

**IN THE CONSISTORY COURT  
OF THE DIOCESE OF CARLISLE**

**RE BEVERLEY PAMELA WILSON DECEASED**

**JUDGMENT**

**delivered on 30 November 2021**

*Introduction*

1. Beverley Pamela Wilson [‘the Deceased’] was born on 7 August 1965 and died in tragic circumstances on 19 August 1998. By her Petition dated 24 July 2021 Pamela Wilson [‘the Petitioner’] seeks an order for the exhumation of the Deceased, her daughter. On 30 September 1998 the Deceased’s cremated remains were interred in a grave in Parkside Road Cemetery Kendal [section G: grave 2366]. The Petitioner asks that they be exhumed and re-interred in another grave [section H: grave 623] in the same cemetery, together with those of her recently deceased father Michael Wilson.

2. In support of the application the Petitioner states:

‘Beverley died tragically in a canal boat accident in Skipton around twenty years ago when she was drowned with others. The funeral and court case happened very quickly with Michael and myself in shock and hardly able to grasp what was happening. As my daughters are both mentally handicapped and Michael has died I don’t feel they should be on their own and we should all be together.’

3. A letter from Fishwicks Ltd, funeral directors, who had recently purchased Ruxtons Funeral Service [‘Ruxtons’] who had carried out the Deceased’s funeral, suggests that Ruxton’s practice was that the cremated remains will either have been interred in an oak casket or will have been poured into the ground, that the ground in that part of the cemetery is relatively dry and that although since 1998 moderate deterioration will have occurred, exhumation would still be possible.

4. After an initial review of the papers I asked whether it would be possible for the recently deceased father and in due course other family members to be buried in the Deceased’s existing grave and if so, why was that course not being adopted.

5. The response from Steve Higson, the Petitioner's nephew who is acting on the Petitioner's behalf, was as follows:

'In the current Plot all 4 could not go in to the same plot in the same way. One would have to be spread over the top underneath the soil rather than in an Urn so this is not very ideal.

Also the current Head stone is laid down and is too small to get all the details on of each family member.

She [referring to the Petitioner] would really prefer all of them to be put into the ground in the same manner and have a head stone stood up so all the details can be seen and so all the family are together and not split up or buried in different ways.

We had looked into them all going into the same plot before we started this process.'

6. My understanding is thus that it is possible that the recently deceased father together with in due course the Petitioner and her two daughters could be interred in the Deceased's existing grave although it would not be 'very ideal' because the last set of cremated remains could not be interred in a container. Instead, they would have to be poured into the grave, as may have been the case in relation to the Deceased's cremated remains. In fact, I remind myself that the current Diocesan Churchyard Regulations indicate that cremated remains should normally be buried without a container although at the incumbent's discretion they may be buried in a casket or urn provided that it is made of biodegradable material.

7. I do not regard the necessity for a new headstone as significant, given that a new headstone would seem necessary in any event.

8. Do these circumstances justify the exhumation of the Deceased?

*The law*

9. 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.`

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

10.1. 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]

10.2. 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].

10.3. 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]

10.4. `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]

10.5. 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]

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

12. 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.’

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. 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. 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. By contrast there have been recent cases where exhumations have been refused in cases where it has been argued that a new family grave was necessary: see for example *Re St Mark Winshell* [2020] ECC Der 4 [Clarke Ch], *John (Jack) Smith Deceased* [2021] ECC Der 2 [Clarke Ch] and *Re Bingham Cemetery* [2018] ECC S&N 1 [Ockleton Ch].

#### *Determination*

15. I remind myself that in determining this application I am exercising a discretion and that there is a presumption against exhumation and that a faculty should only be granted in exceptional circumstances.

16. In my judgment the Petitioner has not established that there are exceptional circumstances which would justify my permitting an exhumation of the Deceased. My reasons may be summarised thus.

- 16.1. This application has been made almost 23 years after the cremated remains of the Deceased were interred and although length of time is not a bar to an exhumation it is a material fact to which I should have regard.
- 16.2. Since the burial took place over 23 years ago and the original funeral director no longer exists, relying on the practice of Ruxtons it is said that the cremated remains will either have been contained in an oak casket or will have been poured into the ground. It is thus a realistic possibility that the cremated remains may have been poured into the ground. In such circumstances, even allowing for the fact that the ground around the grave is relatively dry, it may be difficult to satisfactorily exhume such cremated remains.
- 16.3. Given that it is proposed that the Deceased's exhumed cremated remains will be interred in the same cemetery in which they are currently interred, this is not a case where a new family grave is to be established in a different location far away or where survivors of the Deceased wish to be buried interred in a due course in a different location.
- 16.4. Most importantly, I am satisfied that the Deceased's current grave is currently capable of accommodating the cremated remains of her recently deceased father and the proposed interments of the cremated remains of her mother and siblings.
- 16.5. The fact that the existing headstone is laid down and too small to accommodate the name of the Deceased's recently deceased father is of no significance since a new headstone conforming with the Diocesan Churchyard Regulations can be erected.
17. 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.
18. 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 Carlisle