

IN THE CONSISTORY COURT AT LINCOLN

In the matter of the parish church of St John, Washborough, and

In the matter of Joan Noreen Hussey and Ronald Steven Hussey deceased

Judgment

1. On 24 January 2008 Mrs Joan Hussey, deceased, was interred in a reserved plot which she and the family had understood would be dug to a double depth to accommodate Mr Ronald Hussey, her husband, when the time came. Tragically and unexpectedly Mr Hussey died on 29 January 2019 and the funeral was arranged for 28 February 2019. The petitioners (the children of Mr and Mrs Hussey) expected their father to be interred in the double depth grave with their mother.
2. Regrettably it became clear to the family only a few days before his funeral, that Mrs Hussey's grave had been dug to an inadequate depth of only 2 feet 2 inches and it was therefore impossible to inter Mr Hussey's remains in that grave. The family were faced with an immediate decision and opted for a new double depth grave to be dug to receive their father's remains in a part of the churchyard where new burials were interred. This was to be a temporary measure before both parents could be united in the single grave which they had chosen, once it had been dug to a double depth. If this was to be permitted, then it would of course require a double exhumation.
3. On 28 May 2019 the Petitioners applied for a faculty to exhume the remains of their mother, so that a double depth grave could be dug, her remains then to be reinterred therein, and then their father's remains to be exhumed to be interred in the newly dug double depth grave with his wife's remains.

4. It is not clear why Mrs Hussey's grave was dug to the depth it was, nor why the consequences for any subsequent interment in that grave were not explained to Mr Hussey and the family at the time in 2008. I note that I have granted a faculty in 2014 in this churchyard in circumstances created by a grave being dug to an inadequate depth. I note the background to the gravedigging arrangements at that time. I assume that Co-operative Funeral Services had engaged the gravedigger and to dig a double depth grave. It must have been clear to them during the interment in 2008 that the grave had not been dug to a double depth.

Discussion

5. In considering this Petition it is important that the Petitioners understand, as I am sure they do, the law that I must apply. It is founded upon a Christian understanding of what burial of the body, or the cremated remains, signify. The principles by which an exhumation from consecrated ground is permitted are well known and set out in the case of In Re Blagdon Cemetery 2002 Fam p299.
6. 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".

7. The principle of permanence can only be departed from if there are special

circumstances which justify an exception to the principle that Mr and Mrs Hussey were laid to rest in 2019 and 2008 respectively, and that their remains should not now be disturbed.

8. The Court of the Arches in Blagdon identified various factors which may support a submission that special circumstances have arisen which permit the remains to be exhumed. These factors are:

(i) medical reasons.

The Court made it clear that the only medical reasons which could assist a petitioner in these circumstances would be those which showed quite clearly that a serious psychiatric or psychological problem had arisen caused by the location of the grave to whom the petitioner had a special attachment. The Court made it quite clear mere decline in health and mobility due to advancing years could not be a reason which would displace the presumption of permanence.

There are no such reasons present in this case.

(ii) 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 genuineness of the Petitioners' case.

I am quite satisfied that the family did not realise the depth of their mother's grave prevented their father from being buried there until 2019. This was only made clear to them shortly before the father's funeral. They were then faced with a difficult decision to be made at a very difficult time. They have acted speedily in bringing this Petition forward. Although Mrs Hussey was buried in 2008, there has been no lapse in time since the facts became known to the Petitioners.

(iii) 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.

In this case there has been a mistake made on the part, it would appear, of the 2008 gravedigger in either failing to dig to a sufficient depth, or failing to tell anyone that only a single depth grave could be dug. I would have expected that the undertakers in 2008 would have come to realise at some stage before interment that the grave had been only dug to a single depth. It is clear that the settled intention of Mr and Mrs Hussey was that they should be buried together in a particular grave under the tree. It is not clear whether this is impossible at the location where Mrs Hussey is buried, because of a sub strata of rock, or poor drainage, or whether there are no problems in digging the grave to a double depth.

(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 is 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 is clear that Mr and Mrs Hussey wished to be buried together in effect in a family grave. That can be achieved still with a single exhumation of Mrs Hussey's remains and her interment in Mr Hussey's new grave. However, that is not what the Petitioners want, and it was not the intention of Mr and Mrs Hussey that they should be buried in the location where Mr Hussey is currently interred.

Determination

9. I am satisfied that the wholly exceptional circumstances which have arisen in this case justify an exhumation of Mrs Hussey's remains to allow her grave to be dug to a double depth. A faculty for exhumation is required for this because Mrs

Hussey's coffin and remains will be lifted from the ground: if the coffin could be kept beneath the surface of the ground while work was done around it, then a faculty for exhumation may not have been required. I make no finding upon this issue which has not been argued before me. However, it is clear that this is not proposed and there is no reason why her coffin cannot be lifted from the grave for this excavation work to be carried out: an exhumation is permitted.

10. If her grave can be dug to a double depth, then I am satisfied given the mistake that was made in 2008 and the failure to communicate this at the time to Mr Hussey or the family, it would not be right to insist that Mrs Hussey's remains should be reinterred with her husband in the new grave just dug for him taking her remains away from where they have rested since 2008 and where Mr and Mrs Hussey had chosen to be buried together. I have noted the pastoral concerns raised by the Rector in his helpful letter dated 13 May 2019 and take these into account. Of course, if Mrs Hussey's grave cannot be dug to a double depth then it will not be necessary to exhume Mr Hussey's remains and his wife's remains will be interred with his in his current resting place.
11. In reaching this decision I have taken into account that a mistake has been made by professionals concerned with the 2008 interment which was never communicated to Mr Hussey or the family when it should have been, and the wishes of Mr and Mrs Hussey to be buried together in a family grave at double depth. I also take into account that there will have to be one exhumation in any event even if Mrs Hussey's grave cannot be dug to a double depth.

12. The faculty I grant is for:

(i) the exhumation of Mrs Hussey's remains to investigate the possibility of digging to a double depth

(ii) the exhumation of Mr Hussey's remains **CONDITIONAL** upon it being possible to dig to a double depth in the grave of Mrs Hussey. If that is not possible then the prior condition for the exhumation of his remains has not been met and his remains cannot be exhumed.

12. The logistics of this exhumation must be carefully planned. My order is that:

(i) the exhumation of Mrs Hussey's remains and the digging of the grave to a double depth, and if required, the exhumation of Mr Hussey's remains and the reinterment of both sets of remains in the newly dug double depth grave, should all be accomplished in a single day. If this is not possible then I require a full explanation why not and I will give further directions before any work commences.

(ii) all exhumation/s must be screened and carried out in such a way as not to cause distress to anyone visiting the churchyard to visit graves.

(iii) the local environmental health department should be notified of the work

13. I am concerned with the costs of this faculty and the exhumation/excavation work and who should bear these costs. I direct that the funeral directors in the 2008 funeral of Mr Hussey, who I take to be the Co-op, should be joined in these proceedings to show cause why they should not pay the costs of this faculty. It may be that the Co-op have already given an undertaking to meet these costs: however, if there is any dispute about this, I need to determine that as part of these faculty proceedings.
14. I am very sorry that the Hussey family have had to deal with these unfortunate circumstances and I hope that once this has been resolved they will be able to put these matters behind them so that they can both remember and celebrate their parents' lives together.

The Reverend and Worshipful Chancellor His Honour Judge Mark Bishop

15th June 2019