

IN THE CONSISTORY COURT AT LINCOLN

IN the matter of St Helen's, Boultham and an application to exhume the remains of Gillian Sandra Rayner deceased.

Judgment

1. This is an application by the Petitioner for the exhumation of the remains of his late daughter Gillian Sandra Rayner who tragically died on 22 September 1966 in a road traffic accident when she was aged just 16 months. She was buried in the churchyard of St Helen's, Boultham. Recently his late wife, Gillian's mother, has died and she has been interred in Newport Cemetery, Lincoln. Mr Rayner explains that it has always been the wish of himself and his late wife, that they could be laid to rest with their daughter. However, the churchyard at St Helen's is closed for new burials and his wife's remains were therefore interred in the Newport cemetery.
2. The application is to exhume the remains of Gillian and inter them in a separate grave at Newport Cemetery which has been reserved for her remains. This is close by her mother's grave which is within sight of the previous family home. Gillian's brother and sister, Peter and Carol, have both assented to this exhumation should it be permitted.
3. The Rector of the parish, Canon Osbourne, has confirmed that there is a record of the burial of Gillian's remains in 1966 in Row D number 4. The grave is unmarked and is in an area of several unmarked graves. As far as the parish records indicate there has been no further burial in that area, but he states that they are able to indicate only the 'approximate area' in which Gillian's remains

were buried. He cannot be absolutely precise where the remains were interred within that approximate area. He has no objection to the exhumation should it be permitted.

4. Understandably the family cannot now recall the name of the funeral director at Gillian's funeral in 1966. Lincolnshire Co-operative Funeral Directors are assisting the family in this application. In their email 17 July they have provided a professional assessment about the practicalities of an exhumation of a young child's remains buried in 1966. The email states:

"It is very likely from the time period of the interment in September 1966 that the coffin will have disintegrated. If the engraved coffin plate at the time was either metal or plastic this may still be present allowing identification of the deceased. It would be difficult to know if any remains of the deceased would still be present due to the age of the deceased, where by (sic) the bone structure of a baby or child differs to that of an adult'

The approach to be taken

5. An application to bring together the remains of close family members, particularly when one of the family is a very young child, will always be considered with the greatest care and understanding of the pastoral context. It may be helpful if I set out the Church's understanding of burial which informs the law I must apply and the judgement I must make.
6. The law that I must apply is founded upon a Christian understanding of what burial of the body or the cremated remains signifies. The principles by which an exhumation from consecrated ground is permitted is set out in the case of In Re Blagdon Cemetery 2002 Fam p299.
7. The presumption is that burial of human remains in consecrated ground is permanent. This presumption arises from the Christian theology of burial which was set out at para 23 of the judgement in Blagdon in the quotation from the Bishop of Stafford's paper on the 'Theology of Burial'. He wrote

“The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for their life; to commend them to God the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another.”

He went on to explain:

“The permanent burial of the physical body/ the burial of the cremated remains should be seen as a symbol 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 their ultimate destination, with us, to the heavenly Jerusalem. The commending, entrusting, resting in peace does not sit easily with ‘portable remains’ which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the ‘symbol’ of human life rather than a giving back to God”

8. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that Gillian was laid to rest in 1966 and her remains should not now be disturbed.
9. The Court of Arches in Blagdon identified various factors which may support a submission that special circumstances have arisen which permit the remains to be exhumed. The factors to be considered are:
 - (i) medical reasons: where there was psychiatric evidence of a diagnosed condition or disorder in a family member that was caused by or contributed to by the location of the burial. There is no suggestion that this is relevant in this case.
 - (ii) mistake: where there has been a simple error in administration, such as burial in the wrong grave, the Court held that faculties for exhumations could readily be granted. However, there has been no mistake in the burial place here: this is not relevant to this application.
 - (iii) lapse of time: the Court held that the passage of a substantial period of time before an application for exhumation was made could not be determinative of the application in itself. However, it would be a factor in assessing the Petitioner’s case.

In this case it is 53 years since Gillian's death which is a lengthy period. Whilst the Petitioner and his wife had hoped that they could be buried with or close by Gillian's remains in the churchyard, they have taken no step to achieve this before now. I accept that it was only on his late wife's death that the matter came into focus for obvious reasons, but 53 years is a long time before an application to exhume is made. However, the period of time is not determinative in itself of the question whether the exhumation should be permitted, but it is a factor I must take into account.

- (iv) precedent: the Court held that consideration of the effect of precedent by the grant of the application is properly made because of the desirability of securing equality of treatment, so far as circumstances permit, between Petitioners. I take this issue into account.
- (v) family grave: the Court held that the use of family graves are to be encouraged because they both express family unity and they are environmentally friendly in demonstrating an economical use of the land for burials. It would seem from the Newport Cemetery letter that a separate grave has been reserved for Gillian's remains. I do not know if thought has been given to a 'family grave'.

Decision

10. All the factors set out above are predicated on the assumption that the remains can be recovered by undertakers in an exhumation and reinterred. In this case I am not satisfied that with the passage of time that it is now possible to recover any remains of such a young child buried in 1966. I rely upon the professional assessment of the funeral director set out above in this judgement. If the remains will now no longer be capable of exhumation, then no exhumation can be ordered. I am satisfied that this is the situation here.
11. Additionally, in any exhumation it would also be necessary to be able to locate with reasonable accuracy where the human remains are located that are to be exhumed. If I had been persuaded that the remains were capable of being recovered in an exhumation then the issue of further work to be done in locating

with reasonable accuracy those remains could be investigated further, and I would allow the family time to investigate a 'family grave' option at the cemetery. However, in the absence of any remains to recover after 53 years, that work is not required, and I am unable to authorise an exhumation.

12. I appreciate that this will be a disappointing decision for Mr Rayner particularly, and the rest of the family too. However, I hope that the Church's teaching that Gillian and her mother have both completed their journey and are now resting united together within the love of God, provides some comfort to them.
13. I waive my fee.

The Reverend and Worshipful Chancellor His Honour Judge Mark Bishop

2nd November 2019