

**IN THE CONSISTORY COURT FOR THE DIOCESE OF PORTSMOUTH**

**Re: Patricia Bessie Sharp, deceased**

**JUDGMENT**

**Introduction**

1. By a petition dated 3<sup>rd</sup> June 2019 Clair Sharp, the daughter of the late Patricia Bessie Sharp, seeks approval for the exhumation and re-interment of her late mother's remains in Denmead Burial Ground, Cemetery Lane, Denmead, Hampshire.
2. Patricia Bessie Sharp died on 11<sup>th</sup> February 2017, aged 87, and was interred at the burial ground on 9<sup>th</sup> March 2017 and was interred in Plot no. U59 at the burial ground. It has since transpired that an error had occurred, as the deceased had intended to reserve a different plot, Plot W59 in the burial ground. Her daughter now seeks to rectify the error by exhuming her remains from Plot U59 and re-interring them in Plot W59.
3. The petition is accompanied by a detailed and moving statement by Clair Sharp dated 1<sup>st</sup> April 2019 setting out the unfortunate sequence of events leading to the current situation. Her account is supported by statements from her brother and her partner and from Mr Colin Cleverley. Mr Cleverley, it has more recently transpired, had intended to reserve Plot U59, but his reservation was recorded as being for Plot W59. He supports the petition.
4. Denmead Parish Council now accept that an error was made and by their letter dated 6th March 2019 have confirmed that they do not oppose the exhumation and re-interment of Mrs Sharp's remains. The parish council have not been joined as a party to the petition and they have not been required to file any substantive response to the account given by the petitioner. However, her account is supported by contemporaneous documentation

**The background: Mrs Sharp's reservation**

5. The land where the burial ground is situated was originally in the ownership of the incumbent as a churchyard extension, but was conveyed to Denmead Parish Council in 1953 and consecrated on 21<sup>st</sup> July 1995.
6. The part of the burial ground which is in issue in this case is Row 59.

7. On 26<sup>th</sup> February 1997, Patricia Bessie Sharp wrote to the parish council confirming her wish to reserve a grave space at the foot of the grave of her late husband, Albert, and enclosing the applicable fee. Albert Sharp had sadly died in October 1996 at the age of 67 and was interred in Plot V59. The grave space at the foot of his grave was W59, but Mrs Sharp was not aware of the numbering of the plots and did not request the plot by number.
8. The reservation was confirmed by the parish council in writing on 28<sup>th</sup> February 1997, but was referred to as being for Plot U59. The parish records also show the reservation under that plot number.
9. The reservation was renewed in January 2007 and again in January 2017 (when Mrs Sharp was in hospital). On each occasion the renewal notice included the plot number as U59, but no plan was provided showing the location of the plots and Mrs Sharp had no reason to suspect that an error had occurred.
10. On the day preceding Mrs Sharp's funeral, her daughter and son visited the burial ground and were shocked to find that the plot prepared for their mother's burial was not the plot which the family believed to have been reserved, but was the plot at the head of their late father's grave. They immediately contacted the parish council, but were told that the plot they thought had been reserved by Mrs Sharp had been reserved by someone else (as it later transpired, that was Mr Cleverley).
11. In view of the response from the parish council, the family had no option but to proceed with the burial.
12. During 2017 and 2018 the family made extensive representations to the parish council about the grave and related matters, including the erection of a headstone, but no progress was made.
13. No information had been given to the family about the person who had reserved the other grave space, but in the course of their enquiries they discovered a letter written by Mr Cleverley to the Portsmouth News, which had been published on 27<sup>th</sup> March 2017 complaining that the grave space reserved by him had been used. Clair Sharp was then able to make contact with Mr Cleverley and the nature of the error became clear.

#### **The background: Mr Cleverley's reservation**

14. Mr Colin Cleverley's daughter Samantha tragically died at the age of 16 in May 1996. She was interred in the burial ground in Plot T59. Mr Cleverley wished to reserve a grave space for himself at the foot of her grave, which would have been U59. His reservation was confirmed in writing by the parish council on 19<sup>th</sup> May 1997, but in error the reservation was marked W59 and the parish records were noted accordingly. Again, in the absence of any plan of the burial ground, he was unaware of the correct numbering.

15. The reservation has been renewed since then, but in 2017, on discovering the error, Mr Cleverley relinquished the plot.
16. Coincidentally, Mr Cleverley had also visited the burial ground on 8<sup>th</sup> March 2017. He was shocked to find that the plot he believed he had reserved had been prepared for a burial. He too contacted the council, stating that he had reserved that plot, but was informed that the plot had been reserved by someone else. He then wrote to the local press.
17. In due course he was contacted, through his son, by Clair Sharp and together they were able to make representations to the parish council.

### **The location of the grave plots**

18. I have seen photographs and a video-recording of the arrangement of the grave plots in the relevant section of the burial ground. The area in question is Row 59, plots T59 to W59.

The grave spaces are in line and the current situation is:

- T59 – Samantha Cleverley
- U59 – Patricia Sharp
- V59 – Albert Sharp
- W59 – Vacant

19. It is clear from the evidence that Mrs Sharp and Mr Cleverley each intended to reserve the plot at the foot of their respective family members, in Mrs Sharp's case W59 and in Mr Cleverley's case U59. However, the reservations were recorded the other way round in the parish council records. In response to the queries raised by Ms Sharp and Mr Cleverley in March 2017, the council evidently relied on its records.

### **The principles**

20. The relevant principles applicable to exhumation of human remains after burial were considered in depth by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. There is a presumption that Christian burial is permanent and that presumption can generally only be displaced in exceptional circumstances. However, the court recognised at [36] that the situation may be different in the case of a genuine mistake:

*“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.”*

21. The application of *Blagdon* in cases of mistake was recently considered in *Re South Stoneham Cemetery* [2018] ECC Win 2, where the petitioner had reserved a grave plot which had subsequently been used, in error, for the interment of someone else. There, the family of the person interred in the plot strongly objected to the application for exhumation, which was made many years after the burial. The Chancellor refused a faculty concluding that exceptional circumstances had not been made out.

22. In my judgment, the present case can readily be distinguished from *South Stoneham* because

- (a) The plot which Mrs Sharp had intended to reserve (W59) has not yet been used: and
- (b) Mr Cleverley, who intended to reserve U59 actively supports the exhumation, in order that U59 can be available for reservation by him, as intended.

### **Discussion and conclusion**

23. The parish council, while not opposing the petition, does not necessarily agree that an error was made in recording the reservations. However, I am satisfied from all the evidence that that a genuine mistake was made in the process of recording the reservations made by Mrs Sharp and Mr Cleverley. While there is a presumption that the parish records are regular, that presumption is rebutted by the evidence of the petitioner and her witnesses.

24. It is not necessary for present purposes to determine how the mistake came about and whether it was a result of the act or default of the parish council. In any event it would not be appropriate to reach a determination about that without the parish council having the opportunity to make representations. It is sufficient for the court to conclude that Mrs Sharp never intended to reserve or be buried in Plot U59 and that Mr Cleverley did intend to reserve that plot.

25. Although Mrs Sharp's interment is now more than two years ago, I am satisfied that her family have done all they can to rectify the position since 2017 and that it was only on making the connection with Mr Cleverley's family that it was possible to show conclusively that an error had been made.

26. As noted, where a clear mistake has occurred, the granting of a faculty for exhumation is not in truth an exception to the presumption of permanence, but the correction of an error. I am satisfied in any event that the circumstances which led to Mrs Sharp's

- interment in the wrong grave were exceptional and that the mistake should be corrected by permitting the exhumation of her remains and her re-interment in the correct grave
27. Accordingly I direct that a faculty shall issue for the exhumation of the deceased's remains from Plot U59 and re-interment in Plot W59. The records maintained by the parish council are to be rectified to show that Plot U59 is reserved by Mr Colin Cleverley.
  28. This has undoubtedly been a difficult and distressing time for Mrs Sharp's family and for Mr Cleverley and, whatever the origin of the error, one can only sympathise with their experience.

### **Costs**

29. In a letter accompanying her petition, Clair Sharp indicated that she wished to seek an order for costs against the parish council, including costs and expenses incurred in carrying out the exhumation and re-interment. The parish council, in their letter of 6 March 2019 stated that they did not accept responsibility for any costs.
30. The court has power to make a costs order against a party whom the court finds to have been responsible wholly or partly for an act or default in consequence of which the proceedings were brought: *Ecclesiastical Jurisdiction and Care of Churches Measure 2018, section 69*.
31. Before handing down this judgment, I indicated that if Ms Sharp sought an order for costs, it would be necessary for the parish council to become a party to the proceedings and be given the opportunity to make representations on costs.
32. Ms Sharp has since confirmed that she does not seek an order for costs in the current proceedings, but that she may pursue other remedies.
33. In those circumstances I need say nothing further on the question of costs.

**HH Judge Philip Waller**

**Chancellor**

**24<sup>th</sup> October 2019**