

**IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD**

**BURSLEM CEMETERY**

**RE: THE PETITION OF ANNIE BLAKEWAY**

**JUDGMENT**

- 1) The late Madge Briggs died on 25<sup>th</sup> February 2013. On 27<sup>th</sup> March 2013 her body was buried in plot 13055 in the consecrated portion of Burslem Cemetery. Annie Blakeway is the niece of Madge Briggs and is her executrix. Miss. Blakeway petitions with the support of the surviving members of the family of Madge Briggs for the exhumation of her body and its reinterment in plot 1658 in Burslem Cemetery. For the reasons set out below I have concluded that this is an exceptional case in which I am able to authorise that exhumation and reinterment.
- 2) On 22<sup>nd</sup> April 1991 Miss. Briggs bought the rights to be interred in plot 1658 at Burslem Cemetery. In her will of 11<sup>th</sup> April 1995 Miss. Briggs recited that purchase. That will was revoked and replaced by a will of 5<sup>th</sup> November 2004 in which Miss. Briggs made no reference to the gravespace.
- 3) Miss. Briggs had also bought plots 13016, 4314, and 13055 at Burslem Cemetery and had caused various family members to be interred in those plots. For the purposes of this petition it is relevant to note that plot 13055 had been bought in February 1983. Plot 1658 was bought in April 1991 and in her will of 11<sup>th</sup> April 1995 Miss. Briggs said that she had bought this "*in respect of myself*".
- 4) When Miss. Briggs died her niece and other family members knew that she had bought a plot at Burslem Cemetery for her own burial and that she wished to be buried in that plot. They had been told this by Miss. Briggs. Unfortunately they had not been told the plot number. Also unfortunately there was a degree of family breakdown and animosity at the time of Miss. Briggs's death. This had caused Mrs. Johnson (as she now is), another niece of Miss. Briggs, to remove a copy of the 1995 will from Miss. Briggs's house. Communications had broken down between Mrs. Johnson and Miss. Blakeway.

- 5) Miss. Blakeway and other family members attempted without success to discover the plot which Miss. Briggs had reserved for herself. Those attempts included seeking information from Stoke on Trent City Council the body which owns and manages Burslem Cemetery. The Council explained that it was unable to search its records of purchased plots by the name of the plot owner but instead required the number of the plot (which, of course, Miss. Blakeway did not know). In addition attempts were made to see if Miss. Briggs's former solicitors had any relevant records. However, the firm had been intervened and the solicitors conducting the intervention on behalf of the Solicitors Regulation Authority were not able to find any relevant documents.
- 6) Miss. Blakeway delayed her aunt's funeral until 27<sup>th</sup> March 2013 in the hope that information about the gravespace in which Miss. Briggs had intended to be buried would come to light. When it did not she caused Miss. Briggs's body to be buried in plot 13055. That was a plot which Miss. Briggs had bought in February 1983 and in which a family member (I think her brother) had been interred.
- 7) Seven days after the funeral Mrs. Johnson produced her copy of the 1995 will. This was produced in the context of a dispute about claims to the estate. Nonetheless the disclosure of the 1995 will meant that Miss. Blakeway learnt that the plot in which Miss. Briggs had wished to be interred was plot 1658.
- 8) Miss. Blakeway consented to this matter being determined on written representations and I am satisfied that this is expedient.
- 9) In her written representations Miss. Blakeway sets out the history which I have summarised above. Miss. Blakeway says that it would be an injustice to Miss. Briggs if the unfortunate circumstances surrounding her burial and in particular the failure to identify her intended grave were to thwart her long held wish to be buried in plot 1658.
- 10) This petition is supported by the surviving family of Miss. Briggs, including Mrs. Johnson. Stoke on Trent Council has confirmed that it does not object to the proposal either in its capacity as the operator of Burslem Cemetery or on public health grounds. The funeral directors who provided the coffin have set out the

circumstances of the interment although they are unable to confirm the state in which the coffin is now likely to be.

11) 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.

12) 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. None of those instances is directly in point here. I have considered whether this could be seen as an instance of mistake and have concluded that it cannot be. The Court referred to instances of mistake where a person's remains are interred in the wrong burial plot or in a grave reserved for another person. At paragraph 35 the Court said that "*faculties can in these circumstances readily be granted because they amount to the correction of an error in administration rather than being an exception to the presumption of permanence which is predicated upon disposal of the remains in the intended not an unintended plot or grave*". This is not an instance of a mistake of that kind. At the time of the funeral and interment Miss. Blakeway and the other members of Miss. Briggs's family intended that she should be buried in plot 13055. They regretted the decision to use that plot because they knew it was not the plot in which Miss. Briggs had wished to be buried but the decision to inter her remains there was not a mistaken one. Mirroring the language of the passage from the Blagdon case it must be accepted that the interment was into the grave in which Miss. Blakeway intended Miss. Briggs to be buried even though it was known that Miss. Briggs had desired a different but at that time unknown plot.

13) The instances identified in the Blagdon case are not the only matters which can amount to special circumstances. There will be other combinations of facts which can operate to justify an exception from the presumption of the permanence of burial. What is necessary is something sufficiently outside the normal to justify in the particular case an exhumation even when account is taken of the presumption of permanence. I remind myself that in a degree of

caution is necessary before the Consistory Court can conclude that circumstances of a kind not envisaged or identified in the Blagdon case can amount to special circumstances justifying exhumation.

14) It is the combination of the following matters which enables me to conclude that this is an exceptional case in which exhumation is appropriate.

- a) It is clear that Miss. Briggs had a firm wish to be buried in a particular plot which she had acquired for that purpose.
- b) Miss. Blakeway and the other members of Miss. Briggs's family sought to implement that firm wish.
- c) The failure of the family to carry out Miss. Briggs's wish was not the result of a failure to take appropriate steps. Miss. Blakeway and those organising the burial of Miss. Briggs's body made real and determined efforts to identify the plot which Miss. Briggs had bought and in which she wished to be buried. The funeral was delayed to enable those efforts to be made. The burial in plot 13055 only took place when the attempts to identify the plot intended by Miss. Briggs had failed.
- d) Interment in plot 13055 was always regarded as being a second-best course. That course was taken to ensure that there was an interment within a seemingly period after Miss. Briggs's death. Those organising the burial in plot 13055 were conscious that this was not the ideal outcome and was not what Miss. Briggs had wanted.

15) It is relevant that the proposed reinterment is to be in the same cemetery as that in which Miss. Briggs's remains are currently. That does not of itself justify or excuse the exhumation but it serves to demonstrate that this is not a case where the Petitioner is seeking to treat Miss. Briggs's remains as portable or where the convenience or wishes of the family of Miss. Briggs are being put forward as justifying exhumation.

16) The position here is not an example of the kind of mistake or error in administration which was seen in the Blagdon case as justifying exhumation.

Nonetheless, the situation can be seen as being akin to that category of exceptional circumstance. Moreover, it is my judgment that an analogy can be drawn with the circumstances considered by Bursell Ch in *Re Frogmore Burial Ground* (Oxford Consistory Court 2013). In that case at the time of the death of Queen Maria of Yugoslavia it had not been possible, for political reasons, to inter her remains in the location which was clearly the most suitable – the family mausoleum of the Serbian royal family. The interment in Frogmore was seen as a course which was not ideal but which was the best which could be achieved at the time. When the political position changed and it became possible for Queen Maria to be buried in her family burial ground that was held to be an exceptional circumstance justifying exhumation. Here at the time of her death it was not possible to bury Miss. Briggs in her intended plot because its location was not known. However, its location is now known and an interment in that plot can now be achieved.

17) Accordingly, I am satisfied that there are exceptional circumstances which on the facts of this matter justify the proposed exhumation and reinterment.

STEPHEN EYRE  
HIS HONOUR JUDGE EYRE QC  
CHANCELLOR  
18<sup>th</sup> May 2015