

Neutral Citation Number: [2023] ECC Chd 1

IN THE CONSISTORY COURT OF THE DIOCESE OF CHELMSFORD

IN THE MATTER OF HALL ROAD CEMETERY, ROCHFORD: PETITION NO. 3478

JUDGMENT

1. This is a petition by a representative of the Burial Authority of Rochford District Council (“the Council”), Mr Adam Aldridge, for the exhumation and reinterment of the cremated remains of Ellen Sarah Gander, who died on 9 April 2012.

The circumstances of the interment of Mrs Gander’s ashes

2. The Council owns and maintains Hall Road Cemetery in Rochford. The Council’s “cemeteries leaflet” (<https://www.rochford.gov.uk/cemleaflet>) states that graves may be “purchased”, but this appears to be a reference to the ability to reserve graves.
3. According to a signed statement forming part of the petition and made by Mr Aldridge, the late Mrs Gander’s son, Mr Michael Gander, reserved a space for his mother’s ashes in Hall Road Cemetery on 30 May 2013. That space is known as Plot CPCE8-1061 (“Plot 1061”). Plot 1061 is in consecrated ground.
4. On the same date, Mrs Gander’s ashes were interred, in an oak casket, but not in Plot 1061. Instead, they were interred in a different space, Plot CPCE8-1049 (“Plot 1049”), which is directly behind Plot 1061. Plot 1049 is also in consecrated ground.
5. Mr Aldridge states, and I accept, that the interment of Mrs Gander’s ashes in Plot 1049 was an error. Plot 1049 was not available to be reserved, and Mrs Gander’s ashes ought not to have been interred in it. This is because Plot 1049 had already been reserved by Ms Joanna Ball, on 6 February 2013.
6. Mrs Gander’s remains ought to have been interred in Plot 1061, the plot which Mr Gander had reserved. A headstone in memory of Mrs Gander has been erected on Plot 1061.

The petition for exhumation

7. On 21 December 2017, Mrs Leonora Dunne was added to the Council’s register of reservations as having jointly reserved Plot 1049. Mrs Dunne’s father’s remains are interred in the space directly next to Plot 1049.
8. In 2023, Mr Robert Hoare, Mrs Dunne’s partner, passed away and his body was cremated. On 15 May 2023, Messrs Stibbards, local funeral directors, contacted the

Council to arrange the interment of Mr Hoare's ashes. During the course of preparation of Plot 1049 for the interment, on 19 May 2023, the casket containing Mrs Gander's ashes was unearthed. The plot was immediately re-covered and the Cemetery ground staff informed the appropriate representatives at the Council.

9. Mr Aldridge states, and I can well understand, that Mrs Dunne is in a considerable amount of distress over the fact that it has not been possible to inter Mr Hoare's ashes in Plot 1049, and in the plot directly next to the grave of her father. Both plots were reserved by the family together, and it was and is Mrs Dunne's intention that Mr Hoare's ashes, and, in due course, her own, be interred next to her father's remains.
10. It is against that background that the Council asks the Court to order the exhumation of Mrs Gander's remains from Plot 1049 and their reinterment in Plot 1061. Mrs Dunne and Ms Ball, who originally reserved Plot 1049, agree to this course of action.
11. The Council sought to make contact, by telephone, e-mail and registered post, with Mr Gander, seeking his consent to this course of action, but received no reply.
12. In the light of the lack of any response from Mr Gander, and since Mr Gander's postal and e-mail address were available, I directed that the Registrar serve Special Notice of the petition on Mr Gander pursuant to Rule 6.6 of the Faculty Jurisdiction Rules 2015. That was done on 28 June 2023, and Mr Gander was given 21 days to respond. No response was received within the stipulated period.

The law, and its application to this case

13. The principles governing a petition for the exhumation of human remains are set out in the judgment of the Court of the Arches in Re Blagdon Cemetery [2002] Fam 299. The starting point is that there is to be no disturbance of consecrated ground except for good reason: see [34]. The burden of demonstrating exceptionality is on the petitioner.
14. However, Re Blagdon also makes clear that where there has been a genuine mistake, and in particular where remains have been interred in the wrong grave, exceptionality is likely to be made out. The judgment at [36(iii)] states:

"Sometimes genuine mistakes do occur, for example, a burial may take place in the wrong burial plot in a cemetery or in a space reserved for someone else in a churchyard. In such cases it may be those responsible for the cemetery or churchyard who apply for a faculty to exhume the remains from the wrong burial plot or grave. Faculties can in these circumstances readily be granted, because they amount to correction of an error in administration rather than being an exception to the presumption of permanence, which is predicated upon disposal of remains in the intended not an unintended plot or grave."

15. That is exactly what has happened here. Mrs Gander's remains were, in error, interred in Plot 1049. The error is demonstrated by the fact that Plot 1061 had in fact been reserved by Mr Gander, and by the headstone for Mrs Gander having been erected on Plot 1061.
16. In these circumstances, I consider that exhumation is justified because it "*amount[s] to correction of an error in administration rather than being an exception to the presumption of permanence*", to adopt the language of Re Blagdon.
17. Had Mrs Gander's next of kin objected to the proposed exhumation, that is something which I would, of course, have needed to take into account. However, I am satisfied that all reasonable attempts have been made to contact Mr Gander – including, as I have explained above, the giving of Special Notice – and no response has been received.

My determination and directions

18. In these circumstances, I am content to grant the Faculty that is sought and to order the exhumation of Mrs Gander's cremated remains and their reinterment in Plot 1061. I do so on the following conditions:
 - (1) That the removal be effected with due care and attention to decency, early in the morning and the grave screened from the view of the public.
 - (i) That, following that exhumation, the remains in their casket be re-interred forthwith in Plot 1061 in a safe, private and decent manner.

Philippa Hopkins K.C.
Chancellor
8 August 2023