

IN THE CONSISTORY COURT OF THE DIOCESE OF CARLISLE

Re William Rudd Robson Wilson, Deceased

JUDGMENT

Delivered on 5 February 2024

A. Introduction

1. By a petition dated 31 October 2023 Mr. Colin Scowcroft (“Mr. Scowcroft”) seeks a faculty to permit the exhumation of the cremated remains of the late Mr. William Rudd Robson Wilson (“Mr. Wilson”) and their reinterment in another nearby plot.
2. This Judgment explains why I have decided to grant a faculty for that purpose.

B. Background

3. Mr. Wilson died on 10 August 1997, and his cremated remains were interred in plot number 126, Ward 5, Section A of Whitehaven cemetery (“Plot 126”). This is consecrated ground, which explains why a faculty is necessary for what is now proposed.
4. Before Mr. Wilson’s remains were buried in Plot 126 it had already been used for one burial. That was for Nathan Scowcroft, who died aged just 2 years and 10 months of age on 30 August 1978. Nathan was Mr. Scowcroft’s son. It has always been Mr. Scowcroft’s intention for his own remains in due course to be buried in Plot 126 together with his son’s.
5. Mr. Wilson was formerly Mr. Scowcroft’s father in law. The burial of his ashes in Plot 126 was carried out by members of the family without the involvement of an

undertaker. Nor was Copeland Council, which administers the cemetery, aware at the time of what had happened.

6. The position in which Mr. Wilson's ashes were poured into the ground is such that, unfortunately, it is no longer possible for burials to take place in Plot 126. This has been established by investigations carried out by Cumberland Council, which now administers the cemetery. Those investigations show that Mr. Wilson's cremated remains are close to the surface of the ground. Their position is such that the Council advises that they are extremely confident that they can be removed in their entirety and then re-interred in the proposed alternative location.
7. The present state of affairs is, as might be anticipated, distressing to Mr. Scowcroft. It means that he cannot be buried in the same plot as his son. This is the result of a mistake made when Mr. Wilson's remains were buried there. It was nobody's intention that the further use of the plot should have been prevented, as it unfortunately now has been. The family members involved in burying Mr. Wilson's remains had no idea that this would be the consequence of their actions.
8. Plot 126 is jointly owned by Mr. Scowcroft and his former wife, Barbara Edmed. I understand that she would also like to be buried with her son.
9. Barbara Edmed is also joint owner, with Brenda Kearney, of grave number 6.E.563 ("Plot 563"). This is the plot to which it is proposed Mr. Wilson's cremated remains should be moved. It was purchased after Mr. Wilson's remains were buried in Plot 126. Mr. Wilson's wife, Sarah Hannah Wilson, and son, Lowther Wilson, are already buried in Plot 563.
10. Mr. Wilson's four children have provided their written consent to the proposal to move their late father's remains.

C. Law

11. The relevant legal principles are set out the judgment of the Court of Arches in *Re Blagdon Cemetery* [2002] 3 WLR 603. From that decision it is clear that the starting point in every case where exhumation is sought is (paragraph [33]) "...the

straightforward principle that a faculty for exhumation will only be exceptionally granted.”

12. The reason for this is that *“The disturbance of remains which have been placed at rest in consecrated land has only been allowed as an exception to the general presumption of permanence arising from the initial act of interment”* (paragraph [20]). The presumption of 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 (paragraph [21]).
13. While the Court of Arches identified various categories of exception, it stated [33] that *“Whether the facts in 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”*.
14. This is essentially a matter of discretion, and it is always (paragraph [35]) *“... for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial, that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery, is final.”*
15. One recognised exception concerns the case of family graves. The law encourages the use of double and triple graves, in which the remains of members of the same family can be buried together. The bringing together of family members’ remains in a single grave may provide a special reason for permitting exhumation despite the passage of a long period of time since the burial. Indeed family graves are encouraged as an expression of family unity, and since they represent an economical use of land for burials.
16. Another instance where exhumation may be allowed is where a mistake has been made as to the location of a grave.

D. Reasoning

17. The burial of Mr. Wilson's remains in Plot 126 was not a mistake in the sense that his family did indeed wish to inter his ashes in that specific grave. It was, however, mistaken in the separate sense that burial was undertaken without appreciating the unwanted consequences that would follow, in terms of preventing the further use of that grave space.
18. In my judgment it is important that the proposal is for Mr. Wilson's remains to be moved to a family plot, to be buried with his late wife and son. That is something that is encouraged, for the reasons I have already explained. At the same time it will also serve to alleviate the distress to Nathan Scowcroft's parents, and mean that in due course they can be buried together in a family grave at Plot 126.
19. It is for these two reasons that I have decided that there are special circumstances in this case that warrant the exhumation of Mr. Wilson's ashes and their reinterment in Plot 563, with his wife and son.

E. Direction

20. I have no doubt that the exhumation and reburial will be undertaken in a reverent and respectful manner, and direct that should happen. I also direct that Mr. Wilson's ashes should be removed to Plot 563 as part of a single continuous operation: so that there is no delay in reburial.
21. The period allowed for the removal and immediate reburial of Mr. Wilson's ashes will be 12 weeks from the date of the grant of the faculty.
22. The petitioner must pay the costs of this petition, but I charge no fee for this written judgment.

James Fryer-Spedding

Chancellor of the Diocese of Carlisle

5 February 2024