

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

EMSTREY CEMETERY

RE: THE PETITION OF MAUREEN GOODALL

JUDGMENT

- 1) The late Russell Goodall died on 28th September 2010 and on 12th October 2010 his body was buried in the consecrated portion of Emstrey Cemetery. That cemetery is operated by Shropshire County Council. Maureen Goodall, supported by other family members, seeks a faculty for the exhumation of Russell Goodall's remains and their reinterment in a different part of the same cemetery. The Petition has been supported by the Council and I have been provided with considerable quantity of helpful information by Mr. Martin Key, the Council's officer with responsibility for the cemetery. I have authorised the granting of the faculty for the reasons set out below.
- 2) After Russell Goodall's burial the members of his family learnt that the portion of the cemetery in which he had been buried had been affected by high levels of groundwater. They came to be concerned that Russell's coffin was, in effect, under water. This concern has particularly affected Russell's father and has led to distress which is affecting his health in the respects which I will set out below.
- 3) On behalf of the Council Mr. Key explains that it is correct to say that there had previously been problems with high levels of groundwater in the relevant part of the cemetery. Those problems were addressed by engineering works in 2008 (and so before Russell's burial) and the Council believes that the works which it undertook have removed the groundwater difficulty.
- 4) Mr. Key and his colleagues have been engaged in a series of meetings with the members of the Goodall family over the last twelve months. They have sought to allay the fears of the Goodall family by explaining the works which were undertaken and by providing information about groundwater levels. Those assurances have failed to remove the concerns of the family members. The Council has concluded that it will not be able to persuade the Goodall family members that their concerns are groundless and it supports the Petition. Indeed it

is apparent that it is the Council which has been the moving force in explaining to the members of the Goodall family that a faculty needs to be sought from this Court.

- 5) The Council very properly regards exhumation as an exceptional step and I am satisfied that it has not decided lightly to support the Petition. The factors which has caused the Council to support the Petition are the degree of stress and anxiety being suffered by Russell Goodall's father; the failure of the Council's attempts to alleviate that stress and anxiety; and the effect which those matters are having on the health of Mr. Goodall senior.
- 6) Members of the Goodall family have informed the Council that Mr. Goodall senior is having trouble sleeping and is becoming agitated and that they are concerned for his health. It is particularly significant in this case that Mr. Key supports these concerns by his own observations. He says that he has had repeated meetings with members of the family over the course of the last twelve months. In that period he has noted the distress and agitation of Mr. Goodall senior. It is also significant that Mr. Key indicates that the distress and agitation shown by Mr. Goodall senior have increased over that period despite the efforts of the Council to explain that Russell's coffin is not being affected by excessive levels of groundwater. Mr. Key has concluded that Mr. Goodall senior is suffering "*significant mental anguish*" which is manifesting itself in distress and agitation during the meetings which have been held. Mr. Key's direct and repeated observations of Mr. Goodall senior have caused him to accept the validity of the concerns which family members have raised about the risk to that gentleman's health.
- 7) I have to consider whether the proposed exhumation is justifiable as a matter of law and principle. The starting point is the presumption of the permanence of Christian burial. If exhumation is to be permitted there must be special circumstances justifying an exception from that starting point as explained by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299.
- 8) The Court of Arches in the Blagdon case set out a number of instances of matters which could be capable of amounting to special circumstances justifying

exhumation. The only one of those which is potentially applicable here is that of medical reasons. The Court of Arches made it clear that it would only be in an extreme case that medical problems affecting a member of the deceased's family could justify exhumation. Thus at [35i] the judgment states "*Any medical reasons relied upon by a petitioner would have to be very powerful indeed to create an exception to the norm of permanence, for example, serious psychiatric or psychological problems where medical evidence demonstrates a link between the medical condition and the question of location of the grave of a deceased person to whom the petitioner had a special attachment.*" It follows that there has to be something rather more than distress on the part of the petitioner (or a family member) no matter how deeply and genuinely felt that distress is.

- 9) I am conscious that I have no medical evidence in respect of Mr. Goodall senior. I am also conscious that the fears which members of the Goodall family have as to the presence of excessive groundwater cannot be substantiated objectively. Indeed, the Council is confident that the problems which formerly existed had been addressed before Russell Goodall's burial. However, the fears which the Goodall family members have are not simply figments of their imagination. They are concerns based on the condition of the relevant part of the cemetery before 2008 and the inability of at least some members of the family to accept the assurances that the situation has been remedied.
- 10) Although I do not have medical evidence I do have the detailed information from Mr. Key. This makes it clear that the Council has made real and sustained efforts to address the concerns of the Goodall family members. It also makes it clear that the Council has come to support exhumation as a last resort. The efforts which Mr. Key and his colleagues have put in over a period of twelve months have not resolved the concerns but instead there has been a deterioration in the condition of Mr. Goodall senior. It is apparent that Mr. Key, who has had repeated and prolonged dealings with that gentleman, is seriously concerned about his health. In those circumstances I have concluded that there would be nothing to be gained by requiring medical evidence. It is highly unlikely that such evidence would contradict Mr. Key's observation that Mr. Goodall senior is suffering marked distress which is having effects on his well-being. It may well be that

medical evidence would state that Mr. Goodall is not suffering from a recognised mental disorder but it is not realistic to suggest that such evidence would conclude that the anguish and its effects were not genuine nor to suggest that the evidence would identify a cause other than the perceived problems affecting Russell Goodall's grave. That being so for me to require the provision of medical evidence would be to increase the delay and so to prolong the anguish suffered by Mr. Goodall senior without there being any realistic prospect of the ultimate outcome being altered.

- 11) This is a very particular case. I am satisfied that Mr. Goodall senior is suffering from genuine distress of such a degree as to be affecting his health and well-being; that the degree of distress is increasing; and that there is no realistic prospect of the distress and its consequent effects being allayed. Those matters amount to exceptional circumstances justifying exhumation to be followed by reinterment in a different part of the cemetery.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
26th May 2015