

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

re: Lambeth Cemetery: Petition of Mrs. Louisa Miresse

Mr. Morris Miresse for Mrs. Miresse

1. This is an unopposed petition by Mrs. Louisa Miresse, who has been ably represented by her son, Morris, to exhume the body of her daughter Agata (Morris's older sister) which was buried in the consecrated part of Lambeth Cemetery in Tooting on 27 February 1985, with a view to reburial in the above-ground mausoleum at the Streatham Park Cemetery.

2. Agata was killed in the bathroom by carbon-monoxide poisoning from a defective heater when she was 16. Understandably this tragic accident caused, and continues to cause, great grief to her family, and in particular to her mother and to her brother (then aged 14). The family are Italian Roman Catholics, and when the burial took place they had no understanding of the significance of burial in consecrated ground. I am told that at the time of burial, the parents' intention was that after ten or so years they would go back to Southern Italy and would take Agata's remains with them with a view to reburial in an above-ground mausoleum in South Italy (where this form of burial is extremely common).

3. That is, however, no longer the family's intention. Rather they have discovered the new mausoleum opened at Streatham Park Cemetery in September 1998, and have

(with very considerable difficulty and expense, including the taking of a loan) secured a right of burial in the mausoleum. It appears that a large number of the clientele of this mausoleum are of Italian origin.

4. I have been provided with details and illustrations concerning this mausoleum and the process, which involves placing the coffin in a mausotray before its insertion into a vented, sealed cell with a granite facing stone. There is a mausoleum plan and register. Once sealed the cell may not be reopened, except for a further interment (which, I am told, will not be possible in the case of the cell in question) or for the purpose of removal elsewhere (subject to obtaining an exhumation licence). In this case, I am assured that the reburial will be final, and that no further removal is intended. This mausoleum has been designed on an Italian model, and I have no reason to doubt Mr. Miresse's assertion that it is beautiful, and would have been used by them in 1985, had it been available at the time. It is the family's intention that Mrs. Miresse will eventually be buried in the same mausoleum, although Morris was frank that this may prove beyond the surviving family's means.

5. One consequence of re-burial will be that Mrs. Miresse (who suffers from unsteadiness, pain in her hip and diverticular disease) will find it much easier to visit the place of burial. At present she can only visit when her son takes her, every few weeks or so, a journey of about 15 minutes in the car. Without a car, the journey involves 2 buses. By contrast, the mausoleum will be only a short bus ride from Mrs. Miresse's home. Although I was supplied with a letter from Mrs. Miresse's General Practitioner, I do not

find in her medical condition, or in this “convenience” factor, a good reason for granting the petition; and, although the point was mentioned in the petition, it was (correctly) not argued before me that the petition should be granted on grounds of Mrs. Miresse’s mobility problems (which are common to all old persons).

6. What is said, however, is that a mistake was made in 1985, there having been no intention at that time that the burial should be permanent; and that for an Italian Roman Catholic (as was the deceased) burial in the Streatham Park mausoleum is altogether more appropriate. I was also told (and I accept, having seen Mrs. Miresse at the hearing) that the death of Agate changed her whole life, and that reburial as proposed would go some way towards easing her continuing suffering. The proposal has the support of all her family.

7. *In re Lambeth Cemetery and Crematorium: Petition of Mrs. Mercedes Keenan and re South London Crematorium: Petition of Mrs. Eileen O’Sullivan* (25 October 2002) I set out (paras.12 to 16) five respects in which the principles enunciated by the Arches Court of Canterbury in *In re Blagdon Cemetery* [2002] 3 WLR 603 were relevant to what I had then to decide, which I do not here repeat. The present is not a case where there are “very powerful” medical reasons, though I suspect that stronger medical evidence could readily have been obtained: *Blagdon* para.36(i); on the other hand this is a case where a mistake has occurred “due to a lack of knowledge at the time of burial that it was taking place in consecrated ground with its significance as a Christian place of burial”: *Blagdon* para.36(iii). Whilst there is a risk that, were the petition to be granted, others would seek

to rely on the precedent (*Blagdon* para.36(v)), I consider the risk to be relatively small, particularly since the appeal of reburial in a mausoleum is likely to be limited, save to the Italian community, and even there cost will be a major deterrent.

8. Although I refused the *Keenan* petition, I allowed the *O'Sullivan* petition because the family had intended a temporary burial place, and not understood, and not been informed, about the consequences of burial in consecrated ground and the associated concept of the finality of Christian burial (at least as understood in the Church of England). As I said (para.22):

“As a consequence of the mistake, the stated intention of the deceased prior to his death, and of his family after his death and prior to his cremation, will be thwarted unless this petition is allowed. I know little about Roman Catholic burial theology, but it is strongly arguable that a joint place of burial in a Roman Catholic cemetery for persons of their religious persuasion is a more fitting final disposition than what will occur if the petition is refused”.

I there found the risk of precedent to be small (para.23), and held that there were exceptional circumstances sufficient to override the presumption against exhumation (para.24).

9. The facts here are not quite as strong as in *O'Sullivan*, not least because Agata, unsurprisingly, had expressed no view concerning her place of burial. This mausoleum (though much favoured by Italians, most of whom will be Roman Catholics) is not a specifically Roman Catholic place of burial; and there is a considerably smaller prospect of a joint burial place than there was on the facts of *O'Sullivan*. Nevertheless I am persuaded that the circumstances of both petitions are sufficiently similar that it would be

anomalous not to grant this petition, and that I can properly treat the circumstances of the present case as exceptional.

10. Therefore I grant the petition, subject to the usual conditions.

11. The normal rule is that a petitioner pays the prescribed court fees, and I so order, but unusually I shall not make any order for the payment of a correspondence fee.

6 July 2003

CHANCELLOR