

CASE NOTES

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Chancellor of the Diocese of Norwich

Re St Mary, Pulborough

Chichester Consistory Court: Hill Ch, 19 August and 17 September 2012

Memorial – contempt – costs

The chancellor held a hearing in relation to a petition for a confirmatory faculty for a memorial illegally erected over a grave in the churchyard. The petitioners were the partner and son of the deceased. In the petition the petitioners had inserted only their own details when asked to give the names and addresses of all known close relatives of the deceased and whether, to the knowledge of the petitioners, each was aware of and supported the petition. In the course of the hearing it became clear that there were, in fact, three daughters of the deceased about whom the chancellor had no information. It transpired that the first petitioner was facing criminal charges of rape, indecent assault and incest against the daughters and had bail conditions in place which prevented him from having any contact with them. The chancellor adjourned the hearing pending consultation with the daughters, giving interim directions for the removal of the illegal memorial by the stonemason (who had been joined as a party) and its safe storage at his premises until determination of the petition.

Subsequently, the stonemason did not remove the memorial as directed but rather one of the petitioners smashed the memorial with a sledgehammer in the presence of the local press, indicating that the Court had required him to do so. The petitioners subsequently made an application to withdraw the petition. In that application they offered to pay a contribution of £1,000 of the £2,600 court costs and argued that the stonemason should pay the balance as he was to blame for the situation. The chancellor held that the petitioners' conduct, which included misleading the court, had been primarily responsible for increasing the costs. He acknowledged an honest mistake on the part of the stonemason that may have increased costs by a modest amount and ordered that the stonemason pay £250 in costs. The balance was payable by the petitioners. The chancellor also made clear that the stonemason had been in contempt of court in not removing the memorial as directed. He decided not to

refer the matter to the High Court for sanction, but rather made it a condition of the withdrawal that the stonemason and his firm were required to show cause why they should not be disbarred for a period of twelve months from undertaking works in consecrated ground within the diocese of Chichester. [RA]

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Re St Mark, Fairfield

Worcester Consistory Court: Fookes Dep Ch, 31 August 2012

Exhumation – mistake – change of law – exceptional circumstances

The deceased moved to Fairfield in 1989 but shortly afterwards became seriously ill and died. He was buried in the churchyard of St Mark, Fairfield, where his son was the incumbent. It was anticipated by all family members that the interment would be temporary and in due course the deceased and his wife would be buried in an established family grave in Great Amwell, where the family had connections dating back over three centuries. The deceased's wife died in 2011 and their son petitioned to exhume his father's body for re-interment at Great Amwell. Unfortunately that son died later in 2011; the petition was pursued by his brother.

The deputy chancellor reviewed the case law and found that, since the interment in 1989, there had been a reformulation of the test for the discretion to grant a faculty to exhume remains. In light of the decision of *Re Blagdon Cemetery* [2002] Fam 299 the test had changed from one requiring that there be good reason for the exhumation to one requiring special circumstances to justify an exception to the norm of permanence in Christian burial. The task is now one of identifying exceptions and no longer one of merely balancing different considerations. The lack of objections and familial support for the petition were neutral circumstances rather than special circumstances justifying an exception. In this case there had been a mistake caused by changes to the law concerning exhumation between the 1989 burial and the 2011 petition. The petitioner's brother had made a mistake as to the law in assuming at the time of burial that a future request for exhumation for the purposes of re-interment in a family grave was likely to be viewed favourably. The mistake as to law was an exceptional circumstance supporting the petition. The exceptional suddenness of the father's death, the short time between death and interment and the long-standing intention to re-inter in a family grave also amounted to exceptional circumstances justifying a faculty for exhumation. There were credible and good reasons for the lapse of time between burial and petition. The faculty was granted. [Catherine Shelley]

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