. It is currently awaiting demolition by a developer who has purchased it. He added 'we share the concerns about the current state of the building and the behaviour which surrounds it, however we have no control over that. We do appreciate that it can be distressing to visitors in the graveyard'.

8. On my being satisfied that it was expedient to determine this application on consideration of written representations, pursuant to Rule 14 of the Faculty Jurisdiction Rules 2015, the Diocesan Registrar communicated with the Petitioner to ask her whether she would consent to my determining the application on consideration of written representations and on 2 August 2019 she agreed to my so doing. I thus determine this application on the basis of such written representations.

The legal principles to be applied

9. Having set out the factual background I turn to the legal principles which I must apply.

10. I have a discretion as to whether I should grant a faculty. The starting point for the exercise of such discretion was conveniently explained by Steel Ch in *Re Matheson (Decd)* [1958] 1 WLR 246, at 248, when he stated:

'From the earliest times it has been the natural desire of most men that after death their bodies shall be decently and reverently interred and should remain undisturbed.

Burial in consecrated ground secured this natural desire, because no body so buried could lawfully be disturbed except in accordance with a faculty obtained from the church court. As all sorts of circumstances which cannot be foreseen may arise which make it desirable or imperative that a body should be disinterred, I feel that the court should always be slow to place any fetter on its discretionary power or to hold that such fetter already exists. In my view there is no such fetter, each case must be considered on its merits and the chancellor must decide, as a matter of judicial discretion, whether a particular application should be granted or refused.’

11. In *In Re Blagdon Cemetery* [2002] 3 WLR 603 the Court of Arches it was held that:

11.1. The court has a discretion whether to grant a faculty for an exhumation but the starting-point in exercising that discretion is the presumption that Christian burial is permanent, that human remains should not be portable, and that a faculty for exhumation should only exceptionally be granted. [para 20]

11.2. The presumption of the permanence of Christian burial flows from the theological understanding that burial, or the interment of cremated remains, is to be seen as the act of committing the mortal remains of the departed into the hands of God, as represented by His Holy Church. [para 21].

11.3. This presumption derives from the Christian theology of burial that the disposal of the dead, whether by way of burial or cremation, has an aura of permanence about it. So in *‘Theology of Burial’* the then Bishop of Stafford, the Rt Revd Christopher Hill, stated:

‘The permanent burial of the physical body / the burial of cremated remains should be seen as symbolic of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their `journey`), entrusting them in peace for the ultimate destination, with us, in the heavenly Jerusalem. This commending, entrusting, resting in peace does not sit easily with `portable remains`, which suggests the opposite: reclaiming, possession, and restlessness; a holding on to the `symbol` of a human life rather than a giving back to God. ... In general, therefore, the reluctance to agree to faculties for exhumation is well grounded in Christian theology and eschatology. It is also right generally from the point of view of the mourner, who must learn to let go for their psychological and spiritual health’. [para 23]

11.4. ‘Exceptional’ means ‘forming an exception’ [Concise Oxford Dictionary, 8th ed (1990)] and guidelines can assist in identifying various categories of exception. Whether the facts of 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. [see para 33]

11.5. It is for the Petitioner to satisfy the court on the balance of probabilities that there are special circumstances which constitute good and proper reason for making an exception to the norm that Christian burial in ground which has been permanently set aside as sacred by the act of consecration of a bishop of the Church of England is final. [para 35]

12. The guidelines provided by the Court of Arches at para 36 of its judgment may be summarised as follows:

12.1. Advancing years, deteriorating health and moving to a new area are not in themselves adequate reasons for permitting exhumation. Any medical reasons relied upon by a petitioner have to be very powerful indeed to create an exception to the norm of permanence, for example, serious psychiatric or psychological problems where medical evidence demonstrates a link between that medical condition and the question of location of the grave of a deceased person to whom the petitioner had a special attachment.

12.2. As to the factor of medical reasons, the court stated:

‘If advancing years and deteriorating health, and change of place of residence due to this, were to be accepted as a reason for permitting exhumation then it would encourage applications on this basis. As George QC Ch pointed out in *Re South London Crematorium* (27 September 1999, unreported):

‘Most people change place of residence several times in their lives. If such petitions were regularly to be allowed, there would be a flood of similar applications, and the likelihood of some remains (and ashes) being the subject of multiple moves.’

Such a practice would make unacceptable inroads into the principle of permanence of Christian burial and needs to be firmly resisted. We agree with the Chancery Court of York that moving to a new area is not an adequate reason by itself for removing remains as well. Any medical reasons relied upon by a petitioner would have to be very powerful indeed to create an exception to the norm of permanence, for example, serious psychiatric or psychological problems where medical evidence demonstrates a link between that medical condition and the question of location of the grave of a deceased person to whom the petitioner had a special attachment.’

12.3. The passage of a substantial period of time since burial will not in itself be fatal to a petition, although it might be potentially relevant in assessing the genuineness of the petitioner's case.

12.4. Although mistake as to the location of the grave or, in certain circumstances, as to the significance of burial in consecrated ground could be a good and proper reason, mere change of mind as to the place of burial by those responsible for the interment could not.

12.5. Although the views of close relatives were a very significant factor, the amount of local support for the petition would normally be irrelevant.

12.6. In view of the desirability of securing equality of treatment between petitioners so far as circumstances permitted, the court has to take into account the impact its decision is likely to have on other similar petitions. The Court of Arches referred to ‘the desirability of securing equality of treatment, so far as circumstances permit it, as between petitioners’.”

13. It should be noted that in some cases faculties have been granted to allow family members to be brought together into a single grave: see *In Re St James` Churchyard, Hampton Hill* (1982) 4 Consistory and Commissary Court Cases, case 25 and the decision in *In Re Blagdon Cemetery*. However, the facts in those cases were very different:

13.1. In *St James Churchyard, Hampton Hill*, a faculty was granted for an exhumation 50 years after the deceased`s death so they could be interred in a family plot in Canada.

13.2. In *In Re Blagden*, a faculty was granted in respect of the burial resulting from a sudden and unnatural death of deceased at age of 21 when he had unsurprisingly not expressed any view as to where he might be buried, where there was an absence of any link between him and the community in which he was buried and the parents` did not have any permanent home at the time of his death.

14. The guidance confirmed in *In Re Blagdon Cemetery* was confirmed In *In Re St Nicholas Sevenoaks* [2005] 1 WLR 1011.

15. A similar approach appears in the *Guidance for best practice for treatment of human remains excavated from Christian burial grounds in England* [English Heritage / Church of England 2005] which states:

‘In summary, it is central to Christian theology that, after death, the human body ceases to have any significance for the ongoing resurrected spiritual life of the individual. However, following death, the physical remains should be treated with respect and reverence, even though ultimately it is the fate of the soul, rather than of the physical remains, which matters.’

16. Such presumption also exists in English secular law which provides that there is no ownership of human remains, that it is a criminal offence to disturb human remains without lawful permission and that there is no legal right to exhume human remains. Such reflects a secular culture in which the norm is that the remains of a deceased person should not be disturbed once they have undergone the initial act of interment.

17. The question thus arises: in what circumstances should a court allow the disturbance of remains as an exception to such presumption of permanence.

18. Applying the test in *Re Blagdon Cemetery*, I turn to consider the facts of this case. For me to grant this faculty I must be satisfied that it is established by the Petitioner, on a balance of probabilities, that the facts here justify an exception to the general presumption of the permanence of Christian burial.

Determination of the Petition

19. On the facts here I am not persuaded that, in the exercise of my discretion, I should find that sufficient special circumstances exist to justify my making an exception from the norm that Christian burial is final. My reasons for so concluding may be summarised thus.

20. Firstly, the interment of the Deceased's cremated remains at Deane was a deliberate decision by Mrs Humphreys and her family. It was very close to the former matrimonial home and allowed Mrs Humphreys to walk to visit the Garden of Remembrance where the Deceased's cremated remains were interred. No enquiry was made as to whether this was intended to be the Deceased's final resting place because at that time nobody contemplated the Deceased's cremated remains being exhumed and re-interred elsewhere. Although it is said by the Petitioner that the Deceased's cremated remains would have been interred at Overdale cemetery, given the geography, that would not have been as convenient for Mrs Humphreys to visit where the Deceased's cremated remains were interred.

21. Secondly, it is over 12 years since the Deceased's cremated remains were interred at Deane and during almost all of that time Mrs Humphreys visited the grave and there was no intimation that this application would be made. Although I am satisfied that such a long period of time does not *automatically* lead to a conclusion that I should refuse this application, in my view it is a not insignificant factor that I can, and do, take into account in reaching my decision.

22. Thirdly, the Petitioner's assertions that in recent years the area immediately adjoining the churchyard at Deane has declined with the Church Hall in a derelict state with dubious and unsavoury characters hanging around and that when the Petitioner's brother visited in May 2019 'he could not pay his respects to him or get near because a group of people were playing rounders on grass fronting the graveside', prompted me to visit Deane churchyard.

23. I visited in the afternoon of 3 August 2019. I gained entry by a path between housing and the partly demolished former Church Hall about which the Petitioner expresses concerns. The Garden of Remembrance is situated a short distance from the end of the path and is relatively large. Although the original part is surrounded by a substantial hedge, the Garden of Remembrance continues around the perimeter of such hedge. It is well maintained and a credit to those who are responsible for its maintenance. I found the stone marker where the Deceased's cremated remains are interred easily. It is in the inner row on the south side of the Garden of Remembrance. Adjacent to it is a large grassed area which is an attractive local amenity and I can well imagine is used by young people to play games. I accept, as does the Team Rector, there are currently concerns about the partly demolished state of the former Church Hall, a building which is no longer owned by the Church and that it may be distressing to visitors to the churchyard. However, when the works are

completed, I am confident that it will be a more fitting entrance to the churchyard. I do not regard this as a long-term issue.

24. I do not accept that the area immediately adjoining the churchyard, save and except for the partly demolished Church Hall, is in a derelict run-down state. I cannot say that no dubious/unsavoury characters ever frequent the area, because this churchyard is only a few miles from Bolton town centre but there were none to be seen when I was there. I do accept that when the Petitioner's brother visited in May 2019, a group of young people were playing rounders on the adjacent grassed area but I would be surprised, given the stone marker is on the inner row of two rows of markers, if he was unable to get near to stone marker, still less pay his respects to the Deceased. In any event I note that it was only on one occasion that young people were playing a game on the grassed area adjacent to the Garden of Remembrance.

25. Fourthly, this is not a case where medical reasons or mistake can be, or is relied upon in support of the application.

26. Fifthly, although it is argued that the family had promised Mrs Humphreys that her cremated remains would be interred with those of her husband in Warburton and that to deny her 'this final wish will be unjustifiable and will break those promises we made to her', it should not be forgotten that:

26.1. Mrs Humphreys herself arranged for the Deceased's cremated remains to be interred at Deane near to where she lived.

26.2. any promises made to the Deceased could only be effective if I were to grant the faculty sought.

26.3. because her cremated remains are not yet interred, they can still be interred at Deane with those of her husband. This will meet part of her wishes. It is for the surviving family to decide whether this takes place and her wish to be re-united in death with her deceased husband can be partly honoured.

27. Sixthly, I can well understand why the Petitioner seeks an order which will allow the cremated remains of both her parents to be interred at Warburton. But, I am bound to observe that, had this been desired, Mrs Humphreys could have arranged for her husband's cremated remains to be interred at the outset in Warburton, although it would have been difficult for her to visit the place where his cremated remains were interred in the intervening 12 years.

28. Seventhly, I think that the real reason behind this application is *not* that the Petitioner's parents' cremated remains be interred together, because that can still happen in Deane, but is to inter them together in a locality where most of the family are currently located and can conveniently visit. In this context I note that the Petitioner's parents' sisters along with 'other family members' live in Warburton and of the remaining immediate

family only both brothers currently live in Bolton [the Petitioner herself resides in Solihull] and one is planning to move back to Warburton.

29. Finally, I have concluded that to allow this application would be to approve a practice of regarding cremated remains as ‘portable’ and that to do so would encourage such applications, which I am not willing to do. I echo and adopt the dicta of George Ch, as he then was, in *Re South London Crematorium* that to do so might result in a flood of similar applications.

30. It thus follows that in my judgment, in the exercise of my discretion, I do not grant the faculty sought because I do not accept that any exception is warranted by the facts of this case to the presumption of the permanence of Christian burial. I do so with some regret as I appreciate that my decision will cause distress to the Petitioner’s family.

31. In accordance with the practice of this court the Petitioner must pay the costs of the determination of this Petition.

GEOFFREY TATTERSALL QC
Chancellor of the Diocese of Manchester