

Neutral Citation Number: [2024] ECC Wor 4

IN THE CONSISTORY COURT OF THE DIOCESE OF WORCESTER
CASE NUMBER [Private Petition 23/67]

RE: ASTWOOD CEMETERY
IN THE MATTER OF AN APPLICATION FOR THE EXHUMATION AND RE-INTERMENT OF
THE MORTAL REMAINS OF A CHILD

ANONYMISED JUDGMENT
DELIVERED ON 13 MARCH 2024

Background facts

1. CD was tragically stillborn on [date] 2020. She was the first child of her parents, OD and SD. OD and SD are Romanian nationals who lived in Worcester at the time of CD's birth and death. They have since moved back to Romania, where they have extended families. They are Christians and members of the Romanian Orthodox church. CD was buried in Astwood Cemetery on [date] 2020, less than a month after she was born.
2. OD and SD have applied to exhume the mortal remains of CD so that those remains can be buried in a Romanian Orthodox churchyard in their local village, where the remains of other family members have been buried. The plan is for her remains to be reburied with all the appropriate rites of the Romanian Orthodox Church.

The law

3. 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

- 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

¹ *Re Blagdon Cemetery, para 23.*

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).*

economical use of land for burials.⁸ However, it should not be assumed that whenever the 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.
4. 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 to the present case

5. Applying the tests set out in *Re Blagdon Cemetery* to the facts of this case the following can be determined. I take the view this is an exceptional case.
- a. Over the years with advances in medicine and ante-natal care stillbirth has reduced in the UK from one in every 50-66 births in the 1960s to around one in 250 births today. Nevertheless, the loss of a child in such circumstances can be a devastating experience for those who go through it. Therefore, I take the view that the circumstances in which this petition arises are exceptional. I take the view that in the circumstances of CD's death it is reasonable and entirely understandable that her parents buried her close to where they were living at the time, but now wish to take her remains 'home' to Romania where they live and where many other family members are buried.
 - b. The fact that the plan is for CD's remains to be placed in a Romanian Orthodox churchyard with suitable rites, and that this churchyard is one where other members of CD's family are buried supports the petitioner's application, as it is clear that the remains will be treated with appropriate dignity and reverence, and that they will be buried in a 'family grave' in the wider sense of in a churchyard where other family members are buried. Undertaking such a re-burial according to the rites of the Christian Church to which CD's family belong is both entirely appropriate and, I would hope, likely to give some solace to the parents and wider family.

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

⁹ *Re Blagdon Cemetery*, para 40.

- c. There is, unsurprisingly, no objection from any family member or other person in respect of this petition. Obviously CD could not have expressed any wishes of her own. It is not I hope too fanciful however, to imagine that were she to have been able to do so, she would have wanted to be with her parents and wider family. The wishes of her parents on her behalf in such circumstances clearly carry very significant weight.

ORDER

6. I accordingly direct that a faculty be issued permitting the exhumation of the remains of CD from Astwood Cemetery subject to the following conditions:
 - a. The exhumation shall take place reverently and discretely at the direction of Worcester City Council;
 - b. The remains shall be reburied at [Address], Romania under the direction of the Romanian Orthodox priest of that place.

JACQUELINE HUMPHREYS
Chancellor of the Diocese of Worcester
14.3.24