

In the Consistory Court of the Diocese of Coventry

**Church of St Peter
Bourton-on-Dunsmore with Draycote
Re grave of John Mark Parnaby (deceased)**

Private Petition for reservation of right for burial

**Barbara Kurzweil
(also known as Basia Kurzweil)**

Petitioner

Lilian Parnaby

Interested Party

JUDGMENT

1. By a petition number C6720/2021 Mrs Barbara Kurzweil sought permission to have her own details and a personal message included on the headstone commemorating John Mark Parnaby. The petition was opposed by Lilian Parnaby (mother of the deceased) and by Christopher Parnaby (brother of the deceased). In judgment [2022] ECC Cov 6, handed down on 11th August 2022, the petition was refused and the application was dismissed. Within the

judgment it was acknowledged that no-one had sought to reserve an exclusive right of burial with the deceased in what was acknowledged to have been prepared as a double depth grave. Of particular note, during the course of those proceedings Lilian Parnaby specifically stated “*I have no objections to Mrs Kurzweil being buried with my son, and I organised that on her behalf.*”

2. In the proceedings concerning the previous petition the Court specifically queried whether there had been reservation of the grave plot for a further interment. The response received from Mrs Kurzweil was that she did not intend to pursue application for a faculty to confirm her stated intention to be interred after death in the same grave as Mr Parnaby. However, with that petition there was included correspondence from a Churchwarden, dated 31st December 2018, where Professor David Snead wrote stating that as Churchwarden he has reserved the other part of the double-depth plot within which Mr Parnaby is interred for the petitioner. It had to be pointed out that as a churchwarden he has no right or authority to reserve a burial plot for anyone. Professor Snead subsequently conceded that only by the issuing of a faculty could the plot be reserved for the burial of anyone else (albeit he also indicated that the Court did not appear to appreciate how such matters were usually dealt with in a rural parish!)

3. Despite her previous indication Mrs Kurzweil now makes petition for the right of burial within the grave of John Mark Parnaby. Her petition is supported both by the incumbent and the members of the Parochial Church Council responsible for St Peter's Churchyard. Further, a public notice concerning the intended reservation was displayed in November and December 2022. No objections arose from the display of that public notice.

4. When this matter was referred to the Court it seemed apparent that Lilian Parnaby, as the mother of the deceased currently interred in the grave, was to be regarded as a person who 'could be concerned with' the subject matter of the current petition, in accordance with the Faculty Jurisdiction Rules. In the previous matter there was some discussion over whether Mrs Parnaby, having paid for her Son's funeral and burial, was in law to be regarded as 'owner' of the headstone, despite having been reimbursed in full for the expenses from her Son's estate. In any event, she was clearly the person who had ensured Mr Parnaby was buried in a double depth grave, therefore with space for a further burial.

5. In reviewing the petition it was posited that, in the circumstances known to exist, the petition should have been referred to the Court at the time the public notice was issued so that appropriate directions could be made. That had not occurred but under the case management powers of the Court directions were made and specific notice of the petition was given to Lilian Parnaby.

6. Mrs Parnaby did respond in writing, in a communication addressed to the Registrar. She made a number of choice comments about the petitioner and queried why the petition was being made when Mrs Kurzweil had previously stated she did not intend to formally seek a reservation of the space for her own burial. Mrs Parnaby did not, however, withdraw her previous comment (vis “*I have no objections to Mrs Kurzweil being buried with my son, and I organised that on her behalf*”) nor did she raise any specific objection to the petition. Instead she indicated that she expected to be long dead by the time the Petitioner died, at which time Mr Parnaby’s two children from his previous marriage would probably need to be involved in the arrangements for Mrs Kurzweil’s funeral. Mrs Parnaby did, however, state the following: - “*I could say a lot about the relationship between my son and Mrs Kurzweil, and the consequences for his children, but I do not want this to be turned into a soap plot*”.

The Law that applies

7. The Church of England (Miscellaneous Provisions) Measure of 1976 in section 6(2) previously permitted a Chancellor to grant reservation of a particular grave space for a parishioner or a non-parishioner. That issue is important in the current petition because Mrs Kurzweil is not resident in the parish of St Peter, Bourton-on-Dunsmore (she, in fact, lives in the Parish of Scarborough). Now the legal position is determined by reference to section 65(4) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018, which states :

“(4) *An exclusive right to a burial place may not be granted or acquired after the commencement of this section otherwise than by— (a) the grant of a faculty, or (b) the reservation of an exclusive right of burial under section 90(2)* [which does not apply here, as it relates to people who gift land to extend a Churchyard].” The Court must still, however, have regard to whether the reservation of the right of burial would adversely affect the rights of parishioners, those that die within the parish or members of the electoral roll to be buried in the Churchyard, as indicated by Canon B38(2) and section 88 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018. That can be assessed in this matter by consideration in particular of two matters. Firstly, the Incumbent and the members of the Parochial Church Council have indicated that they support this reservation, thereby stating that the rights of other parishioners or congregants would not be affected (in fact, there are two certificates from the Incumbent, one in the name Basia Kurzweil and the other in her given name of Barbara Kurzweil). Secondly, of course, this would be the reservation of the second space within a double-depth grave. Although in theory the burial could occur in that plot of someone unconnected with Mark Parnaby, the prospect seems entirely unlikely. In those circumstances I am satisfied that reservation of the requested right of burial would not materially interfere with the right to burial of parishioners, those that might die within the parish or those on the electoral roll of the parish.

8. In determining whether a reservation of right to burial should be permitted I am mindful that no formal objection has been raised by anyone to the petition, following the display of a public notice and after specific notice was given to the Mother of the deceased already buried in the grave. Clearly there remains an huge rift between Mr Parnaby's close family and the Petitioner, but Mrs Parnaby has not withdrawn the comment she previously made, asserting that the double-depth grave was sought in order that Mrs Kurzweil could, ultimately, be laid to rest with John Mark Parnaby. In those circumstances I am prepared to grant the faculty as requested.

I waive any Chancellor's fee for the preparation of this judgment. The petitioner must pay any other fees pertaining to this petition.

Let the requested faculty be issued on the following conditions:-

Conditions

- 1) That the faculty granted hereby shall endure for fifty years or until further order.
- 2) That the right reserved be carefully and accurately recorded in the Parish documentation.

Glyn Ross Samuel
Chancellor
9th May 2023.