

Neutral Citation Number: [2023] ECC She 3

DIOCESE OF SHEFFIELD

In the Consistory Court

Her Honour Judge Sarah Singleton KC

Chancellor

In the Matter of

Catcliffe Saint Mary– Exhumation of the Remains of the Late Brian Tonks

Judgment

1. The Petitioners in this matter are Helen Hall and James Tonks. They are the children of the late Brian Tonks. Mr Tonks died on the 21st of April of 1993 aged only fifty five years. His cremated remains were interred in the churchyard at Catcliffe St. Mary's where the plot is marked with a memorial stone.
2. Mr Tonks' widow, Mrs Josephine Tonks, the mother of the Petitioners, survived him by nearly 30 years. She died on 27th July 2021. Her remains have also been cremated. The Petitioners say that she always regretted her decision to have Mr Brian Tonks' remains buried in the churchyard and wished to have them exhumed so that her remains and his could be scattered together in their favourite place. The Petitioners do not know whether their mother ever did anything about this regret. They say that she was fiercely independent and I infer from this that she therefore did not seek their help or confide in them with respect to this.
3. The Petitioners now seek permission to undertake the exhumation of their father's remains in order to fulfil their parents' wishes. They were unsure of the process required to enable permit such an exhumation. Initially they approached the Ministry of Justice and it is confirmed that the MOJ have no objections to the exhumation. Ultimately they have brought this Petition having been ultimately properly advised that the authority to give permission for an exhumation from a Church of England churchyard rests with this Court.
4. I am satisfied from enquiries made of the incumbent, the Reverend Philip Barringer, that Mrs. Tonks' remains can be interred in the churchyard at Saint Mary's Catcliffe with those of her late husband should the Petitioners wish this. I am not satisfied on the evidence available, that the remains of Mr Tonks could be exhumed appropriately after such a passage of time.

5. The law that applies to this issue is settled and clear. Permission for exhumation can only be given exceptionally and it is for the Petitioner so establish that their case is exceptional (see Re Blagdon Cemetery [2002] Fam 299)

I am sympathetic to the wishes of the bereaved Petitioners to follow their mother's wishes in the wake of her more recent death. Unfortunately the reasons they advance are not exceptional in the sense that they do not justify the exhumation of remains particularly after such a lapse of time. This decision is reinforced by my doubt as to whether such an exhumation could be achieved appropriately and with dignity. It is further reinforced by the fact that the Petitioners may, if they chose, arrange to have their mother's remains interred in the churchyard at the site where their father's remains are buried so that their parents remains would be together.

6. I know that this will be disappointing to the Petitioners but my decision follows clearly from the facts in this matter and the settled law which applies.

Sarah Singleton KC

Chancellor of the Diocese of Sheffield

2nd December 2023