

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

**NEWCHAPEL: ST. JAMES**

**PETITION OF COTEENA GARDNER**

**RE: A MEMORIAL TO RICHIE NICKISSON**

- 1) Richie Nickisson died in 2009. Sadly he was aged only 47. His cremated remains have been interred in a grave in the churchyard of St. James, Newchapel. Mrs. Coteena Gardner is the eldest sister of Mr. Nickisson and she petitions for a faculty in respect of a proposed memorial him. The Regulations for the Management of Churchyards authorise incumbents to permit certain memorials but that proposed here is such that the incumbent cannot authorise it hence this petition.

**The Current Appearance of the Grave.**

- 2) The grave into which Mr. Nickisson's cremated remains were interred already contained the body of his brother, Michael, who had died as an infant in 1950, together with the cremated remains of his mother and step-father. The grave takes the form of an area of soil containing flowers and surrounded by a kerb at the top of which there is a headstone. This headstone appears to be of polished black granite. It bears gilt lettering giving the names and dates of birth and death of Michael, of Ivan Capewell (the step-father), and of Sidonie Capewell (Mr. Nickisson's mother) together with some text and an engraved image of Our Lord. The lettering and image take up the entirety of the headstone and there does not appear to be any space for further details to be inserted on it.
- 3) The area of soil contains or has contained three temporary memorials wholly outside the Regulations and those will need to be removed (if that removal has not occurred already).
- 4) I have been provided with photographs showing that the churchyard contains other memorials in polished black granite going beyond the scope of the Regulations.

### **The Proposed Memorial.**

- 5) The Petitioner seeks a faculty to install in the soil area of the grave a memorial in polished black granite with gold lettering. The memorial is to be in the shape of a sloping slab 18” wide by 12” deep and 4” high with a flower container at the top centre. It is proposed that the image of a guitar appear on the top right corner and that the memorial bear the words *“Richie Nickisson 1962 – 2009 A precious son and brother/ Too good in life to be forgotten in death/ Forever in our hearts.”*

### **The Relevant Aspects of the Regulations.**

- 6) The Regulations indicate that polished black granite bearing gold lettering is not normally permissible. As to shape the Regulations provide for vertical stones. They do, however, state that faculties might be granted for stone vases of good design.

### **The Representations to this Court.**

- 7) The Petitioner and the late Richie Nickisson were members of a large family and it is a sad feature of this case that there is disagreement among the members of the family.
- 8) The Petitioner has indicated that she is content for this matter to be dealt with on the basis of written representations (and I so address the matter). Mrs. Gardner has provided a number of letters and comments. This material reveals the depth of Mrs. Gardner’s love and concern for her late brother and her distress at his early death. I regret that this distress has been added to by the current dispute and by the time which it has taken to determine the form of the appropriate memorial to Richie Nickisson. Much of the material provided by Mrs. Gardner expresses criticism of Rev Will Slater (the Vicar of Newchapel). The rights or wrongs of that criticism are not relevant to the issues I have to decide and I make no finding in that regard. Mrs. Gardner also sets out a history of conflict between the late Richie Nickisson and his brother Rocky. Other than noting the sadness of that history I need not comment upon it. Mrs. Gardner makes the following points which are of potential relevance to the issues before me:

- a) By way of photographs Mrs. Gardner demonstrates that the churchyard of Newchapel contains a number of memorials which do not conform to the Regulations. In particular she draws attention to memorials in the form of an open book; memorials in polished black granite with gold lettering; and a grave on which stands a figurine representing an angel.
  - b) The original preference of the Petitioner (and those family members who support her) had been for a memorial in the form of an open book bearing the proposed inscription. The family members who support the petition see the current proposal as involving a degree of compromise by moving away from the open book form.
  - c) It had been the wish of Sidonie Capewell (the mother of Richie Nickisson and the Petitioner) that any family member who died without other family of his or her own should be interred in this family grave.
  - d) Mrs. Gardner explains that the Petition is supported by Diane Merry, Josie Poole, Mischa Westcott, Lisa Conliffe, and Shane Nickisson - sisters and a brother of the Petitioner and of Richie Nickisson. I have had no separate representations from these family members nor from Arica Ward and Shellon Preston – sisters whom the Petitioner says oppose the petition or who are neutral.
  - e) In her most recent letter Mrs. Gardner indicates that she would be willing to give ground on the colour and size of the memorial but I understand her still to seek a memorial in the proposed shape.
- 9) The Diocesan Advisory Committee has commented on the petition. It would support a memorial in the form of a 12” vase but does not support the proposed memorial.
- 10) The Parochial Church Council of St. James has expressed its view on this matter. It’s position is also that of being supportive of a 12” vase memorial but opposing the memorial in the form sought in the petition.
- 11) There has been no response to the public notice given of the petition.

- 12) At the time of his death Richie Nickisson was estranged from his wife, Sharon, with a decree nisi of divorce having been pronounced but not yet made absolute. The former Mrs. Nickisson has now remarried and although she was given notice of the petition she has taken no part in these proceedings.
- 13) Rocky Nickisson is a brother of Richie Nickisson. He has written objecting to the petition but has chosen not to become a party to the proceedings. Rocky Nickisson says that the proposed memorial would overcrowd the grave and would change its overall appearance. Rocky Nickisson says, in effect, that the proposed memorial would give undue prominence to Richie Nickisson at the expense of the other family members commemorated on the upright headstone. He would not object to a new headstone being installed in the place of that currently on the grave (indeed he describes this as being a “compromise proposal”). Rocky Nickisson says that a new larger headstone could replicate the appearance of that currently on the grave but could have Richie Nickisson’s name and dates of birth and death added to it.
- 14) Debra Enoch is a sister of Richie Nickisson. She also has chosen not to become a party to the proceedings but has written in opposition to the petition. Mrs. Enoch objects on the grounds that the size of the proposed memorial will “*eclipse the original headstone*” and would cause the memorial to Richie Nickisson to dominate the grave at the expense of the memorial to the other family members. Mrs. Enoch says that the wording of the proposed memorial would cause distress to family members but does not explain why or how (or by which words) such distress would be caused. Mrs. Enoch adopts the same position as Rocky Nickisson saying that she would not object to the addition of Richie’s name to the original headstone or to a replacement in the same form. Mrs. Enoch also says that she would not object to “*a small pot*” (by which I take her to mean a vase shaped memorial) though she persists in her objection to the proposed inscription.

### **The Applicable Principles.**

- 15) Consideration of any petition for a memorial going beyond that authorised by the Chancellor's Regulations in relation to the management of churchyards must take account of the importance, effect, and purpose of churchyards and of memorials in them.
- 16) Churchyards are consecrated to God, Father, Son, and Holy Spirit. Accordingly, they must be treated and cared for in a manner consistent with that consecrated status. Churchyards fulfil important spiritual rôles. They provide appropriate settings for Christian places of worship and as such send out a message of the Church's commitment to worshipping God in the beauty of holiness. They contain memorials to departed Christians demonstrating the Church's continuing love for them and its belief in the communion of saints. In addition they are places of solace and relief for those who mourn. It is notable also that many people find comfort in knowing that their mortal remains will be interred in a particular churchyard and in a particular setting. That comfort derives in part from a confidence that the character of that setting will be preserved.
- 17) This Court has an important responsibility in caring for the churchyards of the Diocese. It must ensure that what is placed in our churchyards is fitting and appropriate. Moreover, the memorials placed in churchyards must be fitting and appropriate not just for today but also for the future.
- 18) The Chancellor's Regulations are an important mechanism for giving effect to that responsibility. As Ch Turner has said (in ***Re Wallasey: St. Hilary***):
- "[The Regulations] exist not to promote a drab or mindless uniformity, let alone to enforce the personal tastes or preferences of the Chancellor. They serve to create fairness, equality and consistency of treatment for all. They exist to promote peace, dignity and good order in churchyards where it is necessary to balance concerns of the past, present and future and where there will, inevitably, be a spectrum of views about what is fitting. They have evolved over time, the product of the collective wisdom of a range of people, often informed by bitter experience and they are reviewed from time to time to ensure that they continue adequately to reflect local need."*

- 19) Ch. Holden expressed the position thus in **Re Christ Church: Harwood** [2002] 1 WLR 2055 (at 2056):

*“There cannot just be a total disregard for the necessary control and management of burial grounds provided for by the normal processes. These are there to protect and maintain the very beauty, dignity and order of the churchyard which have, in many cases, precisely been the reasons which led those left behind to choose it as the final resting place for their loved one. The rules, carefully worked out over the ages, and arising out of thousands of instances of burial and memorialisation, need to be followed because of their proven value even, perhaps particularly, where the circumstances of death are especially poignant and heartbreaking. In the end everyone suffers if the appearance of a churchyard is disfigured or the tranquil beauty of the burial place is jarred by ill-designed monuments and inappropriate memorial inscriptions. With present day technological advance most memorials have the potential to last virtually for ever and great thought has to be given in considering whether or not to allow anything to be erected which may become indefinitely a part of the landscape. ...*

*“If, ... a departure from the graveyard regulations is involved, then a formal application must be made to the consistory court, presided over by the chancellor, for an exception to be made to those general rules. Such an exception has to be based on strong grounds. As Gage Ch pointed out in In re St Gregory, Offchurch [2000] 1 WLR 2471 when a faculty is sought for a monument which is not in accordance with the graveyard regulations the court has to look for exceptional reasons before granting permission. Such reasons are impossible to set down definitively because much will depend upon the historical, aesthetic and topographical nature and circumstances of each particular graveyard and pastoral factors will differ from case to case. However, without imposing a mindless uniformity, conformity to the norms of the regulations ought to be aimed at, so that, in the interests of justice and fairness, everyone is treated on the same basis, and the concerns of the past, the present, and the future are all balanced. It is inevitable, and entirely understandable, that those who are mourning will be preoccupied with the loss of their loved one, will wish to memorialise him or her as fittingly as they can, and will not centrally be concerned with the impact of what they propose on the environment of the burial ground, or even on other gravestones near to the site of “their” grave. The overall beauty and tranquillity of a churchyard is only as good as its component elements allow it to be. The rights and interests of private individuals, of the worshipping congregation, of all parishioners, of the local community, and of the Church and society at large all have to be considered in permitting a memorial, which is likely to last for ever, to be placed in a churchyard. There cannot be a carte blanche situation where the family of the deceased has sole right to decide what is, and what is not, appropriate by way of memorial, not least because, as will be explained later, that family does not own the land in which the remains are placed, or on which the memorial is meant to be placed.”*

- 20) Particular care has to be taken not just with regard to the appearance of a memorial (including the images engraved thereon) but also in respect of any inscription which is to be placed thereon. Churchyards are consecrated to God and what is set out on memorials therein must be

consistent with that consecrated status. Inscriptions must be consonant with orthodox Christian belief. Not only is this because of the purpose of the churchyard but also because inscriptions convey a message to those who visit churchyards. It is important that the message that such visitors receive is one which proclaims (or at the very least is not inconsistent with) the message of hope and faith being given to them by God's Church.

21) It follows that permission for a memorial which does not accord with the Chancellor's Regulations will not be given lightly. A powerful reason must be shown before a faculty for such a memorial will be given. In **Re St. Mary: Kingswinford** [2001] 1 WLR 927 Ch. Mynors summarised circumstances in which such a faculty could be given thus (at paragraph 38):

*"However, at least some non-standard memorials will be approved. This is likely to be for one of four reasons. The first is where a proposal is for a specially designed memorial which may be non-standard, but which is a fine work of art in its own right. Such proposals are indeed to be positively encouraged. The second is where a proposal relates to a category of memorial that may be suitable in some churchyards but not in others, so that it would be inappropriate to issue a general authorisation. There are after all some variations between churchyards in different parts of the diocese and such regional variations are not to be either ignored or suppressed. The third situation where a non-standard memorial may be allowed is where it is of a type, which may or may not be desirable in itself, of which there are so many examples in the churchyard concerned that it would be unconscionable to refuse consent for one more. The fourth reason for approval is where a stone might be aesthetically or otherwise unsatisfactory, but where there are compelling personal or other circumstances suggesting that a faculty should nevertheless be granted."*

22) The four potential reasons given by Ch. Mynors are useful as examples of the circumstances where a faculty might be given for a memorial which does not conform to the Chancellor's Regulations. However, they are, in my view, to be seen as illustrations only. As Ch. Holden said it is impossible to identify definitively and in advance all the matters which are capable in particular cases of being a sufficiently exceptional reason to justify the granting of a faculty. There will be circumstances falling within one of Ch. Mynors's four categories where it will nonetheless be appropriate to refuse a faculty and also circumstances where a convincing

and powerful reason of a kind different from those set out by Ch. Mynors will be established and the grant of a faculty will be justified.

- 23) The requirement that there be a powerful reason if a memorial which does not conform to the Chancellor's Regulations is to be permitted is a matter of justice and fairness to those who have erected conforming memorials. There are many families and individuals whose personal preference would be to have a memorial to a departed loved one in a form going beyond the Chancellor's Regulations. In the vast majority of cases such persons accept the approach laid down in the Regulations and erect a memorial conforming to the Regulations. In doing so they put aside their personal preferences and accept a memorial in a form different from that which they would have chosen if given a free hand. In many instances this will involve acceptance of a memorial which they regard as second-best or otherwise unsatisfactory and such acceptance will often be combined with a feeling of unhappiness and distress. Such people would have a legitimate sense of grievance if others (perhaps more articulate or forceful or with more time, money, or personal skills) were able easily to obtain faculties for non-conforming memorials. Fairness to those who have reluctantly complied with the Chancellor's Regulations requires the Court to confine exceptions to cases which are truly exceptional.
- 24) Similarly account must be taken of the legitimate expectations of those who have buried their departed relatives in a particular churchyard and of those who are to be buried therein. Those who have interred departed relatives in churchyards on the footing that the appearance of the churchyard will be maintained in line with the Chancellor's Regulations will have cause to protest if the requirements of the Regulations are lightly set aside. Again those who have paid fees for the reservation of grave spaces have a legitimate expectation that the character of the churchyards in question will be kept in accord with the Regulations.
- 25) Whether a particular reason is sufficiently exceptional to justify the grant of a faculty will be an exercise of judgment in each case. The Court has to take account of the foregoing factors and of the matters said to justify the

departure from the Regulations. Account will also have to be taken of the extent of the deviation from the Chancellor's Regulations. The greater the extent of the deviation and the more readily apparent the same is to those visiting the churchyard in question the less likely it will be that a faculty will be granted. Conversely in a particular case where the extent of the deviation is less there is likely to be a lesser impact on visitors and the considerations operating against the grant of a faculty might have less weight though I repeat that in every case a good reason must be shown before a faculty will be granted for a memorial which does not conform to the Regulations.

26) Particular issues arise in cases where there are already a number of non-conforming memorials in a churchyard. The mere fact that non-conforming memorials have been allowed in the past or have been erected without faculty is clearly not of itself a justification for a further inappropriate memorial. However, there will be occasions when the extent of previous non-compliance with the Regulations will be relevant. In the passage quoted above Ch. Mynors referred to situations where the number of non-conforming memorials is such that it would be "*unconscionable*" to refuse permission for one more. In my judgment the proper approach is to take account of the number, type, and appearance of non-conforming memorials in relation to the size and appearance of the churchyard taken as a whole. There will be cases where the non-conforming memorials are so numerous or so dominant that it is simply unrealistic to believe that the objective of preserving the desired appearance of the churchyard can be achieved. That desired appearance being one that is harmonious in appearance and forming a worthy setting for the church. In such circumstances the balance of unfairness changes. It can then become unfair to the Petitioner to refuse a petition for a memorial of a kind akin to those already present in and dominating the churchyard. There is then a risk that the Petitioner's wishes and preferences are being thwarted in pursuit of an unrealistic objective. Moreover, in such cases the risk of unfairness to those erecting conforming memorials contrary to their own preferences is likely to be diminished.

27) In the context of this case I must apply those principles to the issues of whether a separate memorial should be permitted; the type of stone permissible; the shape and size of the memorial; and the wording to appear on it.

### **A Separate Memorial.**

28) Should I permit a separate memorial to Richie Nickisson or should the memorial to him be confined to the addition of his name and details to a headstone commemorating other family members as well as him? There is no space for additional material to be engraved on the existing headstone. This means that the approach of adding the commemoration of Richie Nickisson to a headstone would necessitate the removal and replacement of the existing headstone. If there had been adequate remaining space on the existing headstone the addition to that memorial of a reference to Richie Nickisson would have been an attractive course. However, there is no such space.

29) In those circumstances and given that there is ample space in this grave for a further memorial I have concluded that it is not appropriate to confine the memorial to Richie Nickisson to an entry on a vertical headstone. A very good reason would be needed to justify the compulsory removal and reconstitution of an existing and appropriate memorial. Given that, as I explain below, there are other ways in which appropriate commemoration can be provided that course is not necessary.

### **The Type of Stone.**

30) The existing headstone is of polished black granite and bears gold lettering. There are a number of other memorials in this churchyard of such stone and with such lettering. In those circumstances it would be unrealistic to refuse to allow the new memorial to be of such stone and bearing such lettering. This is particularly so as the new memorial will be in close proximity to the existing headstone. I must make it clear that this does not mean that any other new memorial in this churchyard can be of polished black granite. Each instance will have to be considered on its

merits and the particularly important factor here is the close proximity to the headstone.

**The Shape and Size of the Memorial.**

- 31) The proposed sloping slab shape is outside the Regulations. The Petitioner has put forward no particular argument as to why that shape should be allowed. The impression I have formed from the papers in this case is that the Petitioner wished to have a memorial in the shape of an open book and the sloping slab is favoured because of its resemblance to such a shape.
- 32) I have already explained that a good reason must be shown to justify a departure from the Regulations. No such reason has been shown here (in fact no particular justification is attempted). Similarly, no particular explanation is provided to justify the proposed engraving of a guitar on the memorial. Moreover, the proposed memorial would take up a significant amount of the available space in this grave. I do not accept that the proposed memorial would “eclipse” the existing headstone but it would become a very prominent feature in this grave.
- 33) In the absence of a good justification for departure from the sizes and shapes envisaged by the Regulations I am not prepared to authorise a sloping slab memorial of the proposed size. I am prepared to authorise a memorial in the form of a 12” cube cemented to its base.

**The Wording and Images to be used.**

- 34) The inclusion of a guitar design on the memorial is not appropriate unless there is some very exceptional justification for such inclusion. No such justification is put forward here and I am not prepared to authorise such an inclusion. This is particularly so as the current headstone bears only an image of Our Lord.
- 35) However, the proposed wording is unexceptionable and wholly appropriate. Mrs. Enoch says that it will cause distress but in the absence of a detailed explanation of how and why distress will result from this

wording I am unable to conclude that there will be such distress.

Accordingly, I am prepared to authorise the use of the proposed wording.

**Conclusion.**

36) It follows that the petition is refused. However, I am prepared to authorise the grant of a faculty for a memorial in the form of a 12” cube. Such cube can be made of polished black granite and can bear gold lettering. It may bear the wording proposed by the Petitioner and set out at paragraph 5 above. Thus if the Petitioner wishes to erect such a memorial then she may be granted (without any further application) a faculty for a 12” cube in polished black granite and bearing the proposed words in gold lettering.

STEPHEN EYRE  
CHANCELLOR  
18<sup>th</sup> April 2012