

IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

Re: Tunbridge Wells Cemetery

J U D G M E N T

1. By a petition filed on 1st June 2015, the petitioner, Carole Anne Osborne, applies to exhume the cremated remains of her late mother Mrs Nancy Rosemarie Rosling from the Tunbridge Wells Borough Cemetery, and to reinter them in the plot containing the cremated remains of the latter's late husband, Raymond John Rosling.
2. Mrs Rosling died on 15th August 2006, and her cremated remains were interred in the Tunbridge Wells Borough Cemetery in Grave Class B Section 16 No 855 on 7th November 2006. This was and is consecrated ground. The remains were contained in a solid oak casket.
3. Mr Rosling died on 30th March 2015, and his cremated remains were interred in the same cemetery in Grave Class B Section 16 No 136. This too was and is consecrated ground. I do not know the date of the interment of Mr Rosling's remains, but that does not matter for the purposes of the determination of this petition.
4. Mr Medhurst of J. Kempster and Sons Funeral Directors in a letter dated 27th May 2015 confirmed; "the condition of the casket at the present time is likely still to be good, and should not prevent an exhumation from taking place in order for them to be reinterred in a different grave."
5. Ms Thompson, the Bereavement Officer in a letter dated 29th May 2015 stated; "Tunbridge Wells Borough Cemetery have no objection to the said remains being exhumed from their resting place to that of B16 Grave 136 Consecrated within the same cemetery grounds."
6. Mr and Mrs Rosling were married to each other for 51 years. They ran their own shop business together for some 33 years and retired in June 2006. Sadly, as is clear from paragraph 2 above,

Mrs Rosling died within 2 months of her retirement. I am told, and have no reason to doubt, that Mr Rosling never really got over the death of his wife, and that it was his express wish that his cremated remains should be interred with those of his late wife. By way of confirmation, if such were needed, in his will dated 2nd August 2014 Mr Rosling stated; "I declare that I wish my body to be cremated and my ashes placed within those of my wife Nancy Rosling at Tunbridge Wells Cemetery."

7. The problem that has arisen relates to the fact that the ashes of Mrs Rosling were interred in the plot which holds the ashes of her mother and her sister. Deborah Goss, who is the daughter of Mrs Rosling's sister, is the owner of that plot. Mrs Goss in a letter dated 4th August 2015 refused to allow Mr Rosling's ashes to be placed in the plot, saying; "I will keep the reason private but just to say that Mum requested that he (Mr Rosling) was not put in the grave & I am upholding her wishes." In a number of letters that have been sent to me members of the family have denied the truth of what Mrs Goss has asserted, and have put forward other reasons for Mrs Goss refusing permission as she did. It is a matter of profound regret that there should be disharmony in the family as there is, but I am not in a position to decide the rights and wrongs of what has occurred. Mrs Goss, as a matter of law, being the owner of the plot, ultimately was entitled to refuse to allow the remains of Mr Rosling to be interred along with those of his wife. Whether morally she was entitled to act as she did I cannot determine. This seems to have been ultimately accepted by the Rosling branch of the family, albeit reluctantly, because Mr Rosling's remains, as I have indicated above, were interred in a new plot.
8. Mrs Goss in her letter dated 4th August 2015, which is addressed to my Registrar, also says this; "I have had a letter from my cousin Mrs Carole Osbourne (sic) regarding the removal of her Mother's Ashes from my Grandmothers and Mothers Grave, she has requested that I write to you giving my permission to remove them. Although I am quite happy for my Aunt's ashes to remain in the family grave." For the purposes of this Judgment, I assume that Mrs Goss has in fact consented to the exhumation of the ashes of Mrs Rosling, but I have to say that her reply to the question put to her is equivocal to say the least.
9. The situation prevailing now is that Mrs Rosling's ashes were interred in what I term the family grave, doubtless with the agreement of whoever was the owner of the plot at the time. It would seem that Mrs Rosling expected that in due course her

husband's ashes would be interred along with hers in the event that she predeceased him, as in fact occurred. Once Mrs Rosling had died, it was Mr Rosling's wish that his ashes be interred along with those of his wife. That clearly was his hope, and indeed expectation, but by that stage, as a matter of law, he could not have forced the issue, even had he wanted to do so.

10. What is clear from reading the various letters sent to me by members of the family, is that neither Mr Rosling nor Mrs Rosling in any way caused or contributed towards the problem that has arisen.
11. Mrs Osborne is content for the petition to be determined by me on the basis of the documentary evidence and the correspondence received to date. I am satisfied that this is a proper course to adopt.
12. 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**.
13. 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 theology and 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.
14. Thus it is that the Court can only depart from the principle of permanence if the petitioner, on whom the burden of proof lies, can establish special circumstances to allow an exception to that principle.
15. 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 Mrs Osborne has acted as quickly as might be asked of her; mistake, which does not truly apply, 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 exclusive. They are

guidelines rather than tramlines as to how the Court should exercise its discretion.

16. I have stated above that mistake does not truly apply here, by which I mean mistake of the sort envisaged by the Court of Arches in **Blagdon** (supra). There has been no mistake in the administration, as can occur, with, for example, burial in the wrong grave. I am satisfied, however, that there has been another type of mistake. I am satisfied that Mr and Mrs Rosling hoped, expected, and intended that their remains should be interred in the same plot, and that that plot would be the family grave. I am further satisfied that Mr Rosling right up to his death was consistent in that hope, expectation and intention, and that he clearly expressed his wishes, both in writing in his will, and orally to members of his family. I am further satisfied that Mrs Osborne, faced with the refusal of Mrs Goss to allow the remains of Mr Rosling to be interred in the family plot, took the only practical course open to her, namely she caused her father's ashes to be interred in a plot as close as possible to that in which his wife's ashes were interred.
17. In the very particular circumstances of this case I am satisfied that this is one where I can take an exceptional course, and authorise the exhumation of the cremated remains of the late Mrs Rosling so that they may be reinterred in the plot where the cremated remains of her late husband have been interred.
18. Accordingly, I direct that a Faculty is to issue as sought, but with the following conditions, namely that;
 - (a) The prior written consent is obtained from Mrs Goss in respect of the exhumation of the cremated remains of the late Mrs Rosling
 - (b) The undertaker can recover the oak casket and the ashes sufficiently for the exhumation to be effective.
 - (c) Any conditions imposed by the environmental health department are complied with.

John Gallagher
Chancellor
11 January 2016