

Neutral Citation Number: [2024] ECC Wor 5

IN THE CONSISTORY COURT OF THE DIOCESE OF WORCESTER
CASE NUMBER [Private Petition 23/29]

RE: XXXX, ST XXXX
IN THE MATTER OF AN APPLICATION FOR THE EXHUMATION OF THE MORTAL REMAINS
OF RM

JUDGMENT
DELIVERED ON 13 MARCH 2024

This judgment has been redacted to preserve the privacy of the family involved and should only be reported or published in this version. The unredacted version has been supplied to the Registry for the use of the parties.

Background facts

1. RM sadly died on [date] 1983 and his cremated remains were buried in the churchyard of [Church and Location] on [date] 1984. Over 39 years later, in April 2023 RM's daughter BC lodged a petition for permission to exhume those remains.
2. The undertakers who dealt with this burial were Malcolm J Presland Funeral Directors who are no longer in business. Despite effort to find out, it has not been possible to discover in what form the ashes were buried. The most likely options appear to be that they were within a metal box or a wooden box. I asked for information as to the like state of preservation of those remains and their suitability for scattering (in accordance with the wishes of BC) but that question sadly remains unanswered.
3. Much more recently, I infer in later 2022 or early 2023 BC's mother, FM, RM's widow, also died and her remains were cremated. I also infer FM's cremated remains are in the possession of BC.
4. BC wishes to scatter the cremated remains of RM under a tree in the garden of her home and, I infer, do likewise with those of her mother. There is no intention to rebury the remains or erect any monument. Her petition is agreed by all close family members, RM's brother RM2 and RM's three grandchildren. The PCC are supportive of the application, but apprehensive about what would be left to be exhumed and the Vicar has given his consent.

5. I asked for information as the tenure of the property where it is proposed to scatter the remains and its size and location. I have been provided with a plan that suggests it is a sizeable property with substantial garden, and I am told it is owned by the petitioner and her husband jointly and is not subject to any mortgage. It is not subject to any trust preventing future sale whether by BC, or other members of her family following her own death. I am therefore unable to gauge how permanently the land will remain in family ownership and occupation.
6. BC believes that because her father was not religious then the local churchyard was not the right place for the burial of his remains. She says and I accept that she and her mother felt the then funeral director somewhat took matters out of the hands of her and her mother who felt they had to “do something with my Father’s ashes straight away and that we did not have any time to think about it.” She felt her mother was not given any other options than burying in the local churchyard and that in her later years her mother regretted not sorting this out sooner and ‘having her husband back with her’.
7. BC says and I accept that her motivation is to ‘fulfil the wishes of my mother’ and also she feels that having now lost both her parents ‘this is the right time to have them both with me’.

The law

8. The law which I am obliged to apply in considering this petition is set out in the leading case of *Re Blagdon Cemetery* [2002] Fam 299, Court of Arches. This established the following principles:
 - a. Burial within a Churchyard, or other land consecrated under the rites of the Church of England, should be regarded as permanent – a *final* resting place. This is because it is symbolic of entrusting that person to God for resurrection. The Court of Arches quoted with approval the following theological formulation prepared by the Right Reverend Christopher Hill, then Bishop of Stafford,
*“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 on to the ‘symbol’ of a human life rather than a giving back to God’.”*¹

¹ *Re Blagdon Cemetery*, para 23.

- b. Departure from that approach will only be permitted in exceptional circumstances. That is, the petitioner for an exhumation must satisfy the Consistory Court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial (that is, burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery) is final.²
- c. Medical reasons causing difficulty for a bereaved relative to visit the grave would not be sufficient save for, perhaps in the most extreme cases.³
- d. Lapse of time may be relevant, particularly where there is a long delay with no credible explanation for it.⁴
- e. Mistake as to the location of a grave can be a ground upon which an exhumation may readily be granted, as that amounts to the correction of an administrative error, rather than an exception to the presumption of permanence. A mistake may also occur due to lack of knowledge that the burial is taking place in consecrated ground, and for those without Christian beliefs it may be said that a fundamental mistake had been made in agreeing to a burial in consecrated ground. But a change of mind as to the place of burial on the part of relatives or others responsible should not be treated as an acceptable ground for authorising exhumation.⁵
- f. The support of close relatives is a relevant factor, but not the support of other people.⁶ I should add that in my view the support of close relatives for a petition that does not otherwise come within the exceptionality test would not thereby bring the case within the test, but if one or more close relatives object this would be a powerful argument against an exhumation that might otherwise have met the test.
- g. There should be regard to precedent, so that cases on similar facts are decided in similar ways, because of the desirability of securing equality of treatment, so far as circumstances permit it, as between petitioners.⁷
- h. Burial in a family grave is to be encouraged because such graves express family unity and are environmentally friendly in demonstrating an economical use of land for burials.⁸ However, it should not be assumed that whenever the

² *Re Blagdon Cemetery*, para 35.

³ *Re Blagdon Cemetery*, para 36 (i).

⁴ *Re Blagdon Cemetery*, para 36 (ii).

⁵ *Re Blagdon Cemetery*, para 36 (iii).

⁶ *Re Blagdon Cemetery*, para 36 (iv).

⁷ *Re Blagdon Cemetery*, para 36 (v).

⁸ *Re Blagdon Cemetery*, para 36 (vi).

possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted. As in this case it is to be expected that a husband and wife will make provision in advance by way of acquisition of a double grave space if they wish to be buried together.⁹

- i. There is no particular difficulty, if the petition is otherwise justified within the exceptionality test, that a proposed transfer is proposed to be from consecrated to unconsecrated land that is part of a local authority cemetery. Local authorities can be presumed to properly undertake their legal responsibilities for the care and maintenance of their cemeteries, such that earlier authorities refusing removal from consecrated ground to unconsecrated ground do not apply in those circumstances.
9. As has been pointed out in subsequent cases, it was not intended that this guidance is exhaustive – each case must be treated on the facts of its specific circumstances to consider whether the principal test of exceptionality is met.

Application of the law in the circumstances of this case

10. I requested that BC be sent a copy of *Re Blagdon Cemetery* which I understand has been done. This was so that she could be aware of the legal test that I need to apply and so that she can make any points she may wish to do so in support of her petition. She provided some further information and background (which I have used in my factual summary above) but has not chosen to make any representations as to how her case might come within that test.
11. I'm afraid to say that, whilst I have every sympathy with BC in her wish to scatter her late father's ashes at home with those of her mother, I cannot find any way in which her case comes within the test set out in *Re Blagdon Cemetery*. I cannot find any special circumstances that make this case sufficiently 'exceptional' to permit an exception to the rule of permanence of burial.
12. No medical reasons have been advanced in support of the petition. There has been a very long delay since RM's remains were buried. This is relevant not only in being a reason in principle against disturbing those remains 40 years later but also a practical concern as there is no evidence as to the likely state of those remains. If they were in a wooden casket there may be little trace of them, depending on the soil conditions.
13. There does not appear to have been any mistake. The burial was known to be taking place in a churchyard. It is more a case of disappointment that other options were not given and regret that the ashes were not retained or scattered elsewhere at the time.

⁹ *Re Blagdon Cemetery*, para 40.

14. Whilst all the close relatives agree, this does not bring the case within the exceptionality test. Had it come within that test, then the agreement of all relatives would have had weight encouraging the grant of the faculty requested. There is no evidence of RM's own wishes, save that he was not religious. I do not know whether he would have preferred his remains scattered or buried, or buried for 40 years and then exhumed and scattered. It is hard to imagine he would have wanted the latter of these options. It seems to me unlikely that FM would have consented to the burial of his ashes in 1984 if she knew for certain it was against his firmly held wishes.
15. The desirability of consistency and equal treatment also indicates that I should refuse this petition. In the recent case of *Re Sheringham Town Cemetery* [2023] ECC Nor 1 Chancellor Etherington KC refused a petition of two adult children to exhume the buried remains of their father to scatter them with the cremated but unburied remains of their mother who died some 20 years later.
16. There is no proposal to form any 'family grave' as the plan is to scatter rather than bury ashes. In any event, I do not have sufficient evidence as to the permanence of ownership of BC's home within the family to enable me to conclude that her private garden is a better final resting place than the churchyard in which RM's remains are currently buried. This, of course, does not prevent her scattering her mother's ashes there if she so wishes, although she may wish to reflect on how she and other family members may feel if in the future she moves away from her present home or it is sold away from the family.
17. Therefore, with regret for the distress this decision may cause, I am afraid that in my judgment the ecclesiastical law clearly does not allow for exhumation in the circumstances of this petition. I therefore decline to order the faculty requested.
18. However, I direct that this judgment may only be reported or published in the redacted form that I will supply to the registry with this full judgment, to preserve the privacy of the family involved.

JACQUELINE HUMPHREYS
Chancellor of the Diocese of Worcester
26 April 2024