

Neutral Citation Number: [2023] ECC Gui 4

**IN THE CONSISTORY COURT OF
THE DIOCESE OF GUILDFORD**

Date: 21st June 2023

**IN THE PARISH OF Knaphill and Brookwood
Brookwood Cemetery**

In the matter of a petition for a faculty for the exhumation of the cremated remains of Cecil Gordon Tennant

JUDGMENT

The petition

1. The Petitioner, Victoria Tennant, has applied for a faculty to exhume the cremated remains of her father, Cecil Gordon Tennant. His ashes have been interred in the consecrated ground of Brookwood Cemetery, Woking, Surrey in a plot in Fern Path since 1967. The Petitioner is the registered owner of the plot. The proposed place of re-internment is St Mary's Church, Conistone, Skipton, North Yorkshire.

Background

2. Cecil Tennant was killed in a car crash on 12 July 1967. He and his wife had three children: the petitioner, her sister Irina (who was then aged 14) and their brother Robert (who was then aged 12). The family lived in Surrey at that time. At the time of his death, Cecil Tennant was a company director.
3. Cecil Tennant's wife, the mother of the Petitioner, moved to Australia 2 years after his death leaving the children in England. She died in Australia in 2008 at the age of 89. In accordance with the wishes expressed in her will, her ashes were scattered by her children and grandchildren in America, Scotland and Australia. As far as I am aware she lodged no petition for her husband's remains to be moved during her lifetime. I do not know why this Petition is only lodged now, after Mr Tennant has rested for so many decades at Brookwood and some considerable time after the passing of Mrs Tennant. The Petitioner and her siblings were children at the time of his death, but they (or their mother) have had a number of decades to lodge a petition if it had been considered that Cecil had been interred in the wrong place.
4. Cecil Tennant's family come from Yorkshire and he himself was born and grew up in the Conistone area. I am told that many of his forebears are buried in the churchyard at St

Mary's Church, Conistone and that Tennant family members have been baptised, married and buried at the church for over 200 years. I have been shown an image of a memorial plaque with the names of a number of Tennants inscribed on it. All of them died in the 20th century and the names include Robert Tennant, who was killed in the first World War and who was the older brother of Cecil. It does not appear that there is a 'family plot' since a letter from the church administrator indicates that a parishioner has been asked to look at a list of graves to try to find the graves of family members.

Reasons for the Petition

5. The Petitioner states that she and her siblings wish to reinter their father's ashes in St Mary's Church because Cecil was born and grew up in that area. His children have now all moved away from Surrey. They currently live in London, Andover and Australia. They say that they do not wish to leave their father 'alone' in Surrey.
6. The Petitioner says that if her father could rest with his family members she and her siblings would "all find some kind of peace and closure after all these years. Our father was killed in a car crash, and there has been much undealt with trauma surrounding his death and the subsequent loss of the family home." In additional email correspondence, she explains that her mother collapsed when her husband was killed and made the decisions about his funeral at a time of chaos and crisis.
7. In an additional letter, the Petitioner speaks movingly of the trauma, grief and guilt that she and her siblings have experienced at leaving their father's ashes 'abandoned' in Brookwood cemetery. She says that it does not feel like a spiritual place, and he would not have chosen it for himself. The death of their father, followed by the departure of their mother to Australia, destroyed the family, and the Petitioner feels that some of the trauma would be healed if they could place their father's ashes in St Mary's churchyard and mark the occasion with a service of thanksgiving.

The Legal Principles

8. In *re Blagdon Cemetery* [2002] 4 All ER 482 the Court of Arches considered the principles governing exhumation petitions that I must apply. The essential principles are these:
 - i. Burial in a particular space set permanently set aside for God is intended to be permanent and the peaceful rest of the departed is of paramount importance.
 - ii. A faculty court will only grant a faculty for an exhumation in exceptional circumstances. Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the Court to determine on the balance of probabilities.
 - iii. It is for the petitioner to satisfy the court that there are special circumstances in her or his 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.

9. A delay caused by the passage of time will make it less likely that an exhumation will be allowed, without very compelling reasons (*Re Christ Church, Alsager* [1999] Fam 142, [1999] 1 All ER 177 at p.149H). The granting of a petition for exhumation after 56 years must therefore show these compelling reasons for a change now, as well as the exceptional circumstances required by *Blagdon*.

Relevant factors arising in this petition

10. In considering whether there are exceptional circumstances in this case, the following factors appear to be relevant:
- i. Cecil Tennant died at a relatively young age and very suddenly, which was extremely traumatic and distressing for his wife and children.
 - ii. Members of Cecil Tennant's family have been buried in the churchyard of St Mary's church, Conistone and other members of the family, including Cecil's brother, are commemorated on a plaque in the church.
 - iii. It is 56 years since Cecil Tennant's ashes were interred in Brookwood Cemetery.

The traumatic circumstances of Cecil Tennant's death

11. The sudden death of her husband must have been extremely distressing for Mrs Tennant, and I understand from the Petition that his death led to the family having to move from their home with the additional distress that such an upheaval must have caused. Mrs Tennant left England for Australia two years later, leaving her children behind. In short, the Petitioner says that the death of their father destroyed the family.
12. Mrs Tennant is now herself deceased and I do not know what her wishes were for her husband's final resting place. I cannot know whether she considered Conistone as a resting place for her husband's ashes or whether she wanted him to remain at Brookwood where he rested for her lifetime.
13. If there was clear and strong evidence of some mistake made at the time of burial, that would be capable of amounting to an exceptional circumstance. However, a mistake in 1967 would have likely resulted in a petition in the years after that. A mistake must be distinguished from a case in which a family have simply changed their minds as to the preferred location of the remains. A mistake may occur due to a lack of knowledge at the time of burial that it was taking place in consecrated ground with its significance as a Christian place of burial. (*Re Blagdon* @para. 36 (iii))

Family plots

14. A general desire that family members be buried together is usually insufficient, without more, to dislodge the essential principle that burial is permanent. There have, however, been occasions where faculties have been granted in order to create a family grave: the justification is that it encourages the environmentally sensible use of burial land or carries the benefits which can be derived from family unity, particularly where there have been

strong family relationships. There is, however, no family grave, as such, at St Mary's Church, Conistone: it is simply that many family members have been buried in the churchyard in the past. There may be other members of the Tennant family who are buried elsewhere.

Passage of time

15. The very long passage of time is one of the key considerations in this case. No reasons have been advanced as to why no petition was lodged many years ago if Brookwood was not a suitable resting place for Cecil Tennant. Mrs Tennant lived for a further 41 years after her husband died without trying to move his remains. She herself died in 2008 and yet the Petition is only lodged now. This indicates a change of mind by the family at a very late stage which is understandable, but which does not meet the legal test for an exhumation.

Conclusion

16. I accept that this Petition arises from a genuine sense that the trauma suffered by the Petitioner and her siblings might be ameliorated by the granting of this Petition. No consistory court could be lacking in sympathy for this family, and the other families of those who have died and who feel that healing and peace of mind may be achieved by exhumation and reburial; and nor can any court fail to recognise the hurt that may be brought about by a refusal of such a petition.
17. However, that is not the test I have to implement. Burial in a particular space permanently set aside for God is intended to be for ever. This is a principle which must be honoured, and which can be set aside only in exceptional circumstances and for compelling reasons. The reasons put forward do not meet this threshold and the very long period that Cecil Tennant has rested in Brookwood presents the strongest of reasons as to why I am not able to grant this Petition.

HHJ Sarah Whitehouse KC
21st June 2023
Deputy Chancellor.