

**IN THE MATTER OF ST. MARGARET'S HORSMONDEN AND
IN THE MATTER OF PERCY MORPHETT, DECEASED**

JUDGMENT

1. This is a Petition by Mrs Jill Mills dated 15 January 2013, in which she applies for the exhumation of the cremated remains of her father, Percy Morphett, who died on 5 April 2000, aged 82 years, and whose cremated remains were interred in August 2000, or thereabouts, in the Churchyard of St. Margaret's Horsmonden.

2. The Petition, seemingly, is put on the basis that Mr Morphett's widow, who died on 4 December 2012, and who was subsequently buried in the Churchyard, would have wanted to be interred with her husband.

3. The actual wording of paragraph 12 of the Petition, is as follows:

"My mother wished to be buried and my Dad was cremated in 2000. I desire that they should be together, so that we can pay tributes together in one place...

I (am) also dismayed that since Dad's ashes were interred, the area concerned has not been well cared for, and a fence was erected with metal vases which are now rusting, to be used for flowers, and they bear no resemblance to the persons at rest".

4. It has been agreed by all concerned that I should deal with this Petition in writing, i.e. on the written evidence put before me, and without holding a formal hearing.
5. Mrs Mills has written a letter dated 16 February 2013, which I have read. There she points out that both her parents died as a result of mistakes made by the health authorities; emphasises correctly that the family agree with the course she seeks to pursue; argues that the 12½ years gap between the interment of Mr Morphett's cremated remains and the proposed exhumation should not be regarded as a long period of time; and stresses a desire to "create a lasting and positive union in death".
6. The Petition is supported by various family members, and I have read and taken into account letters from the following:
 - (i) M.E. Morphett, undated;
 - (ii) Robert Mills, son of Mrs Mills, dated 5 January 2013;
 - (iii) Ian Mills, son of Mrs Mills, dated 10 January 2013.
7. I also have before me letters from the Rural Dean, the Revd. Amanda Carr, dated 9 January and 21 February 2013, supporting the Petition.
8. Finally, on this issue, I have before me an email from the Interim Minister at St. Margaret's Horsmonden, the Revd. Susan Fauchon-Jones, which makes it clear that both the Parochial Church Council and the author of that email support the Petition.

9. As I understand it, the cremated remains, i.e. the ashes of Mr Morphett, were not contained in any form of casket. If I am correct in this supposition, there will be, I apprehend, a very real problem in identifying the entirety of the cremated remains.
10. The principles to be applied for allowing an exhumation from consecrated ground (whether of a body or of ashes) are set in the case of *Re Blagdon Cemetery* [2002] 1 Fam 299. The Churchyard I am concerned with is, of course, consecrated land.
11. In *Blagdon* the Archbishops' Court of Canterbury stressed that whilst lawful permission can be given for exhumation from consecrated ground: "that permission is not, and has never been, given on demand by the Consistory Court. 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" (para. 20).
12. In paragraph 23 of the judgment in *Blagdon*, the Court went on to deal with the theology of burial, quoting from a paper delivered by the Bishop of Stafford on the subject, in September 2001, where he stated:

"The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for their life; to commend them to God, the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another".

He went on to explain more generally that

"The permanent burial of the physical body/the burial of cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their "journey"), entrusting them in peace for their ultimate destination, with us, the heavenly Jerusalem. This commending, entrusting, resting in peace, does not sit easily with "portable remains", which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the "symbol" of a human life rather than a giving back to God".

13. The Bishop of Stafford concluded in the light of the above that: "a reluctance by the Consistory Court to grant faculties for exhumation is well grounded in Christian theology."
14. Thus, as is made clear in *Blagdon*, "the norm is permanence in relation to Christian burial," and the norm can only be departed from if there are exceptional circumstances made out so as to justify departure from it.
15. The burden of proof is on the Petitioner to establish, on the balance of probabilities, exceptional circumstances.
16. The Court of the Arches in *Blagdon* identified and considered a number of factors which might assist to establish appropriate exceptional circumstances. The list is neither mandatory nor exhaustive. I propose to deal with the factors in the order in which they are set out in the *Blagdon* judgment:

(i) Medical reasons

No medical reasons are put forward and no medical evidence has been adduced. Accordingly, there are no medical reasons to support the Petition.

(ii) Lapse of time

The lapse of time since Mr Morphett's interment, being 12½ years, is lengthy but, in my judgment, not so lengthy as to be determinative against the Petition.

(iii) Mistake

A mistake as to the location of a grave can be a ground upon which a faculty for exhumation may be granted. This usually refers to the location of the Churchyard, not the location within the Churchyard. I note that Mrs Mills does not rely on mistake in her Petition, although the Rural Dean, on her behalf, does. Obviously when, for example, a burial takes place in the wrong plot, exceptional circumstances may be easily enough made out. However, that is not the case here. It would appear that any mistake which might have occurred was as a result of the failure of the family to consider when Mr Morphett's ashes were interred, what was to happen on Mrs Morphett's death. In this context, there is no direct evidence as to Mrs Morphett's thoughts on the subject. In my judgment, any mistake that did occur does not amount to exceptional reasons.

(iv) Local support

Local support, i.e. from clergy and the parish are, to all intents and purposes, irrelevant. However, the views of the immediate family are of importance. They all support the Petition.

(v) Precedent

The Court must also take account of the impact its decision is likely to have on similar petitions.

(vi) Family grave

The Court should encourage family graves as expressing family unity as being environmentally friendly in demonstrating an economical use of land for burials. The question of a family grave does not arise here.

17. I have referred above to the fact that Mrs Mills seeks to rely on her distress that the area in the Churchyard where her father's cremated remains were interred, has not been properly cared for. That is regrettable but, in my judgment, does not amount to exceptional circumstances in this case. It is largely irrelevant to my decision, although it should be drawn to the attention of those responsible for the maintenance of the Churchyard.
18. I have no doubt at all that Mrs Mills is thoroughly sincere in her Petition.

19. I am, however, unable to grant the Petition, or permit the asked for exhumation for the following reasons:

- (i) distress or upset about the location of the interment of Mr Morphett's cremated remains is not enough. All concerned knew at the time he was interred that he was being interred and where he was being interred. What thought Mrs Morphett may have given to her own burial and place of rest is unclear.
- (ii) distress or upset about the area surrounding Mr Morphett's cremated remains is not enough. Equally a desire that one's parents "be together," though understandable, is not enough;
- (iii) mistake, as such, is not made out. If there was any mistake, it related to a lack of thought as to what would happen in the future. That is not enough;
- (iv) against the above, the arguments and facts made out by the Petition are not sufficient to displace the presumption of permanence applied generally to interments;
- (v) family support, although highly relevant, cannot be decisive. If it were to be, it would usurp the functions of the Court;
- (vi) exceptional circumstances are not made out.

20. I have little doubt that Mrs Mills and the family will be disappointed by my decision. I hope that in the light of this Judgment greater efforts will be made, where appropriate, to maintain the Churchyard, and I further hope that all concerned will recognise that Mr and Mrs Morphett's remains are in reality, in close proximity, but that, more importantly, they have both been entrusted to God for resurrection.

21. The Petitioner will pay the Court costs including correspondence fees incurred by the Court.

John Gallagher
Chancellor