

IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

Re: St Paul, Rusthall

J U D G M E N T

1. By a petition dated 6 January 2019, and filed on 11 January 2019, the petitioner, Stephen Michael Douglas Martin, applies to exhume the cremated remains of his late father, Michael Cyril Martin from Row 4, Plot 6, in the Rusthall St Paul New Churchyard, Nellington Road, Rusthall, Kent, and to reinter them in the Grave 7, Row 10, Plot D of the same churchyard, which contains the mortal remains of his mother, Marion Joy Martin.
2. Michael Cyril Martin died on 26 March 2011 aged 62 years of a brain aneurysm. His death was sudden and unexpected. He had been married to his wife, Marion Joy Martin for a good number of years, and there are four adult children of the family. Mr and Mrs Martin had been childhood sweethearts and had both grown up in the Tunbridge Wells/Southborough area of Kent, where their respective families had lived for more than one generation. Mr Martin was cremated on 7 April 2011, in accordance with his express wishes, and his cremated remains were interred in the plot referred to above, which was, and is, consecrated ground. The Incumbent, the Reverend Ronnie Williams, confirmed this to me. Paragraph 7 of the petition makes it clear that the ashes were placed in an urn before being interred in the ground.
3. Mr Martin did not leave a will. However, in an almost chance conversation during a time when they were fishing together, Mr Martin told the petitioner, who was his oldest son, that he did not want to be buried, but rather wanted to be cremated. The petitioner told me that the conversation arose because his grandmother had just died and had been buried, and that his father had said something along the lines; "I don't want to be buried with the worms. I want to be cremated. I don't know what your mother wants but that is what I prefer" I found the petitioner an honest witness, and that this evidence, in particular, had the ring of truth to it. The petitioner's grandmother died in February 2011, and no one at the time expected that Mr Martin would die just two months or so later. The petitioner further told me, which I accept, that nothing more was said about the subject, and that that was the only

occasion on which his father had expressed his wishes. The petitioner went on to say that he did not share the information about his father's wishes with any other members of the family if only because he saw no need to do so as his father seemingly was fit and no one, for a moment, thought that he was going to die, as he did, in April of that year.

4. Unfortunately, on the day Mr Martin died, his wife suffered a heart attack, after which her general state of health started to deteriorate. The immediate effect of this, not surprisingly, was that an already fraught and emotionally difficult time became even more hard to cope with. Be that as it may, Mrs Martin, with the assistance of her children, was able to take part in the funeral arrangements, and to attend the funeral, which was a cremation service at the local crematorium. It was at an early stage in the arrangements process that the petitioner disclosed to his mother and brothers and sister, what his father had said to him as set out in paragraph 3 above.
5. Mrs Martin's reaction to what the petitioner told her was mixed. On the one hand she was relieved and comforted, as she had been unsure what her husband wanted, the two of them never having spoken about the subject. On the other hand, the petitioner told me, his mother was upset that she had not had the chance to persuade her husband to change his mind and opt for burial because her belief was that she should be buried, and she very much wanted the two of them to be buried together. The petitioner put it thus; "It was her ultimate wish that when she died, they would be together." He told me, and his brother and sister confirmed, that by the time of their father's cremation they were all well aware of what their mother wanted.
6. In the event, there was a gap of about four weeks between the cremation service and the interment. The service at the crematorium was conducted by a retired priest who had baptised the grandchildren of Mr and Mrs Martin. It was thought by the family that he was best placed to conduct the service as he had had some contact with them and with Mr Martin. Sadly, the service did not go as hoped for with the priest getting the name of the deceased wrong on a number of occasions, which not surprisingly caused upset. The upshot was that another priest, the Reverend Brian Fortnum, performed the actual interment.
7. Mr Williams, the Incumbent, told me that the normal protocols were not followed, and that he was unaware until after the interment that Mr Martin had died and been cremated. It seems that for some reason the necessary paperwork may not have been completed, and/or there was a lack of communication on the part of the officiating priests. I am not attaching blame to anyone in particular, because it is not possible to

establish the full facts. What is clear, though, is that neither the petitioner nor any member of the family of the deceased was/is at fault on this issue.

8. The petitioner told me that the retired priest visited the family twice before the cremation, and that during one of his visits, when he himself was present, Mrs Martin said to the priest words to the effect that she did not know what to do with her husband's body, ie whether to have it buried or cremated, because she felt strongly that in due course he should be with her. She then went on to ask the latter whether that would be possible, and received a reply to the effect; "I'm sure that won't be a problem. There are rules and regulations to be followed and abided by. Under the circumstances I don't think it will be a problem."
9. I accept this evidence, albeit that it is impossible to ascertain exactly what the priest was saying or attempting to say. I bear in mind here that he was elderly and retired, and did not regularly officiate at St Pauls. What is apparent is that the family understood that he had told them, before Mr Martin was cremated that it would not be a problem later to have his ashes laid to rest in the grave where his wife was buried. I appreciate that the parties could have been at cross purposes and that the retired priest might well have thought that he was being asked whether the ashes in the event of a cremation could be held until Mrs Martin died. If he did think that, he did not make it clear.
10. The petitioner told me, to use his words; "I absolutely believed him [the priest]. It gave my Mum a lot of comfort, and for us as a family, and we had no hesitation in going ahead with [the cremation], innocently thinking that in time we could remove Dad's ashes and transfer [them] into my mother's grave." He then said; "For sure my mother was influenced by what was said." I accept this evidence; I see no good reason not to do so.
11. The petitioner told me that he thought that on the day of the interment he was told by either Mr Fortnum or the funeral director that what his mother wanted in the future would not be a problem. His memory was less clear here, and his sister, Ms Martin told me that she thought that it was the funeral director who said it. I suspect that it was the latter, but in reality, that does not greatly affect the position, because at that stage everyone was at the interment, and it would have been difficult in the extreme to call it off.
12. Ms Martin, in evidence, confirmed to me that her mother was relieved by what she was seemingly told by the retired priest.

13. The petitioner, continuing his evidence, told me that had the family known that there would be issues down the line they would not have proceeded with the interment, but would have kept the urn until their mother's death, because their mother was so adamant and desirous of being laid to rest with her husband; "even though Dad was in a different state," ie had been cremated. He felt that the family had been misled as to the true position, and he had thought right up to the later time of his mother's funeral that there would be no problem, and that his father's ashes could be transferred to his mother's grave, more or less on the spot.
14. Mrs Martin, unlike her husband, left a will, and in it she requested that her body be buried. She died on 5 March 2018, and was buried in the grave referred to above, on 21 March 2018. The petitioner told me, and I accept, that his mother was undoubtedly influenced in her final choice of burial by her belief that her husband's ashes could then be placed in her grave.
15. On 21 January 2019 I gave directions, and indicated that I was prepared to deal with the petition on written submissions provided that all parties concerned agreed in writing to my doing so. In the event the petitioner, as he was entitled, opted for a hearing, which took place on 15 March 2019.
16. At the hearing, apart from the petitioner and the Incumbent, Mr Williams, I heard evidence from Sarah Joy Martin, and Jonathan Aluian Martin, the petitioner's siblings, who supported the petition and confirmed the evidence given by the petitioner. The youngest member of the family, Jeremy Martin, did not attend but confirmed in writing that he also supported the petition.
17. The principles which I have to apply when dealing with an application for an exhumation from consecrated ground are well known and were laid down by the Court of Arches in **Re Blagdon Cemetery 2002 Fam 299.**
18. I have a discretion, but the presumption is that the burial of human remains in consecrated ground is permanent. This is the starting point when dealing with the discretion. The presumption arises from the Christian theological tradition that burial, or as here, the interment of cremated remains, is to be seen as the act of committing the mortal remains of the departed into the hands of God as represented by His Holy Church.

19. Thus, it is that the Court can only depart from the principle of permanence if the petitioners, on whom the burden of proof lies, can establish special circumstances to allow an exception to that principle.
20. The Court of Arches in Blagdon (supra) helpfully identified certain factors which may assist in deciding whether exceptional circumstances have arisen such as to permit the remains to be exhumed. These include medical reasons, which do not apply here; lapse of time, on this issue I would merely observe that the petitioners have acted as speedily as they could, and that any lapse of time is not due to any neglect or default on their parts, or on that of their late mother; mistake, precedent, and the desirability of encouraging family graves. It is, though, important to bear in mind that the factors identified by the Court of Arches are not determinative, nor are they of necessity exhaustive. They are guidelines rather than tramlines as to how the Court should exercise its discretion.
21. In my judgement a mistake has occurred here. In the first place the mistake may have been on the part of the retired priest in what he said. If so, I am wholly satisfied that the mistake was an innocent one. That said, Mr Williams explained to me that he had protocols to avoid just the sort of situation that arose, because he is fully aware that at such emotional times misunderstandings can easily occur. More likely, and alternatively, I suspect the mistake was on the part of the retired priest, again innocently, in not identifying precisely what was wanted by the family, and/or in then not making it clear what was needed to achieve that. Further, in the alternative, there was a misunderstanding by all the Martin family, amounting to a mistake, as to what they could or could not do.
22. I am further satisfied that the mistake was operative on the minds of all the Martin family, and in particular on Mrs Martin, when she came to make her will, and to her final decision on whether she should be buried or cremated.
23. I note that the Incumbent, Mr Williams, who took the trouble to attend the hearing, and give evidence, is strongly supportive of the petition, as is, he told me, the PCC. He felt that a mistake had been made, incorrect procedures possibly followed, and that pastoral concerns dictated that the petition should be granted. The PCC are unanimously of the same view. Accordingly, there is local support for the petition.
24. I have before me a letter, dated 2 January 2019, from the funeral directors, J. Kempster and Sons, in which they state that they carried out the arrangements for the cremation service of Mr Martin and funeral arrangements for Mrs Martin, and confirm that they are ready, willing,

and able to perform the exhumation of the cremated remains of Mr Martin, should such be permitted.

25. There is nothing here, in my judgement, to lead to an undesirable precedent being created.
26. In these very particular circumstances, I am satisfied that this is a case where I can take an exceptional course, and authorise the exhumation of the cremated remains of the late Mr Martin so that they may be reinterred in the grave plot where the mortal remains of his more recently deceased wife have been interred.
27. Accordingly, I direct that a Faculty is to issue as sought, but with the following conditions, namely that;
 - (1) The exhumation be effected with due care and attention to decency, early in the morning, and the plot screened from the view of the public, and with a priest present.
 - (2) The reinterment be forthwith, in Grave 7, Row 10, Plot D of the Churchyard
 - (3) The petitioners must pay the Registry and Court costs of and incidental to the petition, in the usual way. There shall be a correspondence fee to the Registrar as I direct.

John Gallagher
Chancellor
18th March 2019